ombudsman
veřejný ochránce práv

Information on activities for the 1st quarter of 2018

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

Contents:

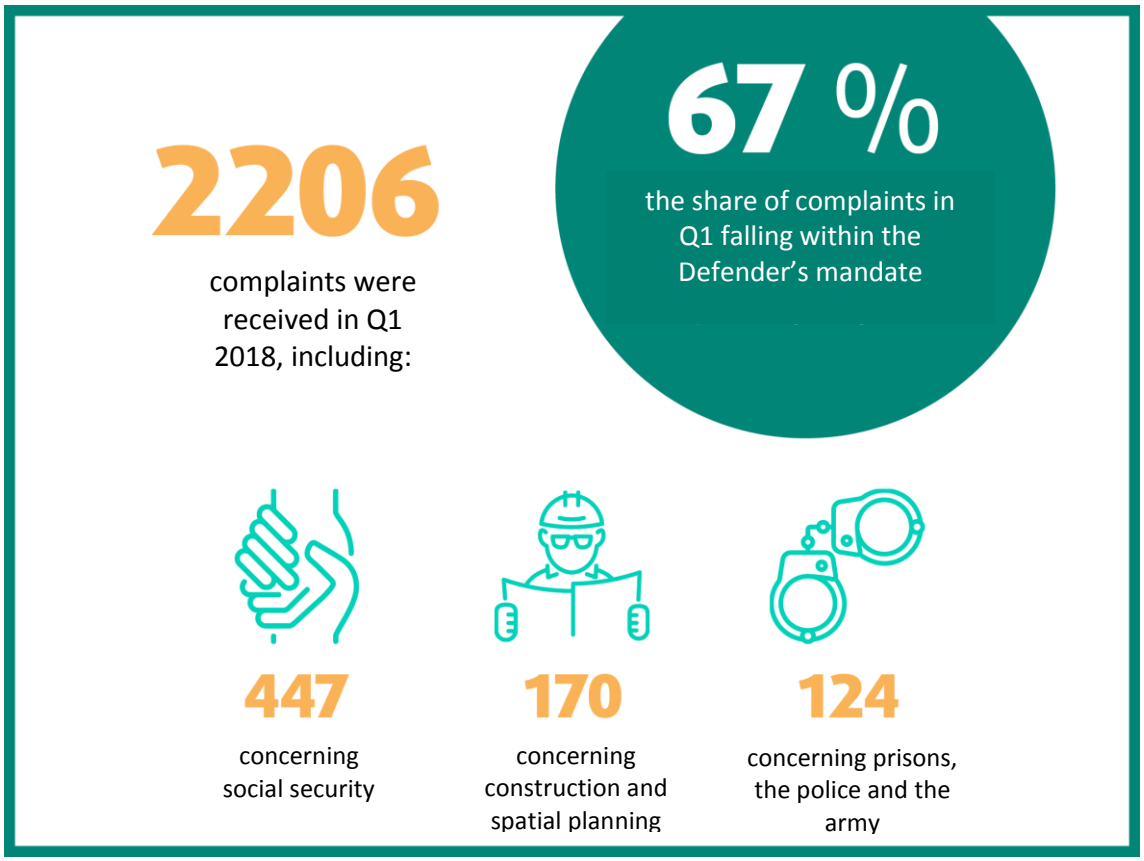
A. Number of complaints, inquiries

A total of 2206 complaints were received in the first quarter of 2018, which is 35 more than in the same period last year. I was approached by 1487 persons in matters falling within my competence under the law, which is 3 more than in the first quarter of the previous year. The proportion of complaints falling within the Defender's mandate decreased to 67% (the figure for the previous year was 68%). Most complaints were related to social security (447 complaints); many complaints (170) concerned the area of construction proceedings and spatial planning, and also the prison system, the police and the army (124).

In a total of 74 of the complaints received, the complainants claimed unequal treatment by public administration and private individuals. The number of complaints against discrimination within the meaning of the Anti-Discrimination Act reached 62. In 17 cases, we also provided discrimination-related information and analyses to international entities and national bodies.

