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Public Defender of Rights

ANNUAL REPORT 2019

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Public Defender of Rights

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FOREWORD

The Defender's annual report addressed to the Chamber of Deputies is a metaphorical shop window presenting the institution's work in the past year. It provides a summary of various situations where the Defender was able to help people by offering assistance or advice. The annual reports issued over the twenty years of this institution's existence have also served as certain feedback for the legislature. They show the most common mistakes made by the government and indicate how facilities where people are restricted in freedom operate, in what way and in what situations people are exposed to unequal treatment, and what kinds of barriers are faced by people with disabilities. At the same time, the Defender points out in the reports various shortcomings in the law and calls on the legislature to fill these gaps. This is also true of the Annual Report for 2019, which you are about to start reading.

This edition of the Defender's annual report is somewhat different than the others. It was drafted by my predecessor, Anna Šabatová, and summarises the last, sixth year of her term in office. I, too, completed my mandate as her Deputy in late 2019 and I was therefore involved in the Defender's work in one way or another for much of the previous year. On 4 December, I was replaced in office by the current Deputy Public Defender of Rights, Monika Šimůnková. When I took the oath and assumed the office of Public Defender of Rights on 19 February 2020, the annual report was already prepared in most part. And so, while I am the one who presents the report to you, I respect that, in actual fact, it summarises the work of my predecessor. I am familiar with most of the topics and have no problem attaching my signature under the report. I therefore made only very minor modifications.

The share of complaints falling within the Defender's mandate, i.e. those we were able to address, further increased in 2019. On the other hand, the total number of complaints dropped. This was true of all areas except for the construction industry. There, the number of people looking for help in their dealings with construction authorities grew in the past year. In general, however, the variety of problems people presented to us did not change significantly in 2019. Social security is still the most frequent topic. In connection with pensions alone, we received almost as many complaints as in the field of construction and regional development combined. However, new problems continue to arise, often requiring a change in the legislation. The Defender usually presents the most serious of these issues to the Chamber of Deputies in the form of his recommendations. I am no exception, as I am presenting three recommendations concerning the rights of persons restricted in their freedom aimed to improve their protection against ill-treatment.

We also did a great job in awareness raising in 2019. We created several new leaflets and updated a number of existing ones to help and guide the public in dealing with difficult life situations. We issued three new Collections of Opinions, namely "Prisons II" and "Discrimination", and at the turn of the year, also "Information". Our "Simple Guide to Building a House" published on our website can make it easier for people to navigate through the process of preparing and building their house. We also organised a number of seminars and educational events for public administration workers, healthcare and social facilities, NGOs, the private sector and students.

I believe that you will find many interesting and useful facts in the Defender's annual report that can be used for the benefit of our society.

Stanislav Křeček, Public Defender of Rights
25 February 2020

Mgr. Anna Šabatová, Ph.D.
Public Defender of Rights until 18 February 2020

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

JUDr. Stanislav Křeček
Deputy Public Defender of Rights, incumbent Public Defender of Rights since 19 February 2020

Mgr. Monika Šimůnková
Deputy Public Defender of Rights since 4 December 2019

Legislative recommendations

The Defender makes general conclusions that reflect the problems and findings encountered in her activities and points out the necessary changes to the legislation. She proposes possible solutions to the Chamber of Deputies in the form of legislative recommendations and also responds to the way her previous recommendations were followed.

Defender's recommendations for 2019

1/ Confidentiality duties of healthcare professionals and ill-treatment

It is the Public Defender's task to improve the protection of persons restricted in their freedom against torture and other forms of ill-treatment. Therefore, during her visits to facilities in which people are placed because they are dependent on care of others or based on the government's decision, the Defender checks compliance with the principles of effective investigation and documentation of ill-treatment under the rules of the UN General Assembly and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). While doing so, however, she faces a certain legal obstacle to her efforts to prevent such treatment and achieve punishment of possible instances of violence encountered by healthcare professionals.

Act No. 372/2011 Coll., on healthcare services and the conditions for their provision, as amended, requires the providers of healthcare services and medical staff to maintain confidentiality of all facts learned in relation to provision of healthcare services. By way of exception, this does not apply to most serious felonies (including murder and grievous bodily arm). However, this exception does not extend to all possible forms of ill-treatment

and, moreover, it requires that physicians be familiar with the definition of individual criminal offences and assess whether they may have been committed. Their confidentiality duty needs to be removed in this regard also because victims of ill-treatment are often afraid or have some other reasons to deny their consent to reporting such conduct to the competent authorities. The perpetrators thus avoid justice and the victims remain unprotected. An amendment enabling medical staff to report any signs of ill-treatment would help preventing ill-treatment and contribute to protection of elderly people living in facilities for senior citizens, patients of psychiatric hospitals and prisoners.

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, as amended, which would enable medical staff to report signs of ill-treatment without violating confidentiality.

2/ Inadequate legal regulation of forensic treatment

In view of its international commitments concerning the prohibition of ill-treatment and the right to protection of physical and mental integrity, the State is required to introduce an appropriate legal and administrative framework for the provision of healthcare services and deprivation of liberty. Public authorities may only legitimately interfere with the freedom and integrity of a human being if the interference has a basis in the law. The law must lay down the conditions under which effective protection of patients' lives and human dignity will be ensured in the provision of healthcare services in governmental as well as private facilities.

The Defender's findings from the visits to psychiatric hospitals, which she presented in her Report on Forensic Treatment, Means of Restraint and Other Topics, unambiguously point towards an inadequate legal framework for forensic treatment.

The legislation on forensic treatment is fragmented and some fundamental issues are not addressed at all. The conditions to be met by facilities providing forensic treatment are not specified. There is no comprehensive regulation of the patients' rights and obligations. Some interferences with the patients' rights that occur in practice lack a legal basis. There are ambiguities relating especially to treatment without the patient's consent, legitimacy and scope of "regime measures" (getting outside, the possibility of wearing one's own clothes and using own things, including a telephone), use of security equipment (cameras, bars). The legislation does not envisage at all that patients could be transferred and any transfer is therefore an informal procedure based on an understanding approach of the courts and hospitals. The same is true of the legal regulation of interruption of institutional forensic treatment.

For comparison, while secure preventive detention, which currently concerns about 90 inmates and several dozen employees of secure preventive detention institutions, is governed by a special law, including a basis for supervision by the public prosecutor's office, forensic treatment, which applies in its institutional form alone to almost 1,000 persons and several hundreds of healthcare professionals, is completely neglected in this regard.

The Defender therefore recommends that the Chamber of Deputies request the Government to present a bill that would comprehensively regulate the issue of forensic treatment.

3/ Change of institutional forensic treatment into secure preventive detention

In her Report on Visits to Secure Preventive Detention Institutions, the Defender evaluated the ten years of operation of these facilities. She focused on the treatment of inmates, conditions in secure preventive detention and achieving its purpose. From the very beginning, secure preventive detention was conceived as the strictest protective measure (not a punishment) for perpetrators who posed an extraordinary danger for society. The number of instances when secure preventive detention was ordered increased as a result of

a legislative change effective from 1 December 2011. The capacity of secure preventive detention institutions has thus been exhausted and must be increased. The Defender considers this an extraordinarily pressing issue.

Following the amendment, secure preventive detention may be ordered not only in cases of especially serious felonies, but also for "less serious" crimes. Institutional forensic treatment may also be changed to secure preventive detention in cases where other conditions for ordering this kind of detention are lacking (even a crime need not be committed) but the forensic treatment is not fulfilling its purpose or ensuring sufficient protection of society (e.g. because the patient has repeatedly refused to undergo examination or treatment or has otherwise shown a negative stance towards the forensic treatment).

In the Report on Visits to Secure Preventive Detention Institutions, the Defender analysed court decisions imposing secure preventive detention and found that changes from institutional forensic treatment to secure preventive detention without the existence of preconditions for direct imposition of secure preventive detention accounted for approximately 20% of the cases. The Defender considers this fact alarming as it casts doubts on the original purpose and sense of secure preventive detention. The same opinion has been expressed by the Constitutional Court of the Czech Republic, specifically in its judgement File No. I. ÚS 497/18, concerning a case where forensic treatment of an offender who had originally been sentenced merely for several cases of theft had been changed to secure preventive detention.

Based on visits to facilities, an analysis of court decisions and discussions with the professional public, the Defender considers it important to again restrict the possibility of changing institutional forensic treatment to secure preventive detention (Section 99 (5) of the Criminal Code), i.e. to reinstate the legislative situation preceding 1 December 2011. The Defender suggests to the Chamber of Deputies that the legal status preceding 1 December 2011 could also be reinstated with regard to imposition of secure preventive detention (Section 100 (1) and (2) of the Criminal Code). The Defender believes that it will otherwise not be possible to treat this strictest protective measure as an extraordinary instrument of last resort and the capacities of secure preventive detention institutions will have to be regularly increased, with the ensuing burden on the State budget and the Prison Service of the Czech Republic.

The recommendation is not being presented in isolation, but rather in view of the recent findings on issues related to forensic treatment dealt with by the Defender in her Report on Forensic Treatment, Means of Restraint and Other Topics.

The Public Defender of Rights recommends to the Chamber of Deputies to request that the Government submit a draft amendment to Act No. 40/2009 Coll., the Criminal Code, as amended, whereby the last sentence would be omitted from Section 99 (5) of the Code.

Evaluation of recommendations for 2017 and 2018

Recommendations for 2018

1/ Remote inspection of an administrative file

Within her inquiry (File No. 2600/2018/VOP), the Defender dealt with remote inspection of administrative files, enabling people to obtain information from the files – to which they are entitled under the law – without having to travel personally to the given authority's offices (Defender's press release of 7 December 2018). She determined that some administrative authorities did provide (send) documents from administrative files but others refused to do so, believing no such right existed under the Code of Administrative Procedure.

The Defender was not successful with her requirement for unification of the administrative practice at the Ministry of the Interior, as the authority responsible for the Code of Administrative Procedure, or at the Government of the Czech Republic, which decided in January 2019 to reject her legislative recommendation for amending the Code of Administrative Procedure so that the right to remote inspection would be explicitly laid down in Section 38 (4) (File No. 15/2017/SZD).

The Defender emphasises that this amendment to the Code of Administrative Procedure would

be fully in line with recent efforts to make public administration more "user-friendly". She continues to be convinced of the need for a change in the legislation that would unambiguously provide for the right to remote inspection of files in the relevant provision.

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 Defender recommended to adopt an amendment to the Healthcare Services Act that would make it possible to punish as an infraction unauthorised use of means of restraint and failure to comply with other duties related to their use by a healthcare services provider. Under the current regulation, people can defend themselves against such conduct only by private-law means (by filing a lawsuit for the protection of personal rights). The Defender does not consider this option sufficient because any use of means of restraint represents a serious interference with the personal integrity of a human being, and their abuse or non-compliance with other related duties has to be effectively punished and prevented. Similar legislation is already in place in the area of social services.

The Defender re-opened the topic in 2019 within her summary report on systematic visits focusing on institutional forensic treatment, because no legislative solution had been adopted thus far. In

December, the Ministry of Health informed the Defender that it was finalising a draft amendment to the Healthcare Services Act, in which it had already incorporated provisions on an infraction of degrading treatment and incorrect use of means of restraint. It intends to present the draft bill to the Government by 30 June 2020.

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

An amendment to the Social and Legal Protection of Children Act, effective from 1 January 2018, changed the amounts of fostering allowances, i.e. the remuneration for parents.

While 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 will receive only CZK 20,000. A temporary foster parent will be granted the same amount if he/she cares for one child who is not dependent on care of another individual, and even if he/she currently has no foster children to care for. In other words, in the case of temporary foster parents, the law does not take account of the complexity of care for a disabled child and thus reduces the likelihood that these children will find temporary foster care.

The Ministry of Labour and Social Affairs is now preparing an amendment to the Social and Legal Protection of Children Act that will remove the said inequality. Based on the amendment, the benefit paid to a temporary foster parent caring for one child would be increased to CZK 27,000 and, if the child falls within dependency category 2 to 4, the amount would be CZK 33,000 per month.

The Public Defender of Rights supports the increase in foster parents' remuneration.

4/ Publishing court decisions in a public database

The Defender has repeatedly pointed out the problem of inadequate publication of lower courts' decisions in the publicly accessible electronic database

of the Ministry of Justice. The results of her inquiry (File No. 4292/2015/VOP) showed that a mere fraction of decisions rendered in civil and criminal matters by superior, regional and district courts were published.

Although judicial decisions do not serve as precedents in the Czech Republic, the courts' decision-making must meet the requirements for predictability, transparency and equality. Consequently, the courts should take into account not only written law (comprised in legal regulations), but also the relevant case law of supreme courts, as well as their own previous rulings, and even case law of other courts. For this reason, it is imperative that anonymised court decisions be accessible not only to the judiciary, but also to the general public.

No law currently requires the courts to systematically publish their decisions in the Czech Republic. Publication of judicial decisions is governed solely by an instruction issued by the Ministry of Justice on 20 June 2002 under No. 20/2002-SM.

The Ministry of Justice focused in 2019 primarily on the creation of organisational and technical prerequisites for the publication of decisions (creation of an anonymisation software; modernisation of the electronic database; specification of the scope of decisions to be published; and setting the rules for anonymisation of decisions). Nonetheless, during the interdepartmental commentary procedure concerning the draft amendment to the Courts and Judges Act (submitter's Ref. No. 28/2018-LO-SP, document of the Chamber No. 630/0), the Ministry did not follow the Defender's recommendation that the duty of courts to publish their decisions be laid down directly in the Courts and Judges Act; it maintains that its instruction is sufficient in this regard.

However, the Defender's inquiry revealed that the regulation comprised in the Ministry's instruction was insufficient as the Ministry of Justice lacked effective means to enforce compliance in practice.

The Public Defender of Rights repeatedly 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 governmental 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 a complaint with the Office for the Protection of Competition requesting the Office to initiate *ex officio* review of contracting authority's procedure

In 2016, the new Public Procurement Act laid down an administrative fee for filing a complaint with the Office for the Protection of Competition in the amount of CZK 10,000 for each contested public contract.

The introduction of the fee led to a substantial reduction in the number of complaints filed; there was a decrease by approx. 93.5% between 2016 and 2017. The legislation did not provide any option to waive the fee or refund it in cases where the complaint turned out to be justified. Moreover, the Office charged the fee also to administrative authorities that had the duty to report any irregularities they found. According to the Defender, the fee was therefore at variance with the principle of officiality as complaints were disregarded if the fee was not paid.

For these reasons, the Defender recommended to annul Section 259 of the Public Procurement Act, which laid down the aforementioned duty to pay the fee.

The Defender also presented the matter to the Government of the Czech Republic in March 2019 (File No. 34/2017/SZD). The Government discussed the recommendation, but did adopt the suggested measure. In the meantime, the Defender exercised her power to participate in proceedings on annulling a law before the Constitutional Court and joined proceedings on an application to annul Section 259 of the said Act. She supported the application and presented her own arguments to this effect. By virtue of its judgement Pl. ÚS 7/19 of November 2019, the Constitutional Court repealed the contested provision on the grounds of its contradiction with the concept of supervision over public procurement, which is governed by the officiality principle. The Defender welcomes this result and believes that the ruling implies that even a fee in a different, lower amount would be contrary to the Constitution.

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

Since 2012 already, the Public Defender of Rights has repeatedly recommended that the Chamber of Deputies introduce a legislative requirement that all final administrative decisions comprise advice on the possibility to contest the decision in court.

The Chamber of Deputies' resolution adopted in 2014 acknowledged the 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. But the Government failed to deliver on its promise for over five years.

Therefore, in late 2018, the Defender again reminded the Government of its commitment. Nonetheless, the Government merely repeated, in January 2019, 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.

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 continues to believe that for this right to be truly effectively exercised, all final administrative decisions should contain advice as to the possibility to file a lawsuit against the administrative decision in order to prevent expiry of the right to court protection due to ignorance of the law.

7/ Handling complaints against the procedure of healthcare services providers

Within the legislative recommendations for 2018, the Public Defender of Rights identified two problems related to addressing complaints against healthcare providers.

Primarily, she pointed out the unsuitable provisions on handling complaints against the procedure of a healthcare services provider in cases where the provider is an individual physician (e.g. a general practitioner). Such complaints should be addressed by the physician him/herself under the currently applicable legislation. However, a number of physicians are not sure how to proceed and they are in fact unaware that the resolution of complaints is governed by the law. If the law enabled patients to choose, in the case of out-patient care providers, whether they will address their potential complaint to the provider or directly to the

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

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.

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.

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.

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."

registering authority (e.g. the regional authority), this could accelerate and streamline the handling of complaints.

Another problem affecting the effectiveness of complaint proceedings consists in unnecessary restrictions regarding the access of the administrative authority dealing with the complaint 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. According to the current legislation, the administrative authority first has to ask the complainant for consent to inspection of the medical documents. If the complainant does not grant it, the administrative authority will terminate the inquiry. The Defender considers the duty to ask for consent superfluous as the complainants are obviously aware of the fact that the administrative

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.

authority will have to learn about the contents of their medical files as the basic material necessary for handling the complaint. For this reason, the Defender proposes that the administrative authority should have the right to inspect the complaint's medical documents without his or her written consent in relation to handling a complaint against a healthcare services provider.

During the year 2019, the Ministry of Health merely informed the Defender that it was preparing an amendment to Act No. 372/2011 Coll., on healthcare services and the conditions of their provision (the Healthcare Services Act), as amended. But it did not promise that it would reflect the Defender's recommendations in the draft.

The Public Defender of Rights repeatedly 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 annulled 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.

Last year, the Defender recommended to the Chamber of Deputies to amend Section 10 of the Anti-Discrimination Act so that, for the purposes of determining the manner and amount of reasonable satisfaction, it would refer to the Civil Code (Sections 2956 and 2957), which – unlike the Anti-Discrimination Act – complies with the requirements of EU law and case law.

During the year 2019, the Defender repeatedly called on the Minister of Justice to comment on the recommendation and inform her of further steps that the Minister would take. In December, the Minister stated that the Anti-Discrimination Act was not within the competence of the Ministry of Justice, but rather of the Office of the Government.

The Czech case law has repeatedly shown 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, as required by EU law and case law.

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

In 2018, the Defender recommended several measures aimed at increased transparency of salaries and pay, and thus also at ensuring fair remuneration. These measures included, in particular, an explicit provision of the law declaring null and void any legal act whereby employees undertake to maintain confidentiality of their remuneration; the duty of employers to indicate the salary offered in their jobs advertisements; the duty to 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); and the duty of larger employers to regularly publish information on differences in their employees' remuneration.

The Public Defender of Rights therefore 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]

In 2019, the Defender presented these measures to the Work-Life Balance Committee attached to the Government Council for Gender Equality (hereinafter the "Council"). The Committee presented its own proposal for measures requiring employers to inform the trade union (or all employees) of the development of salaries or pay, including breakdown by gender. The Council approved the proposal. While the Defender does appreciate that the measure was adopted, this is merely a small fraction of the solution she suggests. The Defender also discussed the matter with representatives of trade unions and employers. The trade unions generally support the proposed measures; on the other hand, employers' representatives are hesitant.

Despite some positive progress, the Czech Republic has yet to adopt any specific actions and the Defender therefore repeats her recommendations to the Chamber of Deputies.

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

The Defender recommended to change the setting of exemptions with regard to the single admission examination in the Czech language and the common part of the school-leaving examination

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

("maturita") in the Czech language so that these exemptions reflected the minimum time needed by students with a different mother tongue to attain the required language skills, i.e. at least 5 to 7 years.

This change is important because the existing regulation of examinations in the Czech language is very strict towards students with a different mother tongue, who are required to master the Czech language at a substantially higher level than is necessary for everyday communication and sufficient for most occupations. Despite minor concessions, many of these students find it nearly impossible to pass such examinations.

The Defender communicated with the Minister of Education, Youth and Sports in this matter during 2019. The Ministry agreed that the exemptions related to examinations and intensive preparatory language courses should apply to a broader range of students. But since the Ministry had not presented the relevant draft amendment to the Schools Act, although it had promised to do so by the end of 2018, the Defender submitted a comment on a different draft amendment to the Schools Act aimed at modifying Section 20 (4) of the Schools Act. This comment was rejected and was not dealt with.

A personal meeting took place in December, where the Minister informed the Defender that a new conception of language support for students with a different mother tongue was being prepared. The time allocated and financial support should be increased and the responsibility should be transferred to municipalities with extended competence. As to the amendment related to examinations in the Czech language, the Defender is not aware that the Ministry would be preparing it.

Recommendations for 2017

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

The Defender recommended that an explicit exemption from real estate acquisition tax should also extend to residential units in private houses. She pointed out that there existed an exemption for whole private houses and also for residential units in residential buildings. In the Defender's opinion, the legal regulation and restrictive interpretation by tax authorities had led to unjustified unequal treatment of tax entities. The Defender thus proposed to amend Statutory Measure of the Senate No. 340/2013 Coll., on real estate acquisition tax, to explicitly exempt residential units in private houses 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.

Act No. 264/2019 Coll. was then adopted based on a Deputies' motion; effective from 1 November 2019, this Act exempted residential units in private houses from real estate acquisition tax.

Although the amendment adopted did not address the situation of taxable persons who had acquired the ownership title to a residential unit in a private house in the period from 1 January 2014 to the effective date of the aforementioned amendment, the Defender appreciated this development as it eliminated inequality among taxable persons at least in the future.

2/ Obligatory registration in the Special Registry

The Defender recommended to abolish 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 Special Registry records births, new marriages and partnerships and deaths of Czech citizens that occurred abroad. The duty to submit a Czech registry certificate regarding a relevant event occurring abroad makes it substantially more complicated for Czech citizens to obtain further documents required, e.g., for travelling with children abroad. A comparison with administrative practices in other European countries shows that the process of issuing passports to children born abroad tends to be much faster in other countries. 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 adopted a negatives stance on the Defender's recommendation in 2018 (Report on the Adoption of the Public Defender's Recommendations for Changes in the Legislation Set Out in the Annual Report for 2017). The Defender's recommendation thus has yet to be incorporated in legislation.

For this reason, the Public Defender of Rights again recommends that the Chamber of Deputies invite the Government to submit a draft amendment to Act 301/2000 Coll., on the registries, as amended; Act No. 328/1999 Coll., on citizen's identity cards, as amended; and Act No. 329/1999 Coll., on travel documents, as amended, to remove the duty of Czech citizens and foreigners to submit documents issued by the Special Registry in dealings with the authorities.

The Defender believes that with the gradually increasing number of migrants travelling (especially) among the Member States of the European Union, the importance of this problem will continue to grow and should already be dealt with now.

3/ Sterilisation as a precondition for administrative sex change in cases of transgender persons

The Defender recommended that the Chamber of Deputies amend Act No. 89/2012 Coll., the Civil Code, and Act No. 373/2011, on specific healthcare services, with a view to removing the requirement for mandatory surgery associated with sterilisation and modification of sex organs as a prerequisite for administrative gender reassignment.

The Ministry of Justice already submitted in 2018 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. Unfortunately, even today, more than a year and a half after the interdepartmental commentary procedure on the proposed change was completed, fundamental contradictions still exist between the party presenting the bill and some of the mandatorily consulted bodies (especially the Ministry of the Interior and the Office for Personal Data Protection).

The current state of affairs continues to be at variance with the requirements following from settled case law of the European Court of Human Rights (especially the judgement of 6 April 2017, A. P., Garçon and Nicot v. France, application no. 79885/12; and the related judgements of 11 October 2018, S. V. v. Italy, application no. 55216/08, and of 17 November 2019, X v. North Macedonia, application no. 29683/16), and from the relevant decision of the European Committee of Social Rights (Transgender Europe and ILGA-Europe v. the Czech Republic, No. 117/2015, of 15 May 2018).

The Defender suggested to the Minister of Justice that the contradictions with the consulted bodies should be resolved at a top-level personal meeting so as to make it possible to continue with the legislative work on the draft law and to eliminate the gap in the national legislation in terms of the country's international commitments. In December, the Minister stated that no such meeting of ministers was being prepared for the time being.

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

Neither the Public Health Insurance Act 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. The current procedure of insurance companies is marked by deviations from the Code of Administrative Procedure and lack of uniformity in the insurance companies' practice.

The Defender is aware that applying the Code of Administrative Procedure without any exemptions would not be 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. Therefore, the Defender appreciated it when the Government stated that it was working on resolving this issue.

A working group on a draft amendment to the Public Health Insurance Act was set up by the Ministry of Health and the employees of the Office of the Public Defender of Rights participated in its activities. However, an attempt at streamlining the procedure on reimbursement of healthcare services within the draft amendment was unsuccessful. The Public Defender of Rights will submit comments on the draft in the interdepartmental commentary procedure.

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

Based on the findings from systematic visits to social services facilities, the Defender recommended to strengthen the protection of the clients of these facilities against unauthorised interference with their dignity. Clients of social services facilities are often 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. According to the Defender, the law should therefore provide the clients with protection against such unlawful conduct by means of administrative punishment.

The Government fully agreed with the recommendation and introduced a punishable infraction of unlawful interference with the privacy, safety and integrity of clients of social services via draft amendment to Act No. 108/2006 Coll., on social services, which was sent to the interdepartmental commentary procedure in December 2019.

The Defender and the Parliament

The Chamber of Deputies

In January 2019, the Chamber of Deputies opened the debate on the 2018 Annual Report on the Activities of the Public Defender of Rights (document of the Chamber No. 444). The debate was not closed by the editorial deadline for this Report.

On 23 January 2020, the Chamber of Deputies acknowledged the Government's report on the adoption of recommendations of the Public Defender of Rights for 2017 (document of the Chamber No. 306). Only one of the five legislative recommendations for 2017 has been implemented thus far (see Evaluation of the recommendations for 2017 and 2018, p. 10). However, the Chamber of Deputies failed to call on the Government to submit a schedule of preparation of the necessary legislative changes, as proposed by the Petition Committee.

The Defender also worked closely with the Chamber of Deputies, especially through its Petition Committee and individual Deputies.

Petition Committee

The Petition Committee discussed the Defender's Annual Report for 2018 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 2018 and the budget of the Office of the Public Defender of Rights for 2020.

It examined the individual legislative recommendations in detail and, on 6 May 2019, recommended that the Annual Report be approved and that the Government be requested to deal with the legislative proposals and submit to the Chamber of Deputies a report on how they were incorporated into the legislative plan.

The Senate

On 13 June 2019, the Senate discussed and took due note of the Annual Report on Activities of the Public Defender of Rights in 2018 (document of the Senate No. 56).

The work of the Public Defender of Rights is followed in more detail by the Committee on Legal and Constitutional Affairs and the Committee on Education, Science, Culture, Human Rights and Petitions, which also regularly discuss the Defender's 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. The Defender welcomes the opportunity to inform anyone interested about her findings and conclusions from all the areas of competence entrusted to her.

The Defender and the Government

The Public Defender of Rights advises the Government whenever a ministry fails to adopt adequate measures to remedy a shortcoming or general maladministration. The Defender may also recommend that the Government propose the adoption, amendment or annulment of a law, or adopt, amend or annul a Government regulation or resolution. In 2019, the Defender proposed to the Government one amendment; she also reported three unlawful practices of the ministries. The Defender considers her participation in commentary procedures a simplified form of legislative recommendations to the Government.

Recommendations to amend laws

Cancelling the CZK 10,000 fee for lodging a complaint with the Office for the Protection of Competition

Transparent handling of public funds is a public interest. The Office for the Protection of Competition is therefore tasked with supervision over public procurement. Proceedings on review of the steps taken by the contracting entity in such procedures can also be initiated *ex officio*. Within this review, the Office must deal with all facts justifying the initiation of proceedings. At the same time, anyone has 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. Pursuant to Section 259 of the Public Procurement Act, complaints filed with the Office for the Protection of Competition requesting the Office to initiate administrative proceedings *ex officio* carried an administrative fee of CZK 10,000. This was true since October 2016.

An inquiry by the Defender's Deputy (File No. 1914/2017/VOP) revealed that the Office for the Protection of Competition not only did not respond to complaints in respect of which the relevant fee had not been paid, but did not even read them. The Office completely stopped checking public contracts on an *ex officio* basis in the period from October 2016 to March 2018, and later did so only very rarely. Even if the fee was paid, the Office generally did not (and still does not) state any reasons in the notice to the complainants as to how their complaints had been treated. With the exception of prosecuting bodies, the Office also claimed the fee from public authorities which merely performed their statutory duty when forwarding their inspection findings or reporting an infraction.

Since the Office did not adopt sufficient remedial measures, the Defender had to report the Office's unlawful administrative practice to the Government (File No. 34/2017/SZD). At the same time, the Defender recommended that the Government annul Section 259 of the Public Procurement Act because even interpretation conforming to the Constitution could not remove all the related problems. The Government discussed the recommendation on 13 May 2019 and rejected it. The Defender subsequently supported annulment of the contested provision in proceedings before the Constitutional Court (File No. 24/2019/SZD). The Constitutional Court indeed annulled the provision (File No. Pl. ÚS 7/19; for more information, see the chapter The Defender and the Constitutional Court, p. 26).

