



Public Defender of Rights  
OMBUDSMAN

# ANNUAL REPORT 2015





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## Explanatory notes



trends in the particular area



link to a webpage



reference to a printed medium

generally about the Public Defender of Rights

government

supervision over restrictions of personal freedom

equal treatment and discrimination

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# FOREWORD BY THE PUBLIC DEFENDER OF RIGHTS

If you read the annual summary reports of the Public Defender of Rights in the previous years, you can now see that this year's report looks substantially different. This is the 15th such report issued by the Office of the Public Defender of Rights since its establishment. In recent years, the form of the report changed several times, but its basic concept remained the same. This time, the change is fundamental. I opted for this change after careful deliberation and discussion with my colleagues. I was motivated to do so by my experience with drafting of the previous report and the thoughts I had at the time. I felt that our language was too complicated, too "legalese" and, in some places, borderline incomprehensible. I asked myself a question: who is going to read this and will they understand it? Preparing such a report takes a lot of effort – does it serve a purpose, aside from complying with my statutory duties? This is when I decided to change the concept of the annual summary report (as well as its title) and make it more accessible to the general public.

However, this was not the only reason for the change. For roughly a year now, anyone can search the Internet register of the Defender's opinions (in Czech: ESO) – a fulltext search and search by the individual areas of law or the individual sections of laws are available. In addition, we continue to publish collections of the Defender's opinions – last year, we summarised our experience with the State administration of courts and water protection. We will also publish separate summary reports on protection against discrimination and protection of individuals against ill-treatment with further details. Quoting the individual case-studies in this annual report would thus serve no purpose, so I decided to try and introduce the variety of topics present in the work of the Office of the Public Defender of Rights in a more concise, but also more vivid, fashion.

Last but not least, I wished to make it clearer that the Ombudsman's work is a team effort. Without renouncing the responsibilities associated with the office I hold, I want the public to know that the Defender's opinions are based on the work of my many colleagues, to whom I would like to express my gratitude. For this reason, the report no longer speaks of the Defender in the third person, but uses the plural "we" to point out the co-operation between the expert employees of the Office (the lawyers in particular) and me or my deputy, JUDr. Stanislav Křeček. I must also mention the employees of the filing service, who take great care to check the texts published by the Office, as well as all the others who ensure smooth everyday operation of the Office.

We wish you a pleasant reading!

Anna Šabatová, 22 February 2016



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



JUDr. Stanislav Křeček  
Deputy of the Public Defender of Rights

# »»»»»» Recommendations to the Chamber of Deputies

Success rate of the legislative recommendations submitted by Anna Šabatová as the Defender

change was achieved **27%**

change is being prepared **33%**

no change **40%**



Based on her findings, each year the Defender submits to the Chamber of Deputies a number of recommendations concerning changes in legislation. The Chamber of Deputies may use the recommendations as a basis for bills submitted by the Deputies and discuss the recommendations in its committees. In cases where a comprehensive change to legislation is required, the Defender recommends that the Chamber of Deputies request necessary co-operation from the Government.

## The Defender's recommendations in 2015

### 1/ The minimum assessment base for public health insurance premiums payable by employees

Insurance premiums for public health insurance equal 13.5% of the assessment base, which corresponds to employees' income from employment. One third of the insurance premiums is paid by the employee and the remaining two thirds by the employer. However, if the employee's income is lower than the minimum salary (which also constitutes the minimum assessment base), the employee is required to pay insurance

premiums in the amount corresponding to 13.5% of the difference between the minimum and the actual salary.

The law thus disproportionately affects **the lowest-income employees who are working part-time jobs**. Indeed, this is the typical situation when the employee's salary is below the minimum salary. With exception of cases where the minimum assessment base is not applied, these employees do not pay insurance premiums based on their actual income, like other employees, but **are required to pay the health insurance balance** from their already low income.

The minimum assessment base (i.e. the minimum contribution paid by each insured person) alongside State contributions ensures sufficient funding for the public health insurance system. However, the Defender still considers the above-described burden unjust, especially if the employees in question are unable to choose the number of hours they work per week and cannot secure another source of income. Currently, the employer has the duty to pay the contribution from the balance only in cases of "obstacles on the part of the organisation", i.e. impediments to

work, and not in case of systematic use of part-time employment.

There are approximately 13,500 employees working part time jobs at minimum hourly rates. Some of these employees are eligible for an exception from the minimum assessment base. The public health insurance system would thus suffer no serious shortage even if all these employees paid insurance premiums based solely on their actual income.



The Public Defender of Rights recommends to the Chamber of Deputies to request that the Government submit a draft amendment to Act No. 592/1992 Coll., on insurance premiums for public health insurance, as amended, relieving the employees, under set conditions, of the duty to pay insurance premiums in the amount of 13.5% of the difference between the actual and the minimum assessment base; or, alternatively, reducing the amount of the premiums paid to 4.5%.

## 2/ Standards for staff and material and technical resources for residential social services

The systematic visits to social services facilities for the elderly showed that some registered facilities lacked sufficient material resources for providing care, or were insufficiently staffed, which resulted in ill-treatment of the clients. The conditions of registration for the provision of social services are laid down in the Social Services Act. However, the Act does not set sufficiently clear and predictable requirements for staff and material and technical resources necessary for the individual types of services, 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 means of 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 will be postponed. However, the Defender believes that such an implementing regulation is crucial and urgent.



The Public Defender of Rights recommends to the Chamber of Deputies to include, by means of a Deputies' motion, new paragraph 5 into Section 79 of Act No. 108/2006 Coll., on social services, as amended, in the following wording: "The minimum requirements for personnel, material and technical resources in residential social services are defined by an implementing regulation", and to include, in Section 119, the words "Section 79 (5)" after the words "Section 76 (1)".

### 3/ Public health insurance of individuals undergoing institutional protective treatment

Persons undergoing protective institutional treatment (aside from imprisonment) **must pay public health insurance premiums themselves**, even though the State pays insurance premiums for persons in preventive detention (i.e.

“involuntary commitment”), custody or imprisonment. The Defender considers such unequal approach unjustified.

In September 2011, the Ministry of Health promised the Defender to list the aforementioned persons in Section 7 (1) of the Public Health Insurance Act “within the next amendment to the Act”. However, none of the amendments presented to date have brought this change.



For this reason, the Public Defender of Rights recommends to the Chamber of Deputies to include, by means of a Deputies’ motion, persons in protective institutional treatment in the list given in Section 7 (1)(i) of Act No. 48/1997 Coll., on public health insurance, as amended, for example by changing the wording as follows: “persons in custody, imprisonment, preventive detention or protective institutional treatment.”

### 4/ Parental allowance – consent of the second parent and choice of the method of drawing benefits

The State Social Assistance Act makes payment of benefits conditional on consent of the entitled person and persons being assessed together with him or her, where the relevant governmental authorities and other institutions are supposed to inform the relevant labour office of facts important for the decision on granting the benefit and its amount (such as the income, the fact the person is a dependent child, and other facts).

Dependent children and their parents are, barring exceptions, always assessed together. However, some parents applying for parental allowance are not able to obtain the **consent (signature) of the other parent of the child** since they do not live together or their relations are not good. In cases where the child’s parent does not want to draw benefits on the basis of earnings of the second parent, the signature of the other parent is merely a formality; no information is obtained about him or her. Nevertheless, the labour office cannot decide in the matter and grant the allowance. The Defender obtained a supporting opinion from the Office for Personal Data

Protection. It states that consent is not necessary as labour offices have statutory authorisation to request such information.

The law stipulates **the rules for drawing the parental allowance** during the first 4 years after the child’s birth: the allowance is CZK 7,600 in the first 9 months, falling to CZK 3,800 in the rest of the period. Employees with sufficient income and self-employed individuals who have voluntarily paid sufficient sickness insurance premiums may choose faster drawing of the parental allowance (up to CZK 11,500 a month). However, the maximum amount may never exceed CZK 220,000.

The Defender repeatedly encounters complaints from economically active persons who had paid taxes and contributed to the pension scheme before the childbirth, but were denied the possibility of choosing faster drawing of the parental allowance because they had not participated in the voluntary sickness insurance scheme. This issue also affects students and economically inactive people. As all manners of drawing the allowance are capped by the same maximum amount, the Defender believes that it would be just to allow other groups of parents to choose the manner of drawing the parental allowance. The Defender discussed this possibility with Ministry of Labour and Social Affairs.



The Public Defender of Rights recommends to the Chamber of Deputies to request that the Government submit a draft amendment to Act No. 117/1995 Coll., on State social assistance, as amended, which:

- would abolish, for reasons of redundancy, Section 50 of the Act, which imposes the duty on the entitled person and the person assessed together with him or her to give consent to obtaining the facts relevant for granting the benefit and its amount;
- would allow other groups of parents to choose the manner of drawing of the parental allowance.

## 5/ “Antenna dispute” between the owner and user of a building

The Electronic Communications Act stipulates the duty of the building owner (apartment building or non-residential premises) to enable users of the building to receive radio and TV broadcasts and to establish internal communication lines for the public communication network, including a switchboard and a network termination point. Any disputes between the owner and the user are to be resolved by the construction authority in co-operation with the Czech Telecommunication Office (instead of a court).

The Defender and her predecessor found that the **construction authorities were often unaware how to deal with such disputes** and

remained inactive or proceeded inconsistently. This was due to the fact that they considered the respective legal regulation unclear in terms of what they were supposed to decide about (the type of device for reception of the signal, the placement of the device, etc.).

The situation remains unresolved despite the repeated promises of the Ministry for Regional Development and the Ministry of Industry and Trade. The Ministries failed to issue application guidelines and did not put forward proposals for amending the respective law. In the absence of this special regulation, such disputes would be resolved by courts. According to information received from regional authorities, there are less than a dozen such cases a year.



The Public Defender of Rights recommends to the Chamber of Deputies to repeal, though a Deputies’ motion, the last sentence of Section 104 (16) of Act No. 127/2005 Coll., on electronic communications and on amendment to certain related laws (the Electronic Communications Act), as amended.

## 6/ Transfer of the burden of proof in discrimination disputes

The Defender believes that all victims of discrimination should have the same procedural rights before the court. The Anti-Discrimination Act (Act

No. 198/2009 Coll.) prohibits difference in treatment on specified grounds (such as race, disability, sex) in selected areas of life (such as employment, housing, healthcare). However, the Code of Civil Procedure lays down the rebuttable presumption of discrimination only in certain cases.

For example, if a certain service, education or healthcare is denied to a member of an ethnic minority, it is sufficient if the person concerned proves in court the existence of unfavourable treatment and asserts that the treatment was unfavourable on the grounds of his or her ethnicity. The burden of proof is then transferred to the defendant – it is up to him or her to prove that his or her conduct was not motivated by the plaintiff's ethnicity. However, in the same situation involving an elderly person, a person with a disability, or a sexual minority, the burden of proof is not shifted. Some victims of discrimination thus face a considerably worse position in terms of the burden of proof, which the Defender believes is a reason they do not turn to the courts for defence. All victims of discrimination should have the same procedural rights before the court, regardless of the grounds of discrimination and the protected areas of life anticipated by the law.

In December 2015, the Government discussed a draft amendment to the Anti-Discrimination Act comprising two possible options of amending the Code of Civil Procedure. The Government chose the option without the proposed change in the transfer of the burden of proof. The Chamber of Deputies received the bill on 23 December 2015 (parliamentary press No. 688).

The Defender recommended to change the transfer of the burden of proof already in the annual report for 2013. The currently recommended measure maintains the level of protection of certain victims of discrimination in access to public contracts and membership in associations, and newly takes into regard the requirements laid down by Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.



The Public Defender of Rights recommends to the Chamber of Deputies to amend, by means of a Deputies' motion, Section 133a of Act No. 99/1963 Coll., the Code of Civil Procedure, as amended, to read as follows:

"If the plaintiff's testimony in court implies that the defendant is guilty of discrimination

- A/ on the grounds of race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion or belief in matters of
  - 1/ right to employment and access to employment;
  - 2/ access to occupation, enterprise and other forms of self-employment;
  - 3/ employment relationships, service relationships and other dependent activities, including remuneration;
  - 4/ membership of and activities in trade union organisations, works councils or employers' organisations, including the benefits provided by such organisations to their members;
  - 5/ membership of and activities in professional associations, including the benefits provided by such public corporations to their members;
  - 6/ social security;
  - 7/ granting and provision of social benefits;
  - 8/ access to and provision of healthcare;
  - 9/ access to and provision of education and professional training;
  - 10/ access to and provision of goods and services, including housing, if provided to the public;
- B/ on the grounds of race or ethnic origin in access to public contracts and membership in associations and other interest groups; or
- C/ on the grounds of nationality in legal relations in which a directly applicable regulation of the European Union concerning the free movement of workers applies (56 b);

the defendant is obliged to prove that the principle of equal treatment was not violated.

56b) Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.

## Evaluation of the recommendations for 2014

The Chamber of Deputies acknowledged the Annual Report for 2014 on 17 December 2015. In contrast to previous years, it did not request that the Government address the new legislative recommendations and submit to the Chamber a report as to how they were put into practice. Out of five recommendations laid down at that time, the Defender wishes to remind the readers especially of the following two unheeded recommendations.

### 1/ Curatorship Act

The Defender already pointed out the problems in performance of public curatorship in her 2013 Annual Report. A year later, she directly recommended to the Chamber of Deputies to request that the Government submit a bill on curatorship, as anticipated by the Civil Code. The recommendation was not heeded. It is continuously being brought to the Defender's attention that some curators are inactive and subject to no supervision whatsoever, while the activities of others are undesirable. This is the reason for **the continuing widespread violations of rights of persons with disabilities** in the sense of Article 12 of the Convention on the Rights of Persons with Disabilities.

The Ministry of Justice has already twice unsuccessfully attempted to draft a substantive intent of the Curatorship Act. As a result of this failure, attempts are now being made to regulate some individual matters concerning curatorship in existing laws. The Defender believes, however, that the Curatorship Act needs to be adopted specifically and only in the form of a comprehensive regulation ensuring adequate protection of the rights of persons with restricted legal capacity.



The Public Defender of Rights again recommends that the Chamber of Deputies request the Government to submit a draft Curatorship Act.

### 2/ Health insurance for foreign nationals

Many foreign nationals from non-EU countries who lawfully stay in the Czech Republic in the long term lack access to public health insurance during the initial five years of their stay. **The current system of commercial health insurance on which these foreigners must rely has long been failing to fulfil its purpose.** Commercial terms of insurance comprise a large number of exclusions and conditions that release the insurance companies from the duty to cover some part of healthcare provided to insured foreigners.

The forthcoming amendment to the Residence of Foreign Nationals Act and the Public Health Insurance Act aiming to merely improve regulation of the commercial health insurance is seen as insufficient by the Defender as it will not ensure healthcare coverage in a scope comparable to the public health insurance system. Moreover, commercial health insurance carries high transaction costs, meaning that a disproportionately small part of the insurance premiums collected would be used to cover healthcare costs, as compared to the system of public health insurance.





The Defender has thus repeatedly recommended to the Chamber of Deputies to request that the Government submit an amendment to Act No. 48/1997 Coll., on public health insurance, as amended, which would incorporate, after a set period of residence, the following categories of foreign nationals with a long-term residence in the system of public health insurance:

- self-employed persons;
- family members of citizens of the Czech Republic, family members of foreign nationals with permanent residence and foreign nationals who are economically active in the Czech Republic; and
- foreign nationals who have ceased to pursue gainful activities but receive sickness benefits or parental allowance.

## Evaluation of the recommendations for 2013

The Defender has already appreciated that most of her legislative recommendations issued in 2013 have been adopted or are in the process of being adopted. However, the year 2015 brought no changes with regard to the two non-adopted recommendations from the 2013 Annual Report.

### 1/ Inspection of files by curators ad litem

The Act on Social and Legal Protection of Children does not allow lawyers or other third parties appointed by a court as curators of minor children in proceedings concerning judicial care of minors to inspect files kept on the children by a body for social and legal protection of children. The Defender remains convinced that this authorisation is crucial for effective protection of the rights of children under curatorship.



The Defender has therefore repeatedly recommended to the Chamber of Deputies to make the following amendments to Act No. 359/1999 Coll., on social and legal protection of children, as amended, by means of a Deputies' motion:

- in the first sentence of Section 55 (5), insert the words "or the child's curator ad litem" after the words "some other person responsible for the child's upbringing";
- in the third sentence of Section 55 (5), insert the words "or the child's curator ad litem" after the words "other persons responsible for the child's upbringing".

### 2/ Adding disability as grounds of discrimination in the Service Relationship Act and the Professional Soldiers Act

The Act on Service Relationship of Members of Security Corps de facto stipulates the duty to discharge a member of security corps if he or she has become permanently medically unfit for the performance of service. Indeed, the Medical Fitness Decree (Decree No. 393/2006 Coll.) does not enable physicians to take into account the actual impact of an illness on the performance of service. Some persons are thus prevented from serving in security corps on grounds of disability, even though their medical conditions does not prevent the performance of service.

Unlike the Anti-Discrimination Act, the special anti-discrimination provisions of the aforementioned law do not specify “disability” among the prohibited grounds of discrimination.

As a result, the law is contrary to the Charter of Fundamental Rights and Freedoms, international treaties on human rights and basic freedoms and the case law of the European Court of Human Rights. The law is also questionable in terms of Council Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation. The Professional Soldiers Act shows a similar defect.

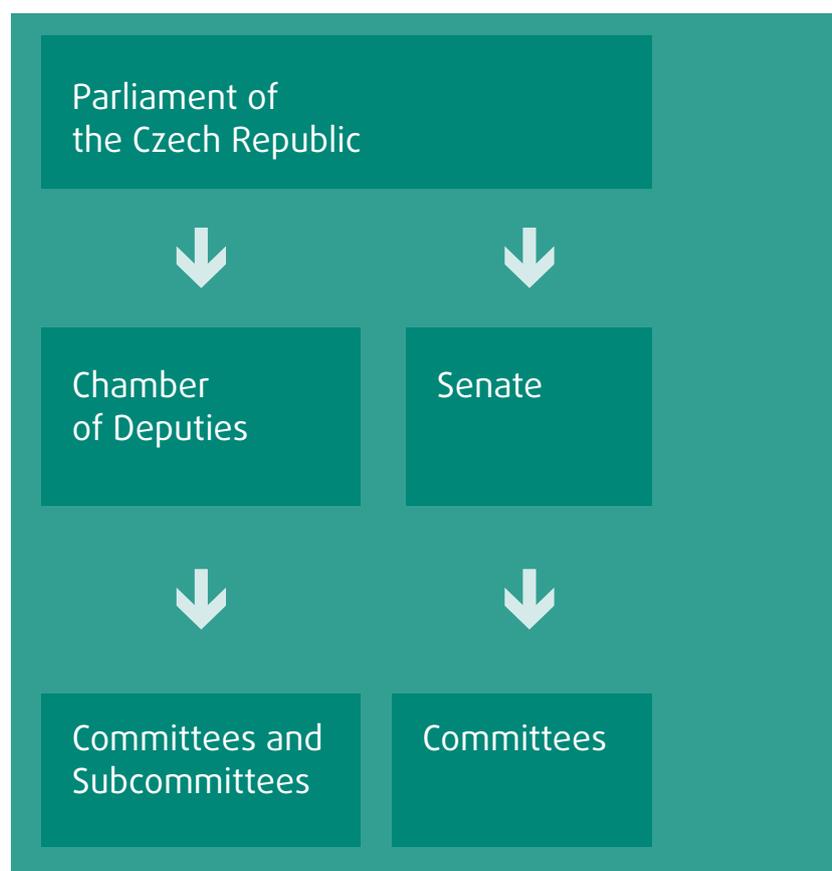


The Defender has therefore repeatedly recommended to the Chamber of Deputies to make the following amendments by means of a Deputies’ motion:

- in the first sentence of Section 77 (2) of Act No. 361/2003 Coll., on the service relationship of members of security corps, as amended, insert the word “disability” after the word “age”;
- in the first sentence of Section 16 (4) of Act No. 361/2003 Coll., on the service relationship of members of security corps, as amended, insert the word “disability” after the word “sexual orientation”;
- in the third sentence of Section 2 (3) of Act No. 221/1999 Coll., on professional soldiers, as amended, insert the word “disability” after the words “sexual orientation”.



# »»»»» The Defender and the Parliament



## The Chamber of Deputies

- On 17 December 2015, the Chamber of Deputies discussed and took due note of the 2014 Annual Report on the Activities of the Public Defender of Rights (parliamentary press No. 446).
- The Defender also participated in the first reading of **the Government’s bill amending the Public Defender of Rights Act (parliamentary press No. 379)**. The Public Defender of Rights could gain the power to apply to the Constitutional Court to abolish a law or its individual provisions on the grounds of them being at variance with the constitutional order, and also the power to file a “public action” in the area of discrimination, through which the Defender would seek to end discrimination and ensure remedy of the defective state of affairs (not satisfaction in money), but only in cases where infringement of the right to equal treatment or discrimination could affect a larger or indeterminate number of people and/or if they could seriously impact public interest.
- The Defender worked closely with the Chamber of Deputies, especially through its individual committees.

### Petition Committee and its subcommittee for human rights

- The Petition Committee discussed in the Defender’s presence her 2014 Annual Report, the quarterly reports as well as the reports on individual cases where the Defender had not achieved remedy even after using all her statutory powers.
- The Committee **supported the proposed amendment to the Public Defender of Rights Act** as a whole and suggested to add the Defender’s power to monitor the observance of the rights of people with disabilities.
- The Defender informed the subcommittee of her findings from the visit to the Facility for Detention of Foreigners in Bělá-Jezová and participated in the committee’s debate on security measures and the limits to restriction of human rights.

