ANNUAL REPORT 2011 (CHAPTER 4)

SUPERVISION OVER RESTRICTION OF PERSONAL FREEDOM

In 2011, as part of the performance of systematic visits under Section 1 (3) and (4) of the Public Defender of Rights Act (Act No. 349/1999 Coll., as amended), the Defender commenced a long-term project aimed at mapping the circumstances in Czech facilities where children are placed. Visits were made to facilities falling under various jurisdictions, serving both **de iure** and **de facto** detention. 23 visits were thus performed in 2011 to **school facilities**, including one diagnostic institution for children, 5 visits and one follow-up visit to **in-patient psychiatric facilities for children**, 4 visits to **infant homes** and one visit to a **facility for children – foreign nationals**. The systematic visits to facilities for children will continue in 2012.

The Defender further continued to perform systematic visits to **police cells**; more specifically, he visited four workplaces of the Police of the Czech Republic. The ascertained shortcomings do not require any systemic or legislative remedial measures. The most frequent shortcomings found were non-observance of the existing legal regulations, particularly in terms of the three main safeguards against maltreatment in police detention, i.e. provision of cooperation in exercising the right of a person restricted in his or her freedom to obtain legal aid at his or her own expenses and to speak with a legal counsel without the presence of a third person, advising a third person of the situation of a person restricted in his or her freedom and provision of cooperation for exercising the right to be examined or treated by a doctor of the person's choice. While the system anticipates that the person will be advised of his or her rights and obligations (special forms in several language versions), in practice the advice is not always provided sufficiently (advice in writing is not left in the cell, a foreigner does not receive a foreign language version of the form), which the Defender must repeatedly point out.

A **follow-up visit** was performed to a women's prison. The Defender continuously monitors the observance of rights in prisons by inquiring into individual complaints. In many cases, he adopted standpoints that have a general effect on the prevention of maltreatment. These are discussed in more detail on page 59.

Several visits were dedicated to issues which the Defender perceives as cross-cutting and topical. The aspect of **malnutrition** was followed during visits to five facilities and the aspect of the **exercise of guardianship** during visits to geriatric psychiatric wards of psychiatric hospitals and in addressing the procedure of the so called public guardians.

One thematic visit to a **facility for the detention of foreigners** was held with a focus on the performance of security searches of foreigners and their items, placement of foreigners in the so-called strict regime and the method and conditions applicable to the escorting of foreigners.

In terms of the method of the Defender's work in performing systematic visits, the Defender decided to make use of the observations he made and offer them to the public in the form

of standards, i.e. description of the desirable procedures, practice and results whose achievement amounts to the prevention of maltreatment, including a description of desirable treatment. The Defender is formulating these standards for the first time as part of his evaluation of the visits to school facilities (see the following section of this Report); in relation to the visits to medical facilities for children, he will do so in the future summary reports. This method does not mean abandonment of the formulation of recommendations; these will remain in place as an instrument of directed action towards influencing the practice of facilities and authorities with a view to ensuring compliance with general standards.

1 / School Facilities for the Exercise of Institutional and Protective Education

The employees of the Office of the Public Defender of Rights visited a total of **23 school facilities** where institutional or protective education is performed. The children were placed there especially because institutional education was ordered to them (727 children), 82 children were placed in these facilities on the basis of a preliminary ruling, while protective education was ordered to a mere 12 children. 64 children were subject to a contract for a prolonged stay.

The systematic visits were held at the Kutná Hora Reformatory and School Canteen; Černovice Reformatory, Education Centre, Secondary School and School Canteen; Jindřichův Hradec Reformatory, Secondary School and School Canteen; Zbytiny-Koryto Children's Home; Moravský Krumlov Reformatory, Children's Home with School, Secondary School, Elementary School and Canteen; Prague 9 Klánovice Children's Home; Radkov-Dubová Children's Home; Ústí nad Labem – Střekov Children's Home; Pardubice Children's Home; Terešov Reformatory; Boskovice Children's Home; Klíčov Reformatory and Education Centre; Budkov Children's Home; Broumov Children's Home; Dlažkovice Children's Home; Valašské Klobouky Children's Home; Polanka Reformatory; Jeseník Children's Home; Ostrov and Karlovy Vary Children's Home; Měcholupy Children's Home with School; Slaný Children's Home with School; Žulová Reformatory; Brno-Hlinky Diagnostic Institution; and the Permon Facility for Children-Foreign Nationals.

