




**ombudsman**  
Public Defender of Rights

# MONITORING OF RIGHTS OF PEOPLE WITH DISABILITIES 2018

REPORT OF THE PUBLIC DEFENDER OF RIGHTS AS THE MONITORING BODY  
UNDER THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

## Explanatory notes

 link to a webpage

 reference to a printed material

Public Defender of Rights

monitoring of rights of people with disabilities

Act No. 108/2006 Coll., Social Services Act, as amended

Act No. 372/2011 Coll., Healthcare Services Act, as amended

Decree No. 98/2012 Coll., on Medical Documentation, as amended

Decree No.177/2009 Coll., on Detailed Conditions for Completing Education by the School-Leaving Education in Secondary Schools, as amended

Decree No.27/2016 Coll., on the Education of Pupils with Special Education Needs and of Gifted Pupils

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# MISSION OF THE PUBLIC DEFENDER OF RIGHTS

This report deals solely with the Defender's activities in the role of a monitoring body under the Convention on the Rights of Persons with Disabilities, which she assumed on 1 January 2018. However, Act No. 349/1999 Coll., on the Public Defender of Rights, as amended, also gives the Defender a further, broader range of powers.

Since 2001, the Defender has been defending individuals against unlawful or otherwise incorrect procedure of administrative authorities and other institutions as well as against their inactivity. The Defender may peruse administrative and court files, request explanations from the authorities and carry out unannounced inquiries on site. If the Defender finds errors in the activities of an authority and fails to achieve a remedy, the Defender may inform the superior authority or the public.

Since 2006, the Defender has acted in the capacity of 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 where persons are restricted in their freedom, either ex officio or as a result of dependence on the care provided. The purpose of the visits is to strengthen protection against ill-treatment. The Defender generalises his or her findings and recommendations in summary reports on visits and formulates standards of treatment on their basis. Recommendations of the Defender concerning improvement of the ascertained conditions and elimination of ill-treatment, if applicable, are directed both to the facilities themselves and their operators as well as central governmental authorities.

In 2009, the Defender became the national body responsible for equal treatment and protection against discrimination (equality body) pursuant to EU law. 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. The Defender provides assistance to victims of discrimination, carries out research and surveys, issues recommendations with respect to matters of discrimination and ensures international exchange of available information on equal treatment.

Since 2011, the Defender has also been monitoring detention of foreign nationals and the performance of administrative expulsion.

The special powers of the Defender include the right to file a petition with the Constitutional Court seeking the abolishment of a secondary legal regulation, the right to become an interested party in Constitutional Court proceedings on annulment of a law or its part, the right to lodge an administrative action to protect public interest or to file an application to initiate disciplinary proceedings with the president or vice-president of a court. The Defender may also make recommendations to the Government concerning adoption, amendment or repealing of a law.

The Defender is independent and impartial, and accountable for the discharge of his or her office to the Chamber of Deputies, by which he or she was appointed. The Defender has one elected deputy, who can be authorised to assume some of the Defender's competences. The Defender regularly informs the public of his or her findings through the media, Internet, social networks, professional workshops, roundtables and conferences. The most important findings and recommendations are summarised in the Annual Report on the Activities of the Public Defender of Rights submitted to the Chamber of Deputies.



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

# FOREWORD

On 1 January 2018, the Public Defender of Rights became a monitoring body under the UN Convention on the Rights of Persons with Disabilities. The Czech Republic thus complied with its obligation assumed in 2009 by ratifying the Convention, i.e. to establish an independent body to systematically watch the rights of people with disabilities.

This report summarises the first year of our activities in this capacity. We prepared the report to inform about the topics we dealt with, our first findings and also the awareness-raising activities inextricably associated with the role of monitoring bodies.

The Defender already dealt with multiple problems and aspects of the life of people with disabilities within the former scope of her powers. The topics she inquired into included disability pensions, allowance for care, barrier-free buildings and other issues related to public administration, as well as protection of people from discrimination and prevention of ill-treatment in facilities where people with disabilities' freedom is restricted in some way. However, monitoring under the Convention on the Rights of Persons with Disabilities entails systematic identification of problems faced by people with disabilities and looking for comprehensive solutions.

We would not be able to identify the most serious systemic problems without active participation of people with disabilities themselves. Therefore, we not only started co-operating with a number of non-profit organisations dealing with the rights of people with disabilities, but the Defender also appointed her advisory body. The advisory body's members are people with disabilities and people who have dealt with the rights of people with disabilities in the long term. The primary responsibility of the body is to point out "facts on the ground" and information we can use in conducting our surveys, formulating our recommendations, commenting on legal regulations and engaging with the public as part of our awareness-raising activities.

Judging from the very first findings and preliminary results of surveys we launched, it is clear that the rights of people with disabilities have long been neglected by society. There is a lack of services and supporting measures to help people with disabilities to fully integrate into society. More importantly, the society's attitudes to people with disabilities must change to eliminate certain stereotypes and prejudices.

We are only at the beginning and our first year of activities related to the rights of people with disabilities could obviously not bring major changes. However, I appreciate that activity has commenced in the Czech Republic and that topics are being raised and discussed, and I believe there is a good chance that the attitudes and opinions concerning the rights of people with disabilities will begin to change. I believe this report can help in that regard.


Anna Šabatová  
Public Defender of Rights

# 1. Basic overview

Since 2018, we have been monitoring the protection of rights under the Convention on the Rights of Persons with Disabilities. For this purpose, we conduct surveys and formulate recommendations. In doing so, we co-operate directly with people with disabilities, non-profit organisations and the advisory body. We also provide information to the UN Committee on the Rights of Persons with Disabilities about the state of implementation of the Convention. Our activities also encompass various awareness-raising activities aimed not only at people with disabilities, but the general public as well. In addition to monitoring, we also inquire into complaints raised by individuals and the performance of public guardianship by municipalities.

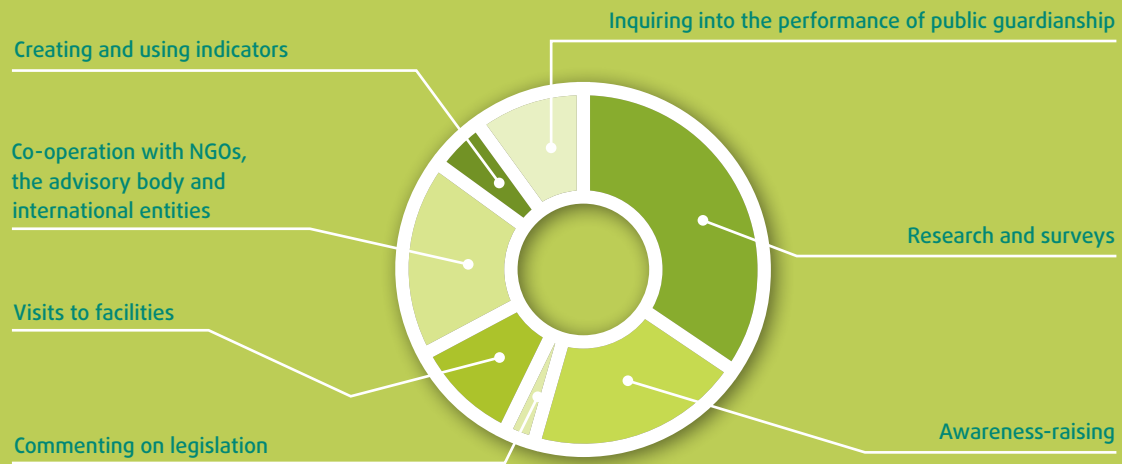
## In the past period, we:



 Continued raising awareness of the rights of people with disabilities in the form of lectures, seminars, videos, articles, also posted on social networks



## Main activities



## 2. Advisory body



The Convention on the Rights of Persons with Disabilities (hereinafter the “Convention”) assumes that its implementation will also be monitored directly by people with disabilities. For this purpose, the Defender formed an advisory body composed of people with disabilities and disability advocates.

