



Report of the Public Defender of Rights on Activities in the 3rd 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.....	4
B. Public administration.....	6
B.1 Illegal building in a natural monument.....	6
B.2 Duty of Czech children living abroad to pay local waste collection fees in the Czech Republic.....	6
B.3 Children's right to be heard.....	7
B.4 Visa for a spouse.....	7
B.5 Document for a child traveling to the Czech Republic for a surgery	8
B.6 False expert report	8
B.7 Allowance for a grandparent providing foster care	8
B.8 Withdrawal of unemployment benefit payments.....	9
B.9 Children's health insurance	10
B.10 Premiums paid by entrepreneurs towards public health insurance	10
B.11 Retirement pension – the time of studies abroad considered in the assessment of eligibility.....	11
B.12 Duties of a guardian during institutional treatment of the person under guardianship	12
B.13 Fine for filing a tax return in an incorrect format.....	12
B.14 University education in a prison	13
B.15 Application to determine competence.....	13
B.16 Conferences, roundtables and training	14
C. Supervision over restrictions of personal freedom and expulsion monitoring.....	15
C.1 Systematic visits and monitoring of expulsion	15
C.2 Conferences, roundtables and training	15
D. Protection against discrimination.....	17
D.1 Transfer of an employee to perform work at a different place	17
D.2 Recommendations for representation of victims of discrimination	18
D.3 Opinion concerning the sixth monitoring cycle of the European Commission against Racism and Intolerance	18
D.4 Important meetings	19
D.5 Awareness raising	19
D.6 Conferences, roundtables and training	20
E. Monitoring of rights of people with disabilities	21
E.1 Sixth meeting of the advisory body	21
E.2 Ongoing surveys.....	21



E.3	Co-operation with the UN Special Rapporteur on the rights of persons with disabilities	21
E.4	Co-operation with non-profit organisations and people with disabilities	22
E.5	Conferences, roundtables and training	22



A. Defender's activities in numbers

During the 3rd quarter of 2019, we received **1870** complaints (29 fewer than during the same period last year). The share of complaints falling within our mandate (**71.71%**) is higher than the average for 2018 (68%). As in previous years, most of the complaints concerned social security – especially pensions and benefits (348) and construction projects (161).

In 104 cases, people complained about unequal treatment, of which **67** related to grounds prohibited by the Anti-Discrimination Act. We also provided discrimination-related information and analyses to international entities or national authorities in 15 cases (discrimination on the grounds of nationality, segregation in education, protection of LGBT+ people against hate crime, protection of people who stand up for discrimination victims etc.).

We visited **3 facilities**, monitored **13 cases of expulsion of foreign nationals** and examined **2034 expulsion decisions**.

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

The following figure illustrates the numbers of complaints:



1870

complaints received
in Q3 2019,
including:

72%

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



161

Construction projects



111

Pensions



109

Prison service



95

Social aid and benefits
for people in material
need



75

Protection of
children



70

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 Illegal building in a natural monument (File No. [5881/2019/VOP](#))



A recreational building cannot be permitted in areas designated as non-buildable in the spatial plan. If the developer commences its construction anyway, the construction authority must impose a fine for illegal construction, prohibit the developer from continuing with the construction, impose a further fine if the prohibition is violated and then initiate proceedings on removal of the building.

On rare occasions, we witness “first-hand” the procedure of construction authorities against developers who are fully aware that they are building in the territory of a natural monument in violation of all regulations and are not willing to observe bans imposed by the environment protection body and the construction authority.

B.2 Duty of Czech children living abroad to pay local waste collection fees in the Czech Republic (File No. [7756/2018/VOP](#))



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. 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 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).

B.3 Children's right to be heard (File No. 4559/2019/VOP)



Each child that is able to comprehend the subject of any proceedings concerning him/her has the right to receive information and make a statement on the case (the right to be heard). The form and scope must be appropriate to the child's age. The responsibility for ensuring that this right is satisfied is primarily borne by the court, but the guardian *ad litem* must communicate with the represented child him/herself and inform the child about the developments in the proceedings even without the court ordering the guardian to do so. Dealing with a parent is not enough.

