# ANNUAL REPORT 2013 (PART IV)

# THE DEFENDER AND FACILITIES WHERE PERSONS ARE RESTRICTED IN THEIR FREEDOM

In 2013 the Defender launched a long-term project of monitoring the care for elderly people. Specifically, he focused on the conditions during the provision of care to persons suffering from the Alzheimer's disease or other kinds of dementia. In exercising the mandate of the so-called national preventive mechanism, within performing systemic visits according to Sec. 1 (3) and (4) of the Public Defender of Rights Act (Act No. 349/1999 Coll., as amended), he focused mainly on residential social service facilities. With respect to demographic development, it is apparent that the issue of care for persons suffering from the dementia syndrome will gain importance globally. The Public Defender of Rights therefore decided to examine how care for this extremely vulnerable group of persons was ensured in the Czech Republic.

In 2013 the Defender made a total of **15 systematic visits to homes for elderly people and homes with special regime** (of which one was a follow-up visit). Further, he visited a **non-registered facility**, which de facto provided residential social services to clients suffering from the dementia syndrome. The Defender had focused on non-registered facilities before and will continue to visit them also in 2014.

The aim of the visits was, above all, to ascertain in what conditions the elderly persons lived, how they were treated, whether their dignity was respected and their fundamental rights observed and whether the care was adjusted to the specific needs of that target group. In assessing the quality of professional care in the facilities, the Defender collaborated with experts on the given healthcare area, who also took active part in the systematic visits. The Defender also signed **memoranda of cooperation** with the Czech Association of Nurses, Czech Alzheimer's Society and the Czech Society of Palliative Medicine to ensure that the recommendations in the area of nursing and health care were in accordance with the expert knowledge.

For the first time, the Defender pursued the conditions **in sobering-up stations** and performed five systematic visits to such facilities. He thus responded to a judgment of the European Court of Human Rights, which had criticised the Czech Republic for the manner of restricting personal freedom in sobering-up stations in case of Bureš vs. Czech Republic (complaint No. 37679/08). More visits and systemic evaluation of findings will follow in 2014.

In 2013 **the monitoring of treatment in police cells** continued; four police stations were visited. Further, three systematic visits were made to **facilities for the exercise of institutional education** (one of which was a follow-up visit) and one follow-up **visit to a psychiatric hospital**. In addition, ten local inquiries were performed, concentrating particularly on complaints in the area of the prison system and the performance of public guardianship.

In the second quarter of 2013, the Defender published **summary reports on systematic visits** performed in the previous two years. They include a report on visits to educational care centres, a report on visits to diagnostic facilities, a report on visits to infant homes and a report on visits to children's psychiatric hospitals. In addition, the Standards of Care for Vulnerable Children and their Families, accompanying the Report on Visits to School Facilities where Institutional and Protective Education is Performed, published in 2012, were updated. In April 2013 the Defender held a seminar at the Ministry of Education, Youth and Sports on the protection of vulnerable children and their families, where he presented basic findings and recommendations from the visits. In connection with the mentioned systematic visits, the Defender addressed his recommendations on the removal of shortcomings and the remedy of unacceptable situations to the competent authorities, i.e. the Ministry of Education, Youth and Sports, the Ministry of Health, the Ministry of Labour and Social Affairs, and to regional authorities.

In September 2013 the Defender initiated a **meeting of the employees of the Department for Supervision** of the Office of the Public Defender of Rights performing systematic visits to school facilities for the performance of institutional and protective education and **public prosecutors** performing supervision of the compliance with legal regulations. The scope of competence of both overlaps at times but the starting points, the purposes of inquiries and the powers and tools differ. The purpose of the meeting, which was attended by almost 60 public

attorneys, was to share experience with other participants and to strengthen the collaboration with regard to the interests of children living in institutions.

The Defender further prepared a **content analysis of internet presentations of regional homes for elderly people** titled "Access to the social service of a home for elderly persons". The analysis examines to what extent such facilities are open to various groups of applicants (mostly with respect to their health condition, level of income, or allowance for care). The analysis responded to findings from systematic visits that had showed the impossibility for some elderly people to get a social service. Within the analysis, the Defender formulated **seven recommendations for social service providers**.