The advisory body has 11 members selected based on nominations submitted by the public. The Defender chose the members from among 101 nominees. The members’ term corresponds to the Defender’s term in office.

The Defender appointed the following people to her advisory body:

### 1. Ivana Recmanová

Ivana Recmanová studied Modern Languages at University College in London for her Bachelor’s degree and later pursued her Master’s degree in linguistics

and cybernetics at Palacký University Olomouc. As a student, Ivana was a member of academic self-governing bodies for students with disabilities and LGBTI advocacy organisations. She currently works in IT, translates and publishes articles. She deals with issues concerning the rights of people with disabilities in the long term and is especially concerned about the ways people with disabilities are depicted in the media, as well as issues concerning women with disabilities.

### 2. Pavlína Spilková

Pavlína Spilková is the president of Association of People with Hearing Impairments and their Friends (ASNEP), which provides services to organisations assisting people with hearing impairments and their parents. Before becoming the president of ASNEP, she used to volunteer for various non-profit organisations. Her activities and personal experience make her especially knowledgeable and well-versed in the area of protection of the rights of persons with disabilities.



### 3. Agáta Zajíčková

For 8 years, Agáta Zajíčková has worked in Fokus, a non-profit organisation assisting people with mental illnesses. She advocates a reform of psychiatric care and watches developments in this area. In her line of work, she has improved her communication skills and learnt to patiently listen to her clients, approach people without prejudices and orient herself in the social area, although she originally studied pedagogy in college. She would like to leverage her experience to benefit people with disability, especially those with mental illnesses.

people with spinal injuries who use a wheelchair, comments on health and social legislation, and promotes a better system of care for people with disabilities. Each day, she learns about new personal experience of the clients and their opinions and comments on problematic areas. She also gathers inspiration via international internships and long-term co-operation with spinal associations in a number of European countries. Her work earned her the Olga Havlová Award from the Committee of Goodwill and she was awarded the Silver Medal by the Senate of the Czech Republic.

### 4. Alena Jančíková

Alena Jančíková is the director of the Czech Paraplegic Association (CZEPA), which provides professional consultancy and advocates the rights and interests of

### 5. Jan Uherka

Jan Uherka has long worked for people with disabilities, drawing personal motivation for this work from the fact that his youngest son is also a person with disability after having suffered from cerebral palsy.



He served as the vice-chairman of the Czech National Disability Council and as a member of the Government Committee for Persons with Disabilities. He has also worked for a special team on autism at the Office of the Government. Jan is the president of an association promoting equal opportunities for persons with disabilities and defending their rights. Over the years of his work for people with disabilities, he has earned substantial experience that he benefits from today. Jan Uherka terminated his membership in the advisory body in February 2019. The Defender appointed Jiří Vencel to take his place.

### Jiří Vencel

Jiří Vencel has been dealing with issues related to people with disabilities in the long term, both professionally and in his private life. He was active in the Czech Association of the Disabled and from 2001 to 2006, he was the chancellor (director) of the Czech National Disability Council (NRZP); between 2007 and 2018, he managed a regional NRZP department and since 2012, he has been the vice-chairman of Czech National Disability Council and a member of the Government Committee for Persons with Disabilities. In 2002, he founded the Czech Association of Counselling Centres for Persons with Disabilities. He has also been dealing with the rights of people with disabilities on an international stage. He serves as a board member in 8 non-profit organisation providing services to people with disabilities.

### 6. Jiří Černý

Jiří Černý has long been advocating the rights of people with disabilities. He is a lawyer and a doctoral student at the Faculty of Law of Charles University, Department of Labour Law and Social Security Law. He is currently writing his dissertation where he analyses Czech legislation relating to employment of people with disabilities and proposes further changes thereto. Jiří is now trying to establish his own counselling platform to support employment of people with disabilities and works on an awareness-raising campaign to inform the broad public about the correct approach to people with disabilities.

### 7. Pavla Baxová

Pavla, like many other mothers of children with disabilities, first became involved in social services after the birth of her second son, Tomáš. She has worked in social services since 1994 and since 2000 she has been the president of Rytmus organisation, which was founded to advocate the rights of people with mental disabilities and to offer opportunities enabling them to integrate into social life. Pavla Baxová has been especially active in relation to Article 24 of the Convention, where she organises direct assistance in standard school classes attended by children with mental disabilities. She lectures courses for teaching assistants and for parents of children with disabilities. She is also interested in Article 19 of the Convention, especially with regard to deinstitutionalisation and independent living.





### 8. Camille Latimier and Marek Richter

Marek Richter is a person with mental impairment and has been a member of the Society Supporting People with Mental Disabilities for over 30 years. He has graduated from a special school. He also participated in the Easily Understandable Information courses and attended the Summer School of Social Skills. As a person with a mental impairment, he has first-hand experience with difficulties such as finding and keeping a job.

Camille Latimier has about 10 years of experience working with people with mental disabilities on the national and European levels. She is an expert on individuals' legal capacity and assisted decision-making; she focuses on the area of the rights of children, accessibility and access to health. She is currently the president of the Society Supporting People with Mental Disabilities, which provides assistance to people with mental disabilities and their close ones.

Camille Latimier and Marek Richter share one vote in the advisory body.

### 9. Helena Plachá

For over 25 years, Helena Plachá has been dealing with problems faced by people with disabilities and she serves as manager of sheltered workshops and housing. She is simultaneously a member of the Czech Association of Employers of Disabled People (AZPP), where

she works as a chairwoman of the supervisory committee. She is also a member of the Czech Vocational Rehabilitation Association, Association of Social Services Providers and the Union of Social Workers. As a member of AZPP, she often meets with politicians on all levels of government, especially members of the Parliament, where she has co-operated for several years with the Ministry of Labour and Social Affairs to support various legislative proposals benefiting people with disabilities.