In the case at hand, the court appointed an authority to serve as a guardian *ad litem* for a fourteen-year-old girl in proceedings regarding maintenance and support. The officials from the authority did not speak to the girl, did not explain the case and did not ask for her opinion, even though she actually came to the meeting with the authority with her mother (she was waiting in the corridor). She received no information from the body for social and legal protection of children which the court had ordered to visit her at her home. The authority argued that the court had not ordered it to communicate with the girl and that the authority had assumed that the mother would provide the girl with the necessary information.

In the course of our inquiry, the authority acknowledged its errors and promised to better satisfy the right to be heard of any children it represents in court proceedings as a guardian *ad litem*.

B.4 Visa for a spouse (File No. [2341/2017/VOP](#))



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 cases of doubt, the administrative body must recognise the marriage and issue a decision to that effect.

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. Since 2013, he 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. The Defender started to deal with the case in 2016. She stressed 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 Defender believed that the Ministry had not proven the sham nature of the marriage.

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



B.5 Document for a child traveling to the Czech Republic for a surgery (File No. [3242/2019/VOP](#))



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 did not change its opinion even after the Ministry of Foreign Affairs sided with the complaint (it upheld her complaint as justified).

Then, the Defender contacted the Ministry of Foreign Affairs, which immediately ordered the consulate to issue the travel document. This took place in late July.

B.6 False expert report (File No. [351/2019/VOP](#))



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. It notified the complainant of this.

B.7 Allowance for a grandparent providing foster care (File No. [6433/2018/VOP](#))



If a grandparent takes care of a child, he/she is only entitled to fostering allowance in extraordinary cases. Account is taken of his/her social and financial situation, the situation of the family and the child's medical condition. The labour office deciding



on whether to grant the allowance must request a statement of the body for social and legal protection of children (the municipal authority). All authorities must provide a proper and comprehensible reasoning for all their statements and decisions.

In the case at hand, the complainant started to provide foster care for her grandson, aged 10, in 2013 and the labour office granted the fostering allowance to her. In 2016, the court also entrusted her young granddaughter into the complainant's care. When the complainant asked for an increase in the allowance, she lost even the fostering allowance for her grandson. We found that even though the authorities had inquired into the overall situation of the family, they had failed to provide proper reasoning for their statements and decisions, and the complainant therefore could not understand why she was not entitled to the allowance. However, detailed information from both authorities confirmed that the case had no longer been extraordinary when the granddaughter had been entrusted to the complainant.

We could not help the complainant. Nonetheless, we proposed that the Ministry should clarify and harmonise the assessment of extraordinary cases with respect to grandparents providing foster care, because we had been informed that the decision-making of the authorities lacked uniformity. An amendment to the legal regulations should also be considered because foster parents are generally entitled to allowances. However, grandparents bear a duty to maintain and support their grandchildren and so their situation is always assessed on an *ad hoc* basis. Perhaps they could receive an allowance automatically, even if a lower one.

B.8 Withdrawal of unemployment benefit payments (File No. [2986/2017/VOP](#))¹



A decision on removal from the job seeker records becomes effective retroactively as of the date of the failure to meet an obligation that caused the removal. However, payment of unemployment benefits still cannot be discontinued until the removal decision enters into legal force. The relevant labour office must also issue a decision on withdrawing the benefit; it cannot merely informally discontinue the payments.

The complainant failed to appear for his appointment at a labour office. The office initiated proceedings on removal from the records and immediately withdrew his unemployment benefits. However, one may not preconceive the result of any removal proceedings, as these not necessarily have to lead to removal from the records. The eligibility for unemployment benefits thus 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 sided with the Defender on this matter. It agreed to audit the procedure of the Labour Office of the Czech Republic in arranging of employment and payment of unemployment benefits, and focus on training of the staff.

1 [Report on inquiry](#), [final statement](#), [notice to the superior authority](#), [press release](#).



B.9 Children's health insurance (File No. [4347/2019/VOP](#))²



If a child is born in the Czech Republic to parents from non-EU countries who have long-term residence permits in the Czech Republic and if, within 60 days, the child's parents apply on his/her behalf for a permanent residence permit based on reasons deserving special attention, the child has a permanent residence from his/her date of birth until the proceedings on the application are terminated (regardless of the result) under the Residence of Foreign Nationals Act. During this time, the child is insured under the public health insurance scheme.

