Public Defender of Rights
OMBUDSMAN

Annual Report on the Activities of the Public Defender of Rights 2014

ANNUAL REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS

2014

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Introduction

The current Public Defender of Rights, **Anna Šabatová**, was elected into the office after her predecessor, **Pavel Varvařovský**, resigned on 20 December 2013. Anna Šabatová took the oath on 18 February 2014 and thus began her 6-year term of office.

In the present Report, the Defender presents her work in 2014 in all areas of her competence – public administration, protection of persons restricted in their freedom, anti-discrimination agenda and supervision over expulsion of foreign nationals. The Defender first presents her legislative recommendations to the Chamber of Deputies, information on comments made in relation to legal regulations under preparation and communication with the Constitutional Court, and then goes on to provide a summary of specific findings and an overview of interesting cases.

The Defender's conclusions and statements also include the conclusions of her deputy, **Stanislav Křeček**, who was authorised by the Defender to perform a part of her competence in accordance with Section 2 (4) of the Public Defender of Rights Act (Act No. 349/1999 Coll.). Moreover, he discharged the tasks of the Public Defender of Rights after the resignation of Pavel Varvařovský.

The Report is divided into eight parts.

In the first part, the Defender summarises the most serious problems and outlines the possible solutions in the form of **legislative recommendations** addressed to the Chamber of Deputies.

The second part is dedicated to the **Defender's special powers** (participation in commentary procedures, submissions to the Constitutional Court, administrative actions to protect public interest).

The third part summarises statistical data on the handling of complaints and **findings from individual areas of government**.

In the fourth part, the Defender provides information on the results of her **systematic visits to facilities** where persons are restricted in their freedom (detention facilities).

The fifth part concentrates on **protection against discrimination** under the Anti-Discrimination Act (Act No. 198/2009 Coll.).

In the sixth part, the Defender presents her activities in the field of the **Directive on Returns,** comprising monitoring of the detention of foreigners and exercise of administrative expulsion, surrender or transit of detained foreigners and the punishment of expulsion imposed on foreigners placed in banishment custody or serving prison sentences.

The seventh part includes general information on the **management** of the Office of the Public Defender of Rights and information on **other domestic and international activities** of the Defender.

In the eighth part, the **Defender** provides her **concluding remarks.**

The Annual Report also serves as:

- summary report in the sense of Art. 13 (2) of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
- summary report in the sense of Art. 8a (2) of Directive 2002/73/EC of the European Parliament and of the Council amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions;
- summary report in the sense of Art. 20 (2) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

The Defender has newly decided to draw up **separately** her report pursuant to Art. 23 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1. General Observations – Recommendations to the Chamber of Deputies

The Defender believes that her general observations regarding the past year and taking the form of recommendations to the Chamber of Deputies represent a fundamental and important part of information she annually provides to the Chamber of Deputies. Through these observations, the Defender also exercises her authorisation under Section 24 (1)(c) of the Public Defender of Rights Act to submit recommendations to the Chamber of Deputies for amendments to legal regulations.

The Defender first briefly reviews the fulfilment of the legislative recommendations provided in 2012 and 2013.

New recommendations are then provided in view of the Defender's activities in the past year. **The Defender details only those recommendations which she regards as fundamental.** She would be pleased if the Chamber of Deputies translated these recommendations into "private members' bills" *(legislative drafts introduced by the Deputies)* in the sense of Art. 41 (2) of the Constitution. Therefore, the Defender will again seek to ensure that the individual recommendations are discussed by the relevant committees of the Chamber of Deputies. In cases where a legislative recommendation requires comprehensive modification of the legislation, the Defender asks the Chamber of Deputies to adopt a resolution (as usual in the past) with a request that specific recommendations be addressed by the Government.

1/ Evaluation of the 2012 Recommendations

The Public Defender of Rights welcomes the fact that **an overwhelming part** of the 2012 **legislative recommendations were satisfied** or the Government at least pledged to fulfil them. Thus, the relevant ministries have already been preparing the necessary changes, while some other recommendations were included in the plan of Government's legislative work for 2015.

The only recommendation that remains unanswered is the recommendation to adjust the amount of the judicial fee for lodging an anti-discrimination action so that it is not calculated as a percentage of the amount of compensation sought for intangible damage in money; alternatively, the fee should be set in the amount of CZK 1,000.

2/ Evaluation of the 2013 Recommendations

The Defender appreciates the approach taken to the 2013 legislative recommendations. While some of the recommendations are yet to be adopted, the Government has either agreed to fulfil them or they are reflected in the Government's plan of legislative work for 2015.

The **following** legislative recommendations, which are detailed in the 2013 Annual Report on the Activities of the Public Defender of Rights, **have not been satisfied to date**.

2/1 Inspection of Files by Guardians Ad Litem

The Social and Legal Protection of Children Act (Act No. 359/1999 Coll.) **does not allow lawyers** and other third parties **appointed** by a court as **guardians of minor children** in proceedings concerning judicial care for minors to **inspect files** kept on the children by a body for social and legal protection of children. The Defender remains convinced that this authorisation is crucial for effective protection of the rights of the child being represented.

The Defender has therefore **repeatedly recommended** that the Chamber of Deputies make the following amendments to the Social and Legal Protection of Children Act by means of a "private member's bill" (a draft law introduced by the Deputies):

- in the first sentence of Section 55 (5), insert the words "or the child's guardian *ad litem*" after the words "some other person responsible for the child's upbringing";
- in the third sentence of Section 55 (5), insert the words "or the child's guardian *ad litem*" after the words "some other person responsible for the child's upbringing";

2/2 Adding Disability as Discrimination Grounds in the Service Relationship Act and the Professional Soldiers Act

The Act on Service Relationship of Members of Security Corps (Act No. 361/2003 Coll.) stipulates *de facto* the duty to release a member of the security corps if s/he has become medically unfit for the performance of service in the long term. Indeed, the Medical Fitness Decree (Decree No. 393/2006 Coll.) does not enable doctors to take into account the actual impacts of a disease on the performance of service. **Thus, certain persons are prevented from serving in security corps merely on grounds of their disability** – i.e. even in cases where the disability does not, in fact, render them medically unfit to perform service.

Unlike the Anti-Discrimination Act, the special anti-discrimination provisions of the above law do not specify "disability" among the prohibited discrimination grounds.

As a result, the law is contrary to the Charter of Fundamental Rights and Freedoms, international treaties on human rights and basic freedoms and the case-law of the European Court of Human Rights. The law is also questionable in terms of Council Directive No. 2000/78/EC, establishing a general framework for equal treatment in employment and occupation.

The Professional Soldiers Act (Act No. 221/1999 Coll.) shows a similar defect.

The Defender has therefore **repeatedly recommended** that the Chamber of Deputies make the following amendments based on a "private member's bill" (a draft law introduced by the Deputies):

- in the first sentence of Section 77 (2) of the Act on Service Relationship of Members of Security Corps, insert the word "disability" after the word "age";
- in the first sentence of Section 16 (4) of the Act on Service Relationship of Members of Security Corps, insert the word "disability" after the word "sexual orientation";
- in the third sentence of Section 2 (3) of the Professional Soldiers Act, insert the word "disability" after the words "sexual orientation".

3/ New Recommendations of the Defender for 2014

3/1 Social Detention

Czech legislation still lacks a legal definition of the conditions under which **a person may be restricted in freedom in social services facilities** ("social detention"). Special regime homes, and also some other residential facilities, restrict some of their clients in terms of leaving the facility or in terms of contacts with the outside world. Such measures are certainly justified in some cases (they protect the client). On the other hand, however, the Defender believes that, without legal support, these measures represent **an interference with personal freedom that is contrary to the Constitution**. Indeed, interference with personal freedom is only permissible in cases and using methods stipulated by law (Art. 8 (2) of the Charter of Fundamental Rights and Freedoms, Art. 5 (1) of the Convention for the Protection of Human Rights and Fundamental

Freedoms). The Ministry of Labour and Social Affairs was already advised of the absent legal regulations and the need to adopt them in 2011 by the Public Defender of Rights in office at that time, Pavel Varvařovský.

The Defender agreed with the Ministry in 2014 that an expert working group would be established to work on an amendment to the Social Services Act (Act No. 108/2006 Coll.) and the Special Court Proceedings Act (Act No. 292/2013 Coll.).

The Defender is aware of the need to discuss the draft thoroughly with experts and also of the fact that the courts need time to prepare for the new legislation. Yet the draft is complete and it is unclear what stands in the way of bringing the amended laws into effect as of 1 January 2016. As a matter of fact, not even the that date would be satisfactory given how long the Defender and other parties have been pointing out the issue and in view of the imminent risk that the Czech Republic will lose its case in proceedings on an action which has been brought against the country before the European Court of Human Rights.

The Public Defender of Rights recommends that the Chamber of Deputies request the Government to submit a draft amendment to the Social Services Act and the Special Court Proceedings Act that will stipulate the conditions of "social detention" and regulate related detention proceedings before common courts.

3/2 Guardianship Act

The last Annual Report referred to issues related to public guardianship caused by **absent legal regulation of guardianship** and lacking guidelines. With effect from 1 January 2014, the exercise of guardianship is governed by the Civil Code (Act No. 89/2012 Coll.), including support measures in case of disrupted capacity of an adult to make juridical acts. However, the position of guardians and persons under guardianship has only improved to some extent. As long as there is no definition of the rights and obligations of guardians, inspections and their parameters, financing of public guardianship, as well as basic principles of the exercise of guardianship, **the rights of persons with disabilities will continue to be violated** in the sense of Art. 12 of the Convention on the Rights of Persons with Disabilities (promulgated under No. 10/2010 Coll. Int. Tr.). Under the present arrangement, some guardians are inactive and subject to no supervision whatsoever, and those who actually make use of their authority, often proceed to the detriment of their clients. The Defender has encountered both these cases when making inquiries into the work of public guardians (see chapter Public Guardianship, p. 30).

The Civil Code envisages the adoption of a special law. The Ministry of Justice has been preparing a substantive intent titled *"Act on public guardianship, regulation of certain aspects related to support measures in case of disrupted capacity of an adult to make judicial acts and on amendment to certain laws (the Guardianship Act)"*. In view of the Defender, the Guardianship Act needs to be adopted specifically and only in the form of a comprehensive regulation ensuring adequate protection of the rights of persons with restricted legal capacity.

The professional public and, in particular, municipalities have been eagerly anticipating the adoption of the Guardianship Act for several years (it is certainly not appropriate that it did not enter into effect together with the Civil Code). Despite this, the Ministry of Justice has not been sufficiently active.

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

3/3 Incorporation of Discrimination by Association in the Anti-Discrimination Act

Discrimination by association occurs if someone is treated less favourably because s/he has a close (most often family) relationship with a potentially discriminated person. It is deemed to exist, for example, when an employee is harassed (at work) on grounds of disability or sexual orientation of his/her child, or a consumer is refused (in access to services or housing) because s/he is married (or has a similar tie) to a person of a different nationality or ethnicity. **Thus, a prejudice related to a marginalised group, in fact, adversely affects** and infringes the human dignity of **a person who does not fall in the potentially discriminated category**.

The term "discrimination by association" was first used by the Court of Justice of the European Union in its judgment in Case C-303/06 of 17 July 2008, S. Coleman v Atridge Law and Steve Law. Over time, it has become an explicit part of anti-discrimination legislation in Austria, Slovakia, Croatia, Bulgaria, Spain and Denmark. The Defender has encountered discrimination by association in complaints relating to employment and housing issues. While the Defender believes that governmental authorities should take account of European case-law, it is uncertain that they would actually apply the prohibition of discrimination by association to all discrimination grounds and forms of discrimination. In addition, knowledge and interpretation of European case-law cannot be reasonably required of those who are primarily subject to the Anti-Discrimination Act (individual natural persons and legal entities). Thus, the Defender's recommendations pursue principally the objective of stipulating and clarifying rights (of employees, consumers) and duties (of employees, sellers). With a view to ensuring legal certainty and predictability of decisions rendered by the courts and administrative authorities, the Defender suggests that the notion of discrimination by association should be incorporated in the legislation of the Czech Republic following the example of other EU countries.

The Public Defender of Rights recommends that the Chamber of Deputies add the following paragraph 6 in Section 2 of the Anti-Discrimination Act by means of a private member's bill (a draft law introduced by the Deputies): "Discrimination also means less favourable treatment of a person for the reason that a person related to him/her may be potentially discriminated against on any of the grounds set out in paragraph 3."

3/4 Adjustment of the Procedure in Ascertaining the Costs of Housing Usual at the Given Place for the Purposes of Providing Assistance in Material Need

Pursuant to Section 34 of the Assistance in Material Need Act (Act No. 111/2006 Coll.), regional branches of the Labour Office of the Czech Republic take into account the costs of housing up to the amount of the usual rent when deciding on provision of assistance in material need. For other than rental housing, they take into account payments up to the amount of the housing costs usual at the given place. However, the Assistance in Material Need Act does not provide a procedure for determining the amount of usual rent and other payments. Usual rent is determined based on the Government regulation setting out the details of and procedure in ascertaining comparable rent usual at the given place (Government Regulation No. 453/2013 Coll.); however, the Regulation expressly excludes the use of comparability characteristics for the purposes of benefits. The legislation does not specify how payments for other forms of housing usual at the given place should be determined.

The Defender's research (see chapter Social Security, p. 25) and findings from individual complaints have revealed that it is necessary to **stipulate criteria** to be used by the body providing assistance in material need when **determining the rent usual at the given place** and **payment for using other forms of housing usual at the given place** (for example, payment for housing at an accommodation facility, in social services facilities or in other than residential premises).

At the present time, the procedure used by the individual authorities in determining the costs of housing usual at the given place lacks uniformity. This makes their conduct unpredictable for clients of public authorities and also shows certain elements of arbitrariness, which is prohibited under the rule of law as prescribed by Art. 1 (1) of the Constitution. The amount of the costs of housing usual at the given place has a fundamental effect on the amount of assistance in material need (especially a contribution towards housing) and the recipient's ability to maintain his/her existing housing.

The Public Defender of Rights recommends that the Chamber of Deputies

- **request the Government to submit an amendment to the Assistance in Material Need Act which will clearly stipulate criteria for ascertaining rent usual at the given place and the payment for using other forms of housing usual at the given place**

or

- **request the Government to amend its regulation setting out the details of and procedure in ascertaining comparable rent usual at the given place, while repealing Section 7 and stipulating the procedure in ascertaining the amounts of rent usual at the given place or similar costs in using an apartment in other than rental form, for the purposes of providing assistance in material need.**

3/5 Health Insurance for Foreign Nationals

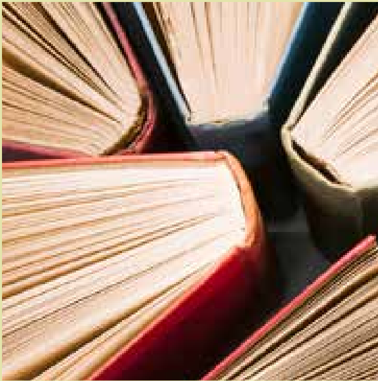
Just like her predecessor, the Defender has noted that a **major part of foreign nationals** from non-EU countries who lawfully stay in the Czech Republic in the long term **lack access to public health insurance during the initial five years of their stay**. Foreign nationals other than those who have a permanent residence permit and are employed in the Czech Republic are excluded from public health insurance. This is true, in particular, of 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.

The system of commercial health insurance on which these foreigners must rely has long been failing to fulfil its purpose. Commercial terms of insurance comprise a large number of exclusions and terms that release the insurance companies from the duty to pay for part of the healthcare provided to insured foreigners. At the same time, insurance companies have no legal duty to provide a policy – this is why foreigners who are already ill (especially new-born children with health problems or congenital defects) are deprived of access to health insurance. The system of commercial health insurance is also unfavourable for the public health system and healthcare providers. The latter must often bear the costs of care which is paid for neither by the commercial insurance company nor by the foreigner him/herself (the costs of care often significantly exceed his/her financial capacities).

The situation cannot be resolved by merely adjusting the system of commercial health insurance. Proposals for such adjustments presented to date have shown that attempts at bringing this insurance closer to the parameters and scope of insurance coverage under public health insurance is not practicable in view of the high transaction costs of the system and the relatively low number of foreigners covered by the system. To resolve the problem systematically, it would be necessary to include within public health insurance a large part of foreigners with a long-term stay who have so far been excluded. Indeed, public health insurance is the only system that is capable of guaranteeing the required scope of insurance coverage for healthcare provided to foreigners as well as a certainty of problem-free reimbursement of care to its providers.

The Public Defender of Rights recommends that the Chamber of Deputies request the Government to submit an amendment to the Public Health Insurance Act (Act No. 48/1997 Coll.) which would incorporate the following categories of foreigners with a long-term stay in the system of health insurance after a set period of stay:

- **self-employed persons,**
- **family members of citizens of the Czech Republic, family members of foreigners with permanent residence and foreigners who are economically active in the Czech Republic, and**
- **foreigners who have ceased to pursue gainful activities but receive sickness benefits or parental allowance.**



2. Relations with Constitutional Bodies and Special Powers

1/ The Defender and the Parliament

1/1 Chamber of Deputies

On 19 June 2014, the Chamber of Deputies discussed and took due note of the 2013 **Annual Report** on the Activities of the Public Defender of Rights. Simultaneously, it requested the Government to address the Defender's legislative initiatives contained in the Report.

Since then, the Defender has worked closely with the Chamber of Deputies, especially its committees. She regularly takes part in meetings of the Petition Committee and the Committee on Legal and Constitutional Affairs and its subcommittee. The Defender approaches other committees whenever she considers it important to draw their attention to her findings related to the draft laws being discussed.

Petition Committee

The Petition Committee discusses the **annual reports** on the Defender's activities (Section 23 (1) of the Public Defender of Rights Act), **quarterly reports** (Section 24 (1)(a) of the Public Defender of Rights Act) and **reports on individual matters in which the Defender did not succeed in ensuring remedy** even after having used all the options envisaged by law (Section 24 (1)(b) of the Public Defender of Rights Act).

In 2014, the Defender acquainted the Committee **with an incorrect decision made by the Ministry of Labour and Social Affairs,** which refused to annul a decision of the Labour Office of the Czech Republic removing a jobseeker from the records due to his failure to appear at an informative meeting, without taking his memory impairment into consideration.

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 took part in a meeting of the Committee and its subcommittee discussing the submitted 2013 **Annual Report** on the Defender's activities and the individual **quarterly reports**.

Committee for Science, Education, Culture, Youth and Sports

Schools Committee

Within the debate on a draft amendment to the **Schools Act** (Act No. 561/2004 Coll.; parliamentary press No. 288), the Defender cautioned both committees about a considerable delay in fulfilment of the tasks set by the Action Plan of Measures for Implementation of the Judgment of the European Court of Human Rights in D.H. and others v. the Czech Republic of 13 November 2007 (No. 57325/00). The Defender considers the draft legislation inadequate. For details, see chapter Defender and the Government, p. 18.

Healthcare Committee

The Defender pointed out the potential consequences of a draft amendment to Section 53 (1)(e) and Section 71 (2)(e) of the **Protection of Public Health Act** (Act No. 258/2000 Coll.; parliamentary press

No. 270). She is concerned that it may promote stigmatisation and, subsequently, discrimination against the HIV positive.

1/2 The Senate

On 29 May 2014, the Defender acquainted the Senate with the **Annual Report** on the Defender's activities for 2013 and the Senate took due note of the report. She also worked together with the Senate's committees.

Committee on Health and Social Policy

Committee on Legal and Constitutional Affairs

The Defender advised both committees of the possible consequences of adopting an amendment to the **Assistance in Material Need Act** (Act No. 111/2006 Coll.; parliamentary press No. 351) in terms of introducing municipalities' consent as a precondition for granting a contribution towards housing in an accommodation facility (the persons to whom municipalities deny their consent are threatened by homelessness and transfer to other municipalities).

2/ The Defender and the Government

The Public Defender of Rights approaches the Government only in exceptional cases. **The Defender advises the Government whenever a ministry fails to adopt adequate measures to remedy** a certain shortcoming or generally unlawful administrative practice (Section 20 (2)(a) of the Public Defender of Rights Act).

The Defender may **recommend that the Government adopt, amend or repeal a law** or Government regulation or resolution (Section 22 (1) of the Public Defender of Rights Act). The Defender considers her participation in commentary procedures a simplified form of legislative recommendations to the Government (the Defender provided **comments on thirty-four draft laws** in 2014).

2/1 The Defender as a Party to the Commentary Procedure

Assistance in Material Need Act

The Government's draft amendment to the Assistance in Material Need Act (Act No. 111/2006 Coll.) was intended to improve the legislation governing the conditions for the provision of a **contribution towards housing**.

The Defender expressed her concerns that **the status of the recipients of contributions towards housing might further deteriorate**. Therefore, she recommended that the draft be reworked and resubmitted to the commentary procedure. She also presented numerous specific comments.

In addition, she pointed out that some people were dwelling permanently in their holiday homes due to a lack of other options (as a result of the high costs of other forms of housing). Consequently, **a contribution towards housing will newly also be available to the owners of holiday homes**.

Consumer Protection Act

The Defender pointed out that the presented draft amendment to the Consumer Protection Act (Act No. 634/1992 Coll.) contradicts its Explanatory Memorandum, according to which the amendment was to introduce a mechanism of out-of-court settlement of consumer disputes based on voluntary access for

consumers and mandatory participation for entrepreneurs. The Defender succeeded with her recommendation to **enact the right to withdraw from participation in the process of out-of-court settlement of disputes exclusively for consumers**. Indeed, a consumer cannot reasonably be forced to continue in proceedings s/he previously initiated. On the other hand, if traders had the same right, the entire process would be deprived of any sense (the trader would simply frustrate the process).

The solution recommended by the Defender would be in line with Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes, which has to be transposed to national laws. According to the Directive, Member States must ensure that both parties to the dispute have the right to withdraw from the procedure of alternative dispute resolution at any stage; however, if national rules stipulate mandatory participation of traders, the relevant provision is applicable only to consumers.

Asylum Act and Residence of Foreign Nationals Act

The primary aim of the amendment to the Asylum Act (Act No. 325/1999 Coll.) and the Residence of Foreign Nationals Act (Act No. 326/1999 Coll.) was to transpose the new Directives of the European Union concerning asylum (Reception Directive and Procedural Directive).

The Defender pointed out cases of **inadequate (incomplete) or inappropriate transposition of the Directives** (access to asylum procedures on international borders, identification and specific treatment of vulnerable persons). She also disagreed with changes (although transposition-related) that would **worsen the existing status and rights of applicants for international protection** (the Directives set out only minimum common standards within the European Union and expressly enable the Member States to preserve or introduce more favourable regulations).

The Defender also disagreed with extending the reasons for non-granting or revoking the right of asylum due to **variance with international human rights commitments** of the Czech Republic (especially the Convention relating to the Status of Refugees, promulgated under No. 208/1993 Coll.).

Environmental Impact Assessment Act

In her comments on a draft amendment to the Environmental Impact Assessment Act (Act No. 100/2001 Coll.), the Defender took the view that the matter required a far more careful consideration and the solution should be discussed with all the stakeholders. She also pointed out that the proposed amendment represented such a **fundamental conceptual shift in the procedure** of project-based assessment of environmental impacts that all potential consequences could hardly be foreseen. The newly introduced processes could substantially prolong the proceedings and increase the administrative burden. The introduction of new types of administrative acts can complicate the permitting procedures and create uncertainty among the parties involved. When faced with interpretation difficulties, authorities, investors and the public currently base their considerations on extensive case-law which has "refined" the existing legislation.

