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Information on activities for the 4th quarter of 2017

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 of my activities.

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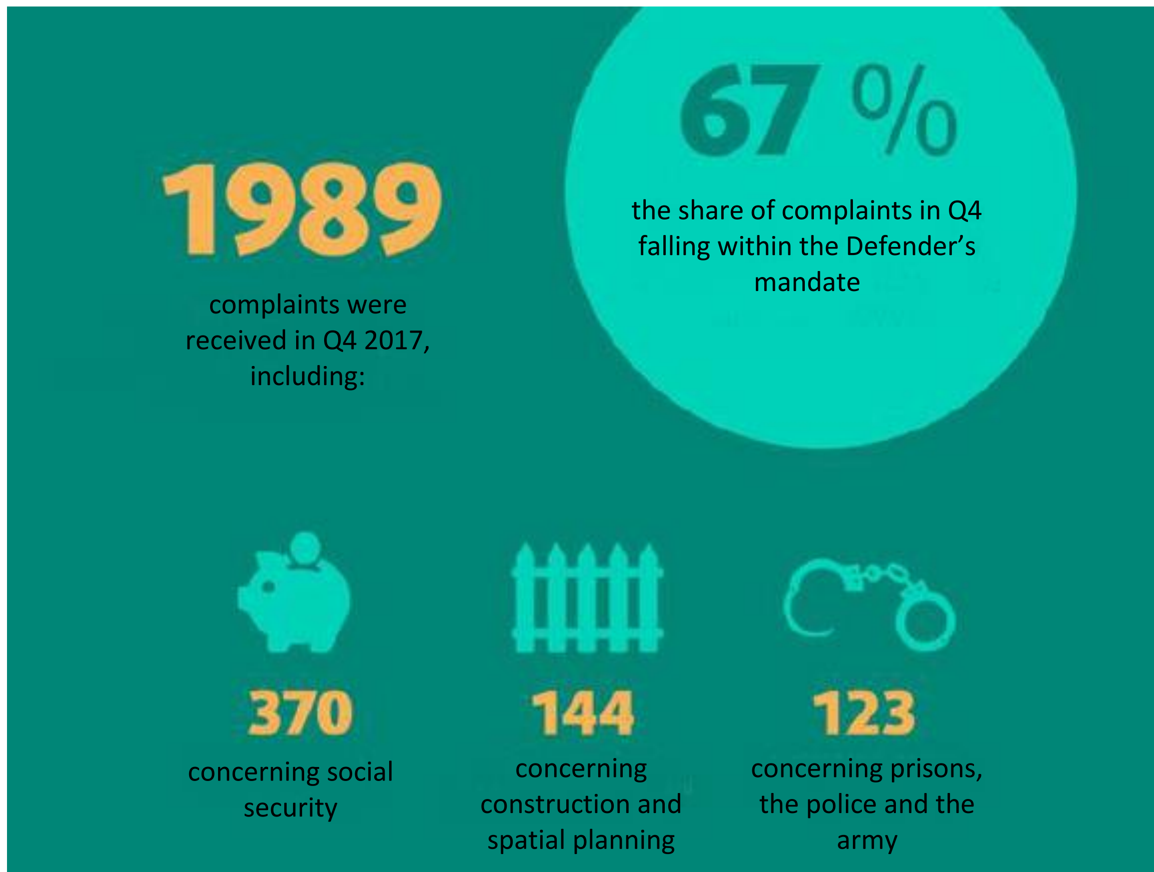
A. Number of complaints, inquiries

A total of **1989** complaints were received in the 4th quarter of 2017, which is **61** less than in the same period last year. I was approached by 1338 persons in matters falling within my competence under the law, which is 15 less than in the 4th quarter of the previous year. **The proportion of complaints falling within the Defender's mandate increased to 67%** (the figure for the previous year was 66%). Most complaints were related to social security (370 complaints); many complaints (144) concerned the area of construction proceedings and spatial planning, and also the prison system, the police and the army (123).

