Veřejný ochránce práv
OMBUDSMAN

Information on activities for the 2nd quarter of 2016

Pursuant to Section 24 (1)(a) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended, I hereby inform the Chamber of Deputies of the Parliament of the Czech Republic on my activities.

Contents:

A. Number of complaints, inquiries

A total of **2045** complaints were received in the 2nd quarter of 2016, which is **58** less than in the same period last year. I was approached by 1,329 persons in matters falling within my competence under the law, which is 21 less than in the second quarter of the last year. **Thus, the proportion of complaints falling within the Defender's mandate increased to 65%** (the figure for the last year was 64%). Most complaints were related to social security (271 complaints); many complaints (160) concerned the area of construction proceedings and spatial planning and also the prison system, police and army (139).

In **108** of the complaints received, the complainants claimed unequal treatment by public administration and private individuals. The number of complaints directed against discrimination within the meaning of the Anti-Discrimination Act reached **63**. In **10** cases, we also provided information and analyses related to discrimination to international parties and national bodies.

In the second quarter, we performed **6** 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 **1630** decisions.

B. Summary of the Defender's main findings

In the past quarter, I examined one of the aspects of **delays in court proceedings**. These are sometimes prolonged due to delays in the **preparation of expert reports**, which the court needs in certain cases to make a decision. I inquired into this issue in connection with a case of the body of social and legal protection of children (BSLPC) acting as the guardian *ad litem*. I informed the relevant BSLPC on what possibilities it had in case of failure to comply with the term of preparation of the expert reports. **The relevant municipal authority accepted our recommendation.** It issued guidelines for its employees, stipulating how they should proceed when submitting complaints against delays in court proceedings and when filing a motion to set a deadline for the performance of a procedural act.

When issuing an order to participate in the initial **meeting with a mediator**, the authorities are obliged to make decisions based on the necessity of mediation**, not based on the parents' financial background**. In case of destitute parents, the mediation can be paid from the state budget, either from the budgetary chapter for the social and legal protection of children or by means of assistance in material need. I have encountered such case in Prague where an appellate authority annulled the mediation order because one of the parents could not afford it. The authority adopted all the remedies I proposed.

I inquired into the case of a complainant who challenged the procedure of **establishment and definition of learning support assistants' responsibilities** in an educational facility (an after-school group). She also argued that there were problems in **funding their activities**.

Following an inquiry, I concluded that the Regional Authorities interpreted the relevant provisions of the Schools Act properly. As the funding of learning support assistants (including in the after-school groups) will be coordinated with effect as of 1 September 2016, **I have concluded the inquiry without issuing any reprimand to the relevant authority**.

By means of repeated visits, I have inquired into the **conditions of institutional and protective education in the Educational Institution and Children's Home in Chrastava**. The Public Defender of Rights already visited this facility in the past (in 2006 by Otakar Motejl and in 2012 by Pavel Varvařovský). With regard to the **serious findings made during the visit of the facility,** specifically that **none of the recommendations submitted by my predecessors had been implemented in the last ten years**, I have, in accordance with Section 21a (4) of the Public Defender of Rights Act, approached the founder of the facility, the Ministry of Education, Youth and Sports, and requested a remedy.

This is the first time I have presented to the public a separate **Annual Report** on my activities related to **the right to equal treatment and protection against discrimination**. The report presents issues on which I focused in the past year. These mainly include **the issue of equal pay**, which I consider **the main issue of 2015**. The report also contains information on tackling discrimination by means of court action and the results of some of these proceedings, including my recommendations.

C. Activities of the Defender

C.1 Public administration

C.1.1 The BSLPC's procedure in the role of the guardian *ad litem* (File No. 1910/2014/VOP)

Court proceedings are sometimes prolonged due to a delay in the preparation of expert reports. Unfortunately, this practice has been common even in such difficult life events as a parents' break-up or divorce. It often takes the court too long to decide in what type of care it will entrust the minor children. The reason often lies in the wait for expert reports which the court needs in certain cases to make a decision. Nevertheless, the body for social and legal protection of children (BSLPC), which usually assumes the role of guardian *ad litem* in such cases, may accelerate this lengthy process. It may submit a complaint against delays caused by court-appointed experts. Unfortunately, it is often unaware it has this option.

