Public Defender of Rights
OMBUDSMAN

PRISONS



REPORT
ON SYSTEMATIC VISITS CARRIED OUT
BY THE PUBLIC DEFENDER OF RIGHTS 2016

Public Defender of Rights

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THE MISSION OF THE DEFENDER

Pursuant to Act No. 349/1999 Coll., on the Public Defender of Rights, as amended, the Public Defender of Rights (Ombudsman) protects persons against the **conduct of authorities and other institutions** if such conduct is contrary to the law, does not correspond to the **principles of democratic rule of law and good governance** or in case the authorities fail to act. If the Defender finds shortcomings in the activities of an authority and if subsequently the authority fails to provide for 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 aim of the systematic visits is to strengthen the protection of persons restricted in their freedom against **ill-treatment**. The visits are performed in places where restriction of freedom occurs ex officio as well as in facilities providing care on which the recipients are dependent. The Defender generalises his or her findings and recommendations concerning the conditions in a given type of facility in summary reports on visits and formulates general standards of treatment on their basis. Recommendations of the Defender concerning improvement of the conditions found and elimination of ill-treatment, if applicable, is directed both to the facilities themselves and their operators and the central governmental authorities.

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

Since 2011, the Defender has also been **monitoring detention of foreign nationals and 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 subordinate legal regulations, the right to become an enjoined party in Constitutional Court proceedings on abolishment of an act or its part, the right to lodge action to protect a general interest or 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**, accountable for the performance of his or her office only to the Chamber of Deputies which elected him or her. The Defender has one **deputy** elected in the same manner, who can be authorised to assume a part of the Defender's competence. The Defender regularly informs the public of his or her findings through the 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 of the Parliament of the Czech Republic.

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FOREWORD

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

Since 2001, the Public Defender of Rights has been visiting prisons and addressing complaints against the conditions of remand in custody and imprisonment, and the actions of the Prison Service of the Czech Republic. In the past ten years, the Defender has also carried out systematic visits in the sense of the Optional Protocol to the Convention against Torture. In this period, the Defender issued a number of important reports concerning prisons. This includes especially the 2006 report on visits to prisons in which the Defender summarised his findings obtained in high security and maximum security prisons, and the 2010 report on visits in remand prisons. The collected standpoints titled "Prisons", published in 2010, was another milestone. In the foreword, JUDr. Otakar Motejl, the first Defender, recommended to let the Prison Service of the Czech Republic decide on the type of prison where a convict will serve his/her sentence, instead of this being determined by the court. He did not expect that his idea would become reality sooner than in a couple of years, but he felt compelled to reiterate it, with an increased sense of urgency. I support his recommendations.

The Report you have before you summarises the findings from visits carried out by my colleagues in 2014 and 2015. We have visited seven facilities for men, predominantly classified in the category of medium and high security prisons.

One could say that this is just an ordinary summary of multiple systematic visits, such as those published in the past. However, several facts indicate that there is nothing ordinary about the latest report. Experts and interested stakeholders have long known that the Czech prison system has been stagnant for a long period of time. In the 1990s, a significant progress was made in the prison system. Unfortunately, the pace of change has ground to a halt in the decades that followed. The Czech Republic's prison population index has long been among the highest in Europe; Czech prisons have long been very overcrowded and even the artificial reduction of the number of prisoners after the presidential amnesty in 2013 did not reverse the unfavourable trend of growing prison populations. Czech prisons are designed to hold large numbers of prisoners in shared accommodation, which does not correspond to the modern approach to imprisonment. The remuneration of prisoners who work was set by a Government regulation in 1999 and has

not been adjusted for inflation ever since. Although the crime rate is generally getting lower[1], the share of recidivist prisoners in the prison population is growing.

The lack of specialists employed in the prison system does not permit individualised rehabilitation of convicts

Being aware of the broader context, our systematic visits focused especially on the medical services, the conditions of imprisonment of people with various health-related handicaps (physical and mental), issues associated with prison capacity and equipment, issues associated with the employment of prisoners, the (non-)functionality of certain regime-related measures, and safety of prisoners and the staff in connection with fundamental rights; in this document, we have formulated a number of recommendations for the Prison Service of the Czech Republic and the Ministry of Justice.

It is clear, however, that some decisions can only be made by the Government as a whole. I want to stress that I am observing the activities of the Ministry of Justice and the preparation of the Prisons Outlook 2025 and I welcome the general conception of this document, which demonstrates awareness of the overlaps with other policy areas.

I intentionally mention the broader context with which we were repeatedly confronted during the visits. It is clear that the Prison Service by itself cannot enact qualitative changes in the prison system that would ensure efficiency and a much greater degree of rehabilitation of the convicts. It is clear that overlaps with criminal-law and social policy as such are a necessary precondition for improvement of the situation in Czech prisons and require inter-departmental co-operation.

> Czech prison population rate is one of the highest in Europe

1 DUŠEK, Libor. Hrozí opět přeplnění věznice? Predikce vývoje počtu vězňů v České republice *(Will prisons get overcrowded again? Forecast of future changes in the prison population in the Czech Republic)*. Národohospodářský ústav AV ČR *(Economic Institute of the Academy of Sciences of the Czech Republic)*, Study 13/2015, p. 13.

SUMMARY

1

Between 2014 and 2015, the Defender carried out **systematic visits in 7 prisons** for men, predominantly classified in the category of medium and high security prisons.

2

The Defender found ill-treatment in two prisons. The reasons were the generally unsatisfactory conditions of imprisonment of convicts with physical or mental disabilities. The Defender found shortcomings in the equipment and also in insufficient provision of assistance to persons dependent on the help of others. The very statutory definition of this specific category of convicts poses a problem, as it currently stresses their inability to work, although the primary criterion defining the specific position of these convicts should be their medical condition.

3

The Czech Republic has one of the highest prison population rates among European countries and its **prisons have long been overcrowded**. If this problem is not systematically addressed, e.g. by a reform of penal policy, then Czech prisons are set to exceed their capacity by approx. 2,300 places in the coming years.

4

The possibilities for rehabilitation of the convicts are impacted by the **system of shared accommodation** that reduces the effectiveness of the work of the specialist prison employees and promotes the so-called shadow life of the convicts.

5

Specialists who work with prisoners are overburdened by paperwork unrelated to the purpose of the convicts' imprisonment. Their number is inadequate to serve the growing numbers of prisoners. The lack of specialists employed in the prison system does not permit individualised rehabilitation of convicts.

6

The health care in prison is in need of a reform. Health care in Czech prisons faces a number of problems, especially in terms of providing for accessible and good care, which is partly related to the lack of physicians motivated to work in prisons; currently, there is a need for an analysis of the entire conception of prison health care – the current European trend, in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the World Health Organization (WHO), seeks to transfer responsibility for health care in prisons to the civilian health care system.

7

Despite significant increases in prices in the past years, the remuneration convicts receive for work has not been adjusted for inflation since 1 July 2000. The average real amount of a convict's monthly remuneration equals CZK 3,725 (in 2014). If all convicts get the opportunity to earn more money, this will increase the likelihood they will pay their debts (the costs of imprisonment, indemnification for damage caused by their criminal acts, duties to maintain and support, distraint, etc.) and it can be reasonably assumed this will reduce their motivation to commit crimes after being released. The Defender supports introduction of gradual **adjustment of the convicts' remuneration to inflation** so that the risk of negative impacts on the employment of the convicts (resulting from lesser attractiveness of convict labour in case of abrupt increase of wages) is mitigated.

8

Convicts' social connections with their close ones should be supported and developed during imprisonment, e.g. **by placing the convicts in a prison near to the home of their close persons or by means of suitable organisation of prison visits**. The Defender considers the statutory 3-hour visiting period as an obsolete minimum standard that no longer corresponds to the modern concept of punishment, which focuses on adapting prison conditions to free life and maintaining contact with the family.

9

The analysis of disciplinary practice shows a rapid decline in the number of disciplinary punishments and rewards between 2013 and 2014. This change is related to a new regulation of disciplinary proceedings connected with the fact that court review of selected decisions taken in disciplinary proceedings is now possible. The Defender believes that the system of disciplinary rewards and punishments should not be the convicts' sole motivator and does not perceive the decline of disciplinary practice as inherently negative. However, the judges need to be aware of this change in the disciplinary practice, as e.g. in parole proceedings they often formalistically require several disciplinary rewards in order to approve the given application.

I) List of abbreviations

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

ECtHR – European Court of Human Rights

EPR – Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe on the European Prison Rules

Convention – Convention for the Protection of Human Rights and Fundamental Freedoms, as promulgated in the Collection of Laws under No. 209/1992 Coll.

Office – the Office of the Public Defender of Rights

Charter – Charter of Fundamental Rights and Freedoms, as promulgated in the Collection of Laws under No. 2/1993 Coll.

RDG – Regulation of the Director General of the Prison Service of the Czech Republic

Imprisonment Rules – Decree of the Ministry of Justice No. 345/1999 Coll., promulgating the imprisonment rules

PUC – permanently unemployable convicts

Criminal Code – Act No. 40/2009 Coll., the Criminal Code

Prison Service – Prison Service of the Czech Republic

Public Defender of Rights Act – Act No. 349/1999 Coll., on the Public Defender of Rights

Prison Service Act – Act No. 555/1992 Coll., on the Prison Service and the judicial guard of the Czech Republic

Imprisonment Act – Act No. 169/1999 Coll., on imprisonment

Health Care Services Act – Act No. 372/2011 Coll., on health care services and the conditions of their provision

The Report is based on the legal state of affairs as of 1 January 2016, unless specified otherwise.

II) Systematic Visits

For part of 2014 and for 2015, I selected for systematic visits **especially the medium and high security prisons intended (profiled for) imprisonment of male inmates.**[1]

I decided to visit this type of facilities especially for the following reasons: The Defender has not yet performed systematic visits to medium security prisons; most convicts are placed in high security prisons; most complaints come from high security prisons.

Prisons are a fertile ground for the risk of ill-treatment, which is inherent to the very nature of imprisonment. The convicts have to submit to a number of measures (restriction of free movement, restriction of the right to privacy, hygienic restrictions, restriction of the free choice of a physician, etc.) as well as to a limited equipment of the spaces which they inhabit during most of their days. The risk of ill-treatment is high also due to the composition of the prison population, which also includes older persons, persons with mental illness, chronically ill convicts, addicts, etc.

> visits focused on medium and high security prisons for men

Aside from the Public Defender of Rights, prevention of ill-treatment of convicts is also ensured by the regional State attorney's offices, which carry out inspections of the prisons' compliance with legal regulations[2] and CPT.

> State attorney's offices and CPT also carry out inspections in prisons

1) Course of the visits

The systematic visits were unannounced, but they were carried out on site with the knowledge of the head of the prison. The visits were carried out by the authorised employees of the Office: lawyers and external consulting physicians or other experts in the area of prisons.

Visits in prison took two to three days and comprised inspection of the prison's premises, observations, interviews with the prison staff

1 Section 56 (1) of the Criminal Code stipulates that custodial sentence (imprisonment) may be carried out in one of the following types of prisons (Czech designations in italics): (a) low security (s dohledem); (b) medium security (s dozorem); (c) high security (s ostrahou); or (d) maximum security (se zvýšenou ostrahou). Pursuant to par. 2, courts will place in a medium security prison those offenders convicted of a misdemeanour committed through negligence who have already served imprisonment for an intentional criminal offence in the past; or those offenders convicted of an intentional criminal offence and sentenced to a maximum of three years of imprisonment who have not served imprisonment for an intentional criminal offence in the past. Courts will place in a high security prison those offenders sentenced for an intentional criminal offence who simultaneously does not meet the conditions for placement in a medium security prison or a maximum security prison; and those offenders convicted of a misdemeanour committed through negligence who have not been sentenced for imprisonment in a minimum or medium security prison. Depending on the seriousness of the crime and the degree and nature of the offender's maladjustment, the court may place the offender in a different type of prison [Section 56 (3) of the Criminal Code].

2 Section 78 of the Imprisonment Act.

and the convicts, study of the internal regulations and records of the convicts, including medical documentation. Photographic evidence was taken during the visits.

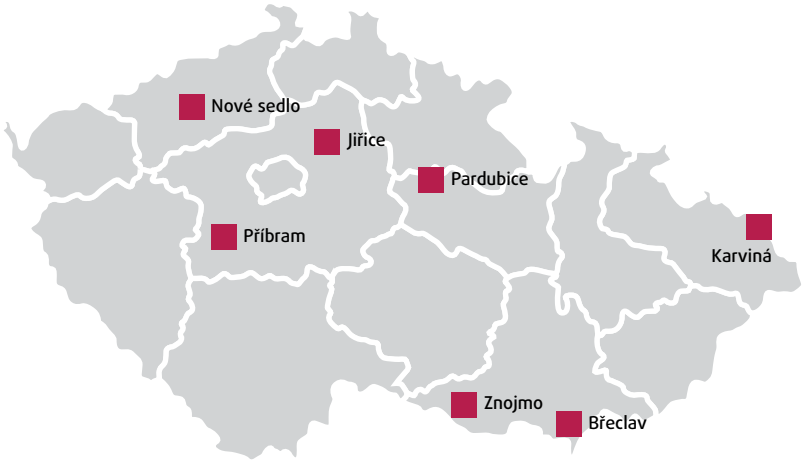
I sent the reports on the visits, which reflected my findings and contained my recommendations on how to achieve better practice, to the heads of the individual prisons. Heads of all the prisons visited responded to the report and informed me on the measures they adopted. The success rate (acceptance) of my recommendations is 81%.[3]

2) Information on the facilities visited

The Office's employees visited 7 out of the total of 35 prisons (27 men's prisons have medium security and high security blocks). In total, 20% of all existing prisons were visited (26% of men's prisons with medium and high security blocks).

The information on the prisons visited and their capacities[4] and fill-up rates[5], are specified in the following table. Prisons marked in red include blocks that exceeded their capacity at the time of the systematic visit.

Prison	Region	Capacity	Fill-up rate
Znojmo	South Moravia	207	164
Pardubice	Pardubice	678	584
Příbram	Central Bohemia	718	690
Karviná	Moravia–Silesia	203	87
Nové Sedlo	Ústí nad Labem	414	426
Břeclav	South Moravia	164	120
Jičice	Central Bohemia	715	749



Map of the Czech Republic showing the visited prisons

3 The number includes even those recommendations that were accepted, but not implemented due to e.g. insufficient funds. Therefore, the number also includes those of my recommendations which are yet to be implemented.

4 Only medium and high security blocks are included. Some of the visited prisons also included blocks with a different security levels or remand custody blocks. These were not subject to the visits. The table shows the capacities as of the date of the systematic visit.

5 Situation as of the date of the systematic visit according to the monthly statistical reports issued by the Prison Service of the Czech Republic. Available at www.vscr.cz [online].

III) The purpose of imprisonment and restriction of rights under the principle of "ultima ratio"

A number of factors is involved in achieving the purpose of imprisonment.[6] From motivational factors (permeable groups of internal differentiation, disciplinary punishments and rewards, treatment programmes, job assignments) to activities of the specialist employees (educators, special pedagogues, psychologists) to the material conditions (equipment of the accommodation and personal hygiene spaces, sports facilities, equipment of visitor and entertainment rooms, etc.).[7]

Section 27 (2) of the Imprisonment Act includes an exhaustive list of the fundamental rights and freedoms of convicts that are suspended during imprisonment. The third paragraph of the same Section also defines the rights of which the convicts are completely deprived during imprisonment (e.g. a free choice of health care services provider). Simultaneously, paragraph 1 of the same Section stipulates *that the convicts have a duty to submit to restriction of certain rights and freedoms whose exercise would be in conflict with the purpose of imprisonment or which cannot be exercised on account of imprisonment.*

Restriction of the rights and freedoms of the convicts is only permitted if this is necessary to achieve the purpose of imprisonment. In every restriction of a fundamental right or freedom of a convict, two facts must be given consideration: 1) whether a more lenient measure could be used; and 2) whether the infringement of the convict's rights and freedoms is proportionate.

