



Public Defender of Rights
OMBUDSMAN

PROTECTION AGAINST ILL-TREATMENT

2015

REPORT OF THE PUBLIC DEFENDER OF RIGHTS
AS THE NATIONAL PREVENTIVE MECHANISM



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Explanatory notes

 website link

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Public Defender of Rights

Protection of Persons Restricted in their Freedom

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FOREWORD

Dear Readers,

The Report you are opening is a report on my activities in the field of prevention of ill-treatment in 2015, the tenth year of the Public Defender of Rights in the role of the National Preventive Mechanism of the Czech Republic. We had been preparing the Report with a view to provide information on the systematic visits we performed and other our activities, but also to offer an insight into what is important right now in the area of prevention of ill-treatment in the Czech Republic, what topics are the so called "hot ones". If you quickly leaf through the text and then start reading the first chapter, which is dedicated to individual topics and broader context I will be delighted. You may wonder, you may challenge our conclusions and perhaps proceed to discuss those with us.

The level of monitoring and efficiency of the related work – such as the formulation of recommendations, the legislative comments, and the awareness-raising – represents a constant challenge. Therefore, we keep reviewing methods of work, actively work together with our foreign colleagues and counterparts and refer to the principles of operation of the National Preventive Mechanism as laid down in the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Independence – both functional and financial – is the main pillar of this work. We also attach great importance to inviolability of the gathered confidential information.

We are gradually building up patience as we endeavour to work systematically, with a long-term perspective. How to do so can be learned from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which has been active in Europe for 25 years. The Committee's recommendations have been shaping the approach to restrictions of freedom in the Czech Republic from a long-term perspective, where in 2015 NPM, as the national experts, contributed to the Government's dialogue with the CPT over the Committee's most recent report for the Czech Republic. At the UN level, we wish to draw attention to the clear message of the Subcommittee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment (SPT) concerning the concept of prevention of torture and ill-treatment – it means more than mere observance of legal commitments. In fact the concept represents a multilateral and interdisciplinary effort which encompasses – or should encompass – everything possible that in any given situation can help reduce the likelihood or risk of torture or ill-treatment.

You are welcome to join us in this effort. If you like the Report, we will appreciate if you disseminate it further, spread the word. It is also available online, together with individual summary reports from other areas of our work. Please check out also the Register of Defender's Opinions ([ESO](#)).

I hope you will find this Report inspiring.

Anna Šabatová

1. Summary

Visited facilities 2015





Facilities for detention of foreigners (FDF)



Police cells (PC)

Prisons

Hospitals for long-term patients (HLP)

- 22**  **systematic visits in 2015 were carried out by the Defender's team** (3 prisons, 8 police cells, 8 hospitals for long-term patients, 3 visits in the facility for detention of foreigners)
- 6x**  **penalties imposed by the Defender which were mostly communicated to general public** For the first time ever, the Defender also turned directly to the Government requesting that it adopts measures.

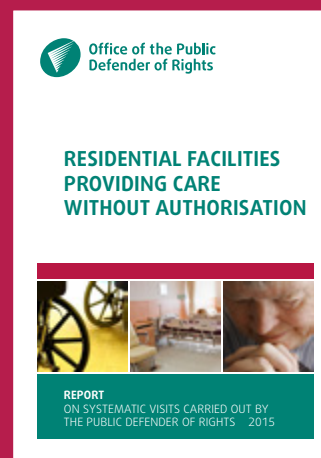
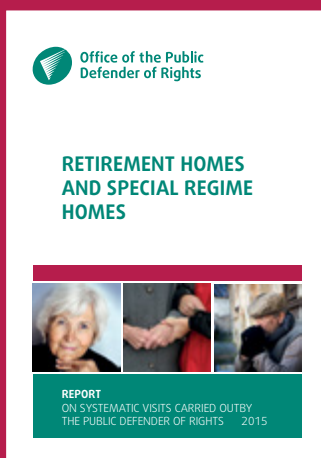
In 2015, the team of the national preventive mechanism consisted of:

- 7**  **lawyers**
- 4**  **interpreters**
- 14**  **external experts** (7 physicians, 6 nurses and a penologist)

10 highlights of 2015

1

In 2015, the Defender released two thematic summary reports on her findings from the systematic visits: Report on Visits to Residential Facilities Providing Care without Authorisation and Summary Report on Visits to Retirement Homes and Special Regime Homes. The Defender sent the reports in printed form to dozens of parties concerned. The interest of experts in social services was such that it was necessary to print additional copies.



2

Six times, prevention of ill-treatment was subject to the submission of comments on draft legislation. Systemic recommendations concerning prevention of ill-treatment were discussed during negotiations with the representatives of the Ministry of Health, Ministry of Labour and Social Affairs, Ministry of Education, Youth and Sports and the Ministry of the Interior and also with the Director General of the Prison Service.

3

In the interest of people at risk of ill-treatment in residential facilities providing care without authorisation, the Defender turned directly to the Government and was successful. The Government tasked the Minister of Labour and Social Affairs with taking steps towards ensuring availability of social services for the elderly and the ill. A plan of actions to address availability of services is to be incorporated into the planned National Strategy for Development of Social Services in 2016-2020 in order to avoid further spread of unregistered facilities.

4

Some other topics from **the recommendations and proposed remedial measures submitted in the past moved closer to resolution** in 2015. These included: ensuring safety in the operation of sobering-up stations, setting up independent supervision in facilities for detention of foreigners defining standards for staff and material and technical resources for residential social services.

5

New topics have also emerged, such as undesirability of accommodating children in detention facilities for foreigners, treatment of prisoners with disabilities or mental disorders and maintaining confidentiality on the part of the staff.

6

In relation to preparation of foreigners for termination of their stays in facilities for detention of foreigners and the problem of automatic handcuffing during escorts, **the Defender combined her findings made within the mandate as the national preventive mechanism and in the monitoring of expulsions.**

7

The critical situation in the Facility for Detention of Foreigners in Bělá-Jezová demanded special attention. Four visits to the facility were carried out in a period of 12 months, where the situation in the summer and autumn of 2015 met the criteria of ill-treatment, especially in relation to children. The Defender intensely negotiated with the Minister of the Interior in order to ensure a remedy and presented the case to the media.

8

Dialogue and exchange of experience with colleagues from national preventive mechanisms in Europe has long contributed to training of the Office's employees and development of work methods. Ten times in 2015, the Defender sent her colleagues either to participate in educational events abroad or to study visits, or participated in such events herself.

9

With a view to increasing awareness of ill-treatment, the Defender held 2 press conferences and published 12 press releases and 48 online updates. To establish professional dialogue and to raise public awareness in relation to authorities, facilities and experts, the Defender held two roundtables and one conference; the employees of the Office actively participated in 30 other events. The Defender succeeded in broadening dialogue with the Public Prosecutor's Office; she offered two opinions to the Constitutional Court on complaints heard and the Office also participated at an expert level in preparation of the Government's response to the CPT Report.

10

2015 was the Defender's tenth year in the role of the national preventive mechanism of the Czech Republic. A special annex to this Report and a bilingual leaflet are dedicated to the anniversary.

2. Topics concerning prevention of ill-treatment in 2015



For the prevention of torture and other cruel, inhuman and degrading treatment or punishment, the national preventive mechanism submits recommendations to the competent authorities with the objective of improving treatment of persons deprived of liberty and the conditions in which they are held and is involved in dialogue on implementation of the recommendations [in the sense of Article 19 (b) and Article 22 OPCAT].

This chapter offers information on 10 topics that either arose or began to be systematically addressed in 2015 based on previous discussions. Promoting them was a matter of considerable efforts that were often successful.

A/ Maintaining confidentiality

Ten years of systematic visits and communication with the facilities visited as well as governmental authorities, local government and prosecuting bodies have exposed the issue of confidentiality. Some of the ascertained cases of ill-treatment came to the attention of the public and authorities, who requested details and underlying documents. One of the cases is even pending trial and it is possible that the employees of the Office who carried out the relevant systematic visit will be called to the witness stand. A legal issue arose with respect to the relation between legislation and the Optional Protocol (OPCAT) in determining the scope of confidentiality.

Under the legal regulations, the Public Defender of Rights is bound by the confidentiality obligation. Exemptions from confidentiality are generally possible, subject to the prior consent of the Chamber of Deputies of the Parliament of the Czech Republic. The law further stipulates that governmental bodies, including prosecuting bodies, may inspect the Defender's files or remove such files only on the basis of a law and with the consent of the Defender or, if the Defender denies consent, with the consent of the Speaker of the Chamber of Deputies. However, in relation to the activities of the national preventive mechanism, the requirement of Article 21 (2) OPCAT comes to the forefront. "Confidential information

collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned."

The Optional Protocol sets out the obligation to maintain confidentiality of the collected confidential information and not to disclose personal data without the consent of the persons in whose case the national preventive mechanism intervenes. In terms of the sense and purpose of the Optional Protocol, confidential information means all information related to the protection of persons restricted in their freedom or other persons (such as witnesses) against reprisals from facility operators or governmental authorities. The basic principle of international humanitarian law – "do no harm" – finds a full application in this respect; monitoring observance of human rights must not aggravate the situation of an individual. Thus, in this particular area, the Public Defender of Rights may not be relieved of confidentiality.

Under the Czech Constitution, OPCAT is part of the legislation and where OPCAT stipulates otherwise than a law, OPCAT shall prevail. Consequently, situations may arise in which no exemptions from the Defender's confidentiality obligation apply.

B/ Children in the detention of foreigners

The Defender repeatedly pointed out that the living conditions of children accommodated together with their parents detained in the Facility for Detention of Foreigners in Bělá-Jezová constitute infringement of fundamental rights of the child and amount to ill-treatment. We visited this particular facility four times over a period of twelve months.

Findings from autumn 2014

Families with children are accommodated separately from others; nevertheless, the facility is a typical place of detention, with security elements consisting in high barbed-wire fences, uniformed security guards, strict regime and very few features allowing children to play and spend their time actively.

- **The main recommendation of the Defender was to avoid placing families with children in the Facility for Detention of Foreigners in Bělá-Jezová.**
- **After unsuccessful discussions with the Refugee Facilities Administration, the Defender informed the Ministry of the Interior that the conditions for the stay of children could have violated Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms and did not comply with the principle of the best interests of the child in the sense of Article 3 of the Convention on the Rights of the Child.**

Developments in 2015

In the course of the year, the authorities were responding primarily to the dramatic increase in the number of foreigners they had placed in the Bělá-Jezová facility. The original capacity of 270 beds was increased to 700; people were accommodated also in container units, tents and the gym. In August, 659 people stayed in the facility behind barbed wire, of which 147 were children. In October, 100 of the 397 people inside were children.

- The ill-treatment of children continued and even intensified (see p. 21). The treatment ascertained in mid-2015 could be classified as degrading.
- The Refugee Facilities Administration did not adopt sufficient measures in response to the urgent recommendations of the Public Defender of Rights and only attenuated the situation. The Defender informed the Ministry of the Interior and the public.



Persons who have been detained for the purpose of administrative expulsion or transfer to another country are placed by the Czech Police in the facility for detention of foreigners. Based on a decision of the Ministry of the Interior, persons who have applied for international protection in the facility for detention of foreigners must stay in that facility. The decision on detention does not apply to children, but they are accommodated in the facility together with the detained parents.

