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Public Defender of Rights

# PROTECTION AGAINST ILL-TREATMENT

# 2019

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

## Explanatory notes



link to a webpage



reference to a printed medium

Public Defender of Rights

Protection of Persons Restricted  
in their Freedom

**Asylum Act** – Act No. 325/1999 Coll., on asylum, as amended

**CPT** – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

**Criminal Code** – Act No. 40/2009 Coll., the Criminal Code, as amended

**Foreigners' Residence Act** – Act No. 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic and on amendment to certain laws, as amended

**Healthcare Services Act** – Act No. 372/2011 Coll., on healthcare services and the conditions of their provision, as amended

**NPM** – national preventive mechanism

**Police Act** – Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended

**Social Services Act** – Act No. 108/2006 Coll., on social services, as amended

**Specific Healthcare Services Act** – Act No. 373/2011 Coll., on specific health care services, as amended

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Mgr. Anna Šabatová, Ph.D.  
Public Defender of Rights

## Public Defender of Rights

Údolní 39, 602 00 Brno

information line: +420 542 542 888  
telephone (switchboard): +420 542 542 111  
e-mail: [podatelna@ochrance.cz](mailto:podatelna@ochrance.cz)

[www.ochrance.cz](http://www.ochrance.cz)  
[www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom](http://www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom)  
[www.facebook.com/verejny.ochrance.prav](https://www.facebook.com/verejny.ochrance.prav)  
[www.twitter.com/ochranceprav](https://www.twitter.com/ochranceprav)



# SUMMARY BY THE PUBLIC DEFENDER OF RIGHTS

The Defender has been active as the national preventive mechanism for fourteen years now. In 2019, we continued conducting systematic visits and implementing long-term recommendations in the area of prevention of ill-treatment. I provide a brief summary of the most important achievements:

We visited a total of 25 facilities. Some of the visits focused on specific topics: we completed a series of visits to homes for people with disabilities, continued in remand prisons and institutional care facilities for children, and started visiting special regime homes. The findings from these visits are always a basis for comprehensive summary reports, which were numerous this time: In 2019, reports were drawn up on secure preventive detention, facilities for children requiring immediate assistance, forensic treatment and homes for people with disabilities. We continued monitoring police cells, facilities for detention of foreigners, as well as general and children's psychiatric facilities.

In Chapters 1 to 5, we summarise our activities in 2019 according to the individual areas of detention. I consider the assessment of conditions of institutional forensic treatment and its systemic framework to be the most important topic of our current activities. The series of visits showed dangerous gaps in the legislation and its practical implementation. The State does not specify the capacity of facilities where treatment is to take place and many hospitals are currently overloaded, lack sufficient staff and improvise in ensuring safety and guarding of the relevant departments. We also found that patients remained in detention regime for longer than necessary and appropriate. Therefore, we address a number of recommendations to the Ministry of Health and the Ministry of Justice. In Chapter 3, we outline only the essential findings and I invite anyone interested to study the whole published report.

The visits yielded only a few unambiguous findings on ill-treatment; however, certain risky practices are basically used everywhere to some extent, and the safeguards are insufficient. As in last year's report, I address this separately in Chapter 6. I briefly describe the deficiencies related to effective prevention of ill-treatment in the Czech Republic, most often in the area of the statutory framework. Unfortunately, these are long-term problems. Foreigner detention facilities and forensic treatment institutions lack independent supervision and protection against potential interference with the inmates' rights. Social services lack an independent complaints mechanism, the State's inspectors cannot access parts of the documentation kept by service providers and there is no legal basis for punishing infractions. I have found similar problems plaguing psychiatric care. Nevertheless, although a number of measures have been merely copy-pasted from previous years, we have conducted some positive negotiations, e.g. in terms of recording and reporting medical findings on ill-treatment and ensuring privacy during medical examinations. I believe that if CPT's recommendations begin to be implemented responsibly, we will be able to see a shift in this area in 2020.

I sincerely hope this text will prove to be an inspiration to your work.

Anna Šabatová

# Basic overview

## Facilities visited in 2019

Chrudim – **G**

Býchory – **G**

Petrohrad – **E**

Bálková – **I**

Plzeň – **K**

Praha – **E, F**

Obořiště – **H**

Vimperk – **C**

České Budějovice – **K**

Český Krumlov – **B**

Humpolec – **F**

25



systematic visits

3 prisons, 3 police facilities, 1 facility for detention of foreigners, 5 psychiatric facilities (of which 2 for children), 1 hospital for long-term patients, 1 facility providing social services without authorisation, 1 retirement home and 1 special regime home, 9 facilities for children