In the first quarter, we performed **4** systematic visits to facilities where persons restricted in their freedom are or may be present. Regarding the area of monitoring detention of foreign nationals and performance of administrative expulsion, we monitored 2254 decisions.

The following figure illustrates the numbers of complaints.



B. Defender's activities

B.1 Public administration

B.1.1 A divorced man blamed the Church for turning children against him (File No. 2237/2016/VOP)

I was approached by a complainant who was dissatisfied with the settlement concerning his four children after the divorce with his wife. He believed the main cause of the problems was the fact he had also left the Church, while the rest of the family had not. He also blamed the body for social and legal protection of children (BSLPC) for siding with his ex-wife. The inquiry showed, however, that the problems were mostly of his own doing.

After separating from his wife, the complainant moved away from the town where he had lived with the family to a small town 24 kilometres away. He requested joint custody without taking the wishes of the children into consideration. He did not consult his new living arrangements with the children and presented them with a fait accompli. Especially the older daughters who were just entering puberty refused to live intermittently in two places. They had interests and friends in the town to pay attention to.

The father did not appreciate that the daughters were growing up and their ideas about spending their time had changed. He blamed the mother and the Church, which he had left, for their refusal of joint custody. For this reason, too, an expert report was drawn up, which did not find the children's or the mother's conduct to be instigated by the Church, although the suspicion had been there in the beginning.

Several attempts to spend time together in the father's new home ended with a fiasco and the daughters returned home to the mother before the visiting days were over. By his dogged attempts to keep the family together, the father was losing his children. Even the younger children were not enthusiastic about joint custody. It should be noted that at least in the beginning, the children liked their father.

The father expected these problems to be resolved by the BSLPC. However, this is not the body's purpose. The BSLPC's role is to protect the children's best interest, not the wishes of their parents. However, we found two mistakes in the BSLPC's work with the family.

The BSLPC did not actively seek to find out about the father's grievances during the meeting where the parents tried to agree on a temporary arrangement for their children (unsuccessfully) with the assistance of social workers. While the mother and the BSLPC believed the parents had reached an agreement, the father disputed that outcome. The BSLPC also failed to mention the circumstances of the meeting in its report for the court. In this, it underestimated the seriousness of the situation.

When the BSLPC concluded that the children were at risk, it should have proceeded more assertively and exhausted all the statutory instruments at its disposal. It should have ordered the parents to seek specialised counselling (e.g. family counselling).

I found no errors in the other aspects of the BSLPC's procedure. The BSLPC had provided the parents with sufficient preventive and counselling activities, advised them on their possibilities and remained impartial in the parent's dispute. Unfortunately, it was not in its power to lead them, especially the father, towards an agreement that would respect the children's best interests and wishes.

In the end, the BSLPC agreed with my conclusions and promised to take them into account in the future.

B.1.2 Public administration cannot deal with drug labs (File No. 6161/2016/VOP)

The town of K. approached me with a request for an inquiry into the procedure of authorities related to a discovery of environmental contamination by chemicals from manufacture of illicit drugs and by chlorinated hydrocarbons from industrial operations. The complaint was also supported by Ms. S.'s family living directly next to the building where illicit drugs had been manufactured.

My Deputy decided to inquire into the procedure of the relevant authorities. The inquiry aimed to address the objections that the authorities had not investigated the case thoroughly and did not use all means at their disposal, leaving the citizens in a state of uncertainty for an extended period of time.

After inquiring into the case, my Deputy noted that while the relevant authorities did address the contamination and tried to ensure improvement, they should have been more active and decisive based on the precautionary principle. The authorities were hampered by a lack of inter-departmental co-operation and co-ordination, resulting in insufficient sharing of information and documents.

According to my Deputy, the authorities underestimated the impacts of the police action following the discovery of the drug lab and of the authorities' procedure on the life of the town and its inhabitants. At the beginning, there was insufficient information available to the town's administration and people living near the building which had been raided by the police.