 Information on procedures in imposing penalties and reports from visits are available on our website at bit.ly/det_foreigners and a press release at bit.ly/Bela_Jezova_ENG

Although the conditions in the Facility for Detention of Foreigners in Bělá-Jezová gradually improved (increasing the number of social workers, removal of the demonstrations of power on the part of the guards, introduction of games for children, etc.), the fundamental problem of placing children in a detention facility has not been solved.

C/ Independent supervision over detention of foreigners

The Public Defender of Rights has long emphasised the Public Prosecutor's Office's lack of authorisation to perform supervision in facilities where foreign nationals are detained.

The Public Prosecutor's office performs supervision over observance of legal regulations at places where personal freedom is restricted, based on a statutory authorisation. The scope, conditions and authorisation of public prosecutors in exercising supervision are regulated by special laws.

The Act on Residence of Foreign Nationals, which regulates detention, does not stipulate the supervisory authorisations of the Public Prosecutor's Office. It entrusts supervision to the Ministry of the Interior, which thus performs the role of operator of the relevant facility (through its organisational component – Refugee Facilities Administration) and also the role of supervisory body.

Due to the absence of an independent supervisory body bestowed with adequate powers, the Czech Republic fails to comply with Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms stipulating the right to an effective remedy for persons whose personal freedom and private and family life have been restricted and who are endangered by ill-treatment.

Following the ill-treatment ascertained in the Facility for Detention of Foreigners in Bělá- Jezová in 2015, the Defender again recommended introduction of independent supervision over compliance with legal regulations in facilities for detention of foreigners by a judicial authority other than a court, where such authority would be entirely independent of the Ministry of the Interior.

D/ Preparation of a foreigner for departure from the country

The Defender pointed out systemic shortcomings in the area of preparation of detained foreign nationals for departure from the country and provision of information on the release from a facility: foreign nationals were not being prepared for departure from the facility and did not receive information on the date and time of the departure. Long-term efforts have brought an amendment to the law and, hopefully, improvement in the treatment of foreign nationals.

The Defender's inquiries show that the deprivation of liberty in a facility for detention of foreigners, magnified by the prospect of forced departure from the Czech Republic where the foreign nationals have often lived for several years, is very stressful. Unaware of the upcoming events, foreign nationals

are often concerned about their fate. The stress involved may be a problematic factor in the actual expulsion or transfer process. On the other hand, preparation helps the foreign national cope with the situation, reduces the risk of self-inflicted harm, suicide and other behaviour on the part of the foreign national that would preclude him/her from leaving the Czech Republic. Crisis situations can be prevented and eliminated. Help and advice for the first moments of life out of detention, or reintegration in the country of origin, are very important. The foreign nationals themselves are unable to obtain them.

A foreign national subject to expulsion or transfer must be advised of the date and time of transfer in advance. This enables him/her to prepare (with assistance of the detention facility's staff) for release from the detention facility, to cope with the situation, to inform the family and close persons and the legal counsel, to settle personal matters and affairs, to say goodbyes to persons he/she befriended in the detention facility, etc.

However, the Refugee Facilities Administration, which employs social workers and declares provision of psychological and consultancy services, did not carry out such preparations. Neither the Residence of Foreign Nationals Act nor any other regulation in the area of the law on aliens expressly stipulates the duty to prepare foreign nationals for release from a facility and to inform them of the date and time of release. Nevertheless, the legitimate need of a foreign national to be informed sufficiently in advance of all the processes associated with expulsion or transfer, in a language he/she understands, is based on a number of international standards concerning the treatment of detained foreign nationals.



Foreign nationals should be informed of the date and time of their expulsion

We dealt with the case of a foreign national who was to be transferred to another member state of the European Union based on the Dublin III Regulation. The foreign national was not advised of the date of the transfer beforehand. At 1:40 a.m. an officer of the Ministry of the Interior accompanied by police officers knocked on the door of his bedroom, advising him that he would be immediately escorted to Italy, the country competent to assess his application for international protection. Before this, he had only been generally informed about the mechanisms of the Dublin III Regulation and knew he would be transferred to Italy at some point. However, they had not advised him of the date and time of transfer due to fear of obstruction or hindering of the transfer. Yet the statements of the authorities concerned, as well as the documentation gathered (personal file from the stay in the facility, medical records), did not reveal any risks that would justify such concerns.

Recommendations of the Defender

- **Standardise procedures for work with foreign nationals leaving detention facilities:** If they cannot be referred to direct help, they should at least obtain contact details of the organisations that can help them in the first moments after returning to the country of origin (overnight accommodation, contact with authorities). Many foreign nationals return to the country of origin after several years, and if they cannot expect help from the family or friends, they often have no place to return to.
- **Inform the detained foreign national in advance of the date and time of release from the facility.**

The Defender made this recommendation also in her comments on the discussed draft amendments to legislation. Since December 2015, providing for preparation of foreign nationals for release from a detention facility has been a duty expressly stipulated in legislation. The Police and the Ministry of the Interior must inform the detained foreign national of the date, time and reason for his/her release from the facility for detention of foreigners, or from asylum proceedings, not later than 24 hours in advance, unless there is reasonable concern that the foreign national would obstruct or hinder the departure from the country. If the Police or the Ministry do not know the date and time reasonably in advance, they shall inform the foreign national without unnecessary delay after obtaining these details.

 The Constitutional Court indirectly supported the Defender's view concerning the need to prepare and inform foreign nationals, in its Judgement File No. ÚS 860/15 of 27 October 2015

E/ Handcuffing during escorts

The Defender criticises automatic handcuffing of foreign nationals during police escorts.

The inflexible approach of police officers to handcuffing during escorts was ascertained in the process of expulsion monitoring. Therefore, during the systematic visits to facilities for detention of foreigners in 2014, the Defender analysed 180 escort decisions. The analysis confirmed that handcuffing was always used:

- The police officer in charge of planning escorts determined in all cases that the person being escorted would be handcuffed. In each of the decisions, the handcuffing was justified as follows: "There is reasonable concern that the security of persons and property or protection of public order may be at risk, or that the detained person may attempt to escape."
- The police indeed used handcuffing in 158 of the total 180 escorts. In 22 cases handcuffs were finally not used, as follows from the notes of the escort commander manually inscribed in the escort decision, without any substantiation.

Handcuffing may be very humiliating. Especially persons applying for international protection in another member state of the EU detained in the Czech Republic for the purpose of transfer under the Dublin III Regulation stated they were no criminals and had committed no criminal act. They did not understand the purpose of handcuffing and regarded it as gross infringement of their dignity. Cases where parents were handcuffed before their children were also not uncommon.



Handcuffs were used in 88% of all escorts

89% men, 79% women and 50% minors were handcuffed.



Legal analysis

Handcuffs (or restraining belt, or escort chains) represent coercive means under the Act on the Police of the Czech Republic. A police officer has the right to use coercive means suitable for achieving the objective pursued by the action, making sure that the person concerned does not suffer harm that would be clearly disproportionate to the nature and hazardousness of his/her unlawful conduct.

Handcuffs and means of preventing spatial orientation may be used inter alia against a detained person “if there is reasonable concern that the security of persons and property or protection of public order may be at risk, or that the detained person may attempt to escape”. To a certain degree, this represents preventive use of coercive means.

The decision on handcuffing an escorted person is made by the escort commander. The commander must always assess justification of the use of handcuffs on an individual basis. Police officers must make sure that they act in manner not causing unjustified harm to anyone and in a manner which does not go beyond what is necessary to achieve the objective of the action.

The abovementioned general justification of the use of handcuffing in escort decisions makes it impossible to objectively assess whether handcuffing in a specific case complied with the statutory conditions.



The European Court of Human Rights examined handcuffing or other coercive means e.g. in *Hénaf v. France* (par. 56) and *Kummer v. the Czech Republic* (par. 63-64) or *Raninen v. Finland* (par. 56). The Court found that handcuffing did not violate the Convention for the Protection of Human Rights and Fundamental Freedoms insofar as it was imposed in connection with a lawful arrest or detainment and was not accompanied by the use of physical force or public exposure of the person concerned in a manner which cannot be reasonably regarded as necessary and proportionate under the given circumstances. In this respect, it is decisive whether there is a reason to believe that the person concerned will attempt to obstruct arrest, escape, cause injury or damage or destroy evidence. The Court always attaches great importance to the circumstances of every case and examines whether the use of coercive means was necessary. Nevertheless, the established case-law allows the general conclusion that coercive means may not be used just because this is generally permitted by the legal regulations. Any coercive measures must pursue a legitimate objective and must be proportionate.



Solution

The Public Defender of Rights recommended to avoid automatic handcuffing of all escorted foreign nationals and to use coercive means only in justified cases.

Proper use of handcuffs in escorting a foreign national is conditional on systematic preparation of the person concerned for release from the facility and timely notice concerning the date, time and grounds of departure from the facility unless there is justified concern that the person would obstruct or hinder the departure from the country.

The Defender recommended that the Police:

- **Create an effective system of exchange of information on escorted persons between the Police and the Refugee Facilities Administration.** The objective is to obtain relevant information on a foreign national collected during his/her stay in the facility and preparation for release. Such information may, in certain cases, legitimise handcuffing during escort.
- **Always evaluate handcuffing during escorts on a strictly individual basis, taking into account the principle of proportionality.** Reasonable safety concern must be supported by concrete findings. Any other concern is not reasonable and makes the use of coercive means illegitimate. In addition, for the purposes of subsequent inspection, there is no other solution that would ensure that the reasonability of handcuffing is (at least partly) reviewable.

F/ Social services: standards for staff and material resources

The systematic visits to social services facilities for the elderly have shown that some registered facilities lacked sufficient material resources for providing care or lacked personnel, which resulted in ill-treatment of clients.

The conditions for registration for the provision of social services are laid down in the Social Services Act. However, the Act does not set requirements for staff and material and technical resources necessary for individual types of services to a sufficient degree of clarity and predictability, and hence fulfilment of the conditions for registration does not guarantee safety and quality of the social services provided. In addition, the legal regulations do not provide sufficient support for cancelling registration when the above shortcomings are found.

Therefore, the Defender recommended that the Ministry of Labour and Social Affairs define the standards for material and technical resources in the provision of residential social services through an implementing regulation. This requires inserting the relevant authorisation into the Social Services Act.

The Ministry promised the Defender to regulate the registration conditions through a “major amendment” to the Social Services Act effective from 1 January 2017. Considering the expected scope of the amendment, the Defender is concerned that the planned effective date needs to be postponed. Therefore, she exercised her authority to turn directly to the Chamber of Deputies of the Parliament and proposed that the required authorisation to issue an implementing regulation be inserted in the Social Services Act through a Deputies’ motion.

G/ Ill-treatment in residential facilities without authorisation

In 2012–2014, visits were made in nine residential facilities that provided social services without proper authorisation. In 2015, the Defender continued her endeavour to stop this phenomenon which is accompanied by ill-treatment of the elderly.

Why is provision of care in accommodation facilities without authorisation dangerous?

These so-called unregistered facilities evade the system of mandatory registration and inspection of social services. It has been found that they focus on vulnerable people among the elderly, people with disabilities and mental disorders, misusing dependence on the services provided. To some extent, they make use of the lack of services provided on a legal basis.

