



Report of the Public Defender of Rights on Activities in the 2nd Quarter of 2019

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



A. Defender's activities in numbers.....	3
B. Public administration.....	5
B.1 Fee for construction material stored on a private driveway.....	5
B.2 Retention orders.....	5
B.3 Right to a statutory judge – assignment of cases.....	6
B.4 Eighty-year-old guardian <i>ad litem</i> for a person owing health insurance premiums	7
B.5 A fence bordering on a public space at a single point.....	7
B.6 Authority's ineligibility to make a decision because of bias.....	8
B.7 Child born to a woman remanded in custody	8
B.8 Duty to return an incorrectly paid benefit	9
B.9 Claiming refund of overpaid pension	9
B.10 Procedural rights of an asylum-seeker	10
B.11 Right to information from the Czech Telecommunication Office	11
B.12 Conferences, roundtables, training and awareness raising	11
C. Supervision over restrictions of personal freedom and expulsion monitoring.....	13
C.1 Systematic visits and monitoring of expulsion	13
C.2 Annual report on the activities of the National Preventive Mechanism.....	13
C.3 Report on visits to facilities for children requiring immediate assistance	13
C.4 Collected documents "Prisons II"	14
C.5 Roundtables, training and awareness raising.....	14
D. Protection against discrimination.....	15
D.1 A disabled baby was forced to stay in a maternity hospital because no general practitioner was willing to accept him as a patient.....	15
D.2 Recommendation on compulsory preschool education	15
D.3 "Being LGBT+ in the Czech Republic" survey.....	16
D.4 Opinion on enforcement of the ECtHR judgement in case D. H. and Others v. the Czech Republic	16
D.5 Important meetings	17
D.6 Awareness raising	17
D.7 Conferences, roundtables and training	17
E. Monitoring of rights of people with disabilities	19
E.1 Fifth meeting of the advisory body.....	19
E.2 Ongoing surveys.....	19
E.3 Visits to homes for people with disabilities.....	19
E.4 Co-operation with people with disabilities and their advocacy organisations	20
E.5 Co-operation at the European level	20
E.6 Conferences, roundtables and training	20



A. Defender's activities in numbers

During the 2nd quarter of 2019, we received a total of **2,013** complaints (147 fewer than during the same period last year). The share of complaints falling within our mandate (**65.19%**) slightly decreased below the average for 2018 (68%). As in previous years, most of the complaints concerned social security – especially pensions and benefits (348) and construction projects (171).

In **51** complaints, people objected to unequal treatment, of which 33 related to grounds prohibited by the Anti-Discrimination Act. In **10** cases, we also provided discrimination-related information and analyses to international entities or national bodies (discrimination based on algorithms, e.g. in insurance; gender pay gap in sports; discrimination on grounds of age; reserved parking for people with disabilities, etc.).

We visited **10 facilities** (children's homes, psychiatric hospitals, remand prisons, police cells). We monitored **12 cases of expulsion** of foreign nationals and examined **2,510** expulsion decisions.

We initiated **2 surveys** to monitor the promotion of rights of people with disabilities.

The following figure illustrates the numbers of complaints:



2013

complaints received
in Q2 2019,
including:

65 %

of complaints fell within the
Defender's mandate and we
could thus deal with them



171

Construction projects



138

Pensions



125

Prison service



89

Protection of
children



72

Assistance in
material need



63

Benefits for people
with disabilities



B. Public administration

Since 2001, the Defender has been defending individuals against unlawful or otherwise incorrect procedure of administrative authorities as well as against their inactivity. The Defender may inspect court files, request explanations from authorities and carry out local inquiries. If malpractice is found on the part of an authority, the Defender will recommend measures for remedy; the authority's decision, however, cannot be cancelled or replaced by the Defender.

B.1 Fee for construction material stored on a private driveway (File No. [5935/2017/VOP](#))¹



Using one's own property to store construction material during the reconstruction of a building located on an adjacent lot represents normal exercise of ownership rights. The owner therefore cannot be charged with a fee for special use of public space. Moreover, a private driveway is not a public space (it does not serve for general use) and any such fee therefore cannot apply to it. If the taxpayer concerned pays the fee and, at the same time, contests its justification, the relevant authority must issue a payment assessment and thus enable the taxpayer to defend him/herself against it.

The complainant was refurbishing his family home and therefore stored construction material on his driveway. The municipal authority claimed that the complainant pay a local fee for the use of public space in this regard. As he had been warned by the authority that the fee could be increased up to three times the original amount if not paid in time, the complainant eventually did pay, but questioned the justification of the fee and asked to be issued with a payment assessment.

The municipal authority maintained its opinion regarding the facts of the case and their legal evaluation but, nonetheless, refunded the local fee to the complainant.

