

ANNUAL REPORT 2010 (CHAPTER 4)

SYSTEMATIC VISITS OF FACILITIES WITH PERSONS RESTRICTED IN THEIR FREEDOM

In 2010, the Defender focused on facilities of so-called de iure detention, i.e. facilities where there may be persons restricted in their personal freedom by public authority [§ 1 Paragraph 3 and 4 a) and b) of the Public Defender of Rights Act (Law No. 349/1999 Coll., as subsequently amended)]. In particular, they concerned **remand prisons, prisons for the imprisonment of women and juveniles and police cells and facilities with foreigners under administrative detention**. The structure of the visited facilities and development of the number of visits made are shown in the following graphs.

Subsequent visits were made by the Defender to **homes for people with health disabilities and psychiatric hospitals**, i.e. facilities where the restriction in personal freedom may be the result of dependence on the care provided (§ 1, Paragraph 4 c) of the Public Defender of Rights Act).

In accordance with the **sanction authorisation** arising from the provisions of § 21a, Paragraph 3 of the Public Defender of Rights Act, as amended on 31 December 2010, the Defender informed the public about the unsatisfactory cooperation with the Psychiatric Hospital in Šternberk. Although a number of desirable changes were identified on another visit to the Hospital, negotiations with the Hospital management on taking the recommended measures took place until the end of 2010.

1 / REMAND PRISONS

At the turn of 2009 and 2010, the Defender made unannounced two-day or three-day visits to remand prisons (hereafter simply „prisons“ or „facilities“). The visits targeted all groups of persons under arrest (men, women, adults, the young, foreigners). The Defender also visited public prosecutors exercising supervision over custody at the appropriate facility.

Workers of the Office of the Public Defender of Rights visited **a total of four remand prisons**. When selecting the specific facilities, the Defender had also considered his observations from various complaints with which persons in custody addressed him. Prisons in both Bohemia and Moravia were represented.

The prevailing part of the accused persons are in custody in conditions not much different from material conditions from the time before the transformation of the Czech prison service was initiated. Although the new legislation regarding custody guarantees a significantly greater extent of rights to the persons subject to custody and also creates conditions for implementing preventive educational and sports programmes, the actual conditions in custody are often dramatically worse than when serving actual prison terms. The main reasons include **lack of staff and unsuitable custody spaces** (small cells with poor hygiene conditions) that are the result of the old architectural layout of buildings, often not allowing any activity to be performed outside the cell. The Prison Service is unable to satisfactorily make sure the programmes of treating defendants are implemented to the extent provided by the Custody Act (Act No. 293/1993 Coll., as subsequently amended).

The solution to a considerable part of the below-described deficiencies is to a significant extent limited by the funds available.

RECOMMENDATIONS

STAFFING AND CAPACITY OF PRISONS

Custody is provided by the Prison Service of the Czech Republic (hereafter simply „Prison Service“) through uniformed members of the prison guard and civilian employees, with the latter hardly present in the custody parts of prisons. In some cases, there are joint educators, pedagogues, psychologists, etc. for the custody department and imprisonments (hereafter simply „term“). In the Prison Service in Ostrava, three psychologists take care of approximately six hundred persons (app. 300 defendants and 300 convicts); the situation with social workers is even worse – with just two of them being available for the whole prison.

The Defender repeatedly criticised the inadequate staffing levels in the Prison Service as well as the lack of prison capacity. This situation means that the rights of defendants are infringed upon (see below) and a potential security risk is also faced. Therefore, the Ministry of Justice is recommended by the Defender to begin negotiations to exempt the Czech Prison Service from its obligation to make annual staffing cuts.

ACCOMMODATION AND MATERIAL MEASURES

Cells are the accommodation standard in remand prisons. Their capacity ranges from one to eight defendants with cells including two to four beds being represented most often. In addition, prisons establish specialised cells (cultural rooms, gyms, lawyer interview rooms, etc.). All the visited prisons dispose of rooms for interviews with the lawyer where invasion of privacy was not identified. All the visited prisons also include visiting rooms for meeting close persons, with the Remand Prison in Ostrava also featuring visiting rooms that are very elegantly and practically equipped and where children can spend time.

In the absolute majority of cases, the equipment of cells met the legal regulations and standards arising from the European Prison Rules. A lack of boxes or chairs was only rarely experienced.

The lighting in cells was inadequate, in particular, where natural daylight was concerned. Apart from the construction-technical limitation of old buildings (small windows), light access is also prevented by the additionally installed transparent plastic screens. Their purpose is to limit the penetration of noise from cells into the environment (urban agglomeration) and prevent forbidden contact between defendants. Due to weather conditions, however, the screens are hardly translucent and, moreover, they prevent fresh air flow into the cells. The situation with the lighting is also complicated because of the fact the Prison Service's internal regulations governing the required artificial lighting intensity were abolished in the past without any compensation.

The Defender recommended to the General Directorate of the Prison Service (hereafter simply „General Directorate“) to re-evaluate the necessity to use the existing screens. At the same time, he recommended to the General Directorate and Ministry of Justice, as the building authority for prison service purposes, to draw up, in cooperation with the Ministry of Health, binding standards for lighting in prisons (day, night, artificial or mixed) that would handle the issue of

shielding screens and illumination of rooms with daylight. Based on a statement from the General Directorate, representatives of the offices in question agreed that the determination of hygiene limits for the internal environment of habitable rooms could be issued in the form of internal regulations of the Prison Service.

EXERCISE SPACES

The exercise spaces in remand prisons take the form of narrow, concrete block-delimited corridors in exercise yards. The absolute majority of the visited exercise spaces did not meet the requirements of the European Prison Rules (Prison Rules; Recommendation (2006) of the Committee of Ministers to member countries of the Council of Europe), sometimes not even the internal regulations of the Prison Service, and looked more like additional cells with no roof. An example may include the exercise yard of the Prague – Ruzyně Remand Prison, with a length of app. 12 m and width ranging from 1 to 5 metres, or the Remand Prison in Litoměřice, where spaces were not even roofed to any extent or equipped with benches to rest.

The Defender recommended performing construction-technical works so that staying in fresh air does not mean just mere promenading in narrow concreted berths. Where exercise yards are designed inappropriately, he recommended their reconstruction and cultivation, including additional equipment with shelters and benches or facilities for sports activities so that requirements of internal regulations are met.

CUSTODY WITH A MODERATE REGIME

Sections with a moderate regime, where the defendant may be placed if this poses no threat to the purpose of custody, are established within remand prisons. The share of this type of custody was different in the visited prisons and ranged from 15.5 % to 28 % of the capacity. Although the executive regulation prefers placing young defendants in this type of section, there was no special section for young defendants established at any of the facilities. For foreigners, there is a section with the mentioned regime in the Prague – Ruzyně Remand Prison.

According to the Defender, the current standard custody should in the future only apply to defendants in collusive custody. Other defendants should **a priori** be placed in moderate regime sections, which shall in particular apply to young defendants.

The Defender recommended to the General Directorate to implement a plan to increase the moderate regime section capacity to at least 30% of the total capacity of prisons by the end of 2010.

PROTECTING THE RIGHTS OF DEFENDANTS

Defendants learn their rights and obligations in a demonstrable manner with a sufficient number of foreign language versions of instructions being available. Rather less optimal is the situation of translations of internal rules of prisons, which are usually missing. The Defender would welcome the where foreigners are given access to at least fundamental information on their rights and obligations arising from the internal rules.

HYGIENE PROVISION CONDITIONS

Showering in hot water is enabled twice a week, more often in exceptional cases (hard work, sports activities), which is in accordance with both the legal regulations

and European Prison Rules. Significant differences between individual prisons were found in the provision of soap and toilet paper to defendants. There were also cases where the provision of basic hygiene needs was inadequate under certain circumstances (more people in cells) in respect of some groups of defendants (women).

The Defender recommended to the General Directorate to supplement the appropriate internal regulations with a provision saying toilet paper and soap are provided to every defendant at least once a month, with other basic hygiene needs being given upon a request.