In **52** of the complaints received, the complainants claimed unequal treatment by public administration and private individuals. The number of complaints against discrimination within the meaning of the Anti-Discrimination Act reached **42**. In **16** cases, we also provided discrimination-related information and analyses to international entities and national bodies.

In the fourth quarter, we performed **7** systematic visits to facilities where persons restricted in their freedom are or may be present. Regarding the area of monitoring detention of foreign nationals and performance of administrative expulsion, we monitored **1883** decisions.

The following figure illustrates the numbers of complaints.



B. Defender's activities

B.1 Public administration

B.1.1 Choosing a secondary school for children placed in a children's home (File No. 2819/2017/VOP)

I was approached by a girl placed in institutional education (a children's home). She claimed that the home was forcing her to enrol in a secondary school she did not want to attend. Attending the secondary school also entailed living in a boarding house, which was far from the children's home and the girl would thus not be able to attend the same school as her sister who had already reached the age of majority.

I found errors in the procedure of the children's home (i.e. its director) because it completely neglected to actively communicate with the girl's mother, at variance with the law. The scope of the mother's parental responsibility had not been officially reduced and she maintained contact with the girl. I also advised the director of the fact that neither the children's home as an institution nor its head were authorised to select a specific secondary school for the children or represent them in administrative proceedings on admission to a secondary school. I voiced my doubts about the degree to which the facility discussed the choice of the secondary school with the girl herself. I also considered it unfair that the director did not tell the girl that she had also been admitted to the school which she wanted to attend.

After the inquiry report was issued, the director of the children's home sent a letter to the parents of all the children placed in the home where he offered them a closer co-operation with the facility's individual workers. The letter was also included in the facility's internal rules as an amendment. The director gave a written reprimand to the social worker then working in the facility who was responsible for the girl's education, citing negligence in the performance of her duties. He also provided me with documents proving that the children's home had discussed the choice of the school with the girl. The children's home also offered to the girl a transfer to the other secondary school; consequently, I closed the case.

B.1.2 "Salami tactics" in development of a residential complex (File No. 482/2017/VOP)

Several people filed a joint complaint with the Defender, requesting inquiry into the procedure of the Prague City Hall. They complained against the assessment of the project to construct residential buildings within the meaning of the Environmental Impact Assessment Act (EIA). The complainants objected to the City Hall's classification of the project as a below-the-threshold project not subject to the fact-finding procedure. The complainants noted that this constituted an evasion of the law. They cited the relevant documents, including visualisations and contracts which indicated that the project would be constructed in stages (313 flats and 362 parking places in the first stage, with further 500 flats and over 500 parking places to follow in the second stage), as well as a city ward council resolution requesting joint assessment of both stages.

My Deputy's inquiry confirmed that the City Hall had made an error. Most importantly, my Deputy found that, based on information already available to the City Hall alone, the project should have been subject at least to a fact-finding procedure. He also stressed that similar projects have to be assessed as a whole and that they should not be split into stages in order to evade procedures under the Environmental Impact Assessment Act. This can occur if only a certain part of the project is notified with the aim to avoid exceeding the relevant statutory thresholds. By issuing the information under Section 6 (3) of the Environmental Impact Assessment Act, the City Hall in fact tolerated the notifier's conduct, i.e. submission of only the first stage of the residential project, even though the City Hall as the responsible authority had to be aware that the project was incomplete.

After the inquiry report was issued, the City Hall admitted its procedural error and agreed that it should have studied the circumstances more closely, especially in terms of the project's total area. The City Hall promised to be more careful in the future and ask the notifiers for further details if necessary. The City Hall noted that it agreed to assess the cumulative effects of all stages of the project together, including ones that had been notified earlier. It is now up to the construction authority having local jurisdiction to make sure that plans in the locality comply with the overall project.