Recently, we have inquired in a similar case in Prague. The court was to decide in what type of care it would entrust minor children. It tasked an expert with preparing a psychological report on two siblings. The father demanded joint custody, whereas the mother requested that the children be entrusted in her custody. The court wanted to make a decision based on an expert opinion in order to determine the best interest of the children. The court-appointed expert received the relevant files at the end of September 2013 and was supposed to submit his comments within 60 days. Nevertheless, the court received the expert opinion only at the beginning of April in the following year, i.e. after

five months. The siblings and their parents lived in unnecessarily prolonged uncertainty regarding their future family life.

In the role of the guardian *ad litem*, the BSLPC may send reminders to the judge. If it does not succeed, it may submit a complaint to the president of the court. Based on the complaints against delays caused by court-appointed experts, the president of the court may file a complaint with the president of a regional court responsible for administering the experts and assessing the severity of their unlawful conduct.

If the court-appointed expert fails to take action, the court may withdraw the case from him or her and appoint a different expert or, as a penalty for the delays in the court proceedings, decrease the remuneration or impose a fine. Ultimately, the court may remove the expert from the list of court-appointed experts.

There is another way of influencing the length of court proceedings, which consists in setting a deadline for the performance of a procedural act pursuant to Section 174a of the Courts and Judges Act.

The relevant municipal authority accepted my recommendation. It issued guidelines for its employees, stipulating how they should proceed when submitting complaints against delays in court proceedings and when filing a motion to set a deadline for the performance of a procedural act.

C.1.2 Imposition of the duty to connect to the sewer system (File No. 5115/2015/VOP)

My deputy examined the filing of a complainant who requested inquiry into the procedure of the Žihobce Municipal Authority and the Regional Authority of the Plzeň Region in the case of a decision to impose on him the duty to connect to a waste water sewer system for public use, which had been built by the municipality. The complainant disagreed with the decision, arguing that the solution was uneconomical and claiming he would have rather built a household sewage treatment plant on his own.

The deputy found that a person may be required to pay the costs of connection to the sewer system if the public interest outweighs the interest of said person. My deputy emphasised that in proceedings on the imposition of the duty to connect to a sewer system, it always needs to be considered whether or not the public interest outweighs the private interests of the owner of the real estate to be connected and justifies the interference with a lawful state of affairs. These issues, which also require looking into the technical solution of the connection and economical aspects of its establishment, need to be examined with respect to the decision on the imposition of the duty to connect to the sewer system.

Although my deputy found errors in the procedure of the authorities, he was unable to help the complainant as the complainant asked for assistance only after the period for a potential review of the decision had expired.

C.1.3 Imposition of the duty to visit a mediator (File No. 6454/2013/VOP)

A father of a child approached me with a request for inquiry into the procedure of the Prague City Hall (hereinafter also the "City Hall"), which, in the appellate proceedings, annulled the decision of the Prague 10 Municipal Authority on imposing on the mother the duty to visit a mediator

The complainant agreed with mediation, the mother of the child did not. The mother and father have been involved in a long-term parental conflict. The first-instance authority based its decision on, *inter alia*, the experts' recommendations concerning the suitability of mediation. The City Hall annulled the decision of the first-instance administrative authority and referred the case back for a new hearing, stating that the mother could not have afforded the services of a mediator, recommended to seek an unpaid service, and ordered both parents to attend family counselling.