43

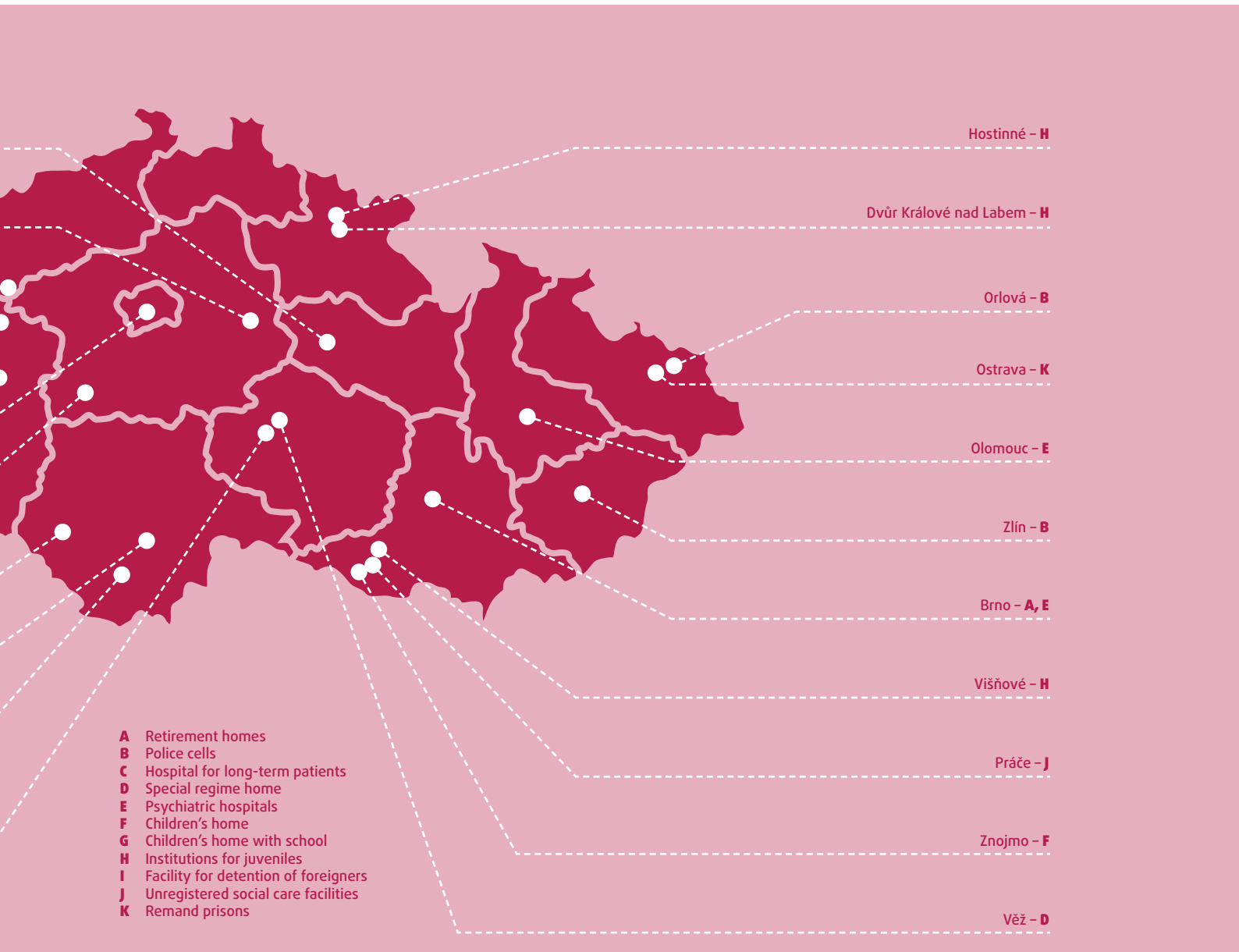


monitored cases of transfer and expulsion of foreign nationals

233



professionals from facilities for long-term and psychiatric care and regional authorities' employees received training in the area of preventing ill-treatment



8



full-time lawyers constituting the permanent team of the NPMé

15



external experts took part in the visits

3 psychiatrists, 2 general nurses, 2 psychiatric nurses, 3 psychologists, 1 expert in social services, 3 special education experts, 1 expert in youth drug abuse

**ESO**

anonymised reports on completed visits to facilities are published in the Defender's Opinions Register and on the Defender's website

# 1. Police and foreigner detention



4 visits

3 visits to police cells

1 visit to a facility for detention of foreigners



## Main topics in 2019

- The situation remains unsatisfactory in terms of privacy of examinations by physicians and compliance with a standard of prevention of ill-treatment by ensuring proper records and reporting of medical findings indicating ill-treatment (cf. page [11](#)).
- In 2019, our repeated recommendations were accepted and the Regional Police Directorate of the South Moravian Region purchased new escort vehicles, which are equipped with safety belts and generally meet the current safety standards.
- In monitoring implementation of court and administrative expulsions, we repeatedly criticised the way coercive means were used in escorts. Police officers should only handcuff foreign nationals if the principle of legality, proportionality and necessity is met. In connection with the imposed sanction, the Police Presidium promised to retrain police escorts regarding handcuffing of escorted persons.