The Defender would welcome changes reflecting the existing problems (the necessity to prevent more effectively purpose-driven adjustments of planned projects in terms of undervaluing their impacts, modifying projects without additional assessment, failure to respect key conditions); however, this must not be to the detriment of the overall efficiency of the permitting procedures. See also chapter Environment, p. 46.

Substantive intent of the Guardianship Act

In her comments on the draft substantive intent of the Guardianship Act, the Defender recommended **reassessment of the notion of special recipient of pensions and benefits** in social security law and the possibility of connecting it with support measures under the Civil Code (Act No. 89/2012 Coll.). Furthermore, she proposed that the Population Records and Birth Identification Numbers Act (Act No. 133/2000 Coll.) be amended so that the **information system of the population records contains information about the scope**

of limitation of legal capacity. The Defender also recommended that **limitations of the exercise of the voting right** be resolved in a comprehensive manner.

She disagreed with the recommendation of the Ministry of Justice to amend the Healthcare Services Act (Act No. 372/2011 Coll.) by **limiting the right of guardians to inspect the medical records of persons under guardianship** in the sense that guardians would only be permitted to inspect those parts of records which pertain to the current operation.

The fact that the Defender's comments were accepted is a Pyrrhic victory – the Ministry has, in fact, discontinued its work on the Guardianship Act. For more on this, see chapter New Recommendations of the Defender for 2014, p. 10.

Schools Act

The Defender welcomed the Government's draft amendment to the Schools Act (Act No. 561/2004 Coll.), but pointed out the considerable delay in the fulfilment of the tasks set by the Action Plan of Measures for Implementation of the Judgment of the European Court of Human Rights in D. H. and others v the Czech Republic of 13 November 2007 (No. 57325/00). For this reason, she **denounced the proposed legal rule as inadequate**.

Indeed, the draft postpones the adoption of **supervisory mechanisms** (introduction of a diagnostic system preventing the placement of Roma children in educational programmes for pupils with mild mental disorders) to as late as 1 January 2017 and fails to enact the **mandatory year of preschool education**.

Act on Liability for Infractions and Proceedings Concerning Infractions

For the time being, the Ministry of the Interior refuses to reflect the Defender's fundamental objection to the Government's draft Act on Liability for Infractions and Proceedings Concerning Infractions. Indeed, the Ministry adopted the existing regulation of the **administrative punishment consisting in prohibition of residence**, which the Defender considers not only difficult to apply, but also unconstitutional.

The Defender pointed out that the concept of prohibition of residence is at variance with Art. 4 (4) in conjunction with Art. 14 (1) and (3) of the Charter of Fundamental Rights and Freedoms as the proposed administrative punishment results in **restricted freedom** (freedom of movement). There can be no doubt that this interferes with the fundamental rights and freedoms, which must be preserved in terms of their substance and meaning. One of the key preconditions for a lawful limitation of fundamental rights and freedoms certainly lies in the fact that the limitation must be proportional to the relevant unlawful conduct (which is to be penalised) and must also correspond to the personal status of the perpetrator and his/her circumstances. The Defender has serious **doubts regarding proportionality** of this punishment in relation to the conduct it aims to punish and its **necessity** for preservation of public policy. Indeed, the draft amendment **grants administrative authorities the power to make decisions on prohibiting residence without the statutory duty** to take into account, on a case-by-case basis, the nature and gravity of the conduct being punished, as well as the personal circumstances and family relations of the alleged perpetrator ("proportionality test").

3/ The Defender and the Constitutional Court

The Defender may **propose** that the Constitutional Court **abolish a secondary legal regulation** or its individual provisions (Section 64 (2)(f) of the Constitutional Court Act (Act No. 182/1993 Coll.)). With effect from 1 January 2013, the Defender may **intervene in proceedings on abolishing laws** or their individual provisions as an enjoined party. In 2014, the Defender **intervened in five of nineteen such proceedings**. For details, see below (3/1 to 3/5).

The Defender also sent a **statement** to the Constitutional Court (in the sense of Section 48 (2) of the Constitutional Court Act) on three other applications. She supported the application for abolishing Section 140 (4) (f) of the Employment Act, under which **an administrative authority was not allowed to impose a penalty**

below CZK 250,000 for an administrative offence (allowing illegal work). Within proceedings on an application for abolishing Section 16 of the Decree implementing the Experts and Interpreters Act (Decree No. 37/1967 Coll.), the Defender referred to the conclusions reached by Otakar Motejl, who considered the legislation on expert activities unsatisfactory as far back as in 2009. She admitted that the **amount of expert fee** may also be influenced by the timely preparation of the expert report (and hence the overall length of the relevant court proceedings). While the Defender **does not question the system of compulsory vaccination** as such, she also supported the application for abolishing Section 46 of the Public Health Protection Act, considering it an inadequate statutory ground for limiting a fundamental right and believing that its abolishment would enable the necessary review of the existing system of compulsory vaccination. See also chapter Healthcare, p. 98.

In 2014, the Defender and her deputies assumed, in two of possible four cases, **public guardianship (guardianship** ad litem) of parties to proceedings on individual constitutional complaints before the Constitutional Court.

3/1 Application for Abolishing Regulation of the City of Františkovy Lázně No. 1/2013 on Prohibition of Rounding and Peddling Sales (File No. Pl. ÚS 57/13)

Despite the guaranteed freedom to operate a business, the Defender considers that **prohibition of peddling and rounding sales does not contradict** the Constitution, even if such prohibition was general in nature. Each prohibition must respect the principle of proportionality, which, however, must be viewed in the context of the right to operate a business and to operate other economic activities as a whole. The right to operate a business can be exercised without a direct personal contact with the customer (for example, via the Internet) or through personal contact in or outside business premises. **Market rules may prohibit certain types of sales taking place exclusively outside business premises.** Rounding and peddling sales represent two types of sale outside business premises and their prohibition does not significantly restrict the right to operate a business and to operate other business activities as such. It can still be exercised using other methods. Proportionality of any limitation of the right to operate a business should also be weighed against the public interest in consumer protection. (See also chapter Consumer Protection, p. 64).

On 20 May 2014, the Constitutional Court dismissed an application for abolishing the relevant municipal regulation.

3/2 Application for Abolishing Selected Provisions of the Labour Code and the Employment Act (File Ref. Pl. ÚS 10/12)

The Defender supported the application for abolishing certain provisions of the **Labour Code and the Employment Act**, on the basis of which an employee may lose his/her job if s/he violates certain rules which are unrelated to the work performed by the given employee (during temporary unfitness to work), without entitlement to unemployment benefits**. According to the Defender, the contested provisions unreasonably interfere with the rights guaranteed by the Charter – the right to acquire the means of** a person's livelihood by work and the right to reasonable material support in unemployment.

In conformity with the applicant's motion, the Defender recommended that the **statutory condition of existence in the employer's company of a trade union organisation** consisting of three persons in an employment relationship should also be **abandoned**. This condition contradicts the right of employees in other than an employment relationship to associate to protect their economic and social interests.

3/3 Application for Abolishing a Transitory Provision of an Amendment to the Distraint Rules (File No. PL. ÚS 1/14)

The Defender **did not support** an application for abolishing a transitory provision of an amendment to the Distraint Rules (Art. LII (2) of Act No. 303/2013 Coll.). **The reason for her disagreement lies in the fact that,**

in the Defender's opinion, the given provision cannot have retroactive effects if applied properly. The provision was intended to resolve a controversy concerning interpretation of another (earlier) transitory provision, namely how the notion of "proceedings" should be understood considering the differences between court enforcement of decisions and distraint procedures. The Defender considers that a **distraint procedure is not a single (indivisible) concept but rather a set of individual "court enforcements of decisions",** and she therefore regards the contested provision redundant.

Nevertheless, the Defender acquainted the Constitutional Court with the related **problematic practical implications of the given extensive amendment to the distraint rules**. While it has generally contributed to the protection of interests of all parties to the proceedings (obliged parties and entitled parties), it has also brought some fundamental risks, especially in application of Section 262a (2) (formerly paragraph 3) of the Code of Civil Procedure (curtailing the exclusive property of the spouse of a liable person on grounds of a joint debt). Although the existing legal regulation provides the other spouse with sufficient protection, an average person is unable to make use of the protective mechanisms on his/her own.

3/4 Application for Abolishing Section 50 of the Public Health Protection Act and Section 34 (5) of the Schools Act (File No. Pl. ÚS 16/14)

The Defender **supported an application for abolishing Section 50 of the Public Health Protection Act** (Act No. 258/2000 Coll.), **which prevents admission of a child who has not undergone all vaccinations** (with the exception of immune children and children with permanent contraindication) **to a pre-school facility**. In the Defender's opinion, due to reasons of redundancy and disproportionality, the aforesaid provision cannot stand the "proportionality test". Despite having other means at its disposal, the State enforces fulfilment of the vaccination duty by denying children access to education without assessing the actual danger to other children in the relevant the pre-school facility and, most importantly, without any exception – it disregards other reasons which may prevent a child from undergoing vaccination before entering a pre-school facility (including a combination of temporary contraindications).

The Constitutional Court dismissed the application. Judge Kateřina Šimáčková reserved a dissenting opinion on both the operative part and reasoning of the judgement.

3/5 Application for Abolishing the First and Second Sentences of Section 264 (4) of the Tax Rules (file No. Pl. ÚS 18/14)

The Defender did not support an application for abolishing a transitory provision of the Tax Rules, according to which the running and duration of a time period for tax assessment which did not expire by the effective date of the Tax Rules, i.e. 1 January 2011, shall be governed by the Tax Rules as from the same date.

In the Defender's opinion, the new Tax Rules do not undermine legal certainty, legitimate expectations and protection of trust in law through its quasi-retroactive transitory provision. In addition, the given provision affords taxpayers a substantially greater legal certainty by the fact alone that it clearly defines facts influencing the running of the time period for tax assessment. In fact, the implications for which the transitory provision is criticised might actually be triggered by its abolishment four years after the Tax Rules entered into effect; furthermore, the abolishment would interfere with equality of taxpayers. In addition, the prescription period not only protects taxpayers against actions of the tax administrator, but may also work to the detriment of the taxpayer, especially in cases where it prevents the application of extraordinary remedies or an additional tax return.

4/ The Defender as the Public Litigant

With effect as from 1 January 2012, the Public Defender of Rights may lodge an **action for protection of public interest against a decision of an administrative authority.** Until the above date, the Defender could lodge such an application only "through" the Supreme Public Prosecutor.

4/1 Action for Protection of Public Interest against Permission to Construct a Photovoltaic Power Plant

In 2012, the Public Defender of Rights Pavel Varvařovský contested final administrative decisions by which the Duchcov Municipal Authority permitted the construction of a photovoltaic power plant in the land-registry territory of Moldava in Krušné hory and, subsequently, approved the structure for use.

The Defender ascertained a number of shortcomings in the administrative proceedings as the **environmental impacts of the industrial project had not been assessed** (possible and likely modification of the appearance of the landscape, impact on the favourable condition of the East Ore Mountains (Krušné hory) Bird Area, missing exemption from the conditions for protection of specially protected species of plants and animals). Furthermore, **the Construction Code was flagrantly breached** because the construction project was permitted and carried out in an undeveloped free landscape and, hence, at variance with one of the basic principles of construction-law regulations, i.e. protection of undeveloped territories (greenfields). Considering the intensity of the unlawful conduct, contradicting the very principles of legality and prevention, and moreover, in a situation where **the Government as a whole was unable to ensure remedy** of that unlawful conduct, the Defender in office at the time filed the above action while being aware that this step had to be used as the last resort. See also the Annual Reports on the Activities of the Public Defender of Rights for 2012 (p. 34) and 2013 (p. 29).

On 8 October 2014, the **Regional Court in Ústí nad Labem annulled the contested decisions** of the Duchcov Municipal Authority on grounds of unlawfulness and referred the case back to the Duchcov Municipal Authority for further proceedings. The court confirmed that Section 90 (a) of the Construction Code (Act No. 183/2006 Coll.) had been breached by placing the construction project of the photovoltaic power plant in an undeveloped territory.

The defendant challenged the court decision by a cassation complaint, which is **yet to be ruled on by the Supreme Administrative Court**.

POLIC

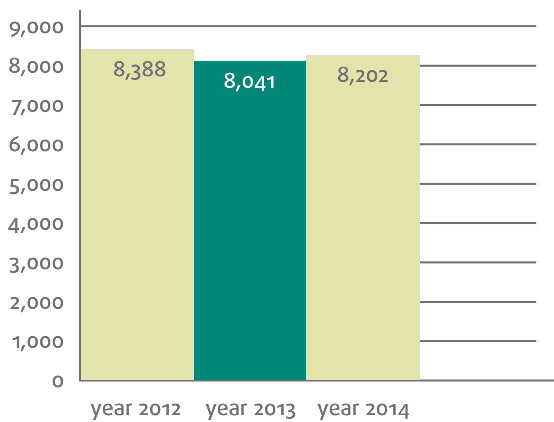
3. The Defender and Public Administration

1/ Basic Statistical Data

1/1 Information on Complaints Received

In 2014, the Defender received a total of **8,202 complaints** – a slight increase compared to 2013 (8,041 complaints). A total of **1,331 persons visited** the Office of the Public Defender of Rights **in person**, and 716 of them filed their complaint orally into a record. The others were advised of further steps they should take. Additional submissions made by the complainants during the proceedings on their respective cases are not included in the number of complaints indicated. The numbers of complaints in the years 2012 to 2014 are compared in the following chart.

Complaints received in individual years

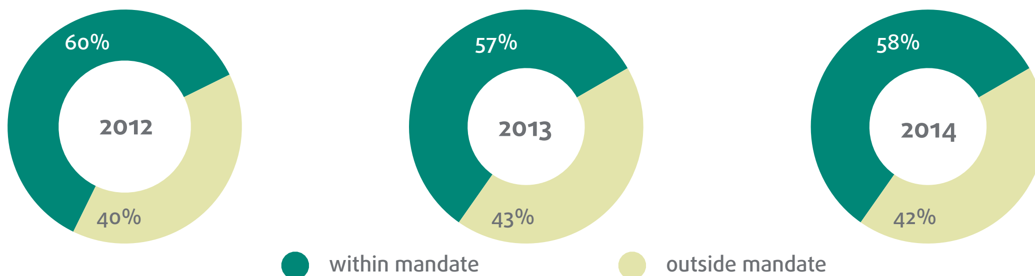


The **information hotline** available for verifying the progress in handling a complaint, explaining the scope of the Defender's mandate or direction towards a suitable solution was used by **6,933** individuals last year.

The number of complaints falling within the Defender's mandate traditionally exceeds those which the Defender cannot address (**58%** of the total number of **complaints** were **within** and **42% outside** the Defender's **mandate**).

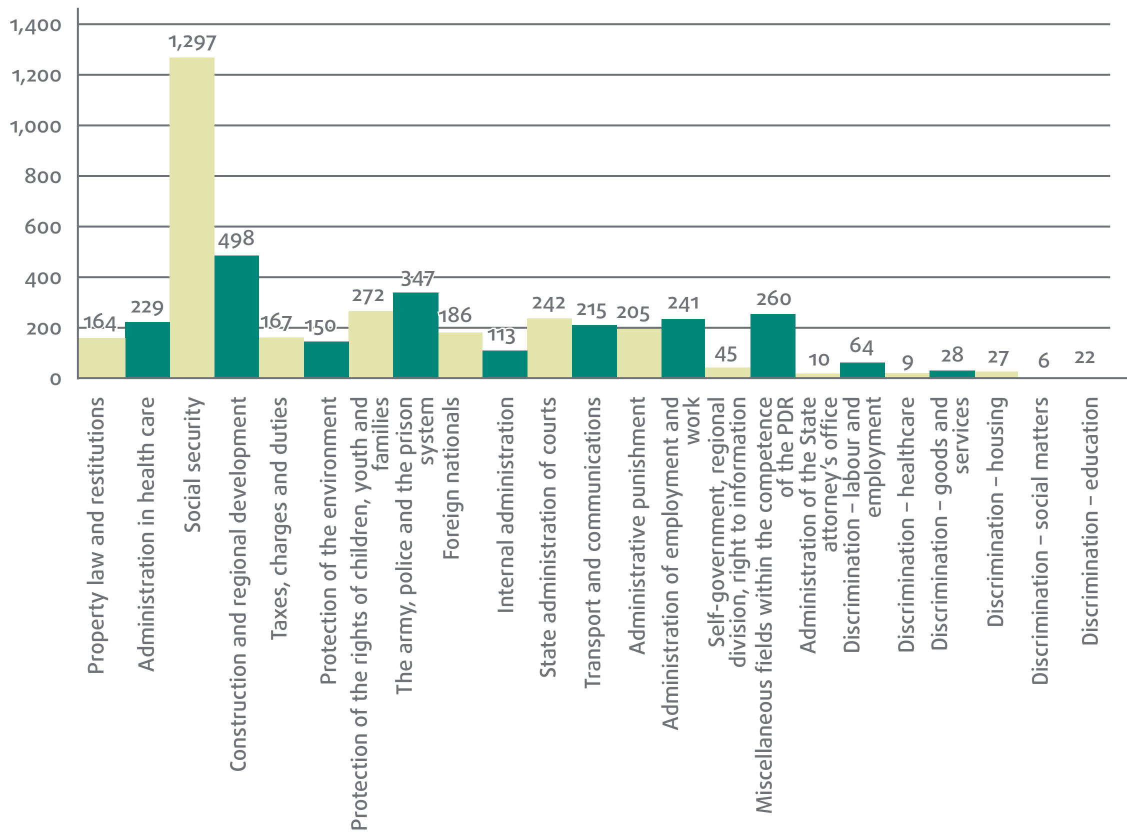
Consequently, most complainants understand correctly the competence of the Public Defender of Rights and the Defender's role is thus apparently firmly anchored in public awareness (for details, see the following chart).

Structure of complaints in terms of the Defender's mandate

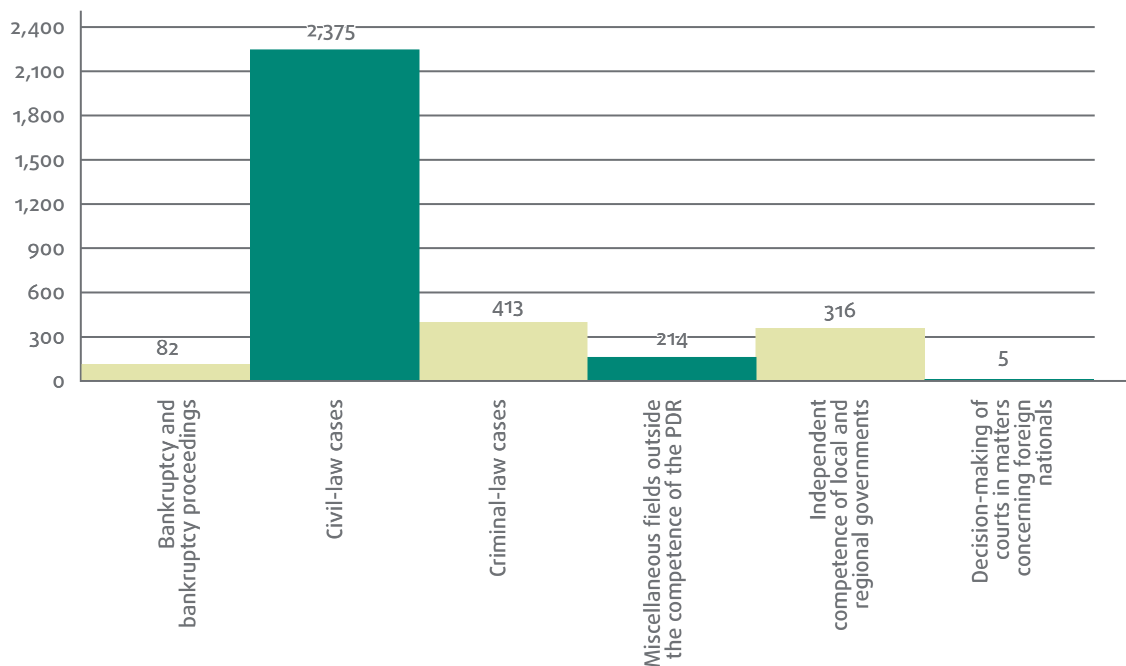


The following charts reveal that most persons address the Defender with matters concerning social security (38% of submissions falling within the Defender's mandate), rules of construction procedure (14.5%) and the Police and the prison system (10%). The number of complaints concerning protection of children, youth and family has increased (8%). This is summarised in the following chart.

Complaints received within the mandate by area



Complaints received outside the mandate by area



In 2014, the Defender **opened** a total of **801 inquiries**, and of these, **40 on her own initiative** (general problems or situations where the Defender learns about improper conduct of an authority from other sources, including the media).

1/2 Information on Complaints Handled

In 2014, the Defender handled a total of **7,637** complaints. Of these:

- **711 complaints were dismissed**, mostly for a lack of competence, or also due to failure to supplement the requisites of the complaint or an obvious lack of substantiation;

- **6,159 complaints were clarified**, which means that the Defender explained the acts of the authority in question if it proceeded correctly, or advised the complainant of steps which can be taken to protect his/her rights; if repeating reservations of complainants suggested a systematic problem, the Defender opened a broader inquiry on her own initiative.

In 2014, the Defender **closed** a total of **658 inquiries**, where:

- **no maladministration was found** in the conduct of the authority subject to inquiry in **214** cases;

- **maladministration was found** in the conduct of the authority subject to inquiry in **444** cases, of which

- in **360** cases the authorities themselves remedied their maladministration following the issue of a report on the inquiry;

- in **77** cases the authorities did not remedy the maladministration and the Defender had to release a final statement, including a proposal for remedial measures, and the latter were accepted by the relevant authorities;

- in **7** cases the authorities failed to remedy their maladministration even after the final statement was released; the Defender therefore used her punitive power and notified the superior authority of the maladministration or informed the public.

The number of complaints handled in 2014 also includes **102** cases where the complainants **withdrew** their complaints and 1 case where the complaint was actually, in view of its contents, an **appeal** pursuant to the regulations on administrative or judicial matters.

The Defender also closed **12 inquiries of particular significance** in 2014; these inquiries should result in a change in administrative practice, legislative recommendations for the Government and the Chamber of Deputies or an application lodged with the Constitutional Court.

2/ Selected Complaints and Commentaries

2/1 Social Security

Assistance in material need

Acceptance of applications for assistance in material need and provision of social advice to persons in material need

In 2014, the Defender received numerous complaints in which applicants for assistance in material need pointed out that employees of the Labour Office of the Czech Republic (hereinafter also the "Labour Office") had refused to accept their applications and informed the applicants that they were not entitled to this benefit. This procedure is unlawful as it contradicts the principles of good governance and existing guidelines on

steps to be taken in proceedings on assistance in material need. However, such maladministration is difficult to prove and the Defender therefore recommends that a written record be drawn up of the given meeting and that an application for the relevant benefit be submitted to the filing department of the authority or sent by post.

The Defender has repeatedly pointed out that employees of the Labour Office have the statutory duty to provide the client with social advice leading to resolution of his/her material need during the very first meeting (amongst other things, they should advise the client of the existence of other social benefits that could address his/her situation). **The constitutionally guaranteed right to assistance in material need should be understood not only as material assistance (granting a benefit), but also non-material assistance, comprising the provision of basic social advice,** which is a prerequisite for granting a social benefit. To comply with the principles of good governance, officials should record their meetings with clients even before the actual proceedings regarding a certain benefit are initiated. This record can serve as evidence and can also be useful in social work with clients. **Failure to provide the required social advice must be regarded as an incorrect official procedure (maladministration)**, which may give rise to liability for damage pursuant to the Act on Liability for Damage Caused during the Exercise of Public Authority (Act No. 82/1998 Coll.).