SOCIAL AND CULTURAL CONDITIONS

Only four defendants (out of 956) had a job. This fact increases the need to provide suitable leisure activities for other defendants. Due to insufficient spaces, overcrowding and low staffing levels, however, the offer is quite inadequate.

The Defender recommended offering the defendants as many leisure activities as possible.

The Defender experienced the situation where defendants could not combine their own bedclothes and prison issue bedclothes and clothing. There is no lawful or objective reason for such limitation.

The Defender recommended that the prisons enable the wearing of a combination of one's own clothing and prison issue clothing, which would also apply to sports and leisure activities and which had been prevented by internal regulations of the Prison Service. The regulations were changed based on the recommendation.

The finding that prison workers did not provide young defendants with suitable and reasonable sports clothing or shoes for sports and leisure activities despite provisions of their own internal rules is considered a serious misconduct by the Defender. This was subsequently mentioned as one of the reasons why such activities are not carried out.

The Defender referred to the above-mentioned and stated the inadmissibility of such practices.

MEDICAL CARE

Medical centres are established in individual prisons. An employment contract is usually concluded between a prison and doctor as far as general practitioners and dentists are concerned. Specialists generally work in prisons without an employment contract. Expressed in a table, there are approximately 100 prisoners per one doctor (including dentists and specialists) (however, three times more per general practitioner). The medical care availability is complicated to a significant extent by the fact medical positions are often unoccupied.

A serious interference with the privacy protection right is the presence of guards during medical examinations, with this being considered an absolute matter of course at three of the visited facilities. Guards are even present in the gynaecological room. This practice is in conflict with both generally binding regulations and the internal regulations of the Prison Service.

The Defender repeatedly recommended fitting medical room doors with transparent inspection holes that would enable the guards to check the

situation without being present in the room and hearing the communication between the defendant and doctor (i.e. to be within eyeshot, not earshot).

MANDATORY HEALTHCARE FEES

A serious obstacle even able to prevent health care availability includes the obligation for poor defendants to pay mandatory healthcare fees and eventually additional charges for drugs. Based on the Public Health Insurance (Act No. 48/1997 Coll. as amended) amendment effective as of 1 January 2008 (Amendment No. 261/2007 Coll. on the stabilisation of public finances), defendants **cannot be exempted from the obligation to pay mandatory healthcare fees due to material need**, as their situation would be evaluated if they were free. At the same time, they are virtually forbidden to work when in custody and – in contrast to convicts – they do not receive CZK 100 as social pocket money. If they do not have any funds from the time before being arrested, any other income or are not given any funds from anyone else as a gift, they do not have access to health care pursuant to the literal wording of the law. The obligation to pay mandatory healthcare fees also applies to minor defendants.

The Prison Service responded to such a situation by issuing an internal regulation assuming that **unpaid mandatory healthcare fees will be enforced only after the debtor is set free and the unsettled payment for drugs becomes a receivable from the State**. The Defender welcomed such approach while being aware it was the only way to comply with the law and meet the international standards for the protection of human rights regarding the approach of persons restricted in their freedom to medical care under the current legal situation. However, he does not consider it optimum, either in terms of the enforceability of receivables and the administrative costs of the process of enforcing or, in particular, considering the impacts on the socio-economic situation of the person after being released from prison, his/her subsequent adaptation and social integration.

COMMUNICATION WITH THE OUTSIDE WORLD

Correspondence is received and sent by the defendants at their own expense and with no limitation – it is checked only in case of collusive custody. The check is to be carried out by law enforcement authorities within 14 days pursuant to internal regulations. However, the term is not met at all times.

The Defender required that the Prison Service check the meeting the terms by a law enforcement authority and inform without undue delay its governing body if terms are not met.

Based on the finding of the Defender, prisons do not allow defendants without any funds to buy a phone card to call a lawyer. The Defender pointed out that the State assumes some obligations upon itself by disfranchising a person, including that a person in custody will not be deprived of some of his/her rights (the right to legal aid in accordance with Article 37, Paragraph 2 and Article, Paragraph 3 of the Charter of Fundamental Rights and Freedoms), the State will provide that person with a certain minimum standard of security (this does not apply just to food and clothing, but also undoubtedly the exercising of one's rights) and that other rights will not be limited unreasonably. Article 40, Paragraph 3 of the Charter of Fundamental Rights and Freedoms explicitly states that a „**defendant shall have the right to be provided with the time and opportunity for defence preparation, to be able to defend (...) through a solicitor**“. This „opportunity“ naturally also features a material-technical

dimension in itself, i.e. the to address a lawyer, consult with him the preparation of one's defence, etc. The defendant cannot be deprived of the right to legal aid with reference to the lack of funds necessary to make a call.

The Defender recommended to the General Directorate to regulate by a methodical measure the opportunity of defendants who are demonstrably without any funds to exercise the right to legal aid by contacting their legal representative or lawyer at the expense of the prison budget first.

INTERNAL SECURITY

No excesses, i.e. excessive or unreasonable imposition of disciplinary punishments or other evident misconducts, were found with disciplinary offences or, to be more precise, in proceedings for awarding disciplinary punishments.

Proper attention is paid to preventing violence between defendants. Once a week, usually when showering, guards carry out a visual check of identified groups of defendants who could be perpetrators or victims of violence; once a month, a similar check is then provided by the doctor. Violence between defendants is at a steady or decreasing level. Violence by employees towards prisoners was not specifically identified but certain observations and more or less open statements of defendants and some employees suggested some violence had taken place in areas not under effective camera monitoring. However, these cases had concerned individual excesses dealt by the prisons. In the past, two prisons had to dismiss one employee each for aggressive behaviour towards imprisoned persons.

Complaints from imprisoned persons were made in respect of inspections of cells, in particular, damage to items by the inspecting workers of the Prison Service. Nevertheless, the mentioned unlawful conduct could not be demonstrated and even written documents were missing. Violating human dignity and privacy was identified by the Defender in the case of the so-called thorough search of a person. Searching was often of a collective nature and there was absolutely no protection of privacy of persons subject to searching.

The Defender recommended to the General Directorate to amend the appropriate internal regulation to set the obligation to fit the inspection area with shields or boxes providing a certain level of privacy and dignity for the defendants.

CUSTODY OF JUVENILES

Special treatment of juveniles as provided by the Custody Act is basically adhered to. Serious deficiencies, however, can be found in the pedagogic and social care of these defendants. Although visits by workers of social legal protection services of children take place at regular intervals, they are only of a formal nature. Institutional or protective education had been ordered for some juveniles before being taken into custody but in no case was it found that the educational institution or children's home was somehow interested in them. The Defender pointed out that these defendants were disadvantaged in several aspects compared to defendants with a family (visits, line change, parcels, etc.).

The Defender recommended that prisons actively establish cooperation through a social worker with school facilities where the defendant had previously been subject to institutional or protective education.

Serious deficiencies were found in securing compulsory schooling. Prison workers described the unwillingness of school workers to visit the prison as it is not legally established which school should provide schooling. Teaching of juveniles is therefore most often provided by the prison special pedagogue, who actually gives children grades and the school formally recognises these grades. At school, defendants only take part in the final revision period at the year's end. However, it was also found that in the past a pupil had not been sent by the prison for the final exams, after which the compulsory schooling had been finished by the school in a lower year. On the contrary, an example of good practice includes the cooperation of the Remand Prison in Ostrava and the Elementary School of Přemysl Pitř in Ostrava – Přivoz.

The Defender recommended that prisons pursue the good practice identified in the Remand Prison in Ostrava when cooperating with a school.

A burning question is the lack of suitable leisure activities, which can represent one of the main reasons for increased aggression of juveniles against property and people.

The Defender asked prisons to expend the maximum effort to provide a sufficient amount of suitable leisure activities for juvenile defendants.