 [Report](#) on expulsion monitoring



## Expulsions monitoring

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### 43 monitored cases


transfer and expulsion of foreign nationals

One of the tasks of the Defender is to monitor the detention of foreign nationals and perform monitoring of administrative and court expulsions and transfers. We linked this activity with our systematic visits. In addition to preparing reports on the individual monitored cases,

we also maintain a dialogue with the responsible authorities. In 2019, we organised two meetings with the representatives of the Directorate of the Immigration Police, Police Presidium, Prison Service and the Refugee Facilities Administration of the Ministry of the Interior.



A three-year “Support for the Effective Monitoring of Forced Returns” project implemented by the Office of the Public Defender of Rights within the national programme of the Asylum, Migration and Integration Fund was completed in 2019. Thanks to the project, we were able to monitor a total of 120 return operations and pursued an intensive dialogue with the responsible authorities. It can be stated that most of the recommendations were adequately implemented.

 [Monitoring reports](#)

## International co-operation

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A lawyer from the Office participated, as a lector, in international training sessions organised by the International Centre for Migration Policy Development (ICMPD) in co-operation with the Frontex agency. The training

was aimed at acquainting police officers and workers from a total of 22 European countries who monitor the course of return operations with critical moments that could occur during the expulsion procedure.

## 2. Prisons and secure preventive detention



3 visits


of remand prisons

### Summary report on secure preventive detention

Following the visits to both institutions where secure preventive detention is carried out, we evaluated the findings we obtained from the perspective of the system. First, we discussed them at a roundtable with representatives of the institutions, the Ministry of Justice, the Prison Service of the Czech Republic, courts and the Prosecutor General's Office. Amongst other problems, we found that medical staff and other professionals would contact inmates only through bars, the inmates were locked up in cells excessively, they did not benefit from sufficient activities and could not spend enough

time outside their cells, etc. The parties present agreed that there was an increasing number of changes from forensic treatment to secure preventive detention. Subsequently, a summary report was drawn up and we submitted recommendations for a remedy to the Ministry of Justice and the Government.

 [Summary report](#)

 [Analysis](#) of 100 court decisions on imposing detention, from p. 29




### Legislative recommendations on secure preventive detention:

**§ Leave out the third sentence of Section 99 (5) of the Criminal Code and thus return the provision to the state before 1 December 2011. Consider this change also for Section 100 (1) and (2).**

From the very beginning, secure preventive detention was conceived as the strictest, exceptional protective measure (not a punishment) for those perpetrators who posed an extraordinary danger for society. However, 10 years later, the once reasonable capacity of the institutions has been exhausted and must be increased. An analysis of court decisions has shown an increasing frequency of imposing secure preventive detention since 2011, i.e. since the effective date of the amendment enabling detention not only in case of an especially serious felony, but also in case of a "mere" felony. Since then, institutional forensic treatment can also be changed to detention without the need to meet further strict conditions for imposing secure preventive detention. The trend in increasing use of secure preventive detention casts doubt on the original purpose and sense of secure preventive detention. As a result, the increasing capacity of detention also disproportionately burdens the State budget and the Prison Service of the Czech Republic.


The proposed amendment to Section 99 (5) of the Criminal Code aims at renewing the original extent of possible change of institutional forensic treatment into secure preventive detention. Section 100 (1) and (2) of the Criminal Code concerns direct imposition of secure preventive detention.


 [Legislative recommendation](#) in the report for the Chamber of Deputies (from page 8)

## Importance of the healthcare service for prevention and detection of ill-treatment

Since 2017, we have been constantly pointing out shortcomings in the legal framework and practical measures ensuring that the healthcare service (not only in prisons) performs its role in effective documentation and investigation of ill-treatment of persons deprived of liberty. Indeed, recommendations of the CPT regarding documentation and reporting of medical findings and ensuring confidentiality of medical examinations have yet to be implemented. When investigating three individual complaints filed by prisoners, the Defender found specific shortcomings in practice which frustrated effective investigation of alleged ill-treatment in 2019.

In order to explain the problem, we organised a seminar for public prosecutors and medical professionals working in prisons in 2019 in co-operation with the Supreme Prosecutor General's Office and the Judicial Academy. Subsequently, we initiated negotiations with the Ministry of Health and the Ministry of Justice to convince them to provide for remedy. Within the dialogue with the CPT, the Government has already promised to take the first steps.

 2019 CPT [report](#) and the Government's response

 Defender's [report](#) on inquiry into the prisoner's complaint




### Standard for the activities of physicians in prevention of ill-treatment

The prohibition of ill-treatment implies the duty of the State to prevent and punish such treatment, protect potential victims, and effectively investigate cases where there is a suspicion of ill-treatment. These obligations are even stricter in cases where the victim is deprived of liberty.

Standards for the role of physicians in prevention and detection of ill-treatment are included in:

 [UN principles](#) for effective investigation and documentation of ill-treatment;

 [Istanbul Protocol](#), i.e. the UN principles implementation manual;

 [CPT standard](#) for documenting and reporting medical evidence of ill-treatment.

