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Report of the Public Defender of Rights on Activities in the 3rd Quarter of 2020

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 about my activities.



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A. Defender's activities in numbers

We received a total of 1972 complaints in the 3rd quarter of 2020, which was 5.4% more than in the same quarter of 2019. The share of complaints falling within our mandate (69%) was below the average for 2019 (71%). As in previous years, most of the complaints concerned social security – especially pensions (127), activities of the Prison Service (101), construction projects – planning and construction permit proceedings and use of buildings (93) and residence of foreign nationals (86).

In 72 complaints, people objected to unequal treatment, of which 45 cases related to grounds prohibited by the Anti-Discrimination Act.

In 14 cases, we also provided discrimination-related information and analyses to international entities and national bodies.

We visited 4 facilities (a social services facility, a psychiatric hospital, a remand prison and a juvenile correctional institution).

We examined 2,620 administrative decisions on an expulsion. One foreign national's expulsion was monitored in the third quarter of 2020.

We responded to 17 requests for information.

We participated in 15 legislative commentary procedures and strategies.

The following figures illustrate our activities and the numbers of complaints:



COMPLAINTS

1972 


complaints delivered in Q3 2020


5.4 % 

growth compared to Q3 2019

69 % 

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

Pensions | 127 

Planning and construction permit proceedings, use of buildings | 93 




Activities of the Czech Prison Service | 101



Residence of foreign nationals | 86

72

complaints claimed unequal treatment 

The number of complaints against discrimination within the meaning of the Anti-

Discrimination Act reached 45



ACTIVITY



2620

examined decisions on an expulsion



Compared to the previous quarter, this is an increase by

428%

4 visited facilities



17

processed requests for information



RECOMMENDATIONS:

- Handbook for social work educators

- For the Labour Inspectorate bodies on the obligation to maintain confidentiality about remuneration



SURVEYS:

- Provision of extraordinary immediate assistance for dependent children

- Decision-making of Czech courts in discrimination disputes



COMMENTS

The Defender submitted comments with respect to

15 legal regulations and strategies



Compared to the previous quarter, this is an increase by **114%**



EXAMPLES OF COMMENTS:



- Comments on draft Decrees implementing the new Act on Experts, Expert Offices and Expert Institutes



- Comments on the Healthcare Services Bill



- Comments on the draft Decree on Education of Pupils and Students with Special Educational Needs and Exceptionally Gifted Pupils and Students



- Comments on draft Decrees implementing the new Act on Court Interpreters and Court Translators



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.

The Defender also examines the practices of governmental authorities, for example by conducting surveys and sending queries. The Defender uses the findings to improve the work of the authorities concerned.

The text below contains an overview of five cases we inquired into in the third quarter of 2020.

B.1 Are the rules for granting a medical-aid allowance fair? (File No.: SZD 15/2019)

For several years now, we have been drawing the attention of the Minister of Labour and Social Affairs to the unfair list of disabilities qualifying people for a special-aid allowance.

The situation of people with mobility impairment caused by severe disability is the most urgent problem in our opinion. This is because the list of disabilities qualifying people for a special-aid allowance is limited merely to thirteen severe disorders of the musculoskeletal system (e.g. anatomical loss of both lower limbs at the level of lower legs or higher, functional loss of both lower limbs due to complete paralysis (plegia) or severe paralysis, etc.) and twelve internal disabilities causing severe mobility impairment (heart failures in patients on the heart transplant waiting list, implantations of long-term circulatory support, heart failures with resting dyspnoea classified as NYHA class 4, etc.).

The list of eligible disabilities cannot be extended, not even if the person suffers from another, equally severe disability leading to comparably severe mobility impairment. A typical example is severe mobility impairment caused by a disease of or damage to the brain (multiple sclerosis, Parkinson's disease, dementia and many others). According to the interpretation of the Ministry of Labour and Social Affairs, this is a "brain defect" that cannot be classified as a disorder of the musculoskeletal system or an internal disability, although it may lead to the same functional limitations, i.e., to comparably severe mobility impairment. The Labour Office thus rejects applications filed by people with disabilities of this type.

We have repeatedly pointed out that the current situation is at variance with the State's obligations under the Convention on the Rights of Persons with Disabilities. Pursuant to Article 28 of the Convention, the State shall ensure equal access by persons with disabilities to devices (compensation aids) and other assistance for disability-related needs. The States are also obliged to take effective measures to safeguard that devices (compensation aids) and other measures to ensure mobility of persons with disabilities are available at affordable cost.



Comprehensive amendments to Annex 1 to Decree No. 388/2011 Coll. and to the Annex to Act No. 329/2011 Coll. are required so that all people with severe mobility impairment become entitled to special aids, regardless of the type of disability causing their mobility impairment.

