

ANNUAL REPORT 2012 (SECTION IV)

THE DEFENDER AND FACILITIES WHERE PERSONS ARE RESTRICTED IN THEIR FREEDOM

In 2012, the Defender continued his practice of **systematic visits to facilities where children are placed in the Czech Republic**. Such systematic visits concerned healthcare facilities (Children's Centre Opava, and Children's Centre Plzeň – infant homes). Visits to school facilities were finished (Chrastava Reformatory, Children's Home with School, Secondary School, Elementary School and Canteen; Uherské Hradiště Children's Home; and Hrotovice Children's Home), and the Defender assessed his findings from this type of institutions in "Report on visits to school facilities where institutional and protective education is performed" and "Standards of Care for Vulnerable Children and their Families."

After a one-year interval, seven **follow-up visits** were performed, and visits were also made to five "**education centres**" and five "**diagnostic institutions**" – for more detail, see below. The Defender also provides more detail about his systematic visits to four facilities with **police cells**, and systematic visits dealing with senior citizen issues – i.e., **visits to non-registered facilities for elderly people**.

To promote the prevention of maltreatment, the Defender organized several meetings with the expert public to discuss problems related to maltreatment in institutions and to present and disseminate his recommendations. There was a round-table discussion with the staff of infant homes and the psychiatric hospitals visited. Paedopsychiatrists and the representatives of facilities for the exercise of institutional and protective education were invited to participate. The Defender organized the meeting to bring together two groups of professionals who have the same clientele – vulnerable children – but who are not really working together as a result of the non-uniformity of the Czech system of protection of vulnerable children and their families. The Defender posted minutes of this meeting on his website.

The Defender also organized a conference on the most recent issues faced by the Czech prison system (among others, the question of judicial reviewability of disciplinary punishments).

International exchange of experience in the prevention of maltreatment also continued in 2012. Closer ties were established with the Slovenian national preventive mechanism, which is also an ombudsman-type institution in Slovenia. The Defender received representatives of his Slovenian counterpart. In the course of discussions, during a visit to a prison, and two systematic joint visits, experience was exchanged, mainly as to the methods used in conducting such visits.

1. The Defender and his power to impose penalties

Responding to a widely-covered incident when a patient died in a caged bed, the Defender performed a systematic visit at the **Dobřany Psychiatric Hospital**, focusing on its conditions for using this means of restraint within the facility. As the Defender's exchange of views with the hospital did not leave him fully satisfied, the Defender approached the promoter, the Ministry of Health. Even though the hospital had responded to the tragic incident by taking measures, including organizational, aimed at improving patient safety, the Defender was dissatisfied by the fact that, in his opinion, the investigation of the event conducted by the hospital and its promoter had failed to deal with certain debatable aspects pertaining to the legality of the caged bed use at the time of the death. Beyond the circumstances of this specific case, the Defender reiterated his findings from his previous systematic visits to the hospital in 2008 and 2009 – that the conditions in which care was being provided in that ward required the use of restraining means in a preventive manner, as soon as a patient became agitated, and not in situations where the life or health of the patient or other persons was threatened, as anticipated by law.

In 2012, the Defender also exercised his power to impose a penalty on the occasion of his systematic visit to **a home with special regime in Jevišovka**, operated by SENIORPROJEKT, s. r. o. After the visit, the Defender found a breach of social-service quality standards and maltreatment. Although the institution specialized in clients requiring special care, it had been unable to secure qualified personnel and the required standard of care. According to the Defender, maltreatment took the form of ignoring problems such as clients' falls and injuries, malnutrition, behavioural disorders in dementia patients, etc., which shows not only lack of professionalism but also lack of interest in the clients entrusted to their care. Clients in the facility were not given even a minimum level of privacy. The Defender also found use of sedatives in a manner violating the Social Services Act (Act No. 108/2006 Coll., as amended). Files containing sensitive patient data

were repeatedly getting lost in the institution, and no proper documentation of the social services provided was kept. A follow-up visit showed that a remedy had not been made. Therefore, the Defender presented the case to the media, while asking, at the same time, the Regional Authority of the South Moravian Region to take all necessary steps leading to the revocation of the licence to provide social services, which the authority accepted.