## Committee on Legal and Constitutional Affairs and its subcommittee for legislative initiatives of the Public Defender of Rights and the European Court of Human Rights

- The Defender participated in a meeting of the Committee and its subcommittee, where the Deputies discussed the presented 2014 Annual Report and the individual quarterly reports.
- Within its debate on the proposed amendment to the Public Defender of Rights Act, the Committee suggested to add **the Defender's power to monitor the observance of the rights of people with disabilities**. It also suggested to leave out anti-discrimination action and to make the Defender's application to the Constitutional Court to abolish a law conditional on previous consultation of the Petition Committee.

## Social Policy Committee

- The Defender supported the discussed **amendment to the Schools Act** and informed the committee of her opinion on draft Section 16a (5) of the Schools Act (parliamentary press No. 288). She recommended to leave it out as it would make it possible to treat some children in the education system as mentally retarded, even though medical specialists ruled that out. The Committee accepted the Defender's recommendation and presented the relevant motion.
- The Defender informed the Committee of certain problems with the **amendment to the Assistance in Material Need Act** (parliamentary press No. 156):
  - **The legal regulation of community service** (in Czech: veřejná služba) could be at variance with the prohibition of forced labour

(in terms of the principle of voluntariness and the remuneration received) and lead to a loss of other people's employment (in that it would substitute for the currently existing instrument of paid community work).

- She also proposed to **extend the range of people** who cannot justifiably be expected to perform community service to include certain vulnerable groups (e.g. people with 2nd degree disability).
- The Defender also participated in the Committee's discussions on application of municipality's consent as a precondition for granting a contribution towards housing to persons living in dormitories, and on a suitable amendment to the Assistance in Material Need Act.
- The Defender also participated in the Committee's discussions on **application of municipality's consent as a precondition for granting a contribution towards housing** to persons living in dormitories, and on a suitable amendment to the Assistance in Material Need Act.
- The subcommittee for non-insurance benefits systems, senior citizens and socially vulnerable groups addressed the Defender's reports concerning the **unregistered social care facilities**.

## Security Committee, subcommittee for prisons

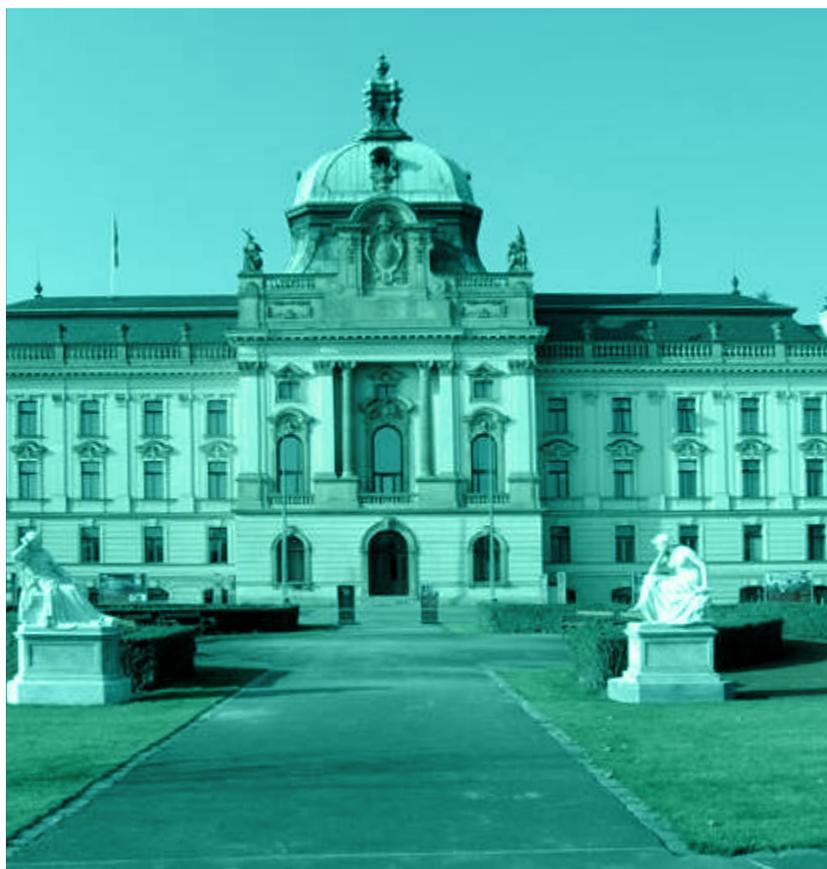
- The Defender acquainted the Committee with her findings from inspections focusing on the **conditions of detention in custody and imprisonment**.

## The Senate

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- On 17 June 2015, the Senate discussed and took due note of the 2014 Annual Report on the activities of the Public Defender of Rights.

# »»»»» The Defender and the Government



The Public Defender of Rights advises the Government whenever a ministry fails to adopt adequate measures to remedy a shortcoming or general maladministration. The Defender may also recommend that the Government adopt, amend or repeal a law or Government regulation or resolution. In 2015, the Defender notified the Government in two cases. The Defender considers her participation in commentary procedures a simplified form of legislative recommendations to the Government.

## The Defender's recommendations to the Government

### The availability of social care and unregistered facilities

- The Defender found **ill-treatment, especially of the elderly and people with mental disorders**, during her visits to 9 residential social services facilities without registration. This comprised, for instance, insufficient or unsuitable food, and the absence of prevention of malnutrition, inexpert provision of nursing care, restraining the clients, insufficient prevention of falls, careless handling of medication, overuse of sedatives, accelerating the onset of incontinence, degrading sanitary conditions and the lack of respect for privacy. The Defender was forced to inform the prosecuting bodies of her most serious findings.
- Unregistered facilities cannot be eliminated without first **ensuring sufficient availability of registered services**.
- The Defender asked the Government to task the Minister of Labour and Social Affairs to prepare a plan to ensure **availability of social care**

**services** and to actively seek and help people who are already using the services of unregistered facilities or are in danger of it.

- The Government complied with the Defender’s request.

 File No. 19/2015/SZD

### Stricter limits for wastewater treatment plants

- The current wastewater treatment plants could clean water better, but they do not. This is because exact limits for the individual pollutants were set by Annex 7 of the Government Regulation No. 61/2003 Coll., on indicators and values of permissible pollution of surface waters and wastewater. Water authorities may not set stricter limits in the permits for discharge of waste water issued to the treatment plants that would be more in line with their technological potential. This results in **deteriorating quality of water** in rivers and reservoirs.

- Abandoning numerical values and **more precise description of the best available technology** could be a solution. The wastewater treatment plants would thus fully utilise their potential and discharge water with lower levels of pollutants.

- As the Government was about to discuss a new draft regulation, the Defender recommended to support a variant that would include only a verbal description of the best available technology, without including any precise numerical values.

- Although the Government did not adhere to the Defender’s recommendation (and adopted a different variant), it **tasked the Minister of the Environment to prepare an amended Government regulation by 15 April 2016** where numerical values would be left out or made significantly stricter.

 Resolution of the Government No. 1022 of 14 December 2015 File No. 3/2015/SZD

## The Defender’s suggestions to the Government

235



suggestions were given by the Defender in 2015 concerning the total of

34



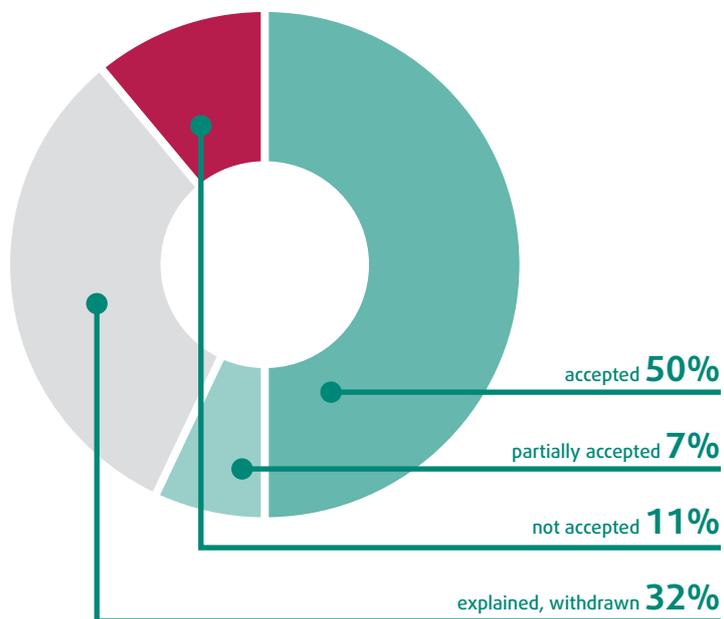
drafts.

More than a half of all suggestions were at least partially adopted; disagreements persisted only in 11% of cases. In comparison to the previous year, this represents a continuation of the existing trend in terms of the quantity and success rate.

The suggestions made by the Defender were successfully adopted in over a half of the cases: **50%** of suggestions were accepted completely, a further **7%** were accepted at least in part.

Most suggestions concerned the decree implementing Section 19 of the Schools Act; none remained unaccepted. On the other hand, most unaccepted suggestions were raised in respect of the Act on Protection of Health against Dependency Producing Substances.

### Resolution of suggestions raised within commentary procedures in 2015



# »»»»» The Defender and courts



## Proceedings on abolishing secondary legislation

The Public Defender of Rights may propose that the Constitutional Court abolish a secondary legal regulation or its individual provisions. In 2015, the Defender exercised this power in two cases which were similar to each other.

### Proposal for abolishing parts of generally binding municipal ordinances issued by the towns of Litvínov and Varnsdorf

The Defender originally inquired into the procedure of the Ministry of the Interior in performing supervision of the lawfulness and constitutionality of municipal ordinances issued by Varnsdorf and Litvínov. The relevant ordinances issued in those towns ban the consumption of alcoholic beverages in certain public spaces, as well as bringing one's own articles for gatherings and barbecuing in certain spaces. The ordinances prohibit people in the whole town from sitting on

curbs, low walls and other structural elements not intended for sitting.

In the Defender's opinion, the ban on consumption of alcoholic beverages in certain public spaces is in accordance with the law.

However, the Ministry should have considered it unlawful to impose a general **ban on sitting on things not intended for this purpose** in all public spaces of any given town. The implication is that any person who sits down e.g. on a curb or a low wall or railing in front of the school would be committing an infraction – violation of the ordinance. The Defender considers **such a regulation completely absurd**. Sitting on things other than

benches is not a harmful activity. Combating vandalism by prohibiting all people from engaging in activities not necessarily leading to vandalism is disproportionate.

As the Defender was unable to ensure remedy either through the Ministry of the Interior or via communication with the above-specified towns,

the Defender resorted to using the special powers vested in her and applied to the Constitutional Court with an application to abolish the relevant parts of the aforementioned generally binding municipal ordinances.

 [File No. Pl. ÚS 34/15 and File No. Pl. ÚS 35/1](#)

## Proceedings on abolishing laws

With effect from 1 January 2013, the Public Defender of Rights may join proceedings on abolishing laws or their individual provisions as an intervening party. In 2015, the Defender joined three of twenty-two such proceedings.

In one case (File No. Pl. ÚS 2/15), the Defender supported an application filed by the Municipal Court in Prague concerning abolishment of certain provisions of the Public Health Insurance Act which provided for unequal access to healthcare for some categories of foreigners in the Czech Republic. The Defender also decided to join and comment on proceedings (File No. Pl. ÚS 7/15) concerning an application for abolishment of Section 13 (2) of the Registered Partnership Act, specifically on the issue of adopting a child by a person living in registered partnership. The last of the mentioned cases concerned an application to abolish certain provisions of the Roads Act.

### Application for abolishing Section 10 (4)(b) of the Roads Act

The Defender joined, as an intervening party, proceedings on an application filed by the Regional Court in Prague for abolishing a part of the Roads Act. The case referred to by the Regional Court in its application is one of many that the Defender has repeatedly encountered: a municipality, as the owner of a local road, refuses to grant consent to connect neighbouring properties despite the fact that such connection would be technically feasible and the transport capacity of the road is satisfactory.

In her statement, the Defender supplemented the applicant's arguments with a similar case which resulted in a procedural tug-of-war between the

administrative authorities involved, caused by their differing approaches to interpretation of the contested statutory provision. The competent highway administrative authority insisted that connection to a road could not be permitted if the owner (municipality) disagreed, whatever the reason might be. The appellate body cancelled its decision on the grounds that a highway administrative authority should only consider the technical aspects of the road owner's agreement or disagreement, i.e. in terms of safety and fluency of traffic and not from the viewpoint of protection of ownership rights.

While the Defender considers the opinion of the appellate body generally sound and desirable, she nonetheless had to conclude that it was at variance with the applicable legislation. Under the Roads Act, the owner's consent is a prerequisite for permitting connection to a road. At the same time, when deciding whether or not to grant consent, the road owner is not bound by any conditions and the consent cannot be replaced by a court order even if it were proven that the applicant for connection to the road was subjected to frivolous treatment.

Therefore, the Defender fully upheld the application filed by the Regional Court in Prague and pointed out that the legal regulation in question would, in fact, be amended effective from 31 December 2015 in such a way as to eliminate this problem in future. **The law should ensure that municipalities cannot arbitrarily block connection of real estate to roads** without stating a legitimate reason.

 [Defender's Report: File No. 2853/2014/VOP](#)

 [File No. Pl. ÚS 25/15](#)

## Proceedings on constitutional complaints

The Constitutional Court may request assistance from other authorities if it requires underlying documents for its decision-making.

The Defender thus provided the Court with her statements on three constitutional complaints:

- File No. I. ÚS 860/15: preparation of foreigners for expulsion, performance of expulsion, and handcuffing of foreigners during forced returns;
- File No. III. ÚS 3289/14: permissibility of detention of children in the Facility for Detention of Foreigners in Bělá-Jezová;
- File No. IV. ÚS 3035/15: fee for father's presence during birth.

### Fee for father's presence during birth

Under the law, a patient is **entitled to the presence of a close person** or some other person

determined by the patient in the provision of healthcare services unless this would hinder the provision of these services. In conformity with the aforementioned patient's right, **healthcare facilities have the duty to tolerate such person's presence. The patient's right is exercised free of charge.** A healthcare facility could merely charge compensation for the direct costs of the relevant person's presence (for example, the costs of meeting requirements for hygiene). The Defender found that maternity hospitals collect a fee ranging from tens of crowns to fifteen hundred crowns (approx. from EUR 2 to 60) for the presence of the father (or other persons) during birth. Thus, some of these fees substantially (several times) exceed the actual costs.

The Defender also supported the complainant's right to protection from unauthorised interference with private and family life under the Charter of Fundamental Rights and Freedoms.



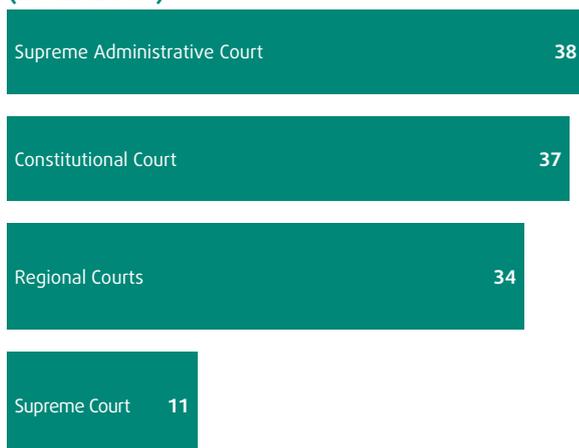
Defender's Statement File No. 41/2015/SZD of 14 December 2015

## Courts usually agree with opinions expressed by the Public Defender of Rights

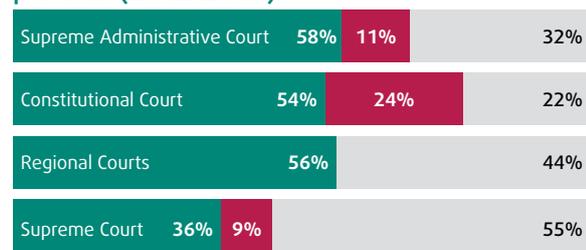
An analysis of court decisions rendered in the period from 2012 to 2015 reveals that the Defender's opinions are most often mentioned by the Supreme Administrative Court (38 cases) and the Constitutional Court (37 cases). In a majority of cases where the court analysed the Defender's opinion in its decision, it eventually ruled in conformity with

the Defender's conclusions. The regional courts always ruled in conformity with the opinion presented by the Defender. Under the same conditions, the Supreme Administrative Court supported the Defender's view in twenty-two of twenty-six cases (84%). The Constitutional Court agreed with the Defender in two thirds of such cases.

### Number of court decisions that mention the opinion of the Public Defender of Rights (2012-2015)



### Decisions of individual courts by type of mention of the Public Defender of Rights in per cent (2012-2015)



- The decision mentions the opinion of the Defender, but the court did not deal with its merits
- The court dealt with the merits of the Defender's opinion, but did not agree with the opinion
- The court dealt with the merits of the Defender's opinion and agreed with the opinion

# »»»»» The Defender as the public litigant



**With effect as from 1 January 2012, the Public Defender of Rights may lodge an action to protect public interest against a decision rendered by an administrative authority. Until the above date, the Defender could file such an action only “through” the Supreme Public Prosecutor.**

## Action for the protection of public interest against permission to construct a photovoltaic power plant

In 2012, the Public Defender of Rights Pavel Varvařovský contested administrative decisions by which the Duchcov Municipal Authority permitted the construction of a photovoltaic power plant in the land-registry territory of Moldava in Krušné hory and, subsequently, approved the structure for use.

The Defender found a number of shortcomings: the environmental impact of the industrial project had not been assessed in advance, and the Construction Code had been breached because the construction project had been permitted and carried out in an undeveloped free landscape (and, hence, at variance with one of the basic principles of construction-law regulations, i.e. protection of greenfields). Therefore, the Defender lodged an action (see also the Annual Reports on the Activities of the Public Defender of Rights for 2012 – p. 3, 2013 – p. 29 and 2014 – p. 20).

The Regional Court in Ústí nad Labem annulled the contested decisions of the Duchcov Municipal Authority on grounds of unlawfulness and procedural defects, and referred the case back to the Municipal Authority for further proceedings. The defendant subsequently appealed against the court’s decision through a cassation complaint filed with the Supreme Administrative Court, which cancelled the judgement of the Regional Court in Ústí nad Labem and referred the case back for further proceedings.

On 16 December 2015, the Regional Court in Ústí nad Labem again satisfied the Defender’s action and, for the second time, cancelled the decision through which the construction of the photovoltaic power plant had been approved in combined land-use and construction proceedings. The court also acknowledged that the Defender had demonstrated a serious public interest that justified the action.

# »»»»»» Activities of the Public Defender of Rights in numbers



In 2015, we received 7,541 complaints, which is 661 less than in 2014. However, the number of complaints that fall within our mandate and that we can thus deal with increased by 6%. It thus appears that complainants are becoming better aware of what we can help with and approach us less often with matters beyond our mandate. It is possible that the project titled Together towards Good Governance, focusing, inter alia, on increasing public awareness of the Defender’s work, also contributed to this positive change (for more information, see “Together towards Good Governance Project” on page 97).

**1 114**  people came to the Office of the Public Defender of Rights in Brno in person, of which 554 filed their complaint orally for the record.

**7 438**  people used the information hotline available for verifying the progress in handling a complaint, explaining the scope of the Defender’s mandate or directing the person towards a solution last year, which is five hundred more than in 2014.

**891**  inquiries were opened, of which 42 were inquiries on our own initiative.

## Complaints received within the mandate by area in 2015

Social security	1293
Construction and regional development	455
The army, police and the prison system	399
Protection of the rights of children, youth and families	302
State administration of courts	259
Foreigners	251
Discrimination	221
Transport and communications	218
Administrative punishment	216
Miscellaneous fields within the Defender's mandate	211
Administration in healthcare	186
Protection of the environment	173
Administration of employment and work	158
Property law and restitutions	156
Taxes, charges and duties	153
Internal administration	108
Self-government, regional division, right to information	36
Administration of the Public Prosecutor's Office	11

7 679



complaints were handled in 2015 (including complaints from previous years closed in 2015)

884



reports released

609



shortcomings found

17



cases with imposed penalty



# 2

## FAMILY, HEALTHCARE AND LABOUR

This year we dealt with hundreds of complaints concerning family matters, labour-law problems and complaints related to healthcare. We examined, in particular, the work of bodies of social and legal protection of children, authorities and labour inspectorates, regional authorities and public health insurance companies. We discussed the topical issues with experts at round tables and at the relevant Ministries.

### 2015 in numbers

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- 575  social workers from bodies of social and legal protection of children, workers of civic consultancy centres and students received our training.
- 58  local inquiries were conducted by us to obtain the necessary information on the cases we examined.

### Our publishing activities

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Requiring “professional co-operation” from parents and other persons responsible for raising the child in theory and practice of bodies of social and legal protection of children (Právo a rodina, Iss. 7/2015)



On some aspects of stays of children in facilities for children in need of immediate help (Právo a rodina, Iss. 10/2015)



On the parent’s option to become represented in negotiations with bodies of social and legal protection of children (Listy sociální práce, autumn 2015)

# »»»»» Healthcare



## Public health insurance companies

### Will it be possible to loosen the schedule of vaccination?

A father wanted to have his child vaccinated at an interval other than that determined by the schedule of vaccination – he was convinced that the hexa vaccine (vaccination against six diseases at once) can be overly invasive in the child's body and could cause health problems. He therefore decided to loosen the schedule of vaccination: first he would have the child vaccinated against four diseases and subsequently against the remaining two. **However**, the health insurance company refused to cover any vaccine other than the hexa vaccine, even though the father would eventually comply with the

scope of vaccination required by the schedule.