B.2 A failure of the Body for Social and Legal Protection of Children (BSLPC) to supervise a boy's custody with fatal consequences (File No. 4436/2019/VOP)



- I. After taking over a case file, the newly responsible BSLPC is obliged to update, properly and in due time, the child's individual protection plan (Section 10 (3)(d) of the Social and Legal Protection of Children Act).
- II. If a family with a child that is subject to the supervision order relocates, the original BSLPC shall either continue in proper supervision of the child or request, sufficiently in advance, that the BSLPC responsible for the administrative district to which the family relocated perform regular inquiries (Section 13 (1)(b) and Section 62 (3) of the Social and Legal Protection of Children Act).

Based on media reports and complaints from third parties, the then Public Defender of Rights, Mgr. Anna Šabatová, Ph.D., opened an inquiry on her own initiative into the activity of a BSLPC in the case of a boy who had been abused to death by his mother's boyfriend. The family had been supervised by the BSLPC for a long time as the mother had been unable to take proper care of her son. During the first two years, the mother and the boy had relocated several times, causing delays and unclarities as to the boy's supervision by the responsible BSLPC. The inquiry revealed several failings. Firstly, there was a months-long delay in updating the child's individual plan due to the internal reorganisation of the responsible BSLPC. Secondly, the BSLPC neglected its duty to supervise the boy's custody. It failed to exercise proper supervision on its own and asked merely for a one-off inquiry by the BSLPC responsible for the administrative district to which the family relocated; moreover, it only did so 8 months following the previous inquiry.

The City Ward Secretary acknowledged that the child's individual protection plan had been updated too late and promised a remedy in the form of more consistent supervision by the head of the department. Although she denied that the supervision had been neglected, she adopted measures for future cases, aimed at clarifying powers of the relevant responsible BSLPC, on the one hand, and the BSLPC responsible for the district of the new *de facto* residence of the family, on the other hand, in case the family supervised by the BSLPC relocates. Furthermore, the BSLPC shall draw up a written record of the above in the future. The Deputy Defender could thus close the case.

B.3 Rejection of the request for documents from a case file in administrative proceedings (File No. 2980/2020/VOP)

The Defender was approached by a complainant from Děčín, who received a payment order (pursuant to Section 125h of Act No. 361/2000 Coll., on road traffic, as amended) from an administrative authority (Ostrava City Hall). The complainant was to pay the amount within 15 days. Within said period, he asked the administrative authority via his data box to send



him documents available with respect to his case. The administrative authority rejected the request with the reasoning that the complainant could come to inspect the file and make a copy of the documents there, i.e., if he came from Děčín to Ostrava, he could inspect the file and ask for a copy.

The Regional Authority of the Moravian-Silesian Region did not find any shortcomings in the City Hall's procedure.

The Defender opened an inquiry into the case and, in his report, he referred, *inter alia*, to the Defender's previous conclusions (File No. 2600/2018/VOP/MŠ), notwithstanding the negative opinion of the Advisory Committee of the Minister of the Interior for the Code of Administrative Procedure.

In his inquiry report, the Defender noted that he was aware that administrative authorities had preferred the opinions of the Ministry of the Interior in the case at hand and that he understood their concerns, specifically that if complainants began to request copies of files (in electronic or paper form) from administrative authorities more often, this would constitute a significant burden. The current practice approved by the opinion of the Advisory Committee, where the applicant must request a copy of the (part of the) file in person, serves to a large degree to dissuade people in order to substantially limit the number of such requests.

However, the Defender believes authorities cannot ignore the facts of the 21st century's life where electronic communication is a common standard. From the practical point of view, there indeed exists no valid reason for the complainant to travel from Děčín to Ostrava just to inspect the file kept with respect to his case. All the more so if he requests the data via his data box and there is thus no doubt as to his identity, the number of requested documents is not large and the administrative authority has them all available in electronic form.

Public administration is, among other things, a public service and everyone who performs tasks within the competence of an administrative authority has the duty to be helpful to the persons concerned as much as possible – see Section 4 (1) of the Code of Administrative Procedure.

In the context of this case, the Defender believes that the procedure adopted by the administrative authority cannot be considered correct even if remote inspections were not directly covered by Section 38 of the Code of Administrative Procedure. Rather, its procedure can be perceived, at the very least, as a breach of the aforementioned principle of helpfulness – which is, *inter alia*, one of the principles of good governance that the Defender promotes (see Section 1 (1) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended).

The Regional Authority of the Moravian-Silesian Region accepted the Defender's arguments and promised to proceed in accordance with the Defender's recommendation, while taking into account the circumstances of each individual case. The Regional Authority shall also give methodological guidance to its subordinate administrative bodies.



B.4 Removal from the register of jobseekers (File No. 4793/2019/VOP)

The Labour Office of the Czech Republic – Regional Branch in Karlovy Vary, Kraslice Contact Office (hereinafter the “Labour Office”) removed the complainant from the register of jobseekers because it concluded that the complainant was medically unfit to meet his obligation to co-operate with the Labour Office in arranging employment. No such removal from the register (i.e. for reasons other than as a penalty) is allowed under the Employment Act. The inability to provide co-operation must be certified by a medical expert report with the requisites stipulated by the Specific Healthcare Services Act. In the case at hand, however, the Labour Office based its decision to remove the complainant from the register merely on a handwritten medical report consisting of a single sentence. The complainant’s removal jeopardised his material needs as he was deprived of subsistence support and housing allowance benefits.