2 / PRISONS FOR JUVENILE DEFENDANTS SERVING TERMS

Serving terms of juvenile men is concentrated in the **Všehrdy Prison** in the Czech Republic; for juvenile women, there is a special section within the prison for serving terms in Světlá nad Sázavou. In 2010, the Defender made an unannounced visit to both of these facilities. In the **Prison in Světlá nad Sázavou**, there was no woman below 18 years of age and only 6 women at an age close to juvenile age at the time of the visit, which is why the **following summary only deals with the Všehrdy Prison** (hereafter simply „Prison“ or „Facility“). Besides several hundred adults, there were 140 juveniles at the time of the visit.

The concentration of all juvenile convicted men into one facility within the State was forced by the reconstruction of part of the Opava Prison into a detention institute and turns out to be unsatisfactory in case there is a need to relocate a problem juvenile or juvenile in danger to any other place.

RECOMMENDATIONS OF THE DEFENDER

MATERIAL SECURITY, STAFF CONDITIONS AND CAPACITY

Equipment and spatial conditions are above average, which is also given by the construction layout and size of the prison area, so the absence of shelters in exercise yards can be regarded as the only deficiency. As in other prisons, significant lack of staff was identified here. The prison capacity and staffing are on the brink of their capacity and the management plan to seek to reduce the capacity and build a section with a cell system for the most aggressive juveniles.

The Defender recommended fitting the exercise spaces of juveniles with shelters against rain. He also voiced his support for the intention to construct at least a couple of cells enabling the separation of the most aggressive prisoners from the others.

SOCIAL NEEDS

The prison includes the Education Centre (hereafter simply „School“) with 20 pedagogues. The School, with a total capacity of 132 persons, does not enable compulsory schooling to be completed; it only provides education in 7 fields of study and 5 five-month courses. What is more, both the capacity and the range of fields and courses have a decreasing tendency over time. As far as inclusion in programmes is concerned, there is an evident effort to prefer adults over juveniles as they are less problematic. In summer, teaching does not take place at all; in addition, the defendant may only be included in the programmes at the beginning of the tuition or course, otherwise, he/she must wait until the beginning of the new cycle. Such practice makes it impossible for juveniles who have spent a rather short time in the prison to complete the field of study.

The Defender recommended creating conditions for broader inclusion of convicts in the tuition programmes during the year and placing greater emphasis on educating juveniles.

3 / PRISONS FOR WOMEN SERVING TERMS

Two facilities were visited without any prior announcement as part of supervision of places where terms are served by women. The first included the **Prison in Světlá nad Sázavou**, with a modern construction-technical design, where app. 700 convicts were serving their sentence in the inspection, supervision and surveillance category at the time of the visit (May 2010). There is also a section for mothers with children and a section for women permanently incapable of work. The Defender paid special attention to the conditions and regime of both the last-mentioned sections.

Another prison that was visited was the **Prison in Opava**, where there were 299 women in all prison types (including those serving life sentences) at the time of the visit (September 2010). There are two specialised sections established in this prison: for addiction treatment and for persons with mental and behavioural disorders. Separate premises are furnished for women with the second building being designed for terms served by men.

In the second half of 2010, fierce austerity measures (restriction of the hot water supply, lighting, heating, use of cookers, provision of hygiene needs) were introduced at Prison Service facilities. Combined with the overcrowding of prisons, these measures may potentially affect dignity of those serving terms and support the growth of negative manifestations. **Generally speaking, although the Defender has a rather positive evaluation of the treatment of women restricted in their personal freedom, he warns against the impacts of the current trends when we are facing an increase in the number of underprivileged persons in prisons, capacity and, at the same time, a mounting pressure on expenditure restraints.** The absence of blanket testing for some infectious diseases can also be considered a potential risk.

The Defender recommended sensitive selection of individual austerity measures, taking into account the rights of the convicts and providing standard social conditions for poor convicts.

RECOMMENDATIONS

MATERIAL SECURITY, STAFF CONDITIONS AND CAPACITY

It is especially the Opava Prison that suffers from overcrowding, which is very unbalanced. While for example the overall utilised capacity of the women's part of the Opava Prison was 108% at the time of the visit, in the surveillance type of the prison the utilised capacity was 134% and in the supervision type prison it was even 146%, which by itself makes serving the term much more difficult. As in other prisons, a significant lack of staff was identified there.

The Defender recommended to the prison management to seek to strengthen the staff levels, in particular, the civilian employees. Further, he pointed out the fact that determining table positions of employees assigned to various prisons cannot be based just upon the average situation of the employees and convicts, but it is also necessary to individually review the local conditions of prisons (e.g. Opava Prison consists of two separate buildings, which is why the staffing requirements for its surveillance and security are necessarily much higher with the same capacity).

SOCIAL AND CULTURAL CONDITIONS

In the Prison in Světlá nad Sázavou, the Defender experienced an unlawful interpretation of the internal regulation issued by the Managing Director of the Prison Service, where poor convicts were forced to preferably buy hygiene needs from their social pocket money amounting to CZK 100. As a result, they lacked money to satisfy other needs.

The Defender strongly asked that practice be stopped. The legal opinion of the Defender was also shared by the Managing Director of the Prison Service, who the Defender had to address due to the absence of the prison's cooperation. Subsequently, social pocket money can now be used upon the discretion of the convicts even in this prison.

COMMUNICATION WITH THE OUTSIDE WORLD

It was especially in the Prison in Světlá nad Sázavou where the Defender found that there were problems in allowing phone calls when the convict or the called person speaks a foreign language.

The Defender insists on the statement that the use of a foreign language itself cannot be a reason for not allowing (finishing) a call in case one of the communicating persons does not have a command of Czech (this applies to e.g. small children with their mothers in prison. Therefore, he recommended that prison management instruct the responsible workers in this regard.

MEDICAL CARE

The Defender characterised the medical care in the Světlá nad Sázavou Prison as sad, in particular, in terms of its availability. The reason especially included the position of the prison doctor, for a long time unoccupied. The fact that until recently there had been no gynaecologist having office hours in a prison with app. 700 convicted women and that at the time of the visit the gynaecologist had office hours once every 14 days only seemed incomprehensible. At weekends, the medical service is not available at all at this facility.

The Defender strongly recommended providing at least one general practitioner in the Světlá nad Sázavou Prison, which was subsequently fulfilled. Further, he recommended that women over forty years of age be referred to the option to undergo a mammography investigation and an annual gynaecological investigation.

Again, the Defender faced a burning issue of the obligation placed on poor convicts in the prison to pay mandatory healthcare fees and additional charges for drugs. Although the situation of poor persons serving terms is rather better than that of persons in custody (see above), the payment of fees is not without problems even here. Moreover, it is often the case at prisons (not only for women but also in remand prisons) that the practice often uses the terms like „urgent“ or even „life-saving“ as the condition for free care. However, this is not in accordance with the internal regulations of the Prison Service, based upon which it is postponed with enforcement of the receivables for mandatory healthcare fees until the prison term has been served or, to be more specific, receivables from additional charges for drugs are transferred upon the State by these regulations.

The Defender strongly insists that the basic principles included in e.g. the European Prison Rules or internal regulations of the Prison Service, are based upon the fact the State has disfranchised a person, assumed responsibility for such person to some extent by e.g. providing such person with proper health care. Such care can surely not be limited to just so-called „urgent“ or „life-saving“ cases. Therefore, the lack of money cannot be a reason to deny care other than „urgent“ or even just „lifesaving“ care.

The same as described in the chapter dealing with visits to remand prisons applies to maintaining human dignity and the protection of sensitive information during medical examinations.

PRIVACY DURING SAFETY INSPECTIONS

Carrying out so-called thorough inspections (before escorting, before and after visits or during so-called technical inspections) collectively is a serious misconduct by workers in the Prison in Světlá nad Sázavou. Women were forced to strip naked in front of others, reputedly even when they were menstruating.

The practice of collective thorough inspections is regarded by the Defender as quite unacceptable and he recommended that such inspections be stopped immediately.

