Public Defender of Rights
OMBUDSMAN

ANNUAL REPORT 2016

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Explanatory notes

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Public Defender of Rights

Údolní 39, 602 00 Brno, Czech Republic

information telephone: **+420 542 542 888**
phone: **+420 542 542 111**
e-mail: **podatelna@ochrance.cz**

www.ochrance.cz
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FOREWORD BY THE PUBLIC DEFENDER OF RIGHTS

I present to you the fourth annual report I published while in office of the Public Defender of Rights (even though, in truth, the first report dealt with the activities of my predecessor, JUDr. Pavel Varvařovský), and the sixteenth such report made during the existence of this institution.

I hope I am not too bold to say that the Office of the Public Defender of Rights gets more successful with each year passing. In 2014, we received 8,202 complaints, of which 58% fell within the Defender's mandate. In 2015, the ratio continued to increase and in 2016, it reached 66% out of the total of 8,398 complaints.

Now, in the middle of my term in office, I appreciate that people are aware of the possibility to seek the Defender's help and understand the scope of my powers. My colleagues and I are honoured by the trust people place in our work.

I also greatly appreciate the welcoming reception shown by public authorities in respect of our findings. In four out of five cases, the authorities acknowledge the failing we found and promptly remedy it after we issue our inquiry report.

We have been successful in other areas, too. Since its inception, the institution of the Public Defender of Rights has commented on draft laws and secondary legislation in its areas of responsibility. Perhaps it is this experience that ensures that two thirds of the Defender's comments in matters of utmost importance are accepted.

Last year marked the 50th anniversary of the formulation of the first binding catalogue of human rights. In 1966, the UN General Assembly adopted two treaties – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Then Czechoslovakia already signed both covenants in 1968, but it only ratified them ten years later. Human rights are our shared heritage and apply to all human beings without exceptions. We have thus decided to draw attention to them through our short video series.

Based on discussion with members of the Parliament over the Annual Report 2015, we decided to take their recommendations into account and arranged this report's contents in a better way.

I hope you enjoy reading this report.

Anna Šabatová, the Public Defender of Rights
22 February 2017

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

1 RECOMMENDATIONS TO THE CHAMBER OF DEPUTIES, RELATIONS WITH CONSTITUTIONAL BODIES AND SPECIAL POWERS

JUDr. Stanislav Křeček
Deputy of the Public Defender of Rights

Legislative recommendations

Defender's Recommendations for 2016

1/ Representation of children by foster parents in proceedings on benefits for people with disabilities

In dealing with complaints filed by foster parents taking care of children with disabilities, the Defender encountered inconsistent regulations concerning the representation of children in the individual regulations governing social benefits. The problem also concerns individuals who were entrusted with the care of children. The State Income Support Act explicitly stipulates that a child is represented in benefits proceedings by foster parent or another individual and that these persons are the recipients of the benefits (income support). However, Act No. 329/2011 Coll., on granting benefits to people with disabilities, as amended, lacks such an explicit provision.

According to the current wording of the Act, the Labour Office should only deal with a foster parent as the representative of the child if the foster parent was granted a special court decision expanding the scope of their authorisations in representing the child. Otherwise, the Labour Office should deal with the biological parent of the child as his or her legal representative or, if legal conditions are met [Section 32 (2)(a) of the Code of Administrative Procedure] appoint the foster parent the child's procedural curator. Both options are very impractical in terms of the speed of the proceedings. The Act also lacks an explicit provision indicating that the foster parent, not the entitled child, is the recipient of the benefit.

The Defender therefore recommends to the Chamber of Deputies to make the following amendments by means of a Deputies' motion:

— change the wording of Section 20 (2) of Act No. 329/2011 Coll., on granting benefits to people with disabilities, as amended, in that if a foster parent or another person is entrusted with care of a child, the foster parent or the person entrusted with the care of the child will also be the recipient of benefits.

— add a new paragraph after Section 22 (3) regulating representation of a child by a foster parent or another person as follows: "If a foster parent or another person is entrusted with care of a child, the foster parent or the person entrusted with the care shall represent the child in proceedings under this Act."

2/ Allowance v. increasing minimum wage

Last year, the Defender received a number of complaints concerning the problems associated with the calculation of the compensation for loss

of earnings after the end of a period of unfitness to work or granting disability allowance (*"renta"*) in connection with an accident at work or occupational disease to aggrieved employees registered with the Labour Office. Pursuant to the Labour Code, the calculation is based on the fiction of job seeker's income in the amount of the minimum wage. The fictitious minimum wage income is deducted from the allowance, which means that a higher minimum wage results in lower actually paid allowance (or zero allowance in extreme cases).

Based on 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, as amended by Government Regulation No. 336/2016 Coll., the amount of minimum wage increased to CZK 11,000 as of 1 January 2017. For many people, this meant that their allowance was decreased or they even lost it completely.

On the one hand, the Public Defender of Rights welcomes increasing the minimum wage, but on the other hand she is cognisant of the negative implications e.g. on the allowance recipients registered with the Labour Office. I believe it is necessary to prepare an analysis of the impacts of increasing the minimum wage on the actual amount of allowance and use the results to adjust its calculations.

The Public Defender of Rights recommends to the Chamber of Deputies to request that the Government submit a draft amendment to Act No. 262/2006 Coll., the Labour Code, as amended, to revise the problematic Section 271b (3) of the Labour Code (the part of the first sentence following the semi-colon) and change the manner in which the allowance is calculated.

3/ Independent complaints mechanism in social services

Social services clients constitute a vulnerable group of people. Each client should be entitled not only to the provision of social services in accordance with the basic principles of the Social Services Act and basic human rights and freedoms, but also to the possibility of efficient defence in cases where a service is provided at variance with the aforementioned principles and standards. Insufficient quality of the provided care can have serious consequences and constitute ill-treatment within the meaning of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Act No. 108/2006 Coll., on social services, as amended, provides for certain practices that are intended to help protect the rights of clients. However, they are not sufficient. It is not possible to lodge an appeal with an independent authority against the manner of resolution of a complaint by the service provider. The Social Services Inspectorate is not obliged to address each of the individual complaints filed by the clients or other persons. The Regional Authorities merely supervise compliance with the registration conditions laid down for the social service providers.

The protection of rights of social services users needs to be ensured via an independent complaint mechanism to investigate complaints against the quality of social services. Looking at current options, it seems best to establish a complaint mechanism similar to the one that exists in healthcare.

The Public Defender of Rights recommends to the Chamber of Deputies to request that the Government submit a draft amendment to Act No. 108/2006 Coll., on social services, as amended, introducing an efficient and independent complaint mechanism.

4/ Patient's option to file a complaint about healthcare provided in social services facilities

Social services facilities may provide expert healthcare services to their clients (e.g. people with dementia, Alzheimer's or Parkinson's disease, permanently bedridden people or recipients of 3rd and 4th degree allowance for care). Nevertheless, clients of these facilities are not able, if they are dissatisfied with the quality of healthcare, to use the complaints procedure under the Health Care Services Act, which exists to protect the rights of patients.

Under the current legal regulation, only patients of "registered healthcare services providers" (typically hospitals) may file complaints with the provider against the quality of healthcare and have the provider's procedure reviewed by administrative authorities. Social services facilities are generally not registered healthcare services providers since providing healthcare is not conditional on a valid licence to provide healthcare granted by the registering authority; it is sufficient for a social services facility to simply notify the registering authority that healthcare services are provided in the facility.

The complaint mechanism regulation included in Sections 93 and 94 of the Health Care Services Act makes a pointless distinction between registered healthcare services providers and entities providing healthcare services on the basis of a notification (i.e. especially social services facilities).

The Health Care Services Act stipulates certain duties for social services facilities; however, the Act does not classify a breach of these duties as an administrative offence, which means the social services facility cannot be penalised for the breach.

The Public Defender of Rights recommends to the Chamber of Deputies to request that the Government submit a draft amendment to Act No. 372/2011 Coll., on healthcare services and the conditions for their provision, as amended, stipulating that the rules for handling complaints against healthcare also apply to healthcare provided in social services facilities.

5/ Supervision by the Public Prosecutor's Office in other detention facilities

Pursuant to Public Prosecutor's Office Act, the Public Prosecutor's Office supervises, under the conditions and in the manner stipulated by law, compliance with legal regulations in places of remand custody, imprisonment, protective treatment, security detention, protective or institutional education or in other places of detention based on statutory authority. However, the Public Prosecutor's Office may only do so where authorised by another Act specifying the subject and conditions of the supervision. Unlike in case of prisons or children's homes, such statutory regulation of supervision is still missing with respect to the facilities for detention of foreigners, reception asylum centres and psychiatric hospitals providing institutional protective treatment.

The absence of an independent supervisory authority with adequate powers means that the Czech Republic fails to create conditions for compliance with Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, while the Defender found that people in these facilities are most at risk of ill-treatment.

For this reason, the Defender recommends to include the supervisory powers of the Public Prosecutor's Office in respect of the facilities for detention of foreigners in the Residence of Foreign Nationals Act; in respect of the reception centres into the Asylum Act; and in respect of psychiatric hospitals providing protective treatment in the Specific Health Care Services Act. The Defender notes that this change would not confer new powers to the Public Prosecutor's Office, but merely enable it to exercise its powers in the manner anticipated by the Public Prosecutor's Office Act.

The Public Defender of Rights recommends that the Chamber of Deputies request the Government to submit a draft law embed the supervisory powers of the Public Prosecutor's Office:

— in facilities for detention of foreigners in the virtue of Act No. 326/1999 Coll., on residence of foreign nationals in the territory of the Czech Republic and on amendment to some laws, as amended;

— in reception centres in Act No. 325/1999 Coll., on asylum, as amended;

— in psychiatric hospitals providing protective treatment, in Act No. 373/2011 Coll., on specific healthcare services, as amended.

Evaluation of recommendations given in 2015

Of the legislative recommendations submitted by the Defender in 2015, **2 recommendations** are currently being implemented, but in **4 recommendations** we are yet to see any progress. Apart from the unsatisfactory state of the legal regulation governing resolution of disputes between owners and tenants concerning home antennas, there are the following unresolved issues::

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

The Defender considers the current system of determining the minimum assessment base of public health insurance premiums for employees unfair to employees who do not earn even the minimum wage (usually part-time workers). Therefore, the Defender recommended to change the relevant legal regulation; nevertheless, the recommendation was not accepted.

Public health insurance premiums equal 13.5% of the assessment base, which corresponds to employees' income from employment. One third of the insurance premium is paid by the employee and the remaining two thirds by the employer. However, if the employee's salary is lower than the minimum wage (which also constitutes the minimum assessment base), the employee is required to pay insurance premiums in the amount corresponding to 13.5% of the difference between the minimum and the actual salary. The Defender considers the above-described burden unjust, especially if the employees in question are unable to choose the number of hours they work per week and cannot secure another source of income.

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

2/ Public health insurance of individuals undergoing institutional protective treatment

The State pays public health insurance premiums for persons in preventive detention (i.e. "involuntary commitment"), custody or imprisonment, but not for persons undergoing protective institutional treatment. Such persons are required to pay the premiums themselves. The Defender believes the difference in treatment is not justified in this case.

For this reason, the Public Defender of Rights recommends to the Chamber of Deputies again to include, by means of a Deputies' motion, persons in protective institutional treatment in the list given in Section 7 (1) (h) of Act No. 48/1997 Coll., on public health insurance and on amendment and supplementation of certain related laws, as amended, for example by changing the wording as follows: "persons in remand custody, imprisonment, preventive detention or protective institutional treatment."

Although the Ministry of Health promised to remedy the unequal treatment already in 2011 by means of amendment to the Public Health Insurance Act, which would include persons in preventive detention in the group of persons for whom the State pays the insurance premiums, the Act has not been amended yet, even after the Defender's recommendation included in last year's summary report.

3/ Shift of the burden of proof in discrimination disputes

The Defender believes that the general principle of equality before the law implies that all potential victims of discrimination should enjoy the same procedural safeguards in court proceedings. The current provisions concerning shift of the burden of proof under Section 133a of the Code of Civil Procedure do not cover all cases in which the Anti-Discrimination Act (Act No. 198/2009 Coll.) prohibits different treatment.

For example, if healthcare is denied to a member of an ethnic minority, it is sufficient if the person concerned proves in court the existence of unfavourable treatment and asserts that the treatment was unfavourable because of his or her ethnicity. The burden of proof is then shifted to the defendant who is then required to prove that the conduct in question was not motivated by the plaintiff's ethnicity (as grounds of discrimination). However, in the same situation involving an elderly person, a person with a disability, or a member of a sexual minority, the burden of proof is not shifted.

In December 2015, the Government adopted and submitted to the Chamber of Deputies a draft amendment to the Anti-Discrimination Act, not including the proposed changes concerning shift of the burden of proof (parliamentary press No. 688). The Chamber of Deputies is still discussing the draft, without the proposed change.

The recommendation also takes into account the requirements related to the free movement of workers in the EU pursuant to Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.

The Defender issued her recommendation already in 2013 and again in 2015, but it has yet to be accepted.

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

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

(a) on the grounds of race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion or belief in matters of
  (1) right to employment and access to employment;
  (2) access to occupation, enterprise and other forms of self-employment;
  (3) employment relationships, service relationships and other dependent activities, including remuneration;
  (4) membership of and activities in trade union organisations, works councils or employers' organisations, including the benefits provided by such organisations to their members;
  (5) membership of and activities in professional associations, including the benefits provided by such public corporations to their members;
  (6) social security;
  (7) granting and provision of social benefits;
  (8) access to and provision of healthcare;
  (9) access to and provision of education and professional training;
  (10) access to and provision of goods and services, including housing, if provided to the public;

(b) on the grounds of race or ethnic origin in access to public contracts and membership in associations and other interest groups; or

(c) on the grounds of nationality in legal relations in which a directly applicable regulation of the European Union concerning the free movement of workers applies (56b);

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

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

Evaluation of the recommendations for 2014

Of the legislative recommendations submitted by the Defender in 2014, **1 recommendation** was fully implemented (incorporation of the conditions for social detention, including court review), but **4 recommendations** are yet to be accepted. For this reason, the Defender wants to remind of at least two of these recommendations:

1/ The Curatorship Act

Since 2014, the Public Defender of Rights has repeatedly recommended that the Chamber of Deputies request that the Government submit a draft Curatorship Act. I am basing the recommendation on findings of often serious shortcomings in the performance of public curatorship impacting a very vulnerable group of people. Regrettably, my recommendation was not accepted. Only some issues related to the funding of public curatorship were resolved. According to latest information, the Government has given up on its plans to prepare the Curatorship Act, which would have introduced comprehensive rules for the performance of curatorship, and has instead decided to submit smaller amendments to the Civil Code and the related legal regulations, despite the fact the Civil Code originally anticipated adoption of comprehensive legal regulation of curatorship. The Defender wishes to repeatedly stress the need to adopt the Curatorship Act to comprehensively stipulate the rights and obligations of the curator, thus supporting the protection of rights of people with limited legal capacity.

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

2/ Health insurance for foreign nationals

The Defender repeatedly draws attention to the fact that many foreign nationals from non-EU countries with legal long-term residence in the Czech Republic lack access to public health insurance during the initial five years of their stay in the country. The Defender's predecessors also repeatedly warned the Chamber of Deputies about this problem. However, the Defender's recommendation has not yet been implemented.

Foreign nationals other than those who have a permanent residence permit and are employed in the Czech Republic are excluded from public health insurance by the current legal regulation. This mainly concerns minor children and husbands/wives of foreign nationals from third countries, self-employed persons and family members of citizens of the Czech Republic (typically husbands/wives) from non-EU countries. In previous years, the Government tried to address the problem by means of changes in the system of commercial health insurance for foreign nationals achieved through proposed amendments to the Residence of Foreign Nationals Act and the Public Health Insurance Act; in 2016, nevertheless, the Government decided to postpone the amendments indefinitely.

The Defender believes that to resolve the problem systematically, it would be necessary to include in public health insurance most foreigners with a long-term residence who have so far been excluded. The public health insurance is the only system capable of guaranteeing the required scope of insurance coverage for healthcare provided to foreigners as well as a certainty of problem-free reimbursement of health providers' care.

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

— self-employed persons;

— family members of citizens of the Czech Republic, family members of foreign nationals with permanent residence and foreign nationals who are economically active in the Czech Republic; and

— foreign nationals who have ceased to pursue gainful activities but receive sickness benefits or parental allowance.

The Defender and the Parliament

Chamber of Deputies

On 10 November 2016, the Chamber of Deputies discussed the 2015 Annual Report on the Activities of the Public Defender of Rights (parliamentary press No. 768).

The Deputies did not support the Government's draft amendment to the Public Defender of Rights Act (parliamentary press No. 379). They wanted to leave out the Defender's power to seek abolishment of a law by the Constitutional Court as well as the power to initiate public litigation in the area of discrimination. The Government subsequently withdrew the draft and the Minister for Human Rights submitted a draft (parliamentary press No. 1015) that would "only" give the Defender the power to monitor the exercise of rights of people with disabilities pursuant to the Convention on the Rights of Persons with Disabilities.

The Defender worked closely with the Chamber of Deputies, especially through its individual Committees.

Petition Committee and its Subcommittee for Human Rights

The Petition Committee discussed the Defender's 2015 Annual Report, the quarterly reports as well as the reports on individual cases where the Defender did not achieve remedy even after using all her statutory powers.

The Defender informed the Committee of her procedure concerning achievement of the purpose of housing benefits in case an apartment landlord does not render to the association of unit owners the advances for performances associated with the use of the apartment obtained from tenants who receive housing benefits.

Committee on Legal and Constitutional Affairs and its Subcommittee for Legislative Initiatives of the Public Defender of Rights and the European Court of Human Rights

The Defender participated in a meeting of the Committee and its Subcommittee, where the Deputies discussed the presented 2015 Annual Report and the individual quarterly reports.

The Defender partially supported an amendment to the Act on remedying the injustice caused to the citizens of the Czech Republic in connection with the loss of property left behind in the territory of Carpathian Ruthenia (parliamentary press No. 403) so that the Act remedy the present injustice consisting in the expiry of the claim for settlement even in case the entitled person (at that time usually a child of the original owners) died before the decision was made on the claim or prior to payment of the settlement amount.

Social Policy Committee

In discussing the amendment to the Civil Code (parliamentary press No. 642), the Defender pursued a solution to the consequences of overloading and slow decision-making of courts in proceedings concerning the placement/transfer of children to various school facilities.

Economic Committee

The Defender asked the Committee to consider the rights of owners of plots of land that contain airports or their parts, including runways, in drafting the amendment to the Civil Aviation Act (parliamentary press No. 747).

The Defender also approached the Committee in the matter of the "administrative termination of vehicles". She suggested to adopt or propose a legislative measure allowing mitigation of the consequences of the amendment to the Act on the conditions for operation of vehicles on roadways, or – in exceptional cases –additional re-registration of an administratively terminated vehicle.

The Senate

On 26 May 2016, the Senate discussed and took due note of the 2015 Annual Report on the activities of the Public Defender of Rights.

Committee on Health and Social Policy

The Defender informed the Committee of certain problems with the amendment to the Assistance in Material Need Act re-introducing the "work for your benefits" scheme of mandatory community service (parliamentary press No. 330). She informed the Senators of her objections raised already during the discussion on the draft in the Chamber of Deputies. She assured the Senators that she is not rejecting the possibility of re-introducing community service in principle, but considers it necessary to regulate its conditions to serve as an incentive and avoid impacting certain groups of people unfairly.

The Defender and the Government

The Public Defender of Rights advises the Government whenever a ministry fails to adopt adequate measures to remedy a failing or general maladministration. The Defender may also recommend that the Government adopt, amend or abolish a law or Government regulation or resolution. In 2016, the Defender notified the Government in three cases. The Defender regards her participation in commentary procedures as a simplified form of legislative recommendations provided to the Government.

The Defender's recommendations to the Government

New Act on the rights of persons accompanied by specially trained dogs

Some persons with disabilities require help of assistance or guide dogs. Nevertheless, they are still banned from entering certain premises or using certain services while accompanied by their trained dogs.

For this reason, the Defender recommended that the Government introduce a draft law to regulate certain rights of people with disabilities accompanied by specially trained dogs.

The law should primarily:

— define the premises accessible to persons accompanied by guide and assistance dogs (e.g. offices of public authorities, courts, banks and various cultural facilities); and

— stipulate the status and conditions for training of guide and assistance dogs.

The Government accepted the Defender's recommendation and tasked the Minister of Labour and Social Affairs with preparing and submitting the draft law to the Government by 31 December 2016.

Resolution of the Government No. 797 of 5 September 2016

File No. 23/2015/SZD of 11 April 2016

The Defender's notification to the Government

Compensation for delays in construction proceedings

The State is liable for damage caused by unlawful decisions or incorrect official procedure, including delays in proceedings or their excessive length in general.

The Defender notified the Government of the fact that the Ministry for Regional Development continually refuses to provide compensations for intangible damage even in cases of obvious delays in proceedings or their excessive length. Despite assurances of correct procedure, the Ministry in reality rejected all 250 applications for compensation filed between 1 January 2010 and 1 June 2015.

After the Government stopped discussing the Defender's notification, the Minister introduced a binding procedure for the Ministry's employees in resolving such claims.

The Defender accepted this remedial measure and did not insist on the Government further discussing her notification.