My Deputy closed the inquiry when the Ministry of the Environment – as the guidance and methodical authority superior to the City Hall – reached the same conclusion. The Ministry instructed the City Hall that undesirable "salami tactics" are to be avoided by assessing a below-the-threshold project stage's potential synergic and cumulative effects with earlier stages (which the City Hall should take into account in the potential information issued under Section 6 (3) of the Environmental Impact Assessment Act on the second stage of the given project).

B.1.3 Barrier-free access to a public building (File No. 5336/2016/VOP)

A complainant approached the Defender with a request to inquire into the procedure of a construction authority. He objected that the construction authority was not taking steps to remedy the defective condition of a building, i.e. its inaccessibility to people with disabilities. The complainant noted that handicapped people had to enter the building through a ramp that did not meet the relevant technical requirements and was not safe.

After conducting an inquiry, my Deputy found incorrect procedure on the part of the construction authority. The construction authority made an error in 2012 when it approved, within a notification procedure, the owner's construction modifications, which led to the removal of a transport ramp enabling people with disabilities to enter the building (Section 169 (1) of the Construction Code). For this reason, my Deputy requested that the construction authority carry out an inspection of the building, assess the facts and order the owner to carry out necessary modifications to ensure barrier-free access and use of the building.

After the inquiry report was issued with the subsequent final statement containing recommended remedial measures, the construction authority engaged with the owner of the public building. During October and November 2017, the owner carried out construction modifications and built a barrier-free access to the building compliant to the general construction and technical requirements. Subsequently, the inquiry in the case was closed.

B.1.4 Overpayment of foster care allowance (File No. 1768/2017/VOP)

I inquired into a case brought to my attention by a complainant who was ordered by the labour office to refund an assessed overpayment of foster care allowance in the amount of CZK 100,000. The complainant argued that she had met all the statutory conditions for receiving the allowance (contribution for purchasing a motor vehicle). Her appeal was dismissed by the Ministry of Labour and Social Affairs in appellate proceedings because she had not used the allowance to become the sole owner of the vehicle.

The documents revealed that the complainant and two members of her family combined three allowances (two disability allowances and one foster care allowance) to purchase a single vehicle together. Based on the purchase agreement, all three welfare recipients became co-owners of the vehicle. The labour office challenged the ownership by pointing out that the vehicle was not registered to the complainant, who was only indicated as its operator. The Ministry believed that the complainant had to be the exclusive owner of the vehicle.

I came to the conclusion that the Social and Legal Protection of Children Act did not specify that a

foster parent had to be the exclusive owner of the vehicle, which is why I launched an inquiry into the Ministry's procedure. After the inquiry had started, the Ministry proposed to initiate review proceedings *ex officio* and decided to repeal the first-instance decision and discontinued the proceedings on refunding the overpayment. Subsequently, I closed the case.

B.2 Supervision over restrictions of personal freedom and expulsion monitoring

Within the Defender's mandate to prevent ill-treatment and ensure supervision over restrictions of personal freedom, authorised lawyers of the Office of the Public Defender of Rights (hereinafter the "Office") performed a total of **7** systematic visits to facilities and monitored **5** instances of administrative and criminal expulsions, both by land and by air, in the fourth quarter of 2017.

B.2.1 Initiation of a series of visits to facilities for people with disabilities

Employees of the Office initiated a series of visits to social services facilities – homes for people with disabilities. Services provided in homes for people with disabilities are of a special nature and should comply with the "normality principle", i.e. these facilities should resemble normal homes as closely as possible. The Defender last addressed this issue in 2009 when he visited 25 such facilities. The report on the previous series of visits is available on the Defender's website.

In this quarter, Office employees visited **three homes for people with disabilities:** Srdce v domě, p. o., in Klentnice, Sociální pohoda, o. p. s., in Vacov, and Domov Lidmaň, p. o.

