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Ref. No.: KVOP-2670/2020/S

# Report of the Public Defender of Rights on Activities in the 4th quarter of 2019

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



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## A. Defender's activities in numbers

During the 4<sup>th</sup> quarter of 2019, we received a total of **1,779** complaints (111 fewer than during the same period last year). The share of complaints falling within our mandate (**72.51%**) is constantly growing (it equalled 68% in 2018). As in previous years, most of the complaints concerned social security – especially pensions and benefits (343) and construction projects (149).

In **76** cases, people complained about unequal treatment, of which **62** related to grounds prohibited by the Anti-Discrimination Act. In **11** cases, we also provided discrimination-related information and analyses to international entities and national bodies.

We visited **5 facilities** (including two facilities for institutional and protective education, a psychiatric hospital and a facility for detention of foreigners). We monitored one **administrative expulsion** of a foreign national and examined **2,446 decisions** on detention and expulsion.

We initiated a **survey** monitoring the exercise of the rights of people with disabilities focusing on employment of disabled people in the public sector.

The following figure illustrates the numbers of complaints:



**1,779**

complaints were received  
in Q4 2019, including:

almost

**73 %**

of complaints fell within  
the Defender's mandate  
and we could thus deal  
with them



**149**

construction



**116**

pensions



**95**

activities of the  
Prison Service



**84**

protection of



**81**

social aid and  
benefits for people  
in material need



**79**

benefits for people with  
disabilities



## B. Public administration

Since 2001, the Defender has been defending individuals against unlawful or otherwise incorrect procedure of administrative authorities as well as against their inactivity. The Defender may inspect court files, request explanations from authorities and carry out local inquiries. If malpractice is found on the part of an authority, the Defender will recommend measures for remedy; the authority's decision, however, cannot be cancelled or replaced by the Defender.

### B.1 Debt in premiums owed for public health insurance (File No. [1186/2019/VOP](#))<sup>1</sup>



A health insurance company should regularly check the performance of the insured persons' duties in payment of premiums for public health insurance (no less than once a year). If any debt is found, the insurance company has to inform the insured person without delay. At the same time, it should advise him/her of the possibility to apply for waiver of a penalty.

In this particular case, the health insurance company informed the complainant of a debt in the amount of CZK 1,080 (for one month) for the first time more than five years after it arose. The penalty for that period had already exceeded the debt itself. The insurance company did not inform the complainant that she could apply for waiver of the penalty after having paid the outstanding premiums. The complainant was surprised about the existence of the debt also because she had already been registered with another insurance company for two years.

In the end, the health insurance company adopted the measures suggested by the Defender – to carry out the relevant checks at least once a year and to properly notify the insured persons.

### B.2 Provision of information to multiple applicants (File No. [676 /2019/VOP](#))



If several applicants file a joint request for information and the information can be provided without any further requirements, the relevant authority shall provide it to each of the applicants under a single reference number. If such a request for information is rejected (even partially), the authority has to issue a single decision to this effect and again deliver it to each of the applicants. Documents that do not relate to his/her business activities cannot be delivered to the data box of a natural person operating a business.

Two applicants first advised the Ministry of Industry and Trade that a certain company was operating its business without a licence. When they received no response in spite of repeated communication, they filed a request under the Free Access to Information Act. At first, the Ministry did not respond in due time and later replied to only one of the

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1 [Report on inquiry, final statement.](#)



applicants. The applicants filed a complaint and made further requests. The Ministry then made the same error again. It only communicated with one of the applicants and, moreover, incorrectly delivered documents to a data box used by that applicant for the operation of his business. Eventually, it issued two decisions instead of one on the joint application. The Ministry later evaluated an appeal lodged by both applicants as an appeal filed by only one of them. Following further complications, the Ministry had to deal with further requests and complaints.

The Ministry acknowledged all the errors found and promised to comply with the procedures under the Free Access to Information Act.

### **B.3 Child's right to be in contact with his/her tutors (File No. [5219/2018/VOP](#))<sup>2</sup>**



The relationships between children and their tutors are protected by the right to family and private life provided that these relationships have actually attained the level of family ties. This must be respected by the competent body for social and legal protection of children in addressing the situation of the child in tutor's care.

On application of a body for social and legal protection of children (BSLPC), the court issued a preliminary injunction whereby it removed a child from his tutors and placed him in a diagnostic institution. The BSLPC failed to discuss the situation with the tutors forthwith after the decision was made, did not inform them of further steps, and failed to co-operate with them. Based on a mere notice from the Police of the Czech Republic, i.e. without a statutory basis (court decision), the diagnostic institution then prevented the tutors from contacting the child, did not communicate with them and did not provide them with sufficient information on the child. The BSLPC knowingly tolerated a long-term violation of the right to mutual contact between the child and his tutors.