File No. 21/2014/SZD of 9 August 2016

Funding of removal of dangerous buildings

If a building or a structure presents a danger to its surroundings (e.g. threatens to collapse), the Construction Authority may order the owner to make the building secure or to demolish the building. If the owner fails to act, the Construction Authority is obliged to demolish the building in public interest and claim the costs from the owner. Most authorities do not perform this duty as the municipalities lack the necessary funding.

A working group composed of representatives of the Ministry for Regional Development, Ministry of the Interior, Ministry of Finance, Association of Regions and the Union of Towns and Municipalities agreed that the State's financial participation is necessary. However, despite repeated assurances, the Ministry for Regional Development has not submitted the promised funding programme.

The Defender thus recommended that the Government task the Minister for Regional Development to prepare a programme by 31 March 2017 containing rules for provision of funding from the State budget to cover the costs of Construction Authorities' decisions made under the Construction Code in the public interest in cases where the obliged person fails to comply with the decision.

6/2011/SZD of 2 December 2016

The Defender's proposal to the Government

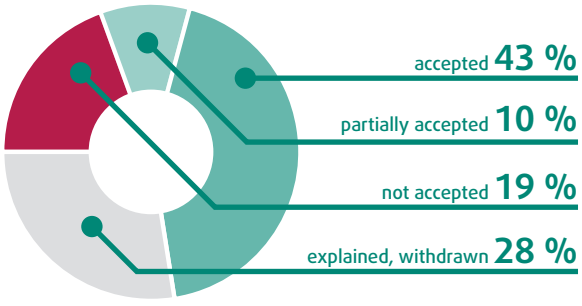
134 proposals were given by the Defender in 2016 in respect of **25** matters.

More than a half of all proposals were at least partially adopted; disagreements persisted in 20% of cases. The Defender was successful especially in those proposals she considered especially important (almost two thirds of which were fully accepted). The number of proposals made and their success rate in 2016 was comparable to the preceding years.

The proposals made by the Defender were successfully adopted in approximately half of the cases: 43% of proposals were accepted completely, a further 10% were accepted at least in part. Most proposals (26) concerned the amendment to the Construction Code; 20 of these proposals were accepted. By contrast, most rejected proposals (6) concerned the amendment to the Code of Civil Procedure and the related laws.

The overview below only contains the most important Defender's proposals concerning drafts that advanced through the inter-departmental commentary procedure.

Resolution of suggestions raised within commentary procedures in 2016



The Defender and the Constitutional Court

Proceedings on abolishing secondary legislation

The Public Defender of Rights may seek abolishment of a secondary legal regulation or its individual provisions by the Constitutional Court.

Equal minimum wage for everyone

The State has set a universally lower minimum wage to recipients of disability pension in comparison to other citizens. The Defender proposed that the Constitutional Court abolish Section 4 of the government regulation on minimum wage on account of variance with the prohibition of discrimination and inequality in the right to fair remuneration for work.

The disability pension serves to compensate people for the loss of income caused by decreased fitness to work. However, it cannot serve to even up the salary for work which the persons concerned performed up to the same standard and scope as non-recipients of the disability pension.

The Constitutional Court discontinued the proceedings after the Government unified the minimum wage starting from 2017. The new minimum wage for 40 working hours a week is now equally set to CZK 11,000 per month (CZK 66 per hour).

Defender's Opinion, File No. 16/2015/SZD of 19 February 2016

File No. Pl. ÚS 6/16

Proceedings on abolishing laws

With effect from 1 January 2013, the Public Defender of Rights may join proceedings on abolishing laws or their individual provisions as an intervening party. In 2016, the Defender joined one of twenty such proceedings.

Application for abolishment of Section 22 (3) of the State Citizenship Act

If the Ministry of the Interior rejects a citizenship application on the grounds that the applicant poses a threat for national security, the reasoning included in the decision only contains this statement. The opinion of the Police of the Czech Republic or the Intelligence Service containing classified information is not, however, included in the file. Under Section 26 of the State Citizenship Act, decisions on granting state citizenship are not subject to court review.

The Defender thus supported the proposal for abolishment of the contested provision. She noted that in itself, the contested provision is not at variance with the Constitution and neither is Section 26 of

the State Citizenship Act. However, these two provisions in conjunction lead to a violation of the applicant's right to fair trial within the meaning of Article 36 (1) and Article 38 (2) of the Charter of Fundamental Rights and Freedoms.

If the application for state citizenship is rejected on the grounds of a threat to national security, the applicant is unable to respond to the crucial piece of evidence against them within the administrative proceedings as the evidence is not contained in the file. He or she is equally unable to respond to it within court proceedings, because the law excludes court review in this matter.

The Defender also noted that the contested provision opens room for arbitrary conduct on the part of executive authorities, which is at variance with the fundamental principles of a democratic state governed by rule of law.

The Constitutional Court dismissed the application. Nevertheless, judge Vojtěch Šimíček and judge Kateřina Šimáčková reserved a dissenting opinion on both the ruling and reasoning of the judgement.

File No. 11/2016/SZD

File No. Pl. ÚS 5/16

Proceedings on constitutional complaints

The Constitutional Court may request assistance from other authorities if it requires underlying documents for its decision-making. The Defender thus provided the Court with her statements on two constitutional complaints:

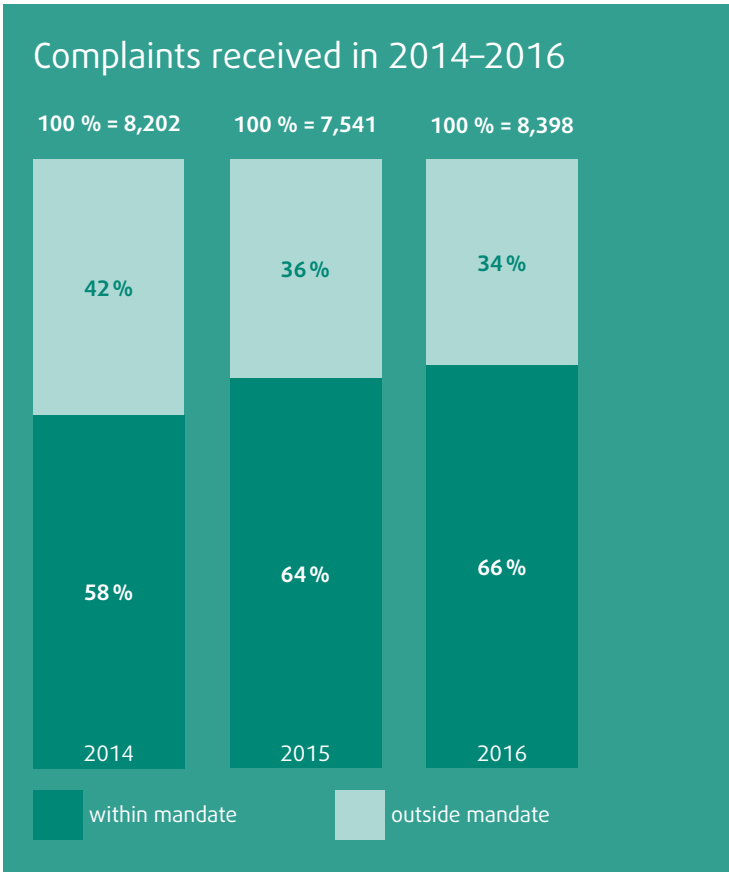
File No. I. ÚS 2993/15: market rules of Prague – violation of the principle of a general nature of legal regulations

File No. I. ÚS 630/16: deadline for filing application for international protection, proceedings on administrative expulsion, binding opinions concerning the lack of reasons preventing departure from the country

The Constitutional Court appointed the Defender's representative as the *guardian ad litem* of a child who was an intervening party in constitutional complaint proceedings. The Defender's representative submitted the opinion that a joint custody was not in the best interest of the particular child given the commencement of school attendance in two elementary schools. The representative thus **sought to have the constitutional complaint granted**. The Constitutional Court quashed the contested judgment.

File No. II. ÚS 169/16

Activities of the Public Defender of Rights in numbers



In 2016, we received 8,398 complaints, which is 857 more than in 2015. The number of complaints falling within our mandate increased by 2%. As this has been a long-term trend, it appears that complainants are becoming more aware of what specifically we can help them with. Therefore, they are not approaching us as often with complaints that lie outside our mandate.

996

A total of 996 people came to the Office of the Public Defender of Rights in Brno in person, of which 415 lodged their complaints orally for the record.

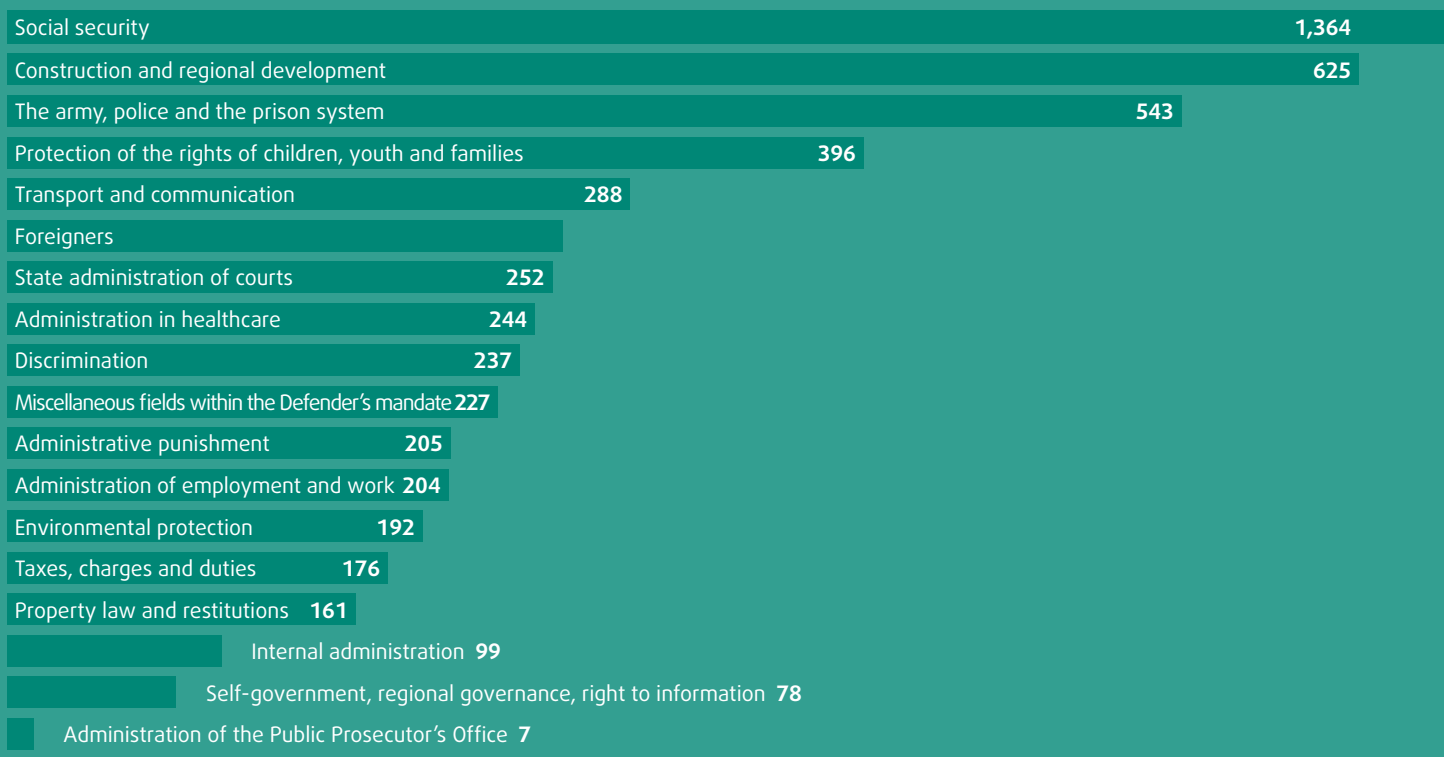
7,638

The information hotline available for people to check the progress of a complaint, explaining the scope of the Defender's mandate or helping people resolve their problems was used by 7,638 people last year, which is two hundred more than in 2015.

833

We opened 833 inquiries, of which 50 were inquiries on our own initiative.

Complaints received within the mandate by area



8,291 complaints handled in 2016 (including complaints from previous years that were closed in 2016).

671 reports released

418 failings found

16 penalties imposed

2 FAMILY, HEALTHCARE AND LABOUR

This year, we co-operated with the Regional Authorities to create rules for handling complaints concerning healthcare. We resolved 25% more complaints concerning children's rights. In one case, we represented a young schoolchild in proceedings before the Constitutional Court. We agreed with the Constitutional Court that continuation of joint custody was not in the child's best interest as the girl had to travel 300 kilometres every two weeks and attend two different elementary schools.

Defender's Report: File No. 17/2016/SZD; and judgment of the Constitutional Court: File No. II. ÚS 169/16 of 24 June 2016

We resolved

1,263 complaints;

of which

- **653** fell within and
- **610** outside the Defender's mandate.

We change the rules

How effective are the inspections of facilities for children requiring immediate assistance?

Inspections in facilities for children requiring immediate assistance are carried out by Labour Offices, which focus on complying with quality standards, as well as by the registering Regional Authorities. Last year, we have approached all Regional Authorities and Labour Offices to establish the real effectiveness of protection of the rights of children placed in the facilities. Inspection activities and supervision focus on different aspects of the functioning of facilities, but there is unnecessary overlap in certain areas. There is insufficient exchange of information which is especially problematic if inspection bodies (the Labour Office) cannot impose any penalties even if they find violations of quality standards. It would be in the interest of the children in facilities if more detailed information on the inspections and supervision were published in order to help other facilities avoid the same failings.

Defender's Report: File No. 2481/2016/VOP

What should the bodies for social and legal protection of children do when court proceedings take too long?

Prolonged legal proceedings in children's affairs are a problem we have repeatedly noted. We often encounter this problem in inquiring into the individual complaints against the procedure of the bodies for social and legal protection of children. It is certainly not true that the bodies for social and legal protection of children lack any tools to protect children's right to fair trial in situations where courts are deciding too long about their matters. Based on our recommendations, the body for social and legal protection of children issued guidelines regulating the procedure in case of delays in proceedings on children's affairs, including filing complaints against the delays or requesting a deadline for the execution of certain procedural acts.

Defender's Report and Opinion: File No. 1910/2014/VOP

Making mediation available to families in difficult financial situations

Mediation is a suitable tool to deal with family conflicts in a manner that is less stressful and faster than conventional court proceedings. We guide bodies for social and legal protection of children to make use of this tool where suitable and order the parents to meet with mediators. However, mediation is a paid service that many families cannot afford. Prague City Hall was inquiring about the expert opinions of several institutions in order to prepare guidelines for ordering and paying for mediation. We co-operated with it to adjust its draft guidelines so that it is now possible to fund the first 3-hour visit to a mediator directly from the budget reserved for social and legal protection of children.

Defender's Report and Opinion: File No. 6454/2013/VOP

A contract between a director of a school facility and a young adult is not a private-law contract

A young adult (a person over 18 years of age) living in a children's home, educational or a correctional institution may enter into a contract with the director of the facility to ensure care during a period when he or she is undergoing vocational training. The Supreme Court ruled in December 2015 that contracts executed between the director of a school facility and a young adult are of public-law nature. For directors this means that if they do not wish to enter into the contract, they must issue a negative administrative decision. We approached all facilities of institutional and protective education with questions as to their practice in concluding these contracts. Our inquiry and meetings with directors of school facilities revealed that there are many outstanding issues in this area that need to be resolved. For example, there is a lack of clarity concerning the legal regime of a student during the summer holiday if the student is to re-sit a final exam in September. There were also heated discussions on how to proceed if a student breaks the internal regulations, but there is no place where the person could be placed if the contract was terminated. We will work to make the founders of these school facilities (i.e. the Regional Authorities and the Ministry of Education, Youth and Sports) help the directors deal with the aforementioned problems.

Defender's Report: File No. 5157/2015/VOP

Judgment of the Supreme Court of the Czech Republic: File No. 33 Cdo 4180/2014 of 10 December 2015

The Ministry of Defence is authorised to investigate complaints against health facilities to which it granted a licence to operate

Complaints against healthcare are investigated by the authorities which have granted the health facility in question the licence to operate, typically the Regional Authorities. However, in the case of some health facilities, the law stipulates that the complaints are investigated by a specific ministry. For example, the Olomouc Military Hospital falls under the Ministry of Defence. Despite that, the Ministry was contesting its jurisdiction concerning the investigation of complaints against the sobering-up station operating at the Olomouc Military Hospital. By inquiring into this matter, we managed to change the Ministry's position and ensured it would investigate complaints against its health facility in accordance with the original intention of the law.

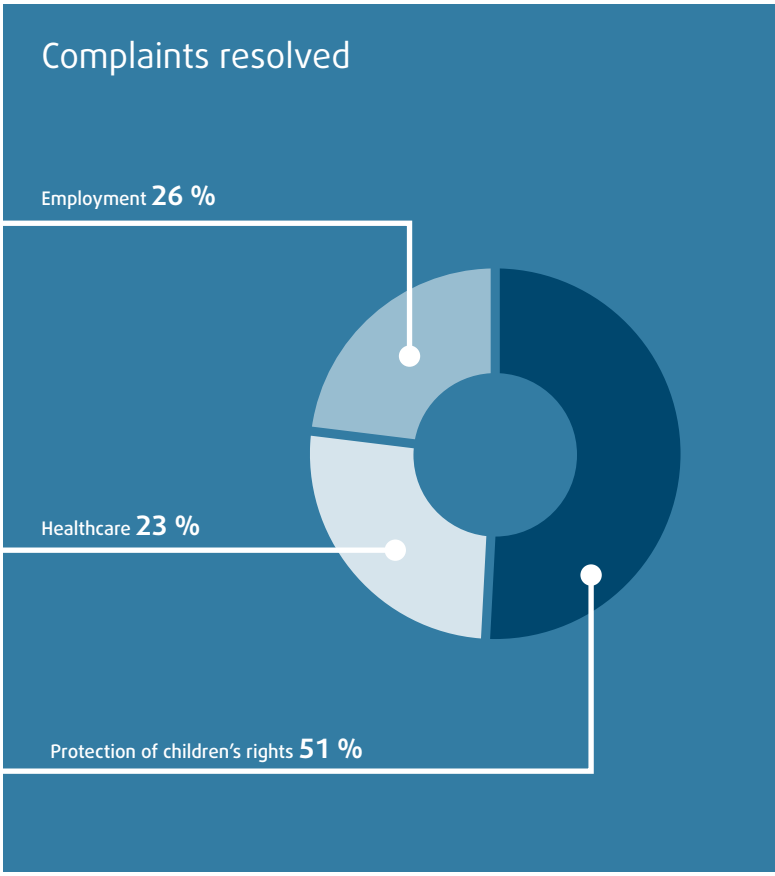
Defender's Report: File No. 529/2015/VOP

If a Labour Office does not approve re-training, it must issue a formal decision

We believe that Labour Offices should decide about applications for re-training within the regime of administrative proceedings. This means that if the Labour Office does not grant the application for re-training, it must issue a rejecting decision and justify it properly. Given that requests have been dealt with informally so far, we have seen an improvement in the applicants' situation as they may now lodge an appeal.

Defender's Report: File No. 5556/2013/VOP

We are here to help



A preliminary injunction cannot be automatically extended

We were approached by a father whose daughter was entrusted, based on a preliminary injunction, to the custody of a married couple with whom she had stayed before based on an agreement with the father. However, the father had in the meantime gained means to take care of her, visited her regularly, had her over for weekends and their relationship had improved. Expert organisations recommended that the married couple gradually prepare the girl for a return to her father. However, instead of doing this, the couple started preventing the father from visiting the child, arguing this was not in her interest. The body for the social and legal protection of children did not intervene and the court was merely automatically renewing the preliminary injunction. After we issued our report, a conference on the case was held and since the couple was still refusing to co-operate, the body for social and legal protection of children lodged a court action seeking to have the child returned into the custody of her father.

Defender's Report: File No. 7095/2014/VOP

Children's opinions do matter

We were approached by a 16-year-old girl. When she failed to get the support she needed from an officer of the body for social and legal protection of children (BSLPC), she herself requested to be placed outside of her family. However, her parents did not approve of her stay in a facility and took her back a few days later. Although the BSLPC was aware of this fact, it did not approach the court, not even after the girl suffered several physical breakdowns, psychosomatic complications, problems at school and after she repeatedly requested to be taken out of the family. Still, the BSLPC downplayed her difficulties and only communicated with her in the presence of her parents. For this reason, the girl was afraid to talk to the social worker. After we have released our report, the BSLPC changed the responsible social worker who communicated with the girl and adopted measures to prevent similar failings in the future.

Defender's Report and Opinion: File No. 616/2016/VOP

Administrative offence has been committed, even if the employer subsequently removes the shortcomings

We have dealt with a complaint against a District Labour Inspectorate whose inspections repeatedly revealed violations of labour regulations, but the Inspectorate only ordered the employer to remedy the shortcomings. It did not initiate administrative offence proceedings and imposed no penalties on the employer. However, the Inspectorate must initiate administrative offence proceedings each time it learns about facts that, upon preliminary legal evaluation, indicate that law was breached. The fact that the employer is implementing measures to remove the shortcomings is not relevant in this regard. Timely implementation of remedies may only be taken into account by the Inspectorate when determining the severity of the penalty.