I have found several errors in the appellate body's procedure. When issuing an order to participate in the initial meeting with a mediator, the authorities are obliged to make decisions based on the necessity of mediation, not based on the parents' financial background. In case of destitute parents, the mediation could be paid from the state budget, either from the budgetary chapter for the social and legal protection of children (in the competence of the BSLPC) or by means of assistance in material need (in the competence of the Labour Office). I spoke for both these options to be equal alternatives, where the BSLPC would decide *ad hoc* which of them would be better in each specific case.

At the time after my inquiry report was issued, the City Hall was already working on unifying the guidelines for the individual municipal district authorities and approached several institutions, as practical experience brought about a range of ambiguities and problems consisting in overpriced services of certain mediators. After receiving my final statement, the City Hall took my conclusions into account when drawing up the guidelines, which will regulate the financial aspects of mediation. The basic principle included in the City Hall's guidelines is that the individual municipal district authorities may enter into co-operation agreements with mediators, who will provide their services for the same price as stipulated by the decree, as if the initial meeting with the mediator was ordered by the court. The municipal district authorities should also try to search for organisations in their jurisdictions that provide these services free of charge. The guidelines explicitly state that a difficult social situation of the clients cannot be the sole reason to waive the order to participate in the initial meeting with the mediator. The guidelines contain a helpful legal opinion that if an order is issued to participate in the initial three-hour meeting with the mediator, the mediation can be initiated and an agreement concluded based on the regulated price.

As the authority implemented all the remedies I proposed, I concluded the inquiry.

C.1.4 Urn storage (File No. 2966/2016/VOP)

The complainant (a widow) approached the Public Defender of Rights with a request for an opinion on the storage of the urn containing the ashes of her late husband, who was a citizen of the Federal Republic of Germany, where the spouses lived together until her

husband's death. After her husband's passing, the complainant moved back to the Czech Republic and took the urn with her. Nevertheless, she received a letter from the city hall in Germany, asking her where the husband was buried. The complainant responded that she kept the urn in her house, on a cabinet with flowers. In this respect, she asked whether there is a law she could refer to.

My deputy informed her that with regard to cremated human remains stored in an urn, the Funeral Services Act does not require these remains (the urn with cremated ashes) to be stored at a public cemetery. This is sometimes a source of disputes among relatives: after the cremation ceremony, the surviving relatives keep the urn at their home, not renting a cemetery plot or a niche in a columbarium, and therefore preventing the relatives and friends to honour the memory of the departed. Nevertheless, each case needs to be examined individually, including taking into account whether the urn with ashes was relocated in bad faith, or with an agreement or knowledge of the other surviving relatives (usually the members of the immediate family of the departed).

The deputy also informed the complainant that her actions were not at variance with the Funeral Services Act, but also recommended her to notify the city hall in Germany and the immediate family on where and how the cremated remains of her husband were stored.

Since this case was outside the competence of the Public Defender of Rights, the deputy concluded the case with a clarifying letter to the complainant.

C.1.5 Establishment and financing of learning support assistants in after-school groups (File No. 301/2015/VOP)

I inquired into the requests of a complainant who challenged the procedure of establishing and defining the responsibilities of learning support assistants in an educational facility (an after-school group); the complainant also stated that there were problems in their financing. The inquiry also brought up the question of whether or not there were differences in the individual Regional Authorities' approach to this issue and also what was the position of the Ministry of Education, Youth and Sports of the Czech Republic (hereinafter the "Ministry"); therefore, I have launched an inquiry in this matter on my own initiative in 2015.

It follows from the statements of the Regional Authorities and Ministry that neither the school headteachers, nor the Regional Authorities believe the consent of the Regional Authority to establish learning support assistants is required. I have also examined whether the Regions, as part of the reallocation of funds, contribute to the salary of the assistants in the after-school groups. It follows from both the legal regulation and the statements of the Regional Authorities and the Ministry that the so-called Regional quota (funds allocated to schools by the Regions) cannot be used for financing assistants in after-school groups or any other school facilities. The headteachers, therefore, are obliged to use other funds. However, since the headteachers are struggling with obtaining funds for the assistants even for the standard school classes, they face an even greater problem in finding the funds for assistants in other activities organised by the school. However, the legal regulation clearly stipulates that the assistants should be available for other school activities as well. It follows from the Minister's statement that the amendment to the

Schools Act, effective from 1 September 2016, anticipates a more transparent system of funding for supporting measures, including the learning-support assistants, and that the school counselling facilities will also be obliged to determine the scale of support measures with respect to recreational learning, i.e. the time spent by children in after-school groups.