In our opinion, if the State demands compliance with the schedule of vaccination and a parent just loosens the schedule to a minor extent, the State should allow the parent to do so. Therefore, we addressed the Ministry of Health, the General Health Insurance Company and the Union of Health Insurance Companies.

 **Defender's Opinion: File No. 28/2014/SZD**

### On health insurance...

... we also organised a round table with participation of representatives from most of the health insurance companies providing public insurance in the Czech Republic.



### Did you know that...

... you can only change your health insurance company once every 12 months? Our comments contributed to a new arrangement within which you can change the insurance company once, but as of two different dates during a year – as of 1 January and 1 July each year.

## Regional authorities

We examine the procedure of regional authorities in handling complaints regarding healthcare. The authorities most often err by failing to appoint an independent expert or independent expert commission to examine a complaint in cases where the law so requires.

20



**complaints concerning healthcare were subject to our inquiry this year. Of the six cases closed, we found errors in five cases. We welcome, however, that regional authorities always ensured remedy and undertook proper additional investigation into the complaints concerning healthcare.**

# »»»»» Work and employment



## Changes in legislation

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### What we achieved:

- If you sue a labour office for its failure to pay you, e.g., foster care allowances or unemployment benefits, you will not be required to pay the court fee for filing the action.
- Labour inspectorates will be able to punish employers for illegal monitoring of employees.
- Operators of new power plants with an output of up to 10 kW will no longer automatically qualify as self-employed persons. Consequently, in case of unemployment, they can now be registered as job seekers and only the actual income will be taken into account in decision-making on unemployment benefits and benefits of assistance in material need.

## Administration in the area of employment

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### What issues were presented to us most often?

- Complaints concerning the procedure of labour offices (registration of job seekers, collaboration of the job seeker, deregistration of the job seeker);
- incorrect determination of unemployment benefits or refusal to provide them by the competent labour office;
- difficulties in providing compensation for accidents at work and recognition of occupational diseases (which, however, fall beyond our mandate). For better awareness, we produced a new information leaflet on these topics.



We also focused on **active employment policy**, i.e. support to job seekers, to improve their prospects on the labour market. We dealt with complaints aimed against labour offices which did not satisfy requests for requalification, creation of socially purposeful jobs and definition of sheltered employment for people with disabilities. Due to the increased number of complaints from this area, we will meet at a round table in 2016 with representatives of the Ministry of Labour and Social Affairs and the Directorate General and regional branches of the Czech Labour Office.

## Requalification courses must have a clear content and corresponding certificate

The offer and content of a requalification course must be entirely clear to everyone. In the case we inquired into, the complainant was dissatisfied with the organisation and quality of the requalification course he had completed. The content of the course provided by the requalification facility was entirely different from the offer presented by the labour office as well as from the final certificate of the work experience obtained.

While the labour office did carry out an inspection after being advised of the case, it nevertheless

failed to deal with the inconsistency between the original presentation of the course content and its actual delivery and output. Thus, in our opinion, the relevant labour office erred especially by providing incomplete information to the complainant on the content of the requalification course, by formulating vaguely the content of the course in the requalification agreement and by investigating insufficiently into the complaint about the organisation of the course. We recommended that the labour office prepare the contractual documents more diligently in future, especially in relation to counselling and provision of information to applicants for requalification.

 [Defender's Opinion: File No. 540/2014/VOP](#)

## Labour inspectorate

The number of complaints concerning illegal employment dropped significantly. This was due to the decrease in the minimum penalty for allowing illegal work, which was formerly capable of destroying small employers (from CZK 250 thousand to 50 thousand; the maximum penalty remained at CZK 10 million for legal entities and CZK 5 million for natural persons).

We found that, in some cases, the labour inspectorate bodies

- were not consistent in applying their statutory powers and omitted some of the objections made by the complainants in their instigation for inspection;
- proceeded with uncertainty and a lack of uniformity in investigating into cases of bullying in labour-law relationships;
- lacked uniformity in administrative punishment
  - when initiating administrative proceedings concerning an offence and in decision-making on the amount of the penalty.

→ **In order to achieve a uniform practice, we invited district labour inspectorates to attend our round table in November 2015. We agreed that the district labour inspectorates should always have the duty to initiate administrative proceedings on an administrative offence, notwithstanding that measures to eliminate shortcomings found during the inspection may have been imposed and perhaps even implemented.**

## An employer may not order more than what is required by the law

An employer issued work rules imposing on the employees the duty to maintain confidentiality of matters they learned in performing their work. However, the Labour Code does not allow employers to issue such orders. We pointed out that employees' confidentiality obligation may only be laid down in the employment contract or some other agreement, for example a non-disclosure agreement.

 [Defender's Report: File No. 7952/2014/VOP](#)



“Internal work rules of the employer cannot order duties beyond the law. Such obligations shall be disregarded.”

# »»»»» Protection of the rights of children and families



## Complaints concerning the work of bodies of social and legal protection of children



People approached us mainly when they were unable to resolve family problems, not even with the assistance of bodies of social and legal protection of children. The latter were often criticised for their inability to arrange contact between a child and its parent living away from the family or for a failure to represent the child in accordance with the child's best interests. We were alarmed by the increasing number of complaints against removal of a child from the parents' care.

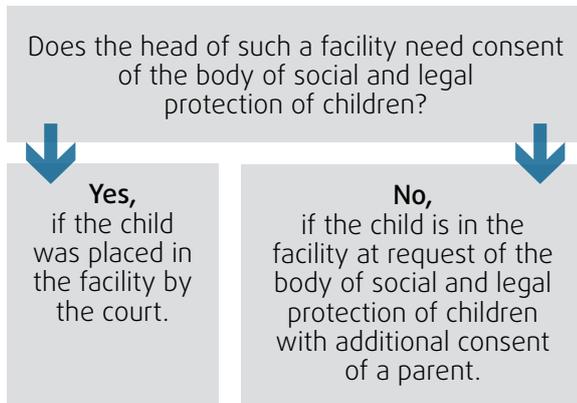


### Social worker should not leave the burden of decision on children

Any potential child's stay away from a children's home ("leave") must be permitted by the competent body of social and legal protection of children. It is often the case that both parents, or grandparents, as the case may be, wish to take leave on the same dates. The authority should carefully consider the situation while taking account of the child's wishes. It cannot release itself from this responsibility by leaving the decision up to the child. We consider it impermissible if the authority demands that the child provide a written statement. The child is in a difficult situation, especially when one of the parents urges and later reproaches the child for the decision it made.

 Defender's Report and Opinion: File No. 8190/2014/VOP of 18 August 2015 and 18 December 2015

## Children placed in a facility for immediate assistance can stay with parents only if this is permitted by the head of the facility



 Defender's Report: File No. 6277/2014/VOP of 17 July 2015

→ This year we organised a round table on this topic and the related problems for the heads and other employees of facilities for children in need of immediate assistance. We presented the conclusions from inquiries and model cases showing other legal pitfalls related to the stay of children in facilities for children in need of immediate assistance.

## A family conflict got a boy to a children's home

A conflict between parents ended up in their eleven-year old son being placed in a children's home. The boy suffered from serious psychological problems as a result of the prolonged family conflict. Moreover, there was only one psychologist for twenty children in the children's home and was available only two hours per week. The boy received adequate professional assistance following our intervention and his condition improved

significantly. The boy's parents ultimately accepted psychological assistance as well.

 Defender's Report: File No. 4377/2014/VOP

## Only the courts can decide on removal of a child from parents' care

A maternity hospital refused to release a child to the parents as it was waiting for a statement of the competent body of social and legal protection of children. The authority concerned was indeed examining the matter of release of the child to the parents. We had to advise the authority that it did not have such power under the Czech law. Nevertheless, an authority may initiate court proceedings if there are doubts regarding the parents' possibilities and ability to care for the child. Only the courts can decide on removal of a child from the parents' care.

 Defender's Report: File No. 4002/2015/VOP

## Fortunate outcome of a story – boy returned to his family

A mother with children was surrounded by police officers in the street and her youngest child was taken away. The main reason for the removal of the child was that the mother was neglecting healthcare for all her children and had abandoned a newborn in the maternity hospital. The boy was placed in temporary foster care. Thanks to our involvement and co-operation with a non-profit organisation, the boy was returned to his mother's care after two months. The mother also significantly improved her care for the children.

 Defender's Report:  
File No. 5460/2014/VOP

## Foster care, benefits

### Authorities must respect court decisions, including the date of enforceability

If a court makes a decision on placing a child in foster care, the decision includes determination of the date when the foster care “commences”. However, we were approached by a foster parent to whom the labour office and the Ministry had granted entitlement to foster care benefits only from the date of enforceability of the judgment. We were of the opinion that the office and the Ministry should have respected the court judgment and grant the benefit retroactively from the date which was determined in the judgment as the date of commencement of foster care. The Minister of Labour and Social Affairs agreed with our opinion and the complainant received retroactively foster care benefits exceeding CZK 50 thousand (approx. EUR 2000).

 Defender’s Opinion: File No. 3384/2014/VOP of 10 October 2014

→ **Following our advice, the Ministry of Labour and Social Affairs also changed its Guidance for Assessment of Entitlement to Foster Care Benefits.**

 Defender’s Opinion: File No. 18/14/SZD



### Did you know...?

... that we initiated changes in the conduct of a body of social and legal protection of children that had failed to adequately advise potential foster parents of the possibilities available to them?

Most importantly, the potential foster parents should have been advised that they apply to a court for a preliminary injunction, seeking release of the child to the care of the potential foster parent. An enforceable court resolution subsequently gives rise to entitlement to foster care benefits.

 Defender’s Report and Opinion: File No. 7371/2014/VOP of 2 July 2015 and 22 September 2015



# Complaints from children

## Defender's website for children

Facts about the institution, presentation of the Public Defender of Rights and her deputy, description of what we do and how we can help children

Explanation of the various ways in which the Public Defender of Rights can be contacted, including a quick contact on the website

Brief welcome to the website for children from Public Defender of Rights Anna Šabatová

Update on matters of children and juveniles, instructions and advice for various life situations



Children and young adults can contact us at our special e-mail address:

[deti@ochrance.cz](mailto:deti@ochrance.cz)

More than

**50**



children received our advice or help in 2015.

- 11 complaints from children were related to conditions in a children's homes or educational institutions,
- many complaints were related to the payment and enforcement of alimonies, time spent with parents and grandparents, parents' behaviour, removal from care, delays in court proceedings, fee for municipal waste and consumer contracts,
- there were also queries regarding permanent residence permit, allowance for care, maintenance of a structure, debt relief and protection of personal rights.

**200**



facilities for institutional and protective education were requested by us to join our survey. We examine whether the facilities provide suitable conditions for children who have reached legal age to remain in the facility after they finish their studies.

The following facilities were involved:

- children's homes
- educational institutions
- diagnostic institutions

We will release a survey report on this topic in 2016 and – in addition to presenting results and identifying the main problems – recommend specific changes to be made.

### Website [deti.ochrance.cz](http://deti.ochrance.cz)

Our website for children provides more than just contact details for queries and complaints. We also provide professional information relating to children and their rights. We provide information, e.g., on new laws and important court decisions and provide practical advice. For example:

- in certain situations, children in foster care will become entitled to an allowance of CZK 25 thousand when they reach 18 years of age,
- providers of healthcare services should claim outstanding out-of-pocket fees from parents and not from children,
- a general ban on children in restaurants is discriminatory, according to a decision of the Supreme Administrative Court.

### Czech Post now submits consignments even to children under 15 years of age

Children have the right to protection of privacy, including the prohibition of arbitrary interference with correspondence. Czech Post did not observe this rule. Czech Post is not authorised to assess whether or not a child may accept a consignment sent to the child by a relative or acquaintance; the same is true of business correspondence. The Czech Telecommunication Office accepted our reservations and arguments and forced Czech Post to change the rules. Consequently, the Post changed the conditions for submission of registered letters and parcels in such a way that children under the age of 15 years may now accept such consignments. The change in the rules was initiated by a complainant who was fourteen years old. We are glad that even children do not hesitate to defend their rights.

 [Defender's Report: 16/2013/DIS of 21 October 2013](#)



# 3

## SOCIAL SECURITY

As in previous years, we dealt with pension and sickness insurance and other benefits paid by the Czech Social Security Administration. We also dealt with complaints concerning non-insurance social benefits (assistance in material need, allowance for care, State income-support benefits) paid by the Labour Office of the Czech Republic.

In total, we handled **1364**  complaints,

most of which concerned

→ **464** pensions

→ **373** assistance in material need

→ **190** benefits for people with disabilities

# Composition of complaints in the area of social security in 2015

235



social workers from non-government organisations and municipal authorities or employees of regional branches of the Czech Labour Office were trained by us at nine workshops held in various regions.

20



students of the Faculty of Law of Palacký University Olomouc visited our workshops and subsequently worked at our Office.

5 ×



we commented on internal regulations of the Ministry of Labour and Social Affairs and the Directorate General of the Labour Office of the Czech Republic. We actively proposed two guidance materials to be released. Thanks to these guidance materials:

→ all labour office branches use the same methodology to determine usual rent when deciding on a contribution towards housing – they compare the amount of three market rents in the given location,

→ people on a low income can receive a one-off benefit for payment of (a part of) the security deposit when renting a flat.

2 ×



was our opinion accepted in proceedings on actions before administrative courts. In the cases concerned, we conducted inquiries but the authorities did not accept our arguments. Therefore, the complainants used the option of lodging an action against the administrative decision. They were successful in courts with arguments offered by us in the following cases:

## Composition of complaints in the area of social security in 2015



### Allowance for car for a person with disabilities

We stood up for the father of a girl with a serious disability applying for a one-off allowance for purchasing a car for the girl. The labour office dismissed the application; therefore, the girl's father appealed to the Ministry of Labour and Social Affairs. The latter demanded that he provide plenty of additional information that, however, was not essential for assessment of the application (for example, the name of the physician-specialist to whom he drove his daughter). The father did not provide this information, following which the Ministry discontinued the proceedings and did not grant the allowance to the girl.

We requested that the Minister of Labour and Social Affairs annul the discontinuation of the proceedings. However, the Minister allowed the time limit for review of the decision to expire to no effect. Therefore, the father of the girl turned to the court, deployed our arguments and succeeded. The court cancelled the decisions of the Ministry and the labour office and ruled that the allowance for purchasing the car should have been granted to the girl.

 Defender's Report and Opinion: File No. 7276/2012/VOP of 24 January 2013 and 13 April 2015  
Judgement of the Regional Court in Hradec Králové File No. 52 Ad 19/2013-83 of 21 July 2015

### Refund of widow's pension

The Czech Social Security Administration granted and paid a widow's pension; nevertheless, later it found that the widow was not entitled to the pension. Therefore, it required that the widow refund over CZK 110 thousand paid during the past year and a half. According to the authority, the widow should have assumed that she was not entitled to the pension.

We claimed it was the authority, and not the applicant for pension, that should have knowledge of the law, and that the applicant could thus legitimately expect the administrative decision to be in accordance with the law. The authority did not concede and the widow lodged an action with the court. The Supreme Administrative Court later confirmed our view and annulled the decision of the Czech Social Security Administration imposing the duty to refund the pension. The above situation will hopefully not occur again.

 Defender's Report: File No. 5959/2013/VOP of 3 December 2013  
Judgment of the Supreme Administrative Court File No. 6 Ads 287/2014-19 of 1 April 2015

# Assistance in material need

## Most frequent types of complaints



subsistence support  
**36%**



contribution towards housing  
**24%**



extraordinary immediate assistance  
**12%**

## Authorities can obtain information from their own records

Some authorities require citizens to provide confirmations and information that the authorities can obtain themselves from their own databases. For example, the labour office required a man from Ústí nad Labem to provide a confirmation that he was registered as a job seeker and a confirmation of the amount of his unemployment benefits. The authority required the data for the purposes of administering the man's application

for subsistence support. The applicant argued correctly that the authority could verify such data in its own database. Following our inquiry, the employees of the authority were allowed to inspect the relevant database and thus obtain themselves the required confirmations.

 Defender's Report: File No. 6999/2014/VOP of 20 January 2015



# State income-support benefits



## Who should pay parental allowance to a person working in another EU Member State?

If one parent works in another Member State of the EU, the family may be entitled to parental allowance from the State concerned. However, it is not an error to apply for the allowance at the labour office at the person's place of residence in the Czech Republic. The given labour office should assess the application and, if appropriate, forward the application to the other country. However, we noted dozens of cases where the labour office dismissed the application and referred the parents to their own initiative, which is at variance with EU laws. Moreover, if the foreign party does not begin to pay the allowance within two months, the allowance must be temporarily granted to the family by the competent Czech labour office which must then settle with the foreign country. This arrangement is motivated by protection of families with children. We have even dealt with cases in which a family with young children remained without parental allowance for a whole year. Therefore, we recommended that labour office employees be trained accordingly in order to eliminate such errors.

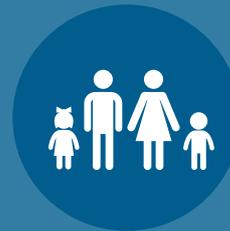


Defender's Report: File No. 1672/2015/VOP of 12 May 2015

## Most frequent types of complaints



housing allowance  
**58%**



parental allowance  
**20%**



family allowance  
**8%**

## Optional amount of parental allowance

Parents on an adequate income may opt for a faster, i.e. shorter scheme of parental allowance and hence a higher monthly amount. In the case in question, the labour office did not grant this option to a child's mother with the explanation that neither her income nor that of the child's father was sufficient for them to choose the amount of the allowance. The biological father was not the applicant's former husband who had been entered by the authorities in the child's birth certificate on the basis of the assumption of paternity, but instead the applicant's partner who lived with her and the child in a common household. Although the partner's income qualified for election of the amount of parental allowance, the labour office did not satisfy the application. We persuaded the labour office to regard the biological father as the child's parent when deciding on the parental allowance, thus allowing a faster drawing scheme for the parental allowance.



Defender's Report: File No. 4117/2015/VOP of 28 August 2015

# Benefits for people with disabilities

## Most frequent types of complaints



allowance for care  
**48%**



identification card  
of a person with  
disabilities  
**30%**



allowance for  
a special aid  
**14%**



### Did you know that...?

... if proceedings on allowance for care last unreasonably long, you can apply for compensation? If the original party died in the course of the proceedings, this option passes to the person who entered the proceedings instead of the original party.

## People are entitled to compensation for unreasonably long proceedings

A woman applied for an allowance for care but died during the proceedings, which lasted 17 months. Therefore, her husband who had cared for her before she died, entered the proceedings on the allowance and applied for compensation for unreasonably long proceedings. He was first turned down on the grounds that he had not been a party to the original proceedings. Therefore, we advised the Ministry of Labour and Social Affairs of the case-law of the Supreme Court, according to which the person who is the legal successor in proceedings also has the right to compensation. Based on our advice, the Ministry reviewed its position and provided the widower with financial compensation of CZK 14 thousand.



Defender's Report: File No. 6983/2014/VOP  
of 9 February 2015

# »»»»» Pensions

Most of those complainants who approach us in matters of retirement pensions have not completed the period of insurance required for pension entitlement or consider that their pension is too low due to periods of insurance they failed to complete. We endeavour to help them prove longer periods of insurance.

In the area of disability pensions, the most frequent problem lies in an insufficient period of insurance for a pension entitlement, on the one hand, and determination of the disability degree and the date of commencement of disability, on the other hand. Both have a fundamental effect on the amount of the pension.

## Duration of employment for pension calculation may also be confirmed by witnesses

A complainant had no proof of employment but could provide testimonies of her former colleagues, following which her employment was recognised and we succeeded in obtaining a higher pension for her. The Czech Social Security Administration initially did not recognise her employment because the witnesses failed to provide accurate dates and were unable to document that they worked for the same employer. The Czech Social Security Administration did not even accept the testimony of the husband who had worked for the same employer.

We ultimately convinced the authority that it had proceeded incorrectly because it had the possibility to verify the testimonies, for example by simply checking whether the witnesses had the reported period of employment taken into account in the calculations of their pensions. In addition, the unjustified refusal of the husband's testimony is at variance with the case-law of administrative courts. The authority ultimately accepted the

## Most frequent types of complaints



retirement pensions  
**38%**



disability pensions  
**38%**



survivors' pensions  
orphan's and widow's  
(widower's) pensions  
**7%**

witnesses' declarations and took the complainant's period of employment into account in calculating her pension.

 Defender's Report: File No. 120/2015/VOP of 11 May 2015

## Granting of disability pension

A complainant had been found fully disabled several years earlier but the Czech Social Security Administration repeatedly dismissed her application for disability pension due to a failure to qualify for the required period of insurance. Based on our inquiry, we questioned correctness of the date of commencement of the disability on the grounds of inadequate substantiation. Following this, the Czech Social Security Administration performed an inspection and determined an earlier date of commencement of the disability. The complainant paid the outstanding insurance premiums for four months in the amount of CZK 7,500. The authority granted her disability pension in the amount of CZK 9,200.