As part of **international cooperation**, the staff of the Department for Supervision visited their colleagues in Slovenia and France. In addition, experience in the field of the prevention of maltreatment was exchanged during a visit of Georgian Ombudsman in the Czech Republic. The Defender's findings from systematic visits were also presented by the employees of the Department for Supervision at international workshops and seminars.

# 1/ The Defender and his Power to Impose Penalties

## Slaný Children's Home with School

In 2013 the Defender used his punitive power regarding a systematic visit to Slaný Children's Home with School (as an independent facility of the Diagnostic institution, children's home with school, children's home, centre of educational care and elementary school Dobřichovice). On the basis of a systematic visit to this facility, the Defender concluded that **the staffing and also the care for children were insufficient to ensure the operation of the facility**. With respect to the fact that a majority of the clients of this facility form a particularly sensitive group of children requiring educational and therapeutic regime, the Defender pointed out, above all, the necessity to increase the number of experts (psychologists/special education officers) ensuring such regime. The Defender also recommended increasing the number of assistant teachers. **During a follow-up visit in September 2013, it emerged that not only had the Defender's recommendation not been respected but the bad personnel situation in the facility had further escalated**. Due to an insensitive approach on the part of the management and sudden departure of expert personnel, **the continuity of professional care had been fundamentally broken and the educational and therapeutic regime as such disrupted**. In an attempt to stabilise the facility (which had been given as an example of good practice in 2011), the Defender turned to the Ministry of Education, Youth and Sports (the promoter). The Ministry subsequently stated that it would take measures to achieve remedy, which involved the removal of the head teacher.

## Liběchov Children's Home with School

The punitive power of the Defender was also used in connection with a systematic visit to Liběchov Children's Home with School, where the Defender **found maltreatment** and notified the superior authority, i.e. the promoter, of the case.

The most serious instances of maltreatment included, for example, locking children who fell ill in medical isolation and leaving them almost without contact with adults. Children were isolated after escapes and they were forbidden, by means of educational measures, to go out of doors for as long as 14 days. Contact among individual family groups was prohibited, as a result of which boys and girls did not have a chance of mutual contact. That measure was also very insensitive with respect to siblings. Children could not make phone calls in private but only during the presence of an educator, who prevented them from making possible complaints. Educators were instructed to check children's text messages. Children could spend only 45 minutes a day out of doors. (In this respect, the Defender noted that the standard time for prisoners is one hour). Children were not provided special educational or psychological care, although they were children with serious behavioural disorders. Finally, serious information regarding inappropriate contact between a social worker and minor boys was ascertained.

The Defender submitted these findings to the promoter and relevant bodies of social and legal protection of children and the supervising Public Prosecutor's Office. **Information indicating possible commitment of a crime was forwarded to the Police of the Czech Republic**. Subsequently, the promoter and the Czech School Inspectorate conducted inspections, the

supervising public prosecutor performed a check and the Defender made a follow-up systematic visit. Most of the most serious shortcomings were subsequently remedied.

### Psychiatric Hospital in Dobřany

Responding to a widely-covered incident of the death of a patient in a caged bed, the Defender performed a systematic visit to the Dobřany Psychiatric Hospital, focusing on the conditions for using this means of restraint within the facility. After conducting an inquiry, the Defender found debatable aspects pertaining to the justifiability of the caged bed use at the time of the death, i.e. whether the caged bed had been used for preventive reasons. Further, he questioned in some parts the internal rules of the hospital for the use of the means of restraint and found working conditions for the staff in the given ward very demanding and even hazardous (repeatedly since 2008). As the Defender's **exchange of views with the hospital was not satisfactory**, the Defender approached the Ministry of Health (the promoter), requiring an investigation of the event. After repeated requests for the Ministry of Health's statement, the Defender performed a follow-up visit.