COERCIVE MEANS

The same as described in respect of this issue in the chapter dealing with visits of remand prisons applies to using coercive means. Moreover, the consequences of the case followed by the media of the escape of an imprisoned person when being escorted to a medical facility in Plzeň also had a negative impact. The Managing Director of the Prison Service issued an internal regulation on binding persons during escorts, virtually introducing blanket use of shackles with a restraint belt regardless of the individual physical and personal characteristics of the person subject to escort or criminal act relevance. As far as serving prison terms is concerned, this instruction leads to absurd situations where e.g. women in the most moderate type of prison with inspection who are commonly allowed to move freely to unguarded workplaces outside the prison must be escorted to medical facilities with their hands tied, shackled to the with a restraint belt.

The Defender asked that suitability and rationality be provided when using coercive means.

4 / POLICE CELLS

In the period from March to August 2010, the Defender made systematic visits to police cells (hereafter simply „Cells“). **A total of 34 police departments were visited.** Of this number, two were subject to the foreign police administration under which 126 cells for 192 persons are established. All visits were made without prior announcement, some of them in the evening or at night. In some cases, facilities were also entered in the early morning after being investigated the preceding evening or night.

Since 2006, when the Defender started making systematic visits of police cells, there was a fundamental change to the legal regulations regarding the cells. The Act on the Police of the Czech Republic (Act No. 273/2008 Coll., as subsequently amended) regulating the details on placing persons in cells was adopted. Further, a binding instruction of the Chief of Police No. 159 of 2 December 2009 on escorts, guarding of persons and police cells (hereafter simply „**Binding Instruction**“) was adopted.

RECOMMENDATIONS

INSTRUCTIONS TO PERSONS WHEN BEING PLACED IN A CELL

A person placed in a cell must be demonstrably informed of his/her rights and obligations under the Police Act. Instructions are provided through a form called „**Instructing a Person when Being Placed in a Cell**“ (hereafter simply „**Instructions**“) signed by the person placed in the cell and the text of which is set by the appendix of the Binding Instruction, which states that one copy of the form is given to the person being placed in the cell, which mostly is not the case in practice as the paper is evaluated by the Police as a matter able to the put life or health of the person placed in the cell at risk. Policemen proceed across the board without evaluating the level of risk in relation to the person placed in the cell. The Defender criticises this procedure as informing about rights and obligations is the basic condition of their implementation. There is a difference between the ability to receive information within procedures following one after another after the restriction of freedom and the ability to receive it later (in relative peace). That is why the person placed in the cell should have the „**Instructions**“ with him/her in the cell. According to the Defender, the „**Instructions**“ form does not need to be given to the person in the cell for safety reasons, however, only after individual evaluation of the specific person's characteristics that would suggest the form would be used for self-inflicted harm or to put another person at risk. In such a case, the form should be kept with the items taken from the person and given to him/her when leaving the cell.

The Defender recommended placing the Instructions form in the cell.

Pursuant to the applicable regulation, the person should be instructed when being placed in the cell in respect of the legal reasons behind the act being taken and his/her rights and obligations. However, the practice of many police departments is such that the person placed in the cell is instructed by the police authority that has restricted the person in his/her freedom (often a couple of hours before their actual placement in the cell). The policeman taking the person to the cell will receive from the supplying policeman the signed „Instructions“ but then does not need to make

sure the person has understood the **Instructions**. Combined with not placing the „**Instructions**“ form copy in the cell, there is a real risk that the person placed in the cell is actually not informed of his/her rights.

The Defender recommended respecting the Binding Instruction provisions and giving Instructions when placing a person in the cell or making sure the person has properly understood the Instructions.

MEDICAL TREATMENT AND STATEMENT ON THE STATE OF HEALTH

If there is any reasonable suspicion that the person that is to be placed in the cell suffers from a serious disease, the policeman is obliged – under the Police Act – to provide such person with medical treatment and ask the doctor to provide a statement on his/her state of health. In one case, the Defender found that there was a person in a cell about whom they had known from the beginning suffered from a mental disorder and was subject to care from a psychiatrist (in the past, they had assisted several times in his/her involuntary hospitalisation in a psychiatric hospital); despite that, they had not asked for a statement from the doctor regarding his/her health care before such person was placed in the cell. They even did not make sure the detained person was given the that he/she was using on a regular basis.

The Defender evaluated this procedure as breaching the statutory obligation, in particular, breaching the detained person's right to health protection. He strongly recommended respecting the Police Act.

The situation where policemen had had the state of health of the person placed in the cell evaluated by the doctor and had given the person the prescribed medications but had not learnt their amount or the intervals of their use or, to be more specific, this information had not been given in any documentation, was evaluated by the Defender as misconduct. It may be assumed that the information the medication was to be given in the morning had been transmitted orally by the policemen but there had been a risk of exchanging the amount and intervals of giving the medications or omission. The person placed in the cell was thus subject to the risk of their health being affected.

The Defender recommended providing instructions from the doctor on medicine administration at all times (intervals, amount, etc.)

The Police Act provides that a person restricted in freedom has the right to be examined or treated by the doctor of his/her choice (note: this does not apply to examinations by a doctor to find out whether the person can be placed in the police cell). The Police will allow the appointed doctor to access the person to treat or examine him/her. The Defender found that the right would not be respected in some prisons due to a lack of knowledge of the regulations and the unusual character of such requirement, and policemen would not notify the doctor of the person's request to be examined by him/her.

The Defender recommended respecting the Act and allowing the person placed in the cell to be accessed by the doctor of his/her choice.

In case of the medical examination of a person restricted in his/her freedom, the policemen are obliged to provide safety of the treating staff and prevent the person restricted in his/her freedom from escaping if the examination is carried out outside the cell or police station. There is a conflict of several rights and obligations: protection of safety of the medical staff, protection of privacy of the examined person,

maintaining medical confidentiality and the to prevent the escape of the examined person. Based on the Binding Instruction, there is a different regime for examinations outside the cell where the policeman is paradoxically only meant to stay in visual contact, and examinations in the police cell where a policeman is to be present. Policemen clearly preferred the maximum safety aspect, i.e. presence in the cell. As a reasonable compromise, the Defender sees it fit that the guard remains in visual contact outside the cell and only enters it when asked to do so by the doctor.

The Defender recommended respecting the privacy of a person in respect of medical examinations.

LEGAL AID PROVISION

Access to legal aid is not only an integral part of implementing the right to a fair trial but also one of the ways to prevent maltreatment when a person is being placed in the cell. Under the Police Act (§ 24, Paragraph 4), a person restricted in freedom has the right to be provided with legal aid at his/her own expense and to talk to a legal representative without any third person being present. The right to legal aid is usually implemented in such a way that the guarding policeman notifies the police unit that has placed the person in the cell of the wish of the person placed in the cell to talk to a lawyer (unless already appointed within the so-called necessary defence) to review the request and mediate the contact. According to the Defender, however, this is not sufficient. Such procedure is suitable when criminal proceedings are being undertaken. Nevertheless, there are not just detained persons (i.e. within the criminal proceedings) in the cells but also persons restricted in their freedom for other reasons (police detention or parading). Policemen guarding the cells must be ready to provide such persons with legal aid, which mostly is not the case as found by the Defender. And these are not difficult tasks – providing a phonebook and phone call.

The Defender recommended that a list of lawyers from the surroundings be available at the police cells that can be offered to the person placed in the cell. The Defender recommended conveying the right to legal aid also to persons placed in the cell for detention or, if you like, persons before being notified of their charge.

If no special visiting room for consulting the legal representative is established in the appropriate workplace, consulting usually takes place directly in the cell. In some cases, however, the technical situation does not allow complete confidentiality of the meeting. Communication facilities in the cells would, for example, allow monitoring of the actual interview (specific monitoring not identified). In one case, it would be possible to monitor even a specially created visiting room.

The Defender recommended finding a solution so that legal aid could be provided without any third person being present.

