



Report of the Public Defender of Rights on Activities in the 4th 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

During the 4th quarter of 2020, the Defender received a total of 1,780 complaints (which is just one complaint fewer than during the same period last year). The share of complaints falling within his mandate (**72%**) is above the average for 2019 (69,53%). As in previous years, most of the complaints concerned social security – especially pensions (165), construction projects (75), activities of the bodies for social and legal protection of children (51) and tax administration (50).

In **75** complaints, people objected to unequal treatment, of which **41** cases related to grounds prohibited by the Anti-Discrimination Act. In **14** cases, the Defender also provided discrimination-related information and analyses to international entities and national bodies.

We visited a **quarantine area in the Facility for Detention of Foreigners in Bělá–Jezová**. In line with the measures taken to prevent the spreading of the COVID-19 disease, we did not perform any other systematic visits in the fourth quarter.

We examined **1,846** administrative decisions on an expulsion.

Within the intersectoral commentary procedure, **the Defender provided 6 comments** on proposals of legal regulations and strategies.

We carried out **3 surveys** and issued **1 recommendation**.

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



COMPLAI

1780

complaints delivered in Q4 2020

72%

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

That is a **3%** growth compared to Q3 2020

Pensions | 165



Planning and construction permit proceedings, use of buildings | 75

Activities of the Czech Prison Service | 66



Assistance in material need | 55

Activities of the BSLPC | 51



Residence of foreign nationals | 51

Taxes and tax administration | 50



75

complaints claimed unequal treatment



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

reached **41**



ACTIVITY



1846

examined decisions on
an expulsion



11

processed requests for
information



the Defender commented on 6
legal regulations and strategies

SURVEYS:

- Lives of clients living in homes for people with disabilities

- Role of municipalities in decision-making on supporting measures and in their implementation

- Employment of people with disabilities in the public administration



RECOMMENDATIONS:

- How to protect the rights of parents with psychosocial 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 Conclusive determination of the date of commencement of disability resulted in an increase in the pension amount and reimbursement of pension owed (File No. 2905/2019/VOP)

The Defender was approached by a complainant – a mother and, simultaneously, a guardian of a young woman to whom the Czech Social Security Administration (hereinafter the “CSSA”) had granted a third-degree disability pension from the age of 20 (specifically from 30 December 2014). The complainant argued that the medical condition of her daughter had not changed since an accident she had suffered at young age; the complainant therefore did not understand why the CSSA had not already granted her daughter the disability pension from her 18th birthday.

The Defender opened an inquiry and requested the relevant assessment documents from the CSSA to determine why the CSSA had decided to grant the disability pension from a later date. According to the report drawn up for the purpose of granting the disability pension, the medical assessor set the disability onset date as the date of issue of the psychological examination report. The assessor did not give any additional reasons. The question why the medical assessor had set the disability onset date as the date of the specific report remained unanswered even after the Defender had examined the psychological examination report. On the contrary, the report raised further doubts. According to the report, the complainant's daughter “repeated sixth grade of primary school, she was unable to complete any of her special study courses at the special school for students with mental disability, she was unable to cope with stress – since her school years, she has been suffering from severe stress-related psychosomatic problems, she cannot focus, she cannot complete a sequence of simple tasks, she cannot organise her time and her personal activities”, etc.

Once the Defender pointed out this error, the CSSA carried out an extraordinary medical examination. Based on its results, the medical assessor determined the disability onset date as the date when the girl started attending the specialised school for students with mental disability, specifically 2 September 2010. Subsequently, the CSSA issued a decision granting her third-degree disability pension from the same date, recalculated the existing allowance based on the newly formed entitlement to extraordinary disability pension, and also paid to the complainant's daughter the outstanding amount of the disability pension equal to CZK 483,485.



B.2 Monitoring of employees through camera surveillance systems (File No. 6813/2020/VOP)



I. A camera surveillance system (CCTV) with a recording device allowing for identification of employees represents infringement of the employees' privacy.