The BSLPC and the diagnostic institution eventually accepted all the measures the Defender proposed with a view to achieving a remedy. If contact is to be prohibited in the future, the diagnostic institution will strictly require a decision rendered by a court or a public prosecutor's office. At the same time, it will support the least invasive interference with the child's right to be in contact with persons responsible for his/her upbringing. If contact with the child needs to be restricted, the institution will continue providing these persons with information on the child unless this is prohibited by the court. It will properly record all its procedures.

### **B.4 BSLPC as a child's tutor, foster care benefits (File No. [7712/2018/VOP](#))**



If a body for social and legal protection of children (BSLPC) is in the position of a child's tutor, it has to co-operate with the persons responsible for the child's upbringing and take interest in the child's needs and interests. It must ensure that the persons responsible for the child's upbringing do not exceed their authorisation to represent the child. A person who has custody of a child but does not have the duty to maintain and support the child is entitled to foster care benefits throughout

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<sup>2</sup> [Report on inquiry, final statement.](#)



the proceedings on his/her appointment as a tutor. Appointment as a tutor is not conditional on non-existence of debts.

The court entrusted a boy with a multiple disability into the complainant's custody. At the same time, it appointed a BSLPC as the boy's tutor. The complainant later asked the court to appoint her as a tutor instead. The BSLPC did not support her application – she allegedly did not meet the precondition of a clean record as she had some outstanding debts. It did not advise her that she was already entitled to foster care benefits during the proceedings and did not enter with the complainant into an agreement on foster care as required by the law. It is unclear whether and how the BSLPC communicated with the boy (no records exist in this regard). The BSLPC failed to properly represent the boy in certain important matters (usual non-urgent medical treatment; choice of a school) and failed to sufficiently defend his interests (it failed to enforce claims for outstanding maintenance payments). The file did not indicate that it had sufficiently co-operated with the complainant, e.g. in the creation of an individual protection plan for the child, and with a collaborating non-profit organisation.

In response to the report, the BSLPC acknowledged most of the errors and, following two subsequent meetings, it took measures to ensure a more active approach by the BSLPC to the exercise of tutorship and more frequent reviews of the correctness of this procedure. The complainant was provided with the foster care benefits retroactively.

#### **B.5 Fair unemployment benefits even without the employer's confirmation (File No.: [1578/2017/VOP](#))<sup>3</sup>**



If the employer fails to confirm an employee's average monthly net earnings using the relevant form and the labour office is unable to perform an inspection under the Employment Act, the office has to determine the amount of unemployment benefits even on the basis of other available documents that the applicant submits or proposes.

In the case at hand, the employer failed to issue any documents to the complainant following termination of her employment. She was thus unable to prove her average monthly net earnings and the labour office granted her unemployment benefits in the minimum amount. Later, she managed to obtain copies of her payslips from the employer's accounts. She therefore asked the labour office to increase the benefits and pay the outstanding amounts retroactively. The office refused to deal with any documents other than a form filled in by the employer and denied her the requested benefits. It stated that it would not perform any calculations itself and would merely check the amount of earnings confirmed by the employer.

Remedy was ensured by the Ministry of Labour and Social Affairs, which confirmed the Defender's conclusion that a labour office has the duty to use also other underlying materials when setting the amount of the benefits.

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<sup>3</sup> [Report on inquiry](#), [final statement](#).





**B.6 Refund of tax payment remitted to an incorrect tax account (File No. [185/2018/VOP](#))**



The tax administrator will refund a payment to anyone who proves that, by an obvious mistake, he/she has remitted tax to an incorrect tax account. If a person making such a payment has any outstanding tax liabilities, the tax administrator will use the payment made by mistake towards settlement of such liabilities. If the person into whose tax account the payment was remitted by mistake owes taxes, this should not prevent a refund of the payment.

The complainant's accountant entered an incorrect variable symbol with regard to payments of value added tax in an amount exceeding CZK 500,000. The payments were therefore credited to the personal tax account of another tax entity. The complainant learned about the error several months later and asked the tax administrator to transfer the payments to his personal tax account. The tax administrator did not satisfy the complainant's request, arguing that the person to whose account the payments had mistakenly been remitted had outstanding tax liabilities.