Based on her inquiry, the Deputy Defender concluded that the Labour Office had erred. The Deputy Defender believes it is inadmissible for the Labour Office to rely merely on a medical certificate (irrespective of its form) as the single, yet fundamental, piece of evidence underlying its decision to remove a jobseeker from the register.

The director of the Regional Branch of the Labour Office in Karlovy Vary commented on the conclusions of the inquiry as follows: When assessing the circumstances of the case, the Labour Office acted on the basis of information it had obtained over the course of its practice, where such medical certificates were taken into account on a regular basis, decisions made in specific administrative proceedings, as well as information provided at expert meetings with representatives of the General Directorate of the Labour Office of the Czech Republic (hereinafter the “General Directorate”) or the Ministry of Labour and Social Affairs (hereinafter the “Ministry”). She said that the Labour Office was prepared to change its procedure if the superior General Directorate and the Ministry changed their position.

For these reasons, the Deputy Defender extended her inquiry to the General Directorate and asked for its statement explaining the considerations and arguments that had led it to support the procedure of the Labour Office.

According to the statement she received, the existing practice of the respective branches of the Labour Office had been revised in co-operation with the Ministry and the methodological opinion of the General Directorate in the respective area had been changed based on conclusions of her inquiry. Hence, in the future, removals from the register of jobseekers due to one’s inability to co-operate with the Labour Office shall be assessed exclusively on the basis of medical expert reports issued under the Specific Healthcare Services Act. Mere medical certificates will no longer suffice.

Although the Deputy Defender managed to achieve a change in the practice of the Labour Office, it will only be reflected in future cases and will not help the complainant. No remedy can be achieved in his case because the time limits for initiation of review proceedings have already expired.



B.5 Claiming the income tax credit for a spouse based on an incorrect Statement of Benefits Paid (1815/2019/VOP)



- I. The issuing of a Statement of Benefits Paid (Section 84 (2)(c) of the Sickness Insurance Act) is an administrative act subsidiarily governed by Part Four of the Code of Administrative Procedure. A Statement of Benefits Paid is a public instrument both in administrative proceedings (Section 53 (3) of the Code of Administrative Procedure) and in tax proceedings (Section 94 (1) of the Tax Rules). The issuing of an incorrect Statement of Benefits Paid constitutes a malpractice in the sense of the Act on Liability for Damage Caused during the Exercise of Public Authority.
- II. The Sickness Insurance Act distinguishes among the date of entitlement to benefits (Section 45 of the Sickness Insurance Act), the date of entitlement to payment of benefits (Section 46 of the Sickness Insurance Act) and the date of payment of benefits (Section 110 of the Sickness Insurance Act). Based on the legal terminology, as well as on the usual perception of the phrase “benefits paid”, a Statement of Benefits Paid should contain a list of all benefits paid in the period indicated therein.
- III. The tax administrator cannot determine and assess the tax using the procedure specified in Section 140 of the Tax Rules without considering whether or not the data in the tax return can be accepted without further ado. If any discrepancies follow from the content of the Statement of Benefits Paid (or from other annexes to the tax return), the tax administrator is obliged to further examine the case.
- IV. One of the basic requisites of a decision to waive default interest is to provide a proper and convincing reasoning (Section 102 of the Tax Rules), specifically indicating how the tax administrator assessed the grounds for waiver claimed by the taxpayer (Section 259b of the Tax Rules). If the tax administrator refers in its reasoning merely to a list of justifiable grounds specified in Guideline No. GFŘ-D-2, its decision will not meet the legal requirements.
- V. Acts taken by taxpayers while relying on a public instrument issued by another public authority constitute a justifiable ground for waiver of default interest (Section 259b (2) of the Tax Rules).

One of the conditions for claiming the income tax credit for a spouse is that the spouse did not generate his or her own income exceeding CZK 68,000 in the tax period. This income also includes maternity benefits. The complainants' wives exceeded the relevant limit because of maternity benefits for December, which were paid to them in January of the calendar year under assessment. The complainants erroneously classified the benefits as income for the previous calendar year (instead of income for the calendar year under assessment, to which the benefits correctly belonged). The Statement of Sickness Insurance Benefits Paid issued by the District Social Security Administration significantly contributed



to the error, as the benefits paid for December were not included therein (although they should have been). In addition to the unjustifiably claimed tax credit, the complainants also ultimately had to pay default interest (in the order of several thousand crowns). Many of them filed a request for waiver of the interest with the tax authority, but to no effect. Those who requested that the Ministry of Labour and Social Affairs compensate them for damage caused by a malpractice of the Social Security Administration bodies were also unsuccessful.

The Czech Social Security Administration informed the Defender with respect to the inquiry report that it shared his opinion that the content of its statement had to be unambiguous and correct. Therefore, employees of the Czech Social Security Administration had been repeatedly advised of the correct procedure. At the same time, the Czech Social Security Administration promised that, in the future, each statement shall also contain an accompanying text and explanation as to the rules on the basis of which the respective sickness insurance benefits were included in the table/output.