The public was also informed of maltreatment in **Domov důstojného stáří Harmony in Líchnov**, a home for elderly people, operated by Vedrana, s. r. o. This is a hotel-type facility providing comprehensive services, including care for elderly people with dementia or Parkinson's disease. The Defender pointed out that it was unlawful to provide services that are social services in nature without the necessary registration, as was the case of the facility (for more detail on the subject, see below). In view of the problematic status of the facility, the Defender mainly issued a recommendation that the facility should make remedy and obtain the necessary registration, and thus also authorisation to provide social services. As to the treatment of patients in the facility, the Defender found that professional nursing care was absent; the approach to care provided to fragile elderly persons was intuitive; prevention of malnutrition was neglected; means of restraint were used in an unprofessional manner; drugs (including sedatives) were administered without medical prescription. The facility did not respond to these recommendations. As these facts might be constitutive of a criminal offence (unlawful business activity), **the Defender also informed the police.**

The Defender felt compelled to exercise his power to impose a penalty on **Children's Psychiatric Hospital in Louny**, as a result of finding persisting and serious shortcomings during his third successive visit to this facility. The rooms where children were spending their time were not only comfortless and bleak, but also untherapeutic, or even degrading: peeling plaster and tiles in bedrooms, battered and broken furniture, and children's beds located in rooms with tiled walls. Consents to hospitalisation were provided on a completely uninformed basis. Privacy protection was inadequate (patients' personal data were not secured); numerous irregularities were found in medical record keeping. Therefore, the Defender asked the relevant authority, the Ministry of Health, to remedy the situation.

In 2012, a visit was performed to Chrastava Reformatory in order to check, above all, whether and how recommendations previously provided in 2006 had been implemented. The visit led to a report in which the Defender assessed the implementation of his earlier recommendations and pointed out some persisting shortcomings and irregularities. The response sent to the Defender by the facility did not make it clear, however, whether or not his reiterated recommendations for improvement would be implemented. Therefore, the Defender closed the case by a penalisation procedure and notified the relevant authority, the Ministry of Education, Youth and Sports, thereof asking it to provide its position on the matter and to decide on the steps to be taken if appropriate.

Liběchov Children's Home with School, Elementary School and Canteen was visited in June 2012. The Defender found maltreatment in the form of separating siblings, unreasonably hard internal rules, checking children's phone calls, inappropriate behaviour towards children by one staff member, and imposing unlawful educational measures. He demanded an immediate remedy, and shared his findings with the Ministry of Education, Youth and Sports as the operator, with the Public Prosecutor's Office as the authority competent to supervise the compliance with legal regulations in the exercise of institutional and protective education, and the investigative, prosecuting and adjudicating bodies. Some remedial measures were immediately taken; however, an overall assessment was not yet possible at the time of issuance of this report.

One year after the initial visit, systematic visits to **a facility for children – foreign nationals** were concluded by a penalisation procedure. This case is described in more detail below.

2. Follow-Up Visits

Out of more than thirty school and healthcare facilities for children visited in 2011, the Defender chose seven for follow-up visits, focusing mainly on checking if and how his recommendations had been implemented. These visits concerned a children's home for children under 3 years of age at Mladá Boleslav Regional Hospital (CH3 Mladá Boleslav); Children's Psychiatric Hospital in Louny (CPH Louny); Children's Home, Elementary Practical School, Practical School and Canteen Dlažkovice (CH Dlažkovice); Children's Home with School, Elementary School and Canteen Měcholupy (CHS Měcholupy), Children's Home Budkov (CH Budkov), Reformatory, Secondary School and Canteen Terešov (RF Terešov), and Reformatory, Secondary School and Canteen (RF Žulová).