Meeting these conditions is evaluated by the courts in the so-called proportionality test.[8] ECtHR favours a similar approach, where the Convention is found violated if a restriction of a fundamental right is not based on a law, does not follow a legitimate goal or is not necessary in a democratic society.[9]

6 Section 1 (2) of the Imprisonment Act describes the purposes of imprisonment as follows: The purpose of the sentence of imprisonment (hereinafter only "imprisonment") is to use the instruments stipulated by this Act to influence the convicts so that the risk of recidivism of their criminal behaviour is reduced and they can lead a self-sufficient life in accordance with the law after their release, and to protect society against criminals and to prevent them from committing more crimes. Section 2 (1) of the Imprisonment Act stipulates that imprisonment may only be carried out in a manner that respects the personal dignity of the convicts and reduces the adverse effects of deprivation of liberty; however, this must not jeopardise the need to protect society. Paragraph 2 further stipulates that imprisoned convicts must be treated in such a way as to protect their health and, if the term of imprisonment makes this possible, support such attitudes and skills that will help the convicts reintegrate into society and enable them to lead a self-sufficient life in accordance with the law after their release.

7 MURDOCH, Jim. *The treatment of prisoners. European standards.* Strasbourg: Council of Europe, 2008, p. 213

8 In its Judgement File No. Pl. ÚS 4/94 of 12 October 1994, the Constitutional Court inferred one of the basic rules of functioning of the State power, i.e. the principle of proportionality and the prohibition of abuse of the law. The Constitutional Court noted that in cases of conflict between the fundamental rights and freedoms with public interest or other fundamental rights and freedoms, "*... it is always necessary to assess the purpose (goal) of such an infringement in view of the means that are used, where the measure for such assessment is the principle of proportionality (reasonability in a broader sense), which could also be called a prohibition of excessive infringement of the rights and freedoms.*"

9 Kmec, J., Kosař, D., Kratochvíl, J., Bobek, M. Evropská úmluva o lidských právech. Komentář (Charter of Fundamental Rights and Freedoms. Commentary). 1st edition. Prague : C. H. Beck, 2012, pp. 883-884.

This is the framework I used for assessment of the treatment of the imprisoned convicts. In each restriction of a convict's fundamental right or freedom, I assessed whether the given restriction served to achieve the purpose of imprisonment, whether it was suitable (necessary) for this purpose, and whether it was proportional. In each restriction of the rights and freedoms of the convicts, I simultaneously assessed whether or not it infringed on human dignity and reached the severity of ill-treatment.

1) Conditions in individual prisons

The legal regulation of the rights and duties of the convicts applies the same to all convicts in all prisons of the same type. However, with regard to the principle of equality, the law does not and, in reality, cannot take into consideration the factual differences of imprisonment in the individual prisons. These factual differences rest especially in the geographical position of the prison, the design layout of the prison, the material conditions, the availability of treatment programmes, the composition and number of convicts, staffing, access to jobs, etc.

Heads of prisons should be aware of these factual differences between prisons as well as of the resulting disadvantaged position of certain individual convicts. This logic should be applied to exercising the rights and enforcing the duties of the convicts.

The CPT is also aware of the fact that the position of the convicts is not equal. For these reasons, a certain degree of flexibility in visiting and phone rules is required with regard to the convicts who are placed far from their families.[10]

> "the conditions in individual prisons differ"

10 Excerpt from the second General Report [CPT/Inf (92) 3], par. 51. In: EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards [online]. CPT/Inf/E (2002) 1 – Rev. 2004 [retrieved on 20 November 2015]. Available at: http://www.cpt.coe.int/lang/cze/cze-standards.pdf.

IV) Prison staffing

The task of the Public Defender of Rights as the "national preventive mechanism"[11] is to prevent ill-treatment of persons restricted in their freedom. Nevertheless, I also paid attention to the working conditions of the prison staff. This is necessary as the staff levels, composition and motivation as well as their working conditions have a significant influence on the treatment of the convicts and is one of the prerequisites for successful achievement of the purpose of imprisonment.

Par. 8 of the EPR notes *that prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.*

In some prisons, I encountered attitudes of resignation among the prison staff. This might have been caused by an interplay of multiple factors (e.g. low salaries, a high number of convicts per staff member, lack of supervision, lack of feedback from senior employees, lack of self-actualisation, work in stress-inducing environment, etc.). The lack of motivation on the part of the staff has adverse effects on their everyday work with the convicts.

A number of specialist prison employees in particular stated that their direct work with the convicts was paralysed by excessive paperwork and a number of other tasks unrelated to direct work with the convicts.[12]

This also affects the overall atmosphere in the prisons and the relations between the convicts and the prison staff. The CPT standards stipulate *that constructive as opposed to confrontational relations between prisoners and the staff will serve to lower the tension inherent in any detention environment and by the same token significantly reduce the likelihood of violent incidents and associated ill-treatment.*[13] 13 The CPT criticises the practice where the approach of educators and pedagogues to the convicts is based on control and subordination.[14] Cold relationships between the staff and the convicts were also criticised by the CPT in the report on the visit to the Czech Republic in 2014. CPT further stated that the relationship between the staff and the prisoners is, to a large degree, dependent on staffing and that the

> prison staff carry out an important public service

11 National preventive mechanism, see http://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/ [retrieved on 20 January 2016].

12 COYLE, Andrew. Řízení věznic v čase změn *(Managing Prisons in a Time of Change)*. Prague, 2003, p. 84 et seq.

13 Excerpt from the second General Report [CPT/Inf (92) 3], par. 45. In: EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards [online]. CPT/Inf/E (2002) 1 – Rev. 2004 [retrieved on 20 November 2015]. Available at: http://www.cpt.coe.int/lang/cze/cze-standards.pdf.

14 EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). Report to the Czech Government on the visit to the Czech Republic carried out by the CPT from 25 March to 2 April 2008, par. 63 Available at: http://www.vlada.cz/assets/ppov/rlp/dokumenty/zpravy – -plneni-mezin-umluv/report-cpt--czech-rep--2008-_czech_.pdf.

lack of staff represents a risk to the members of the staff themselves, as too much overtime carries a risk of quick burnout.[15]

I have encountered inadequate staffing in proportion to the work tasks and the numbers of convicts in all of the prisons I visited. I address the issues of providing for medical staff in prisons later in a special chapter on health care.

1) Educators' responsibilities

I believe it necessary to point out the working conditions of the staff on an example of educators who are in daily contact with the convicts. The described working conditions are, however, typical of other members of the team of specialist employees who participate in achieving the purpose of imprisonment (typically a special pedagogue, social worker, and psychologist).

The working tasks of an educator are regulated by RDG 21/2010, which in Section 10 (1) stipulates that *the educator is a member of the team whose primary tasks comprise comprehensive educative, pedagogical, diagnostic and preventive activities aimed at the convicts' overall character development and socialisation, re-socialisation and re-education, including targeted measures to optimise the process of convicts' education and implementation of drug prevention in the prison*. In order for the educator to work with the convicts and to lead them toward orderly life and re-socialisation, he or she must know them personally and be in regular contact with them.[16] The principle of individual work with the convict is reflected in Section 2 (2) of the Imprisonment Rules, which stipulates that, as a rule, not more than 20 convicts should be assigned to one educator.

For the work of a specialist employee with the convicts to be meaningful and effective, he or she must have sufficient time to work with the convicts directly. During the systematic visits, I ascertained that the educators are overburdened with paperwork and other tasks. For instance, the educators check the contents of the convicts' mail [17], deal with their requests for phone calls[18], escort them to the telephone machine and supervise the calls. Until recently, they have also been overburdened by activities associated with the "toiletry packages" (packages containing articles of personal need).[19] They also distribute cleaning products to the convicts, supervise visits, escort the convicts to do shopping in the canteen, etc. I have also noticed discontent on the part of the educators concerning the increased paperwork associated with disciplinary practice after RDG No. 36/2014 came into effect.[20]

> "the administrative burden is increasing at the expense of specialist work"

15 Excerpt from the eleventh General Report [CPT/Inf (2001) 16], par. 26. In: EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards [online]. CPT/Inf/E (2002) 1 – Rev. 2004 [retrieved on 20 November 2015]. Available at: http://www.cpt.coe.int/lang/cze/cze-standards.pdf.

16 Section 10 (2)(a) of the RDG No. 21/2010.

17 Section 24 (2) of the Imprisonment Rules.

18 Section 25 (2) of the Imprisonment Rules.

19 Cf. Methodological Guideline of the Director General of the Prison Service No. 1/2014. Internal regulation cancelled on 1 March 2015.

20 The relevant internal regulation came into effect on 1 October 2014. See Chapter 11 for more on disciplinary practice.

Interviews with the educators showed their lack of motivation as, instead of performing educative, pedagogic, diagnostic and preventive activities to which they are qualified, they have to perform a number of other tasks which require no qualification at all. To give an example, the already mentioned escorts to the phone machine are very time-consuming and, while the convicts are speaking on the phone, the educator cannot work on other things.[21] This is even though CPT criticised the educators' passivity already during the 2008 visit to the Czech Republic; *their main task seemed to be delivering and collecting mail and filling up activity boxes in the imprisonment plans.*[22]

> understaffing limits work with the convicts

In some prisons, the lack of educators was apparent. Above, I quoted Section 2 (2) of the Imprisonment Rules according to which, *as a rule, one educator should take care of 20 convicts at maximum*. I found that the number of convicts per educator was usually above 20. I even encountered sections where the limit was exceeded by 100% or more.

The lack of educators coupled with the considerable administrative burden and tasks that should not be carried out by educators paralyses their ability to influence the convicts and hinders achieving the purpose of imprisonment. It can also lead to their overworking and quick burnout.

I recommend that the General Directorate of the Prison Service:

- **Re-evaluates the working tasks of the educators with respect to the amount of administrative burden.**
- **Ensures that the real number of convicts per educator in each prison section does not generally exceed the number of 20; this should be implemented by the end of 2017.**

21 The lengthy escorts of the convicts to the phone machines is completely unnecessary in many countries (e.g. in Germany and Slovenia), as the convicts there have telephone lines available at their cells (of course, they are only allowed to call pre-approved numbers).

22 EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). Report to the Czech Government on the visit to the Czech Republic carried out by the CPT from 25 March to 2 April 2008, par. 62. Available at: http://www.vlada.cz/assets/ppov/rlp/dokumenty/zpravy – -plneni-mezin-umluv/report-cpt--czech-rep--2008-_czech_.pdf.

2) Protection of the rights of employees and officers

I also addressed the situation concerning protection of the rights of officers and employees of the Prison Service. The protection of rights and justified interests of the employees in relation to their work is generally under the competence of the Labour Inspectorate.[23] With respect to the officers, this should be carried out by the trade union organisation which, however, only has limited competences and powers.[24]

I consider the above-described system of protection of the rights of the Prison Service's employees and officers to be inadequate, especially with regard to the officers. I have encountered cases of repression against officers (e.g. in the form of transfer to the other end of the country) who reported their suspicions concerning criminal activities or bribery. I believe it necessary to create an independent body (under the Prison Service) that would address and deal with complaints from the officers and employees of the Prison Service concerning violations of fundamental and other rights of these persons or inactivity of their superiors in exercising these rights, and other unlawful conduct.

I note that also the other security corps have established the office of ombudsman. Concerning the scope of the competences and powers of the prison service ombudsman, the ombudsman of the Ministry of the Interior[25], could serve as an example as his competences include the Police and the Fire Rescue Service of the Czech Republic.

To the Ministry of Justice, I recommend to

- **Establish the office of prison service ombudsman to ensure greater protection of the rights of the employees and officers of the Prison Service; this should be implemented by the end of 2016.**

23 Under Act No. 251/2005 Coll., on labour inspection, as amended.

24 Cf. Section 198 of Act No. 361/2003 Coll., on the service relationship of the members of the security corps, as amended.

25 Regulation of the Ministry of the Interior No. 22/2012.

V) Prison overcrowding

Section 17 (6) of the Imprisonment Rules stipulates that *in a dormitory intended for several convicts, each convict must have at least 4 m² of accommodation space*. The same provision allows a living space of less than 4 m² per convict *in a situation where the total number of convicts serving sentences in prisons of the same basic type in the whole country exceeds the prison capacity defined as providing a living space of at least 4 m² per convict*.

Since the total number of convicted men serving sentences in high security prisons in the Czech Republic exceeded the defined capacity of prisons on 14 October 2014, the living space per convict was reduced to 3 m² in accordance with Section 17 (6) of the Imprisonment Rules. The situation further worsened during the systematic visits as medium security prisons for men also became overcrowded on 19 March 2015 (female convicts serving imprisonment in maximum security prisons reached the same threshold on 12 May 2015).

All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.[26] The CPT adds on this that an overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy; reduced out-of-cell activities; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff.[27]

I observed these adverse effects of overcrowding in some of the prisons I visited. These were, in particular, prisoners accommodated in very large numbers in cells/bedrooms, prisoners being often locked in their cells/bedrooms, overcrowded visiting rooms, inadequate capacity of the common room, long waiting times for telephone and medical treatment, little time for food consumption, limited contact with specialist prison employees; see below.

1) Shared accommodation

One of the implications of prison overcrowding is that 10 or more convicts were accommodated in some of the bedrooms. The EPR consider shared accommodation of convicts permissible, but only where it is suitable.[28] Unfortunately, Czech prisons are **built on the principle of shared accommodation.**

26 Excerpt from the second General Report [CPT/Inf (92) 3], par. 46. In: EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards [online]. CPT/Inf/E (2002) 1 – Rev. 2004 [retrieved on 20 November 2015]. Available at: http://www. cpt.coe.int/lang/cze/cze-standards.pdf.

27 Excerpt from the seventh General Report [CPT/Inf (97) 10], par. 12-15. In: EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards [online]. CPT/Inf/E (2002) 1 – Rev. 2004 [retrieved on 20 November 2015]. Available at: http://www.cpt.coe.int/lang/cze/cze-standards.pdf.

28 Par. 18.5 – 18.7 EPR.

The situation becomes desperate when the living space per convict[29] is further reduced. I noted with regret that even newly built accommodation facilities for convicts follow the system of shared accommodation of convicts.[30]

Lack of privacy in convicts' everyday life escalates in direct proportion to the growing number of beds in a dormitory. Moreover, multiple-occupancy dormitories imply the risk of intimidation and violence among convicts. Shared accommodation imposes a restriction on proper staff control over convicts and fosters the development of "shadow life in the facility" and "offender subcultures and facilitates the cohesion of criminal organisations".[31] [32]

Convicts inside every prison form a system of mutual relationships and links which is invisible from the outside and remains consistently hidden (so-called **shadow life of convicts**). According to Netík, *shadow life includes the formation of a specific informal structure of (a) social relationships and statuses, hierarchy of convicts with precisely defined roles and corresponding rights, as well as socially pathological forms of behaviour.*[33] *Shadow life may often become a source of violence among convicts. CPT states that violent incidents among prisoners are a regular occurrence in all prison systems; they involve a wide range of phenomena, from subtle forms of harassment to unconcealed intimidation and serious physical attacks.*[34]

The EPR lay down in par. 52.2 that "*Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety.*"

I recommended in my reports that the capacity of individual dormitories should not exceed 8 beds, even if the accommodation capacity of the respective prison has been exceeded. Nevertheless, dormitories should provide a standard aimed at minimising shared accommodation along the example of the more advanced prison systems.

example of shared accommodation

29 According to the above-cited Section 17 (6) of the Imprisonment Rules.

30 For example, the new building of the Rapotice Prison (2012) and the restored accommodation facilities in the Pankrác Prison (September 2015).

31 Excerpt from the eleventh General Report [CPT/Inf (2001) 16], par. 29. In: EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards [online]. CPT/Inf/E (2002) 1 – Rev. 2004 [retrieved on 20 November 2015]. Available at: http://www.cpt.coe.int/lang/cze/cze-standards.pdf.

32 Similarly also VAN ZYL SMIT, Dirk; SNACKEN, Sonja. *Principles of European Prison Law and Policy*. Oxford: Oxford University Press, 2011, pp. 50-54.

33 NETÍK, Karel et al. *Psychologie v právu: úvod do forenzní psychologie (Psychology in Law: Introduction to Forensic Psychology*. 1st ed. Prague: C.H. Beck, 1997, p. 28.