Complaint – file No.: 173/2014/VOP/AV

Employees of the Labour Office are obliged, pursuant to Section 64 (1)(b) of the Assistance in Material Need Act (Act No. 111/2006 Coll.), to accept even an incomplete application for a social benefit and provide the person appearing before the Labour Office with basic social advice in excess of the general duty to provide information in order to address the person's material need, i.e. including information about the existence of other social benefits responding to the client's social emergency and the conditions under which such benefits may be granted. To comply with the principles of good governance, an employee of the Labour Office should draw up, together with the client, a brief written record of the advice provided and should do so even before the proceedings on assistance in material need actually commence.

A complainant visited the Labour Office in October 2013 to apply for subsistence support. The official responsible for benefits did not accept the application because she had a large number of clients to deal with that day. The complainant appeared at the Labour Office again in November 2013 with completed forms; however, the given official yet again refused to accept them because they were allegedly incomplete and requested the complainant to return in December. The official then accepted the application for subsistence support only during the complainant's fourth visit at the end of December 2013. It was only in December that she informed the complainant that she could also apply for housing allowance.

The Defender considers that the Labour Office erred in this case. Its employees should have informed the complainant during her first visit that she could address her material need through social benefits (housing allowance, contribution for housing) and should have explained to her how such social benefits could be obtained. The employee of the Labour Office also erred when she failed to provide the client with assistance in completing the application for subsistence support, failed to accept the application (even if incomplete), and did not record the procedure in dealing with the client in writing.

Following the results of the Defender's inquiry, the Labour Office retrained its employees and developed written basic advice, which the employees hand over to the clients on their first visit. The Ministry of Labour and Social Affairs granted indemnification to the complainant.

Inquiry on the Defender's own initiative on ascertaining rent usual at the given place for the purposes of contribution for housing

In March 2014, the Defender opened an inquiry on her own initiative, focusing on the procedure taken by regional branches of the Labour Office and their contact offices in ascertaining rent usual at the given place for the purposes of granting a contribution towards housing, because individual complaints revealed that the contact offices often determined rent usual at the given place arbitrarily without any substantiation. Another impulse for initiating this inquiry lay in removal of the rent map from the website of the Ministry for Regional Development – in the past, the Defender recommended the use of this map to bodies deciding on assistance in material need. The Defender asked all the contact offices to complete a questionnaire concerning the

method of determining rent usual at the given place. The questionnaire was completed by 97% of the total number of 230 contact offices.

Based on the findings from the survey, the Defender proposed recommendations for determining rent usual at the given place for the purposes of granting a contribution towards housing. She concluded that the definition of usual rent in Section 2 of the Government regulation setting out the details of and procedure in ascertaining comparable rent usual at the given place (Government Regulation No. 453/2013 Coll.) was also applicable for the purposes of assistance in material need. Although the Government expressly ruled out the application of Sections 4, 5 and 6 of the above Regulation (which define the characteristics of comparability of lease relationships and residential value of an apartment); in order to eliminate arbitrariness, a body providing assistance in material need should **reasonably apply some of these characteristics, namely the size of the residential space and location of the apartment**. The body providing assistance in material need should determine the usual rent primarily **on the basis of its own investigation using at least three comparable rents in the area**. The amount of rent in municipal apartments cannot serve as a source if the applicant for a contribution towards housing is not, and is not likely to become, a tenant in a municipal apartment. **The body providing assistance in material need should take into consideration the amount of rent in apartments with an area similar to** that used by the applicant for a contribution towards housing or recipient of a benefit. In the process, it must take into consideration that the rent per square metre is usually higher in smaller apartments than the **rent for apartments with a larger floor area. If a client lives in the most expensive area of the city, the administrative** authority must determine the rent usual at the given place using information about the market rent in the given area because “rent usual at the given place” is an objective quantity. However, having considered the circumstances of the case, the authority may take the rent usual in some other comparable area of the given city where the client can demonstrably obtain cheaper housing into account when determining justified housing costs. The administrative authority must keep underlying documents for determining the usual rent in the given file and must describe the manner of determining the usual rent in the reasoning of the decision or notification of benefit.

The Defender recommended that the Labour Office issue new guidelines on the determination of rent usual at the given place or change the existing instruction on a contribution towards housing. See also chapter New Recommendations of the Defender for 2014, p. 10.

Benefits of assistance in material need for persons who have lost a substantial part of their income

In 2014, the Defender also encountered maladministration within evaluation by Labour Offices of the entitlement to assistance in material need in cases where the applicant had lost a substantial part of his/her income (for example, parental allowance, unemployment benefits). The Defender emphasised that if the body providing assistance in material need concludes that an applicant for subsistence support or a person being assessed together with him/her has lost some of his/her income and the loss of income is substantial, **this body must take the decrease in income into consideration** (the decision on the benefit must not be based on earlier income which no longer exists). The administrative authority should use its discretion to determine whether the applicant’s situation involves a “substantial decrease in income”. The administrative authority must take the substantial decrease in income into consideration.

State income support benefits

Proving a lease for the purposes of housing allowance

The Defender repeatedly encountered cases where it was difficult for an applicant for a housing allowance to prove the existence of a lease. In these cases, the applicant for the benefit as the tenant of the given residential unit had nothing else than the original document, often several decades old (agreement on use of apartment, decision on assignment of agreement) together with proofs of payment of the rent. In some cases, the Labour Office refused to accept such “historical” documents and requested additional documents to prove the existence of the lease (for example, landlord’s confirmation of the existence of the lease). The Defender concluded that if the applicant submits a valid document proving the existence of a lease together with proofs of payment of the rent, any requirement for additional evidence is at variance with the principle of the least possible burden for the parties to proceedings as stipulated by the Code of Administrative Procedure (Act No. 500/2004 Coll.).

The Supreme Administrative Court dealt with a similar problem in its decision of 29 January 2014, file No. 6 Ads 78/2013. It found a notification of unilateral increase in rent containing the landlord's signature, in which both contractual parties were identified, sufficient for proving the existence of the lease.

Ascertaining social circumstances and property relations for the purposes of housing allowance

As from 1 January 2012, the compulsory requisites of an application for housing allowance included, among other things, a declaration of the entitled person that his/her social circumstances and property relations do not allow him/her to address the housing problem other than by lodging an application for benefit. It was the opinion of the Public Defender of Rights from the very beginning that the above declaration can have no effect on assessment of the entitlement to benefits and the Defender considered that the new requirement for said declaration was superfluous. Therefore, in the commentary procedure, the Defender proposed that this condition be omitted from Section 68 (1)(e) of the State Income Support Act (Act No. 117/1995 Coll.). The declaration was omitted from the Act effective from 24 June 2014.

Complaint – file No.: 7370/2013/VOP/MBL

Although pursuant to Section 68 (1)(a) of the State Income Support Act an applicant for housing allowance must sign a declaration that his/her overall social circumstances and property relations do not allow him/her to address the housing problem other than by lodging an application for the allowance, the Labour Office cannot examine his/her social circumstances and property relations for the purposes of the allowance and take them into consideration when assessing the entitlement to the allowance and determining its amount.

A complainant applied for a housing allowance with the Labour Office. The latter did not grant this benefit with reference to finances in the applicant's bank account and the declaration that she had signed, which indicated that her overall social circumstances and property relations did not allow her to address the housing problem other than by lodging an application for a benefit. The State Income Support Act required the above declaration as a requisite of an application for a benefit (it was thus printed in the given application form). The Act did not, however, include the overall social circumstances and property relations among the preconditions for the entitlement to benefits. Therefore, the Labour Office lacked authorisation to examine the balance in the applicant's account and to reflect this in any manner whatsoever in the proceedings concerning the benefit. The authority remedied its maladministration, granted the benefit, paid the outstanding amount and removed the additional information from the file pertaining to the decision-making on the benefit.

Pensions

Decision on the duty to refund an overpayment of pension

In 2014 (as in previous years), the Defender was approached by complainants on whom the Czech Social Security Administration imposed the duty to refund an overpayment of pensions which had been incorrectly paid to them by the Social Security Administration in an amount exceeding their actual entitlement. While the complainants had not violated any statutory duty (in particular, the duty to notify certain facts) and collected the pensions in good faith, considering themselves entitled to it, the Czech Social Security Administration deemed that the overpayment had arisen through the complainants' fault as they must have assumed in the given circumstances that they were not entitled to the pensions in the higher amount. In the same way as her predecessors, the Public Defender of Rights defined the conditions for liability for overpayment and concluded that the conditions for liability of a pension recipient for an overpayment pursuant to Section 118a (1) of the Organisation and Implementation of Social Security Act (Act No. 582/1991 Coll.) are met only if the recipient's fault is demonstrated at least in the form of inadvertent negligence (s/he could and should have known that s/he was not entitled to the pension). Unawareness of the relevant provisions of the Pension Insurance Act concerning reduction in pensions in cases where there is an overlap of various pensions does not constitute inadvertent negligence.

Evaluation of the period of employment for the purposes of entitlement to pension

The Defender often encountered cases in which it was impossible to demonstrate the period of employment for pension purposes. Most often, this is due to a shortcoming on the part of former employers who failed to fulfil their notification duty towards the Czech Social Security Administration. In most cases, the employment

terminated decades ago and most complainants have no documents to prove the employment (and can no longer obtain them). In such cases, the Czech Social Security Administration grants a lower pension. In some cases, it even refuses to acknowledge a period of employment in respect of which the applicants present documents.

The Defender concluded that if the Czech Social Security Administration lacked the necessary documents concerning the period of employment due to fault of the former employer, it was obliged to acknowledge this period if sufficient alternative evidence was provided. An insured person may not bear the consequences of his/her former employer's failure to comply with his duty towards the Social Security Administration.

Sickness benefits

The Defender also encountered a practice where civil-law agreements had been made between the recipient of benefits and the District Social Security Administration in a situation where an overpayment of the relevant benefit (called "administrative overpayment") had arisen as a result of the authority's maladministration. In these cases, the District Social Security Administration may not require the recipient to refund the overpayment because the overpayment did not arise through the recipient's fault. Nevertheless, the Social Security Administration did seek to have the overpayment refunded by asking the recipient of the benefit to sign a civil-law agreement on acknowledgement of debt under the Civil Code (Act No. 40/1964 Coll., effective until 31 December 2013). **The Defender considers** such an **agreement on acknowledgement of obligation unlawful** because the applicable rules of public law do not allow public authorities to enter into civil-law agreements unless this is expressly stipulated by law.

The Social Security Administration insisted that the recipient had obtained unjust enrichment and the overpayment could therefore be enforced in courts (regardless of the fact that it had not arisen through the recipient's fault) unless the recipient returned it voluntarily.

The Defender maintained its opinion that the view of the Czech Social Security Administration was at variance with the clear case-law of the Supreme Administrative Court, according to which **the relationship between an insured person and an insurance provider was a public-law relationship and the private-law rules on unjust enrichment (the Civil Code) were not applicable to it.** The Defender suggested that the situation be remedied by entering into a settlement agreement, not enforcing a refund of the overpayment and changing the practice of executing agreements on acknowledgement of obligation (including a change in the guidelines). The Czech Social Security Administration complied with the Defender's requirements and remedied its incorrect procedure both in the case concerned and in general – by changing its internal rules.

Social security involving a foreign element

The number of complaints in the area of social security with a foreign element has been constantly growing and the number of cases concerning pensions significantly exceeds those involving family benefits and sickness and maternity benefits. In 2014, the Defender most often addressed cases with a **European element**. She repeatedly identified problems in determining the country which is to make a decision on benefits, in evaluating insurance and residence periods in another Member State of the European Union and also in determining the amount of a Czech benefit. In these cases, the Defender works closely together with her foreign colleagues, most often the Slovak Public Defender of Rights.

Another large group comprises complaints filed by individuals from the successor countries of the former Soviet Union. Some of these submissions were related to application of the **Agreement on Social Security between the Czechoslovak Republic and the Union of Soviet Socialist Republic** (hereinafter also the "Agreement"). In this area, the Defender most often found that a pension benefit had unlawfully not been granted during the term of applicability of the Agreement and she also found shortcomings consisting in failure to exclude periods of eligibility acquired in a successor country of the Soviet Union after 1 January 1996 in decision-making on Czech pensions.

There were also issues related to application of the **Agreement between the Czech Republic and Ukraine on Social Security** (hereinafter also the "Agreement"). The Defender found maladministration on the part of the Czech Social Security Administration in relation to an insured person who was registered for permanent

residence both in the Czech Republic and in Ukraine on the date of entry of the Agreement into force (1 April 2003). At a time when the Agreement was not applicable, she received old-age pension in Ukraine on the basis of periods of insurance in that country. She was subsequently employed in the Czech Republic. The Czech Republic, and not Ukraine, was competent to include the periods of insurance (eligibility) acquired after the Ukrainian old-age pension was granted up until 30 March 2003. However, the Ukrainian Pension Fund unlawfully recalculated the insured person's old-age pension after the Agreement was adopted (increasing the Ukrainian pension by the period of insurance in the Czech Republic), and the Czech Social Security Administration therefore did not grant pension for the aforementioned period. However, the Czech Social Security Administration should have advised the Ukrainian Pension Fund of its mistake and it should have granted a partial Czech pension for the aforementioned periods (which would have been higher than the increase in the Ukrainian pension for the same period). The Czech Social Security Administration remedied the shortcoming (by granting partial Czech pension) following the Defender's intervention.

Compensation for damage caused by the communist regime

In 2013 and 2014, the Defender and her predecessor were approached by dozens of complainants, former **members of the Auxiliary Engineering Corps and Engineering Corps**. The Ministry of the Interior had not granted them indemnification under the Government regulation on the provision of a one-off allowance to mitigate certain injustices caused by the communist regime (Government Regulation No. 135/2009 Coll.) in respect of a part of their basic military service at the Engineering Corps that immediately followed service in the abolished Auxiliary Engineering Corps. These complainants documented that the nature of the service had not changed in any fundamental respect after the organisation had been renamed to Engineering Corps. The Government regulation grants a **one-off allowance** to persons restricted in their freedom by the communist regime **as reimbursement of salary during annual leave** which would have been payable to them if they had been properly employed. The Ministry of the Interior argued that the Government regulation did not explicitly stipulate that indemnification was also payable for service at the Engineering Corps. After reviewing the individual decisions made by the Ministry, the Defender concluded that the Ministry had acted incorrectly in both substantive and procedural terms. It had granted indemnification only for service at the Auxiliary Engineering Corps and failed to reject the entitlement to indemnification for the part of service at the Engineering Corps by means of a separate section of the operative part of the given decision. By doing so, it prejudiced the applicant's right to lodge an ordinary remedy (appeal – in Czech *rozklad*) against the partial rejection of the application. Indeed, if such appeal had actually been lodged, the entire decision on granting indemnification (for a part of the period of service) would not have come into legal force and indemnification could not have been paid to them even in respect of the granted part.

Some applicants contested the decision of the Minister of the Interior on appeal through an action brought to an administrative court. Through a decision of 28 May 2014, file No. 3Ad 2/2014 (and other similar decisions), the Municipal Court in Prague cancelled the decision of the Minister of the Interior. The Court also **agreed with the Defender's objections** regarding the substantive and procedural aspects of the procedure taken by the Ministry of the Interior. Considering the long-term efforts of members of forced labour camps, the Defender's standpoint and the above **case-law, the Ministry of the Interior prepared an amendment to the Government Regulation, which was published in the Collection of Laws under No. 205/2014.** Based on the above amendment, the complainants who turned to the Defender were also paid indemnification for the time served in the Engineering Corps.

Public guardianship

Municipalities with the status of public guardians of persons with limited legal capacity exercise State administration (government) in "delegated competence". In 2014, the Defender made an inquiry into several cases on the basis of the complaints received and made certain other findings during her systematic visits. **The exercise of guardianship continues to be adversely affected by the absence of a legal regulation** which would supplement the basic provisions contained in the Civil Code (Act No. 89/2012 Coll.) and uniform guidelines.

It is typical in such cases that there is an inconsistency between the **wishes of the person under guardianship and his/her interests that the guardian should protect**. The Defender sought reasonable balance in cases where, in the guardian's opinion, the wishes of the person under guardianship were at variance with his/her interests (they could harm the person). In one such case, the person under guardianship demanded that the guardian pay the rent for a leased apartment also for her partner she lived with. The partner lacked finances to contribute to the rent. The guardian refused this, referring to the duty to defend the financial interests of

the person under guardianship. The Defender emphasised that, while it is fair for partners to share the payment of the rent and utilities, the guardian should respect the ideas of the person under guardianship regarding his/her way of life and handling of his/her finances. If she wished to live with her partner and her income allowed her to pay housing for both, this was a specific wish of hers which the guardian should have respected. Under the Civil Code, such a wish may be disrespected only if it can be reasonably opposed. In addition, acting as she did, the person under guardianship exercised her right to private and family life.

It also became obvious that it was not easy to **provide for suitable social services for persons under guardianship** in such a way as not to cause disproportionate interference with their independent lifestyle and participation in society in the sense of Art. 19 of the Convention on the Rights of Persons with Disabilities (promulgated under No. 10/2010 Coll. Int. Tr.). The Defender paid special attention to the exercise of public guardianship with respect to persons who were found, during the systematic visits, in accommodation facilities providing care without proper authorisation. The Defender made an inquiry into ten cases on her own initiative and summarised her findings in a **statement concerning the performance of public guardianship and provision of social service**. In relation to **unregistered residential social services facilities,** the Defender recommends that guardians:

- do not entrust persons under guardianship dependent on care to unregistered residential social services facilities,
- when in doubt as to a suitable social service, turn for assistance to the municipal authority of a municipality with extended competence,
- defend the interests of the person under guardianship also after admission to the residential facility and consistently monitor the quality of the services provided to the person under guardianship, thus contributing to his/her protection.

Inquiry on the Defender's own initiative file No.: 541/2014/VOP/RJ

In order to duly perform his/her duties, a guardian should act in the interest of the person under guardianship. To be able to act in his/her interest, the guardian must know the person's needs, abilities and personal circumstances. If the guardian is unable to assess the situation of the person under guardianship and propose appropriate solutions and procedures, the guardian should turn to the municipal authority of a municipality with extended competence. Within the performance of delegated competence, municipalities perform social work which includes, amongst other things, identification of persons living in, or at risk of, adverse social circumstances, and individual planning directed at addressing such circumstances.

A person with a disability (person under guardianship) has the right to live in a natural environment. The guardian must strive to ensure that the person under guardianship can have an independent lifestyle as far as possible and be integrated in society. To achieve this, the guardian should use all available services provided in a domestic environment or field services. Placement in a residential facility, which inherently restricts people's freedom and independent lifestyle, should be resorted to only when the person under guardianship is obviously unable to live with assistance and support provided in a less restricting environment.

Facilities which provide care corresponding to care in social services facilities without proper authorisation (registration) do not guarantee observance of the fundamental rights and freedoms of clients. Therefore, a public guardian must not contractually arrange a stay in such a facility for the person under guardianship and has the obligation to look for a suitable social services facility which is duly registered.

For a person living in an institution, the guardian should serve as a guarantee of protection of his/her rights. The guardian should be active in his/her role under the Social Services Act (Act No. 108/2006 Coll.), maintain regular contacts with the person under guardianship and consistently monitor the quality of provided care.

The Defender made an inquiry into the performance of guardianship by several guardians who had placed the persons entrusted to them into a facility which lacked authorisation to provide social services under the Social Services Act. De-

spite this, the facility provided these clients with care which corresponded, in its nature and scope, to the basic activities of a residential social service such as retirement home or special regime home as defined by the Social Services Act. It did not, however, meet the quality standards stipulated by law. The Defender stated that the circumstances in the facility amounted to ill-treatment.

The facility was to provide the persons under guardianship with follow-up care and services after release from a health-care facility. However, the quality of care was very low and the needs of many clients remained unmet.

Some of the persons were placed in a residential facility despite the fact that support from a field social service in a less restricting environment would be sufficient considering the degree of care required in the given case.

In addition, the facility was very remote from the original place of residence of the persons under guardianship. This resulted in reduced relations with the original social environment, especially the persons' families. The persons concerned could establish and maintain social relations only with other clients and perhaps the personnel in the facility. They were in fact isolated from the rest of society.

The guardians concluded contracts for accommodation and care for the persons under their guardianship remotely without verifying beforehand or during the stay what kind of facilities the persons were being sent to and what care (in what quality) the facilities provided to the clients. The guardians also failed to continuously evaluate the needs of the persons under their guardianship. They did nothing to monitor the quality of provided care and did not use their inspection powers to protect the clients. The guardians also poorly protected the property interests of the persons entrusted into their guardianship as they automatically transferred the duty to administer financial means to the facility. They did so without being aware of how the facility handled those funds and whether they were utilised effectively.

2/2 Work and Employment

Administration in the area of employment

Assessment of serious reasons

As in previous years, the Defender was approached in 2014 by complainants who had been unregistered as jobseekers on grounds that they had been frustrating co-operation with the Labour Office by not appearing at the Labour Office on a set day without stating a serious reason. However, the Labour Office often concluded that the asserted and documented reasons for failure to appear did not represent serious reasons in the sense of Section 5 of the Employment Act (Act No. 435/2004 Coll.), i.e. reasons strong enough for waiver of the given duty. Following the Defender's inquiry, the Labour Office pledged to pay more attention to the matter and regularly discuss controversial cases at conferences in order to ensure a uniform approach. In cases where the complainants had not succeeded with their appeals to the Ministry of Labour and Social Affairs and the time limit for lodging an action with administrative courts had not expired, the Defender recommended them to bring an action. She found this to be more effective or "certain" (unlike courts, the Defender cannot cancel a defective decision). Several decisions of the Ministry were subsequently cancelled, which supported the Defender's view of the matter of assessment of seriousness of claimed reasons.

Coordination Regulations

In connection with the growing number of complaints from citizens of the Czech Republic who **had been denied unemployment benefits by the Labour Office** under the directly applicable regulations of the European Union, i.e. the Coordination Regulations, **after having returned from work stays abroad**, especially because they had failed to demonstrate that they had preserved their residence (centre of interests) in the Czech Republic during the last gainful activity abroad, the Defender initiated a meeting with representatives of the Ministry of Labour and Social Affairs and the General Directorate of the Labour Office and its regional branches during the first quarter of 2014. The meeting yielded agreement on the need to review the questionnaires used to determine the country of residence submitted by applicants together with their application for unemployment benefits. It also uncovered the lack of uniformity among regional branches in determining the Czech Republic as the centre of interests. On the other hand, a positive finding was made

that the employees of regional branches were providing helpful and professional advice on the application of the Coordination Regulations.

Requalification

The Defender also concentrated on requalification courses and the conditions set for enhancing the qualifications of jobseekers registered with the Labour Office. The Defender was often approached by complainants whose planned requalification had not been approved or, on the other hand, were ordered to participate in various projects organised, as a rule, by the Ministry of Labour and Social Affairs with a view to reducing unemployment, supporting social inclusion and equal opportunities with a focus on development of the labour market. Most of these projects are financed from EU funds and compulsory attendance in them is included in the personal individual action plans of jobseekers who have been registered with the Labour Office for a long period of time. Considering the increased number of complaints concerning this topic, the Defender plans to meet with representatives of regional branches in the second quarter of 2015 to discuss practical experience in implementing this instrument of active employment policy.