Children's homes, children's homes with schools, reformatories

General system standards

1) The entire policy of protection of children's right is to be conceptually managed by a single Ministry

The concept of substitute care for children and youth is currently scattered and often uncoordinated. It falls within the competence of the Ministry of Education, Youth and Sports, the Ministry of Health and the Ministry of Labour and Social Affairs. The Committee on the Rights of the Child has called on the Czech Republic to create an effective mechanism (or to substantially strengthen the existing mechanism) aimed at co-ordination of children rights policies. The Public Defender of Rights already called for unification of the concept of substitute care for minors in his 2007 report on visits to facilities where institutional and protective education is performed. No progress has been made since then towards

concentrating protection of the rights of children under a single Ministry and a single authority. The Defender must therefore emphatically reiterate his recommendation.

2) The removal of a child from the family solely on social grounds is an inadmissible interference with the right to family life.

In visits to facilities where institutional and protective education is performed, the inquiry was also concerned with the legal title on the basis of which children were placed in the facilities. It was ascertained that 11 % of the decisions were based on purely social reasons. Situations where the family lacked appropriate housing or had financial difficulties (typically due to unemployment or excessive debts) were considered to be social reasons. Inappropriate housing or no housing at all was the reason in 95 cases (of the total of 543 decisions under examination). In total, social reasons were the second most frequent reason for ordering institutional education. This practice is at variance with the established case-law of the European Court of Human Rights (see, for example, Wallová and Walla v. Czech Republic, judgment of 26 October 2006, Application No. 23848/04, Havelka and others v. Czech Republic, judgment of 21 June 2007, Application No. 23499/06).

3) A child has the right to be heard by the court in proceedings on ordering institutional education.

The right of a child to be heard is stipulated in the Convention on the Rights of the Child and also in the Family Act (Act No. 94/1963 Coll., as amended). The Constitutional Court has also ruled that there is no reason why a 12-year old child should not be heard in proceedings on ordering institutional education (decision of 2 April 2009, File Ref. II ÚS 1945/08). It pointed out "… the general fundamental right to be heard before a court which is making a decision on the restriction of freedom, at any time when such decision-making is taking place. In principle, there is no reason for a child not to have the fundamental right to be heard directly before a court when a decision is being passed on restricting the child's personal freedom whilst an adult has such a right in the same circumstances." It followed from the studied legal titles that 80 % of children aged 12 and older were not heard by the court in the proceedings on ordering institutional education.

4) In proceedings on institutional education, a child is not to be represented by the same body of social and legal protection of children as that which proposed the ordering of institutional education and the preceding preliminary ruling, if any.

In the analysed decisions, a body of social and legal protection of children several times acted as the party proposing institutional education and, at the same time, as the child's guardian ad litem in the proceedings. It is thus anticipated, even before the court decides, that the decision is in the interest of the child, and the child's right to a fair trial is not adequately guaranteed.

Standards of treatment of a child

5) Facilities for the exercise of institutional education and protective education should be family-type establishments and should be situated in an agglomeration.

Small facilities that resemble as much as possible the family environment are more suitable than large-scale institutions. An isolated location where children do not have regular contacts with the outside world (including children of the same age of the opposite sex) is inappropriate. Most of the facilities visited are intended for more than 30 children, and facilities for as many as 60 children were no exception. Especially some reformatories, as well as children's homes with a school, are intended for girls or boys only, or the two groups are separated in the facility.

6) Educational measures in the form of penalties (punishments) may only be imposed on a child placed in a school facility for the exercise of institutional or protective education for proved violation of the obligations defi ned by the Act on the Exercise of Institutional Education or Protective Education (Act No. 109/2002 Coll., as amended).