The Defender's notifications to the Government

The Ministry of the Interior has been hindering the Defender's inquiry

The Public Defender of Rights is authorised and required to assess acts and decisions of all administrative authorities. The Defender cannot perform this duty without becoming familiarised with documents underlying the relevant decisions. The Ministry of the Interior claimed that it had dismissed applications for citizenship filed by the complainants based on statements of the police or intelligence services comprising classified information. The Ministry refused to disclose the statements to the Defender despite repeated requests, although the law permits her to access classified information of all classes. The Ministry claims that the Defender does not need the opinions for the discharge of her office.

The Defender informed the Government that the Ministry of the Interior had been unlawfully interfering with the exercise of her competence and suggested that the Government order the Minister of the Interior to make documents available to her where needed for her specific inquiries and to ensure compliance with the duties under the Public Defender of Rights Act. The Government approved the Ministry's procedure (Government Resolution No. 152 of 4 March 2019).

Subsequently, the Defender informed the Government that the Ministry of the Interior had been similarly hindering her review of decisions on applications for granting a long-term sufferance visa.

The Ministry's action, approved by the Government, represents a substantial unlawful interference with the activities of the Public Defender of Rights. The Defender is one of the control mechanisms of the Chamber of Deputies and, being unable to perform her duty to review the action of administrative authorities, she cannot fulfil this control function in this case. Applicants for citizenship now have no remedy available. They themselves do not have access to the statement as a result of which they were unsuccessful, and decisions in these matters are still excluded from judicial review.

The Defender filed an application with the Constitutional Court to initiate proceedings on determining the scope of competences of individual governmental authorities, because such conflicts of competence fall within the jurisdiction of this institution.

Notification addressed to the Government: File No. 3/2019/SZD of 18 February 2019

Notification addressed to the Government: File No. 27/2019/SZD of 4 October 2019

Application to the Constitutional Court: File No. 38/2019/SZD, Pl. ÚS 19/19

Labour offices fail to decide properly on contributions towards active employment policy

Indeed, a labour office makes a decision affecting the rights and obligations of the applicant every time it assesses an application for a contribution towards active employment policy. Administrative proceedings are therefore automatically initiated when such an application is filed. If the labour office eventually decides to grant the application, a public-law agreement regarding the provision of the relevant contribution is concluded between the office and the applicant. This agreement then replaces the relevant administrative decision and the proceedings are discontinued by the office. If the office resolves not to grant the application, it has to issue an administrative decision to this effect with the necessary requisites (including reasoning), which the applicant can then contest by an appeal.

The Defender has found that labour offices fail to conduct administrative proceedings. Applications are not assessed according to formal procedures and, where an application is not granted, the applicant is merely informally notified of this fact. Such a notice does not give any specific reasons why the application was rejected and contains only a general statement from which it cannot be inferred on what facts the labour office relied and why it decided not to grant the application. The applicants are then practically unable to defend themselves.

Labour offices proceed in this regard based on a methodology laid down by the Ministry of Labour and Social Affairs; the Defender thus tried to remedy the situation by recommending a change to the Ministry. But she was unsuccessful in spite of repeated requests. The Defender therefore informed the Government of the unlawful practice she had ascertained and of the unsuccessful recommendation to harmonise the relevant methodology with the law. She suggested that the Government instruct the Ministry to provide methodological guidance to labour offices in that they are to make decisions on applications for a contribution towards active employment policy in administrative proceedings. The Government did not follow the suggestion.

Notification addressed to the Government: File No. 12/2019/SZD of 26 November 2019

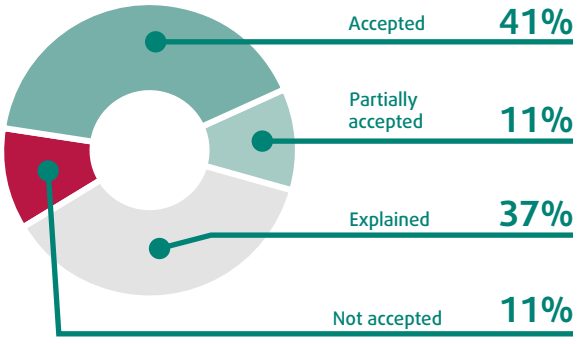
The Defender's comments addressed to the Government

In 2019, the Public Defender of Rights raised a total of 192 comments concerning 22 materials of the Ministries (of which 20 were draft pieces of legislation). More than a half of all her suggestions dealt with by the relevant authorities (52%) were at least partially accepted; disagreements persisted only in about one tenth (11%) of cases. The Defender was successful especially with those suggestions she considered absolutely crucial or crucial (57% of them were at least partly accepted). The number of comments (suggestions) made as well as the success rate increased in comparison to the previous year.

In 2019, the Defender commented on a total of 22 drafts (for comparison, she commented on 18 drafts in 2018; 18 drafts in 2017; 25 drafts in 2016; 34 drafts in 2015; and 30 drafts in 2014). The suggestions she made were successful in more than half of the cases (41% of the suggestions were accepted completely, and a further 11% were accepted at least partially).

Most of the suggestions dealt with by the relevant authorities (a total of 13) concerned the substantive intent of the Construction Code; seven of them were fully accepted. Most unaccepted suggestions (a total of 4) pertained to proposed amendments to the Courts and Judges Act.

The overview only includes fundamental comments (suggestions) to which the submitters have already responded.



The Defender and the Constitutional Court

Proceedings on annulment of laws

With effect from 1 January 2013, the Public Defender of Rights may join proceedings on annulment of laws or their individual provisions as an interested party. In 2019, the Defender joined two out of the eighteen proceedings that were conducted on annulment of laws.

Cancelling the CZK 10,000 fee for lodging a complaint with the Office for the Protection of Competition

The Office for the Protection of Competition is tasked with supervision over public procurement. Proceedings on review of the steps taken by the contracting entity in such procedures can also be initiated *ex officio*. The Office must therefore deal with all facts justifying the initiation of proceedings. Section 259 of the Public Procurement Act, however, introduced a fee of CZK 10,000 for filing a complaint with the Office for the Protection of Competition and laid down that the complaint would be disregarded if the fee was not paid.

The Defender thus supported the proposal for annulment of the contested provision. She referred to the restriction of the right to petition and potential indirect discrimination on grounds of property (i.e. insufficient funds to pay the fee). She had already presented detailed arguments to the Constitutional Court earlier (File No. 12/2018/SZD, Pl. ÚS 28/18).

The Defender newly acquainted the Constitutional Court with the unlawful practice of the Office she had ascertained. The Office for the Protection of Competition not only did not respond to complaints in respect of which the fee had not been paid, but did not even read them. The Office completely stopped checking public contracts on an *ex officio* basis in the period from October 2016 to March 2018, and later did so only very rarely. Even if the

fee was paid, the Office generally did not (and still does not) state any reasons in the notice to the complainants as to how their complaints had been treated. With the exception of prosecuting bodies, the Office also claimed the fee from public authorities which merely performed their statutory duty when forwarding their inspection findings or reporting an infraction.

The Constitutional Court found the contested provision unconstitutional and therefore annulled it. It pointed out the requirement for predictability and lack of contradictions in the law, the prohibition of arbitrariness, as well as the principle of primacy of an individual before the State. The law must always lay down any duty to pay a fee unambiguously, comprehensibly, consistently and predictably.

Although the Office for the Protection of Competition is obliged to deal *ex officio* with facts that could be a reason to initiate proceedings on review of the contracting entity's acts, the contested provision, in fact, prevented the Office from dealing with complaints in respect of which the relevant fee had not been paid. The law thus simultaneously required and prohibited a certain procedure on the part of the Office for the Protection of Competition. The fee *de facto* guaranteed that the Office would perform its inherent constitutional and legal obligations. However, that must always be true in a country governed by the rule of law and no fee may be charged in this regard. If a complaint has to be dealt with regardless of whether or not a fee is paid, such a fee makes no sense.

Defender's Statement: File No. 24/2019/SZD of 9 July 2019

Decision of the Constitutional Court, File No. Pl. ÚS 7/19 of 30 October 2019

Cancellation of a time limit preventing quick judicial review of the lawfulness of detention

Detention of a foreigner in a facility interferes with his/her right to personal freedom. Everyone is entitled to take proceedings by which the lawfulness of his/her detention will be decided speedily by a court and his/her release ordered if the detention is not lawful. Pursuant to Section 129a (3) of the Residence of Foreign Nationals Act, a foreigner may only file a request for his/her release from a facility after expiry of 30 days after the decision on detention, decision on prolongation of detention or decision not to release the foreigner entered into legal force unless he/she has filed a lawsuit against such a decision, or after expiry of 30 days of the legal force of the last decision on his/her lawsuit against the decision.

The Defender is convinced that the set time limit unreasonably restricts access of detained persons to judicial review in situations where circumstances change during the detention. She therefore supported the application filed by the Supreme Administrative Court to annul the said provision as it denied foreigners timely, effective and accessible protection of the right to personal freedom, thus violating Art. 5 (4) of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 36 in conjunction with Article 8 of the Charter of Fundamental Rights and Freedoms.

The Defender acquainted the Constitutional Court with the findings she had made while monitoring expulsions of foreign nationals and reviewing decisions on detention of foreign nationals. She described cases where foreigners were often practically unable to request their release from the facility due to chains of decisions on prolongation of detention. She pointed out the difference between judicial review of a decision on (prolongation of) detention and a decision on a request for release. In the first case, the court is generally bound (subject to very few exceptions) by the facts of the case and the legal status existing at the time when the administrative authority made its decision. Even if the detention is prolonged, the court will not assess the situation at the time of the prolongation because, in practice, administrative authorities prolong the detention without hearing the foreigner. The foreigner can thus only submit facts that have newly occurred during the detention in a request for release. The administrative authority (and later the court) must then assess whether the detention is still permissible in their light.

The Defender ranks among circumstances influencing the assessment of lawfulness of detention, in particular, deterioration of the medical condition occurring solely as a result of the detention. At the time when her statement was issued, she was dealing with two cases of detention of persons with mental issues whose condition deteriorated during the detention.

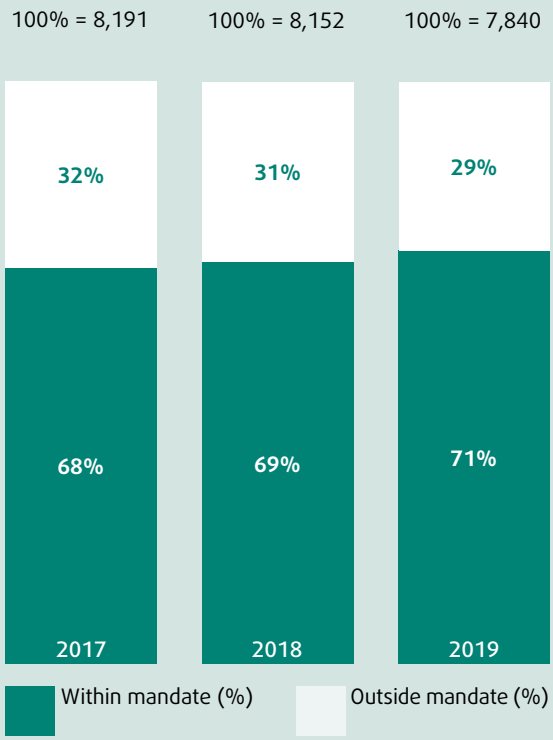
Defender's Statement: File No. 39/2019/SZD

Decision of the Constitutional Court: File No. Pl. ÚS 12/19

Activities of the Public Defender of Rights in numbers

In 2019, we received 7,840 complaints, of which 71% fell within the Defender's mandate and we were thus able to deal with them. The ratio of complaints falling within and outside the Defender's mandate thus continues to change in favour of cases where we can help people with their problems.

Complaints received in 2017–2019



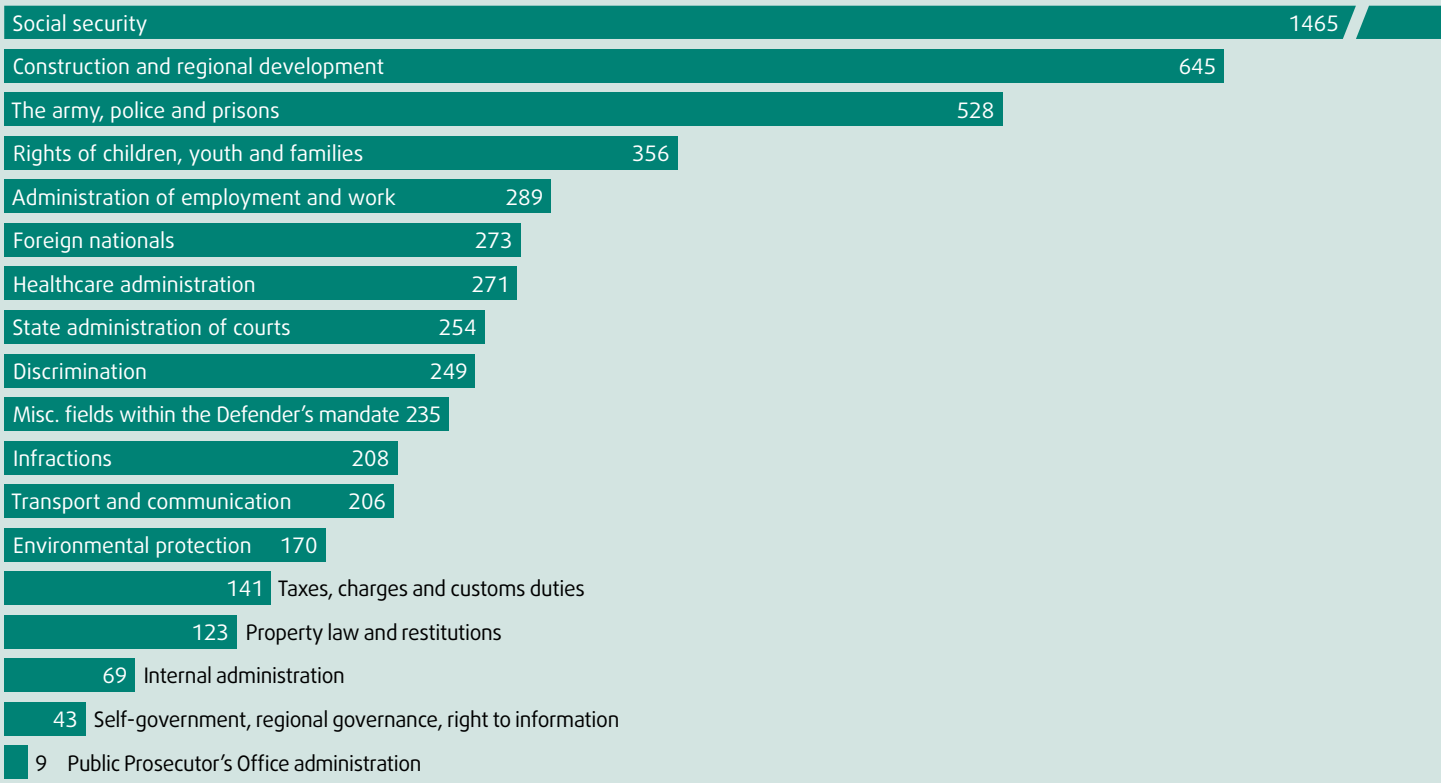
7,840 complaints were received

710 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 mandate. 407 of them filed their complaint orally on the record.

6,358 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 life situation, or to check on the progress of inquiry into their complaints.

749 inquiries were initiated, of which 66 on the Defender's own initiative

Complaints received within mandate by area



7,670 complaints were resolved (including complaints from previous years that were closed in 2019)

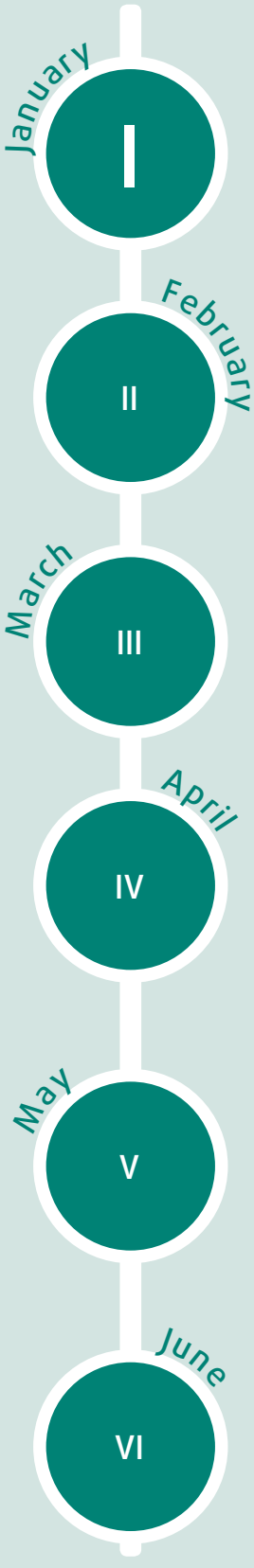
708 inquires were completed, where:

In **187** cases, we found no maladministration or discrimination

In **521** cases, we identified maladministration or discrimination, where

- In **380** cases, the authority itself remedied the maladministration following the issue of the inquiry report;
- In **90** cases, the authority did not remedy the maladministration and the Defender had to release a final statement, including a proposal for remedial measures, and the latter were taken by the authority;
- In **37** cases, the authority failed to remedy the maladministration even after a final statement was released. Therefore, the Defender exercised her power to impose a sanction and informed the superior authority or the public of the maladministration.

Important moments and events in 2019



— The Defender asked the Government to allow remote inspection of files by means of sending copies of the documents in the files to the parties and to ensure that the parties were advised of their right to lodge an action against an administrative decision.
— The Defender successfully participated in proceedings before the Constitutional Court as a guardian *ad litem* for a two-and-half-year-old child whose carer had already changed three times and another change was imminent.

— We published the results of a survey concerning availability of dental care for people with mental disabilities or an autism spectrum disorder.
— We organised a roundtable on the issue of inclusive education of Roma and non-Roma children.
— The Defender informed the Government that the Ministry of the Interior was preventing her from investigating the Ministry's procedure in decision-making on granting citizenship.

— We submitted our Annual Report for 2018 to the Chamber of Deputies with ten new legislative recommendations.
— We pointed out certain new misleading and manipulative strategies in the area of consumer protection.
— We announced a competition for documentaries dedicated to the topics of equality and discrimination.
— We organised a meeting with people having experience with psychosocial disabilities, carers and experts in this area.

— We organised a roundtable on selected issues in application of the Construction Code.
— Czech Television began broadcasting the twelve episodes of a new series called "Case for the Ombudsman".
— We participated in the annual ENO conference in Brussels on the topics of participation of citizens, family allowances with a cross-border element, and healthcare and social rights of posted workers.

— The Defender participated in the annual conference of Visegrad Group's ombudspersons in Slovakia. The topics were segregation in education, adoption and foster care, homelessness and liability of the ombudsperson's office for damage caused by the exercise of public authority.
— We published the results of a questionnaire survey among LGBT+ persons where we inquired into the problems and obstacles they encountered and their experience with discrimination.
— On the occasion of the European Independent Living Day, on 6 May, the Defender's Office publicly presented the unique Australian film documentary Defiant Lives. This film speaks openly about crucial topics concerning people with disabilities.

— We issued the first annual report on monitoring of rights of people with disabilities.
— We issued the Collection of Opinions: Prisons.
— We published a report on visits to facilities for children requiring immediate assistance and pointed out the shortcomings we had ascertained.
— We organised meetings with representatives of organisations defending the rights of people with disabilities and discussed with them topics that had to be addressed.

July – VII

— We were surprised by the Government's dissenting opinion on a Deputies' motion to introduce an infraction of ill-treatment in social services. Protection of the elderly was thus postponed.
— We pointed out certain problematic aspects of the substantive intent of the Construction Code.

August – VIII

— We advised the public that it was also possible to apply with the labour office for an extraordinary one-off allowance to cover children's school expenses.
— We helped a sick child who was unable to return to the Czech Republic with his mother for treatment because the consulate had refused to issue a travel card to him.

September – IX

— We found that over the past five years, the Czech courts had mentioned or used the Defender's opinion in more than 450 decisions. In a vast majority of cases, they had eventually ruled in line with the Defender's conclusions.
— We were the first ones in the Czech Republic to translate the Convention on the Rights of Persons with Disabilities into the Czech Sign Language, subsequently publishing it on the Defender's website.
— We issued recommendations for lawyers representing discrimination victims.

October – X

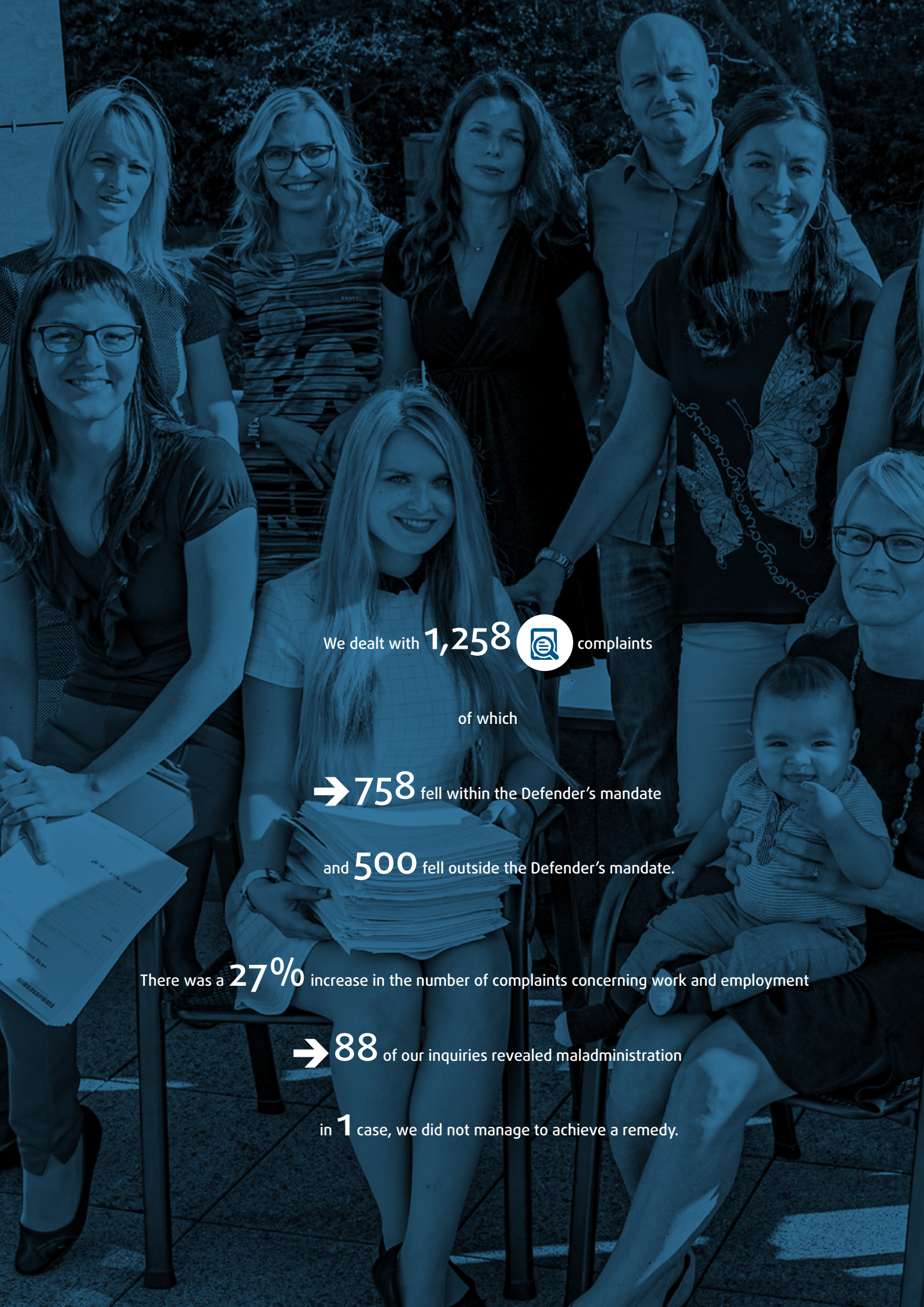
— Together with the Constitutional Court and the Supreme Public Prosecutor, we organised a conference on hate speech on the internet.
— In the Senate, we organised an international conference titled "Anti-Discrimination Act 2009–2019: Ten-year Journey to Fairness".
— We successfully discussed with the Ministry of Health the ways to remove delays in reviewing binding opinions of regional public health stations.

November – XI

— We organised a conference on the 10th anniversary of ratification of the Convention on the Rights of Persons with Disabilities.
— We launched a special online guide for those who plan to build a house – a "Simple Guide to Building a House". This guide provides advice on how to obtain the necessary permits, what opinions are required, how to obtain funding, etc.
— In proceedings we had joined, the Constitutional Court abolished the CZK 10,000 fee for lodging a complaint with the Office for the Protection of Competition.
— We organised a roundtable on anonymisation and publication of judicial decisions in a publicly accessible database.

December – XII

— We organised our very first open doors day. At the same time, we opened the celebrations of the 20th anniversary of establishing the office of Public Defender of Rights.
— The newly elected Deputy of the Public Defender of Rights, Monika Šimůnková, took the oath and assumed the office. The term of office of her predecessor, Stanislav Křeček, ended on the same day.
— We presented to the public the results of a survey of accessibility of railway transport for people with disabilities, especially those using wheelchairs.



We dealt with **1,258** complaints

of which

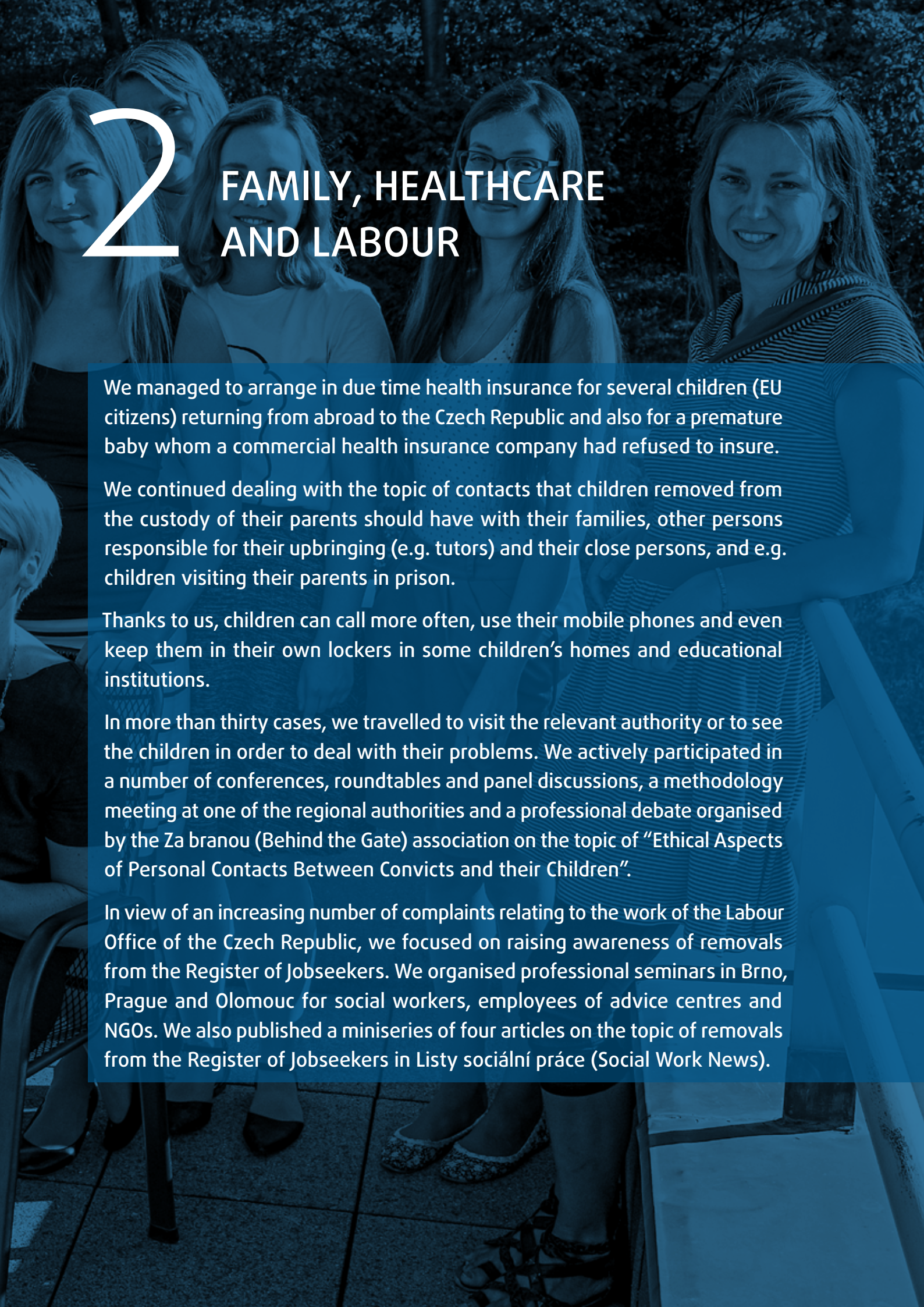
→ **758** fell within the Defender's mandate

and **500** fell outside the Defender's mandate.