The tax administrator eventually refunded the payment on the basis of a decision rendered by an administrative court (regional court), which approached the case in the same way as the Defender's Deputy. The Supreme Administrative Court will hear the case based on a cassation complaint lodged by the tax administrator.

**B.7 Permanent residence of citizens living abroad and local fees (File No. [6074/2019/VOP](#))**



If an authority issues a certificate containing a certain piece of information, it has to ensure that this information is reflected in the relevant records so that their contents are not at variance with the issued certificate.

The complainant, a Czech citizen, left the country in 1987. In 1995, when he returned to the Czech Republic to obtain a passport, the municipal authority issued to him a certificate of citizenship, where it stated Australia as his place of residence (while knowing the exact address). But it did not cancel his permanent address in the Czech Republic in the population records, although when a certificate is issued to citizens living permanently abroad, their residence in the Czech Republic is considered temporary. It then used the same records in administration of the local fees for municipal waste. The complainant learned about the problem at a time when he received Czech old-age pension because the municipal authority had attached the pension (i.e. seized it as a debt collection measure) with a view to collecting the outstanding fee.

The municipal authority remedied the situation forthwith after the inquiry was initiated. It retroactively cancelled the complainant's permanent residence, discontinued the attachment procedure and corrected the balance of the account maintained with regard to the complainant's duty to pay the local fee.



**B.8 Assistance in material need is not subject to debt collection procedures (File No. [3397/2018/VOP](#))<sup>4</sup>**



Assistance in material need is not subject to any debt collection (attachment) procedure even after it has been remitted to a bank account. The tax administrator is not obliged to examine the nature (source) of the funds in a debtor's account when ordering debt collection by assigning a receivable from his account. However, once the debtor proves that a part of the funds credited to his/her account is not subject to attachment (proves that their source is not subject to debt collection), the tax administrator must discontinue the debt collection procedure and refund the money to this extent.

By mistake, the labour office did not pay a benefit under assistance in material need to the complainant by means of a postal order, but rather sent it to her attached bank account. The bank immediately transferred it to the competent municipal authority, which, as the tax administrator, ordered its attachment with a view to collecting an outstanding local fee for municipal waste. The complainant asked for a refund of the benefit but the municipal authority dismissed her request three times in spite of a confirmation issued by the labour office that the amount in question represented assistance in material need, which cannot be subject to attachment.

Only after the case was published did the superior regional authority intervene and the complainant got the unlawfully attached money back.

**B.9 Parents' disagreements with regard to admission to a kindergarten (File No. [398/2019/VOP](#))<sup>5</sup>**



If only one of the two parents files an application for admission of a child to pre-school education and the kindergarten headteacher learns that the other parent is not aware of the application, the headteacher cannot decide on admission of the child until consent of this other parent is obtained. The existence of consent cannot be inferred solely from the fact that the parent did not explicitly state his or her disagreement.

The complainant learned that his son's mother had filed an application for admission of the boy to a kindergarten without his knowledge. He personally discussed the matter with the headteacher. Although he had not granted his consent to the application, the headteacher nevertheless decided to admit the boy to pre-school education. The complainant approached the Regional Authority, but the latter refused to initiate review proceedings although it should have done so because the kindergarten headteacher was not in good faith that the parents had acted in concert.

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4 [Report on inquiry, final statement, notice to the superior authority, press release.](#)

5 [Report on inquiry, final statement.](#)



After the final statement was issued, the Regional Authority admitted the error, apologised to the complainant and acquainted the relevant employees with the Defender's legal opinion.

#### **B.10 Calculation of rent usual at the given place with regard to a contribution towards housing (File No.: [7005/2018/VOP](#))<sup>6</sup>**



When deciding on applications for a contribution towards housing (form of assistance in material need), the labour office has to determine the amount of rent usual at the given place, which represents the maximum limit of rent that can be used for the calculation of this benefit. Determination by the labour office of the amount of rent usual at the given place is then based on the current amount of rent for at least three comparable flats at a comparable location. As source data, it can use data on rent available in clients' files, advertisements and also the rent map published by the Association of Real Estate Agencies (AREA CR). However, data from the rent map published by AREA CR cannot be used for the calculation itself, but only to check (compare) the results obtained so far, as the map does not contain any specific data on the sizes of the flats or whether the amounts of rent are up-to-date.

To calculate the rent usual at the given place in the present case, the labour office used data from AREA CR's rent map as an equivalent source. The average rent calculated on the basis of data from the clients' files kept by the labour office and online advertisements of real estate agencies was higher in all the cases than the average rent ascertained from AREA CR's rent map. As a result of this error, the labour office determined the rent usual at the given place in such a low amount that it would be insufficient for actually renting a flat; this then affected the amount of the contributions towards housing granted to applicants.