Penalties must be imposed in such a way as to respect the principle of legality, predictability, individualisation and reasonability and the right of the child to be heard must be observed. Some facilities imposed punishments that involved, for example, ban on wearing jewellery, use of make-up by girls, dying hair, etc.; some punishments were imposed for an indefi nite period of time (until revocation); the same punishments were imposed for violation of the ban on smoking and for physical assaults. A statement of the child on the imposed punishment (if at all required or permitted) was treated in a purely formalistic manner.

7) The possibility of spending time with the family may not be used as a motivational element as it represents exercise of the right to family life.

In some cases, leave to spend a weekend with the parents is used as one of the most signifi cant motivations available. A child's stay with the parents is subject to permission from the head of the facility, which is bound to written consent of the municipal authority of a municipality with extended competence. In fact, however, it is only permissible to deny the stay with the family on the grounds of an inappropriate environment where the child would stay rather than a lack of merits or poor school marks.

8) A child has the right to be in contact with its sibling and to joint placement in the same facility.

The right to family life of a child includes bonds among siblings (see, for example, Judgment of the European Court of Human Rights in Ollson v. Sweden of 24 March 1988, Application No. 10465/83, Judgment in Boughanemi v. France of 24 April 1996, Application No. 22070/93). Unless this is prevented by serious reasons, siblings must be placed together. Otherwise, it is necessary to provide for regular personal contact among them. The Defender encountered many cases where siblings were separated and their mutual bonds were severed (placement in different facilities, separation in connection with substitute family care or unprofessional exercise of foster care accompanied by inactivity of a body of social and legal protection of children), sometimes irreversibly (although the siblings were together in the family or in a facility, they never meet again or they are even unaware of one another). In the light of the above decisions, a practice failing to provide for joint cohabitation of siblings and development of their relationships after removal from the family

can be regarded as violation of the right to family life. The family of a child does not include just the parents but also siblings and other relatives, even more distant ones.

Facility for Children – Foreign Nationals

The Facility for Children – Foreign Nationals, as a specialised school facility for the exercise of institutional and protective education, is to provide for substitute educational care for these children. The "child-foreigner" category is not directly specifi ed by the legal regulations; nevertheless, it can be deduced that it involves particularly **minor unaccompanied asylum seekers** or **children with a language barrier** coming from a culturally different environment in need of education.

The Facility for Children – Foreign Nationals in Prague has a nationwide competence. It consists of a diagnostic institution, a children's home with a school, a reformatory, a centre of educational care, an elementary school and a practical school. The children's home with a school and the reformatory that were subject to the systematic visit are situated in a sparsely populated location near Příbram, at a site called Permon. The site serves for the long-term stays of children who do not return to the family or are not placed in some other facility after being diagnosed.

Almost one half of the capacity of the children's home with a school and reformatory was occupied by children from Slovakia and a large group of children who are not citizens of the Czech Republic but have stayed here in the long term. **The Defender recommended that children who no longer stay in our territory for a long term and children who come from similar cultural or social environments be placed in the network of normal school facilities for the exercise of institutional and protective education.** According to the Defender's recommendation, the Facility for Children – Foreign Nationals should be intended only for a specifi c group of children who are foreign nationals, and hence State nationality should not be the only criterion for placement.

As a result of the system of placement of children – foreign nationals applied by the diagnostic institution, fully integrated children (although formally foreign nationals) with problematic behaviour have been put together with children – foreign nationals who are asylum seekers as well as other children – foreign nationals who come from a culturally different environment and need specific care (language teaching, integration into society). **The Defender recommended that all the parties involved, i.e. the Ministry of Education, Youth and Sport; the Ministry of Labour and Social Affairs; the Ministry of the Interior; non-governmental non-profit organisations, and the Facility for Children-Foreign Nationals, commence negotiations on a new concept of the operation of the Facility for Children – Foreign Nationals.**

The very location of the Permon site in a recreational area on the shore of the Slapy water reservoir is problematic. This location prevents integration and considerably limits support for the children's social bonds and activities.