### 10. Milena Urbanová

After giving birth to a son with an autism spectrum disorder, Milena Urbanová started participating in various activities benefiting people with disabilities. She is a member of the working group for disability affairs in the South Bohemian Region, she participated in the founding of the Southern Autist community, and in 2014, she founded Auticentrum o. p. s., a beneficiary society, which she also presides. The society is dedicated to providing social services to people with autism. It promotes the provision of social services in a community and sees communities as one of the most important things affecting the everyday lives of people with disabilities. As a member of the advisory body, she wants to promote awareness of issues faced by people with disabilities and aim towards systematic solutions in all areas, from early care to education, social services, healthcare and employment. She emphasises the need for independent living and social participation of people with disabilities according to Article 19 of the Convention.



### 11. Petr Špaček

Petr Špaček has been active in the area of social services since 2000 and has worked especially with people with mental impairments and autism spectrum disorders. Since 2011, he has worked in Fokus, a non-profit organisation assisting people with mental disabilities, where he is now the head of the social rehabilitation service - the Employment Support Team. His main responsibility is to support people with mental impairments in finding jobs. In addition to helping individuals, he is interested in destigmatisation of (not only) people with mental illnesses, raising awareness among employers and achieving a change in the system of employing people with health problems.

#### The main aims of the advisory body are as follows:

- receive suggestions for further Defender's activities from people with disabilities, their advocacy organisations and carers;
- set priorities and systemic topics to be addressed in the area of protection of rights of people with disabilities;

- participate in the Defender's commentary procedure in relation to legal regulations and release opinions concerning the Defender's strategic documents on the rights of people with disabilities;
- ensure that people with disabilities, their advocacy organisations and the broader public are informed about the Defender's monitoring activities.

In 2018, the advisory body dealt with matters of availability of social and health services and exercise of the right to vote by people with disabilities, especially those with restricted legal capacity. Together, we have started working the problems of communication, media presentation and the use of proper terminology in relation to people with disabilities. The issue of employment and education of people with disabilities was also raised at a meeting of the advisory body. Members of the advisory body have also submitted suggestions to be included in the List of Issues for the UN Committee on the Rights of Persons with Disabilities.

 [The advisory body](#) met four times in 2018.



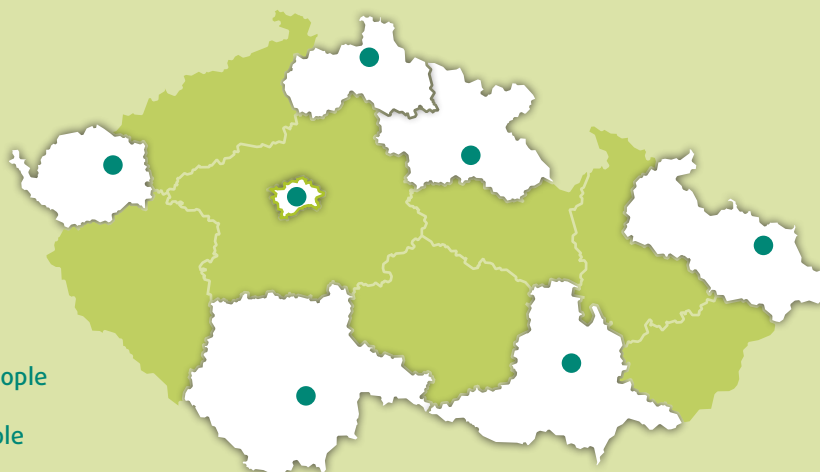
## Regional meetings

One of the first steps within the new competence was to meet with people with disabilities. At the beginning of 2018, we co-operated with regional authorities to organise 7 regional meetings where we introduced our activities in the area of monitoring of rights of people with disabilities, gathered inspiration for further projects and discussed nominations for membership in

our advisory body. All meetings were interpreted into the sign language.

We met with over 400 active people with disabilities in the regions and gathered inspiration for our further monitoring work from them.

### Regional meetings in 2018



Brno – 80 people

České Budějovice – 50 people

Hradec Králové – 50 people

Karlovy Vary – 35 people

Liberec – 55 people

Ostrava – 60 people

Prague – 80 people

# »»»»»»»»»» 3. Co-operation with disability advocacy organisations



In 2018, we approached 358 organisations concerned with the rights of people with disabilities. Our aim was to find out which of these organisations met the criteria set by the UN Committee on the Rights of Persons with Disabilities for “disabled persons’ organisations”, i.e. organisations of people with disabilities that respect the Convention’s principles, are led, managed or administered by people with disabilities and most of their members qualify as people with disabilities. Using a questionnaire, we were looking to learn which of these organisations wanted to actively or passively participate in our activities.

A total of 60 organisations expressed their willingness to assist the Defender in her activities. To be able to regularly inform them about our activities and the topics tackled, we launched an electronic bulletin, which we also use to publish invitations to various events.

### Aliance 12

We are members of ALIANCE 12, an informal grouping of organisations and persons supporting implementation of Article 12 of the Convention on the Rights of Persons with Disabilities. In 2018, the grouping met to debate safety in decision-making support. We discussed, e.g., the possibilities of checking guardians, supporters and representatives of a household member, possible conflicts of interests and the role of a court in protecting persons with disabilities against abuse.