B.2 Retention orders (File No. [4452/2017/VOP](#))



Payment of tax that has not yet been specified or is yet to fall due can only be secured by virtue of a retention order if there is a justified concern that the tax will be irrecoverable once it becomes enforceable or that its collection will entail considerable difficulties. Where a tax has yet to be specified, it must also be reasonably likely that it will be specified in the future. The tax administrator must obtain all available underlying documents and ascertain all facts, including those which speak for the benefit of the tax entity. The tax administrator must secure collection of the tax primarily by means of a pledge or mortgage, or other security instruments, in co-operation with the tax entity (third-party guarantee, financial guarantee). Where this is not possible, the administrator will use other instruments of tax enforcement. The tax administrator must regularly check that the conditions

1 [Report on inquiry, final statement.](#)



for securing the tax continue to exist. If a court cancels the relevant retention order, the tax entity is entitled to payment of interest on the amount affected by the unjustified conduct of the tax administrator.

Also in view of the ongoing debate in the professional community, I examined to what extent the tax administration was using retention orders indiscriminately and also whether it would use them systematically without justification, i.e. unlawfully. The statistical data obtained and analyses made available by the tax administration did not confirm that retention orders were used indiscriminately; this, however, does not rule out possible individual cases of maladministration. Therefore, I analysed thoroughly in my inquiry report the conditions for issuing retention orders and the subsequent procedure of the tax administrator. I proposed how the administrative practice could be improved. I also commented on various suggestions for amending the legislation which were discussed at that time.

The General Tax Directorate updated its methodological guideline on the procedure in issuing retention orders,² and published a change in the administrative practice regarding a review of retention orders in appellate proceedings³ and a methodological guideline on the appellate body's duty to acquaint the tax entity with the results of evidence-taking in appellate proceedings concerning a retention order.⁴ It will also issue a new methodological guideline to provide for payment of interest on amounts affected by an unjustified procedure of the tax administrator in cases where an unlawful retention order is cancelled.⁵

B.3 Right to a statutory judge – assignment of cases (File No. [694/2019/VOP](#))



No one may be removed from the jurisdiction of his/her lawful judge. The jurisdiction of both the court and judge are laid down by the law. Distribution of cases to individual court departments is governed by the court's schedule of work. The manner of assigning cases must be sufficiently transparent, definite, reviewable and comprehensible. The assignment mechanism must be clear on the date when the case reaches the court – assignment of the case as such is not required at that time. The cases are always distributed as they are delivered among the judicial departments of the same expert section based on the set ratios. Cases can be assigned both "circularly" (gradually, based on a predetermined order of judges) and "specifically", with a view to balancing the caseload (reflecting the individual judges' dockets). The schedule of work cannot give a court official the discretion to assign or re-assign cases, but he/she may be authorised to stop the assignment of cases in specified cases of the judges' absence.

The complainant questioned the procedure followed by bodies of governmental administration of the judiciary – he pointed out certain systemic issues in assigning criminal cases at a district court. He claimed that the mechanism of assignment of individual cases could not be ascertained from the schedule of work and that possible manipulation of assignments could

2 Methodological guideline Ref. No. [13847/19/7700-00130-711462](#).

3 Methodological guideline Ref. No. 17644/19/7700-00130-711462.

4 Methodological guideline Ref. No. 9237/19/7700-00130-711462.

5 Methodological guideline Ref. No. [60589/18/7700-10126-702909](#).



not be ruled out either, based on the actual assignment of cases. The court had four criminal chambers. Individual cases were distributed among them using an information system with an algorithm based on the principle of balancing the caseload, following certain predetermined rules and without any intervention by the president or vice-president of the court. The cases were thus distributed according to a predetermined ratio, taking into account the respective sizes of the judges' dockets, both in terms of cases already heard and cases newly assigned. Nonetheless, the schedule of work for 2018 did not comprise any exact description of the manner of assigning cases and rather stated that "[w]here necessary, the decisions on distribution of cases to individual departments will be made by the court's president or vice-president as required and in the interest of balancing the caseload". In practice, however, this rule served only to stop the assignment of new cases.

The schedule of work for 2019 already contains exact assignment rules. In view of the results of her inquiry, the Defender rejected the complainant's request and did not propose initiation of disciplinary proceedings against the court's vice-president.

B.4 Eighty-year-old guardian *ad litem* for a person owing health insurance premiums (File No. [3198/2018/VOP](#))



When a health insurance company conducts proceedings against a person insured with it, it has to try and determine the person's address and then deliver documents to that address. The law provides health insurance companies with access to details of an insured person's family members (father, mother, other legal representative, spouse, children). Insurance companies thus have to contact these persons and ask them about the insured person's possible whereabouts. Only if such an attempt is not successful can a guardian *ad litem* be appointed.