II. An employer may interfere with an employee's privacy through the use of a camera surveillance system only if the employer has serious grounds for doing so consisting in a special nature of its activity. Protection of the life and health of the employer, his/her employees and other persons may constitute grounds for the use of such a surveillance system. Another legitimate reason for its use is to protect the property of the employer, employees and other persons.

III. However, the means chosen and the manner of surveillance must always be assessed in terms of the individual criteria of the proportionality test (suitability, necessity, proportionality). This test determines whether the given measure (e.g., the use of camera surveillance) can contribute to achieving the given objective, whether it is possible to attain the given objective in a different, more sensitive way and, finally, whether it is proportionate, i.e., the interference with the protected values is the least possible (the principle of subsidiarity).

The Defender was contacted by the president of a trade union of employees with a complaint regarding the procedure followed by the District Labour Inspectorate, which, according to the complainant, incorrectly and inconsistently checked compliance with labour-law regulations by the employer, focusing on the operation of a camera surveillance system by the employer.

The Defender came to the conclusion that a camera surveillance system with a recording device allowing for identification of employees represents infringement of their privacy. An employer may interfere with an employee's privacy through the use of a camera surveillance system only if the employer has serious grounds for doing so consisting in a special nature of its activity. Protection of the life and health of the employer, his/her employees and other persons may constitute grounds for the use of such a surveillance system. Another legitimate reason for its use is to protect the property of the employer, employees and other persons. However, the means chosen and the manner of surveillance must always be assessed in terms of the individual criteria of the proportionality test (suitability, necessity, proportionality). This test determines whether the given measure is suitable, i.e. whether the measure (e.g., the use of a camera surveillance system) can contribute to achieving the desired objective, necessary, i.e. whether or not it is possible to attain the objective in any other way, and, finally, proportionate, i.e., whether the conflicting values are well balanced (the employer's interest in the protection of its property, on the one hand, and the employee's right to privacy, on the other). Surveillance will only be permissible if the chosen measure can lead to the intended objective and if it is not possible to attain that objective by different means, and unless there is some other objectively comparable legal means that would allow for attaining the given objective in the same or better way while interfering with the protected values to the same or lesser degree (the principle of subsidiarity).



B.3 A fee not assessed cannot be enforced (File No. 593/2020/VOP)



Local fees that a taxpayer fails to pay properly and in due time must be charged (assessed) by the tax administrator by virtue of a decision (Section 11 of the Local Fees Act). Until the administrator does so, the amount of the fee cannot be regarded as unambiguously specified as whenever a fee is not paid properly and in due time, the administrator will always consider whether or not the fee should be increased. If the amount of the fee is not clearly determined, it cannot be recorded or collected, not even if the deadline for payment of the tax (fee) is yet to expire.

A complainant objected to the procedure followed by a municipal authority in administration of a local fee payable for improvement of the complainant's construction plot of land in view of the possible connection of the plot to the water mains and sewerage system. The complainant believed that the deadline by which the municipal authority could collect the fee had already expired. The Defender found that the use permit for the newly built water mains and sewerage system had come into legal force on 10 June 2011. The three-year period for setting the fee began running on that day. The municipal authority failed to charge the complainant for the fee during this period by means of an official payment assessment. Nonetheless, the municipal authority still requested payment of a fee of CZK 42,972 in 2019, and informed the complainant that the fee could be increased up to three times of its amount.

In the inquiry report, the Defender pointed out to the municipal authority the rules for setting local fees. The Defender stated that the fee could not be collected if the municipal authority had not charged (assessed) it to the complainant within the three-year period for its assessment. The municipal authority agreed with the Defender's findings and would not ask the complainant to pay the local fee.