A physician's role is irreplaceable when he/she is examining or treating a person bearing signs of possible ill-treatment (assault by a fellow prisoner, inappropriate use of force by a police officer or a prison officer) or a person who complains about ill-treatment directly. The system must be set up so that, in such cases:

- the medical examination is carried out confidentially, without the presence of police officers or guards (with certain exceptions);
- the physician's report includes (i) the most accurate description of events, ill-treatment and subsequent physical and mental manifestations, as stated by the patient; (ii) a full account of medical and psychological findings, including colour photographs of injuries; (iii) a physician's opinion as to the likely connection of the findings and possible torture and ill-treatment, and any recommendations for further care;
- the physician can, and is required to, systematically report such cases to the authorities competent to investigate.

### To remove systemic obstacles, it is necessary...

Ministry of Health: to prepare an amendment to the Healthcare Services Act so that notification of findings of signs of ill-treatment does not constitute a breach of the physician's confidentiality and that the presence of prison guards is not required during medical examinations and treatment of prisoners.

Ministry of Justice: to ensure methodological guidance and education of prison physicians and the necessary conditions for their work.



## Other systemic problems

- The Government accepted the Defender’s recommendation and, as from 1 January 2020, the remuneration of imprisoned persons will be linked to the minimum salary. So far, it has always been necessary to change the relevant regulation whenever the amount of remuneration is to be increased, which could take as long as 17 years. A convict’s average monthly salary in 2018 was CZK 4,345. The basic monthly rate is newly 50% of the minimum salary. Convict labour continues to be attractive for private employers and decent remuneration will help convicts repay their debts already during the service of their term in prison (as debts are a factor influencing the convicts’ tendency towards recidivism upon release).
- A complaint filed by a woman who had given birth to a child in a civil hospital during her remand in custody had a broader impact. The child remained in the hospital, but the mother had to return to the prison on the date of the birth. This case had eventually a happy ending as the woman was released from custody three days after she gave birth to the child. However, it was found that the separation of the mother and the child had not been necessary and had, in fact, been the result of poor communication between employees of the remand prison and

the only Czech prison with a specialised section for accused and convicted mothers of minor children. Therefore, the internal regulation governing, inter alia, filing of applications for placement in the specialised section will be reviewed.

 [Defender’s report](#)

- One of the topics of our systematic visits is the use of CCTV in cells. The topic was brought up because a prison had equipped several cells with cameras and unreasonably interfered with the prisoners’ right to privacy. The prison adopted remedial measures in the given case; specifically, its director determined who would decide on CCTV surveillance and how often the decision would be reconsidered, and also established certain safeguards for reasonable privacy. The only issue that remained unresolved was that, according to the Defender, cells equipped with CCTV should be reserved only for prisoners who are specifically subject to such supervision (similar to “crisis cells”, which are reserved only for a specific purpose).

 [Defender’s report](#)


## Collected documents “Prisons II”

We issued a second collection focusing on prisons. The publication summarises the Defender’s opinions on this issue in the period from 2010 to 2018. The legal standard, including the prohibition of ill-treatment, is illustrated by stories of specific people. For example, a man had his hands and feet handcuffed during a gastroscopy carried out in the presence of two guards; there was no reason to do so.



### We remind the Ministry of the problems

- We informed the new Minister of Justice of the state of our dialogue on prison overcrowding, lack of vision in penal policy, problems concerning prison healthcare and overcrowding of secure preventive detention.
- We again discussed the implementation of systemic recommendations for remedy.

 [Report](#) on visits to prisons

## Visits to remand prisons

The series of visits to remand prisons continued in 2019. In the preparation phase, we visited an Austrian remand prison together with the Austrian NPM. During our visits, we examine the entry procedures, material

conditions, activities available to prisoners, disciplinary practice, health care and methods of ensuring safety of the accused. Systemic evaluation of the visits will take place in 2020.





# 3. Healthcare facilities



## 6 visits


- 1 hospital for long-term patients
- 3 psychiatric facilities for adults
- 2 psychiatric facilities for children

## Summary report on psychiatric hospitals

The Report entitled Forensic Treatment, Restraints and Other Topics deals with the performance of institutional forensic treatment, use of electroconvulsive therapy and restrictive measures, complaints and documentation and reporting of medical findings on ill-treatment. While we did not find any wilful ill-treatment, we encountered a number of very risky situations and conditions that, considering the cumulative effect, could have reached the threshold of ill-treatment for some individuals (e.g., a very strict long-term regime associated with isolation and lack of activities, long-term use of restrictive measures). Furthermore, the conditions at some units pose a threat to the staff and patients; specifically, the environment

contains dangerous elements, drugs are sneaked into the units and the number of personnel does not correspond to the demands of the target group.

The report was completed at the time when discussions were held on CPT's recommendations and also on the issue of critical overcrowding of forensic treatment facilities. A number of recommendations are thus directed towards the Ministry of Health and the Ministry of Justice. We will continue negotiating on them in 2020.