An insured person who owed premiums and penalties for health insurance cancelled his permanent address in the Czech Republic. The insurance company did not know his new address. As it failed to fully utilise its right to seek details on relatives of the insured in the population records information system, it was only able to find his almost eighty-year-old mother. But she was not familiar with her son's location either. The insurance company subsequently appointed her a guardian *ad litem* for her son. The mother refused, pointing out that she had serious reasons for not taking on this duty and also that her interests contradicted those of the insured person. She also noted that her son had a wife living in the Czech Republic.

During the subsequent inquiry, the insurance company cancelled the decision on appointing the complainant as a guardian. It also promised to establish access to the population records information system for itself within the scope of the Public Health Insurance Act. This problem should therefore not happen again.

B.5 A fence bordering on a public space at a single point (File No. [998/2018/VOP](#))



A fence is deemed to border on a public space or a publicly accessible road even if they share merely a single point. In that case, the fence can be built only with a permit from the construction authority – no exemption applies.



The owner of a family home built a fence separating his property from a nearby watercourse. He thus blocked a path along the river. The construction authority did not order him to remove the fence as it assumed that a permit was not required since the fence was neither more than 2 metres high nor did it border on a public space or a publicly accessible road – it touched the public space at a single point [Section 79 (2)(f) of the Construction Code].

However, even if two properties border on each other at a single point, this may affect protected public interests (e.g. limit visibility or passability of the territory, and thus jeopardise road safety or safety of public premises). The competent regional authority cancelled the construction authority's decision. The owner removed the original fence, but immediately built a new one in its place, and the construction authority therefore again initiated proceedings on removing the structure.

B.6 Authority's ineligibility to make a decision because of bias (File No. [5085/2017/VOP](#))



Before a superior authority delegates a certain case to another authority on the grounds that all public officials at the authority which was originally competent to hear and decide the case are excluded due to their alleged bias, the superior authority must evaluate whether the original authority is indeed ineligible to decide. An official representing a public authority must exhibit more tolerance and objectivity than an ordinary citizen. Otherwise, his/her eligibility for the given senior position can be questioned.

Since 2013, the complainant had been seeking a decision on subdivision and merger of properties. A total of four general construction authorities had gradually stated that they could not hear the case due to bias. In each instance, the regional authority therefore delegated the case to another authority. The head of the first authority considered himself biased due to a labour-law dispute pending between the complainant and the local secondary school, where he had friends among the staff. The head of another construction authority recused herself because of her "antipathy" towards the complainant.

Following a methodological intervention by the Ministry for Regional Development, the regional authority acknowledged that it had to assess whether or not the facts stated by a public official indeed justified his/her recusal. It then referred the case back to the first construction authority and the latter finally resolved the case – it satisfied the complainant's request. The regional authority then discussed the issue of bias at a meeting with the construction authorities in its region.

B.7 Child born to a woman remanded in custody (File No. [1951/2019/VOP](#))



A child born to a woman remanded in custody may not be separated from the mother without justification. Following hospitalisation in an ordinary maternity hospital, the mother should be transferred with her child to a specialised section of the remand prison enabling them to stay together, provided that the mother requests such placement in due time and her request is supported by the body for social and legal protection of children and the physician.



In view of the upcoming due date, the complainant, who was remanded in custody, asked to be transferred to a remand custody block for mothers with minor children in Světlá nad Sázavou Remand Prison. A prison officer provided her with the necessary forms but informed her that she could not be transferred until after she gave birth to the child. The complainant then delivered in a “civil” hospital. However, they moved her back to the original remand prison later on the same day, while her new-born child remained in the hospital. Three days after the birth, the complainant was released and she took over her child.

The Director General of the Prison Service acknowledged that both prisons had erred as they had not been sufficiently informed and had failed to co-operate so as to prevent unjustified separation of the newly born child from the mother. He promised to adopt an internal regulation and closely co-operate with bodies for social and legal protection of children.

B.8 Duty to return an incorrectly paid benefit (File No. [7639/2018/VOP](#))



The labour office need not consider a person removed from the register of job seekers to be in material need. If the job seeker is not considered to be in material need, the labour office will reduce the subsistence support by a proportional part attributable to this person. Anyone who receives such an allowance, although he/she must assume under the circumstances that the allowance is not justified, must return it. The same applies to any person who is assessed together with the recipient of the benefit. A decision on removal from the register of job seekers is retroactive, but its effects arise upon delivery. Thus, the person concerned is deemed to be listed in the register of job seekers until the decision is delivered. The existence of any overpayment of an allowance and the duty to return it is assessed as at the time when the allowance is paid.