Following an inquiry, I concluded that the Regional Authorities interpreted the relevant provisions of the Schools Act properly. As the financing of learning support assistants (including in the after-school groups) will be coordinated with effect as of 1 September 2016, I have concluded the inquiry without a reprimand to the Authority.

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 (hereinafter "the Office") **performed a total of six systematic visits to facilities during the second quarter of 2016**.

In total, **three facilities for children requiring immediate assistance were visited**. This was a facility for children requiring immediate assistance attached to the Children's Home in Trnová u Plzně and two facilities operated by the Fund for Children in Need located in the Láskova Street, Prague, and in Kroměříž.

The employees of the Office also carried out systematic visits to the Lotos Sanatorium in Ostředek, which is a **social services facility** (a special regime home), and visits to the **Heřmanice prison**, which focused on the conditions of imprisonment of convicts located in a specialised ward for convicts with mental disabilities.

By means of repeated visits, I have also inquired into the **conditions of institutional and protective education in the Educational Institution and Children's Home in Chrastava**. The Public Defender of Rights already visited this facility in the past (in 2006 by Otakar Motejl and in 2012 by Pavel Varvařovský).

The authorised employees of the Office and the invited experts, special education teachers who are the foremost experts in the field of education of children, made the following important findings:

- The facilities' education system is based on repression and restriction of the fundamental human needs (possibility to get outside, phone contact with the family, staying with the family etc.);
- the atmosphere in the facility is hostile and contributes to the escalation of tensions;
- the approach to boys is disciplinarian and authoritarian, their individual needs are neglected and any potential mental or personal limitations are disregarded;
- the point system for evaluating the boys' behaviour is highly demotivating, overly complex, incoherent and poorly arranged, punishing the slightest of violations and emotional expressions (for instance: "speaking in the dining room: minus two

points"), which fuels tension and fear in the boys; there are more negative points than positive;

- children's visits to their parents (or legal representatives) are demonstrably linked to the point system, despite the fact that it is their statutory right to visit them;
- the children do not receive professional psychological and ethopedical care.

With regard to the **serious findings made during the visit of the facility**, specifically that **none of the recommendations submitted by my predecessors had been implemented in the last ten years**, I have, in accordance with Section 21a (4) of the Public Defender of Rights Act, approached the founder of the facility, the Ministry of Education, Youth and Sports, and requested for a remedy.

Report from the visit to the Educational Institution and Children's Home in Chrastava is available at the Office's website.[1]

By organising seminars and trainings, I try to contribute to the prevention of ill-treatment in all types of facilities where people are restricted in their freedom, whether as a result of a decision of a public authority or dependence of the person on the care provided.

In this quarter, the following persons were trained by the employees of the Office:

- the personnel of social services facilities that provide care for patients, especially those suffering from dementia. 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 for the providers of social services in the Olomouc Region (ca. 40 persons), will also be organised in other regions;
- public curators from the South Bohemian Region (ca. 40 persons) during, who were lectured by lawyers from the department of monitoring of good practice on good practice in the performance of curatorship; Seminars for public curators in other regions will follow;
- the police officers from the Regional Police Directorate of the Plzeň and Karlovy Vary Regions during three seminars aimed at the treatment of detainees in police cells. Trainings for policemen in other regions are to follow.

On 26 June, on the occasion of the **10th anniversary of the Public Defender's role as the national preventive mechanism** (hereinafter the "NPM"), a group of supporters as well as former and current colleagues, who actively participate in the prevention of ill-treatment, met in Brno. We commemorated the beginnings of the NPM during the mandate of JUDr. Otakar Motejl, looked back at the successes and milestones[2] in the NPM's activities and identified new challenges for the future.