Defender's Report and Opinion:
File No. 1147/2015/VOP

Can a complaint against a stay in psychiatric hospital be addressed by an expert in gynaecology and obstetrics?

We addressed the manner in which a Regional Authority resolved a complaint against the conditions and regime in a psychiatric hospital. We found that the Regional Authority was satisfied merely with the opinion of the hospital's director. It did not request to see the internal regulations governing the regime in the hospital. We have also found that a specialist in gynaecology and obstetrics was asked for an expert opinion, even though the complaint concerned psychiatry. This was the case despite the fact that an expert opinion is a crucial piece of evidence for the Regional Authority to conclusively address all the complainant's objections. In this case, however, the independent expert provided a short written statement confirming the director's statement corresponded to the medical records and that nothing indicated that unauthorised care had been provided. In the future, the Regional Authority will use all sources that could contribute to establishment of all facts of the case and will approach independent experts with relevant qualifications.

Defender's Report and Opinion:
File No. 524/2015/VOP

Should a health insurance company be represented by an attorney-at-law even in routine and simple matters?

When dealing with a complaint against a health insurance company, we found that the company had itself represented by an attorney-at-law even in formal, simple and routine operations associated with enforcement of arrears in health insurance premiums. These were activities that could easily have been carried out by the employees of the health insurance company (e.g. filing distraint [enforcement] applications). When enforcing arrears, the health insurance company acts in the role of a tax administrator and must proceed in accordance with the Tax Rules. Therefore, it should protect the rights of insured persons and choose such a manner of enforcing arrears that ensures the cost of enforcement is not obviously disproportional to the amount of the arrears. We recommended to the insurance company to handle tax enforcement itself to reduce the costs. If the company decides to enforce debts through a court distrainer, it should not use the services of attorneys-at-law for ordinary operations.

Defender's Report and Opinion:
File No. 635/2014/VOP

Let's talk together

Parents with limited legal capacity and child care

When inquiring into individual cases, we found that bodies for social and legal protection of children are not sufficiently co-operating with parents with limited legal capacity; they do not try to establish their possibilities for taking care of children or for ways to make them involved in the children's upbringing with suitable support e.g. from NGOs. We organised a working meeting with experts and representatives of NGOs. This will result in guidelines for public servants as well as social services providers, NGOs and public curators to help them work with parents with limited legal capacity in various situations and avoid certain errors.

What is the correct way of resolving complaints against healthcare?

People often approach us because they are not satisfied with the manner the Regional Authorities resolved their complaints against healthcare. In September, we organised a round table with all Regional Authorities and representatives of the Ministry of Justice and Ministry of Defence, which also deal with complaints against healthcare in certain cases. Together, we formulated a number of principles that will ensure that public authorities resolve complaints both in accordance with the law and the principles of good governance. The most important principle is for the authority to communicate with the complainant regularly and to always appoint an independent expert if the law so requires. This expert should be a specialist in the relevant area of healthcare. It is also important for the complainant to be informed that he or she may attend the meetings of the expert commission, and that the authority addresses all the complainant's objections is an understandable manner.

Intense co-operation with the Ministry of Health

In 2016, we co-operated intensely with the Ministry of Health. We discussed the recommendations included in the previous summary reports (such as the payment of premiums in case of part-time employees or payment of premiums in case of persons under State protective treatment) as well as

a number of new issues that appeared throughout the year:

— We want to ensure that it is explicitly stated whether or not the covered fertility treatments (four in total) also include those attempts where the embryo is not implanted in the body, which is the current practice of health insurance companies. Our interpretation, which is also supported by the Ministry of Health, allows to conclude the opposite, however, i.e. that these unsuccessful attempts should not be included in the number of covered treatments.

— We also strive to achieve a simplification of the process of lending medical devices (such as adjustable beds) when a patient is released from hospital to home care; we also want public health insurance to cover other forms of mandatory vaccination aside from hexavaccine (e.g. if parents request a looser vaccination schedule).

How to effectively investigate mobbing?

Investigating and proving mobbing and unequal treatment at work is a very sensitive and difficult issue. For this reason, we give advice to District Labour Inspectorates during our regular meetings. We discussed our recommendations based on repeated findings also with the State Labour Inspectorate in order for it to include them in its guidelines to unify the procedure of the individual Inspectorates. Sufficient finding of the facts of the case is crucial for any investigation of mobbing. For this reason, the inspectors should also ask former employees for testimony or work with audio recordings. The inspection reports should include detailed description of the found unequal treatment to ensure the conclusions are convincing and reviewable.

Is removal from the Job Seekers Register always an appropriate measure?

We often encounter cases where a job seeker is complying with his or her duties, but exceptionally fails to attend a meeting arranged at the Labour Office. Such a job seeker is then removed from the Job Seekers Register just because he or she wrote down an incorrect appointment or arrived late due to an emergency (e.g. giving a testimony to the police, unannounced visit by the body for social and legal protection of children at home, court hearing, etc.). We believe that the consequences of being stricken from the register are disproportionally harsh. We discussed this issue with the Ministry of Labour and Social Affairs, which promised to instruct the Labour Offices to evaluate such cases on an ad hoc basis. The Offices should always inquire about the reasons why the job seeker failed to show up. In case such a failing is an isolated or first such incident, the Labour Office should not automatically strike the job seeker from the Register.

3 SOCIAL SECURITY

In 2016, we focused heavily on issues associated with the payment of retirement pensions. We published our collected materials in "Důchody II" (Pensions II) where we summarised our findings from the past 8 years. We also met with the assessment physicians of the Czech Social Security Administration and the Ministry of Labour and Social Affairs to arrange the terms of our future co-operation. We noted an increased number of complaints concerning the provision of assistance in material need.

Důchody II – Collected materials

We dealt with

1,354 complaints.

We organised

- **3** round tables;
- **4** worskhops;
- **4** seminars for the professional public.

A total of

306 public servants

attended these events.

We change the rules

Faster drawing of parental allowance

Last year, we recommended to amend the law to enable all parents to draw parental allowance faster. So far, this option was not available to self-employed people who were not participating in the voluntary sickness insurance (but were participating in the mandatory pension and tax schemes). The Ministry of Labour and Social Affairs agreed with us and incorporated the change in the draft amendment to the State Social Support Act.

Second parent's consent to processing of personal data is no longer necessary for filing applications for parental allowance

We succeeded also with another of our last year's recommendations. We drew attention to the fact that it is sometimes difficult to obtain consent to processing the personal data from a separated parent who does not have custody. The consent was necessary for filing applications for parental allowance. The Ministry of Labour and Social Affairs agreed with us that the consent was not necessary as the Labour Office has a statutory authorisation to obtain the information. Also for this reason, our recommendation was incorporated in the draft amendment to the State Social Support Act.

Contribution towards dietary foods for pregnant and nursing women

Pregnant and nursing women who are in difficult financial situation (qualify as persons in material need) are entitled under the law to an increase in assistance corresponding to expenses for dietary foods. However, we found that Labour Offices only granted the contribution to those pregnant and nursing women who had health problems. We asked the Ministry of Health and the Czech Gastroenterological Society for an opinion. Based on their responses, we recommended that the Ministry of Labour and Social Affairs change the guidelines, instructing the Labour Offices to provide the contribution towards dietary foods to all women who demonstrate the need of such increased spending by means of a doctor's confirmation. The Ministry accepted our recommendation.

When the tenant pays, but the owner keeps the money for himself

In co-operation with the Ministry of Labour and Social Affairs, we try to address situations where landlords or flat owners receive rent from their tenants, but do not pay advances on services or contributions to the repair fund. This results in debts

on the part of the association of unit owners in the relevant building. We came to the conclusion that these problems could be solved if the Labour Office appointed the association of unit owners as the special recipient of benefits, i.e. housing allowance. We asked the ministry to so instruct the Labour Offices to prevent future unethical conduct on the part of some flat owners. Since talks with the Ministry are still ongoing, we also supported the draft amendment that would explicitly incorporate this possibility in the law.

Retroactive payment of pensions

A pension (or its supplement) may be paid retroactively for a period of five years. Even outside this time limit, the pension may be paid retroactively or increased in case of maladministration on the part of a social security body. Unconvincing or incomplete disability assessment may also be considered maladministration. We found that social security bodies lack a uniform procedure in evaluating whether an error resulted from maladministration. We contacted the Czech Social Security Administration and recommended that it issue guidelines to unify the procedure of social security bodies, thus ensuring equal and uniform approach to people. The Czech Social Security Administration accepted our recommendation.

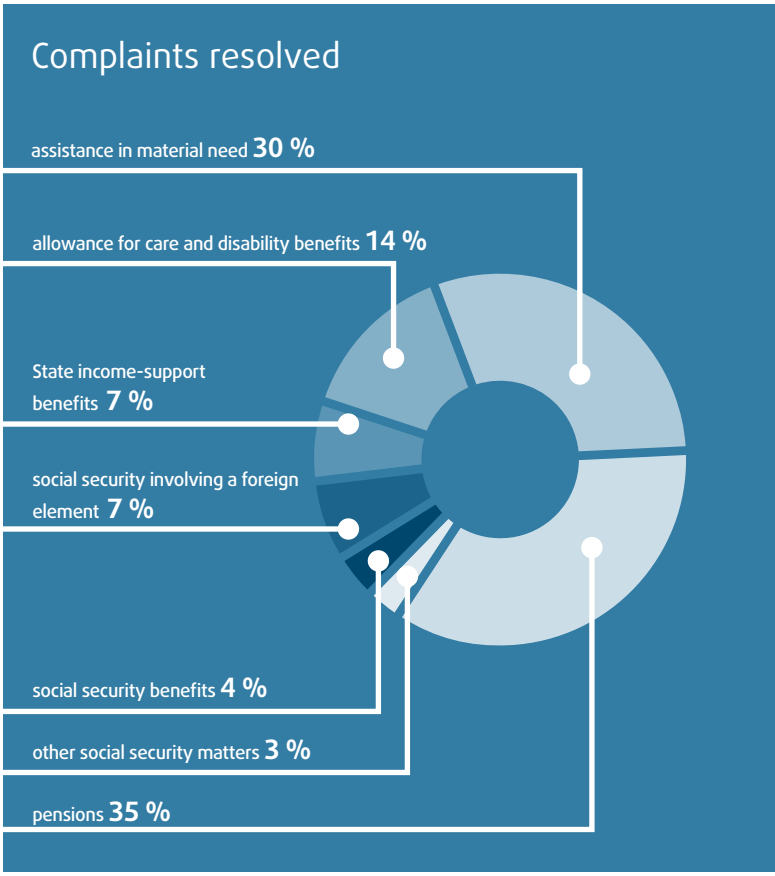
Records of meetings preceding commencement of proceedings can help if there is a doubt as to whether a client even came to the Office and what was discussed with the officer

In many cases, we have to deal with contradictory testimonies of the complainants (Labour Office clients) and the officers. These are typically situations where a person goes to the Labour Office, only speaks with an employee behind the counter, but does not file any application. Our objective was to ensure the employee created a brief record in the electronic system including information as to who came to the Office, why and what recommendation or advice was provided. These records could help verify whether the client came to the Office and clarify what was discussed with the officer and what advice was given by the officer. We requested that the Ministry of Labour and Social Affairs issue instructions to the Labour Offices to keep such records, both in the area of employment and non-insurance (discretionary) social benefits. As of today, we were successful as regards cases when clients come to the Office to discuss non-insurance social benefits.

"Hybrid post" will be regulated by law

Labour Offices use a service offered by Czech Post (state-owned company) called "hybrid post" to send certain kinds of documents. Hybrid post means that the Labour Office sends the documents to the post office in an electronic form, the post office prints them out, puts them in an envelope and delivers them to recipient. This means the post has to process personal data of the Labour Office's clients without authorisation. We have argued in the past that using hybrid post for sending notifications concerning the (non-) granting of social benefits and other documents is at variance with the law. We wanted to either change the practice or regulate the use of hybrid post by law. We contacted the Minister of Labour and Social Affairs and the Minister of the Interior and asked them to deal with the problem. The Minister of the Interior subsequently informed us that the use of hybrid post will be included in the Code of Administrative Procedure as one of the possible ways of delivering documents. The relevant draft legislation was approved by the Government in October 2016.

We are here to help



Hospitalisation is a serious reason preventing people from receiving post

A complainant applied for a subsistence support and contribution towards housing. The Labour Office did not grant the subsistence support, but granted the contribution towards housing. It subsequently requested that the complainant come to the Office and prove that she also met the conditions for receiving the contribution towards housing in the following time periods. However, the complainant was unable to receive any of the documents because she was at a hospital. The Office argued the complainant had ignored its notifications and failed to inform the Office she was at a hospital, even after she was released. For this reason, it withdrew the contribution. We confirmed that the complainant had not informed the Office as she was supposed to. However, she additionally provided proof that she was at a hospital and was unable to receive post. We concluded that in this case, the Labour Office should have considered such notifications as undelivered. The complainant did eventually receive the contribution towards housing.

Defender's Report: File No. 470/2016/VOP

Assistance to a woman taking care of her great-granddaughters

We were contacted by a complainant who had been entrusted with the care of her two minor great-granddaughters by virtue of a preliminary injunction issued by court on the basis of a body for social and legal protection of children's proposal. During the time she was taking care for the children on the basis of the preliminary injunction, she was receiving child and parental allowances. Later, it turned out the body for social and legal protection of children had not been authorised to file the application for preliminary injunction on behalf of the woman in this matter and the appellate court thus rejected the application. As a result, the complainant was required to return the received social benefits in the amount of CZK 31,600, despite the fact she was actually taking care of the children. She would have been entitled to the benefits had she received correct advice from the body for social and legal protection of children, i.e. to file the application for the preliminary injunction at the court herself. After we found the error on the part of the body for social and legal protection of children, we advised the complainant to apply for a compensation at the Ministry of Labour and

Social Affairs. At first, the Ministry refused to provide any compensation since the complainant had not yet returned the claimed amount and had thus not incurred any damage. We noted that even the incurrence of a debt constituted damage pursuant to the Civil Code. After that, the Ministry waived its right to the claimed benefits in the amount of CZK 31,600.

Defender's Report: File No. 5094/2015/VOP

Defender's Report: File No. 5425/2016/VOP

Pay attention to the date when disability arose

We dealt with low disability pension, set to its minimum amount. The date when disability (in the third degree) had arose was set to 2012, i.e. the date of issuance of a General Practitioner's medical report. The complainant suffered from the disease already during his college studies, received out-patient treatment several times and spent time at a hospital (since 2009). The assessment doctor, however, did not have a report of the previous complainant's hospitalisations nor the medical records concerning his out-patient treatment. In the end, the date when the disability arose was shifted back to October 2009 (partial disability); second degree disability was set as of January 2010 and third degree disability from February 2012. The authority did eventually retroactively pay the pension to the complainant.

Defender's Report: File No. 3028/2015/VOP

How to establish the date of conception precisely?

We were approached by a complainant who found out, after switching jobs, that she was pregnant and had to go on sickness leave due to high-risk pregnancy. The complainant was working for two employers, sequentially. For the first employer, she worked 178 days and for the second employer she worked 47 days – the employer terminated her employment during the trial period when she was already pregnant. The doctor established, based on the date of her last period, the date of conception at sometime during the first days in her new job. The complainant was thus not entitled to financial assistance in maternity as the protection period in her case was only 47 days (i.e. the number of days she spent working her second job). In order for her to be entitled to financial assistance in maternity on the basis of the sum of the time spent working both jobs, she would have had to become pregnant already during her first job. We are aware that it is not possible to precisely determine the conception date, but medical experts believe that an ultrasound scan carried out during the 12th week of pregnancy can best determine the date. If the examination had found that the woman became pregnant earlier (during her first job) than the first doctor determined, it would have completely changed the assessment of her entitlement to financial assistance in maternity. The complainant supplied the ultrasound examination and it confirmed she had conceived earlier and the District Social Security Administration granted her the financial assistance.

Defender's Report: File No. 314/2015/VOP

If social inquiry has already been carried out, the allowance for care proceedings cannot be discontinued on account of the applicant's death

We were asked for help by a wife of an applicant for the allowance for care. Her husband had applied for the allowance for care and social inquiry had already been carried out. However, the proceedings were subsequently discontinued by the České Budějovice Labour Office as the applicant had previously received sickness benefits from Austria, and transferred the case to the Příbram Labour Office, which is the Office competent to deal with benefits with cross-border elements. Unfortunately, the complainant died in the meantime and the Labour Office discontinued the proceedings. The wife was trying in vain to receive the allowance because she entered the proceedings as the caring person instead of her late husband. We concluded there were no reasons to discontinue the proceedings as social inquiry had already been carried out (this is one of the necessary prerequisites for granting the allowance even after the applicant's death) and the Czech Republic's jurisdiction in the case was established. The Labour Office cancelled its decision to discontinue the proceedings, re-opened them and eventually paid the allowance to the wife.

Defender's Report: File No. 315/2016/VOP

Let's talk together

Last year, we started holding regional seminars for social workers of the competent Municipal Authorities who are tasked with social work with persons in material need or people threatened by material need. The aim of the seminars was to teach the social workers to be able to provide their clients with the best legal advice in difficult social situations, especially as concerns dealing with applications for non-insurance social benefits. Seminars were held in the South Moravian, Olomouc, Zlín and Vysočina Regions.

Workshops

In the same regions, we also organised workshops for the employees of contact points of the Labour Office of the Czech Republic. The workshops dealt with the issues of extraordinary immediate assistance and administrative discretion in provision of assistance in material need. Case studies of the Defender and the administrative courts were used to train the employees of the contact points to provide convincing reasoning in decisions to grant or not to grant benefits in cases where there is no statutory entitlement to the benefit and the benefit is thus subject to administrative discretion.

Round tables

For the first time, we organised a round table for employees of the Ministry of Labour and Social Affairs who deal with appeals against the decisions of the Labour Office in cases of non-insurance social benefits. Aside from the aforementioned problems, we requested a greater use of the option to change the decision in appellate proceedings concerning discretionary benefits. Repeated cancellations of the Labour Office's decisions and referring the case for new proceedings creates the risk of disproportional delays in proceedings; social affairs decisions should be issued as fast as possible.

As in previous years, we organised a round table for the representatives of the regional branches of the Labour Office. We used specific examples from the practice of the Public Defender of Rights as well as the administrative courts to illustrate the principles of administrative proceedings and its selected procedures (filing, service, decision-making). We stressed the principle of not burdening the parties to the proceedings; this had been a problem we had repeatedly criticised the Labour Office for in numerous cases.

Collected materials

During the final months of the year, we focused heavily on issues related to pension insurance. We published the collected opinions of the Public Defender of Rights titled Důchody II in which we summarised the Defender's opinions and the evolution of legal regulations between 2008 and 2016, also from the point of view of the complainants. We organised a round table for the assessment physicians of the Czech Social Security Administration and the Ministry of Labour and Social Affairs. We finished by stressing the need to convincingly justify the assessments' conclusions in order to make them understandable to the applicants as well as the public authorities who lack medical qualifications, but are tasked with reviewing the conclusions of the assessment physicians (i.e. the appellate bodies, administrative courts and the Public Defender of Rights).

Důchody II, collected materials:
bit.ly/sbornik_duchody

Other activities

We informed the professional public of the Defender's findings not only during the events we organised ourselves. At the invitation of the Ministry of Labour and Social Affairs, we actively participated in the meeting of the Department of Appeals and Administrative Issues concerning non-insurance social benefits and the round table on the effectiveness of the State Social Support Benefits.

We also discussed social security during educational activities with university students. As part of the "Social Rights Clinic" selective course taught at the Faculty of Law of the Palacký University Olomouc, we devoted one seminar to the issues associated with benefits for people with disabilities.

4 PUBLIC POLICY AND LOCAL GOVERNMENT

In the last year, we addressed 50% more complaints concerning free access to information and 25% more complaints in the area of transportation. New complaints also appeared in the area of civil service and there was a slight increase in the area of service (employment) relationships. On our own initiative, we inquired into the procedure of the Police of the Czech Republic during the visit of the Chinese president in Prague and during a carnival in February 2016. We organised the first ever symposium on property law.

We dealt with

1,750 complaints,

of which

- **1,005** fell within and
- **745** outside the Defender's mandate.

We change the rules

Delays in proceedings on State citizenship

As in last year, we found that even though the law stipulates the Ministry of the Interior must decide on a citizenship application within 180 days, proceedings often took in excess of one year. One of the reasons was that the Ministry requested provision of documents that the applicants are not required to provide under the law (confirmation from the health insurance company, overview of social benefits and assistance in material need).

Economy is one of the principles of public administration; this means that if an authority can obtain a piece of information on its own from another authority, it should do so to avoid burdening the citizens. Moreover, in some cases the Ministry was requesting information completely unnecessarily. This was the case of an applicant who was a medical doctor with a salary of nearly CZK 70,000; regardless, the Ministry requested an overview of social benefits and assistance in material need, even though it was clear the applicant was not receiving these benefits.

The Ministry hired new personnel for the department responsible for dealing with citizenship applications and changed its practice in that it requests the necessary information from health insurance companies itself, if needed, and no longer requires an overview of benefits from the applicants, instead relying on the confirmation of income that is a mandatory prerequisite of the application.