**The hospital responded to the tragic incident by taking measures**, including organizational measures, **aimed at improving the patients' safety**. However, in the Defender's 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. The Ministry of Health had failed to take an active approach to an event as serious as the death of a patient retrained within involuntary hospitalisation, failing to conduct an impartial and thorough investigation of the event.

## 2/ Facilities for Elderly People with Dementia

In performing systematic visits, the Defender mostly focused on residential social service facilities providing care to elderly people suffering from the dementia syndrome. An inquiry was also conducted at one non-registered facility. **The Defender found maltreatment in seven cases**. The following facilities were visited (chronologically, from the beginning of 2013): Domov pro seniory Třebíč, Domov Slaný, Alzheimercentrum Průhonice, o. p. s. (Prague), Charitní dům pokojného stáří Cetechovice, Domov pro seniory Světlo (Drhovle), Domov pro seniory Uničov, s. r. o., Domov pro seniory Kobylisy (Prague), Domov pro seniory Pyšely, Dům seniorů Liberec – Františkov, TOREAL, spol. s r. o. (Královské Poříčí), Domov u zámku, o. s. (Chvalkovice na Hané), Lázně Letiny, s. r. o., Domov pro seniory Pampeliška (Česká Lípa), Domov pro seniory Zlaté slunce (Ostrava) and Centrum komplexních služeb pro rodinu a domácnost Kunštát.

During the visits, the examined areas included particularly the environment and equipment of facilities, whether the principle of the freedom to arrange one's own affairs was respected and the privacy of clients ensured, the clients' freedom of movement and their safety, the quality of the provided social services and nursing care, or the conditions of concluding a contract for the provision of social services and its contents. In all of the mentioned areas, the central theme was the protection of human dignity and the protection of (not only) fundamental rights and freedoms of clients.

The most frequent shortcoming encountered during the examination of material conditions consisted in the **failure to adjust the environment to the needs of clients with dementia**. Such persons may be disoriented and may easily get lost even in familiar places. Therefore, the area where they move around should be well organised and support spatial orientation (e.g. the use of different colours marking each floor, pictograms on room doors, orientation signs in halls and so on). One of the issues that the Defender criticised in some cases was **the absence of communal dining rooms or common areas**. Regular communal dining has crucial socialization importance and clients with dementia may significantly profit from it depending on the stage of the illness (it improves the quality of the life of clients, forms a part of the daily programme, helps to maintain self-reliance).

In the area of ensuring privacy, the Defender was particularly interested in whether the **privacy of clients in toilets, during the maintenance of hygiene or the provision of nursing** care was respected, whether in a bathroom, on a bed in a room or in the nurse's room. He recommended that no one be exposed to being seen by other clients and that the relevant acts be performed behind closed doors or a screen. He also criticised, where relevant, **the impossibility of clients to store safely their belongings**. Although the Defender is aware that not all clients suffering from dementia are able to use keys to lockers or drawers, he recommended

that those able to do so have a lockable space in their room and that conditions for the storage of belongings to protect them against theft be created for all.

While checking if the clients' freedom of movement was ensured, the Defender examined especially the use of restraining means within Sec. 89 of the Social Services Act (Act No. 108/2006 Coll., as amended). **Unlawful administration of sedatives** was a frequent shortcoming. The Defender found that physicians often prescribed irregular administration of sedatives in case of agitation or aggression. Nevertheless, the prescriptions are so vague that in practice it is not a physician who decides on the administration of a sedative but an employee of the facility (in some cases not even a medical officer). The facility does not regard the administration of sedatives as the use of restraining means even if the purpose of the administration of such medication in a specific case is to restrain a client (prevent him or her from walking, getting up, or due to aggressive behaviour). In a number of cases, no records about the administration of a sedative were maintained; the existing records gave rise to doubts as to whether the statutory conditions for the administration of a sedative as a means of restraint had been met and in several cases evidence about procedure in violation of the statutory prohibition of restraining movement was obtained.