# »»»»»» 4. Co-operation with the UN Committee on the Rights of Persons with Disabilities



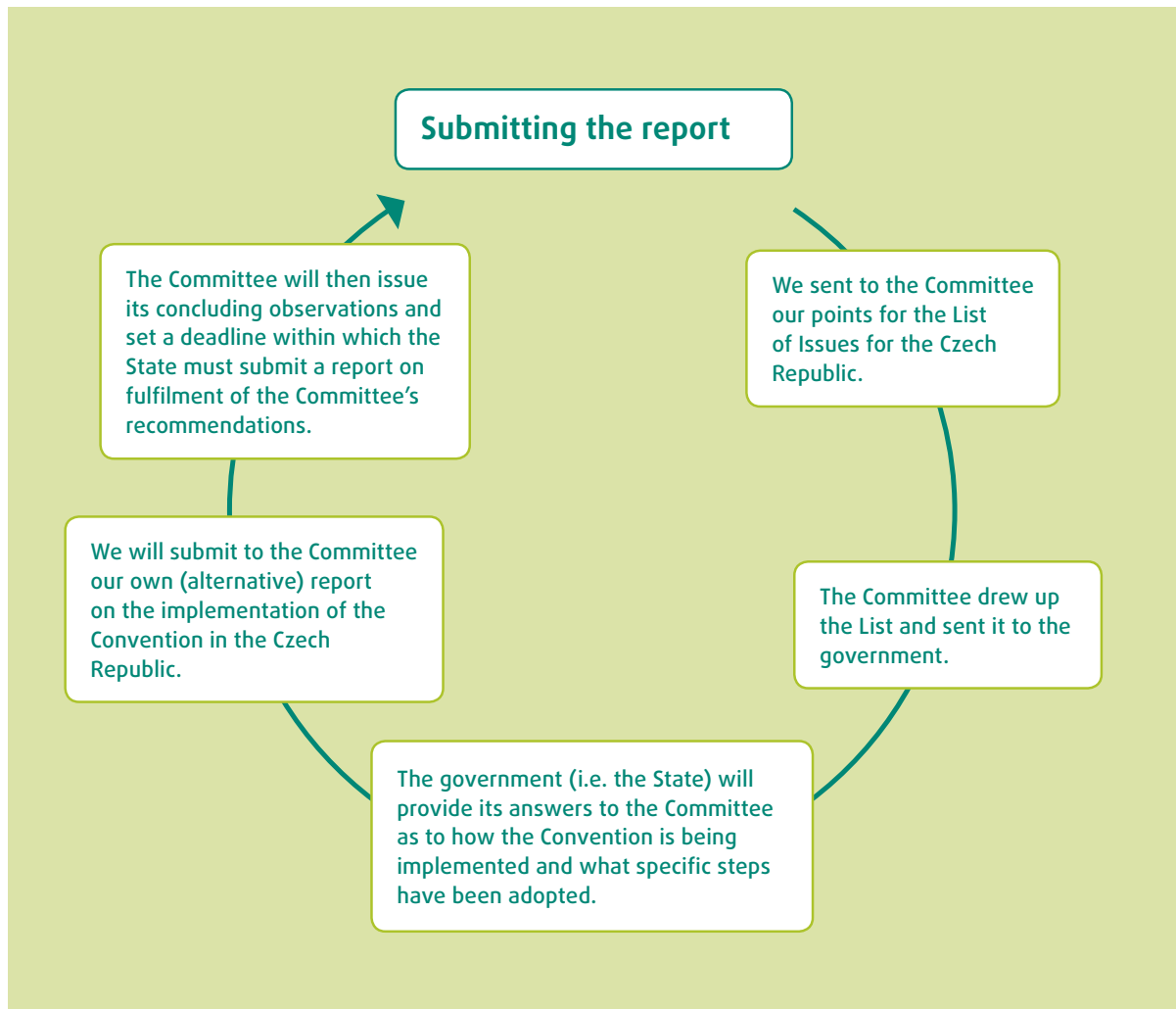
One of our aims under the Convention on the Rights of Persons with Disabilities is to co-operate with the UN Committee on the Rights of Persons with Disabilities (hereinafter the “Committee”).

The Committee is authorised to receive and review reports from member states on measures adopted with a view to performing the commitments under the Convention. In order for the Committee to be able to operate properly, it needs information from entities monitoring the situation within the member states.

Based on our findings and in co-operation with disability advocacy organisations, we created a list of issues which we sent to the Committee. The list summarises topics and issues that we consider important in terms of protecting the rights of people with disabilities in the Czech Republic. We also formulated specific questions which the Committee could then pose to the Czech Republic.

For example, we drew the Committee’s attention to the fact that no information was publicly available on the accessibility of public buildings and services. Likewise, the statutory minimum standard of accessibility for newly constructed buildings is not observed and, more importantly, not enforced. Czech legislation also does not explicitly regulate the status or the conditions for training of guide dogs to assist people with disabilities, and the rights of access of persons with **special-ly-trained assistance dogs** are regulated only partially.

In connection with Article 12 of the Convention, which guarantees legal capacity of people with disabilities on an equal basis with others, we pointed out that the Czech Republic still allowed restriction of legal capacity. Moreover, courts tend to restrict legal capacity far more often than they opt for less restrictive supporting measures, such as representation by a household member or support in decision-making.



We also proposed to the Committee to verify how the Czech Republic intended to provide for actual accessibility of various social services (especially with respect to field services and day centres), including adequate financing so that people with disabilities could enjoy as much self-reliance as possible, living outside institutions.

In the area of education, the issues included, e.g., the fact that there were no rules as to who should provide health care (such as administration of medication, insulin etc.) in schools. This means that the health and safety of students with disabilities is not sufficiently guaranteed.

We also pointed out the persisting insufficient number of physicians providing expert reports for the social security administration and of Czech Sign Language interpreters.

The Committee can use our points in compiling the List of Issues to be sent to the Czech Government, asking

questions about the implementation of the Convention and its specific steps. The Czech Republic will then be obliged to draw up a written report based on the List of Issues and submit it to the Committee. The Committee can subsequently provide its observations, recommending changes to the Czech Republic.

We also participated in the preparation of a General Comment on Article 5 of the Convention – Equality and Discrimination. We sent comments on its draft wording to the Committee.

Our recommendations were as follows:

- Clearly define the obligation of the States parties to ensure effective legal counselling and legal aid, including free legal aid for victims of discrimination on the grounds of disability, based on respect to their will and preferences.



- Emphasise the absolute prohibition of restricting legal capacity or procedural rights in the area of protection against discrimination.
  - Recommend to the States parties that they establish a mechanism for an action in public interest (*actio popularis*) to be used in cases of discrimination against the most vulnerable groups of persons.
  - Further specify the purpose of sanctions imposed in cases of proven discrimination, or propose a non-exhaustive list of said sanctions.
  - Define in more detail the undue burden test in fulfilling the obligation to carry out reasonable accommodations.
- All our recommendations were accepted and included in the final draft of the Comment.

 [General Comment](#) on Article 5 of the Convention

# »»»»»»»»»» 5. Research and surveys

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Everyone has a right to social services corresponding to his/her needs and allowing him/her to live in a usual environment.

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## Survey of availability of social services to children and adults with autism spectrum disorders and with significant behavioural problems

We conducted a survey mapping the availability of social services to children and adults with autism spectrum disorders, especially those with significant behavioural problems. The survey included social service providers, education facilities, psychiatric hospitals and also the administrative regions. We used case studies to ascertain whether and how the above entities could provide support to their potential clients. This was accompanied by a survey of obstacles that prevent people with an autism spectrum disorder from using the corresponding services.

The survey revealed the following:

- availability of social services varies across individual administrative regions;
- at the time of the survey, some types of the services required were not available in certain regions at all;
- medium-term plans created by regions are often too abstract and do not reflect the actual demand and need for the services;
- availability of social services is in the hands of local and regional governments and the State has no

direct instruments to comply with the duties under the Convention on the Rights of Persons with Disabilities;

- the situation of families is not addressed comprehensively.

For this reason, we recommended, inter alia:

- to create an instrument enabling the Ministry of Labour and Social Affairs to directly influence the availability of social services, which are currently handled by local and regional governments;
- to involve in the planning of social services all actors with information on current demand, especially the clients themselves and their families;
- to reflect the financial demands of specific social services in allocating subsidies;
- to train social workers at municipal authorities to focus on addressing the comprehensive needs of families.

 [Survey](#) and [recommendation](#):  
File No. 45/2018/OZP

Based on the survey, we published an information leaflet explaining the relevant issues and providing advice for situations that can occur in various areas of lives of families including a member with an autism spectrum disorder, ranging from diagnostics of the child, education, allowance for care, up to searching for a physician and labour law issues. We also involved non-profit organisations and families in the preparation of this information material.

 Leaflet for families



The question of availability of social services was also tackled by the Constitutional Court, which ruled that:





## ÚSTAVNÍ SOUD

“Persons with disabilities who are in an adverse social situation enjoy a right to availability of suitable social services under public law...This right is under judicial protection and can be asserted in court.”