34 EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards, p. 23 [online]. CPT/Inf/E (2002) 1 – Rev. 2004 [retrieved on 20 November 2015]. Available at: http://www.cpt.coe.int/lang/cze/cze-standards.pdf.

The CPT recently issued standards concerning the size of living space per prisoner.[35] The Committee has been issuing requirements for living space since the 1990s. Although I use these standards during all my visits, they have not been clearly defined in a single document to date and as such they represent rather a result of the application in practice. In the document, the CPT addresses in detail also the aspects of the system of shared accommodation and calls on the Member States to apply the existing minimum space standards as follows, in particular when building new prisons:

- single-occupancy cell: at least 6 m^2 of living space + sanitary annexe;
- 2 prisoners in a cell: at least 10 m^2 (6 m^2 + 4 m^2) of living space + sanitary annexe;
- 3 prisoners in a cell: at least 14 m^2 (6 m^2 + 4 m^2) of living space + sanitary annexe;
- 4 prisoners in a cell: at least 18 m^2 (6 m^2 + 12 m^2) of living space + sanitary annexe[36]

I recommend that the General Directorate of the Prison Service of the Czech Republic:

- **Aims at accommodating convicts in single-occupancy cells or double cells when restoring existing accommodation facilities and/or building new ones.**

- **Takes into account the CPT standards regarding the size of living space per prisoner when restoring and/or building new accommodation capacities.**

2) Other adverse effects of overcrowding

Inadequate time for food consumption is one of the possible adverse effects of prison overcrowding. In some of the prisons I visited, convicts had around 8 minutes for consuming their food (lunch) because the capacity of the dining room was not designed to "serve" all the convicts within a reasonable period of time. **I consider at least 15 minutes as a reasonable time for consuming food (lunch)**.

Another possible adverse effect of overcrowding is that the prison must place convicts in spaces that are not a standard accommodation section. In one of the prisons visited, convicts were not placed in a standard section due to a lack of capacity but instead in a special section with a "regime" resembling a crisis block. The section concerned was subject to a stricter "regime" than a standard section, with restricted activities, extended daytime locking times, a reduced treatment programme, etc.

Prison overcrowding adversely affects also **maintenance and fostering of the convict's** family ties. Convicts very often complain about rejection of their application for **transfer** to a prison located closer to the family's place of residence on the grounds of the desired prison being over capacity. [37]

Prison overcrowding also limits the effectiveness of motivational factors. In some of the prisons visited, the differences between the first, second and third permeable groups of internal differentiation

35 EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). Living space per prisoner in prison establishments: CPT standards. CPT/Inf (2015) 44. [online]. Strasbourg: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) [retrieved on 18 January 2016]. Available at: http://www.cpt.coe.int/en/working-documents/cpt-inf-2015 – 44-eng.pdf

36 Ibid.

37 Cf. also chapter 10. Visits.

> overcrowding limits the possibility of serving a sentence closer to the prisoner's family

were in fact blurred due to a lack of space, which significantly limited the motivational influence of internal differentiation on the convicts. When the capacity of a prison is fully utilised, it may be difficult to physically separate these groups, as a result of which internal differentiation was often just words on paper (in some prisons, convicts were placed in bedrooms without regard to their placement in the internal differentiation system, i.e. convicts from the first and third internal differentiation group together).

3) Solution to overcrowding

I do not believe that the problem of prison overcrowding can be cured merely by constructing new prisons or restoring existing ones. It is obvious that the numbers of imprisoned persons show a rising trend. In this respect, Dušek concludes that unless the problem of the numbers of imprisoned persons is addressed by changes in approach to penal policy aimed at reducing the prison population, there will be a shortage of approximately 2,300 places in Czech prisons in the upcoming years.[38] For taxpayers, imprisonment is the most expensive of the penalties that may be imposed on offenders.

It should be pointed out that the Czech Republic has a relatively high prison population rate. The Czech Republic has approximately twice the number of imprisoned persons per 100 thousand inhabitants as the countries of Western Europe (such as Germany, France, Italy).[39]

I refer to CPT's standpoint on the problem of prison overcrowding; CPT states that countries that have embarked on extensive programmes of prison building only found their prison populations rising in tandem with the increased capacity acquired by their prison estates. According to CPT, the problem would be better resolved by changing the State's penal policy, with imprisonment being an extreme measure pursuing the objective of rehabilitation of offenders and protection of society; greater use should be made of alternative measures.[40]

In this respect, the Committee of Ministers of the Council of Europe issued a recommendation calling on the Member States to address the problem of overcrowding and, when reviewing their

38 DUŠEK, Libor. Hrozí opět přeplnění věznice? Predikce vývoje počtu vězňů v České republice (*Will prisons get overcrowded again? Forecast of future changes in the prison population in the Czech Republic*). Národohospodářský ústav AV ČR (*Economic Institute of the Academy of Sciences of the Czech Republic*), Study 13/2015, p. 1.

39 Source: International Centre for Prison Studies [online] Available at: http://www.prisonstudies.org/ [retrieved on 20 January 2016].

40 Excerpt from the seventh General Report [CPT/Inf (97) 10], par. 14. In: EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards [online]. CPT/Inf/E (2002) 1 – Rev. 2004 [retrieved on 20 November 2015]. Available at: http://www. cpt.coe.int/lang/cze/cze-standards.pdf.

legislation, to adopt systematic measures aimed especially at preventing prison overcrowding.[41]

> overcrowding should be addressed through systematic measures

I consider it appropriate to seek to rehabilitate offenders through their assuming responsibility and voluntarily remedying unlawful acts. In this sense, it is reasonable to review the existing penal policy and promote elements of restorative approach to the judicial system.[42]

It must also be noted that despite the presidential amnesty of 1 January 2013, some types of prisons were full again by the end of 2014 and that overcrowding continues. The government thus failed to take advantage of the aforementioned general pardon to deal with the problem of high prison population. The penal policy also has not substantially changed and neither did treatment of convicts during imprisonment and after release in order to reduce recidivism.

I recommend that the Ministry of Justice:

- Draws up a strategy changing the penal policy in the way of reducing the numbers of convicted persons, using elements of restorative justice; this should be implemented by the end of 2017.

41 Council of Europe Committee of Ministers. Recommendation to Member States No. R (99) 22 concerning prison overcrowding and prison population inflation [online]. Available at: http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/Umluvy/vezenstvi/R_99_22_pre – plnenost_vezenskych_zarizeni.pdf.

42 ŠABATOVÁ, Anna. Proč máme stále přeplněné věznice? Zamyšlení nad trestní politikou ČR *(Why are prisons always overcrowded? Thoughts on the penal policy of the Czech Republic).* Fórum sociální politiky. 2012, Iss. 2, pp. 71-79.

VI) Employment of convicts

There is no doubt about positive effects of work on convicts; at the very least work represents a meaningful way of spending time in prison. The purpose is also to preserve, or create, basic work habits while enabling the convict to repay debts. The management of the Prison Service openly admits that the prison employment figures need some interpretation. Official figures indicate that the **average employment rate in 2014 was 60.97%**.[43] However, in addition to convicts assigned to work, the figure also includes numerous convicts participating in therapeutic and educational programmes. In addition, the parameter is not derived from all convicts but instead only those who are fit to work.[44] **It follows that the real employment rate is lower.**

1) Real employment rate

Convicts are employed if they actually work, take part in educational and therapeutic programmes or perform work necessary for ensuring functioning of the prison without entitlement to remuneration. The number of employed convicts can be related either to the prison's total (all convicts) or only those who are employable (fit to work). In this way, certain prisoner groups can be removed from the calculation for various reasons – those who **refuse to work** (although this is a rare case – **only 20 prisoners**[45] in all prisons); those in the admission block, those with a state of health that prevents them from being permanently employed; those who cannot be assigned to work on legal or security grounds; those in protective treatment; those over 65 years of age; those who are fully disabled; others as specified in the Imprisonment Rules, or more specifically, those removed from the duty to work. Consequently, it is rather important to pay attention to the methodology of calculation of employment rates.

example of a convicts' workplace in prison premises

My analysis of the employment rate provided by the Prison Service for **August 2014**[46] reveals that the real employment rate in the relevant period was **34.8%**, see the table below. It should be noted that when using the methodology for calculation of the employment rate currently used by the Prison Service, the employment rate in the same period was **58.4%**. This exposition is not to say that the Prison Service uses wrong employment rate calculations, but merely to point out how the figures should be interpreted. The real employment rate would be even lower if we took into account the working time utilisation. If the

43 *Fast facts. [online] Prague: the Prison Service of the Czech Republic[retrieved on 26 January 2016].Available at: http://vscr.cz/generalni-reditelstvi-19/informacni-servis/ rychla-fakta/.*

44 Under Section 69 (1) of the Imprisonment Act, a convict is permanently unemployable if (a) s/he is older than 65 years unless s/he applies for assignment to work; (b) s/he has been found disabled in the third degree unless s/he applies for assignment to work and his or her fitness to work is such that the assignment is possible; or (c) permanent employment is impossible due to the state of his or her health.

45 August 2014 figures.

46 The analysis was based on surveys of employment rates in all 35 prisons obtained during the systematic visits..

latter was 77.8[47], then real employment drops to 27.1% in the period in question when taking this parameter into account.

Status of convict	Permanently unemployable	Employed	Receiving education	Receiving therapy	Working without remuneration	Unemployed
Percentage of all convicts	18.1%	34.8%	4.2%	4.3%	4.6%	34%

I consider it important to stress that the number of employed convicts (working and entitled to remuneration for work) is the same as that of unemployed convicts. In other words, **34% of all convicts do not work in any way** (with or without remuneration for work, as participants in education or therapy).

While there are certain limits to the employment of convicts, such as limited possibility to allow them to work outside guarded prison premises (to avoid misuse), it is most desirable to aim at increasing their employment rates.

I recommend that the Ministry of Justice:

- In co-operation with the other Ministries, seeks for possible ways of supporting the employment of convicts, for example by applying Section 18 (4)(b) of the Public Procurement Act.[48]

2) Work without entitlement to remuneration for work

Under Section 32 (2) of the Imprisonment Rules, **cleaning and other similar activities required for ensuring everyday functioning of a prison** are not included in working hours; as a rule, such activities are performed by all convicts, with a duty to do so without entitlement to remuneration for work (so-called work without remuneration or internally organised work).

Five selected prisons (Jiřice, Příbram, Karviná, Břeclav and Nové Sedlo) of the seven visited facilities provided varying information on the positions in which they employ convicts without entitlement to remuneration for work. This indicates that the same work is remunerated in some prisons and performed without remuneration in others.

All the prisons employed convicts (with entitlement to remuneration for work) as cooks, cleaners, storekeepers and workshop operators. Only the Příbram Prison had a non-convict employee working as a librarian. Unlike the remaining three prisons, Příbram and Karviná did not employ a barber. Unlike the remaining three prisons, Karviná and Břeclav did not employ a waste handling operator. The data

47 Ibid.

48 *A contracting authority does not have the duty to award contracts under the aforesaid Act insofar as they are below-the-threshold public contracts for construction work, supplies or services provided to the Czech Republic by the Prison Service of the Czech Republic.*

from Jiřice, Příbram and Nové Sedlo show that they did not employ assistant carers, as opposed to Karviná and Břeclav (the explanation being that the latter two prisons have blocks for permanently unemployable convicts where nurses are required). It is also not certain whether personnel dispensing meals are paid in all prisons. In some of the prisons, this is explicitly defined as a working position; in others the personnel are classified as cooks or do not receive remuneration. The Břeclav prison employed assistant warders (a total of 7 prisoners). This position, in particular, should be re-examined with respect to whether or not it should be remunerated.

In other prisons, this activity was not reported as remunerated work. It is also necessary to carefully consider the work content of assistant warders, especially due to the possible misuse of the prominent status which the role carries and which is deeply rooted in the convicts' "shadow life".[49]

Working positions could be established for various kinds of construction and repair work. It is worth mentioning that various prisons had the working positions of electrician, carpenter, mason, boiler room operator and structural maintenance worker. All these positions can be performed by convicts and should be remunerated. Some prisons distinguish among these working positions while others seem to include them in the general category of "workshops".

There is an obvious lack of uniformity among prisons in defining work without entitlement to remuneration.

I recommend that the General Directorate of the Prison Service:

- **Prepares a material determining which positions, or activities, should be remunerated and which work should be categorised as work for ensuring the functioning of the prison without entitlement to remuneration; this should be implemented by 30 June 2016.**

3) Adjustment of remuneration to inflation

Despite the significant increase in prices in the past years, the amount of convicts' remuneration has not been increased or adjusted to inflation since 1 July 2000. It should also be noted that up until 30 November 2000, the amount of convicts' remuneration depended on the minimum wage tariffs in the majority population. Therefore, it seems logical to link the remuneration with the minimum wage (formerly minimum salary grades – Government Regulation No. 333/1993 Coll.). The current minimum wage equals CZK 9,900 and is to be further increased while the basic element of remuneration in group 1 (lowest) under Government Regulation No. 365/1999 Coll. is CZK 4,500. The verage real amount of a convict's monthly remuneration is even lower – CZK 3,725 (in 2014). If we analyse the data available in the statistical yearbook of the Prison Service and at the website of the Czech Statistical Office, the amount of convicts' average monthly remuneration has been gradually decreasing since 2000, in contrast to the growing average

> "the average monthly remuneration for work is CZK 3,725"

49 MOTEJL, Otakar et *al. Vězeňství (Prison system).* Prague: Wolters Kluwer ČR, 2010, pp. 63, 161.

salary in the general population. In 2000, a convict's remuneration equalled 29.79% of the average salary outside prison, while in 2013 it was just 14.18%, i.e. one half. The average monthly remuneration of convicts was 92.66% of the minimum salary in the total population in 2000, which dropped to a mere 46% by 2013. These data are shown in the enclosed table.

Year	Average monthly remuneration of convicts*	Average salary outside prisons	Minimum wage (if increased in the course of the years, it is calculated as the proportional part of minimum salary in the relevant year)**	Prisons/ outside prisons ratio – average remuneration/ salary (%)	Average monthly remuneration in prisons/minimum salary ratio
2013	3,777	26,637	8,208.3	14.2	46.0
2012	3,560	25,101	8,000	14.2	44.5
2011	3,639	24,126	8,000	15.1	45.5
2010	3,806	23,797	8,000	16.0	47.6
2009	3,615	23,344	8,000	15.5	45.2
2008	3,902	22,592	8,000	17.3	48.8
2007	3,935	20,957	8,000	18.8	49.2
2006	4,190	19,546	7,762.5	21.4	54.0
2005	4,200	18,344	7,185	22.9	58.5
2004	4,181	17,466	6,700	23.9	62.4
2003	4,119	16,430	6,200	25.1	66.4
2002	4,046	15,524	5,700	26.1	71.0
2001	3,935	14,378	5,000	27.4	78.7
2000	3,938	13,219	4,250	29.8	92.7
1995	2,577	8,307	2,200	31.0	117.1

*Source: Czech Statistical Office, Prison Service of the Czech Republic.**Source: Ministry of Labour and Social Affairs.

The EPR stipulate in par. 26.10 that "there shall be equitable remuneration of the work of prisoners". Similarly, the Standard Minimum Rules for the Treatment of Prisoners, par. 76/1: "*There shall be a system of equitable remuneration of the work of prisoners.*" Professional literature takes a similar approach.[50]

In summary, I **support introduction of gradual adjustment of the convicts' remunerations** to inflation so that the risk of negative impacts on the employment of the convicts (resulting from lesser attractiveness of convict labour in case of abrupt increase of remunerations) is mitigated.

If all convicts get the opportunity to earn more money, this will increase the likelihood they will pay their debts (the costs of imprisonment, indemnification for damage caused by their criminal acts, duties to maintain and support, distraint, etc.) and it can be reasonably assumed this will reduce their motivation to return to crime after being released.

50 "If the experience of work is to prepare prisoners for life after release and not merely to be seen by them as forced labour, it is important that they should receive some form of remuneration for the work which they do." In: COYLE, *Andrew. A Human Rights Approach to Prison Management: Handbook for Prison Staff.* London: International Centre for Prison Studies, 2002, p. 89. The International Labour Organisation (ILO) takes the same position.

convicts' workplace – sewing room

Therefore, I supported the motion of the Council of the Government for Human Rights concerning the issue of imprisonment[51] aiming towards gradual adjustment of remunerations for work of convicted persons to inflation (currently stipulated in Government Regulation No. 365/1999 Coll., on the amount and conditions of remuneration of sentenced persons assigned to work during imprisonment.

