



Information on activities for the 1st quarter of 2016
pursuant to Section 24 (1)(a) of Act No. 349/1999 Coll., on the Public Defender of
Rights, as amended

Contents:

A	Number of complaints, inquiries	2
B	Summary of the Defender's main findings.....	2
C	Activities of the Defender.....	3
C.1	Public administration	3
C.1.1	Correctness of data in the database of distance travelled (File No. 5809/2015/VOP/MK).....	3
C.1.2	Generally binding municipal ordinance on regulation of gambling (File No. 5945/2013/VOP/MBC).....	4
C.1.3	Access of sight impaired persons to the "Inspection of the Land Registry" online application (File No. 1531/2015/VOP/DV)	5
C.1.4	Failure to set a favourable rate of disability pension (File No. 6310/2015/VOP/DŘ).....	5
C.2	Supervision over restrictions of personal freedom and monitoring of expulsions	6
C.3	Protection against discrimination.....	7
C.3.1	Survey of discrimination in the Czech Republic	7
C.3.2	Recommendations on enrolment in primary schools	7
C.3.3	Age discrimination at work (File No. 134/2013/DIS/VP).....	8
D	Legislative recommendations and special powers of the Defender.....	9
D.1	Application for annulment of Section 4 of Government Regulation No. 567/2006 Coll., on minimum wage, on the lowest levels of guaranteed wage, on definition of an unfavourable working environment and on the amount of extra pay for work in an unfavourable working environment (File No. PI. ÚS 6/16)	9
D.2	Comments to non-legislative materials titled "Subscriber disputes concerning pecuniary performances in the area of telecommunications"	9

A Number of complaints, inquiries

A total of **2,110** complaints were received in the 1st quarter of 2016, which is **18** less than in the same period last year. I was approached by 1,387 persons in matters falling within my competence under the law, which is 68 more than in the first quarter of the past year. **Thus, the proportion of complaints falling within the Defender's mandate increased to 66%** (the figure for the last year was 64%). Most complaints were related to social security (385 complaints); many complaints (143) concerned the area of construction proceedings and spatial planning and also the prison system, police and army (112).

In **97** of the complaints received, the complainants claimed unequal treatment by public administration and private individuals. The number of complaints directed against discrimination in the sense of the Anti-Discrimination Act reached **50**. In **26** cases, we also provided information and analyses related to discrimination to international parties and national bodies.

In the first quarter, we performed **5** systematic visits to facilities where persons restricted in their freedom are or may be present. In the area of monitoring detention of foreign nationals and performance of administrative expulsion, we monitored **1,205** decisions.

The following figure illustrates the numbers of complaints.

66% – the share of complaints in Q1 falling within the Defender's competence, meaning we can initiate inquiry

2110 complaints were lodged in Q1 2016, of which:

385 concerned the area of social security

112 concerned the area of prisons, police and the army

143 concerned the area of construction and spatial planning

B Summary of the Defender's main findings

In the past quarter, I examined the legality of the **generally binding ordinance of the city of Karlovy Vary concerning gambling**. The City Hall did not by itself specify the places where gambling was to be allowed; it left the choice to the Union of Gambling Industry (*in Czech: Unie herního průmyslu*). However, the power to regulate gambling belongs to the municipalities, not to the Union of Gambling Industry or any other private entity. I criticised the Ministry of the Interior for its failure to assess the city's selection of criteria. The Ministry accepted my arguments and forwarded the case for inquiry by the Office for the Protection of Competition.

I issued a recommendation concerning **enrolment in primary schools**, especially with respect to the determination of criteria compliant with the Schools Act and the Anti-Discrimination Act in terms of children falling under / not falling under a certain school's catchment area. The recommendation was issued in reaction to the growing number of complaints and queries received by the Defender in 2015 from parents, non-profit organisations and local governments. These recommendations are primarily meant to help

parents and headteachers. I have also sent my recommendation to the Ministry of Education, Youth and Sports. I invited the Ministry to adopt an implementing legal regulation **unifying the conditions for enrolment of children in primary schools**.

I sent to the Ministry also my **second recommendation** concerning amendment to the **Decree on Pre-School Education**. According to the current wording of the Decree, free pre-school education shall only be provided to children at the age of six. However, the wording of the law stipulates that it should be free regardless of the current age of the child, making the current Decree at variance with the law.