A child was born prematurely to a woman – foreign national from a post-Soviet country holding a long-term residence permit. The woman had been born in the Czech Republic, she had worked and lived here. Therefore, she was insured under the public health insurance scheme, while the child was not and commercial insurance had to be taken out for him. However, the commercial insurance company refused to insure a premature child. Therefore, the mother applied for a permanent residence for her son, relying on reasons deserving special attention, and also for registration in the public health insurance scheme. But the insurance company refused to insure the child because his mother did not have a permanent residence, but merely a long-term one.

We drew the health insurance company's attention to judgement of the Supreme Court of 22 September 2016, File No. [33 Cdo 2039/2015](#), according to which the type of the parent's residence permit did not matter. The health insurance company then immediately provided insurance to the child with effect from his birth.

B.10 Premiums paid by entrepreneurs towards public health insurance (File No. [2222/2019/VOP](#))



Entrepreneurs pay advances towards the public health insurance premiums at the rate of 13.5% of their income minus their expenses, but the amount of the premiums must equal in any case at least 13.5% of the minimum salary (even if the entrepreneur has no income). Entrepreneurs are not obliged to pay the monthly advance if they are unfit to work for the whole month. However, if an entrepreneur's premiums are paid by the State for a whole month (e.g. if the entrepreneur is eligible for maternity benefits), then the entrepreneur pays an advance equalling the actual income minus the expenses (i.e. the minimum assessment base – minimum salary – does not apply). The “whole month” rule (the law stipulates “if these circumstances prevail throughout the decisive period”) cannot be interpreted in that the entrepreneur must pay the advance based on the minimum salary even if he/she does not have any income because, in the relevant month, he/she meets not one condition based on which he/she does not have to pay the advance, but rather two such conditions, one following after the other.

A health insurance company required that an entrepreneur (hairdresser) pay the minimum advance towards the premium in the amount of CZK 2,024 for November 2018, even

² [Report on inquiry, press release.](#)



though she had not worked (had not had any income) in that month because she had been receiving sickness benefits for the first half of the month since she had been pregnant and then she had started her maternal leave. The insurance company insisted that she had not been unfit to work for the whole month (if she had been unfit to work for the whole month, she would not have had to pay the advance) and that she had only been “an insured person whose premiums are paid by the State” for a part of the month (if she had received the maternal leave for the whole month, her advance would have equalled CZK 0).

After we initiated our inquiry, the insurance company processed, *ex post*, the complainant’s notice “of termination and non-performance of business activity as of 30 July 2018”. It then changed the information in the register of insured persons and refunded the advance and the penalties to the complainant because she was then registered for November 2018 as a person with no taxable income for whom the premium is paid by the State.

B.11 Retirement pension – the time of studies abroad considered in the assessment of eligibility (File No. [2282/2019/VOP](#))



When assessing the Czech citizens’ eligibility to pensions, the time of studies abroad before 1 May 1990 is considered as a substitute insurance period; this applies to the first six years of study after the relevant person achieved 18 years of age. It is required that the person be a Czech national at the time of the studies and also at the time when he/she lodges the application for the pension.

The Czech Social Security Administration long refused to consider the time of studies abroad while assessing the eligibility for the pension of applicants who were not Czech nationals at the time of the studies. It claimed that any studies before 1 May 1990 had to be assessed in accordance with the then-applicable regulations and the students had to have a Czechoslovak nationality. However, the Supreme Administrative Court rejected this interpretation: *“If a Czech national acquired the necessary qualification in his/her country of origin and subsequently used it to earn income in the Czech Republic and paid levies on this income into the Czech pension scheme, and he/she ultimately became eligible for retirement pension exclusively under the Czech legal regulations, there is no reason to disregard the time of his/her studies abroad when assessing his/her eligibility to the pension.”*³

The Czech Social Security Administration acknowledged that its interpretation was untenable in view of the case law⁴ and, following a consultation with the Ministry of Labour and Social Affairs, it adopted the new interpretation, taking account of the time of the studies abroad for all applicants.

³ Judgment of the Supreme Administrative Court of 22 March 2012, Ref. No. 4 Ads 145/2011-59, available at www.nssoud.cz.

⁴ Judgment of the Supreme Administrative Court of 22 March 2012, Ref. No. 4 Ads 145/2011-59; judgment of 17 April 2014, Ref. No. 4 Ads 113/2013-45; judgment of 10 June 2015, Ref. No. 2 Ads 20/2015-142; all available at www.nssoud.cz.