 Defender's Report: File No. 938/2013/VOP of 17 August 2015



# 4

## PUBLIC POLICY AND LOCAL GOVERNMENT

We concentrate on individual issues of public administration and local government: we address problems concerning registries, personal identity cards and travel documents as well as citizenship. We also deal with matters concerning the provision information and personal data protection, transport administration agenda, State supervision over local government, transport and the Land Registry. In 2015, we also dealt with the efficiency of authorities and Ministries in handling requests for information.

In 2015, we organised

6 + 3



workshops and  
round tables

for a total of

305



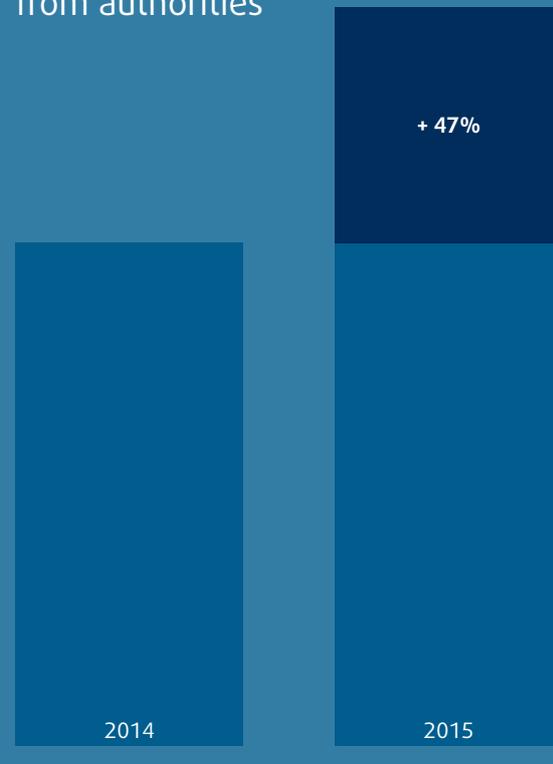
persons.

We discussed matters such as

- » right to information and personal data protection,
- » public roads,
- » provision of information on salaries and remuneration,
- » driving licences with a foreign element.

# »»»»» Events in 2015

## Number of requests for information from authorities



### Survey: How do authorities provide information?

We examined the conduct of ministries and other authorities in providing information and whether authorities handle requests for information without delay.

- The number of requests for information increased by 47% year on year.
- Delays exist only at the Ministry of Justice in decisions on appeals against failure to provide information; there was an enormous increase in the number of such appeals. The Ministry promised to resolve the situation by an increase in staffing.
- There is a lack of uniform practice among authorities concerning the provision of information on ongoing court proceedings that affect them. Therefore, we recommended that the

authorities should follow the principle of transparency and should not prevent the public from having access to information.

 [Defender's Report: File No. 98/2014/VOP of 14 December 2015](#)

### Appellate bodies can remedy errors directly

An appellate body need not refer a case back for new hearing by administrative authorities of lower instance on the grounds of existing shortcomings. The superior authorities can remedy errors directly, for example by supplementing evidence, to avoid the often lengthy process of referring the case back for a new hearing.

 [Defender's Report: File No. 6509/2014/VOP of 7 July 2015](#)

## Prohibitions of residence do not comply with the statutory conditions

We inquired into 80 cases of prohibition of residence imposed in the Prague 1 city ward in the years 2013-2014. We often found non-observance of the applicable statutory conditions. The most serious errors occurred when the authority imposed a penalty for conduct that did not even disrupt public policy. As a rule, the city ward did not examine, either, whether the prohibition of residence disrupted the family and social ties of the person concerned. The Ministry of the Interior agreed with our conclusions and decided to develop guidance for the authorities' conduct in prohibiting residence.

## Easier access of sight impaired persons to the Land Registry

During 2015, we inquired into the conditions under which sight impaired persons are able to use the "Inspection of the Land Registry" online application without entering CAPTCHA codes. This is conditional on a registration where the applicant receives a password that removes the need to enter the CAPTCHA code. It is possible to register as a person with disability to qualify for above-standard support in the form of remote assistance, where an employee of the Czech Office for Surveying, Mapping and Land Registry uses special software for remote control of the computer. While the procedure regarding above-standard support is correct, we had objections against the registration form, which did not include the applicant's express consent to processing of sensitive data. Moreover, it did not specify that a person should register as a user with disability only in case he or she wanted to receive above-standard support (i.e. it is not necessary to indicate the disability within standard registration, which was not obvious from the form). The Czech Office for Surveying, Mapping and Land Registry modified the form in response to our recommendation.

## The court must provide the ruling on which it relies

If a court refers in its decision to a ruling of some other court which has not been published, it must provide that ruling to a person applying for information. The Free Access to Information Act stipulates that such information concerns the jurisdiction of the court seized in the relevant case. By referring to the other ruling, the court has shown it considered the information contained in it relevant for the present decision and that it was available to the court at least at the time when it rendered the present decision.

 [Defender's Report: File No. 808/2015/VOP of 21 July 2015](#)

## People with dual citizenship may present any of the two passports

The Foreigners Police at the Prague airport did not allow young children with dual citizenship (Czech and South Korean) to fly to South Korea because they could present only their Korean passports. They were accompanied by their mother, who is Czech. The children had previously travelled from Prague to South Korea with their Korean father using Korean passports. We criticised the Foreigners Police for proceeding unpredictably and unreasonably. Indeed, the Police may not prevent a Czech citizen with dual citizenship from crossing the State border just because he or she does not produce a Czech travel document. In response to our recommendation, the Police provided compensation for the damage incurred and the Head of the Foreigners Police apologised to the complainant in writing.

 [Defender's Opinion and Report: File No. 1610/2014/VOP of 3 June 2015 and 5 February 2015](#)

## Yellow line in a non-parking zone: a change to the better for everyone

Cars were parked at a place where the complainant in the case in question needed to go with her wheelchair, despite the fact that it was a non-parking zone directly under the law. For this reason, the competent authority considered it superfluous to install additional road marking in the form of yellow lines and recommended that the complainant call the Police when needed. We compelled the authority to change its position. The new marking made the place clearer for everyone, thus avoiding unnecessary conflicts.

 **Defender's Report: File No. 7509/2014/VOP of 27 May 2015**



Road marking (yellow zig-zag line) may suitably regulate parking in densely populated settlements with a lack of parking spaces.

## A lawyer who studied abroad may become a public prosecutor

The Ministry of Justice accepted our arguments concerning recognition of foreign education and appointed a public prosecutor who had won the selection procedure for the given position. The complainant had studied law in Poland. In 2004, he returned to the Czech Republic, where the Ministry of Education, Youth and Sports recognised his education. The Czech Bar Association put him on the list of trainee attorneys and he passed his bar examination in 2011.

Despite this, the Ministry of Justice insisted that the complainant should apply for recognition of his education directly at the Ministry of Justice in order to be appointed as public prosecutor. In formal terms, we do not question the competence of the Ministry of Justice to recognise legal education relevant for the profession. On the other hand, it should be noted that if the complainant passed the bar examination and has many years of experience, this sufficiently proves his knowledge of Czech law. His success in the selection procedure proves the same. In this particular case, the insistence on a formal requirement runs counter the purpose and sense of the law. Moreover, the Ministry could have pointed out the complainant's deficiency before the selection procedure.

 **Defender's Opinion: File No. 4956/2014/VOP of 21 July 2015**

## Domestic violence should be verified on site if the given person is to be banished from home

Principles we reached through our inquiries into the procedure of the Police in investigating domestic violence:

- 1/ Police officers should make decisions on banishment on grounds of domestic violence only after becoming acquainted with the situation on site.
- 2/ In the official record on banishment, the Police should always describe the specific reasons for the banishment.
- 3/ Any decision on objections against the banishment should be properly justified.

 **Defender's Report: File No. 2857/2015/VOP of 21 October 2015**

## Soldiers finally receive payments for on-call duty

Since 2012 we were trying to help professional soldiers who were not provided with remuneration for on-call duty. According to the Ministry of Justice, the soldiers were not on call as they were not required to be present at a specific location. The Ministry claimed that they were merely ordered to be “available”: the soldier had to be prepared to appear at the military base within a specified time on a telephonic order. This, however, limited the soldier during his/her time off in the same way as an on-call duty.

- In our opinion, only paid on-call duty may be ordered to a soldier during his/her time off. It must not operate to the soldier’s disadvantage that the superior set merely a time limit and not the place where the soldier should be present.
- Our opinion was upheld by the Supreme Administrative Court at a soldier’s instigation in 2013.
- Remedy was finally ensured in late 2015 and the relevant remuneration for on-call duties is now being gradually paid to the soldiers retroactively. On-call duties are now ordered in accordance with the law.

 [Defender’s Reports: File No. 7661/2012/VOP, 5929/2014/VP of 8 October 2015 and 23 April 2015](#)

## Amendment to the Roads Act

Decisions in complicated disputes regarding the existence of publicly accessible special-purpose roads will no longer be made by the authorities of small municipalities, but instead by municipal authorities with extended competence. The Ministry of Transport has heeded the repeated requests of the Defender and her predecessors and provided for an amendment to the Act. In addition, a municipality – as the road owner – will no longer be able to arbitrarily hinder a permit to connect a neighbouring property to a road.

## Amendment to the Civil Aviation Act

Based on our recommendations, the Ministry of Transport prepared an amendment to the Civil Aviation Act. The amendment should clearly specify the conditions for obtaining a licence to operate an airport and regulate in a just manner the aspects of property settlement between airport operators and owners of the land on which an airport is located. In our opinion, however, the draft excessively favoured airport operators and provided them with unreasonably long time for reaching agreement with the owners on the use of their land. Depending on airport type, the owners would have to tolerate the use of their properties for additional ten or more years without compensation. We also disagreed with the proposed arrangement under which the Civil Aviation Authority could independently determine the type of airport it will permit regardless of the type required by the applicant for licence or airport operator. The Ministry agreed with our objections and changed the draft amendment.

# »»»»» Trends in 2015



## The Ministry fails to handle reviews and appeals in transportation matters in due time

The Ministry of Transport fails to handle instigations for review proceedings and appeals against decisions of the Prague City Hall falling under the **transport administration agenda** within the statutory deadlines. We believe that there are only two solutions to this adverse situation:

- 1/ Radical increase in the number of officials at the Ministry of Transport.
- 2/ **Transfer of the decision-making power** in this area **from the Prague City Hall to authorities of the city wards**, whereby the City Hall would become the appellate body. This would represent a long-term, systemic solution.

## Delays in handling traffic offences in the Central Bohemian Region

The Department of Transport of the Central Bohemian Region has long been suffering from delays in appellate and review proceedings on traffic offences. It often failed to complete the proceedings in due time (within one year), as a result of which **liability for the offence expired and the offender escaped penalty.**

→ **Therefore, we require systemic measures to be adopted, including increased staffing for the Department and greater emphasis on the most serious offences. A prolonged deadline now applies to offences committed from October 2015 onwards. We continue to monitor the situation.**

## Transport

We still receive numerous complaints against truck traffic on lower-class roads. Trucks bring noise, vibrations, dust and deterioration in safety and cause damage to the roads, which are not designed to such a load. The complainants fear that the situation will further worsen if additional roads are tolled as planned.

- The Ministry of Transport assured us it was not planning to change the existing system. The benefits of tolling on class I, II and III roads would not be such as to justify the necessary investments.
- We supported municipalities in exercising their right to ban or restrict transit truck traffic where lower-class roads are used to bypass tolled motorway sections. The Ministry agreed with this approach.

## Inherent bias of officials

May an official from a municipality or region make decisions in administrative proceedings on matters in which the official's employer (municipality, region) has an interest or is the official automatically biased and may not make such decisions? We have been dealing with this pitfall

of the mixed public administration model. In our opinion, especially a very small municipality may not conduct proceedings as an authority if the mayor or the municipality itself is a party to the proceedings.

## Citizenship

Since 2014, the Ministry of the Interior has been handling



**as many applications for citizenship than before. Unfortunately, the period of time required for issuing a decision twice exceeds the official deadline. We found that the Ministry often stays the proceedings and requests that the applicants submit documents the Ministry has received before, or documents that have become invalid due to the exceeded deadline for a decision.**

→ **Therefore, we opened an inquiry on our own initiative. Thanks to the inquiry, staffing was increased at the department in charge of the applications. This should significantly accelerate the proceedings.**



# 5

## DEPARTMENT OF CONSTRUCTION LAW AND THE ENVIRONMENT

We deal with matters of spatial planning, work of construction authorities, monument care, protection of the environment, protection against noise and funeral services. In 2015, we dealt e.g. with an amendment to the Construction Code, unnecessary pollution of water released from municipal treatment plants, horses subjected to cruelty and unauthorised structural alterations of historic buildings.

We commented on the following in the Ministries' workgroups:



amendment to the Construction Code



substitute enforcement of decisions of construction authorities in public interest



new Monument Fund Act



amendment to the Funeral Services Act

In 2015,  
we trained

600



officials

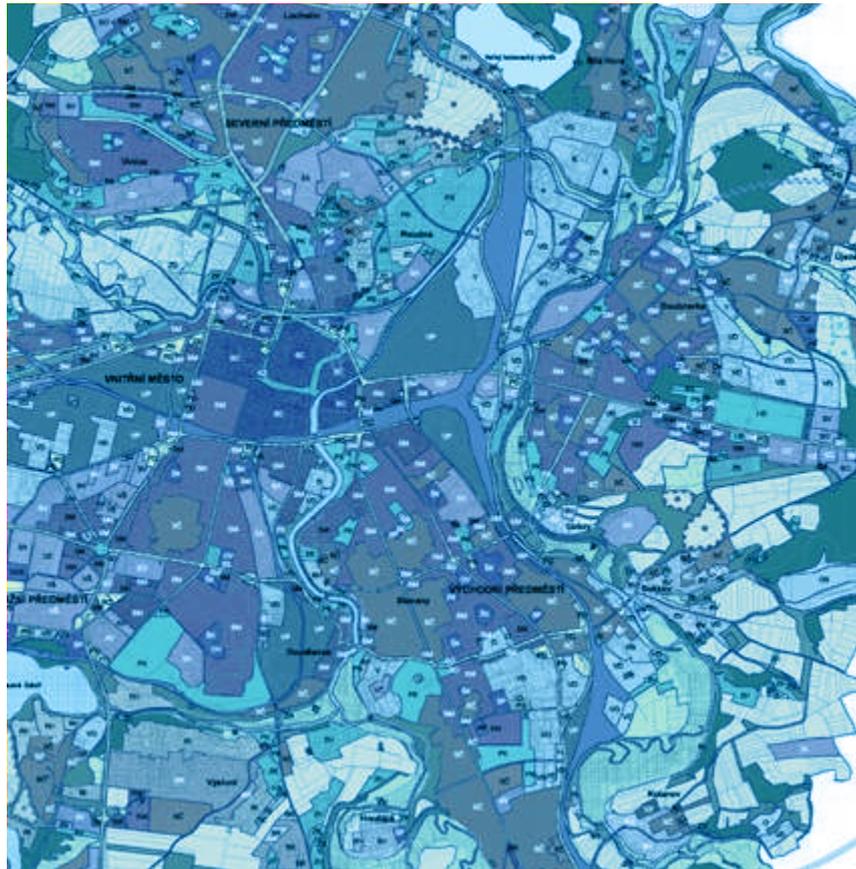
and organised

16



educational events on removal of structures, monument care, water law and protection against noise.

# Construction and urban development



## What complaints did we deal with in 2015?

- Procedures of construction authorities especially in matters of location and permitting of structures
- **Illegal structures** and the related **lack of discipline among investors** (who rely on the possibility of having the structure permitted additionally – during construction or after completion of the construction).
- The presently discussed amendment to the Construction Code, which extends the **scope of structures in a “free regime”**, i.e. structures that the construction authorities will not assess at all, proceeds in the same direction. We also criticised a proposal of the Ministry for Regional Development, according to which all private homes and cabins could be built on the basis of a mere notification.

### Simplified permitting of structures causes problems

- The endeavour to accelerate and simplify the process of permitting structures is often detrimental to the parties to construction proceedings. The well-intentioned trend in construction law, which aims at accelerating the construction process, is often misused e.g. for large projects, structures built without neighbours’ consent and without proper documentation.
- Simplification of the construction process requires a responsible approach by the construction authorities, which often fails in practice.
- For example, in one of the cases inquired into by us, the construction authority in Špindlerův Mlýn permitted construction of apartment houses at variance with the spatial plan. As a matter of act, the plan is the basic development document and should reflect not only the existing utilisation of the territory, but also future construction and development plans of municipalities. The police have initiated criminal prosecution of officials who made the decisions in the matter.

## Industrial complexes

- We regularly receive complaints against the operation of large industrial complexes.
- As a rule, they represent very complicated cases that need to be addressed by several authorities.
- Our experience has shown that municipalities play a fundamental role in spatial planning.
- If the spatial plan permits a careless placement of an operation causing nuisance in the vicinity of residential areas, the ensuing conflicts can only be attenuated but not resolved satisfactorily.

### Nuisance caused by operation of an industrial complex



The residents of Kněžpole complained about nuisance caused by noise, dust, vibrations from an industrial complex and the related intense truck traffic. Therefore, they did not agree with permitting other structures and extension of the complex and pointed out the existence of illegal structures. They complained about the poor condition of the access road through the municipality, which was not designed for such a load. They also pleaded variance with the spatial plan.



Our inquiry targeted several authorities. We criticised them for having permitted the industrial complex at a place which the spatial plan assigned to “affiliated non-agricultural production”. This, in our opinion, cannot be



“...the competence to conduct review proceedings belongs to an administrative body superior to the construction authority which issued the consent.”

interpreted as land for any structure with industrial production unrelated to agriculture.



We ultimately compelled the construction authority to perform an inspection in the complex and examine whether all the structures had been permitted, approved for use and used in accordance with the permit. The construction authority subsequently initiated proceedings on removal of some of the structures.



We also recommended that before permitting other structures, the authorities should first examine whether the access road to the plant is adequate and still has the required capacity.



Although the problems with the nuisance caused by the operation of the industrial complex have not been fully resolved, the administrative authorities have begun to take active steps towards remedy. Therefore, we closed the inquiry.



[Defender's Report and Opinion: File No. 6117/2011/VOP of 26 March 2013 and 22 November 2013](#)

### Construction authorities will not be reviewing their own decisions

We long criticised the existing practice where construction authorities were reviewing their own decisions – they had the additional role of a review body. The Ministry for Regional Development supported this arrangement. We considered that this was wrong interpretation of the law. There was a conflict of interest because the “consents” granted by the construction authorities were not reviewed by any independent superior authority.

We have now achieved a change to the prepared amendment to the Construction Code. The amendment introduces a rule we promoted for a long time, which stipulates that **the competence to conduct review proceedings belongs to an administrative body superior to the construction authority which issued the consent.**

# Funeral services



It is solely up to the given municipality to decide on **renewed operation of an original German cemetery**. As a necessary precondition, public cemetery rules must be issued and approved by the competent regional authority after all the required underlying documents have been provided, including determination of the decomposition time based on a hydrogeological survey and an opinion of the regional public health station. The public cemetery rules must enable equal conditions for all citizens in arranging the lease of a grave plot and must be published at the usual place (as a rule, at the entrance to the cemetery).

## Parents will have the right to bury their stillborn children

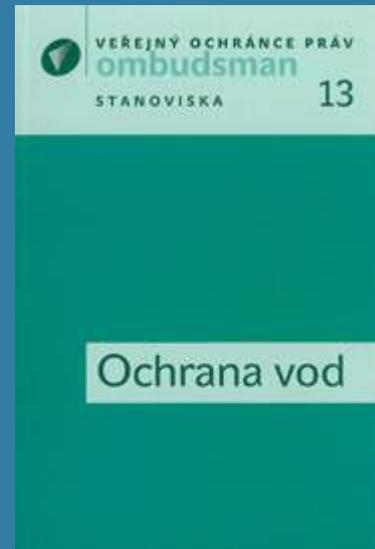
We have long pointed out deficiencies in the legal regulation on burying stillborn children, which does not meet the parameters given by the Healthcare Services Act (less than 500g or, where the weight could not be ascertained, pregnancy lasting less than 22 weeks). Such children are incinerated in hospital incineration plants

together with amputated human limbs and other hospital waste. Hospitals often deny parents the right to a respectful burial of their children. Therefore, we endeavoured to ensure that the law take this right into consideration.

A commission of the Ministry for Regional Development for

the amendment to the Funeral Services Act, which included a lawyer from our Office, found a solution to this situation. The resulting proposal is that a stillborn child may be buried in a dignified manner according to the parents' wish. The parents will have 96 hours to notify the hospital that they wish to bury their stillborn child.

# Environment



We published a collection of opinions titled Water Protection, in which we described our most important findings in the area of water law. The collection is intended both for experts (water law authorities and construction authorities, the academia, lawyers) and for the general public.

## Substitute care of animals

Authorities are reluctant to make decisions on substitute exercise of decisions, especially with regard to vulnerable animals and animals subjected to cruelty where the substitute exercise may include care of animals. This is due to a lack of funds in the municipal budgets, especially those of small municipalities, which must cover the costs of substitute care using their own means. Therefore, it is necessary to find a suitable method of financing.