Follow-up visits to the following educational institutions: RF Terešov, RF Žulová, CHS Měcholupy, CH Budkov, and CH Dlažkovice, showed that **barred windows continued to be used in areas where children undergoing institutional, and not protective education, were held.** Despite an improvement in material conditions at some facilities, a greater degree of privacy for children (possibility to lock toilet doors, curtains in showers, lockers for their personal belongings) is still not a general rule. **Contact with families is often unreasonably and unacceptably restricted** (limited access to the phone, listening in on phone calls, unlawful "authorisation" of visits for children undertaking ordered institutional education, integrating permissions to be with their family into the reward/punishment scheme). **If there is any social work with a family (family recovery), it is random and not systematic.** In many facilities the Defender found as a serious problem consisting in the fact that professional services – special-educational, psychological, or psycho-pedagogical – were inadequately provided; in certain locations, **paedopsychiatric care is not readily available.** This issue has special importance in children's homes, where the absence of timely paedopsychiatric intervention jeopardises further stay of a child showing an onset of psychiatric problems, including behavioural disorders, in the facility, or exacerbates the situation and makes it necessary to transfer the child into a facility with stricter regime, further away from his or her family. Generally speaking, staff that are overworked and are not given self-reflexion support is mainly concerned with supervising and organizing children, not with any educational or even therapeutic activities. In isolated cases, inappropriate punishment was also discovered (e.g., collective punishment, taking-away clothing, punishment for speaking in the canteen).

Follow-up visits to healthcare facilities concerned one psychiatric facility (CPH Louny – see above) and one infant home (CH3 Mladá Boleslav). Even though the infant home had implemented some of the Defender's recommendations (such as keeping children's journals), follow-up visits confirmed a **very low interdisciplinary support for the children's families**, as all effort focused on finding foster families and on adoption processes, rather than on the recovery of a biological family. In many cases, the involvement of bodies of social and legal protection of children in family recovery was often found to be very low. **The staff, in the numbers present during the visit, was unable to provide children with individual care**, including physical contact (so much necessary and natural for very young children), or to **meet** each child's **individual needs**; the overall regime and all activities were shared by all children.

The re-visited facilities acknowledged many of these findings, and accepted a recommendation that remedy be made (provided doing so was within the management's powers). More general issues were or will be mentioned in the Defender's summary reports containing recommendations for central authorities or self-government bodies.

3. Educational care centres

The Defender visited five centres of educational care (a "Centre"), more specifically, their residential departments: Children's Diagnostic Institution, Centre of Educational Care, Elementary School and Canteen, Olomouc – Svatý Kopeček (CDI Kelč); Children's Diagnostic Institution, Children's Home with School, Centre of Educational Care and Canteen, Homole, České Budějovice (CDI České Budějovice); Help Me Private Centre of Educational Care (CEC Help Me); Klíčův Reformatory and Centre of Educational Care (RF Klíčův); and Diagnostic Institution, Children's Home with School, Children's Home, Centre of Educational Care, Elementary School and Canteen, Dobřichovice (DI Slaný). All clients in the given facilities were staying therein on the basis of a contract on preventive educational care, concluded voluntarily. No maltreatment was found in any of these facilities.

During the assessment of the living conditions, the care provided, and treatment or privacy arrangements at the centres, recommendations and standards specified by the Defender in his Report on systematic visits to school facilities for institutional and protective education were applied appropriately. **The main conclusion of these visits is that access to preventive educational care is inadequate.**

The Centres are not distributed evenly over the country's territory; out of the 40 Centres in total, only 16 include a residential department, while day-care departments are fewer still. The capacity of most residential or day-care facilities does not exceed 20 children. In certain regions, Centres are to be found even in smaller towns; in others, however, **availability of such facilities is reduced to a minimum.** This mainly concerns the Vysočina and Pardubice Regions with one Centre each, working only on an "outpatient" basis. This situation is contrary to the objective set out in the 2009-2011 National Action Plan to Transform and Unify the System of Care for Vulnerable Children, i.e., to reduce the number of children placed on a long-term basis in all types

of institutional care by reinforcing work with vulnerable children and their families, and to concentrate on prevention above all. For now, the reality is different, however: the number of school institutions for the execution of institutional education is a multiple of the number of educational care centres.