In June 2020, the General Directorate of Finance issued new Guideline No. GFŘ-D-45 on waiver of tax accessions, where it supplemented the list of justifiable grounds for delay with the specific situation of taxpayers acting on the basis of an incorrect statement issued by the District Social Security Administration (see section III (3) (A), justifiable ground No. 11).

The Defender considered the adopted measures efficient and sufficient and thus closed the inquiry.

B.6 Conferences, roundtables and training

In the third quarter of 2020, we organised the following educational events:

- Expert seminar: Placing children in neutral environment
- On-line conference: Regulation of sexist advertising in the 21st century
- Roundtable: Reserved parking for people with disabilities
- Roundtable: Handling complaints against the procedure of healthcare services providers
- Expert seminar: Selected aspects of decision-making on granting international protection



C. Supervision over restrictions of personal freedom and expulsion monitoring

The Defender is 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 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. The Defender also monitors detention of foreign nationals and the performance of administrative expulsion.

C.1 Systematic visits and monitoring of expulsion

In the third quarter, the Deputy Defender visited 4 facilities. The facilities included the social services facility in Návojná, a special-regime home for people with chronic mental illness and people with or at risk of alcohol addiction resulting in decreased self-sufficiency. Furthermore, the Deputy Defender visited the Psychiatric Clinic of the General University Hospital in Prague, Prague Pankrác Remand Prison, where the visit focused on remand units, and the Juvenile Correctional Institution and Children's Home with School, Primary School, Secondary School and School Canteen in Kostomlaty pod Milešovkou.

We monitored one sentence of expulsion from the Prague Ruzyně Remand Prison to Václav Havel Airport in Prague.

Findings from systematic visits carried out during the "first" wave of the COVID-19 epidemic

During our press conference held on 30 July 2020, we presented findings from a series of facility visits carried out between mid-May and mid-June 2020 to 12 facilities, specifically 2 prisons, 2 social services facilities, 4 facilities for children, 2 facilities for foreigners and 2 psychiatric hospitals. The rationale behind the visits was to find out how the Covid-19 epidemic affected the life in the facilities, what measures were adopted there in connection with the epidemic, on the basis of what information and instructions this happened and whether or not the measures disproportionately interfered with the clients' rights. The findings ascertained during the visits supplemented the findings from our regular communication with the facilities during the state of emergency.

No ill-treatment was found in any of the facilities. Our findings show that the staff always tried to do their best to ensure standard operations and to provide good care. After the initial difficulties, all the facilities managed to procure enough protective aids and sanitation equipment; problems, if any, were caused rather by a lack of relevant information and methodological guidance in certain cases. The Deputy Defender considers the most problematic measures to be the restrictions of contacts with the outside world (prohibitions of visits, curfews). The strictest restrictions were introduced in facilities for foreigners.



Facilities for children

The biggest problem of facilities for children was the lack of practical information and instructions on how to proceed during the epidemic, affecting especially children's contacts with their families and close ones. At least during the first weeks of the epidemic, some of the facility managers did not allow children to engage in any personal contact with their families and recommended their parents to keep in touch using other means (phone calls, social networks, etc.). Their approach to permits enabling children to stay at home also differed. While one visited facility completely stopped issuing the permits with reference to the exceptional epidemiological situation, another facility permitted children to leave the facility and stay at home to the maximum possible degree; in yet another facility, most children were allowed to leave for their homes only after the initial complete lockdown in the facility which lasted for about two weeks.

The inconsistent approach of the facilities is a proof of insufficient methodological guidance. Central authorities provided no support to the facility managers who had to balance the children's rights to keep in touch with their families, on the one hand, and their own duty to protect the health of children and employees, on the other hand.

Banning pupils from attending schools is also controversial as far as children's homes with schools are concerned. The ban aims to prevent transmission of the infection between children and their families; however, in a children's home with school, the children spend almost all of their time together in the respective community and educational group, shared canteen, hall and other areas.

The Deputy Defender informed the Ministry of Education, Youth and Sports of her findings in order for it to take them into account in its methodological materials. She will also send a summary of her findings and recommendations to other facilities, especially to regions where the number of infected people is growing again.

In its response, the Ministry of Education, Youth and Sports failed to sufficiently specify the methodological guidance for facilities of institutional and protective education and, therefore, the Deputy Defender will ask the Ministry to specify the methodological guidance once again.

Social services facilities

The staff did their best to ensure the clients' daily routine would be affected by the situation as little as possible. The clients received comprehensible information about the epidemic and standard care and they were allowed to engage in their usual activities, merely the size of individual client groups was limited. The facilities tried to help the clients to get in touch with their close ones using modern technologies (tablets, Skype calls); the Deputy Defender appreciates this, but at the same time she points out that many senior citizens cannot communicate this way due to their medical condition.