The labour office removed the complainant’s common-law partner from the register of job seekers retroactively as from 25 June 2018, by virtue of a decision delivered to him on 31 July 2018. The subsistence support was paid by the office in mid-July. Although the complainant’s partner was registered as a job seeker at the time when the allowance was paid to him in July, the Labour Office required the complainant to return an overpayment for the month of July (CZK 1,229) and deducted this amount from the benefit paid for the months of September to November 2018.

Based on our inquiry report, the Ministry of Labour and Social Affairs cancelled the decision of the labour office regarding the overpayment and the office then refunded the collected amount to the complainant.

B.9 Claiming refund of overpaid pension (File No. [3816/2017/VOP](#))



In 2012, the Czech Social Security Administration (CSSA) lost its right to claim a refund of pensions paid without justification. This authorisation now belongs to district social security administrations. These have to proceed in accordance with the Tax Rules in payment of pensions and enforcement of any potential claims. If the conditions laid down by the law are met, an applicant is entitled to a grace period (deferral of instalments) and is not charged with interest on the owed amounts. On serious grounds, the applicant may also ask for a decrease in



deductions aimed at debt collection.

The complainant was supposed to return almost CZK 100 thousand because he had been receiving excessive pension amounts for several years based on falsified documents. The CSSA rejected his application for payment in instalments which he substantiated by stating that, if the current amount of his pension were affected by a debt collection order, he would no longer be able to pay rent in a nursing home.

In spite of a detailed legal analysis, the CSSA insists that it has the option of gradually deducting the owed amounts from pension benefits, pursuant to Section 118a (4) of the Organisation and Implementation of Social Security Act. It refuses to provide any grace periods (allow payment in instalments). Its procedure, which is based on a methodological guideline, has been confirmed by the Ministry of Labour and Social Affairs. The procedural standing of the CSSA needs to be clarified. Further steps, including a possible recommendation for an amendment to the legislation, will depend on a statement of the Ministry of Finance (the authority responsible for the Tax Rules). We advised the complainant to file a lawsuit with an administrative court should his well-substantiated application be rejected.

B.10 Procedural rights of an asylum-seeker (File No. [7456/2017/VOP](#))⁶



An asylum-seeker (applicant for international protection) must appear personally to provide information on the application he/she filed. The authority will invite the asylum-seeker to do so at least two business days in advance even if he/she is remanded in custody. The notice must contain an advice specified by the law, including the possibility of obtaining legal aid. A power of attorney for legal counsel may also be granted orally into a record. The authority may appoint a person not entered in the list of sworn interpreters as an *ad hoc* interpreter if: (i) there is no interpreter listed for a certain language; (ii) no interpreter entered in the list can provide the service; or (iii) interpreting by a person entered in the list would entail unreasonable difficulties or costs. Before a decision is made, the applicant must be given the opportunity to comment on the underlying documents.

A complainant placed in remand applied for international protection. The Department for Asylum and Migration Policy of the Ministry of the Interior failed to notify her at what time it would visit the remand prison to obtain information regarding the application she had filed (it did not formally summon her for an interview). The Department justified this by the fact that the date and time were set in co-operation with the Prison Service and that a notice to this effect had not been necessary as the complainant's presence had been ensured. The Department also incorrectly advised the complainant that a power of attorney granted to legal counsel had to be documented in writing, and moreover set a deadline for her in this regard. It then appointed a person not registered in the relevant list as an interpreter without checking compliance with the statutory conditions, although there are as many as 152 registered interpreters of the English language in Prague alone.

⁶ [Report on inquiry](#), [final statement](#).



The Minister of the Interior promised that the Department of Asylum and Migration Policy would also inform applicants deprived of liberty of upcoming interviews. The Department also modified the advice on the applicant's option to grant a power of attorney orally into the record. I continue my discussions with the Ministry on the issue of appointing interpreters.

B.11 Right to information from the Czech Telecommunication Office (File No. [6468/2017/VOP](#))⁷



A legal duty to publish specific information does not simultaneously entail a prohibition to disclose other (non-specified) information. Information cannot be refused indiscriminately on the grounds of possible misuse. If the right to information collides with another fundamental right (protection of the holders of individual permits against interference with assigned radio frequencies), the competent authority has to weigh the two rights. Data protection does not have priority in cases where the data are disclosed by another administrative authority under the law. Excessive data protection must not prevent public supervision of administrative proceedings. The relevant authority has to provide its decisions so that it is possible to determine the principal reasons based on which the decisions were made.

The Czech Telecommunication Office (CTO) refused to provide copies of decisions on granting individual permits for an aeronautical mobile service to use radio frequencies. It first treated the request as an application for inspection of the file (the applicant was not a party to the proceedings and did not prove an urgent legal interest in this regard) and invoked the scope of information published under the law as an obstacle to provide any further information.