Defender's Report and Opinion: File No. 5794/2015/VOP

Compensation for damage caused by a failing of the competent officer

We were approached by a complainant to whom the Ministry of the Interior denied a compensation for intangible damage under the State Liability for Damage Act. He incurred damage in the following case. For a number of years, proceedings were ongoing concerning the payment of a retirement contribution. This contribution was eventually assessed in June 2015 in the amount of CZK 227,952. However, this amount was subject to an income tax assessed at a special rate of 15%, totalling CZK 34,193, based on the amendment of the Income Taxes Act, which had removed the tax exemption for the retirement contribution from the Act as of 1 January 2011. We have found unlawful decisions of competent officers which were cancelled by the Municipal Court in Prague, the arising of a damage in the amount of CZK 34,193 and a causal link between the two. If the complainant's claim for retirement contribution

had been correctly resolved already in 2010, he would have received it in the full amount and would not have been required to pay any tax. However, we agreed with the Ministry that the State Liability for Liability for Damage Act was not applicable in the case. The Ministry should have forwarded the complainant's application to the competent officer for decision under the Service Relationship Act with potential granting of compensation. However, the Ministry agrees that applications for compensation for intangible damage should be resolved by a competent officer within proceedings in the matters of the service relationship; however, questions remain as to who and on what basis has the power to actually grant the compensation.

Defender's Report: File No. 2954/2016/VOP

Municipality as the obliged entity under the Free Access to Information Act

The Municipalities Act stipulates the possibility of any citizen to request information related to the municipality's operations. However, if the municipality fails to provide the information, the Municipalities Act provides no rules for further procedure. It is therefore necessary in these cases to use the Free Access to Information Act which does contain rules for such situations. The unsuccessful applicant may appeal to the Regional Authority by means of a complaint against non-provision of information and the Regional Authority is obliged to deal with the complaint. We approached the Ministry of the Interior in a situation where the Regional Authority refused to deal with such complaint. The Ministry accepted our interpretation and ensured a remedy. The conclusions were also reflected in the Ministry's guidelines.

Defender's Report and Opinion: File No. 3208/2015/VOP

What kind of personal data can appear on an official notice board?

If someone asks for information concerning third parties, the relevant authority (or anyone obliged to provide the information) must ask the persons concerned for consent. In some cases, this could concern dozens of persons and the question as well as the potential decision to refuse the information was delivered by means of publication on the official notice board. This meant that personal details of the persons concerned as well as the applicants for information were made public, including e.g. dates of birth. We asked the Ministry of the Interior to adjust the guidelines so as to ensure the notice on the board would only contain announcement of the possibility to obtain the document (i.e. the request for a statement or a decision). The notice should only identify the applicant and the persons concerned as necessary for these persons to understand the document is meant for them. Therefore, identification by name and surname, together with a description of the subject of the application (e.g. a quotation of a part of the application where the applicant specifies the requested information) would be sufficient. Any broader identification of natural persons in the published notice must be justifiable in terms of personal data protection.

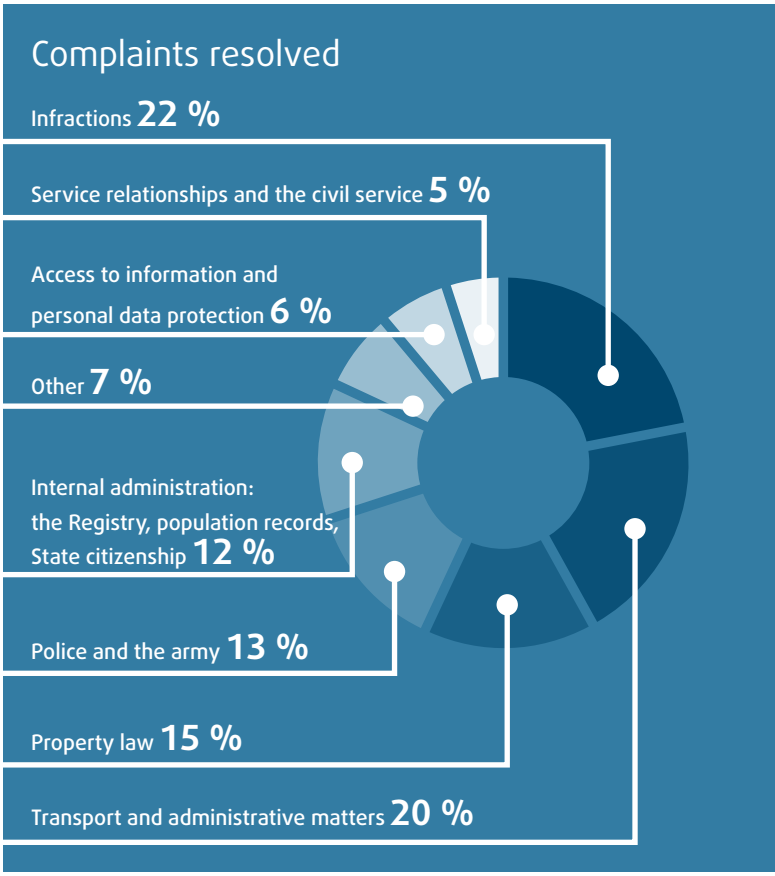
Defender's Report: File No. 1490/2016/VOP

Is the database of distance travelled reliable?

We found that if a technician makes an error when performing and MOT within State technical inspection of motor vehicles and incorrectly states the distance travelled in the record, the technician can only correct the error in a supplementary record because the web application at www.kontrolatachometru.cz does not allow corrections. This means that the data in the database run by the Ministry of Transport are not always necessarily correct. At our request, the Minister of Transport ordered a modification of the database in order to allow corrections in the electronic system.

Defender's Report: File No. 5809/2015/VOP

We are here to help



Not all pranks are funny

At the beginning of 2016, a private radio station launched a contest for students of primary and secondary schools to record "pranks", i.e. videos depicting teachers in unexpected embarrassing situations arranged by the students (in some of the "pranks", the students even faked serious injury). The class submitting the winning prank was eligible to win a trip. We asked the Council for Radio and Television Broadcasting to deal with the case. The Council first argued it was powerless in the case as it cannot regulate YouTube, where the videos were being posted. However, we believed the Council could address the problematic nature of the contest announced by the radio station. The Council finally agreed with us and assessed the contest, concluding that law had indeed been violated. An invitation to record pranks with no further instruction (such as information that the goal was not to humiliate teachers) could have disrupted the mental and moral development of children and the youth. The Council ordered the operator of the radio station to ensure remedy and promised to monitor the situation in this area. The Defender believes that radio operators must approach communication with children and the youth responsibly and with regard to their greater suggestibility.

Defender's Report: File No. 2492/2016/VOP

Applications for a change of surname are not always in good faith

We were approached by complainants who were dissatisfied with the fact an authority allowed a man sentenced to 16 years in prison for the death of their daughter to adopt her surname. They considered this to be an infringement of the individual rights of them as well as their late daughter. Matters of personal status (including changes in the surname) are only subject to review proceedings (potentially resulting in a change of an effective decision) if it is demonstrated the applicant did not act in good faith. The man in question said in his application that

the woman was his fiancée and that was the reason he requested the change. However, he omitted the circumstances of her death and the authority did not inquire into them. This fact led us to conclude the man did not act in good faith when he submitted the application for a change of his surname; therefore, it was possible for the Regional Authority to initiate review proceedings and cancel the decision.

Defender's Report: File No. 5512/2015/VOP

Proving that a person is alive

Czech pensioners have to prove they are alive if they are to receive pensions from abroad. As this is not an ordinary and routine matter, the authorities should carefully study the submitted documents and learn of all the possible ways in which a person can prove he or she is alive. In case of this particular complainant, an officer stamped a submitted foreign document proving that the complainant's signature was genuine, even though he did not sign the document; therefore, it certified something that did not happen in fact. The complainant argued that he did not ask for an authentication of his signature and should therefore not be required to pay an administrative fee.

A person can prove he or she is alive in several ways. The person can ask a notary to issue a certificate that the applicant is alive. He or she can also request extract of his or her personal data under the Register of Population Act. Alternatively, the person can write a letter in which he or she indicates the name, surname, date of birth, permanent address and other relevant facts and have the signature on this letter officially authenticated. If the person has a multilingual foreign form that contains a Czech version, the contents of the form are decisive. If it is a certificate one can fill in on his or her own, the person can submit it to the certifying body, which will not make any changes in the form and only confirm the authenticity of the signature. Depending on the contents of the form, the person can ask the relevant authority to which he or she proves his or her identity to fill in the required boxes in the form.

Defender's Report and Opinion: File No. 4468/2015/VOP

Should persons always be taken to a police station?

We dealt with the procedure of the Police of the Czech Republic during the incidents transpiring during the visit of the Chinese president in Prague in February 2016. We found failings in the case where the police transported to a police station a young man who was himself attacked by belligerent supporters of the Chinese president. We believe the police failed when they did not take action against the supporters, establish their identities and take them to a police station. We found similar failings in police action at the Evropská street where two activists chained themselves to lampposts and were replacing Chinese flags with Tibetan flags. The others were watching and some were also chained to the lampposts. The police marked an area they needed to remove the men from the lampposts and ordered others to leave this area. Those who failed to do so were taken to a police station. We understand that those detained were suspected of committing an administrative offence consisting in their failure to leave the designated area. However, as they were detained outside this area, we had doubts as to whether they could have continued committing unlawful acts consisting in not leaving the designated area. Taking these persons to the police station, from which they were promptly released, was thus unnecessary.

In assessing some of the police actions, we had to rely on recordings made by the participants in the incidents or random passers-by and uploaded online. We have thus recommended that the Police of the Czech Republic make video recordings of similar interventions themselves as such recordings enable better evaluation of their procedure as well as better identification of other persons.

Defender's Report: File No. 881/2016/VOP

Defender's Report and Opinion: File No. 2455/2016/VOP

Let's talk together

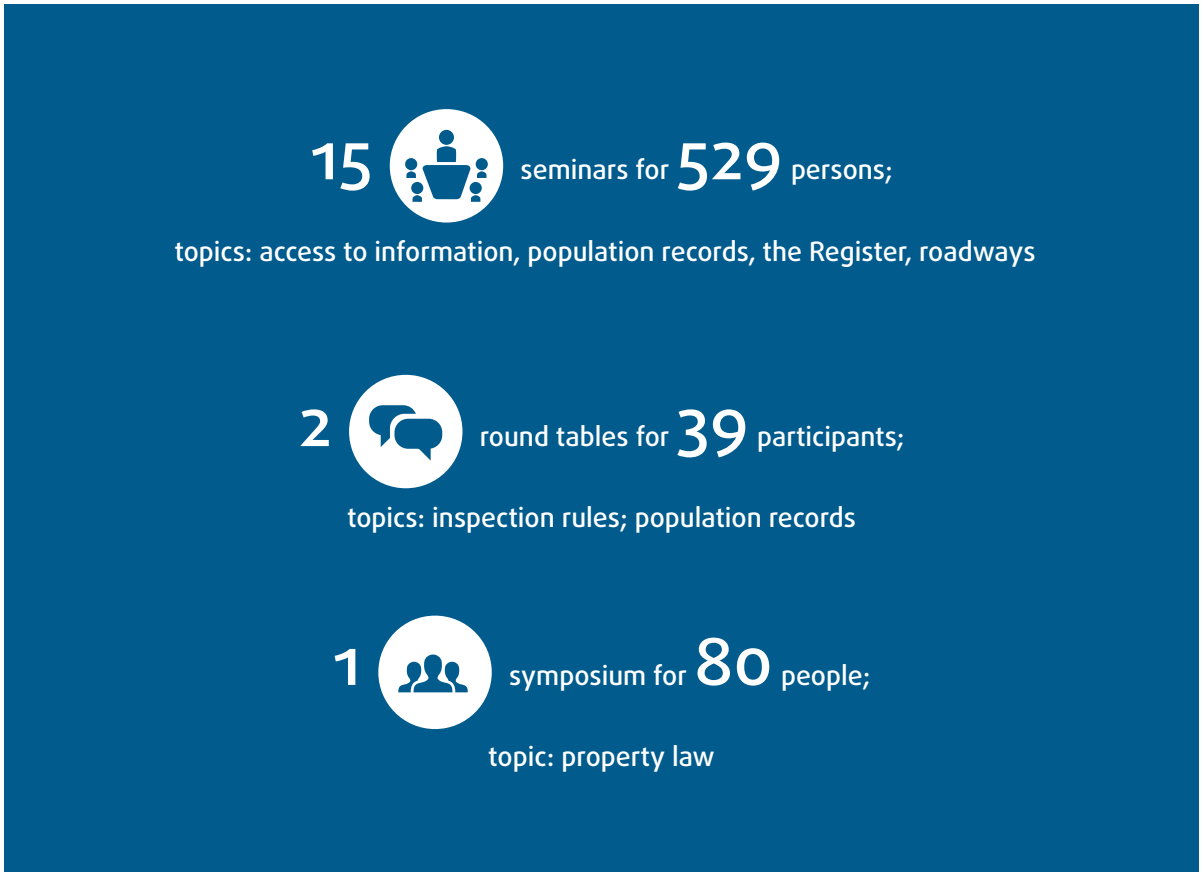
We met for the first time to discuss property law and the Land Registry

We organised our first symposium on property law. We discussed with employees of Land Registry Offices, academic workers and judges the historical aspects of possession, the openness of the Land Register, personal data protection or determining property boundaries. The matter of public accessibility of the Land Register in relation to the personal data protection was the most controversial topic. A representative of the Office for Personal Data Protection, inter alia, stated that the Office changed its opinion as regards the provision of information to property owners on who requested information from the register of ownership in the Czech Republic, the Collection of Instruments or information concerning the prices of real estate. Until that time, the Office had believed that the owner could only be informed about the category of the data recipient (e.g. whether it was a governmental body, a prosecuting body or a court), not about the specific identity of the recipient.

Two years of effect of the Inspection Rules

We met with representatives of control, supervision and inspection bodies to share experience and good practice in inspection activities. The procedure of all bodies active in this area should be uniform, which is a difficult goal to achieve given the diverse nature of controls and inspections. On the other hand, the diversity of inspection bodies allows to find inspiration and look for cases of good practice. At the symposium, we focused on issues where our cases revealed inconsistent practice, e.g. receiving proposals for an inspection, the actions to be made prior to the inspection, obtaining underlying materials for inspection, preparing inspection records including inspection findings, or imposing measures to remedy the identified deficiencies and their punishment. Our findings and recommendations are summarised in the collected documents titled "Kontrolní orgány" *(Regulatory Bodies)*.

Kontrolní orgány, collected materials: bit.ly/kontrol_org



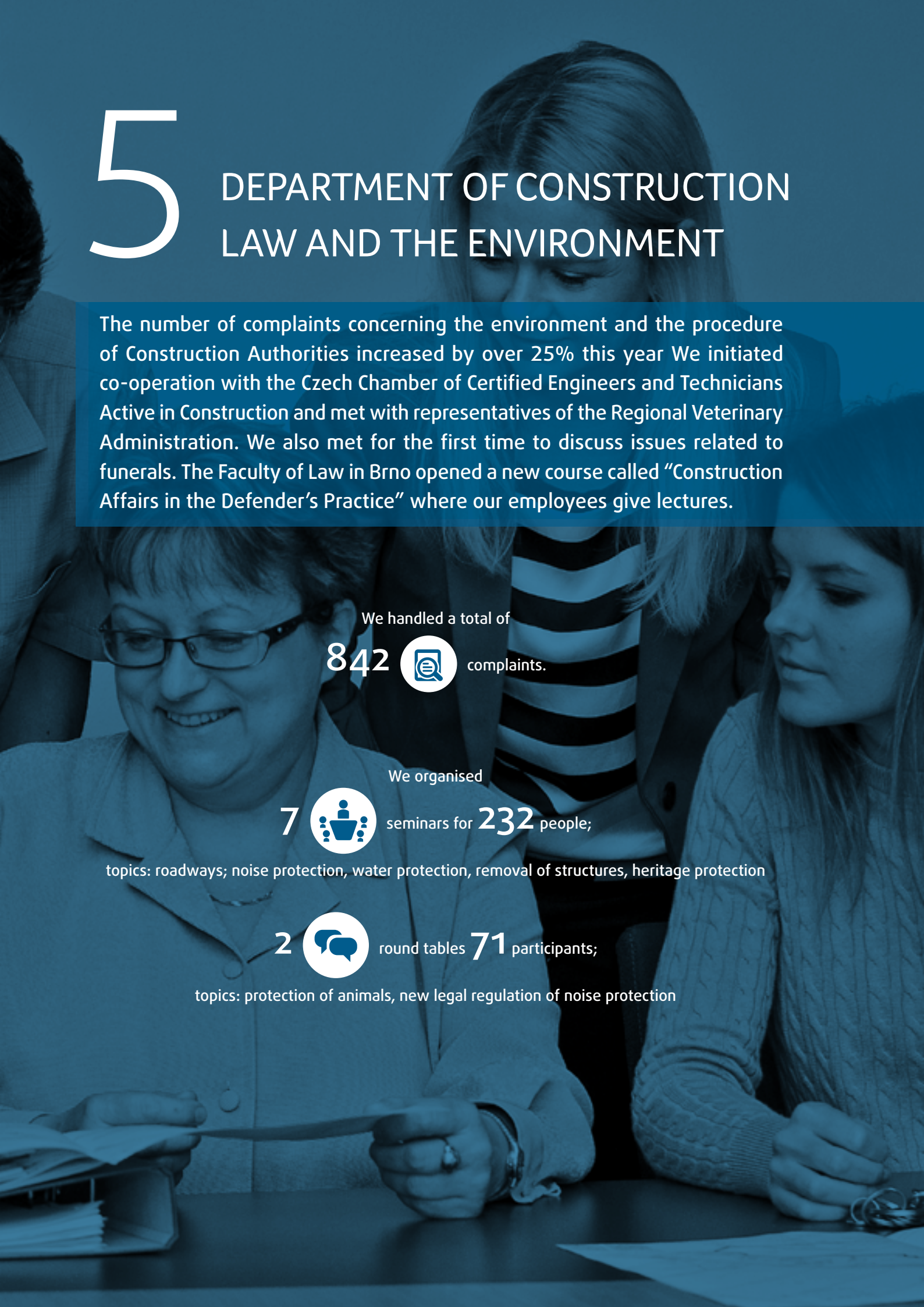
Can we rely on the Population Records' information system?

The Population Registry ' information system operated by the Ministry of the Interior contains information on Czech citizens living in the Czech Republic. The system is used e.g. by the Land Registry Offices, Tax Authorities, the Register of Vehicles and Driving Licences, distrainers [enforcers] and notaries. However, we found that correct and complete data are not always available in the system. This is caused by the fact that public authorities often record/update the data late and that the system is not technically capable of complying with the changes brought about by legislative amendments. This increases the number of incomplete entries, e.g. concerning the place where registered partnership (civil union) was entered into, data on legal representatives other than the parents, court decisions pronouncing a person missing or dead, etc.

Additional problems are brought about also by late registration of persons who newly acquired Czech citizenship, which can affect the issuance of identity cards and passports. We thus organised a round table on this topic. We agreed that it was vital for the officers who enter data into the system to do so diligently, accurately and quickly. If they have doubts as to the correctness of a certain piece of information, they are to immediately contact the relevant municipality with extended competence in whose district the data subject lives and mark the data in the system as incorrect. The Municipal Authority should subsequently verify the correctness of the data. The Ministry of the Interior already issued e.g. the guidelines for procedure in registering a citizen's death abroad. The Czech Office for Surveying, Mapping and the Land Registry shall modify the procedure of the Land Registry Offices to prevent accepting incorrect information from the population records' information system.

5 DEPARTMENT OF CONSTRUCTION LAW AND THE ENVIRONMENT

The number of complaints concerning the environment and the procedure of Construction Authorities increased by over 25% this year We initiated co-operation with the Czech Chamber of Certified Engineers and Technicians Active in Construction and met with representatives of the Regional Veterinary Administration. We also met for the first time to discuss issues related to funerals. The Faculty of Law in Brno opened a new course called "Construction Affairs in the Defender's Practice" where our employees give lectures.



We handled a total of

842 complaints.

We organised

7 seminars for **232** people;

topics: roadways; noise protection, water protection, removal of structures, heritage protection

2 round tables **71** participants;

topics: protection of animals, new legal regulation of noise protection

We change the rules

In addition to informing the Government in two cases of incorrect administrative procedure of the Ministry for Regional Development (see the chapter "The Defender and the Government"), we managed (sometimes after years of trying) to succeed with our other recommendations.

Stricter limits for wastewater treatment plants

In 2015, we informed that the Government, acting on the basis of our recommendation, had ordered the Minister of the Environment to draft an amendment to the relevant Government regulation by April 2016, which would impose significantly tighter limits for wastewater discharges or completely eradicate them and, at the same time, refine the description of the best available technologies for wastewater treatment plants. In May 2016, the Ministry of the Environment accepted our recommendation and submitted the draft Government regulation imposing stricter limits.

Report to the Chamber of Deputies: File No. 639/2016/PDCJ

The Supreme Administrative Court has finally decided on the illegality of a photovoltaic power plant

In recent years, we have been continually reporting on the course of the court proceedings in the matter of the action in the public interest we filed in 2012. In the action, we argued that the permit for construction of a solar power plant in a protected bird reserve in the Moldava municipality in Krušné hory had been issued unlawfully. The Regional Court in Ústí nad Labem confirmed our opinion at the end of 2015. However, the Construction Authority filed a cassation complaint to the Supreme Administrative Court. In our statement given to the court, we proposed to dismiss the cassation complaint. The Court accepted our motion and in July 2016 it confirmed that the plant's construction permit lacked, *inter alia*, other environmental exemptions and approvals required by law, which the plant has not yet obtained.