This quarterly report also includes an **extraordinary annex focusing on the Defender's activities as the national preventive mechanism**. The 10 years of Defender's activities in this area revealed obstacles which cannot be removed or remedied by the Defender alone. These problems concern the system as a whole and bring lots of difficulties and limitations to the citizens in their everyday lives. In the annex, we focus on three areas.

The first concerns the **deteriorating situation in the area of institutional care for the elderly**. The number of elderly people is growing, while the number of medical workers in facilities providing care to the elderly is decreasing. The individual facilities are also usually strictly classified as facilities providing "social care" or "health care". Such classification, however, does not take into account the real needs of the elderly, who often require care in both of the aforementioned areas, albeit to varying degrees and in varying ratios.

The second area facing long-term problems concerns **institutional care of vulnerable children**. The Czech Republic has difficulties in this area mainly in terms of the fragmentation of care, where the responsibility and funding is split among several ministries. The very fact **children are still being placed in these facilities** is problematic, putting the Czech Republic clearly behind the other European countries.

The final area concerns chiefly the proposal to address this problem. Each year, the Defender receives **dozens of complaints from prisoners and their families who are asking for relocation to a prison** closer to the family's residence. Maintaining contact with the family is one of the key factors enabling re-integration of the convict into society following the end of his or her imprisonment and preventing future recidivism – in which, unfortunately, the Czech Republic has long been a "leader" among European countries.

C Activities of the Defender

C.1 Public administration

In the first quarter of 2016, I and my deputy dealt, among others, with the following cases in the area of public administration.

C.1.1 Correctness of data in the database of distance travelled (File No. 5809/2015/VOP/MK)

This inquiry was initiated by a complainant whose car underwent a roadworthiness test in 2010. The technician made an error in recording the odometer reading, confusing two

digits, and recorded the wrong number in the electronic system. Officially, the indicated distance travelled by the car was 80,000 km longer than in reality (the record in the electronic system indicated 199,004 km as opposed to the accurate number of 119,004 km). The complainant noticed the error upon receiving the technical inspection record and immediately pointed it out. The technician corrected the error in the record given to the complainant, but not in the electronic system as the system did not permit corrections of data. The complainant approached the Ministry of Transport, without success.

After releasing the inquiry report and the final statement stressing that it was legitimate to request that the data showing in the web application correspond to reality or, at the very least, show that some of the published data are incorrect, the Deputy Public Defender of Rights received the promise from the Minister of Transport that the “kontrolatachometru.cz” application would be modified so that data from administrative corrections would be shown at www.kontrolatachometru.cz, where “administrative correction of the record” would be indicated, including a note indicating the date of correction of the record with incorrect odometer reading.

The Deputy also requested that this modification be made already in the 1st half of 2016.

C.1.2 Generally binding municipal ordinance on regulation of gambling (File No. 5945/2013/VOP/MBČ)

I have inquired into the lawfulness of the generally binding ordinance of the city of Karlovy Vary concerning the places and times where betting games, lotteries and similar games can be operated. The City Hall did not specify the places where gambling was to be allowed (based on selected criteria), but left the choice to the Union of Gambling Industry which was only limited by the final number of establishments.

The City Hall was thus unable to justify the choice of specific places and could not even confirm whether the adoption of the ordinance decreased the number of slot machines, which was the original goal. This fact is well illustrated by the minutes of the meeting of the municipal assembly where the ordinance was adopted. I consider adopting a legal regulation in such a manner unacceptable. The power to regulate gambling belongs to the municipalities, not to the Union of Gambling Industry. The municipalities must exercise their powers in a just and equal manner. Thus, they have to have control over the selection criteria and control whether the selected places meet such criteria.

In my inquiry report, I criticised the Ministry of the Interior for the fact it did not verify the criteria chosen by the City Hall and that it was not alarmed by the manner in which the places were chosen. In reaction to my criticism, the Ministry reassessed the matter and communicated with the Office for the Protection of Competition, which is responsible for penalising municipalities that infringe the rules of competition within the performance of self-government. The Ministry of the Interior found that the city was indeed unable to justify the choice of places, which is why the Ministry forwarded the case for inquiry by the Office for the Protection of Competition.