Therefore, the Defender recommended that preventive educational care be made equally accessible in all regions, even in smaller towns, in the form of outpatient care, day-care, residential, and field care.

Another obstacle to the availability of preventive educational care is the cost of day-care or residential form of such services. Even though preventive educational care as such is provided free of charge, housing and meals are subject to charge in accordance with the applicable law, both for the residential and for the day-care form of stay; payment must be made prior to a client's enrolment, unless otherwise agreed by the parties. In practice, the amount is a few thousand crowns per month of stay. At the same time, outpatient care (not associated with such costs) is hardly accessible in some regions, and it may also be unsuitable or inadequate in certain cases, in view of the specific client's problem. **The cost of the residential and day-care forms of preventive educational care still reduces its accessibility, especially for socially disadvantaged families.**

4. Diagnostic institutions

Diagnostic institutions are facilities representing a "gateway" to institutional substitute care for children. Their mission is mainly to make a diagnosis for each child, on which his or her further pathway through the system of facilities for educational and protective care will be based; based on the diagnosis, the head of an institution will decide where the child is to be subsequently placed. In 2012 the Defender continued his visits to facilities where children are placed by visiting five diagnostic institutions: Children's Diagnostic Institution, Children's Home with School, Centre of Educational Care and Canteen, Homole, České Budějovice; Children's Diagnostic Institution, Centre of Educational Care, Elementary School and Canteen, Brno-Hlinky; Children's Diagnostic Institution, Elementary School and Canteen, Bohumín; Diagnostic Institution for Youths, Prague-Lublaňská; and Diagnostic Institution and Centre of Educational Care, Prague-Hodkovičky).

During his visits, the Defender focused his inquiries on the nature and degree of involvement of families and other entities in the course of diagnostic stays, on the regime and treatment in facilities, the level of equipment, and the transfer or placement of children by the diagnostic institution to facilities within its network. His specific and systemic findings and his recommendations were summarized in Report on visits to diagnostic institutions. He thereby expanded Standards of care for vulnerable children and their families. Some **essential standards** are quoted below:

The rights of participants to proceedings must be respected within administrative proceedings for the transfer or placement of a child. Above all, they must be notified of the opening of such proceedings and given the possibility to respond to the grounds for a decision before it is issued. The child's opinion must be actively sought. The Defender encountered practices where the opinion of a child as a participant to administrative proceedings on the transfer or placement was neither ascertained nor taken into account.

Substantiation of administrative decisions must be adequate so as to make the decisions reviewable. It must be apparent what line of thought led the administrative authority (the head of a diagnostic institution) to the decision; the facts of the matter on which his/her decision was based must be specified, as well as his/her response to participants' arguments. In these respects, the Defender found shortcomings. For a specific example, **see Family and child, page**

The child's parent(s) should be given the possibility to participate as soon as the child has been admitted to a facility. If no parent can be present, the facility should inform the parents in writing (or by phone) about the character of their child's diagnostic stay and provide any information relevant for their mutual contact. Working with the family is an indispensable part of work of the institution where the child is placed, separated from his/her family. This is yet more important in diagnostic institutions, where the situation may still be reversible, as the child is standing at the very doorstep of the institutional care system.

In its diagnosis, the institution must use relevant information collected from a wide range of involved parties (parents, school, bodies of social and legal protection of children, etc.). A diagnostic report, which is the main document on which subsequent work with a

child will be based, must be objective and comprehensive. This cannot be achieved without collaborating with all entities whose activities have educational impact on the child's life.

Children's bedrooms must be fitted out and furnished in accordance with common standards, and in compliance with the requirements of legal regulations. For example, rooms previously designed for other purposes were found to be used for accommodating children, and their unsuitable layout resulted in undermining the regime in the facility. Minimum space requirements specified by Decree regulating the particulars of exercise of institutional education and preventive education in school facilities (Decree No. 438/2006 Coll., as amended) often remain unfulfilled.