NOTIFICATION OF A THIRD PERSON

The Police have a statutory obligation to notify, upon the request of the person restricted in his/her freedom, a person close to him/her or any other person specified by the person restricted in his/her freedom of that fact. Guarding policemen handle the notification request on their own or ask the police authority that has supplied the person to be placed in the cell to do it. In the latter case, the problem is the fact that guarding policemen do not check whether the supplying authority has managed to contact and notify the third person. As a result, it happens that the person placed in the cell is uncertain of whether the third person knows of his/her existing situation.

Notifying a third person may be requested at any time during the stay in the cell, however, this right is often not applied as persons placed in the cell are not aware of that – they do not have the „Instructions“ form with them and have forgotten the instructions given to them orally.

The Defender recommended informing the person placed in the cell at all times of whether notifying the third person has been successful. If „Instructions“ have not been given, the Defender recommends informing the person continuously of his/her right to notify a third person.

FILING COMPLAINTS

Policemen guarding the cells usually said they were not authorised to take a complaint from the mentioned person and that a specialised unit (internal inspection) worker needed to be called for that purpose. However, the procedure according to the Binding Instruction assumes that the person placed in the cell writes the complaint himself/herself or through the legal representative. The internal inspection worker should only be called to write a complaint if the person is unable to write it himself/herself for objective reasons.

The Defender recommended respecting the applicable legislation, allowing the person to write a complaint and accepting it.

WITHDRAWING OF ITEMS AND HEALTH AIDS

Before a person is placed in a cell, a policeman is authorised to check whether the person has a gun or any other item able to put life or health at risk and confiscate such item from the person. For this purpose, the policeman is authorised to inspect the person. In practice, all items including documents related to their placing in the cell or their prosecution, items of everyday use or watches are confiscated in most cases. There is the question of whether such action corresponds to the intention of a legislator. The Police Act (§ 29) allows the confiscation from a person of „**an item able to put life or health at risk**“, not all items. Nevertheless, policemen proceed as if an item unable to put life or health at risk did not exist.

No item is able to put life or health at risk by itself but only in connection with the action of a person with that intention (or negligent or inappropriate actions). The Defender therefore asks for individual evaluation, considering the characteristics of the person placed in the cell.

Confiscating all items may lead to the impossibility to orientate in time (many cells do not have access to daylight), the impossibility to familiarise oneself with the criminal regulations, documents related to prosecution, or to pass the time by reading a magazine during the stay in the cell. There is no reason to cause such „**discomfort**“ according to the Defender. Restricting the personal freedom itself is a heavy psychological intervention and should be reduced to the necessary minimum given by its purpose: preventing escape, thwarting investigation or continuing in prohibited acts.

The Defender recommended individual evaluation for items confiscation and usually allowing the person to keep documents related to his/her placement in the cell and his/her criminal case so that he/she could be familiarised with them to a sufficient extent. Further, he recommended that watches only be confiscated in well-founded cases, and such reason is always given in the service aids. If watches are confiscated or if the person does not have one, the

Defender recommends notifying such person, even without a request, of the time at regular cell inspections, food supply or presentation.

Under the Police Act (§ 29), if the item the confiscation of which causes a psychological injury or physical harm includes a health aid, there must be a special reason for such confiscation. At most of the visited sites, glasses are almost always confiscated. The Defender does not agree with this generally applied – blanket approach. The policeman must be able to individually evaluate whether there is any special reason for glasses to be confiscated, which is to be subsequently recorded in documents. In other words, the policeman should automatically keep the glasses; to legally confiscate glasses, there must be yet another „special“ reason.

The Defender recommended keeping glasses on principle and confiscating them only in individual cases after a special reason for their confiscation has been identified.

SERVING MEALS

Pursuant to the Binding Instruction, the person has the right to be provided meals three times a day at reasonable intervals. At some stations, there was still the old, long implemented practice of serving meals after 6 hours after personal freedom is restricted.

The Defender recommended that meal serving roughly respected the time of the main meals of the day with the policemen monitoring in their service records the time the person ate last.

Depending on the local conditions, the person placed in the cell may be provided, upon his/her request and at his/her expense, with meals reasonably per his/her requirements if such person disposes of the necessary money, with whom there is no reasonable suspicion the money comes from criminal activity. In some departments, buying one's own meals was not allowed, saying it would be administratively difficult to report it.

The Defender recommended respecting the Binding Instruction and finding a suitable method for reporting purchases from funds of the person placed in the cell.

MEETING THE PERSONAL FREEDOM RESTRICTION TERM

Systematic visits did not find any cases of exceeding the terms set by the Police Act and Criminal Procedure Code (Act No. 141/1961 Coll., as subsequently amended) for the restriction of the personal freedom of persons; nevertheless, a practice enabling the exceeding of terms was identified. Statutory periods may namely be changed during freedom restriction by the police authority. If the detained person for whose freedom restriction a term of 48 hours applies is submitted to the court by a prosecutor, the term is extended by 24 hours. At several sites, the Defender found that these details had not been recorded in the freedom restriction documentation. Although exceeding terms was not documented in specific cases, it was evident that policemen changing guard in shifts did not have any demonstrable information about when the term was to expire and the person was to be set free. Formally, it concerned breaching the Binding Instruction (a policeman is to make a record in the information system or service aids if he has received instructions regarding the statutory period for freedom restriction). Where such misconduct was commented

upon by the Defender, better cooperation and exchange of information with the prosecution was promised.

The Defender requested the documentation be kept in such a way that it is demonstrably provided that the statutory period will not be exceeded.

Another issue regarding the „Instructions“ form where it talks about placement in a cell for a necessary period, however, not more than 72 hours, is connected with the length of the term for personal freedom restriction. This, however, does not apply in case of the institute of detention under the Police Act. Detention of a person may not last more than 24 hours following the personal freedom restriction moment, or 48 hours in case a foreigner is detained.

The Defender recommended making the „Instructions“ form more precise and supplementing it with information on the length of placement in a cell in case of the institute of detention.

STRUCTURAL AND TECHNICAL LAYOUT

The Binding Instruction sets requirements for the structural and technical equipment and layout of cells. At some sites, the following deficiencies were identified: the basin was not placed outside the camera's reach and the part of the cell with the basin and WC was not visually separated from the remaining part of the cell; basins were not fitted with running water or water could not be run from the cell but only from the corridor; dual lighting mode (day, night) was not installed or the night lighting did not work as a result of which day lighting was on at night to allow cameras to work; the signalling system did not work.

The Defender recommended modifying the cells to meet the Binding Instruction requirements.

A table providing information to persons placed in the cell on continuous cell space monitoring in the following wording: „Cell spaces subject to camera system monitoring“ as required by the regulations, was not present in all of the cells.

The Defender recommended posting the information table.

ASSURING PROTECTION AND THE DIGNITY OF PERSONS

At some cells, the room for searching of persons before being put in the cell was not provided and searches were carried out e.g. in the corridor. In such cases, it was always investigated whether the improvised search spaces were accessible by unauthorised persons and Police members of the opposite sex. Misconduct was identified in several cases. Apart from that, there were glass doors through which it was possible to see inside in some rooms designed for searches.

The Defender recommended establishing search rooms. Further, he recommended that the privacy of persons subject to searches be immediately assured, e.g. by temporary curtains or an appropriately covered peephole.

In connection with the searches, the Defender also emphasized the issue of dignity and privacy of the person in the case of camera monitoring of special rooms. A situation where the picture is shown on a monitor in a room where other persons, even those of the opposite sex, are commonly present or where the monitor can be viewed from stations that can even be accessed by the public is considered by the Defender misconduct.

The Defender recommended taking such measures so that the dignity and privacy of persons during searches and in connection with picture transmission by cameras are respected.

MATERIAL EQUIPMENT OF CELLS

In some cells, even in newly built ones, toilet seats were missing. As far back as in connection with the systematic visits of police cells in 2006, the Defender recommended that toilets in cells be equipped with toilet seats and also lids for toilet bowls at least in cases where the flushing control is placed outside the cell.