Why ill-treatment?

The Defender identified ill-treatment in all the visited facilities. Depending on the circumstances, such ill-treatment consisted in insufficient or unsuitable foods and the absence of prevention of malnutrition, in amateurish provision of nursing care (including the treatment of wounds), in restrictions of the freedom of movement of clients, in careless disposition of medication, in accelerating the onset of incontinence, in degrading hygienic conditions and in a lack of respect for privacy.

How can the problem be solved?

The solution is to close the existing facilities (and, in an extreme case, prosecute those responsible for them) while ensuring availability of proper social services. In the first step the Defender called on each of the facilities visited to immediately create grounds for successful registration of the social service or to cease operation.

However, the facilities did not follow the recommendation

Considering that most of the facilities did not comply with the recommendation, the Defender had to publicise her findings. To raise awareness of this issue, she also prepared an information leaflet and set up a special page on her website. The public responded emotionally to the information and demanded a solution.

Summary report on systematic visits

At the beginning of 2015, the Defender released a report on systematic visits to residential facilities providing care without authorisation. In the report, she described her findings and also provided a detailed legal analysis including the status of general practitioners. She also formulated her recommendations to citizens, authorities and politicians. The Defender sent the report to dozens of prosecuting bodies and discussed it with the Ministry



of Labour and Social Affairs, the Supreme Public Prosecutor and representatives of the Regional Authorities; she also informed the Deputies.

What the State can and should do?

Operating an unregistered facility represents administrative offence which may be prosecuted and fined by the Regional Authorities. In addition, governmental authorities have the duty to avoid ill-treatment.

- In all the facilities visited, the Defender urged the competent Regional Authority to initiate proceedings on the administrative offence of unauthorised provision of social services. The Defender subsequently monitored their steps and instigated guidance provided by the Ministry of Labour and Social Affairs.
- In four cases the Defender turned to the prosecuting bodies, asking them to assess whether the severity of the ascertained ill-treatment reached the level of a criminal offence. The Defender's instigations suggested the possibility of criminal offences of unauthorised operation of a business and, in one of the cases, the criminal offence of bodily harm caused by negligence and the criminal offence of failure to provide assistance.



Report on residential facilities providing care without authorisation

- The report describes our findings from the visits in 9 facilities.
- The report explains why it is dangerous to tolerate provision of social services without rules, registration and inspection.
- It contains recommendations and advice for people interested in social services, physicians, authorities, guardians, criminal prosecuting bodies.



The publication is available on our website at bit.ly/fac_without_aut



The Defender turned to the Government and succeeded

The existence of unregistered facilities is partly due to unavailability of registered social services, both residential and field services. After negotiating with the Ministries, the Defender turned directly to the Government with the result that the Government tasked the Minister of Labour and Social Affairs with taking steps towards ensuring availability of social services to the elderly and the ill. A plan of actions to address availability of services is to be incorporated into the planned National Strategy for Development of Social Services in 2016-2020 in order to avoid further spread of unregistered facilities. The Government also accepted the Defender's general recommendation for systematic steps against unregistered social services facilities to ensure the State guaranteed that the elderly were not exposed to ill-treatment.

H/ Safety in sobering-up stations

The series of systematic visits to sobering-up stations carried out in 2013 and 2014 revealed a number of problems concerning safety and the risk of ill-treatment. The Defender discussed them in her summary report:

- **One of the key issues in sobering-up stations is ensuring safety.** Risks involve especially the inability of the personnel to react quickly to aggression on the part of the detained. This is mainly due to the insufficient staffing (insufficient number of staff, predominately female staff members) as well as insufficient material equipment (no signalling equipment from rooms, absence of rooms for solitary confinement of aggressive individuals).
- **In a majority of the sobering-up stations visited, the Defender found serious shortcomings in the use of restraints** (unauthorised use of restraints, insufficient supervision of persons subjected to restriction, order to use restraints given by an unauthorised person, excessive duration of restriction and gaps in the documentation).
- The Defender recommends an improved statutory definition of the **conditions under which personal freedom may be limited in a sobering-up station.**
- A large part of the shortcomings found during the visits to the sobering-up stations was caused by insufficient statutory regulation, which includes also the ambiguous legal basis for the service.

Therefore, the Defender sent her recommendations also to the Ministry of Health and discussed them during personal meetings in 2015. As a result, some of her proposals are now contained in the Government's bill on protection of health against the harmful effects of addictive substances. Nevertheless, not all the proposals were taken into consideration, and a number of problems are thus likely to persist in everyday situations. The Defender will continue to monitor the introduction of implementing regulations on material conditions and staff of sobering-up stations.

The Defender's recommendation formulated many years ago that the principle of subsidiarity of the use of restraints should be expressly stipulated in legislation is to be implemented soon.



The Summary of Report on visits to sobering-up stations is available on our website at bit.ly/sober_stations

I/ Court and prevention of ill-treatment

Judicial authorities also play a role in combating ill-treatment The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) points out this fact e.g. in connection with the protection of persons remanded in custody [12th General Report CPT/Inf (2002) 15, par. 45].

In general, bringing a person restricted in his/her freedom who has been ill-treated before the judge provides an opportunity to lodge a complaint. Even in the absence of an express complaint, the judge will be able to take action in good time if there are other indications of ill-treatment (e.g. visible injuries; a person's general appearance or demeanour). The CPT considers it important that the judge should record the allegations in writing, order immediately a (forensic) medical examination and take the necessary steps to ensure that the allegations are properly investigated. Even in the absence of an express complaint, the judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment.

The court did not disregard the prisoner's injury

The Defender was approached by a judge from a court which heard the criminal case of a convicted man, A. E. When the judge met the man in the courtroom, she found him in a wretched condition – he had undergone a head surgery because the arresting police officer had broken his skull by hitting him with a weapon. In some respects, the matter fell within the Defender's mandate; therefore, the Defender initiated an inquiry concerning proportionality of the police action and provision of medical care in the prison. The inquiry did not establish any error on the part of the Police and the Prison Service; the Defender also ascertained that the investigation of the circumstances of the serious injury had begun in due time. However, questions arose regarding the police tactics and internal inspection mechanisms of the Police, which the Defender submitted to the Police authorities.

On the one hand, the judge's sensitiveness to the displays of possible ill-treatment of a detained person deserves appreciation; on the other hand, this should be a rule, not an exception.

J/ Specific register of recourse to means of restraint

For many years, the Defender has been recommending that the Ministry of Health amend legislation so that health care services providers keep specific register of, and evaluate, the use of restraints. In 2015, this topic was again included in the agenda of negotiations with the Ministry and comments on draft legislation.



At the time being, a mandatory entry in the patient's medical records is made whenever restraints are used. However, to evaluate the practice of healthcare services providers and to reduce the need for restraints, their use must be recorded in a specific register. The latter should be regulated by law because a mere recommendation in the Ministry's guidelines is not likely to force the providers to comply.

Restraints are used in the Czech Republic not only in psychiatric care but also in other fields. The conditions applicable to their use are stipulated in the Health Care Services Act.

The use of a restraints represents an extremely stressful situation for the patient and the medical staff alike; both groups are endangered by injuries and traumas. This in itself, together with the ubiquitous risk of abuse motivated by making care easier, gives rise to the justified requirement for thorough monitoring and regular evaluation of the use of restraints.

As the Defender ascertained through a number of systematic visits, health care services providers check and evaluate the approach to work with restraints only exceptionally. Internal evaluation could identify weaknesses in the provision of care and compliance with statutory duties enabling the provider to determine remedial measures for the future with the objective of strengthening protection of dignity and health of patients and strengthening safety of the staff in their work.

The introduction of public annual reports on the use of restraints would increase transparency and allow for benchmarking.



The Defender's recommendation was close to fulfilment in 2015 as the Ministry of Health took due note of the comment on the draft new legislation (law on protection of health against the harmful effects of addictive substances, Parliamentary Press No. 508). However, the Government's bill defines register merely as a summary of numerical data ("number of cases in which restraints were used for a calendar year"), without reference to the specific cases in order to ensure evaluation and learning experience. Nor will the records facilitate inspection of the use of restraints. In the Defender's opinion, the bill will only bring additional paperwork resulting in nothing more than statistics.

Thus, the Czech Republic has failed to satisfy the repeated recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and missed the opportunity to perform its international commitment to act preventively against ill-treatment.

3. Systematic visits and recommendations in 2015



The basic task of the national preventive mechanism is to examine on a regular basis the treatment of persons restricted of their freedom with a view of strengthening their protection against torture and other cruel, inhuman or degrading treatment or punishment. Therefore, the national preventive mechanism makes recommendations to the relevant authorities and enters into a dialogue with them on possible implementation measures [see Article 19 (a) and (b) and Article 22 OPCAT].

This chapter provides information on the systematic visits that were performed and, where applicable, on the reports that were prepared and submitted. The text is organised by the type of restriction of freedom. Considering the focus of the Defender's activities in 2015, it discusses the conditions of imprisonment in Czech prisons, treatment in police cells and detention of foreign nationals. The topic of restriction of personal freedom as a result of dependence on care provided was addressed through a series of visits to hospitals for long-term patients. Brief information is presented on the issue of treatment in residential facilities without authorisation to provide social services (a topic which is now being closed) and systemic recommendations are presented following the important series of visits to social services facilities for the elderly.

A/ Prisons

The series of visits to prison was completed

In 2015, the Defender completed the series of visits to seven high-security prisons which had commenced in 2014. The employees of the Office carried out 3 systematic visits, one of which was a follow-up visit. In addition to the Office's lawyers, a physician participated in each of the Defender's systematic visits as an external consultant. These efforts culminated in a summary report released in early 2016.

Basic problem areas on which the Defender gathered her findings and to which she will submit systemic recommendations are as follows:

- prison staff and their working conditions
- prison overcrowding
- employment of convicts
- system of health care
- permanently unemployable convicts (ill convicts and convicts with disabilities)

→ safety and security

→ visits

→ disciplinary rewards and punishments (motivational factors)

In two prisons, the Defender identified the unsatisfactory conditions of imprisonment of convicts with physical or mental disabilities as ill-treatment. Shortcomings were present in the equipment and also in insufficient provision of assistance to persons dependent on the help of others. The very statutory definition of the specific category of "permanently unemployable convicts" is problematic. It emphasises the convicts' unemployability despite the fact that the primary criterion for specific



treatment should consist in their needs following from poor health and lack of self-sufficiency. Convicts with disabilities and long-term ill convicts are a particularly vulnerable group in the prison system and the Defender will demand remedy.



For more details, see the Report on systematic visits of prisons at our website: bit.ly/report_prisons

Implemented recommendations of the Defender for 2015

The dialogue of the Public Defender of Rights with the Director General of the Prison Service continued in 2015. During three work meetings, they discussed both the current topics that arose from individual complaints from prisons (the Office handled 293 such complaints in 2015) and findings from the systematic visits. The topics discussed include, for example, the possible decrease in the price of prisoners' telephone calls in order to facilitate contact with their close ones and providing an interpreter to imprisoned foreign nationals during medical examinations.