1 http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Ustavni_vychova/2016-Chrastava.pdf

2 http://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/10-let-ochrany-pred-spatnym-zachazenim/10-let-uspechy-a-vyzvy/

C.3 Protection against discrimination

C.3.1 Separate Summary Report on Protection Against Discrimination for 2015

This is the **first time I have presented to the public a separate annual report** on my activities related to the right to equal treatment and protection against discrimination.

A 2015 study[3] I ordered showed that only a fraction of discrimination victims turn to the ombudsman for help. An overwhelming majority of people would rather report discrimination to the police. The 2015 Eurobarometer survey sponsored by the European Commission reported similar results. Therefore, I consider it important to constantly reinforce public awareness of the Defender's anti-discrimination competence, even in this manner.

The report does not only offer a summary of interesting cases, but presents issues on which I have focused in the past year. These mainly include the issue of equal pay, which I consider to be the main issue of 2015. The report also contains information on tackling discrimination by means of court action and the results of some of these proceedings, including my recommendations on amending the process of shifting the burden of proof that is incorporated in the Civil Procedure Code. The report also includes a number of findings from other areas I was concerned with.

Finally, it also contains detailed statistics of the number of discrimination complaints which have been filed since 2009 when the Public Defender of Rights became the national equality body. The full report is available on the Defender's website.[4]

C.3.2 Conditions in education (File No. 6799/2014/VOP)

I was approached by a complainant who studied at a higher vocational school in the field of "Nutritional Assistant". She claimed that during the lessons, the teachers forced her to taste meat dishes, although they knew she was a vegetarian. The complainant considered the teachers' pressure unacceptable and she felt she was being discriminated against on the grounds of her world view (i.e. vegetarianism). I have therefore inquired into the question whether vegetarianism is a world view and whether forcing somebody to taste meat dishes could be qualified as indirect discrimination in access to education on the grounds of a person's world view.

Having inquired into the case, I concluded that vegetarianism can be considered a world view within the meaning of Section 2 (3) of the Anti-Discrimination Act. If a vegetarian refuses to consume meat dishes, this expression of his or her world view can be considered essential within the meaning of Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms. However, this does not mean that the preference must be respected under any and all circumstances.

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

4 http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyrocni_zpravy/2015-DIS-vyrocni-zprava.pdf

I approached the Ministry of Education and the Brno University Hospital which informed me that the purpose of tasting all prepared dishes before they are served is to carry out sensory evaluation of their quality and provide safe therapeutic nutrition to clients (of healthcare facilities; it is necessary to evaluate whether or not a dish is suitable and safe). This process is also a part of the curriculum. I therefore believe that compulsory tasting of dishes follows a legitimate purpose, i.e. to ensure safe therapeutic nutrition and appropriate education of students, which is necessary for their work as nutritional therapists; this is in line with the accreditation and practical requirements for the performance of this job. The complainant argued that she did not need to taste the meat, because she had eaten it in the past and, therefore, she knew the taste of meat dishes; she also said she would cook alternative (meat free) dishes. Such arguments, however, are irrelevant to checking the dishes that have been prepared by others. I have, therefore, found the requirement to taste all dishes as appropriate and necessary.

Despite the fact that the complainant's world view, i.e. vegetarianism, was infringed during her education by the requirement of tasting all dishes, including those containing meat, it did not constitute indirect discrimination within the meaning of the Anti-Discrimination Act. This requirement is in fact an acceptable form of different treatment within the meaning of the Anti-Discrimination Act and, therefore, I concluded that no discrimination occurred in the complainant's case.