Judgement of the Constitutional Court of the Czech Republic File No. I. ÚS 2637/2017 of 23 January 2018

## Survey of availability of dental care for people with mental disabilities and an autism spectrum disorder

We co-operated with the Equal Treatment Department on a survey focusing on the provision of dental care in general anaesthesia to people with mental disabilities and people with an autism spectrum disorder.

We found that both adults and children with mental disabilities and an autism spectrum disorder who have to receive dental treatment under general anaesthesia due to their disability have to wait for treatment for four months on average, with the waiting time exceeding one year in certain regions. Individual facilities also apply different criteria and reimbursements for such treatment. We further found that, save for a few exceptions, patients would not lodge official complaints about the waiting times or other aspects of the treatment with the facilities they had contacted, and that there was no comprehensive system of training for dentists in respect of the needs of patients with a mental disability or an autism spectrum disorder in their treatment.

Based on the results, we formulated a set of recommendations for central governmental authorities, the

Czech Dental Chamber, health insurance companies and other key stakeholders.

We also held a roundtable to discuss the individual recommendations with their addressees. The joint meeting yielded the following results:

- It is necessary to define specialised facilities that will provide treatment of tooth decay in general anaesthesia.
- The Ministry of Health pledged to create procedures for providing dental care to people with disabilities.
- The Ministry of Health will initiate refinement of the rules for reimbursement of this treatment from health insurance.
- Health insurance companies declared that they had decided to increase the reimbursements for treatment of people with disabilities to dentists and hospitals.

Before the commencement of the roundtable, the Defender received a letter from the President of the Czech Dental Chamber, doc. MUDr. Roman Šmucler, concerning the measures agreed between the Chamber and the health insurance companies. These measures aim to ensure that sedatives administered directly in the dentist's office are used to enable treatment of a majority of children, whether with a mental disability, an autism spectrum disorder or suffering from anxiety. This form of treatment should be newly covered

from health insurance. Furthermore, the Chamber has been negotiating with the health insurance companies concerning a network of facilities that would be created to provide one-day dental surgery.

These measures should improve the availability of dental care for people with mental disabilities or autism spectrum disorders.

 [Survey](#): File No. 51/2017/DIS

## Survey of accessibility of railway transport for people using wheelchairs

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We conducted a survey to verify whether the conditions for railway transport of people using wheelchairs were satisfactory. The survey focused on accessibility of railway buildings (stations) as well as the trains of the carriers operating in the Czech Republic – specifically, we were looking to establish whether the doors were wide enough for an electric wheelchair.

We found that:

- Only about one sixth of the total number of platforms at railway stations were at least partially accessible to people using wheelchairs.
- Only about one fifth of the total number of buildings in railway stations were at least partially accessible for people using wheelchairs.
- In most cases, railway carriers in the Czech Republic allow for carriage of people using electric wheelchairs by modifying the cars. Only one carrier does not.
- There is no effective legal instrument to ensure that cars registered and approved prior to 1 July 2008 are made accessible for people using wheelchairs.

- When providing information on the possibilities of transport for people using wheelchairs, carriers do not show sufficient sensitivity in the terminology they employ.

We formulated recommendations to improve the overall situation, which we addressed to the Ministry of Transport, the railway authority and the carriers. We wish to ensure that:

- the obligation to order any transportation with a wheelchair in advance is restricted;
- awareness is raised among passengers with disabilities as to their rights;
- enforceable regulation for accessibility of trains manufactured before 1 July 2008 is introduced;
- accessibility in smaller towns and rural areas is ensured;
- all stakeholders use more sensitive language and terminology towards people with disabilities.

## Exercise of the right to vote by people with disabilities

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In relation to the municipal elections, we inquired in October 2018 whether clients of residential social services, especially those with restricted legal capacity, had participated in the elections. We visited a total of 7 homes for people with disabilities, discussed the issue with the staff and clients, and studied documentation.

We found that:

- some clients had not been enabled to vote even though their right to vote had not been restricted;
- some clients with restriction of the right to vote had actually voted;
- some facilities intentionally did not inform their clients about the elections;



Indeed, restricted legal capacity does not automatically imply inability to vote. A restriction of the right to vote must be directly mentioned in the court decision whereby the legal capacity is being restricted. If the right to vote is not explicitly mentioned in the judgment, the person can vote.



People with disabilities have the right to manifest their social autonomy and exercise the right to participate in political and public life.

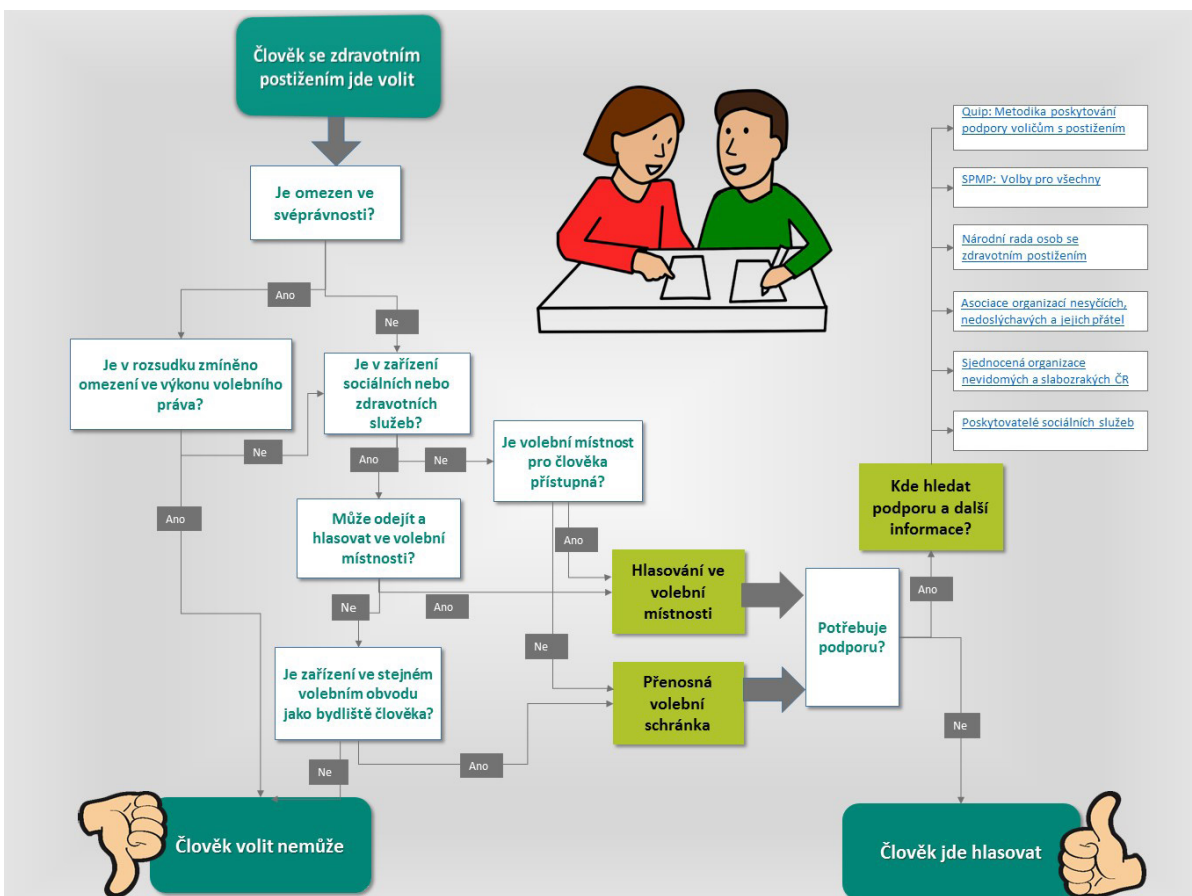
- social workers often found it difficult to understand the court decisions on restriction of legal capacity;
- facilities lacked procedures and methodologies concerning the exercise of the right to vote;
- electoral rolls did not correspond to the current legislation and terminology concerning restrictions of legal capacity.