B.2.2 Other visits

Employees of the Office continued visiting **facilities which provided care to the elderly without having an authorisation to do so** (Penzion klub seniorů, z. s. in Staré Hradiště near Pardubice). Office employees also visited **two child care facilities**, namely Dětský domov Charlotty Masarykové *(Charlotte Masaryk Children's Home*), a facility for children requiring immediate assistance, and the Kostomlaty pod Milešovkou Educational Institution. We have also visited the **Institution for Security Detention** in Brno.

B.2.3 Summary report on visits to treatment facilities for long-term patients

After a series of 8 visits to facilities for long-term patients, I released a summary report containing generalised findings and **7 systemic recommendations for the Ministry of Health and 102 recommendations for healthcare services providers** on how to improve care. In particular, I noted the need to monitor the patients' nutrition, ensure sufficient rehabilitation and mobilisation activities and promote self-sufficiency. The summary report was also sent to all facilities for long-term patients, medical schools and professional associations. Additionally, employees of the Office are preparing training courses for the nursing staff working in the treatment facilities. The summary report on visits to treatment facilities for long-term patients is available on the Defender's website.

B.2.4 Round tables

After a series of **5 visits to psychiatric facilities tasked with the performance of protective institutional treatment**, I organised a roundtable discussion with their directors and a representative of the Psychiatric Society of Czech Medical Association of J.E. Purkyně. We discussed systemic aspects of institutional treatment and the benefits of our recommendations for the psychiatric hospitals. The participants agreed that many hospitals were overburdened and **there was no conceptual plan on how to reform protective treatment in the Czech Republic**. I will issue my summary report on systematic visits to psychiatric hospitals tasked with the performance of protective institutional treatment in 2018.

The Defender has been **monitoring expulsions** for over 6 years. The Office organised a roundtable discussion with representatives of the police, Refugee Facilities Administration and the Prison Service on systemic implications of expulsions. We agreed that good preparation of the persons being expelled and organisation of the expulsion reduces the risk of ill-treatment and facilitates a successful performance of the expulsion.

B.2.5 Seminars and training

We prepared a seminar for employees of regional authorities' health departments responsible for **inspections and handling complaints against healthcare providers**. The main clinical and legal topics of the seminar included: the use of means of restraint, respecting psychiatric patients' informed consent and treating patients undergoing protective treatment. A better knowledge of these issues can help administrative bodies to properly perform their duties and thus help prevent ill-treatment. Study materials from the seminar are available on the Defender's website.

We prepared a **seminar for social care specialists** working with clients with dementia in the Zlín Region. The purpose of the training was not only to inform them about the Defender's findings from systematic visits to residential social services facilities with a view to preventively strengthening the protection of clients dependent on care of others, but to also support the specialists in performing their duties.

I have long been participating in the **Senior Academy**, a project led by the municipal police in Brno, which aims to improve awareness among the elderly of their rights concerning the provision of social and health services. To over 100 elderly people, we presented our findings from systematic visits to treatment facilities for long-term patients and retirement homes.

Employees of the Office also **gave lectures at the Faculty of Law of Palacký University in Olomouc** as part of the "Legal Clinic of Social Rights" course. The lectures mainly focused on the private and family life of institutionalised children.

B.2.6 International co-operation

Lawyers of the supervision department **initiated co-operation with the Austrian national preventive mechanism**. At the first meeting in Vienna, both parties presented their working methods, institutional support and co-operation with experts. They also discussed specific topics, in particular concerning the area of protective treatment and the provision of related health services.

In co-operation with the Council of Europe and the European Union, I organised **a conference of national preventive mechanisms in Prague**. The international event was attended by three ombudspersons and other representatives of NPMs from over 12 countries. The contributions and debates concerned topics such as NPM participation in the legislative process and management.