The dire living conditions in some parts of the home were also criticised. Although they resulted to a considerable degree from the children's own conduct, the underlying cause

was the motivation and educational activities. The Defender also pointed out the inappropriateness of internal education of children – foreign nationals, i.e. at the elementary and practical school established at the facility. Specialised care, especially psychotherapy, was neglected considering the gravity of some children's fate. The Defender further found it inadmissible to use the so-called separated room (Section 22 of the Act on the Exercise of Institutional Education or Protective Education) as the statutory conditions regarding the reasons for and term of placement of children in it were not fulfilled**. The Defender sent the report on the visit to the facility, with the observation of maltreatment, to the head of the Facility for Children – Foreign Nationals; however, taking into consideration the gravity of the findings, he also discussed the matter with the representatives of the Ministry of Education, Youth and Sports as the founder of the facility, the Ministry of Labour and Social Affairs, the Ministry of the Interior and the representatives of the Supreme State Attorney's Office.** The repeated meetings with the representatives of the competent Ministries should result in a comprehensive concept of care for minor children – foreign nationals, which should prioritise the placement of children in the normal network of school facilities.

2 / Medical Facilities for Children

Infant homes

In 2011, the Defender visited **4 medical facilities for children up to three years of age, known as "infant homes"**. These were the Children's Centre at the Thomayer Teaching Hospital with Policlinic; the Children's Home for Children up to 3 Years of Age at the Area Hospital in Mladá Boleslav; the Svitavy Infant Home and Children's Home; and the Ústí nad Labem Region Infant Homes in Most.

Although the public will be acquainted with the Defender's conclusions only in 2012 in the form of a summary report, the Defender can already now state that he has found the following most serious shortcomings:

In spite of experts' recommendation that children should not stay in these facilities for more than six months, it was found that 43 to 72 % of the children **had been staying for more than a half year** in the facilities visited and **some had been there for more than three years**. Of this number, only very few were children with a disability. In addition, the future of many long-staying children was unclear; i.e. it was not certain whether they would return to the biological family, whether substitute family care would be mediated or whether they would leave for some other institutional facility.

Although relatively many children return to their original families (about 25 to 70 %), a multidisciplinary support for the biological family is absent. There is little cooperation between the facilities and the bodies of social and legal protection of children, courts and the very few non-profi t organisations that exist (especially those that provide social services). Bonds among siblings are not purposefully supported. Records are not kept on the course of visits by parents (changes in interactions between parents and children, emphasis on positive moments, etc.).

If the facilities approach all children in the same way, it is rather in that they go on the pot and are fed all at the same time. A nurse who is in charge of 4 to 8 children at once becomes a mere attendant and lacks time for physical and formative contacts with children.

In-patient psychiatric facilities for children

The Defender visited **5 in-patient psychiatric facilities for children** in 2011. These were the children's ward of the Psychiatric Hospital in Opava; the children's ward of the Psychiatric Hospital in Havlíčkův Brod; the Children's Psychiatric Hospital in Opařany; the Children's Psychiatric Hospital in Velká Bíteš; and the Children' Psychiatic Hospital in Louny. The Defender performed a follow-up visit in one of these facilities. A child psychiatrist participated in five of the visits. The Defender will acquaint the public with his conclusions in 2012 in the form of a summary report. However, he can already now provide some of the observations that will lead to the formulation of recommendations in the individual reports.

While each of the visited facilities seeks to obtain the **written consent of a statutory representative to the child's hospitalisation**, the procedures of the facilities and the forms used are very little concerned with the question of whether the consent was obtained from a statutory representative present at the time of admission (and hence informed of the reasons and nature of the hospitalisation) or whether it was obtained remotely (for example through social workers in the case of a child who is cared for by a school facility). If a statutory representative was not present, the medical facilities did not actively inform him or her but merely waited whether any interest would be shown. The Defender doubts whether such consent can be considered as informed consent. The Defender has, in rare cases, encountered an inadmissible practice where the consent to hospitalisation was granted by the head of a school facility.