 [Summary report](#), overview of systemic recommendations from p. 116



## Systemic problems of forensic treatment

- The State does not specify the capacity of hospitals that should be dedicated to forensic treatment or material and personnel requirements on hospitals. Many hospitals are overburdened, lack sufficient staff and improvise in ensuring safety and security of the relevant units.
- Lacking policy of forensic treatment as a whole, its concept both in hospitals and in out-patient care and prisons. As a result, patients remain in detention for longer than necessary and appropriate. The specific needs of minors are disregarded.
- The legal framework of forensic treatment has serious gaps. Some cases of interference with the patients' rights lack any legal basis (restriction of going outside, removal of personal belongings, use of cameras and bars). In practice, there are also doubts as to the rules of involuntary treatment and there is no legal regulation on the transfer of patients to another hospital and interruption of institutional forensic treatment.

The Defender therefore requests that a policy of forensic treatment be prepared and recommends that the hamber of Deputies request the Government to present a bill that would comprehensively regulate the issue of forensic treatment.

 Defender's legislative recommendations in [Annual report 2019](#)

# 4. Social services facilities



## 3 visits

a facility providing social services without authorisation

a retirement home

a special regime home

## Summary report on homes for people with disabilities

In 2019, we processed findings from 9 visits and a summary report was published at the beginning of 2020. In addition to evaluating material conditions, the visits were also concerned with inmates' safety (peaceful relationships, dealing with falls and challenging behaviour), conditions enabling private and family


life including sexuality, provision of special methods of communication, restriction of free movement, conditions for autonomy of will and support for clients' autonomous decision-making.

 [Summary report](#)



## We point out systemic problems

- We reiterate that there is no independent body to deal with complaints raised by clients of social services. Although the Defender lacks this competence, she still receives complaints and requests for help (more than 120 in 2019). The Ministry of Labour and Social Affairs acknowledges the systemic shortcoming, but has yet to provide for remedy.
- It is necessary to boost support for transformation and deinstitutionalisation of residential social services. In fact, the adopted national strategy and action plans do not force service providers and founders to make any changes and a number of homes are thus absolutely institutional in nature.
- The legal regulation of personnel, material and technical standards in social services has still not been prepared. At the same time, the conditions at some facilities are not satisfactory, which may lead to ill-treatment.
- unavailability of social services is a precondition for dignity and autonomy. Availability planning falls within independent competence of administrative regions in the Czech Republic. A survey has showed major differences in availability and the State lacks tools to influence it.

 Report on the Public Defender's [Survey](#) and [Recommendations](#)

# 5. Facilities for children



**9 visits**

- 3 children's homes
- 2 children's homes with a school
- 4 institutions for juveniles



## Summary report on facilities for children requiring immediate assistance

Our visits to 11 facilities for children requiring immediate assistance were systematically evaluated. The facilities are supposed to serve as crisis points providing care for the necessary period of time when a child finds him/herself without care or in some other serious danger. The summary report deals separately with problems at the level of individual facilities and with systemic problems. These include long-term stays of

children, placement on the grounds of material or housing needs of the family, passivity on the part of authorities for social and legal protection of children during the child's stay in the facility, and a lack of legislation regulating individual outings of children.

 [Summary Report](#)



## Findings from visits to facilities for children requiring immediate assistance

- Most of the facilities do not fit into the category of crisis points and children live there longer than foreseen by the law.
- The facilities work insufficiently with the children’s families, which reduces the children’s chance of returning home.
- The facilities often focus primarily on securing material needs (food and accommodation), with insufficient emphasis on psychological assistance to the children.
- The facilities are often established in already existing facilities of different types, especially in children’s homes for children under 3 years of age ( “infant care centres”) or in existing children’s homes. In such cases, they cannot be considered a family facility as required by the law.



## On current topics of institutional education

Representatives of the facilities request opportunities to discuss good practice and resolve unclear legal issues. Therefore, we organised two meetings with the directors of the facilities, representatives of the Ministry of Education, Youth and Sports, the Ministry of Labour and Social Affairs and the Prosecutor General’s Office. We discussed evaluation systems in facilities, decision-making on measures in education and work with restless children.

## Visits to facilities for institutional and protective education

A series of visits to children’s homes, children’s homes with schools and institutions for juveniles began in 2019. These visits are focused on safety in the facility (prevention and addressing of bullying), elements

of institutionality (motivation systems, body searches), privacy of children (within their rooms and sanitary facilities), the standard of individual outings, and preparation of children for life after leaving the facility.

# 6. Unresolved issues in effective prevention of ill-treatment

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We intend to remind the authorities of our systemic recommendations and provide expert assistance in their implementation.