She is concerned about bans on visits of the close ones and on free movement of the clients outside the facility or its premises. Long-term absence of personal contact leads to deprivation of all parties involved. Similarly, the nearly two-month-long ban on leaving



facilities without gardens has led to social isolation and has had adverse impacts on the clients' mental and physical health. We encourage the facilities to look for ways to prevent contamination by the virus that do not lead to social isolation. Social services providers should in any case closely co-operate with regional public health stations and follow their recommendations. The Deputy Defender reiterated this opinion also during her meeting with the Minister of Health this July in case the Ministry of Health had to adopt further measures adjusting the visiting regime in social services facilities.

Prisons

Reducing the number of visitors had a negative impact on inmates' lives; the communication between inmates and visitors was made even more difficult due to their physical separation by dividers.

According to an extraordinary measure enacted by the Ministry of Health, visits were provisionally limited and each inmate could only have one visitor at a time. Children were thus excluded as they have to be accompanied by an adult during their visits in prison. At the request of the Deputy Defender, the Minister of Health modified the measure with effect from 22 June so that children accompanied by an adult could visit prisoners. Nevertheless, the maximum number of visitors is still one adult and one child per visit, which may, in some cases, significantly impact the enjoyment of the right to family life.

A positive impact of the pandemic consisted in the extended use of communication technologies (e.g. Skype) to keep in touch with close ones besides personal visits. In this connection, we asked the Director General of the Prison Service to ensure that the Prison Service would further extend the possibilities of Skype calls and video conferencing in the future beyond the measures adopted during the pandemic. This form of contact would help convicts placed in prisons far away from their homes and it could be used for distance learning and for other purposes.

We have informed the Minister of Justice of our findings.

Facilities for foreigners

The greatest restrictions and strictest measures against the spread of Covid-19 were detected in facilities for foreigners.

Rights were significantly limited in the facility visited. While the purpose of the measures adopted in the facility was to prevent the spread of Covid-19, some were excessively restrictive. Persons placed in the facility were often regarded as a health threat even if tested negative for Covid-19. No other types of facilities adopted measures so restrictive.

Foreigners did not have enough information, decisions on detention they received were in Czech only and they did not understand them. Their only contact with other persons was three times a day when the staff served them their meals. They had no access to fresh air – windows and balcony doors could only be partially opened (with a 15 cm gap), the outdoor premises could not be used at all.



We appreciated the effort of the facility to enable the clients to keep in touch with their close ones using telephone and internet connection. The entire facility has a WIFI coverage and clients who did not have their own device could borrow a tablet from the facility.

The identified shortcomings should be remedied to better balance the protection of health with the foreigners' fundamental rights in case a similar situation occurs in the future.

We communicated our findings to the Minister of the Interior with request to adopt remedial measures. In his response, the Minister of the Interior promised, among other things, to reduce time spent in quarantine facilities to about 48–72 hours until Covid-19 test results are known. If the person is tested negative, the quarantine and other restrictive measures will be terminated. Furthermore, he promised to separate the quarantine areas for men and women, or families with children.

Psychiatric hospitals

The situation in psychiatric hospitals was similar to that in social services facilities. Therapeutic care was limited only to the necessary extent (e.g. group activities, teaching at the children's ward) and no patient was placed in long-term isolation because of preventive measures related to Covid-19. Should a similar situation occur again in the future, we recommend that enough alternatives for meaningful spending of time are prepared in the case that standard activities must be limited. We also recommended arranging the capacity for rapid testing of patients to prevent them being subjected to unnecessary restrictive measures upon their admission to the hospital that could worsen their mental state; we also urged not to ban visits of representatives, fiduciaries and supporters of involuntarily hospitalised patients. During our personal meeting, the Minister of Health promised to take our findings into account if his Ministry was forced to re-impose extraordinary measures again.

New information leaflet for children placed in children's homes or juvenile correctional institutions

The Defender's new information leaflet is intended for children placed in children's homes or juvenile correctional institutions. It focuses on their rights and the most common problems they face. In this respect, the Deputy Defender contacted managers of children's homes, juvenile correctional institutions and diagnostic institutions and asked them to inform children about the leaflet. In addition, a separate letter was addressed to the children, informing them of problems they may consult with the Defender.

The leaflet is complemented by the Defender's website, where children can find answers to all questions they may have.



D. Protection against discrimination

In 2009, the Defender assumed 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 and 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 Non-renewal of employment contract due to age (File No. 5676/2018/VOP)



- I. If the Labour Inspectorate obtains data of statistical significance on protected characteristics (age, sex, etc.) during an inspection of equal treatment, it is obliged to evaluate them as part of the inspection. If the data indicate a significant statistical difference suggesting possible discrimination, the Inspectorate must address it in the inspection record and duly justify its conclusions.
- II. When examining whether or not it is admissible to repeatedly conclude fixed-term employment contracts with academic staff, the Inspectorate must not be satisfied with a general statement of the inspected entity that such a procedure was permitted by the earlier wording of the Higher Education Institutions Act. The Inspectorate must examine each contract individually with regard to the date of its conclusion and the dates of its (repeated) renewal. The conclusion whether or not legal regulations permit to conclude fixed-term employment contracts must be included among inspection findings and provided with conclusive substantiation.