Based on the inquiry report, the CTO provided the required information and promised to change the administrative practice so that information would be denied only if the protection of another fundamental right or public interest outweighed the right to information in the sense of case law of the Constitutional Court and of the Supreme Administrative Court. This change will be reflected in internal normative guidelines.

B.12 Conferences, roundtables, training and awareness raising

Cases of removal from the records of job seekers ([seminar](#) for social workers and employees of public counselling centres and non-governmental organisations providing basic consultancy)

Selected problems related to assistance in material need ([roundtable](#) for employees of regional branches of the Labour Office)

Selected problems related to application of the Construction Code ([roundtable](#) with participation of representatives of the Ministry for Regional Development, regional authorities, the Prague City Hall and the Brno City Hall, and the Czech Construction Law Society)

Right to information and personal data protection ([seminar](#) intended especially for officers of territorial self-governing units in the Central Bohemian Region)

⁷ [Report on inquiry](#), [final statement](#).



Assistance in material need and housing benefits (seminars in [Pardubice](#) and in Prague for social workers at municipal authorities of municipalities with extended competence and authorised municipal authorities)

Duties following from involvement in sharing economy (roundtable with representatives of authorities and health insurance companies aimed to create awareness raising material for the general public)

New leaflets [Proceedings on benefits for persons with disabilities](#), [Deferral of debts \(instalments\)](#), [Tax debt collection procedure](#), [Waiver of local fees for municipal waste](#), and [Hearing of infractions](#); all available (in Czech) at <https://www.ochrance.cz>, section *Životní situace (Problems and their solution)*



C. Supervision over restrictions of personal freedom and expulsion monitoring

Since 2006, the Defender has been the national preventive mechanism (NPM) pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Defender systematically visits facilities for persons restricted in their freedom, either *ex officio* or as a result of dependence on the care provided. The Defender generalises his or her findings and recommendations in summary reports on visits and formulates standards of treatment. The findings and recommendations are submitted to the facilities and their founders, and systemic recommendations are presented to central governmental authorities. Since 2011, the Defender has also been monitoring detention of foreign nationals and the performance of administrative expulsion.

C.1 Systematic visits and monitoring of expulsion

We visited **10 facilities and performed monitoring in 12 instances** of administrative and criminal **expulsion** of foreigners, both by land and by air.

The series of visits focused on treatment of accused persons held in remand detention continued with my visit to the Pilsen Prison, which also comprises a **remand unit**. We now follow up on a series of visits to **facilities for institutional and protective education** with visits to the Radost Children's Home in Prague, Children's Home with School in Chrudim, Children's Home with School in Býchory, Educational Institution in Obořiště and Educational Institution in Hostinné. We visited the children's **psychiatry department** of the Motol University Hospital and Psychiatric Hospital in Petrohrad to review the way patients were treated in those facilities. We also examined the conditions of arrest and detention in **police cells in Český Krumlov and Orlová**.

C.2 Annual report on the activities of the National Preventive Mechanism

We published an [annual report](#) on protection against ill-treatment. In addition to information on activities in 2018, we present a list of problems that persist in various facilities where people are restricted in their freedom or dependent on care of others. For example, clients in social services facilities have no place to contact if their rights are violated. Indeed, there is no independent authority that would have to deal with their complaints.

C.3 Report on visits to facilities for children requiring immediate assistance

In our [summary report](#), we informed the public of the findings and recommendations originating from our visits to facilities for children requiring immediate assistance. 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. 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.

C.4 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.

C.5 Roundtables, training and awareness raising

At a joint [seminar](#), we familiarised employees of healthcare services from the Pardubice Region with our findings from **systematic visits to treatment facilities for long-term patients** (File No. [3/2015/NZ](#)) and we presented the good practice.⁸ The series of training courses will also continue in the other regions.

We organised two all-day **training courses focusing on human rights in psychiatry** for over 60 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.

We reported on the care in **facilities for the elderly and treatment facilities for long-term patients** in another edition of the series [Cases for the Defender](#).

We presented the **activities of the Department of Supervision over Restrictions of Personal Freedom** of the Public Defender’s Office in [Lucie Výborná’s](#) talk show broadcast on Czech Radio Radiožurnál.

We talked about the **situation in Czech prisons** in the [This Week in Justice](#) programme.

For a third year in succession, we supported the “Yellow Ribbon Run” by our personal participation. The purpose of the run is to point out problems in **integrating prisoners** in civil life after they are released.

We organised **a meeting 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 the form of decision-making on measures in upbringing and instruments for work with restless children.

⁸ Summary report on visits to treatment facilities for long-term patients in 2017, File No. [3/2015/NZ](#).