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## Independent supervision and protection from continuing infringements



**facilities for detention of foreigners, reception centres, and psychiatric hospitals providing forensic treatment**

**Issue:** Lack of an independent body able to quickly ensure remedy in case of ill-treatment. A person placed in an institution can claim enforceable protection of rights in court, which is often a demanding and long path. Such a person could invoke violation of Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

**Potential solution:** In prisons and facilities of institutional and protective education, the necessary authority is vested in the public prosecutor’s office. The public prosecutor’s office supervises compliance with the legal regulations by means of checks and dealing with complaints, and can issue an instruction to release an individual or to comply with the regulations. We recommend that the public prosecutor’s office’s supervision is expanded to cover forensic treatment and detention of foreigners.

§ **To extend the supervision by the public prosecutor’s office, it will be necessary to supplement the Foreigners’ Residence Act, the Asylum Act and the Specific Healthcare Services Act.**

## Punishing degrading treatment is complicated

**Issue:** Torture and other inhuman and cruel treatment constitutes a crime pursuant to Article 149 of the Criminal Code. However, the Criminal Code does not specifically mention degrading treatment, which means it can only be punished if it features elements of other crimes, which do not cover the entire range of intentional degrading treatment. Nonetheless, for example in the field of social and healthcare services, the Public Defender of Rights most frequently encounters flaws

that attain the level of degrading treatment. A distinct problem lies in the fact that degrading treatment does not necessarily inflict physical harm and can be caused by a number of less severe actions with combined effect. This complicates criminal punishment.

As concerns administrative punishment, no suitable infractions have been legislatively defined for the area of social and healthcare services. The Social Services Act



provides for administrative punishment of social service providers in case of non-compliance with formalities, but defines no infraction covering often serious instances of interference with privacy, safety, integrity and dignity of service users. The Healthcare Services Act does not even include any infractions with regard to incorrect use of means of restraint. This results in

non-punishability of less serious forms of ill-treatment and contributes to low respect towards control bodies.

§ It is necessary to revise the Criminal Code and define infractions in the relevant sectoral laws so as to ensure that no form of intentional degrading treatment remains non-punishable.

## Recording and reporting medical findings of ill-treatment



### especially police and foreigner detention and prisons, but also other facilities

**Issue:** The prohibition of torture and other forms of ill-treatment is always weakened when the perpetrators are not punished for their acts. If a credible complaint is received or there are injuries indicating ill-treatment, an effective investigation must be conducted. The systematic visits indicated that the medical reports on examination and treatment lack the parameters required for investigation of ill-treatment. In extreme cases, the examination is limited to several questions asked in the presence of a police officer. This is caused by a low awareness of the principles governing documentation of ill-treatment. The statutory confidentiality requirement under the Healthcare Services Act

then does not permit a physician, without the patient's consent, to submit findings on signs of ill-treatment to authorities competent to investigate.

**Potential solution:** It is necessary to provide methodological guidance to physicians, change the legislation on confidentiality, and to initiate a professional debate so that physicians accept their role in combatting ill-treatment with understanding and without endangering the physician-patient relationship.

§ Modify the Healthcare Services Act so that reporting on findings of marks of ill-treatment does not represent violation of the physician's confidentiality.

## Confidentiality of medical examination is not ensured



### police and foreigner detention and prisons

**Issue:** The right of a person restricted in freedom to see a physician is one of the basic safeguards against ill-treatment. The presence of police officers or prison guards deters the victim from disclosing information on any ill-treatment to the physician. As regards medical examinations of persons under the authority of the Prison Service of the Czech Republic, the Healthcare Services Act (Section 46 (1)(g)) provides that they shall take place in the presence of an officer who has to be "in sight" and in cases of danger even "within earshot". The Act lays down no special regime for medical examinations of persons presented by the Police of the Czech

Republic, but the Police President's binding instruction prescribes that at least one police officer shall remain in visual contact. For the prevention of ill-treatment to be effective, CPT standards require that no police officer or prison guard be present at all unless this is requested by the physician for security reasons, and even in that case, only in sight.

§ It is necessary to modify the Healthcare Services Act and instruct police officers and members of the Prison Service of the Czech Republic to respect the rule that their presence in treatment is only possible on the physician's request, and in that case only "in sight".

## Disciplinary punishments are not in accordance with international standards



### prisons

**Issue:** The legal limit for the duration of solitary confinement as a form of disciplinary punishment is 14 days. Subsequent disciplinary punishments can prolong the effective duration of solitary confinement even above the statutory maximum. The CPT has further repeatedly pointed out that the range of possible disciplinary punishment of prisoners should not include total prohibition of contact with family if the misconduct committed did not relate to such a contact.

**Potential solution:** In 2015, already, the Government promised to the CPT to prepare a draft amendment that would incorporate disciplinary proceedings comprehensively in the Service of Imprisonment Act, reduce the time of solitary confinement and presence in an enclosed ward, and transfer decision-making on the most serious disciplinary misconduct to criminal proceedings. The promise has yet to be fulfilled.

§ It is necessary to modify the Service of Imprisonment Act.