### Horses kept in unsuitable conditions

A municipal authority imposed a penalty on a horse keeper suspected of cruel treatment. The authority also ordered the keeper to improve the conditions for the horses. Nevertheless, it failed to enforce fulfilment of the conditions and did not proceed to enforcement of the decision. Thus, the horses continued to live in unsuitable conditions. We criticised the authority for its approach and



the veterinary administration for a shortcoming. If the owner did not allow the veterinary administration to enter his land, the authority should have instigated initiation of administrative proceedings on the grounds of a failure to provide collaboration.

Both administrative authorities took active remedial steps after our report on the inquiry was

 **Defender's Report: File No. 2806/2014/VOP of 2 April 2015**

## Water quality is deteriorating due to benevolent limits for treatment plants

Wastewater treatment plants operate under capacity. As a result, more pollutants are being discharged into rivers and reservoirs, leading to deterioration of water quality. This is true even though the wastewater treatment plants are able to clean water better; however, the current legislation sets only very benevolent limits for pollutants discharge. In some cases, the operators

obtained even lower limits than those given in the original permits.

In our inquiry, we approached the Ministry of the Environment and the water authorities. We believe that the best solution would be to leave out the numerical values from the Annex to the Government regulation which currently sets the limits, and further specify the verbal description of the best available technology for the wastewater treatment plants. Such a step would force the operators to fully utilise the potential of the treatment plants and to discharge water with lower levels of pollutants.



**The Public Defender of Rights used her special power to recommend that the Government amend Annex 7 of Government Regulation No. 61/2003 Coll. and leave out the numerical values.** The Government rejected our proposal, but simultaneously tasked the Minister of the Environment in co-operation with the Minister of Industry and Trade and Minister of Agriculture to prepare a new amendment to the relevant Government regulation by 15 April 2016 and leave out or set significantly stricter numerical values listed in Annex 7 of the of the Government regulation.

## Air protection

Complaints concerning air quality can be divided into two groups:

- Complaints against nuisance through smoke (from chimneys, fireplaces, etc.) produced by individual households, e.g. the neighbours.
- Complaints against odours produced by industrial or agricultural complexes.

→ **Finding solutions in these cases is very difficult. The current Air Protection Act sets no emissions or pollution limit values for odorous substances. Odorous substances are, in contrast to the original legal regulation, specifically listed under "pollutants". Air protection authorities thus may, when issuing permits for operation of air pollution sources, set individual limit values for emissions of odorous substances, if this is expedient and effective with respect to the relevant pollution source. The authorities may also impose specific technical measures to reduce odours.**

→ Individuals perceive the intensity of odours differently, which is why we believe that persons who feel their rights are directly affected should be considered parties to the proceedings on permitting operation of a pollution source pursuant to the Air Protection Act, as well as the individual proceedings under the Construction Code. The fact that air pollutants ignore borders cannot, in itself, be a reason to exclude persons who base their participation in the proceedings on a decreased comfort of living and interference with peaceful use of their property resulting from nuisance through odours.

## Protection against noise

- With respect to authorities responsible for public health, we repeatedly encountered cases where the regional public health stations refused to address instances of exceeding noise limits during one-off noisy events, such as concerts.
- The health stations pointed out that on the basis of their assessment of health risks, they found the noisy events annoying, but not threatening or damaging health.
- Although in most cases we agreed with the health stations' assessment that the noisy event could not have caused damage to health (and it was questionable whether public health could be threatened as a result), we found the authorities' procedure unlawful. Pursuant to the Protection of Public Health Act, a public health station must initiate administrative proceedings on imposition of a fine once it learns of violation of the law. The question of threats posed to the public by the noisy event should be addressed only within these proceedings. Subsequently, the health station may either waive the fine, or impose it in an amount corresponding to the degree of threat posed to public health.

 [Defender's Report: File No. 7995/2014/VOP of 21 September 2015](#)

## Mining administration

In 2015, we again dealt with complaints concerning mining. Resource site protection limits the possibilities of further development of the respective area. This is why it must be included in the principles of regional development and potentially also in municipal spatial planning. The same applies to the already designated mining areas.

### Construction in protected resource areas

In the case at hand, the complainant wished to build a family home on a property situated in a protected resource area. According to the spatial plan, it was a built-up area and the property itself was surrounded by existing buildings on three sides. However, the Regional Authority, after having discussed the case with

the District Mining Authority, refused to grant construction permit pursuant to the Mining Act. The general explanation provided was that the property was unsuitable for a family home, since it could suffer future damage resulting from mining activities.

We criticised the authorities for not providing more specific arguments in the reasoning, such that it would directly address the submitted plan for the family home. In our opinion, the authorities should have first addressed, e.g., how the house's foundations were designed and whether they could withstand vibrations from mining activities, the distance of mining from the property and whether mining would move closer or away from the property in the future. They should have taken into consideration

that other buildings already existed adjacent to the property and that stone mining would have to take this fact into consideration.

A binding opinion pursuant to the Mining Act was requested by the construction authority which, on its basis, refused to permit the construction. In this, it violated the Code of Administrative Procedure as it denied the complainant the right to respond to the relevant evidence, i.e. the complainant was defenceless against the resulting binding decision.

The complainant brought the case before an administrative court, where it is now being heard.

 [Defender's Report: File No. 5961/2012/VOP of 20 April 2015](#)



# 6

## JUDICIARY, MIGRATION, FINANCIAL MATTER

In the area of the judiciary, during the year in question we dealt e.g. with delays in proceedings and inappropriate conduct of judicial persons. We also published collected documents concerning our findings in the area of State administration of courts. In the area of migration, we focused especially on matters associated with residency permits, expulsions and obtaining international documents. In the area of finance, we dealt with fees collected from minors and disputes between mobile operators and consumers.

### Our mandate:

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#### Judiciary

- » delays in proceedings
- » inappropriate conduct of judicial persons
- » administration in expert and interpreting matters
- » Ministry of Justice supervision

#### Migration

- » travel documents
- » various types of residence permits
- » expulsions and detention of foreign nationals
- » international protection

#### Financial matters

- » taxes
- » customs duties
- » administrative and judicial fees
- » consumer protection
- » inspection bodies

# State administration of courts

The bodies of State administration of courts, i.e. the presidents and vice-presidents of the courts, should supervise and contribute to quick resolution of cases, and ensure dignity and judicial ethics in proceedings. We inquire into how the president or vice-president of the court dealt with complaints against delays in proceedings or inappropriate conduct of judicial persons.

 For more information, visit [bit.ly/sprava\\_soudu](http://bit.ly/sprava_soudu)

In 2015, we compiled a collection of papers presenting our findings concerning State administration of courts; you can find the collected papers on our website at:

 [bit.ly/sbornik\\_soudy](http://bit.ly/sbornik_soudy)

## Service of documents on prisoners

The courts regularly served documents on prisoners at their permanent addresses, not at prisons where they were actually present. Based on our inquiry, the Ministry of Justice modified the "office rules" which regulate the service of documents on prisoners. It should thus no longer be possible for the decisions being served to come into legal force without the addressee having had the opportunity to read them.

 For the whole report on the inquiry, go to our website at [bit.ly/doručovani\\_vezni](http://bit.ly/doručovani_vezni)



## Complaints filed with the State administration of courts



### Timely compensation for damage and assistance to victims of crime

In 2015, there was an increase in complaints against the Ministry of Justice for its failure to deal with applications for compensation for unlawful decisions or delays within the period of six months. After our meeting with the Minister, the Ministry increased the number of personnel in the department of compensations. We also succeeded with our suggestion concerning an amendment to the Victims of Crime Act. In doing so, we prevented a problematic extension of the period for dealing with applications for financial assistance filed by victims of crime, or their surviving family members.

→ **The six-month period for dealing with applications for compensation features prominently in our Decalogue of Good Practice.**

 You can find it on our website at [bit.ly/10\\_dobrapraxa](http://bit.ly/10_dobrapraxa)

### Retirement contribution may no longer be seized in its entirety

Until August 2015, it was possible for a distrainer to seize the whole amount of retirement contribution. In cases of distraint (judicial enforcement), former members of security corps for whom retirement contribution was the only income could thus remain completely destitute. We thus made an effort to initiate a change; thanks to our recommendation, retirement contribution was included in the list of income which may be seized only partially, by means of salary deductions, as from 1 September 2015.

The same also applies to the allowance towards retirement pension to mitigate certain injustices committed by the communist regime in the social area and to the special contribution towards retirement pension under the law on rewarding participants of the national struggle for the formation and liberation of Czechoslovakia and some of their surviving kin.

# Foreign nationals

The number of persons accommodated in facilities for detention of foreigners increased to the total of 1,125 detainees in August 2015. The refugees, usually from Syria, Afghanistan and Iraq, underwent a journey over the sea to Greece and further via the so-called Balkan route through Macedonia, Serbia and Hungary, usually heading to Germany or Sweden.

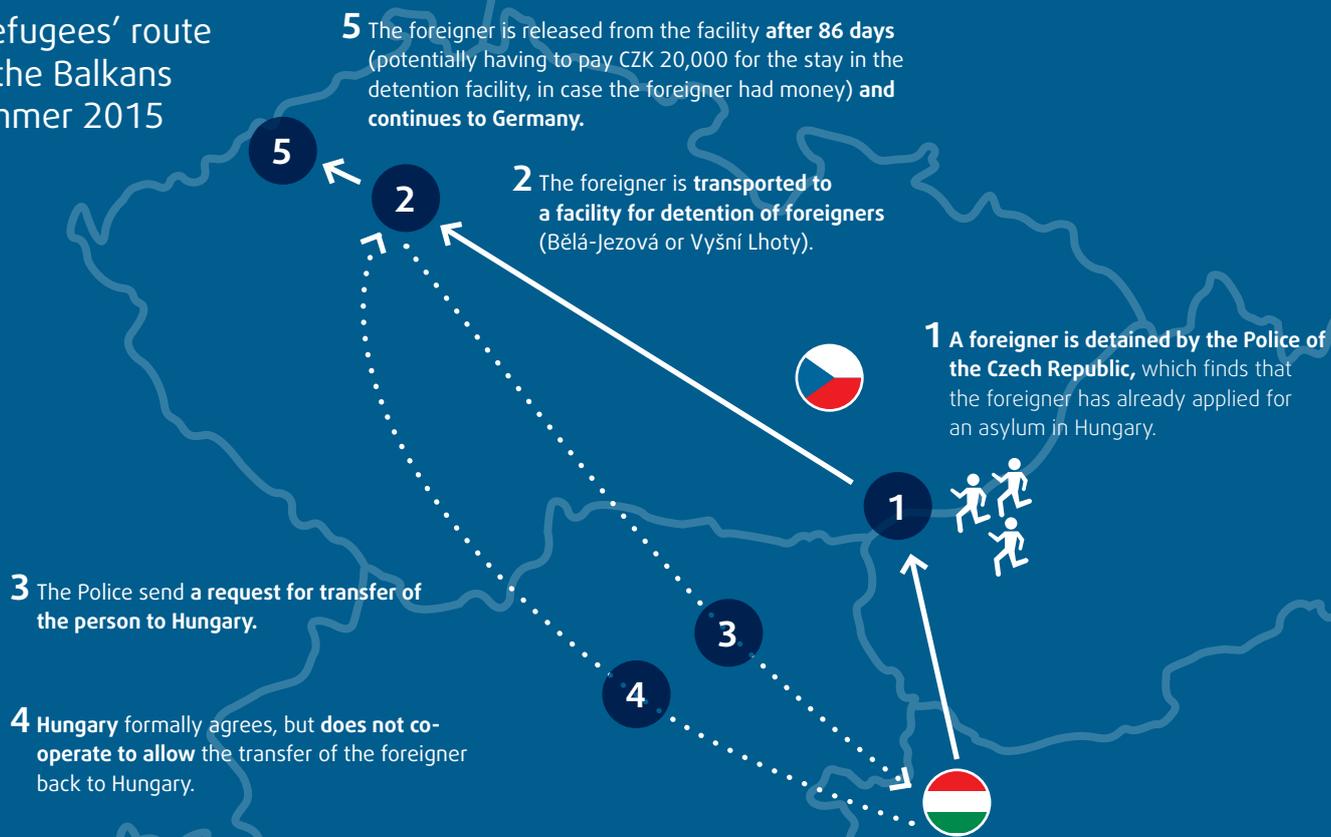
Beginning on 17 June 2015, the Police usually checked trains heading towards Germany for the presence of foreign nationals without a residence permit. The Police could detain such foreign nationals (depending on the circumstances in each individual case) with a view to their transfer under the readmission agreements or the Dublin III Regulation, or for the purposes of expulsion into the country of origin.

Hungary acknowledged its jurisdiction, but it failed to sufficiently co-operate to enable transfer of the detained foreign nationals from the Czech Republic back to Hungary pursuant to the Dublin III Regulation. This is why the Police had to release most of the foreign nationals when the maximum permissible period of detention elapsed.

## Number of requests and actual number of transferred asylum seekers

2015	Sent requests for transfer of foreigners back to Hungary	Number of completed transfers of foreigners to Hungary
january	90	2
february	121	2
march	95	9
april	63	48
may	59	6
<b>june</b>	<b>113</b>	<b>4</b>
<b>july</b>	<b>208</b>	<b>3</b>
<b>august</b>	<b>258</b>	<b>1</b>
<b>september</b>	<b>330</b>	<b>9</b>
<b>october</b>	<b>95</b>	<b>3</b>
november	8	19
december	4	2
<b>total in 2015</b>	<b>1 444</b>	<b>108</b>

## The refugees' route from the Balkans in summer 2015



Many foreign nationals were needlessly deprived of personal liberty. In addition, the Refugee Facilities Administration charges a fee for accommodation and food in the amount of CZK 242 per person and day from their available financial means. After 30 days of stay in such a facility, the detained foreign national had to pay CZK 7,260. The costs of, e.g., a family of four could thus rise to CZK 29,040 after 30 days of stay. We believed the law did not permit a request for payment from foreign nationals detained for the purposes of transfer under Dublin III Regulation. The foreign nationals did not even receive an administrative decision with the bill of these costs.

→ For more information on the conditions in the Facility for Detention of Foreigners in Bělá-Jezová, see Chapter 7, the section on detention of foreign nationals.

## Fees for stay in a facility for detention of foreigners

person / day	242 CZK
1 month	30 days
→ $242 \times 30 = \underline{7\,260\text{ CZK}}$	

person / day	242 CZK
1 month	30 days
family	4 persons
→ $242 \times 30 \times 4 = \underline{29\,040\text{ CZK}}$	

## Delays in residence proceedings and international protection proceedings

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Delays in residence proceedings continued in 2015 despite measures taken to speed-up processing of requests. Thanks to our interventions, many of these delays in proceedings were removed. We were also approached by some complainants whose applications for international

protection remained undecided by the Ministry of the Interior even after several years. The foreign nationals were stuck in an insecure position as to whether they would be allowed to stay in the Czech Republic.

## VISAPOINT

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Foreign nationals may only apply for a residence permit or a visa in person at the relevant embassy. They are required to use the VISAPOINT online system to get an appointment. However, in some countries (e.g. in Mongolia, Thailand, Uzbekistan, Vietnam or Ukraine), VISAPOINT has long offered

no free appointment dates. On the other hand, registration has improved at embassies in Georgia, Kazakhstan and Turkey. Thanks to our initiative, the Ministry of Foreign Affairs now provides foreign nationals with better information on the system, also through the websites of the relevant embassies.

## Issuing travel documents to Bulgarian citizens

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Bulgarian citizens who often lived their whole lives (over 70 years) in the Czech Republic encountered serious problems. Although in the previous years, the Bulgarian authorities used to issue travel documents to them without any issues, they now refused to do this unless the applicants proved permanent residence in Bulgaria. Due to the complainants' advanced age and lack of ties to their former homeland, they could not have possibly complied with such a requirement. This is why they applied for a substitute foreigners'

passport in the Czech Republic, but without success. The authorities subsequently stopped paying their retirement pensions and social benefits as they could not verify their identity with a valid document. This is why we initiated talks between the Minister of the Interior and the Bulgarian embassy in the Czech Republic to seek a solution to this problem. The Ministry subsequently agreed to issue foreigners' passports to these complainants. Afterwards, the payment of retirement pensions resumed.

→ As this concerns a broader range of issues, we organised, in co-operation with the UN High Commissioner for Refugees, a workshop titled "Border protection and identification of persons in need of international protection during increased mixed migration flows" with participation of the Foreigners Police officers from all regions of the Czech Republic.

→ In September 2015, we organised our traditional seminar on asylum and foreigners law. The contributions presented at the seminar will be published as collected papers.

 Collected papers presented during the 2014 scholarly seminar on the topic Residence of foreign nationals: selected legal issues II can be found on: [bit.ly/pobyty\\_cizincu](http://bit.ly/pobyty_cizincu)

→ Within the lectures we organised, we acquainted the judges of the Supreme Administrative Court with our findings.

→ We took advantage of our power to intervene in proceedings before the Constitutional Court in a case concerning health insurance of foreign nationals and detention of minors. We commented on detention of foreign nationals and transfers under the Dublin III Regulation in proceedings before the Supreme Administrative Court.

# »»»»» Financial matters

## What to do when you are not satisfied with system of municipal waste:



**1** If you disagree with the placement of collection containers, or you have another recommendation for the system of municipal waste management, notify the local authority.



**2** Send suggestions, comments or ideas how to improve the system to the local authority.



**3** Require a discussion of the matter at the local council.



**4** In case of possible environmental danger, contact the Czech Environmental Inspectorate or regional office.



### However! Do not forget:

You have a duty to pay the municipal waste fee **always**, even though you would not agree with the system.



For more information, go to our website at [bit.ly/poplatek\\_odpad](http://bit.ly/poplatek_odpad)

## Municipal waste fee charged to minors

In the past two years, two major changes were made in the area of municipal waste fee:

- From 2013 onwards, the municipal waste fee may be charged to the legal representatives of children. We recommend that the municipal authorities take advantage of this option.
- Certain distraint (enforcement) proceedings to enforce older outstanding fees concerning children must be stopped. In 2014, the Supreme Administrative Court reached the conclusion that if the authority dealt with the legal representative of a child whose interest was at variance with the interests of the child, then such a fee was not imposed properly.



More information on our website at: [bit.ly/nedoplatky\\_deti](http://bit.ly/nedoplatky_deti)

## Subsidies

- Many applicants for subsidies consider their awarding opaque and unclear.
- The authorities' decisions often do not include any reasoning, so the applicants do not know why their application was rejected.
- Sometimes, the authorities do not even issue an administrative decision.

→ **This is why we organised an expert debate on the standing of the applicants for subsidies. An application for a subsidy may only be dismissed on the basis of an administrative decision with a reasoning and advice on appeal.**



Defender's Report and Opinion: File No. 6329/2012/VOP of 12 May 2014 and 9 December 2014



More information concerning applications for subsidies is available on our website at [bit.ly/zadost\\_dotace](http://bit.ly/zadost_dotace); the report on the case concerning subsidies for private schools is available here: [bit.ly/dotace\\_skoly](http://bit.ly/dotace_skoly)

## 5+3 recommendations for (non)payment of the local municipal waste fee

### Principles for paying the fee for municipal waste:

- A/ Your duty to pay the municipal waste fee is stipulated by the law and a generally binding ordinance.
- B/ The authority does not have the duty to remind you of your duty to pay the fee.
- C/ Pay attention to the annual date of the fee and pay on time.

### If you still find out that you have an underpayment:



#### 1 Inspect the fees file at the municipal authority's office and find out the amount of your underpayment and the reason for the debt.

Focus especially on documents such as the payment assessment or the collective prescriptive list through which the fee was assessed and also on information as to when and how the decision was delivered to you and in what way the authority is enforcing the fee.



#### 2 You may file an appeal against the payment assessment (decision)...

... if you believe the payment assessment is incorrect. Be advised, there is a 30 day deadline running from the date of delivery. The possibilities for your further procedure thus depend on the date of delivery of the decision.



Please note! The collective prescriptive list is delivered by posting on the official notice board – this is why the decision need not be delivered to your home.



#### 3 Is the authority pursuing distraint (enforcement) proceedings against you to enforce the fee, but you consider its actions unlawful?

You can defend yourself by filing an application for discontinuation of the distraint proceedings. Be advised, in distraint proceedings, you may not alter the original payment assessment through which the duty to pay the fee was imposed. The review is limited to:

- whether the payment assessment was delivered properly
- whether it is legally effective and you failed to pay
- whether the period in which the authority may enforce the fee (the basic period is 6 years from the substitute due date of tax = i.e. 15 days of the legal force of the payment assessment; there are also exceptions where the period is extended, ceases to run or runs again).



#### 4 Are you unable to pay the debt in one instalment?

Get a payment schedule. You can apply for a grace period or a payment schedule; however, the application is subject to administrative fee in the amount of CZK 400. Be active in communication with the authority concerning your debts. Describe your property and financial situation in detail in your application for a grace period. The authority will decide on your application within 30 days.



#### 5 Is the authority proceeding in unlawfully, or is it making some other error? Invite the authority to ensure remedy.

→ If this does not bring results, approach the Public Defender of Rights, who will inquire into the authority's procedure.

Enclose copies of the relevant letters exchanged with the authority (e.g. your appeal against the payment assessment, the application for discontinuation of the distraint proceedings and the decisions on the above, if any) in your submission to the Defender. Send this to [podatelna@ochrance.cz](mailto:podatelna@ochrance.cz).

# »»»»» Consumer protection



In 2015, we most often addressed the following issues in the area of consumer protection:

## Unfair commercial practices of doorstep sellers



We organised an interactive theatre performance in retirement homes including a debate about “crooks” where unfair commercial practices in doorstep selling of products and services were

discussed. The elderly enriched the performance with their own experience and participated in the performance and in the debate.