There was a **27%** increase in the number of complaints concerning work and employment

→ **88** of our inquiries revealed maladministration

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



2 FAMILY, HEALTHCARE AND LABOUR

We managed to arrange in due time health insurance for several children (EU citizens) returning from abroad to the Czech Republic and also for a premature baby whom a commercial health insurance company had refused to insure.

We continued dealing with the topic of contacts that children removed from the custody of their parents should have with their families, other persons responsible for their upbringing (e.g. tutors) and their close persons, and e.g. children visiting their parents in prison.

Thanks to us, children can call more often, use their mobile phones and even keep them in their own lockers in some children's homes and educational institutions.

In more than thirty cases, we travelled to visit the relevant authority or to see the children in order to deal with their problems. We actively participated in a number of conferences, roundtables and panel discussions, a methodology meeting at one of the regional authorities and a professional debate organised by the Za branou (Behind the Gate) association on the topic of "Ethical Aspects of Personal Contacts Between Convicts and their Children".

In view of an increasing number of complaints relating to the work of the Labour Office of the Czech Republic, we focused on raising awareness of removals from the Register of Jobseekers. We organised professional seminars in Brno, Prague and Olomouc for social workers, employees of advice centres and NGOs. We also published a miniseries of four articles on the topic of removals from the Register of Jobseekers in Listy sociální práce (Social Work News).

We help change the rules

You'll need to be a guardian for your adult son because we don't know where to find his wife

We defended an almost 80-year-old woman who had been asked to deal with her son's debts towards a health insurance company. In spite of her disagreement, the insurance company appointed her as her son's guardian. It justified this step by stating that it had no information on other family members.

We contacted the Ministry of the Interior and found that the insurance company had not obtained access to all the data as required by the law. If it had done so, it would have known that the debtor also had a wife and adult children. And had it contacted these relatives, it could have found out, for example, where the debtor was staying. The insurance company agreed that it would always obtain access to all these details in the future. At the same time, the insurance company's arbitration body initiated review proceedings in which it cancelled the resolution on appointing the mother as guardian.

Defender's Report: File No. 3198/2018/VOP

You don't have a form filled-in by your employer? You will only receive minimum unemployment benefits.

We were approached by a woman who had been denied the balance of her unemployment benefits by the labour office. This was because her employer had failed to issue her with any documents after her employment had ended. She was thus unable to prove her average monthly earnings and the labour office granted her unemployment benefits in the minimum amount. After some time, she managed to obtain copies of her payslips recorded in the employer's accounts from the Police of the Czech Republic and asked the labour office to increase her allowance and pay the balance. But the labour office insisted that the allowance would be calculated only based on the earnings specified by the employer on the relevant form. It stated that it would not perform any calculations itself and would merely check the amount of earnings confirmed by the employer. If the applicant failed to submit the requested form, she would receive only the minimum allowance. It therefore refused to pay the balance amount.

We considered this approach formalistic but the labour office rejected our view. We therefore approached the Ministry of Labour and Social Affairs, which confirmed our opinion that where the employer failed to issue a certificate of earnings and an inspection could not be performed, the labour office could calculate the average net monthly earnings itself. In determining the amount of the allowance, the labour office was also obliged to use other available underlying documents presented by the applicant. The labour office would follow this conclusion in the future.

Defender's Report and Opinion: File No. 1578/2017/VOP

We'll stop paying an allowance immediately, even before a decision is issued

We defended a complainant to whom the labour office had stopped paying unemployment benefits before it had decided to remove him from its records. The complainant had failed to appear for a meeting with the labour office, which constituted a legal ground for initiating administrative proceedings on his removal from the records. However, it is not possible to presume the result of such proceedings, which need not always end in removal. The eligibility for unemployment benefits can only expire based on the result of administrative proceedings on removal from the records completed by means of a final decision.

The Ministry of Labour and Social Affairs accepted the Defender's opinion that the procedure of the labour office was unlawful. It promised to audit the procedures of the Labour Office of the Czech Republic in arranging the payment of unemployment benefits, and focus on training of the staff so as to prevent any further maladministration of this kind.

Defender's Report, Opinion and Sanction: File No. 2986/2017/VOP

Protection of the right to family life also covers relationships between a child and a tutor

We found that a children's diagnostic institution ("CDI") had long been violating the right to mutual contact between a child and his tutors although no legal decision had been issued regarding the contact (or its prohibition) and that even the body for social and legal protection of children ("BSLPC") had been aware of this violation. The Police of the Czech Republic had requested that such contact be prohibited on the grounds of possible hampering of investigation. Both the CDI and the BSLPC erroneously believed that the Police were authorised to prohibit the child's contact with his tutors during the pending criminal proceedings.

Following our inquiry, the CDI informed the Police of the Czech Republic that the decision to prohibit the child's contact with his tutors was unlawful and that it would not accept any future requests of the Police to this effect. The CDI also adopted an internal measure: with regard to any prohibition of contact, it would strictly demand a decision issued by a court or a public prosecutor's office, and would simultaneously support the least invasive interference with the child's right to be in contact with persons responsible for his/her upbringing. If it is necessary to limit the child's contact with persons responsible for his/her upbringing, the CDI would continue to disclose information on the child to them and always make a record indicating whether, to whom and to what extent information was provided.

Defender's Report and Opinion: File No. 5219/2018/VOP

Transport of a child to a facility

We were approached by a 14-year-old girl placed in a crisis facility for children at BSLPC's request. The girl stated that she did not know why she had been placed in the facility, how long she would be there and where she would go when released, or why she had been taken from her father's care. She described the way the decision was enforced as insensitive as she had been forced to keep her hands in her lap throughout the transport by car. This was demanded by the law enforcement officer although there were no serious reasons for such a restrictive approach.

We criticised the fact that prior to her placement in the facility, the BSLPC had failed to inquire into the possibilities of arranging care for the girl by her wider family, that the girl had not been demonstrably acquainted with the reasons why she was being placed in the facility, for how long this would be and what would happen next. We disapproved of BSLPC's failure to intervene when the law enforcement officer had demanded that the girl keep her hands in her lap throughout the trip to the facility. The BSLPC should have objected to this demand.

After our inquiry report was issued, the authority informed all the BSLPC officers of our conclusions and asked them to follow them. As regards the enforcement of the relevant decision, the BSLPC attempted to arrange a meeting with the law enforcement officers with a view to clarifying the need for an individual approach to each child. The Office also promised to communicate more and better with the girl as to how she perceived her current situation, and advise her who could explain anything that might be unclear to her.

Defender's Report: File No. 1551/2019/VOP

Squats as punishment?

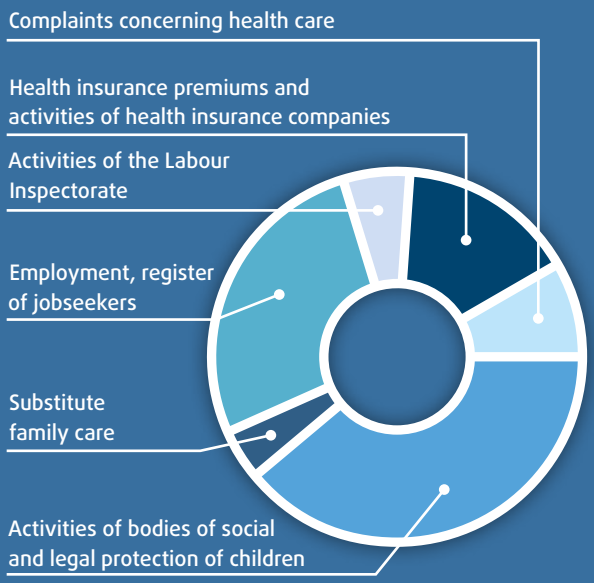
We inquired into the procedure of the Czech Schools Inspectorate (the "CSI"), which had carried out an inspection in a children's home focusing, among other things, on inadmissible infringement of children's rights. The CSI had ascertained that a teacher had ordered the children to do exercises "as punishment". It had discussed the matter with the management of the children's home and pointed out that any physical exercise had to be reasonable.

Teaching children through physical exercise could be considered both humiliating and ineffective (arbitrary). In our opinion, the CSI should have approached the issue more resolutely and concluded that such teaching methods were unacceptable. After our inquiry report was issued, the central schools inspector agreed with our conclusion and promised to discuss it with the management of the South Bohemian Inspectorate of the CSI.

Defender's Report: File No. 137/2019/VOP

We are here to help

People most often sought help in the following areas:



50% fewer complaints about reimbursements related to the provision of healthcare

35% more complaints about removal from the register of jobseekers

We helped and advised:

264 families

161 people with problems concerning health insurance and complaints against healthcare

157 people who had problems with the labour office

47 children contacted us asking for help or advice

88 employees of labour offices, whom we instructed on the topic of removal from the records

Informed consent cannot be provided without relevant information

We were approached by a mother who had agreed to medication during childbirth. However, the staff had failed to advise her that after delivery, they would take the newborn away from her for observation. The newborn thus could not be placed on her chest as the mother had wished.

Medical staff cannot advise a new mother of all adverse effects of medication that will be administered. But they should advise her in advance that the newborn will be removed from her for several hours after the delivery. The regional authority discussed our opinion with the hospital. The hospital then promised to advise new mothers before administration of the given medicament that it would be necessary to remove the child for observation immediately after the delivery.

Defender's Report and Opinion: File No. 6137/2018/VOP

We'll not insure your child because you don't have a permanent residence permit

We were approached by the mother of a sick newborn child. The health insurance company refused to insure the child despite an application had been filed for a permanent residence permit for reasons deserving special consideration. The insurance company referred to the residence status of the mother.

We advised the insurance company of the court's opinion that a child became a participant in public health insurance once the relevant application was filed. The insurance company thus immediately insured the child from the time of his birth.

Defender's Report: File No. 4347/2019/VOP

You need to submit additional documents or else we'll not approve payment for treatment

We helped a patient who turned to us when her insurance company had decided not to approve payment for her proton treatment. The insurance company had requested that the patient's application be supplemented with documents on excess of tolerance doses and by expert studies. The patient had considered this redundant and stated that there had in fact been no such studies.

We concluded that the patient had submitted an application for payment for proton radiotherapy with all the legal requisites. Subsequently, the insurance company changed its decision and approved the payment for the radiotherapy.

Defender's Report: File No. 1873/2019/VOP

Tutor, but only on paper

We inquired into the case of now already an eight-year-old boy with a hearing impairment, attention deficit disorder and mild mental disability. Since an early age, he had been entrusted to the care of a woman who was not his relative. The court had deprived the boy's parents of their parental responsibilities and appointed the BSLPC as his tutor.

We found a number of irregularities in the BSLPC's procedure. The BSLPC had failed to deal with the boy's admission to kindergarten and school. As a tutor, it had not asked the court to approve the choice of school (a school devoted to students with special educational needs), although this was its legal duty. The BSLPC had also incorrectly claimed that when representing the boy (especially in relation to the school and medical facilities), it did not have any authorisations beyond those the complainant as the boy's carer could exercise. The BSLPC had failed to provide the complainant with advice regarding foster care benefits. The BSLPC had been passive in enforcing long outstanding alimony.

The authority adopted a number of measures following our inquiry. It focused its meetings on this topic and prepared an information leaflet which it would newly distribute to all persons caring for children for whom the BSLPC had been appointed as tutor. The head of the BSLPC discussed the case in detail with the key social worker and criticised her for the errors that had been found. He also decided to carry out regular random checks of the work of his subordinates.

We also advised the complainant that she could apply for foster care benefits. The labour office paid approximately CZK 400,000 to her in benefits (also retroactively).

Defender's Report: File No. 7712/2018/VOP

Compensation for maladministration

Last year, a complainant informed us that he had successfully claimed compensation for BSLPC's maladministration in the amount of CZK 32,000. He had based his lawsuit on legal conclusions made by the Public Defender of Rights in 2016. The court had concluded that the BSLPC had committed maladministration when it had failed to provide the complainant with social and legal counselling related to foster and pre-foster care and had failed to take the statutory steps (the BSLPC could have made a decision in administrative proceedings on pre-foster care, based on which the complainant and the child would have been provided with foster care benefits; moreover, there would have been a legal ground for the child's stay with the complainant).

Defender's Report and Opinion: File No. 603/2015/VOP

Right of a disabled parent to support from the State in care for a child

We were approached by a mother of a one-year-old boy whose son had been removed from her custody. Both the mother and the father of the child were disabled. After suffering polio, the mother had reduced mobility and limited spatial orientation. The father was on a wheelchair and was dependent on the care of his mother. The parents' disability was the main reason why the boy had been entrusted into the custody of his father's mother, with whom the family had been living at that time. This had happened shortly after his birth and based on a court injunction.

We found that the BSLPC had erred. As the child's guardian *ad litem*, it had supported the injunction without having even met with the mother and checked whether and how the mother had been coping in caring for her child. It had failed to offer any support or assistance in this regard, and had thus violated the Convention on the Rights of Persons with Disabilities.

The BSLPC then adopted several remedial measures. In particular, it asked the locally competent BSLPC to carry out an inquiry at the mother's place of residence, where no shortcomings were eventually found that would prevent the mother from caring for the child. The BSLPC began communicating with a local charity organisation, which then concluded an agreement with the mother on the provision of a service intended for families with children. The social worker of the local charity organisation confirmed that the mother was fully capable of taking care of her son. After the appellate court referred the case back to the first instance, the court entrusted the child to his mother's custody.

Defender's Report and Opinion: File No. 7432/2018/VOP

We communicate

So, who'll check it?

We are currently dealing with an unusual case of a freight train driver who suffered an injury when getting off the locomotive outside a train station. The employer acknowledged that this was an accident at work and paid compensation. But the complainant also wanted to point out the unsuitable working conditions and non-compliance with the rules of occupational safety and health protection (hereinafter also the "OSHP") on the railway, and realised he had nowhere to turn to. Neither the railway authorities nor the State Labour Inspectorate admitted that they were competent to audit employer's compliance with the OSHP rules in railway transport.

We are convinced that the labour inspectorates are responsible for making such audits. We therefore asked the superior administrative authorities – the Ministry of Labour and Social Affairs and the Ministry of Transport – to clarify their mutual competences in this regard. Both ministries agreed with our conclusion. Together with the Ministry of Labour and Social Affairs, we asked the State Labour Inspectorate to change the existing approach and to have local inspectorates begin checking compliance with the OSHP rules also for employers in railway transport. We are now awaiting its statement.

Commuter benefits – not every place of residence is the same

We inquired into the case of a complainant who had been denied a contribution towards the expenses for commuting to work. This was because he had been living in an accommodation facility in the long term and had his permanent residence registered at the address of the municipal authority (the accommodation provider had not allowed him to register the facility as his permanent address). He thus had not met the condition of "actually staying at the registered permanent address and commuting from that place". We had to conclude that the labour office had not erred. However, as we considered this condition too harsh and unfavourable for applicants living at a place other than their permanent address, we contacted the Ministry of Labour and Social Affairs in the matter. The Ministry promised to prepare an amendment to the Employment Act so that applicants who are not regularly staying at their permanent address could also receive a contribution towards commuting. However, since the promised change was eventually not incorporated in the amendment submitted to the commentary procedure, we made a comment on the amendment in this sense in January 2020.

Defender's Report: File No. 5690/2017/VOP

Care provided by midwives and payment for this care

In the long term, we strive to ensure easier access to prenatal and postnatal services of midwives and payment for these services from public health insurance. We thus contacted the Ministry of Health, which promised that it would check the local and temporal availability of these services.

A guardian ad litem should talk with the child and provide information on the litigation

We inquired into a case of a fourteen-year-old girl whose parents were involved in a lawsuit on alimony. She was represented in the proceedings by a guardian *ad litem*, who did not communicate with her at all. She wrote to us that she felt no one would listen to her. She wanted to talk about the alimony, know important information and express her opinion. Moreover, she was very well aware of her rights and did not like the way her guardian *ad litem* was treating her.

The file indicated that the girl's guardian had not talked to the girl, and had not explained to her the subject of the proceedings or her position. He had not asked about her opinion nor had he informed her of the result of the litigation. He had had several opportunities to ensure that the girl would be properly involved – e.g. when he had asked the locally competent authority to determine her current situation and needs, or when the girl had visited the authority's offices with her mother. At that time, she had sat in the corridor and the guardian *ad litem* had talked only with her mother.

We did not consider it sufficient that the guardian had talked only with the girl's mother and merely assumed that the mother would properly explain everything important to her. It was important for the girl to receive undistorted and impartial information.

When discussing the case on site, the guardian *ad litem* acknowledged his error and stated that he was aware that he should have talked with the girl. He promised to change his approach and communicate more and better with the children he represented in the future.

Defender's Report: File No. 4559/2019/VOP

Is it suitable for a child to visit his/her parents in prison?

An imprisoned father of a six-year-old boy complained that neither he nor the boy's mother, who was also serving a custodial sentence, had direct or indirect contact with their son. The parents had not committed any criminal offence involving child victims. Several months before their imprisonment, the boy had been entrusted to temporary foster care on the grounds of long-term shortcomings in the care provided by his parents.

The boy, accompanied by one of the foster parents, had visited his biological parents only once since they had gone to prison. After the visit, the foster parent had concluded that the boy had not liked it in the prison. The BSLPC had subsequently not recommended any further visits as it had considered they were not beneficial for the child. The parents could not even call the child since the BSLPC had also considered this inappropriate.

We found the BSLPC had in no way led the foster parent to comply with his legal duty to maintain and develop the child's contact with his biological parents during the term of temporary foster care. The BSLPC had not inquired into the possibility of establishing a direct contact and had not even supported indirect contact between the child and the parents in the prison.

After we issued our inquiry report, we repeatedly discussed the matter with the officers. The BSLPC then admitted the maladministration and adopted remedial measures. It also promised to change its approach to contacts between children and parents during their imprisonment. The child's father was enabled to call his son regularly by telephone. The telephone calls were arranged by the boy's mother who had already been released by that time and her contact with their son was arranged in a suitable and sufficient manner.

Defender's Report: File No. 6729/2018/VOP

"At Home with Family" project

In 2019, we were actively involved in several working groups within the "At Home with Family" project organised by IQ ROMA Servis. The working groups included social workers and employees of bodies for social and legal protection of children, as well as social workers from organisations supporting foster families. The project was aimed at improving the quality of work in supporting foster families caring for children of their relatives from socially disadvantaged environments. It yielded a methodology intended primarily for all the staff of support organisations and workers in social and legal protection of children, especially those who work with this target group of foster families. Available at: http://bit.ly/doma-s-rodinou

We handled a total of

1,350 complaints, which is

twice the number of complaints compared to the previous year concerned family allowances from EU countries under the co-ordination regulations.

50% fewer complaints pertained to survivors' pensions (orphan's, widow's, widower's)

30% fewer complaints related to subsistence support

25% fewer complaints concerned assistance in material need

→ **85** of our inquiries revealed maladministration

in **5** cases, it was not possible to ensure remedy

3 SOCIAL SECURITY

The vast majority of complaints concerned pensions, with a significant prevalence of disability pensions. People usually disagreed with the way the date of commencement of their disability had been set or how periods of pension insurance had been counted towards their pension. The number of complaints concerning assistance in material need decreased compared to the previous year. On the other hand, more often than in the past, we were asked to deal with complaints in the area of social security comprising a foreign element, whether they concerned family allowances from EU countries, pensions from abroad under EU co-ordination regulations or bilateral agreements on social security.

We issued 8 new or updated information leaflets on social benefits, in a form easily comprehensible for the general public.

We help change the rules

The date when disability arises is not determined by the applicant for pension but rather by the development of his/her medical condition

When inquiring into complaints concerning disability pensions, we repeatedly encountered situations where the Czech Social Security Administration (hereinafter the "CSSA") would set the date of commencement of disability as the date specified by the applicant for disability pension in his/her application as the requested date of granting the pension. That is also how it substantiated the date of commencement of disability in its report. In doing so, it followed its own methodology.

However, disability arises absolutely independently of the applicant's will. While the applicant does specify the date as from which he/she seeks the pension, this date indicates nothing about the actual date of onset of the relevant disease or the date of commencement of disability.

Determination of the date of commencement of disability has fundamental importance for assessment of the preconditions for the person's entitlement to disability pension. Indeed, the date of commencement of disability defines the period within which the duration of insurance required for the pension entitlement is ascertained. Determination of the date of commencement of disability must therefore be conclusively justified.

The report on disability will be conclusive primarily if it relies on sufficient underlying documents. The CSSA examined the applicant's medical condition and fitness to work only as of the date specified in the application. However, the relevant disease may have existed longer, even for many years. It is then wrong if, in such cases, the disability report

completely neglects the development of the medical condition.

We therefore exercised our special authority and recommended that the relevant internal regulation be modified so that the date of commencement of disability was not bound to the date indicated by the given person in his/her application for disability pension, but rather to the date when the disability had actually arisen.

The Czech Social Security Administration accepted the recommendation and prepared the relevant change in the methodology.

Recommendation to modify an internal regulation: File No. 32/2019/SZD

Counting studies abroad towards pension entitlement for Czech citizens

We encountered cases where the CSSA failed to count the period of studies abroad towards the applicant's entitlement to old-age pension under the Czech regulations. This was true of studies in countries outside the EU with which the Czech Republic had not entered into an agreement on social security. The CSSA reasoned that at the time when the applicants had studied (in the 1990s), they had not had Czechoslovak citizenship.

We contested the approach of the Czech Social Security Administration also in view of settled case law. While the legislation indeed made evaluation of the period of study before 1996 conditional on the existence of Czechoslovak (or Czech) citizenship, what was, in fact, decisive was not the citizenship at the time of the study, but rather the citizenship existing as at the date when the pension application was filed.

The CSSA subsequently included the period of study in specific cases and also changed its current practice – in future similar cases, it would also treat the period of study as substitute period of insurance under the Czech laws.

Defender's Report: File No. 2282/2019/VOP

The practice in requesting orphans to present certificates of study is changing

Based on specific complaints, we inquired more thoroughly into the procedures of the Czech Social Security Administration in removing orphan's pension on the grounds of a failure to present a certificate of study. The CSSA informed us that it had changed its procedures in June 2018 with a view to avoiding repeated removal and subsequent renewed granting of orphan's pension after a certificate of study was presented. Up until the anticipated end of their studies, the CSSA sent orphans a request together with a questionnaire regarding continuation of their study. The survivor's pension should only be removed if the orphaned student failed to respond within the set deadline, in spite of a reminder. However, we learnt from the wording of the request that the CSSA would also advise the orphans that even if the certificate of study was delivered by the set deadline, their orphan's pension might still be removed.

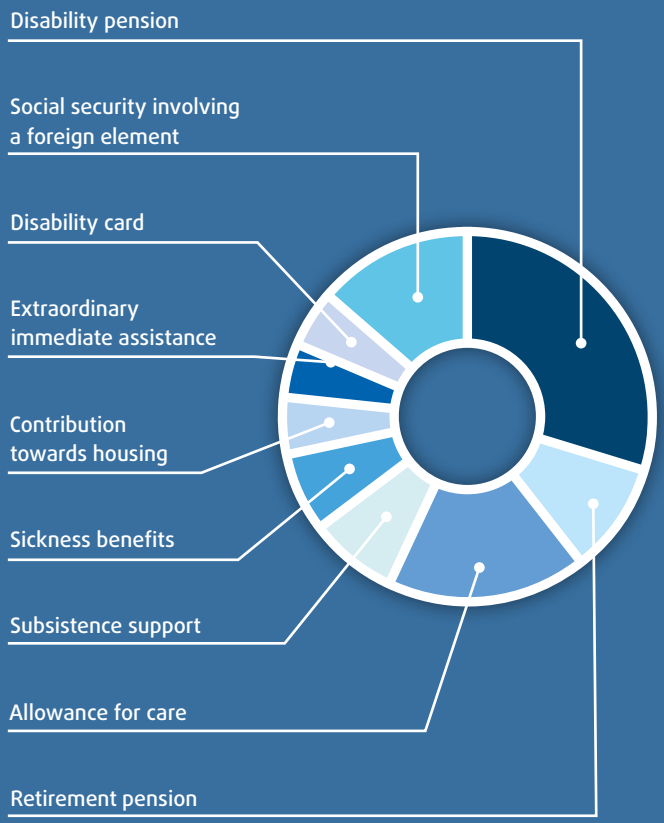
We notified the CSSA that such information was misleading. The CSSA took our comments into account and is now preparing a change in the accompanying letters to the questionnaires. In respect of fifteen-, sixteen- and twenty-year-old orphans and students in one of the early years of university studies, to whom the CSSA sends the control questionnaire, the part regarding a possible removal of the orphan's pension will be omitted.

In other cases where an orphaned student is about to end his/her secondary study or is in the last year of university, where the CSSA lacks a proof of further studies and cannot even anticipate whether the student will continue his/her studies at another school, the CSSA sends a request to the orphaned students together with an information questionnaire four months before the end of the studies, i.e. long before the month in which the pension will be removed if a certificate proving continued entitlement to the orphan's pension is not presented. The purpose of the information questionnaires, unlike the control questionnaires, is to inform the pension recipients of the date of removal of the pension on the grounds of termination of the current studies, with a notice of its possible renewal. The CSSA will continue sending letters with questionnaires, but will rephrase the paragraph on removal of the orphan's pension.

Based on communication with the Defender, the CSSA has modified the wording of the letters in the way mentioned above.

We are here to help

People most often sought help in the following areas:



Allowance for care paid to the recipient after his or her death must be refunded by the person who disposed of the bank account

We were approached by a man whom the labour office had ordered to refund a monthly instalment on the allowance for care in the amount of CZK 4,000. The allowance had been collected by his father and the relevant amount had been credited to his account only after the father had died. But the surviving son had inherited only negligible property (CZK 400) and only because he had organised his father's funeral. He had no access to the allowance money or to his father's account; he had not been in contact with his father.

Nevertheless, the labour office had ordered him to refund the allowance for care, which had been paid into the account of his deceased father. The labour office had reasoned that he had organised the funeral, and had been the sole heir and, at the same time, the carer. The decision had subsequently been also confirmed by the Ministry of Labour and Social Affairs.

We initiated an inquiry into the procedure of the authorities and criticised them for not proving that the son had actually accepted the allowance. He had had no right to dispose of his father's account – he had obtained this right only when the probate decision had been issued. The account balance had been only CZK 400 at the relevant time. Moreover, we found a record in the documents of the labour office that the carer had actually been the daughter of the deceased.

The Minister of Labour and Social Affairs accepted our arguments and cancelled the decision in review proceedings on the grounds of its unlawfulness.

Defender's Report: File No. 6180/2018/VOP

Disability pension received by a young man with a mental illness was increased by CZK 5,000

We were approached by a 33-year-old man who complained about the amount of his disability pension. His third-degree disability pension in the amount of CZK 5,500 was not sufficient to satisfy even the basic necessities.

We requested the file and found several discrepancies in it. First, the complainant had spent one year studying at a secondary vocational school, but this year had not been counted towards his entitlement because he had incorrectly stated in the application that he had interrupted his study for health reasons. He had in fact repeated the year. Nonetheless, what was even more important in terms of the amount of the disability pension was the incorrect procedure followed by the medical assessor in determining the date of commencement of disability. The assessor had determined the date as the date when the application for disability pension had been filed (November 2010). But the medical records clearly indicated that the complainant had been receiving psychiatry care since he had been 15. The schizoaffective disorder based on which the medical assessor had recognised his disability in 2010 had already been diagnosed in 2004.

The Czech Social Security Administration acknowledged that the medical assessor's procedure had been incorrect and again dealt with the issue of the complainant's disability. It ultimately found him partially disabled since April 2008 and fully disabled since December 2010. Because of the shift in the date of commencement of disability and because a further period of study had been counted towards his entitlement to pension, the complainant newly met the conditions for a higher amount of disability pension (pension for young disabled persons). The Czech Social Security Administration recalculated his pension, increased it to CZK 11,500 and granted him a balance of CZK 333 thousand.

Defender's Report: File No. 6599/2017/VOP

An elderly woman was granted an old-age pension balance in the correct amount

An elderly woman had achieved an increase in her pension based on evaluation of a period of insurance in Slovakia in the years 1961 to 1963 and asked us for help with regard to the amount of pension balance payable for the preceding period. She had been receiving a partial disability pension since 1983. In 2000, she had applied for old-age pension but had later withdrawn her application; the CSSA had therefore discontinued the proceedings. She had again applied for old-age pension in 2002. At that time, the CSSA had already granted her the pension in the amount of CZK 6,500 per month. The complainant had always mentioned the time of her employment in Slovakia.