If the Ministry of the Interior receives a final decision of the Office for the Protection of Competition indicating that the city of Karlovy Vary breached the rules of competition, the Ministry will exercise its supervisory powers.

C.1.3 Access of sight impaired persons to the “Inspection of the Land Registry” online application (File No. 1531/2015/VOP/DV)

During 2015, my Deputy 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. A person may register as a standard user or user with disabilities. A person with disabilities may receive 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. My Deputy found no errors in this procedure.

However, he had objections against the registration form, which did not include the applicant’s express consent to the processing of sensitive data and did not specify that a person should register as a user with disabilities only in case he or she wanted to receive above-standard support. The Czech Office for Surveying, Mapping and Land Registry modified the form in reaction to my Deputy’s objections. Simultaneously, it stated on its website that if a person with disabilities did not require above-standard support, he or she may register as a standard user (without stating any disabilities).

C.1.4 Failure to set a favourable rate of disability pension (File No. 6310/2015/VOP/DŘ)

I inquired into the case of a complainant who objected against the rate of disability pension he received on the grounds of his 3rd degree disability (CZK 4,691). The underlying documents clearly showed that the pension was calculated “ordinarily”. When granting the disability pension, the Czech Social Security Administration (hereinafter the “CSSA”) did not use the statutory favourable (fictitious) per cent rate granted to insured persons who are under 28 years of age and were thus unable to attain earnings in their previous careers that could serve as the base for calculation of the pension. In order for the CSSA to grant such a pension, the time when an insured person was not paying insurance premium in the period between reaching 18 years of age and the arising of disability must not exceed 1 year, where this period also includes studies and the time when the person was registered as a job seeker.

It was thus unclear why the CSSA did not grant the disability pension at the favourable rate (which would currently be over CZK 9,000 a month) when disability pension was granted to the complainant before he reached 28 years of age and where in the aforementioned period he had only 232 days when he was not paying insurance (i.e. less than 1 year).

Nevertheless, the CSSA noted in its statement that there were 652 days when insurance was not paid during the period from reaching 18 years of age to the arising of

disability. As this exceeded 1 year, the CSSA believed the complainant was not entitled to a favourable rate of disability pension.

Based on the above, the CSSA was notified that the complainant's personal pension insurance sheet showed that he was registered for over 365 days in the register of job seekers without receiving unemployment benefits, and these days were credited for the purposes of pension calculation in the personal pension insurance sheet of 21 January 2011. The CSSA was further informed that it was likely that the complainant was also registered as a job seeker in other periods than from 8 October 2009 as indicated in the certificate issued by the Labour Office in Břeclav on 4 November 2010, which was a part of the file.

In response to the aforementioned steps, the CSSA credited the whole period when the complainant was registered in the register of job seekers and re-calculated the pension to its current amount of CZK 9,516. It also paid to the complainant the outstanding amount of pension corresponding to CZK 248,219.

C.2 Supervision over restrictions of personal freedom and monitoring of expulsions

Within the scope of prevention of ill-treatment and supervision over restrictions of personal freedom, authorised employees of the Office of the Public Defender of Rights performed a total of **5 systematic visits to facilities** during the first quarter of 2016 and **one expulsion monitoring**.

These included one visit to the Facility For Detention of Foreigners in Drahonice u Lubence, one systematic visit to a facility for children requiring immediate assistance attached to the Children's Home in Nová Ves u Chotěboře, and three systematic visits to police cells in Benešov, Mariánské Lázně and Plzeň. One punishment by expulsion was monitored, specifically the escort from the Brno Remand Prison to the Hodonín-Holíč border crossing.

Employees from the department of protection of persons deprived of freedom organised a seminar on the care of people accommodated in social services facilities, especially those with dementia, to contribute to prevention of ill-treatment in these facilities and to raising awareness on the part of their staff. The preparation of the seminar and presentation of the Defender's findings from these facilities was also supported by a medical worker who participated in the visits. The seminar, in this case focusing on providers of social services in the South Moravian Region (40 persons), will also be organised in other regions.