Unemployment benefits after return from parental leave

The Defender repeatedly encountered cases of **women who started to work as employees after their parental leave** but were given **notice** on grounds of redundancy after some time or left the job themselves and registered with the **Labour Office**. However, they applied for registration as jobseekers more than three workdays after termination of their employment. For this reason, in accordance with the Employment Act, their unemployment benefits were calculated on the basis of the average wage in the national economy (and the resulting amount was approx. CZK 2,600 to 3,500) instead of the average earnings in the last employment as they had expected. Considering that many of these women stated in their complaints that the employees of the office had advised them incorrectly of the consequences of late registration, the Defender's deputy Stanislav Křeček issued a press release in January 2014, advising parents who had terminated their employment after returning from parental leave that they had to register with the Labour Office within three workdays after termination of the employment relationship; otherwise they would face the risk of receiving only the minimum benefits. He also asked the Labour Office to advise jobseekers of the implications of a failure to comply with the time limit for registration.

Labour Inspectorate

Illegal employment

Since 2012, the Public Defender of Rights has paid attention to the aspects of **the lower limit of the fine** imposed by Labour Inspectorates on employers for allowing illegal work. Just as many employers, the Defender considered that the minimum amount of CZK 250,000 had the potential of ruining a business. Based on the Defender's comments and reservations by other parties authorised to submit comments, the minimum amount of the fine contained in the Employment Act was to be decreased to CZK 50,000 effective from 1 January 2015. Prior to that, the Constitutional Court assessed compliance of the lower limit of the fine of CZK 250,000 with the Constitution. Through a judgment of 9 September 2014, file No. Pl. ÚS 52/13, the Constitutional Court cancelled it as obviously disproportionate and preventing proper consideration of the circumstances of the case (including proportionality of the amount of the fine).

The Defender also required that the State Authority for Labour Inspection change or cancel the General Inspector's guidelines in which inspectors were guided to automatically consider that failure to present labour-law documents during an inspection focusing on illegal work equalled **illegal work**. The State Authority for Labour Inspection responded to the numerous interpretation disputes by changing the guidelines. Following this, the inspectors recorded in the inspection protocols that the employers had not presented documents during the inspection, thereby "merely" failing to comply with the duty to keep copies of documents proving the existence of a labour-law relationship at the workplace. The inspectors made an assessment as to whether the conduct concerned amounted to the offence of allowing illegal work only subsequently, when assessing fulfilment of all the statutory preconditions for the administrative offence. An amendment to Section 136 of the Employment Act changed (effective from 1 January 2015) the provisions governing the employers' duty to keep copies of documents proving the existence of a labour-law relationship at the workplace. The said guidelines were thus removed from the website of the Ministry of Labour and Social Affairs

and the State Authority for Labour Inspection; the inspectors' procedure in inspecting illegal employment will be unified by new guidelines of the General Inspector which are currently under preparation.

Inspection powers of the bodies of the Labour Inspectorate

In 2014, the Defender yet again found, when making an inquiry into the procedure taken by the bodies of Labour Inspectorate, that **inspectors were not using all their statutory powers** and, as a result, they often failed to sufficiently ascertain the facts of the case. The bodies of the Inspectorate also often failed to sufficiently deal with all objections contained in the petitions for inspection. The Defender also found that their method of investigating allegations of bullying in labour-law relationships was unconvincing.

Complaint – file No.: 1758/2014/VOP/EHŠ

The course of an inspection performed by a district Labour Inspectorate should be documented to such an extent that the inspection procedure is evident from the files. This is the only feasible way to review the conclusions of the inspection, assess their conclusiveness and check that there exist no justified doubts regarding the facts of the case ascertained by the Inspectorate.

If the district Labour Inspectorate questions the employees of the inspected party during an inspection within its authority, it is obliged to keep consistently official records of its communication with the employees.

When informing the petitioner of the result of the inspection, the District Labour Inspectorate is obliged to sufficiently deal with all the items of the petition for inspection.

The complainant was dissatisfied with the manner in which the District Labour Inspectorate (hereinafter the "District Inspectorate") verified his petition for inspection in which he stated that he was a victim of bossing – the employer subjected him to unequal treatment without justification (for example, in scheduling the working hours).

On the basis of the petition, the District Labour Inspectorate performed an inspection during which it questioned the employer's personnel pursuant to Section 7 (1) of the Labour Inspection Act (Act No. 251/2005 Coll.). However, it was unclear from the file how many employees were actually questioned by the inspector and on what matters, and the file did not contain any record of the employees' testimonies.

The Defender deems this unsatisfactory. The District Inspectorate is obliged to keep consistent official records of communication with employees so that the conclusions of the inspection can be reviewed. In the case concerned, the conclusions from the inspection could not be reviewed; consequently, the Defender could not assess reliability of the conclusions from the inspection and determine whether there existed any justified doubts regarding the facts of the case ascertained by the District Inspectorate in the sense of Section 3 of the Code of Administrative Procedure.

Furthermore, the District Inspectorate erred as it did not deal with the entire content of the petition for inspection during the inspection at the employer, did not provide the complainant with all the information ascertained during the inspection and did not sufficiently explain essential facts to the complainant.

The Defender closed the case after she had been promised that the inspection would be repeated with an emphasis on the criticised shortcomings.

2/3 Family and Children

Complaints by children

In 2014, as in previous years, **minor children and young adults** addressed the Defender (usually via email at *deti@ochrance.cz*). This option was exercised by **35** children in 2014. The most common issues included the situation in their families (e.g. the parents' behaviour, the manner, course and frequency of contact with one of the parents, contact with grandparents, and removal from a parent's care), situation in the facility where

they were placed (e.g. conduct of the staff, visits to parents, passes and permits to leave, and the facility-leaving package), and their transfer to another facility. There were also requests for help from children in relation to the procedure of their schools, enforcement of payment for collection of municipal waste, search for their father, and also questions concerning the public health insurance and complaints against **Česká pošta, s. p.** (Czech Post). Complaints by children receive special attention from the Defender, who tries to maintain an informal tone in communication with them and strives to provide quick and practical help.

Amendment to the Act on Social and Legal Protection of Children

The Defender has further addressed the implications of the amendment to the Act on Social and Legal Protection of Children (Act No. 359/1999 Coll.) published in the Collection of Laws under No. **401/2012**, effective as from 1 January 2013. As in 2013, **married couples–foster parents** raising three or more children in foster or custodial care have contacted the Defender. At the time of taking children into their care, both spouses were entitled to fostering allowance, which influenced their decision as to whether and how many children they would accept, including children with severe disabilities. Since 1 January 2013, however, only one of the spouses-foster parents may receive the fostering allowance. (In unmarried couples, both foster parents continue to be entitled to fostering allowance.) The Defender has talked about the situation with the Ministry of Labour and Social Affairs, which promised to provide assistance at least to specific families for the time being. The Defender continues to monitor the situation.

In 2014, the Defender dealt with **decisions taken by directors of facilities for children requiring immediate assistance** to prohibit contact between parents and children placed in facilities. Pursuant to Section 42a (3) of the Act on Social and Legal Protection of Children (effective from 1 January 2013), the director may prohibit or interrupt a visit of the parents or other persons in the facility in the event of their inappropriate conduct that would have an adverse effect on the child's upbringing, where the child has been placed in the facility on the basis of a judicial decision. The aforementioned provision only authorises the director to decide to prohibit contact **ad hoc – i. e. in individual situations**. In the case of the complainants (parents), the director used the aforementioned authorisation incorrectly ("excessively") by prohibiting visits in general, reasoning that the parents may endanger the child in view of the parents' previous inappropriate conduct toward the child.

The importance of justified concerns on the part of the facility and the body for social and legal protection of children cannot be downplayed; however, the Defender recommended that they file a motion with court to restrict or prohibit the child's contact with the parent (or, depending on the circumstances of the case, to order a supervised contact). The very serious decision on restricting or prohibiting children's contact with parents falls under the exclusive competence of the court. The facility's decision may not substitute for a court decision. Moreover, in the case described, the facility neglected, without any legal reason, its duty to co-operate with the child's family set forth in Section 42a (1)(h) of the Act on Social and Legal Protection of Children.

The Defender has also addressed the issue of the "indirect form" of contact between parents and their children, specifically the **disclosure of information concerning the child between the parents** with the assistance of a body for social and legal protection of children. She concluded that the body for social and legal protection of children should not obtain information from a parent on the basis of a request of the other parent without serious reason. The parents are obliged to inform each other of all significant matters concerning the life of the child (e.g. medical condition, school performance, necessary organisational matters), but they are not obliged to provide each other with a detailed description of everyday activities.

The Defender has also challenged the refusal on the part of the bodies for social and legal protection of children to **authorise parents to obtain an audio recording** of their meetings with officials. Verbal communication of an official during a personal meeting held within the scope of social and legal protection of children cannon be considered personal communication; therefore, obtaining an audio recording cannot be subject to the official's approval. The body for social and legal protection of children is not authorised to prevent the legal representative to obtain an audio recording of the meeting with social workers because such procedure lacks any legal basis.

The Defender has also addressed in detail the right of parents to deal with the body for social and legal protection through a **representative or attorney.**

Complaint – file No.: 1899/2013/VOP/MPT

Power of attorney does not relieve the parent of his or her duty to appear if summoned for personal meeting by a body for social and legal protection of children and to provide the necessary information if exercise of rights and obligations intrinsically connected to parental duties (which are fundamentally non-transferable) is concerned.

The court removed the complainant's daughter from her care after she repeatedly exposed the child to other persons' inappropriate conduct. Prior to the removal of her daughter, the complainant filed into the case file a power of attorney authorising her then-partner to act in matters concerning the "minor and matters associated with her to the full extent, without any limitations." The social worker warned the complainant that in this case the body of social and legal protection would talk exclusively with her as the sole legal representative of the child. In view of the broad scope of the power of attorney given, the body believed that the complainant was transferring to her current partner the rights and obligations following from her parental responsibilities. The body also challenged the credibility of the attorney since he was a person with past criminal record, unemployed and lacking long-term emotional connection with the child. The body had thus not recognized the power of attorney and refused to deal with the attorney appointed by the mother.

The main task of bodies for social and legal protection of children is to facilitate resumption of disrupted functions of the family. In order to ensure quality social and legal protection of children, the body requires direct access to information on the child, his/her parents and the environment in which the child lives. It is thus inconceivable for the bodies to be unable to deal directly with the parents and children as necessary. Having regard of the sense and purpose of the social and legal protection of children, the Defender believes that parents may appoint other persons to represent them in dealings with bodies for social and legal protection of children, however, this does not relieve them of the duty to appear in person if summoned by the relevant body for a personal meeting. Nevertheless, the body must allow the parent's attorneys to be present during the meeting. If, in the given instance, the body is not trying to improve the unfavourable condition of the family and if the parent is not to perform any acts personally during the meeting (typically if the meeting only serves the purpose of handing over documents), the attendance of the parent in person cannot be requested.

New Civil Code

In 2014, the Defender addressed the implications of the new Civil Code (Act No. 89/2012 Coll.). Section 971 (4) of the new Civil Code changed the practice concerning **placement of children on whom institutional education has been imposed into school facilities**, where a decision on placement (and transfer) of the child into a specific facility must now be made by a court as opposed to diagnostic institutions. According to the Defender's findings, the use of the new rule brought problems that represent infringement of children's rights.

The child and his/her needs should be expertly assessed in order to place the child in a facility which best meets his/her needs. Act No. 109/2002 Coll., on provision of institutional education or protective education at school facilities and on preventative educational care at school facilities, anticipates that children's homes with schools and educational institutions provide care for children with severe behavioural disorders (and other groups of children). It must be assessed and decided by a diagnostic institution whether a given person suffers from a severe behavioural disorder and this decision must have an expert basis. Nonetheless, the courts are not required to place the child in a diagnostic institution for expert assessment. They are only required to take account of the interests of the child and the opinion of the body for social and legal protection of children. The Defender believes that the duty "to take the interests of the child into account" is too vague to motivate the courts to seek expert assessment. In practice, the assessment of severe behavioural disorders may thus depend solely on inexpert guesswork on the part of an employee of a body for social and legal protection of children or the court.

In addition, the individual facilities for performance of institutional education (children's homes, children's homes with schools, and educational institutions) are further **specialised**. However, the courts are unable to fully appreciate specialisation within one category of facilities since this is a matter of expertise, not law and the specialisation is usually not reflected in the facility's statute. The courts are also not obliged to take the specialisation into account and to take account of the local conditions.

Even though the speed of decision-making must not reduce its quality, it is of major importance in some cases. The Defender encountered slow decision-making of courts in connection with the placement as well as transfer of children. At least 67 children placed in children's homes with schools who finished elementary school in 2014 could not start their education in a secondary school or a vocational school the next September due to the **courts' failure to decide in time on the transfer of the children from a children's home with a school to the educational institution where they were to continue their studies.** The State has thus interfered with the right of the children to education in a completely unacceptable manner. Children also stay in diagnostic institutions for an excessive length of time due to the courts' overloading (and slow decision-making).

Therefore, in her comments on the amendment of the Civil Code, the Defender proposed to consider if the decision on placement of children in a specific facility should not return to the competence of diagnostic institutions, under conditions currently stipulated by the Civil Code.

Adoption of children by a person in registered partnership

Section 13 (2) of Act No. 115/2006 Coll., on registered partnership, prohibits **a person living in a registered partnership from adopting a child.** At the same time, an unmarried individual may adopt a child (albeit only under extraordinary circumstances) pursuant to Section 800 of the Civil Code. However, if the person enters into a registered partnership (union for same-sex couples), the person loses the possibility of adopting a child.

For this reason, the Defender maintains that Section 13 (2) of the Registered Partnership Act **is at variance with the constitutional order** (it represents unequal treatment on the basis of personal status). Any difference in treatment should always pursue a legitimate purpose and be reasonably justified. In this particular case there is no legitimate purpose or reasonable justification. The Defender believes that the status of a registered partner cannot influence the person's ability to be a good adoptive parent.

A change in the current situation may only be brought about through **amendment to the Registered Partnership Act**.

2/4 Health Care

Handling complaints against the procedure of health care services providers

The Defender has often dealt with **appointing of independent experts and independent expert commissions** by Regional Authorities. She reminds that Act No. 372/2011 Coll., on health care services and the conditions for their provision, not only allows Regional Authorities to use the opinion of an independent expert or an expert commission in their activities, it even imposes the duty to have such commissions appointed in some cases. There, the Authority may not get by using only its own employees. This applies both for dealing with complaints and situations where the Authority acts on the basis of its own findings (ex officio) and where it acts on the basis of an instigation from a different source.

Complaint – file No.: 4018/2013/VOP/MJ

Information-deprived record of admission of a person into an alcohol detention centre and a brief interview with an employee lacking education in medicine does not constitute a sufficient basis for ascertaining the actual state of affairs on the part of an inspection body.

If the inspection is to assess a matter based on a medical procedure, a doctor's opinion should be sought during the inspection.

The complainant was placed in an alcohol detention centre (hereinafter the "Sobering-up Station") after being detained by the Police on suspicion that he had driven a motor vehicle under the influence of alcohol. When detained, the complainant was subjected to alcohol measurement by the Police, which showed 0.58 ‰; he subsequently spent almost two hours at the Police station, after which he was transported to a Sobering-up Station where he had to stay for more than eight hours. The Regional Authority as the registration authority for the Sobering-up Station performed an inspection at the facility at the instigation of Pavel Varvařovský, the Public Defender of Rights at that time. It subsequently confirmed the justification of placing the complainant into the facility.

The Defender found the Regional Authority's inspection insufficient. While the Regional Authority inspected, for example, the technical equipment of the centre and the formal contents of the medical records, it had done little to assess the justification of the complainant's placement at the drunk. No professional with a medical background participated in the inspection. The Regional Authority also made incorrect conclusions from some of the inspection findings; the complainant had been almost sober when received at the centre (at that time, the receiving physician had not measured the alcohol level in the complainant's body) and other statutory requirements for admitting him had not been met (the complainant had been in control of his behaviour, had not threatened anyone and had not been causing public nuisance). The length of his stay in the facility also lacked justification due to the lack of actual intoxication on the part of the complainant.

The Regional Authority, after receiving the Defender's objections, adopted remedial measures – it changed its guidelines and ordered the Sobering-up Station to modify its operating rules.

Mandatory vaccination

The Defender was approached by **parents of several minor children who expressed their disagreement with the obligation to have their children vaccinated.** They allege, on the basis of their personal experience and claims of people they know, that vaccination may sometimes cause a number of rather serious side effects, which the complainants perceive to be of a greater risk than the disease against which the vaccination protects. **At the same time, the State does not bear any responsibility for the potential damage to health occurring as a consequence of the vaccination it orders.** The children's parents also claim that in comparison to other European countries, the Czech Republic sets a larger number of mandatory vaccinations (nine), which are moreover to be made at the child's youngest age, when vaccination might be very taxing on the child. Furthermore, the legal regulation sets forth a penalty for a failure to comply with mandatory vaccination that, in its result, punishes not only the parents (through a fine) but also their children, who may not participate in pre-school education without the mandatory vaccinations. See also chapter "The Defender and the Constitutional Court", p. 18, and chapter "Health Care", p. 98.

Possibility of changing the health insurance company

In 2014, a number of insured persons contacted the Defender to point out **rules restricting the option of changing their health insurance company.** Effective as from 1 December 2011, pursuant to Section 11 (1) (a) of Act No. 48/1997 Coll., on public health insurance, an insured person may only change his or her health insurance company once every 12 months, always only as of 1 January of the following calendar year. The registration for insurance must be submitted to the selected health insurance company no later than 6 months prior to the requested date of change.

If, therefore, the insured person decides to change his or her insurance company, he or she must register with the new insurance company before the end of June of the given year in order for the change to come into effect on the next possible date, i.e. as of 1 January of the next year. If the insured person makes a decision to change the insurance company only in the second half of the year, the change will come into effect in the year following the next (i.e. after more than one year), similarly as if the insured person reconsidered within the set deadline (six months before the requested date of change). Therefore, even though the insured person may be dissatisfied with his/her health insurance company, (s)he is forced to stay with it for a relatively long period of time.

In her comments on the draft amendment to the Public Health Insurance Act, the Defender recommended to soften the rules, for example by allowing insured persons to change their health insurance company once per year (as today), but on two dates within the calendar year (on 1 January and on 1 July), with a reasonable deadline for the request for change. The Defender's suggestion was not accepted.

2/5 Courts

Shortcomings in dealing with complaints

In 2014, as in previous years, the Defender also addressed the admissibility of a complaint against delays in court proceedings filed by a person who was not a party to the proceedings. The president of the court rejected this complaint as inadmissible. Pursuant to Section 164 of Act No. 6/2002 Coll., on courts and judges, "natural persons and legal entities" (not solely the parties to proceedings) may address bodies of state administration of courts with complaints. According to the Defender, parties to proceedings as well as anybody else have the right to have their complaint against delays investigated and receive notification of the result and any remedial measures adopted.

The Defender considers it important that the **president of the court always carefully evaluate the smoothness of the proceedings** (having regard of the complexity of the case, the importance of the subject of the proceedings and the complainant's behaviour) and, in the event the complaint is unwarranted, convince the complainant of the lack of justification of his/her objections. It should be clear from the reasoning of the response to the complaint which facts of the case were addressed by the president of the court and what logic was used to evaluate the smoothness of the proceedings.

Secret recording as a proof of inappropriate conduct of a judge

In one of the cases where an inquiry was made, the president of the court **did not admit a recording made without a judge's consent as evidence** in dealing with a complaint against inappropriate conduct of the judge, stating that it had been made illegally. The recording contained a dialogue between the judge and a female recorder during a recess in court proceedings.

The Defender believes that any judge must behave as a professional also during recess and act in a manner ensuring that he/she does not impair the confidence in the judiciary and the dignity of the office of judge. The judge's conduct in the court room must comply with the requirements stipulated in Section 80 of the Courts and Judges Act, even in situations where the public is excluded from the proceedings by law. As regards the evidence, the Defender is of the opinion that a recording made by a private person without the judge's prior consent may be used as evidence in a case of complaint against inappropriate conduct of the judge and for potential disciplinary punishment. The interest of protection of the judge's personal communications is outweighed by the interest of the society in protection against possible misconduct on the part of the judge (its ascertaining and punishment).

Provision of information on court proceedings

The Defender dealt with the issue of whether an application for **"an extract from files kept in connection with a person"** (obtaining an extract of the proceedings) pursuant to Section 244a of the Office Rules (Instruction of the Ministry of Justice No. 505/2001-Org.) is an application under the Free Access to Information Act (Act No. 106/1999 Coll.), as well as with its requisites the applicable judicial fee. The inquiry revealed a disparate court practice with regard to the scope of the information provided, the manner of charging fees and also protection of personal data. The Defender wishes to achieve uniform practice in the above through guidelines issued by the Ministry of Justice.

Non-admission to expert judicial examination

The Defender has received complaints from several persons who obtained degrees in the field of law abroad. These persons' degrees were recognized pursuant to the Universities Act (Act No. 111/1998 Coll.) and they have carried out law practice in the Czech Republic (e.g. as higher judicial officers). The Ministry of Justice, however, did not admit them to expert judicial examination, referring to a failure to comply with the statutory qualification requirements for performance of the office of judge.

The Defender addressed especially the form of the failure to satisfy the request for performance of the expert judicial examination. She concluded that the Ministry of Justice determines whether the applicant meets the statutory requirements – it decides on whether he/she has a certain right or not, therefore it must adhere to the procedure and issue an **administrative decision**.

Supervision over court distrainers by the Ministry of Justice and presidents of district courts

A majority of complaints is directed against court distrainers directly and the Defender may thus not address the complaints on her own. In those cases, she refers especially to the information leaflets available on the Defender's website, which explain the possibilities of dealing with the most common situations (e.g. questionable procedure during distraint through sale of movable assets, curtailing the assets of the debtor's spouse and unreasonable costs of proceedings). Information obtained from the complaints is used by the Defender in instigations for changes of legislation.

In carrying out inspections, the Ministry of Justice often encounters **lack of evidence** – the inability to ascertain the real course of dealings between the distrainer (persons acting on his or her behalf) and the obliged party, or other persons. The Defender thus believes that, in principle, it should be the court distrainer who must prove that his or her procedure was correct (including providing advice to the obliged party).

The Defender believes it is impermissible to **issue distraint orders for sale of the complainant's real estate** automatically – regardless of the amount of the enforced receivable with accessories, the value of the real estate and the possibility to satisfy the receivable through other means of distraint.

Complaint – file No.: 2559/2011/VOP/JHO

An automatic establishment of a distraint right of mortgage regardless of the value of the enforced receivable with all the expected accessories and a safe provision in relation to the overall value of affected real estate is unlawful.

An automatic issuing of distraint orders for sale of the obliged party's real estate regardless of the value of the enforced receivable with all the expected accessories and regardless of the possibility to satisfy the enforced receivable through priority distraint means is unlawful.

The complainant did not agree with the results of supervision of the Ministry of Justice over the activities of a court distrainer. The complainant considered the manner in which distraint was performed as inappropriate, since the distrainer "blocked" eleven buildings belonging to the complainant in the value of several million of Czech crowns (as well as three current accounts) in response to the complainant's failure to pay maintenance for his son in the amount of tens of thousands of crowns.

The distrainer established the distraint right of mortgage to all real estate of the obliged party, which did not constitute a single functional unit, and simultaneously issued distraint orders for sale of the real estate, having no regard of the amount of the enforced receivable with accessories. The Ministry did not challenge this procedure. However, the Defender believes that any interference with the rights of the obliged party must always be proportionate to the purpose of the distraint (enforcing the receivable). If payment of the receivable with all accessories and the appropriate provision under Section 58 (1) of the Distraint Rules (Act No. 120/2001 Coll.) can be satisfied by establishment of a distraint right of mortgage to just some of the complainant's real estate (to one function unit), it is unnecessary

to establish the right of mortgage also to other real estate, thus restricting the rights of the obliged party more than is necessary to enforce the rights of the entitled party.