In the end, the labour office recalculated the amount of the rent usual at the given place without using data from the rent map published by AREA CR. The rent usual at the given place increased significantly as a result.

#### **B.11 Duty of convicts to present health insurance cards (File No. [5653/2019/VOP](#))<sup>7</sup>**



As a general rule, anyone who wants to access healthcare must first present his/her insurance card. However, the Prison Service as a healthcare provider may not refuse care to a convict if the convict does not have this card in his/her possession or if the card is damaged. With the exception of uninsured foreigners, a convict serving imprisonment is automatically insured within the system of public health insurance and the Prison Service is the only provider of healthcare available to the convict. In a prison, it is not necessary to present an insurance card to identify the patient and it is also irrelevant whether or not the expiry date is legible on the card because the insured person continues to be insured with the same insurance company even after

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6 [Report on inquiry, final statement, notice to the superior authority.](#)

7 [Report on inquiry, final statement.](#)



expiry of the card.

The complainant came to the prison's healthcare centre with flu-like symptoms. The insurance card which he submitted was partially damaged and had an illegible expiry date. The physician refused to treat him because he had failed to comply with the duty to present a health insurance card as required by the head of the given department, and at the same time, the physician had concluded that his medical condition did not require urgent treatment.

After an initial attempt to defend the existing approach (including assurance that if the complainant had shown acute symptoms of a disease, the physician would have treated him), the prison director ultimately agreed that presenting a valid and undamaged insurance card was not a precondition for providing healthcare in a prison.

### **B.12 Conferences, roundtables, training, information leaflets**

- Cases of removal from the records of job seekers in the practice of the Public Defender of Rights ([seminar](#) for social workers and employees of public counselling centres and non-governmental organisations)
- Right to information and personal data protection (series of seminars for officers of territorial self-governing units and public institutions established by them in [Prague](#), [České Budějovice](#), [Plzeň](#) and [Ostrava](#))
- Topical questions from practice of the Immigration Police – reflection on selected problems, case law of Czech and European courts and examples of foreign practice (two-day training course for the Immigration Police)
- Administration of local fees ([seminar](#) for officers of territorial self-governing units)
- Topical issues related to noise in urban environment ([roundtable](#) with representatives of the Ministry of Health, individual regional public health stations and the National Reference Laboratory for Noise in Urban Areas)
- Anonymisation of court decisions ([roundtable](#) with representatives of the Ministry of Justice, the Supreme Court, the Supreme Administrative Court and the Constitutional Court, regional and district courts, and experts from the academia)
- New information leaflets: [Long-term contribution towards medical treatment; Lawyers and notaries; Expert witnesses, Social and legal protection of children; Sharing economy - accommodation services; Sharing economy - transport services](#)



## C. Supervision over restrictions of personal freedom and expulsion monitoring

Since 2006, the Defender has been the national preventive mechanism pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Defender systematically visits facilities for persons restricted in their freedom, either *ex officio* or as a result of dependence on the care provided. The Defender generalises his or her findings and recommendations in summary reports on visits and formulates standards of treatment. The findings and recommendations are submitted to the facilities and their founders, and systemic recommendations are presented to central governmental authorities. Since 2011, the Defender has also been monitoring detention of foreign nationals and the performance of administrative expulsion.

### C.1 Systematic visits and monitoring of expulsion

We visited **five facilities** and monitored **one administrative expulsion** of a foreign national, specifically from the Facility for Detention of Foreigners in Bělá-Jezová via Václav Havel Airport in Prague.

We initiated a new series of visits focusing on social services facilities – **special regime homes providing care to persons with reduced self-reliance due to a chronic mental illness or addiction to dependency producing substances**. The first visited facility was Domov ve Věži in the Vysočina region.

We then continued with **facilities for institutional and protective education** as we visited the Educational Institution in Višňové and Educational Institution Husův Dům in Dvůr Králové nad Labem. We also visited the **Psychiatric Clinic** at the Olomouc University Hospital and the **Facility for Detention of Foreigners** in Balková.

### C.2 Forensic treatment

[We presented a report dealing with the execution of forensic treatment, means of restraint and further topics.](#) This report on visits to psychiatric hospitals points out the inadequate legal framework of forensic treatment and further systemic and individual shortcomings of its execution. Ambiguities relate to treatment without the patient's consent, legitimacy and scope of "regime measures" (getting outside, the possibility of wearing one's own clothes and using own things, including a telephone), use of security equipment (cameras, bars), etc. The issues we found present a threat to the staff and other patients. Therefore, we requested in the report that appropriate measures be adopted by the responsible ministries, i.e. the Ministry of Health and the Ministry of Justice.