The lawyers from the department of monitoring of good practice organised two seminars for public curators in the Olomouc Region focused on good practice in performance of curatorship. Seminars for public curators from other regions are to follow.

The employees of the department of protection of persons deprived of freedom continued developing their skills in monitoring the treatment of persons deprived of freedom during a multi-day internship in facilities for children requiring immediate assistance and in facilities for institutional and protective education. A lawyer from the same department attended a 5-day seminar in Vienna, organised by the European Union Agency

for Fundamental Rights (FRA) focusing on treatment of persons who are being expelled. Other lawyers continued developing their professional skills by attending several seminars focusing on definition of legal capacity and public curatorship.

C.3 Protection against discrimination

C.3.1 Survey of discrimination in the Czech Republic

Five years ago, in 2009, the Public Defender of Rights became the institution where victims of discrimination can go to seek help. The number of people who do this is gradually increasing. Despite the obvious increase in the quantity of complaints, their overall number remains rather low. This raises the question of whether discrimination is in fact rare in the Czech Republic, or whether the victims of discrimination are not prevented from getting legal advice by various obstacles.

I believe the second scenario is much more likely, i.e. that the Public Defender of Rights faces, similarly as other European equality bodies, underreporting of discrimination and reluctance to complain against discrimination. This phenomenon occurs when victims of discrimination do not report incidents involving discrimination for various reasons (this concerns underreporting at the place where discrimination occurred as well as underreporting with respect to institutions responsible for helping the victims) and do not exercise their rights guaranteed by the law.

For this reason, I decided to conduct a survey of the extent to which discrimination goes unreported, analyse the reasons and propose potential solutions to the problem. In order for me to be able to describe and survey the current state of affairs, I was interested in the experience of ordinary people, the marginalised groups and also the opinions of actors enforcing the right to equal treatment: administrative authorities, courts and non-profit organisations.

I summarised the results of the survey including specific recommendations for removal of the obstacles in the final report titled “Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice”¹, which I released to the public in January 2016.

C.3.2 Recommendations on enrolment in primary schools

Enrolment in primary school is an important day in the lives of all children, yet it also brings certain possible complications for the parents and headteachers. However, the Schools Act must be observed at all times.

In reaction to a growing number of complaints and queries I received in 2015 from parents, non-profit organisations and local governments, I decided to issue a set of recommendations in this area to help parents and headteachers of the relevant school to resolve ambiguous situations.

¹ http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/CZ_Diskriminace_v_CR_studie.pdf.

The objective of my recommendation is, in particular, to assess criteria in terms of compliance with the Schools Act and the Anti-Discrimination Act and their application to various groups of children, especially from and outside the “catchment area”. The recommendation also contains instructions for assessing individual criteria and for pursuing administrative proceedings on (non-)acceptance to primary education.² In this regard, I also prepared a tool to assist the headteachers in decision-making concerning the applications filed on behalf of the children.

To the Ministry of Education, Youth and Sports, I recommended to issue an implementing legal regulation that would stipulate binding conditions and organisation of enrolment in compulsory education. I included detailed information in a separate report under Section 24 (1)(c) of the Public Defender of Rights Act, which I am also sending to the Chamber of Deputies.

C.3.3 Age discrimination at work (File No. 134/2013/DIS/VP)

I was approached by a complainant objecting against the procedure of her employer (a university), who, despite the fact the complainant worked there for twelve years, extended her employment contract for only a single year, where usually employment contracts were extended by three or even five years in some cases. By the end of 2014, when the complainant’s employment terminated, all older employees of the department where the complainant worked had been let go. A relative of the then-dean was the only exception.

The complainant approached the Labour Inspectorate which then carried out an inspection of the employer. The Labour Inspectorate found unequal treatment of the complainant in multiple areas. Aside from not extending the employment contract, she was required to retroactively justify her absences, although attendance records were kept very loosely and leaves were not even required. The complainant was also sent for an extraordinary medical examination and was repeatedly insulted because of her age. The unfavourable treatment did not concern solely the complainant, but also her other older colleagues and, subsequently, the younger colleagues who stood up for the victims of bullying.