A "detention room" must be safe and look congenial to the child. Detention rooms designed for a temporary stay of a child brought back after an escape cannot have the character of a police cell (as has been also found). The safety of children confined there and of their carers must be ensured in another manner. The rule that no children under the influence of addictive substances may be taken in must be always respected. The approach to children placed in the facility must be based on suitable pedagogic management or on crisis intervention, as appropriate in each case.

5. Facility for Children – Foreign Nationals

A systematic visit to Permon, a facility designed for children who are foreign nationals (Children's Home with School and Educational Institution, Facility for Children – Foreign Nationals, Diagnostic Institution, Children's Home with School, Educational Institution, Centre of Educational Care, Elementary School and Practical School) took place in 2011, and included two local inquiries. Most of the findings were assessed by the Defender in 2012. He mainly pointed out that the structure of admitted children – foreign nationals was not in line with the original target group for which the institution had been founded, and noted inadequate living conditions in the educational institution and treatment of children – foreign nationals in general. **All in all, the Defender ascertained maltreatment and notified of this fact the Ministry of Education, Youth and Sports as the relevant authority, the Ministry of the Interior, the Ministry of Labour and Social Affairs, and the Supreme Public Prosecutor's Office.** The competent authorities – most of all, the relevant authority – were invited to look into the situation in the facility, and to work together in order to prepare a new concept of care for children – foreign nationals.

As the Ministry of Education, Youth and Sports failed to provide for any remedy on the part of the facility or to contribute to preparing a new concept of care for children – foreign nationals, the Defender decided to use his sanction powers by informing the public. The Ministry as the relevant authority failed in its duty to prevent, detect and punish maltreatment.

Subsequently, by a decision of the relevant authority, the remote facility of the institution was closed down (Children's Home with School, Educational Institution). Through Resolution No. 646/2012 dated 6 September 2012, the Government adopted a new Concept of the protection and care of unaccompanied foreign minors, including international protection seekers. An amendment to the Act on the Exercise of Institutional Education or Protective Education (Act No. 109/2002 Coll., as amended) modified the competence of a facility designed to provide care for children – foreigners. At present, foreign nationality is not the only criterion for admitting a child to a facility, and the actual situation of a specific child, i.e. whether he/she comes from an utterly different cultural and social background, the existence of a major language barrier, possible traumatizing experience (war, etc.), must be taken into account.

6. Police facilities

The Defender continued to perform systematic visits to police cells. Four facilities were visited.

In one case it was found that, when being confined to police cells, persons were not given the advice of rights form (notification advising persons confined of their rights and obligations), contrary to Section 15 (1) of the Police President's Binding Instruction dated 2 December 2009, pertaining to escorts, guarding of persons and police cells (the "Binding Instruction"). **The Defender insists that a person confined to a cell have access to the advice of rights form throughout his/her confinement stay. The possibility of familiarising oneself repeatedly with one's rights is a safeguard against maltreatment.**

The Defender also focused on the actual possibility of confined persons to perform personal hygiene, specifically, to take a shower. According to Section 33 (4) of the Act on the Police of

the Czech Republic (Act No. 273/2008 Coll., as amended), a person placed in a police cell is entitled to adequate access to water and toilet, and to being allowed to perform his/her basic hygiene. Therefore, the possibility to take a shower is not explicitly guaranteed by law and it is not specifically regulated in the Binding Instruction either. It was found that, wherever a shower is located nearby the cells, a person who is very dirty is generally allowed to take a shower. However, confined persons are not informed of their right to request the use of a shower. It seems important to the Defender that, in the exercise of the right to perform personal hygiene, the subjective need of the detained person for a shower be taken into account, as well as the duration of his/her stay in the cell. In other words, it needs to be taken into consideration that in case of a confinement in excess of 24 hours, more thorough personal hygiene needs to be performed. **Therefore, in cells where a shower is available, the Defender recommends including the information that shower use may be requested on the advice of rights form, and recording all requests, or instances when this possibility was used.**