## Social services lack an independent complaints mechanism



### social services facilities

**Issue:** Residents of social care institutions have no place to turn to with a complaint if they suspect violation of their rights, other than the management of the facility they live in. The Defender receives many complaints concerning the quality of nursing care, e.g. from children of elderly residents living in the facilities; unfortunately, there is no one to look into these complaints. Clients who are dependent on care and disabled are in an extremely vulnerable position and referring them to seek recourse in court is not an effective solution. While we have been pointing to this problem for many years, the Ministry of Labour and Social Affairs only started addressing it by the end of 2018. But there has been no result so far.

**Potential solution:** There is a complaints mechanism in healthcare, but the law does not take into account nursing care provided as part of social services. It would thus be sufficient to simply change the law accordingly. However, the area of social services requires a systemic solution.

§ It is necessary to amend the Healthcare Services Act so as to open the current complaints mechanism to recipients of nursing care in social services facilities. Furthermore, a complaints mechanism has to be established in the field of social services.

## There is a lack of personnel, material and technical standards of social services



### social services facilities

**Issue:** Some of the facilities lack sufficient conditions for the provision of care, which may also lead to ill-treatment of residents. While the Social Services Act does generally require the providers to ensure personnel, material and technical conditions corresponding to the

type of the social services provided, without further specification in the form of a decree this legal provision is unclear and shortcomings almost cannot be penalised.

§ It is necessary to include authorising provisions in the Social Services Act and then issue the relevant implementing decrees.

## Inspection authorities are not allowed to peruse medical records



### social services facilities

**Issue:** For the authorities inspecting the provision of social services to effectively protect the residents' rights and prevent ill-treatment, they have to be able to access all documents kept by the social services provider. This means they must have the right to peruse documentation on nursing care and make excerpts or copies even without the patient's consent. The problem is that documentation of nursing care constitutes a part

of medical records and the relevant laws do not provide for the inspectors' access to it. The Ministry of Labour and Social Affairs has not been able so far to secure the necessary legislative changes with the Ministry of Health, which is responsible for this area.

§ **It is necessary to amend the Healthcare Services Act and include social services inspectors among entities authorised to peruse medical records even without the patient's consent.**

## A strategic approach is also lacking in terms of decreasing the need for using means of restraint.



### psychiatric facilities

**Issue:** The legal regulation of criteria for the use of means of restraint is in conformity with the European standard. Full compliance with the standard, including the principles of necessity and subsidiarity, is prevented by a number of issues persisting in practice. In practice, there is a lack of specific conditions for alternative resolution of dangerous patient behaviour. At certain units, means of restraint are used preventively and is prolonged because of inadequate material equipment and insufficient staff, without this leading to any adjustment in the manner of providing care. Not only patients, but also the personnel are in a danger of injury and trauma.

The health-care staff often do not distinguish between treatment and pharmacological restraints. State inspection is sporadic. Because records of the use of means of restraint in the current form, as laid down by the Healthcare Services Act (Section 39 (4)), only provide an irrelevant statistic, effective monitoring and inspection of restraints remains difficult.

**Potential solution:** The use of means of restraint will not decrease without policy of their prevention and alternative means, and without a clear signal from the Government that it will no longer tolerate care relying on the use of restraints. Constant guidance and supervision is also necessary.

## The attitude to the use of net beds has not changed



### healthcare services facilities

**Issue:** Although the CPT has regularly recommended since 2002 that the Government of the Czech Republic prohibit this means of restraint, net beds still remain in use. Specifically, although the number of net beds in psychiatric hospitals has decreased, they nevertheless have not been abandoned completely. It is not known how many of them are currently in these or other healthcare facilities. The Government has not yet

adopted the necessary steps to implement its 2015 promise to the CPT that it would seek ways to discontinue the use of net beds. Some physicians are concerned that net beds will simply be replaced by other means of restraint.

§ **Adopt a strategic approach that would include search for and promotion of effective alternatives to the use, not only of net beds, but of means of restraint in general.**

# 7. Further activities to prevent ill-treatment

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Prevention is a multilateral and multidisciplinary effort. We therefore give lectures, engage in debates and educate ourselves.

“

## We strive to build a long-term dialogue

In 2019, the Public Defender of Rights and employees of the Office again met with the Director General of the Prison Service of the Czech Republic and public prosecutors of the Prosecutor General's Office. After our visits to secure preventive detention institutions, we organised a roundtable with the directors and a wide range of experts, where we discussed our

findings and recommendations. We organised two meetings on the current topics of institutional and protective education and two meetings for authorities involved in administrative expulsion and forced return of foreign nationals. We also participate in methodological meetings organised by the Ministries and the Prison Service.

## We disseminate the standard of prevention of ill-treatment

Within regular teaching, our own training activities and participation in conferences, we

- trained 163 professionals working in long-term and psychiatric care and employees of regional authorities on issues of prevention of ill-treatment of people dependent on care and findings obtained through our visits to facilities;
- trained 70 prison physicians and public prosecutors in the standard of documenting and reporting evidence of ill-treatment;

- provided a lecture for participants in the Senior Academy of the Brno Municipal Police as to how they should defend themselves against ill-treatment;
- gave a lecture to students of social work, law and international relations, public guardians, Prison Service officers and workers in geriatrics and social services on the results of systematic visits and the standard of prevention of ill-treatment.