These conclusions are more relevant to the practice of "automatic" issuing of distraint orders for sale of all real estate of the obliged party, regardless of the amount of the enforced receivable and the value of the real estate.

The Defender agrees with the Ministry's opinion that issuing a distraint order for sale of real estate does not have, in contrast with establishment of the right of mortgage, a character of a security; therefore, care must be exerted to ensure proportionality. The Defender welcomed the Ministry's effort to punish disproportionate distraints through sale of real estate. The negative impact of automatic establishment of the distraint right of mortgage was limited by an amendment to the Distraint Rules, which removed the prohibition of use of property affected by the right of mortgage.

2/6 Property Law

Correction of errors in the Land Registry

As in previous years, a major part of complaints related to the Land Registry in 2014 concerned the issue of correcting errors in the Land Registry. The Defender dealt in particular with the **requisites of the application for correction of an error**. While delivery of the application does not initiate administrative proceedings (this is initiated only after rejection of the application or after failure to correct the error), the application should comply with the requisites for an application under Section 37 (2) of the Code of Administrative Procedure. **The purpose of the proceedings on correction of an error is to harmonise the records in the Land Registry with the contents of the Collection of Instruments.** The application for correction of an error does not have to contain any documents (deeds), since all the documents necessary for making a decision in proceedings on correction of an error are contained in the Collection of Instruments.

Construction of elements of the plan of public works

The Defender began dealing with the problem of construction of elements of a plan of public works (e.g. roads, lanes, windbreaks, soaking belts, reservoirs, ponds, local environmental stability systems) proposed within comprehensive landscape changes. The Defender studied the length of time between conclusion of proceedings on comprehensive landscape changes and the actual construction of the elements of the plan of public works in the landscape. This often takes several years. The inquiry continues.

Overloading of the Land Registry database

Complaint – file No.: 4691/2013/VOP/DV

The right to inspect the Land Registry through the application "Nahlížení do katastru nemovitostí" (In English: Inspection of the Land Registry) may be exercised only through interactive work with this application. This right does not cover extraction where permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form occurs.

The complainant challenged the procedure of the Czech Office for Surveying, Mapping and Land Registry (hereinafter the "Office"), which blocked his IP address from accessing the internet application "Inspection of the Land Registry," since it detected massive download of data. The access to the application was blocked pursuant to the user terms and conditions, because it did not constitute "interactive work with the application", but rather automated extraction of data.

The inquiry focused on the assessment of the lawfulness of the restriction under the user terms and conditions issued by the Office. Pursuant to the Land Registry Act, the registry is public and open for inspection by any person. Decree No. 162/2001 Coll., on provision of information from the Land Registry, effective until 31 December 2013, provides for free inspection via web applications of the Land Registry in relation to selected data in a set of descriptive and geodetic information. The rules of the internet application thus could have been at variance with the aforementioned legal regulations that allow any person to inspect the Land Registry free of charge and do not specify any restrictions with respect to the volume of the data obtained, or the manner of their obtaining.

The statement of the Office explained that, historically, inspection of the Land Registry was possible only through a personal visit to the Land Registry Office. The internet application enables a form of inspection of the Land Registry that takes into consideration new technical possibilities. The Office stressed the need to differentiate between inspection of the Land Registry and database extraction. Section 90 (2) of the Copyright Act (Act No. 121/2000 Coll.) defines extraction as a "permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form". Section 21 (1) of the Land Registry Act (Act No. 344/1992 Coll., effective until 31 December 2013) permits only inspection, not extraction.

The Defender agreed with the Office's opinion and concluded that the user terms and conditions of the internet application "Inspection of the Land Registry" were in compliance with the law.

2/7 Construction and Urban Development

Proceedings on determination of legal relationship

The Defender received a large number of complaints against the procedure of construction authorities in proceedings on determination of legal relationship pursuant to Section 142 of the Code of Administrative Procedure. The increased frequency of use of this type of proceedings may be related to new case law, which designated the **decision on determination of legal relationship** as a possible instrument of protection of the rights of persons neglected either during the announcement of construction with certificate of an authorised inspector or during conclusion of a public-law contract replacing measures under the Construction Code (Act No. 183/2006 Coll.). Persons affected by a thus-permitted planned construction project could also achieve court protection through administrative action against the decision on appeal against the decision on determination of legal relationship. The complaints pointed out a repeated error on the part of construction authorities, which **addressed the applications only informally, through communications and letters instead of issuing a decision**, by which they excluded the possibility of appeal and thus also court review. In thus doing they essentially negated the aforementioned case law established by administrative courts. The Defender therefore insisted on proper formal conclusion of administrative proceedings (initiated on the date of delivery of the application to the relevant administrative body) by issuing a decision or resolution.

At the same time, the Defender found that some individuals **abuse the application for determination of legal relationship in order to achieve substantive review of planning permits, construction permits and consents issued in the past**, thus attempting to overturn the established rights following from the (usually) already unquashable decisions or measures of the construction authority. The Defender believes that if the consent or final decision is not quashed or does not cease to be valid, it gives rise to the intended effects (it establishes the right to place, construct or use a structure) and the decision on determination of legal relationship cannot alter the situation in any way. However, this fact does not relieve the construction authority of the duty to properly decide on applications for determination of legal relationship.

Proving compliance of a structure with the land-use plan

The Defender encountered attempts on the part of developers to **purposefully evade the binding regulations of the valid land-use plan and the Construction Code with the aim of retrospectively achieving a permit for "illegal" structures** which would otherwise have to be removed based on a decision of the construction authority due

to non-compliance with the land-use plan. The Defender concluded that where the construction authority assesses the compliance of a structure of a certain kind with the limits specified by the land-use plan, the construction authority must always base its considerations on the real purpose of use of the structure regardless of its formal designation (e.g. an individual recreation structure designated as gardening equipment rental shop). The construction authority must always convincingly establish whether the placement or implementation of the planned construction project actually complies with the aims and tasks set forth by the land-use plan. At the same time, it is up to the developer (the owner of the structure) to prove the structure's compliance with the land-use plan.

Administrative courts' case law reached the same conclusion. Specifically, pursuant to the judgement of the Supreme Administrative Court of 16 July 2014, file No. 5 As 161/2012, **a retrospective construction permit for a structure built in a non-built-up area may not be provided on the basis of its formal designation** as one of the structures which pursuant to Section 18 (5) of the Construction Code may be placed in such area; it must also be proved beyond any doubt that the structure substantively serves this purpose.

Site inspections

The Defender often encounters complaints against the procedure of construction authorities in carrying out inspections, often with the purpose of **determining the use of the structure**. The construction authorities often fail – and are unable – to ascertain the facts pointed out by the complainants (usually the owners of neighbouring lots).

Complaint – file No.: 6890/2013/VOP/MPO

To initiate proceedings on imposing a penalty for use of structure without permit, the construction authority may use also the underlying documents it received together with the instigation for initiation of such proceedings if these underlying documents clearly show that an infraction or an administrative offence may have been committed.

In some cases, the inspection meets its purpose only if the construction authority announces it and invites the owner of the structure to enable it only shortly before it is carried out.

The complainant challenged the procedure of the construction authority in carrying out inspection to determine the use of an unpermitted structure – winter garden and terrace on the first above-ground floor in the courtyard area of the neighbouring row house. She repeatedly notified the construction authority that the neighbours were using the winter garden and terrace without a permit. She claimed to be bothered by being exposed to view from the neighbouring terrace (the houses are in a row of buildings) and she provided the construction authority with photographic evidence documenting the use of the structure. After carrying out inspection which was announced to the owner of the structure several days in advance, the construction authority concluded that according to its findings, the structure – winter garden and terrace, were not in use.

The Defender concluded that the construction authority may use documents provided by the complainant in proceedings on imposing penalty for use of a structure without a permit. The document must, however, unequivocally demonstrate that an infraction or administrative offence have been committed. In case of initiated proceedings on imposing penalty, the construction authority must assess whether underlying documents thus obtained may be used in the proceedings as evidence with regard to the protection of personal rights and interference with privacy.

Construction authorities usually announce the inspection to the developer or owner of the structure in advance. This means they may "prepare" for the inspection in order to prevent the construction authority from finding facts for which it could impose penalty, or they hinder the inspection, knowing this poses a risk of procedural fines. The Defender therefore recommended that, in cases of danger of frustration of the purpose of the inspection, construction authorities invite the developer (owner of the structure) to enable the inspection only shortly before it is carried out, although this carries the risk for the construction authority that the developer (owner of the structure) will not be present at the time, or alternately that he will not allow the authorised employees to enter the structure or property.

The construction authority agreed with the Defender's conclusions and promised to act in accordance with them.

Communication with the Ministry for Regional Development concerning the competence to review construction authorities' consents

The Ministry for Regional Development (hereinafter the "Ministry") does not agree with the Defender's opinion regarding the administrative body (the construction authority or its superior body) which should review **"consents" issued pursuant to the Construction Code in simplified proceedings** (planning consent, consent with implementation of the announced construction project and construction approval). Although the Ministry admits that current legal regulations require clarification, it believes that review proceedings should be carried out by the construction authorities which originally gave the consent. The Defender, on the other hand, believes that consents given under the Construction Code are administrative acts establishing specific rights to persons, therefore their review should be subject to stricter rules than those for review of simple letters, statements or certificates which do not establish new rights (pursuant to Part Four of the Code of Administrative Procedure). The Defender believes that review of the consents by the same construction authorities which originally issued them puts in doubt the impartiality and objectiveness of the review procedure. The Defender thus recommended a remedial measure by asking the Ministry to reconsider its position and issue a methodological opinion.

Financing the execution of construction authorities' decisions

The Defender continues an inquiry initiated by her predecessors concerning the securing of the execution of decisions issued by construction authorities in public interest (e.g. decisions on immediate removal of structure, ordering emergency securing works, or ordering remedy within inspection of structure).

The Defender, in co-operation with Regional Authorities and the Municipal Authority of the Capital City of Prague collected, by means of a **questionnaire survey**, clear and up-to-date data on execution of decisions of construction authorities. The data shows that **each year, construction authorities fail to execute a number of decisions issued in public interest** because they lack financial means to cover the costs of the execution.

The Defender called a working meeting in order to resolve this undesirable state of affairs where duties imposed in public interest (such as protection of life, health of persons or property) are not performed, not even through forced execution. Representatives of the Ministry for Regional Development, the Association of Regions of the Czech Republic and the Union of Towns and Municipalities of the Czech Republic agreed with the Defender that the situation urgently required a solution. The participants of the meeting concluded that financial participation of the State on covering costs of performance of duties imposed in public interest was necessary in extreme situations, where the construction authority could not, despite all its acts, secure the performance of a duty it had imposed by an enforceable decision. The Ministry of Finance promised to set aside funds from the state budget to cover the costs of execution of the decisions. The participants of the meeting are now preparing specific rules for payment of costs of execution of decisions.

Protection against noise

In 2014, most of the complaints against nuisance caused by noise concerned noise from industrial operations close to residential areas, noise from road transport and noise from catering facilities (restaurants, night clubs, etc.). In the commentary procedure on a draft amendment to the Public Health Protection Act, (Act No. 258/2000 Coll.), the Defender **unsuccessfully attempted to prevent the exclusion of noise caused by customers in catering facilities** (loud speech) **from the "reach" of the Public Health Protection Act.** The Defender is of the opinion that this noise (aside from the standard technical sources of noise such as air conditioning, refrigeration equipment, etc.) represents a dominant source of noise from catering facilities and the most common subject of complaints against this type of noise. Therefore, although the Defender welcomes the draft amendment as such, she strongly disagrees with this part.

Citizens also often complain against noise **from public music performances**. Nuisance caused by noise from occasional performances cannot be prevented by governmental authorities (construction authorities and the bodies for protection of public health). The Defender thus recommended to choose a more effective way – bring the matter to court (through a lawsuit for protection against "pollution") or, alternatively, to local

authorities. Municipalities may, through a generally binding decree, set binding conditions for the organising, course and conclusion of publicly accessible sports and cultural events, including dance parties and "discotheques". Violation of the decree may be punished by a fine (thus enforcing compliance with the decree).

Complaint – file No.: 3713/2014/VOP/TM

Organising occasional musical performance in a structure not specified for this purpose by the approval of structure for use (occupancy permit or similar measure of the construction authority) cannot automatically be considered an unauthorised use of the structure, even if maximum noise limits are exceeded.

Whether this represents a change in the use of the structure requiring intervention of the construction authority must always be assessed by the construction authority based on specific circumstances (the intensity of interference with public interest protected by law) evaluated on the basis of full findings of facts in accordance with the principle of material truth.

The complainant complained against the nuisance caused by noise from occasional cultural events (held twice per year) at a sports stadium during which public musical performances were organised. As the owner of neighbouring properties, the complainant argued that this use of the stadium by its owner represented unauthorised change in the use of the structure. He backed this allegation by the results of measurement of noise levels of the musical performance, which demonstrated exceeding of maximum noise limits set for protection of public health, representing a breach of duties of the organiser (natural person – entrepreneur).

However, the Defender backed assessment of the matter by the construction authority (and the superior Regional Authority). The failure of the organiser to comply with the set maximum noise limits (for which the organiser was fined by the body for protection of public health) does not automatically represent a violation of the Construction Code.

The construction authority must first, based on the circumstances of the given case, verify whether the conduct of the user of the structure does not represent a mere deviation from the rules set forth by the construction permit and take into account also the variability of the purpose of use of the structure, in accordance with existing case law. In this case, the Defender agreed with the conclusion of the authorities that the interference with public interest protected by law was not serious enough to require an intervention from the construction authority on the grounds of unauthorised use of structure.

Monument care

In 2014, the Defender participated in the preparation of a **new Monument Care Act**. The Defender appreciated that the Ministry of Culture paid attention to the long list of reservations and comments with respect to the current regulation that were compiled by the Defender's predecessors.

The Defender considers it important that the **new Monument Care Act regulate the possibility of providing subsidies to the owners of properties in heritage protection areas**, strengthen the powers of the Monument Inspectorate and expressly say that heritage protection areas will be established by general measures. The whole process of establishing heritage protection areas will thus involve the public, including the affected owners of properties situated within the area to be declared a heritage protection area or a reservation.

The Defender often encounters situations where, despite the body of State monument care acts in accordance with the law (imposes measures to safeguard the monument and fines), the monument in question continues falling into disrepair since the municipality which is to bear the costs of the (forced) substitute performance of the imposed measures refuses to release the necessary funds or lacks any funds set aside in its budget for this purpose. The Defender believes that a greater participation of the State must be considered. If the State is interested in monument care, it should provide for the monuments and claim the potential costs expended on its preservation from their owners.

Funerals

In 2014, the Defender also received a number of citizen's complaints concerning funerals and funeral services. In particular, these involved **disputes concerning grave plots between relatives** caused by the fact that the courts in inheritance proceedings failed to address the passing of lease of a grave lot to the heir and the passing of the ownership title to grave accessories (headstone, tombs, memorials). The heirs often fail to inform the operators of the cemetery of their legal succession, which causes the operators to deal only with some members of the family of the deceased. The Defender thus recommends the municipalities to diligently request submission of a certificate of legal succession (court decision in inheritance proceedings) while concluding new agreements on lease of grave plots.

The Defender encountered also some critical remarks from the municipalities (which operate most cemeteries) concerning the new Civil Code. The municipalities were not awarded ownership of abandoned things. The absence of a legal definition of a grave accessory in the Funeral Services Act (Act No. 256/2001 Coll.) also gives rise to problems.

2/8 Environment

Setting emission limits for municipal waste-water treatment plants

The Public Defender of Rights encountered cases where, in **issuing a new permit for discharging waste waters** for an existing municipal waste water treatment plant, water-law authorities set a looser limit than the waste water treatment plant was able to meet. The authorities based this especially on the numerical values set forth in Annex No. 7 to the Government Regulation on the indicators and values of permissible pollution of surface waters (Government Regulation No. 61/2003 Coll.), included in the Government Regulation effective as from the 4 March 2011, and from Section 38 (10) of the Water Act (Act No. 254/2001 Coll.).

The Defender initiated **inquiry on her own initiative** with the preliminary goal of mapping the practice of water-law authorities in setting emission limits for new and existing communal waste-water treatment plants (hereinafter the "plants"). In practice, the inquiry aims to change the aforementioned Annex to the Government Regulation, preferably as part of an amendment implementing EU regulations which the Ministry of the Environment is planning for 2015.

The Defender has already carried out a **questionnaire survey**. She asked the water-law authorities, among other things, how often they ease emission limits for communal plants (i.e. plants in towns and municipalities). She sent the questionnaire to all Regional Authorities (including the Municipal Authority of the Capital City of Prague) and to municipal authorities of municipalities with extended competence. Questions in the questionnaire were answered by 88% of the addressed authorities. The survey has shown that, in setting emission limits, water-law authorities generally do not set stricter limits than those in Annex No. 7 to the Government Regulation and, in a significant number of cases, they set looser limits even in cases where the plant is capable of meeting the original, stricter limits.

Water-law authorities also provided a number of inspiring comments and suggestions. They consider the fact that a number of municipalities still lack a central sewer system very serious.

Amendment to the Decree on protection of trees, and permits for tree felling

In mid-2013, a new Implementing Decree of the Ministry of the Environment (Decree No. 189/2013 Coll.) to Act No. 114/1992 Coll., on nature conservation and landscape protection, regulating permits for tree felling, came into effect. Some of the rules brought by this decree (in particular the ambiguous definition of gardens and exclusion of all trees contained within them from the permit regime) have soon become the subject of criticism by experts as well the general public. The criticism mostly concerned the risk of decrease of the number of valuable trees in residential areas (valuable greenery important for the whole town in the form of non-fruit trees in gardens in residential areas), or **inappropriateness of the rules for owners and users of**

structures for family recreation (cottages, cabins and gardens) who were not given the possibility (stressed during the approval of the decree) of felling fruit trees without permit. The Defender received a number of complaints suggesting she proposed that the Constitutional Court annul the decree due to its variance with the Constitution (incompatibility of the new legal regime for felling trees in gardens with the statutory authorisation for the issuance of the Decree).

The Defender joined the criticism of the new Decree (moreover, she found a breach of the legislative rules of the Government in the approval process). The very definition of a garden ("a property adjacent to an apartment building or a family house situated in a built-up area of a municipality, which is fenced and inaccessible to the public") raises doubts and fails to meet the requirement of legal certainty (intelligibility and predictability of results of a legal regulation). This increases the risk of incorrect application on the part of nature conservation authorities. She stressed that the Decree's application results vary in practice from the declared intention of the legislator not to require a permit in cases of felling trees of lesser environmental and societal importance. The Defender exercised her special authority pursuant to Section 22 of the Public Defender of Rights Act and recommended that the Ministry of the Environment change the Decree. **The Ministry subsequently changed the controversial provisions** through Decree No. 222/2014 Coll. (effective as of 1 November 2014).

Animal husbandry

In 2014, the Defender received a number of complaints pertaining to animal husbandry. They concerned various issues – from nuisance caused by livestock and dealing with administrative offences to adopting special measures pursuant to Act No. 246/1992 Coll., on protection of animals against cruelty.

The Defender encountered two serious problems which in practice hinder effective protection of animals against cruelty. Both are related to the imposition of "special measures" – e.g. ordering substitute care, reduction of the number of animals or suspension of activities. **Special measures** may be imposed by a municipal authority of a municipality with extended competence **on recommendation of the Regional Veterinary Administration**, which provides expert opinion in the area of animal protection.

The first problem lies in the **requirements and the binding effect of the recommendation** in relation to the municipal authorities. The authorities' procedure in imposition of special measures varies. The Defender therefore asked the Ministry of Agriculture, whether it currently planned to issue guidelines in order to unify the procedure.

The second problem lies in the **financing of performance of some of the special measures**, especially ordering substitute care of an animal subjected to cruelty. Although these costs are covered by the breeder (the person from whom the animal was taken) pursuant to the law, in practice the breeder often lacks the necessary funds. The municipality thus has to pay for the substitute care from its own budget. Subsequent enforcement of the costs against the breeder is difficult if not impossible. The potential forfeiture of the animal to the State does not solve the issue in most cases. The Ministry of Agriculture promised to prepare guidelines in co-operation with the State Veterinary Administration.

Environmental impact assessment

The Defender repeatedly encounters cases of insufficient use of environmental impact assessment (hereinafter "EIA") in the process of approval of investment projects in a given area.

The Defender's predecessors in office have stressed for a long time that **each project for a new use of an area should be subject to careful assessment.** Especially in case of projects where serious impacts on the environment are expected, it is necessary for the relevant administrative bodies and the local authorities to provide for comprehensive assessment aiming at sensitive incorporation of the planned structures into the existing settlement structure and respecting the principles of urban planning and the requirements for maintaining the ease of living. The concept of assessment of the project's environmental impacts is a key

instrument in this area – with respect to its timing (the beginning of public-law approval of the project) and with respect to negotiating the possible variants of the project.

EIA is currently a relatively independent and well-prepared part of environmental legislation. The principles inherent to environmental legislation are reflected there. Procedure pursuant to the Environmental Impact Assessment Act (Act No. 100/2001 Coll.) is meant to ensure some important principles, such as **prevention** (anticipation of possible future damage to the environment), **comprehensiveness** (the assessment includes ascertaining, description, evaluation and interpretation of the anticipated direct and indirect effects of implementation / non-implementation of the project), and **alternative solutions of the** project.

The Defender found that, in some cases, the authorities fail to apply EIA with the necessary diligence. She stressed the necessity of providing a good reasoning for the result pursuant to the Environmental Impact Assessment Act, to improve its credibility (also for the general public).

Complaint – file No.: 5655/2013/VOP/MKČ

Requirements for a reasoning of an administrative decision pursuant to Section 68 (3) of the Code of Administrative Procedure must be applied to a reasoning of the conclusions of a fact-finding procedure with the necessary modifications.

The complainant applied for review of the procedure of the Regional Authority and the Ministry of the Environment in environmental impact assessment of a large shopping centre project and the conclusion of a fact-finding procedure issued for the plan by the Regional Authority. The project was to be implemented on an area of approx. 16,000 m2 and result in construction of a shopping mall with shops, cafés, other services and underground car park with 431 parking spaces. The structure was planned to have 5 floors (two of them underground). The project was to be implemented largely within an area of a city heritage zone, in an archaeologically valuable locality and close to important cultural heritage sites. Demolition of the existing cultural and community centre was a part of the project. Approx. 150,000 m3 of soil was to be excavated.

The Regional Authority completed the fact-finding procedure and concluded that the project would no longer be considered and the Ministry did not find errors in the procedure. The Defender found the procedure of both of the authorities insufficient. The Defender found the conclusion of the fact-finding procedure of the Regional Authority impossible to review due to its general wording. She found that the fears of serious environmental impacts were interpreted very broadly and thus a possible impact was found in all the individual elements of the environment. The objections cast doubt on the overall scope of the project in relation to its placement in the central heritage zone of the city. The project did not include alternate solutions. Some parties have, however, proposed to asses also other variants of the project (for instance a variant with shallower foundations) in the "broad" EIA process. The Defender concluded that in this case the authority should have noted in the conclusion of the fact-finding procedure that the project would be assessed under the Environmental Impact Assessment Act and, simultaneously, it should have ordered preparation of a different variant of the project. Moreover, the project did not have a basis in the land-use documentation, therefore it will be subject to further comprehensive negotiations. The Defender closed the case after having criticised the errors of the authorities' procedure.