The Government discussed the motion of the Council and, through Resolution No. 80 of 3 February 2016 [Art. II./1. (d)] tasked the Minister of Justice with preparing, **by 30 June 2016**, in co-operation with the Minister of Labour and Social Affairs and the First Deputy Prime Minister for Economy and the Minister of Finance, a detailed **analysis of the possible adjustment** of convicts' remuneration for work to inflation while taking into account the situation in the labour market and the options available to the State, including the possible **mechanism of increasing remunerations**, while observing the budget limits for the total expenses in 2017 and a mid-term outlook for the years 2018 and 2019 within the relevant budgetary chapter, and if the amount of the limits is such that the increase is impossible, to demand that the limits be increased.

I welcome the resolution although it is my opinion that the analysis should not deal with the question as to whether to adjust remunerations to inflation but rather how and by what amount.

I recommend that the Ministry of Justice:

- Draws up and submit a drafts amendment to Government Resolution No. 365/1999 Coll., increasing remunerations of convicted persons assigned to work during imprisonment, including the possible mechanism of the increase following Government Resolution No. 80 of 3 February 2016; this should be implemented by the end of 2016.

51 File No. of the submitting party in eLLP: 10474/2014-OLP.

VII) Health care

Health care in Czech prisons faces long term problems especially in the area of providing for available and good care, which is partially related to the lack of physicians motivated to work in prisons and the lack of strategy in prison health care.[52]

1) Conception of health care in prisons

So far, prison health care services have not been interconnected with the civilian health care system, which has been recommended in the White Book on Development of the Czech Prisons until 2015, as well as by the CPT or the Moscow Declaration of the World Health Organisation (WHO).[53]

> "the health care system needs a reform"

In my opinion, the Prison Service's duty to provide health care services to the convicts (as well as officers and the employees of the Prison Service) needs to be revised.[54] Prison health care is, unsystematically, subsumed under the Prison Service, i.e. the Ministry of Justice, which is at variance with Act No. 2/1969 Coll., on establishment of Ministries and other central State authorities of the Czech Republic, as amended[55], as well as with the above-specified international standards. This categorisation results in a number of ethically problematic situations in the physician – patient relationship. The legal consequences are also observable in the absurd complaint system with respect to the provider of health care services, where complaints under Section 93 (5) of the Health Care Services Act are generally resolved by the head of the prison – a person without medical qualification who, moreover, requires the patient's approval to inspect his or her medical files. I have repeatedly encountered cases where convicts refused to allow the head of the prison to inspect their medical files, which made the complaint impossible to resolve.

I have found a **lack of medical staff in the prisons** I visited. In one of the prisons, the position of the head physician was unoccupied for a long time, which had ramifications in ensuring the continuity of health care. Many heads of prisons noted problems in finding physicians. The recently increased salary incentive made only little difference.[56] The possibilities for ensuring availability of a physician for work with the convicts are very limited. It should be noted that convicts are often patients suffering of multiple medical conditions, often in combination with addictions and mental conditions, which increases the demands on medical staff.

52 MOTEJL, Otakar *et al. Vězeňství (Prisons)*. Prague: Wolters Kluwer ČR, 2010, pp. 100-101.

53 WORLD HEALTH ORGANIZATION. Declaration on Prison Health as Part of Public Health [online]. Moscow: World Health Organization. [retrieved on October 2015]. Available at: http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/pre-2005/ moscow-declaration-on-prison-health-as-part-of-public-health.

54 This duty is stipulated by Section 2 (1)(l) of the Prison Service Act.

55 Cf. the definition of the competence of the Ministry of Health included in Section 10 (1) of the aforementioned Act.

56 The 2014 amendment of Regulation of the Government No. 564/2006 Coll., on salaries of employees in public services and administration, brought an increase of the pay grade of all physicians employed with the Prison Service.

The lack of medical staff carries the risk that convicts would not receive a timely and adequate health care. This problem has also been repeatedly noted by the CPT during its visits in the Czech Republic. In its Report on the visit to the Czech Republic carried from 1 to 10 April 2014, the CPT notes that its delegation received a number of complaints from prisoners about difficulties and delays in seeing a doctor. It recommended to the prisons that the Czech authorities redouble their efforts to fill the vacant posts of prison physicians, although the findings from prisons show this is a very difficult problem that needs to be addressed on the conceptual level.

Generally speaking, there are three possibilities.

1. The current situation stays the same, i.e. the duty to provide health care will remain with the Prison Service with all the associated problems (availability and quality of care, lack of prison physicians, etc.).

2. A new organisational unit of the Ministry of Justice is created (a parallel to the Healthcare Facility of the Ministry of the Interior). The amendment of the Prison Service Act (through Act No. 157/2013 Coll.), effective as of 1 September 2013, introduced Section 4d which stipulates the possibility of creating a **State contributory organisation** to ensure provision of health care services to imprisoned persons and officers as well as civil employees of the Prison Service, based on an agreement between the Ministry of Justice and the Ministry of Health. In reality, however, the aforementioned amendment has not yet been put into practice.

3. The responsibility for provision of health care to imprisoned persons is transferred to civilian health care system, which is the direction taken by many European and other countries in recent years; this approach adheres to the CPT recommendations. Similar health care reforms concerning imprisoned persons (transfer of the responsibility for prison health care to the Ministry of Health) have been enacted in a number of European WHO member states: Norway, France, the UK, and partially also Italy, several Swiss cantons and two autonomous regions in Spain. Some other countries have initiated such reforms or are seriously considering them (Finland, Kazakhstan, Kosovo, Moldavia).[57] [58]

I recommend that the Ministry of Justice:

- **Carries out a feasibility study of transferring the responsibility for provision of health care to persons imprisoned in Prison Service's facilities from the Prison Service to civilian health care system; this should be implemented by 2016.**

2) Interpreting for convicts who do not know the language

Pursuant to Section 28 (1) of the Healthcare Services Act: *Medical services may only be provided to a patient with his or her free and informed consent, unless this Act stipulates otherwise.* "Free consent" means that the patient cannot be forced to accept medical services and can revoke his or

57 ENGGIST, Stefan et al. *Good governance for prison health in the 21st century.* Copenhagen: World Health Organization, 2013, p. 18.

58 Norway completed this reform already in the 1980s while France implemented a similar law in 1994 (the Ministry of Health has the responsibility); the UK has finished the transition in 2002. Cf. MOLLER, Lars et al. Health in prisons. A WHO guide to the essentials in prison health. World Health Organization, 2007, p. 9-10.

her consent. "Informed consent" assumes the patient was advised of the purpose and nature of the intervention, its consequences, risks, possible complications and alternatives in such manner that the patient understands the advice. If medical services are provided to a foreign national, the health care services provider has a duty to ensure such conditions as to enable the patient to give his or her informed and free consent (Section 30 of the Health Care Services Act).

A record should always be made of the fact that an interpreter assisted during the medical procedure, including the name of the interpreter; the **record should be included in the convicts' medical files** so that it is demonstrable that the provider did not neglect its duty under Section 30 of the Health Care Services Act. I have discussed these changes with the General Directorate of the Prison Service during the systematic visits.[59]

I recommend that the Ministry of Justice:

- Reviews Regulation of the Minister of Justice No. 4/2008 so that it stipulates a duty on the part of the examining physician to record in the medical files the fact that an interpreter was present during provision of medical services by the physician to the patient; this should be implemented by the end of 2016.

In the prisons I visited, interpreting was generally provided by another convict. I consider this practice hazardous with regard to the possible discrepancies in diagnostics resulting from inexpert translation, as well as risky for the patient whose sensitive data may easily spread among the other convicts.[60] I note that I have also encountered cases of severe illness (e.g. HIV infection) in convicted foreign nationals who faced a complete language barrier where not even in these serious cases (in terms of the medical condition and the severity of the language barrier) was a professional interpreter used.[61]

I do not completely reject interpreting through a fellow convict, e.g. in cases of emergencies, but especially in cases of severe illness or in cases of very serious language barrier, I believe that using the services of a proper interpreter is necessary (i.e. a professional interpreter arranged through an agency or in co-operation with the embassies of the individual countries, etc.). It is obviously often difficult to get an interpreter; in those cases, prisons abroad use interpreting over the phone.[62]

I recommend that the General Directorate of the Prison Service:

- Ensures that patients receive the services of a professional interpreter in cases of severe illness or serious language barrier, pursuant to Section 30 of the Health Care Services Act.

59 Statement of the Director General of the Prison Service, brig. gen. PhDr. Ondrášek in the letter of 14 May 2015, Ref. No.: VS 16/059/006/2015-50/ZDR/812.

60 Similarly in VAN ZYL SMIT, Dirk; SNACKEN, Sonja. *Principles of european prison* law and policy. Oxford: Oxford University Press, 2011, p. 155.

61 E.g. File No.: 6685/2013/VOP/MS.

62 Ibid.

3) Presence of a prison guard during examination

The Health Care Services Act[63] stipulates that a officer of the Prison Service may be present **within eyeshot** during provision of health care to prisoners. He or she may be present within earshot only in cases of risk to the life, health or safety of the medical worker or another specialist worker, or property. This provision is controversial as it assumes that, as a rule, physician-patient meeting will have a witness (the prison guard within eyeshot). Such a legal regulation is unsatisfactory, not only with respect to medical confidentiality but also in view of prevention of ill-treatment (see below). Paragraph 51 of CPT Standards stipulates t*hat all medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and – unless the doctor concerned requests otherwise – out of the sight of prison officers.*[64] CPT Standards thus stipulate a higher degree of confidentiality in contact with physicians than Czech legal regulations.

In addition, I believe that the Health Care Services Act as well as the CPT Standards insufficiently regulate the entire range of situations that commonly occur. The presence of an officer of the Prison Service must be considered with regard to two different situations. Health care is provided to convicts primarily in health care facilities of the Prison Service.[65] If this is not possible[66], then it is provided in civilian health care facilities[67], i.e. outside the guarded premises of prisons, which naturally carries a risk of the prisoner's escape.

In prison health care facilities, the aforementioned problem can be addressed using cameras that monitor the medical office's premises and transmit the video (not audio) feed to a Prison Service offices so that he or she may intervene if needed (e.g. if the prisoners attacks the physician); at the same time, such an arrangement preserves physician-patient confidentiality to the maximum degree.

However, the situation (especially in terms of security) is more difficult in case of civilian health care facilities due to the fact that civilian facilities are not secured and guarded. Here, the security reasons permit certain infringement of the right to medical confidentiality on the part of a Prison Service officer (consisting in him or her always being in the eyeshot).[68] [69] For this reason, I further address only the situation where a prison guard is present during medical examination in a Prison Service's health care facility.

63 Section 46 (1)(g) of the Health Care Services Act.

64 EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards [online]. CPT/Inf/E (2002) 1 – Rev. 2004 [retrieved on 20 November 2015]. Available at: http://www.cpt.coe.int/lang/cze/cze-standards.pdf.

65 Section 23 (1) of the Imprisonment Rules.

66 Typically e.g. when the physician is not present or in case of a more demanding medical procedure that cannot be performed in Prison Service facilities for objective reasons.

67 Section 23 (3) of the Imprisonment Rules.

68 As currently stipulated in the Health Care Services Act.

69 For the sake of completeness, I note that pursuant to Section 50 (1)(b) of the Health Care Services Act, a medical worker has a right to deny provision of medical services if his or her life would be directly threatened or if his or her health would be seriously at risk (e.g. due to the prisoner's assaulting the medical worker).

In most of the prisons I visited, I encountered the practice where the prison guard was present within earshot during the convict's examination (usually near an open door to the office). The common practice where prison guards are within earshot of medical examinations in civilian health care facilities as well as in prison is at variance with both the CPT Standards and the law.

I understand that the physicians may fear for their personal safety. This is why it should always be up to the physician to decide when a prison guard is to be present within eyeshot. My recommendation to prisons was for the prison guard to remain beyond earshot during the provision of medical services and, unless the physician requested otherwise, also out of sight.[70]

The General Directorate of the Prison Service agreed with my legal opinion and recommendations. By the end of 2015, the offices of prison physicians were being fitted with camera surveillance systems. In case of need, based on the physician's own assessment of the security situation, the physician should be able to use the camera to ensure the presence of a prison guard within eyeshot.

4) Appointments with physicians

Over the course of my visits, some prisons had a problem consisting in several days of wait in seeing a physician. To these prisons, I recommended to put in place an effective and transparent **system ensuring availability of health care** to the convicts so as to rule out several days of wait in seeing a physician and to ensure availability of health care.

If it is necessary, for various reasons, to assess the necessity or unavoidability of medical examination, a **physician should always be the one** to decide on escorting the convict to the office. In case of doubts concerning the medical condition of the convict, he or she should be escorted to the physician **without undue delay**.

The physician-patient relationship is confidential and subject to non-disclosure on the part of medical workers. Confidentiality of this relationship serves the interest of protecting the convicts from ill-treatment; in this, the physicians play an indispensable role in objectivising an infringement on the person's integrity, and successful performance of this role is conditional on the patient feeling safe with the physician and not being afraid to speak about any violence he or she is subjected to. Further interest in protection of privacy is based on personal data protection under Act No. 101/2000 Coll., on personal data protection, as amended. Information on the medical condition constitutes sensitive data, which lays down strict requirements for their protection against unauthorised storage, disclosure, transfer, etc.

Convicts' signing up for visit of the physician is arranged the same in all prisons. The convicts sign their name in the book at the given section (or a prison guard signs them up on their request). The book is then delivered to the medical centre of the prison and convicts are brought in based on the data it includes. I found that the convicts are required to write in the section book not only their names and date of birth, but also the reasons for visiting the physician, i.e. their specific health problems. While the convicts only describe their health problems in general term (e.g. headache, flu, rash), these are **sensitive data** in the sense of the Personal Data Protection Act. If it is necessary to disclose certain information on the nature of the convict's request via the book for signing up for a visit of a physician, such

70 In truly exceptional cases where presence of a prison guard within earshot is necessary, the physician should record this in the medical file, including the reasons why he or she requested the prison guard's presence.

a "communication" should not involve sensitive data. It is certainly possible to use general denotation to differentiate between those who need to order regular medication, those who are signing up based on the physician's recommendation from the last visit, and those who believe to be in urgent need.

The noted procedure for signing up for visits is based on Section 16 (1) of Regulation of the Minister of Justice No. 4/2008, on provision of health care to persons in remand custody and imprisoned persons, including a non-exhaustive list of reasons for which visiting a physician may be requested (headache, fever, diarrhoea, rash, dental problems). It is beyond any doubt that these are sensitive data in the sense of the Personal Data Protection Act[71], which are under special protection. Therefore, I believe that Section 16 (1) of Regulation of the Minister of Justice No. 4/2008 **is at variance with the Personal Data Protection Act**.

I recommend that the Ministry of Justice:

- Ensures compliance of Section 16 (1) of Regulation of the Minister of Justice No. 4/2008 with Act No. 101/2000 Coll.; this should be implemented by 30 June 2016.

I recommend that the General Directorate of the Prison Service:

- Ensures that, following on the change of Regulation of the Minister of Justice No. 4/2008, the books of persons signing up for a visit to the physician do not include information on the medical condition of the convicts.

5) Physician as a safeguard against ill-treatment

The physician, with respect to persons restricted in their freedom, does not only serve within the boundaries of the traditional physician-patient relationship, but should help to prevent ill-treatment by means of systematic records of any potential injuries and signs of physical assault. The physician's activity is a prerequisite for the government's duty to ensure effective investigation of charges of ill-treatment on the part of the bodies responsible for detention of individuals.[72]

In response to the Report on the visit to the Czech Republic carried out by the CPT from 1 to 10 April 2014, the Government of the Czech Republic adopted Resolution No. 609 of 29 July 2015, through which it, inter alia, ordered the Minister of Health to prepare, in co-operation with Ministers of the Interior and Justice, a draft amendment of the Health Care Services Act[73], which would, in accordance with the CPT recommendations, introduce the duty of physicians to report to the supervisory bodies any found signs of ill-treatment of individuals deprived of their personal freedom.