The Defender noted exceptional cases where the **use of means of restraint** was not reported to the court as an additional restriction on a patient's movement and, at the same time, the consent of a statutory representative to the restrain was not obtained.

The Defender criticised some forms of **excessive limitation of contacts between child patients and their parents**. He expressed a fundamental disagreement with an absolute elimination of contacts or contacts only through an intermediary, which was applied in a facility in the treatment of specific disorders. He further criticised unreasonable limitations on the answering of phone calls by child patients in a facility which provided the time between 7.15 PM and 8.45 PM for this purpose and offered only one telephone for 25 children (it was permanently busy). In this respect, the Defender also criticised the general ban on the use of mobile phones in some facilities. He did not agree with the therapeutic justification of this measure and recommended that the children be provided with a safe storage for their telephones and allowed to use them every day.

In connection with the hospitalisation of **children with mental disorders and autism**, the Defender pointed out the specific needs of these patients. Taking into account the need to provide these children with professional care, it is necessary that the personnel be trained in work with them and employ, or at least hire externally, a pediatric psychologist.

3 / Follow-up Visit to the Světlá nad Sázavou Prison

The follow-up visit concentrated especially on implementation of the recommendations that the Defender addressed to the facility in 2010. It was ascertained that the prison had made considerable efforts, as a result of which **most of the recommendations had been implemented**. The prison was advised of certain shortcomings (e.g. different approach of the individual departments to permitting telephone calls in the Romani language at different

wards) and it promised to provide for a remedy. The Defender previously criticised the undesirable practice of placing together convicts assigned to various types of prisons in a specialised department for prisoners who are permanently unfit to work; this practice is still in place. Some new recommendations were made, for example that a telephone card, as an item classifiable under the prisoner development programme, should be included in the items that are permitted to be sent in the "one-kilogramme parcel"; the prison accepted the recommendation.

4 / Thematic Visit to a Facility for the Detention of Foreigners

The Defender continued his monitoring of treatment in facilities for the detention of foreigners in 2011 by visiting the Bělá – Jezová Facility for the Detention of Foreigners. His visit concentrated one some specific issues.

In relation to the **performance of security searches**, in some cases they were found to be unreasonably harsh (e.g. the obligation to stand in the corridor during the search, facing the wall, with hands put against the wall), failure to provide advice of the extent and reasons for the search and failure to allow those foreigners who were found (partly) undressed to put the dress on. All the police officers who performed searches were advised that any rude behaviour towards the detained foreigners would not be tolerated. They were also advised of the obligation to perform the search reasonably and the necessity to bring the foreigners' rooms into a condition suitable for normal use after the search. All the police officers who performed searches were informed with particular emphasis that any destruction of the foreigners' items would not be tolerated and is punishable.

In relation to the **placement in the strict regime**, the Defender requires the Police to consistently ensure that a foreigner who does not understand Czech receives the advice form in a language version (s)he will sufficiently understand. The Defender further recommended that the period of 48 hours applicable to the placement of a foreigner in the strict regime should be consistently monitored and the complaint procedure should be better communicated. He also pointed out that, if the period of placement of a foreigner in the strict regime exceeds 48 hours, a decision on the placement must be issued in administrative proceedings. In terms of the **handcuffing of foreigners during escorts**, the Defender recommended that the Police consistently indicate in the decisions on escorting whether handcuffing is to be used or not; in decisions on escorting involving several foreigners together, it should be indicated who of them will be handcuffed and who will not; and the reasons for handcuffing should be specified in more detail in the decisions.

5 / Malnutrition

The Public Defender of Rights performed **5 systematic visits focusing on identification and evaluation of the risk of malnutrition** in 2011: two inquiries were performed in institutions for long-term ill patients (institution at the Valtice Hospital, limited liability company, and

institution at the Municipal Hospital in Litoměřice, contributory organisation); two at geriatric psychiatric wards of psychiatric hospitals (Brno Psychiatric Hospital and Psychiatric Hospital in Kroměříž); and one in a social service facility serving as a home with special regime (in Jevišovka, operated by Seniorprojekt, limited liability company). A nutritionist/gastroenterologist participated in three of the visits as an invited expert.