2/9 Infractions

Cases where the attorney-counsel of the accused excuses him/herself from oral hearing

The Defender addressed excuses on the part of a counsel of a person charged with an infraction from oral hearing. She concluded that, in assessment of the justification of an excuse of a party to a hearing or his/her legal counsel, the administrative body should use specific underlying documents, even in case of an excuse on the grounds of annual leave. If an oral hearing coincides with other work commitments of the party's legal counsel, the administrative authority should take into consideration the sequence in which representation was assumed in individual cases. The counsel's excuse should always demonstrate that he/she could not have provided for a substitution by a different counsel or task a trainee attorney-at-law with the

representation. Especially in case of repeated excuses from hearing, the administrative body should consider whether or not this constitutes an attempt to evade punishment for the infraction, in view of the expiry of the liability after one year of its committing.

Waiver of default

The Defender made an inquiry into the justification of denial of waiver of default pursuant to Section 41 of the Code of Administrative Procedure. The law sets forth that default may not be waived if one year has passed from the date when the relevant act should have been performed. The Defender disagrees with the current interpretation by the authorities, which relate the deadline to the moment of decision on the application. She considers it absurd that the expiry of the deadline to no effect (resulting in impossibility of waiver of default) should be contributed to by the inactivity of the authority. **The Defender believes that the deadline is preserved without other considerations if the party to the proceedings submitted his or her application in time.** The Regional Court in Brno (judgement file No. 41 A 4/2014 of 19 November 2014) ultimately agreed with the complainant (and the Defender).

Complaint – file No.: 1606/2014/VOP/IK

Fraudulent property infraction may also be committed through intentional failure to provide the promised intangible performance if, as a result, the aggrieved party suffers proprietary damage.

The complainant challenged the procedure of the infraction committee in the case of the accused who allegedly committed a fraudulent property infraction pursuant to Section 50 (1)(a) of the Infractions Act (Act No. 200/1990 Coll.). In the given case, the person accused of the infraction was eliciting money for a mobile phone credit in the amount of CZK 3,575 using short text messages, in which the accused person repeatedly promised the complainant intimate visits, which he never made. The infraction committee discontinued the proceedings under Section 76 (1)(c) of the Infractions Act. It stated that it had not been demonstrated beyond doubt that the person accused of the infraction had misled the complainant with the intention to enrich himself. The Defender concluded that intention, as the defining element of an infraction against property, should not be linked to the motive pursued by the complainant as the aggrieved person (it is irrelevant whether he had sent the given amounts with a view to topping up the accused person's credit at the latter's explicit request or on the basis of his own good will), but rather to the inner motivations of the person accused of infraction. In other words, the administrative authority should examine whether the person who had committed the infraction had intended to cause damage to another person's property through fraud. In view of the circumstances of the given case and the criminal history of the accused person, who had been repeatedly convicted of property crimes, the Defender inferred that the latter had indeed committed a fraudulent property infraction. The administrative authority accepted her opinion.

2/10 Police

Imposition and collection of deposits in transportation

The procedure of the Police of the Czech Republic (hereinafter the "Police") in imposition and collection of deposits in transportation under Section 125a of the Road Traffic Act (Act No. 361/2000 Coll.) was addressed as early as 2013 by the previous Public Defender of Rights, Pavel Varvařovský. He then strove to ensure **better reasoning for imposition of the deposit** and clarification of the statutory conditions of the imposition of the deposit. Despite the general agreement on the need of proper reasoning for decisions, the Defender still encountered cases of unclear reasoning based solely on the amount of the imminent fine for the infraction committed, where the suspect's behaviour was not assessed. However, imposition of sanctions has already been constricted by the case law of the Supreme Administrative Court (e.g. the decision of 11 June 2014, file No. 3 Aps 10/2013 or decision of 17 April 2014, file No. 4 As 6/2014).

Police activities within "preparatory proceedings"

Another part of the agenda of the Police encountered by the Defender repeatedly concerns its activities within "preparatory proceedings" in infractions under Section 58 of the Infractions Act (Act No. 200/1990 Coll.). **In some cases, the Police has a tendency to assess the relevant case instead of the administrative authority.** This usually happens in borderline cases where it is unclear whether a suspicion of an infraction is involved or not, i.e. whether all the conditions of an infraction are satisfied. However, taking of evidence should be performed by the administrative authority and not the Police; only then the authority should decide, on the basis of findings of the proceedings, whether an infraction has been committed and by whom.

Complaint – file No.: 5656/2014/VOP/MK

The person suspected of committing the infraction is not required to provide a statement to the notice of infraction. Enforcement of statement, either in the form of an invitation pursuant to Section 10 (5) of the Police Act (Act No. 273/2008 Coll.) or through coercive measures pursuant to Section 51 et seq. of the same Act, is unlawful.

The complainant challenged the procedure of the Police during a road traffic safety campaign aimed at observance of road traffic rules by pedestrians. The complainant was caught crossing the road near a pedestrian crossing, but outside it, at the time when the "go" signal was active (the complainant crossed between cars halted by the "stop" signal). The complainant proved his identity on the request of the police officer, but he refused to deal with the matter in summary proceedings; he was subsequently ordered to follow the police officer to his service car where the matter was to be processed properly.

After following the police officer for approx. 100 metres, the complainant refused to continue because he was in a rush to catch the next public transport connection. However, the police officer insisted on the complainant's participation in resolution of the matter. By resolving the matter, the police officer meant allowing the complainant to provide a statement to the notice of infraction. Due to the increasing passive resistance on the part of the complainant, the police officers first warned him by invoking the law and subsequently used coercive measures.

The director of the Regional Directorate of the Police later informed that the "resolution of the matter" meant checking of the person's records in the information systems and verification of validity of the person's identity card.

The Defender found error in the Police procedure. Giving statement to a notice of infraction is a right, not a duty of the suspect; therefore, there was no lawful reason for the police officers to force the complainant to follow them to the service car.

The Defender cast doubt on the justification provided, i.e. the necessity to carry out a search in the information systems. If the Police wants to restrict the freedom of a person who has already proved his/her identity by the anticipated means (by producing the identity card) by forcing the person to walk to a distant service car, to wait for the search in the information systems, etc., the Police may proceed only in accordance with the principle of proportionality under Section 11 of the Act on the Police of the Czech Republic.

The interference with the fundamental rights of the checked person must be reasonable. It should be mentioned that the duty of police officers stipulated by internal management acts to conduct a search does not correspond to the statutory duties of checked persons. Checking the person's records in the information systems resembled, in some ways, procedure under Section 63 (3) et seq. of the Act on the Police of the Czech Republic, which, however, concerns situations where the person in question refuses to prove his or her identity. In other words, if the police officer can search the information systems without restricting the person being checked to an unreasonable extent (which must be assessed in each individual case), the police officer should do so. The Defender believes that any other procedure in this case is incorrect.

2/11 Prison Service

Hygienic conditions

One of the changes introduced by the amendment to the Imprisonment Act (Act No. 169/1999 Coll.) effective as from 1 January 2014 was the replacement of the "social pocket money" (CZK 100 per month) for poor convicts with **personal needs packages** (personal hygiene articles, stationery, etc.). The contents of the packages are further specified by the internal regulation of the Prison Service of the Czech Republic (hereinafter the "Prison Service"). It sets forth that the contents of the packages are determined by the current needs of the convict. The authorised employee (usually the pedagogue responsible for the individual convict) verifies the entitlement to the package and also approves the contents of the provided package.

Complaints concerning the **contents of the packages** have been appearing since 2014. For example, one of the complaints was that the package contained note papers and envelopes, but no postal stamps. In other cases, the package contained a comb, but no toilet paper. Moreover, the Defender has found that the contents of the packages in no way correspond to the current needs of the convicts. The only change in the contents of the packages consisted in the regular change of the package contents in time intervals set forth in the internal regulation, since adjusting the contents of the packages to the needs of the individual convicts represents an **enormous administrative burden** on the responsible employees. Paradoxically, this means that e.g. bald convicts receive hair products while toothless ones get toothpaste. The current situation **leads convicts to barter with surplus items**.

The Defender believes that the basic personal hygiene items (e.g. toilet paper and soap) should be distributed to convicts automatically (outside of the package; they should not be forced to obtain these items by different means). Generally speaking, **the Defender believes that the concept of the personal needs package is ill-conceived** and she informed the General Directorate of the Prison Service of the Czech Republic of her objections and talked about them with the Director General.

According to the explanatory memorandum to the amendment to the Imprisonment Rules (Decree No. 345/1999 Coll.), the Decree should newly contain a provision ensuring that the "convicts receive vouchers for which they can obtain personal need items according to their own preferences".

The Defender initiated inquiry on her own initiative, which focused on ascertaining the hygienic conditions in Czech prisons, specifically the availability of hot water showers to the prisoners, which they can usually access only once per week. Barring exceptions (showering after sporting activities or work in certain workplaces), this represents a general practice across prisons based on the Imprisonment Rules. The European Prison Rules, however, recommend showering daily, if possible, but at least twice a week, in the interest of general hygiene. The Defender exercised her special authorisation to recommend a change of legislation pursuant to Section 22 of the Public Defender of Rights Act and addressed the Ministry of Justice with a proposal to change the Imprisonment Rules. This recommendation was included in the aforementioned amendment.

Locking of convicts during the day

Pursuant to the Imprisonment Act, the convicts are locked in their cells during sleep time (eight hours) if the conditions in the prison make this possible. Beyond this, the prison director may prolong the lock-up in justified cases in view of the requirements of maintaining order and security in the prison. However, such a measure must not be applied generally and over long periods of time.

Complaint – file No.: 2050/2014/VOP/MS

Placement of a convict in the third permeable group of internal differentiation is not (by itself) a sufficient reason for prolonging the hours in which the convict is confined to his cell or bedroom.

The Defender was approached by the complainant objecting to being placed in a special part of the security ward of the prison with a stricter regime than that in a standard ward. The stricter regime consisted mainly in the fact that the cells were opened only for four hours a day (depending on the treatment programme of the individual convicts).

The on-site inquiry in the prison revealed that only convicts in the third permeable group of internal differentiation were placed in this ward. The Defender concluded that permanent prolonging of cell lock-up constituted an erroneous procedure on the part of the prison. The Decree only authorises the director of the prison to prolong the set cell lock-up hours in extraordinary and justified cases (e.g. if the convict commits a disciplinary offence, he remains in lock-up until a decision on punishment is made, in order to prevent him from influencing witnesses). Lock-up of convicts may also be imposed after mass destruction of prison property, also until all the perpetrators are given disciplinary punishments, or in the event of necessary repairs of the prison's technical equipment, and in other similar cases. Lock-up of prisoners pursuant to Section 50 (2) of the Imprisonment Rules must follow from assessment of individual risks and security reasons must demonstrably be present in each convict, and its duration must be continuously monitored.

The fact that a convict is placed in the third differentiation group is reflected negatively e.g. in the evaluation given to the court for the purposes of conditional release from prison. These convicts are also "affected" by other restrictions following from placement into this group (restrictions to watching TV, etc.). After releasing the report on the inquiry, the prison prolonged the cell opening hours in the ward and the Defender thus closed the case.

Addressing complaints in prisons

The Defender is not authorised to substitute for the responsibilities of "review bodies" in prisons (usually the prevention and complaints department, or, in case of disciplinary punishment, another responsible employee). She recommends to the prisoners (barring urgent cases) to first address these "review bodies" with any of their complaints. Despite the prevailing lack of trust on the part of the convicts in them, these bodies have to address the convicts' complaints and resolve them objectively. Proper addressing of the complaints may subsequently be verified by the Defender.

In 2014, the Defender recommended that the prison store the **recordings from the camera surveillance system** if the prison used it as evidence in investigation of a complaint. To obtain a transcript of the recording and then delete it, reasoning that it did not prove the complainant's allegation, **harms the credibility** of the whole investigation.

With respect to complaints against decisions on a disciplinary punishment, the Defender stressed again that the **principle of material truth** governing disciplinary proceedings against the convict requires proper clarification of the circumstances of the disciplinary offence and proof of the perpetrator's guilt. If the allegations of the purported perpetrator that (s)he raises in his/her defence seem to lack credibility, other possible evidence needs to be taken in order to prove or refute his/her guilt. If no other relevant evidence is available, a simple evaluation of the purported perpetrator's allegations as purpose-driven is **unreviewable** and therefore completely inconclusive in relation to the possible guilt of the perpetrator.

Violence among convicts

In 2014, the Defender addressed several cases involving violence among convicts. Cases of threats and, less often, physical violence are encountered in prisons. Without having proper knowledge, one could assume that if nobody files a complaint against an assault, it has not taken place. However, the far more likely explanation is that violence between convicts is a part of the "other life" of the convicts, which must be understood as a system of mutual relationships and connections inside prison facilities, which is invisible and well-hidden from the outside world.

The case below represents one of the situations where the convicts reported it, perhaps due to the scope and severity of the violence. The most serious problem in this case is that the prison only reacted formally to their complaints (by carrying out an ineffectual investigation).

Complaint – file No.: 7326/2013/VOP/JM

A mere justified suspicion of violence between convicts gives rise to a duty on the part of the director of the prison to adopt suitable measures to prevent further violence, pursuant to Section 35 of the Imprisonment Rules.

The Defender was approached by the complainant backed by approx. 20 other convicts serving imprisonment in a remand prison. The convicts complained about psychological and physical abuse, degradation of human dignity and racial slurs at a specialised ward for permanently unemployable convicts. It was stated in the complaint that an assistant warder, i.e. one of two convicts employed in the prison as orderlies providing care to the prisoners, was especially responsible for this conduct. The assistant warder in question allegedly also abused his position. According to the complaint, the prison staff was inactive even though a number of facts indicating ill-treatment of prisoners in the prison should have been apparent. The assistant warder had been subject to investigation into suspected rape and bodily harm against other convicts.

The Defender found maladministration on the part of the remand prison in that the prison failed to address the critical situation in the ward. Although the complaint was addressed by the department of prevention and complaints, the atmosphere in the prison continued to be tense, as evidenced by the individual convicts' testimonies and also placement of one convict at the crisis ward because he feared the assistant warder. Even though this was an unusually serious case, the remand prison made no steps to prevent further ill-treatment in the future. After issuing her report, the Defender assumed that the remand prison received sufficient guidance for immediate action, i.e. transferring the assistant warder to some other ward within the prison or initiating his transfer to another prison plus taking additional measures to calm down the situation at the ward. It appeared equally important to objectively define the rights and obligations of assistant warders in order to avoid any doubts regarding the tasks they were actually paid for and their duties.

The remand prison refused to move the convict in question and defended his existing placement. One of the objections raised by the convicts filing the complaint was that the assistant warder was related with the head of the department of imprisonment in the remand prison, or that his behaviour was covered up by the head for some other reason. It was this particular senior employee who, through the statement of the prison, strongly argued for keeping the assistant warder in his position.

After the final statement was delivered, the prison accepted the Defender's arguments for the necessity of adopting suitable preventive measures based on a justified suspicion of violence in the prison alone. The assistant warder in question was moved to a different prison. At the same time, the prison defined the responsibilities of assistant warders serving as orderlies.

Increasing the convicts' remuneration

The Defender also paid attention to remuneration of convicts for their work. The amount of remuneration of convicts is set forth by the Regulation of the Government on the amount and conditions of remuneration of sentenced persons assigned to work during imprisonment (Government Regulation No. 365/1999 Coll.). The Defender considers it problematic that the remuneration for work has not changed since 1 January 2000. To give a comparison, the Defender referred to the amount of the minimum salary in the Czech Republic, which is regularly increased. Moreover, **the average monthly remuneration of a convict** for his/her work in 2013 was only CZK 3,777, while the minimum remuneration for work set forth by the above-specified regulation is CZK 4,500. Finally, there is the well-known problem of overindebtedness of prisoners who are not allowed to significantly reduce their indebtedness through work while serving imprisonment due to the low remuneration. As a result, they are often released into civic life in a dire financial situation. It should be noted that this situation may lead to recidivism on the part of released prisoners. Due to these considerations, the Defender approached the Ministry of Justice and has subsequently supported the proposal of the Government Council for Human Rights aiming at raising the remuneration in the commentary procedure.

Prison capacity

Despite the President's general pardon as of 1 January 2013, some types of prisons (category B – especially guarded) began to fill up again by the end of 2014. This reduced the minimum space per one prisoner (4 m2) pursuant to Section 17 (6) of the Imprisonment Rules. The Government thus failed to take advantage of the aforementioned general pardon to deal with the problem of high prison population. The crime policy also has not substantially changed and neither did treatment of prisoners during imprisonment and upon release in order to reduce recidivism. A system of electronic surveillance incentivising the courts to use the punishment of house arrest more often has also not been implemented.

2/12 Transport

Avoiding toll motorways and class I highways

In 2014, the Defender dealt with the issue of shifting of transit freight transportation from the main road corridors to lower-class roads, encountering an increase of interest on the part of municipalities in resolution of this problem. She concluded that the problem may be addressed also using the current legislation, through proper use of traffic signs. The Ministry of Transport agreed with the Defender, but the Police Presidium of the Czech Republic was of the opposite opinion and instructed the subordinate Traffic Inspectorates not to approve the planned changes in traffic signs (with the exception of construction defects in lower class roads). Therefore, the Defender asked both these central governmental authorities to unify their approach. According to the latest information, **the Police Presidium will no longer be preventing traffic adjustment (re-routing of freight transportation to motorways and class I highways) in cases of demonstrable and intentional avoiding of toll roadways.** The Defender proposed to the Ministry of Transportation to impose the duty of primary use of motorways or class I highways (even if subject to toll) directly by law; however, the Ministry of Transportation chose a different solution (clearer regulation of the possibility to regulate freight transportation through traffic signs).

In another case where an inquiry was made into freight transportation, the Defender criticised the procedure of the authorities which deliberately re-routed part of the traffic from a class I highway to a class II road, even though the latter road was in a bad state of repair. The Defender reminded them of the purposes served by the individual categories and classes of roadways and admitted that **authorities may relieve pressure from the main roadways (especially if they pass through city centres) by re-routing a part of the traffic, however, this is possible only in situations where this is necessary and, simultaneously, the alternate route must be capable of handling the increased traffic.** In the relevant case, administrative authorities partially submitted to the pressure of the Defender and persons living along the excessively burdened class II road and prohibited vehicles over 12 tonnes from entering it.

Airport properties

The Defender also addressed the Ministry of Transport in the matter of unsettled property relations between airport operators and owners of certain airport properties. The Ministry of Transport and the Civil Aviation Authority proceeded inconsistently in the past with respect to the individual cases of issuing permits for operation of airfields where the applicants for the licence had unsettled property relations with respect to all the properties. The Ministry of Transport informed the Defender that **it would submit a draft amendment to the Civil Aviation Act** (Act No. 49/1997 Coll.), which should address the problem, **no sooner than in 2016.**

Public roads

In 2014, the Ministry of Transport again proposed to change the competence of the road administration authorities from the "type I municipalities" to municipal authorities of municipalities with extended competence, which is welcomed by the Defender. The Defender has repeatedly called attention to the inability of

small municipal authorities to deal with complicated administrative proceedings concerning the existence of local and special-purpose roads.

Charging for access to forest roads

In 2014, the Defender reached a summary conclusion in several cases involving access to forest roads and the possible introduction of charges for the access by the owners of the forests. She insisted that access to forest roads which have the features of special-purpose roads pursuant to the Roads Act (Act No. 13/1997 Coll.) has to be free.

Complaint – file No.: 512/2013/VOP/DS

The owner of a publicly accessible special-purpose road is not entitled to charge any fees to its users, even though the property is intended to function as a forest. Charging fees for an exception from the statutory prohibition of entry of motor vehicles in a forest is illegal since anybody may use all roadways in the usual way unless the law stipulates otherwise (Section 19 (1) of the Roads Act).

Properties intended to function as a forests do not include paved forest roads serving as access roads to built-up properties. The user of such a road is not obliged to obtain an exception from the prohibition of entry of motor vehicles into the forest since such a road does not constitute a forest.

The Defender concluded the inquiry into the case of imposing a fine on the complainant for the administrative offence of "carrying out activities prohibited in a forest". Forest management authorities considered the use of a motor vehicle in the forest as an administrative offence, however, the "forest" in question was in fact a paved forest road leading up to a cottage owned by the complainant's close relative.

The Defender believes the procedure of the authorities was unlawful if only because, due to the complicated circumstances of the case, the complainant's actions could hardly be seen as a "danger to the society". For this reason alone the fine should not have been imposed.

In particular, the Defender does not agree with the legal classification of the paved special-purpose road in question as "forest", i.e. "property intended to function as a forest". The road serves as an access road to a number of buildings and the Defender thus believes that it cannot constitute a property where entry of motor vehicles is prohibited by law. Moreover, the Defender believes that even if the property indeed were a forest and the statutory prohibition of entry of motor vehicles applied, the owner of the forest may not charge a fee for granting exceptions.

The administrative authorities subjected to the inquiry did not alter their legal opinion after receiving the report on the inquiry and the final opinion of the Defender, hence the Defender informed the competent Ministries about this incorrect procedure on the part of the authorities. However, the Ministries too did not back the Defender's opinion. The case is currently being heard by an administrative court.

Traffic infractions

The media paid considerable attention to a case where a **driver drove away from a "small traffic accident"** (i.e. an accident not involving injury or damage over CZK 100,000). The controversy consisted in what infraction is committed by a driver if he acts in this manner. Breach of the duty under Section 47 (5)(a) of the Road Traffic Act (Act No. 361/2000 Coll.) to remain at the site of the traffic accident or to immediately return to it if smaller damage to property of a third party occurs does not constitute an offence under Section 125c (1)(i)(4) of the same Act. This infraction may only occur if the driver drives away from a traffic accident involving death or injury to a person or property damage in excess of CZK 100,000 (Section 47 (4) of the above Act). However, it could constitute an infraction under Section 125c (1)(k) of the above Act.

Retention of a driving license issued by a foreign country or Member State of the European Union

A driving licence issued by a foreign country or Member State of the European Union whose holder is suspect of driving in the Czech Republic without authorisation is usually retained in situations where such driver has reached the 12 points limit or has been sentenced to a prohibition of activity consisting in the ban on driving motor vehicles by an administrative authority or a court. The Defender concluded that if the driver wishes to again drive motor vehicles in the Czech Republic following the completion of the punishment of prohibition of activity consisting in the ban on driving motor vehicles, he/she has to apply for the reinstatement of the driving authorisation. However, this duty does not apply to holders of a valid driving licence issued by a Member State of the European Union or by a foreign country. If the holder of the driving licence issued by a foreign country or a Member State of the European Union reaches the 12 point limit, he/she does not lose driving authorisation but "only" the right to drive in the Czech Republic for a period of 12 months. The authorities should thus proceed carefully in retaining foreign driving licences or driving licences issued by Member States of the European Union and always take into account whether the driver really was obliged to apply for reinstatement of the driving authorisation in order to be able to drive motor vehicles in the Czech Republic.

2/13 Taxes, Charges and Duties

In 2014, the Defender addressed a number of **complaints filed by working pensioners** who tried to claim the basic income tax allowance. Although the tax administration allowed pensioners to claim tax allowance also for the 2013 tax period following the judgements of the Constitutional Court of 10 July 2014, file No.Pl. ÚS 31/13 and 16 September 2014, file No. ÚS 2340/2013, the Defender still receives complaints from working pensioners who cannot claim tax allowance at the employer or in their tax return, since their income was subject to a withholding tax.

The other complaints consisted of a diverse assortment of cases where the complainants challenged the procedure and decisions of financial, municipal and customs authorities, as well as the legal regulation itself.