B.4 An application for fostering allowance filed by a woman taking care of her granddaughter has to be properly assessed by the authorities and the decision convincingly substantiated (File No. 2276/2019/VOP)

The Labour Office dismissed the complainant's application for a fostering allowance. She applied for the allowance after a court had entrusted her granddaughter to her foster care. The Labour Office substantiated its decision by stating that this was not a case deserving special consideration as required by the law. The law states that if a grandparent takes care of one or two children, he/she is entitled to a fostering allowance only in cases deserving special consideration, taking into account his/her social situation and property, the situation of his/her family and also his/her health. Although it is up to the Labour Office to decide whether or not this allowance will be granted, it should rely, among other things, on a statement presented by a body for social and legal protection of children (hereinafter the "BSLPC"). In the complainant's case, the BSLPC did not find any reasons for granting the allowance that would deserve special consideration. Therefore, the Labour Office dismissed her application.

Following an inquiry, the Defender noted that the Labour Office had erred when it failed to sufficiently ascertain the facts of the case and provided insufficient reasoning for its



decision. Neither the BSLPC's statement nor the decision of the Labour Office indicated the family's income and expenses. The Defender also found errors on the part of the Ministry of Labour and Social Affairs, whose decision on an appeal was not sufficiently substantiated. Although, unlike the Labour Office, the Ministry dealt with the income and expenses of the family, it did not take into account the family's income at the time when the application was filed. Moreover, the Ministry considered it sufficient to assess merely the needs of the granddaughter and, in its decision, neglected the overall social circumstances and property of the complainant and her family, as required by the law.

The Defender suggested to the Labour Office that it should provide a thorough reasoning for its decisions in the future. Moreover, the Defender requested that the Ministry incorporate in the forthcoming guidelines the requirement for proper determination of not only the financial situation of the family (including, e.g., potential debts for housing), but also its social situation and the applicant's health. An instruction of the Deputy Minister of Labour and Social Affairs has already been prepared with regard to assessment of the claims of grandparents and great-grandparents for a fostering allowance for reasons deserving special consideration, reflecting the Defender's comments.

After the Defender's inquiry, the complainant filed a new application for a fostering allowance and succeeded.

B.5 Illegal scrapyards (File No. 6006/2018/VOP)

The Defender was approached by a civic association criticising the authorities' procedure in addressing their complaints concerning the operation of a car scrapyard in the very centre of a municipality. In the inquiry, the Defender found that the premises had been used for collecting, buying and dismantling vehicles illegally since 2013, and that the authorities were unable to effectively close this illegal business. Furthermore, the authorities failed to monitor consistently whether the sanctions and remedial measures imposed were effective, and to co-ordinate their steps. Their actions thus lacked the desired effect. The authorities acknowledged their errors and promised to further act in the case – among other things, to file an application for revocation of a trade licence (suspension of operation of a trade). Since the case is also a reflection of shortcomings in the legislation concerning disposal of vehicles imported from abroad (which are often used for spare parts and frequently end up at – often illegal – Czech scrapyards), the Defender welcomed the fact that the Ministry of the Environment had prepared a new legal regulation for the disposal of scrap vehicles (end-of-life vehicles). The End-of-Life Products Act, effective from 1 January 2021, together with the new Decree on details of disposal of end-of-life vehicles, should ensure more accurate regulation and new tools to prevent illegal disposal of scrap vehicles.

B.6 Conferences, roundtables and training

- On-line workshop held on 11 November 2020: Insights from visits to school facilities for institutional and protective education.
- On-line workshops held on 12 and 13 November 2020 focusing on the topic of: Administration of local fees.



- On-line workshop held on 18 November 2020: Findings from systematic visits to facilities for children requiring immediate assistance.
- On-line discussion held on 2 December 2020: People with disabilities and the European Convention on Human Rights (1950–2020).
- On-line workshop held on 8 December 2020: Defender’s findings from inquiries in the area of substitute family care.