D. Protection against discrimination

In 2009, the Defender was also given the role of the national *equality body* pursuant to the European Union legislation. The Defender thus contributes to the enforcement of the right to equal treatment of all persons regardless of their race or ethnicity, nationality, gender, sexual orientation, age, disability, religion, belief or worldview. For that purpose, the Defender provides assistance to victims of discrimination, carries out surveys, publishes reports and issues recommendations with respect to matters of discrimination, and ensures exchange of available information with the relevant European bodies.

Since 2018, the Defender has also been helping foreigners – EU citizens who live or work in the Czech Republic. The Defender provides them with information on their rights and helps them in cases of suspected discrimination on grounds of their citizenship. The Defender also co-operates with foreign bodies with similar responsibilities regarding Czech citizens abroad.

D.1 A disabled baby was forced to stay in a maternity hospital because no general practitioner was willing to accept him as a patient (File No. 1505/2019/VOP)



A healthcare facility may discharge a patient only if responsibility for the patient passes to some other healthcare provider. Anyone can choose a general practitioner. A physician may refuse a new patient only (i) if his/her capacity is full; (ii) if he/she would be unable to visit the patient because of the distance he/she would have to travel; or (iii) if he/she does not have a contract concluded with the patient's health insurance company. The physician must issue a written report on such refusal. A patient may not be refused because of his/her disability or because he/she is Roma. The health insurance company is obliged to provide persons insured with it with healthcare services covered by public health insurance (including local and temporal availability).

A woman gave birth to a boy with severe disabilities. Following several major surgeries, he spent several months in the hospital. He could then be discharged but only if he was registered with a paediatrician. However, all the paediatricians approached by the mother refused to accept the child as their patient. The mother came to believe that the son was being refused by the doctors because of his disability requiring special care or because they were both Roma.

The complainant succeeded after she followed our recommendation and submitted the physician's written refusals to her health insurance company. The insurance company then managed to find a paediatrician and the son was finally discharged from the hospital.

D.2 Recommendation on compulsory preschool education (File No. 75/2018/DIS)

As many as 3% of five-year-old children, i.e. approximately 3,400 boys and girls, were unable to join the (newly) compulsory preschool education in the 2017/2018 school year. Because of that, these children could later have problems in the first grade of primary school. These are often children coming from socially and economically disadvantaged backgrounds, where preschool education has the greatest value.



We therefore asked important stakeholders in the area of education and asked them to share tried and tested methods of ensuring the participation of all five-year-olds in mandatory preschool education. The recommendation thus summarises **examples of good practice**: e.g. availability of a comprehensible information leaflet; handing out the leaflets personally or in some other innovative way (in shop windows of local vendors; in paediatricians' surgeries); field work; and frequent communication with children's parents using active listening techniques.

We sent the recommendation to municipalities, which are obliged to ensure conditions for preschool education of three-year-old and older children of their inhabitants. It can also provide inspiration to kindergartens, bodies for social and legal protection of children and non-governmental organisations working with families. At the same time, we requested further co-operation on the matter from the Ministry of Labour and Social Affairs.

D.3 “Being LGBT+ in the Czech Republic” survey (File No. [4/2019/DIS](#), [summary](#))

In co-operation with a non-governmental organisation, we conducted a questionnaire survey among lesbians, gays, bisexuals and transgender people in the Czech Republic. A total of 1981 people participated.

We found that LGBT+ people generally considered their position satisfactory (6.4 points out of 10). Nonetheless, three quarters of the respondents believe that LGBT+ people face discrimination in the Czech Republic. The public perceives the situation of these people much more favourably. The position of transgender people is much more difficult and worse than the position of gays and lesbians. A large part of LGBT+ people often encounter prejudices on the part of the majority society. Over the past 5 years, more than a third of LGBT+ people have experienced discrimination, which is approximately three times more compared to the general population. Most often, this concerns the area of education (13% of all respondents).

LGBT+ people mostly did not pursue their discrimination and harassment cases (over 90% of the cases). They considered the incidents trivial, were convinced that nothing would change anyway or did not know where they could ask for help or advice.

We presented a number of recommendations for improving the situation of LGBT+ people in the Czech Republic for further debate. What these people consider the most important are measures related to family life. Access to marriage for same-sex couples has the greatest support among the interviewed. Up to 95% of LGBT+ people consider registered partnership to be an insufficient and inferior form of union.

D.4 Opinion on enforcement of the ECtHR judgement in case *D. H. and Others v. the Czech Republic* (application no. [49/2019/DIS](#))

In April 2019, the Czech Government informed the Committee of Ministers of the Council of Europe of the progress achieved in enforcement of the judgement, especially in terms of inclusive education. We informed the Committee of Ministers of issues related to education of Roma pupils, specifically the constantly high number of Roma children attending programmes for students with mild mental disabilities, a controversial amendment to the Decree on



education of students with special educational needs, ethnic segregation in education and an increasing number of students diagnosed with specific learning and behavioural disorders.