In 2018, the complainant had found an error in data on the duration of her pension insurance. She had therefore asked for an increase in her old-age pension and submitted a confirmation on pension insurance in the period from July 1961 to January 1963 on the grounds of her employment in Slovakia. The CSSA had increased her pension by approx. CZK 150, but had granted a balance payment only for the past five years.

The complainant had unsuccessfully claimed payment of the outstanding pension from 1 January 2006. Then she asked us for help. We found that the period of employment in Slovakia, which she had proven in 2018, had already been indicated in her application for partial disability pension and in the first application for old-age pension. With regard to that application, the CSSA had made merely a record in the file "not proven". When dealing with her second application for old-age pension, the CSSA had not requested the complainant to prove that period nor had it made any inquiries in this regard. We concluded that this procedure had been incorrect.

We also found an incorrect procedure in dealing with the complainant's application for an increase in her pension, in terms of the balance payment granted to her. Given this maladministration by the social security body, the balance of old-age pension should already have been granted to the complainant as from 2006 (the law does not make it possible to grant a balance payment further to the past).

Based on our conclusions, the CSSA reviewed the procedure and granted the complainant a balance payment for her pension as from 1 January 2006.

Defender's Report: File No. 542/2019/VOP

Housing benefits in material need cannot be reduced due to the beneficiary's hospitalisation

We were approached by a man who had been receiving assistance in material need because he had no property. He paid for the costs of living at an accommodation facility from housing benefits which he was receiving due to being in material need. He had concluded an accommodation contract for the entire calendar year of 2018, but had twice been placed in a hospital during that time. The first hospitalisation had lasted from the end of January to early March, i.e. for more than a month. His second spell in hospital had been for more than two months, from June to September. The labour office had reduced his housing benefits for the time he had spent in hospital and had not been staying at the accommodation facility; with regard to full months of hospitalisation, the benefits had been completely removed. The office had reasoned that the complainant had incurred no costs of living on days when he had not been staying at the facility.

We inquired into the procedure of the labour office and found it incorrect. The labour office could not reduce or remove housing benefits merely because the recipient was not staying at an accommodation facility due to serious reasons (hospitalisation). According to the accommodation contract, he was obliged to pay the accommodation fee for all days in a month regardless of his actual presence. Because the benefits had not been provided, he had become indebted to the accommodation provider.

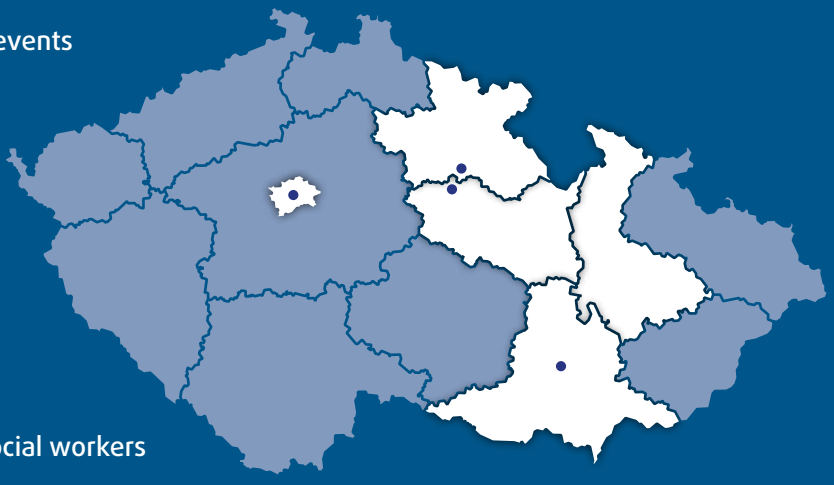
After receiving our report, the labour office admitted its error and paid the housing benefits to the complainant also for the days when he had not stayed at the accommodation facility because of his hospitalisation.

Defender's Report: File No. 6809/2018/VOP

We communicate

Last year, we organised

6 educational events



for 142 officials and social workers

At 4 seminars taking place within our legal clinics, we provided lectures to law school students on our findings in the area of social security.

We wrote 8 articles for the professional public on aspects of social security.

We contribute to the debate on a fairer set-up of the pension system

The Minister of Labour and Social Affairs has invited us to take part in the Commission on Fair Pensions, which aims to ensure a sustainable pension system offering decent and fair pensions. The Commission prepares its recommendations based on discussions among its members – representatives of the professional public and politicians.

During the Commission's meetings, we supported a number of proposals which we considered helpful for a fairer set-up of the pension system. Not all of them received the necessary support (e.g. a proposal for sharing insurance periods between spouses and partners, which we had agreed with), but the Commission approved most of them and recommended them to the Minister for discussion in the coalition council. These successful proposals include, for example:

a fairer calculation of pension for people caring for a child or a disabled person. This should be achieved by setting fictitious assessment bases for these persons. Parents caring for children over 4 years of age could be offered the option of excluding part-time earnings so as not to be disadvantaged in the calculation of pensions because of an attempt to achieve a work-life balance. All the aforementioned changes should apply to future pensioners.

an increase in pensions for current recipients who cared for children in the past. We also supported the preparation of a measure allowing early retirement of employees in demanding professions. The age limit for retirement should be reduced by 1 year for every 10 years of this work (2 for 20), while employers should pay higher premiums.

Together with other members, we also introduced a new, highly urgent topic to the Commission, specifically the very strict setting of the period of insurance necessary for an entitlement to old-age pension. The requirement for 35 years of insurance (or 30 years of "net" insurance) is quite unique in Europe and it can be anticipated that the number of seniors without entitlement to old-age pension will increase in the coming years. We also agreed with the general plan for the creation of a "zero pillar" within which a (solidary) pension would be provided, corresponding to the minimum standard of living. Along with that, a new first pillar should be established by transforming the existing system so as to better reflect the merits in terms of evaluation of individual professional careers. The changes should also include the introduction of "individual virtual pension accounts" that would provide citizens with information on the periods of insurance they have achieved and their future pensions. This would enable people to take suitable steps at a productive age so as to better prepare for their future pension. Better awareness among the insured persons and a more flexible option of retroactive payment of premiums are steps we have been calling for in the long term.

We were involved in an interdepartmental working group dealing with 15 measures in the fight against poverty

Further to the Government's resolution on implementation of 15 measures in the fight against poverty, the Ministry of Labour and Social Affairs invited us to take part in an interdepartmental working group tasked with putting these measures into practice. Although the group also dealt with matters falling within the competence of other ministries, the main topic of the meeting was a review of housing benefits and introduction of measures to increase the activity of long-term recipients of assistance in material need.

As regards the regulation of the "poverty industry", specifically rental of subpar flats and accommodation units for disproportionate prices, we perceive with great concerns the efforts of the Ministry of Labour and Social Affairs to address this undesirable phenomenon by reducing housing benefits (introduction of substantially stricter "benefit caps" with regard to accommodation facilities) or by removing them altogether (e.g. due to non-compliance with newly defined standards for the use of a flat). Without ensuring availability of adequate solutions for low-income persons in housing need, these measures cannot be functional and will increase the number of homeless people and worsen social exclusion of vulnerable groups. However, the working group developed no effective systemic measures to ensure accessible solutions for people in need of housing. Such measures could include, in particular, the preparation of a draft law ensuring accessible housing at least for vulnerable groups. No measures were adopted to regulate the "poverty industry" directly at the providers, e.g. by restricting the possibility of renting flats to persons threatened by social exclusion in case of the owner's failure to provide for proper maintenance or non-performance of other duties.

We also raised fundamental objections to a set of "activation measures" aimed at long-term recipients of assistance in material need. Work performed by people receiving housing benefits (public service; compliance with an action plan, etc.) and their children's school attendance should also newly be reflected in the amount of the benefits. Until now, these punitive measures were applied only with regard to subsistence support and parental allowance (with regard to the latter, only in terms of monitoring school attendance). In this case, too, we expressed our fundamental disagreement with the introduction of punitive provisions affecting housing benefits. Without ensuring accessible housing, one cannot expect that poor people will become more involved in the labour market or improve their children's school attendance.

We will also draw attention to the significant social risks associated with stricter conditions in the system of benefits when discussing the draft law on contribution towards housing expenses within the legislative procedure. We already expressed our disagreement in the commentary procedure.

Defender's Comments: File No. 2757/2019/S

Defender's Comments: File No. 2759/2020/S

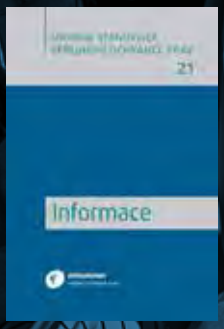
We initiated a survey on the provision of extraordinary immediate allowance for school supplies and after-school club fees

In order to raise public awareness of the fact that poor families could ask for allowances to cover the increased costs they had to expend for their children's school supplies and participation in after-school clubs, we issued an information leaflet titled "Extraordinary Immediate Assistance for Dependent Children". We sent the leaflet to non-governmental organisations and social workers dealing with people at risk of poverty and social exclusion so as to get the information to as many people as possible.

These activities are followed by a survey on the practice of labour offices in the provision of extraordinary immediate allowance for dependent children to cover these expenditures. We launched the survey at the end of 2019 and its results will therefore be available in the middle of the calendar year 2020.

Leaflet Extraordinary Immediate Allowance for Dependent Children

We prepared the 21st Collection of the Defender's Opinions – Information for publication.



We handled

2,214 complaints;

of which

→ **980** fell within the Defender's mandate,

1,234 fell outside the Defender's mandate.

there was an 18% increase in the number of complaints concerning traffic infractions, the number of complaints regarding personal data protection and right to information grew by more than 20%

→ **88** of our inquiries revealed maladministration

in **10** cases, we did not manage to achieve a remedy

4 PUBLIC POLICY

In 2019, we focused on how the authorities provided information on their activities. We created a new information leaflet titled Provision of Information and updated existing leaflets Debt Relief I, Debt Relief II and Land-use Authorities so as to make them more comprehensible and provide better help to people in difficult life situations. We thus also contributed to greater comprehensibility and relevance of answers and decisions of certain authorities. We pointed out an unlawful speed measurement in Varnsdorf. We dealt with the use of police drones in the Brdy protected landscape area and interpretation of the term "camping". We acknowledged that the police could use drones.

We help change the rules

We are changing the authorities' practice in dealing with requests for information

We prepared a collection of the Defender's opinions called Information. The collection summarises our findings related to the way requests for information are dealt with (not only) under the Free Access to Information Act. Readers will learn how they can ask for information and how to proceed if they are rejected. We provided authorities with instructions as to how they should deal with requests and how to proceed if someone abused the right to information.

When two people ask for the same information, they should both receive a response

We found that the Ministry of Industry and Trade did not proceed correctly when it dealt with a request for information filed by several people. The Ministry incorrectly responded only to the person listed first in the request. We also reminded the Ministry that every time the Ministry refused to provide information, it had to issue a decision on rejecting (even partially) the request.

The Ministry promised to comply with the procedures under the Free Access to Information Act.

Defender's Report: File No. 676/2019/VOP

Information can also be provided by e-mail

In one specific case, we were unable to persuade the president of a court that she could also provide information in some way other than by sending it by post with personal delivery. When we realised that our arguments would be in vain, we referred the matter to the Minister of Justice as the superior body. The Minister agreed with our opinion. She assured us that this problem was exceptional, promised to advise the president of the court accordingly and utilise our finding in methodical work.

Defender's Opinion: File No. 3159/2018/VOP

If an assembly member initiates a public debate on activities of the municipality, this is not a frivolous act

We were informed that a municipality had already refused five times to provide a member of the municipal assembly with information regarding the municipality's economic management. It reasoned that the assembly member was abusing the right to information. He had not found support even at the competent regional authority, which had reproached him for allegedly "using the information exclusively for political competition, especially in an attempt to spread misinformation regarding the operation of the municipality".

We concluded that public debate on the economic management of a municipality, initiated by an assembly member within political competition after the respective information had been provided, could not be considered a frivolous act. Therefore, in itself, this could not be a reason for denying a request for information.

The director of the regional authority acknowledged the error and introduced corresponding organisational measures at the authority.

Defender's Report and Opinion: File No. 2544/2018/VOP

You should co-operate with the service authority when it is deciding on your relocation

We have achieved a change in a methodological guideline issued by a deputy director for civil service regarding changes in service relationships. The guideline newly recommends that the service authority advise the public servant of the duty to provide the necessary collaboration and present underlying documents required to prove personal, health and family circumstances that could affect decision-making on relocation.

Defender's Report and Opinion: File No. 4572/2018/VOP

We supported the use of personal cameras by police officers on duty

We often encounter situations where there are two opposing statements – one made by the complainant and one by a police officer. If there is no other evidence available, such a complaint filed with the police is declared unfounded. In contrast, where the police have at their disposal a camera recording of the way the police officer dealt with the complainant, they can suitably respond to the individual points of the complaint and undertake proper inquiry.

Equipping all police officers in the field with personal cameras would be very expensive. But it would nevertheless be a step in the right direction.

When a suspect claims the opposite than the person reporting an infraction

When dealing with infractions, we encounter situations where the allegations made by the person reporting the infraction are disproved solely by the suspect's own statement. The authorities are burdened with proceedings on offences that will likely not be clarified, and such a procedure could even be at variance with the principle of procedural economy. We therefore strive to motivate the authorities to take the necessary steps to hear the infraction, i.e. to summon the suspect to provide an explanation within 60 days and invite the person reporting the infraction to present evidence. If, even after such acts have been performed, it still is not likely that sufficient evidence will be collected in the proceedings, they should set the case aside on the grounds that they have been unable to ascertain facts justifying the initiation of proceedings against a certain person. By doing so, they would strike balance between the principles of procedural economy and material truth – i.e. the duty to ascertain the facts of the case beyond reasonable doubt.

Defender's Report: File No. 5091/2019/VOP

You can vote in municipal and regional elections even if you are registered in a special electoral roll at an embassy

We received a complaint filed by a citizen whom the district electoral committee had not enabled to vote in the municipal elections in October 2018 because he had been registered in a special electoral roll kept by an embassy abroad. The district electoral commission had followed an opinion of the Ministry of the Interior, which had argued by the principle of equality. But the principle of equality could not be violated because a voter registered in a special electoral roll kept by an embassy could not vote in municipal elections at any place other than in the constituency where he had permanent residence. The Ministry of the Interior accepted our arguments. For elections to regional assemblies to be held in 2020, it would prepare a new methodology. As a matter of fact, our interpretation was already reflected by the Ministry in the draft Administration of Elections Act.

Defender's Report: File No. 395/2019/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

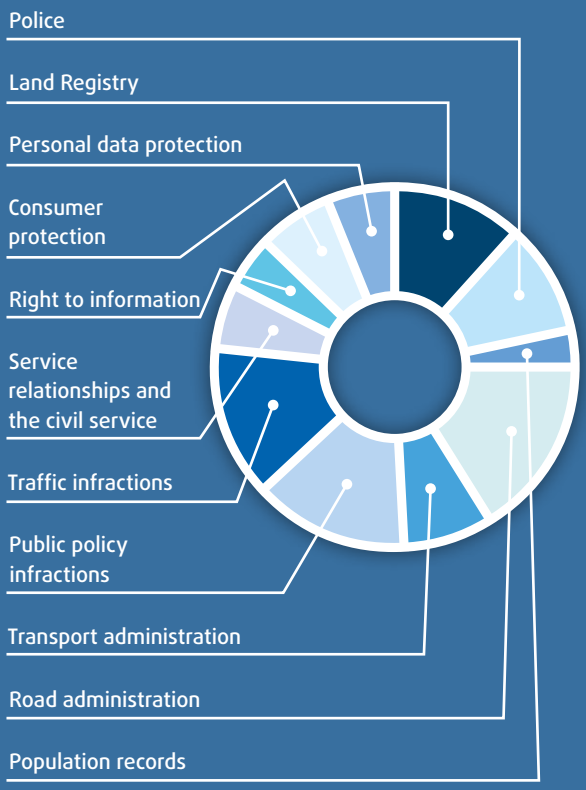
40 people with problems concerning registry offices and population records

102 people with problems concerning the use of roads

56 people with problems concerning driving licenses and vehicle registration

62 people with problems concerning the right to information or, on the other hand, personal data protection

People most often sought help in the following areas:



Not every fine for malicious phone calls is legitimate

We were approached by a daughter of a complainant who was fined CZK 30,000 by the Czech Telecommunication Office for an infraction (making malicious phone calls), although she had pointed out to the Office during the proceedings that her father was sick.

The Office had erred when it had failed to sufficiently ascertain the facts of the case, as there had existed doubts as to the mental condition of the culprit at the time when he had committed the infractions. The Office accepted our proposal for initiation of review proceedings and cancelled the decision on the fine.

Inquiry Report: File No. 1952/2018/VOP

Access to real estate during motorsport rallies

The complainant claimed that some parts of his real estate had been inaccessible because of a closure during a motorsport rally. We therefore advised the road administration authority that access to real estate had to be maintained throughout a closure. It is not sufficient to impose this duty in the decision on the closure; before such a decision is issued, the road administration authority is required to actively check how access to the real estate affected by the rally will be ensured.

When the next year's edition of the rally was organised, the road administration authority advised us that, before issuing the relevant decision, it had checked that the organiser had notified the owners and users of adjacent real estate sufficiently in advance about the course of the rally. It had done so by delivering the relevant notice to their mailboxes. The organiser had also pointed out to them that, throughout the closure, access to the real estate would be possible when the races were underway only during the afternoon breaks and only when accompanied by the organiser's staff.

Defender's Report: File No. 4137/2018/VOP

Parking in a car park for disabled for a maximum of 4 hours

We learnt that in one of Prague's city wards, disabled people could use reserved parking spaces for no more than 4 hours without interruption. The road administration authority thus compensated for an insufficient number of such parking places. However, such a limitation is not required throughout the day. In view of the office hours of the institutions located in the area, the necessary "turnover" of cars has to be ensured only during certain times of the day. The limitation loses sense in the evening and during night time. Checking compliance with the maximum period of parking in the reserved car park is also questionable.

The management of the city ward promised to remove the general time limit for these reserved parking places. It would also review whether their locations and overall number were appropriate.

Defender's Report: File No. 2186/2018/VOP

Landscaping can also create an obstacle on a road

The complainant owns a cabin. The owner of the neighbouring plot carried out such landscaping modifications on the local road that the complainant could no longer use it to drive a car to his cabin.

We found that proceedings on the existence of a publicly accessible special-purpose road had already been underway for 10 years. During that time, the road administration authority had never ascertained the actual facts nor had taken proper evidence. Although the modifications carried out on the road prevented its use and could constitute a permanent obstacle, the authority had yet to initiate proceedings on their removal. At the same time, the road administration authority had repeatedly caused absolutely disproportionate protractions of the proceedings. It took more than a year for the authority to issue a decision during our inquiry alone, without there being any objective reason for such a delay.

Since the road administration authority had failed to take sufficient remedial measures and continued to conduct the proceedings improperly, we contacted the regional authority as the superior body. The latter agreed with our conclusions and ordered the road administration authority to check whether the road continued to be blocked by the landscaping modifications. If this was the case, the road administration authority would have to initiate proceedings on removal of this obstacle.

Defender's Report and Sanction: File No. 3428/2017/VOP

We communicate

We strive for better comprehensibility

We have been working in the long term on improving the comprehensibility of our answers and we also guide the authorities in the same direction. We know that a text which is complex, long, unstructured or full of professional terms might be difficult for the readers to understand. An incomprehensible decision of a superior authority can hardly serve as a clear guideline for the first-instance body on how to conduct new proceedings. Therefore, we strive to discuss this problem with authorities wherever we encounter it and inspire them to improve their practice. For example, with representatives of the Czech National Bank, we looked for a way to use more simple and comprehensible terms to answer various inquiries as to when and how the Czech National Bank could help.

We also regularly encountered relatively incomprehensible decisions issued by the Central Bohemian Region in appellate proceedings concerning road use. We therefore talked with representatives of the regional authority about a possible improvement in this regard. We emphasised the need to express a clear and comprehensible legal opinion in the decisions so that it would be understood by first-instance road authorities that are asked to follow them. We will continue to monitor the aspect of comprehensibility of decisions.

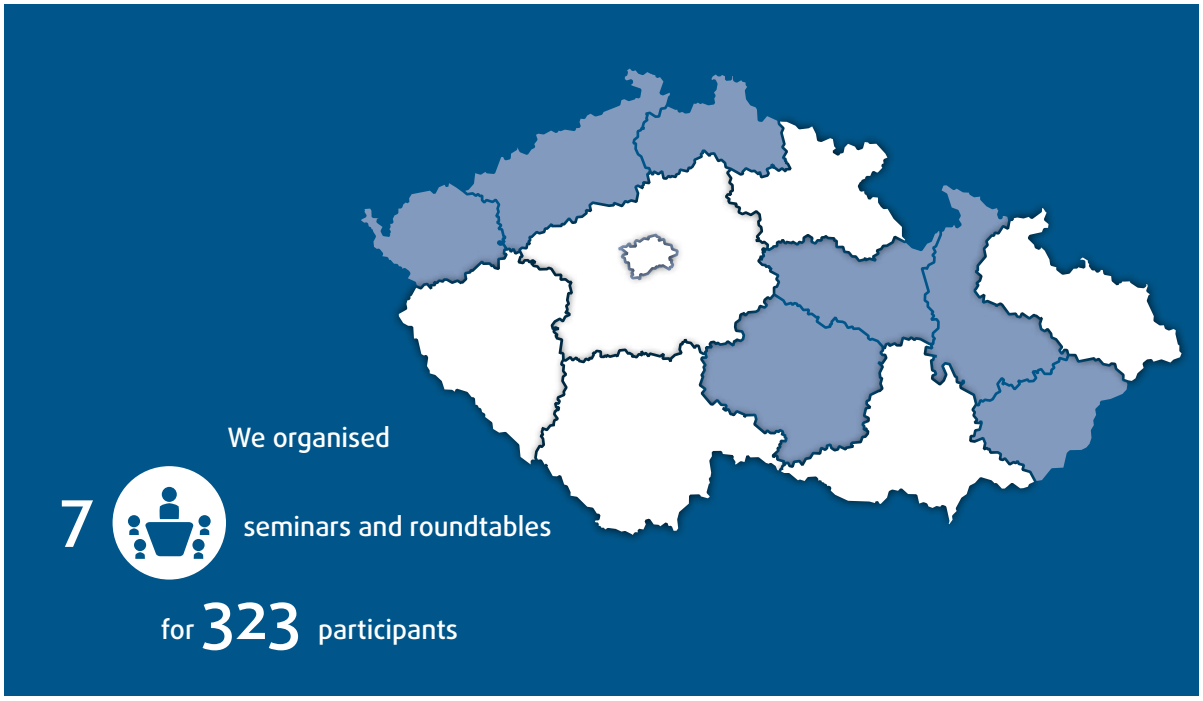
We share good practice

We followed up on a meeting held in 2018 and organised another roundtable for representatives of regional authorities dealing with public roads, with a focus on specific cases. The topics included, among others, roads in inner courtyards; abolishment of railway crossings and the related disappearance of special-purpose roads; obstacles of *res judicata*; and improving the way roads were identified in declaratory decisions. We shared our experience from similar cases as well as problems associated with the individual procedures.

Better supervision over activities of intermediaries in the energy sector

We repeatedly encounter consumer complaints regarding the conduct of persons offering cheaper supplies of electricity or gas. The activities of such intermediaries are now supervised by the Czech Trade Inspection Authority. However, it would be more efficient if they were supervised by the Energy Regulatory Office because this authority already regulates the activities of other licenced entities in the energy sector and can also issue binding decisions to resolve disputes between them and consumers.

We convinced the Ministry of Industry and Trade of the need for an amendment to the Energy Act.



Unsolved vehicle re-registrations

We continue to communicate with the Ministry of Transport with respect to the problem of registration of new vehicle owners, which usually occurs in cases where the buyers do not honour their agreements with the sellers and fail to register themselves as the owners. The sellers thus continue to be registered as the vehicle owners although this is not true in reality. At the present time, they have very limited options of how to achieve the registration of the actual owners.

Contradictions between laws may cause problems for drivers

We continue to discuss with the Ministry of Transport how the conditions for renewal of driving licences should be set. In some cases, these conditions do not correspond to the provisions of the Code of Criminal Procedure. Specifically, it is necessary to harmonise the probationary period applicable in case of conditional discontinuation of criminal prosecution with a voluntary ban on driving accepted by the accused person in that case. At the present time, the driver's licence cannot be renewed following expiry of such a ban if the probationary period is longer and has yet to lapse. The given person is thus prevented from driving for a longer time than he/she voluntarily accepted.

When an authority is caught by surprise by a new law and refuses to speak to you

The European data protection regulation (GDPR) brought certain interpretation issues which we wanted to discuss with the Office for Personal Data Protection. For example, we were repeatedly asked to deal with complaints about cameras installed in buildings managed by associations of unit owners, although this appears to be a question of problematic relationships, rather than a legal issue.

We also wanted to talk with the Office for Personal Data Protection about the need to process personal data in connection with entry into public buildings, the use of the Land Registry when offering real estate for sale, and experience with exercise of the right to be forgotten.

However, despite all our efforts, we were unable all year long to persuade the Office to talk to us. We also received a number of complaints that the Office had failed to respond to individual pleadings within a reasonable period of time. The Office explained its inactivity by referring to an excessive burden associated with the change in the law.

We will not give up, however, and believe that we will be able to find an opportunity to discuss the problems related to application of the EU regulation together.


ZÁKAZ

5 RULES OF CONSTRUCTION PROCEDURE

We thoroughly analysed the draft Construction Code and raised fundamental suggestions both with regard to the substantive intent and in relation to the articled version of the draft. To make the process of preparing and building a house easier, we published a "Simple Guide to Building a House" on our website.

We organised roundtables to discuss topical issues of construction law and protection against noise with the authorities.

We handled a total of

862 complaints;

→ **107** of our inquiries revealed maladministration,

in **13** cases, we did not manage to achieve a remedy.

We prepared **4** professional seminars and roundtables and trained **146** officials.

We help change the rules

You should inform us about the risks of non-ionising radiation

In the past, we criticised the Ministry of Health for increasing the limits for non-ionising radiation without prior discussion with the professional public. The effects of new technologies, including the currently introduced 5G network, on human health have not yet been sufficiently examined, which is why awareness-raising is important. We requested that the Ministry acquaint the public with all available findings on non-ionising radiation, explain the related health risks and prevention possibilities. The Ministry first responded in its Action Plan aimed at reducing health risks from the natural and working environment for the 2015–2020 period; subsequently, the National Reference Laboratory for Non-ionising Radiation also published information on the problem of exposure to telecommunication networks of the fifth generation.

Dangerous predators will have a refuge

We inquired into a case where lions were kept without a licence. Unfortunately, this ended up tragically for both the breeder and the animals. We had already pointed out previously that the legislation did not sufficiently deal with possible removal of animals requiring special care; in practice, there were complications in handling animals taken from their owners (especially large predators). This case clearly illustrated our concerns. Even if the veterinary administration removed the lions from the owner in time, it would have nowhere to put them. There is no suitable facility in the Czech Republic that would provide the necessary shelter for such animals, although the number of cases of such problematic private breeding is constantly increasing. We therefore contacted the Ministry of Agriculture and the Ministry of the Environment with a view to speeding up the legislative work aimed at creating emergency and rescue stations for such animals. The two ministries are working on the task together and the Ministry of the Environment has promised that facilities for animals requiring special care will be created not later than in 2022.

Press release of 5 March 2019

Press release of 3 May 2019

A general power of attorney granted to a lawyer can also be used in administrative proceedings

We repeatedly encountered a situation where a lawyer had been given a general power of

attorney for all legal acts, but various administrative authorities approached this authorisation in different ways. Some did accept it and others did not. We examined the situation by means of a survey among the regional authorities, which confirmed that many authorities would still disregard the manifestation of the party's will to be represented by an attorney-at-law as expressed in the general power of attorney. This, however, had serious procedural consequences for the persons represented because, for example, administrative authorities would reject appeals filed by the lawyer as inadmissible. We therefore asked the Ministry of the Interior to issue a methodological guideline instructing all the authorities without exception to accept such general powers of attorney; we will continue discussing this matter with the Ministry.

When is a party to construction proceedings entitled to a copy of the design documents?

We conducted a survey among regional authorities in 2017. We found that if a party to construction proceedings asked for a copy of the design documents, not all individual construction authorities would proceed in the same way. Some authorities would not provide copies of the documents at all, others would only provide them under certain conditions and still others would do so without further ado. We believe that in respect of each application for a copy of the documents, construction authorities should take into account all the competing interests – the interest of the owner of the structure to which the documents pertain in maintaining his/her privacy, and the interest of the party demanding the copy in fair trail. The construction authority will not provide a copy of the documents only if the owner's interest prevails. The Supreme Administrative Court adopted the same opinion in 2019 (File No. 2 As 256/2017). Therefore, we asked the Ministry for Regional Development to unify the procedure of the construction authorities. The Ministry promised to discuss our recommendations at a meeting with the regional authorities and consider issuing a methodological guideline.