B.7 Changes to the authorities’ internal methodology

- Based on the Defender’s inquiry (File No. 6825/2018/VOP), the Department for Asylum and Migration Policy of the Ministry of the Interior (hereinafter the “Asylum Department”) changed the methodology of assessing the impact of denial of a long-term sufferance visa on the foreigner’s private and family life. The Ministry of the Interior did not grant the complainant a sufferance visa. The complainant justified her visa application by stating, among other things, that she was unable to leave the Czech Republic because her severely ill mother was dependent on her care. She supported her claim by a number of documents, including medical reports. In its decision, the Ministry of the Interior failed to take into account the impact of the denial of visa on her family life. The Defender requested that, in case of a foreigner’s objection, the Ministry of the Interior assess the proportionality of the impact on his/her private and family life, even though the Residence of Foreign Nationals Act did not explicitly require such assessment in decision-making on applications for sufferance visas. The duty to take the foreigner’s private and family life into consideration follows from international commitments of the Czech Republic. The Ministry of the Interior accepted the conclusions of the inquiry and changed the methodology for assessing sufferance visa applications.



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

C.1 Systematic visits and remote monitoring

In the fourth quarter, we carried out a follow-up visit to the quarantine area in the Facility for Detention of Foreigners in Bělá–Jezová. We wanted to check whether the promises and assurances given by the Ministry of the Interior concerning compliance with the recommendations from our spring COVID-related visit had been put into practice. However, the conditions in the facility had not improved much. The Defender therefore already called for an immediate change during the follow-up visit, and immediately afterwards, informed the Ministry of the Interior of serious findings that had not been remedied.

In line with the measures taken to prevent the spreading of the disease, the Defender did not perform any other systematic visits in the fourth quarter. The Defender used other means of monitoring to fulfil his mission, which also includes protection against ill-treatment. He contacted almost 40 facilities to identify challenges these facilities were currently facing with regard to the provision of care and dignified conditions. Among other things, the Defender asked about the practical implementation of the prohibition of visits and lockdown measures, possible shortcomings in the area of personnel and material capacity, and other problems encountered by the facilities.

The Defender invited people working in social services facilities, facilities for children and other facilities to share their experience with the current situation in the initiative called *“Please share your experience with the current situation in social services facilities, healthcare facilities and other facilities”*¹. The Defender uses the insights obtained from this initiative to communicate with the competent authorities and other institutions with a view to resolving systemic problems.

Risks associated with care in unregistered facilities for the elderly during the epidemic

¹ The press release is available (in Czech) on the website of the Public Defender of Rights, see <https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/podelte-se-s-nami-o-sve-zkusenosti-z-aktualni-situace-v-zarizenich-socialnich-sluzeb-l/>



Through a press release of 2 December 2020², the Defender brought attention of the chief public health officer, heads of regional authorities and, subsequently, also the public to the risks associated with care provided in unauthorised facilities, as unlike registered residential social services facilities, they escape the spotlight and do not receive any direct help.

C.2 Conferences, roundtables, training and awareness raising

Following up on the series of visits to 12 facilities for children, we held an on-line roundtable with representatives of the facilities visited and representatives of the Supreme Public Prosecutor's Office. The discussion focused especially on systemic problems, such as the need for a new legislation (unification of the legislation governing residential social services for children, separation of institutional and protective education), repeated delays in courts' decision-making on the placement or relocation of children, and an inappropriate environment in a number of existing facilities (especially those located in old palace buildings). The facilities' managers also shared their insights on dealing with the current pandemic situation, such as the arrangements for visits and leave permits for children, quarantine and isolation measures, including testing, and methodological guidance by the Ministry.

The Defender organised **an on-line expert seminar intended for employees who work in or co-operate with facilities for children requiring immediate assistance**. The participants familiarised themselves with the findings from the systematic visits to these facilities, contained in the report on systematic visits titled "Facilities for Children Requiring Immediate Assistance" issued in 2019. In the report, the Defender pointed out the possible risks of ill-treatment of children in these facilities (the importance of co-operation with the family, support for the child's contact with the family, and the provision of sufficient and timely psychological assistance to the children).