Ruling of the Supreme Administrative Court: Ref No. 9 As 24/2016 – 109 of 14 July 2016

Strict conditions for the hunting guard

Already since 2013, we have sought a change in the assessment of the integrity of persons wishing to act as hunting guards ("myslivecká stráž"). A person who had previously committed an intentional criminal offence was not considered a person without a criminal record, even if the conviction had since been expunged. Candidates for this position had to submit a copy of the criminal record (including data on already expunged convictions). We considered this regulation to be too strict, especially since expungement of conviction is taken into account in applications for the fishing and forest guards. We do not support the argument that the rules for hunting guards must be stricter because the guard carries a weapon. The lack of a criminal conviction of a person is already ensured in the course of issuing a hunting weapon licence, where submission of a copy of the criminal record is required (a licence cannot be issued to people convicted of any of the listed crimes). After three years, our comment was finally incorporated into the amendment to the Game Management Act.

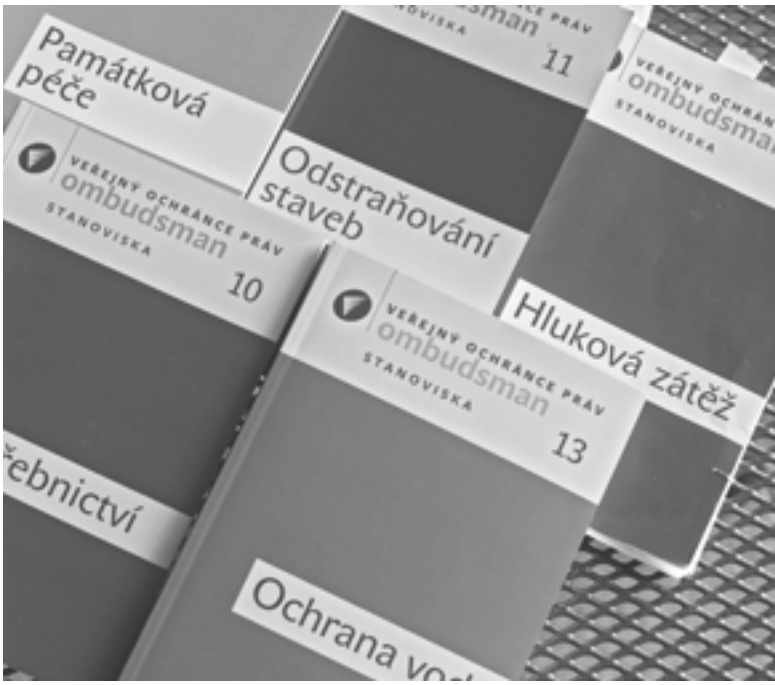
Report to the Chamber of Deputies: File No. 4/2014/PDCJ

Exploration drilling may cause groundwater loss

We have long been informing about cases where hydrogeological prospecting boreholes caused a loss or decrease in the quality of water in wells owned by people in the surrounding area. We identified the problem in that exploration drilling (unlike the drilling of water wells) did not require an expert assessment. We requested that the Ministry of the Environment remedy this problem. The Ministry accepted our request and drafted an amendment to the Water Act, according to which exploratory drilling will only be possible with the consent of the relevant water authority.

2013 Summary Report to the Chamber of Deputies

We are here to help



Participants in construction proceedings have the right to acquaint themselves fully with the documents used in the proceedings

We were approached by spouses who were participants in the construction proceedings concerning an additional construction permit. They had requested that the Construction Authority allow them to get a copy of the structural analysis report the developer had commissioned. The Construction Authority had not only rejected their request, but also had not issued any rejecting decision against which the spouses could appeal. We concluded that the Construction Authority and subsequently also the Regional Authority had failed, because the regulations and case law in this area were clear. Parties to the proceedings have the right to acquaint themselves fully with the documents used in the proceedings, which includes making copies thereof. This right is not affected in any way by the statement of the creator of the underlying document (i.e. the structural analysis report) requesting private-law protection of his "work". The Regional Authority prepared and published guidelines for this area and instructed the subordinate Construction Authorities to follow them.

Defender's Report: File No. 5178/2015

Placement of an urn in private does not breach the law

We were approached by a widow who had came back to the Czech Republic after the death of her husband, a citizen of the Federal Republic of Germany. After her return, she was contacted by the Municipal Authority which asked her where her deceased husband was put to rest. The complainant approached us with concern that she might have violated the law because she kept the urn with the ashes at home, placed with flowers on a bookcase. We recommended her to notify this fact both to the town hall and to her spouse's closest relatives to avoid any potential family disputes. The complainant however did not violate any law by not placing the urn with ashes at a public burial ground

Defender's Report: File No. 2966/2016

If a building is approved for a particular purpose, it can not be used for all purposes that can generally be classified as "civic amenities"

Based on the complaint, we found that the "Sports Chess Club" building was used not only for chess tournaments, but also for weddings, conferences and balls. The Construction Authority considered these ways of using the building to be justified. It based its opinion on the fact that the building's occupancy permit designated it as a "sports chess club" and thus a "sports grounds", but also as a "comprehensive civic amenities facility". However, we were of the opinion that a "sports chess club" building cannot be used for all the activities subsumed under the term "civic amenities". During the occupancy permit procedure, the parties only expressed their intention to use the building as a "chess club", not as a place where cultural events would take place. The Construction Authority agreed with us and initiated proceedings to change the intended use of the building. Until a decision is made, the Authority prohibited larger events with a greater number of people from being held in the building.

Defender's Report: File No. 7240/2015

If the Construction Authority can obtain all information from publicly accessible land, it does not have to visit anyone at home

There was an unauthorised building adjacent to the complainant's home. The proceedings concerning issuing a retroactive permit for this building had been ongoing for five years. The complainant objected to the building and filed many appeals. After three years, the Construction Authority informed her of its intention to carry out an inspection in her home. The complainant considered this to be in retaliation for her filing of objections and appeals. The reason for the visit was allegedly the complainant's objection that the building had windows facing her house, which it should not have had according to the project documents. Admittedly, an inspection is certainly a good tool for establishing the real facts of the matter; however, if the only purpose is to find out whether and where the windows are on an unauthorised building, it is not appropriate to enter the complainant's house solely for this purpose. We also noted that the Construction Authority was causing delays in the proceedings as it knew about the building when it was still under construction and did not intervene against its unauthorised completion. In the end, the Construction Authority carried out only an external inspection without entering the complainant's house and informed us that it would make a decision in the case.

Defender's Report: File No. 7483/2014

An administrative authority must not remain inactive just because the file is in court

We received a complaint from the owner of a small hydroelectric power plant who argued that the water authorities had not been able to deal with a weir that had been damaged by a flood. The delays in implementing flood protection measures had led to the virtual liquidation of her small hydropower plant. Although she had all the necessary permits, she could not use her power plant. We inquired into the matter and agreed with the complainant that the water authority had indeed been inactive. We did not accept the authority's argument that the case could not have been resolved on the ground that the file had been handed over to the court at its request (for the purposes of a hearing involving a claim for damages). We stated that in such a case the administrative authority must obtain copies of the documents from the administrative file before the file is sent to the court because the fact that it does not have the original file available does not relieve it of its duty to proceed in the case, carry out procedural steps and issue a decision. In addition, we pointed out other errors in the procedure of the water authority concerning approvals of other water management modifications. We mainly criticised its failure to address the situation of the watercourse as a whole, not just its individual parts. The owner of the small hydropower plant eventually agreed to sell her plant to the water authority.

Defender's Report: File No. 571/2013

Let's talk together

Does an attack on an animal by another animal constitute animal abuse?

We dealt with the procedure of the administrative authorities in cases where escaped pets attacked, injured or killed other animals. We found out that the Offence Committees, Veterinary Administrations and the Ministry of Agriculture evaluate these situations differently, even within one region. For this reason, we conducted an area survey to map the practice throughout the country. All the respondents agreed that the above constituted an administrative offence consisting in the failure to take adequate measures against the escape of animals. There were different views, however, as to whether this also constituted the offence of (deadly) animal abuse. In this interpretation, the offence is committed in that the negligence of the owner of the attacking animal causes a painful injury or death of another animal. At a round table, we were looking for ways to unify the practice of punishing these offences. As a result, the Ministry of Agriculture, in cooperation with the State Veterinary Administration, will issue unified guidelines and the described situation will also be qualified as (deadly) animal abuse, according to the specific circumstances of the case.

New obligations for developers

We met with representatives of the Ministry of Health, Regional Construction Authorities, the Brno City Hall, the Prague City Hall, and the Czech Construction Law Society to evaluate the practical impacts of the new noise protection regulation that came into effect on December 2015. In practice, the new duties of the public authorities and the developers can cause problems and confusion. The developers' new duties include, for example, the fact that if a developer wants to construct a building in a place that is already noisy (e.g. near a roadway), the developer must now submit to the Construction Authority a noise measurement and proposed measures to protect the building against noise, together with the application for a planning permit.

Public Health Stations cannot act against noise coming from pubs

At the meeting, we also addressed the issue of reduced noise protection, for example concerning noise coming from restaurant facilities or playgrounds. Noise consisting of people's voices (unless they are part of, for example, a musical production) no longer qualifies as noise. Regional Public Health Stations are thus only able to deal with technological sources of noise at the establishment, i.e. sources such as air conditioning or refrigeration equipment, but not the noise created by the guests or noise that is typical for such establishments. People who suffer nuisance caused by the noise of restaurants and cafés now have to file the "neighbour lawsuit" or they can ask the Municipal Council to adopt a generally binding ordinance limiting the establishment's opening hours. The Ministry for Regional Development and the Ministry of Health subsequently prepared a common methodology for the placement of buildings in noisy areas as well as new obligations for developers.

We met for the first time to discuss issues related to funerals

We organised a seminar on issues related to funerals, which was attended by representatives of municipalities (as operators of funeral grounds), funeral services and professional associations active in this area. At the seminar, we presented the findings we obtained while handling complaints. With the participants, we discussed current topics such as grave renting issues, social funerals, handling of abandoned graves, restoration of German cemeteries, as well as legal issues related to unusual burial methods (for example, spreading ashes in a forest or a river). We presented a number of interesting court decisions and the Defender's opinions which are especially relevant for the area of cemetery and funeral law. Many of these topics were also addressed in the recent amendment to the Funeral Services Act, on the preparation of which we worked with the Ministry for Regional Development.

6 JUDICIARY, MIGRATION, FINANCIAL MATTERS

Last year, we focused mainly on achieving systemic changes in the justice system. We organised a conference on curatorship proceedings which was held in the Senate building. We discussed issues such as repeated appointment of presidents and vice-presidents of courts, how to deal with experts who do not perform their duties and we also inquired into how courts perform their duty to publish important decisions online.

We handled a total of

2,073 complaints,

of which

- **822** fell within and
- **1,251** outside the Defender's mandate.

We change the rules

Municipal waste collection fees cannot be waived informally

In dealing with complaints, we found that it is often very difficult for public servants in smaller municipalities to decide about waiving the municipal waste collection fee. The Municipal Authority acts in the role of the Tax Administrator and must therefore proceed pursuant to the Tax Rules; it must issue a decision in each matter and properly justify it. However, the lack of awareness of the law is a cause of frequent failings. Municipal Authorities often resolve applications for remission of municipal collection fees informally and do not issue a formal decision. This is why in 2016, we focused on training public servants especially in the small municipalities and also offered our help to the Union of Towns and Municipalities. The goal is to change the practice of the municipalities by providing them with a manual for how to proceed in the matter of (non-)waiving of fees.

Tax Administrators and bodies for social and legal protection of children should co-operate in the child's interest

We often encountered cases where children incur debts due to irresponsible actions of their parents. In the past, these debts often concerned outstanding municipal waste collection fees. Debts present a danger to children, making them more vulnerable. We wish to achieve that the Tax Administrators inform the relevant body for social and legal protection of children (BSLPC) in cases where parents' actions result in children's debts (e.g. outstanding real property taxes, municipal waste collection fees) and continuously ignore requests for payment. The BSLPC should then be able to work with the parents to resolve the issue. Tax Administrators have the duty to inform pursuant to the Social and Legal Protection of Children Act. Unfortunately, the Ministry of Finance does not agree with our opinion that the Tax Administrators cannot invoke confidentiality under the Tax Rules. It did not even accept our recommendation to explicitly stipulate in the Tax Code the conditions under which confidentiality does not apply. We will continue trying to change the procedure of the Tax Administrators as well as the legal regulation itself.

Defender's Report: File No. 2129/2015/VOP

Defender's Report and Opinion: File No. 5817/2014/VOP

Transparency in publishing internal regulations of the General Directorate of Finance

Public access to internal regulations promotes transparency in the performance of State administration, enhances the predictability of the authorities' decision-making and the legal certainty of citizens, in

this case the taxpayers. However, at present, not all internal regulations of the General Financial Directorate are published on the Tax Administration's website. Citizens have no choice but to try to obtain access to the regulations through a request filed under the Free Access to Information Act. We are trying to ensure that the General Financial Directorate would publish its methodological guidelines on its own initiative.

Regulation of advertising applies to everybody equally

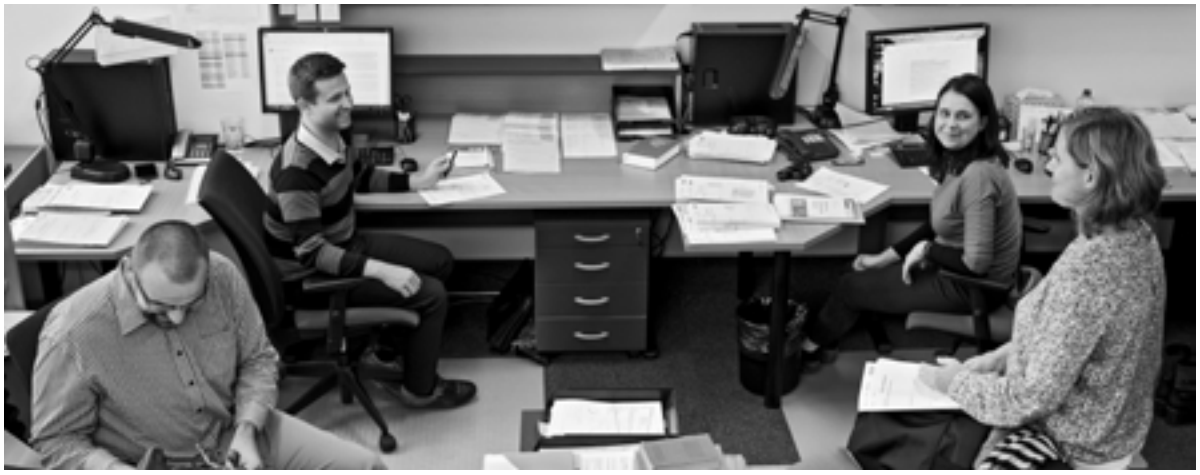
The Prague City Hall promised, following our intervention, to amend the regulation of advertising in the Prague Heritage Reservation and the adjacent neighbourhoods, which granted an unjustified exemption to the City of Prague. The prohibition of advertising was not to apply to events organised or co-organised by Prague or its city wards. We did not agree with the opinion of the Prague City Hall and the Ministry of Industry and Trade that Prague is not an entrepreneur and is not pursuing a profit. An exception for certain events based exclusively on the identity of the organiser is also illegal according to the Constitutional Court because it constitutes an unjustified and unequal approach in relation to other persons and entities. The Ministry accepted our opinion and amended the regulation by leaving out the exemption for the City of Prague.

Repeated appointment of court officials

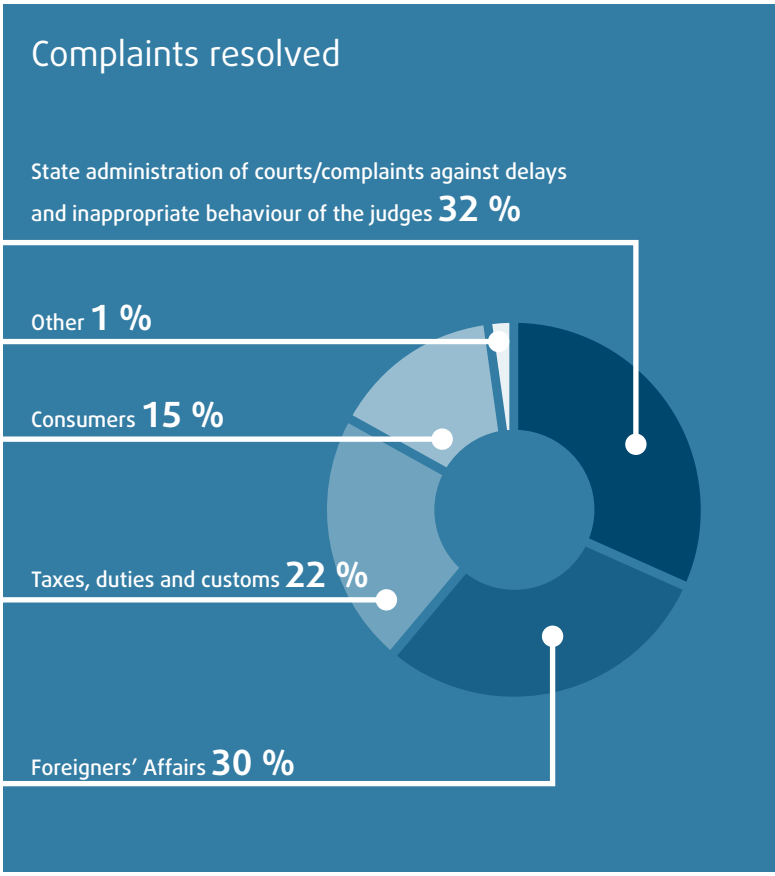
We asked the Minister of Justice to take measures preventing the re-appointment of the presidents and vice-presidents of courts, as such a practice is prohibited by the Constitutional Court's ruling. In our view, the rules for the selection and appointment of such officials should also be regulated by law, not by a mere instruction. We also agree with the professional public that the appointment period should be extended to 10 years. We are aware that this is not the most pressing problem of the justice system, but it is a small step that can be done before a comprehensive reform of the entire system.

Publication of judicial decisions

Since 2011, district, regional and superior courts have been instructed to publish important decisions electronically through the *e-judikatura* portal at www.justice.cz. Only 2,875 decisions have been published since that year, with only 75 judgments released in 2015. By contrast, the Supreme Administrative Court has 95,000 decisions in its database (both its own decisions and the decisions of regional [administrative] courts are published). The publication of decisions serves an important purpose consisting in unification of case law and helps improve the predictability of judicial decision-making and legal certainty. Citizens and lawyers now have to seek access to judicial decisions under the Free Access to Information Act. In many cases, the provision of the requested information is subject to a fee, even though the applicant should be able to access it free of charge through the *e-judikatura* portal. It is an interesting fact that some legal information systems include more decisions in their databases than there are on the *e-judikatura* portal, in which judges are obliged to enter their decisions. We turned to the Minister of Justice with the request to create the conditions for including all the required judgements in the central records of court rulings.



We are here to help



Visapoint

Certain types of residence permits require that the applicant must arrange an appointment at the embassy office via the Visapoint online system. We have repeatedly noted that Visapoint has not been functioning properly in some countries and that the appointment is virtually impossible to arrange. The case law established by the administrative courts in recent years indicates that registration in the Visapoint system is not required under the law. These were cases where foreign nationals were registered in the Visapoint system, but applied for a residence permit different from the one they requested through Visapoint. More recently, the Supreme Administrative Court ruled that an application was properly had been filed even if the foreign national had submitted it to the embassy personally without any prior registration through the Visapoint system (decision Ref. No. 2 Azs 128/2016-54). In 2016, we monitored the functionality of the system and found out that despite the promises of the Ministry of Foreign Affairs, it was virtually impossible to arrange an appointment for filing application for certain types of residence permits; this was the case in Mongolia, Uzbekistan, Vietnam and Ukraine. We will therefore inform the European Commission about this situation again. For some types of residence permits, foreign nationals are legally entitled to a residence permit under EU law. In these cases, the failure to enable the applicant to file application infringes on the rights guaranteed by EU directives and the right to a fair trial.

Defender's Report: File No. 655/2015/VOP

For more information, see the collected materials: Aktuální právní problémy azylového a cizineckého práva (*Current legal issues of asylum and foreigner law*; pg. 11 et seq.)

May a judge openly call a person "disturbed" during a court hearing?

We were approached by a convict whom the judge had described as a disturbed person during a court hearing concerning his conditional release from prison. He was convinced that the judge's conduct had been inappropriate. The president of the court had dismissed his complaint as unfounded. We inquired into the procedure of the president of the

court, but we came to the same conclusion. To be eligible for release on parole, it is not enough for the convict to have behaved well in prison; it is important if it can be reasonably expected that he will lead an orderly life and pose no risk to society after release. If the judge – having evaluated his character and the possibility of his rehabilitation – identifies the convict as a disturbed person with a tendency to commit criminal acts, such a statement is within the judge's discretion that is necessary for the assessment of the application for release on parole.