The Deputy also criticised the lack of a clear co-operation mechanism governing the procedure of public authorities with respect to ensuring environmental protection and public health when dealing with illicit drug labs. This was surprising given that the public administration must have encountered similar cases before.

My Deputy closed the inquiry after the authorities had promised to remedy the criticised shortcomings in their existing procedures and pay increased attention to the case (i.e. take necessary steps to decontaminate the site).

B.1.3 Parents placed daughter in a psychiatric clinic during divorce (File No. 7750/2016/VOP)

I was approached by a woman whose 14-year-old daughter lived in a single household with both her parents after their divorce, because the parents were unable to reach settlement of their community property. According to the complainant, the father "verbally terrorised and abused both the mother and the daughter", which had resulted in bouts of depression and deliberate self-harm in the daughter. The girl was unable to deal with the confrontational atmosphere otherwise than by cutting herself. The girl mentioned the problems on Facebook where the father found about it and asked a body for social and legal protection of children (BSLPC) for help.

One day, after returning home from work, the complainant found out that her daughter had been hospitalised in a psychiatric clinic based on a court's preliminary injunction requested by the BSLPC. The complainant was not aware of the proceedings, nobody had contacted her and she had only found out from the father, who had been the only person in touch with the BSLPC. Nobody had discussed the information provided by the father with the complainant or asked about the daughter's current condition, even though the mother had apparently discussed the daughter's condition with a psychologist.

I criticised the BSLPC'S conduct; while it had made recommendations to the parents and mediated professional help, and had even warned them that it would order them to seek help if they did not do so voluntarily, it had not acted on these warnings without proper explanation. Also, after the father's first notification (that he was concerned about his daughter's health and life), the BSLPC did not inquire whether the mother, who was responsible for taking care of the girl, had been dealing with the situation and with what results, and neither did the BSLPC interview the girl herself. Based on these errors and other formal shortcomings, I concluded that the application for a preliminary injunction whereby the child was placed in a psychiatric clinic constituted an error, i.e. an inadmissible simplification of procedure and work with the family. I also found that the BSLPC had erred when it had made no effort to achieve the objective set at the case meeting, i.e. to ensure the girl would not return to the problematic environment after her release from the psychiatric clinic.

After I issued my inquiry report, the mayor tasked a secretary to ensure that the BSLPC used all the lawful instruments it had available, and to urge it to monitor compliance with its recommendations and proceed to enforcement if necessary. The secretary also explained to the BSLPC that it could employ external counsellors. The inquiry was subsequently closed.

B.1.4 Authorities failed to investigate a dog-to-dog attack (File No. 7227/2016/VOP)

I was contacted by a man who complained about a case where his dog had been attacked by another dog.

Dog-to-dog aggression may be caused by another persons' neglect and can constitute an infraction under the Animal Protection Act. Infraction proceedings are initiated *ex officio* by municipal authorities with extended competence if there is a justified suspicion that an infraction has been committed. The authority did not initiate infraction proceedings in the case, even though the notification clearly indicated that the complainant's dog had been injured by another person's dog and there was a justified suspicion the aforementioned infraction had indeed been committed. The authority erred when it had set the infraction aside and had not initiated infraction proceedings against the owner of the attacking dog.

Within infraction proceedings, a municipal authority with extended competence has a duty to seek expert opinion from the regional veterinary administration (except in cases of infractions consisting in neglect to adopt measures against an animal's escape). The authority asked the regional veterinary administration for an opinion outside administrative proceedings on an infraction. This means the authority also erred by asking an expert opinion from the regional veterinary administration without conducting infraction proceedings.

The regional veterinary administration issues expert opinions which are binding within infraction proceedings. The expert opinion must include the regional veterinary administration's assessment of the animal's health. On the other hand, the regional veterinary administration is not competent to determine whether an infraction was committed; this is up to the competent authority.

The regional veterinary administration's opinion included practically no assessment of the health of the complainant's dog. The administration mostly commented on the legal assessment of the incident itself. For this reason, the regional veterinary administration made an error when it addressed facts it was not competent to evaluate and failed to assess the dog's health.