One cannot wait years for a binding opinion

We inquired into the procedure of the Ministry of Health, which caused many sets of construction proceedings to stop for long months and years when reviewing binding opinions issued by regional public health stations. Regional authorities were unable to decide on an appeal against a construction permit until the Ministry provided its statement on the contested binding opinion. Reminders addressed by certain regional authorities directly to the Ministry did not help. We therefore met with the Minister of Health and discussed with him the causes of the delays and the possible solutions. On our recommendation, the Minister ordered analysis of the Ministry's files and prompt decision in all pending reviews. The Ministry also adopted systemic and organisational measures to prevent any such disproportionate delays in the future.

Press release of 15 October 2019

Finally! – The Ministry for Regional Development has announced a subsidy programme for derelict structures

For many years, we have pushed for removal of dilapidated buildings endangering lives and health of people. Finally, the Ministry for Regional Development responded to our calls, prepared a subsidy programme "Support for enforcement of decisions of construction authorities" and issued rules for utilisation of public funds to cover the costs of enforcement of decisions rendered by construction authorities. We will continue monitoring the way these subsidies are utilised.

Press release of 21 March 2019

We want to protect animals but we cannot reach them

Ever more often we encounter difficulties in proving animal abuse when animals are kept in a private house or flat. This is why we have contacted the chairwoman of the Committee on Environment of the Chamber of Deputies to discuss the issue of entering dwellings. Our experience shows that without ascertaining how the animals are kept and what their condition is, it is not possible to intervene effectively and in time against their abuse.

We are here to help

We helped and advised:

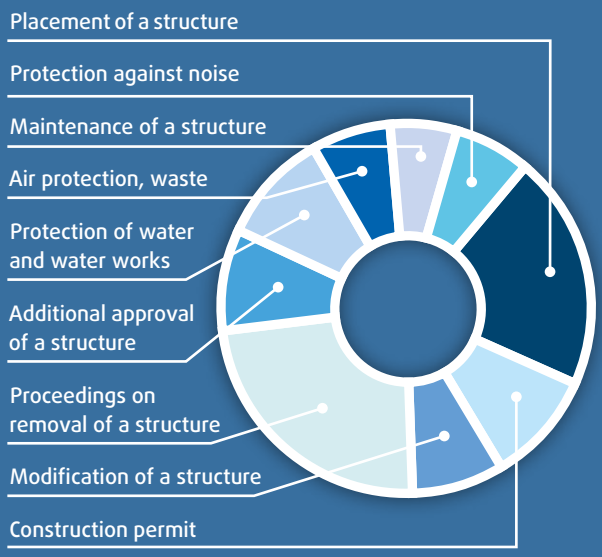
327 people with problems regarding planning or construction permit proceedings or using a structure

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

67 people exposed to excessive noise

47 people dealing with water mains, sewerage or water protection

People most often sought help in the following areas:



"Simple Guide to Building a House"

Everyone who has ever decided to build a house and applied for a construction permit knows that it is by no means easy to navigate the process of preparation and implementation of a construction project. For these situations, we created a website called "Simple Guide to Building a House", which helps and explains what it takes to build a house in terms of administration and what authorities have to be contacted – from choosing a plot to applying for a street number. The topics are divided chronologically depending on when they occur during the construction process. We highlighted the most important tips that should be borne in mind or that can make the whole process easier. Our guide also tells the reader which authority has to be addressed in each stage, who can help with this and what the most important time limits are. People will also find the necessary applications and documents on the website, which eliminates the need to seek them at various other sources and authorities. We pay special attention to situations where something goes wrong. We advise people to whom they can turn should they have any problems or with whom they should file an appeal. At the same time, we describe cases where people can contact directly the Defender and cases we dealt with in the past. One click is sufficient to send a complaint on a prepared form.

Press release of 7 November 2019

A hydro power station can cause low water levels in a river

With the growing effects of drought, we are increasingly often asked to deal with low water levels in rivers and wells. One of such complaints was filed by the owner of a cabin close to a river. He was displeased about the extremely low water levels in the river during the summer months. He stated that water was being drawn from the river by a small hydro power station and that illegal modifications had been made to a weir and the discharge channel of the station, which had also resulted in reduction of the water flow beyond the weir. The water-law authority had not taken steps to resolve the situation. We thus informed the superior regional authority of its procedure; the regional authority carried out an extraordinary

inspection at the water-law authority and found serious errors, especially in terms of consistent failures to take the statutory steps in the case. The regional authority subsequently ordered the water-law authority to adopt measures to remedy the shortcomings and provided the authority with methodological assistance in the matter.

Defender's Report: File No. 4830/2016/VOP

Shooting ranges

We inquired into several cases involving sports shooting ranges. The construction and operation of such facilities require assessment by a number of administrative authorities, as they could have an unfavourable impact on the environment. A shooting range usually causes a number of negative phenomena, such as elevated noise and dust levels and increased demands on transport service. Assessment of the degree of such impacts in the given area and setting the conditions for their elimination requires mutual co-operation of all the competent authorities (especially the construction authority, police, public health station).

One of the shooting ranges we focused on was located in the municipality of Otročiněves in the Central Bohemian Region. We criticised the construction authority for failing to check whether the shooting range would be established legally in the given territory. The police then permitted the operation of the facility based on incorrect evaluation of the underlying documents and they made the relevant administrative consideration regarding legality of the range in terms of construction law instead of the construction authority. Therefore, we asked the Directorate of the Firearms and Security Material Service at the Police Presidium of the Czech Republic to review the decision to permit the operation of the shooting range and suggested that it be closed down. The Police Presidium followed our suggestion and cancelled the decision in summary review proceedings.

Defender's Report, Opinion, and Sanction: File No. 3818/2018/VOP

An error in the certificate of roadworthiness can result in loss of a subsidy

We dealt with a case presented to us by a company selling agricultural machinery. The State Agricultural Intervention Fund (hereinafter the "SAIF") revoked a subsidy (almost CZK 500 thousand) that this company had originally been granted for the purchase of a vehicle. The reason was a formal error in the certificate of roadworthiness. According to the rules of the relevant subsidy programme, the subsidy was intended (among other things) for the purchase of vehicles of the N1 category (freight vehicles). However, in the certificate of roadworthiness, the vehicle was classified as M1 (passenger vehicle), although it was, in actual fact, a freight vehicle. We contacted the SAIF and suggested that its procedure in assessing the subsidy might have been overly formalistic. The complainant then turned to the Review Commission of the Ministry of Agriculture, which recommended that the SAIF not revoke the subsidy. Following these steps, the SAIF promised to pay out the subsidy.

Defender's Report: File No. 3594/2019/VOP

When you cannot sleep downtown

We were approached by a complainant who asked us for assistance related to nuisance caused by noise from a music club in the Olomouc city centre. The construction authority had been ignoring complaints from the citizens as well as suggestions from the body of state heritage care regarding unauthorised installation of roof windows in a building hosting a dance club. This had allegedly disrupted the soundproofing of the building's envelope. Noise measurements had also pointed in the same direction as they had indicated a significant violation of the noise limits. Following intervention by the regional authority, the unauthorised windows had been removed. But that had not been sufficient to bring the noise down to safe levels. We therefore came to the conclusion if safe noise levels were exceeded in the long term, the given structure comprised a defect in terms of public health and was also used in a manner other than originally intended. The construction authority accepted our arguments and called on the building owner to remove the defect and terminate the unauthorised operation of the music club insofar as it demonstrably exceeded the applicable safe levels.

Defender's Report and Opinion: File No. 396/2017/VOP

We communicate

The latest amendment to the Construction Code slowed down construction

An amendment to the Construction Code adopted in 2018 introduced, for most structures, the duty to obtain a binding opinion of the spatial planning authority before filing an application for a construction permit. Our findings showed that, in some cases, the process of issuing a binding opinion significantly protracted the construction permit procedure. Therefore, we inquired the regional authorities about the situation in their respective regions.

We found that compliance with reasonable deadlines was not a nationwide problem, but rather an issue specific to certain areas. Delays occurred especially at spatial planning authorities in the vicinity of large agglomerations and in areas with increased construction activities. We now communicate with such authorities individually. When we are approached with complaints about the protracted process of issuing binding opinions, we recommend that the complainants turn to the superior regional authority and request a measure aimed against inactivity of the given authority – an order to issue a binding opinion by the set deadline.

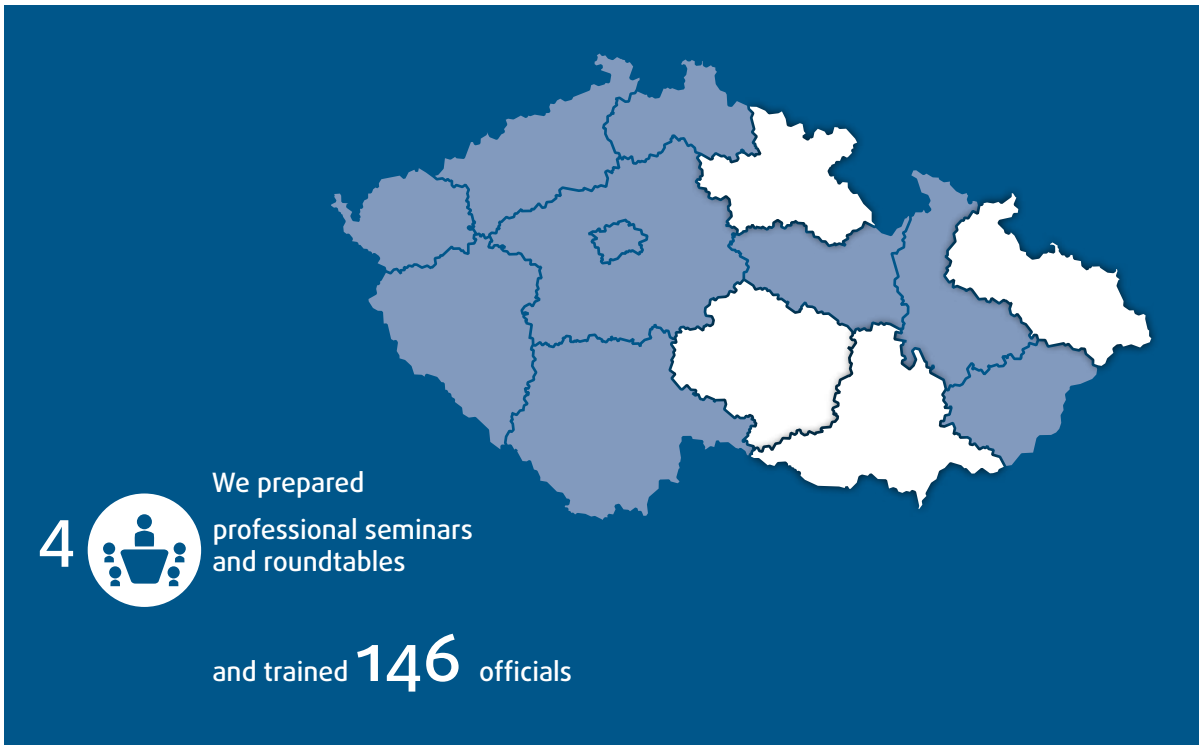
Monuments deserve a new law

We were involved in the commentary procedure regarding the Bill on Heritage Protection. We have long supported the adoption of a new heritage protection law since the current Act of 1987 is obsolete and does not match the current trends in monument care. We appreciate that the Ministry of Culture has incorporated in the draft law our requirement that owners of unprotected real estate located in heritage zones should be able to apply for subsidies towards their refurbishment. However, the draft does not adequately provide for the right of associations to actively participate in the protection of architectural heritage. According to the draft legislation, the general public, represented by associations, would not be a party to the relevant proceedings. They would be informed that proceedings have been initiated, would be able to comment on the underlying documents for the decision and would be served with the decision; however, if they disagreed with its contents, they would not have the right to appeal or file a lawsuit against it.

Defender's Comments:
File No. 34320/2019/S

Limitations on the part of the superior body are no excuse

Every year, we organise a roundtable for regional authorities and the Ministry for Regional Development and talk about the current problems of construction law. This year, we focused on the procedure of superior authorities in dealing with inactivity,



bias and methodological assistance. Superior authorities often approach these issues formalistically, and fail to express any specific opinion or provide clear guidance for the subordinate construction authorities. They usually explain this by referring to limits of legislation and concerns about making a conclusion in a case where they might later be in the position of the appellate body. However, if the matter is resolved in this way without dealing with its merits, this usually results in nothing but unnecessary protractions. We therefore strive to change the established formalistic practice and want to persuade the superior bodies to give more consideration to the choice of the best procedure that would lead to a constructive solution.

At the roundtable, we agreed that cases where bias was pleaded could not be automatically referred to another construction authority once a subordinate authority had declared itself biased as a whole. This approach creates a "hot potato", where a certain unpleasant case travels from one authority to another. The superior body may not avoid assessing justification of the declared bias. We also clarified that when providing methodological assistance to subordinate authorities, individual consultation could also be provided in a certain case, albeit only at a general level. The concerns expressed by appellate bodies as to the loss of trust in impartiality of their future decision-making in such cases can be eliminated with reference to case law of the Constitutional Court. In contrast, if specific cases are consulted, this can avoid the "ping pong" of repeated cancellation of decisions and referral of cases.

New Construction Code

We analysed the draft new Construction Code. We raised comments both with regard to its substantive intent and the draft articled wording. We agree that today's construction law is too complicated and the processes of discussing a construction project lengthy. The current Construction Code requires fundamental changes. But we do not think that the present draft Construction Code is a step in the right direction. Its preparation was too hasty and the draft does not sufficiently take into account all interests that could be affected by newly built structures, except for the interest in "quick construction". For example, we disagree with the plan to integrate the present affected bodies in the construction authority. This would fundamentally jeopardise the independence and impartiality of assessment of important public interests defended by these bodies. We also disagree with automated (computer generated) decision-making. This would not speed up the procedures but rather complicate decision-making on projects. An automated decision would lack proper reasoning; it would not deal with all important (public) interests; objections raised by the parties would not be assessed, taken

into account and settled, etc. Such a decision would be unlawful and the superior body would cancel it either in appellate or in review proceedings. This would undoubtedly prolong most cases involving an automated decision.

We also request that the public (environmental associations) be returned to construction proceedings from the stage of the substantive intent in cases where the interests in nature conservation and landscape protection may be affected. While the draft Construction Code does envisage this, the rules it lays down for involvement of associations are so strict that effective participation of the public would be impossible in most common cases. We therefore request that these obstacles be removed and that the provisions on participation of associations go back to the situation existing before 1 January 2018.

Defender's Comments: File No. 56210/2019/S

Comments on the amending Act related to the Construction Code: File No. 56211/2019/S

Press release of 3 July 2019

Noise can be stopped, but how?

We have received numerous complaints regarding ineffective procedures of regional public health stations against operators of facilities generating noise (such as pubs, manufacturing complexes, roads, railways, etc.) which exceed safe levels in the long term. Therefore, we met with representatives of the Ministry of Health, regional public health stations and the National Reference Laboratory for Noise at a roundtable. We focused on the practice of utilising punitive and remedial instruments. The debate followed from our survey which had revealed that regional public health stations had imposed a total of 281 fines for exceeding the safe levels of noise in 2014 – 2018, but only in 8 cases had they used a stricter measure and ordered the relevant establishments to stop the operation (or use) of the source of excessive noise. We also found that, in practice, the authorities practically never revoked exemptions for noise, although there had been reasons to do so in some of our inquiries (e.g. the exemptions existed for an unreasonably long period of time, even for several years, and the operator was doing nothing to reduce the noise, or the measures were inadequate).

The results of the survey showed that the practice of public health stations in the use of remedial

measures was inconsistent and, in some cases, insufficiently strong. We will therefore ask the Ministry of Health to issue a methodological guideline that would clearly describe when and under what conditions it is possible to suspend the operation or use of an excessive noise source.

Press release of 19 November 2019

Mining of sand and gravel or protection of a water source?

We are interested in the planned mining and treatment of sand and gravel in the Moravský Písek Protected Resource Area, located in the floodplain of the Morava River between Uherský Ostroh and Moravský Písek. We have been advised many times that the project presents a serious threat to the underground water source in an area supplying drinking water to 130,000 inhabitants, especially of the South Moravian Region. The project should be carried out in the "Morava River Quaternary" Protected Area of Natural Water Accumulation and in the "Bzenec Complex" protected zone of the water source (spring area). The situation is specific in that mining activities will take place only in the territory of the Zlín Region but close to the border with the South Moravian Region, where the unfavourable effects of the project, including danger for the water source, could occur primarily. The core of the dispute lies in a conflict of two interests – the interest in the use of mineral wealth, on the one hand, and the interest in the protection of water, on the other hand. This is a complicated case, which is also documented by a number of expert assessments whose conclusions differ in the fundamental question of whether this is an acceptable risk in terms of protection of the water source.

In our inquiry, we found shortcomings in the procedures of the District Mining Authority for the territories of the South Moravian and Zlín Regions, the Regional Authority of the Zlín Region and public health authorities – the Ministry of Health and the Regional Public Health Station of the Zlín Region. These authorities significantly contributed to unlawful exclusion of the authorities of the South Moravian Region from the proceedings on delimitation of the mining space of Uherský Ostroh. Sufficient space was not provided in the proceedings on delimitation of the mining space for protection of the public interests in the form guaranteed by the law (absence of necessary affirmative binding opinions, consents or exemptions that would make it possible to approve the project).

We also utilised our experience with the difficulties people encountered in these areas in several other leaflets:

Deferral of (an instalment on) a debt;

Tax enforcement procedure;

Waiver of local fee for municipal waste;

Courts;

and Experts

Throughout the year, we also posted on Facebook important information with regard to personal income tax.

6 JUDICIARY, MIGRATION, FINANCE

Do you earn money by providing short-term accommodation for tourists in your real estate or occasionally give a ride to someone in your car? We already know what duties you have if you get yourselves involved in the provision of accommodation and transport services via online platforms. We dealt with the topic throughout the year. We gradually realised how complex this issue was and how many various authorities it concerned. In co-operation with the authorities and also thanks to assistance from colleagues from other departments, we managed to put together all the necessary information and eventually issued two information leaflets in December: Sharing economy: Accommodation services and Sharing economy: Transport services

We handled a total of

965 complaints;

→ **678** fell within the Defender's mandate,

317 fell outside the Defender's mandate.

→ **95** of our inquiries revealed maladministration,

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

We help change the rules

Unclear pleadings of debtors subject to a tax enforcement procedure

A debtor can defend him/herself against the procedure taken by the tax administrator in a tax enforcement procedure especially by filing an objection (within 30 days of the notice of the relevant act) or through an application for discontinuing the enforcement procedure (during the procedure). The tax administrator cannot arbitrarily choose the regime for dealing with a debtor's pleading. Quite the contrary, the administrator must follow a procedure that will enable material review of the objections.

We discussed cases where these rules were not properly followed with the General Tax Directorate. The General Tax Directorate subsequently issued a methodological guideline to unify the practice of the tax administrators so as to avoid any such errors in the future.

Press release of 26 April 2019

A systemic inquiry will help unify the rules for payment of premiums

We followed up on a survey and roundtable discussion on administration of payments for public health insurance held in 2018. We prepared a comprehensive inquiry report that year on the question of whether insurance companies had to apply the Tax Rules when collecting premiums and to what extent.

Health insurance companies mostly agreed with our conclusions and some of them began working on measures to improve the position of debtors. At the same time, the Ministry of Health promised to prepare an amendment to the relevant law in order to clearly arrange for the possible deferral of (instalments on) outstanding premiums.

Defender's Report: File No. 6044/2018/VOP

Unlawfully collected funds

In our Annual Report for 2018, we described a case where, based on our inquiry, the tax administrator had discontinued the tax enforcement procedure and granted the complainant interest on the grounds of the tax administrator's unlawful conduct. The tax administrator attached a balance payment of the complainant's salary even though this is inadmissible where the enforcement takes the form of assignment of a pecuniary receivable. Although the tax administrator did grant interest to the complainant, he did not refund the actually collected balance of salary.

We therefore dealt with the question of whether the tax administrator could retain the collected funds if they should not have been subject to enforcement in the first place. We believe that a tax administrator may only choose legal means of enforcement. The tax administrator cannot refuse to refund the collected funds on the grounds that the complainant has a tax debt.

Based on our inquiry, the General Tax Directorate changed its legal opinion and ordered the tax administrator to obtain underlying documents for the calculation of non-attachable amounts of salary

for the individual months. The tax administrator ascertained that a civilian enforcement officer had also conducted an enforcement procedure against the complainant in the given years and the complainant had thus received non-attachable amounts. However, based on the findings she had obtained in this case, the Defender presented a comment regarding a draft amendment to the Tax Rules, which the Ministry of Finance accepted. The Tax Rules should newly specify that the tax administrator will always automatically refund any collected funds which could not have been subject to the enforcement in the first place.

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

New manner of determining the age of foreign children

The Czech Republic has so far almost exclusively used X-ray examination of the bone age to determine the age of foreigners. However, this method is not entirely reliable and leading experts in medicine have repeatedly pointed out its inaccuracy in determining age within the context of the laws on asylum and foreigners. For this reason, the Defender initiated a pilot project in which the age of children and young foreigners should be determined in an interview with trained psychologists. During the first year of the project, the results of such interviews will be compared with the results of the X-ray examination, with subsequent evaluation of the accuracy and further usability of psychological assessment.

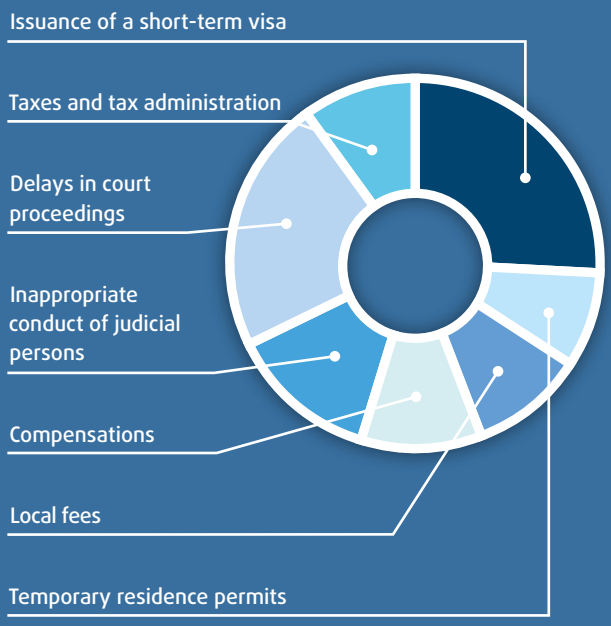
Transparent rules for the provision of grants for research, development and innovations

We were approached by a complainant who disagreed with the procedure of the Czech Science Foundation (GACR) in awarding grants for the support of research, experimental development and innovations. He considered the Foundation's procedure non-transparent, with ensuing limited space for defence by unsuccessful applicants. We inquired comprehensively into the process of awarding grants and presented several suggestions for amending the law so as to increase transparency of the system. In the future, the rules for granting subsidies should be governed to a greater extent by the Code of Administrative Procedure, which provides applicants with more effective means of defence. The Czech Science Foundation agreed with our conclusions and presented a draft amendment to the relevant law to the Office of the Government, which is responsible for this legislation.

Defender's Report and Opinion: File No. 6315/2017/VOP

We are here to help

People most often sought help in the following areas:



We helped and advised:

87 people and companies with problems concerning taxes and customs duties

206 foreigners with achieving a fair trial

70 people dealing with delays in court proceedings

A tax returned filed in the PDF format cannot be ignored

The complainant filed her VAT returns in the PDF format in 2013 and 2014. Although there was no law or decree regulating the format of the tax return at that time, the tax administrator insisted on the XML format. This format has been mandatory only since May 2016. The complainant knew that a regional court was already dealing with the question of admissibility of the PDF format based on an action filed by another taxpayer. When the tax administrator requested that the complainant remedy the defects of her returns, she asked for extension of the relevant time limit and succeeded.

In December 2014, the regional court acknowledged the admissibility of the PDF format and, therefore, the complainant did not remedy the alleged defect and did not respond to further requests of the tax administrator in 2016, either. She legitimately expected that the tax administrator would also follow the regional court's decision in other cases. However, she was fined for not filing

VAT returns in the following year. These fines reached the amount of CZK 245,000 over the entire period. During the inquiry, the tax administrator accepted our arguments, which were also based on the said judicial decision, and cancelled the fines.

Defender's Report: File No. 6827/2018/VOP

Press release of 14 October 2019

Assistance in material need cannot be attached in an enforcement procedure

By mistake, the labour office remitted assistance in material need into the complainant's account. She then lost it in an enforcement procedure conducted by the Municipal Authority in Břeclav. The complainant asked for a refund of the assistance. However, the Municipal Authority refused although employees of the labour office had confirmed that this was indeed assistance in material need. Assistance in material need is protected by the law and, therefore, cannot be attached in an enforcement procedure. Only when we published the case did the Regional Authority of the South Moravian Region intervene and the complainant managed to reclaim the unlawfully attached amount.

Defender's Opinion, Report, and Sanctions: File No. 3397/2018/VOP

Press release of 22 November 2019

Duty of Czech children living abroad to pay local waste collection fees in the Czech Republic

Everyone registered for permanent residence in a municipality that imposes a local waste collection fee has the duty to pay the fee. If they fail to do so, the municipal authority must impose the fee by means of a payment assessment. If the municipal authority does not do so within three years of the due date of the fee, it may not keep the fee in its outstanding fees records, it may not claim payment of the fee and it may not set off other payments made by the relevant person against the supposedly outstanding fee.

A married couple living in Slovakia (the wife is Slovak, the husband is Czech) have two daughters. Shortly after each of them was born (2013, 2016), the father applied for certificates of the daughters' Czech nationality and their registration in a special registry of births. Based on these applications, the Czech authorities automatically registered the daughters for permanent residence at the address where their father was registered (in the Czech Republic) and the registration was made with retroactive effect as of their respective birth dates. In 2018, the municipal authority requested that the parents pay the local fees for municipal waste collection for both their daughters. The parents protested because their daughters had never lived in the Czech Republic. However, the legislation does not allow retroactive cancellation of permanent residence that has been registered automatically.

The municipal authority agreed to refund the fees paid for 2013 to 2016, because it had not claimed their payment in time. The fees for 2017 and 2018 were claimed by means of a payment assessment, which allowed the parents to take legal measures by submitting appeals or, at a later stage, by filing suit.

Defender's Report: File No. 7756/2018/VOP

False expert report

A complaint about an expert who drew up a false report must be followed by initiating administrative proceedings on an infraction, which must be resolved without undue delay and within a reasonable period of time. If the complainant so requests, the authority must inform him/her of the manner

in which the authority will respond to the complaint within 30 days. Should the authority fail to meet this deadline, it must inform the complainant about the pending investigation and, subsequently, about its result.

In January 2018, the Ministry of Justice received a complaint about an expert institute and an expert on the grounds of a false expert report. Even though the Ministry informed the complainant in February that it would notify him of the result of the inquiry, it failed to do so, even despite repeated requests (October 2018, January 2019). We found that the advisory committee of the Minister drew up an opinion in June 2018 and that the Ministry initiated administrative proceedings on an infraction with the expert in September. It failed to notify the complainant accordingly.

In the inquiry, the Ministry acknowledged the delays, caused by reorganisation of the competent departments, and promised rectification. It requested supplementation of the opinion of the advisory committee regarding the complaint about the expert institute and, in June 2019, it initiated infraction proceedings against the expert institute. The Ministry informed the complainant accordingly.

Defender's Report: File No. 351/2019/VOP

Judicial ping-pong with an application for a preliminary injunction

The competent court has to decide on an application for a preliminary injunction regarding the situation of a minor child within 7 days. Within the same deadline, it should assess the local jurisdiction and, if appropriate, declare that it lacks jurisdiction. It is very important when assessing local jurisdiction for the court to make its decision carefully. Indeed, if local jurisdiction is not determined correctly, the evaluation of the merits and decision on an application is usually unnecessarily postponed by several months.

In mid December 2017, the complainant asked a court to entrust his son into his custody by means of a preliminary injunction. On the same day, the court declared that it lacked local jurisdiction and referred the application to another court. Two months later, that court referred the case back to the first court. Another month later, the case was presented to the superior regional court, which confirmed, one week later, that the first court indeed lacked jurisdiction. The second court thus ruled on the injunction more than five months after the application was filed.

Following our inquiry, the president of the second court adopted several measures. She reminded judges of their duty to proceed in matters of judicial care for minors with utmost urgency and, at the same time, asked them to proceed consistently if jurisdiction could not be determined or if the court having jurisdiction was unable to intervene in time. She also instructed the heads of offices of the guardianship department to always inform her of cases where local jurisdiction and an application for a preliminary injunction had to be dealt with simultaneously.

Defender's Report: File No. 2034/2018/VOP

When a court is to decide on release from forensic treatment

Based on information provided by a psychiatric hospital, we conducted an inquiry on our own initiative concerning possible delays of courts in releasing patients from institutional protective treatment. According to the Code of Criminal Procedure, the courts are required to decide on applications for release from forensic treatment without undue delay. Once such a decision becomes final and enforceable, the court has to ensure that the given person is released immediately. The task of the court's president is to set up the functioning of the court in enforcement of such a decision so as to minimise any delays in the release.