## Consumer protection in the financial market



We inquired into the procedure of the Czech National Bank in its supervision over financial institutions, especially in connection with compliance with the prohibition of unfair commercial practices. We also inquired into the procedure of the Ministry of Finance in approval of the general terms and conditions of building societies. The inquiry showed that the Ministry checked insufficiently whether the terms

and conditions complied with the legislation as a whole, not just with the Building Societies Act. The Ministry did not acknowledge its error.

 Defender's Opinion, Report, and punitive measures: File No. 138/2014/VOP of 11 August 2014, 26 November 2014 and 8 April 2015

## Disputes between consumers and mobile operators



The competence to resolve these disputes belongs to the Czech Telecommunication Office. There have been repeated attempts to transfer these responsibilities to the courts. We believe that transferring dispute resolution from the Office to the courts would be unwise. On

the contrary, there should be an effort to divert certain types of disputes away from the courts. The Czech Telecommunication Office has long experience with resolving these disputes, which can be reflected in its supervision over consumer protection.



# 7

## SUPERVISION OVER RESTRICTIONS OF PERSONAL FREEDOM

We visit places where persons are or may be restricted in their freedom. In addition, we address complaints against prisons and psychiatric hospitals. We also deal with the procedure of municipalities acting in the capacity of public curators. We supervise expulsions of foreign nationals.

In 2015, we visited 20 facilities. In some cases, we informed the public of our findings. We formulated a number of recommendations for the governmental authorities and commented on the proposed amendments to laws.

We celebrated the 10th anniversary of activities in the area of protection against ill-treatment as the so-called national preventive mechanism.

We visit:

- » Prisons and police cells
- » Facilities for detention of foreigners and asylum facilities
- » Facilities for institutional and protective education
- » Psychiatric hospitals and treatment facilities for long-term patients
- » Residential social services facilities

20



We visited 22 facilities in total. Visits were carried out by teams consisting of our lawyers and, when needed, also experts from the ranks of medical specialists, psychologists, nurses and interpreters.

# »»»»»» Visits in 2015



Beginning in 2016, we will publish all our reports on visits after discussions with the respective facilities end.



Summaries of our reports, visits and inquiries are available on our website at [ochrance.cz](http://ochrance.cz), in section Protection of persons restricted in their freedom.

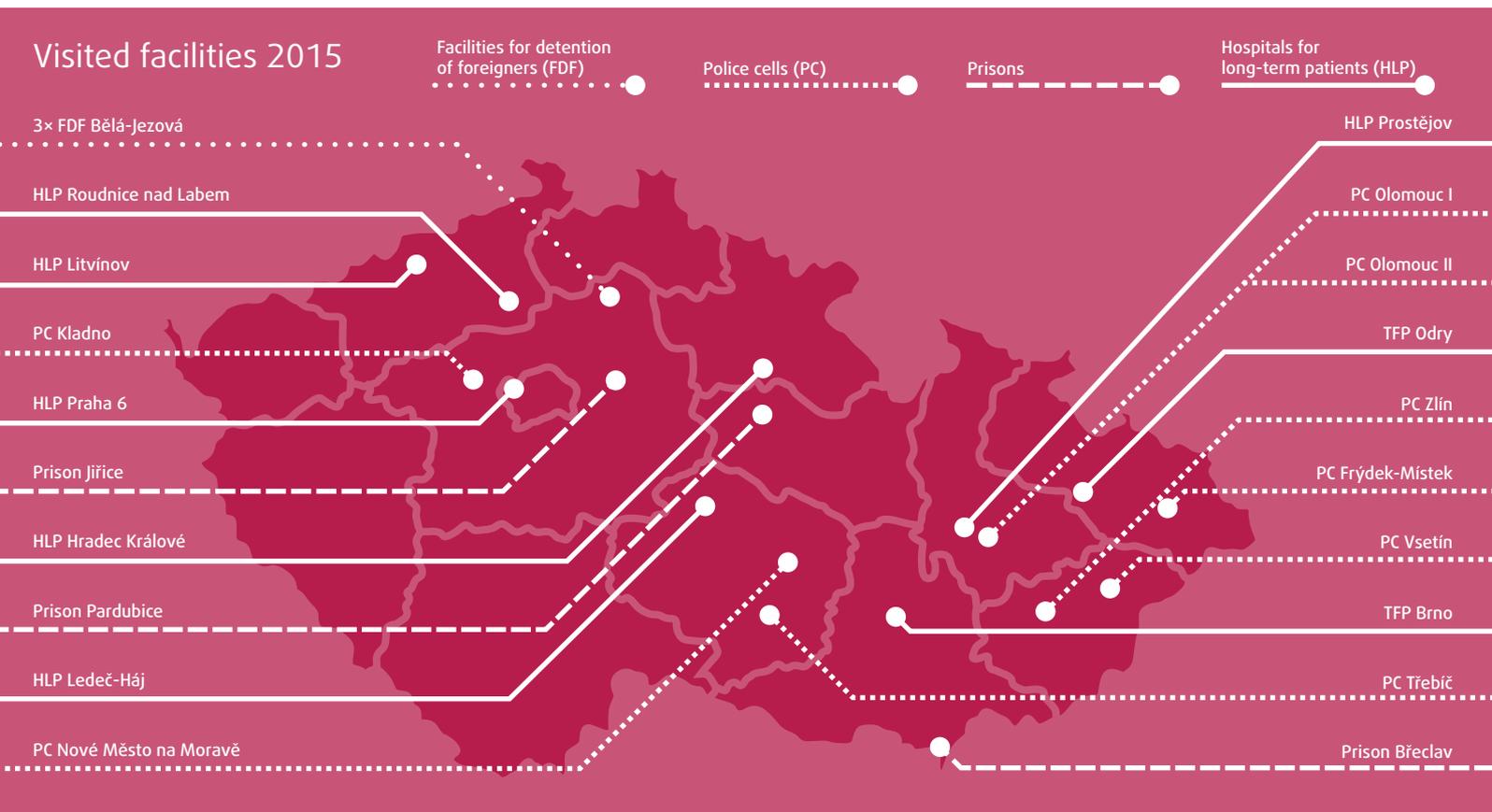


## 1/ Prisons

- A total of 6 prisons were visited, half in the process of inquiry into the individual matters
- A medical specialist participated in each systematic visit.

### What did we inquire into?

- material conditions and catering
- sanitary conditions
- healthcare and the conditions of imprisonment for people with disabilities
- strictness of the security measures
- meeting the cultural and social needs of the convicts
- achieving the purpose of imprisonment and employment
- contact with the family and the world out of prison
- treatment of convicted foreign nationals



## 2/ Police cells



- We visited cells at 8 police stations.

### What did we inquire into?

- advice given to persons in cells as to their rights and duties, delivering the advice into the cell
- ensuring the right to legal advice and availability of a list of attorneys
- food in reasonable intervals
- equipment of the cells
- rules for treatment of persons with behavioural problems

## 1/ Police cells





### 3/ Detention of foreign nationals

- A total of 3 visits to the Facility for Detention of Foreigners in Bělá-Jezová
- The Defender participated in person twice, alongside interpreters

659



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

#### What did we inquire into?

- the conditions in detention of families with children
- material and sanitary conditions, access to water, catering and clothes
- healthcare services
- provision of interpreting and legal advice
- presence of security personnel in uniforms, security measures

The Defender visited the facility repeatedly. She was twice forced to exercise her punitive powers as she concluded that the authorities had erred and failed to ensure a remedy.

→ **The facility does not meet the conditions for accommodation of children. We tried to at least improve the conditions in the facility.**

→ **We requested better treatment of the detained foreigners. The Refugee Facilities Administration and the Police have taken some steps, but in some cases we were forced to contact the superior authority – the Ministry of the Interior.**

→ **In our opinion, during summer and autumn of 2015, the foreign nationals placed in the facility were subjected to degrading ill-treatment, usually as a result of the facility's overcrowding. The situation was very serious with regard to children.**

 Information on both procedures in imposing penalties and reports from visits are available on our website: [bit.ly/zarizeni\\_cizinci](http://bit.ly/zarizeni_cizinci) and a press release at [bit.ly/Bela\\_Jezova](http://bit.ly/Bela_Jezova)

The Defender met with the Minister of the Interior twice in person. He informed her of the steps taken that would lead to gradual improvement of conditions in Bělá-Jezová. These measures included, e.g., increasing the number of social workers, ensuring availability of interpreters and games for children.



### 4/ Treatment facilities for long-term patients

- we visited 8 such facilities
- the team always included a medical specialist and a nurse
- after discussions with experts and representatives of the visited treatment facilities for long-term patients, we will issue a summary report in 2016 with recommendations for the responsible authorities
- sufficient staffing is the basic requirement for good care

#### What did we inquire into?

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

# Individual complaints

99



complaints concerned treatment in social services. We are not authorised to deal with individual cases, but these complaints have a role in preparing the programme of the visits. Despite this, we always tried to come up with a proposed solution. The chief problem is that there is no governmental authority to review complaints of clients in social services.

48



complaints concerned care in psychiatric facilities. We can only directly address those which are related to protective treatment ordered by court in criminal proceedings. *nařízeného soudem v trestním řízení.*

45



complaints concerned support measures, usually curatorship. The Defender may only address complaints concerning curatorship performed by municipalities.

293



complaints filed by prisoners were addressed by us during the year.

A number of curators are mayors of small municipalities. Without any kind of financial subsidy, they are responsible for a broad range of issues in which they often lack sufficient expertise. This needs to change. It is also necessary to improve the inspection and guiding activities on the part of regional authorities and the Ministry.

## Imprisonment of people with disabilities and long-term patients

Convicts with disabilities and long-term illnesses are a particularly vulnerable group in the prison system. In 2015, we inquired into **individual cases** as well as the **general conditions** in special blocks in three prisons. We found ill-treatment in a number of cases. Usual problems include adjusting the material conditions to the needs of the prisoners, ensuring sufficient assistance and care, and providing healthcare and the necessary medical aids. This is why we will submit our systemic recommendation to the responsible authorities in 2016.

### How to deal with incurably ill patients in prisons?

We ensured remedy in the case of a man with three paralysed limbs and an inoperable malignant tumour in the spine, who was spending nights locked in his bedroom, alone and without means to call for assistance. The man was transferred to a bedroom for immobile persons and assigned an assistant from the ranks of the convicts.

However, the issue remains of whether a terminally ill person in such a bad medical condition should be staying in prison at all – the convict had served most of his sentence and, given his medical condition, his sentence could become a life sentence. The man had repeatedly turned to the courts. However, he only succeeded after our report was published; the court granted his request for parole on medical grounds.

The European Court of Human Rights considers placing convicts in prison despite the fact their medical condition is not compatible with prison life a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms.



Defender's Report: File No. 7624/2013/VOP of 5 December 2013

# Events in 2015



9×

the number of times we commented on legal regulations in 2015; e.g. the Social Services Act, the Professional Medical Qualifications Act and the Criminal Code.

10

the number of training events we organised for senior police officers year concerning rights of persons restricted in their freedom.

3×

the number of times we met with the Director General of the Prison Service of the Czech Republic. We regularly discuss the complaints of prisoners and findings from systematic visits. Thanks to our co-operation, we managed to achieve progress in some long-term problems:

- **Creating a just system for resolving convicts' applications for transfer into another prison. Since October 2015, convicts do not have to file a new application for transfer if their previous one was rejected on capacity grounds; convicts are now put on a waiting list.**
- **Provision of interpreting to imprisoned foreigners during medical examinations.**
- **Shorter periods spent by convicts locked up in their cells/bedrooms.**
- **Observance of the rule that expunged disciplinary punishments cannot be indicated by the prisons in convict's assessment submitted to courts.**



## Prisons Outlook to 2025

This year, the Prisons Outlook 2025 was under preparation at the Ministry of Justice, in which we participated in the following ways:

- We voiced concerns about the present **penal policy settings**. It is necessary to analyse the impacts of the new Criminal Code in view of the constantly increasing number of imprisoned persons as prison overcrowding is now imminent.
- We propose to **reform the prison healthcare system**, as it has problems with providing available and good care, in itself resulting from the lack of medical specialists willing to work in prisons. We believe the concept of prison healthcare needs to be reviewed.



## Safety in sobering-up stations

In 2014, on the basis of our systematic visits to sobering-up stations, we recommended to the Ministry of Health to adopt legal and organisational measures to increase safety in the provision of sobering-up station service. In 2015, we discussed these measures with the Minister and his deputy. A new legal regulation of the sobering-up service is currently being prepared. The Ministry has also prepared a number of useful changes strengthening the rights of the patients. However, we continue to request:

- that the Government's bill be modified to include a duty for the providers of healthcare services to **keep records of the use of restraints**;
- that minimum requirements be set for personnel and material and technical equipment of the sobering-up stations.

 The summary report on visits to sobering-up stations is available on our website at [bit.ly/zachytky](http://bit.ly/zachytky)



## Better protection of the elderly in facilities

Based on our findings from visits to 14 retirement homes and special regime homes, we formulated systemic recommendations for the Ministry of Labour and Social Affairs and the Ministry of Health. The recommendations concern sedatives, conditions for registration to provide social services and a Czech strategy to combat dementia. We pointed out **insufficient funding of healthcare**

**in residential social service facilities** and invited both ministries to find solutions.

 the report on visits to the facilities and letters to the ministries are available on our website at [bit.ly/socialni\\_sluzby](http://bit.ly/socialni_sluzby)



## Report on visits to retirement homes and special regime homes



- The report describes our findings from visits in 14 facilities.
- It includes descriptions of good and bad practice and recommendations that can serve as guidelines.
- The cause of ill-treatment often lies in insufficient staffing and lack of knowledge of good practice.
- We focused primarily on the living conditions of the elderly with dementia.

 The report is available on our website at [bit.ly/domovy\\_seniori](http://bit.ly/domovy_seniori)

 Office of the Public Defender of Rights

### RETIREMENT HOMES AND SPECIAL REGIME HOMES



REPORT  
ON SYSTEMATIC VISITS CARRIED OUT BY  
THE PUBLIC DEFENDER OF RIGHTS 2015

## Report on accommodation facilities providing care without authorisation



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

 The publication is available on our website at the publication is available on our website at [bit.ly/zarizeni\\_bez\\_opravneni](http://bit.ly/zarizeni_bez_opravneni)

 Office of the Public Defender of Rights

### RESIDENTIAL FACILITIES PROVIDING CARE WITHOUT AUTHORISATION



REPORT  
ON SYSTEMATIC VISITS CARRIED OUT BY  
THE PUBLIC DEFENDER OF RIGHTS 2015

# »»»»» Monitoring of expulsions



- We monitored 4 expulsion and transfers.
- The Defender pointed out shortcomings in the area of preparing detained foreigners for leaving the Czech Republic and handcuffing them during police escorts.



## Monitoring of expulsion of foreign nationals from the Czech Republic

This was the first year when we observed administrative expulsion as part of a joint return operation co-ordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). We monitored the expulsion of a Nigerian national from the point of his leaving the Facility for Detention of Foreigners in Bělá-Jezová up to the transfer to Nigerian authorities at the international airport in Lagos. On three occasions, we monitored transfers of 15 foreign nationals from detention and reception centres to their transfer at the border crossing to Austria.

## Our recommendations concerning expulsion of foreign nationals

- **Do not neglect preparation of foreign nationals for their departure from the Czech Republic.** Preparation for leaving the facility is mainly the responsibility of the facility for detention of foreigners and should help people deal with their situation. Good preparation decreases the risk of self-inflicted harm, suicides or other

behaviour on the part of the foreign national that would hinder or prevent his or her departure.

- **Give the foreigners information on the date and time of their leaving the facility.** The foreign national is then better prepared for leaving the detention facility, can inform the family and close ones, his or her legal counsel and can settle personal matters and other necessary things.
- **Avoid indiscriminate handcuffing of the escorted persons.** Handcuffs may be used by police officers if they have a reason to believe safety is at risk or that the escorted person might attempt to escape. We analysed 180 decisions on escorts, where handcuffs were used in 88% of all escorts (89% where the escorted persons were male, 79% where the escorted persons were female, and 50% where the escorted persons were minors). In none of the cases did the file suggest there was such reasonable concern.



# 8

## EQUAL TREATMENT AND DISCRIMINATION

In 2015, we carried out a survey focused on victims of discrimination and their difficulties in achieving justice. Even though approximately one out of ten Czechs was exposed to some form of discrimination in the past five years, these people face difficulties in seeking legal recourse. We also focused on equal pay and children with disabilities in schools.

### Discrimination in 2015 in numbers

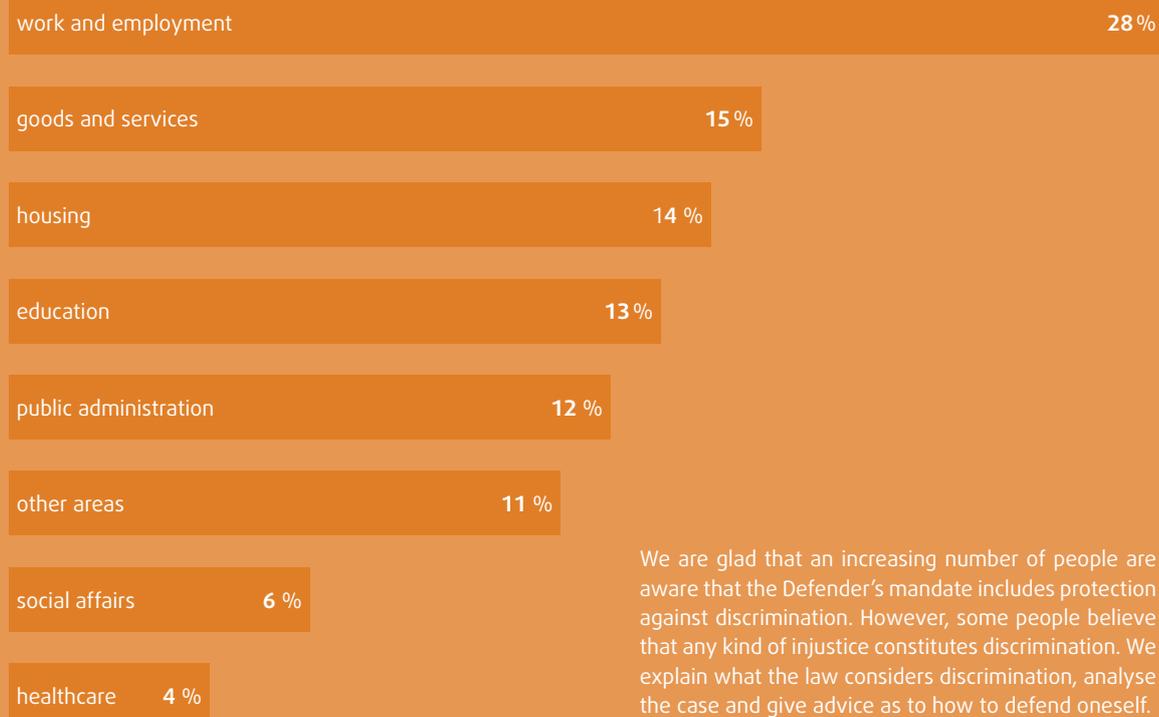


This does not mean that discrimination does not exist in society. A major part of the complaints received in 2015 are still being inquired into.

 For more information, go to our website at [bit.ly/odlisne\\_zachazeni](http://bit.ly/odlisne_zachazeni)

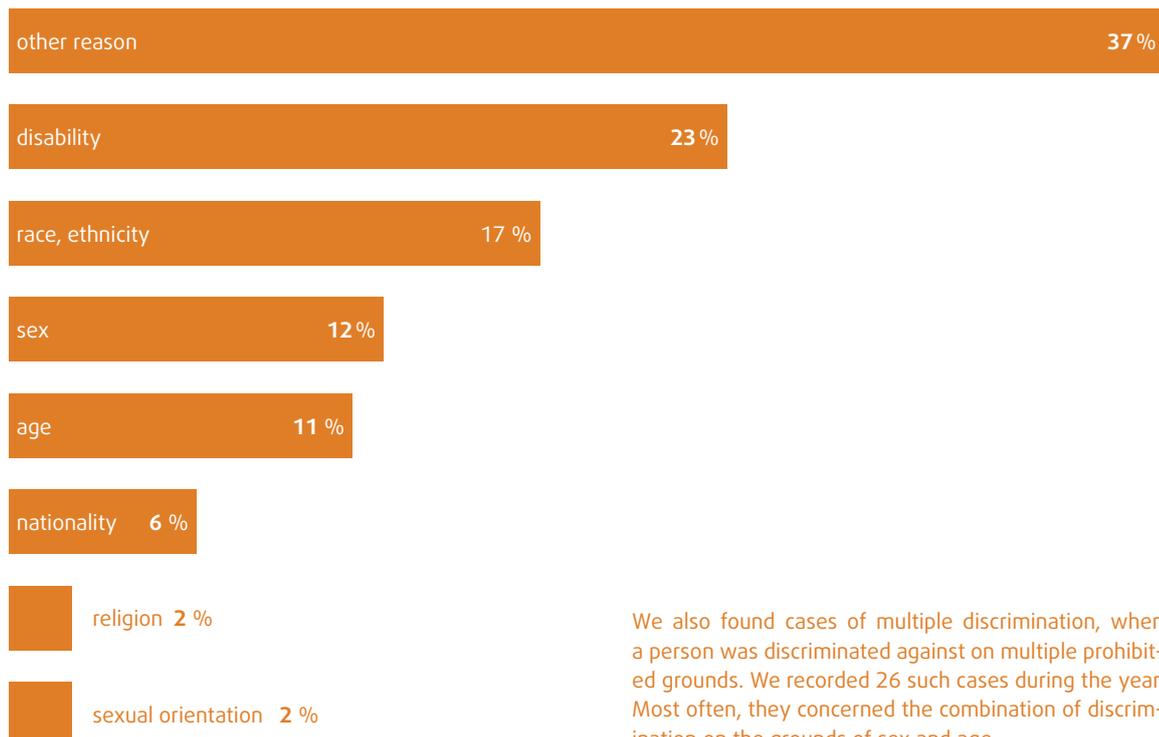
# Focus on complaints

## Areas in which people felt to be discriminated against in 2015



We are glad that an increasing number of people are aware that the Defender's mandate includes protection against discrimination. However, some people believe that any kind of injustice constitutes discrimination. We explain what the law considers discrimination, analyse the case and give advice as to how to defend oneself.