As regards the quality of the care provided, in all of the facilities the Defender concentrated primarily on proper nutrition of clients. In particular clients whose communication ability is limited or who are permanently confined to bed have to depend completely on the care provided by the staff, which must include the provision of nutrition. **The underestimation of the risk of malnutrition** and its insufficient prevention was the most serious shortcoming in this area. In a number of facilities, nutrition screening is not performed, clients are not regularly weighed, food intake is not systematically monitored and facilities do not cooperate with a nutritional therapist. Clients suffering from the dementia syndrome belong to a risk group as regards the occurrence of malnutrition and some are completely dependent for nutrition on the care of the facility staff. The modification of food texture is a related problem. The Defender objected to cases where **all food components were blended together** during the mechanical modification of food texture (blending), which in the end looked very unappealing and unappetizing, preventing clients to enjoy their meals in any way. The Defender also focused on **the manner of preparing and administering medication to clients**. He criticised situations where medication was prepared according to medication lists, with changes and cross-outs made by the staff, and the correctness of the prescription could not be verified. Further, the Defender pointed out that **medication was not stored in a safe place** and could be also reached by persons who were not authorised to handle it. In most of the facilities visited, **micturition regime** (determination of the form and frequency of assisting clients to use the toilet) was not determined for clients suffering from dementia and in several cases the **onset of complete incontinence was even accelerated**. In most facilities, **depression was not systematically checked for or monitored** and **standardised monitoring of pain did not take place**. Finally, the Defender criticised the impossibility to establish from the files how long the patient permanently confined to bed **had not been getting up**, who had decided on the patient's further confinement to bed on an all-day basis and on what grounds. Permanent confinement to bed constitutes crucial and often irreversible deterioration in the quality of life and therefore it should be discussed by a physician and duly recorded in the client's files.

In the area of ensuring the safety of clients, the Defender found most shortcomings in the **incorrect use of sideboards**. Even though employees of facilities were aware that a sideboard could restrain the client's movement, they were not concerned with the purpose of its use if the client's guardian or relative had given consent to its use. The Defender repeatedly explained that the use of a sideboard was right if its purpose was to protect the client from fall after other less restrictive preventive measures had been tried out without success or their use had been excluded beforehand for a justified cause. In such a case sideboards are a standard nursing instrument and the consent of third persons is without legal significance. However, the use of sideboards for the purpose of restraining the client's movement is undesirable and it cannot be made good by potential consent. **Insufficient prevention of falls** was another frequent shortcoming. Falls may have very serious consequences for elderly people (e.g. fractures, head injuries, anxiety, depressions and so on). The Defender criticised the absence of a systematic fall risk assessment, the absence of a proper analysis of the causes, the absence of preventive measures and of transparent statistics of falls.

The Defender also obtained findings about **the shortage of funds** in the given area of social services, although that was not the purpose of the visits. Social services are funded from multiple sources and subsidies from the State budget remain an important source for the providers. The size of subsidies earmarked for this area is stagnating or declining. Providers of social services are

thus forced to reduce the working hours of professional medical staff; and headcount reduction also concerns direct care workers. This situation **affects the quality of the provided care and negatively impacts the life of clients** in the facilities. In some cases the facilities consequently cannot comply with the quality standards of care for this specific target group of clients. For example, in one facility the Defender recommended on-site presence of a head nurse on a daily basis and he acknowledged the care for clients provided by a sufficient number of direct care workers. The facility subsequently informed the Defender that it was forced to reduce the working hours of the medical staff and lay off more direct care workers.

Generalized findings, related recommendations and systemic evaluation will be published by the Defender in a summary report in 2014. In 2013 he already prepared and published partial outputs for practical use, such as "Extracts from reports on visits to facilities for elderly people" or a paper on the problems in ensuring the nutrition of elderly people.

# 3/ Sobering-up Stations

Sobering-up stations are specialized medical facilities intended for short-term stays and detoxication in case of acute intoxication by alcohol or other psychoactive substances. They are a special type of facility, on the borderland between out-patient and in-patient care. An intoxicated person is placed in a sobering-up station usually involuntarily and is released only by the decision of a physician. He or she is obliged to pay a financial amount for the stay at the sobering-up station, determined by the station.