The complainant of retirement age worked as a university professor at the Faculty of Arts of Palacký University. In 2016, the university did not renew the fixed-term employment contract concluded with the complainant. The complainant objected to discrimination on grounds of age and approached the Defender and the District Labour Inspectorate for the Moravian-Silesian and Olomouc Regions in this connection. The Labour Inspectorate carried out an inspection focusing on compliance with the principle of equal treatment at the university, but found no misconduct.

The Defender concluded that the Labour Inspectorate had erred as it did not sufficiently deal with the statistical data indicating possible discrimination during its inspection. He also pointed out that the Labour Inspectorate could not be satisfied with the general statement of the employer that repeated conclusion of fixed-term contracts was allowed under a



special regulation contained in the Higher Education Institutions Act, but rather should have examined individual contracts with regard to the date of their conclusion (renewal). The Defender then issued his final statement addressed to the Labour Inspectorate where he proposed, as one among multiple remedial measures, that a new inspection be carried out focusing on discrimination in concluding and (non-)renewing fixed-term contracts. The Labour Inspectorate carried out the inspection and found repeated violations of the rules for conclusion of fixed-term employment contracts (Section 39 (2) of the Labour Code) on the part of the university. In 2019, the complainant decided to lodge an anti-discrimination action against the university. In the end, also thanks to the arguments presented in the Defender's report and in his final statement, the complainant and the university concluded an out-of-court settlement consisting of the combination of a public apology and financial compensation.

D.2 Handbook on anti-discrimination law for social work educators (File No. 79/2020/DIS)

Victims of discrimination are often in contact with social workers. Therefore, the Defender contacted the Association of Educators in Social Work and offered them free support in the preparation of courses on anti-discrimination law. Already in 2017, two workshops took place where the employees of the Office of the Public Defender of Rights discussed individual case reports on discrimination with educators, trying to find solutions.

As a follow-up on the workshops, the Handbook on anti-discrimination law for social work educators was published. Its purpose is to make it easier for teachers of future social workers to prepare courses on protection against discrimination. The handbook covers the following topics: housing, education, employment, healthcare, goods and services. It contains a number of model cases with solutions and other practical exercises for courses.

D.3 Refusal to admit a patient accompanied by an assistance dog to hospital (File No. 6779/2019/VOP)



- I. A hospital commits indirect discrimination on grounds of disability in access to healthcare if it rejects a request for hospitalisation made by a patient accompanied by a specially-trained assistance dog, stating that it has neither a kennel nor staff to take care of the dog.
- II. If a hospital places patients accompanied by assistance dogs exclusively to single rooms without offering them discount on the fee that is usually paid for such rooms, it commits indirect discrimination on grounds of disability in access to healthcare because patients accompanied by assistance dogs could, in such a case, never access the most affordable type of hospital care.

Due to his disability, the complainant has a specially-trained assistance dog. He asked to be admitted to hospital together with his dog. The complainant provided us with e-mail communication in which the hospital rejected his request, arguing that it had neither a kennel nor staff to take care of the dog. The hospital stated that it had offered him, in accordance with its internal rules, hospitalisation in a single room for extra fee which the complainant had refused to pay.



The Defender expressed the opinion that by rejecting the request, the hospital committed discrimination on grounds of disability in access to healthcare. He also commented on the internal rules of the hospital according to which patients accompanied by assistance dogs must be hospitalised in single rooms, without giving them with any discount on the fee that is usually charged. A hospital can meet its obligations of equal treatment either by placing patients accompanied by assistance dogs in a multi-bed room (if the circumstances allow this), or by offering them hospitalisation in a single room for the price of a bed in a multi-bed room.

D.4 Survey: Decision-making of Czech courts in discrimination disputes 2015–2019 (File No. 61/2019/DIS)

As the national equality body, the Defender provides methodological assistance to victims of discrimination including, *inter alia*, preliminarily assessment of their claims and recommendation whether or not to lodge an anti-discrimination action. He should therefore know how independent courts deal with anti-discrimination disputes in practice. Thus, he decided to carry out a detailed survey on anti-discrimination case law of Czech courts. The survey is a follow-up to the Defender's previous activities, especially to the Defender's 2015 survey report titled "*Discrimination in the Czech Republic: Victims of Discrimination and Obstacles in Access to Justice*". Said previous report focused on examination of anti-discrimination case law of Czech courts in 2010–2014. The follow-up survey focused on the 2015–2019 period.

Summary of conclusions:

- Most plaintiffs claiming unequal treatment were unsuccessful in court (52%).
- Most lawsuits were initiated in the area of work and employment (ca. 60%).
- Disability was the most frequently invoked discrimination ground (ca. 23%).
- Plaintiffs most often asserted direct discrimination (ca. 55%).
- Plaintiffs most often sought financial compensation for intangible damage (ca. 57%).
- Persons claiming discrimination have the biggest problem with demonstrating it in cases where the defendants (e.g. employers) have a broad discretion and are not required to state reasons *prima facie*. Courts do not consider such a conduct as suspicious *prima facie*.
- The highest compensation for intangible damage claimed was CZK 10 million (EUR 388,531). The highest amount actually awarded was CZK 400,000 (EUR 15,546).
- In cases assessed by the Defender, the result of the court proceedings corresponded to the Defender's conclusion in ca. 64% of the cases.