In my inquiry, I found that the collected evidence proved extraordinary and unfavourable treatment of the complainant, where age was most likely the reason for this kind of treatment. I concluded that bullying, or unequal treatment (Section 16 (1) of the Labour Code), from the employer does not necessarily have to consist of making unlawful demands; it may also consist in excessive or selective application of otherwise lawful steps. The fact that the employer exercises its rights *vis-à-vis* a certain employee in the lawful scope does not by itself exclude the possibility the employer is bullying or treating the employee unequally.

However, this case can only be finally resolved by the court, with which the complainant filed an action.

² http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Doporuceni/Doporuceni-zapisy-do-ZS_82-15-DIS-BN.pdf.

D Legislative recommendations and special powers of the Defender

D.1 Application for annulment of Section 4 of Government Regulation No. 567/2006 Coll., on minimum wage, on the lowest levels of guaranteed wage, on definition of an unfavourable working environment and on the amount of extra pay for work in an unfavourable working environment (File No. Pl. ÚS 6/16)

If two people do the same work, it is not permissible if one receives lower pay just because he or she has a disability and receives disability pension. Such discrimination represents a violation of the Labour Code as well as the Anti-Discrimination Act. The Labour Code stipulates a duty for the employers to provide the employees with equal pay for equal work. Anti-Discrimination Act prohibits unequal treatment of employees on the grounds of disability. This prohibition also applies to pay, including all parts of the salary – claimable (the basic salary) and non-claimable (bonuses, personal extra pay, etc.).

Such inequality in pay is illustrated by **complaints and objections I frequently receive**. Typically, these complaints are sent by employees of private security companies and administrative workers who claim that their job tasks, scope and working time distribution are the same as those of their healthy colleagues, but they receive lower pay regardless.

In this connection, I believe it is a serious cause for concern that the **inequality in pay is also based on the Government's own regulation**, which stipulates a lower minimum wage for all employees receiving disability pension. I notified the **Ministry of Labour and Social Affairs** of the **discriminatory character** of Section 4 of the Government Regulation and I tried, without success, to promote equal pay within the comment procedure concerning the amendment to the Regulation; I also approached the Prime Minister, again without success.

As I am adamant in my reluctance to accept a situation where people with disabilities receive lower pay for the same work, I decided to **exercise my special powers and filed an application with the Constitutional Court** for annulment of this Section of the Regulation.

D.2 Comments to non-legislative materials titled “Subscriber disputes concerning pecuniary performances in the area of telecommunications”

I believe (same as my predecessor, JUDr. Pavel Varvařovský), that **it is not necessary to modify the current system of resolving subscriber disputes by the Czech Telecommunication Office** (hereinafter the “CTO”).

In 2014, I initiated inquiry into the CTO's procedures in resolving subscriber disputes. On the basis of assessment of the relevant information, I believe that **the most effective solution is to keep decision-making concerning subscriber disputes in the competence of the CTO**. This is because during the time the CTU exercised its competence in this area, it has accumulated significant intangible assets consisting in the experience of the qualified staff and the know-how; moreover, disputes are processed quickly with the help of the CTO's information system.

Transferring the CTO's competences in this area to the courts would not only increase the State's costs (resolution of disputes by courts is always the costliest variant for the State), but, taking into account the current overburdening of courts, it would also prolong the overall length of the proceedings. The standing of the parties to the proceedings would also be jeopardised due to the impermissibility of appeal in petty cases (whereas in administrative proceedings, the parties are not limited by the value of the pecuniary performance). In my opinion, **by transferring this agenda to the courts, the State would lower the standard of protection** to the parties to disputes concerning pecuniary performances in the area of telecommunications, **at a greater cost.**

The Defender repeatedly warned the Chamber of Deputies against the transfer of decision-making competences in the area of subscriber disputes concerning pecuniary performances in telecommunications from the CTO to the courts, especially in connection with the Chamber's discussion of the relevant amendments to the Electronic Communications Act. Therefore, I welcomed and supported the current proposal of the Ministry of Justice that resolving subscriber disputes is to remain in the competence of the CTO. On 11 April 2016, the Government **adopted**, through its Resolution No. 314, the decision to keep decision-making in the area of subscriber disputes involving pecuniary performances in the competence of the CTO.

In Brno, on 28 April 2016

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