B.3 Protection against discrimination

B.3.1 Discriminatory prohibition of entry into a store with a baby carriage (File No. 6899/2015/VOP)

A woman approached the Defender with a complaint that she had often been denied access to a shop with her baby carriage. She specifically described a case involving a corner shop with over-the-counter sale. The complainant had previously shopped in the establishment with her baby carriage; later, however, the owner banned entry with a baby carriage and the complainant was not allowed to enter the establishment even when it was empty. The complainant did not want to leave the child unattended, so she had to shop in a supermarket situated further away. She considered the ban to be discriminatory.

The woman filed a complaint against the practice with the Czech Trade Inspection Authority. At first, the Trade Inspectorate for Pardubice and Hradec Králové regions only told the complainant that such a ban was not discriminatory if it applied to everyone equally. After filing a complaint against the Inspectorate's procedure, its director sent her a letter where he noted that the Inspectorate had investigated suspected discrimination resulting from a ban of baby carriages before, but only in terms of age discrimination (i.e., discrimination of the children in the baby carriages) and had not found the ban discriminatory as it only applied to children in baby carriages, not all children. Furthermore, the director considered the prohibition of entry with a baby carriage a proportionate measure pursuing a legitimate objective, i.e. ensuring safety of customers and protection of goods against damage.

I issued my inquiry report in which I concluded that in the case at hand, the blanket ban on entry with a baby carriage constituted indirect discrimination on grounds of sex (parenthood). The ban put people taking care of children at a disadvantage. Although the objective was legitimate (safety of the customers), the ban itself was not a reasonable way of achieving it, since the goal could have just as well been achieved using less severe methods (e.g. only ban baby carriages when the shop was full of customers). I also found errors in the Inspectorate's procedure: the Inspectorate initially did not address the possible discrimination at all, then it misclassified the possible grounds of discrimination (age instead of parenthood), failed to investigate the conditions in the establishment and, finally, concluded that the ban was reasonable, ignoring the facts of the case.

After receiving my inquiry report, the Inspectorate conducted an additional inspection in the establishment. The shop owner placed a text under the baby carriage ban symbol specifying that it only applied if there were many people inside the shop; according to the Inspectorate's findings, the shop assistants were letting in customers with baby carriages if there was enough room for them.

I considered this form of a ban on baby carriages to be reasonable in terms of ensuring the safety of the shoppers and I subsequently closed my inquiry into the case.

B.3.2 School meals and their accessibility for children with a food intolerance, vegetarians and vegans (File No. 6481/2017/VOP; 5679/2016/VOP; 5906/2017/VOP; 5570/2015/VOP; 6059/2015/VOP)

In the second half of 2017, I closed several cases involving school meals. Parents and grandparents of school children and students complained to me about problems mentioned below; in each of these cases, I tried to formulate recommendations or measures to be adopted by the school in question.

- In one case, a school was not providing gluten-free meals even though it had been informed a girl had the coeliac disease. Said school did not even permit her to bring her own meals and eat them in the school canteen. While preparing gluten-free meals by the school kitchen depends on the canteen's specific circumstances and the nature of the student's health problems, **banning students from eating their own meals in the school canteen is discriminatory**.

- The school did not offer gluten-free meals, not even after a refurbishment of the school canteen and a substantial increase in its capacity. The school claimed that even after the construction modifications, it was not possible to ensure reliable separation of spaces for preparing standard and gluten-free meals. The school did not consider possibilities to satisfy the girl's specific health needs (i.e. whether trace amounts of gluten in her food would make her sick). **If it had turned out that the cooking spaces did not need to be completely separated and ordinary meals could have easily been prepared as gluten-free, the school would have been guilty of discrimination** by failure to adopt reasonable measures to accommodate the needs of a disabled person.

- Two mothers of pre-school children also called attention to the uncooperative attitudes of

kindergartens to alternative (vegetarian or vegan) diets. In the first case, the headteacher insisted that a child whose mother insisted on a vegetarian diet also had to get meat on the plate, albeit the child could refuse to eat it. In the other case, the mother requested a vegan diet for her child. In neither case did the kindergarten permit bringing home-prepared meals. Taking account of the fact that a kindergarten has to conclude a catering agreement with the parents, it is necessary for the kindergarten to be cooperative in order to agree on mutually satisfactory arrangements. **Kindergartens prohibiting bringing home-prepared meals without a legitimate justification commit discrimination** on grounds of worldview.