We regularly contribute to professional journals Social Services and Czech Prison System, and occasionally also to the journal Social Work Magazine and other scholarly journals.

## We work to improve the professionalism and quality of our visits

The thematic focus on remand prisons and special regime homes required proper preparation of the programme of visits and training of our team. Our lawyers completed several internships in social services facilities and meetings in prisons. We organised training on the

topic of disability, communication of people with mental disabilities, methods of drafting reports and the legal standard prevention of ill-treatment. Our lawyers also completed a “bespoke” training by experts in the area of case law of the European Court of Human Rights.

## Lively international co-operation

We have already worked as a national preventive mechanism for 14 years. We are happy to share our experience, but also need new inspiration. For this reason, we also participated in several meetings with our foreign colleagues in 2019, deepened co-operation with the Austrian NPM and welcomed new interns from Ukraine.

In the area of monitoring of forced returns of foreigners to their home countries, we co-operate with the FRONTEX European return agency and the International Centre for Migration Policy Development. Employees of the Office provide training to persons tasked with monitoring expulsions in other countries and they monitor return operations personally as well.

## We assisted the Government in planning measures in response to the CPT report

In 2019, the Government of the Czech Republic received a report on the visit performed by the CPT. The report comprised a detailed statement on the situation in police detention, prisons, psychiatric hospitals and social care homes. The Government was obliged to respond specifically to each of the several dozen recommendations and, where appropriate, promise to adopt remedial measures. We commented on the initial draft response prepared by the Ministries. As a result, the final response of the Government was more accurate, followed up on the dialogue led by the Government with the Committee in 2015 and also yielded a list of specific tasks for the ministries concerned.

 [CPT report](#) and the Government's response

 [Resolution of the Government](#) and [List of Tasks for the Ministries](#)



### Automatic publication of CPT reports

In 2019, the Government decided to ask the CPT to apply the regime of automatic publication of reports. This means that the Government will no longer be required to make separate decisions in this regard and, based on agreement with the Office of the Government, the CPT will publish the reports directly. This is an important step, expressing the commitment of the Czech Republic to work transparently to prevent ill-treatment.

 [CPT website](#)



For the third time, the “Yellow Ribbon Run” race held within the Prague Marathon took place under the Defender’s auspices. The philosophy of the race subtitled “Run Away from Prejudice” is to point out problems in integrating prisoners in civil life after they are released. This race has already been instrumental in securing jobs to hundreds of former convicts. The picture shows our relay team, which improved its last year’s ranking by 32 places with a time of 1:55:25.



# »»»»»»»»»» ANNEX 1: 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 a 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, are 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 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 been monitoring detention of foreign nationals and the performance of administrative expulsion. Since 2018, the Defender has helped foreign nationals who are EU citizens and reside or work in the Czech Republic, advises them of their rights and provides them with assistance in cases of suspected discrimination on the grounds of nationality.

Effective from 2018, the Defender has been active as a monitoring body in the sense of the U.N. Convention on the Rights of Persons with Disabilities. The Defender publishes reports and issues recommendations regarding issues related to the fulfilment of rights of people with disabilities. For this purpose, it has created an advisory body.

The special powers of the Defender include the right to file a petition with the Constitutional Court seeking the abolishment of a secondary legal regulation, the right to become an enjoined party in Constitutional Court proceedings on annulment of a law or its part, the right to lodge an action to protect a general interest or to file an 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 repealing 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 responsibilities. The Defender regularly informs the public of his or her findings through the Internet, social networks, professional seminars, round tables 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 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. 349/1999 Coll.).

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 care. Systematic visits are carried out in facilities founded by both public as well as private entities.

The Defender is free to choose 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.

The visits are carried out by employees of the Office of the Public Defender of Rights on the basis of the Defender’s instruction. These are lawyers from a special department within the Office as well as external consultants in other fields of expertise. The Defender most frequently co-operates with physicians and nurses, 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. Office staff receive all necessary training courses, internships and technical equipment, including cars, 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. The Defender monitors compliance with the recommendations and discusses the recommendations 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. The Defender publishes reports on individual visits (after the case has been closed) in the Defender’s Opinions Register ([eso.ochrance.cz](http://eso.ochrance.cz)) and on the Internet. If the Defender obtains findings that can be generalised, he or she releases a summary report where the systemic recommendations are formulated and measures to prevent ill-treatment are proposed.

Along with visits, the Defender and her team also pursue further activities to prevent ill-treatment: Publish selected summary reports in press and disseminate them. Comment on governmental bills. Work in advisory bodies. Co-operate with State inspection bodies. Educate and raise awareness among professional public. Actively participate in the co-operation of national preventive mechanisms in Europe.

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