The Defender also examined the conditions inside cells. He mainly commented on providing access to daylight. According to Section 33 of the Act on the Police of the Czech Republic, a cell must be perfectly hygienic and must be suitable for its purpose. The law does not stipulate providing natural light. According to Section 2(b) of the Annex to the Binding Instruction, no windows are required in cells, and according to letter j) of the same Section, daylight is required "except for cells established prior to the effective date of this Instruction." In two cases, visited cells lacked windows. In one case, daylight was absent also from a room used for consultations with legal representatives. It must be pointed out that a person confined to a cell with neither windows nor direct daylight cannot distinguish day from night by sole observation. Negative impact on human psyche is then irrefutable. It can be argued, of course, that interrogation or other procedures will be carried out in daylight conditions; on the other hand, it cannot be ruled out that a confined person might be denied daylight for more than a 24-hour period as a result of being placed in a windowless cell. The Defender also advised the police that even the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment stressed that cells should preferably enjoy natural light, and that individuals restricted in their freedom for more than 24 hours should be allowed physical exercise (stay) in fresh air. **The Defender considers this requirement reasonable; therefore, he recommended that, in the case of cells without access to daylight, persons placed in the cell be allowed after a certain period of confinement in the cell to go outside their cell- i.e., to enjoy daylight and/or fresh air. This information should be included into the advice of rights form, and it should be recorded whether this possibility was offered to confined persons, and whether and for how long they made use of it.**

7. Non-registered facilities for elderly people

Upon repeated individual complaints, the Defender visited the following housing facilities for elderly people: "Ubytovací zařízení pro seniory Tuchlovice (residential facility for the elderly)", operated by Senior Home, s. r. o., and "Domov důstojného stáří Harmony Líchovy", operated by Vedrana, s. r. o. This is a hotel-type institution for elderly people, focusing on persons with various types of dementia and also offering services. **Alarming facts were found as to the quality of service:** unprofessional handling of medication; absence of nursing care of an appropriate standard; providing social services without authorisation; inadequate prevention of malnutrition; unprofessional manner of restraining clients.

It was ascertained that both institutions corresponded – by the nature of services they provided – to what the Social Services Act (Act No. 108/2006 Coll., as amended) defines as a "home with special regime". However, both were operated on the basis of combination of trade licences, lacking the registration required by law, i.e., authorisation to provide social services. As a result, the care provided appeared not to be subject to the requirements of the Social Services Act with respect to personnel, equipment, and the quality of care, or the inspection of providing social services. If assessed under the social-services mode, practices discovered in both facilities would be found in breach of statutory requirements. The Defender assessed the legal situation by stating that their purpose (operating a home with special regime) had been achieved contrary to what was required and anticipated by the Social Services Act. **He recommended that both facilities immediately remedy the situation by filing a registration application and by creating conditions making it possible for the Municipal Authority in Prague to grant it.** A follow-up visit to the Tuchlovice facility showed that the operator had complied with the recommendation. Vedrana, s.r.o., on the contrary, failed to do so; therefore, the Defender used his sanction powers and informed the public of his findings in accordance with applicable law. He also warned that due to the violation of the Social Services Act, persons who "unofficially" surrendered their allowance

for care to such an unregistered professional facility, could have their allowance payments suspended.

The Defender is in possession of other information indicating that the phenomenon of using several different business licences for providing services that the Social Services Act defines as "social services" subject to registration has been spreading. It can be inferred that these are situations where care can be provided to vulnerable and sick persons without proper control and supervision. Such care can be unprofessional, intuitive, involving restriction of free movement and seclusion, with no adequate nursing care or protection of clients, while citizens have no means for judging these aspects. **To reinforce preventive measures against such practices, he issued a Statement on providing social services on the basis of trade licences, and demands that competent authorities take action against such operators for an administrative offence of providing social services without authorisation.**