The vice-president of the relevant court responded promptly to our request, checked the requested cases and also reviewed further files for 2018. In some cases, he found delays of several days (from 2 to 6 days). He discussed the delays with the responsible persons and emphasised that these cases had to be dealt with preferentially, even during holiday time. To this end, he ordered court offices, among other things, to keep records of these cases separately, to consistently monitor the relevant deadlines and to issue orders to release the given persons from forensic treatment in due time. The court currently pays the same attention to the issue of forensic treatment as to remand cases.

Defender's Report: File No. 7781/2018/VOP

A woman waited six years for her husband to obtain a visa

A visa application of a spouse of an EU/CR citizen can only be rejected on the grounds of a sham marriage if the administrative body proves beyond any doubt that the sole motivation for the marriage was to obtain a residence permit and that the spouses had never intended to develop a genuine marital relationship.

In the case at hand, the complainant met her future husband, who is a Pakistani national, in 2010. They married in Sri Lanka in 2014. Her husband applied for a visa to the Czech Republic several times, but the authorities always rejected his application stating that their marriage was a sham one. We had been investigating the case since 2016. We emphasised that the relationship between the spouses had been developing and deepening over the years. The spouses communicated with each other every day and spent holidays together abroad, which reduced the suspicion that this was a sham marriage. The Ministry overlooked a number of indicia attesting to the authenticity of the marriage (the length of the relationship; the intensity of communication; holidays spent together; mutual conformity of the testimonies in many aspects). At the same time, it failed to reflect that the complainant was permanently dependent on a wheelchair and it would be difficult for her to live in her husband's home country.

The Ministry of Foreign Affairs long insisted on its conclusions. Finally, the complainant's husband got a short-term visa in July 2019 based on another application.

Defender's Report: File No. 2341/2017/VOP

Document for a child traveling to the Czech Republic for a surgery

Czech citizens abroad can be issued with emergency travel documents for a one-time trip to the Czech Republic in justified cases.

A Czech citizen living with her family in north-east Africa gave birth to a son with a congenital anomaly in his leg in January 2019. He had to be operated on as soon as possible. The complainant wished that her son be treated by specialists in the Czech Republic. She applied for a Czech birth certificate and a certificate of nationality. Nothing happened for two months and her son's condition deteriorated. Therefore, the complainant applied for an emergency travel document. However, the Czech consulate refused to issue it stating that this was not a purpose emergency travel documents were intended for. The consulate again rejected the request even after the Ministry of Foreign Affairs sided with the complaint and upheld her complaint as justified. We therefore contacted the Ministry of Foreign Affairs, which immediately ordered the consulate to issue the travel document. This took place in late July.

Press release of 16 August 2019

We communicate

What can be done to ensure easier and faster indemnification from the State (not only) for an unlawful tax decision?

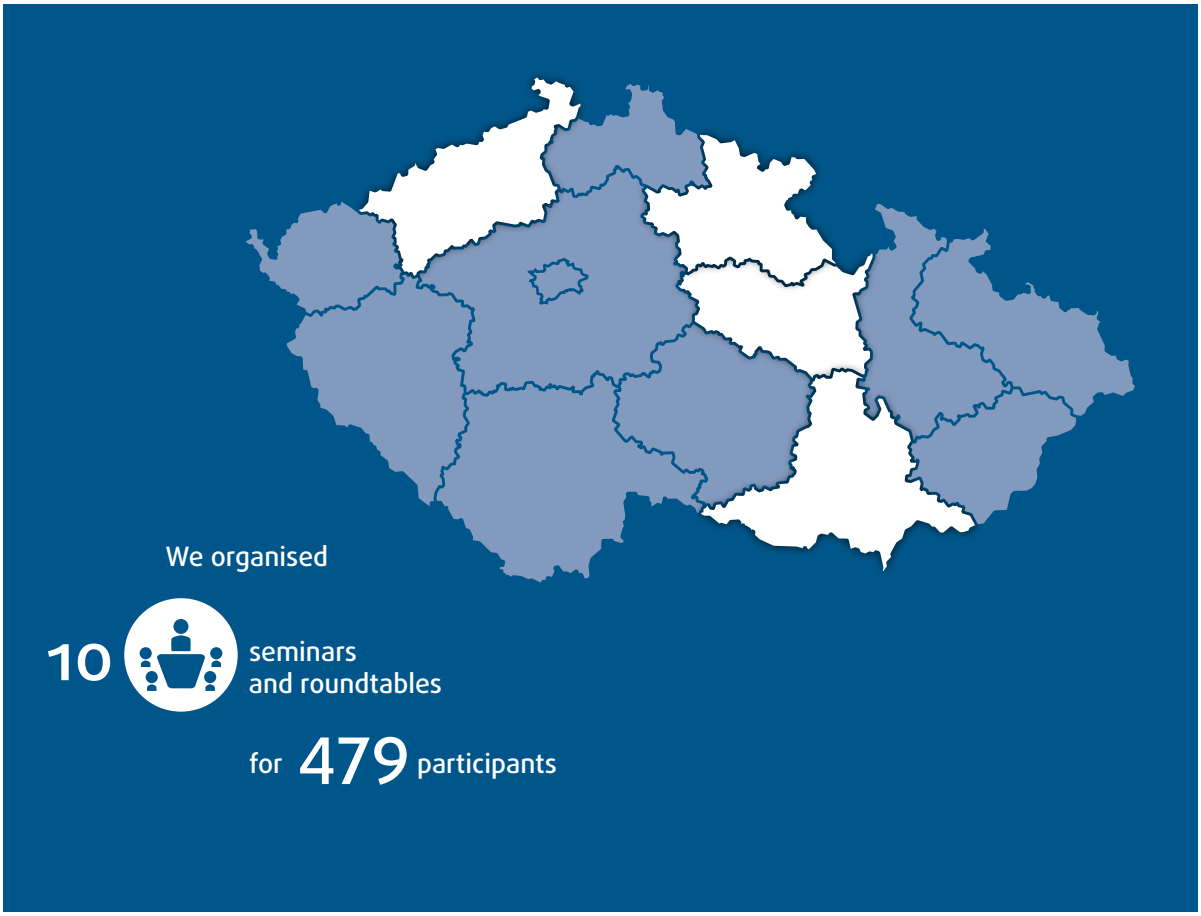
In co-operation with the Chamber of Tax Advisers of the Czech Republic, we organised a professional symposium focusing on indemnification in the area of tax administration. Judges of the supreme courts, attorneys-at-law, representatives of the Ministry of Justice, the Ministry of Finance and the General Tax Directorate participated in the seminar.

The participants agreed that only a minimum number of disputes should end up in courts. An important role can therefore be seen in the preliminary discussion of a request for indemnification by the Ministry of Finance. It is crucial for the aggrieved party to receive the money within a reasonable period of time. This is not always true, and the participants thus also discussed how the current system should be changed.

Press release of 1 May 2019

Facebook awareness campaign regarding personal income tax

Over the course of the year, we worked together with the Tax Administration of the Czech Republic and the Chamber of Tax Advisers of the Czech Republic on short informative Facebook posts with regard to personal income tax. The campaign aimed to describe what one should look out for when paying the income tax. We also point out the most common mistakes every year by means of our press releases.



Do you provide accommodation or transport services via digital platforms? And are you sure you know your duties in this respect?

It might be difficult to find one's way through the maze of duties related to sharing economy. The Defender therefore decided to help. We discussed this matter with the competent authorities at a round table. We then together prepared two leaflets that cover the currently most popular types of services. These are transport services (Uber as the best known example) and short-term accommodation (Airbnb being the most popular provider). The leaflets explain, among other things, the tax implications and repercussions in the area of social and health insurance.

Press release of 6 December 2019

Even waiver of fees might cause problems

Our experience shows that municipal authorities sometimes make mistakes when waiving local fees. Therefore, in co-operation with the Ministry of Finance and the regional authorities, we issued an information leaflet that could help municipal officials in this regard.

In 2019, we followed up on our training sessions on administration of local fees organised in previous years and held another three seminars focusing on this topic. We trained officials from the Hradec Králové Region, Pardubice Region and Ústí nad Labem Region. Based on our experience and training, we found that officials had trouble applying the Tax Rules. We would therefore like to focus on this topic in the future as well.

Press release of 28 June 2019

Publication of judicial decisions is already shaping up

During the year, we organised two roundtables dealing with publication of judicial decisions. We consider the current situation, where only a minimum number of decisions rendered by lower courts are published, unsatisfactory and we have repeatedly pointed out this problem.

The debate at the February roundtable confirmed that there existed a general consensus on the need to publish judicial decisions to the greatest extent possible, but while protecting certain data pertaining to privacy of the persons involved in the litigation. We also discussed related practical issues with experts from the Ministry of Justice, representatives of supreme and lower courts and other experts from the Czech and Slovak Republics, including e.g. which decisions should be published, how they should be published, who should prepare the decisions for publication, etc. Based on the information from the roundtable, an employee of the District Court in Most created an anonymising tool which should facilitate the publication of decisions for the courts as much as possible.

We then discussed the details of publication with the Ministry of Justice; in particular, we claimed that the courts' duty to publish their decisions in a database should be laid down directly in the Courts and Judges Act.

The roundtable held in November focused on anonymisation of the published judicial decisions. The Ministry of Justice presented the anonymising tool it had procured and we discussed in detail the methods of anonymisation and the specific settings of the tool. The Ministry of Justice is planning to initiate a pilot project of publication of lower courts' decisions in the first half of 2020 (first focusing on the first-instance agenda of regional courts).

Defender's Comments: File No. 23152/2019/S

Press release of 1 March 2019

Press release of 15 November 2019

Expert seminars on the laws on asylum and foreigners

In March, we participated in a seminar organised by the Supreme Administrative Court on the topic of migration. In September, we organised our own traditional seminar on the laws on asylum and foreigners. The seminar contributions are included in the Yearbook of the Laws on Asylum and Foreigners.

During the year, we organised two seminars in co-operation with the United Nations High Commissioner for Refugees (UNHCR). The first, held in March, focused on training for psychologists regarding the way they should conduct interviews with children and young foreigners in order to determine their age. A two-day seminar then took place in November, where we talked with representatives of the immigration police, for example, about possible alternatives to detention, determination of the age of unaccompanied minors and also expulsion of EU citizens and their family members.

Collected documents: Yearbook of the Laws on Asylum and Foreigners for 2018

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 **25** facilities,

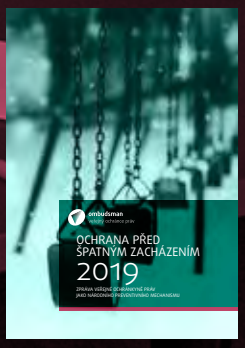
monitored **43** expulsions and transfers of foreign nationals,

dealt with **625** complaints raised by social services clients, patients and inmates,

trained **233** professionals from facilities for long-term and psychiatric care in topics of ill-treatment and staff involved in detecting ill-treatment in prisons.

You can find more information on supervision over restrictions of personal freedom in the Annual Report of the NPM for 2019

http://bit.ly/VZ_NPM



We help change the rules

Facilities visited in 2019

Chrudim – G

Býchory – G

Petrohrad – E

Bálková – I

Pilsen – K

Prague – E, F

Obořiště – H

Vimperk – C

České Budějovice – K

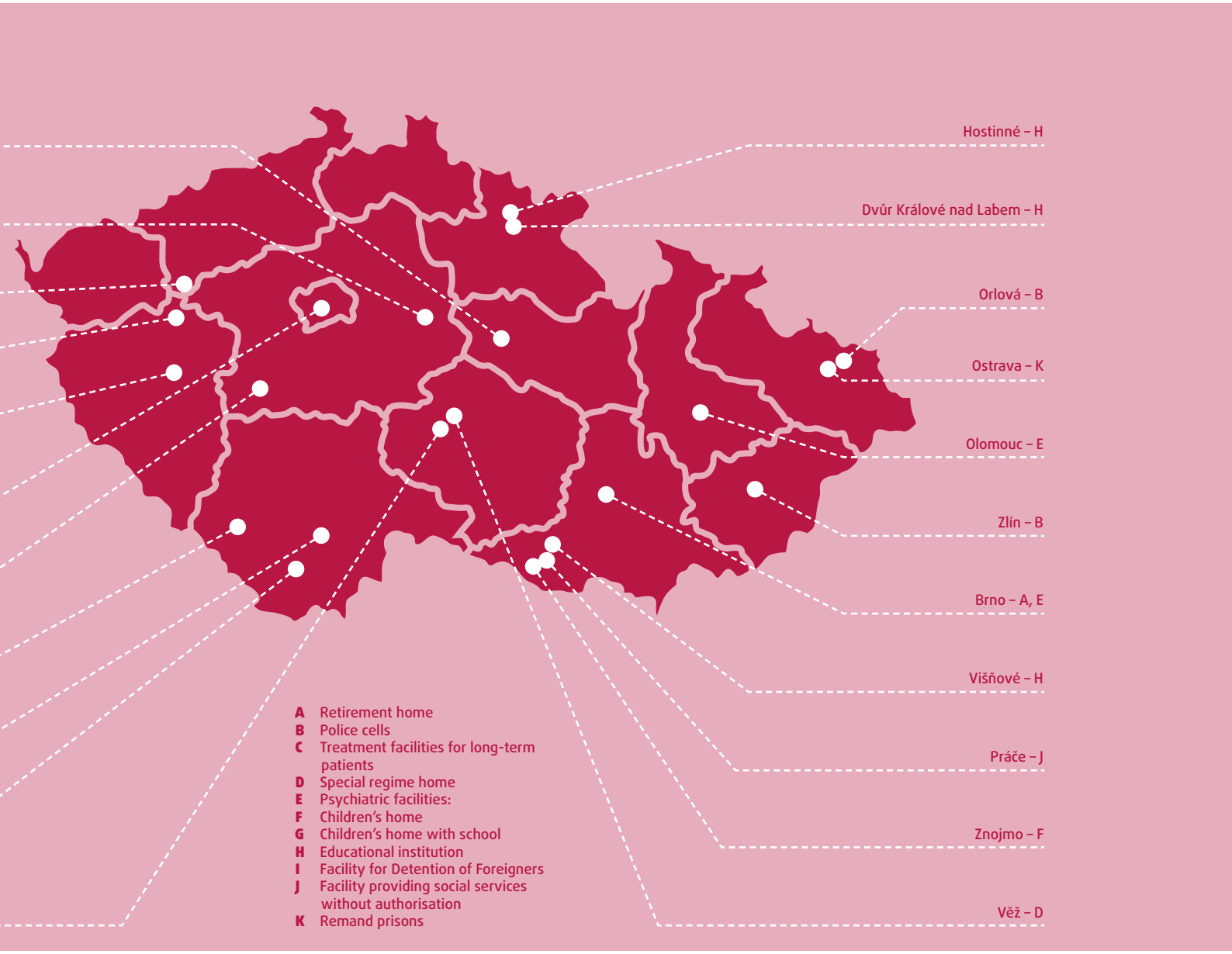
Český Krumlov – B

Humpolec – F

Report on visits to secure preventive detention facilities

We issued a report on visits to secure preventive detention facilities. In the report, we summarise our findings from the visits to the individual institutions (Brno and Opava) and present individual and systemic recommendations. We focus especially on contact with inmates through bars, excessive locking up of inmates, activities offered, etc. We also analyse 100 decisions on imposition of secure preventive detention and monitor trends in imposing this protective measure and other relevant facts. Our analysis of court decision-making serves as one of the underlying documents for the Defender's legislative recommendations concerning a change of institutional forensic treatment into secure preventive detention (see the Legislative recommendations, p. 8)

http://bit.ly/zabezpecovaci-detence



Report on visits to facilities for children requiring immediate assistance

In our report on visits to facilities for children requiring immediate assistance, we provided information about our findings and recommendations ensuing from visits to these facilities. These facilities should serve as crisis facilities providing care for the necessary period of time to those children who lack any care at the time or have otherwise been seriously endangered. However, the visits showed that most of the facilities did not fit into the category of crisis points and children lived there longer than required by the law. Not all facilities also work sufficiently with the children's families, thus reducing their chance of returning home. The facilities often focus primarily on securing material needs, such as food and accommodation, with insufficient emphasis on psychological assistance to the children.

http://bit.ly/ZDVOP-2019

Report on systematic visits to psychiatric clinics tasked with the performance of protective institutional treatment

We presented our findings from the visits to psychiatric hospitals in the report dealing with forensic treatment, means of restraint and other topics. We point out the inadequate legal framework of forensic treatment and further systemic and individual shortcomings of its execution. Ambiguities relate to treatment without the patient's consent, legitimacy and scope of "regime measures" (getting outside, the possibility of wearing one's own clothes and using own things, including a telephone), use of security equipment (cameras, bars), etc. The issues we found present a threat to the staff and other patients. Therefore, we requested in the report that appropriate measures be adopted by the responsible ministries, i.e. the Ministry of Health and the Ministry of Justice.

http://bit.ly/ochranne-leceni

Collected documents "Prisons II"

We issued a second collection focusing on prisons. The publication summarises the Defender's legal opinions on this issue in the period from 2010 to 2018. The individual legal opinions of the Defender are based on real-life stories of specific people. For example, the story of a man who asked for postponement of his sentence because of his severe medical condition. The court did satisfy his request, but delivered the decision late. The man had to commence the sentence and died in the prison several weeks later. We also dealt with the case of a man who had his hands and feet handcuffed during a gastroscopy carried out in the presence of two guards, although there was no reason to do so.

http://bit.ly/Stanoviska-Vezenstvi

Remuneration for working convicts is linked to the minimum salary

We already called attention to the insufficient remuneration for working convicts in our report on visits to prisons (http://bit.ly/zprava-veznice). As from 1 January 2020, remuneration for work is linked to the minimum salary. Thus, at the lowest rate, the monthly remuneration for a working convict equals one half 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.

We are here to help

127 complaints in the area of social services

Most complaints were related to the quality of the services provided, the management or the staff of social services facilities. Several times, we were approached by the facility itself, with questions concerning the use of restrictive measures or other methodological assistance. We lack the mandate to deal with the individual complaints against the quality of care, but we always try to help.

We have long 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 2017 and 2018, p. 10).

57 complaints against facilities providing psychiatric care

Patients most often complain about the conditions of the stay and treatment in psychiatric hospitals, and not only in connection with the forensic treatment.

Transfers of patients under forensic treatment are not regulated

We point out the practical problems caused by the fact that the law does not regulate transfers of patients subject to forensic treatment within psychiatric hospitals. No one is thus entitled to a transfer and it is unclear how the courts should decide on such requests. A transfer is commonly requested both by the patients themselves (the family has relocated; the patient wants to prepare for a transition to out-patient care in another region; somatic problems require the care of another provider) and by the providers (cessation of certain type of care). We also dealt with a case where a patient had been transferred to a hospital 170 km far, without any decision made by a judge and without the patient having been informed in advance.

We describe this and also another shortcoming in our report dealing with forensic treatment, means of restraint and other topics.

Indiscriminate removal of laptops

A complainant was undergoing forensic treatment in a psychiatric hospital and was suddenly denied the possibility of using his own laptop with internet connection. The reason was a new provision enshrined in the house rules of the department, which prohibited laptops to everyone in order to prevent gambling, drug trafficking, stalking and playing on-line games. According to the law, a hospital may issue internal rules, but may not interfere thereby with the patients' rights beyond the scope necessary for the objective pursued. The hospital erred when it imposed a general ban instead of a less strict measure, such as setting specific conditions for using a laptop. In response to the Defender's report, the hospital cancelled the provision on indiscriminate removal of laptops and left such a measure to a decision taken by the head physician.

Defender's Report: File No. 8135/2019/VOP

437  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 the convicts' money kept within the prison.

Separation of the mother from the child after giving birth in prison

We received a complaint from a woman who had given birth to a child in a civilian hospital during her remand in custody. The child remained in the hospital, but the mother had to return to the prison on the date of the birth. This case had eventually a happy ending as the woman was released from remand three days after she gave birth to the child. Within our inquiry, we concluded that the Prison Service of the Czech Republic had erred in the case. After receiving the inquiry report, the Director General of the Prison Service of the Czech Republic stated that the professional staff of the Světlá nad Sázavou and the Prague-Ruzyně Remand Prison had probably been insufficiently informed in the given case. At the same time, he stated that a review of the internal regulation governing the procedure for applications for placement in specialised sections for accused and convicted mothers of minor children was being prepared, which also included co-operation with courts and bodies for social and legal protection of children.

Defender's Report: File No. 1951/2019/VOP

Assault between guards and the accused, physician's documentation of injuries

We inquired into the case of a complainant who asked us to examine the procedure of the Litoměřice Remand Prison, where he was placed in extradition custody. The complainant claimed that he had been assaulted by the guards twice, causing him multiple bruises including a bleeding wound on his face. The Defender found the procedure of the members of the Prison Service of the Czech Republic inappropriate (excessive use of coercive means) and also criticised the physician of the remand prison's healthcare centre who had insufficiently recorded the signs of violence in the medical records. The case is also being heard by the court as the guards were indicted in the case. The Defender has thus closed her inquiry.

Defender's Report: File No. 387/2018/VOP

Handcuffing the accused during medical examination

We criticised the staff of the Prison Service of the Czech Republic for handcuffing an accused person during his escort to a healthcare facility as they used a transport belt and leg cuffs; the accused remained cuffed even during the examination (gastroscopy). The prison service must always make an ad hoc decision on the use of coercive means and the specific manner of their use in escort to a civilian healthcare facility, especially based on the character of the escorted person; the crime of which he/she is accused or of which he/she has been convicted; the physical and medical condition of the escorted person; his/her physique; experience obtained during the remand in custody or service of imprisonment; and also as required by the examining doctor.

Defender's Opinion, Report, and Sanctions: File No. 5630/2018/VOP

4 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.

Use of coercive means in escorts

In connection with the use of coercive means by police officers during court and administrative expulsion, we repeatedly recommended that foreigners should be handcuffed only if the principles of legality, proportionality and necessity were met. In connection with the sanction imposed, the Police Presidium of the Czech Republic informed us that it had decided to retrain police escorts regarding handcuffing of escorted persons. At the same time, the Directorate of the Immigration Police informed the police officers about the tactics of handcuffing in connection with escorting persons via airports and places with presence of the general public, with the aim to minimise interference with the dignity of the foreigners being escorted.

Defender's Report: File No. 7/2018/NZ

Purchase of new escort vehicles

In our reports on expulsion monitoring, we repeatedly asked the head of the Regional Police Directorate of the South Moravian Region to provide for the purchase of new escort vehicles that would be equipped with seatbelts and possibly other passive safety features. He eventually complied with our recommendations and new escort vehicles were purchased in 2019. These vehicles already meet the safety standards and do not pose an increased risk to the persons being expelled.

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 Státní zastupitelství (Public Prosecutor's Office), České vězeňství (Czech Prisons), Listy sociální práce (Social Work News) and others.

Roundtable on secure preventive detention

Following our visits to secure preventive detention institutions, we issued a report on the visits and organised a roundtable with representatives of institutions, the Ministry of Justice of the Czech Republic, the Prison Service of the Czech Republic, courts and the Public Prosecutor's Office. We discussed our findings and recommendations for practice, especially regarding the problematic contact with inmates through bars, excessive locking up of inmates, activities performed, etc. The participants agreed that there was an increasing number of changes from forensic treatment to secure preventive detention. Therefore, the Defender decided to submit a legislative recommendation in this matter (see the Legislative recommendations, p. 8).

Seminar with international participation: Importance of the healthcare service for prevention and detection of ill-treatment

The prohibition of torture and ill-treatment requires the State to provide for safe conditions of deprivation of liberty and effectively investigate any credible suspicions, including proper documentation of the injuries. For more information on the topic, see the NPM annual report.

Therefore, together with the Supreme Public Prosecutor's Office and the Judicial Academy, we organised a seminar for public prosecutors and healthcare professionals, especially in prisons, aimed at presenting the standard of documenting and investigating signs of ill-treatment of persons during police detention and imprisonment. A lecture was also given on the topic by Dr. Marzena Ksel, 1st Vice-President of the European Committee for the Prevention of Torture (CPT).

Some standards have yet to be reflected in the legislation or practice. We strive to ensure that this happens just as in respect of waiver of confidentiality for healthcare workers in certain situations (see the Legislative recommendations, p. 8).

We assisted the Government in planning measures in response to the CPT report

In 2019, the Government of the Czech Republic received a report on the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2018. The report comprised a detailed statement on the situation in police detention, prisons, psychiatric hospitals and residential social services facilities. The Government was obliged to respond specifically to each of the several dozen recommendations and, where appropriate, promise to adopt remedial measures. We commented on the initial draft response prepared by the Ministries. As a result, the final response of the Government was more accurate, followed up on the dialogue led by the Government with the Committee in 2015 and also yielded a list of specific tasks for the ministries concerned.

Meeting on topics of institutional and protective education

We organised two meetings on topical issues of institutional and protective education. Together with the heads of facilities for institutional and protective education, representatives of the Ministry of Education, Youth and Sports, the Ministry of Labour and Social Affairs and the Supreme Public Prosecutor's Office, we discussed evaluation systems of facilities, the form of decision-making on measures in upbringing and instruments for work with restless children.

Training of staff in treatment facilities for long-term patients

We prepared four seminars for health services workers in 5 administrative regions, especially those who take care of patients in treatment facilities for long-term patients. We imparted to them our findings from systematic visits to treatment facilities for long-term patients and presented good practice. The series of training sessions for the staff of treatment facilities for long-term patients will continue next year in other regions.

Training on human rights in psychiatry

We organised two training courses focusing on human rights in psychiatry for over 90 employees of psychiatric hospital management. The training was based on experience from systematic visits and focused on how psychiatric hospitals could prevent ill-treatment and strengthen protection of the rights of patients and employees.

Meeting aimed at expulsion monitoring

We organised two meetings with representatives of institutions that participate in the preparation and implementation of forced returns of foreign nationals. We informed the participants from the ranks of the Directorate of the Immigration Police, the Prison Service of the Czech Republic and the Refugee Facilities Administration of the Ministry of the Interior about our findings obtained during expulsion monitoring over the three years of the project titled Support for the Effective Monitoring of Forced Returns, registration number AMIF/8/02, financed from the EU Asylum, Migration and Integration Fund. The project, which ended on 31 October 2019, reinforced the functioning of an independent and effective system for monitoring forced returns of foreign nationals. A total of 120 expulsions were monitored within the project.

Further prevention and awareness raising activities

We presented the activities of the Department of Supervision over Restrictions of Personal Freedom in Lucie Výborná's talk show broadcast on Czech Radio Radiožurnál. We reported on the care in facilities for the elderly and treatment facilities for long-term patients in one of the editions of the Case for the Ombudsman series. We talked about the situation in Czech prisons in the This Week in Justice programme. We presented our findings from visits to homes for people with disabilities within the professional conference "Disabilities in the Context of Social Work" organised by Sts Cyril and Methodius Faculty of Theology of Palacký University Olomouc. We provided lectures in the framework of the Brno Senior Academy programme. For a third year in succession, we supported the "Yellow Ribbon Run" by our personal participation. We were involved in teaching the "Clinic of Social Rights" course at the Faculty of Law in Olomouc. We share our findings at the summer school on prisons in Prague. We participate in methodological meetings organised by the Ministries and the Prison Service.

International activities

We have already worked as the national preventive mechanism for over 13 years. We have accumulated experience we are happy to share with others, but are also eager to learn new things. For this reason, we also participated in several meetings with our foreign colleagues and welcomed new interns from Ukraine.

We shared our experience in supervision over administrative and criminal expulsion with Slovak police officers at the Police Academy in Bratislava. We emphasised especially the importance of preparation for expulsion, standards of treatment in expulsion and handcuffing during escort.

As supervisors, we actively participated in international training organised by the International Centre for Migration Policy Development (ICMPD) in co-operation with the Frontex agency. The training was aimed at acquainting police officers and workers who monitor the course of return operations with critical situations that could occur during the expulsion procedure. In this way, we help to make return operations more effective in returning illegally staying foreigners back to their countries of origin.

8 EQUAL TREATMENT AND DISCRIMINATION

In 2019, we marked the 10th anniversary of adoption of the Anti-Discrimination Act and this gave us an opportunity to look back and reflect on what we had accomplished. We were also focusing on LGBT+ people's experience of discrimination. We conducted a survey of the case law concerning hate speech on the Internet and helped specific people defend themselves against discrimination.

We received a total of

403 complaints against discrimination,

which is **20** more than in 2018.

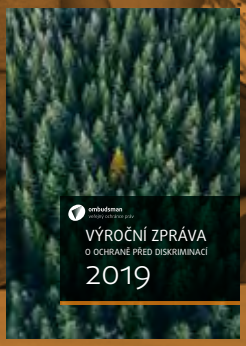
We found discrimination in **16** cases, out of which:

- **11** cases involved direct discrimination (i.e. a person was treated less favourably than another person in a comparable situation based on a discrimination ground),
- **4** cases involved indirect discrimination (i.e. a person was put in a less advantageous position as compared to others on the basis of an apparently neutral criterion or practice but actually on the same grounds as in the case of direct discrimination),
- **1** case involved harassment, instruction to discriminate, or incitement to discrimination.