Defender's Report: File No. 5398/2015/VOP

Difficulties in defending the rights of users of pre-paid phone cards

We dealt with a situation where CZK 900 "disappeared" from a pre-paid phone card. The customer unsuccessfully tried to resolve the situation both with his network operator and the Czech Telecommunication Office. The Office called on the operator to provide an explanation and concluded, on the basis of this explanation, that the customer had probably spent the credit. In our view, however, the Office should have established the facts of the case to make sure the network operator was not to blame. That did not happen. The Office explained during the inquiry that it could not have requested any more information at that time. Operators providing pre-paid cards must keep all the documents that could serve as evidence (in particular a detailed list of calls) only for as long as the service may be legally challenged. A pre-paid card user would have to claim unauthorised credit deduction in a timely manner and potentially also file a complaint against the outcome of the claim proceedings with the Office. Pursuant to law, pre-paid card users are not eligible to receive a bill and it is therefore virtually impossible for them to find out in time that their credit was deducted incorrectly. We acknowledged that the Office could not have acted otherwise in this case, but we intend to work towards increasing the legal protection of pre-paid card users.

Defender's Report: File No. 1202/2016/VOP

Is silence a luxury?

We received a complaint from spouses dissatisfied with their holiday arranged by a travel agency. They said that although they had paid for the most luxurious hotel, they had been exposed to noise from a backup power generator during the whole holiday. They were not satisfied with the way the travel agency had resolved their complaint and also objected to the way the Czech Trade Inspection Authority had dealt with their complaint. Aside from the poor handling of their complaints, the spouses also alleged unfair commercial practices consisting in the way the trip had been advertised by the travel agency. The Inspection Authority concluded that the agency's practices had not been unfair. According to the Inspection Authority, the spouses had been warned about the possibility of increased noise through a leaflet indicating that "power outages could occur" and, further, that tourist resorts could be noisy and the travel agency could not ensure complete lack of noise in the hotel. In our opinion, the Inspection Authority did not deal with the issue of whether the information on the noise from backup power generators could have influenced the decision of an average consumer to purchase or not purchase the trip. This is precisely the most important thing to evaluate in order to decide whether the designation of the hotel as "luxurious" constituted an unfair business practice. We agreed with the Inspection Authority on the criteria to be used in assessing unfair business practices of travel agencies.

Defender's Report: File No. 814/2015/VOP

Who should review a decision on an administrative fee?

During our inquiry into a complaint, we found out that it was unclear which Ministry (the Ministry of Finance or the Ministry for Regional Development) was competent to assess the application for review of a decision to charge an administrative fee for an inspection of a structure. The proceedings involving the Ministries thus had dragged on for over three years. After our recommendation, the Minister of Finance asked the Supreme Administrative Court to decide which of the Ministries was competent in this matter.

Defender's Report and Opinion: File No. 962/2014/VOP

Let's talk together

How to proceed in cases of unclear payment of taxes?

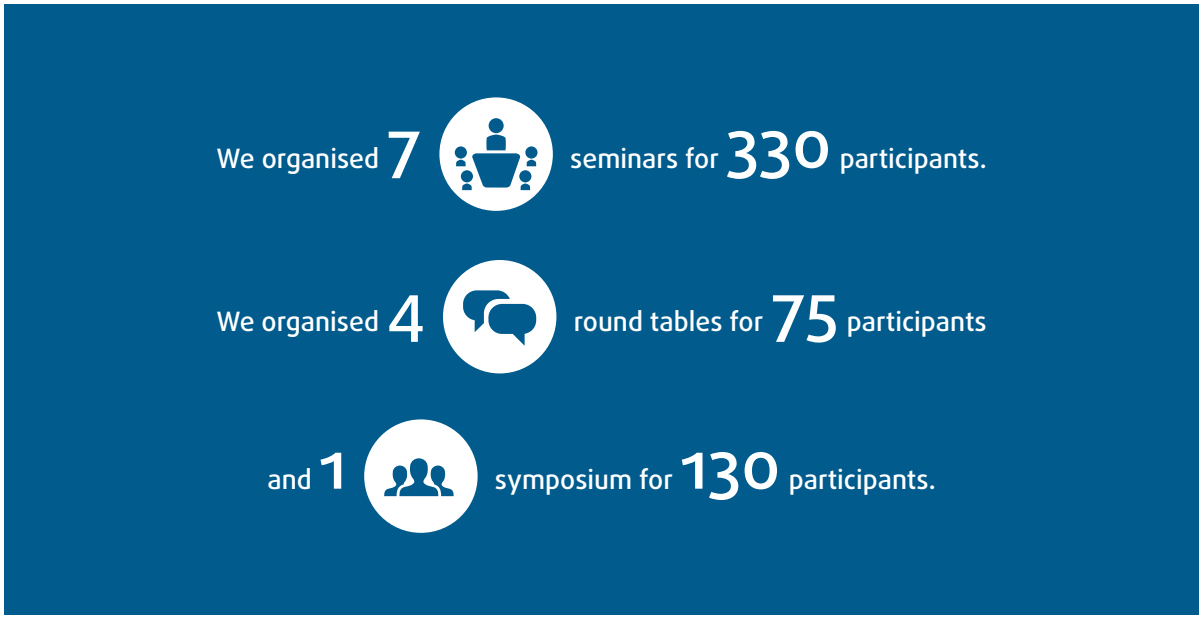
This was one of the questions we discussed with the representatives of the Tax and Customs Administration and tax advisors. We focused on a case where the real estate transfer tax had been paid by the buyer instead of the seller. The buyer had been the guarantor of the tax and had paid it before the Tax Administrator so requested. We came to the conclusion that if the Tax Administrator is not sure why the guarantor has made the payment, it should treat it as an unclear payment, clarify it and not assess any default interest to the seller for a late payment. We also discussed the case of money accidentally sent to the bank account of another person that was subject to tax distraint. We discussed the possibilities for having the money refunded. As one option, we discussed the possibility of submitting an application to exclude the property from the tax distraint. We agreed that at the time it was impossible to get the money back even in this way.

Faster and cheaper resolution of consumer disputes

Since February 2016, consumers can resolve their disputes with providers of goods and services also out of court. The courts are substituted by inspection bodies such as the Czech Trade Inspection Authority, the Czech Telecommunication Office and the Energy Regulatory Office. Since this role is also new for the aforementioned authorities, we met together to share fresh experience. We inquired into the procedure of the authorities in out-of-court settlement and whether the consumers use this option. This most often concerns disputed resolution of claims which the inspection bodies can resolve to mutual satisfaction.

What is the future of family-law justice?

In the Senate, we organised a conference on problems plaguing the courts in decision-making on minor children. With the judges, representatives of Ministries, the Office for International Legal Protection of Children, bodies for social and legal protection of children, school facilities and other experts, we identified the most problematic areas such as the lack of judges specialising in family law, low prestige of this area of law, lack of appreciation of the difficulties of these proceedings including the duties brought about by the new Civil Code, and lack of material and technical equipment of the courts. We will ask the Minister of Justice and the presidents of the courts to ensure sufficient personnel for these responsibilities on the basis of an analysis, in order to ensure smooth proceedings and provide the judges with a sufficient number of assistants. Further, we want to ensure that specialised court chambers are created at Regional Courts and that there are rooms suitable for taking testimonies of children.



First meeting to discuss current issues concerning experts

In handling complaints, we often encounter objections to the activities of experts. Together with the Ministry of Justice, we organised a round table with the participation of officials from the Regional Courts and the employees of the relevant departments handling the expert affairs. We addressed the current situation and the prepared regulation of the activities of experts, expert offices and expert institutions. We discussed the need to submit expert reports in time and in proper quality and talked about how to address deficiencies in this area. We further discussed the problem of insufficient remuneration of experts and advisory councils..

How to deal with the situation of stateless persons?

Stateless persons are people who are not citizens of any country and therefore lack any kind of protection. In migration contexts, they often lack any means to legalise their status. They are often unable to prove their identity, obtain identity documents or enter into contracts; they often face difficulties in accessing governmental help and services. Together with the Prague office of the UN High Commissioner for Refugees, we organised a seminar presenting international practices and recommendations as well as the commitments of the Czech Republic with the goal of supporting their introduction into practice in the Czech Republic. The Czech legal regulation of this area is insufficient. The seminar identified ways in which stateless persons can exercise at least some of their rights. In particular, it is possible to ask the Ministry of the Interior for the status of a stateless person and to exercise the rights resulting from the international Convention relating to the Status of Stateless Persons in administrative proceedings. This could at least partially mitigate the inadequate performance of the State's obligations towards this vulnerable group.

Is the equal status of EU citizens working in the Czech Republic guaranteed?

Many citizens of the European Union, for example people from Romania, Bulgaria or Slovakia, are working less qualified jobs. If employed via employment agencies, they usually have a significantly worse position than ordinary employees. This issue was also addressed within the project titled "Testing European Citizenship as a 'Labour Citizenship'". Because they do not know the language or the local environment, foreign workers may fall into a situation resembling exploitation. They work for long periods of time without written contracts, proper insurance and often also without receiving wages. At several meetings, we discussed proposals to improve the awareness of foreign employees of the conditions for working in the Czech Republic and how to make the Labour Inspectorates work more efficiently in this area.

7 DEPARTMENT OF SUPERVISION OVER RESTRICTIONS OF PERSONAL FREEDOM

We visit places of detention where persons restricted in their freedom are or may be present, and deal with complaints concerning prisons and psychiatric hospitals. We also monitor the expulsions of foreign nationals and inquire into the procedure of municipalities as public curators.

This year, we

visited **22** facilities;

monitored **6** expulsions of foreign nationals;

dealt with **623** complaints raised by children, social services clients, patients, convicts and persons under curatorship;

trained **786** facility employees;

received and analysed

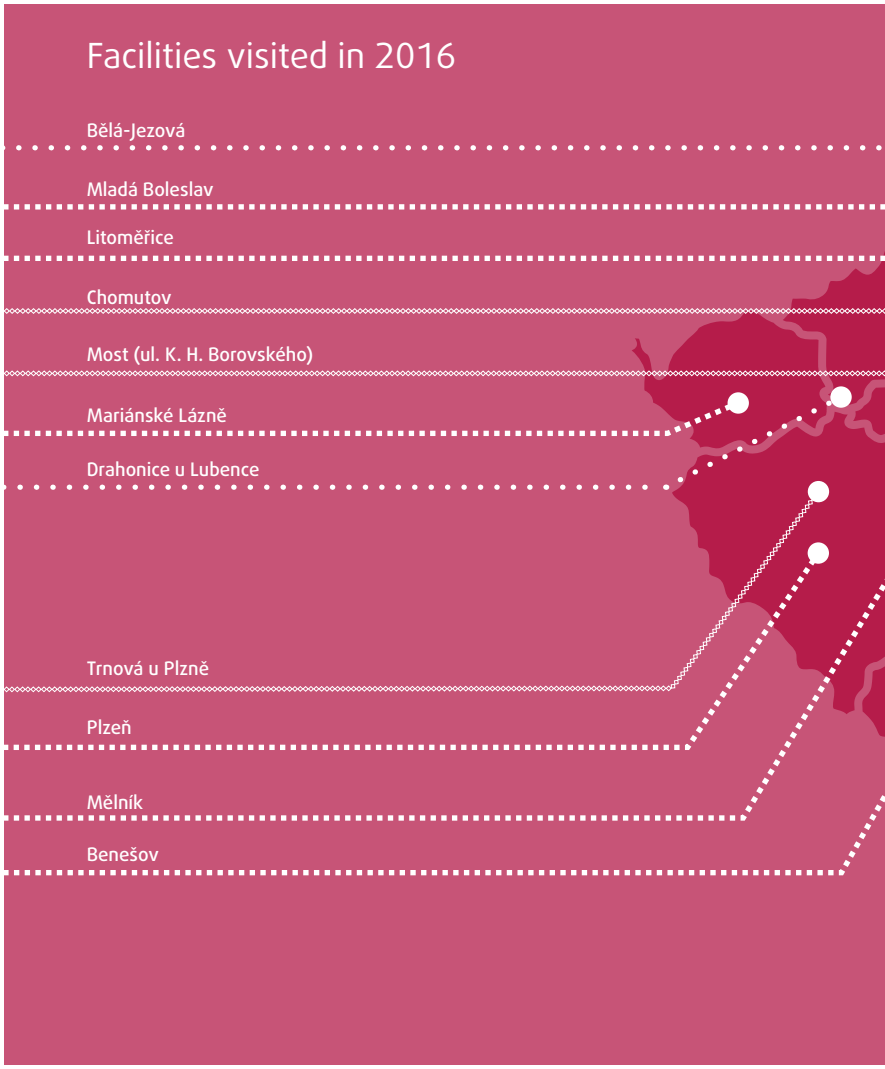
→ **4,477** administrative decisions on expulsion;

→ **869** administrative decisions to detain foreign nationals.

For more information on the activities of the Department of Supervision over Restrictions of Personal Freedom, please consult the national preventive mechanism's annual report 2016:

bit.ly/NPMreport2016

We change the rules



Facilities for children requiring immediate assistance

In 2016, we visited 9 facilities for children requiring immediate assistance that provide protection and help to children left without care in cases where their lives or development are seriously compromised (Section 42 of Act No. 359/1999 Coll., on social and legal protection of children, as amended.). We inquired into the level their right to a family life, privacy, social autonomy and the right to participate in decision-making concerning their future lives were being exercised.

We mention only the most important of our findings, which will be summarised in a separate summary report in 2017:

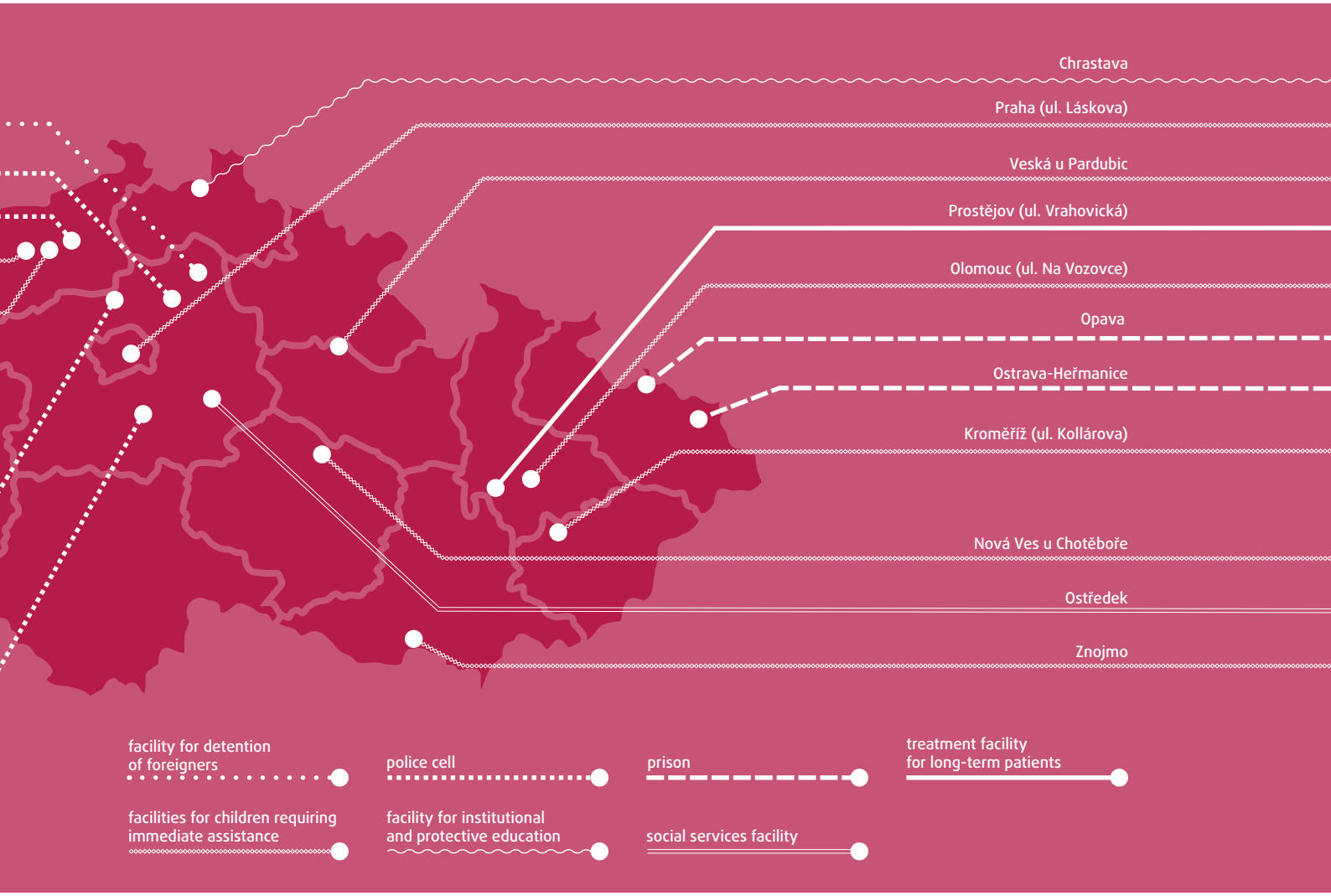
— some children are placed in a facility without a legal basis, i.e. unlawfully;

— facilities provide care to children for a period of up to 5 years. They do not respect the fact that children should only stay in the facilities for a short time in emergency situations. This means the facilities are in fact providing a long-term care, even though this is not their purpose;

— the facilities often prevent parents from maintaining personal or phone contact with their children, limit the duration and frequency of visits and have their employees present during the whole course of the visit;

— there is a lack of counselling for the children and parents, including sufficient psychological assistance, as well as social work aimed towards returning children back to their families;

— the facilities are often attached to children's homes or children's homes for children under three years of age (formerly infant care centres),



which means their character often resembles that of a children's home and they lose sight of their original purpose which is to provide immediate help to children.

Police cells

We visited police cells in six police departments. From the Police of the Czech Republic, we requested remedies especially in the following areas:

— advice given to the detainees do not include all the rights and obligations of persons held in a cell;

— police officers often do not leave the advice on the persons' rights and obligations in the cell during the entire time of detention;

— when placing persons in the cells, police officers indiscriminately remove people's medical aids, including glasses;

— people being placed in cells are subjected to strip searches and squatting indiscriminately;

— these searches are not always performed by persons of the same sex as the detainee;

— police officers fail to provide at least one hot meal a day to the detainees;

— personal hygiene articles are often only provided at request of the detainee;

— police officers ignore the right of the detainees to file motions, objections and complaints already during the course of their detention.

Standards of quality of care of children in school facilities for institutional education or protective education

The missing standards of quality of care of children in school facilities for institutional education or protective education have long been subject to our criticism; however, the Minister of Education, Youth and Sports now issued Decree No. 5/2016 that made these standards binding for all directly governed organisations under the Ministry's supervision. However, we maintain that the standards must be incorporated in legal regulations as a part of a decree implementing the Performance of Institutional and Protective Care Act.

Treatment facilities for long-term patients

We carried out a follow-up visit to the ADP Sanco, s.r.o. treatment facility for long-term patients in Prostějov. Our goal was to verify the degree to which the facility had implemented our previous recommendations and whether the Defender should use her power to impose a penalty.

We also imposed a penalty in the case of the treatment facility for long-term patients attached to the Bubeneč Hospital and called attention to a case of incorrect use of restraints.

Defender's Report: bit.ly/Nem_Bubenec

Social services facilities

We found ill-treatment of clients in Sanatorium Lotos, s.r.o., in Ostředek. The report noted restriction of the clients' personal freedom, inadequate nursing care by competent staff, bad treatment and documentation of decubitus ulcers, and the lack of proper monitoring of dietary intake of clients at risk of malnutrition. We also found failings in provision and billing of optional services and setting and billing of service fees. After the visit, the Defender notified the police and other authorities concerned. This confirms the need for an independent complaints mechanism in social services (see page 9 for more details).

Prisons

We issued a summary report from visits to 7 prisons, in which we summarised our findings and recommended certain changes to the General Directorate of the Prison Service of the Czech Republic and the Ministry of Justice.

What were our findings?

— The Czech Republic has one of the highest prison population rates among European countries and its prisons have long been overcrowded.

— The possibilities for rehabilitation of the convicts are impacted by the system of shared accommodation that reduces the effectiveness of the work of specialist prison staff and promotes the so-called shadow life of the convicts.

— Specialists who work with prisoners are overburdened by paperwork unrelated to the purpose of the convicts' imprisonment.

— The health care in prisons is in need of a reform.

— Despite significant increases in prices in the past years, the remuneration convicts receive for work has not been adjusted for inflation since the year 2000.

Find the whole report at: bit.ly/prisons2016

»»»»» We are here to help

103 complaints in the area of social services.

Most complaints were related to the quality of the provided social services and reimbursements in facilities. We are not authorised to deal with individual cases, but these complaints play a role in preparing the programme of systematic visits. Regardless, we always tried to suggest a solution. The lasting problem is that there is no independent authority to review complaints raised by social services clients. This is why this year we submit the recommendation to create such an authority to the Chamber of Deputies of the Parliament of the Czech Republic.

See page 9 for more information

41 complaints regarding facilities providing psychiatric care.

We can only directly address the complaints which are related to the performance of protective treatment ordered by a court within criminal proceedings. There were thirteen such cases this year; we found ill-treatment of the patients in two cases. For this reason, we recommend that the Chamber of Deputies adopt legislation that will authorise the Public Prosecutor's Office to supervise compliance with legal regulations during execution of institutional protective treatment in health facilities.