B.12 Duties of a guardian during institutional treatment of the person under guardianship (File No. [3308/2017/VOP](#))⁵



A guardian must ascertain the wishes of the person under guardianship, proceed in accordance with such wishes and explain to the given person any steps the guardian takes on his/her behalf, even if the person under guardianship suffers from a mental disorder. The guardian represents the person under guardianship in interactions with the provider of healthcare services or, if relevant, informs the provider of this person's wishes. It is not necessary for the guardian to have a medical education but in order to protect the rights of the person under guardianship, the guardian must know what treatment the person is undergoing and what rules he/she must comply with in the treatment and must determine this person's wishes and his/her opinion on the respective treatment. A guardian may not disregard his/her duties only because the person under guardianship is being treated by physicians.

The complainant is undergoing institutional treatment in a psychiatric hospital. She was dissatisfied with the procedure adopted by her public guardian (municipality). We found in our inquiry that, in some cases, the guardian did not act in accordance with the complainant's wishes (and in some cases, the guardian did not even attempt to learn what the complainant's wish was) or failed to inform her of the legal acts made on her behalf, did not sufficiently protect her rights and interests in court proceedings, did not care about her medical condition and did not maintain regular contact with her to the necessary extent and in an appropriate form.

The guardian did not accept some of the objections; however, after the final statement was issued, he promised to strive for proper performance of public guardianship.

B.13 Fine for filing a tax return in an incorrect format (File No. [6827/2018/VOP](#))⁶



Since May 2016, VAT returns must be filed in the XML format. The format of the returns was not governed by any legal regulation until that time. Nonetheless, one regional court acknowledged that the PDF format was admissible in the case of a specific applicant at the end of 2014. If the tax administrator acted in such a way that another taxpayer could legitimately expect it to follow this procedure, it was not allowed to subsequently fine the taxpayer for not filing her tax return.

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. The complainant knew that the court was already dealing with 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 court acknowledged the admissibility of the PDF format and, therefore, the complainant did not remedy the alleged defect and did not respond to

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

6 [Report on inquiry, press release.](#)



further requests of the tax administrator in 2016, either. However, she was fined in 2017 for not filing VAT returns. Yet, the amounts of the tax assessed and fines were determined based on these returns.

During the inquiry, the tax administrator acknowledged that until 2016, it had not been legitimate to consider returns filed in the PDF format invalid (i.e. not filed) and it therefore cancelled the fines it had imposed.

B.14 University education in a prison (File No. [6731/2018/VOP](#))⁷



It is more beneficial to society when prisoners serve their sentence doing something meaningful, rather than just passively observing the world outside through the narrow space between the bars. The European Prison Rules require prisons to provide convicts with access to the widest possible range of educational programmes. Prisons should thus consider convicts' wishes and enable them to study according to their choice unless this is prevented by serious reasons.

The complainant, who was serving a prison sentence, wished to enrol in a distance university programme of computer science. The complainant's family, prison staff and university representatives together discussed technical details of how to make the study possible because, for security reasons, the complainant did not have access to a computer with internet connection. The university was unable to enrol the complainant in the selected programme at the time but allowed him to attend an off-line pilot course titled *Theory of Languages and Automata* (with study materials and tasks available on a CD).

Following the report on inquiry, the prison complied with the complainant's wish and, in co-operation with the university, prepared conditions enabling him to take part in the off-line course. The possibility of the complainant's further studies also depends on the university's requirements.

B.15 Application to determine competence (File No. [38/2019/SZD](#), Pl. ÚS 19/19)



The Public Defender of Rights is authorised and obliged to assess acts and decisions of administrative authorities, including the Ministry of the Interior. The Defender cannot perform this duty without becoming familiarised with documents underlying the relevant decisions. In her inquiry, the Defender does not evaluate an underlying statement, but rather only whether such a statement exists and how the authority decided in view of its specific content.

In her report on activities in the 1st quarter of 2019 ([Annex](#)), the Defender informed the Chamber of Deputies that the Ministry of the Interior was hindering her inquiry by refusing unlawfully to submit the requested written documents (File No. [3/2019/SZD](#)). The Defender filed an application with the Constitutional Court because conflicts of competence fall within the jurisdiction of this institution.