After an inquiry into the case, my Deputy noted the aforementioned errors and asked the relevant authorities for a statement. All the aforementioned authorities accepted the Deputy's conclusions and promised to avoid the criticised shortcomings in the future. My Deputy subsequently closed the case.

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

Within the Defender's mandate to prevent ill-treatment and ensure supervision over restrictions of personal freedom, authorised employees of the Office of the Public Defender

of Rights performed a total of **4** systematic visits to facilities and monitored **13** instances of administrative and criminal expulsions, both by land and by air, in the first quarter of 2018.

B.2.1 Continuing visits to homes for people with disabilities and institutions tasked with the performance of security detention

Last year, I initiated a series of visits to social services facilities – homes for people with disabilities and I also visited one of the two institutions tasked with the performance of security detention. In the first quarter, employees of the Office continued in the series and visited Domov pod Kuňkou in Ráby and Domov u rybníka in Víceměřice, as well as the Prison and Institution for Security Detention in Opava.

B.2.2 International co-operation

The head of the department of supervision over restrictions of personal freedom **reported to the Subcommittee on Prevention of Torture on the activities of the Czech National Preventive Mechanism**. Representatives of the Subcommittee asked mainly about the Defender's independence and the current challenges in combatting ill-treatment. They praised the manner of conducting systematic visits as well as the individual and systematic topics we pay attention to during the visits.

From 5 to 9 March 2018, I co-operated with FRONTEX and other partners to organise at Václav Havel Airport in Prague a **seminar for representatives of EU countries active in monitoring of forced returns of foreign nationals to their countries of origin.** Employees of the Office and other persons concerned trained their colleagues in expulsion monitoring, from the preparation stage to the departure to the target country and transfer of the foreign national to the other country's authorities. The Defender also contributes to making forced return operations in the European Union more effective.

B.2.3 Awareness raising

Employees of the department of supervision over restrictions of personal freedom presented the activities of the national preventive mechanism (NPM) on various occasions, including the "Human Rights Live" lectures to law school students, the presentation of elderly care issues at the "One World" festival, and courses on foreigner issues organised by the Judicial Academy in Kroměříž.

B.3 Protection against discrimination

B.3.1 The Supreme Court agreed with the Defender's opinion that survivors of a deceased person can also lodge an anti-discrimination action (File No. 61/2015/DIS)

Rights infringed by discriminatory conduct may be claimed not just by the victim of discrimination, but – should the person die – also by his or her surviving relatives and close persons, if they were indirectly affected by the discriminatory conduct. The Supreme Court thus agreed with my opinion in this matter. This concerned a case where a hospital refused to transfer a one-year-old to an intensive care unit with the argument that this form of care would be pointless. The girl was a "butterfly child" (suffered from epidermolysis bullosa).

The parents believed she had been discriminated against because of her condition. After the child had died, the parents initiated an anti-discrimination action against the hospital, whereby they claimed an apology and financial compensation. Lower-instance courts rejected the action with the argument that it could only have been lodged by their daughter and that the right had not passed to her heirs.

The girl suffered of congenital epidermolysis bullosa. When she was eleven months old, she had to be hospitalised. Despite receiving antibiotics, her condition continued to deteriorate. According to the parents, the hospital staff urged them to accept their daughter's impending death because even if she was successfully revived, her life would not be worth living. However, the parents disagreed with ending attempts to keep their daughter alive and requested her transfer to an anaesthesiology and resuscitation department (ARO). This happened four days after her first birthday; the child died on the same day. The parents believed that if their daughter had not been suffering of her illness, her resuscitation would have been initiated sooner and without the need to urge it. For this reason, they decided to lodge and anti-discrimination action. They were convinced that her illness was the reason why adequate care had not been provided to her.