In exceptional cases, it was found that mattresses were not used in the cells and, as a result, persons were sleeping directly on the bed's wooden boards. This concerns a breach of the Binding Instruction, as in cases where mattresses on beds only have a textile surface. Based on the Binding Instruction, the bed should be fitted with a washable sleeve or mattress with a washable surface.

The Defender recommended supplementing the missing equipment in cells.

In each cell, there should be one bed sheet or sheeting and a cover with a blanket used as standard. In some places, paper torn from a roll was used while in other places there was no sheeting and persons had to lie directly on the mattress. At some sites, blankets were not cleaned after being used. The Defender criticised cases where the equipment did not allow contact with the exposed surfaces or surfaces unable to be cleaned to be avoided. If a person was eligible, based on a previous Binding Instruction, to have two pieces of sheeting so that one could be used as a sheet and due to that, immediate physical contact with an already used blanket (or mattress) could be avoided, nowadays, a person is only eligible to one sheet or, to be more specific, a single bed sheet and such contact cannot be avoided.

The Defender recommended increasing the hygiene standard, providing regular cleaning of blankets and offering persons two pieces of sheeting.

In most cases, it was found that a person in the cell had to specifically ask to be given equipment the stations are obliged to dispose of and to which the person is entitled. This also concerns hygiene needs (toothbrush and paste). Combined with the failure to provide „Instructions“ in the cell, in practice this means that the person placed in the cell only rarely asks for these items to be given to him/her.

The Defender recommended providing hygiene needs ipso jure.

5 / FACILITIES FOR THE DETENTION OF FOREIGNERS AND ASYLUM RECEPTION CENTRES

In the second quarter of 2010, the Defender made systematic visits to facilities where there are foreigners in the administrative detention regime. This concerned two facilities for the detention of foreigners where – based on § 130 of the Act on the Residence of Foreigners in the Czech Republic (Act No. 326/1999 Coll., as subsequently amended) – they provide their securing for the purpose of administrative deportation, exit or handover or extradition in transit. Also, two asylum facilities that are used – pursuant to § 79, Paragraph 1 of the Asylum Act (Act No. 325/1999 Coll., as subsequently amended) – to accommodate applicants for international protection for the time necessary to perform operations according to §

46 of the Asylum Act were selected. **In 2010, the Defender visited all facilities in the Czech Republic that are used to detain foreigners or initially place asylum seekers** (hereafter simply „Facilities“).

Apart from the reception centre in Zastávka u Brna, this was the second systematic visit to these facilities. The first visits were made in 2006 and 2007. For this reason, the visits were not conceived of as just the seeking of new facts but also focused on evaluating and supplementing the original recommendations of the Defender. The visits were not announced in advance, lasted one day, two days in one case, and were always made by four Office employees.

The operator of all the facilities **includes the Refugee Facilities Administration of the Ministry of the Interior** (hereafter simply „Refugee Facilities Administration“), the employees of which take care of the regular operation of the facility, acquaint foreigners with the environment, identify their needs, provide leisure activities, etc. Health care at facilities is provided by the Medical Facility of the Ministry of the Interior (hereafter simply „Medical Facility“). The surveillance of the facilities for the detention of foreigners is provided by the Police of the Czech Republic – Alien Police Service (hereafter simply „Alien Police“ or „Police“), which also ensure the so-called strict regime and carry out searches of persons at these facilities. The Alien Police are present in the reception centres but only provide searches of foreigners or escorts. In the reception centres and facilities for the detention of foreigners there are also workers from private security agencies whose task is to provide internal safety and keep order.

After visiting the facilities, the Defender initiated negotiations with representatives of the Refugee Facilities Administration, Medical Facility, Alien Police and Asylum and Migration Policy Department of the Ministry of the Interior (hereafter simply „Asylum and Migration Policy Department“). Issues relating to individual recommendations were discussed and statements from all parties concerned were clarified, too.

RECOMMENDATIONS

SEARCHES OF FOREIGNERS AND THEIR BELONGINGS

The statements from detained foreigners and information from non-government organisations suggested that the Alien Police inspected the rooms and belongings of foreigners in an – at least – unprofessional manner. During the inspections, foreigners reputedly stand scantily clad in corridors and their belongings are treated roughly. The overall character of these searches is regarded by the Defender as unreasonable as the described practice is not common even at stricter detention facilities such as prisons.

Although no misconduct could be demonstrated, the Defender appealed for the search procedure to be changed. He recommended that the foreigner always be present when his/her belongings are searched along with another independent person that would guarantee the suitability and dignity of the search.

SHACKLING OF ESCORTED PERSONS

Cases where shackles were used for escorts outside the facility for the detention of foreigners were identified, although the escorted person had been evaluated in the escort decision as inoffensive and there was no reason to believe he/she could inhibit the escort process. It is evident that policemen do not evaluate individual risk and

take a blanket approach to the shackling of persons, although they should proceed individually based on the applicable regulations.

The Defender recommended that shackles only be used for escorted foreigners after individual evaluation and just in well-founded cases.

LONG-TERM STAY IN A STRICT REGIME

Facilities for the detention of foreigners are divided into those with a moderate regime and those with a strict regime, where persons acting aggressively or breaching their obligations are placed. Foreigners can be included in the strict regime for a necessary period, however, not longer than 30 days. For reasons provided by the Act on Residence of Foreigners (§ 135 Paragraph 5), the term may be extended by a decision by 30 days. In a specific case, the Defender found that the stay of a foreigner in the strict regime had lasted for two months and, moreover, it had occurred repeatedly. Although such placement had been fully legitimate, its conditions are reminiscent of custody or even the disciplinary punishment of solitary confinement, which, however, is not allowed in the administrative detention regime.

Except for an hour outside cells, detained foreigners in the strict regime are not offered any leisure activities, books, etc. and they are prevented access to legal counselling provided by non-governmental nonprofit organisations, which the Defender views as serious.

The Defender considers it desirable to include in the legislation a rule that would only mark the strict regime residence as one of the legal tools designed for correcting the behaviour of detained foreigners, which is the ultima ratio tool. For correct behaviour, tools of disciplinary punishment the introduction of which is also proposed by the Defender should be used first.

STRICT REGIME AND DECIDING ON COMPLAINTS

A record on inclusion in a strict regime will be written by the Police, the foreigner will be familiarised with such record and sign it. If an interpreter is appointed, he/she will sign the record, too. The foreigner will have the right to file a complaint with the Ministry of the Interior about being included in the strict regime.

If the foreigner is placed in the strict regime for more than 48 hours, the Police will render a decision on such. It is surprising that in 2009 – 2010, the Ministry of the Interior did not register any such complaint and no foreigner contacted the administrative court with a request to review the decision. According to the Defender, this shows evidence of possible system failure. As far as the formal aspect of the issue is concerned, records and decisions with errors were identified.

The Defender recommended that policemen instruct foreigners of the possibility to appeal to a court if included in the strict regime. Further, he recommended taking measures that would prevent wrong decisions and records being issued.

RECEIVING VISITORS IN THE STRICT REGIME

Within the systematic visits to facilities in 2006 and 2007, the Defender criticised the fact that foreigners could meet their visitors in a room fitted with a glass barrier. While in moderate regime areas, barriers had already been removed, the Defender encountered them at the Bělá-Jezová's Facility for the Detention of Foreigners in the strict regime part. With reference to the fact that even the prison regulations admit

non-contact visits only in exceptional cases, the Defender considers such state in the administrative detention regime inadmissible.

The Defender recommended removing the glass barriers in the visiting rooms of the strict regime.

PRIVACY DURING VISITS

Visits to facilities for the detention of foreigners always take place in the presence of a private security service worker or at least under his visual or audible supervision. Any physical contact (handshake, kissing) is prohibited. Such restriction in the administrative detention regime is considered unreasonable by the Defender as it is not common even in prisons. Such restriction does not apply in reception centres, however, the Defender found misconduct in the conditions of receiving visitors in the Reception Centre in Zastávka u Brna. The visiting room only comprises part of the entry hall near the reception delimited by hanging blinds, so one cannot speak about any privacy. To make the description complete, it is necessary to state that meetings with legal representatives (lawyers, non-profit organisations) take place at all of the facilities without the presence of third persons and in spaces where privacy is fully provided.