The Defender **translated into Czech and published³ the UN Standard Minimum Rules for the Treatment of Prisoners**, commonly referred to as the "**Nelson Mandela Rules**". Although the rules are not binding (they represent "soft law"), their significance lies in the fact that they serve as the basic guidance for the creation, application and interpretation of national laws.

² The press release is available (in Czech) on the website of the Public Defender of Rights, see <https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/neregistrovana-zarizeni-socialnich-sluzeb-v-dobe-epidemie/>

³ The translation is available on the website of the Public Defender of Rights, see https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Veznice/Pravidla-Nelsona-Mandely.pdf



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 January 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 Access by a disabled visitor to a sports stadium (File No. 5708/2019/VOP)

A complainant who is a wheelchair user protested against visitor rules at a sports stadium providing that the holders of a disability card and persons with significantly reduced mobility could enter the stadium only if accompanied by another person. According to the stadium operator's statement, the rationale behind this provision of the visitor rules lay, in particular, in an effort to ensure safety and also in the difficulties associated with the presence of disabled visitors at the stadium.

The Defender concluded that the relevant provisions of the visitor rules constituted direct discrimination on grounds of disability. They put the complainant (and other visitors with disabilities) at a disadvantage compared to other visitors. Although they pursued a legitimate objective in terms of ensuring the safety and comfort of visitors, they were not proportionate and necessary for achieving this objective. Therefore, the Defender recommended that the operator change the visitor rules. In its subsequent statement, the operator pointed out that access to the stadium was currently limited by extraordinary measures related to the spreading of the COVID-19 disease. However, the operator promised to review the visitor rules after the containment measures were lifted, taking into account the Defender's recommendations.

D.2 Concluding registered partnerships during a state of emergency (File No. 105/2020/DIS)

The options for concluding a marriage or registered partnership are generally restricted during a state of emergency. However, the Defender found in the autumn of 2020 that the conditions for entering into marriages and registered partnerships were set unequally. While marriages could be concluded basically in the standard regime (with some restrictions concerning the number of participants at the wedding ceremony and reception), registered partnership could only be entered into in urgent cases (e.g., threat of an imminent death of one of the partners, expiry of the foreign national's residence permit). As it turned out, many gays and lesbians, as well as a major part of the general public, considered the unequal



conditions to be humiliating and undignified. The Defender shared their opinion and found no reasonable grounds for such differentiation. Therefore, he invited the Minister of the Interior, as the minister responsible in this matter, to ensure a remedy at the Government level. In response to the Defender's letter and complaints from other parties, the Government corrected its omission as of 23 November 2020. The fact that remedy has been achieved is also apparent from the information available on the COVID portal of the Ministry of the Interior. This portal is where the above-specified irregularity was first discovered. Given the positive development in the situation, the Defender decided not to take any further action.

D.3 COVID – Culture subsidy programme (File No. 31/2020/SZD)

The Defender focused on the conditions of the COVID – Culture subsidy programme. The programme's condition stipulating that applicants without Czech citizenship or permanent residence in the Czech Republic would not be eligible for this subsidy was found discriminatory on grounds of nationality in relation to EU citizens.

The Ministry of Industry and Trade announced a subsidy programme aimed at supporting entrepreneurs in the field of culture who had lost their income due to the anti-pandemic measures. In our opinion, the conditions of this one-off support for art professions are discriminatory, including specifically the condition that an applicant must be a citizen of the Czech Republic or a foreign national with permanent residence in the Czech Republic. Discrimination on grounds of nationality is prohibited especially by Article 18 of the Treaty on the Functioning of the European Union. The State's obligation to treat equally citizens of the Union who lawfully reside in the territory of the State, including the provision of social assistance, also follows from Article 24 of Directive 2004/38/EC on the rights of citizens of the Union. In the Defender's opinion, support for art professions and technical professions from such a subsidy programme can be considered a form of social assistance in the sense of this Directive. According to the Directive, EU citizens may be denied social assistance only during the first 3 months of their residence in the country. However, the conditions of the subsidy programme required permanent residence, which can only be obtained after 5 years of stay. The conditions of the programme were thus clearly at variance with the Directive.