C.3.3 Exchange of an apartment in a nursing home (File No. 1307/2014/VOP)

I was approached by a complainant who asked me to examine the town's procedure in the allocation of apartments in a nursing home. The complainant was renting a first floor apartment in this building that was only accessible via a staircase. Nevertheless, his medical condition prevented him from walking up and down the stairs. He asked the town council several times, always unsuccessfully, to be allocated another apartment that would be suitable with regard to his medical condition.

After examining the case, I reached the conclusion that the town's procedure constituted indirect discrimination pursuant to Section 3 (2) of the Anti-Discrimination Act. The town did not take appropriate steps to allow the person with disability to use public services. Such steps could include the lease of another apartment in a barrier-free nursing home. Such a step cannot be considered an unreasonable burden for the town because if an agreement to lease another apartment had been concluded, the complainant's current apartment would have become available to the town. Furthermore, such a solution seems less financially demanding than adding on a staircase platform to the complainant's current apartment.

Nevertheless, despite my report, the town council did not change its decision and did not allocate a barrier-free apartment to the complainant. For this reason, I decided the complainant would be represented *pro bono*.

C.3.4 Access to a military rehabilitation institute with an assistance dog (File No. 35/2013/DIS)

I have inquired into the request of a complainant, who approached me through Helppes – Centrum výcviku psů pro postižené o. p. s., a non-profit organisation conducting assistance

dog training, and requested an inquiry into the procedure of the military rehabilitation institute. In May 2013, the complainant planned to go on a four-week stay in the institute. The complainant is a person with disability and she uses an assistance dog to help her perform her daily tasks. However, the institute's employee informed her that she could not access the institute with an assistance dog, as it was a health care facility with the status of a hospital. The director of the institute subsequently specified that there were no single-bed rooms available for the relevant period. He also informed her that the presence of a dog would have interfered with the rights of other patients. The complainant approached the Ministry of Defence (hereinafter the "Ministry") with a request for an inquiry into whether the institute committed an administrative offence. The Ministry reached the conclusion that no administrative offence had been committed.

Due to a suspicion of discrimination on the basis of disability in the area of access to healthcare, I have initiated an inquiry in this case. The institute provided me with a copy of its Operating Rules that regulated the stay of specially trained dogs. The Operating Rules linked the stay of assistance dogs to several questionable requirements. I have also initiated an inquiry into the Ministry's procedure, which, following administrative proceedings, issued a statement that the institute's actions did constitute an administrative offence. However, at the time of the statement, the liability for the administrative offence had already expired. Despite that, the Minister issued a recommendation on changing the overly restrictive Operating Rules.

The institute eventually complied with the recommendation, thus eliminating the need for the institute's consent to the stay of persons with their assistance dogs. The institute also stopped requiring that the person with the dog be accommodated in a single bedroom and that the person be able to take care of the animal. Additionally, the dog is now allowed to stay regardless of whether its presence is necessary for the patient or not. However, I came to the conclusion that the institute had committed indirect discrimination against the complainant in that it had not taken appropriate steps to allow the complainant to complete the stay with an assistance dog.

Nevertheless, I appreciated the change of the institute's Operating Rules. I also recommended that the institute consult its Operating Rules with an expert on the training of assistance dogs in order to specify the parts of the facility where dogs are (not) allowed. Considering the fact that the Ministry subsequently corrected its procedure, I concluded the inquiry.

D. Legislative recommendations and special powers of the Defender

D.1 Application for annulment of Section 13 (2) of Act No. 115/2006, Coll., on registered partnership and on amendment to some related laws (Ref. No. Pl. ÚS 7/15)

In March 2015, I joined the proceedings concerning the application for annulment of Section 13 (2) of the Registered Partnership Act as an intervening party.[5] I had already acquainted myself with the aforesaid case during the inquiry into the complaint submitted

5 Quote Section 13 (2): "The existence of the partnership prevents either of the partners from adopting a child".

by Mr L. P., who approached me with a request for inquiry into the procedure of the Prague 13 Municipal Authority and Prague City Hall.