All findings, recommendations and methodological materials concerning the issue of voting rights will be released in a summary report in 2019.

Before the municipal elections, we created an information material explaining how to enable people with disabilities living in residential social services facilities to vote.

 [Press Release](#) of 2 October 2018

Based on the findings from the visits to the facilities, we held a roundtable to discuss the recommendations of the Defender. The meeting was attended by representatives of the facilities visited, but also of the





Ministry of the Interior (as the authority responsible for the elections), and of the Ministry of Labour and Social Affairs (as the authority ensuring methodological guidance for social service providers). Representatives of social services who were involved in support for the exercise of the right to vote in the long term also spoke at the roundtable. They provided specific examples of how competences of people with disabilities could be strengthened in this area.

We also held a separate meeting with the Ministry of the Interior and highlighted the necessity to ensure that elections are accessible to all groups of people with disabilities. The Ministry pledged to introduce changes and initiated closer co-operation with us in this matter.

We also informed the Union of Towns and Municipalities about the need to eliminate any barriers that prevented or discouraged people with disabilities from voting.

## Survey on issues associated with restriction of legal capacity and other supporting measures



Restriction of legal capacity must be a last-resort protection measure.

We initiated a survey focusing on the quality of court decisions in the area of restrictions of legal capacity and other supporting measures.

In the first stage of the survey, we analysed a total of 190 judgments concerning people living in a residential social services facility designated as “facility for people with disabilities”. It follows from the preliminary results that:

- restriction of legal capacity is used far more often (90.5% of cases) than other supporting measures such as representation by a household member, assistance in decision-making, and declaration in anticipation of incapacity (9.5% of cases).



No restriction of legal capacity		18
Of which:	Guardian appointed (no restriction)	17
	Representation by a household member	1
	Assistance in decision-making	0
Restriction of legal capacity		172
Total		190

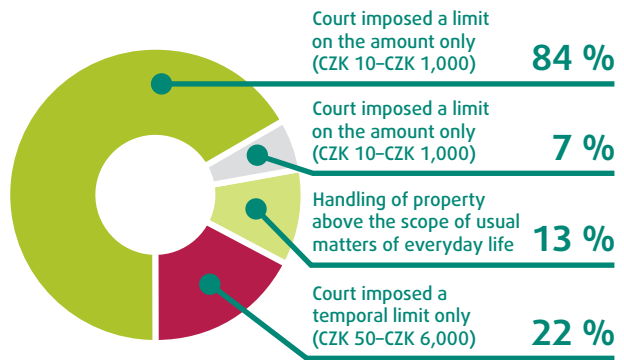
Table 1: Choice of support measure

- Courts often impose a “general” restriction of legal capacity. An formulation oft-used in the judgements states “restrictions in all areas of life except for ordinary matters of daily life.” However, such judgments are at variance with the principle of recognition of individual capacities and unique nature of a person.
- In other cases, the courts decided to impose restrictions with regard to disposal of property (104 cases), drawing up last will and testament and disposal of inheritance (91 cases), entering into marriage (88 cases), and employment (86 cases); the right to vote was restricted in 62 cases, i.e. in almost a third of all examined judgements.
- The court practice differs in determining the amount people can dispose of independently. These amounts ranged from CZK 10 per transaction to CZK 50 per

month, up to CZK 6,000 per month. In the cases of the lowest numbers of e.g. CZK 50 a month, it is doubtful that these amounts could be sufficient for a person to arrange “ordinary matters of daily life,” even in situations where most needs of these persons are taken care of by social services.

In the next stage of the survey, we will analyse the judgments requested from district courts. The complete survey report will be issued in 2019.

Chart 1: Determination of an amount subject to independent disposal



In examining the quality of the reasoning of individual judgments, we also looked at whether the courts had carefully examined in the proceedings the new conditions for restricting legal capacity and considered

Chart 2: Assessment of the possibility of using an alternative to restricting legal capacity and specific impending damage



the fact that legal capacity could only be restricted if no other supportive measures were available and the person could suffer specific damage if his/her legal capacity remained unrestricted (see Section 55 (2) of Act No. 89/2012 Coll., the Civil Code). In most cases, the courts tackled these conditions, albeit at times by means of a very formal review. In about a quarter of

the cases, the court merely cited a statutory provision regarding the use of alternatives and stated that no alternative could be used. The results were somewhat better regarding assessment of impending damage, but the damage was often purely hypothetical and was not based on any specific high-risk behaviour of the person under assessment.

## Surveys initiated

We have initiated a **survey concerning the availability of field social services and day centres** for families of children with disabilities. The aim is to find out whether the support and development of these services are among the priorities of the State and administrative regions, and how this support and development are implemented in practice. We are interested in the tools the regions have available to meet the demand for social services in a timely and appropriate manner. The survey should show the extent of fulfilment of the obligations under Article 23 of the Convention and the Social Services Act, stipulating that the required support and care must be ensured in an environment that is as non-restrictive as possible and aim at maximum development of self-reliance.

We have also initiated a **survey concerning the issue of work rehabilitation**. We are mapping the activities of expert working groups that are involved in decision-making on work rehabilitation. We focus on the composition of the working group, the method of its establishment, the manner of its decision-making, and the possibility for those interested in work rehabilitation to participate in the working group meetings. Among other things, we want to establish the nature of the expert group's conclusions and their impact on the decision to provide work rehabilitation to a particular applicant.

We aim to ascertain the degree of availability of **shelters and accommodation facilities for people with**





**disabilities.** Shelters and accommodation facilities are designed for people at risk of losing their homes, and thus facing extremely adverse situations. Within this group, people with disabilities are among the most vulnerable, and they thus must not be excluded from these services, for example because of inaccessibility of the relevant facilities. Therefore, we decided to initiate a survey on this matter and map the accessibility of the social services (shelters and accommodation facilities) for people with disabilities, and reveal the most common barriers to their use in connection with disability, if any, as well as to understand the mechanisms based on which these operate. We would like to issue follow-up recommendations that would help remove any barriers and provide a better access to

these services. The survey follows from Article 28 of the Convention.