The Defender recommended maintaining privacy during visits and enabling the detained persons to have reasonably physical contact with visitors. Further, the Defender recommended providing in the Reception Centre in Zastávka u Brna such a visiting room that would ensure a sufficient level of privacy during visits.

LOCKABLE SPACES FOR PERSONAL ITEMS

Despite the recommendations of the Defender made after its visits in 2006 and 2007, foreigners at the facilities continue not to be allowed to keep their personal items in lockable spaces, whether directly in the room or in any other place within the moderate regime. Although they may keep their items in the deposit area with the operator, this is not the right solution for items used every day. The Refugee Facilities Administration management defended the existing unsatisfactory situation not by reason of financial costs but by the fear that safety at facilities could get worse. However, the Defender objects to the fact that boxes can be locked with a universal key and are subject to regular checks.

The Defender again recommended that foreigners have at their disposal a lockable space to deposit their personal items in.

SENDING OFFICIAL DOCUMENTS

Foreigners usually come to the facility with just some financial means, which is why many of them do not have the chance to buy postage stamps. Social workers provide foreigners with envelopes and paper, however, not postage stamps. A poor foreigner may thus file papers directed to the Asylum and Migration Policy Department by submitting them to a Refugee Facilities Administration employee. Other filings in matters of his/her proceedings (e.g. appeal against the decision of an Administrative Procedure Code, administrative action, filing to the Public Defender of Rights or international organisations) are not guaranteed. A foreigner is therefore exposed to actual damage to his/her rights. At present, the risk of letters and files not being sent due to a lack of means is minimised by the activities of non-governmental organisations, but it is not possible to rely on their help all the time.

The Defender recommended creating an efficient system of providing postage stamps so that poor foreigners are actually guaranteed the right to appeal to a court or other institutions.

COMPLAINT MECHANISM

A foreigner at a facility is authorised to file complaints on conditions at the facility, health care, activities of employees of the Refugee Facilities Administration, etc. In practice, however, there are problems in evaluating the filed complaints. A number of them can be evaluated as complaints about the activity of the Refugee Facilities Administration (handled by the Refugee Facilities Administration) and complaints about breaching Chapter XII. of the Act on Residence of Foreigners (handled by the Asylum and Migration Policy Department). Although a foreigner has the option to file a complaint, he/she does not have any actual idea of who will handle such complaint.

The Defender recommended that the Refugee Facilities Administration handle only such complaints that are related to inappropriate or unethical behaviour of employees of the Refugee Facilities Administration. All other complaints should be handled by the Asylum and Migration Policy Department.

APPOINTING OF GUARDIANS

Findings of the Defender suggest that in exceptional cases a guardian for detention proceedings had not immediately been appointed to minor foreigners with no accompanying person but had been appointed only after a person had been placed in the facility. This had put the timeliness of filing remedies against the detention decision at risk. The Act on Residence of Foreigners (§ 124, Paragraph 4) conceives the guardian institute in such a way that he/she should be appointed as early as in the detention decisionmaking process.

The Defender recommended taking measures that would prevent the late appointing of guardians for proceedings. A remedy was provided by the Act of Residence of Foreigners amendment imposing on the Alien Police the task to immediately appoint a guardian to a minor foreigner without any accompanying person.

HEALTH CARE EXTENT

Foreigners placed in the facility are not informed of the fact they are not entitled to be provided health care to the full extent under the Act on Residence of Foreigners, which often elicits negative responses and the subjective feeling that the necessary health care has been neglected. Further, foreigners are not instructed on the medical treatment purpose, medicine administration nature and their right to reject any medical service. The only exception includes information relating to the initial medical examination. In the past, the Defender pointed out that under such situation, it was not possible to talk about granting an informed consent to treatment. Also, the presence of private security agency members or policemen during a medical examination clashes with the right to the protection of privacy of the person subject to examination or with medical confidentiality.

The Defender repeatedly recommended providing foreign-language instructions on the nature and purpose of the most frequent medical examinations and medicines administered so that a foreigner be sufficiently and clearly informed of the health care provided. Further, he recommended providing the necessary language versions for rejecting a medical intervention

and respecting the privacy of the person subject to examination. The presence of a third person can only be allowed in well-founded cases.

CAMERA SYSTEM IN RECEPTION CENTRES

Despite the previous recommendations of the Defender, the Refugee Facilities Administration has no legal support for using a camera system in asylum facilities. Although such legal regulations were proposed, according to the Office for Personal Data Protection no amendment is necessary and the Refugee Facilities Administration should take the direction of the notification requirement under § 16 of the Personal Data Protection Act (Act No. 101/2000 Coll., as subsequently amended). However, this opinion was not shared by the Defender – he insists on his previous recommendation and declares the need for statutory authorisation to use a camera system, similarly as the provisions of § 132a of the Act on Residence of Foreigners.

The Defender still perceives it as desirable to regulate in the Asylum Act the use of a camera system as in § 132a of the Act of Residence of Foreigners so that the invasion of privacy of foreigners is in accordance with the Charter of Fundamental Rights and Freedoms.

6 / SUBSEQUENT VISITS TO HOMES FOR PEOPLE WITH DISABILITIES

The purpose of subsequent visits at six homes for people with disabilities (hereafter simply „**Homes**“ or „**Facilities**“) was to check the meeting of recommendations addressed to Home managements after the visits in 2009 and also recommendations summarised in October 2009 in the Report on Visits to Homes for People with Disabilities, which was also intended for facility founders and regional and municipal government units.

The subsequent visits were made to the following facilities: **Regional Home for Children Under 3 Years of Age (Aš)**, **Social Welfare Institute in Háj u Duchcova**, **Social Welfare Institute in Křižanov**, **Social Welfare Institute in Litvínov – Janov**, **Home in the Castle (Nezamyslice)** and **Nováček Home (Plzeň)**. Visits were always attended by an expert in the field of social services invited by the Defender, and one time a psychiatrist. In several cases, due to that fact, the visited facility was also provided with an expert commentary, i.e. support exceeding the framework of potential maltreatment evaluation.

It was confirmed by the subsequent visits that a number of recommendations by the Defender had been fulfilled. Where it was not the case, the Defender resumed discussions with the facility management.

MATERIAL EQUIPMENT AND PRIVACY STANDARD

In the meantime, at some facilities, some construction or technical improvements had been carried out based on the recommendations of the Defender. For instance, transit bedrooms were removed, the capacity of bedrooms was reduced, windows were fitted with blinds to provide more comfort for the clients, etc. In some cases, recommendations for improving privacy, equipping rooms with lockable boxes, providing room keys to selected clients and toilet occupancy signalling were implemented to a various extent.

At one facility, however, increasing privacy was merely promised, not only in the case of toilets but also missing shower curtains. Clients with appropriate skills and abilities were not given bedroom keys, either.

FREEDOM OF MOVEMENT OF USERS

Since the last visits, an improvement in implementing movement restricting measures was registered. At two facilities, beds with a high lattice cage attached to them that may be used as a restriction in certain cases were fully removed and their number was reduced at least at another facility. At one facility, the removal was provided only as a result of a subsequent visit by the Defender.

Where using a cage bed (though not locked but the client was fixated to its use) was still identified in the subsequent visit, the bed was immediately dismantled to some extent and a directed process of eliminating its need by the client began. At such facility, internal regulations were improved as a response to the subsequent visit so the risk of optional use of movement restricting measures is minimised. In another case, the practice where one client was actually living in an isolation room stopped being used.

The Defender recommended evaluating the restricting measures not as being merely protective but also as perceiving their restricting potential. At all times, it is necessary to evaluate which client, considering his/her mobility, may be restricted in his/her free movement by the bed (this consideration was successfully handled in e.g. the Home in Háj u Duchcova) and to fit the facility with beds allowing the client to leave them in a safe way whenever he/she wants.