### **C.3 Assistance to the Government with the plan of measures in response to the CPT report**

The Government of the Czech Republic received a [report](#) on the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2018. The report comprised a detailed statement on the situation in police detention, prisons, psychiatric hospitals and residential social services facilities. The Government has to respond specifically to each of the several dozen recommendations and, where appropriate, promise to adopt remedial measures. We commented on the draft response. As a result, the final [response of the Government](#) was more accurate, followed up on the dialogue led by the Government with the Committee in 2015 and also yielded a [list of specific tasks](#) for the ministries.

### **C.4 Meeting aimed at expulsion monitoring**

We organised a meeting with representatives of institutions that participate in the preparation and implementation of forced returns of foreign nationals. We informed the participants from the ranks of the Directorate of the Immigration Police, the Prison Service of the Czech Republic and the Refugee Facilities Administration of the Ministry of the Interior about our findings obtained during expulsion monitoring over the three years of the project titled *Support for the Effective Monitoring of Forced Returns*, registration number AMIF/8/02, financed from the EU Asylum, Migration and Integration Fund. The project, which ended on 31 October 2019, reinforced our activities as an independent and effective system for monitoring forced returns of foreign nationals. We monitored a total of 120 expulsions. In this way, we help to make return operations more effective in returning illegally staying foreigners back to their countries of origin.

### **C.5 Awareness raising**

We prepared a seminar for health services workers in the Plzeň and South Bohemian Regions, especially those who take care of patients in treatment facilities for long-term patients. We imparted to them our findings from systematic visits to treatment facilities for long-term patients (File No. [3/2015/NZ](#)) and presented good practice. The series of training sessions for the staff of treatment facilities for long-term patients will continue in other regions.

As part of the “[Senior Academy](#) Brno” study programme, we informed more than a hundred elderly people what rights they have as clients of social services and also about shortcomings we tend to encounter in the area of provision of social services.

We were involved in teaching the “Clinic of Social Rights” course at the Faculty of Law in Olomouc. We shared with the students our experience in institutional and protective education.

We participated in a methodological meeting organised by the Ministry of Labour and Social Affairs concerning de-institutionalisation of residential social services. We communicated our findings from our visits to facilities for people with disabilities.



At a seminar for social workers at the Prison Service of the Czech Republic, we discussed problematic situations encountered by these employees. We also presented [collected documents under the title “Prisons II”](#) and recommendations issued in reports on expulsion monitoring.

### **C.6 International activities**

We have already worked as the national preventive mechanism (NPM) for over 13 years. We are happy to share our experience. And we also want to learn from others. That is why we hosted our colleagues from Ukraine for two days and shared experience with them. In Ukraine, the NPM activities are also performed by the ombudsman.

As supervisors, we participated in international training organised by the International Centre for Migration Policy Development (ICMPD) in co-operation with the Frontex agency. The training was aimed at familiarising our colleagues from other countries who monitor the course of the return operations with critical moments that can occur during the expulsion.



## D. Protection against discrimination

In 2009, the Defender was also given the role of the national *equality body* pursuant to the European Union legislation. The Defender thus contributes to the enforcement of the right to equal treatment of all persons regardless of their race or ethnicity, nationality, gender, sexual orientation, age, disability, religion, belief or worldview. For that purpose, the Defender provides assistance to victims of discrimination, carries out surveys, publishes reports and issues recommendations with respect to matters of discrimination, and ensures exchange of available information with the relevant European bodies.

Since 2018, the Defender has also been helping foreigners – EU citizens who live or work in the Czech Republic. The Defender provides them with information on their rights and helps them in cases of suspected discrimination on grounds of their citizenship. The Defender also co-operates with foreign bodies with similar responsibilities regarding Czech citizens abroad.

### D.1 Supervised meetings in cases of suspected discrimination against a person with a disability (File No. 2500/2019/VOP)

A girl's father had doubts as to the approach of a speech therapist to his daughter. The girl suffers from serious hearing problems but wants to learn to speak. Everyone in the family is deaf and she can thus find no one to support her in her attempts at speaking. Her father wanted the speech therapist to provide his daughter with more intensive care. He felt that the therapist was giving priority to children with different handicaps.