## Why people felt discriminated against in 2015



We also found cases of multiple discrimination, when a person was discriminated against on multiple prohibited grounds. We recorded 26 such cases during the year. Most often, they concerned the combination of discrimination on the grounds of sex and age.

# »»»»» Topic of the year 2015: equal pay

”

We believe it is unjust if people performing the same work or work of a similar value receive different pay, either due to their sex, disability or the fact they also receive old-age pension. Unequal pay is undignified and the government does not do everything required to prevent it.

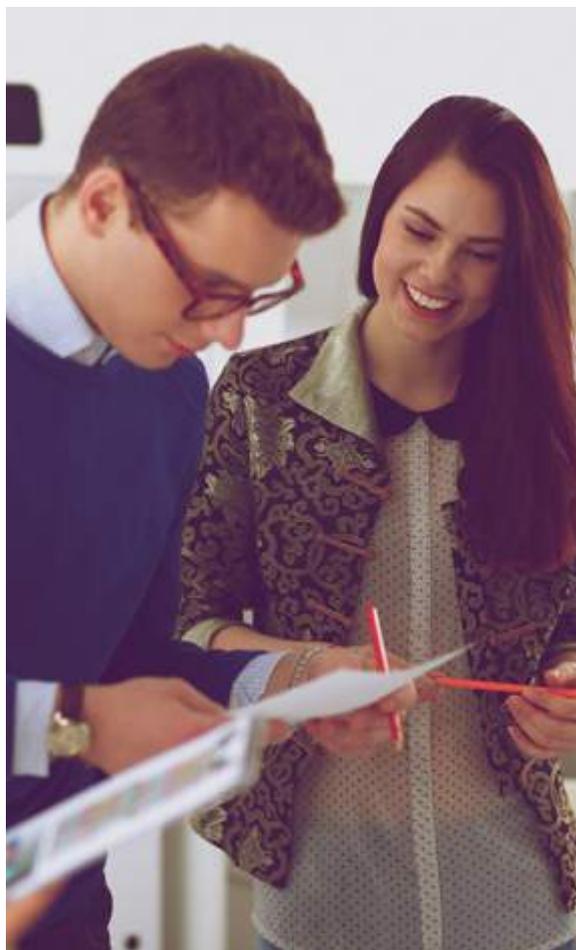
“

## Therefore, in 2015 we

- A/ **recommended that the Ministry of Labour and Social Affairs take concrete systemic steps** in countering unequal pay for women and men;
- B/ **criticised the Government Regulation on minimum wage** which, at variance with the constitutionally guaranteed rights of persons with disabilities, determines lower minimum salaries for recipients of disability pension;
- C/ **called on** the State Labour Inspectorate to perform **more thorough inspections of** equal pay at work;
- D/ accepted partnership in the project dubbed **“Pay attention to gender pay gap!”**, as part of which we engage in debates with the general public, secondary school students and social partners in all regions of the Czech Republic. The project is being implemented by the NORA Gender Information Centre, a benevolent association.

Do you know the difference between average salaries of men and women in the Czech Republic?

[www.jetofer.cz](http://www.jetofer.cz)



# »»»»»» Survey: Why people do not take action against discrimination?



## The survey further showed that:

- People do not report discrimination because they do not believe that anything could change; they do not have enough evidence and fear possible “retaliatory” steps.
- People would most often report discrimination to the Police (58%); 16% would contact the Defender. Some did not know at all to whom they should turn.
- Members of marginalised groups feel helpless and believe that the loss they would suffer if they reported discrimination would be greater than the gain from successful litigation.

## What is the situation regarding courts and inspection bodies?

**3/4**



of the respondents believe that it is difficult to enforce their rights as discrimination victims.

**30**



people filed only anti-discrimination claims in 2009–2014, where

**6x**



the court upheld the plaintiff’s claim. In only one case the court granted compensation for intangible damage in the amount of CZK 51,000.

- in addition, courts are reluctant when dealing with a shift of the burden of proof (especially in harassment cases) and discrimination in redundancy cases;
- inspection bodies punish primarily discriminatory conduct about which there is written evidence (job advertisements) or are directly witnessed by inspectors (dual prices for domestic and foreign customers);
- the low fines imposed by administrative authorities do not have a deterring effect; as a result, the inspection bodies encounter certain offences repeatedly.



## What is necessary to change?

15



measures were recommended on the basis of the survey for more effective enforcement of anti-discrimination law

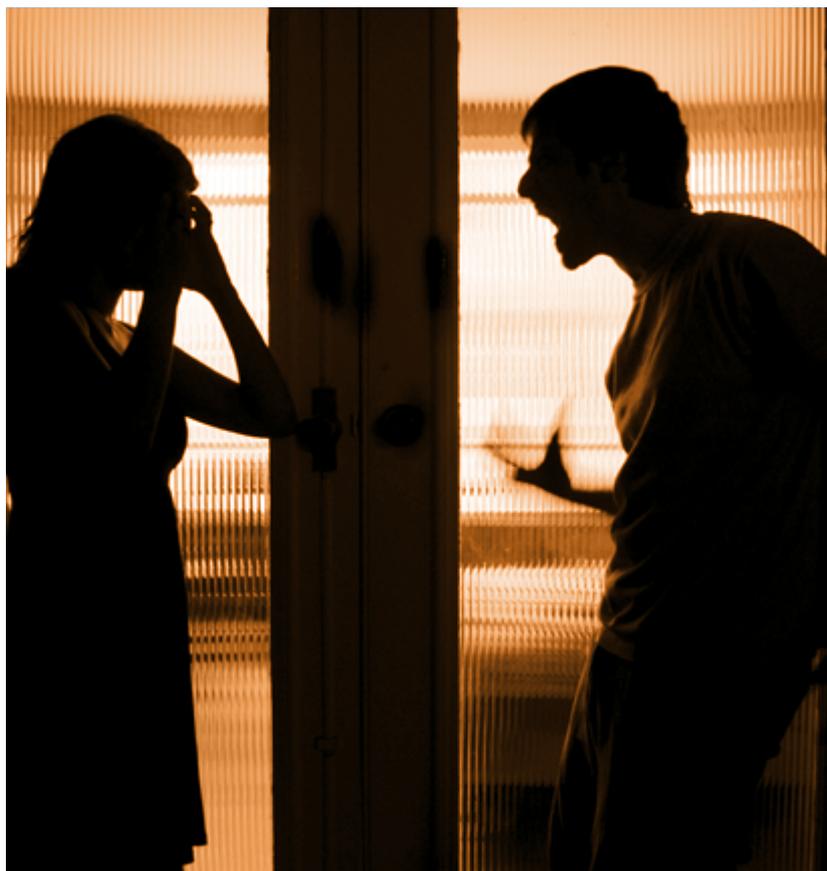
These include, for example:

- creating a promotional campaign and a **campaign raising awareness** for the public and the vulnerable groups;
- **training for judges**, lawyers, inspectors, social workers, medical staff and police officers;
- **amendments to legislation** (reduction of the court fee for filing an anti-discrimination claim,
- provision of free legal aid, enactment of “public action”, equal procedural protection for all victims of discrimination in courts);
- **imposing** effective, deterring and **reasonable penalties** in administrative proceedings.



A full report on the survey is available on the Defender's website at [bit.ly/obet\\_diskriminace](https://bit.ly/obet_diskriminace)

# »»»»» Discrimination case law



**Evidence of discrimination must not be of purely formal nature. Otherwise, the court violates the right to fair trial.**

The Constitutional Court admitted the Defender's earlier legal opinion in the case of a man claiming discrimination on the grounds of sex with respect to termination of his employment. The man had worked as a tutor in a children's home. The Court noted that the Defender had previously criticised the procedure of the Labour Inspectorate which investigated the case, but failed to find any discrimination. The Defender had found that the Inspectorate's inspections were purely formal. The lower-instance courts should thus not have used the inspection results and should have proceeded with taking additional evidence. When they failed to do so, they violated the plaintiff's right to a fair trial. We welcome the fact that the Constitutional Court took the Defender's findings into account and forced the courts and Labour Inspectorates to approach discrimination cases more responsibly.

 Defender's Report File No. 5798/2013/VOP of 16 September 2013  
Court ruling: judgement File No. III ÚS 880/15 of 8 October 2015

**A real estate broker may not discriminate at the owner's request**

The District Court in Litoměřice upheld the Defender's conclusion that a real estate broker may not refuse a person interested in housing just because he or she is of Roma ethnicity. Not even with reference to the wish of the owner of the flat or house. The court also admitted a recording of a telephone conversation as evidence. We analysed this breakthrough (and final) verdict in detail with the Association of Real Estate Brokers and agreed on further co-operation. We trust that a society-wide discussion will contribute to fairer environment on the housing market.

 Defender's Report File No. 112/2012/DIS of 10 September 2014  
Court ruling: File No. 14 C 46/2013 of 14 August 2015

## Who turned to the court based on the Defender's advice?



a child with a disability who had been excluded from an after-school group



a woman who had been dismissed from her job on the grounds of maternity



a child with a disability whose parents had been paying the learning support assistant "from their own pocket" for several years



a blind man to whom a municipality refused to lease an apartment on the grounds of his sensory impairment

### We know, however, that litigation is not the only solution...

... and we always endeavour to resolve disputes amicably. Sometimes it is enough to give advice, in other cases positive change comes with the Defender's inquiry or steps taken by a pro bono counsel. We often manage to remedy widespread discriminatory practices. By doing so, we prevent future recurrence of such discrimination.

## Who did we help in 2015?

- a patient who was not allowed to take along her guide dog to a spa  
→ **the spa changed the operating and accommodation rules in favour of people with disabilities**
- a transgender woman who managed to obtain a new school-leaving certificate after sex change  
→ **the school first refused to communicate with her**
- all persons under fifteen years of age – they are now allowed to collect a parcel or registered mail at a post office  
→ **the post originally provided the service only to people over the age of fifteen**
- two Roma women in access to municipal housing  
→ **the towns where the women and their children lived changed their view and granted the applications**
- a consumer whose insurance company paid out the outstanding balance of indemnity under accident insurance  
→ **the insurance company originally reduced the indemnity on the grounds of age**
- unmarried couples and registered partners who apply for a contribution from the housing development fund  
→ **the contribution was originally designed for married couples only**
- a university student with a mental disorder who can now take exams in writing  
→ **originally, only oral exams were admitted**

# »»»»» Schools

Survey: Availability of catering in kindergartens for children with special needs

Almost

$\frac{1}{2}$

of kindergartens have encountered requests for a special diet for children, where

95%

of kindergartens granted such requests and

9 out of 10

kindergartens accept children with diabetes, where insulin is applied by the parent or the teacher



## Recommendations to kindergartens and authorities concerning enrolment

- 1/ do not use problematic criteria in the admission proceedings (e.g. the permanent residence of parents) or use such criteria (e.g. the criterion of "siblings") carefully;
- 2/ prefer a copy of the vaccinations records within the admission proceedings over a separate form;
- 3/ in case of a lack of funding for assistant teachers, communicate with the founding authority and the regional authority to provide for the child's educational needs;
- 4/ promote pre-school education to Roma parents and address the issue of payment for school lunches on a national level, at least in relation to pre-school children;
- 5/ do not open preparatory classes in (segregated) primary schools; focus on increasing kindergarten capacities.



You can find the whole survey on our website at [ochrance.cz](http://ochrance.cz), section Diskriminace/vyzkumy

## We defended the rights of children with hearing disabilities attending any school

In compliance with the Convention on the Rights of Persons with Disabilities, the Act on Communication Systems of Deaf and Deafblind Persons and the Anti-Discrimination Act, we call on the **Ministry of Education, Youth and Sports:**

- to adjust the conditions for activities of interpreters of the sign language in regional and university education;
- to set conditions for organisation of courses of the Czech Sign Language for both parents;
- to create a reference framework for the Czech Sign Language; only this will enable to evaluate whether the teacher is sufficiently fluent in the Czech Sign Language.

## From the Czech Schools Inspectorate, we expect:

- to provide for activities of native speakers of the Czech Sign Language (hearing impaired) as consultants;
- to provide information on how to educate hearing impaired children integrated in normal schools;
- to obtain opinions of the consultants (hearing-impaired experts) as an integral part of the inspection file.



“We will carefully monitor compliance with all our recommendations.”

## Primary schools must treat children fairly during enrolment

We advised that during enrolment in the 1st grade, primary schools must comply with the principle of equal access to education. They should not make any unjustified differences between first-graders

e.g. according to the time the application was filed or the results of the school readiness test. We insist on a transparent approach to the parents and children (i.e. publishing the criteria in advance) and

also on a partnership between the founding authority and the school, which will enable to react to an increased interest in the school on the part of children with priority admission rights.



# 9

## METHODOLOGY AND ANALYSIS

We make analyses for the Office's lawyers, produce research of literature, national and international case law, provide consultations and surveys, including evaluation. We release the Defender's opinions to the public. In 2015, this led us to launch an online database – Defender's Opinions Register (in Czech: ESO).

### Authorities must invite the sender to supply the missing electronic signature

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Although we do not address individual complaints delivered to the Defender, we are authorised by the Defender to inquire into cross-sectional topics of administrative practice. In one of these cases, we inquired into the procedure of authorities in resolving electronic submissions, complaints or other documents without a recognised electronic signature. We believe that the principles of good governance mean that administrative authorities **have the duty to invite the sender of an e-mail without recognised electronic signature to supply the signature**. The authorities must give advice of this to the sender promptly and in such a way to enable him or her to comply within the supplementation period of five days of the delivery of the incomplete submission.

We informed the Ministry of the Interior of our findings and the Ministry used them as a basis for its guideline for administrative authorities.



Defender's Report and Opinion:  
File No. 7108/2013/VOP of 21 August 2014 and 29 October 2014



Guidelines of the Ministry of the Interior – link: [bit.ly/metodika\\_spravnicarad](http://bit.ly/metodika_spravnicarad)

## Defender's Opinions Register

In 2015, we launched an online database designated **Defender's Opinions Register (in Czech: ESO) for the benefit of the public**. It contains selected anonymised opinions of the Defender and her predecessors concerning cases we inquired

into. Aside from the Defender's opinions, the database also includes comments on draft laws, reports on the Defender's activities submitted to the Chamber of Deputies and other documents.

## How to use the Defender's Opinions Register

- The interface at [eso.ochrance.cz](http://eso.ochrance.cz) is split into tabs: Search, Results, Saved results and Help.
- The Records contain key documents issued by the Defender. This includes especially:
  - reports on inquiries (pursuant to Sections 17 and 18 of the Public Defender of Rights Act)
  - final statements (Section 19)
  - reports on visits to facilities (Section 21a)
- reports on found/not-found instances of discrimination, recommendations or survey reports (Section 21b)
- For easier use of the search, you can use combined criteria:
  - areas of law
  - particular laws and regulations
  - fulltext

The screenshot shows the search interface for the Defender's Opinions Register. The interface is in Czech and includes the following elements:

- Header:** Evidence stanovisek ombudsmana - vyhledavani
- Tabs:** Vyhledávání, Nalezené, Odkázané, Nákovlida
- Search Filters:**
  - Hledat za poselnicí: [dropdown]
  - Forma zprávy o ochrance: [dropdown]
  - Specifická značka: [input]
  - Výsledek řešení: [dropdown]
  - Oblast práva: [dropdown]
  - Věc: [dropdown]
- Advanced Search:**
  - Hledání fulltextem: [checkbox]
  - Protahet právní věty: [checkbox]
  - Protahet texty dokumentů: [checkbox]
  - Jen s právní vědou: [checkbox]
  - Datum podání od: [input]
  - Datum podání do: [input]
  - Datum vydání od: [input]
  - Datum vydání do: [input]
- Additional Filters:**
  - Heslo: [input]
  - Vztah k českým právním předpisům: [dropdown]
  - Vztah k evropským právním předpisům: [dropdown]
- Buttons:** Vymazat dotaz, Vložit z nalezených, Vyhledat v nalezených, Vyhledat a přidat k nalezeným, Vyhledat

Evidence stanovisek ombudsmana - vyhledavani

Vyhledavani    **Nalezeno (2)**    Odobreni    Navrhota

Odstranit vybrane    Odobrit vybrane    Stahnout vybrane    Export do XLS    Export do CSV

Vystupit:    Dle zkratky

#	Školní značka	Období práva	Věk	Forma zhlédni
7108/2013/VOP	Správa na území území a stříška, ostatní původnosti Ministerstva vnitra	ostatek		Závěra o řešení - § 18
<p>Právní věty:</p> <p>I. Die územní právní úpravy neexistuje zákonná povinnost úřadu vyžít podatelé podání (§ 37 odst. 1 správního řádu) bez uznávaného elektronického podpisu k potvrzení, či doplnění tohoto podání formálním způsobem (§ 37 odst. 4 správního řádu).</p> <p>II. Podání bez uznávaného elektronického podpisu, které není v zákonné právní úpravě potvrzeno, či doplněno formálním způsobem (§ 37 odst. 4 správního řádu) není podáním ve smyslu správního řádu a nemá žádné procesní účinky.</p> <p>III. Posouzení podání o nutnosti potvrzení, či doplnění podání bez uznávaného elektronického podpisu formálním způsobem je však nezbytné s ohledem na principy dobré správy.</p> <p>IV. Podatelé je třeba postihnout v čase a způsobem (e-mailem, či telefonicky), který mu reálně umožní stihnout lhůtu 8 dnů od doručení formálně vadného podání stanovenou pro jeho řídné doplnění.</p> <p>V. Podatelé (§ 47 správního řádu) není podáním (§ 37 správního řádu), a proto podatelé bez uznávaného elektronického podpisu je podatelé řádem a úřad jej musí bezodkladně vyřadit zákonem předvídaným způsobem.</p> <p>VI. Zádost o poskytnutí informace (§ 13 zákona o svobodném přístupu k informacím) není podáním (§ 37 správního řádu), a proto je i bez uznávaného elektronického podpisu řídnou a úřad jí musí bezodkladně vyřadit zákonem předvídaným způsobem.</p> <p>VII. Správnímu úřadu je e-mail (podání, podnět, či jina písemnosti řídné doručení pouze v případě dodání na jeho elektronickou adresu podatelé (§ 5 odst. 1 vyhlášky č. 268/2012 Sb.) zveřejněnou na jeho území desce, resp. na jeho internetových stránkách (§ 2 odst. 2 písm. a) téže vyhlášky). Den doručení na elektronickou adresu podatelé je proto významný pro posouzení něho ihat dožadatelé i samotného správního úřadu.</p> <p>VIII. Je-li e-mail doručen na jeho adresu elektronické pošty, má je elektronická adresa podatelé, přičemž tato adresa zřídil správní úřad (typicky úřadem zříděné území jednotlivých úřadů). Je úředník povinen bezodkladně zabezpečit jeho předání na elektronickou adresu podatelé (§ 5 odst. 1 vyhlášky č. 268/2012 Sb.).</p> <p>IX. Lze-li území opakovaně podněty (§ 42 správního řádu) vyhodnotit jako „zneužitá práva“, vyhodí je správní úřad neformálním dopisem, v němž může podatelé upozornit, že na další obsazené totožně, či obdobně podněty již nebude reagovat. V dopise vysvětlí, v čem spočívá zneužitá práva ze strany podatelé, které je) k takovému postupu omezuje.</p> <p>X. Lze-li území opakovaně podání (§ 37 správního řádu) vyhodnotit jako „zneužitá práva“, je proto třeba správní řízení jimi zahájeno formálně ukončit. Správní úřad se ovšem v tomto případě nemusí zabývat řešením věci a v odůvodnění svého rozhodnutí (či varování) uvést, v čem spočívá zneužitá práva, pro má není třeba podání měřebně vyřadit.</p>				
7108/2013/VOP	Správa na území území a stříška, ostatní původnosti Ministerstva vnitra	ostatek		Závěra o řešení - § 18
<p>Právní věty:</p> <p>Správní orgány jsou povinny naplňovat předpisy dobré správy. Řešení mezi povinností uloženou právním předpisem a povinností vyplývající z principů dobré správy spočívá v následku porušení povinnosti. Porušení povinností vyplývající z principů dobré správy nemůže vést ke konstatování mezkonnosti správního rozhodnutí nebo postupu správního orgánu, ovšem může vést k uplatnění měřebných sankcí (většinou správního ochranné práva, vyřka kontrolního orgánu v rámci vnitřní kontroly, apod.)</p>				

Odstranit vybrane    Odobrit vybrane    Stahnout vybrane    Export do XLS    Export do CSV

- Each found item in the Results tab can be saved for later in the Saved tab, where it remains until the user decides to remove the item or leave the application.
- Most published documents also contain a headnote summarising the opinion of the Public Defender of Rights.
- All documents are anonymised for the purposes of public dissemination.
- The application includes selected documents since approx. 2009 and we regularly update it.