Creating a fair and rational system of handling convicts' applications for transfer to another prison. The Defender's long-term recommendation was implemented at last. Effective from mid-October

2015, new internal rules are in force, stipulating that an application for transfer previously dismissed due to a lack of capacity shall automatically be put on a waiting list. If a place becomes vacant in the target prison and the convict is still interested, he or she shall be transferred there.

Convicts have access to hot showers twice a week again. At the recommendation of the Public Defender of Rights, the prisons' duty to allow convicts to take a shower at least twice a week has been incorporated in the Imprisonment Rules (Decree No. 345/1999 Coll.). At the beginning of March 2015, this put a stop to the existing cost-saving arrangement where access to hot showers was guaranteed to convicts only once per week.

Comments on the Prisons Strategy

The Prisons Outlook 2025 was under preparation at the Ministry of Justice in the course of 2015. A lawyer of the Office joined the initiative as an expert consultant, presenting inter alia the key aspects emphasised by the Public Defender of Rights:

→ **Concerns about the present setup of the penal policy. It is necessary to analyse the impacts of the new Criminal Code in view of the constantly**

increasing number of imprisoned persons – prisons are again becoming overcrowded.

→ **Recommendation to reform the system of provision of health care services in prisons. The present system is problematic in terms of availability and quality of care, which is related to the lack of physicians motivated to work in prisons. The Defender considers that the concept of prison health care should be reviewed.**

B/ Police cells

Findings from the visits

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systematic visits to police cells in 2015 were carried out by the employees of the Office.

They ascertained e.g. the following problems:

– Not always does a person placed in a cell obtain a form with advice on their rights and duties.

Sometimes the police provide the form only following an express request. The Defender points out that a person placed in a cell is unable to remember all the information contained in the advice. The person is entitled to advice and this is stipulated in an internal regulation of the Police.

– Police officers often remove medical aids when placing a person in a cell. As a rule, persons placed in cells must be allowed to keep eyeglasses and

other medical aids. Legislation allows them to be removed only in individual cases where a “special” reason has been found. The “special” reason for removal must be indicated in the records.

— In several cases the police failed to provide the persons placed in cells with the food they were entitled to, or the standard of the food was lower than the person was entitled to receive.

Training of police officers continues

Based on agreement with the Police President, the Defender prepared a training programme focused on the protection of the rights of persons placed in police cells. The training is aimed at fostering prevention of ill-treatment, especially in those areas where shortcomings are regularly found during systematic visits. A pilot training took place in October 2014, and in 2015 the lawyers of the Office trained senior employees of police departments in ten regions of the Czech Republic. The training is based on Czech legislation and also the CPT Standards and the case law of the European Court of Human Rights.

C/ Facility for detention of foreigners

Until autumn 2015, the Facility for Detention of Foreigners in Bělá-Jezová was the only facility for administrative detention of foreign nationals in the Czech Republic. The Defender has focused on the facility since the systematic visit of autumn 2014. The year 2015 saw further three visits, intensive negotiations on remedying the issues found and, twice, the Defender’s penalty steps.

Serious errors found in 2014

The systematic visit taking place in October 2014 revealed that

- conditions for the stay of children accommodated in the facility together with their detained parents could have violated Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms and did not comply with the principle of the best interests of the child in the sense of Article 3 of the Convention on the Rights of the Child;
- some restrictions of everyday life of the detained foreign nationals were not legitimate.

The Refugee Facilities Administration of the Ministry of the Interior and the Police of the Czech Republic only complied with some of Defender’s recommendations

and proposal of remedies. The Defender thus had to insist on the following measures:

- **not using handcuffs during all escorts;**
- **making phone calls cheaper by switching to another telecommunications provider;**
- **ensuring access to the Internet;**
- **systematically preparing the foreign nationals for release from the facility;**
- **avoid placing families with children in the Facility for Detention of Foreigners in Bělá-Jezová.**

Therefore, the Defender was forced to contact the Ministry of the Interior directly (penalty procedure under the Public Defender of Rights Act).

Major deterioration in 2015

During 2015, the number of person placed in the facility increased multiple times. The Defender repeatedly visited the facility in person, accompanied by the Office’s lawyers and interpreters.

The treatment she found during the visit was classifiable as degrading, especially with regard to the children placed in the facility.

The foreign nationals were deprived of liberty while lacking any information on their legal standing. Close as well as more distant family members were being separated. The anxiety of the detainees was intensified by the fact that they were unable to contact their relatives. The facility’s equipment as well as the availability of legal advice were insufficient. People perceived the treatment and the conditions they were subjected to as very degrading. There was tension and hostility among the detainees and among the staff.

Parents felt humiliated in front of their children, not least because they were escorted in handcuffs by police officers.

The Defender concluded that the situation presented an acute humanitarian problem. The facility was not prepared, in terms of its equipment, organisation and personnel, to accommodate and provide services to such a large number of persons. The Defender urgently sent her report to all the relevant authorities and also to the Minister of the Interior, Minister of Labour and Social Affairs, Minister of Education, Youth and Sports, Minister of Justice and Minister for Human Rights.

However, the Refugee Facilities Administration did not adopt sufficient measures and only attenuated

the situation. As ill-treatment of the detained foreign nationals continued unabated, the Defender exercised her punitive powers under the Public Defender of Rights Act and informed the Ministry of the Interior and the public of her findings.

Subsequently, the Defender met with the Minister of the Interior twice and received information on steps that were being taken, which eventually gradually improved the conditions in the Facility for Detention of Foreigners in Bělá-Jezová (e.g. increasing the number of social workers, removal of the demonstrations of power on the part of the guards, introduction of games for children, etc.). However, the fundamental problem of placing children in a detention facility has not been solved.

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persons were placed in the Facility for Detention of Foreigners in Bělá-Jezová in August 2015, including 147 children. The original capacity of 270 beds was insufficient and people were accommodated also in container units, tents and the gym.



Information and reports from visits are available on our website at bit.ly/det_foreigners and a press release at bit.ly/Bela_Jezova_ENG

D/ Hospitals for long-term patients

Systematic visits and their purpose

A series of visits to eight hospitals for long-term patients took place in 2015. The visits were carried out by the Office's lawyers and physicians and nurses working as external consultants. Prior to the commencement of the visits, experts were recruited. The Defender received special assistance from the Czech Association of Nurses, the Czech Alzheimer Society and the Czech Society of Palliative Medicine. Within preparation of the programme for inquiry and training of the monitoring team, three excursions to best-practice facilities and an internship with social workers in a hospital were conducted.

Subjects of inquiry: compliance with the right to privacy and respect for human dignity, specific needs of persons with dementia, the degree and manner of ensuring safety of the patients, as well as some nursing issues such as malnutrition, hydration, decubitus care, bladder voiding regimen, and pain management.

What did we inspect?

- provision of safety, privacy and dignified conditions
- arrangements with respect to the specific needs of person with dementia
- use of tranquillizers and restraints
- prevention and management of pain, malnutrition and injuries
- staffing and personnel issues

Co-operation with the experts proved crucial. The combination of the legal and medical viewpoints with respect to the persons deprived of liberty due to their dependence on long-term care turned out to be very important. It was helpful that the experts were present both at the preparation of the programme of visits and during the subsequent evaluation. After the conclusion of the series of visits, the Defender also organised two roundtables with experts and representatives of the facilities visited to discuss with them her findings, evaluations and recommendations. The Defender will publish these alongside the systemic recommendations in the 2016 thematic summary report.

Findings from the visits

The Defender found ill-treatment in one facility. The systematic visits further revealed that the key issue consists in the **lack of patients' privacy** (no screens during bed baths, no rooms for private conversation with the physician, up to six beds in one room, the staff do not knock before entering the room, the patients lack a lockable storage space for their personal belongings).

There were serious errors in the **use of restraints**. Patients in a medical condition that may necessitate the use of restraints lack plans for managing restlessness/agitation and preventing the use of restraints (e.g. how to prevent agitation in the given patient, how to react to it when it occurs) and strategies for using restraints in the most tactful and safe manner possible. These problems, the lack of nursing staff and the common practice of physicians ordering the use of restraints at some point in the future (not at the time of actual danger) may lead to their abuse.

The treatment facilities often do not keep proper records of administering **tranquillizers (agitation medication)**, which may constitute a restraint under certain conditions. The Defender criticised vague prescriptions of ad hoc medication made in advance in expectation of certain complications (e.g. "in case of restlessness/agitation"), leaving wide room to the staff's discretion. After administering agitation medication, the staff often fail to record in the patient's file the time of administration, the description of the situation leading to the administering of medication, and the medication's subsequent effect. This again opens door to possible abuse.

In the area of **nursing care**, the Defender most often recommended to systematically monitor the risk of malnutrition, to better support the patient's self-sufficiency in toileting and to standardise pain management. Some patients die in the hospitals. Despite this fact, they usually do not receive a systematic and standardised **palliative care** and very often there is a lack of proper communication with the patient's close ones. None of the facilities took advantage of the instrument of "living will" – in many cases, the facility staff was not even aware it existed.

What are the major problems in hospitals for long-term patients?

- lack of patient's privacy
- the manner of using restraints
- hazardous use of tranquillizers
- lack of staff available for nursing care



E/ Residential facilities without authorisation

In 2015, the Defender continued to deal with the issue of ill-treatment in residential facilities providing social services without proper authorisation. These so-called unregistered facilities evade the system of mandatory registration and inspection of social services. They focus on vulnerable people among the elderly, people with disabilities and mental disorders, creating conditions which constituted some degree of ill-treatment in all the nine cases that were examined.

In 2015, the Defender informed the public of the conditions in four of the facilities visited that failed to implement remedies based on her recommendations. Specifically, these were the following facilities: Penzion pro seniory Atrium (Atrium – Guest-house for the Elderly) in Liberec, Domov Na kopci (Home on the Hill) in Červený Újezd, Penzion Jiřinka (Jiřinka Guest-house) in Brno, and Domov spokojeného stáří (Home for Comfortable Retirement) in Luhačovice.

After the Defender informed and warned the experts and the broader public, she published a Report on Visits to Residential Facilities Providing Care without Authorisation. She submitted the report to all the competent governmental authorities, including the prosecuting bodies, and asked the Ministry of Labour and Social Affairs to restrict the activities of such facilities and provide help to vulnerable people. The Defender subsequently also approached the Government. For more information, see page 16.



The publication about Facilities Providing Care without Authorisation is available also on our website at bit.ly/fac_without_aut

F/ Social services for the elderly

Releasing information to the public as a penalty

In 2015, the Public Defender of Rights informed the public of the bad situation in the social and health-care services facility Sociální a zdravotní centrum Letiny (Social and Health-care Centre in Letiny). The facility was the target for systematic visits in August 2013 and September 2014. The Defender's dialogue with the management did not ensure remedy of the serious ill-treatment found in the facility (for more details, see the 2014 Report of the Public Defender of Rights as the National Preventive Mechanism, p. 22).



Find more information on our website at bit.ly/Report_Letiny



The Defender believed the situation in the facility was very serious. The case represented only the second penalty by releasing information to the public, even though 128 such facilities had been visited since 2006.

The Defender believes that the State must make steps against ill-treatment if it is found, even if it occurs in a (private) social services facility. The dependence on the care provided puts the users to an especially vulnerable position in which they are unable to protect themselves.