We are also reviewing **employment of people with disabilities in the public sector.** Within the survey we have initiated, we aim to establish, inter alia, the manner of complying with the statutory quota for people with disabilities, hiring practices and the number of employees with disabilities in the public sector. The survey focuses not only on the procedures used by the employers, but also on the experience of employees with disabilities.

All surveys initiated will be completed and published by the end of 2019.

# »»»»»»»»»» 6. Awareness-raising



One of our main tasks concerning the rights of people with disabilities is awareness-raising. Over the year, we organised a number of events aiming to draw attention to everyday problems faced by people with disabilities, inform the public about their rights and thus to empower them.

## World days

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### World Down Syndrome Day

World Down Syndrome Day is an opportunity to raise awareness among the general public about the genetic disorder called Down syndrome and the needs of the people who were born with it. Together with the Aldente Theatre, we organised a play of "Who's afraid of DS" and an author's reading of the work of an author with Down syndrome. We commemorated this world day and spread its message on social networks by sharing a series of photographs with bright and colourful socks, the symbol of Down syndrome.

### Lunacy Months

In co-operation with the Práh association and the Psychobraní project, we held a public screening of the Canadian film "Out of Mind, Out of Sight" documenting the lives of perpetrators of serious crimes who suffer from mental illnesses. The screening was followed by a discussion with representatives of a psychiatric hospital, an institution for secure preventive detention and community care on how society should treat perpetrators with mental illness.

## European Independent Living Day

As the first organisation in the Czech Republic, we took part in the European Independent Living Day marked on 5 May. We challenged people with or without disabilities to take pictures of what independent living meant to them. We used their contributions to create a video highlighting the importance of independence and the fact that both people with and without disabilities have the same need for independent living. The video had 5,300 views on Facebook. We also made a report that had 2,149 views.

 [Video:](#)



Generally, independent living means being able to control one's life and make all the relevant decisions. This is closely related to the right to lead a full social life, study, work, have a family. This is often a question of availability of personal assistance and other support services.

## Spinal Muscular Atrophy Awareness Month

In August 2018, we focused on raising awareness of spinal muscular atrophy (SMA). The aim of the campaign was to show that people with SMA could live



actively, even if every day brought new challenges to them. Therefore, we asked people to think about their personal challenges and express their support for people with SMA by trying to overcome them, taking a picture of themselves doing this and sending the picture with a comment or message to us. The photographs were then used for an exhibition held at the Polárka Theatre in Brno, which attracted 3,000 visitors.

## International Day of Sign Languages

We joined forces with the ASNEP association to present the Defender's activities. Together, we made a short video in sign language to commemorate this international day.

 [Video:](#)



## Rare Disease Day

We became involved in a campaign on the occasion of the Rare Disease Day, which falls on 28 February. Rare diseases are those affecting a maximum of 5 people out of ten thousand. There are more than 8,000 of such diseases in the world, and approximately 30 million people suffer from these in Europe alone.

We attended a meeting organized by Debra ČR, z.ú. devoted to "Building bridges between health and social care for people with rare diseases". As part of the meeting, we delivered a presentation on the right of people with disabilities to independent living.





Together with children from the children's group of the Office of the Public Defender of Rights, we shared pictures of painted faces on social networks, a traditional token of support for people with rare diseases.

### World Autism Awareness Day

We commemorated the World Autism Awareness Day (2 April). We have been dealing with the topic of autism in the long term and we want the lives of the people "on the spectrum" to improve. We strive for

well-balanced support of both people with autism and those who help them and care for them.

We actively participated in the Life with Autism conference organised by the Faculty of Health and Social Studies of the University of South Bohemia in České Budějovice.

We are also a member of the Autism Working Group of the Government Committee for People with Disabilities.



## Conferences

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- We co-operated with the Faculty of Law of Charles University and organised a two-day conference titled “Practical Implementation of Article 12 of the Convention on the Rights of Persons with Disabilities”. The conference was attended by judges, scholars, representatives of the relevant Ministries, public guardians working for regional authorities and people working for organisations trying to use the new legislative instruments for support and protection.
- The SKOK do života organisation showcased the work of a professional supporter and the Svěrenské fondy a trusty organisation showed how one can use trusts to help people with disabilities. The participants also commented on the decisions of courts, especially the Constitutional Court, in cases concerning the permissibility of appointing a guardian for people without a restriction of legal capacity.
- The organisers of the international collaborative and dialogue symposium Horizonty asked us to prepare a debate on the rights of people with mental illnesses. According to the motto “Tension that (dis)unites us”, we discussed with representatives of psychiatry and patients the potential conflicts between human rights and the views of medical science concerning involuntary hospitalisation and treatment, looking for boundaries between protection and autonomy, and ways which a harmony of the two approaches could help improve care.
- We participated in the international conference titled “Employment of people with mental disabilities” in Olomouc, where we talked about the need to improve possibilities for employing people with disabilities on the open labour market and the necessity of linkage between preparation for work and commencing the employment itself.
- At a conference titled “Let’s set clear rules and conditions for care of people with ASD”, we summarised our findings and recommendations following from the Defender’s survey on the availability of social services for this target group.
- As the only representatives from the Czech Republic, we participated in an international conference “Social economy as an effective model for social inclusion” held in Varna, Bulgaria. The participants discussed the effects of social economy on the quality of life and employment rates of people with disabilities. Workshops held within the conference proved to be a reliable source of practical information.
- We participated in the meeting of European ombudspersons responsible for monitoring the rights of people with disabilities, where we drew on the experience with employment of people with disabilities; we talked about the situation in the Czech Republic and the potential barriers faced by people with disabilities.
- We attended a conference organised by the Faculty of Law of Charles University where we presented a paper entitled “People with disabilities as a new minority?”, focusing on how the society approaches people with disabilities and whether these people are in a disfavoured social position, which can be seen as a typical feature of a minority. We stated in the paper that social perception of people with disabilities was evolving and it was important to change it so that people with disabilities were not treated as a minority.

## Lectures, seminars, education of public administration

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- We delivered two lectures for people with a hearing impairment to explain how the Defender could help and what was his or her role, for example, in discrimination issues. The lectures were interpreted into the sign language.
- To students of the Faculty of Social Studies of Masaryk University, we presented monitoring of the rights of people with disabilities, specific examples and preliminary results of our surveys.
- In co-operation with patients’ organisation SMÁ-Cl, z. s., which supports people with spinal muscular atrophy, we organised the first webinar called Convention on the Rights of Persons with Disabilities and the monitoring activities of the Public Defender of Rights. Along with listening to the lecture, the participants could use their computers to follow a presentation related to the lecture, and also actively enter the debate. This form of education is advantageous because anyone can participate from their homes, with just an Internet connection and a computer. Twenty-five families used the opportunity to participate.
- For our colleagues at the Office of the Public Defender of Rights, we prepared a short interactive



course on communication with people with disabilities and things to be avoided.