In this spirit, I approached the Minister of Health, MUDr. Svatopluk Němeček, and offered my cooperation during implementation of the given task.

71 Section 4 (b) of the Personal Data Protection Act.

72 The positive obligation based on Article 3 of the Convention consisting in effective investigation of alleged ill-treatment requires as follows: Investigation must be able to clarify events and identify the responsible persons to be punished; it must include all adequate and reasonable steps to obtain evidence; it must focus on all investigation possibilities that are obviously available, and the conclusions must be based on a detailed, objective and impartial analysis of all relevant circumstances.

73 This draft should be presented to the Government by 31 December 2016.

VIII) Permanently unemployable convicts

In this report, I devote special attention to this specific group of convicts because they are at the centre of a number of shortcomings I found, specifically in the area of material conditions of imprisonment and conditions for personal hygiene, the activities of the "carers" on the part of other convicts, the availability of rehabilitation care and provision of the necessary medical aids. In case of two prisons, I ave to note cases of **ill-treatment** in the sense of violation of Article 3 of the Convention, which I infer on the basis of ECtHR case-law.

The category of the "permanently unemployable convicts" (PUC) is defined by Section 69 of the Imprisonment Act. Under this section, a convict is classified as PUC if he or she is older than 65 years, unless he or she applies for assignment to work; he or she has been found disabled in the third degree[74], unless he or she applies for assignment to work and his or her fitness to work is such that the assignment is possible; or permanent employment is impossible due to the state of his or her health. Therefore, this category may include convicts with impaired mobility, but also persons with mental illness or healthy elderly convicts.

Imprisonment of convicts falling under the PUC category is specific. Pursuant to Section 7 of the Imprisonment Act, PUC are usually placed separately from the other groups of convicts and, pursuant to Section 92 of the Imprisonment Rules, they serve imprisonment only in specialised prison blocks established by the Director General of the Prison Service. This group of convicts can only be subject to certain types of disciplinary punishments.[75]

there are wheelchair-bound people among convicts

Convicts are placed in cells and bedrooms based on their medical condition according to the recommendation of the examining physician. PUC may, based on the recommendation of the examining physician or their own request approved by the examining physician, perform suitable work therapy inside the prison or, rarely, outside the prison.[76]

Especially as regards convicts classified as PUC, it should be stressed that the underlying principle of punishment is that it must be delivered in a way that respects the convict's personal dignity.[77]

74 Section 39 of Act No. 155/1995 Coll., on pensioninsurance, as amended.

75 Section 69 (2) of the Imprisonment Act.

76 Section 93 (2) of the Imprisonment Rules.

77 Cf. Section 2 (1) of the Imprisonment Act. For more details, see Section16 (7) of the same Act.

Specialised blocks for permanently unemployable convicts have been established in 13 prisons; in total, there are 19 such blocks.[78] During 2014 – 2015, I carried out systematic visits in the following four PUC blocks[79]:

- a specialised block for imprisonment of permanently unemployable convicts in a minimum security prison (Břeclav[80]),
- a specialised block for imprisonment of permanently unemployable convicts in a high security prison (Břeclav[81], Karviná[82], Pardubice[83]).

The conditions of imprisonment of permanently unemployable convicts received my attention during the systematic visits especially because of the general difficulty of ensuring proper conditions of imprisonment in this group of convicts and with regard to their specific needs following especially from the disabilities of some of the convicts belonging to this group.

1) Obligations of the State following from ECtHR case law

A number of requirements concerning PUC imprisonment also follows from Article 3 of the Convention as interpreted by the ECtHR case law. In accordance with established case law, the States must take into regard the specific needs of various groups of persons and adjust the conditions of their detention accordingly.[84] This obligation applies especially to persons with physical disabilities.[85] If national authorities wish to subject a disabled person to long-term imprisonment, they must devote sufficient attention to ensuring adequate conditions for the detention of such a person.[86]

With regard to health care provided to prisoners, the ECtHR repeatedly concluded that national authorities are obliged to protect the health of persons deprived of their liberty, where the lack of adequate health care can constitute treatment at variance with Article 3 of the Convention.[87] Health care provided to persons deprived of liberty must, as a rule, be comparable to the quality of care which the governmental authorities ensure to the general population, although this does not mean that each detained person must have access to health care on a level comparable to the best health care facilities outside the prison.[88] Health care must not be limited to attenuating the symptoms of illnesses, but must include a timely and correct diagnosis and a comprehensive treatment plan aimed at relieving the health

78 Cf. RDG No. 71/2013, on remand prisons and categorisation of prisons under the Prison Service of the Czech Republic.

79 As I have already noted, not every prison visited included a PUC block.

80 Holding 11 convicts as of the date of the visit.

81 Holding 48 convicts as of the date of the visit.

82 V době návštěvy 33 odsouzených.

83 Holding 41 convicts as of the date of the visit.

84 See the judgement of the Grand Chamber of the European Court of Human Rights in case *Kudła* v. *Poland* of 26 October 2000, no. 30210/96, par. 92-94; and judgements of the European Court of Human Rights in cases *Melnītis* v. Latvia of 28 February 2012, no. 30779/05, par. 69; *Savičs v. Latvia* of 27 November 2012, no. 17892/03, par. 130..

85 KMEC, Jiří et al. *Evropská úmluva o lidských právech* (*European Convention on Human Rights*). 1. Ed. Prague: C.H. BECK, 2012, p. 423.

86 Cf. further the judgements of the European Court of Human Rights in case *Farbtuhs v. Latvia* of 2 December 2004, no. 4672/02, par. 56; *Jasinskis* v. Latvia of 21 December 2010, no. 45744/08, par. 59; and Z. H. v. Hungary of 8 November 2012, no. 28973/11, par. 29.

87 E.g. judgement of the European Court of Human Rights in case *Naumenko v. Ukraine* of 10 February 2004, no. 42023/98.

88 E.g. judgement of the European Court of Human Rights in case *Grishin v. Russia* of 15 November 2007, no. 30983/02.

problems and prevention of further deterioration of medical condition.[89] It should also be noted that the duty to provide adequate care includes rehabilitation care ordered by a physician.[90]

ECtHR building in Strasbourg

In relation to the material living conditions of persons with disabilities, the ECtHR stresses that the States must adopt adequate modifications and remove all environmental obstacles preventing these persons from integration with the fellow convicts, and to the maximum possible degree promote their physical and psychological integrity, strengthen their autonomy and prevent their further stigmatisation.[91] This means removal of, in particular, all structural-technical obstacles preventing these persons from independent movement in the parts of the prison where they would be able to stay if it was not for their disability.[92] Concerning respect for human dignity, ECtHR assigns special importance to ensuring independent access to and technical adjustment of toilets and showers to ensure that persons with disabilities can, if they are capable, perform these intimate tasks independently without help of others. Simultaneously, the State is obliged to enable incontinent persons to access the showers every day.[93]

Concerning the provision of day care for persons with disabilities, the ECtHR stresses that the States cannot absolve itself of this duty by transferring it to the other convicts.[94] If these persons need it, the State must get them professional care provided by persons with the required qualification or training, who will receive compensation for their services from the State. Only everyday tasks not requiring any professional qualifications (e.g. small help with putting on clothes etc.) can be performed by unqualified personnel.[95]

With respect to persons with mental illness, ECtHR has consistently ruled that these persons should be provided with daily psychiatric care if their medical condition requires it. If such care is not available, this represents a risk to health which, according to the ECtHR, unavoidably leads to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.[96] In placing and keeping these persons in cells, regard must be had for the fact that they do not cope well with closed and overcrowded rooms due to their medical condition and, therefore, must be provided with increased personal space and the possibility to stay outside of the cell.[97] The ECtHR also stresses that these persons can only be kept in such structural and therapeutic environment that enables the achieving of the purpose of imprisonment.[98] The competent bodies are also obliged to adopt all the

89 E.g. judgement of the European Court of Human Rights in case *Iacov Stanciu v. Romania* of 24 July 2012, no. 35972/05.

90 E.g. judgement of the European Court of Human Rights in case *Helhal v. France* of 19 February 2015, no. 10401/12.

91 E.g. judgement of the European Court of Human Rights in case *Semikhvostov v. Russia* of 6 February 2014, no. 2689/12.

92 E.g. judgement of the European Court of Human Rights in case *Cara-Damiani* v. Italy of 7 February 2012, no. 2447/05.

93 E.g. judgement of the European Court of Human Rights in case *D. G. v. Poland* of 12 February 2013, no. 45705/07.

94 E.g. judgement of the European Court of Human Rights in case *Semikhvostov v. Russia* of 6 February 2014, no. 2689/12.

95 E.g. judgement of the European Court of Human Rights in case *Zarzycki v. Poland* of 12 March 2013, no. 15351/03.

96 E.g. judgement of the European Court of Human Rights in case Rivière v. France of 11 July 2006, no. 33834/03;Sławomir *Musiat v. Poland* of 20 January 2009, no. 28300/06; and G. v. France of 23 February 2012, no. 27244/09.

97 E.g. *Sławomir Musiat* v. Poland.

98 E.g. judgement of the European Court of Human Rights in case *K. B. v. Belgium* of 2 October 2012, no. 22831/08.

necessary steps to minimise the risk of suicide, even in those convicts or accused persons with mental illness who have never attempted suicide before.[99]

2) Definition of the category of permanently unemployable convicts

The PUC as defined by the Imprisonment Act (see above) is very diverse. This group of convicts includes healthy seniors, persons with disabilities, as well as people suffering from a mental illness. As a rule, all these convicts serve imprisonment in specialised PUC blocks[100], which I consider undesirable with regard to the need of differentiated treatment of these convicts, who have specific health needs. In practice, the diversity of this group leads to conflicts between the convicts.

Moreover, the current legal regulation of this category only accentuates the possibilities for employment of the individual convicts, not their medical condition. This is why I consider the very name of the category very misleading. The PUC category must be more differentiated and the individual groups must have specific treatment programmes; it must not be seen as a "discard" category of convicts who are unable to work due to their medical condition or age.

I recommend that the Ministry of Justice:

- **Proposes a change of the statutory definition of permanently unemployable convicts included in Section 69 (1) of the Imprisonment Act and the related provisions so that the definition is primarily based on the medical condition of the convicts and not their possibilities of employment; this should be implemented in the next amendment to the Imprisonment Act.**

During the systematic visits, I encountered two convicts in the PUC category who were suffering of a mental disorder and were, in my opinion, ill-treated in the prison. Both convicts were placed in their cells where they spent most of their day, mostly locked up.[101] The cells were standard, with austere equipment. The convicts were put on only a minimum programme of treatment, did not participate in any activities and not even the specialist employees of the prison worked with them in any systematic manner. It is doubtful whether the purpose of their imprisonment was being achieved as they were merely isolated, which is impermissible with respect to the duties of the State indicated above.

I note this case particularly because I want to initiate discussion about the following topics: (a) subjecting such persons to imprisonment; (b) achieving the purpose of imprisonment in case of these persons; and (c) using the instruments allowing to suspend or waive imprisonment of convicts with mental retardation or other mental disorders.

99 E.g. judgement of the European Court of Human Rights in case *De Donder and De Clippel* v. Belgium of 6 December 2011, no. 8595/06.

100 Pursuant to Section 92 of the Imprisonment Rules.

101 Both convicts were, according to the prison management, placed in an ordinary block, but given their inability to integrate with the usual group and conflicts and aversion they triggered on the part of the other convicts, they were placed separately based on a psychologist's recommendation.

Established case law of the ECtHR lays down substantial requirements for imprisonment of convicts with mental retardation or other mental disorders and their accommodation.[102] There are three basic requirements following from the Convention:

the convicts must be placed in a facility where psychiatric care is available on a daily basis[103]; locking people up in their cells is an aggravating circumstance[104]; convicts must be kept in a place which permits achieving the purpose of imprisonment.[105]

I recommend that the Ministry of Justice:

- Pays due attention to convicts with mental illness in implementing the prisons strategy.

3) Material and personal hygiene conditions

Imprisonment of PUCs entails high requirements for the material conditions and equipment of prisons, especially in case of immobile convicts. I consider the material conditions of imprisonment in the specialised blocks as generally unsatisfactory. This is the case mainly because of the **significant lack of non-barrier elements** in prisons that results from their age and design. The needs of immobile convicts are very specific and cannot be compared to the needs of ordinary prisoners.

One of the shortcomings I noted was the **absence of emergency alarms** in the bedrooms of immobile convicts, not even next to the beds and in showers. Convicts reliant on the assistance of others were thus unable to call for help in case of need. I am especially concerned by this in relation to convicts with serious disabilities. At least in two individual cases[106] involving convicts demonstrably reliant on the help of others in their basic everyday tasks, the emergency alarm was placed beyond the convict's reach from the bed (in the corridor) and was thus useless. I consider such practice to be completely inappropriate.

convicts' showers

102 Cf. especially the judgements of the European Court of Human Rights in case Rivière v. France; Sławomir Musiat v. Poland of 5 June 2009, no. 28300/06; G. v. France; and judgements in cases L. B. v. Belgium; Swennen v. Belgium of 10 January 2013, no. 53448/10; Lankester v. Belgium of 9 January2014, no. 22283/10.

103 If suitable psychiatric care is not available, this represents a risk to health which unavoidably leads to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. For more details, see judgements in cases Sławomir Musiat v. Poland, Rivière v France, and G. v. France.

104 For more details, see judgement of the European Court of Human Rights in case Canali v. France of 25 April 2013, no. 40119/09.

105 For more details, see judgements in cases L. B. v. Belgium and Swennen v. Belgium.

106 A prisoner suffering from triparesis, i.e. paralysis of one upper and two lower limbs, was being locked up in his bedroom during silent hours without an emergency alarm in reach. The only way for him to call in help was to shout, but only people with the key could get to him. Prison employees were not commonly present in the corridor, which meant the convict was left to rely on his voice and the attention and willingness of people passing by (File No. 7624/2013/VOP/MS).

access to showers

I found significant shortcoming in the conditions for personal hygiene of PUCs. I encountered the case of one convict with a lower limbs paralysis. He could not stand during showering nor sit on a bench and so there always had to be someone to assist him.[107]

In one case, there was only 1 **toilet** and 1 **shower adjusted to the needs of people on wheelchairs**[108] for 11 such convicts. Both the shower and the toilet were placed in one room, which made simultaneous personal hygiene of more convicts impractical. Every day, someone could not use the toilet because somebody else was using the shower, and vice versa. Moreover, the shower adjusted to disabled persons was situated next to a convicts' bedroom who then lacked privacy and undisturbed sleep. Other toilets in the parts of the prison frequently attended by immobile convicts, e.g. health care centres, were also not usually adjusted to their special needs. A convict on a wheelchair waiting to see a physician in a healthcare centre was thus effectively prevented from going to the toilet.

Similar situation was found in the common kitchens, which were not usually adjusted to the needs of wheelchair-bound convicts.

In view of the structural-technical condition of certain prisonsc[109], I came to the conclusion that holding permanently unemployable convicts in this kind of spaces is very difficult and unsustainable in the long term. I believe the problem is especially urgent in the Karviná Prison, which I found unsuitable for placement of PUCs, especially of convicts with severe disabilities.

Concerning the material equipment of the prisons, I refer to Section 2 (1)[110] and Section 16 (7)[111] of the Imprisonment Act, the established case law of the ECtHR (see above) and the fact that the Czech Republic ratified the Convention on the Rights of Persons with Disabilities.

I recommend that the General Directorate of the Prison Service:

- Carries out an analysis of the structural–technical condition and material equipment of all the specialised prison blocks where convicts with disabilities are placed; this should be implemented by the end of 2016.
- In connection with the previous recommendation, ensures that the conditions of imprisonment of convicts with disabilities are in accordance with ECtHR case law.
- Does not place immobile convicts in the Karviná Prison.

107 File No. 4420/2014/VOP/JM. I believe prisons where severely disabled convicts serve imprisonment should be equipped with a bathtub adjusted to the needs of persons with mobility impairments.

108 Although the shower contained a seat (albeit only with 100 kg bearing capacity), it did not contain folding rails for support, which means the shower did not meet the requirements pursuant to par. 5.1.12 of Appendix 3 of Decree No. 398/2009 Coll., on general technical requirements ensuring barrier-free use of structures.