See page 10 for more information

Ill-treatment in performance of protective treatment at the Dobřany Psychiatric Hospital

We inquired into a complaint filed by patient institutionalised at the psychiatric hospital for the purposes of protective treatment. He complained against the conditions and the regime he was subjected to in the long term. During our inquiry, we found failings in the hospital's procedure consisting especially of:

— keeping the complainant unlawfully in an isolation room for periods of 10, 13 and 7 days and subjecting him to an inadmissibly strict regime for months on end;

— the decision to place the patient in the isolation room was made by the carers (not the physician), even in situations where there was no risk of delay;

— the conditions in the ward where he was placed were not therapeutic, especially in long-term stays;

— systematic internal control of the use of means of restraint and long-term holding in the admission bedroom regime was absent.

We met with the management of the psychiatric hospital, who promised us systemic changes in the provision of care at the facility and we also reached a consensus with respect to dealing with the complainant's complicated situation.

Defender's Report: File No. 2361/2016/VOP

Ill-treatment in performance of protective treatment at the Petrohrad Psychiatric Hospital

We initiated an inquiry into the conditions of the performance of institutional protective treatment at the facility on our own initiative. After an inquiry on site, we found that the psychiatric hospital had failed when it unjustifiably placed and kept the patient in an isolation room, moreover under undignified conditions, and that it had needlessly kept him under a regime of limited activities and limited therapeutic action. The head of the psychiatric hospital promised to take measures to prevent this failing from re-occurring in the future.

Defender's Report: File No. 4174/2016/VOP

402 complaints were received from accused persons and convicts.

We most often addressed complaints concerning transfers to other prisons and complaints against health care.

Right to effective investigation of assault by fellow convicts

A convict complained to the administration of the Jiřice Prison about being repeatedly assaulted by the other convicts during the course of his imprisonment. The Prevention and Complaints Department of the prison failed to resolve the situation, so the convict contacted the Defender. The prison failed as it did not carry out effective investigation of the assault, even though the complainant raised a "defensible assertion" (arguable claim) in the sense of Article 3 and Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms. He was asserting facts that were not completely implausible and, moreover, he substantiated the assertions with a medical report. The prison acknowledged its failing.

Defender's Report: File No. 5325/2015

Not allowing a convict to attend his brother's funeral

The convict asked the director of the Znojmo Prison for a permission to leave the prison to attend his brother's funeral. The complainant approached us with the objection that the prison director had rejected his request and had not duly justified her decision. We recommended the director to allow the interruption of imprisonment in lawful cases

unless the stay in prison was absolutely necessary in the interest of public safety, order and crime prevention; we also recommended that she provide a convincing justification for her rejecting decision. As satisfaction in this case, we recommended to provide the convict with a greater contact with his family. The prison director did not agree with our assessment and conclusions. Therefore, as a penalty, we contacted the superior authority, specifically the General Directorate of the Prison Service of the Czech Republic.

Defender's Opinion, Report, and punitive measures: File No. 1640/2016/VOP

Postponement of treatment until after release

A convict requested the Prison Service of the Czech Republic to arrange for provision of adequate health care with regard to persistent pain he experienced in the hip and musculoskeletal system. He was not successful and he contacted us. We concluded through our inquiry that the convict's complaints had not been addressed in a timely manner and that the complainant had not been provided with adequate health care. Health care must not be limited to alleviating the symptoms of the disease, but must focus on eliminating health problems and preventing further deterioration of the person's medical condition. Health care provided to persons deprived of their liberty must in principle be comparable to the quality of care provided to the general population.

Defender's Report and Opinion: File No. 2392/2016/VOP

45 complaints concerning limitation of legal capacity, curatorship and other supporting measures.

The Defender may only address complaints against the procedure of public curators. We received 27 such complaints. Already in the 2014 Annual Report, we informed the Chamber of Deputies of the Parliament of the Czech Republic of the need to introduce the Public Curatorship Act to regulate and control the manner in which it is exercised. The Act is yet to be adopted. The rights and obligations of curators, including potential penalties, are thus not defined.

Let's talk together

We raise awareness in order to prevent ill-treatment. This year, we trained:

over **350** police officers from five regions who are responsible for guarding detainees in police cells. We passed on our experience based on visits to police cells and the case law of the European Court of Human Rights. This concluded our series of training courses for police officers from all the regions of the Czech Republic;

221 social services workers in four regions. We passed on our findings concerning the care of clients, especially those with dementia. The topics were also presented by a medical worker who had visited the facilities with us;

145 public curators in four regions, to whom we presented good practice in the area of curatorship;

70 inspectors of the Czech Schools Inspectorate whom we acquainted with our methods of visiting facilities for institutional and protective education and our findings from the visits.

We keep raising awareness of ill-treatment prevention and present good treatment standards at conferences dedicated to people with mental illness, seminars for the staff of school facilities for institutional and protective education, social services workers, and in courses taught at law schools.

We regularly publish articles in the Sociální služby *(Social Services)* monthly journal where we try to respond to questions frequently raised by social services workers concerning the conditions of provision of social services. We recently started publishing articles in the České vězeňství *(Czech Prisons)* magazine to highlight the case law of international courts and the Defender's findings in the area of treatment of prisoners. We also contribute to the Listy sociální práce *(Social Work News)* magazine.

This year, the Defender celebrated her 10th year in the role of the national preventive mechanism. On this occasion, we submitted to the Chamber of Deputies a special overview report. We also held a meeting with supporters and former and current colleagues who, through their activities, contribute to prevention of ill-treatment.

We conveyed our experience, findings and recommendations obtained in our visits to facilities to the representatives of the Albanian Ombudsman during a several-day internship.

8 EQUAL TREATMENT AND DISCRIMINATION

The key topics in the area of discrimination in 2016 included practical enforcement of rights of people with disabilities, examination of conditions for entering into registered partnership and raising awareness of the gender pay gap. In the area of education, we paid increased attention to the secondary school graduation examination ("maturita") and fair enrolment of first-graders.

In total, we received

451 complaints,

which is **33** more compared to 2015.

We identified **9** cases of discrimination;

5× constituted direct discrimination;

out of which

2× constituted indirect discrimination;

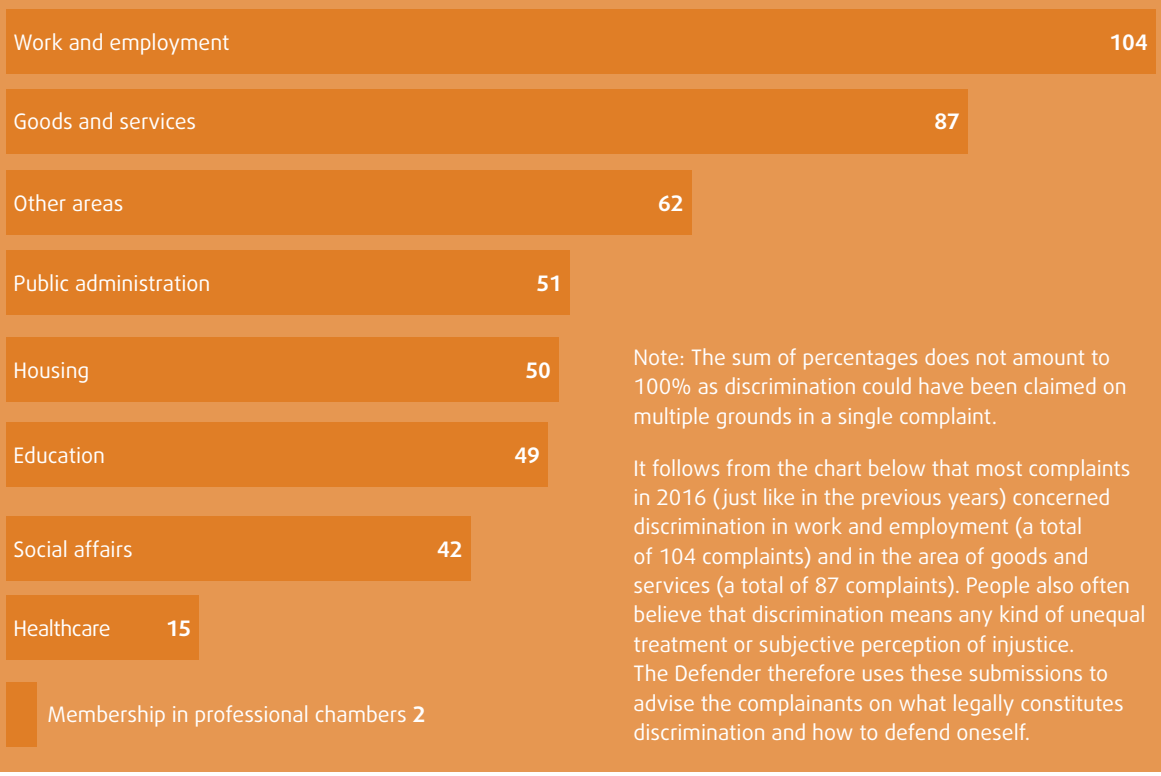
2× constituted cases of harassment/instruction/incitement/retaliation.

(However, 95 cases remain unresolved.)

In 37 cases, the suspicion of discrimination could be neither proved nor disproved. The Defender also identified discrimination in another 25 cases which she had received in the previous years (2013–2015). Proving discrimination is difficult. Furthermore, the complaints received in 2016 are still being inquired into. See the 2016 Summary Report on Protection Against Discrimination (bit.ly/DISreport2016).

Focus on complaints

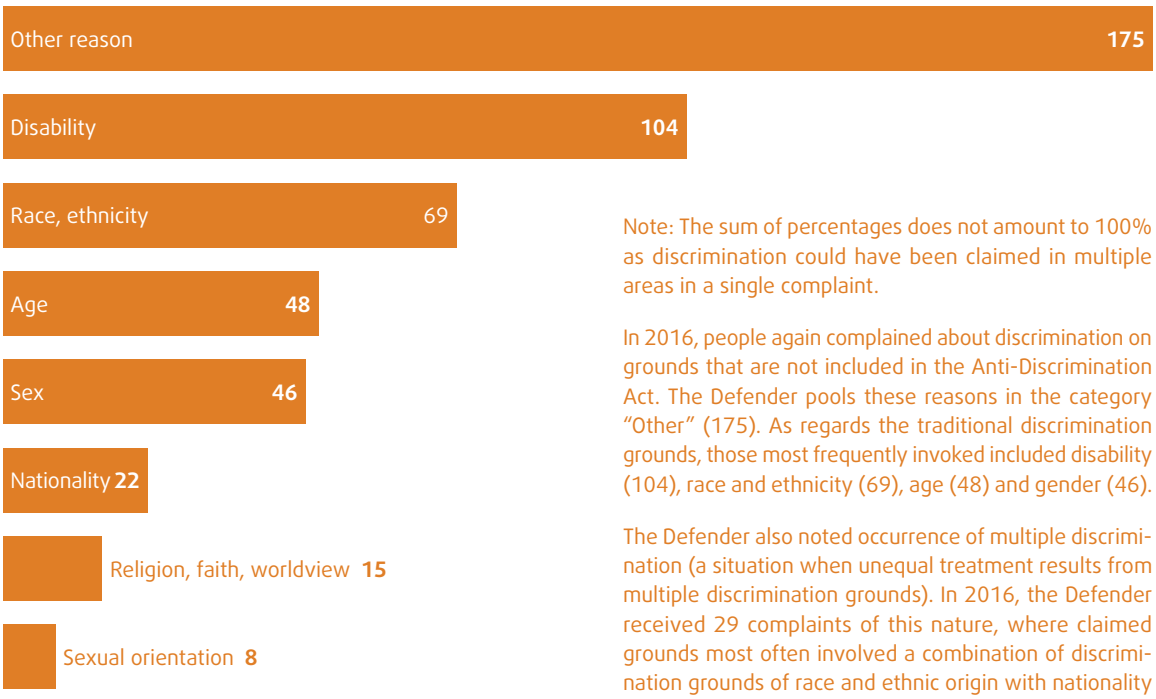
Areas in which people felt to be discriminated against in 2016



Note: The sum of percentages does not amount to 100% as discrimination could have been claimed on multiple grounds in a single complaint.

It follows from the chart below that most complaints in 2016 (just like in the previous years) concerned discrimination in work and employment (a total of 104 complaints) and in the area of goods and services (a total of 87 complaints). People also often believe that discrimination means any kind of unequal treatment or subjective perception of injustice. The Defender therefore uses these submissions to advise the complainants on what legally constitutes discrimination and how to defend oneself.

Why people felt discriminated against in 2016



Note: The sum of percentages does not amount to 100% as discrimination could have been claimed in multiple areas in a single complaint.

In 2016, people again complained about discrimination on grounds that are not included in the Anti-Discrimination Act. The Defender pools these reasons in the category "Other" (175). As regards the traditional discrimination grounds, those most frequently invoked included disability (104), race and ethnicity (69), age (48) and gender (46).

The Defender also noted occurrence of multiple discrimination (a situation when unequal treatment results from multiple discrimination grounds). In 2016, the Defender received 29 complaints of this nature, where claimed grounds most often involved a combination of discrimination grounds of race and ethnic origin with nationality (6 cases) and disability with age (5 cases).

»»»»» We change the rules

In 2016, we focused on improving the rules for the protection of people with disabilities. We also attended to registered partnership (its conclusion and potential adoption). We pushed for stronger protection of children's rights to education and their access to services. Thanks to our activities, unjust fees for parents studying at universities were eliminated, and it is now possible to teach both scripts at European schools.

New decree on interpreting to and from the Czech Sign Language at a university

Interpreting from and to the Czech Sign Language at Czech colleges and universities is still regulated merely by a methodological guideline of the Ministry of Education, Youth and Sports. We recommended that a decree be issued and the Ministry agreed with our proposals. University students with hearing impairment will thus soon enjoy the same guarantees as those in lower-level schools. The Ministry is preparing the decree in co-operation with universities. It should come into force on 1 September 2017.

Defender's Report: File No. 4958/2012/VOP of 20 November 2015

Subtitles are not the best solution for everybody

In its world news reporting where a foreign language is spoken, Czech Television relies solely on the use of Czech subtitles. This is not suitable for people with visual impairments, who would prefer voice-over, which Czech Television used in the past. We recommended to Czech Television to return to its previous practice of providing voice-over. This is yet to occur. However, Czech Television will co-operate with visual impairment advocacy groups to improve the audio description of its reporting. We will also continue to discuss the accessibility of news reporting in 2017.

Defender's Recommendation: File No. 44/2015/DIS of 27 May 2016

Survey: How do Registry Offices treat registered partners?

The year 2016 marked the 10th anniversary of adoption of the Registered Partnership Act, which provides for civil unions of same-sex couples. On this occasion, we inquired whether the 14 Registry Offices which can officiate entering into a registered partnership treat homosexual couples equally as the heterosexual ones. We considered three aspects: the venue and time for entering the union and the associated fees. We identified less favourable treatment of homosexuals in three regions; we have been communicating with the relevant authorities regarding the remedy. However, most Registry Offices treated everyone equally or changed their procedure already during our inquiry, which we of course appreciated. In our opinion, there are also unintended deficiencies in the legislation; we will discuss this with the Ministry of the Interior..

Defender's Report: File No. 30/2016/DIS

Age limit for issuing the Czech Post Customer Card

Since 1 January 2017, persons under 15 years of age may apply for the Czech Post Customer Card. The application may be filed by their legal representatives, usually the parents, or with their written consent. The Customer Card primarily simplifies the posting of registered consignments, especially registered letters and parcels. Furthermore, it provides the holder with a small discount on selected Czech Post's services as a reward for loyalty and the personal data provided. The provision of personal data turned out to be the key aspect of setting the age limit for applying for the Customer Card. However, with respect to the valid legislation, Czech Post's terms and conditions were unreasonable and discriminatory. Czech Post accepted our arguments and amended its terms and conditions, bringing them in line with both the Anti-Discrimination Act and the Civil Code.

Defender's Report: File No. 4218/2014/VOP of 12 July 2016

Fair enrolment of first-graders

We have been approached by people complaining against the situation concerning the enrolment of first-graders. Headteachers of schools which receive more applications for enrolment than they can satisfy are coming up with various criteria to facilitate the selection of children. Long queues often form in front of the sought-after schools on the enrolment registration date. For this reason, we issued recommendation to schools on how to proceed in these situations. We prepared a simple orientation tool for headteachers to help them differentiate between children justly and in a non-discriminatory manner. Based on our recommendation, the Ministry of Education, Youth and Sports amended the decree on elementary education, adding more details and specifications, and adjusted its guidelines. The Czech Schools Inspectorate implemented our conclusions in their inspection activities..

Did you know that...

... thanks to our engagement

— the Act on the Rights of Persons Accompanied by Specially Trained Dogs will be adopted?

— university students with hearing impediment will have better conditions for being provided interpreting to and from the Czech Sign Language?

— children under 15 years of age can apply for the Czech Post Customer Card?

— schools will no longer be afraid to take steps against cyberbullying occurring outside teaching hours?

Defender's Recommendation: File No. 82/2015/DIS of 13 January 2016

A useful guideline for elementary school headteachers: bit.ly/ZS_prijimani

Protection against cyberbullying at schools

We believe schools should be allowed to punish pupils or students for cyberbullying that demonstrably happened in the school's environment. These cases can include, for instance, a situation where a group of pupils ridicule their classmate on the Internet for his/her in athletic skills in P.E. However, the methodology of the Ministry of Education, Youth and Sports does not cover these cases. To this end, we recommended that it be amended.

Defender's Report and Opinion: File No. 4400/2013/VOP of 6 December 2016

Parenthood while studying must not be a burden

We inquired into a case of a student who had provided the university with a document on the drawing of parental allowance with a delay. The university had not acknowledged her parental leave and charged her a fee for exceeding the standard period of study, not taking account of the parental leave. We find that this procedure was at variance with the Universities Act and the Anti-Discrimination Act. Universities should not punish students for exceeding the standard period of study if the reason is parenthood. Parenthood begins with the birth of a child, not after formally notifying the school of the fact. Although the student did not file a lawsuit and paid the fee, the Ministry of Education, Youth and Sports unified the methodology used by colleges and universities. For this reason, we hope this case of discrimination was the first as well as the last of its kind.

Defender's Report: File No. 2695/2014/VOP of 7 September 2016

Connected script at European schools

"European schools" are intended for the children of EU employees. In the Czech section of one of these schools, a dispute arose regarding the type of script the children were to be taught. The school introduced Comenia Script in the school, even though some of the parents disagreed with this and requested that their children be taught the traditional cursive script. The Ministry of Education, Youth and Sports did not object to the nationwide introduction of the Comenia Script. Following our intervention, the Ministry changed its opinion and, finally, the school allowed for teaching both the Comenia Script and the traditional cursive script. Teaching both scripts better reflects the purpose of European schools and the high fluctuation of students.

Defender's Report: File No. 5716/2014/VOP of 7 April 2015

We are here to help

We are always happy when we change an incorrect procedure of a public authority or remove discriminatory conduct on the part of an individual informally – based on a recommendation, at a personal meeting or by advising the victim of discrimination to take steps against unlawful treatment (for instance by filing a complaint). We have solved several cases in this manner. Most of them involved persons with disabilities, i.e. the discrimination ground that we paid closer attention to last year.

Whom did we help?

— a wheelchair-bound girl who is now able to get assistance from a platform operator while accessing the post office; the signalling equipment was originally non-functional and the girl was thus unable to see to her official matters. We opened dialogue with the post office and helped file a complaint with the Czech Telecommunication Office;

— a man with mental illness who finally received a flat; previously, the municipality had repeatedly rejected his applications for a municipal flat, fearing he would be unable to coexist with healthy individuals. We reminded the municipality of its duties under the Municipalities Act and the Anti-Discrimination Act, after which the municipality changed its opinion and assigned a flat to the man;

— a student of an elementary art school who got a classification mark in piano and violin lessons despite missing many classes because of problems caused by his disability; the school had originally refused to excuse the hours absent. We helped the student's mother to draft a petition and to argue by referring to specific provisions of the decree on elementary art education. The school accepted the mother's petition.

Despite our many successes, people with disabilities continue to face problems. Various organisations are still not aware that they have a duty to help people with disabilities proactively, i.e. adopt suitable measures to accommodate them. If they neglect this duty due to ignorance or deliberately, they are committing discrimination. This can occur e.g. in the following situations

→ **A municipality refuses to establish a reserved parking place for a person with a disability. The Anti-Discrimination Act clearly states that road owners must consider the utility of the reserved parking space and take into account potential other possibilities that could help a person**

with a disability resolve their problems with parking. The municipalities must consider each application individually.