# ESO

## Defender's Opinions Register

(available only in Czech)

[eso.ochrance.cz](http://eso.ochrance.cz)



# 10 “TOGETHER TOWARDS GOOD GOVERNANCE” PROJECT

Between 2014 and 2015, we implemented the Together towards Good Governance project aimed at improving the efficiency of our activities. We aimed at authorities, governmental authorities, employers, non-governmental non-profit organisations, students and the public. We co-operated with our Slovak and Hungarian colleagues.

- » In 2015, we continued implementing the Together towards Good Governance project (Reg. No. CZ.1.04/5.1.00/81.00007).
- » The project was financed from the European Social Fund through operational programme “Human Resources and Employment” and the State budget of the Czech Republic.
- » The main objective of the project was to identify opportunities for increasing effectiveness of the work of the Office of the Public Defender of Rights, taking advantage of international co-operation.

Within this project, we focused on

- » sharing and comparing experience and examples of good practice with international partners;
- » further education and training of our staff;
- » organising educational seminars, roundtables and conferences;
- » internships and opportunities for students to gain experience;
- » raising public awareness of the competences of the Public Defender of Rights.

# »»»»» Education and public awareness



## Sharing examples of good practice

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1 750



public servants, employees of non-governmental organisations and representatives of employers attended our seminars and roundtables

13



seminars were organised for students of the Faculty of Law in Olomouc and students of secondary schools and higher vocational schools

220



people in total attended our International Conference on the Occasion of Fifteen Years of Activities of the Public Defender of Rights of the Czech Republic and the conference organised to discuss survey results of Discrimination in the Czech Republic: victims of discrimination and the obstacles on their way to justice

7×



the number of times we met with our international partners and co-operating organisations to share experience and examples of good practice

## Visits in 2015

Municipalities under 10,000 inhabitants

Social services facilities

Socially excluded areas

Primary and secondary schools

Jánské Lázně

Jablonec nad Nisou

Ústí nad Labem

Kladno

Karlovy Vary

Retirement homes: DS Vychodilova, DS Okružní,  
DS Podpěrova, DS Koniklecová, DS Mikuláškovo náměstí, DS Nopova in Brno

Brno

Plzeň

Brno

Vodňany

České Budějovice

Hustopeče

Žďánice

Osoblaha

Štěpánov

Olomouc

Pavlovice u Přerova

Ostrava

Koryčany

Zlín

Jablůnka

Uherský Ostroh

Kunovice

Čejkovice

## Public meetings

40  events1130  participants

Over the course of the year, we organised an awareness-raising campaign for the public as part of the Together towards Good Governance project. We visited:

- regions (Olomouc, Zlín, Central Bohemia, Liberec, Karlovy Vary, Ústí, Plzeň and South Bohemia);
- municipalities under 10,000 inhabitants (Osoblaha, Koryčany, Jablůnka, Kunovice, Štěpánov, Žďánice, Uherský Ostroh, Pavlovice u Přerova and Čejkovice);
- social services facilities (retirement homes: DS Vychodilova, DS Okružní, DS Podpěrova, DS Koniklecová, DS Mikuláškovo náměstí, DS Nopova);

- socially excluded areas (Ostrava, Brno, Kladno, Karlovy Vary and České Budějovice);

- primary and secondary schools (in Olomouc, Osoblaha, Hustopeče, Zlín, Vlašim, Jablonec nad Nisou, Ústí nad Labem, Jánské Lázně, Brno, Plzeň and Vodňany).

## What did the meetings in regions look like?

- morning interactive performance for students

- evening performance and discussion with the public focused on practical solutions to inactivity of the authorities or specific issues

- information stands in regions, where we answered questions raised by the public and collected individual complaints

# 11

## THE OFFICE OF THE PUBLIC DEFENDER OF RIGHTS



# »»»»» Budget utilisation in 2015



## Approved budget for 2015

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# CZK 112,302,000

Of which **CZK 5,192,000** for funding of the Together towards Good Governance project under the Operational Programme “Human Resources and Employment”. Of this amount, CZK 4,932,000 (i.e. 95%) was co-financed by the European Union.

We also included claims from the unutilised expenses from the previous years in the amount of **CZK 4,601,000**, of which:

- CZK 2,623,000 for employee salaries
- CZK 1,978,000 for funding of the Together towards Good Governance (incl. CZK 1,879,000 of EU funding);
- CZK 69,000 from out-of-budget funds (reimbursement paid by insurance company for a destroyed vehicle).

We used the funding to ensure standard operations of the Office in addressing complaints and performing our other statutory duties – especially protection against discrimination and protection of persons restricted in their freedom. We also used the funds to co-finance the Together towards Good Governance project.



## Utilised budget for 2015

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# CZK 111,559,000

From the final budget of **CZK 116,972,000**, i.e. **95.37%** of the final budget.  
Where:

- **CZK 5,058,000** was used for funding of the Together towards Good Governance (incl. CZK 4,805,000 of EU co-financing);
- CZK 4,601,000 was drawn from unutilised expenses from the previous years, where CZK 1,978,000 was used to finance the project.

Of the budget, cuts in the amount of CZK 2,020,000 were made, corresponding to the funding for the “Don’t give in!” project, which failed to obtain approval and was not implemented.

Savings in the amount of CZK 3,393,000 resulted mainly from non-utilisation of current funds, especially in the area of operating expenses (purchase of other services, training and education services, travel expenses, repairs and maintenance).

Investment expenses were utilised with savings in the amount of CZK 13,000.

 For more detailed economic results of the Office of the Public Defender of Rights, go to our website at [bit.ly/VOP\\_hospodareni](http://bit.ly/VOP_hospodareni)

# Staff in 2015



133



is the binding limit for the number of the Office's employees for 2015, including 6 employees for projects funded by the European Union. Considering that one of the projects was not implemented, the employee limit was reduced to 130 over the course of 2015.

131,6



employees is the average recalculated number of employees recorded in 2015. The limit was exceeded due to the need to increase the number of staff in the Children's Group operated by the Office in order to correspond to the number of children placed there, and due to the need to cover the expanded responsibilities of the Office's Division of Internal Administration.

99



the total number of employees directly dealing with complaints and otherwise performing the mandate of the Defender (we are also active as the national preventive mechanism, the national equality body for protection against discrimination and monitoring of expulsions of foreign nationals).



In 2015, as in previous years, we co-operated with specialists in areas other than law who are not regular employees of the Office. These specialists assisted us in comprehensive assessment of certain cases we dealt with.

We also continued in our co-operation with faculties of law in Brno and in Olomouc on running practice-oriented classes (the "clinics") for students, enabling them to do an internship in the Office.

# »»»»» Provision of information pursuant to Act No. 106/1999 Coll., on free access to information



54 

requests were received and resolved by the Office of the Public Defender of Rights in 2015 pursuant to the Free Access to Information Act. The requests were received through the post, e-mail, via the data box or by means of personal submission.

Of these:

40× 

The Office provided the requested information. The requests mostly concerned queries about generalised results of our inquiries and opinions on the different areas of responsibilities (matters of foreigners; environment; social and legal protection of children; spatial, construction and occupancy proceedings), requests for our collected opinions (especially with respect to prisons) and statistics of received complaints according to the individual areas or documents from the complainants' files.

15× 

the Office refused to provide information (or partial information). In 1 case, the applicant filed an appeal against our decision not to provide information. The Office also received 1 complaint against our procedure in resolving a request for information.

## Provision of information has limits

In the requested information consisting of a report on inquiry and the final statement, the parts concerning the individual, personal statements and privacy were made illegible. The Regional

Court did not cancel the decision of the head of the Office to provide the requested information. However, the plaintiff pleaded unlawfulness of the Regional Court's decision and impossibility

to review the contested decision due to vague reasoning for the partial non-provision of the requested information.

The Supreme Administrative Court came to the conclusion that the decision was reviewable as “it is possible to see both from the administrative decision and the administrative file which underlying documents were used by the administrative authority to reach its conclusion and which facts and legal considerations governed its

decision-making.” The court added that “a more general nature of the reasoning... has to be expected in a case concerning refusal to provide information on the grounds of protection of privacy.” The Office incurred no expenses in connection with the aforementioned proceedings.

 [Judgment of the Supreme Administrative Court: File No. 1 As 229/2014-48 of 11 April 2015](#)

## The Office must release information obtained from other authorities

The Regional Court in Brno decided that the Office of the Public Defender of Rights had to provide a mother deprived of parental responsibilities with an access to the file of her minor children kept by a body for social and legal protection of children (hereinafter the “BSLPC”). The plaintiff requested inspection of the file concerning the procedure of the BSLPC of the Municipal Authority of Bruntál. The Office rejected the request for information in part, refusing to disclose the copies of the Regional Authority’s files. The Office argued that the plaintiff, as a parent deprived of her parental responsibilities to the full extent, was not authorised to access the file kept by the BSLPC in respect of her minor children, and that information from the file could not be provided to her through the Office either.

The Office referred to the rule in the Free Access to Information Act according to which documents or information following from them are not disclosed if the documents were not produced by the Defender nor were they made based on the Defender’s request. However, the plaintiff pleaded that she could not be deprived of her right to a family life and the parent’s right to information.

The court reached the conclusion that the Office was not within its rights to apply this rule, even though it obtained the files from a third person, i.e. the Regional Authority. The court also stressed the interpretation of the term “third party” and stated that if the third party is an entity that has the duty to provide information under the Free Access to Information Act, the rule concerning refusal to provide information cannot apply. The court added that the decisions of the Office were also unreviewable from the viewpoint of Section 55 (5) of the Act on Social and Legal Protection of Children, i.e. that files kept on a child may only be inspected by the parent of the child who has parental responsibilities. The reasoning of the decision lacked assessment as to whether this included files to which the plaintiff could have been denied access completely. The court ordered the Office to reimburse the plaintiff for the costs of the proceeding in the amount of CZK 53 and the Office did so. The Office incurred no further costs.

 [Judgement of the Regional Court in Brno: Ref. No. 29 A 34/2013-88 of 26 May 2015](#)

	Total number of requests for provision of information	54
Section 18 (1)(a)	Number of decisions rejecting a request (or its part)	15
Section 18 (1)(b)	Number of appeals lodged against a decision	1
Section 18 (1)(c)	Copy of important parts of each court judgement	0
Section 18 (1)(d)	List of exclusive licenses granted	0
Section 18 (1)(e)	Number of complaints lodged under Section 16a of the Act	1
Section 18 (1)(f)	Other information concerning the application of law	0
Section 4a	Number of cases when information was provided	37

# Media and public relations

## 8 topics receiving significant media attention in 2015

- findings from visits to Facility for Detention of Foreigners in Bělá-Jezová
- compensation for maladministration
- activities of the State administration of courts and delays in court proceedings
- ill-treatment of the elderly in the facility in Letiny
- objections to the amendment to the Construction Code being prepared
- ensuring equal approach to children in enrolment in the first grade
- discriminatory conduct of real estate agencies vis-à-vis Roma tenants
- online launch of the Defender's opinions records

9



press conferences

117



press releases and updates

10



issues of electronic newsletter

8 000



thousands subscribers of the electronic newsletter

4 806



printed and broadcasted news, articles and reports in the media, of which 212 on TV, 203 in the radio, 1149 in printed media, 2879 in internet media and 363 in agency news (ČTK)

> 360 000



visits to the Defender's website (ochrance.cz)

> 8 600



visits to the Defender's website for children (deti.ochrance.cz)

2 500



fans on Facebook

550



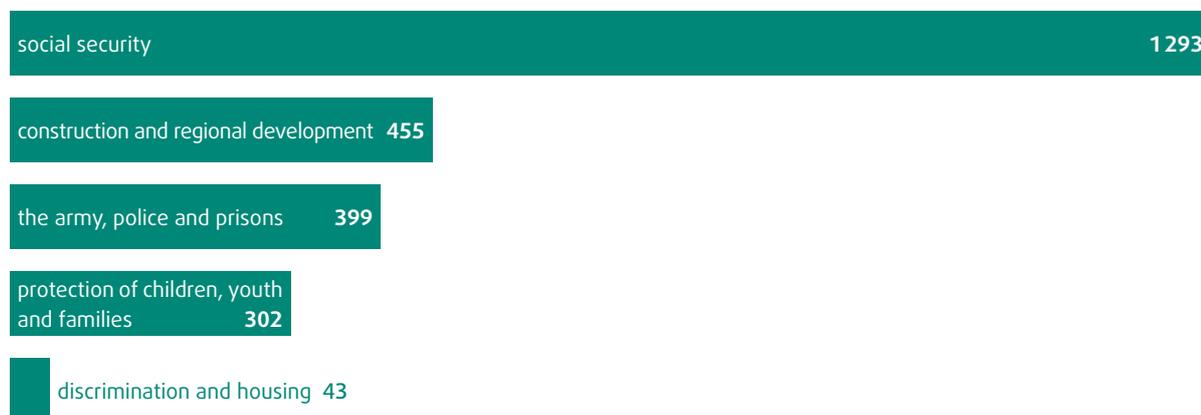
followers on Twitter

Our analysis revealed that there is no correlation between the number of complaints from citizens and, by extension, the actual work of the Public Defender of Rights, and the topics discussed in the media in connection with the Defender. As in previous years, most complaints fell under the areas of social security (1293 complaints); army, police and prisons, and construction and regional development. In comparison, the media most often mentioned topics concerning the areas of discrimination and foreign nationals.

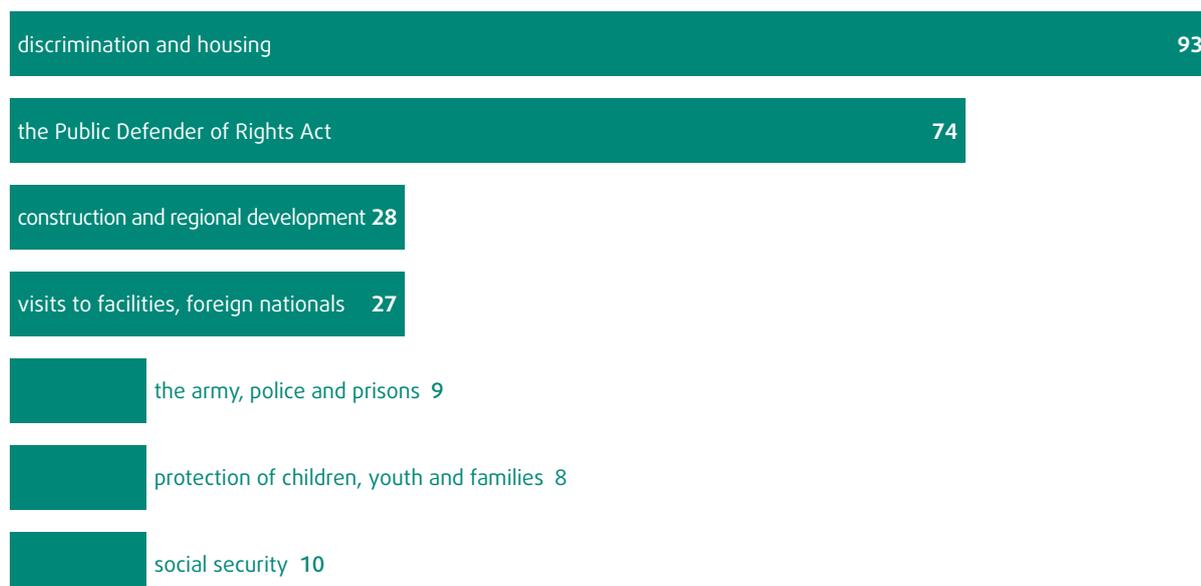
The case concerning the discrimination of Roma people in access to housing was the most

prominent media topic in 2015 (92 articles); the inquiry into the case was launched by the previous Defender Pavel Varvařovský and it was closed in 2014. The second most popular topic was the amendment to the Public Defender of Rights Act, which appeared throughout the whole year. The third place in media attention was occupied by the report on the visit to the Facility for Detention of Foreigners in Bělá-Jezová. Reports concerning visits to unregistered facilities for the elderly where we warned against bad conditions and unsuitable care of the elderly also attracted attention.

## Our activities



## Reports in the media



70



information leaflets are available for the public and we regularly update them. They provide guidelines and solutions to usual problems encountered by people. They include topics ranging from family disputes, distraint (enforcement) procedures, all kinds of social benefits, consumer protection and courts to neighbours' disputes or emotional abuse at work. Leaflets are available to all visitors of the Office of the Public Defender of Rights in Brno and online at [bit.ly/zivotni\\_situace](http://bit.ly/zivotni_situace)



We also regularly distribute our electronic newsletter. You may subscribe to it at [www.ochrance.cz](http://www.ochrance.cz).



## Facebook

almost **100%**



growth in the number of fans in comparison to 2014

**300 000**  
people



visited our website in 2015



## Twitter

more than **550**



followers by the end of 2015

**75 000**



times our tweets were displayed during the year



## Google+

almost

**150 000**



people viewed the photo of our headquarters, the profile and information on Google+ in 2015. Most often, they continued to our website for more information and searched for a route to get to us.

# International relations

## Selected international activities in 2015

- 1 Briefing of the Committee of Ministers of the Council of Europe organised by the Open Society Justice Initiative (Strasbourg, France, on 17 February) – topics: current developments in the enforcement of decisions in case D. H. v. the Czech Republic
- 2 International conference “the CPT at 25” (Strasbourg, France, on 2 March) – topics: challenges in the area of protection of persons restricted in freedom.
- 3 International Conference held on the occasion of the 15th anniversary of establishing the office of Public Defender of Rights in the Czech Republic (Brno, on 26-27 March) – ombudspersons from 8 countries attended; workshops on their working methods.
- 4 Forum on the Future of Gender Equality co-organised by the European Commission and EQUINET (Brussels, Belgium, on 21 April)
- 5 10th seminar organised by the European Ombudsman for the national ombudspersons (Warsaw, Poland, on 26-28 April) – topics: Ombudspersons against discrimination
- 6 Forum on implementation of the UN Convention on the Rights of Persons with Disabilities (Brussels, Belgium, on 29 April)
- 7 Conference on effective use of the recommendations of national preventive mechanisms in improving conditions in detention facilities (Vienna, Austria, on 29 April).

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During the year, the Defender focused more on developing international relations, co-operation with ombudsman institutions abroad and non-governmental organisations, and on improving the international reputation of the Czech Public Defender of Rights.

## We stepped up our participation in EQUINET

The Defender and her colleagues actively participated in dozens of conferences, seminars and workshops abroad, where they presented our activities, findings and opinions. We significantly stepped up our participation in EQUINET, a network of national equality bodies. As part of work groups focused on enforcement of anti-discrimination legislation in practice, forming of the policy of equal treatment, equal treatment of men and women and presentation of equal treatment to the public, we participated in the search for solutions and in evaluation of cases of potential discrimination. The conclusions from these meetings and international experience are taken into account and used within all our inquiries.



**8** Annual seminar of the European Commission against Racism and Intolerance (ECRI) (Strasbourg, France, on 28-29 May) – topics: the role of equality bodies in combating non-reporting of discrimination and racially-motivated acts.

**9** Roundtable organised by the UNHCR to ensure an alternative to detention of asylum seekers and refugees (Budapest, Hungary, 15-16 June)

**10** Workshop organised by the International Ombudsman Institute (IOI) and the APT (Riga, Latvia, on 17-19 June) – topic: application of the NPM mandate within the ombudspersons' powers.

**11** Seminars organised by the University of Bristol on the activities of the national preventive mechanisms (Bristol, UK, on 9-13 August) – topic: preventing ill-treatment and torture of women in prisons

**12** International conference organised by the European Environmental Law Forum (Aix-en-Provence, France, on 1-4 September) – topics: effectiveness of environmental law

**13** Seminar on the rights of persons with disabilities for experts from ombudsman institutions (Warsaw, Poland, 13-15 September)

**14** Visegrad Group ombudspersons meeting (Visegrad, Hungary, on 30 September – 2 October) – topics: Ombudspersons' roles in protection of rights of the most vulnerable social groups.

**15** Seminar organised by the European Ombudsman on implementation of return measures and FRONTEX activities (Madrid, Spain, on 16 October)

**16** International conference on the European migration crisis (Belgrade, Serbia, on 23-24 November) – topic: Human rights challenges in the current refugee crisis

**17** Seminar organised by the European Commission on the current developments in EU law in the area of equal treatment (Brussels, Belgium, on 24 November)

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## Election of the Office's employees to the Executive Board of EQUINET and the European Committee against Torture

The election of Petr Polák, the head of the Department of Equal Treatment, as a member of the EQUINET Executive Board represents a confirmation of the professional skills and expertise of our employees.

Appointment of Marie Lukasová, the head of the Department of Surveillance over Restriction of Personal Freedom, as a member of the European Committee for the Prevention of Torture (CPT) is no less prestigious. It is indeed the area of systematic visits to detention facilities where we count among the most experienced in Europe. For this reason, the employees of the surveillance department continued to share their experience in 2015, especially with countries where the mechanism of prevention against ill-treatment is either new or is being set up. At the same time, surveillance department employees continued gaining experience through work exchanges and visits to facilities of detention abroad.



# ANNUAL REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS 2015

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