109 Moreover, current prisons are often limited by urban development, the original purpose of the prison as a remand prison, etc.

110 Imprisonment may be carried out only in a manner respecting the dignity of the convicted person.

111 A seriously disabled convict has the right to appropriate conditions allowing for dignified service of imprisonment.

4) Provision of care and the role of "carers"

Assistance and support in coping with everyday tasks, meal, personal hygiene, moving around and some nursing tasks concerning PUCs who need them on account of their medical condition, are generally ensured in prisons by employed convicts, or they are provided on an informal (volunteer) basis.

In light of ECtHR case law, provision of care by fellow convicts on a volunteer basis must be resolutely rejected.[112] While the Convention does not stipulate the right to social care, the ECtHR has repeatedly concluded that the duties of the State in ensuring adequate conditions in detention include addressing the special needs of convicts with disabilities. Moreover, the State cannot relieve itself of the duty by transferring it to the other prisoners.[113] I have encountered cases where convicts dependent on care were cared for by another convict, one who was not assigned to the position of carer and was rewarded for these activities in terms of disciplinary steps. I documented a case of a convict who suffered from faecal incontinence and was in need of assistance with bathing. He was cared for by a fellow convict who cleaned the toilet after him, helped him exchange incontinence aids and bathed him. The dependent convict gave him money (approx. CZK 800) for which the carer bought things in the canteen. If a convict is dependent on care (needs assistance with bathing, exchanging incontinence aids, etc.), he should receive it only from convicts officially employed by the prison as carers. In cases where care is provided by another convict informally, there is an **increased risk the carer** would abuse this **dependence relationship**. I consider the above-described case as impermissible.

Convicts employed as carers are designated as carers or medical assistants, sometimes as carers for immobile convicts. These are employed convicts who are not considered orderlies in the sense of RDG No. 17/2013, stipulating the conditions for the activities of an orderly by imprisoned persons in health care facilities of the Prison Service of the Czech Republic that provide in-patient care.[114] The aforementioned activities of carers as I encountered them in the visits to the three relevant prisons are not covered by any special internal regulation of the Prison Service.

The responsibilities of a carer, or a medical assistant, as observed in practice in the visited blocks, include assistance to the convicts in need with basic self-maintenance tasks – personal hygiene, exchanging incontinence aids, bringing in and distributing food, preparing insulin pens, etc. The scope of the working tasks of carers is not defined by internal regulations[115], there are no qualification requirements (e.g. training for certain tasks, etc.).

In one case, care for the convicts was always provided by two carers whose standard working time was 8 hours. However, there was nobody to substitute for them, which meant they were providing care continuously. Moreover, in order to be always available, the carers were living in the same bedroom (joint bedrooms with barrier-free toilet) as the convicts who needed maximum assistance. The carers did not have time to rest nor 8 hours of undisturbed sleep.[116]

112 Cf. judgements of the European Court of Human Rights in cases *Farbtuhs* v. Latvia, par. 60; *Kaprykowski v. Poland*, of 3 February 2009, no. 23052/05, par. 74; D. G. v. Poland, par. 147; *Grimailovs v. Latvia* of 25 June 2013, no. 6087/03, par. 161; *Semikhvostov v. Russia*, par. 84.

113 For more details, see *Grimailovs* v. Latvia.

114 The individual activities that can be carried out by convict orderlies are specified in Section 4 of the above-mentioned RDG.

115 Cf. Section 116 of Act No. 108/2006 Coll., on social services, as amended.

116 SCf. Section 16 (5) of the Imprisonment Act.

> activities of carers are not legally defined or uniformly organised

Although these carers obviously carried out their tasks with great personal sacrifice and empathy, it was clear during the visit that there were not enough of them. Provision of actual uninterrupted care carries another risk, i.e. the risk of overburdening the carers.

I understand the problems the individual prisons have with getting enough carers. **Allowance for care** provided to persons dependent on the assistance of others could offer the solution of how to fund the carers' activities. Pursuant to Section 7 (2) of Act No. 108/2006 Coll., on social services, as amended, *allowance may be claimed by a person who, due to his or her long-term medical problems, requires assistance of another individual in managing his or her basic life needs, in the scope given by the degree of dependence, if the assistance is provided by a close person, social care assistant or a provider of social services.* The convict may serve as a social care assistant for another convict, if he or she is over 18, in a good health and if he enters into a written contract on provision of assistance.[117] A social care assistant should be remunerated using the granted allowance for care, not from the prison's budget. In my knowledge, none of the prisons took advantage of this possibility.

Another possibility may consist in the Prison Service's obtaining the **licence to provide social services** pursuant to Section 78 et seq. of the Social Services Act. In that case, the Prison Service would be the direct recipient of the allowance for care.

The fact that care is provided to dependent convicts by one or more convict carers represents a high risk, especially in view of the possible abuse and aggravation of the dependence on the care provided, the risk of psychological manipulation and pressure, and also in view of the possible bullying or blackmail of the convict in need. In order to prevent ill-treatment, the prison staff must pay increased attention to dependent convicts cared for by other convicts and regularly evaluate all the possible risks arising from the relationship between the carer and the person being cared for.

To summarise the above observations, during my visits in prisons where TUCs serve imprisonment, and with respect to convicts dependent on the assistance of others in managing their ordinary life needs and situations, I encountered a **lack of carers** recruited from the ranks of other convicts, **insufficient qualifications** on their part to perform this kind of employment, but mainly a lack **of legal basis for their activities**. I have further found an increased risk of ill-treatment in the relationship between carer(s) and the persons being cared for.

I recommend that the General Directorate of the Prison Service:

- Obtains an analysis in co-operation with the Ministry of Labour and Social Affairs of the possibilities for utilising the allowance for care under the Social Services Act on the part of convicts dependent on the assistance of other persons, including the risks and potential obstacles in utilising the allowance; this should be implemented by the end of 2016.

117 Section 83 of the Social Services Act.

- Conducts a feasibility analysis in co-operation with the Ministry of Labour and Social Affairs of the possibility that the Prison Service obtains the licence to provide social services under the Social Services Act; this should be implemented by the end of 2016.

- Based on the analyses, determines the legal regime of the assistance/help to persons that require it in view of their long-term medical problems; implement the selected form of assistance/help not later than 30 June 2017.

- In the meantime, until the aforementioned analyses are conducted, uses an internal regulation to set a legal basis of the standing and scope of activities of carers and set requirements for their qualification (e.g. the type and extent of professional training) and ensure compliance with Section 16 (5) of the Imprisonment Act with respect to the employed convict carers (especially the 8-hours of sleep).

5) Rehabilitation care and provision of medical aids

Ensuring accessible health care in the required quality is without doubt a very serious challenge to the current prison system.[118] In case of PUCs, the specific features and complexity of the health care required in view of their medical conditions play an important role.

Interviews with the prison staff and inspection of the medical files of the specific convicts suffering of severe disabilities showed that neither of these convicts, despite their medical condition and disability, received specialised rehabilitation care. This is true notwithstanding that under Section 13 of Act No. 48/1997 Coll., on public health insurance, as amended, the covered services include, inter alia, medical **treatment-rehabilitation care and provision of medical devices, especially compensation aids**. Indeed, the Imprisonment Rules anticipate provision or ensuring treatment-rehabilitation care on the basis of a physician's order.[119]

Although the legal regulation **anticipates provision of rehabilitation care** and all the prisons visited were aware of the possibility to ensure treatment-rehabilitation care in co-operation with the prison hospital of the Brno Remand Prison, or through a local civilian provider of medical and rehabilitation care, **this option was not used**. Based on my findings, physicians do not usually order or provide rehabilitation care to convicts, not even in case of triplegics or paraplegics, or persons after a stroke.

> "non-provision of rehabilitation care makes returning into civilian life more difficult"

Despite the fact that most convicts are insured pursuant to the Act on Public Health Insurance, many were not provided with

118 For more details, see Chapter 7 – Medical services.

119 Section 93 (2)(e) of the Imprisonment Rules.

compensation aids at the time of the systematic visits. Health care provided by the prison must be comprehensive. Medical staff should provide patients with all information leading to a better quality of life of persons with disabilities

In one prison, I found that 11 immobile clients had the total of 7 adjustable beds (electrical and mechanical) that were assigned on the basis of the prison physician's prescription, 4 free-standing movable bed trapezes and 3 special retractable tables for ease of eating. The convicts thus had to wait for others to be released from prison, because that was the only way to get an adjustable bed, trapeze, or other compensation aid.

In another case, an amputee was not aware of the possibility to get a prosthetic limb. It did not occur to the prison physician to actively inform the convicts of the possibility to get prosthetic limbs.

I also documented a case of a foreign national with severe movement impairment preventing him from standing or sitting without support, who was not provided with a wheelchair for three quarters of a year.

One example of insufficient provision of compensation aids consisted in a convicted diabetic dependent on insulin, who is also nearly blind according to an expert's opinion. Despite this fact, he was not provided with aids for blind diabetics (a special insulin pen, voice activated glucose meter).

I recommend that the General Directorate of the Prison Service:

- Ensures the availability of rehabilitation care to convicts whose medical condition requires it.
- Ensures adequate medical (compensation) aids to persons with health handicaps.

IX) Security

I stated above that measures restricting the fundamental rights and freedoms of a convict must not infringe on the convict's dignity, must pursue a legitimate goal and be suitable, necessary and proportionate to achieving that goal. Fundamental rights and freedoms of the imprisoned convicts are most commonly restricted by security measures (strip searches, locking the convicts in their cells, etc.).

1) Regime measures

Section 28 of the Imprisonment Act stipulates the basic duties of a convict. Paragraph 1 of this section stipulates the duties that may take the form of "regime measures": *An imprisoned convict must comply with the established order and discipline, follow the instructions and orders of the employees of the Prison Service . . . and respect the principles of decent treatment in contact with other persons, and otherwise observe the internal regulations of the prison.*

It should be taken into account that *imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment.*[120] Paragraphs 3 and 5 of the EPR stipulate that *restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed, and that life in prison shall approximate as closely as possible the positive aspects of life in the community.*

It is clear that complying with regime measures is, to some extent, necessary for achieving the purpose of imprisonment (complying with the daily time schedule, keeping order, observing the rules of decent behaviour). However, in some prisons I encountered regime measures that could not have pursued the purpose of imprisonment, or pursued it in a completely disproportionate manner. In one prison, these measures showed **arbitrary elements** on the part of the prison management and its individual employees.

For example, in one prison the convicts were required to wear a bag (a part of their equipment) always on the right side, and march in rows with specifically determined spacing when moving to a different place. I did not accept the prison's claim that this was a measure ensuring discipline and order. I do not believe that requiring the convicts to move in a military-like formation and wear their bags always on the right side will in any way serve to re-educate the convicts nor that it constitutes a proportionate measure to ensure security in the prison. As a side note, the same prison **prohibited the convicts from doing exercises during their statutory time outside**.

In another prison, I encountered a **disproportionately early waking-up time**, where convicts placed in a medium security block (unemployed convicts, convicts in the admission block or the release block) had to get up at 4 a.m. on working days (and at 5:40 a.m. on weekends), although there was no reason for that. According to the convicts and the prison employees, the early waking-up time had been introduced a long time ago for organisational reasons. If early waking-up time is justified (e.g. by the convict's employment), such practice is acceptable. However, if early waking-up time is applied generally

120 EPR, par. 102.2.

and does not pursue a legitimate goal, or is not proportionate to this goal, it cannot be imposed on the convicts.

In this respect, based on a convict's complaint, I examined also the **duty of the convicts to stand up** when a prison officer enters a cell/bedroom. The duty is based on internal regulations (internal prison rules) and is not legitimated by anything contained in the Imprisonment Act or the Imprisonment Rules. As such it is a duty imposed beyond the statutory framework. I personally see it as a relic of the former concept of the Prison Service as a military structure that is no longer appropriate today.

I recommend that the General Directorate of the Prison Service:

- Reviews the duty of convicts to stand up when a prison officer enters a cell/bedroom, and regulates the internal rules of prisons in this respect; this should be implemented by the end of 2016.

Similarly, I dealt with the case of a convict who was not permitted to keep **religious items** (specifically a rosary) due to alleged security risks.

Under Section 4 (2) of the Imprisonment Rules, a convict is allowed to keep, amongst other things, a wedding ring. Several convicts in one of the prisons stated that they had to hand over their wedding rings upon admission and it was returned to them only upon request and based on approval by the head of the department of imprisonment. I regard this as disproportionate interference with the right to private and family life. Therefore, my recommendation was that **the convicts should be allowed to keep their wedding rings automatically without any prior approval**.

2) Strip searches

The duties of a convict under Section 28 (2) (a) of the Imprisonment Act include the duty to undergo a body search in order to ensure order in the prison and to make sure that they do not keep items that would compromise the purpose of imprisonment. Details concerning strip searches are stipulated in Section 89 of RDG No. 23/2014. The aforementioned provision contains an exhaustive list of situations in which a strip search is carried out automatically.

rooms for conducting strip searches

Personal searches generally represent interference with the right to inviolability of the person and privacy of convicts. It constitutes legitimate interference in a prison, to the extent that it is conducted with a view to ensuring internal security (avoiding introduction of prohibited items to the prison), but provided that the searches are carried out reasonably and in a manner which as far as possible respects human dignity. It is certainly not reasonable when all convicts must generally submit to a strip search and the routine includes squatting and lifting one's penis and scrotum without there being any realistic suspicion that would justify such steps.[121] This is all the more true of strip searches conducted on convicts with disabilities.

> strip searches should only be performed in justified cases

Many convicts pointed out the general use of searches and their humiliating nature. This is, for example, when a search is performed before the convicts are escorted to a civilian health care facility, where they remain under the surveillance of the escorting prison officers during the entire escort, and yet they undergo a strip search again after returning to the prison. It was also common that strip searches were generally applied before and after a visit, even during it if the convict needed to use the toilet.

I have documented a case in which a convict was ordered to take off his diapers (again in a situation where he had been searched before the escort and had been naked in a hospital with the prison officers present).[122] In the same prison, there were complaints against Prison Service officers who acted disrespectfully towards persons with disabilities and gave offensive instructions during the search.

I recommend that the General Directorate of the Prison Service:

- **Modifies the rules for performing strip searches in the internal regulation (RDG 23/2014) to make it clear that they may only be performed in individually justified cases instead of on a general basis; this should be implemented by the end of 2016.**

3) Locking of convicts in cells

It is stipulated in Section 50 (1) of the Imprisonment Rules that *if permitted by the conditions of the prison, the convicts are locked in their cells or bedrooms during the eight hours of sleep time.* Furthermore, according to the second paragraph of the same provision: t*he time during which the convicts are locked in their cells or bedrooms may be extended in justified circumstances by the head of the prison in view of the requirements of maintaining order and security in the prison. The reasons for a longer lock-up are specified in the prison's internal rules.*

I found that in most of the prisons visited the convicts in some sections were locked in their cells for more than the eight hours of sleep time without any evaluation of individual risks. Various reasons for locking the convicts were stated by the prisons – most often the need to ensure order and security.

121 SVOBODA, Milan. *Důkladné osobní prohlídky (Strip searches). České vězeňství.* 2015, Iss. 2, pp. 22-23.

122 Records of convict J. S. on whom a disciplinary punishment was imposed on 21 November 2013 in connection with a personal search.

One prison locked convicts in the third permeable group of internal differentiation in excess of the eight hours of sleep time, using this as a motivational and reformatory factor.