D.5 Important meetings

Deputy Minister of the Interior for Civil Service: discussions regarding vacant civil service positions; possible impacts of systemisation on women on maternity/parental leave and implementation of the Defender's [recommendations](#) on work-life balance in civil service of 2018

Union of Towns and Municipalities: discussions on spatial segregation in education; reserved parking and regulation of prostitution in the municipalities.

Association of Primary School Headteachers: discussions on the Defender's recommendation on inclusive education of Roma and non-Roma children (File No. [86/2017/DIS](#)).

D.6 Awareness raising

We issued a [collection](#) of the Defender's opinions on **Discrimination**.

We created a new information [leaflet](#): Discrimination on grounds of sexual orientation and gender identity.

In co-operation with the Business for Society alliance, we talked with representatives of companies about preventing and addressing **harassment at work**.

We also announced the winners of the **"Equal.doc" contest** for documentaries dedicated to the topics of equality and discrimination, made by students from 15 to 19 years of age.

At the University of Pardubice, we gave lectures on **discrimination against consumers**, and also presented our views at the Family Policy Forum on the topic of **equal remuneration for work**. At a legal congress, we informed the participants about **decisions made by Czech common courts regarding anti-discrimination lawsuits**.

We provided the Czech Schools Inspectorate with instructions on how to incorporate the Anti-Discrimination Act in the outputs of its activities.

D.7 Conferences, roundtables and training

Anti-discrimination case law 2018 ([professional seminar](#)): most interesting judgements in the field of anti-discrimination law (European Court of Human Rights, Court of Justice of the European Union, Constitutional Court, Supreme Court and Supreme Administrative Court)

10 years of the Anti-Discrimination Act from the viewpoint of non-profit organisations ([roundtable](#)): evaluation of the effects of the Anti-Discrimination Act in the practice of non-profit organisations; discussion on the possibilities of improving protection against discrimination and future co-operation with the Defender

Discrimination in healthcare ([professional seminar](#)): most common forms of discrimination in healthcare, practical cases in the Defender's activities and case law



10 years together against discrimination ([roundtable](#)): recapitulation of the co-operation between the Defender and administrative authorities in the area of equal treatment; discussion on potential legislative changes, most important case law and education in the area of equal opportunities

Quo vadis, equality body? ([professional seminar](#)): recollection of important milestones over the ten years of Defender's work as the national equality body; discussion on recommendations of the Council of Europe and the European Commission on standards for equality bodies; christening of a [collection](#) of the Defender's opinions on Discrimination.



E. Monitoring of rights of people with disabilities

In January 2018, the Defender became a monitoring body for the implementation of rights recognised in the Convention on the Rights of Persons with Disabilities

E.1 Fifth meeting of the advisory body

During its May meeting, the advisory body focused on the **right to education**. It first familiarised itself with the preliminary results of visits to homes for people with disabilities, where we also focus on whether the clients of these services have the opportunity to educate themselves, under what conditions and how. The members of the advisory body then presented their suggestions for the Defender in the area of education. This was followed by a discussion on the aspects of integration and other commitments of the State within the right to education.

E.2 Ongoing surveys

Survey on employment of people with disabilities in the public sector

The objective of the recently initiated survey is to determine under what conditions people with disabilities are employed in the public sector. We therefore focus on whether

- such workplaces are accessible to people with disabilities;
- the employers are able and willing to adapt positions and job descriptions to the abilities of disabled employees;
- the employers adhere to the mandatory share of employees with disabilities or prefer to provide a “substitute performance”; and
- the selection procedures are adapted to the needs of people with disabilities and, if so, how.

We addressed all the ministries, regional authorities and all organisational components of the State with the questionnaire survey.

Survey on availability of a social service consisting in emergency housing and dormitories for people with disabilities

We intend to map the availability of various forms of housing for people with disabilities in the long term. We are now looking into whether the social services of emergency housing and dormitories are also available to people with disabilities, and if so, under what conditions. We also focus on recurring obstacles to the provision of these services to such people.

E.3 Visits to homes for people with disabilities

We initiated a series of visits to facilities for people with disabilities. We want to monitor from time to time how people with disabilities live outside normal society in institutional facilities. As part of these visits, we are interested, for example, in how

- these facilities provide specialised preventive healthcare for clients;



- the clients are educated;
- the clients' right to self-reliance is fulfilled;
- the facilities deal with the right to private and family life.

So far, we have visited a total of **five facilities of the planned number of ten**. However, we will request information from all homes for people with disabilities so as to obtain comprehensive information from all the providers of this service.