Complaint – file No.: 435/2013/VOP/ES

Failure to fill in the mailing address in the appropriate spaces of the tax return form represents an application to change the current mailing address in the sense of Section 44 (3) of the Tax Rules (Act No. 280/2009 Coll.) if the form includes an instruction to fill in the mailing address if it is different from the address of the place of residence/the registered office.

The complainant objected that the tax administrator failed to change her previous mailing address and thus delivered the payment assessment for interest on an amount that is subject to a grace period to a wrong address. This has allegedly deprived her of the possibility to request that the tax administrator refrain from prescribing interest for the grace period. She believed that the change of the mailing address can be notified through the tax return form by not filling up the mailing address for delivery of documents.

The form of the submitted tax return for real estate tax in 2012 included, directly next to line No.113, the following instruction: "please fill in if different from the address of the place of residence/the registered office". Tax entities received even more precise advice in the instructions for completion of the tax return form: "113 Mailing address for delivery of documents – only fill in if the mailing address is different from the address of the place of residence of a natural person or the registered office of a legal entity..." The Defender concluded that the above instructions cannot be interpreted differently than that by not filling in the mailing address in a latter tax return, the tax entity expresses a wish to have documents delivered to his/her place of residence (thus changing any previous mailing address). If such tax entity notified a mailing address in the past, his/her will expressed later (even if only through not filling in a mailing address in accordance with instructions) replaces the previous mailing address. The tax administrator agreed with the Defender's conclusion and subsequently addressed the complainant's instigation to assess the possibility of refraining from prescribing interest for the grace period.

The amendment to the Tax Rules implemented through Statutory Measure of the Senate No. 344/2013 Coll., effective from 1 January 2014, **excluded appeal against distraint orders issued by the tax administrator**. Despite this, the tax administrator **should give advice to the tax entity concerning other means of defence anticipated by law**, in accordance with the basic principles of tax administration. Although the explanatory memorandum envisages the use of objections (general measure of defence against an act of the tax administrator in payment of taxes) for this purpose, the Defender prefers an **application for discontinuation of the distraint procedure** (special procedure appropriate if the statutory reasons are satisfied under which the distraint procedure cannot continue).

Moreover, effective from 1 January 2014, Section 181 (3) of the Tax Rules has changed. The amendment was meant to remove ambiguity concerning the parties on whom decisions are served on rejection of an application for suspension or discontinuation of tax distraint. Supplementation of the third paragraph with decisions on rejection has evidently **unintentionally and absurdly excluded the possibility of appeal** against these decisions, since the fourth paragraph (excluding appeals) refers to the contents of the third paragraph. The Defender therefore recommends to the complainants to try challenging the decisions on rejection through an appeal; however, for reasons of prudence, they should also defend themselves by an administrative action.

Despite the change of the legal regulation, the Defender encounters cases where municipal authorities charge a fee for collection of municipal waste also to minor children, instead of imposing this duty on the **minors' legal representatives**. At the same time, she welcomes the decision of some municipalities to completely exempt children placed in children's homes from paying the local municipal waste fee. She likewise supports a change to the Local Fees Act (Act No. 565/1990 Coll.), which would return to the municipal authorities the right to waive local fees in justified cases and provide for the passing of the duties to pay fees previously charged to the children to their legal representatives.

In cases where this does not jeopardise the possibility of enforcing the fee, the tax administrator (municipal authority) should, prior to distraint, **inform the debtor of the existence of the debt and invite him/her to satisfy it voluntarily**. The Defender criticised the practice of some municipal authorities where they assign court distrainers for enforcement of trivial amounts without trying to ascertain the debtor's assets and the possibility of achieving enforcement of the outstanding amount through tax distraint by means of transferring a receivable from an account or through deductions from salary (or other income). The Defender has been a long-time proponent of the opinion that if a municipal authority must file an application for distraint, it cannot use legal services of attorneys-at-law for these simple (form) applications, which unreasonably increases the debtors' burden.

Subsidies, public procurement and financial control

The Defender addressed some issues related to the provision of subsidies. The complaints revealed a **lack of a unified procedure on the part of the subsidy providers** and tax administrators, which provide for the control of management of funds from the public budget.

The Code of Administrative Procedure is used subsidiarily in the decision-making on applications for a subsidy if the application is granted and, especially, if it is rejected. If the administrative body rejects the application for a subsidy under Section 14 of the Budgetary Rules (Act No. 218/2000 Coll.), it is obliged to issue an administrative decision. **Even a decision through which an application for a subsidy is fully granted constitutes an administrative decision** the issuance of which is subject to subsidiary use of the Code of Administrative Procedure (including its second and third part), in view of Section 180 (1) of the Code of Administrative Procedure.

The Defender has further addressed the nature of agreements on provision and increase of subsidies pursuant to Act No. 306/1999 Coll., on provision of subsidies to private schools, pre-school and school facilities, and the procedure of the provider in the event of a failure to meet the statutory conditions for conclusion of such agreements.

She also addressed the **application of interest on amounts subject to a grace period** (which is similar to default interest, which can be applied for the up to five years of delay) in case of levies subject to a granted grace period, after penalties may no longer be claimed pursuant to the Budgetary Rules. The legislator resolved this contentious situation by abolishing the five-year deadline for claiming (the incurrence of) default interest.

2/14 Foreigners

Delays in proceedings

In 2013, the Public Defender of Rights systematically addressed delays in residence and asylum proceedings. The Ministry of the Interior subsequently adopted a number of measures to ensure the right of the parties to be issued a decision within a statutory period of time. Although the situation has somewhat improved, foreign nationals who experienced **delay several times in excess of the statutory period for issuing a decision** continued to approach the Defender in 2014.

Crossing the external Schengen border by Czech citizens with dual citizenship

The Defender was approached by several **persons who are Czech nationals and, simultaneously, citizens of a foreign country**. They encountered problems during crossing the external Schengen border in the Czech Republic (at an international airport) after having proven their identity using only the passport issued by the foreign country. It appeared that they were foreign nationals in breach of regulations governing the residence of foreign nationals in the Czech Republic, which led to lengthy investigation and factual refusal to allow them to cross the external Schengen border. On the basis of the Defender's intervention, the original restrictive interpretation used by the Foreigners Police was overruled by an instruction of the Directorate of the Foreigners Police of 14 August 2014 (Ref. No. CPR-8634-11/ČJ-2014- 930302). It still follows from the general principle that a person is considered to be a national of the country whose passport he or she produces at the border control; however, it introduces a special (not previously used) regulation for persons who simultaneously hold Czech citizenship. If such a person produces a passport issued by a different country than the Czech Republic, he/she may enter Czech territory and leave it with this document. The residence of this person is governed by rules applicable to Czech nationals. The aforementioned change is also to be included in the Travel Documents Act (Act No. 329/1999 Coll.), the amendment to which has been prepared by the Ministry of the Interior (the commentary procedure concluded in December 2014).

Travel of family members of European Union citizens

In 2014, the Defender has dealt with cases involving travel of family members of European Union citizens. On the basis of an inquiry into a particular case, the Ministry of the Interior has changed its practice in order for it to correspond with the Schengen Borders Code.

Complaint – file No.: 3548/2014/VOP/LJ

Family members of European Union citizens (including Czechs) staying in the Czech Republic pursuant to Section 87y of the Residence of Foreign Nationals Act (Act No. 326/1999 Coll.), must be considered as persons with a residence permit in the sense of Art. 2 (15)(b) of the Schengen Borders Code. Therefore, they have the right to enter the Member States without visa (Art. 5 (4) in conjunction with Art. 13 of the Code). This does not apply only if their first application for permit of residence in the Czech Republic is being considered.

The complainant was staying in the Czech Republic as a family member of a European Union citizen on the basis of the fiction under Section 87y of the Residence of Foreign Nationals Act during the period of examination of his application

for residence permit (before that, he had stayed in the country on the basis of temporary residence permit). During this period of time, he had to travel outside the Schengen Area; however, he was told that he would require entry visa for re-entering the Czech Republic, since his "temporary permit" issued under Section 87y does not, in itself, entitle him to enter the Czech Republic.

According to the Defender's conclusions, a "temporary permit" does not constitute a proper residence permit since it merely certifies the legality of residence on the basis of a legal fiction. However, the term "residence permit" under the Schengen Borders Code must be interpreted in conformity with European regulations and pursuant to the case law of the Court of Justice of the European Union. It stipulates that the purpose of Art. 2 (15)(b) of the Schengen Borders Code is to include into the term "residence permit" all kinds of documents used in accordance with national practice in the individual Member States by a foreigner to prove (document) his or her right of residence while the proceedings on his application for residence are ongoing. In this sense, a "temporary permit" issued pursuant to Section 87y of the Residence of Foreign Nationals Act undoubtedly represents a residence permit. The Code expressly excludes from the term "residence permit" only cases of residence during the proceedings on the first application for a residence permit, not proceedings on extension of an existing temporary residence permit or on granting permanent residence permit following preceding temporary residence. These persons thus have the right to travel outside the Schengen Area and return to it without visa.

The Ministry of the Interior changed its practices based on the Defender's intervention. Newly, the "temporary permit" is no longer issued in these cases; rather, the validity of the European Union (Czech) citizen family member residence card is extended to enable these persons to travel outside the Schengen Area and return to it without entry visa.

Reunification of families of Syrian refugees in the Czech Republic

The Defender also addressed cases of reunification of families of Syrian refugees who were granted international protection in the Czech Republic. Their family members often stayed outside Syria (in particular Lebanon, Turkey, Jordan, Iraq and Egypt), which they escaped to avoid the armed conflict. However, they could only apply for a visa for the purpose of family reunification at the Czech embassy for the Syrian Arab Republic located in Lebanon. It required personal filing of the visa application by the family members and was not willing to waive this condition in justified cases, as anticipated by Section 170 (1) of the Residence of Foreign Nationals Act. In many cases, this practice completely precluded reunification of families of Syrian refugees.

Pursuant the notification by the Defender and the Prague office of the United Nations High Commissioner for Refugees, the practice of the embassy in Lebanon changed in that it now waives the condition of filing the application in person in these cases.

Sufferance visa for Ukrainian citizens

The Defender continued dealing with cases of Ukraine citizens who entered the Czech Republic on the basis of tourist visa but, considering the current security situation in east Ukraine, they filed an application for "sufferance visa" pursuant to Section 33 (1)(a) of the Residence of Foreign Nationals Act before their original tourist visa expired, due to their fears for their lives and security in case of return to these areas of Ukraine. On the basis of the Defender's notification, the Foreigners Police began issuing "removal orders" to these foreigners with periods corresponding to the 30-day deadline for issuing a decision on the application for sufferance visa. If the procedure was different, the applicant would not be permitted to stay in the country before decision on the visa application is issued, thus frustrating the visa proceedings.

The Ministry of the Interior has also modified its procedure. In each application for residence permit under the Residence of Foreign Nationals Act, it issues advice together with the certificate of filing the application. Foreign nationals are provided with information concerning the situations where they have right to reside in the country for the duration of the proceedings on the application filed, as well as of the consequences of residence without permit and the necessity to immediately resolve the situation in co-operation with the Foreigners Police. The advice is universal and meant to go with all types of applications filed by nationals of countries outside the European Union.

VISAPOINT

The Defender has continued monitoring the operation of the VISAPOINT system. In 2014, the European Commission terminated the "EU Pilot" proceedings, initiated on the basis of the Defender's instigation, in which it investigated the possible violation of European Union law by the impossibility to register for filing an application for permanent residence with the purpose of balancing family life with studies, which represents a transposition of EU directives.

The Defender found **continuing difficulties in registration** for filing of applications in some embassies (especially in Kazakhstan, Ukraine and Vietnam). Despite measures adopted to increase the capacity of the consular sections of the selected embassies (e.g. in Astana and Hanoi), the VISAPOINT system still does not offer any free appointment dates for some types of applications. The Defender will thus continue to monitor the problems in operation of the VISAPOINT system.

Permanent residence

The Defender addressed the issue of counting the period of temporary residence of a European Union citizen family member into the period of residence necessary for **granting the status of a long-term resident** of European Union. The current wording of the Residence of Foreign Nationals Act does not allow to count this period of residence. However, the Defender concluded, on the basis of Euro-conforming interpretation in accordance with Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, that this period must include any type of legal residence in the country, including temporary residence. Acting on the basis of the Defender's advice, the Ministry of the Interior included the change of the relevant stipulation in the amendment to the Residence of Foreign Nationals Act to make it conform to European Union law.

Right of European Union citizens with temporary residence to vote

The Defender noted the variance of the Czech regulation of the right to vote in municipal elections with European Union law. EU legislation stipulates the right of European Union citizens living in another Member State to participate in local elections under the same conditions as the citizens of the Member State. The Act on Elections to Municipal Assemblies (Act No. 491/2001 Coll.) sets forth permanent residence in the given municipality as one of the conditions. However, a permanent residence of a foreign national (as opposed to permanent residence of Czech citizens, which only has the character of official record) represents one of the types of residence under the Residence of Foreign Nationals Act and may in principle be obtained only after five years of interrupted residence in the country. The conditions set forth for European Union citizens are thus hardly comparable with the conditions for Czech citizens, which fact represents incorrect transposition of European law.

The Defender concluded that this variance of the Czech legal regulation with European Union law could be mended by applying direct effect of European Union law and granting voting right to those European Union citizens who have resided in the Czech Republic in the long term and have been issued a certificate of temporary residence.

The Defender's opinion was confirmed by the judgements of the Regional Court in Brno and in Prague respectively, which 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 to all citizens of the European Union with a certificate of temporary residence in the Czech Republic. According to available data, the previously unlawfully denied right to vote has now been granted to approximately 100 thousand European Union citizens living in the Czech Republic.

2/15 Records of Inhabitants, Registries of Births and Deaths, and Citizenship

Landlords and notification of change of permanent address

The Public Defender of Rights has repeatedly called attention to the fact that citizens have been filing complaints concerning their inability to obtain permanent address in the building where they live, because the **landlord refuses to register them**. They thus remain registered at the address of the registering authority or they their permanent address is different from the place where they actually live in the long term. Citizens continued to address the Defender with this problem also in 2014.

Registration of permanent address **is not subject to the landlord's approval**; a proof of a right to use a building (a house or an apartment), typically a lease contract, is enough. Even the landlord's express disagreement with the registration of permanent address incorporated in the lease contract does not represent an obstacle for the registration of permanent address (the municipal authority as the registering authority cannot take such statement of the landlord into account). Following termination of the lease, the landlord may achieve cancellation of the permanent address, if he or she documents to the registering authority that the former tenant has lost the right to use the building and no longer lives there. With respect to the fears on the part of the landlords, the Defender notes that the real estate itself cannot be subject to distraint by a court distrainer (who cannot order its sale) because of the existence of the lease. If the obliged party resides in the building in fact, the person's belongings in there may be subject to distraint (the court distrainer may compile a list of the belongings), even if the person does not have his or her permanent address registered in the building. Therefore, if the landlord is leasing out an equipped apartment, it is important that the lease contract contains a description of the equipment.

Discrepancy between data contained in personal documents and data contained in information systems

If data concerning name and surname of a person is changed in the information system of records of inhabitants or the information system of foreigners, without the person having been informed of the change, it represents an erroneous procedure even though the law does not stipulate such duty for the authority. **A correction of an incorrect information carried out** ex officio without co-operation with the person affected may represent an inappropriate infringement of his or her personal rights under the Civil Code (Act No. 89/2012 Coll.) or an unlawful intervention pursuant to Section 82 of the Code of Administrative Justice (Act No. 150/2002 Coll.). It cannot be justly requested that the affected person use a different name, surname or surname at birth than the one contained in his or her personal documents for many years which the person had considered valid. In case of correction of name or surname of a deceased person, all living close persons, who pursuant to the Civil Code may claim protection of the personal rights of the deceased, should be informed.

Underlying documents for registration of planned home births

The Act on the Registries of Births, Deaths and Marriages (Act No. 301/2000 Coll.) has been amended, effective from 1 January 2014, by Act No. 312/2013 Coll. Currently, the law requires, **inter alia**, in case a child is born outside a health care facility and the mother is subsequently not provided any medical services, that one of the parents submits to the Registry additional documents (in addition to the usual documents – certificate of marriage or certificates of birth of the parents, identity documents, statement of name and surname, if appropriate) proving that the mother of the child is the woman who gave birth to the child. The Defender has encountered cases where the Registry requested a certificate from a gynaecologist proving that the woman has given birth. These were presumably cases of planned home births with the assistance of a midwife. With regard to the fact that the Czech legislation does not provide for midwives providing health care during home births, the parents did not submit a report by the midwife, who was present at birth, to the Registry.

In July 2014, the Defender issued a press release concerning the underlying documents for registration of birth in planned home births. She noted that no right to request a physician's report follows from the law. If

a midwife authorised to provide postpartum care has provided medical services to the mother of the child after its birth, the parents are not obliged to submit any additional documents. A notification of the birth of the child by the midwife is sufficient.

Even if the mother was not provided with medical care after birth, she does not necessarily have to contact a physician. The scope of the evidence to prove maternity depend on specific circumstances of the case. The procedure of the Registry should correspond to this. In some cases, witness testimony may suffice; in other cases the Registry's request for a physician's certificate that the woman has given birth may be justified. **In case of a home birth without any subsequent medical treatment, the mere statement of the parents is not a sufficient proof of maternity.**

Documents of foreign nationals necessary to enter into a registered partnership

The Defender made an inquiry into the Ministry of the Interior (hereinafter the "Ministry") guidelines for the Registries competent to accept the declaration of entry into a registered partnership. The website of the Authority of City Ward Prague 1 (hereinafter the "Authority") as the registering Registry contained information that each foreign national whose home country does not issue a document of legal capacity to enter a registered partnership would have to produce a certificate of this fact. The complainant, whose complaint served as the basis for the Defender's inquiry, pointed out that to obtain such certificate from certain countries is impossible. The Ministry, which was addressed first by the complainant, concluded that the Authority proceeded in accordance with its guidelines.

The Defender first managed to ensure remedy only on the part of the Authority. Later, she achieved a change in the Ministry's guidelines concerning the waiver of documents submitted by a foreign nationals in order to enter into a registered partnership, and the Ministry published and overview of legislation concerning registered partnership abroad on its website. If the home country of the foreign national does not issue a document of legal capacity to enter into registered partnership, the registering Registry now only states this fact in the file. The Ministry has also heeded the Defender's recommendation and, from 2014 onward, it publishes all its guidelines concerning Registries online.

New Act on State Citizenship of the Czech Republic

As of 1 January 2014, the new Act on State Citizenship of the Czech Republic (Act No. 186/2013 Coll.) came into effect. **The new Act abandons the principle of a single citizenship** and instead opens the possibility of dual (or multiple) citizenship. This represents **acceptance of repeated recommendations of the Public Defender of Rights** issued between 2002 and 2006 and in 2009. The law newly enables the possibility of acquiring citizenship of the Czech Republic by declaration in cases where a person was issued a document proving Czech citizenship without authorisation if the person acted in good faith. Also this represents acceptance of repeated recommendations of the Public Defender of Rights issued between 2002 and 2006.

In the past, the Public Defender of Rights has also pointed out in vain the **lack of justification for exclusion of Slovak citizens from the possibility of acquiring citizenship of the Czech Republic through declaration** pursuant to Section 31 of the Act on State Citizenship of the Czech Republic. The express condition not to be a Slovak citizen as of the date of the declaration set forth in Section 31 (2) of the Act affecting former Czechoslovak citizens who before going abroad had their permanent address in the territory of the Czech Republic, represents a needless administrative burden, since pursuant to Slovak legislation, acquiring citizenship of a foreign country on the basis of explicit manifestation of will means the loss of citizenship of the Slovak Republic.

The Defender also calls attention to the fact that many expatriates acquire Czech citizenship through declaration pursuant to the new Act mostly for emotional reasons. Due to the possible complications in the country they reside in and of which they are citizens, they are not interested in having their permanent address registered in the Czech Republic. The authorities err if they fail to inform the relevant persons of the registration of permanent residence in the Czech Republic upon acquisition of citizenship, which follows from the Act on Records of Inhabitants (Act No. 133/2000 Coll.), and of the possibility to terminate the permanent residence.

2/16 Right to Information, Personal Data Protection

Access to information

The **most common shortcomings in the procedure of the obliged entities** consist in a failure to issue a decision on refusal to provide information (in cases where it is not provided to the petitioner), failure to respect the legal opinion of a superior body, refusal to provide information based on other than lawful reasons or failure to maintain proportionality when determining whether the information in question should or should not be provided.

The Defender initiated an inquiry on her own initiative in order to **verify the observance of the deadline for resolving requests for information** pursuant to the Free Access to Information Act (Act No. 106/1999 Coll.), and ascertain the existing practice in the area of **providing information on ongoing court proceedings** where the obliged entity is a party. The aim of the inquiry is to conduct a general survey of the existing situation in public administration and, subsequently, draft a general recommendation document in co-operation with the Ministry of the Interior addressing both issues, including possible reconsideration of current statutory deadlines.

Personal data protection

In dealing with complaints against the procedure of the Office for Personal Data Protection (hereinafter the "Office"), the Defender has made the general finding that the Office's public relations department insufficiently addresses some of the complaints against breach of duties under the Personal Data Protection Act (Act No. 101/2000 Coll.). This organisational unit of the Office has for example stated in a reply to the complainant that dealing with complaints against a school falls under the competence of the municipal assembly. However, pursuant to the Municipalities Act (Act No. 128/2000 Coll.), complaints against the procedure of legal entities and organisational components established or founded by the municipal assembly is addressed by the municipal council. In the given case, the mayor published, on question from a member of the assembly during a meeting, the personal data of a school student, even though she was authorised only to disclose how many complaints there had been against the school, what they were about and whether they were founded. In a different case, the Office failed to notice that the requests and complaints addressed to the municipal bodies and published by them revealed the identity of the complainants.

The Office has admitted its errors in all of the cases where an inquiry was made.

Publishing of birth identification numbers of participants in proceedings on landscape changes

The Defender asked the Office to provide a statement on the basis of a complaint from a citizen against the publishing of his birth identification number on published and widely distributed documents concerning landscape changes. The Office's answer revealed that it has repeatedly encountered complaints against inclusion of birth identification numbers in resolutions of land-use authorities. The Office agreed that a systemic solution was necessary. After a **meeting** of the representatives of the Office, the Ministry of Agriculture, the State Land-Use Authority and the Czech Office for Surveying, Mapping and Land Registry, **the State Land-Use Authority changed its procedure.** Land-use authorities now only include a list of all the parties to the proceedings with their identification information in the Annex to the resolution delivered to the parties and accessible for inspection at the land-use authority – it is now not published on the official board and the internet.

Complaint – file No.: 5695/2013/VOP/VBG

The Road Traffic Act (Act No. 111/1994 Coll.) does not represent a "special regulation" (Section 2 (3) of the Free Access to Information Act) enabling complete exclusion of application of the Free Access to Information Act. The scope in which Section 34d (4) of the Road Traffic Act regulates provision of information from the Road Transport Entrepreneurs Register complements the Free Access to Information Act and will

be used specially, i.e. preferentially. The Free Access to Information Act will be used subsidiarily in all the remaining aspects of access to information not regulated by the Road Traffic Act.

Data on duration, scope and loss of financial qualifications, as well as information which can serve to obtain this information indirectly, cannot be disclosed to a third party without the consent of the road transport entrepreneur to whom the data pertains. If this consent is not given, the request for information must be denied pursuant to Section 15 of the Free Access to Information Act, since Section 34d (4) of the Road Traffic Act sets forth further limitations of the right to information.