The home with special regime (a private facility whose clients are mostly elderly people suffering from the dementia syndrome) falls outside the usual results of the inquiry. The care in this facility was in many respects against the regulations and was insufficient also in terms of nutrition. **The Defender regards this as maltreatment**.

No shortcoming that could be seen as maltreatment was found in the remaining medical facilities, and the situation at two sites – the Brno Psychiatric Hospital and the Institution for Long-term Ill Patients at the Municipal Hospital In Litoměřice – **was rated as very good practice**.

In cooperation with the invited specialist, the Defender formulated several recommendations for increasing the standard of the care provided:

1) A simple nutrition screening should be introduced for each patient/client.

Information on weight, height, BMI, ingestion of food should be recorded at the time of admission. The perimeter of the arm should be recorded instead of body weight for persons who are unable to stand up.

2) Where the risk of malnutrition or actual malnutrition is found, professional examination should be ensured and a nutrition plan, nutrition intervention and plan of checks should be determined.

If the BMI drops below 20 and/or less than three quarters of the provided rations are ingested and/or the weight drop amounts to 5 % per month, examination by a dietitian or internist should be ordered. An appropriate response should follow, for example by changing the diet, including snacks, and possibly sipping. Based on the doctor's indication, intubation may be introduced. The recommendations (orders) of the specialists should be recorded since verbal recommendations may be forgotten.

3) The risk of malnutrition should be regularly evaluated and nutrition entries should be introduced.

The above figures should be continuously monitored with the aim of identifying high-risk patients/clients. Documentation – nutrition entries should be made in order to create records on the ingestion of food, weight, diet, sipping, etc. The documentation can often be simplified using several well-prepared forms. The ingestion of food can be monitored using a simple checklist (by the member of staff who removes the plate and the report is subsequently filed in the records). After training, these procedures are within the capabilities of nurses, junior healthcare personnel and social service workers. However, in an ideal situation a bedside nutrition therapist is employed. It is important that the records be relevant (objectivised).

4) It should be determined who should be fed, receive supplementary feeding, who should receive crushed or ground food.

These decisions should be documented. A decision to feed need not be made by a doctor.

5) A sufficient number of staff for feeding should be ensured.

Feeding must not be done too quickly; ground food must not be used only to simplify work if there is a lack of personnel. A plate with left-over food is a signal for the staff.

6) A standard of maintenance should be created for the nasogastric tube and application of nutrition into the tube.

7) The personnel should be educated in the importance, diagnostics and ways of combating malnutrition.

6 / Guardianship

Municipalities fall within the Defender's mandate in their exercise of the so-called public guardianship under Section 27 (3) of the Civil Code (Act No. 40/1964 Coll., as amended), which the Constitutional Court considers to be the exercise of **delegated competence**. According to the Resolution of the Constitutional Court of 10 July 2007, File Ref. II ÚS 995/07, public guardianship is not subject to the general rule laid down in Section 8 of the Municipalities Act (Act No. 128/2000 Coll., as amended), stipulating that, if a special law regulates the competence of municipalities without determining that its competence is delegated, the competence is always independent. Legal incapacitation is always a decision of the State, whereby the State enters the autonomy of an individual, and it is the State that is fully responsible for ensuring that the status or "quality" of the individual's legal acts will not worsen in any respect while incapacitation is in place. The Constitutional Court inferred from the above that it is again the State that is primarily obliged to exercise guardianship towards legally incapacitated persons insofar as it is unable to find a suitable person among the relatives of the person lacking capacity or other private individuals. The above provision should be understood in the future as meaning that, **under Section 27 (3) of the Civil Code, "local authority" means the municipality which performs the role of a guardian as an organisational unit of the State rather than a corporation bestowed with territorial self-government**.