There was no animosity between the two parties and we therefore decided to try and resolve the issues at a personal meeting. The speech therapist explained to the father that he had not given preferential treatment to the other children; he lacked the capacity to provide more intensive care and, as a matter of fact, the condition of his daughter did not call for such care. But it would be helpful for her to be in contact with a hearing/speaking community. He therefore promised to help her father look for a student who could spend some time with the girl. The father was satisfied with this result of the meeting and accepted the therapist's explanation.

### D.2 A public opinion poll excluding participation of persons over 75 years of age (File No. 7689/2018/VOP)



People over 75 years of age cannot be excluded from a public opinion poll which is to replace a local referendum.

The complainant challenged steps taken by the Statutory City of Ostrava on the grounds of discrimination against elderly people as the city had excluded people over 75 years of age from a public opinion poll regarding a plan for the construction of new tram tracks in the district of Ostrava-Poruba. The Mayor of Ostrava repeatedly described this poll in the media as a "cheaper alternative to a local referendum".





The Defender sent a letter to the Mayor of Ostrava where she stated that it was inadmissible to set an upper age limit for a public opinion poll that was to replace a local referendum, also because these people would have the right to vote in a possible referendum. The Mayor of the City of Ostrava stated that they had also been presenting the project of tram tracks in debates organised in retirement homes. While the Defender appreciated this, she pointed out that such debates could not substitute for an opportunity to express one's opinion in a public opinion poll. She therefore recommended that, next time, the City should refrain from setting any age limits for public opinion polls unless this was warranted by the subject of the poll.

### **D.3 In two cases, the Supreme Court confirmed the Defender's previous legal opinion**

A Muslim girl of Somali origin was unable to study at the Secondary Medical School in Prague because she insisted on wearing a hijab. The Defender concluded (File No. [173/2013/DIS](#)) that the provision of the school regulations which prohibited the wearing of headdress was indirectly discriminatory on the grounds of religion. The Supreme Court (File No. 25 Cdo 348/2019) confirmed the Defender's opinion and ruled that a prohibition covering religious headdress worn during theoretical courses at a school did not pursue any legitimate objective.

An employer "pressed" several employees into quitting their jobs because they had reached the retirement age. Eventually, they were given notice on the grounds of redundancy. The Defender believed that in cases of alleged discrimination, the courts should deal with the specific grounds given for the selection of redundant employees (File No. [8024/2014/VOP](#); File No. [4519/2019/VOP](#)). One of the employees defended herself in court against the notice she had received. Lower-instance courts acknowledged that the steps in question constituted age discrimination and declared the notice invalid.<sup>8</sup> These conclusions were also confirmed by the Supreme Court in 2019.

### **D.4 Important meetings**

European Commission: **discussion on discrimination against Roma children** in the Czech education system with regard to obligations following from EU law

European Commission against Racism and Intolerance (ECRI): a debate on the individual areas dealt with by the ECRI during the **sixth monitoring cycle** (equal treatment and access to rights, including the role of the national equality body, hate-motivated violence, inclusion, accessibility of housing)

Ministry of Education, Youth and Sports: **segregation of Roma children** in the Czech education system, education of children with a **different mother tongue**

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<sup>8</sup> Judgment of the District Court in Blansko File No. [12 C 374/2015](#) of 26 July 2017; judgement of the Regional Court in Brno File No. [49 Co 367/2017](#) of 13 March 2019; resolution of the Supreme Court File No. [21 Cdo 2662/2019](#) of 22 October 2019; Defender's [press release](#) .



Office of the Government of the Czech Republic and Ministry of the Interior (Civil Service Department): presentation of a [handbook](#) on prevention and resolution of cases of **sexual harassment in the civil service** to State secretaries and ministerial secretaries, and the Office of the Government

#### D.5 Awareness raising

At [the University in Hradec Králové](#), we talked about our findings concerning discrimination against HIV-positive people. With representatives of the Czech Trade Inspection Authority, we discussed the practical procedures in detecting discrimination against consumers. We completed a weekly traineeship at the Czech Schools Inspectorate. In co-operation with the Ministry of Labour and Social Affairs, we tested the Swiss analytical tool [Logib](#), which can be used to determine whether fair remuneration is provided to both men and women. We presented the results of the testing in [our press release](#). We acquainted non-profit organisations with the legal regulation of pre-school education and our [recommendation](#), and informed them about possible ways of defence in cases of discrimination. We also participated in professional forums on work-life balance, [sexist advertising, and workplace bullying](#). We shared our recent experience with discrimination against migrating EU citizens with the European Commission. We were actively involved in the organisation and evaluation of the competition "[Office on the Way Towards Equality](#)". In an expert section of the international conference "[Days of Law](#)" dedicated to "20 years of the Public Defender of Rights Act", we explained the importance of European standards for equality bodies.