E.4 Co-operation with people with disabilities and their advocacy organisations

Inclusion of people with disabilities and consultations on issues concerning them belong among the general commitments stipulated in the Convention on the Rights of Persons with Disabilities. Therefore, we established co-operation with more than sixty organisations dealing with the rights of people with disabilities. In mid-June, the Office of the Public Defender of Rights held the first meeting with more than 60 people with disabilities and representatives of their organisations. We discussed topical issues in the area of rights of people with disabilities and collected suggestions for our further activities.

We also began issuing an information bulletin. In this way, we share news on our activities and other topics.

E.5 Co-operation at the European level

In May, we participated in the Work Forum on the implementation of the United Nations Convention on the Rights of Persons with Disabilities. At the Forum, European countries shared their experience with implementation of the individual articles of the Convention, especially reforms pertaining to inclusive elections, and also the enforceability of rights under the Convention and interplay between protection of people with disabilities and of other vulnerable groups. A meeting of the European Commission was followed by a meeting of the European Network of National Human Rights Institutions, where representatives of the individual monitoring mechanisms discussed the possibility of a joint procedure in promoting the rights of people with disabilities.

E.6 Conferences, roundtables and training

In April, we organised a roundtable on excusing students with disabilities from physical education classes. The objective was to start a wider discussion and identify the main systemic obstacles to **involvement of children with disabilities in physical education classes, sports activities and other associated events** (trips, skiing camps, swimming, etc.). The participants from the Ministry of Education, the Schools Inspectorate, schools, special education centres, academia, physicians as well as students themselves and their parents subsequently formulated recommendations to improve the situation.

A roundtable was also held with representatives of **homes for people with disabilities** concerning the possibility of **improving the clients' ability to exercise their right to vote**. We presented our findings from the visits to these facilities carried out after the municipal elections in 2018. We found that:



- there was no systematic support for clients with regard to elections;
- the facilities did not know the current legislation applicable to restrictions of legal capacity;
- there were insufficient barrier-free polling stations.

We therefore initiated a partnership with the Ministry of the Interior, which began preparing measures to increase accessibility of elections to people with disabilities.

In co-operation with the Society Supporting People with Mental Disabilities and the QUIP organisation, we also organised an **awareness-raising event focusing on elections**. The participants discussed obstacles preventing them from voting and the importance of participation of disabled people in political life. They were also able to take part in a “mock election”.

We organised a roundtable titled ***Current issues in sexuality of people with disabilities*** with experts in this field and people with personal experience in this regard. The participants' contributions related, for example, 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.

In connection with the topic of sexuality of disabled people, we presented our views at a **methodological meeting** on the topic of ***“Partner relations, intimacy and sexuality of clients of residential social services”***, where we presented the findings from our visits to homes for people with disabilities in this area.

On the occasion of the **European Independent Living Day**, on 6 May, we publicly [presented Australian film documentary *Defiant Lives*](#). The film openly speaks about crucial issues concerning people with disabilities, such as involuntary life in an institution, discrimination, lack of self-reliance, and the need to change the social perception of disabled people. The documentary itself features more than 600 archive recordings and photographs from all over the world depicting public speeches, rallies and arrests of disabled people fighting for their rights. The screening was followed by a **panel discussion** with interesting guests who have a professional or personal experience related to the rights of people with disabilities. The participants actively participated in the debate not only in the projection room, but also at home, as questions could also be presented to the guests via an online chat.

At the beginning of June, a second meeting was held involving people with psychosocial disabilities and their representatives. The topic was **awareness of people with psychosocial disabilities of their rights and available of legal assistance**, especially in case of hospitalisation in a psychiatric hospital. People with experience in this regard primarily pointed out that legal counselling and help were practically unavailable. The participants suggested various measures that would be further elaborated in the working group. We will use the underlying material obtained for our further activities.

We presented a paper at the **conference titled *“Education, employment and community life of the deaf”***, organised by Masaryk University as part of the celebration of the 100th anniversary of its foundation, together with the Czech Association of People with Hearing Impairment. We



talked about the rights of people with hearing impairments from the viewpoint of the Convention on the Rights of Persons with Disabilities.

We also lectured for **children with hearing impairments** from three countries – the Czech Republic, Lithuania and Latvia. We presented the role of the Public Defender of Rights, his/her competence and activities, including monitoring of the rights of disabled people and the Convention on the Rights of Persons with Disabilities.

We also bear in mind that the Convention on the Rights of Persons with Disabilities itself **has to be accessible to disabled people**, and we therefore recorded its translation into the Czech Sign Language. Once the technical work is completed, we will publish the translation on the website at www.ochrance.cz.

Brno, 5 August 2019

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