My previous conclusion remained unchanged and for this reason, I provided the Constitutional Court with the inquiry report of 1 July 2014. In my statement, I focused on the matter of the homosexual couples' position as surrogate parents. I used my statement concerning this question to supplement and augment my previous arguments.

On 28 June 2016, the Constitutional Court's judgment of 28 June 2016 annulled the relevant provision of the Registered Partnership Act prohibiting persons in a registered partnership from adopting children. As a matter of fact, any person had previously had this right prior to entering into the registered partnership.

In practice, the Constitutional Court's decision means that any individual (even people in registered partnerships) may apply for the adoption of a child. However, prior to this decision, this option was only available to persons not living in any kind of formalised union (regardless of their sexual orientation) or one of the spouses in a marriage. The Constitutional Court, however, did not consider the matter of joint adoptions (it is still true that only spouses in a marriage can jointly adopt a child) and neither did it consider the so-called step-parent adoption (when a spouse adopts the other spouse' child in a marriage).

D.2 Constitutional Complaint concerning the father's presence at birth (File No. IV. ÚS 3035/15)

I welcomed the Constitutional Court's decision of 12 April 2016 which reaffirmed that the father's right to be present at birth of his children cannot be subject to fees. Indeed, the Constitutional Court took the same position that I took in my own inquiries and communicated to the Constitutional Court in December 2015 as the so-called *amicus curiae* in the proceedings concerning the constitutional complaint filed by one of the affected fathers.

In my opinion, the Health Care Services Act expressly gives the patient the right to the presence of a close person or another person chosen by the patient during the provision of health care. The hospital is obliged to enable and tolerate the presence of this person. In doing so, the healthcare facility only performs its statutory duties – it does not provide any special service and it, consequently, may not ask for any contractual price for doing so.

The Constitutional Court also agreed with my opinion that if a hospital incurs costs associated with the provision of above-standard services to the father, it may subsequently request compensation from the father. However, the Constitutional Court noted that provision of the necessary sanitary clothing and similar items does not constitute an above-standard service.

D.3 Comments on the substantive intent of the Act amending certain laws in relation to the extension of the State-assured legal aid

I believe that all persons should be entitled to legal aid, not only in court, but also in dealing with authorities. This is why I welcomed the plan laid out by the Ministry of Justice

(hereinafter the "Ministry") to extend free legal aid also to administrative proceedings. The State would then provide legal aid to those who are unable to arrange for it themselves due to financial or other reasons.

In the commentary procedure concerning the substantive intent of the bill, I drew attention to some of its major shortcomings. For instance, the bill does not unambiguously define persons who could apply for free legal aid. According to the bill, a person whose monthly income does not exceed three times the subsistence minimum would be eligible. Aside from the missing definition of "income", the bill does not take into account the other persons in the household who are assessed jointly with the applicant. Consequently, a pensioner living alone on a pension not exceeding three times the subsistence minimum would be entitled to free legal aid, while a single mother with children and an income only marginally higher would not. For this reason, I believe that the bill should be modified to specify the parties entitled to free legal aid in a more precise and just manner.

I have further voiced my disagreement with the requirement for the persons receiving free legal aid to pay an "out-of-pocket regulatory fee" in the amount of CZK 100. According to the Ministry, the out-of-pocket fee serves to prevent excessive use or abuse of the option to obtain free legal aid. However, I believe that the limit of 120 minutes of legal aid per applicant per year as laid out in the bill is a sufficient measure against abuse. In this regard, I also noted that people in material need would, in many cases, need to apply for an extraordinary immediate government assistance, so the out-of-pocket fee would still ultimately be paid by the State. Additionally, the administrative and financial costs of the collection and administration of fees would be higher than the amount collected.

Finally, I recommended to the Ministry to abandon its intention to only authorise attorneys-at-law to provide free legal aid.

The sponsor of the bill accepted some of my suggestions during the commentary procedure, but disagreements about three major issues remain unresolved.

In Brno on 28 July 2016

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