The Defender inquired into the problem of locking convicts in their cells in excess of the eight hours of sleep time as part of the systematic visits to prisons in 2006, with the conclusion that *a permanent extension of the set locking time constituted an incorrect procedure because the director of a prison was authorised to extend the set time only exceptionally and in justified cases. This means that a convict may be locked e.g. after committing a disciplinary offence and may remain locked until a decision on the offence is made, or convicts may be locked after extensive destruction of prison property, also until all the perpetrators are given disciplinary punishments, or in the event of necessary repairs of the prison's technical equipment, etc. Pursuant to Section 50 (2) of the Imprisonment Rules, lock-up of prisoners must follow from individual risk assessment and security reasons must demonstrably be present in each convict, whereas its duration must be continuously monitored.*[123]

I informed the Director General of the Prison Service about questionable nature of the measure to lock-up prisoners in excess of the eight hours of sleep time and the Director General agreed with my opinion that lock-up of convicts in cells should not be used as a motivational factor.[124] According to the Director General, *lock-up in excess of the eight hours of sleep time may be extended on the basis of an individual risk assessment in relation to the convict in question, or based on justification of the lock-up procedure specified in the prison's internal rules* (in the sense of Section 50 (2), second sentence, of the Imprisonment Rules). The Director General also informed me that the *General Directorate of the Prison Service was coordinating preparatory work on an amendment to the relevant Regulation of the Director General stipulating the principles for processing and issuing internal rules of remand prisons and internal rules of prisons for sentenced offenders, which willrespond to these facts.*

> "permanent extension of the lock-up time constitutes a wrong procedure"

I recommend that the General Directorate of the Prison Service:

- **Provides an exhaustive list in the internal regulation (RDG 4/2011) to specify the situations in which the lock-up time in cells/bedrooms may be extended while taking into account that the extension of the lock-up time must be based on individual risk assessment and security reasons must demonstrably exist in relation to each convict; this should be implemented by 30 June 2016.**

123 Public Defender of Rights: Report on Visits to Facilities. Prisons. 2006, p. 18. The report is available online at http://www.ochrance.cz/filead – min/user_upload/ochrana_osob/2006/Veznice_2006.pdf [retrieved on 26 October 2015].

124 Statement of the Director General of the Prison Service of 19 May 2015, Ref. No. VS 9/023/002/2015-50/0VVT/305.

4) Belts in escort buses

I ascertained during the systematic visits and, most notably, during the visit to the Escort Assembly Centre (EAC)[125] at the Jiřice Prison, that the escort buses were not equipped with safety belts (or any other similar element of passenger passive safety). Thus, the convicts are not in any manner protected against injury in the event of accident of the escort bus.

CPT also addresses this topic, for example in the report from its visit to Slovenia (2006) and the United Kingdom (2012)[126], summarising that the absence of safety belts in the course of convict escorts represents a safety hazard.

I believe that escort buses should be equipped with safety belts as an element of general safety; they should be introduced as part of replacement of the Prison Service's vehicle fleet.

I recommend that the General Directorate of the Prison Service:

- **Ensures that escort buses are equipped with safety belts or other elements of passenger passive safety; this should be implemented by the end of 2017.**

125 The place is the largest transfer station for long-distance escorts of convicts imprisoned in the Czech Republic.

126 The reports from CPT's visits are available at http://hudoc.cpt.coe.int/eng# [retrieved on 1 January 2016].

X) Prison visits

In par. 24.1 the EPR recommend that convicts should have the opportunity to communicate with their families, other persons and representatives of external organisations *as frequently as possible in writing, by telephone or using other means of communication, and to receive these persons as visitors.* Any limitations and checks imposed on communication and visits must pursue a legitimate objective (order, security, etc.) and must be commensurate to that objective (acceptable minimum level of contact). Under Section 19 (1) of the Imprisonment Act, convicts have the right to receive their relatives as visitors for three hours per calendar month.

The EPR impose the duty on the Prison Service to assist convicts in maintaining sufficient contacts with the outside world.[127] In his report from the visits to prisons in December 2006, my predecessor concluded that *maintaining and providing support for family relationships, partnerships and other social relationships was an integral part of a convict's rehabilitation.* The importance of contacts with the family is very often stressed in professional literature on prisons.[128] An additional argument, one which is contained in most international human rights documents, is the right to a family life.[129]

The most frequent objections of convicts during the systematic visits were directed against assignment to a prison which was located far away from the home of the convict's relatives. Distance plays an important role in deciding whether and when to visit the prison.[130]

Therefore, I welcomed that, during the systematic visits, the Prison Service accepted my predecessor's proposal[131] for establishing a transparent **system of relocating convicts**. Until then, when a convict's application for relocation was declined e.g. due to a lack of capacity, the Prison Service would not revisit the application even if a place was vacated in the target (desired) prison.

Effective from 15 October 2015, applications for relocation are kept in files chronologically in every prison; when a place becomes vacant in the target prison, the applicant (convict) is asked whether he still insists on the application and is relocated when there are no security reasons that would prevent this.[132]

> support for family relations is part of convicts' rehabilitation

127 Par. 24.5 EPR.

128 COYLE, Andrew. A Human Rights Approach to Prison Management: Handbook for Prison Staff. London: International Centre for Prison Studies, 2002, p. 9.

129 Cf., for example, Art. 12 of the Universal Declaration of Human Rights, Art. 23 of the International Covenant on Civil and Political Rights, Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

130 Many family members of convicts have scarce means of subsistence for their households, which makes travelling across the country a serious complication.

131 MOTEJL, Otakar et al. Vězeňství *(Prisons)*. Prague: Wolters Kluwer ČR, 2010, pp. 57-58.

132 Bližší úpravu stanoví NGŘ č. 42/2015.

1) Dividing visits

The prisons visited took varying approaches to the possibility of dividing the statutory 3 hours of visits per month. Some prisons allowed the convicts to divide the three-hour visits per month into two visits, 1.5 hour each. Other prisons, on the other hand, did not allow this and the convicts had to receive a single visit lasting three hours. In my opinion, the former approach, although undoubtedly more demanding in terms of organisation, is suitable and desirable. In contrast, due to a lack of capacity, in one of the prisons the convicts were ordered to divide visits instead of having a single three-hour visit.

I recommended that the prisons allow the convicts to divide visits; this should, however, be optional, not mandatory. Where it is impossible to divide visits, this may have a limiting effect on contact with close persons because the number of visitors per visit is limited, and when the arranged visit is unable to arrive, the convict loses visits for the whole month. Mandatory division of visits into two halves may have an equally limiting effect on contacts with close persons considering that, especially for convicts placed far away from home, a visit lasting 1.5 hours may be insufficient.

I would like to note in this respect that the statutory 3-hour visiting period is an obsolete minimum standard that no longer corresponds with the modern concept of punishment, which focuses on adapting prison conditions to free life and maintaining contact with the family.[133] In my opinion, the duration of visits should be extended while leaving it to the convict to decide whether he uses the set visiting period all at once or schedules more visits spread over several weeks. In this respect, I identify with the recommendation of the CPT made in the 2014 report from visits in the Czech Republic, proposing that all convicts should be allowed to receive visits every week, each lasting at least one hour.[134] I would also like to point out that convicts' right to the minimum visiting period is laid down in Section 19 (1) of the Imprisonment Act, which does not prohibit prisons from regulating longer visiting periods in their internal rules (or in any other manner).

I recommend that the General Directorate of the Prison Service:

- **Allowes convicts to receive visits for more than 3 hours per month, leaving it to them to decide how they schedule the visits, and incorporate this change in Art. 13 of Annex No. 2 to RDG No. 4/2011 (model internal rules); this should be implemented by 30 June 2016.**

133 Paradoxically, most convicts have the objective of maintaining contacts with the family or generally with close persons laid down in their treatment programme.

134 EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). Report to the Czech Government on the visit to the Czech Republic carried out by the CPT from 1 March to 10 April 2014. [online]. Strasbourg: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) [retrieved on 1 December 2015]. P. 48. Available at: http://www.cpt.coe.int/docu – ments/cze/2015-18-inf-cze.pdf.

2) Arrangement of the visiting room

Par. 24.4 EPR stipulates that *visits must be arranged so as to allow prisoners to maintain and develop family relationships in as normal a manner as possible*. I learned during the systematic visits that the material equipment of visiting rooms and their configuration varied significantly. One of the prison had not established any traditional visiting room by the time of the visit (visits for the medium security block took place in the gym and visits for the high security block in the canteen); in some prisons the visiting room was not designed to accommodate children (e.g. include a makeshift play area) while in others the visitors were seated on hard stools with no backrests, at a table with a low partition between the visitor and the convict.[135]

In some prisons the tables in the visiting rooms were arranged in a line, minimising privacy of the visit – the convicts and their visitors disturbed the others present.

example of visiting rooms with a linear arrangement

example of visiting rooms with a "restaurant" arrangement

I personally consider the so-called restaurant arrangement of visiting rooms (i.e. separate tables) to be more suitable. Checks and prevention of handover of addictive substances should be carried out using camera systems, not by restricting privacy during visits or reducing the convicts' contact with visitors.

Some prisons had no automatic beverage dispensers or dispensers with small packed snacks for visitors. On the other hand, others **offered shopping in the prison canteen during visiting times**. The latter approach, in my opinion, is an **example of good practice** which is not unreasonably limiting and yet minimises the risk of introduction of addictive substances.

I recommend that the General Directorate of the Prison Service:

- Ensures that visiting rooms are primarily organised in the so-called restaurant arrangement. Other arrangements may be chosen in individually justified cases.

135 The latter arrangement was in place despite the fact that these were not visits "behind partition" as defined by Section 19 (6) of the Imprisonment Act.

3) Convict's contact with visitors

In some prisons the convicts stated that they were not allowed to have usual contact with the visitors (e.g. touching hands), mostly including their own children. The only physical contact left was the standard social interaction in welcoming and parting (handshake, kiss). The visiting rooms tend to be arranged so as to reduce such contacts, as evidenced by the partitions between the visitor and the convict.

As a rule, physical contact between the convict and the visiting person was limited by the prison's internal rules, for example through the following text: *"A convict may welcome visitors and part with them using normal social interactions such as handshake etc. Other contacts may be permitted where close persons are concerned (embrace, kiss). The visits supervisor may permit a convict's contact with a minor child during a visit (cradling in the arms, etc.)."*

The above arrangement clearly shows the prison's endeavour to minimise the risk of introduction of addictive substances (or other prohibited items), which is a legitimate requirement. Nevertheless, it should be noted that specifically when permitting a convict's contact with a child, preference should always be given to the child's interest in the sense of Art. 3 (1) of the Convention on the Rights of the Child. As the Defender observed in his 2009 statement, permission of contact with a minor child may not be given for a limited period of time; it may only be stopped if there is justified suspicion that the child is being misused for introducing prohibited items to the prison.[136]

I recommended that prisons ensure contacts as normal as possible during visits, specifically with children, unless this is prevented by security reasons.

I recommend that the General Directorate of the Prison Service:

- **Adjusts the prisons' practice in the way of routinely enabling contact between the convict and the visiting children. Limitations may be applied in individual cases based on security risk assessment.**

136 The Public Defender of Rights. Collected Standpoints of the Public Defender of Rights: Prisons. [on-line]. Brno: Office of the Public Defender of Rights, 2010 [retrieved on 15 May 2015]. P. 126. Available at: http://www.ochrance.cz/fileadmin/user_upload/Publikace/sborniky_stanoviska/Sbornik_ Vezenstvi.pdf.

4) Placement of permanently unemployable convicts

The EPR lay down in par. 17.1 that prisoners shall be allocated, as far as possible, to prisons close to their homes. Under RDG 71/2013, the Břeclav Prison is the only minimum security prison for the imprisonment of permanently unemployable men.

By not allowing permanently unemployable convicts allocated to a minimum security prison to serve their sentences in any other prison (another region), the Prison Service creates obstacles or limitations to exercising the right to convicts' private and family life.

This is not the only category of convicts who are limited in possible assignment to prisons in other regions.[137]

It is very likely that prisons' profiles will change in connection with the legislative proposal for a change in internal differentiation of prisons.[138]

I recommend that the General Directorate of the Prison Service:

- Takes into account, as part of the change in prison profiles, that some blocks exist in only a single prison, which is a factor limiting the possibility of placing convicts as close to their homes as possible.

> "the only block for permanently unemployable male convicts serving imprisonment in a minimum security prisons exists in the Břeclav Prison"

137 Examples include only a single block specialised in protective sexological treatment (used to treat sex offenders) for all high security prisons, and only a single block specialised in imprisonment of convicts with mental illnesses and behavioural disorders subject to individualised treatment for all high security prisons.

138 Parliamentary press No. 588.

XI) Discipline

Under Section 45 of the Imprisonment Act, a convict *who shows a responsible approach to performance of the his duties by his behaviour and conduct, or by an exemplary act, and who cooperates in achieving the purpose of imprisonment*, may receive a disciplinary reward, which is one of the basic motivational elements in the service of imprisonment.

On the other hand, if a convict culpably breaches statutory duties or duties imposed under the law, or violates order or discipline during imprisonment, he may be subject to disciplinary punishment.[139]

1) Analysis of disciplinary practice

a) Disciplinary rewards

In all the prisons visited, there was an obvious drop in the quantity (frequency of awarding) of disciplinary rewards, a trend which began in 2014. The convicts across prisons complained that disciplinary rewards for cleaning, learning and work activities, etc. were no longer available, which reduced the chance of reassignment to a better permeable group of internal differentiation and release on parole. The prison staff confirmed the **decrease in the frequency of disciplinary rewards**, attributing it to the change in disciplinary proceedings introduced by RDG No. 70/2013, on disciplinary proceedings with accused persons, convicts and wards, effective from 1 January 2014. Based on the above-mentioned RDG, the disciplinary proceedings were substantially changed and now place more administrative demands on both the parties proposing disciplinary proceedings and those with disciplinary powers.

To demonstrate the phenomenon of decreased frequency of disciplinary rewards, I have chosen information on disciplinary rewards from two of the visited prisons (Karviná, Jiřice).

Karviná

It is stated in the document titled *Evaluation of Disciplinary Practice in Relation to Convicts in the 1st Half of 2014* that a total of 53 disciplinary rewards (and 9 disciplinary punishments) were given in the first half of 2014. For comparison, 100 disciplinary rewards (and 56 disciplinary punishments) were given in the second half of 2013, which corresponds to a decrease of 47% for disciplinary rewards (and 84% for disciplinary punishments). The documentation obtained reveals that 100 rewards for half a year had formerly been a standard (second half of 2012: 124 rewards, first half of 2013: 102 rewards, second half of 2013: 100 rewards). The figures clearly show a sudden decrease in 2014.

Jiřice

It is stated in the document Analysis of Disciplinary Practice in the *Jiřice Prison for 2014* that 404 disciplinary rewards were given in the prison in 2014, which corresponds to a decline by 72% in

139 Section 46 of the Imprisonment Act.

comparison to 2013 (or even 80%, according to the document). More than 1,000 rewards had been given in each of the preceding years.

Year	2014	2013	2012	2011	2010	2009
Number of rewards in the prison	404	1,455	1,574	1,130	1,181	1,241

To eliminate distortion of the total number of rewards in a prison by changing numbers of convicts, I related the total numbers of rewards to the numbers of convicts in each prison in the years 2009-2014.[140] The result shows the number of rewards per convict in the prison concerned.

Year	2014	2013	2012	2011	2010	2009
Number of rewards per convict	0.5	2.1	1.9	1.4	2.2	2.3

It follows from the above that, in statistical terms, in the past year each convict received an average of 2 rewards in a calendar year while in 2014 about a half of convicts were left without rewards and the remaining half received an average of just 1 reward.

b) Disciplinary punishments

I again based my analysis on the data obtained from the prisons. The quality of these data suffers from the fact that the composition of convicts in the individual prisons varies (in terms of types of prisons as well as the convicts – including e.g. recidivists, convicts serving their first prison sentence, etc.). Nevertheless, the data reveal certain trends. **All the prisons visited show a reduction in disciplinary punishments corresponding to the similar trend in disciplinary rewards**.

Changes in the frequency of disciplinary punishments can be demonstrated on the case of the Karviná Prison which showed a significant decrease in the number of punishments imposed, again year-to-year from 2013 to 2014. The total year-to-year decrease in all disciplinary punishments imposed was 81%.

A substantial difference is revealed if we compare the 2014 data with those from 2013. While there was one disciplinary punishment per 3.3 convicts in 2013, the figure in 2014 was one punishment per 14.9 convicts. Thus, the total number of disciplinary punishments imposed (regardless of the type[141]) decreased by a factor of 4.5.

It is understandable that the Prison Service adjusted the rules of disciplinary proceedings in response to the broadened application of court review of decisions on the imposition of disciplinary punishments.[142] From the viewpoint of the staff with disciplinary powers, the proceedings became more demanding in terms of procedure and hence the administrative burden. Educators (and other specialist

140 The Prison Service of the Czech Republic. Statistical Report of the Prison Service [online]. Available at: http://www.vscr.cz/generalni-reditelstvi-19/informacni-servis/ statistiky-a-udaje-103/.