Defender's Report: File No. 3609/2015/ VOP of 13 December 2016

→ **A housing co-operative refuses to install a video doorbell in the flat of a member with a hearing impairment. As part of refurbishment of the building's doorbell system, the housing co-operative would incur no significant extra costs if it provided the deaf member with a video doorbell, which would serve her the same as audio doorbells serve the other co-operative members.**

Defender's Report: File No. 2587/2015/ VOP of 24 June 2016

→ **A municipality refuses to provide a barrier-free flat to a client of a nursing home who is unable to walk the stairs (by exchanging it for his existing flat), even though it has a barrier-free flat available. The municipality did not provide a convincing explanation justifying its refusal.**

Defender's Report: File No. 1307/2014/ VOP of 25 February 2016

Free legal aid

Due to the fact that in the last two cases, no remedy was provided to the persons with disabilities, we contacted Pro Bono Alliance, a non-governmental association of law offices providing legal services free of charge, who gladly accepted these cases. They also provided legal advice to victims of discrimination on other grounds. These cases specifically included the following:

a priest who was subjected to harassment in the Church due to his Roma background

Defender's Report: File No. 810/2016/VOP of 5 January 2017

a person who opposed mandatory sterilisation for the purposes of the so-called administrative sex change

Defender's Report: File No. 206/2012/DIS of 29 June 2015

Anti-discrimination actions before Czech courts

We consider the judgement of the District Court in Vyškov of 18 March 2016 (File No. 10 C 250/2014-127) to be the most important ruling of 2016; the court found discrimination of a student with a disability in access to elementary education. The court awarded the student CZK 50,000 in damages for intangible harm and ordered the municipality (the school's founding authority) to issue a written apology to the claimant. The municipality did not appeal against the judgement and the decision thus became final.

Among others, the following people lodged anti-discrimination actions with Czech courts in 2016:

two Roma boys who were discriminated against in enrolment in the first grade

Defender's Report: File No. 5202/2014/VOP of 16 April 2015

a university professor who was subjected to harassment due to her age

Defender's Report: File No. 134/2013/DIS of 14 December 2015

a boy with a disability who faced trouble in obtaining funding for a learning support assistant

Defender's Report: File No. 3343/2014/VOP of 15 September 2015

In three of our cases, extrajudicial settlement was achieved. Victims of discrimination thus achieved satisfaction (apology, restoration of the previous state of affairs, or financial compensation) even before the judgement was rendered. Specifically, this occurred in the following cases:

spouses who were rejected by a dentist because of their Roma background – see page 87

Defender's Report: File No. 67/2012/DIS of 23 May 2012

an employee with kidney stones who was mobbed at work;

Defender's Report: File No. 5560/2014/VOP of 18 May 2015

a female science worker who was fired after returning from parental leave;

Defender's Report: File No. 7930/2014/VOP of 16 July 2015

These cases demonstrate the people's willingness to try and achieve settlement if they find it satisfactory. This was the reason why we created an information leaflet on mediation in 2016. We believe that some discrimination lawsuits may be resolved through mediation, thus avoiding lengthy and costly court proceedings.

See the online leaflet at: bit.ly/mediace

In order to efficiently help persons with disabilities, some of us started learning the Czech Sign Language in 2016.

Resiting the graduation exam

In the area of education, where we annually receive about sixty submissions, we repeatedly inquired into the procedure of the Ministry of Education, Youth and Sports and the Czech Schools Inspectorate regarding their review of the state graduation examination ("maturita"). For instance, we provided our help in a case where a headteacher refused to accept a student's application to resit the graduation exam because the CERMAT system indicated that he had already exhausted all the additional dates for the resist. However, the student insisted that he had retaken the exam twice and that he still had one exam date left. The Czech Schools Inspectorate did not find a failing on the part of the headteacher. We reached the conclusion that the headteacher had not ascertained the facts of case, even though there were no serious doubt concerning the veracity of the student's statements, because the data had been entered in the CERMAT system by the headteacher, meaning they did not prove that the student had actually registered for the exam date. For this reason, the Inspectorate did not proceed correctly and should have taken the student's side. In the end, the Minister of Education, Youth and Sports allowed the student to resit the final exam in spring 2017. The Minister also recommended that the headteachers keep the applications for graduation exams in the future.

Defender's Report and Opinion:
File No. 321/2015/VOP of 8 August 2016
and 17 October 2016

Let's talk together

We consider the previous year a very successful one. We gave presentations on the matters and topics of equal treatment to a wide range of audiences in the Czech Republic and abroad. In 2016, we managed to organise three prestigious international events in the Czech Republic with participation of experts from abroad. As always, we received assistance from our partner institutions which have long been active in the area of combating discrimination.

International conference titled "Unequal Gender Pay"

22 January 2016, Brno
in co-operation with GIC Nora
60 participants

Conference proceeds for download at bit.ly/paygap_coll

Expert seminar on "Gender Equality in Education"

19 to 20 May 2016, Prague
in co-operation with Equinet – the European Network of Equality Bodies
50 participants

Presentations from the seminar for download at bit.ly/equ_gender

Round table "Against Racial Discrimination and Intolerance in the Czech Republic"

3 November 2016, Prague
in co-operation with the European Commission against Racism and Intolerance (ECRI) and the Minister for Human Rights
60 participants

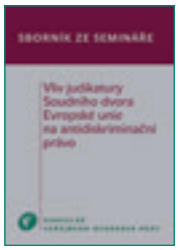
Press release, video and audio recording for download at bit.ly/stul_ecri

New conference proceeds

We issued conference proceeds from two expert events that took place in the previous years:

Equality and Non-Discrimination in the Activities of the Public Defender of Rights: bit.ly/sbornik_rovnost (only in Czech)

Impact of the Case Law of the Court of Justice of the European Union on Anti-Discrimination Law: bit.ly/sbornik_judik (only in Czech)



For attorneys-at-law

We held lectures as part of four expert seminars for the benefit of law offices co-operating with the Pro Bono Alliance. The topics concerned were:

— Discrimination in the provision of goods and services

— Penalties in anti-discrimination law

— Reasonable measures for people with disabilities

— Harassment at work

Public administration

We met with public administration representatives at round tables, expert seminars, lectures and meetings on an ongoing basis.

The topics we discussed:

— discrimination in civil service;

— inspecting pay of persons with disabilities;

— effective protection of consumers against discrimination;

— dietary meals, vaccination and supporting measures for children with disabilities;

— discriminatory generally binding decrees;

— problems faced by persons with visual impairment;

— complaints against discrimination in healthcare;

— segregation in housing and schools;

— persisting shortcomings in inspections of equal treatment at the workplace;

— equal opportunities of men and women in the civil service.

Non-governmental organisations

We met with NGOs at the regular round table and discussed especially the issue of protecting the rights of persons with disabilities. Seventeen organisations accepted our invitation. We actively participated in four events organised by the following non-profit organisations: Open Society Fund, Nesehnutí, Prague Pride and Social Housing Platform.

Students

We offered internships to fifteen law school students from Prague, Brno and Olomouc. We also welcomed a number of one-day excursions in the Office and again held a lecture on discrimination at the School of Human Rights.

International relations

With our Slovak colleagues from the Ombudsman's Office, we discussed surveys, discrimination in public administration, segregation of Roma children in schools and cases of discrimination by association.

We actively participated in meetings of all Equinet working groups. We provided our contributions to individual publications. We are really happy about the

Standards for National Equality Bodies and the practical manuals on equal pay.

Public-awareness project "Pay attention to gender pay gap!"

We invested our utmost effort as an official partner in an awareness-rising project led by GIC Nora. The project took place from September 2015 to June 2016 and received financial support from the Open Society Fund Prague and the Norwegian funds. The main goal of the project was to increase public awareness of the issues related to gender pay gap.

In all 14 regions of the Czech Republic, we:

→ **organised public discussions after the screening of the British film "Made in Dagenham";**

→ **hosted thematic lectures for students of secondary schools and universities;**

→ **discussed the issue with employers and social partners (incl. authorities) at round table meetings.**

In the final stage of the project, we participated in drafting the final position paper:

bit.ly/paygap_dokument (only in Czech)

In the future, we wish to achieve implementation of some of the measures recommended to the Member States by the European Commission in its Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency.

We also initiated co-operation on preparing new guidelines for the District Labour Inspectorates on how to inspect equal pay.

9. OFFICE OF THE PUBLIC DEFENDER OF RIGHTS

Budget utilisation in 2016

Approved budget for 2016

CZK 101,215,000

Apart from that, the budget was increased during the year to cover expenses in the amount of CZK 865,000 for the funding of a project of the Operational Programme Employment titled **Children's Group Motejlci**, and CZK 176,000 for the funding of a project of the National Programme of the Asylum, Migration and Integration Fund **Support for the Effective Monitoring of Forced Returns**.

We included claims from the unutilised expenses from the previous years in the amount of CZK **22,939,000**, of which:

— CZK 5,242,000 for the salaries of employees and other payments for performed work incl. accessions;

— CZK 11,382,000 for operating costs;

— CZK 1,990,000 for programme funding.

We used the funding to ensure standard operations of the Office in addressing complaints and performing our other statutory duties – especially protection against discrimination and protection of persons restricted in their freedom and monitoring of expulsions. We also used the funds for co-funding of the projects Children's Group Motejlci and Support for the Effective Monitoring of Forced Returns.

Utilised budget for 2016

CZK 112,017,000

which amounts to the drawing of 110.67% compared to the approved budget. Of these:

— CZK 681,000 for the funding of the project Children's Group Motejlci;

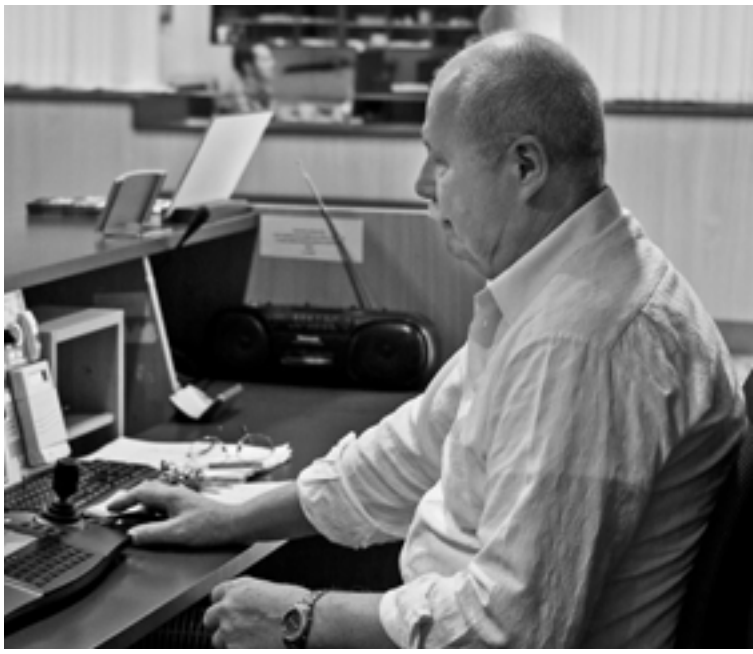
— CZK 206,000 for the funding of the project Support for the Effective Monitoring of Forced Returns;

— 18,614,000 from claims from unutilised expenses from the previous years.

The budget overrun was covered by using claims from unutilised expenses. Claims from unutilised expenses were used for salaries and accessions of five employees (permitted excess of the limit on the number of employees), other personal costs (co-operation with external experts), increase in the salaries of the representatives due to a change in the pay base, operating costs (the operating costs were significantly reduced in the approved budget), and preparatory work associated with the extension of the building of the Office, which will be entirely funded from the claims from unutilised expenses.

For more detailed economic results of the Office of the Public Defender of Rights, go to our website: bit.ly/VOP_hospodareni

Staff in 2016



130

the binding limit on the number of employees of the Office in 2016. The original binding limit on the number of employees of the Office increased during the year from 127 to 130 persons. These employees mainly participated in projects co-funded by the European Union.

132.05

employees is the average recalculated number of employees recorded in 2015. The limit was exceeded due to the necessity of increasing the number of Office employees (2 employees for the Department of Supervision over Restriction of Personal Freedom, 2 employees for internal administration of the Office, 1 employee for the Secretariat of the Defender her Deputy for the Area of Foreign Relations.) The limit was exceeded with the prior consent of the Ministry of Finance of the Czech Republic and was covered by using claims from unutilised expenses from previous years. As a permanent measure, the increase in the number of employees was accounted for in the draft budget of the Office for 2017.

101

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

In 2016, as in previous years, we co-operated with specialists in areas other than law who are not regular employees of the Office (e.g. physicians, experts in social education, psychologists, healthcare and social workers, geriatricians). We engaged these experts for the sake of comprehensive assessment of all cases.

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

»»»»» Provision of information pursuant to Act No. 106/1999 Coll., on Free Access to Information

65 requests were received and resolved by the Office of the Public Defender of Rights in 2016 pursuant to the Free Access to Information Act. The requests were received through the post, e-mail or via the data box.

Of these:

51 times the Office provided the requested information. The requests mostly concerned queries about generalised results of the Defender's inquiries and opinions on the different areas of responsibilities (matters of foreigners; the environment; social and legal protection of children; spatial, construction and occupancy proceedings), documents from the complainants' files, requests for collected opinions titled "Prisons" and information on the budget of the Office.

14 times the Office refused to provide information (or some of it). In 3 cases, the applicants filed an appeal against our decision not to provide information. The Office also received 2 complaints against our procedure in resolving a request for information.

	Total number of requests for provision of information	65
Section 18 (1)(a)	Number of decisions rejecting a request (or its part)	14
Section 18 (1)(b)	Number of appeals lodged against a decision	3
Section 18 (1)(c)	Copy of important parts of each court judgement	0
Section 18 (1)(d)	List of exclusive licences granted	0
Section 18 (1)(e)	Number of complaints lodged under Section 16a of the Act	2
Section 18 (1)(f)	Other information concerning the application of law	0

Media and public relations

8
press conferences

122
press releases and updates

11
issues of electronic newsletter

12,000
subscribers of the electronic newsletter

4,140
printed and broadcast news, articles and reports in the media, of which 184 on TV, 176 in the radio, 1,035 in printed media, 2,430 in internet media and 315 in agency news

> 220,000
visits to the Defender's website (ochrance.cz)

> 7,000
visits to the Defender's website for children (deti.ochrance.cz)

> 12,000
searches in the Defender's Opinions Register (ESO)

3,200
Facebook fans

980
Twitter followers

Topics receiving significant media attention in 2016

- findings from visits to prisons, conditions in prisons and their overcrowding
- enforcement of the right of persons with disabilities to the same minimum wage as received by their able-bodied colleagues for the same work
- increasing number of inquiries and submissions for the Defender by children and teenagers
- recommendation to draw up a law protecting persons with disabilities who use specially trained dogs when entering public premises and means of transport
- inspections of employers with respect to equal pay of men and women performed by trained employees of Labour Inspectorates

During 2016, the Defender analysed for the media three subject areas with the highest number of submissions:

— pensions;

— rules of construction procedure and land-use planning;

— protection of the rights of children and families (activities of the bodies for social and legal protection of children).

In the analysis, she summed up the repeated problems and the most frequently found deficiencies in the activities of authorities. She also pointed out the high success rate in dealing with administrative authorities with respect to remedying failings, which is a positive signal to the public that the Defender can actually help them. These subsequently became the subject of 55 reports, articles and news stories.

Media also paid significant attention to the applications filed by the Defender with the Constitutional Court, including the following:

— application for abolishment of a part of the government regulation on minimum wage according to which persons with disabilities receive lower pay than their able-bodied colleagues for the same work;

— application for abolishment of generally binding ordinances of the towns of Litvínov and Varnsdorf prohibiting people from sitting in public spaces anywhere except benches.

Aside from the topics presented by the Defender publicly, the media most often mentioned the Defender in 2016 in relation to the discussed amendment to the Public Defender of Rights Act and in connection with the situation in the Chrastava educational institution.

Last year, the Defender succeeded in raising public awareness with respect to resolving specific life situations also through her regular column in the Týdeník Květy magazine.

more than

70

information leaflets with instructions and solutions regarding frequent problems are available, for instance at the Defender's website: bit.ly/problem_solutions

We also regularly distribute our electronic newsletter. You may subscribe to it at www.ochrance.cz

Facebook

over **12,000** responses to our Facebook statuses

430,000 people visited our website in 2016

Twitter

78 % increase in followers in 2016

105,000 times our tweets were displayed

Instagram

In autumn, we created a new profile of the Office. Follow our account ochrankyne_prav

5 most favourite topics on social networks:

1. putting an end to the practice of distrainers enforcing telephone debts from children
2. implementation of the recommendation to draw up a law protecting persons with disabilities who use specially trained dogs
3. helping a woman whose ex-daughter-in-law kept her from seeing her little granddaughter
4. our efforts to protect the rights of elderly people and improvement of conditions in facilities for the elderly
5. advice on how to *apply for the allowance* for care for those taking caring of their relatives who have been ill in the long-term

International relations

In 2016, we continued to develop international relations, co-operation with ombudsman institutions and non-governmental organisations abroad. We strengthened bilateral relations with selected defender institutions in Europe and focused on improving the international reputation of the Czech Public Defender of Rights.

1/ 50 years of human-rights conventions

The year 2016 marked the 50th anniversary of the formulation of the first binding catalogue of human rights. In 1966, the UN General Assembly adopted two treaties – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Then Czechoslovakia signed both covenants already in 1968, but it only ratified them ten years later. We prepared a short video series on certain rights we commonly deal with.

2/ Participation in the European Network of Equality Bodies EQUINET

We are active members of EQUINET, an association of national equality bodies. In 2016, we attended or co-organised dozens of foreign and domestic seminars and conferences. We presented our activities, findings and opinions on cases we handle in practice. We participated in all four work groups that evaluate the impact of the activities of the equality bodies, communication, forming of the policy of equal treatment and anti-discrimination legislation in practice. We draw on the findings in our inquiries. With respect to international relations in the field of anti-discrimination, we also focused on equal pay, racial discrimination and gender equality in education.

3/ Development of international relations of the NPM

Within our role as the national preventive mechanism (NPM), we resumed our dialogue with colleagues from similar European organisations. This co-operation presents a long-term contribution to our knowledge and development of working methods. In 2016, we made eight trips abroad, participating in educational events and study visits related to issues associated with the NPM, such as protection of the fundamental rights of children, therapeutic work with convicts suffering from mental disorders, ethical issues associated with the care of persons with dementia and conditions in psychiatric hospitals.

4/ Observer status in the South-East Europe NPM Network

We joined the South-East Europe NPM Network as observers. This means we can participate in the regular information meetings, but we do not have any voting rights. The aim of this association is the exchange of experience, sharing examples of good practice and providing mutual support in the introduction of NPM mechanisms in the Member States.

5/ 10 years of OPCAT

In 2016, the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) marked its 10th anniversary. The Defender also summarised the ten years of her institution's activities as the national preventive mechanism. For the international anniversary, we prepared several activities including a bilingual information leaflet or Czech voice-over to a short animated film created by the Association for the Prevention of Torture.

Selected international activities in 2016

- **The Rights of the Child in Practice Conference and meeting with the Irish Ombudsman for Children** (Ireland, Dublin, 9–13 February). Topic: rights of children and their protection; information on the functioning of the institution of Ombudsman for Children.

- **Children's Rights Behind Bars Conference organised by the international non-governmental organisation Defence for Children International** (Belgium, Brussels, 15 February). Topic: presentation of the first European methodological guidelines for conducting visits, taking into account the specific features in relation to children and their rights as well as the guiding principles in monitoring.

- **LABCIT – Labour Citizenship Project Conference** (Belgium, Brussels, 4–5 April). Topic: the most frequent cases of violations of rights of workers and proposal for the improvement of legislation in the area of indirect employment.

- **IOI's Human Rights Challenges Now: The Ombudsman Facing Threats Conference** (Spain, Barcelona, 25–27 April). Topic: discussion on topical issues, such the dilemma between freedom and safety, the role and responsibility of ombudsmen in the context of the refugee crisis, social crisis and new powers for the ombudsmen of the 21st century or transparency.

- **Bilateral meeting of the Czech and Croatian Ombudspersons** (Croatia, Zagreb, 23–24 May). Topic: comparison of legislation and everyday practice of both institutions in all areas of their competence.

- **Work forum on the implementation of the Convention on the Rights of Persons with Disabilities** (Belgium, Brussels, 9–10 June)Topic: meeting and discussion of the EU Framework representatives and national monitoring mechanisms.

- **International Conference of the European Network of Ombudsmen – ENO** (Belgium, Brussels, 12–14 June). Topic: exchange of experience and examples of good practice of ombudsman institutions, e.g. in the area of promoting transparency of public institutions or good and just administration in the public sector.

- **2016 Annual Conference on European Foreigners' Law** (Belgium, Brussels, 15–17 June). Topic: return policy, protection of the rights of returned persons, the Dublin system and relocation of asylum seekers.

- **FUNDAMENTAL RIGHTS FORUM 2016 International Conference** (Austria, Vienna, 21 June) Topic: rights in today's world and current values in Europe, Convention on the Rights of Persons with Disabilities etc.

- **The Future of Refugee Law International Conference** (United Kingdom, London, 29 June – 1 July).

- **Meeting of ombudspersons from the Visegrad Group** (Slovakia, Štrbské Pleso, 26–28 September). Topic: threats to human rights.

- **Annual Meeting of National Preventive Mechanisms of Members of the Organization for Security and Co-operation in Europe** (Austria, Vienna, 12–14 October).

- **Experts' Meeting on the Occasion of the 10th Anniversary of the German Anti-Discrimination Act** (Berlin, Germany, 27 October). Topic: evaluation of the past ten years for the anti-discrimination law and for the society.

- **Opening Conference for the Project "Forced Return Monitoring II"** (Vienna, Austria, 17 November). Topic: monitoring of forced returns of third-country nationals.

ANNUAL REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS 2016

Editorial board
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Editor
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Photo
Mgr. Kateřina Pavlíčková, Mgr. Jakub Špiřík (cover photo)

Cover photo
The statue of justice created by blind artist Božena Přikrylová in 2002 – located in the foyer of the Office of the Public Defender of Rights.

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