The Defender visited **five** sobering-up stations in 2013, in Prague, Ostrava, Plzeň, Kroměříž and Karviná. During the systematic visits, he focused particularly on the issue of ensuring the privacy of persons placed in the stations, the fulfilment of statutory reasons for the placement of persons there, the use of the means of restraint, sufficient staffing and payments for stays at the station.

The Defender did not directly find maltreatment or deliberate infringement of the rights of the persons placed in the sobering-up stations; however, **he pointed out some serious shortcomings in the conditions** at the sobering-up stations and in the admission and release of persons. The most frequent shortcomings included failure to ensure, to a sufficient extent, privacy in a toilet, failure to actually examine all statutory conditions for the restriction of freedom at the time a person is placed in the sobering-up station and insufficient staffing in the facilities.

Findings from the systematic visits to sobering-up stations will be used by the Defender in 2014 to discuss this matter further with experts in that field and subsequently to formulate the standards of care for persons placed in this type of facility.

# 4/ Police Cells

Systematic visits were made to **four** police cells, namely to police cells in Sokolov, Vyškov, Ostrava and Ostrov. The Defender focused on checking whether fundamental rights of persons confined to cells were observed and their dignity respected. In particular he was checking whether the persons had been duly advised of their rights and duties, whether they were provided food, whether they could perform personal hygiene, where and in what manner body searches were performed or whether medical aids (for example glasses) were deliberately taken away at the time of confinement.

In two cases a signed advice of rights form (notification advising persons confined of their rights and obligations) was not found in the files maintained at the time of confinement and **a reasonable doubt arose as to whether the person had been advised of their rights and obligations**, as prescribed by the law and other regulations. Familiarization with one's rights is one of the basic safeguards against maltreatment. In three cases the Defender found that when being confined to police cells, the persons had not been given the advice of their rights form to enable access to the information throughout the confinement.

In all four facilities visited, the Defender found that **the persons confined were provided only cold meals**. The Defender pointed out that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Revised CPT 2011 standards) requires that the confined persons be given a full meal at least once a day, i.e. more substantial meal that a sandwich (in Czech conditions typically a roll and salami or pâté). Therefore, he recommended that a warm meal be provided to a confined person at least once a day.

In three cases it was found that a bed sheet was not provided in cells, although it is mandatory cell equipment. Since bed sheets are not provided and blankets are successively used

by several persons without being washed, physical contact with an already used blanket is more of a rule than exception. The Defender considers it unhygienic and demeaning.

## 5/ Conditions During Protective Treatment

Responding to complaints, the Public Defender of Rights inquired into the conditions during protective treatment in the Dobřany Psychiatric Hospital and the Bohnice Psychiatric Hospital.

A point system intended for the motivation of patients to treatment was the subject of the inquiry. The Defender found that the system in one ward was set is such a way that some patients **had been prevented from getting fresh air** for several months. That situation was caused by the structural and technical arrangement of the ward, which prevented patients who were not allowed to move out of the ward from going outside. As a result, in case of some patients, the treatment conditions were harsher than in prisons, where convicts may get fresh air for at least an hour a day. This standard must be maintained also during the protective treatment (an exception is possible only on the basis of the health condition of a patient and the exception may not be interpreted extensively). A thing that should be natural cannot serve as motivation.

Further, the Defender was interested in **the conditions during stays and the right of persons to privacy**. The psychiatric hospital was found to have rooms with 14 or 11 beds, where patients with various diagnoses were placed. A stay in such rooms could have a negative influence on patients and could also go against the sense of the therapy. The Defender found the related complaints justified and recommended that the psychiatric hospital make necessary changes. He also noted that to maintain the minimum standard of privacy it was necessary to create conditions enabling the storage of a reasonable amount of personal items in a lockable cabinet, with the key being in the patient's possession, provided the patient was able to use it. This standard needs to be maintained despite the financial requirements connected with it.

Another shortcoming encountered by the Defender in the area of privacy protection during protective treatment concerned **the manner of performing ward rounds**. The dignity of patients needs to be protected and the protection of their personal data needs to be ensured in such situations too. The requirements of the degree of this protection cannot be determined uniformly across the health care sector. However, it is reasonable to expect privacy in a situation when a patient is describing his or her experience and a decision is to be made about his or her future and civil life. If such a situation occurs during each ward round, privacy must be ensured during each ward round.