#### D.6 Conferences, roundtables and training

Anti-Discrimination Act 2009–2019: Ten-year Journey to Fairness ([international conference](#) co-organised with Vice-President of the Senate, Miluše Horská): summary of the most important case law of Czech supreme courts, the European Court of Human Rights and the Court of Justice of the European Union; experience of victims of discrimination with enforcement of law before common courts; the ombudsman's role; the possibility of increasing the effectiveness of the Anti-Discrimination Act; [press release](#)

Hatred on the Internet ([professional conference](#) co-organised with the Constitutional Court of the Czech Republic and the Supreme Public Prosecutor's Office): overview of case law of the Constitutional Court of the Czech Republic and the European Court of Human Rights; specific activities of the European Commission, Supreme Public Prosecutor's Office, Ministry of the Interior, and Police of the Czech Republic; experience of the In Iustitia non-profit organisation; Slovak perspective; interim results of the Defender's survey; [press release](#)

Determination of intersex children's gender ([roundtable](#)): medical, social, ethical and legal aspects of intersex issues; child's right to make decisions regarding his/her own body; health risks associated with treatment of ambiguous sex; extension of the deadline for registration of sex in the registry of births; need for data and research in this specific area; [press release](#)



Law against discrimination ([professional legal seminar](#)): definition of basic concepts; permissible forms of different treatment; legal remedies for protection against discrimination and sharing of the burden of proof in discrimination cases; specific features of representing victims of discrimination; foreign and Czech case law; Defender's reports; case studies



## E. Monitoring of rights of people with disabilities

In January 2018, the Defender became a monitoring body for the implementation of rights recognised in the Convention on the Rights of Persons with Disabilities

### E.1 Last meeting of the advisory body

The advisory body of the Public Defender of Rights for the area of protection of the rights of people with disabilities met a total of four times in 2019 at regular intervals. The members of the advisory body gradually dealt with the issues of health (Art. 25 of the Convention), education (Art. 24 of the Convention) and also work and employment of persons with disabilities (Art. 27 of the Convention). During the last meeting, the members looked back on their work because their term of office is linked with the term of office of the Defender who appointed them. The members of the advisory body presented to the Defender their suggestions for further activities of the body and of the Department of Supervision over Rights of Persons with Disabilities at the Office of the Public Defender of Rights, and also provided feedback on the existing form of co-operation.

The members actively brought up matters for discussion as they encountered them in their activities. They also co-operated individually in specific projects – they provided professional or personal contributions to the topic of rights of people with disabilities; they also participated in systematic visits to homes for people with disabilities and in the creation of a simplified Defender's leaflet. They made an active contribution at the [conference](#) titled *“Ten Years with the Convention on the Rights of Persons with Disabilities”* and at a seminar on the rights of people with psychosocial disabilities.

### E.2 Ongoing surveys

Within Article 27 of the Convention (work and employment), we conducted a survey focusing on mapping the conditions of and impediments to employment of people with disabilities in the public sector. Indeed, we assume that public administration should lead by example in creating appropriate working conditions for employees with disabilities.

Using a questionnaire survey and personal interviews, we wanted to obtain a better idea about the situation on the ground, approaches to employment of people with disabilities and the actual accessibility of workplaces, specific jobs for people with disabilities in the public sector, as well as the possibilities of making reasonable adjustments. We addressed all the ministries, regional authorities and organisational components of the State with the questionnaire. The collection of data took place from September to December 2019.

#### Preliminary results of the survey

- **The practice of individual authorities differs significantly**

The individual authorities comply with the statutory mandatory quota for people with disabilities in completely different ways. Some employ people with disabilities as little as possible and do not deal with this issue any further. Other authorities try to avoid a penalty in the form of a levy to the State budget and adhere to the mandatory quota by



combining employment of people with disabilities with purchases of products and services. The last type are authorities that have experience with disabled employees and naturally exceed the mandatory four-percent quota by following specific strategies.

▪ **People with more serious limitations tend not to be employed in public administration**

Persons with first- to third-degree disabilities can be found among disabled employees in public administration. In the case of higher degrees of disability, these pertain mostly to dietary limitations, cancer patients and patients with limited mobility. People with visual, hearing or mental disabilities are practically not present in public administration and do not even register for selection procedures. Authorities themselves do not actively seek them, not even if they lack workforce and have long-term vacancies.