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



B.16 Conferences, roundtables and training

Current issues in refugee and foreigner law (annual [scientific seminar](#), video recording available)

Construction defects and possible solutions ([professional seminar](#) organised in co-operation with the Regional Authority of the Vysočina Region, intended especially for employees of first-instance construction authorities)

Case studies dealing with experience of regional authorities in matters concerning publicly accessible special-purpose roads ([roundtable](#))

New leaflets: [Insurance premiums for public health insurance, Ombudsperson and experts](#); all leaflets can be found (in Czech) at www.ochrance.cz, in the *Životní situace (Problems and their solution)* section.



C. Supervision over restrictions of personal freedom and expulsion monitoring

Since 2006, the Defender has been the national preventive mechanism 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 **3 facilities** and performed **monitoring in 13 instances** of administrative and criminal expulsion of foreigners, both by land and by air.

We continue in a series of visits where we focus on treatment of accused persons during **remand in custody**. This time, we visited the České Budějovice Remand Prison. In the **treatment facility for long-term patients** attached to the Vimperk Hospital, we inquired into the degree of compliance with the standards of treatment contained in the 2017 summary report on visits to treatment facilities for long-term patients (File No. [3/2015/NZ](#)). We found that Spolek pro seniory Mír Práče, an association for the elderly, operates an accommodation facility in which it **provides care to the elderly, as well as other people dependent on care, without proper authorisation**. The overall situation has already been described in our 2015 summary report (File No. [28/2014/NZ](#)).

Recently, we have published a report on our visits to the **Znojmo Children's Home** (File No. [12/2019/NZ](#)) and the **Radost Children's Home** (File No. [43/2019/NZ](#)).

We will initiate a **new series of visits** focusing on social services facilities – special regime homes providing care to **persons with reduced self-reliance due to a chronic mental illness or addiction to dependency producing substances**. As a part of preparation, we visited two facilities of this type and underwent training with a foreign expert.

C.2 Conferences, roundtables and training

We acquainted quality managers in psychiatric hospitals with the **issue of human rights in psychiatry**. The training was based on experience from systematic visits and we focused on how psychiatric hospitals could prevent ill-treatment and strengthen protection of the rights of patients and employees. We also followed from the [2019 CPT report to the Czech](#)



[government](#)⁸ and from the [summary report on use of means of restraint in psychiatry](#) (research and analyses conducted as a part of the Reform of Psychiatry strategy).

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.

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.

In the [Ranní Plus](#) morning show broadcast by Czech Radio’s Plus station, we commented on the current developments in the area of social services, i.e. on the government’s reluctance to promptly adopt legislation regulating **ill-treatment in social services**. Furthermore, in the [Odpolední Plus](#) afternoon show on the same station, we focused on the issue of **prison overcrowding**. In the [Pro a proti \(Pros and cons\)](#) show, we shared our insights from visits to **facilities for children requiring immediate assistance**. In the [Apetýt \(Appetite\)](#) show broadcast by Czech Radio Brno, we discussed issues in the area of **psychiatry**, its reform and the rights of patients. In the [Host Dne na Moravě \(Guest of the Day in Moravia\)](#) show on the same station, we shared our experience of **care for the elderly** in both registered and unregistered facilities.

8 For psychiatry, see paragraph 90 *et seq.*



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 January of 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 Transfer of an employee to perform work at a different place (File No. [7571/2017/VOP](#))



If an employer refuses to employ a candidate or transfer an employee to another place of work on grounds of his/her age or medical condition, the employer discriminates against such a person. At the same time, if such a candidate or employee is disabled, the employer will be deemed to discriminate against him/her indirectly if the employer fails to adopt appropriate measures for the benefit of this person under to the Anti-Discrimination Act and if this employee thus loses his/her job. The obligation to adopt appropriate measures is borne by the employer's organisation as a whole (all its organisational units) and also applies to cases where the employee's application for transfer or relocation is not based on a recommendation of a provider of the occupational medical services pursuant to the Labour Code.

The complainant worked in a prison. As a commuter, he would travel over 300 km every week. Since his medical condition no longer allowed him to continue commuting, he requested a transfer to a prison closer to his home. The director of the prison to which he was to be transferred did not grant his consent, although the prison was regularly recruiting new employees for the given position. The circumstances indicated that the prison had lost its interest in the complainant's transfer after it had learnt about his age (60 years) and medical condition (long-term back problems). Since the employer did not allow the complainant to change his place of work, the complainant had to terminate his employment by agreement.