While inquiring into the conditions during protective treatment, the Defender also dealt with **the use of restraining means**. In one case he found a shortcoming in connection with the use of medication.

*Complaint File Ref.: 461/2012/VOP/MLU*

***The use of the means of restraint is a serious intrusion into personal rights. Therefore, it must be evident without doubt that the intensity of the threat to life or the safety of the situation reached the level anticipated by the law.***

*On the basis of a complaint, the Defender inquired into the situation of a complainant hospitalized in the Bohnice Psychiatric Hospital, first on grounds of court-ordered institutional observation and subsequently within a six-month protective treatment.*

*When being admitted to the hospital for the purpose of observation, the complainant had been prescribed psychiatric drugs by a doctor at the admission centre. Since she refused to take them voluntarily, the medication was applied by injection. The refusal of the patient had culminated and she was restricted in her freedom for an hour by being strapped to bed. All that happened before the complainant could be examined by a physician at the ward where she had be admitted. Subsequently the patient was given medication despite her disapproval throughout the observation period and then also during the protective treatment, although the legal regulation at that time (as opposed to now) did not allow it.*

*The Defender found the manner of using the means of restraint and the involuntary medication of the complainant during her protective treatment unlawful and recommended remedial measures, which the psychiatric hospital adopted.*

**The prescription of "agitation treatment"** (i.e. medication indicated in case of agitation or aggression) and the subsequent administration of medication at the nurse's discretion is, unfortunately, a procedure common in many psychiatric hospitals. Subsequently, it is not distinguished whether the procedure is part of the medication of the patient's illness anticipated by the physician or of the management of the patient's aggression or dangerous behaviour in general.

The Healthcare Services Act (No. 372/2011 Coll., as amended), however, requires special, controlled procedure in case of specific administration of psychiatric drugs (used as the means of restraint). That applies to the administration of sedatives to avert an immediate threat to life, health or safety of the patient or other persons. Primarily, a physician should decide about each use after assessing the specific situation; a nurse should do so only in emergency cases and subsequently call the physician.

# 6/ Procedure of the Regional Authority in Taking Action Against Non-registered Social Service Facilities

In 2013 the Public Defender of Rights continued to pay attention to the problem of providing residential social services without proper authorisation (registration), i.e. without complying with the rules and quality requirements prescribed for this activity. The registration is tied to the fulfilment of statutory material and personnel requirements and enables State supervision of the quality of the services provided. The provision of social services without authorisation therefore carries a risk of maltreatment of clients and constitutes an administrative offence, against which the relevant regional authority is authorised to take action.

On the basis of systematic visits to two residential facilities in the previous years, **the Defender pointed out a significant risk of maltreatment in such facilities.** To reinforce preventive measures, in 2013 the Defender issued "Statement on providing social services on the basis of trade licences", monitored the procedure of one regional authority in taking action for an administrative offence of providing social services without authorisation and addressed the Ministry of Labour and Social Affairs with a request to unify the practice of regional authorities within methodological guidance.

Due execution of **administrative proceedings on an administrative offence** is complicated since the entities concerned do not cooperate with authorities. The task of the regional authority is to prove that services are provided at a specific address and also to prove that the character of the services provided corresponds to social services. Nevertheless, there is strong public interest in carrying out proceedings and therefore the Defender insists that they be carried out while the principles of administrative punishment are observed.

**In this connection the Defender makes a general note that if a regional authority has a reasonable suspicion that a facility provides social services without authorisation, it should commence administrative proceedings by virtue of office.** A reasonable suspicion may be based for example on information given on the website of the facility, provided by witnesses, acquired during the authority's own activities or activities of other administrative bodies. In the course of administrative proceedings followed by the Defender, for example, the regional authority proved that the facility had provided a number of services having the character of social services; the employees had provided all-day nursing care to persons dependent on assistance, administered medication and applied regimen measures. The authority based its findings on documentary evidence, own inquiries performed in the facility and also a report of the Public Defender of Rights.