The Defender notified the Minister of Industry and Trade of the unlawful nature of the conditions and recommended that they be changed. The Minister subsequently indeed changed the conditions, thus allowing EU citizens with temporary residence in the Czech Republic to also apply for this support.

D.4 Termination of travel insurance for a payment card holder on grounds of age (File No. 1153/2020/VOP)



- I. If a certain product is intended to be used in the long term and is offered to all clients under the same conditions, an upper age limit for its provision, based on relevant data, is in accordance with the law. Termination of travel insurance on the grounds of reaching 76 years of age is justified by a legitimate



objective of proceeding with caution and professional care in the insurance industry, while taking into account the increased insurance risk.

- II. When the Czech National Bank is called on to assess discrimination against consumers, it has to base its conclusions on the relevant discrimination test. Using this test, the CNB determines whether a different treatment has a legitimate objective and whether necessary and appropriate means were chosen to achieve the objective. If, while supervising compliance with the prohibition of discrimination, the Czech National Bank avoids assessment of a specific age limit for the provision of services, it acts at variance with the principle of good governance, specifically the principle of accountability.
- III. If a supervisory authority provides a complainant merely with a formalised and irrelevant response to his/her complaint, it thus acts at variance with the principles of good governance, especially the principles of persuasiveness and openness. Indeed, this procedure may give rise to a justified suspicion that the supervisory authority failed to address the complainant's request in an adequate manner.

A complainant took out travel insurance linked with his payment card. Once he reached 76 years of age, the bank informed him that it would terminate the insurance. The complainant considered this step discriminatory and asked the Czech National Bank to inquire.

The Defender concluded that the procedure of the Czech National Bank and the insurance company was not discriminatory, but criticised the Czech National Bank for the formal aspect of its response. A service provider may set an upper age limit if the product is intended to be used in the long term and is offered to all clients under the same conditions. In this case, the aim of the age limit was to help the provider act cautiously and with professional care.

D.5 Important meetings

In October, a meeting was held with Petr Hůrka, the Deputy Minister of the Interior for the Civil Service. The meeting was concerned with the employment of people with disabilities in public administration, flexible working arrangements and the problem of bullying at work in civil service. A second meeting of the Equinet working group (European Network of Equality Bodies) was held, focusing on gender equality, anti-discrimination law and the standards of activities of equality bodies.

In November, the Defender participated in a meeting of the Government Council for Gender Equality.

In this quarter, the Defender also participated in three expert panel meetings on the education of Roma children.



D.6 Awareness raising

In December, the Defender participated in a workshop for young Roma people concerning hate speech on the Internet. Different forms of hate speech were discussed at the workshop, together with the possibilities of preventing this phenomenon. The Defender presented the survey titled *“Hate Speech on the Internet and Decision-making of Czech Courts”*⁴ and recommendations concerning hate speech⁵.

An information leaflet on equal treatment and discrimination has been updated and is now also available in English.⁶

D.7 Conferences, roundtables and training

In October, the Defender participated in a **seminar for the Czech Schools Inspectorate on the use of recordings in inspection activities.**

The basics of anti-discrimination law were presented to employers from the Plzeň, Karlovy Vary and South Bohemian Regions in co-operation with the Confederation of Industry.

In November, the Defender took part in a **seminar organised by the Scottish equality body with regard to monitoring cases concerning discrimination before the European Court of Human Rights.**

The Defender **discussed the rights of sexual and gender minorities** with judges.

He presented **cases of unequal treatment of parents at workplaces and options for defence against discrimination** to counsellors of an organisation helping parents find jobs on the labour market.