Because the complainant wished to lodge an anti-discrimination action, we referred the case to *Pro bono alliance* after we issued our report in which we found discrimination in the case. The attorney-at-law who accepted the engagement eventually filed a lawsuit because the employer had rejected the claims raised in the pre-litigation request



(compensation for damage caused by a loss of earnings and compensation for intangible damage).

D.2 Recommendations for representation of victims of discrimination (File No. [40/2019/DIS](#))⁹



1. Try to resolve discrimination disputes amicably.
2. Use multiple sources when preparing your arguments.
3. Pursue claims for pecuniary compensations for intangible damage.
4. Use audio and video recordings as evidence.
5. Draw attention to the shared burden of proof.
6. Consider the judge during the court proceedings.
7. Co-operate with other entities as required.
8. Communicate with the client in an effective and sensitive manner.
9. Be prepared to communicate with the media.
10. Expect that discrimination disputes are quite demanding.
11. Educate yourselves in the area of anti-discrimination law.
12. Follow the activities of the Public Defender of Rights.
13. Think strategically.

For 10 years now, the Defender has contributed to the promotion of the right to equal treatment and, in conformity with law, provided guidance to victims of discrimination in filing discrimination lawsuits. However, the Defender herself is not authorised to represent victims of discrimination in court. The role of attorneys-at-law is therefore irreplaceable and indispensable in this regard. Therefore, in our recommendation, we summarise the Defender's co-operation with attorneys to date and subsequently present the results of a qualitative survey conducted with selected lawyers having experience of representing victims of discrimination. The recommendation also contains a list of useful sources in the area of anti-discrimination law.

D.3 Opinion concerning the sixth monitoring cycle of the European Commission against Racism and Intolerance (File No. [52/2019/DIS](#))

The European Commission against Racism and Intolerance (ECRI) has asked the Defender for her opinion with regard to the individual areas she is to address in the sixth monitoring cycle, including areas such as equal treatment and access to rights (including the role of the national equality body), hate speech and hate-motivated violence, integration and inclusion. We responded to the questions asked with respect to the role of the Czech national equality body and shared our findings and experience.

In the area of inclusive education, we mentioned a change in the legislation (a decree on inclusion and introduction of compulsory preschool education); however, we also pointed out that we were still unable to achieve participation of all children in compulsory

⁹ [Recommendations, press release.](#)



preschool education and referred to the Defender's recommendation on compulsory preschool education (File No. [75/2018/DIS](#)).

We informed the ECRI of the survey conducted on LGBT+ equality and the recommendations made (File No. [4/2019/DIS](#)).

We also pointed out certain problematic aspects of the foreigner status – e.g. limited access to the system of public health insurance and education of pupils with a different mother tongue.

We also commented on issues of hate speech and hate-motivated violence and the situation of the Roma in the Czech Republic.

D.4 Important meetings

Ministry of the Interior: **segregation in housing and education**, results of supervisory activities

Czech Trade Inspection Authority: negotiations on the possibilities of punishing carriers who limit the **entry of dogs (assistance and signal dogs) into public transport vehicles**; planned methodological guidance for regional inspectorates

Office of the Government of the Czech Republic: preparation of pilot debate meetings on the issue of **prevention and dealing with sexual harassment in civil service offices**

District Labour Inspectorate for the South Moravian Region and Zlín Region: **inspection of equal treatment at the workplace**; implementation of the Defender's final statement in practice (File No. [5112/2014/VOP](#))

D.5 Awareness raising

We discussed **discrimination** at the [Summer Film School Uherské Hradiště festival](#). The audience also had the opportunity to see the [winning documentary film](#) by Ema Ostřížková and Karolína Žáková in a secondary schools competition named Equal.doc.

We gave a speech on **equal pay for women and men** at a seminar of the European Academy of Law in Prague.

We gave a block of lectures at the [School of Human Rights](#) in Náměšť nad Oslavou.

We informed the members of the Committee on Fundamental Rights and Prevention of Discrimination at the Government Council for Human Rights about **age discrimination**.

At the occasion of [Hradec Social Work Days](#), we presented specific findings following from resolution of cases of **social exclusion in housing**.

Directly in the Chamber of Deputies of the Parliament of the Czech Republic, we informed companies co-operating with the Business for Society platform about **most common cases of discrimination on the part of employers**.