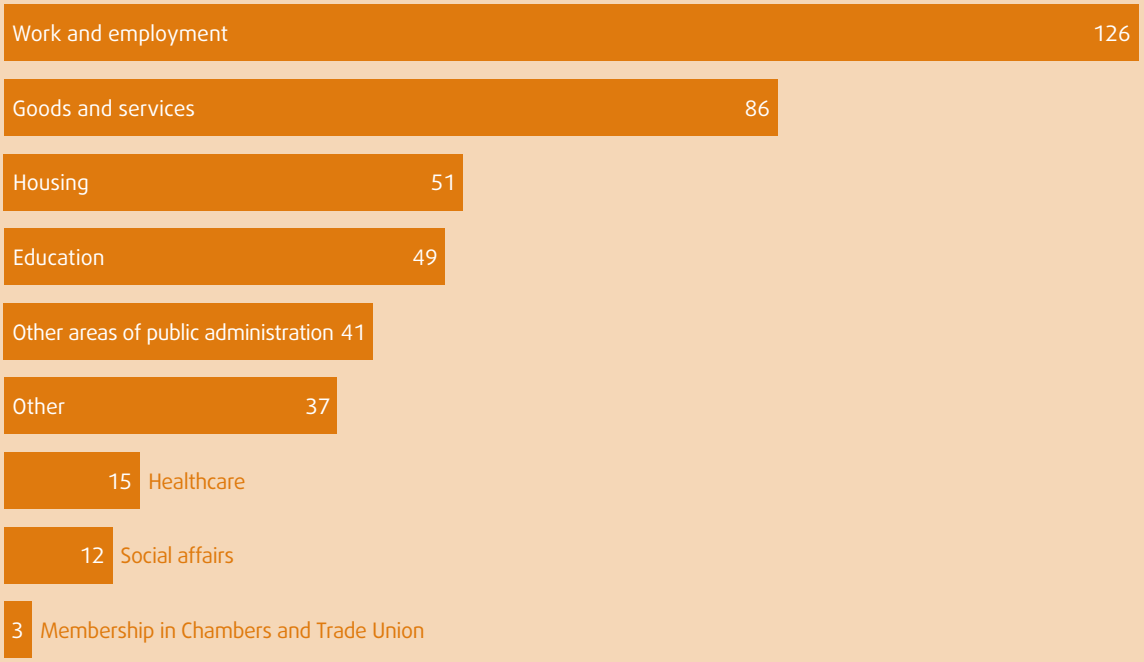
In **23** cases, the suspicion of discrimination could be neither proved nor disproved.

More details are provided in the Annual Report on Protection against Discrimination in 2019

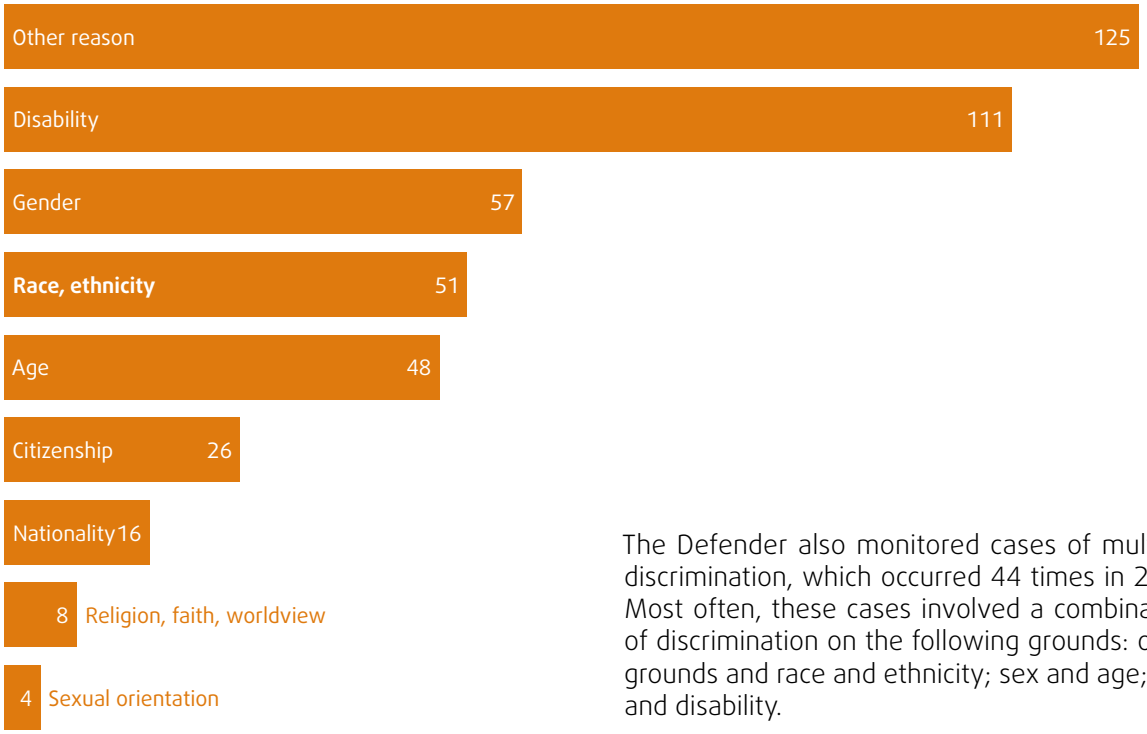
http://bit.ly/VZ_dis



Complaints in focus



Why people felt discriminated against in 2019



The Defender also monitored cases of multiple discrimination, which occurred 44 times in 2019. Most often, these cases involved a combination of discrimination on the following grounds: other grounds and race and ethnicity; sex and age; age and disability.

We help change the rules

Experience of LGBT+ people with prejudice, discrimination and violence

In 2019, we were focusing on the experience of LGBT+ people with various social prejudices, discrimination, harassment and hate violence. Our on-line questionnaire was completed by 1,981 people from the LGBT+ community. The survey revealed the following:

— A large part of LGBT+ people often encounter various prejudices on the part of the majority society. This includes, for example, the opinion that gays and lesbians should not openly manifest their sexual orientation or that homosexuality is not natural.

— Over the past 5 years, more than a third of LGBT+ people have experienced discrimination (most often in schools), which is approximately three times more compared to the general population. In more than 90% of cases, these people did not defend themselves against discrimination.

— Manifestations of social aversion towards LGBT+ people are most often softer in character – jokes, sneers, humiliation and insults, rather than threats or physical violence.

The findings of the survey yielded a set of recommendations that could help improve the lives of LGBT+ people in Czechia. For example, we made the following recommendations:

— The employers should effectively prevent harassment of LGBT+ people at the workplace and, if harassment does occur, choose effective measures to deal with it.

— Schools should consistently and competently examine every instance of suspected harassment in order to foster respectful behaviour among students.

— Advocacy organisations should raise awareness among LGBT+ people of their rights and possibilities of defence against discrimination and hate violence.

— The Chamber of Deputies should evaluate the importance of marriage for same-sex couples and carefully consider legalising gay marriage.

— The Government should draft a bill on the basis of which administrative gender reassignment for transgender people would cease to be conditional on invasive surgical alterations and sterilisation.

Defender's survey File No. 4/2019/DIS

Press release of 17 May 2019

Hate speech on the Internet

We inquired into court decisions concerning hate crime committed on-line. We asked district courts to provide us with decisions issued from January 2016 to June 2019. We collected a total of 47 decisions meeting the set criteria. We found that:

— The number of court decisions concerning hate speech is clearly growing year-on-year.

— Roma people (49% of decisions) and Muslims (23%) were the most common victims.

— Hate speech on the Internet was almost always committed by an individual with a clean criminal record and the perpetrators were men in most cases.

— Most incidents adjudicated by the courts took place on Facebook.

— Where a case was heard before a court, the perpetrator was convicted, at least in the first-instance proceedings in 91% of cases. The most frequent punishments were a suspended sentence (10 months on average) or a fine (CZK 15,800 on average).

Defender's survey File No. 47/2019/DIS

Together with the Constitutional Court and the Supreme Public Prosecutor's Office, we organised an all-day professional conference titled "Hatred on the Internet". It was intended especially for police officers, public prosecutors and judges and we discussed relevant current problems and challenges.

"Hatred on the Internet", a conference which took place on 16 October 2019

The Defender summarised her findings to date on the topic of online hate speech in her recommendations addressed to the competent governmental authorities.

Defender's Recommendation: File No. 67/2018/DIS

How to approach compulsory preschool education?

Up to 3% of five-year-olds do not attend preschool, even though attendance is in fact compulsory. These are often children coming from socially and economically disadvantaged backgrounds where preschool education has the greatest value. Therefore, we focused on examples of good practice in informing parents of five-year-olds that kindergarten attendance was compulsory for their children and in ensuring they met this obligation. In view of this, we provide the following recommendations to municipalities, which are obliged to secure conditions for preschool education of their inhabitants' children:

— create a comprehensible ("easy-to-read") information leaflet;

— distribute the leaflet to the parents in person or in some other innovative way (put it up in shop windows of local retailers, make it available in paediatricians' offices, etc.);

— carry out social and field work directly in families;

— ensure frequent communication between the kindergarten's employees and the children's parents using active listening techniques or short pre-printed messages.

Defender's Recommendation: File No. 75/2018/DIS

We are here to help

The purpose of our work is to help victims of discrimination.

Who did we help in 2019?

A mother and her newborn son with severe disabilities could be discharged from hospital to be treated in their home environment. This was made possible as the mother finally managed to find a paediatrician for her son thanks to our advice (previously, no paediatrician wanted to take him on).

Press release of 5 April 2019

An employer apologised to an employee for not allowing him to work in the branch located closer to his home. For health reasons, the employee could no longer commute 300 km to his original workplace.

Defender's Report: File No. 7571/2017/VOP

Prague has changed its rules for assignment of municipal flats in that it no longer requires unreasonably high income from families in social distress.

Defender's Report: File No. 5275/2016/VOP

On their website, Czech Railways provided further information for people with disabilities.

Defender's Report: File No. 4015/2019/VOP

The assistance dog of a woman using a wheelchair will no longer have to make the very high jump into and from the train carriage, as the carrier will allow the use of a lifting platform.

Defender's Report: File No. 4475/2018/VOP

The Labour Inspectorate will re-investigate a complaint against unequal pay of a senior female employee who received a lower remuneration than her successor.

Defender's Report: File No. 2617/2017/VOP

During a personal meeting with a speech therapist, it was possible to arrange language support for a daughter of deaf parents. This will provide a greater opportunity for her to learn how to speak.

Defender's Report: File No. 2500/2019/VOP

We are pleased that also the courts agree with our conclusions. We inquired into a case of an employer who exerted pressure on several female employees in order to make them terminate their employment because they had reached the retirement age. They did not agree, so the employer ultimately gave them notice on the grounds of redundancy. We believe that the courts should deal with the grounds given for selection of the redundant employee in cases where discrimination is claimed. One of the employees defended herself in court against the notice she had received. Lower-instance courts acknowledged that the steps in question constituted age discrimination and declared the notice invalid. These conclusions were also confirmed by the Supreme Court in 2019.

Defender's Report: File No. 8024/2014/VOP

Defender's Report: File No. 4519/2019/VOP

Judgment of the District Court in Blansko of 26 July 2017, File No. 12 C 374/2015

Judgment of the Regional Court in Brno of 13 March 2019, File No. 49 Co 367/2017

Resolution of the Supreme Court of 22 October 2019, File No. 21 Cdo 2662/2019

The Supreme Court ruled that the ban on wearing the Muslim headscarf in secondary school theory classes constituted indirect discrimination. The school regulations, which generally prohibit wearing of any kind of headdress, adversely affect pupils wearing them for religious reasons. In theory classes, such a ban does not pursue a legitimate objective, such as protection of pupils' safety or health.

Defender's Report: File No. 173/2013/DIS

Judgment of the Supreme Court of 27 November 2019, File No. 25 Cdo 348/2019

We issued a guide for people returning from abroad. In view of Brexit, we especially focused on returns from the United Kingdom. The guide contains tips on handling documents and records both abroad and in the Czech Republic, on seeking employment, as well as securing health care and education for children.

Guide for People Returning from Abroad

We communicate

Topic of the year: 10 years of the Anti-Discrimination Act

The year 2019 marked the 10th anniversary of adoption of the Anti-Discrimination Act. At a roundtable, we talked with non-profit organisations about ways to effectively help victims of discrimination and discussed which data on equality we should collect and how to communicate issues of equal treatment to the general public. At a regular roundtable with administrative authorities, we focused on the most important anti-discrimination case law to date. We also discussed possible amendments to the Anti-Discrimination Act and suitable methods for educating officials in the area of equal treatment.

We held an expert seminar to discuss with our expert guests whether the Defender complied with the standards for equality bodies. We also considered the enforceability of law from the perspective of discrimination victims at an international conference which we organised in the Czech Senate thanks to Mgr. Miluše Horská, Vice-President of the upper chamber of the Czech Parliament. Among many issues, we discussed the amendment to the Anti-Discrimination Act submitted in the spring of 2019 by a group of members of the Chamber of Deputies, which reflects the Defender's legislative recommendations.

New publications

We issued a Collection of the Defender's Opinions on "Discrimination". It contains the most interesting cases we dealt with during the ten years following the adoption of the Anti-Discrimination Act.

http://bit.ly/Stanoviska-Diskriminace

We have expanded the collection of leaflets in the "Inspiring stories" series. They describe real cases of discrimination victims who successfully defended themselves. Thus, we supplemented the existing leaflets on racial and age discrimination with leaflets on discrimination on the grounds of disability, sex, and sexual orientation and gender identity.

We also issued a leaflet with useful information for people with disabilities who use guide or assistance dogs. There are tips on what to do when a person with a dog is not let in a restaurant, a means of transport or a healthcare facility.

Students

On the occasion of events for students titled "School of Human Rights" and "Human Rights to Live", organised by the Pro Bono Alliance and Masaryk University, we discussed case studies in an attempt to find a balance between freedom and the right to equal treatment. We organised visits and summer internships for students of law, during which they had an opportunity to try out working in our Office. We also participated in the PročByNe (WhyNot?) motivational traineeship project thanks to which Sára (a student) could try "shadowing the Defender" for two weeks.

We invited secondary school students to participate in discussions on equality. The students had the opportunity to express their views through documentary films made as part of the Equal.doc competition. You can watch the winning video with Czech or English subtitles.

Attorneys-at-law

In 2019, 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:

— Anti-discrimination case law in 2018

— Discrimination in the provision of goods and services

— Representing victims of discrimination

— Law against discrimination

We have also prepared recommendation for representation of victims of discrimination. There we summarise our co-operation with legal professionals to date and present the results of a survey in which we asked selected attorneys-at-law about their experience in discrimination disputes. Based on these findings, we compiled a list of thirteen recommendations for effective representation of victims of discrimination.

Defender's Recommendation: File No. 40/2019/DIS

Press release of 16 October 2019

Foreign co-operation

Last year, we were again involved in the work of Equinet, a network associating national equality bodies. We sent our representatives to working groups and executive bodies. We met with the ombudspersons from the Visegrad Group, lectured for the Academy of European Law (ERA) and presented our experience in combating discrimination to the participants of a two-day workshop in Moldova. We also welcomed the delegation from Ghana led by the Minister for Gender, Children and Social Protection with the participation of the ambassador of the Czech Republic in Ghana.

At request of the European Commission against Racism and Intolerance, we sent our statement on the situation in the Czech Republic.

Defender's Opinion: File No. 52/2019/DIS

For the Committee of Ministers of the Council of Europe, we drew up an opinion concerning enforcement of the judgment of the European Court of Human Rights in the case of D. H. and Others v. the Czech Republic.

Defender's Opinion: File No. 49/2019/DIS

9. MONITORING OF RIGHTS OF PEOPLE WITH DISABILITIES

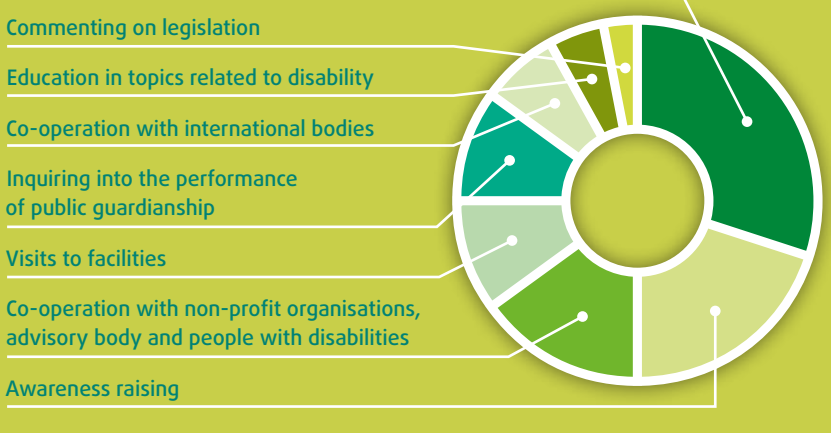
2019 was the second year in a row in which we monitored protection of rights of people with disabilities in the Czech Republic. We mainly focused on surveys, active co-operation with people with disabilities and their organisations, as well as co-operation with the UN Committee. We were contributing to settlement of individual complaints concerning the rights of people with disabilities across all areas of our competence.

Received **55** complaints pointing out systemic shortcomings with respect to the individual articles of the Convention.

Translated **55** articles of the Convention into the Czech Sign Language (as the first ones in the Czech Republic).

Organised **4** meetings on the rights of people with psychosocial disabilities.

Main activities



In the past period, we:

- organised **1** conference
- carried out **4** surveys
- organised **5** roundtables
- organised **4** meetings of the advisory body
- organised **2** meetings for **60** non-profit organisations
- published **2** bulletins with information on our activities
- visited a total of **10** homes for people with disabilities
- organised a total of **12** awareness raising activities and campaigns
- gave lectures at **15** seminars and conferences

We help change the rules

Survey on availability of social services for children with disabilities and their families

Between 28 June and 9 September 2019, we conducted an online survey among administrative regions and providers of early care services regarding availability of field social services and day care centres for children with disabilities and their families. Functional and accessible field social services and day care centres are essential to keep disabled children in their family environment.

Most important findings:

1/ The providers of early care services had to reject as many as one quarter (25%) of all the applications for the provision of this service in 2018, and even over one third of the applications (36%) in the first quarter of 2019, all **because of insufficient capacity**.

2/ Almost three quarters of the providers (26 out of 38) had **waiting lists for early care**. A total of 422 families were on the lists as of 31 December 2018, and 358 families as of 31 March 2019. The situation was the worst in the Capital City of Prague and in the South Moravian Region (more than 100 applicants waiting) and among those providers who worked with families of children **with autism spectrum disorders and providers focusing on the broadest target groups** (mental disabilities, ASD, physical disabilities, combined disabilities).

3/ The average **waiting period exceeded 210 days** for providers in three regions: **the Central Bohemian Region, South Moravian Region** and the **Capital City of Prague**.

4/ All the providers of early care operating in the Capital City of Prague and most providers **in the Pilsen, Central Bohemian and Ústí Regions** would appreciate an **increased number of interventions**.

5/ In three administrative regions (the South Moravian Region, the Vysočina Region and the Olomouc Region), applications for **inclusion in the regional social services network** in 2019 had to be filed by the providers by the end of February 2018, i.e. ten months before the beginning of the relevant year.

6/ **Almost one third of the administrative regions (29%)** did not enable providers included in the regional social services network to increase the number of "units" (beds or jobs in direct care) during 2019.

7/ Three administrative regions (South Moravian, Liberec and Olomouc Regions) do not have any **instrument to ensure local and temporal availability of social services within a reasonable period of time**.

Survey on conditions of employment of people with disabilities in the public sector

We mapped the conditions for and impediments to employment of people with disabilities in the public sector through a questionnaire survey and interviews. We consider it crucial for public administration to set an example in recognising the rights of people with disabilities (not only) in the area of employment.

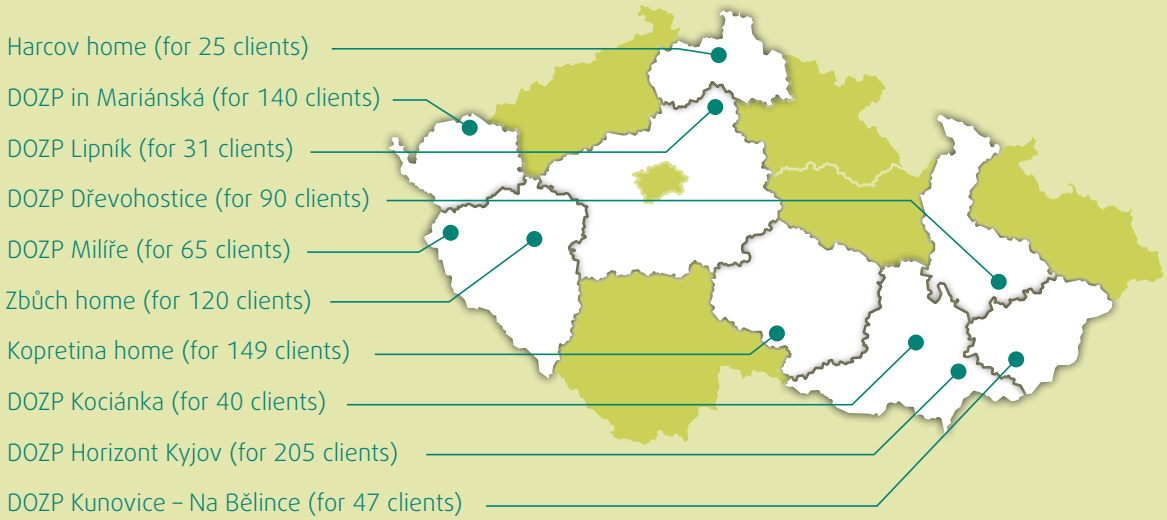
With the survey, we wanted to get a better idea of the situation on the ground, approaches to the issue of employment of people with disabilities and the actual accessibility of workplaces, specific jobs for people with disabilities in the public sector, as well as the possibilities of making reasonable adjustments. We addressed individual Czech ministries, regional authorities and organisational components of the State with the questionnaire.

The preliminary results of the survey show, in particular, that:

— **The approach of individual authorities differs significantly**
The way the mandatory share required by the law is achieved varies among the individual authorities. There are authorities which employ people with disabilities as little as possible and do not deal with the issue in any way. Other authorities try to avoid a penalty in the form of a mandatory levy to the State budget and adhere to the mandatory quota mostly by combining employment of people with disabilities with purchases of products and services. The last type are authorities that have experience with disabled employees and naturally exceed the mandatory four-percent quota by following specific strategies.

— **People with more serious limitations tend not to be employed in public administration**
Persons with first- to third-degree disabilities can be found among disabled employees in public administration. In the case of higher degrees of disability, these pertain mostly to dietary limitations, cancer patients and patients with limited mobility. People with visual, hearing or mental disabilities are practically not present in public administration and do not even register for selection procedures. Authorities themselves do not actively seek them, not even if they lack workforce and have long-term vacancies.

We visited the following facilities for people with disabilities



— **The system is not ready for people with work performance limitations**
Public authorities only have a narrow room to manoeuvre in terms of possibilities for a flexible approach to their employees. They have a fixed structure and numbers of work positions assigned to carry out their duties. This negatively reflects in the options to meet the requirements for reducing working time, dividing working time or creating new jobs for people with disabilities.

— **The principle of levies to the State budget (as penalties for not employing disabled people) is not functional in the case of public administration bodies**
The penalty mechanism based on levies to the State budget, as a compensation for not employing people with disabilities, does not sufficiently motivate the authorities. On the one hand, there are authorities which, in view of their budget, consistently monitor their compliance to avoid payment of levies. On the other hand, there are other (usually larger) authorities paying millions of CZK in compensation. It is also problematic that this is merely a question of transferring money between individual chapters of the State budget and the motivational effect is thus completely absent here.

— **Contributions towards active employment policy and contributions towards employment of people with disabilities are not intended for public administration bodies**
Section 107 (2) of Act No. 435/2004, on employment, excludes the possibility of providing contributions towards employment of people with disabilities and contributions towards active employment policy to organisational components of the State and State contributory organisations. The State has thus set up a system which has exclusively punitive effects; it fails to provide appropriate support to public administration bodies in employing people with disabilities.

Visits to homes for people with disabilities

Our objective is to monitor the conditions in which people with disabilities live in institutional facilities. Over the past year, we visited a total of 10 homes for people with disabilities and mapped the provision of this social service in terms of employment support, education and preparation for life in a common social environment. The monitoring involved 825 people living there in the long term.

All findings from the visits will be summarised in a special summary report. The report will also include recommendations for improvement of the current practice and strengthening of the rights of people who have to use these services for various reasons.

We are here to help

In addition to mapping systemic problems in the area of rights of people with disabilities, we also deal with exercise of public guardianship in cases where municipalities serve as guardians for people with limited legal capacity.

The guardian's personal contact with the person under guardianship staying in a psychiatric hospital must be regular

We inquired into the scope of the guardian's duties in respect of the person under guardianship who was in forensic treatment in a psychiatric hospital. She complained that her guardian neither visited her, nor protected her property interests nor addressed the complaints the guardian was approached with. We found that the guardian (municipality) lacked up-to-date information on the course of the treatment and regime measures to which the complainant was subjected in the hospital. Yet, personal contact with the person under guardianship, as well as interest in her health, are among the guardian's basic duties. To fulfil these duties, it is not sufficient if an authorised employee only visits the given person in the hospital once a year and otherwise relies on the belief that all needs of this person are provided for by the healthcare facility. Based on our intervention, an agreement was reached between the complainant and the guardian regarding the frequency and manner of their mutual communication; the guardian also started to perform more carefully the duty to provide explanation in relation to the acts the guardian performs on behalf of the person under guardianship and began communicating with the physicians regarding her treatment.

Defender's Report and Opinion: File No. 3308/2017/VOP

Duty of the guardian to determine the will of the person under guardianship

In the area of guardianship, we also dealt with a complaint filed by the son of a person placed under guardianship. He complained that his mother's guardian did not accept the power of attorney signed by his mother, authorising the son to inspect the file. The guardian argued that the person under guardianship did not enjoy the necessary legal capacity; however, the guardian did not even attempt to ascertain her actual wishes. This was in spite of the fact that the guardian was in regular contact with the complainant's mother and nothing prevented him from ascertaining her opinion and acting in accordance with it. We advised the guardian that his duty was to primarily act according to the wishes of the person under guardianship unless such conduct could result in a specific harm to this person.

Defender's Report: File No. 5626/2017/VOP

It is not possible to force a person under guardianship into contact with the guardian

We also dealt with a complaint filed by a woman who complained about conflicts she had with the officers authorised to perform guardianship over her. Based on bad past experience, the woman refused any contact with the authorised officer. However, the officer did not want to accept this and once he even delivered "summons" to her with the help of the municipal police. But this only disrupted their mutual relations even more. The woman also complained that her guardian assigned inappropriately low amounts to be expended at her discretion. In our inquiry, we found that the guardian proceeded in full compliance with the judgment of the court as regards the management of property, but we found shortcomings in the manner in which he communicated with the complainant. Based on the conclusions of our inquiry, the guardian changed the officer authorised to perform the guardianship and adjusted contact in accordance with the wishes of the person under guardianship. The guardian also provided social services to the person under guardianship to improve her financial literacy.

Defender's Report: File No. 6013/2017/VOP

Powers of a guardian in case of disagreement between the parents of an adult person under guardianship

We also dealt with an unusual case where the mother sought contact with her adult son, who lived with his father. The mother complained that a public guardian appointed to her son due to disagreements between the parents would not help her to ensure more frequent contact with her son (i.e. the person under guardianship). We found that the guardian performed his duties and tried to arrange contact between the son and the mother. We concluded that this was all the guardian could do. A guardian is obliged to protect the rights of the person under guardianship, rather than rights of his family members. If close persons of the person under guardianship are unable to reach mutual agreement, they must turn to the court, rather than to the guardian.

Defender's Report: File No. 4305/2018/VOP

We communicate

Advisory body

The advisory body whose main purpose is to co-operate with the ombudswoman in monitoring compliance with the Convention on the Rights of Persons with Disabilities met four times in 2019. The members of the advisory body gradually dealt with the issues of health (Art. 25 of the Convention), education (Art. 24 of the Convention) and also work and employment of persons with disabilities (Art. 27 of the Convention). During the last meeting, the members looked back on their work because their term of office is linked with the term of office of the Defender who appointed them.