▪ **The system is not ready for people with work performance limitations**

Public authorities only have a narrow room to manoeuvre in terms of possibilities for a flexible approach to their employees. They have a fixed structure and numbers of work positions assigned to carry out their duties. This negatively reflects in the options to meet the requirements for reducing working time, dividing working time or creating new jobs for people with disabilities. The frequent impossibility to make construction modifications due to lease arrangements in public office buildings is also a limiting factor.

▪ **The principle of levies to the State budget (as penalties for not employing disabled people) is not functional in the case of public administration bodies**

The penalty mechanism based on levies to the State budget, as a compensation for not employing people with disabilities, does not sufficiently motivate the authorities. On the one hand, there are authorities which always make sure that the levies do not apply to them as this would have an unfavourable impact on their budget. On the other hand, there are (mostly larger) authorities for which the amounts of levies reach millions of crowns. It is also problematic that this is merely a question of transferring money between individual chapters of the State budget and the motivational effect is thus completely absent here.

▪ **Contributions towards active employment policy and contributions towards employment of people with disabilities are not intended for public administration bodies**

Section 107 (2) of the Employment Act excludes the possibility of providing contributions towards employment of people with disabilities and contributions towards active employment policy to organisational components of the State and State contributory organisations. Public administration bodies do not have financial reserves available for adapting their workplaces, working times or other reasonable adjustments that would enable them to hire disabled persons. The State has thus set up a system which has exclusively punitive effects; it fails to provide appropriate support to public administration bodies in employing people with disabilities.



### **E.3 Co-operation with members of the European Network of National Human Rights Institutions (ENNHRI)**

We co-operated on a comprehensive document dealing with best practice in the area of implementing Article 12 of the Convention (Equal recognition before the law) prepared by an ENNHRI working group in co-operation with Mental Health Europe. The material contains a description of the legal regulations applicable in selected European countries, as well as experience with practical application of new regulations under Article 12 of the Convention. When working on the material, we met with colleagues from the Austrian ombudsman institution, who described to us how new support instruments operated in Austria. The material should be published at the beginning of 2020.

In monitoring the exercise of the rights of people with disabilities and their active involvement in this activity, especially in the preparation of the report for the UN Committee, we wish to draw inspiration from experience gained by other monitoring bodies. Therefore, we contacted the ENNHRI with a request for co-operation and used its mediation to send an electronic questionnaire to the members in order to find out how our European colleagues carry out their duties. We asked these 42 partners about the functioning of the advisory body and their visits to facilities where people with disabilities were living in the long term. We plan to continue with similar activities in other areas in the future.

### **E.4 Co-operation with non-profit organisations and people with disabilities**

The 2<sup>nd</sup> meeting with organisations defending the rights of people with disabilities took place in November. This time, it focused on the functioning of organisations for people with disabilities on an international and European scale, and the possibility of utilising these organisations' activities in defending the rights of people with disabilities in the Czech Republic. At this meeting, the participants again had room for presenting individual instigations and to engage in discussion on the current situation of people with disabilities in the Czech Republic.

### **E.5 Conferences, roundtables and training**

In November, we visited various events held within **Rehaprotex 2019**, a trade fair focusing on rehabilitation, compensation, prosthetic and orthopaedic aids, where we learned interesting information and drew inspiration from various novel features. As part of the trade fair, we took part in a press conference on accessibility of railway transport, organised by Národní rada osob se zdravotním postižením ČR, z.s. (*Czech National Council of Persons with Disabilities*). We also visited a seminar titled "Family Life, Intimacy and Sexuality of Persons with Disabilities", prepared by the Ministry of Labour and Social Affairs, where we presented our findings from visits to homes for people with disabilities.

We participated in the three-day **Prague Educational Festival**. Along with interesting contributions and debates concerning, e.g., the State policy for schools, inclusion and integration, the future of education and the necessary changes in the system, we were also involved in several of the workshops offered.



We organised a [conference](#) titled **Ten Years with the Convention on the Rights of Persons with Disabilities** on the occasion of the tenth anniversary of ratification of the Convention by the Czech Republic. Together with the participants, we discussed the ways in which the Convention had changed the lives of people with disabilities in the Czech Republic, as well as what was necessary to fulfil the rights of people with disabilities in terms of accessibility of public administration, products and services, and work and employment on the regular labour market. Inspiring stories of people with disabilities were presented in the concluding part of the conference. All these presentations shared the idea that it is people with disabilities themselves who have to fight for their rights and better integration in society.

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