141 Section 46 (3) of the Imprisonment Act.

142 SVOBODA, Milan. K soudnímu přezkumu rozhodnutí vydaných v kázeňském řízení proti odsouzenému (*On Court Review of Decisions Issued in Disciplinary Proceedings Against Convicts).* Prague: Právní rozhledy, 13/2011, p. 476.

employees) are trained in, and tasked with, treating convicts. It is questionable to what extent they can be expected to formulate legally flawless administrative decisions (decisions on imposition of a disciplinary punishment).

I recommend that the General Directorate of the Prison Service:

- **Has disciplinary proceedings supervised by prison lawyers, considering the increased demands placed on such proceedings.**

It seems that the overall decline of disciplinary practice is related to the above-described new internal regulation of disciplinary proceedings. I am personally convinced that the system of disciplinary rewards and punishments should not be the convicts' sole motivator and I do not perceive the decline of disciplinary practice as inherently negative. However, the judges need to be aware of this change in the disciplinary practice, as e.g. in parole proceedings they often formalistically require several disciplinary rewards in order to approve the given application. A practice has been established for dozens of years where convicts aspiring for parole have far better prospects if they have received several disciplinary rewards. The judicial system has been long accustomed to this system. This is not to encourage restoration of the once abundant disciplinary practice, but rather to acquaint judges with the change. The change in judicial practice should also be reflected in the evaluations prepared by specialist employees for the purposes of court proceedings.

I recommend that the General Directorate of the Prison Service:

- **Ensures that the change in judicial practice be taken into consideration in the evaluations prepared by prisons for courts.**

I recommend that the Ministry of Justice:

- **Within the regular conferences with presiding judges, presents judges with information on the change in the disciplinary practice in prisons.**

2) Court review of disciplinary punishments

Section 52 (4) of the Imprisonment Act governs the court review of selected disciplinary punishments: forfeiture of a thing; placement in a restricted block for up to 28 days, with the exception of the time designated for performance of the tasks assigned under the treatment programme; all-day placement in a restricted block for up to 20 days; placement in solitary confinement for up to 20 days and decision on confiscation of a thing. This legal regulation has been effective since 1 July 2011.

Considering concerns expressed by the legislature that courts could become overburdened with actions contesting disciplinary proceedings, I was also interested to learn during the systematic visits how many actions were filed in this respect (how many convicts turned to courts to challenge a decision made in disciplinary proceedings).

The actions filed began to be monitored centrally[143] as late as 2014. In 2014, 8 convicts' actions against a decision on the imposition of a disciplinary punishment were dismissed. In four cases the court upheld the applicant's claim and annulled the decision on imposition of disciplinary punishment. In 8 cases the courts did not reach a decision on the proceedings by the end of 2014.[144]

In view of the above, the **fear that courts could become overburdened with convicts' actions against disciplinary proceedings has not materialised**. Only very few convicts claim review of decisions taken in disciplinary proceedings.

The case law of administrative courts to date shows that two basic principles are applicable to disciplinary proceedings. First of all, indisputably and in accordance with the Defender's opinion expressed in the past[145], disciplinary proceedings are to be subject to **the basic principles of work of administrative authorities** laid down in Sections 2 to 8 of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended, despite the exclusion under Section 76 (1) of the Imprisonment Act.[146]

Secondly, administrative courts take into account in their decision-making practice that for the prison system to work correctly, justified disciplinary punishments must have a reformatory and preventive effect on other convicts. Courts also accept that in view of the nature of such decisions and the untypical circumstances under which they are made, as well as the deadlines by which administrative bodies are obliged to decide, decisions taken in disciplinary matters may not be subject to the same rigour as those issued by other administrative bodies or courts. This argument, however, may in no case be interpreted as giving the Prison Service a right to **give up on the duty** to issue decisions which are comprehensible, logically justified and based on evidence duly taken in the course of the proceedings, including the duty to conduct the proceedings in accordance with the procedural rights of convicts as guaranteed in the generally applicable legal regulations.[147]

These two basic principles justify my above recommendations that disciplinary proceedings should be subject to some degree of **supervision by prison** lawyers (see the preceding chapter, (b) Disciplinary punishments).

143 By the Department of Remand in Custody and Imprisonment of the General Directorate of the Prison Service.

144 Data for 2014. Source: letter by the Director of the Department of Remand in Custody and Imprisonment Ref. No. VS 9/039/002/2015-50/0VVT/310.

145 The Public Defender of Rights. Collected Standpoints of the Public Defender of Rights: Prisons. [on-line]. Brno: Office of the Public Defender of Rights, 2010 [retrieved on 21 January 2016]. P. 137. Available at: http://www.ochrance.cz/fileadmin/user_upload/Publikace/sborniky_stanoviska/Sbornik_ Vezenstvi.pdf.

146 Cf., for example, Judgement of the Regional Court in Hradec Králové Ref. No. 30 A 84/2013-65, dated 28 January 2015 2015.

147 Cf., for example, Judgement of the Regional Court in Hradec Králové Ref. No. 30 A 97/2014-51, dated 26 June 2015.

XII) Sources

1) Legal regulations[148]

Universal Declaration of Human Rights.

International Covenant on Civil and Political Rights (120/1976 Coll.).

European Convention for the Protection of Human Rights and Fundamental Freedoms (209/1992 Coll.).

Convention on the Rights of Persons with Disabilities (10/2010 Coll. of International Treaties).

Convention on the Rights of the Child (104/1991 Coll.).

Regulation of the Government No. 365/1999 Coll., on the amount and conditions of remuneration of sentenced persons assigned to work during imprisonment, as amended.

Regulation of the Government No. 564/2006 Coll., on salaries of employees in public services and administration, as amended;

Resolution of the Presidium of the Czech National Council No. 2/1993 Coll., promulgating the CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS as part of the constitutional order of the Czech Republic, as amended.

Decree No. 345/1999 Coll., promulgating the imprisonment rules, as amended. Act No. 372/2011 Coll., on health care services and the conditions for their provision, as amended. Act No. 555/1992 Coll., on the Prison Service and judicial guard of the Czech Republic, as amended.

Act No. 40/2009 Coll., the Criminal Code, as amended.

Act No. 169/1999 Coll., on imprisonment and on amendment to some related laws, as amended.

Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

Act No. 137/2006 Coll., on public procurement, as amended.

Act No. 2/1969 Coll., on establishment of ministries and other central State administrative bodies of the Czech Republic, as amended.

Act No. 101/2000 Coll., on protection of personal data and on amendment to some laws, as amended. Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended.

Act No. 155/1995 Coll., on pension insurance, as amended.

Act No. 48/1997 Coll., on public health insurance, as amended.

Act No. 108/2006 Coll., on social services, as amended.

Act No. 251/2005 Coll., on labour inspection, as amended.

Act No. 361/2003 Coll., on the service relationship of the members of the security corps, as amended.

148 The relevant regulations are available in: ASPI [legal information system]. Wolters Kluwer ČR [retrieved on 1 January 2016]. Internal regulations of the Prison Service are not accessible to the public.

2) Case-law[149]

Judgement of the Constitutional Court (full court) file No. PI. ÚS 4/94 of 12 October 1994, available at http://nalus.usoud.cz.

Judgement of the Grand Chamber of the European Court of Human Rights in case Kudła v. Poland of 26 October 2000, no. 30210/96.

Judgement of the European Court of Human Rights in case Naumenko v. Ukraine of 10 February 2004, no. 42023/98.

Judgement of the European Court of Human Rights in case Farbtuhs v. Latvia of 2 December 2004, no. 4672/02.

Judgement of the European Court of Human Rights in case Rivière v. France of 11 July 2006, no. 33834/03.

Judgement of the European Court of Human Rights in case Grishin v. Russia of 15 November 2007, no. 30983/02.

Judgement of the European Court of Human Rights in case Slawomir Musiat v. Poland of 20 January 2009, no. 28300/06.

Judgement of the European Court of Human Rights in case Kaprykowski v. Poland of 3 February 2009, no. 23052/05.

Judgement of the European Court of Human Rights in case Jasinskis v. Latvia of 21 December 2010, no. 45744/08.

Judgement of the European Court of Human Rights in case De Donder and De Clippel v. Belgium of 6 December 2011, no. 8595/06.

Judgement of the European Court of Human Rights in case Cara-Damiani v. Italy of 7 February 2012, no. 2447/05.

Judgement of the European Court of Human Rights in case G. v. France of 23 February 2012, no. 27244/09.

Judgement of the European Court of Human Rights in case Melnītis v. Latvia of 28 February 2012, no. 30779/05.

Judgement of the European Court of Human Rights in case Iacov Stanciu v. Romania of 24 July 2012, no. 35972/05.

Judgement of the European Court of Human Rights in case L. B. v. Belgium of 2 October 2012, no. 22831/08.

Judgement of the European Court of Human Rights in case Z. H. v. Hungary of 8 November 2012, no. 28973/11.

Judgement of the European Court of Human Rights in case Savičs v. Latvia of 27 November 2012, no. 17892/03.

Judgement of the European Court of Human Rights in case Swennen v. Belgium of 10 January 2013, no. 53448/10.

Judgement of the European Court of Human Rights in case D. G. v. Poland of 12 February 2013, no. 45705/07.

Judgement of the European Court of Human Rights in case Zarzycki v. Poland of 12 March 2013, no. 15351/03.

Judgement of the European Court of Human Rights in case Canali v. France of 25 April 2013, no. 40119/09.

Judgement of the European Court of Human Rights in case Grimailovs v. Latvia of 25 June 2013, no. 6087/03.

Judgement of the European Court of Human Rights in case Lankester v. Belgium of 9 January 2014, no. 22283/10.

Judgement of the European Court of Human Rights in case Semikhvostov v. Russia of 6 February 2014, no. 2689/12.

Judgement of the European Court of Human Rights in case Helhal v. France of 19 February 2015, no. 10401/12.

Judgement of the Regional Court in Hradec Králové Ref. No. 30 A 84/2013-65, dated 28 January 2015 In: ASPI [legal information system]. Wolters Kluwer ČR [retrieved on 1 January 2016].

Judgement of the Regional Court in Hradec Králové Ref. No. 30 A 97/2014-51, dated 26 June 2015. In: ASPI [legal information system]. Wolters Kluwer ČR [retrieved on 1 January 2016].

149 All ECtHR decisions are available in: HUDOC Database [legal information system]. European Court of Human Rights [retrieved on 1 January 2016]. Available at http://hudoc.echr.coe.int.

3) References

COYLE, Andrew. *A Human Rights Approach to Prison Management: Handbook for Prison Staff.* London: International Centre for Prison Studies, 2002, 160 p. ISBN 0-9535221-5-6.

COYLE, Andrew. *Řízení věznic v čase změn (Managing Prisons in a Time of Change).* Prague, 2003, 110 p. ISSN 1213-9297. Published as a supplement of the České vězeňství magazine Iss. 1/2004.

DUŠEK, Libor. Hrozí opět přeplnění věznice? Predikce vývoje počtu vězňů v České republice (*Will prisons get overcrowded again? Forecast of future changes in the prison population in the Czech Republic).* Národohospodářský ústav AV ČR *(Economic Institute of the Academy of Sciences of the Czech Republic),* Study 13/2015, 28 p., ISBN 978-80-7344-360-3.

ENGGIST, Stefan *et al. Good governance for prison health in the 21st century.* Copenhagen: World Health Organization, 2013, 32 p., ISBN 978-92-890-0050-5.

KMEC, Jiří et al. *Evropská úmluva o lidských právech* (European Convention on Human Rights). 1st ed. Prague: C.H. eck, 2012, 1660 p. ISBN 978-80-7400-365-3.

MOLLER, *Lars et al. Health in prisons. A WHO guide to the essentials in prison health.* World Health Organization, 2007, 179 p., ISBN 978-92-890-78209.

MOTEJL, Otakar et al. *Vězeňství (Prisons).* Prague: Wolters Kluwer ČR, 2010, 336 p. ISBN 978-80-7357-606-6.

MURDOCH, Jim. *The treatment of prisoners. European standards.* Strasbourg: Council of Europe, 2008, 402 p. ISBN 78-92-871-5927-4.

NETÍK, Karel et al. Psychologie v právu: úvod do forenzní psychologie (Psychology in Law: Introduction to Forensic Psychology. 1st ed. Prague: C.H. Beck, 1997, 140 p. ISBN 80-7179-177-6.

SVOBODA, Milan. Důkladné osobní prohlídky *(Strip searches). České vězeňství.* 2015, Iss. 2, pp. 22-23. ISSN 213-9297.

SVOBODA, Milan. K soudnímu přezkumu rozhodnutí vydaných v kázeňském řízení proti odsouzenému *(On Court Review of Decisions Issued in Disciplinary Proceedings Against Convicts).* Prague: *Právní rozhledy,* 13/2011, p. 476. ISSN 1210-6410.

ŠABATOVÁ, Anna. Proč máme stále přeplněné věznice? Zamyšlení nad trestní politikou ČR (Why are prisons always overcrowded? Thoughts on the penal policy of the Czech Republic). *Fórum sociální politiky.* 2012, Iss. 2, pp. 71-79. ISSN 1804-3070.

VAN ZYL SMIT, Dirk; SNACKEN, Sonja. *Principles of European Prison Law and Policy.* Oxford: Oxford University Press, 2011, 496 p. ISBN 978-0-19-969331-3.

WAGNEROVÁ, Eliška et al. *Listina základních práv a svobod* (Charter *of Fundamental Rights and Freedoms*). *Commentary.* Prague: Wolters Kluwer ČR, 2012, 931 p. ISBN 978-80-7357-750-6.

4) Online resources

EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). Report to the Czech Government on the visit to the Czech Republic carried out by the CPT from 1 March to 10 April 2014. [online]. Strasbourg: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) [retrieved on 1 January 2016]. Available at: http://www.cpt.coe.int/documents/cze/2015-18-inf-cze.pdf

EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). Living space per prisoner in prison establishments: CPT standards. CPT/Inf (2015) 44.

[online]. Strasbourg: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) [retrieved on 18 January 2016]. Available at: http://www.cpt.coe.int/en/working-documents/cpt-inf-2015-44-eng.pdf

EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). Report to the Czech Government on the visit to the Czech Republic carried out by the CPT from 25 March to 2 April 2008 [online]. Strasbourg: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) [retrieved on 1 January 2016]. Available at: http://www.vlada.cz/assets/ppov/rlp/dokumenty/zpravy-plneni-mezin-umluv/report-cpt--czech-rep--2008-_ czech_.pdf

EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards [online]. CPT/Inf/E (2002) 1 – Rev. 2004 [retrieved on 20 November 2015]. Available at: http://www.cpt.coe.int/ lang/cze/cze-standards.pdf

COUNCIL OF EUROPE. Recommendation Rec (2006) 2 of the Committee of Ministers to the Member States on the European Prison Rules [online]. Strasbourg: Council of Europe [retrieved on 15 March 2015]. Available at: http://www.coe.int/t/DGHL/STANDARDSETTING/ PRISONS/EPR/Evropska_vezenska_pravidla_2006.pdf

PUBLIC DEFENDER OF RIGHTS. Report on Visits to Facilities. Prisons. 2006 [online]. Brno: Office of the Public Defender of Rights, p. 18. [retrieved on 26 October 2015]. Available at: http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2006/ Veznice_2006.pdf

COUNCIL OF EUROPE COMMITTEE OF MINISTERS. Recommendation to Member States No. R (99) 22 concerning prison overcrowding and prison population inflation [online]. Strasbourg: Council of Europe [retrieved on 1 January 2016]. Available at: http:// www.ochrance.cz/fileadmin/user_upload/ochrana_osob/Umluvy/vezenstvi/R_99_22_preplnenost_vezen – skych_zarizeni.pdf

WORLD HEALTH ORGANIZATION. Declaration on Prison Health as Part of Public Health [online]. Moscow: World Health Organization. [retrieved on 25 October 2015]. Available at: http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/pre-2005/moscow-declaration-on-prison-health-as-part-of-public-health