- Together with the Department of Supervision over Restrictions of Personal Freedom, we spoke at the Senior Academy organised by the Brno Municipal Police.
- We trained regional social work methodology officers, public guardians and representatives of the Ministry of Labour and Social Affairs regarding the legal regulations and obligations arising from the Convention on the Rights of Persons with Disabilities.

In March, we prepared training sessions for employees of the Labour Office as part of their methodology days – two of these were held in Prague and one in Olomouc. In April, we joined forces with the Department of Supervision over Restrictions of Personal Freedom to train employees of regional authorities on how to assess patients' informed consent in psychiatric hospitals. In June, we discussed the agenda of our department at a catch-up seminar of the Ministry of Labour and Social Affairs, and we took part in the Ministry's methodology days for public guardians in October. In November, we prepared a workshop for public guardians from the Olomouc Region.

## Roundtables

### Roundtable with people with psychosocial disabilities

We held our first meeting with people with psychosocial disabilities. It involved especially people who had experienced a mental illness, representatives of their families and carers, as well as services supporting them within their communities. The aim of the meeting was to find out what current issues regarding people with psychosocial disabilities needed to be addressed. One of them was the lack of awareness of the rights of people with psychosocial disabilities and the unavailability of legal assistance in case of hospitalisation in a psychiatric hospital. The participants set as a priority for further activities to

map the situation in individual healthcare facilities and issue recommendations for improving the existing practice.

### Roundtable on Excusing students with disabilities from physical education classes

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



We also organised a roundtable on the exercise of the right to vote by people living in residential social services, and another one on the issues of access

to dental care for people with mental disabilities and people with an autism spectrum disorder (see above).

## Publications, leaflets, information materials

### Publication on “How to protect the rights of parents with psychosocial disabilities and their children?”

We developed a material for social workers, guardians, bodies for social and legal protection of children (BSLPs) and social and health care providers on how to support parents and future parents with psychosocial disabilities. The reason that inspired the publication was the fact that the Defender had repeatedly dealt with complaints of mothers with mental disabilities or mental illnesses who had either been threatened with, or subjected to, removal of their child immediately after delivery. Among other things, the Defender’s inquiry revealed that the authorities sometimes did not know how to work with the concept of the best interest of the child, and were not versed in the legislation. Furthermore, the practice was inconsistent.



### Leaflet on the Convention on the Rights of Persons with Disabilities

We explain the new scope of the Defender’s competences in a new leaflet.





## Videos and social networks

We want information on the rights of people with disabilities to be available to all. For this reason, we made several videos explaining the individual articles of the Convention on the Rights of Persons with Disabilities. The videos had a total of 14,335 views on the Internet. We also translated the entire Convention on the Rights of Persons with Disabilities into the Czech Sign Language. The videos will be made available in the course of 2019.



We have set up our own group on Facebook called Rights of people with disabilities for direct communication with people with disabilities, sharing of information and receiving instigations concerning the rights of people with disabilities.

 [Rights of people with disabilities](#)

The most prominent topics regarding the rights of people with disabilities on Facebook were as follows:

Persons with disabilities and elections	1,200 views
International Day of Sign Languages	2,600 views
Convention – Article 27: Work and employment	835 views
Convention – Article 9: Accessibility	2,700 views
European Independent Living Day	5,300 views
Regional meetings on monitoring of the rights of people with disabilities	1,700 views

# »»»»»»»»»» 7. Commenting on legislation

Our main task is to seek to change any systemic shortcomings that prevent people with disabilities from exercising their rights. For this reason, we actively submit comments on draft legal regulations.

## Decree on medical records

We referred to the Ministry of Health that it had failed to incorporate one of the measures envisaged under the National Plan for Promoting Equal Opportunities for Persons with Disabilities for the period 2015–2020 (<http://bit.ly/narodni-plan-podpory>) when preparing an amendment to Decree No. 98/2012 Coll., on medical records, namely to add among the obligatory essentials of medical documentation “information on the necessary compensatory aids used by the patient and on the forms of communication preferred by the patient with hearing impairment or combined hearing and visual impairment” (paragraph 11.2).

At the same time, we pointed out that, under Section 30 of Act No. 372/2011 Coll., on health services, a patient with sensory impairment or with severe communication problems caused by health reasons had the right to communicate, with respect to the provision of health services, in a manner understandable to him/her and using the means of communication which he/she chose, including those based on interpreting by another person.

Including information on the preferred method of communication among the obligatory essentials of medical records will facilitate the exercise of the right of a patient with specific communication needs in practice: upon admission to care, healthcare professionals will

be clearly motivated to identify the person’s needs and other healthcare professionals (at the same provider) will be able to follow from the respective records.

The Ministry of Health accepted our point.

## Graduation decree

Together with the Department of Equal Treatment and Protection against Discrimination, we submitted comments on a draft amendment to Decree No. 177/2009 Coll., on detailed conditions of completion of education in secondary schools through a school leaving examination (“maturita”).

In the context of the rights of students with disabilities, we appealed to the sponsor of the draft to accommodate the principles and requirements of the Convention on the Rights of Persons with Disabilities, which is binding on the Czech Republic, and adapt the categorisation of students eligible for modification of the conditions for taking the school leaving examination. Indeed, neither the existing nor the proposed categorisation adequately reflects the social model of disability underlying the Convention, because the key indicator for the categorisation of students is the type of disability (physical, visual, auditory, specific learning disabilities and other disadvantages), which corresponds to medical approach to disability. Although the decree was amended with effect as of 1 November 2018, there was no change in the categorisation. Therefore, we will continue to strive for a change to another key indicator for the categorisation of students as well as for a paradigm shift in the overall perception of people with disabilities.

### **Decree on education of students with special educational needs**

In co-operation with the Department of Equal Treatment and Protection against Discrimination, we also submitted comments on a draft amendment to Decree No. 27/2016 Coll., on education of students with special educational needs and exceptionally gifted students. In particular, we pointed out the inconsistency of the proposed amendment with Article 24 of the UN Convention on the Rights of Persons with Disabilities. According to this Article, the States which have acceded to this Convention have, *inter alia*, to ensure that a “person with disabilities can access an inclusive, quality and free primary education and secondary education in the communities in which they live” and “receive the support required, within the general education system, to facilitate their effective education”. However, the changes to be introduced with the forthcoming amendment, such as the limitation of the number of staff teaching in parallel in regular classes, or the deletion of the provision stipulating that students with disabilities shall be primarily educated in mainstream schools, do not match the idea of inclusive education enshrined in the Convention.

### **Draft Long-term Plan for Education and Development of the Educational System in the Czech Republic for 2019–2023**

In co-operation with the Department of Equal Treatment and Protection against Discrimination, we submitted our comments on a draft of the Long-term Plan for Education and Development of the Education System of the Czech Republic for 2019–2023. In particular, we pointed out that the project paid very little attention to inclusive education and ethnic de-segregation of Czech education.

# MONITORING OF RIGHTS OF PEOPLE WITH DISABILITIES 2018

## REPORT OF THE PUBLIC DEFENDER OF RIGHTS AS THE MONITORING BODY UNDER THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

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