Given that the exercise of public guardianship was long considered to be the exercise of independent competence, it was not and still is not regulated in any manner by the central bodies and bodies providing methodological guidance. Thus, apart from the brief text of the Civil Code, the only corrective consists in the decision-making and supervisory activities of district courts, which are exempted from the Defender's mandate. However, there is a lack of uniformity in some fundamental aspects.

In his activities, the Defender addressed various aspects of the exercise of guardianship, from the conclusion of contracts on the provision of social services to the granting of consent to other legal acts, including non-proprietary acts (for example, a substitute consent

to medical operations), issues of due supervision over a client and legal representation of the client, to court supervision over restrictions on personal freedom. The Defender repeatedly stated in the inquiries that, if the person lacking capacity is the client of a residential social service facility, due supervision is to be performed primarily by the facility concerned. In order to protect the rights and justified interests of the person lacking capacity, the guardian may cooperate with the facility in planning the provision of the social service and evaluation of its course (e.g. through individual planning, plan of risk situations, etc.). **However, the guardian does not have the right to prohibit free movement of the person lacking capacity**. The guardian may not violate, or unreasonably interfere with, the fundamental rights of this person. The guardian may interfere with the fundamental rights of the person lacking capacity only in accordance with the purpose and sense of guardianship. However, even in that case, the rights of the person lacking capacity must be respected to the maximum possible extent. If the guardian's role is to administer all affairs for this person and represent him or her in acts defined by the court, the guardian must always act in the interest of the person. In order to do so, the guardian must know the needs, wishes, views and life circumstances of the person lacking capacity and respect his or her will to the maximum extent insofar as this is not contrary to the guardian's own interests.

Complaint File Ref.: 2355/2011/VOP/JF

The legal act made by a guardian on the basis of which the person lacking capacity is to be placed at a home with a special regime which exercises a regime interfering with constitutionally guaranteed rights, namely the right to personal freedom guaranteed by Art. 8 (1) of the Charter of Fundamental Rights and Basic Freedoms and Art. 5 (1) of the Convention for the Protection of Human Rights and Freedoms (Communication No. 209/1992 Coll.), must be approved by the court.

If a person who is legally incapacitated or restricted in legal capacity expresses disagreement with his or her placement in a facility while (s)he is staying there and it is impossible to release him or her from the facility, it is necessary to initiate proceedings on statement of permissibility of admission or holding in a healthcare institution under Section 191a et seq. of the Code of Civil Procedure (Act No. 99/1963 Coll., as amended).

Based on a contract concluded by the Authority of Prague 11 Municipal Ward as the public guardian, a legally incapacitated complainant was placed in a residential social service at a home with special regime where he was subject a regime (outings and shopping only when accompanied by the staff) and treatment he had not been receiving before. The complainant demanded release in letters addressed to the guardian court competent based on the seat of the social service provider and to the State Attorney's Office.

The Defender considers that a contract for the provision of residential social services is a legal act which, in order to be valid, needs to be approved by the court as it affects not only the disposal of a person's property but also interferes with the protected personal freedom of an individual protected by a constitutional guarantee. The Defender found that the complainant was de iure deprived of his personal freedom in the sense of Art. 5 (1) (e) of the

Convention for the Protection of Human Rights and Fundamental Freedoms. In that case, the proceedings in the sense of Art. 5 (4) of the Convention should be available to him; however, in Czech law, under Section 191a et seq. of the Code of Civil Procedure, such proceedings are exercised only in medical facilities and not in social service facilities. The Defender proposed an interpretation alternative to the term "institution exercising medical care" in the Code of Civil Procedure, which would make it possible to extend detention proceedings also to the provision of a residential social service. Otherwise, it would be necessary to directly apply Art. 5 (4) of the Convention. Given that decision-making by the courts is outside the Defender's mandate, the report on the inquiry was provided, via the Ministry of Justice, to individual guardian courts and "detention" courts to study it in detail and it will be reflected in the amendment of the relevant regulations according to the legislative plan of the Government.