Co-operation with disabled people and their organisations

We organised two meetings with people with disabilities and their organisations. The main objective was to share knowledge and experience in the area of rights of people with disabilities, which we could use to prepare a report for the UN Committee, as well as to introduce international organisations and possibilities of co-operation. We regularly co-operate with a total of 60 organisations.

http://bit.ly/CRPD-spoluprace

Co-operation with the UN Committee and other international entities

Within our co-operation with the UN Committee on the Rights of Persons with Disabilities, we:

— Sent a list of questions to the Committee, which the Committee used for preparation of the List of Issues addressed to the Czech Republic. The Committee expects them to be answered in the regular report. The Czech Republic is to submit this report in April 2020.

— Completed two questionnaires from the UN Special Rapporteur on the rights of persons with disabilities. In the first one, we mapped the legislation and summarised the situation of elderly people with disabilities living in the Czech Republic, while the second questionnaire concerned bioethics and disabilities.

— Established co-operation with members of the European Network of National Human Rights Institutions (ENHRI) and shared monitoring experience with them. We also actively participated in preparation of an overview of EU activities concerning people with disabilities. Furthermore, we contributed to creation of the Compendium on Article 12 of the Convention on the Rights of Persons with Disabilities.

Awareness raising

With a view to improving awareness of everyday problems faced by people with disabilities, we organised a number of awareness-raising campaigns and activities. Through lectures, videos, webinars and social networks, we joined in celebrations of the following world days:

— Rare Disease Day

— World Down Syndrome Day

— World Autism Awareness Day

— European Independent Living Day (to promote the right of people with disabilities to live in a community instead of an institution)

— Spinal Muscular Atrophy Awareness Month

— Day in Slippers (focusing on the issue of availability of hospice and palliative care)

— Let's Not "Pigeon Hole" People (devoted to the issue of mental illnesses)

— Pinwheel Day (related to the European Cystic Fibrosis Awareness Day)

Conferences

We participated in a conference organised by the Faculty of Law of Charles University. We focused on how the society approaches people with disabilities and whether these people are in a disfavoured social position, which can be seen as a typical feature of a minority. We stated in the paper that social perception of people with disabilities was evolving and it was important to change it so that people with disabilities were not treated as a minority.

We actively participated in the conference titled "Education, Employment and Community Life of the Deaf" organised as part of the celebration of the 100th anniversary of foundation of Masaryk University and community work of people with hearing impairments in Brno.

We took part in a press conference on accessibility of railway transport, organised by Národní rada osob se zdravotním postižením ČR, z.s. (Czech National Council of Persons with Disabilities), and also attended a seminar titled "Family Life, Intimacy and Sexuality of Persons with Disabilities", prepared by the Ministry of Labour and Social Affairs as part of the 2019 Rehaprotex fair.

We participated in the three-day Prague Educational Festival focused on education, including education of children with disabilities.

On 1 November 2019, we organised a conference titled "Ten Years with the Convention on the Rights of Persons with Disabilities" on the occasion of the tenth anniversary of ratification of the Convention by the Czech Republic. Together with the participants, we discussed the ways in which the Convention had changed the lives of people with disabilities in the Czech Republic, as well as what was necessary to fulfil the rights of people with disabilities in terms of accessibility of public administration, products and services, and work and employment on the regular labour market.

We educate, we train, we lecture

In co-operation with patients' organisation SMÁCI, z.s., which supports people with spinal muscular atrophy, we organised webinar called "Convention on the Rights of Persons with Disabilities and the monitoring activities of the Public Defender of Rights".

We lectured for children with hearing impairments from three countries – the Czech Republic, Lithuania and Latvia. The children had the opportunity to learn about the Defender's mandate and also about their own rights under the Convention on the Rights of Persons with Disabilities.

Together with our colleagues from the Department of Supervision over Restrictions of Personal Freedom, we presented our findings from visits to homes for people with disabilities.

We presented our findings from visits to homes for people with disabilities concerning family life and sexuality of their clients within the methodical meeting of the Ministry of Labour and Social Affairs.

We took part in a panel discussion on the topic of deinstitutionalisation in the Czech Republic held within the Festival of Democracy marking the 30th anniversary of the Velvet Revolution. The debate aimed to map the situation in the Czech Republic, show the roots of Czech institutionalism and discover why the process of deinstitutionalisation was not moving forward in the Czech Republic.

We trained public guardians and the methodology officers on the rights and duties of public guardians in terms of the Public Defender of Rights, and support for parents with restricted legal capacity.

As part of the Mental Health Weeks, we lectured on the rights of people with psychosocial disabilities under the Convention on the Rights of Persons with Disabilities and on the Defender's related activities.

Roundtables

We organised a roundtable focused on the issue of excusing of students from physical education classes. The main goal was to gain knowledge from the professional public about the existing practice, discuss possible solutions to the situation and then formulate recommendations so that students could be involved in all school activities and subjects.

In 2018, we co-operated with the Equal Treatment Department on a survey focusing on the provision of dental care in general anaesthesia to people with mental disabilities and people with an autism spectrum disorder. Further to this survey, we organised a roundtable with the relevant representatives of the professional public to discuss not only the findings, but primarily the necessary remedial measures.

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

We organised a roundtable on the issue of exercise of the right to vote by people living in residential social services facilities. At this occasion, we pointed out certain systemic shortcomings in the exercise of the right to vote by people with disabilities, as well as the best practice in supporting clients of residential social services in voting in elections.

We organised a roundtable on the topic of "Current Issues in Sexuality of People with Disabilities". The event was attended not only by experts on this topic, but also by people with disabilities. The participants' contributions related to various areas, such as the role and activities of sexual educators, the legal framework for disability sexual assistance

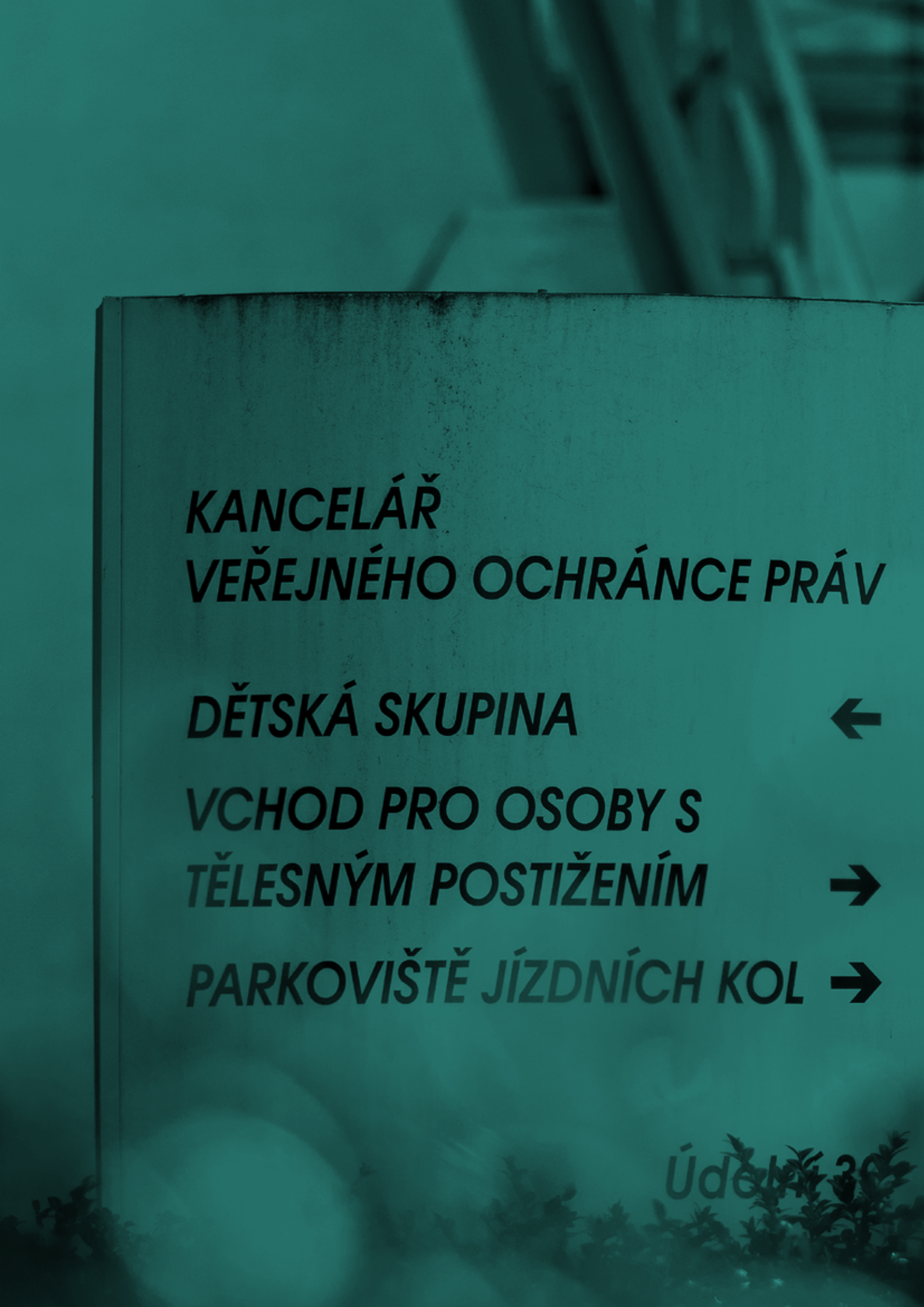
and questions of guardianship related to sexuality of the person being supported by the guardian. The participants also shared real experience with the lives of people with disabilities.

Information materials

We strive to increase accessibility of information concerning the Public Defender of Rights. For this purpose, we issued an easy-to-read information leaflet titled "Ombudsman in Simple Terms".

We were the first ones in the Czech Republic to translate the Convention on the Rights of Persons with Disabilities into the Czech Sign Language. There is a separate, freely available video for each article of the Convention.

https://www.ochrance.cz/monitorovani-prav-lidi-se-zdravotnim-postizenim/umluva-ve-znakovem-jazyce/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10. OFFICE OF THE PUBLIC DEFENDER OF RIGHTS

Budget and its utilisation in 2019

Approved budget for 2019

158,932 thousand Czech crowns

During the year, the budget was increased to cover the costs associated with funding of a project within the Operational Programme Employment project, Reg. No. CZ.03.1.51/0.0/0.0/17_073/0008543, titled **"Children's Group Motejlci"** (CZK 961 thousand), and a project funded from the Norway Grants, Reg. No. LP-PDP3-001, titled **"Reinforcing the activities of the Public Defender of Rights in the protection of human rights (with the aim of establishing a National Human Rights Institution in the Czech Republic)"** (CZK 11,200 thousand). After these adjustments, the budget totalled CZK 171,093 thousand.

In 2019, we also claimed non-utilised funds from the previous years in the amount of CZK 8,286 thousand. Of this amount:

— CZK 6,089 thousand was used for expenses not provided for in the relevant chapter (incl. CZK 2,701 thousand for salaries and other payments for work, incl. accessions; plus CZK 3,388 thousand for operational costs);

— CZK 1,812 thousand was used for projects co-financed by the EU (of which CZK 1,487 thousand was used to fund the "Cyber Security of the Office of the Public Defender of Rights" project; CZK 198 thousand for the "Support for the Effective Monitoring of Forced Returns" project) and CZK 127 thousand for the "Digitalisation of the Office of the Public Defender of Rights" project;

— CZK 385 thousand was used for programme funding expenditures (expansion of the Office's HQ).

Funds from the State budget were used to ensure standard activities of the Office in dealing with complaints and performance of other tasks that the Defender performs based on the law (especially systematic supervision of facilities where persons deprived of liberty are or may be present; assistance to victims of discrimination and citizens of the European Union and their family members living in the Czech Republic; monitoring of the rights of people with disabilities; monitoring of expulsions of foreign nationals). We also used these funds for co-funding of the projects titled "Children's Group Motejlci" and "Support for the Effective Monitoring of Forced Returns".

Utilised budget for 2019

165,340 thousand Czech crowns

Amounting to 96.64% of the adjusted budget. Of which:

— CZK 673 thousand was used to fund the "Children's Group Motejlci" project;

— CZK 1,241 thousand was used to fund the "Support for the Effective Monitoring of Forced Returns" project;

— CZK 1,487 thousand was used to fund the "Cyber Security of the Office of the Public Defender of Rights" project;

— CZK 126 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 employees (permitted excess of the staff limit), other personnel costs (co-operation with external experts), increase in the salaries of the representatives (higher costs of taking annual leave), severance pays for employees, operating costs (to ensure operation support in relation to implementation of the "Cyber Security of the Office of the Public Defender of Rights" project), and for funding of projects co-financed by the EU.

Detailed economic results of the Office are published at https://www.ochrance.cz/kancelar-vop/vysledky-hospodareni/

Staff in 2019

164.67

The binding limit on the number of employees of the Office in 2019 was 164.67 staff members. During the year, the original limit of 155.67 was increased to 164.67 persons [of which 10.67 were employees participating in the implementation of projects co-financed by the EU (1.67) and from financial mechanisms (9)].

156.24

employees is the average recalculated number of employees recorded in 2019 (without the project co-financed from financial mechanisms). The employee limit was exceeded by 0.57. 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 (of which, just like in 2018, 99.5 were working in the Legal Section, 17 in the Administrative and Filing Services Department, and 4.5 in the Secretariat of the Defender and her Deputy).

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. Among others, we co-operated with psychiatrists, general and psychiatric nurses, psychologists, social services experts, specialists in education of children with behavioural disorders, experts in youth drug abuse, etc. especially in the performance of systematic visits to facilities where persons deprived of liberty are present, as well as on tasks in the area of equal treatment and in monitoring of the rights of people with disabilities.

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

The Office of the Public Defender of Rights as an obliged entity pursuant to Act No. 106/1999 Coll., on free access to information, as amended, received and processed a total of **91 requests** for provision of information pursuant to this Act in 2019. The requests were received through the post, e-mail or via the data box.

In **74** 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 police and prisons; detention; discrimination; disciplinary actions; cassation complaints; protection of classified information; requests for indemnification; actions in public interest; education; civil service; competence of the Ministry of Justice), requests for documents from the complainants' files, requests for provision of the Defender's Collection of Opinions on "Prisons", and information on the functioning, organisation and budget of the Office of the Public Defender of Rights or queries related to the Public Defender.

4 complaints were lodged pursuant to Section 16a of the Free Access to Information Act. In **18** cases, a decision was made to reject a request for information (or a part thereof); in **9** cases, an appeal was lodged against the rejecting decision.

	Total number of requests for provision of information	61
Section 18 (1)(a)	Number of decisions rejecting a request (or its part)	18
Section 18 (1)(b)	Number of appeals lodged against a decision	9
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	4
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

- conditions in facilities for children requiring immediate assistance;
- the duty to have the registration documents of a vehicle even during test drives;
- availability of railway transport for people with disabilities;
- the case where the Ministry of the Interior was hindering the Defender's inquiry in connection with decision-making on acquiring citizenship;
- abolishment of the fee for lodging a complaint with the Office for the Protection of Competition in respect of public contracts;
- recommendations on inclusive education of Roma and non-Roma children;
- survey on LGBT+ persons' experience of discrimination.

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

- conditions in retirement homes;
- activities of medical assessors in connection with disability pensions;
- dealing with hate speech on the Internet;
- establishment and operation of sports shooting ranges;
- removal of illegal structures.

Most popular topics on the website

- the rights of people with disabilities;
- extraordinary assistance allowance for covering costs of a schoolchild;
- parents' disputes and rules concerning contact of both parents with their child;
- noise nuisance;
- protection of pregnant women against termination of employment including during the trial period.

7
press conferences

132
press releases and dozens of further news

12
episodes of the "Case for the Ombudsman" series

6,552
subscribers of the electronic newsletter

4,662
printed and broadcasted news, interviews, articles and reports in the media, of which 361 on television and radio; 1,159 in printed media; and 3,142 in online media.

Nearly **280,000**
visits to the Defender's website at www.ochrance.cz

8,788
followers on social networks

Over **130**
leaflets concerning various life situations

Website

> 280,000

visits to the website at www.ochrance.cz

> 10,000

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

> 20,000 ESO

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

11,000

visits to the new website at www.domek.ochrance.cz only in the first week after its launch

Social networks

6,000 followers

2,000 followers

600 followers

Most popular topics on social networks

- "Nekupujte kytky, dejte ženám spravedlivou mzdu" (Don't buy them flowers, give women a fair salary);
- extraordinary immediate allowance for purchase of school supplies for children;
- findings from visits to facilities for children requiring immediate assistance;
- the Defender represented before the Constitutional Court a two-and-a-half-year-old child who had experienced three changes of the carer;
- availability of dental care for people with disabilities;
- protection of pregnant women against termination of employment including during the trial period.

Case for the Ombudsman

12 episodes shot in co-operation with Czech Television and broadcast on the ČT 2 channel:

Noise
Discrimination on grounds of age
Pensions
Animal abuse
Problems at school
Police interventions
Workplace bullying
Unfair advertising practices
Prohibition of discrimination on the grounds of disability
Treatment facilities for long-term patients, retirement homes
Parenthood
Illegal structures

Available in Czech Television's archive: https://www.ceskatelevize.cz/porady/12305577320-pripad-pro-ombudsmanku/

Over 130 leaflets

in Czech and other 9 languages with instructions and solutions for frequent situations in life

bit.ly/letaky_zadosti

International relations

In 2019, our international co-operation consisted in improving and strengthening existing international contacts and partnerships, as well as in establishing new co-operation. We were active within the International Ombudsman Institute (IOI), the European Network of Ombudsmen (ENO) and the European Network of National Human Rights Institutions (ENHRI). We newly became a member of the European Migration Network (EMN) and also actively co-operated with FRA (EU Agency for Fundamental Rights). Within competences conferred on the Defender by the law, we also provided assistance to international organisations (or their bodies) responsible for monitoring of human rights obligations of their member states (e.g. the UN, Council of Europe). In bilateral international co-operation, we were traditionally focusing especially on ombudspersons from other Visegrad Group countries (Poland, Slovakia and Hungary), as well as the Norwegian National Human Rights Institution and the Austrian ombudsperson. We also welcomed a delegation of our colleagues from Ghana and Ukraine.

In the area of combating discrimination, we were active in the Equinet network and participated in a conference organised on the occasion of the 25th anniversary of the existence of the European Commission against Racism and Intolerance (ECRI). We continue to be an active member of the ENNHRI working group dealing with the rights of people with disabilities. We participated in an important conference of the Committee for the Prevention of Torture (CPT) in Strasbourg and provided professional training to colleagues from the Ukrainian ombudsperson's office.

1/ Meeting of Visegrad Group ombudspersons in Bratislava

The 2019 annual meeting of Visegrad Group ombudspersons took place in Bratislava. The main topics were segregation in education, adoption and foster care, homelessness and liability of the ombudsperson's office for damage caused by the exercise of public authority.

2/ Multilateral international co-operation

In 2019, we participated in an annual conference of the ENO network and a week-long educational academy organised by the ENNHRI network focusing on economic, social and cultural rights. We have become a member of the European Migration Network, which brings together organisations dealing with migration in EU Member States and Norway with a view to collecting, exchanging and analysing information in the given area of interest. Within the IOI network, we contributed with our practical experience to a study dealing with refugees and asylum seekers in Europe, specifically within the chapter monitoring the situation of unaccompanied minors. We also provided professional co-operation to FRA in preparation of a study concerning national human rights institutions in the EU, as well as to the Council of Europe's GRETA group dealing with human trafficking, which carried out its first monitoring visit to the Czech Republic in 2019. We were also in regular contact with the Office of the United Nations High Commissioner for Human Rights (OHCHR) regarding requests for information and expert opinions on diverse human rights issues.

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, which was also one of the topics of the annual ENO conference. We continued to maintain exceptional relationships with Visegrad Group ombudspersons. Last year, we established close co-operation with the Norwegian National Human Rights Institution, which we are planning to further develop in the following years as part of a joint human rights project. Contacts were newly established with the Ukrainian ombudsperson and her colleagues, who are in charge of supervision of persons deprived of liberty (NPM). At request of this Ukrainian institution, we organised a meeting in Brno between representatives of the institutions on general topics related to their activities, as well as a professional seminar for NPM colleagues who showed interest in the training provided by our experts in this area. We also received a request for a visit from Ghana's Minister of Gender, Children and Social Protection and her colleagues, and from the judge of the Supreme Administrative Court of Egypt, who expressed interest in learning more about our activities. We also maintain ties with other countries through meetings with their ambassadors in the Czech Republic. In 2019, we were visited, among others, by the ambassador of Spain and the British deputy ambassador.

4/ International co-operation in the area of the rights of persons deprived of liberty

Last year, we participated in a multilateral conference of the Committee against Torture in Strasbourg held on the occasion of the 30th anniversary of its existence. Our employees participated as supervisors in international training organised by the International Centre for Migration Policy Development (ICMPD) in co-operation with the Frontex agency. The training was aimed at acquainting police officers and workers who monitor the course of return operations with critical moments that could occur during the expulsion procedure.

In the area of bilateral co-operation, we organised a professional seminar for our colleagues from the office of the Ukrainian ombudsperson who showed interest in our professional experience and methodological recommendations in the area of preparation, performance and subsequent evaluation of visits to facilities where persons deprived of liberty are present. We shared our experience in supervision over administrative and criminal expulsion with Slovak police officers on the occasion of a training held at the Police Academy in Bratislava.

5/ International co-operation in the area of equal treatment

We also participated in a multilateral conference organised on the occasion of the 25th anniversary of the existence of the European Commission against Racism and Intolerance. This year, we were again involved in the work of Equinet, a network associating national equality bodies. We sent our representatives to working groups and executive bodies. Furthermore, we co-operated with the European Commission against Racism and Intolerance, to which we provided, upon its request, our opinion on the situation in the Czech Republic. For the Committee of Ministers of the Council of Europe, we drew up an opinion concerning enforcement of the judgment of the European Court of Human Rights in the case of D. H. and Others v. the Czech Republic. We also lectured for the Academy of European Law as part of our educational activities and presented our experience in combating discrimination to the participants of a two-day workshop in Moldova.

6/ International co-operation in the area of the rights of people with disabilities

In 2019, we were active especially within the ENNHRI network: as members of the CRPD working group, we participated in the creation of a practical handbook on Article 12 of the Convention on the Rights of Persons with Disabilities, which guarantees them full legal capacity. We prepared a statement for the UN Committee on the Rights of Persons with Disabilities, which provides an overview of problematic areas regarding the rights of people with disabilities in the Czech Republic that we would like to draw attention to. This statement will subsequently be used by the Committee in formulating questions addressed to the Government of the Czech Republic, which will be obliged to respond to it through a report. We provided co-operation to the UN Special Rapporteur on the rights of persons with disabilities by completing questionnaires concerning the rights of elderly people with disabilities, and the rights of people with disabilities and bioethics.

Within our bilateral co-operation, we worked together with our colleagues from the Austrian Ministry of Justice and the guardianship network, with whom we discussed matters of guardianship and representation of adult persons.

Selected international activities in 2019

- The VI European Labour Mobility Congress (Poland, Krakow, 14–15 March). Topic: issues related to posting of workers within the EU internal market.
- Annual ENO conference (Belgium, Brussels, 8–9 April). Topics: state of democracy in Europe and participation of citizens, GDPR, SOLVIT – family allowances with a cross-border element, and healthcare and social rights of posted workers.
- Work Forum of the Commission on the implementation of CRPD in the EU member states (13–14 May). Topics: political participation of people with disabilities, methods of implementation of CRPD, monitoring mechanisms, CRPD's overlaps with other international instruments.
- Annual conference of Visegrad Group's ombudspersons (Slovakia, Bratislava, 29–31 May). Topics: segregation in education, adoption and foster care, homelessness and liability of the ombudsperson's office for damage caused by the exercise of public authority.
- NHRI Academy (Italy, Venice, 2–8 June). Topics: economic and social rights, their monitoring and enforcement as activities of national human rights institutions.
- FRA conference titled "From wrongs to rights – Ending severe labour exploitation" (Belgium, Brussels, 25 June). Topic: labour exploitation of migrants and the fight against it.
- UNHCR training seminar for employees of the Moldovan ombudsperson's office (Moldova, Chisinau, 24–25 September). An active participation of an employee of the Defender's Office was requested in order to train Moldovan colleagues in the area of asylum and stateless persons.
- Conference for ECRI's 25th anniversary titled "On the Road to Effective Equality – New responses to racism and intolerance needed?" (France, Paris, 26–27 September). Topics: inclusive society, new technologies and the Internet in relation to racism and intolerance, future challenges in the area of promoting equality and combating racism and intolerance.
- Conference organised by the Office titled "Anti-Discrimination Act 2009–2019: Ten-year Journey to Fairness" (Czech Republic, Prague, 3 October). Topic: the ten years of existence of the Anti-Discrimination Act in the case law of Czech supreme courts, protection against discrimination and its enforceability from the victims' perspective, anti-discrimination law in the Czech Republic and Europe in 2009–2019.
- Conference on the occasion of the 10th anniversary of the Georgian NPM titled "Measuring and Increasing Efficiency of National Preventive Mechanisms" (Georgia, Tbilisi, 16–17 October).
- Conference on the occasion of the 30th anniversary of the existence of CPT (France, Strasbourg, 4 November). Topic: implementation of guarantees during the first hours of remand in police custody with a view to preventing torture and ill-treatment.


PŘÍJEM PODNĚTŮ
Respektujte prosím,
že tento
prostor je určen pro osoby
podávající stížnosti !!!

ANNUAL REPORT ON ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS IN 2019

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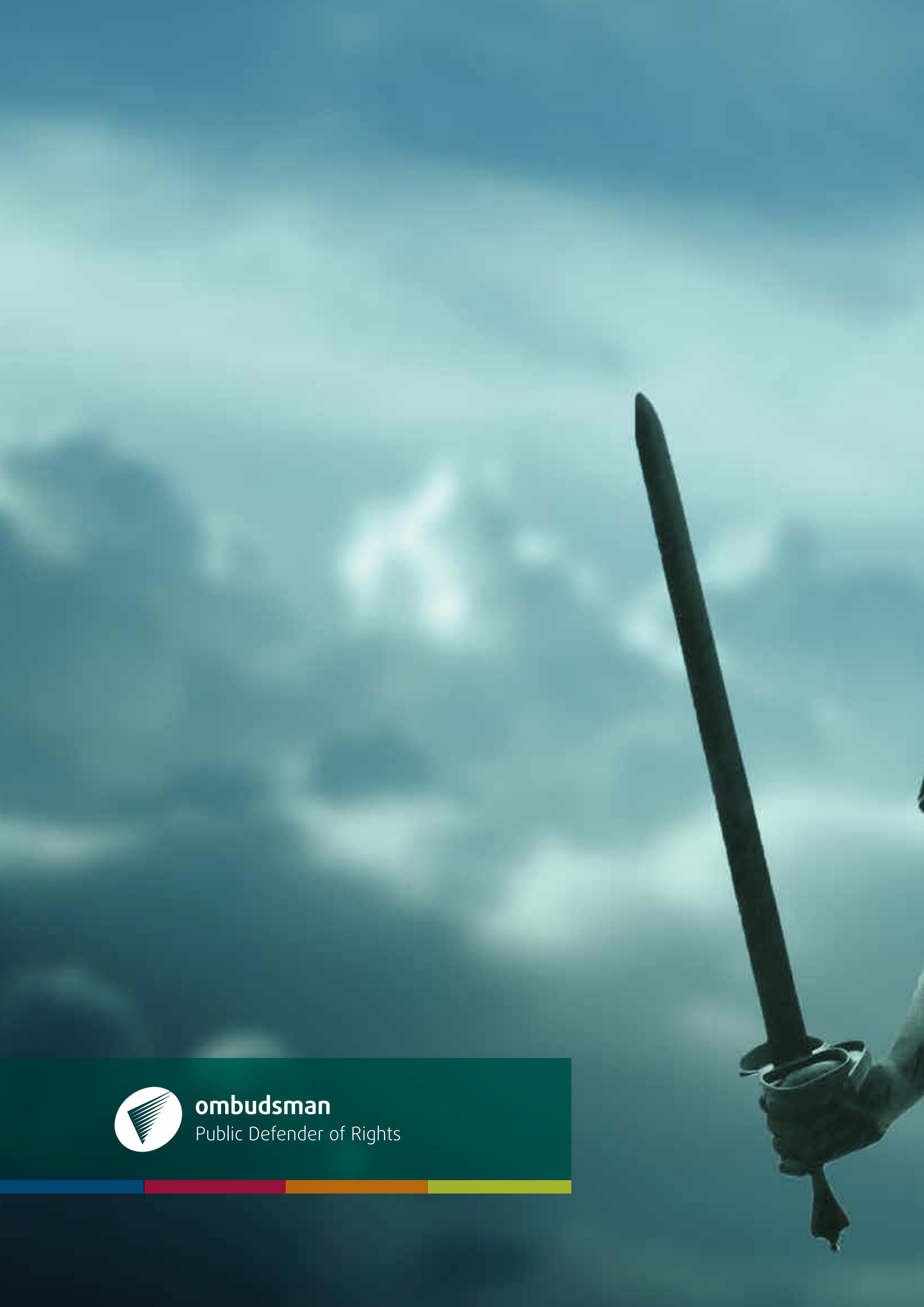

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