B.3.3 Survey of work-life balance at the Ministries of the Czech Government (File No. 101/2017/DIS)

As part of the "Bespoke Civil Service" project (CZ.03.1.51/0.0/0.0/15_027/0005638), which is co-funded by the European Social Fund (ESF) through the Operational Programme "Employment", I conducted a survey of work-life balance in the civil service across most of the Ministries. The survey was intended as a supplement to the regular reports published by the Ministry of the Interior.

It follows from the survey carried out at the Ministries, that:

- There are certain standard measures applied in the area of work-life balance at the Ministries; these measures enable to more easily combine work and out-of-work duties of the employees in this sector of public administration; however, the survey confirmed existing differences among the individual Ministries.

- The Ministries **often use only some of the flexible forms of work that are available**. Only flexible scheduling of working time is available everywhere; in contrast, reduced working time or remote working are only available to a few percent of civil servants, despite the large demand.

- **The Ministries try to provide for pre-school childcare** – they usually run a children's group or use a children's group of another Ministry based on a contract; consequently, the demand for childcare is almost entirely satisfied. However, only two Ministries also set up a children's corner as a space at the workplace dedicated for short-term stay of children, although many civil servants participating in the survey would welcome it.

- The survey confirmed that work-life balance had to be approached cross-sectionally – **across generations and age groups**, as well as **in the context of various life situations.** Currently, most attention is devoted to parents with small children, especially mothers, although there is still room for further improvement of work-life balance (see children corners, childcare during school holidays, taking care of children under 3 years of age, etc.).

- It is clear that one of the prerequisites for an effective solution to work-life balance lies in **actual awareness of the wishes, needs and satisfaction of the employees**, in this case civil servants working for the individual Ministries. Although an annual evaluation of progress in this area is conducted (use of work-life balance measures, etc.), it is not entirely clear how the results are reflected at the Ministries and what conclusions are drawn on their basis by the Government's Council for Gender Equality and the Department for Gender Equality at the Office of the Government of the Czech Republic.

Based on my findings, I conclude that **if a civil servant has care responsibilities, his or her employer (the relevant government office) has a duty to adopt work-life balance measures provided that this does not interfere with their duties.** If the authority fails to adopt appropriate measures, **this could constitute discrimination (also by association)** against the civil servant, who can defend herself/himself by filing an anti-discrimination action.

The survey report is available here.

We organised a two-day international conference to discuss issues related to work-life balance. The records and conference proceedings are available here.

C. Impact of legislative amendments in the area of social security

C.1 Community service

Since 1 August 2017, a labour office may reduce the "subsistence support" allowance to the "reduced subsistence level" (*existenční minimum*; i.e. CZK 2,200 for an individual) if the person in question is in material need for over 6 months and does not perform any work activities. Work activities include gainful activities, participation in projects organised by the labour office or at least 20 hours of community service. If the person in material need participates in one of these activities, the subsistence support allowance increases to the "basic subsistence level" (*životní minimum*; i.e. CZK 3,410 for an individual). If the individual performs 30 hours of community service, the allowance is increased by CZK 605. Already when the legislation was being discussed, we criticised the indiscriminate reduction of benefits for anyone who does not work for the required number of hours, without the labour office looking into the reasons. **People should not be punished for insufficient opportunities to work.** The law also does **not permit to refuse community service on account of medical condition.** I also believe it is demotivating that there is no reward for performing 20 hours of community service, not even in the form of increased benefits.

The complaints I received in the past quarter confirmed my concerns. By the end of the year, I received a total of **35** complaints against the legislative framework of community service or the individual cases where benefits had been decreased. In several cases, benefits received by **elderly persons who could not find jobs within community service** were reduced. **I consider these impacts extremely unfair** and, therefore, I will continue talks with the Ministry of Labour and Social Affairs and the Chamber of Deputies about the **possibilities to soften the law at least in respect of some groups of people**.