The hospital insisted it had provided the girl with all possible care. It had opposed her transfer to ARO mainly because application of any kind of an intravenous drip would be difficult and life-threatening given the girl's diagnosis and prognosis. Patients are transferred to ARO if there is a reasonable expectation that the care provided could help them overcome their critical condition and there is a real possibility of restoring or improving their body functions. The doctors believed this was not the case.

The individual court instances did not deal with the matter of who was right, whether the parents or the doctors, and neither did I within my inquiry. The courts were deciding about whether or not the parents of the deceased girl had the right to lodge an anti-discrimination complaint after her death. Lower-instance courts believed that the right only belonged to the person concerned, i.e. the girl in this case. They believed the right terminated with the death of the person.

In the opinion I provided, I asserted that the right also belonged to the survivors who had been indirectly affected by the discriminatory conduct.

The Supreme Court reached the same conclusion in its judgment File No. 30 Cdo 2260/2017.

B.3.2 Recommendation on equal access to preschool education (File No. 25/2017/DIS)

The first recommendations on equal access to preschool education were issued in 2010 by then ombudsman, JUDr. Pavel Varvařovský. They were his response to complaints raised by parents whose children had not been admitted to a kindergarten. Kindergarten headteachers were making decisions based on criteria the parents considered discriminatory. Consequently, the aim of the recommendations was to assess the most commonly applied criteria in terms of their compliance with the law.

In 2016, a major amendment to the Schools Act was enacted. The amendment introduced mandatory preschool education and the right to preferential admission to a kindergarten based on age. Just as the other types of education, preschool education, too, must also be governed by the principles of equality and non-discrimination. For this reason, I have decided to update the recommendations to reflect the current legislation in the area.

The recommendations include assessment of the criteria most commonly used in admissions to preschool education and their application to various groups of children (children with the obligation to attend preschool education, children with the right to preferential admission, and (non-)catchment children). The recommendations also address the procedural aspects of kindergarten headteachers' decision-making.

My recommendations are intended primarily for headteachers in kindergartens administered by municipalities or associations of municipalities, regional authorities (which hear appeals against decisions not to admit a child), the founders, the Czech Schools Inspectorate, parents, as well as the general public.

B.3.3 Workplace bullying after return from parental leave (File No. 15/2016/VOP)

I was approached by a woman who had worked in a company as the head of the legal department before taking up maternity leave. Even before returning from the leave, her employer had given her a demanding task he could have given to another employee. After returning from the leave, her new boss started piling up difficult assignments on her, which were sometimes unrelated to her job responsibilities, or criticised her for formalities.

While she was at home on bed rest ordered by a doctor, her employer continued assigning new tasks to her. The woman believed this behaviour constituted workplace bullying (bossing) designed to force her to quit her job. According to the complainant, the employer also used similar tactics against other women returning from parental leave.

For this reason, the woman turned to the District Labour Inspectorate (hereinafter the "OIP"), which concluded that the Labour Code may have been violated and informed the woman that it had initiated steps to remedy the situation. However, the complainant did not notice any improvement, and so she again turned to the OIP and, later, to the State Labour Inspectorate. Neither step brought any results.

During my inquiry, I found multiple errors in the Inspectorate's procedure. The OIP failed to properly inform the complainant of the results of the inspection and had not sufficiently dealt with the claimed unequal treatment – it had not sought information on the alleged unequal treatment from other employees who could have corroborated the complainant's allegations. The OIP had also failed to properly assess the unsuitability of the tasks given to the complainant and incorrectly assessed the alleged assignment of work during the complainant's temporary unfitness to work.

During my inquiry, the complainant resigned from her job, making it impossible to ensure a remedy. The Director General of the State Labour Inspectorate informed me that the results of my inquiry had been discussed with the heads of departments of labour relationships and conditions of all district branches and recommendations had been given to inspectors as to

how to proceed in similar cases in the future. Further, I personally discussed the conclusions and recommendations with the General Director at our regular yearly meeting. Subsequently, I closed the case.

C. Legislative recommendations and special powers of the Defender

C.1 Statement of the enjoined party on the application to abolish Section 26 of Act No. 186/2013 Coll., on the citizenship of the Czech Republic and amendment to certain laws, as amended.