Based on the above findings, the Defender recommended, in particular, the following amendments to legal regulations:

- Eliminate the ancillary nature of satisfaction in money;



- Extend the shared burden of proof to all cases of discrimination;
- Reduce the court fee paid for appeals in anti-discrimination disputes;
- Incorporate into the legal order the action in public interest (*actio popularis*) in cases involving discrimination;
- Incorporate discrimination by association into the Anti-Discrimination Act;
- Publish court decisions in a public database.

The Defender also made the following recommendations:

- Educate judges, judicial officers and attorneys-at-law;
- Check how the new legal counselling provided free of charge works in practice;
- Supplement and improve the accuracy of the records of judicial decisions kept by the Ministry of Justice.

D.5 Awareness raising

In July, we received the bePROUD award for our last year's survey titled "Being LGBT+ in the Czech Republic", which was selected the Project of the Year. We presented our last year's activities on the Equinet's website (European Network of Equality Bodies).

In September, we introduced the equality activities of the Public Defender of Rights to a group of law students at the School of Human Rights and discussed with them specific cases related to the COVID epidemic. We also launched a Facebook information campaign about migrant EU citizens.

D.6 Important meetings

The Defender and employees authorised by the Defender have attended a number of meetings, for example:

- In July, a meeting of the Government Council for Gender Equality, discussing, *inter alia*, the draft law on the provision of a one-off pecuniary compensation to unlawfully sterilised persons;
- In August, a discussion during the Prague Pride festival on legislation applicable to HIV-positive people. We also met with representatives of the US Embassy in the Czech Republic to discuss last year's developments in the area of equal treatment;
- In September, an expert forum held a debate on implementation of the Judgement of the European Court of Human Rights in case D. H. and Others v. the Czech Republic on education of Roma children. Furthermore, we met with members of the advisory committee of the Framework Convention for the Protection of National Minorities. They were interested mainly in education of Roma children and online hate speech.



- In September, the Defender participated in a meeting of the Government Council for Roma Community Affairs and the National Minorities Council.

D.7 Roundtables

At the beginning of September, the Defender organised a roundtable on reserved parking for people with disabilities. He discussed the procedure in granting consent to reserved parking and individual assessment of applications with municipal representatives.

In mid-September, an online conference on sexist advertising was held in co-operation with the Nesehnutí non-governmental organisation. The individual contributions focused on case law, the concept of good morals in advertising, activities of the Advertising Standards Council, perception of sexist advertising by the Czech public and on sexist advertising as unfair competition.

In late September, an online roundtable was held with non-governmental organisations active in relation to migrant workers and EU citizens.



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 Advisory body – appointment of new members

In September, a new advisory body of the Public Defender of Rights for the area of protection of the rights of people with disabilities met for the first time in Brno. The Defender entrusted this agenda to his Deputy who thus presides over the new advisory body. At the moment, the advisory body consists of 19 members. It comprises of persons with disabilities and persons defending the rights of people with disabilities and, newly, children with disabilities are also represented. The advisory body will participate, *inter alia*, in the drafting of the Alternative Report for the UN Committee on the Rights of Persons with Disabilities. In addition to regular quarterly meetings of all its members, the advisory body will also act in smaller working groups. The first meeting focusing exclusively on its working tasks is planned for November.

E.2 Surveys and recommendations on improving the situation of people with disabilities.

The Deputy Defender completed the survey titled “**Crossroads of Autonomy**”, dealing with court decision-making on supporting measures. An analysis of a total of 256 decisions rendered by district courts in the Czech Republic showed that the restriction of one’s legal capacity is still the most frequently used measure imposed on persons who require support in decision-making. Most often, courts restrict legal capacity of people in the area of disposal with property. The average limit of transactions allowed to these people does not amount even to the subsistence minimum (CZK 3,410 per month). One third of them have less than a thousand crowns per month; all payments exceeding this amount must be made by a guardian on their behalf. In up to 40% of judgements under review, courts decided to restrict people’s legal capacity with respect to all or almost all types of legal acts. Nearly half of the people were also restricted in the exercise of their right to vote. The survey report is available on the Defender’s website.

The recommendation titled “**How to protect the rights of parents with psychosocial disabilities and their children?**” responds to an increasing number of complaints from parents with disabilities whose right to a family life has been drastically interfered with. The publication summarises findings of the Public Defender of Rights in this area and contains several practical recommendations for public guardians, social workers, BSLPC representatives and providers of social and healthcare services. It also includes a simple checklist to assess the level of interference with parental rights and a short summary for the parents themselves. The entire recommendation is available on the Defender’s website.

The Deputy Defender initiated a **survey mapping barriers preventing young people with disabilities from becoming independent of their parents’ support**. At the age when their peers usually move to their first apartment (rent, flat share), complete their education, look for their first job and enjoy their first relationships, young people with disabilities might face



a completely different situation. This is caused by a lack of community social service – which are absolutely crucial for young people – leading to their reliance on the support by their families. There is also a lack of suitable housing (e.g. fully accessible barrier-free residences) and job opportunities.