C.2 Payment of subsistence support in vouchers only

Effective from 1 December 2017, the statutory rules for payment of subsistence support benefits have changed. **The labour office must mandatorily pay at least 35% of the benefits to persons who are in material need for longer than 6 months in the form of vouchers** for purchase of goods at the specified value. The vouchers are only intended for people in material need and are clearly marked as such (i.e. differently from standard meal vouchers issued as an employee benefit). Even though this new measure had only been in effect for one month at the end of the year, I already received **34** complaints where people objected to this new way of distributing welfare. The complainants primarily argue that **payment in vouchers restricts their freedom of choice as to where to shop.** Not all shops accept the vouchers and the shops which do accept them do not return change, which means it is necessary for the purchase to correspond exactly to the voucher's nominal value. As a consequence, people are forced to make more expensive purchases than if they received the benefits in money. The vouchers also cannot serve to cover co-payments for reimbursable medicines or rent (if the housing allowance is insufficient). Many people consider paying with vouchers degrading and are ashamed to use them. Benefits are also paid in vouchers to elderly people with low pensions. To receive a part of the benefit in vouchers, the elderly citizens must travel to the labour office even though they used to receive the entire benefit via a postal order. The same method is used to send parts of the benefits to people in health and social services facilities. In their situation, payment in vouchers lacks any justification since people in these facilities are not able to misuse the benefits and cannot use the vouchers at all (in social services facilities, they need money to pay for meals and services).

I consider the indiscriminate payment of benefits in vouchers unjustified. However, I was unable to

voice this opinion during the legislative process because the measure was only introduced by means of an MPs' motion submitted during the second reading at the plenary session of the Chamber of Deputies. **Given the unjust impacts affecting specific persons in material need**, I will continue calling for **an amendment to the legislation to make it less severe**, e.g. by introducing exceptions for certain groups of people in material need.

D. Extending the mandate of the Public Defender of Rights

D.1 Monitoring of rights of people with disabilities

On 28 September 2009, the Czech Republic ratified the Convention on the Rights of Persons with Disabilities. This created the obligation to establish a monitoring body to protect the rights of disabled persons in the sense of Article 33(2) of the Convention.

The Czech Republic met this obligation by adopting **Act No. 198/2017 Coll.**, amending Act No. 349/1999 Coll., on the Public Defender of Rights. **Effective from 1 January 2018**, the Defender's mandate was expanded to cover **monitoring of the rights of people with disabilities.**

As a monitoring body, the Defender will systematically deal with issues concerning the exercise of rights of disabled persons. She will conduct surveys, issue recommendations on matters related to the rights of disabled persons and further propose measures to protect them.

D.2 Providing help to EU citizens

Act No. 365/2017 Coll. amended the Anti-Discrimination Act and the Public Defender of Rights Act and implemented the new EU directive on migrant workers in the Czech legislation. The Directive's purpose is to facilitate the exercise of rights based on the free movement of workers and other persons. Based on the Directive, each Member State shall designate bodies for the promotion, analysis, monitoring and support of equal treatment of Union workers and members of their family without discrimination on grounds of nationality.

Effective from 1 January 2018, the Defender has become the Czech Republic's body tasked with facilitating the exercise of EU citizens' right to free movement within the Union. EU citizens have the right to move to another Member State for work and they also have the right to be treated the same as national workers. Free movement of workers within the Union is enshrined in the founding treaties and further elaborated in a number of associated legislative instruments. EU citizens and their family members enjoy the right to equal treatment in access to employment and working conditions, especially in the area of remuneration, termination of employment and tax and social benefits. **The Defender will serve as a contact point where these people can find help if they encounter problems in the aforementioned areas.**

In Brno, on 31 January 2018

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