The Defender further required action from the Regional Authority of the Plzeň Region as the competent registration body, the regional branch of the Labour Office in Plzeň, which is authorised to inspect the performance of social services and lead proceedings on administrative offences, and the Ministry of Labour and Social Affairs of the Czech Republic. She continues to monitor their procedure.

Systemic recommendations in 2015

Retirement Homes and Special Regime Homes summary report

In 2015, the Defender issued a summary report including findings from systematic visits of 14 (registered) residential social care facilities categorised as retirement homes and special regime homes. Aside from the description of the findings, the report also contains recommendations on how to achieve a desirable standard of care and a related commentary. The report's main aim is to inform its readers from the ranks of employees in social services that the rights of people to life, freedom from ill-treatment, personal liberty and the right to private and family life can be threatened even in places serving to provide care to people.

The report is available online and has twice been issued in print. The good response we have received so far to this compilation of findings on the current practice of residential social services provided to senior citizens and on the need of a standard of treatment has led to deliberate presentation of the report among the experts.



Report on visits to retirement homes and special regime homes

- Describes findings from the visits in 14 facilities.
- Contains description of good and bad practice and recommendations to serve as guidelines.
- The cause of ill-treatment often lies in insufficient staffing and lack of knowledge of good practice.
- Focuses primarily on the living conditions of the elderly with dementia.



Find the report on our website at bit.ly/retire_homes



Recommendations for the Ministries

The Defender made recommendations to the Ministry of Labour and Social Affairs and the Ministry of Health based on the findings from the visits and asked the Ministries to ensure the recommendations were implemented in practice. The goal of the recommendations is to prevent ill-treatment by improving the systemic framework for provision of residential services to the elderly.

- In order to ensure the needs of the elderly in the area of medical and nursing care are met, the Defender recommends to: draft a solution for funding health care provided to clients of residential social care facilities.
- To avoid any further doubt concerning the use of sedatives, the Defender recommends to: supplement the current procedure recommended by the Ministry of Labour and Social Affairs to pay attention to the use of medication as a form of restraint (measure restricting the freedom of movement); and provide guidelines to inspection enabling it to recognise various regimes of use of sedatives.
- To prevent operation of facilities where conditions prevent provision of services with adequate privacy and which lack sufficient staff, the Defender recommends to: define, through a decree, the necessary standards in terms of staffing and equipment for provision of residential social services.
- To develop services suitable for the specific needs of persons with dementia, the Defender recommends to: prepare the Alzheimer Plan.

4. Other activities of the NPM



Within her activities aimed at boosting protection against torture, cruel, inhuman or degrading treatment or punishment, the national preventive mechanism submits recommendations with the aim of improving treatment of persons deprived of liberty and the conditions in which they are kept, and further submits proposals and opinions regarding the applicable or drafted legal regulations, leads a dialogue with governmental and public authorities and raises awareness of her findings and recommendations [in the sense of Article 19 (b) and (c) and Article 22 OPCAT].

In this part, the report informs of other activities supplementing the performance of systematic visits. Preventing ill-treatment requires to consistently remind and promote the previous recommendations and proposals of remedies and an active approach to dialogue with governmental authorities, experts and the general public. The year 2015 has seen progress and success in this regard. First and foremost, the Defender continued her dialogue with the authorities and raised a number of suggestions with respect to draft legal regulations. She was also successful in offering her expert findings – two times to the Constitutional Court and once during preparation of the Government’s response to the CPT report. A great deal of effort is devoted to expert meetings, training and raising awareness among the public. International co-operation chiefly with European national preventive mechanisms brought, as in previous years, enrichment and a lot of experience. To inform readers from the ranks of our colleagues abroad, we have included a brief summary concerning evaluation and publication of the reports on systematic visits.

A/ Negotiations with government

Compliance with the systemic recommendations and prevention of ill-treatment generally are common topics in the Defender’s dialogue with the top government officials. In 2015, the following discussions took place:

- with the deputy Minister of Health, the Defender discussed safety in sobering-up stations and inspections of the use of restraints;
- with the deputy Minister of Education, Youth and Sports, the Defender discussed the findings from systematic visits and the Defender’s request that the Ministry adopt a decree on quality standards for institutional education and preventive-reformatory care so that the standards could become an instrument for inspections of how the care is provided;
- with the Minister of Health, the Defender discussed the treatment of small children in infant care centres, transformation of psychiatric care and inspection of the use of restraints;
- with a head of a department at the Ministry of Labour and Social Affairs, the Defender discussed the situation in the residential facilities providing social services without authorisation, the failure of the registration system to prevent ill-treatment in residential social care facilities, the response to the ill-treatment found in the social services facility in Letiny and the legal regulation of involuntary stay in social services facilities;
- with the Minister of Education, Youth and Sports, the Defender discussed unifying the system of care of vulnerable children and the quality standards for institutional education;
- with the Minister of the Interior, the Defender discussed remedies to the situation in Facility for Detention of Foreigners in Bělá-Jezová (twice);
- with the head of the Refugee Facilities Administration of the Ministry of the Interior, the Defender discussed the same topic as above;
- with the Director General of the Prison Service of the Czech Republic, the Defender discussed the topics raised by individual complaints from prisons and the findings from systematic visits (three times);
- appearance at a session of the Government – the Defender’s success in recommending steps to prevent further spread of unregistered facilities and to ensure availability of proper social services for the elderly and the ill.

B/ Comment procedures

The Defender responds to draft legal regulations submitted by the Government for comment procedure and she is invited to meetings of the Government Legislative Council. In 2015, she commented on the following draft Acts:

- Draft amendment to Act No. 40/2009 Coll., the Criminal Code, Act No. 169/1999 Coll., on imprisonment and on amendment to certain other related laws, and Act No. 293/1993 Coll., on remand in custody.
Topics of the comments: reduction of the type of prisons, the possibility of court review of the decision on placement in a certain type of prison
- Draft amendment to Act No. 95/2004 Coll., on the conditions for acquiring and recognising professional qualifications and specialised qualifications to perform a medical profession of a physician, dentist and pharmacist.
Topics of the comments: including child and adolescent psychiatry into the basic education fields of physicians
- Draft amendment to Act No. 108/2006 Coll., on social services, and Act No. 292/2013 Coll., on special court proceedings.
Topics of the comments: statutory requirements of the so-called social detention

- Draft amendments to Act No. 326/1999 Coll., on the presence of foreign nationals in the territory of the Czech Republic and on amendment to certain laws, and Act No. 325/1999 Coll., on asylum.
Topics of the comments: preparing foreign nationals for leaving the facility, informing on the date and time of expulsion, public prosecutor's supervision in the facility for detention of foreigners
- Draft amendment to Act No. 373/2011 Coll., on special health care services.
Topics of the comments: statutory requirements for surgical castration
- Draft law on protection of health against the harmful effects of addictive substances and draft amendment to Act No. 372/2011 Coll., on health care services and the conditions for their provision.
Topics of the comments: subsidiarity of use of restraints, taking records of the use of restraints, safety in sobering-up stations, payment for stay in sobering-up stations

The Defender also commented on

- the draft Response of the Czech Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to the Czech Republic from 1 to 10 April 2014.



C/ Opinion provided to the Constitutional Court

The Public Defender of Rights responded to the request of the Constitutional Court and provided to it two opinions as an assistance in obtaining evidence for decision-making in constitutional complaints.

In the first case, she responded to the restriction of personal liberty of families with children and the conditions of their stay in the facilities for detention of foreigners. Repeated visits to the Facility for Detention of Foreigners in Bělá-Jezová brought findings on the conditions and treatment which, in the Defender's opinion, represented ill-treatment, especially with regard to families with children. This constitutional complaint (File No. III. ÚS 3289/14) has not been resolved yet.

The second opinion concerned a constitutional complaint against the intervention of the Police of the Czech

Republic during an attempt to expel a detained foreign national. The complainant believed the procedure of the Police constituted degrading and inhuman treatment. The Defender provided the Constitutional Court with her findings concerning preparing the foreign nationals for leaving the facility for detention of foreigners, the lack of available information on the exercise of administrative expulsion or transfer, and the handcuffing of foreign nationals during Police escorts. In its judgement of 27 October 2015, File No. I. ÚS 860/15, the Constitutional Court took the Defender's argument into account.

D/ Government's response to CPT report

In 2014, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a periodic visit to the Czech Republic. During preparation of the Government's response to the report, several topic-focused meetings with the representatives of the relevant Ministries and facilities took place.

The role of the Office's employees in the meetings was to act as experts in the rights of persons restricted in their freedom and explain the context of the CPT recommendations and standards. In 2015, the report was a topic of a broader discussion among experts, and its

recommendations are important inspiration for the Defender's work.

The CPT standards were also the topic of a recent court decision, specifically the binding nature of international soft-law for the interpretation of the term torture, inhuman and degrading treatment. In its judgement of 27 October 2015, File No. I. ÚS 860/15, par. 59, the Constitutional Court inferred that the recommendations and interpretation of terms provided by expert bodies of international organisations created by an international treaty, specifically the CPT, are authoritative in nature and any deviation on the part of governmental authorities must be very thoroughly and convincingly justified.

E/ Co-operation and education

This part introduces activities which are either directly related to visits (roundtables with experts and representatives of the facilities visited) or draw on the findings from the visits and aim to prevent ill-treatment by means of expert discussion and awareness-raising events.

Roundtable "Individual and systemic recommendations for long-term care" in Brno

A meeting of the monitoring team – lawyers, nurses and physicians – took place after the series of visits to hospitals for long-term patients. The meeting aimed to form clear recommendations and standards based on the obtained findings that could be presented in the Defender's summary report. The experts further offered their opinions concerning the course of the visits and the priorities in the area of prevention of ill-treatment and monitoring in the area of provision of care.

Roundtable "Treatment of patients in hospitals for long-term patients" in Brno

The meeting was a follow up to a series of 8 systematic visits to hospitals for long-term patients. Representatives of the visited facilities, lawyers, external consultants of the Office and other experts participated in the roundtable. The subject of the expert discussion was the standard of treatment that would correspond to the need to prevent ill-treatment of persons dependent on the care provided in the hospitals. The representatives of the facilities visited were able to give their opinion on the Defender's legal assessment and offer their practical experience with the implementation of her recommendations. The Defender simultaneously received feedback on the course of her visits. The conclusions of the roundtable will serve as a source for the Defender's summary report.

Conference "Challenges in Prevention of Ill-treatment" in Olomouc

The Defender organised the conference in co-operation with the Faculty of Law of Palacký University in Olomouc. Speakers from the Office of the Public Defender of Rights presented the 10 years of monitoring of ill-treatment. The next topic concerned the definition of torture in international treaties and the possible implications of the absence of a definition of torture in the Criminal Code for the effectiveness of prosecution of this crime in the Czech Republic. The current topic concerning the binding nature of international soft-law for the national authorities' interpretation of the term torture, inhuman and degrading treatment was also presented.

Meetings with public prosecutors

The Public Prosecutor's Office monitors compliance with legal regulations in facilities serving for remand in custody, imprisonment, preventive detention, and protective or institutional education. In 2014, the Defender concluded an agreement on co-operation with the Supreme Public Prosecutor. In 2015, the Office's lawyers presented the current findings and priorities of the Defender at two meetings with public prosecutors.