⁴ The entire survey is available (in Czech) on the website of the Public Defender of Rights, see https://ochrance.cz/fileadmin/user_upload/ESO/47-2019-DIS-PZ-Vyzkumna_zprava.pdf

⁵ The entire text of the Public Defender of Rights’ recommendations is available in the Defender’s Opinions Register (ESO, available in Czech only), see <https://eso.ochrance.cz/Nalezene/Edit/7792>

⁶ See https://www.ochrance.cz/fileadmin/user_upload/Letaky-jazyky/EN-Discrimination.pdf



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. Within this competence, the Defender carries out surveys, issues recommendations to improve the situation of people with disabilities, comments on legal regulations and strategic documents, visits facilities, co-operates with the advisory body and raises awareness.

E.1 Surveys and recommendations

“Lives of clients living in homes for people with disabilities” survey

The Defender completed a survey focusing on the conditions of provision of residential social care in homes for people with disabilities (hereinafter as “home(s)”).⁷ As part of a questionnaire survey addressed to the providers of this type of social service, the Defender focused primarily on the conditions under which the service was provided to minors, on issues related to the clients’ preparation for employment and work, as well as on the area of ensuring appropriate health care.

A total of 156 homes in the Czech Republic participated in the survey; as of the date of the survey report, they provided services to a total of 9,129 clients.

The survey revealed the following facts:

- Only 11% of the homes co-operate with bodies for social and legal protection of children with a view to allowing the children to leave the homes and join a family. That is in spite of the fact that the BSLPC have a statutory duty to monitor whether the reasons for the child’s stay in an institution continue to exist, as well as the duty to arrange substitute family care for the child in suitable cases.
- In the period from 2015 to 2019, only less than one fifth of the children (18%) returned to the family and approximately one sixth of children (15%) were placed in substitute family care. At the same time, the vast majority of clients (93%) who reached the age of majority in the home continued to live there. None of the clients moved out to live on their own after reaching the age of majority.
- The employment rate of clients in productive age living in homes (13%) is significantly lower than for people with disabilities who live in households (40%). This can be attributed to a number of factors, especially the education attained and the effect of disability on the client’s ability to work.
- Almost two thirds of the clients (62%) who have jobs are in a labour-law relationship based on an agreement on work performed outside employment (agreement to perform work, agreement to complete a job). Almost one half of clients who have a job work based on an agreement to complete a job (41%). Only 38% of the clients

⁷ The entire text is available (in Czech) on the website of the Public Defender of Rights, see https://www.ochrance.cz/fileadmin/user_upload/CRPD/Vyzkumy/6-2019-domovy-pro-osoby-s-postizenim.pdf



have a full-time job. The proportion of clients who are employed by the homes is very high (51%).

- A total of 93% of the homes stated they had encountered difficulties in providing healthcare to their clients. They considered it difficult to provide access to dental care (47%), psychiatric care (44%), gynaecological care (25%) and care of a general practitioner (22%). Almost one half of all homes with underaged clients (48%) also stated that it was difficult for them to ensure availability of paediatric and adolescent psychiatry.
- The clients would receive spa care only to a minimum degree.

“Employment of people with disabilities in the public administration” survey

As part of the survey, the Defender focused on the conditions of employment of people with disabilities in the public administration. After all, public administration should set an example and strive to ensure maximum involvement of people with various types and degrees of disability and related special needs. Based on a questionnaire survey and interviews with the representatives of employers, the Defender identified the following recurring problems.

- The way the mandatory share required by the law is achieved varies among the individual authorities. There are authorities which employ people with disabilities as little as possible and do not deal with the issue in any way. Other authorities try to avoid a penalty in the form of a mandatory levy to the State budget and adhere to the mandatory quota mostly by combining employment of people with disabilities with purchases of products and services. Authorities that have experience with disabled employees and naturally exceed the mandatory four-percent quota by following specific strategies are sparse.
- People with more serious limitations tend not to be employed in public administration very often. People with visual or hearing impairments or mental disabilities are underrepresented among public administration employees and they rarely even apply for jobs in public administration. By the same token, employers are not actively seeking people with disabilities as their potential employees. The most frequent types of disability or special needs of employees are dietary restrictions, cancer or limited motor skills.
- Limited work performance represents an obstacle to which the system is unable to respond. Due to the systemisation, clearly defined structure and number of jobs, employers often cannot meet the requirements for reducing or dividing the working time, or in contrast, creating jobs for disabled people as required. The approach to employees with special needs is thus not very flexible.
- The principle of levies to the State budget (as penalties for not employing disabled people) is not functional in the case of public administration bodies.