By virtue of my statement of 5 January 2018, I became an enjoined party in proceedings on the application to abolish Section 26 of Act No. 186/2013 Coll., on the citizenship of the Czech Republic and amendment to certain laws, as amended (hereinafter the "Citizenship Act").

JUDr. Pavel Varvařovský, the former Public Defender of Rights, voiced his resolute disagreement with the exclusion of court review stipulated by Section 26 of the Citizenship Act already within the inter-departmental commentary procedure concerning the Government's bill. During the subsequent legislative procedure, further reservations to the provision were voiced by the Senate, which on 16 May 2013 returned the draft Citizenship Act back to the Chamber of Deputies with proposed amendments. One of the proposed amendments concerned modification of Section 26 to enable court review also of those administrative decisions where Czech citizenship is denied due to reasons of national security. However, the Chamber of Deputies adopted the original version of the bill, in the wording submitted to the Senate, on 11 June 2013.

The current application for abolishment of the provision clearly indicates that **the concerns regarding its suitability and conformity to the Constitution already voiced during the legislative process** persist.

In my opinion, Section 26 of the Citizenship Act violates the right to a fair trial guaranteed by Article 36 of the Charter of Fundamental Rights and Freedoms and the principle of a democratic State governed by rule of law following from Article 1 (1) of the Constitution. For this reason, I agreed with the application filed by the Supreme Administrative Court to abolish Section 26 of the Citizenship Act, which rules out court review of administrative decisions to deny Czech citizenship on the grounds of national security, because it is at variance with the Czech constitutional order.

C.2 Commentary procedure on a bill amending electoral laws

Within the commentary procedure concerning the relevant bill, I requested that the amendment to electoral laws be supplemented with another provision which would **stipulate the right of citizens of EU Member States with temporary residence in the Czech Republic to participate in elections to municipal assemblies**.

The current wording of the law gives the right to vote only to those EU citizens who have permanent residence in the Czech Republic. Pursuant to the Treaty on the Functioning of the European Union and Council Directive 94/80/EC, however, this right also belongs to EU

citizens with temporary residence in the Czech Republic. **I already advised the Minister of the Interior of this discrepancy in 2014** and I inferred it could be remedied by direct effect of EU law. **This was subsequently confirmed by the judgements of the Regional Courts in Brno and in Prague**, respectively, which had received petitions from a number of European Union citizens with temporary residence (using the Defender's legal opinion) prior to the municipal elections held in October 2014. The Ministry of the Interior subsequently adopted a measure allowing the exercise of the right to vote in the October 2014 municipal elections by all citizens of the European Union with a certificate of temporary residence in the Czech Republic. The Ministry also promised to submit a law that would bring the area of the EU citizens' right to vote into compliance with EU law.

However, this is yet to materialise. A draft legislative measure remedying the discrepancy in the Czech Republic's obligations following from EU law by amending Section 4 of the Municipal Elections Act, which specifies persons with the right to vote in elections to municipal assemblies, was originally a part of the bill amending the electoral laws, which was approved by the Government's Resolution No. 715 on 24 August 2016. However, this part was deleted by the Chamber of Deputies. **The existing legislation thus continues to violate EU law.**

New elections to municipal assemblies will take place in October 2018; the absence of the aforementioned amendment will have the same problematic consequences as it had before the last municipal elections in 2014. The Ministry of the Interior had to deal with these problems *ad hoc* based on case law of administrative courts. **It is not acceptable for the situation to repeat itself four years after the administrative courts identified the discrepancy with EU law, during which the Ministry of the Interior should have ensured a solution to the problem.** In terms of the time remaining, the submitted bill seems to be the only suitable option to adopt a legislative solution in time for it to become effective prior to the date of the municipal elections.

For the above reasons, I find the non-acceptance of my suggestion within the commentary procedure baffling. At present, the relevant amendment is to be discussed by the Chamber of Deputies (document No. 137).

In Brno, on 24 April 2018

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Public Defender of Rights