The aim of the survey is to identify the entire spectrum of barriers preventing people with disabilities from living independently. The survey includes interviews with young people with various types of severe disabilities (third and fourth degrees of dependency) between 18 and 35 years of age.

A survey on obstacles preventing people with disabilities from finding employment in the public sector is still in progress. In September, the Deputy Defender organised two group interviews (Prague, Brno) with people with disabilities who had been unable to find employment in the public sector and with people who had such work experience. We managed to ensure that people with various types of disabilities were represented in the discussion groups. The Deputy Defender is planning to meet with the new Deputy Minister of the Interior for the Civil Service and the Labour Office representatives to discuss this topic. The survey report and recommendations are to be issued by the end of the year.

We also continue in the drafting of our new concept of recommendations based on our systematic visits to facilities. The first recommendations will be based on a series of systematic visits to homes for people with disabilities carried out in 2019. New recommendations will be thematically oriented and will provide room for a more detailed analysis of topics, increasing their potential impact on practice. New recommendations will also include examples of best practice and expert insights. The expected publication date of the complete recommendations is set for December 2020.

The Deputy Defender initiated **a survey focusing on the availability and quality of maternity and postnatal care for women with disabilities.** Based on the findings obtained from our activities so far and from publicly available sources on the topic, we can conclude that mothers with disabilities giving birth, midwives and maternity hospitals face problems in this area. A questionnaire survey on this issue is currently underway in maternity hospitals and mothers with disabilities are also being interviewed.

E.3 International co-operation

As part of our international activities, employees of the Department for Protection of Rights of People with Disabilities talked about their experience at an online meeting organised by the European Network of National Human Rights Institutions (ENNHRI), of which we are a member. The meeting focused on persistent issues with the monitoring of the rights of people in institutions caused by the Covid-19 pandemic. Our recommendations had been heard and we played an important role in launching a regular quarterly newsletter informing about the activities of ENNHRI members. We also established close co-operation with the Fundamental Rights Agency (FRA) in Vienna in developing indicators used in systematic monitoring of compliance with the Convention. Our co-operation is based on an exchange of information, including the FRA articles. A follow-up online workshop will be held on 25 November 2020. As soon as possible in view of the epidemiological situation (probably at



the beginning of 2021), a full-day workshop on the development and use of indicators will take place in Brno.

Employees of the Department for Protection of Rights of People with Disabilities took part in creation of the publication of ENNHRI and Mental Health Europe describing good practice in implementation of support with decision-making pursuant to Article 12 of the Convention on the Rights of Persons with Disabilities across the European Union. The entire publication is available on the ENNHRI website.

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

In the third quarter, we continued in our co-operation with many organisations protecting the rights of people with disabilities as well as with people with disabilities themselves.

In the past period, our co-operation comprised mainly of mutual sharing of up-to-date information on the situation of people with disabilities during the Covid-19 pandemic and on related measures. We took this as a basis when drawing up our recommendations to improve the situation of persons living in homes for people with disabilities. We discussed the best circumstances for the provision of this kind of service and examined existing examples of good practice.

To guarantee better accessibility (not just) for our partners, we decided to boost the info-line service for people with disabilities and people with poor understanding of spoken language. They can now ask for call transcripts using the transcription service. Anyone interested in this service simply enters their phone number and waits for a call back. After accepting the call, he or she may begin speaking. The info-line worker's reactions and answers will appear in written form on screen. Calls using the transcription service are free of charge.

Regular information about our monitoring activities can be found in our quarterly bulletin. The current issue is available on our website in the "Monitoring of the rights of people with disabilities" section.

E.5 Conferences, roundtables and training

The Defender issued a new leaflet titled "Guardian" clearly summarising the guardians' duties, but also specifying the areas in which guardians are not allowed to make decisions. Persons under guardianship as well as their close ones may approach the Defender with complaints concerning activities of "public guardians", i.e. municipalities.

We organised another meeting with people with psychosocial disabilities, where we discussed, *inter alia*, the impacts of the Covid-19 pandemic on the rights of patients in psychiatric hospitals and clients using social services, on the upcoming recommendation of the Deputy Defender regarding the legal status of psychiatric patients and on comments on the Healthcare Services Bill.

We have also used social networks (Twitter: @s_prava, Facebook: Práva lidí s postižením (*Rights of people with disabilities*)) to inform the public of the lives of people with disabilities and thus increase public awareness of this substantial social group. For example, we



celebrated various memorable days (World Alzheimer's Day) and introduced the topic of disability in various areas of everyday life (art, sports). We also provided information about the legal and non-legal developments in this area, both abroad and in the Czech Republic. On a positive note, there is a steady growth in the number of followers of our "Rights of people with disabilities" Facebook group. It has almost doubled since the beginning of 2020.

In Brno, on 3 November 2020

JUDr. Stanislav Křeček, signed
Public Defender of Rights
(this report bears an electronic signature)