D.6 Conferences, roundtables and training

Discrimination in access to employment (professional seminar): resolution of case studies with inspectors of district labour inspectorates, topics: rejection of a job seeker on the grounds of property, sex, age, ethnic origin

Representation of victims of discrimination ([professional seminar](#)): key anti-discrimination case law from 2009–2019; work with statistical data in court decision-making; practical experience of attorneys-at-law; presentation of the Defender's recommendations on representing a victim of discrimination (File No. [40/2019/DIS](#)).



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 Sixth meeting of the advisory body

During its September meeting, the advisory body focused on an extensive topic of work and employment. The members of the advisory body became acquainted with interim results of the ongoing research aimed at functioning of expert working groups involved in decision-making on work rehabilitation of job seekers. They also received preliminary data on a survey mapping employment of people with disabilities in the public sector. As part of a questionnaire survey, we contacted all organisational components of the State and, later, we would conduct more detailed interviews with selected respondents. Subsequently, the members of the advisory body shared their practical experience and proposed priorities for further activities of the Defender in the area of education (Article 24 of the Convention on the Rights of Persons with Disabilities).

E.2 Ongoing surveys

(1) Rights of people living in homes for people with disabilities

At the beginning of September, we launched a survey to identify certain aspects of the service of providing homes for people with disabilities. The survey follows on from the findings obtained during our visits to facilities for people with disabilities. We asked all homes for people with disabilities in the Czech Republic to fill in our questionnaire. We focus, for example, on the provision of services to children, conditions and possibilities of clients' employment and availability of healthcare for people living in institutional care. Results of the survey should be available at the end of 2019.

(2) Survey on the provision of work rehabilitation and expert working groups

From the individual contact offices of the Labour Office of the Czech Republic, we collected answers to a questionnaire concerning functioning of expert working groups involved in decision-making on the form of work rehabilitation of job seekers. We are currently working on a survey report in which we will summarise not only the results of the inquiry, but also recommendations for improvement of working groups' procedures and efficiency.

E.3 Co-operation with the UN Special Rapporteur on the rights of persons with disabilities

The UN Special Rapporteur on the rights of persons with disabilities, Catalina Devandas Aguilar, is preparing a study on *Bioethics and Disabilities*. At her request, we informed her about the situation in the Czech Republic, including legislation, availability and practice in the area of prenatal testing, abortions performed due to disability, and experimental treatment of people with disabilities.



E.4 Co-operation with non-profit organisations and people with disabilities

In August 2019, we issued a second [information bulletin](#) for co-operating organisations. Among others, it includes information on the recent activities of the Department for Protection of Rights of People with Disabilities and news on the rights of people with disabilities. We invited the organisations to become involved in the Defender's ongoing and planned activities. Another meeting of co-operating organisations will take place on 29 November 2019.

E.5 Conferences, roundtables and training

In July, we participated in a seminar for parents where we discussed the protection of rights of their adult children with psychosocial disabilities. The parents were interested primarily in the issue of restriction of legal capacity and other options for support in decision-making, as well as the relationship between these measures and potential treatment in a psychiatric hospital. They also asked about the possibilities of supporting their children in involuntary hospitalisation, the concept of a fiduciary and the role of a guardian in detention proceedings.

On 26 September 2019, Sts Cyril and Methodius Faculty of Theology of Palacký University Olomouc organised a [conference](#) titled **Disabilities in the Context of Social Work**. 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.

In September, there was a third **meeting on the topic of people with psychosocial disabilities** concerning the issue of monitoring the rights of people in psychiatric hospitals. At the meeting, we presented the course of our systematic visits and the most important findings in the area of psychiatric care. Other monitoring mechanisms in the Czech Republic were also discussed. The participants shared their experience and proposals for increasing efficiency of monitoring where relevant.

Through [social networks](#), we participated in an awareness-raising campaign for spinal muscular atrophy. We provided information not only about this disease, but primarily about people who, despite the effects this disease has on them, fight for the rights of disabled people.

On the occasion of the **International Day of Sign Language**, we [published](#) a translation of **the Convention** on the Rights of Persons with Disabilities into the Czech Sign Language.¹⁰

Brno, 21 October 2019

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¹⁰ Available at www.ochrance.cz, in the "Monitoring of the rights of people with disabilities" section.