Other opportunities to engage in expert dialogue

- In February 2015, the Defender organised an informal meeting in Prague of experts active in various services for vulnerable children. The topic of the meeting included meeting the specific needs of children, connection between health care and social services, and educational-therapeutic regime.
- Within preparation of systematic visits to hospitals for long-term patients, the Office's employees

went on excursions in the hospitals attached to the Bílovec Hospital, the Gerontological Centre in Prague and the Military University Hospital Prague. A multi-day internship focused on social work in hospitals also took place there.

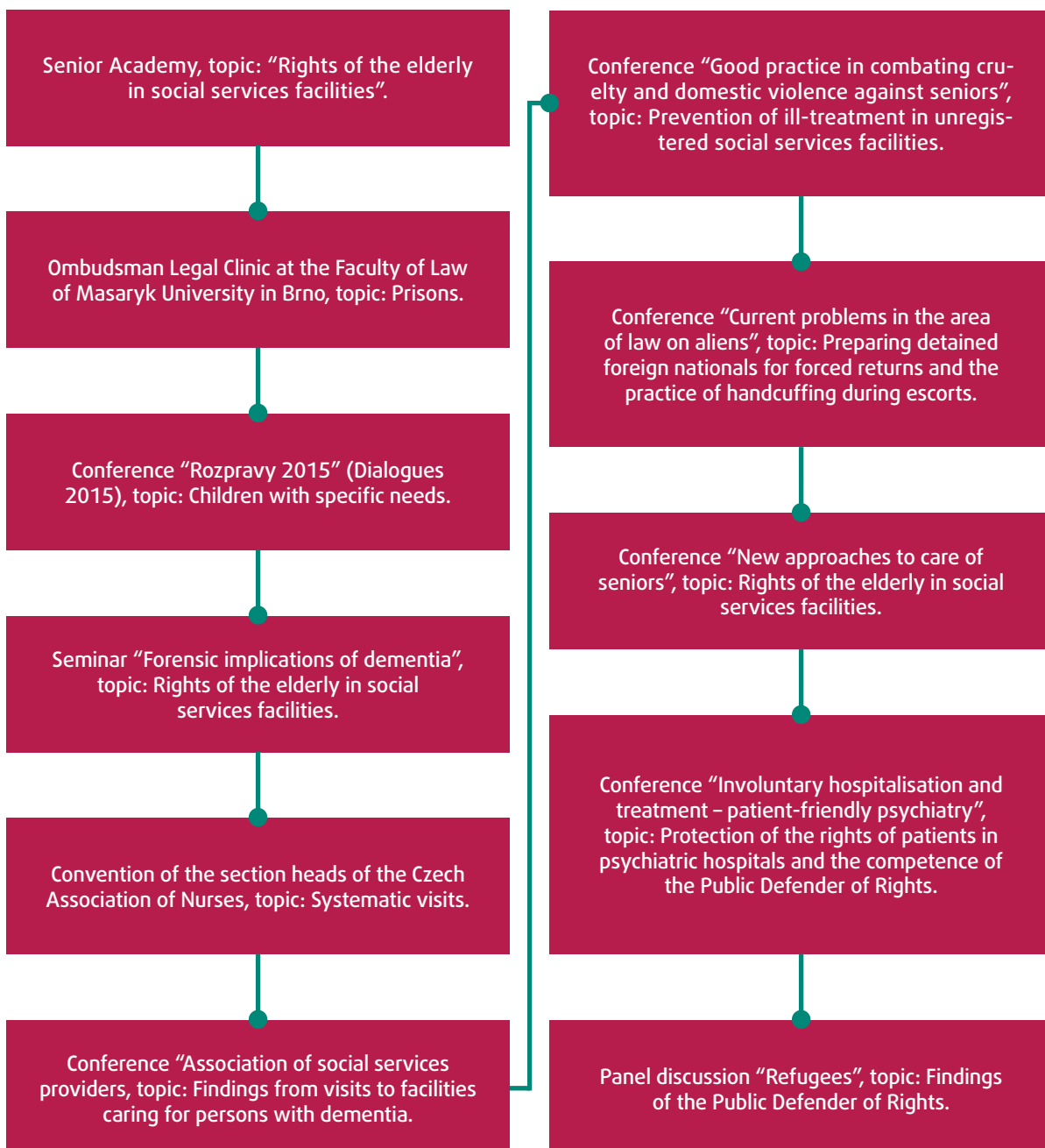
- The employees of the Office regularly attend the meetings of the Committee Against Torture of the Government Council for Human Rights and the Council for Inspection of Quality in Social Services.

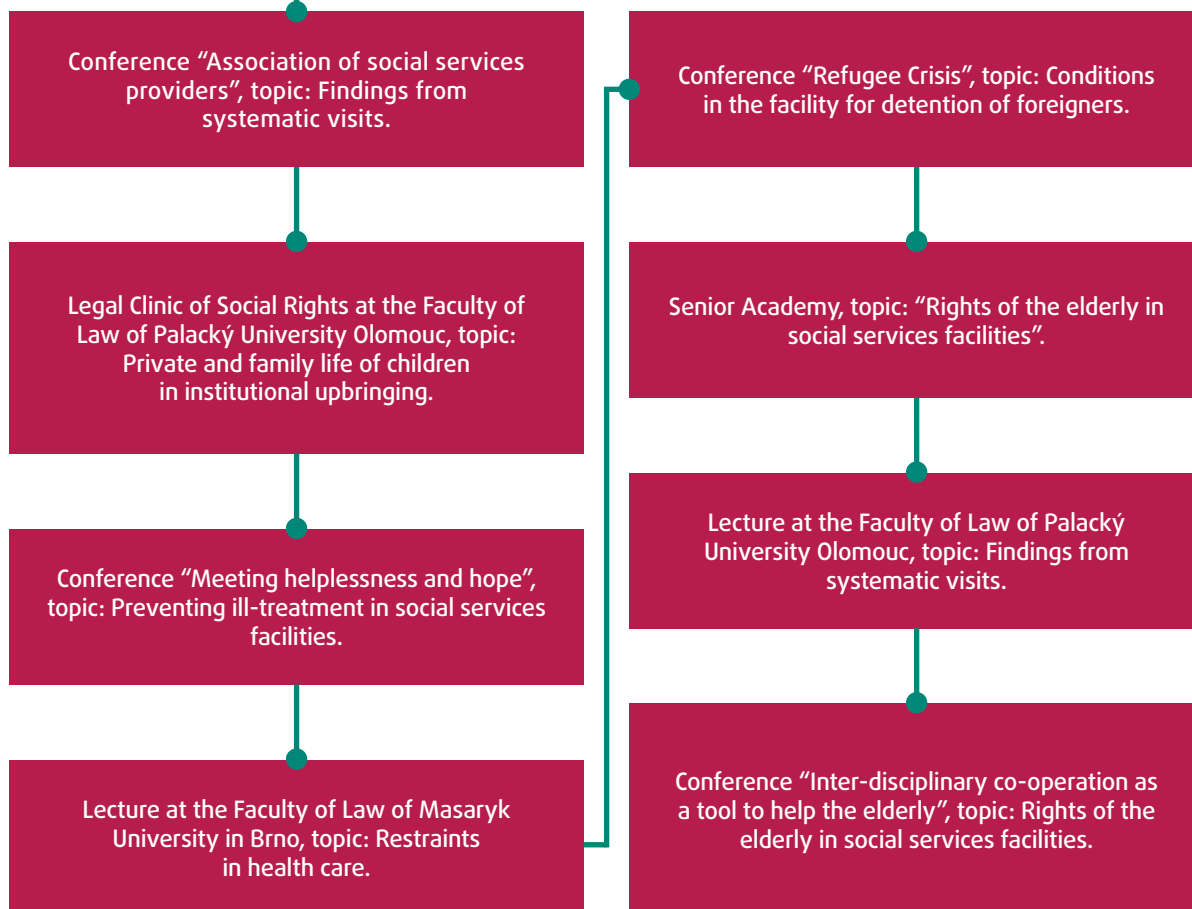
- During 2015, the lawyers of the Office participated as experts in work on the Prisons Outlook 2025 on preparing changes of legislation with respect to involuntary stay in the social services facilities (the so-called social detention).

Training for police officers guarding cells

In 2015, ten training events for police officers responsible for guarding persons in prison cells were organised. The aim of the training was to prevent ill-treatment, especially in areas where the Police had erred according to the findings from systematic visits.

Events with participation of employees of the Office





Contributions to the Social Services journal

Each month, the lawyers of the Office publish an article in the "Sociální služby" (Social Services) journal. Our recommendations in the area of prevention of ill-treatment thus reach workers in facilities where freedom is restricted de facto. In 2015, the published articles dealt with, for example, the importance of a medical opinion in entering into an agreement on social services, the conditions of provision of social services to persons with limited legal capacity, the right to proper medical care, and the position of health-social workers in provision of comprehensive care to patients in hospitals for long-term patients.



Media and public relations

- The activities of the national preventive mechanism have a separate section on the Defender's website at www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom. The website also offers all summary reports and other documents containing the Defender's findings and recommendations, including presentations from educational and awareness-rising events and information leaflets.

In order to inform the public on a continuous basis were published



- 3 of the 9 press conferences held by the Public Defender of Rights in 2015 were devoted to ill-treatment.
- Findings from the Facility for Detention of Foreigners in Bělá-Jezová and from the social services facility in Letiny received the most media attention in 2015.
- A special information leaflet commemorates the 10th anniversary of the Defender acting in the role of the national preventive mechanism.



F/ International co-operation

Sharing experience with national preventive mechanisms (NPM) of Hungary and Austria

In January 2015, the Public Defender of Rights visited the Austrian Ombudsman institution. This was the first meeting devoted to the agenda of the national preventive mechanism.

In March 2015, employees of the newly established national preventive mechanism of Hungary (i.e. the Ombudsman) came to Brno for a two-day visit. The predominantly study visit for the benefit of our Hungarian colleagues also brought, due to the scope of the original mandate of the Hungarian Ombudsman, some valuable experience for our own mandate.

Study visits abroad

A group of lawyers of the Office participated in the excursion in the women's prison in Chemnitz, Germany, together with the employees of probation and mediation service of the Ústí Region.

The end of the year presented opportunities to perform study visits of our colleagues abroad. The employees of the Office visited national preventive mechanisms of Hungary, Spain and Georgia where they studied the methodology of performing visits, the organisation of work and the ways of bringing forward topics from the broad area of prevention of ill-treatment.

The exchange of experience, especially in the area of social work with the convicts, continued through the reciprocal visit to the Světlá nad Sázavou Prison.