# 7/ Public Guardianship

The exercise of public guardianship (based on substantive law) by municipalities or, more precisely, by an authorised employee of a municipal office constitutes the exercise of governmental authority within delegated competence according to the case-law of the Constitutional Court and therefore falls within the mandate of the Defender. In 2013 the Defender obtained findings regarding this area of public administration by inquiring into specific complaints and also by performing systematic visits.

It might be mentioned that **lacking legal regulation of guardianship and insufficient methodological guidance** are very limiting factors in this area. Although the new civil law goes into more detail with respect to so-called supportive measures, it still does not enable effective protection of the rights of persons under guardianship, who mostly comprise persons with limited legal capacity. It is not specified what falls under the performance of the public guardian's duty or what its basic principles are. As a result, guardians are not sure as to the scope of their activities and interpret the best interest of the person under guardianship in various ways. Moreover, municipalities often struggle with insufficient staffing and funds in this area.

## Deciding on hospitalisation and placement in residential social services

The Defender encountered a shortcoming in the decision-making of public guardians regarding principal issues in the life of persons placed under guardianship, specifically, regarding hospitalisation or the removal of persons from natural environment and their placement in residential social services. The nursing model, characteristic by the protection of persons with mental illness and their placement in institutional facilities, where they will get better care, is deeply rooted in public guardians.

The Defender dealt with a complaint of a psychiatric hospital patient regarding his hospitalisation commenced on the basis of an approval of a public guardian, whose action, moreover, the complainant regarded as the cause of the hospitalisation. Within voluntary hospitalisation he was restricted in the freedom of movement (he could not leave the hospital) and spent a considerable amount of his income on healthcare regulation fees every month. Although as of 1 January 2013 in the case of persons hospitalised in a psychiatric hospital on the basis of the public guardian's consent, court proceedings may be conducted on the permissibility of the admission and holding of such persons in the facility, no one had filed an application for their commencement until the Defender intervened. By the proceedings, the right of the person under guardianship to the protection against arbitrary restriction in freedom was carried out and the status of his hospitalisation, which had been de facto involuntary, was adjusted.

The Defender also dealt with cases when **the future of the person under guardianship had been decided without the public guardian's consulting the person's life situation** with other persons providing support and assistance to the person under guardianship (close persons, physician, employees of health and social services). In one case, the guardian even declined an offer of communication, stating the absence of a statutory requirement to communicate with persons providing care. Such approach is fundamentally at variance with the currently promoted concept of "supported decision making".

*Inquiry on own initiative, File Ref. No.: 7402/2013/VOP/JR*

***It may be in the interest of a person under guardianship (and it may be a duty of the guardian) to consult the life situation of the person under guardianship with experts who are in contact with such person.***

***The person under guardianship has, as a person with disability, a right to life in natural environment. The guardian should endeavour to make it possible for such a person to lead an independent way of life and to that end the guardian should take advantage of all the services available.***

*A public guardian decided on the placement of a person under guardianship to a remote home with special regime. She was prepared to sign a contract on the provision of social service, despite a disagreement of the person under guardianship (after his previous indecisiveness) and a negative opinion of his outpatient psychologist and a field psychiatric team, who were in regular contact with the person. The public guardian refused to communicate with the persons regarding the matter.*

*The person under guardianship (suffering from schizophrenia) was stable in his natural environment, he had a lease for an indefinite period of time, was employed, was in a regular care of the psychiatrist and the psychiatrist team (three times a week), and had a home care service arranged. That mode of care was evaluated as optimal by the client and the staff involved. However, the guardian saw the best interest of the person under guardianship in safe environment of the home with special regime, where a place had become vacant. The matter was resolved by suspending the person's registration at the facility.*

*With respect to obligations arising from the Convention on the Rights of Persons with Disabilities, when public guardianship is performed, attention needs to be paid to the integration of persons under guardianship (including persons with permanent mental illness) in society. To this end, a social service that is restrictive as little as possible should be selected.*