“Role of municipalities in decision-making on supporting measures and in their implementation” survey

Based on the survey titled *“Crossroads of Autonomy – the court practice in decision-making on supporting measures”*,⁸ which the Defender used to map the court practice in implementing individual supporting measures, the Defender decided to map analogously the role of municipalities. Municipalities play an important role both in the process of decision-making on supporting measures, where the court may request co-operation and information on the person whose legal capacity is in question, and in the process of implementing the supporting measures (as public guardianship). Based on the findings obtained to date, the Defender had found that the experience of individual municipalities differed, and therefore, he contacted selected municipalities with a questionnaire in order to map the existing practice and experience, as well as to point out potential systemic shortcomings and propose changes.

“How to protect the rights of parents with psychosocial disabilities” recommendation

Based on complaints from parents with disabilities whose right to family life had been inconsiderately impaired, the Defender prepared a recommendation with the view to increasing awareness in this area and calling for a change in the approach to disabled parents. The material⁹ is intended for public guardians, social workers in municipalities, representatives of the BSLPC and providers of healthcare and social services. It also includes a simple checklist to assess the level of interference with parental rights and a short summary for the parents themselves.

E.2 International co-operation

Within the co-operation with the Fundamental Rights Agency (FRA) in Vienna, an on-line workshop was held on the development of indicators used in systematic monitoring of compliance with the Convention. The Defender will update the indicators developed in co-operation with the FRA. The purpose of the update is to increase the effectiveness of monitoring of rights embodied in the individual areas of life as defined in the Convention on the Rights of Persons with Disabilities.

The Defender regularly contributes to the Newsletter issued by a working group for the area of the Convention on the Rights of Persons with Disabilities attached to ENNHRI (European Network of National Human Rights Institutions).

⁸ The entire survey is available (in Czech) on the website of the Public Defender of Rights, see https://www.ochrance.cz/fileadmin/user_upload/CRPD/Vyzkumy/2018_61_Vyzkum-svepravnost.pdf

⁹ The entire text is available (in Czech) on the website of the Public Defender of Rights, see https://www.ochrance.cz/fileadmin/user_upload/CRPD/Doporuceni/2020_26_Doporuceni-rodice.pdf



E.3 Conferences, roundtables and training

The Defender organised an on-line **workshop for students of the Faculty of Law of Charles University on employment of people with disabilities**, where he presented his findings in this area and discussed with the students the problems faced by disabled employees.

The Defender also participated in an **international seminar for students of the Public Administration field at Osnabrück University**. The seminar focused on the rights of people with disabilities in individual areas of life. The Defender provided his foreign colleagues with information on the Czech practice and experience in the area of monitoring the rights of people with disabilities.

The Defender participated in the **symposium of the Faculty of Law of Charles University on the topic of genocide** with a speech focusing on the topic of neglecting of people with disabilities in the Genocide Convention.

On the occasion of the International Day of People with Disabilities, the Defender held an on-line discussion on the topic called **People with Disabilities and the European Convention on Human Rights (1950-2020)**, with the participation not only of people with disabilities, but also of judges, representatives of the Office of the Government Commissioner [for Human Rights], lawyers and other representatives of the professional public. The recording of the event is publicly available.¹⁰

By a series of posts on social networks, the Defender commemorated the 70th anniversary of the ratification of the European Convention on Human Rights.

In Brno, on 1 February 2021

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

¹⁰ See <https://www.youtube.com/watch?v=YWLzGz5Sxe4&t=693s>