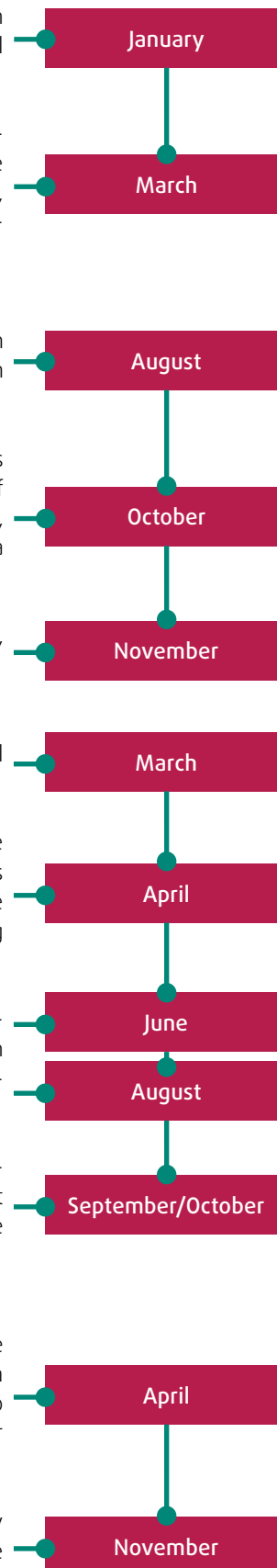
Conferences and workshops abroad

- Strasbourg – The Public Defender of Rights personally attended the international conference “The CPT at 25”.
- Vienna – A lawyer of the Office attended the Conference on effective use of the recommendations of national preventive mechanisms in improving conditions in detention facilities. His discussion contribution focused on sharing experience with organising roundtables concerning the series of visits and targeted training of police officers.
- Riga and Bristol – Of training events abroad, the employees of the Office attended the one at Bristol University focused on preventing ill-treatment of women in prisons and the workshop on implementing the mandate of the national preventive mechanism in the activities of public defenders of rights.
- Visegrad – The meeting of ombudspersons of the Visegrad Group countries focused on the role of the ombudspersons in protecting the rights of the most vulnerable social groups; the Defender also presented her findings from the agenda of the national preventive mechanism.

Short meetings

The agenda of the national preventive mechanism was one of the topics of the meeting between the Public Defender of Rights and the Croatian Ombudswoman in Brno. The Croatian Ombudswoman was planning to use her entire competence to address the issue of protection of rights of the elderly, to which end the Defender provided her reports from 2014 and 2015.

On the occasion of a study visit to the Czech Republic, the Office was visited by Egyptian lawyers active in the area of human rights protection. The agenda of the national preventive mechanism was one of the discussed topics.



G/ Evaluating and publishing NPM reports

Over the past 10 years, the form of the report on systematic visits changed several times. The changes were generally motivated by the effort to increase the transparency and comprehensibility of the text as well as its attractiveness to readers from the ranks of representatives and employees of the facilities visited. Also in 2015, the formal presentation of the report was evaluated by an external lecturer. The lawyers went through a two-day training course focused on precise phrasing and good comprehensibility of the text. A new graphical layout of the report with a better text structure was introduced. The aim of the report is not only to communicate recommendations on the basis of evidence of the problems found. The report should convince and motivate the reader to change procedure

and to prevent unnecessary frustration and opposition arising from criticism or possible misunderstandings. The report is not an end, but rather a beginning of dialogue on adopting the recommended measures; therefore, it needs to be a good underlying document for that purpose.

Until recently, the individual reports from the visits were not released to the public, unless the Defender informed the media as a form of a punitive measure resulting from non-compliance with her recommendations. Beginning with 2016 and onwards, the Defender will be required by law to release the reports on the visits to the public following the conclusion of negotiations with the management of the relevant facility.



Division of Supervision over Places of Detention

ANNEX 1: The mission of the Public Defender of Rights



Pursuant to Section 349/1999 Coll., on the Public Defender of Rights, as amended, the Public Defender of Rights (Ombudsman) protects persons against the **conduct of authorities and other institutions** if such conduct is contrary to the law, does not correspond to the **principles of democratic rule of law and good governance** or in case the authorities fail to act. If the Defender finds errors in the procedure of an authority and if the authority subsequently fails to provide for a remedy, the Defender may inform the superior authority or the public.

Since 2006, the Defender has acted in the capacity of the **national preventive mechanism** pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The aim of the systematic visits is to strengthen the protection of persons restricted in their freedom against **ill-treatment**. The visits are performed in places where restriction of freedom occurs ex officio as well as in facilities providing care on which the recipients are dependent. The Defender generalises his or her findings and recommendations concerning the conditions in a given type of facility in summary reports on visits and formulates general standards of treatment on their basis. Recommendations of the Defender concerning improvement of the ascertained conditions and elimination of ill-treatment, if applicable, is directed both to the facilities themselves and their operators as well as central governmental authorities.

In 2009, the Defender was also given the role of the **national equality body** pursuant to the European Union legislation. The Defender thus contributes to the enforcement of the right to equal treatment of all persons regardless of their race or ethnicity, nationality, sex, sexual orientation, age, disability, religion, belief

or worldview. For that purpose, the Defender provides assistance to victims of discrimination, carries out research, publishes reports and issues recommendations with respect to matters of discrimination, and ensures exchange of available information with the relevant European bodies.

Since 2011, the Defender has also been **monitoring detention of foreign nationals and performance of administrative expulsion**.

The Defender's **special powers** include the right to file a petition with the Constitutional Court seeking the abolishment of subordinate legal regulations, the right to become an enjoined party in Constitutional Court proceedings on abolishment of a law or its part, the right to lodge action to protect a general interest or application to initiate disciplinary proceedings with the president or vice-president of a court. The Defender may also make recommendations to the Government concerning adoption, amendment or annulment of a law.

The Defender is **independent and impartial**, accountable for the performance of his or her office only to the Chamber of Deputies by which he or she was elected. The Defender has one **deputy** elected in the same manner, who can be authorised to assume a part of the Defender's competence. The Defender regularly informs the public of his or her findings through the internet, social networks, professional seminars, roundtables and conferences. The most important findings and recommendations are summarised in the **Annual Report on the Activities of the Public Defender of Rights** submitted to the Chamber of Deputies of the Parliament of the Czech Republic.

»»»»»» ANNEX 2: Basic information on the NPM

Since 2006, the Defender has acted in the capacity of the national preventive mechanism pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT; No. 78/2006 Coll. of International Treaties).

The Defender's mandate encompasses all places of detention, even places of detention de facto where restriction of liberty results from dependence on the care provided and where the primary purpose of stay is provision of social, educational and health. Systematic visits are carried out in facilities founded by both public as well as private entities.

The Defender enjoys absolute freedom in the choice of places to visit. The Defender determines the plan of visits internally one year in advance, where this plan is sometimes operatively supplemented in reaction to pressing issues. In determining the plan, the Defender follows up on the previous period, where in view of the goal to act against ill-treatment, the Defender strives for maximum efficiency in carrying out individual visits as well as issue-focused series culminating in systemic proposals and recommendations. As a rule, the visits are unannounced. The number of visits each year depends on the size of the facilities selected for visit and the scope of the inquiry. To ensure that the findings are representative, the Defender selects facilities both large and small, public and private, and located in cities and in rural areas alike.

The visits are carried out by employees of the Office of the Public Defender of Rights on the basis of the Defender's instruction. The employees include a group of lawyers from a special department within the Office as well as external consultants in other

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The Defender shall systematically visit places where persons restricted in their freedom by a public authority, or as a result of their dependence on care provided, are or may be confined, with the objective of strengthening the protection of these persons against torture, or cruel, inhuman and degrading treatment, or punishment and other forms of ill-treatment.

“

(Section 1 (3) of Act No. Act No. 349/1999 Coll.)

fields of expertise. The Defender most frequently co-operates with physicians and nurses, and often also with psychologists, social workers and special pedagogues. A clinical pharmacologist and a nutritional therapist helped working on special topics. The Office organises recruitment of experts ahead of a larger series of visits and is open to interest on the part of experts; the Defender entered into a special co-operation with the Czech Association of Nurses, the Czech Alzheimer Society and the Czech Society of Palliative Medicine. The employees of the Office have access to all the necessary training and internships focused on currently monitored issues. Their technical equipment includes a minibus and passenger cars for travel, accommodation, computers and cameras. They work according to special methodologies and use separate documentation.

Members of the monitoring team have all the necessary authorisation to carry out visits: they have access to all facility premises at their request, may speak to anyone they wish in private and have access to all documentation, including medical files.

After visiting a facility or after related visits to several facilities, the Defender compiles a report on his or her findings that may include recommendations or proposals of remedies. If the Defender obtains findings that can be generalised, he or she releases a summary report. In the summary report, the Defender lays down systemic recommendations and proposals for prevention of ill-treatment, and sometimes also standards of good treatment that can also serve as guidelines to unvisited facilities. The Defender monitors compliance with the recommendations and discusses them with the facility that was visited, its founder or the relevant authorities. If the Defender

finds their response insufficient, he or she may inform the superior authority or, if no such authority exists, the Government; the Defender may also inform the public of his or her findings. Since 2016, the Defender releases the reports on the individual visits online (after the case is closed); in the previous years, as a rule, only summary reports were released to the public.

Aside from performing visits, the Defender's preventive actions against ill-treatment consist in a number of other activities:

- Selected summary reports are issued in print and distributed to authorities and other parties that may influence treatment in the facilities.
- The findings from systematic visits are used in the comment procedure for the legislation being drafted.
- The Defender participates in expert discussions and is active in labour and advisory bodies.
- The Defender meets with employees of the Public Prosecutor's Office who supervise compliance with legal regulations in some places of detention.
- The Defender performs and supports awareness-raising activities in the area of ill-treatment, including: publishing press releases and information materials, contributing to scholarly as well as popular periodicals, organising educational events and actively participating in educational events organised by third parties.
- The Defender endeavours to actively participate in the co-operation of national preventive mechanisms in Europe.



»»»»»» ANNEX 3: Ten years of prevention of ill-treatment



A/ Success and challenges in prevention of ill-treatment

On the occasion of the Human Rights Day, the Public Defender of Rights organised a press conference on the 10 years of systematic visits. She presented what she would like to achieve and what the challenges are in prevention of ill-treatment. The aim was clear: to familiarise the public with this rather abstract term and to suggest topics to the competent authorities for their own combating of ill-treatment.

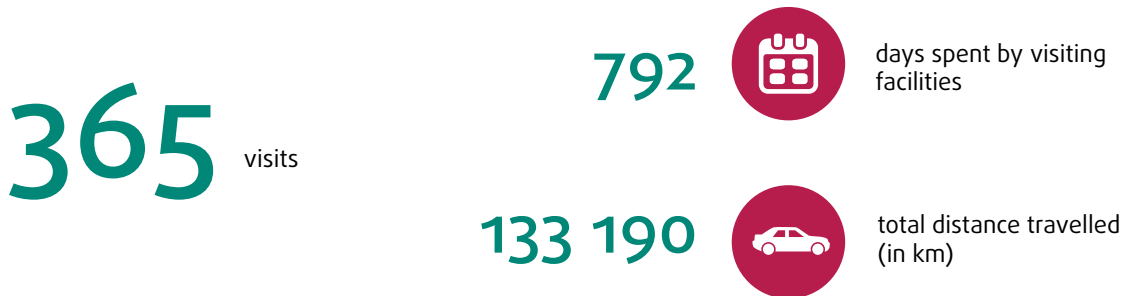
Successes

- **Society has been made aware that people's close ones should not be put in certain residential facilities which provide services unlawfully.** In all such facilities visited, there were people – the elderly, people with mental illnesses and disabilities – who were subjected to ill-treatment.
- **The law now sets clear rules for the use of sedatives and other forms of restriction (i.e. physical restraints).** Until 2012, restraints were used in health care without being subject to any legal regulation. There is still a need to ensure compliance with the legal regulations and that restraints are actually only used as an extreme step to manage dangerous behaviour on the part of the patients.
- **Facilities for the elderly now use our standards of prevention of disregard of pain and neglectful nursing care.** Even in the area of nursing care, there is a need to work to prevent ill-treatment, which is sometimes systemic in nature.
- **Advice is now available for detainees in police cells, informing them of their right to contact their families, lawyers and physicians.** Non-compliance with the basic safeguards against ill-treatment is a recurring topic of systematic visits to police cells.
- **We helped create a standard of care provided to children in children's homes and educational institutions.** The Defender does not seek to substitute for the inter-Ministry's inspection mechanism. The standards only represent as-of-yet non-existent guidelines for its activities.
- **The living conditions in the facility for detention of foreigners improved in 2015.** Unfortunately, this was preceded by a crisis including ill-treatment of the detainees, including many children. The Defender was frequently discussing remedies with the Minister of the Interior.
- **Convicts again have access to hot showers twice a week.** The return to the basic standard of treatment of the convicts is also partially a result of the Defender's pressure.