Using a restraining belt for a mobile client was identified as a new misconduct at one facility. After commenting upon this misconduct, the facility provided a remedy.

Positive changes were made in cases where clients were restricted in their movement either as a result of the facility regime or due to the risk of the movement itself. Facilities had taken steps to re-evaluate the situation of individual clients and provide an accompanying person where independent movement of a client with disabilities had represented a risk.

At one facility, the Defender after the original visit clearly recommended re-evaluating the psychiatric medications of the service users as, according to the opinion of the invited expert, it was exaggerated. By the subsequent visit it had been verified that medications had been adjusted by the doctor. At the facility, conditions for administering medication had also been made stricter and measures preventing the administering of medication without immediate medical indications had been taken.

Exceptional administration of calming medication is admitted by the revised Social Services Act (Act No. 108/2006 Coll., as subsequently amended) as a movement restricting measure, based just on examination by the called doctor and in his/her presence. On subsequent visits, except for one case, the Defender did not encounter breach of the obligation set in this way. Just at one facility, based on interviews, was it found that workers would act on their own rather than call a doctor.

The Defender recommended respecting the law and not using any calming medications without the presence of a doctor.

REGIME OF A FACILITY AND USER'S AUTONOMY

The recommendations of the Defender to change the internal rules as well as his recommendations on the wording of draft agreements on social service provision were implemented. At one facility, they did not follow the recommendations to familiarise clients, i.e. people who either have difficulties understanding a text or do not understand a text at all, with at least the most important rules and information from the home rules.

The Defender recommends using alternative options of providing important information to clients (e.g. through pictures, cartoons, photos) as already takes place at some of the facilities.

The approach to the client as a partner influencing the nature of the service provided had improved. Clients were allowed to cancel various meals and be refunded the suitable amount paid. At two facilities, clients could choose from a number of main courses. At some sites, it was found that clients could influence the individual plan of service provision or selection of clothing to a greater extent. The process of general lights out at 7 PM was cancelled at one facility.

At one facility, remedy of the commented situation where clients are not given personal clothes was not provided.

Once again, the Defender recommended taking organisational measures so that each client have his/ her (prison issue, though) clothing separately in their own boxes.

HANDLING THE MONEY OF USERS

After the original visits, the Defender criticised the manner of managing money of the clients. At some facilities, clients were not allowed to access their money, usually because of their legal incompetence, although such clients actually managed minor shopping and were offended by such action of the facility. The recommendations of the Defender were implemented to some extent by e.g. releasing pocket money to the clients, engaging clients in making decisions on using their money, practicing money treatment, etc. At one of the facilities, however, such unsatisfactory situation persisted.

SCHOOL ATTENDANCE

There was some improvement at facilities at which the Defender had recommended concentrating on users exempted from compulsory schooling pursuant to prior legal regulations and such clients were able to continue in their basic education.

LACK OF STAFF

In reports from the original visits, the Defender recommended critical assessment of the reasonability of the number of workers with respect to meeting the needs of the users, as the current state did not allow proceeding under the Social Services Act and responding to individual needs of the user. There was no significant shift in this respect and the managements of all facilities subsequently visited experience a lack of staff. While social services are sufficient for clients with a lower disability level, it is not the case for clients with a higher disability level. Due to the lack of staff, the service is conceived as monitoring a group and maintaining peace. As a result, it is not possible for clients to live in a home-like environment as it is necessary to have the group together at all times, e.g. in one common room or in the corridor. At the

facilities in Nezamyslice and Háj u Duchcova, the situation with the staff seemed to be very acute even in the subsequent visit.

The Defender recommended a prompt increase in the number of workers employed in social services. In the long term, facilities should develop a concept of a gradual increase in the number of workers and reduction in the facility's capacity, and notify the founders of such.

The lack of night shift staff may directly put the safety of clients at risk. At one facility, the suspicion of sexual abuse between the clients was investigated at the time of the first visit by the Defender. The Defender recommended providing for the safety of clients at night (staff were not present at night in some places; only checks were carried out) and drawing up rules to prevent sexual abuse. The subsequent visits showed that no steps to increase safety at nights had been taken since the first visit and that rules to prevent sexual abuse brought nothing in this respect, either.

Once again, the Defender recommended providing the permanent presence of a facility worker at night. The development at this facility needs to be monitored by the Defender and he is ready to address the founder if no remedy is provided within the set term.

Due to the lack of staff, clients cannot regularly stay outdoors as there are no staff members to provide the necessary support. For example, at one facility, the Defender recommended in the original report for clients who are unable to move on their own and need help from others to include in a plan how often staying out in the garden will be allowed for them. The recommendation was not implemented and had to be repeated, also just in connection with the recommendation to increase the staff levels. The insufficient allowed time outdoors is also a problem at two other facilities.

CLIENTS WITH SPECIFIC NEEDS

The lack of staff prevents more successful work with clients with specific needs (e.g. with more frequent demonstrations of aggressive behaviour) who are present at almost every facility. Not only can their state not be improved but the lack of staff leads to using movement restricting measures and an increase in psychiatric medications.

The Defender recommended seeking a special approach to clients with specific support and care requirements. If a facility is not able to provide such care and damage to the client could be faced (due to long hospitalisation, free movement restriction), he recommended notifying the service founder in writing. Further, the Defender recommends that regions address the homes themselves and request urgent solutions to the situation of these clients.

In this connection, a forbidden mechanical means of restriction was commented upon at two facilities. It was also repeatedly demonstrated that warning signs in the behaviour of clients were not sufficiently monitored or evaluated. After some time, the situation resulted in use of a restriction (legally from the formal aspect) without the facility being able to demonstrate it had met the statutory requirement and use a method preventing situations where a movement restricting measure needs to be applied.

The Defender recommended strengthening the staff levels of such facilities and immediately ending unauthorised restrictions. Further, he recommended

cooperating with an external expert in the field of social services to prevent similar situations from taking place.

At one facility, inadequately provided ambulatory psychiatric care was identified on the subsequent visit, however, the facility promised a remedy to provide it.

LEGAL CAPACITY AND GUARDIANSHIP

The life of clients at homes for people with disabilities is to a significant extent influenced by the restriction in/depriving of their legal capacity, i.e. a matter falling within the court's powers. The initial visits confirmed that the regulation of restriction in/depriving of their legal capacity does not meet the needs of the clients. Clients deprived of their legal capacity prevail, although many of them are actually competent in certain matters. The tendency of the courts to deprive them of the legal capacity instead of restricting it is also criticised by the Constitutional Court of the Czech Republic in its current judicature (see the Constitutional Court judgement of 18 August 2009, file No. I. ÚS 557/2009).

After the initial visits, the Defender recommended to facilities to provide a critical evaluation of the current regulations of the legal capacity for adult clients and an active procedure to return them (to at least some extent) where necessary. In some cases, two facilities (Křižanov and Nezamyslice) had proceeded in this way.

On subsequent visits, the Defender found that **it is not easy to provide remedy in case of a permanent conflict of interests consisting in the parallel provision of guardianship and social service**. At three of the subsequently visited homes, there is still a situation where the facility (or a worker) is appointed by the court as a guardian to the client (or a large number of clients). If, for example, the facility director, in assessing a social service provision contract being performed on one side as the representative of an entity, is obliged to provide the service but, at the same time, on the other side is the representative of a user of a service, this evidently concerns a conflict of interests.

The Defender recommended to facilities to appeal to a guardianship court with a proposal to change the guardian. Two facilities were discouraged by the court from filing such a proposal (the same court was concerned); other facilities only proceeded in this manner in the case of just a few clients.

The Ministry of Justice stated on this issue that considering the length of discussions on the new Civil Code, it is preparing a proposal to assume the legislative regulations of the legal competence and support measures and include them in the existing Civil Code and Civil Procedure Code.

The Defender intends to discuss his specific findings with chairmen of the regional courts and at the same time obtain information on the current decision-making practice in this field.