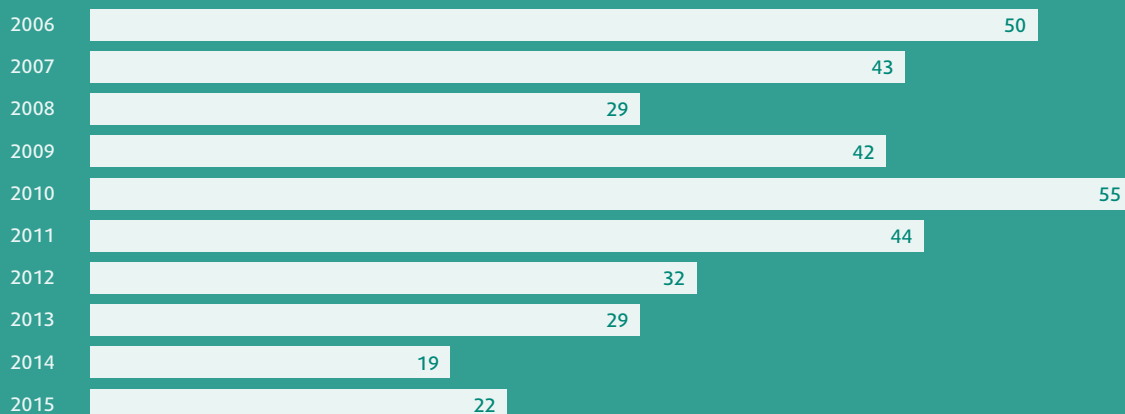
Challenges

- **Independent review of complaints raised by clients in social services.** Users of social services represent an extraordinarily vulnerable group where achieving protection and exercising their rights in court is difficult and lengthy for them, while there is no independent mechanism of lodging complaints.
- **Sufficient staffing of facilities for long-term patients and persons with disabilities, as well as adequate pay for their employees.** Achieving this goal would remove the need for restraints and the impersonal regime in a number of institutions. Without sufficient staff, it is not possible to provide a truly individualised care corresponding to the expert standards for preventing falls, pain, malnutrition and deterioration of the mental condition, including behavioural disorders.
- **Small children must be brought up in families, not in institutions.**
- **Availability of community care for persons with mental illness or disability and for terminal patients and their close ones.** Institutional facilities always present an increased risk of ill-treatment, either as a result of abuse of the client’s vulnerability or in the form of forced hospitalisations.
- **Tackling prison overcrowding and mass accommodation of prisoners.**
- **Dignified living conditions for prisoners with chronic illnesses and disabilities.**

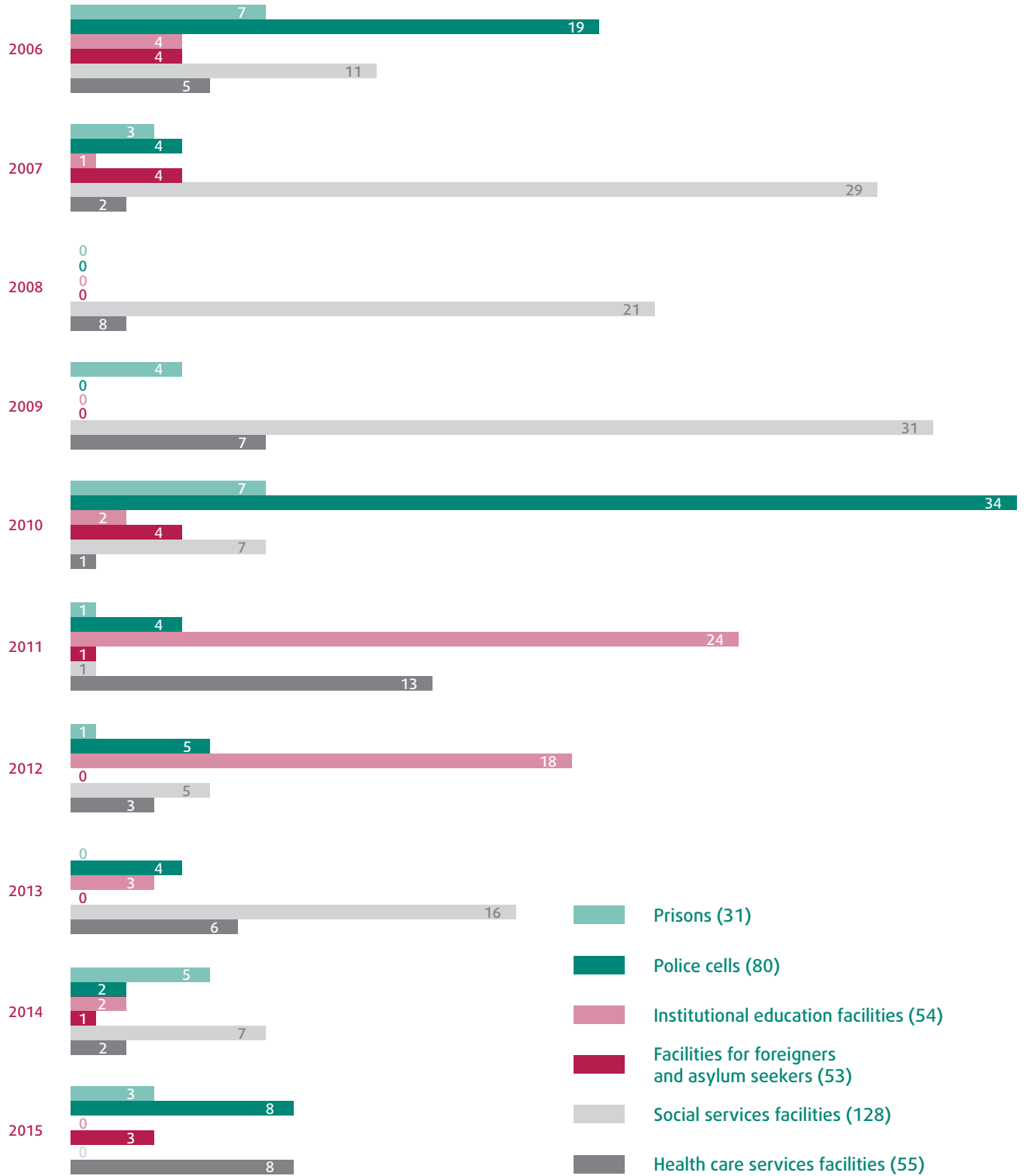
B/ 10 years in numbers



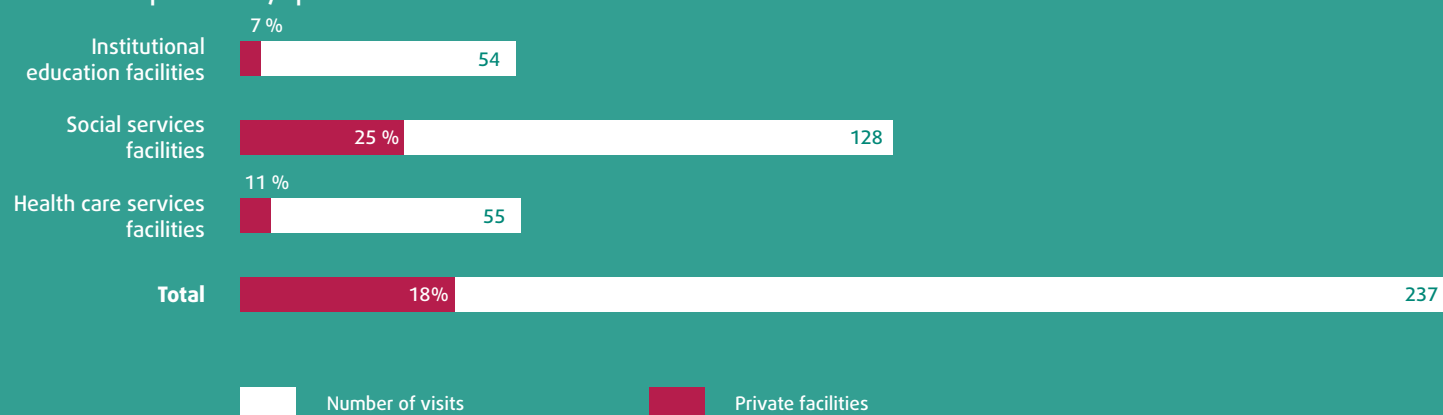
Number of visits to facilities



Types of facilities visited



Share of private / public facilities



C/ Summary reports published

A summary report is issued when the Defender obtains generalisable findings from conducting systematic visits in one type of facility. Through the report, the Defender informs the public about the situation in an area of restricted liberty, comments on the findings with respect to ill-treatment and its prevention, brings forward examples of good practice and formulates the required standard of treatment and prevention, and prepares systemic recommendations and proposals of remedies. The ten years of activities saw the release of 23 summary reports:

- Report on visits to facilities for institutional and protective education (2006)
- Report on visits to prisons (2006)
- Report on visits to institutions of social care for adults with disabilities (2006)
- Report on visits to police cells (2006)
- Report on visits to hospitals for long-term patients (2006)
- Report on visits to facilities for detention of foreigners (2006)
- Report on visits to facilities for institutional and protective education (2007)
- Report on visits to social services facilities for the elderly (2007)
- Report on visits to psychiatric treatment facilities (2008)
- Report on visits to homes for people with disabilities (2009)*
- Report on visits to remand prisons (2010)*
- Report on visits to police cells (2010)
- Report on subsequent visits to psychiatric treatment facilities (2010)*
- Report on visits to facilities for foreigners (2010)
- Report on visits to school facilities for institutional and protective education (2012)

- Report on visits to infant care centres (2013)
- Report on visits to preventive educational care centres (2013)
- Report on visits to diagnostic institutions (2013)
- Report on visits to children’s psychiatric hospitals (2013)
- Report on visits to sobering-up stations (2014)
- Report on visits to residential facilities providing care without authorisation (2015)*
- Report on visits to retirement homes and special regime homes (2015)*
- Report on visits to prisons (2016)*

*the report is also available in English

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AS THE NATIONAL PREVENTIVE MECHANISM

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