The complainant claimed review of the procedure of a regional authority (hereinafter the "Traffic Authority") and the Ministry of Transport (hereinafter the "Ministry") on the basis of a refusal to provide information on the scope, duration and manner of documenting financial qualifications of a specific road carrier, as one of the conditions for granting a concession for operating freight road transportation. The complainant suspected that although the carrier had not documented financial qualifications for operating a business, the Regional Authority had not filed an instigation with the trade licence office to change or withdraw the license.

The Defender found formal shortcomings in the way the complaint had been handled. She criticised the Ministry for failing to examine the procedure of the Traffic Authority despite the complainant's repeated requests. With regard to the case itself, the Defender supported the conclusions of both of the authorities that the requested information could not be provided to the complainant. This was because the complainant had clearly failed to meet the statutory conditions for provision of information (he had not produced an authenticated consent of the entrepreneur to whom the requested information pertained). The information on the manner of proving financial qualifications of a road transport entrepreneur is not recorded in the Road Transport Entrepreneurs Register; however, by being provided with this information the complainant could obtain information that is recorded in the Register (information on the duration or loss of financial qualifications for operating a business). If the conditions listed in Section 34d (4) of the on road transport are not met, not even this information can be provided.

After issuing of the inquiry report, the Ministry examined the procedure of the Traffic Authority and found that it had not been inactive.

2/17 Consumer Protection

In 2014, the Defender continued dealing with the **issue of product demonstration events**. Despite widespread media attention to the problematic aspects of product demonstrations, the consumers continue attending them and entering into unfavourable contracts.

Therefore, the Defender has welcomed the change of the relevant legal regulation. As from 15 January 2014, Sections 20 to 20b of the Consumer Protection Act (Act No. 634/1992 Coll.) **impose new duties on the sellers and organisers of product demonstrations**. They must provide notification of each of the planned sales event and the "invitation" to the event must meet the prescribed requisites.

In the area of provision of consumer credit, the ban on using (a reference to) a phone number with an increased rate in offering, negotiating or mediating of credit has proven effective. In the past, the agents mediating the provision of consumer credit used phone lines with increased rates and tried to artificially prolong the call. The Defender thus welcomes the **ban**, effective as from 15 January 2014, on using phone numbers with increased rates for any communication between the entrepreneurs and consumers.

The Defender has also addressed the question whether a municipality may prohibit rounding and peddling sales through municipal market rules (see the chapter "The Defender and the Constitutional Court", p. 18).

Consumer protection in the area of electronic communications

The Defender has addressed **delays in "subscriber disputes"**, i.e. disputes under Section 129 (1) of the Electronic Communications Act (Act No. 127/2005 Coll.), concerning the payment of a certain amount, usually initiated by the provider of electronic communications services.

Delays were caused in particular by the sharp increase in the number of proceedings, to which the Government did not react adequately and in time. Although the first substantial increase in the number of proceedings occurred in 2009 (101,178 motions to initiate proceedings in comparison to 73,538 motions in 2008), the number of employees of the Czech Telecommunication Office dealing with this agenda has actually decreased (from 116 to 96). Another spike in the number of proceedings occurred in 2012 (227,728 motions in comparison to 122,658 motions in 2011); however, the number of employees responsible for the agenda only increased in 2013. The measure adopted in 2013 substantially improved the situation and contributed to a significant reduction in delays. However, the length of the proceedings continues to exceed the statutory deadlines for issuing a decision. The Defender has thus recommended that the Government increase the number of the Czech Telecommunication Office's employees in the interest of faster resolution of the proceedings in all older cases where delay has occurred.

Besides the clear infringement of the rights of the parties, the failure to comply with the statutory deadline for issuing a decision also affects the State directly, since it faces the risk of becoming liable to pay the costs of the proceedings in administrative actions filed against its inactivity. The parties to the proceedings also could, in accordance with the Act on Liability for Damage Caused during the Exercise of Public Authority (Act No. 82/1998 Coll.), claim damages or appropriate satisfaction for delays.

Further in the area of electronic communications, the Defender addressed the issue of **prepaid cards**, specifically the contractual provisions for the validity of the credit and termination of the contract on the basis of failure to purchase new credit within a given deadline.

Complaint – file No.: 6012/2013/VOP/PN

Provided that the conditions of clarity and comprehensibility are met, the contractual provisions concerning validity of a prepaid telephone card and expiry of the credit represent an agreement on the price of the provided service, which is, pursuant to Art. 4 (2) of Council Directive 93/13/EEC, on unfair terms in consumer contracts, excluded from assessment of whether it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer contrary to the requirement of good faith.

The transposition of Art. 4 (2) of the above Directive to the Civil Code (Act No. 40/1964 Coll., effective until 31 December 2013) was incorrect, since agreements on the price and subject of the performance were excluded from the assessment of reasonability, while conditions of clarity and comprehensibility did not have to be met.

If it does not clearly and comprehensibly follow from the contractual terms and conditions of mobile operators that non-utilisation of pre-paid credit and non-recharging the credit within the set deadline will result in expiry of the remaining credit, this represents a violation of Section 63 (1) of the Electronic Communications Act.

The complainant approached the Czech Telecommunication Office since a mobile operator had deactivated her phone number on the grounds that she had failed to recharge her credit within the set deadline. The Czech Telecommunication Office informed the complainant of its conclusion that the obligation to recharge credit within a set deadline, despite the fact that it had not been fully utilised by the client, did not represent conduct at variance with the law.

The mobile operator has a legitimate interest in such terms of use of its service that motivate the subscriber to an active (or at least a minimum) use of its services. Certain minimum scope of use of services and the corresponding payment can be considered as payment for the connection to the mobile network. A thus-assessed contractual provision concerning the validity of a prepaid telephone card and expiry of the credit represents an agreement on the price of the provided

service, which is, pursuant to Art. 4 (2) of the Council Directive on unfair terms in consumer contracts, excluded from assessment of reasonability of the provisions, i.e. evaluation of whether it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer contrary to the requirement of good faith.

Therefore, it must be clear to the customer from the relevant contractual provision that if he or she does not use the phone for some time or recharge the credit, the subscription contract is terminated and the telephone card will be deactivated, which is associated with the expiry of the remaining credit.

Another case where the Defender made an inquiry involved charging for "**third-party services**". In particular, the inquiry revealed that a comprehensive investigation in such a case with respect to compliance with public-law duties requires participation of several supervisory bodies. Distribution of responsibilities between the individual authorities is not transparent to the average consumer. The solution (defence) then depends on whether the relevant complaint concerns charges for telephone services (a plea against the resolution of the complaint by the Czech Telecommunication Office) or charges for paid third-party services (standard civil proceedings before the court).

Consumer protection in the energy sector

The Defender examined the **correctness of transposition of energy directives** of the European Parliament and of the Council (Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009, concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC; and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009, concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC), which stipulate the obligation for service providers to inform the customers directly, at an appropriate time and in a comprehensible manner, of any increase in charges related to the provision of energy services. The Energy Act (Act No. 458/2000 Coll.), however, lets service providers choose whether they will inform the customers specifically or generally (e.g. by publishing the information on the internet), with a different time period within which the customer may withdraw from the contract. The Defender concluded that these Directives were incorrectly transposed into Czech law. Therefore, she commented on the draft amendment to the Energy Act and recommended to introduce a duty of the service provider to specifically inform the customers of each increase in charges.

Acting on the basis of the same complaint, the Defender also addressed the procedure of the Energy Regulatory Office in assessing unilateral changes to the service providers' terms and conditions, unreasonable agreements with respect to consumer protection and a discriminatory approach of service providers to customers.

Citizens have approached the Defender also because of problems caused by switching energy service providers, usually on the basis of a contract concluded during a personal visit of a service provider's representative in the customer's home, i.e. outside the usual premises for conducting business. It is therefore necessary to strive to increase awareness of the risks of contracts concluded under such circumstances and of consumer rights (especially the right to withdraw from a contract without giving a reason, and without penalties). In February 2014, the Energy Regulatory Office established the office of internal ombudsman for energy, who is now trying to find an amicable solution to the disputes between customers and energy service providers. Although such a procedure is not based on law, it should be noted that it often leads to a resolution of the dispute.

Consumer protection in the area of the financial market

Complaints regarding the area of the financial market mostly concerned the supervision over observance of selected provisions of special (sectoral) laws and, to a lesser degree, supervision over compliance with the rules set forth by the Consumer Protection Act.

For example, the Defender has made an inquiry into the procedure of the Czech National Bank in addressing complaints against inactivity of an insurance company in investigation of an insured event. The insurance company was waiting for a decision of the municipal authority in proceedings on an administrative offence, where the company itself did not take sufficient steps to ascertain liability for the damage to the complainant's vehicle. After the proceedings on administrative offence were discontinued due to expiry of liability for the infraction (due to expiry of the one-year deadline from its commitment), the insurance company informed the complainant that the insured event was put aside without payment of indemnification due to a lack of proof of the aggrieved party's entitlement.

The Defender believes that the insurance company acted at variance with its duty to carry out investigation without undue delay pursuant to Section 9 (3) of the Motor Vehicle Liability Insurance Act (Act No. 168/1999 Coll.), since it merely waited for the results of the proceedings on administrative offence related to the insured event and it did not investigate the insured event properly on its own. Moreover, pursuant to Section 6 of the Insurance Act (Act No. 277/2009 Coll.), the insurance company is obliged to carry out investigation of the insured event with due professional care and attention. This means that it must exercise all its powers, which include also the right to inspect the file in criminal proceedings or an administrative offence, or, as the case may be, request voluntary co-operation from private persons who witnessed the insured event.

2/18 State Supervision and Control of Local Government

Compliance of municipal ordinances with national legislation/constitutional order

In 2014, the Defender initiated a number of inquiries into the activities of the Ministry of the Interior as the authority supervising the lawfulness of generally binding municipal ordinances. **Most complaints** received by the Defender **concerned ordinances regulating public order and ordinances regulating the collection of municipal waste fees.**

With regard to **ordinances regulating public orde**r, the Defender noticed in particular the complaints against their implications promoting segregation in "socially excluded areas", where the ordinances stipulate stricter rules for personal conduct in public premises in such areas than in other places. In some cases, the ordinance even introduces a general ban on activities which are not problematic in themselves (e.g. sitting on the curb). The Defender called on the Ministry of the Interior to review again the lawfulness of these ordinances and focus on their possible discriminatory implications as well as infringement of the constitutional guarantee of the freedom of movement.

Complaints against ordinances regulating the collection of municipal waste fees involve especially the possible reliefs and exemptions, where the complainants challenge unequal treatment (discrimination) in cases where municipalities stipulate a different amount of the fee for persons with permanent address in the municipality and persons who own holiday homes in the municipality. The Defender negotiates with the Ministry of the Interior in these cases too in an attempt to find a balance between the right of municipality for self-government and the related right to make its own regulation, on the one part, and the duty of the municipality to adhere to the law (Act No. 565/1990 Coll., on local fees) in making its own regulations, on the other part.

2/19 Schools

Application of the Code of Administrative Procedure in regional schools

In the area of public administration of schools, the Defender often encountered **incorrect application of the Code of Administrative Procedure** by school headteachers, Regional Authorities and the Ministry of Education, Youth and Sports (hereinafter the "Ministry"). This most often involved the determination of substantive jurisdiction of an administrative body, obstacle of litispendence, participation, application of Part Two and

Part Three of the Code of Administrative Procedure to specific procedures of public administration authorities and extraordinary remedies (review proceedings).

In cases of enrolling children in kindergartens, the Defender concluded that if the legal representative of the child **submits the enrolment application in more than one kindergarten**, the kindergarten may not discontinue the administrative proceedings on the grounds of obstacle of pending proceedings before another administrative authority (Section 48 (1) of the Code of Administrative Procedure). The subject of the administrative proceedings is the enrolment of the child in a specific kindergarten; therefore, in case of several applications, **the proceedings are concerned with different matters and aim at different purposes.**

The Defender is of the opinion that the Ministry is not competent to issue a rejecting decision in cases where the legal representative of an **extraordinarily gifted child** requests **early commencement of compulsory education**. The Ministry has the duty to give the legal representative of the child proper advice on the legal regulations, in particular Section 36 (3) of the Schools Act (Act No. 561/2004 Coll.) and inform him or her that requests involving decisions on education are decided by **school headteachers**, upon the child's enrolment in the first year of elementary school (pursuant to Section 17 (3) in conjunction with Section 165 (2)(a) of the Schools Act).

The Defender has also repeatedly concluded that Regional Authorities decide on the basis of Parts Two and Three of the Code of Administrative Procedure in **proceedings on a school's request for establishing the position of a learning support assistant** pursuant to Section 16 (9) and (10) of the Schools Act. The concept of a learning support assistant represents one of the key support measures in education of students with special educational needs; the position may not be established without the consent of the Regional Authority. If the Regional Authority does not grant the school full approval, it is obliged to issue a (partially) **rejecting administrative decision with proper justification.** Any potential appeal filed by the school is decided by the Ministry.

Headteachers often make errors in situations where they inform in writing only one of the parents about a **decision on transfer of the student to a different school** or a **decision to place the student in a different educational programme**. The Defender believes that both legal representatives of the child must be informed of key issues concerning the child's education, including both of the above types of decisions. If the second parent is not a party to the proceedings, any decision issued is unlawful.

Complaint – file No.: 6584/2012/VOP/EN

If only one of the parents files an application for transfer of the child to another elementary school, the second parent becomes a party to the proceedings, since his or her rights may be directly affected by the headteacher's decision in the sense of Section 27 (2) of the Code of Administrative Procedure; the headteacher must inform both of the parents of the initiation of administrative proceedings. A headteacher of an elementary school as an administrative authority may issue a preliminary injunction (Section 61 of the Code of Administrative Procedure), ex officio or on request of a party to the proceedings, to allow the child to attend the elementary school where one of the parents wants to transfer it, if it is necessary to provisionally arrange for the relations between the parties with respect to the best interests of the child. The preliminary injunction is cancelled by decision of the headteacher immediately after the reason for its issuing ceases to exist; the relations between the parties may thus be arranged for by the preliminary injunction no longer than until the final court decision on substitution of the consent of one of the parents with transfer of the child to a different school.

The complainant claimed unlawfulness of two decisions on transfer of his minor son to an elementary school that were made by the headteacher of the elementary school based on the request filed by the mother of the minor child, with whom the complainant does not live in a common household. The Regional Authority confirmed the decision of the headteacher, even though the complainant as one of the parents had expressed his disagreement with the transfer and there had been no court decision that would substitute his consent.

Although the situation was resolved during the course of the inquiry (the complainant's son began attending the elementary school on which both of the parents agreed), the Ministry promised to the Defender that it would inform the substantively competent units of all Regional Authorities and the Municipal Authority of the Capital City of Prague of her opinion.

The competence of the Czech Schools Inspectorate in relation to school counselling facilities

The Defender has repeatedly encountered the opinion that the Czech Schools Inspectorate is not authorised to inspect and evaluate the professional activities of school counselling facilities (educational psychology counselling centres and special education centres). She therefore issued a statement in which she concluded that the **present legislation** (Section 174 (2)(a)(b) and (d) and Section 174 (5) and (7) of the Schools Act) **granted the Czech Schools Inspectorate the authorisation to inspect professional, especially special education and psychology, procedures and conclusions of school counselling facilities**. The Czech Schools Inspectorate is therefore obliged to put together a team composed of its employees (invited persons) that will ensure proper inspection of all professional practices of school consulting facilities.

If a school consulting facility issues reports and recommendations for the education of children with special educational needs not reflecting professional findings, the Czech Schools Inspection may find a violation of Section 16 (6) of the Schools Act in conjunction with Section 2 (1)(a) or (b) of the Schools Act and impose remedial measures.

2/20 Other Administrative Authorities

Administration of the Public Prosecutor's Office

The Defender's authorisation affects only the **authorities performing the administration of the Public Prosecutor's Office**, specifically the Ministry of Justice, the Supreme Public Prosecutor, Regional Public Prosecutors and District Public Prosecutors, when fulfilling tasks following from Sections 13a to 13j of the Public Prosecutors Act (Act No. 283/1993 Coll.). Complaints are most frequently **concerned with delays** in fulfilling the tasks of the Public Prosecutor's Office and **provision of information** pursuant to the Free Access to Information Act (Act No. 106/1999 Coll.).

Complaint – file No.: 4099/2013/VOP/IK

A submission is anonymous when it cannot be responded to due to a lack of the submitter's contact details. An electronic submission without recognised electronic signature is not anonymous. The Public Prosecutor's Office is obliged to adequately respond to such submission, i.e. either address the submitter or request that the submitter supplement the submission. This applies also to complaints submitted pursuant to Section 16b of the Public Prosecutors Act.

Amongst other things, the complainant challenged inactivity of the Supreme Public Prosecutor's Office, which had not addressed the complainant's complaint against inactivity. The complainant submitted the complaint without a recognised electronic signature. (S)he only stated his/her name and surname. Neither the Supreme Public Prosecutor's Office, nor the Supreme Public Prosecutor have responded to the complaint, as they have considered it to be anonymous within the meaning of Section 16a (2) of the Public Prosecutors Act. According to the Supreme Public Prosecutor, a submission without a recognised electronic signature would not be anonymous, if the complainant indicated at least his/her address of residence.

The Defender concluded that it is in principle necessary to always respond to electronic submissions, as the Public Prosecutors Act does not request that such submission be signed with a recognised electronic signature. The Public Prosecutor's Office should therefore reply to the e-mail address from which the submission has been filed, with request that the submitter supplement the requisites of the submission pursuant to Section 16a (2) of the Public Prosecutors Act (i.e. to supplement, amongst other things, the identification details of the submitter). Only when the submitter does not supplement this information within the set deadline, the submission may be considered anonymous with consequences foreseen by law, including the possibility that the Public Prosecutor's Office will not react to this submission.

The Supreme Public Prosecutor's Office has adopted corrective measures (it has responded to the complainant's complaint, amended the office rules of the Public Prosecutor's Office and prepared standardised requests to supplement the requisites of submission).

2/21 Compensation

During 2014, the Defender also dealt in particular with complaints about the practice of governmental authorities in preliminary hearings on claims for compensation or reasonable satisfaction pursuant to the Act on liability for damage caused during the exercise of public authority (Act No. 82/1998 Coll.). The Defender examined in particular compliance with the principles of good governance summarised in the **Decalogue of Good Practice for Assessment of Compensation Claims.**

Ministry of Justice

The Ministry of Justice **does not resolve compensation claims within the set deadline of six months** due to the high number of claims caused by the fact that most claims concentrate at the Ministry. The Ministry sends claimants acceptance letters with an apology for the failure to comply with the set deadline and notifies them of the option to refer their case to the courts upon expiry of the deadline.

The Ministry is aware of the lack of personnel in the Department of Compensation. In the summer of 2014, the ministry hired new workers. This at least partially stabilised the situation.

Ministry of Transport

During 2014, the Defender dealt with the manner of addressing complaints based on **unreasonable length of administrative proceedings held under the Roads Act** (Act No. 13/1997 Coll.). The Ministry has promised to develop internal guidelines reflecting and developing the conclusions of the case law regarding the amounts of compensation granted. Repeated personnel changes at the Ministry do not contribute to resolution in the form of changes to official practice.

Complaint – file No.: 3125/2013/VOP/DS

Excessively long administrative proceeding in themselves cause intangible damage, where appropriate compensation in money is payable for the uncertainty of the aggrieved person. A note on infringement of rights suffices only under absolutely exceptional circumstances.

The fact that the excessive length of administrative proceedings in itself brings further consequences to the aggrieved party may be taken into account by the Ministry when determining the amount of appropriate compensation within the categories listed in Section 31a (3) of the Act on liability for damage caused during the exercise of public authority.

As soon as in 2012, the former Defender Pavel Varvařovský stated in one of many specific cases that the length of administrative proceedings held by a small municipality acting as a highway administrative authority was excessive. He advised the complainants to request compensation (appropriate compensation in money) from the Ministry of Transport. The complainants filed such claim; however, the Ministry did not grant it. The Defender therefore examined the procedure of the Ministry in addressing the abovementioned claim.

In his inquiry report, the Defender stated again that the duration of proceedings reaching 30 months cannot be in any way considered appropriate to the relevant type of administrative proceedings (declaratory proceedings on determination of existence of publicly accessible private road) and pointed out that full 18 months of the period in question was taken up by unjustified delays in the proceedings on the part of the administrative authority. These protracting administrative proceedings in themselves have caused an intangible damage to complainants consisting in their uncertainty as to the legal regime of the access to their house and in exhaustion from the long duration of the proceedings, taking into consideration their age and health condition. The fact that long-term problems with the use of the road in question had been caused by the long duration of proceedings should have been taken into account by the Ministry when determining the amount of appropriate compensation.

The Ministry refused to apply the current rules of providing compensation for excessive length of proceedings in money inferred from the case law of the European Court of Human Rights and the Supreme Court and stated that this rule

is non-applicable in public administration. The Ministry therefore intends to compensate the parties to excessively long administrative proceedings only in "justified cases". The complainants were not granted any compensation. In his final statement, the Defender reiterated that this case was a typical case where compensation should have been paid to the complainants.

The Defender then attempted to reverse the decision of the Ministry in a meeting with deputies of the Minister of Transportation and thus to make the authority to grant the compensation, but without success. The Ministry only began to develop internal guidelines which would in the future better reflect case law and the opinions of the Defender.

Ministry for Regional Development

In several cases, the Ministry for Regional Development **refused to provide compensation for intangible damage** caused to the applicant by incorrect official procedure (inactivity).

During a personal meeting, the Defender attempted to persuade the representatives of the Ministry that the Ministry does not purely defend the State in matters of compensation but it also acts as an executive body of public administration (it must act in accordance with the law, objectively, convincingly, efficiently, openly, in a forthcoming and timely manner and responsibly).

The Ministry insists that it does not refuse in advance to compensate intangible damage, provided that such damage actually incurred. However, it does not infer that intangible damage has been caused by excessive length of the proceedings itself, which is incorrect. The Ministry has only promised that it would focus on providing a better reasoning for their responses to claims (explain why the duration of proceedings in question is/is not excessive, why intangible damage was not incurred etc.). The Defender maintains her conclusions (excessively long administrative proceedings in themselves cause intangible damage to the parties – it is not necessary to prove that the damage was incurred).

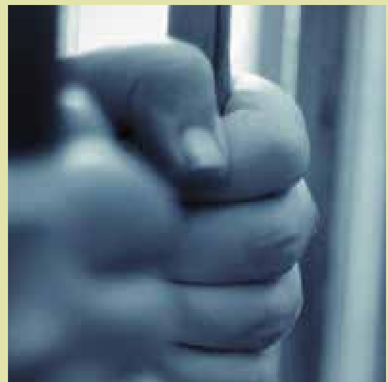
Ministry of Labour and Social Affairs

In February 2014, the Defender issued an inquiry report on inquiry performed on the Defender's own initiative in relation to the decisions of the Ministry of Labour and Social Affairs on **compensation** claims for excessive length of proceedings in the form of appropriate satisfaction (file No.: 5539/2013/VOP/JH). The inquiry was initiated based on the doubts of the former Defender about compliance of the practices of the Ministry with the Decalogue of Good Practice for Assessment of Compensation Claims and Uniformity in Decisions, which arose from inquiries into individual complaints.

During an inquiry into the overall administrative practice of the Ministry, the Defender evaluated the resolution of all the complaints filed in the second half of 2012. The inquiry confirmed that the **decisions of the Ministry were inconsistent**, especially in relation to **determination of various amounts of compensations** calculated on the basis of the duration of the proceedings. In some cases, the Ministry determined a lower basic amount for one month of excessively long administrative proceedings, despite completely unambiguous case law of the Supreme Court. In other cases, the Ministry granted compensation only for the months following the deadline set in accordance with the Code of Administrative Procedure, although compensation must be granted for the whole duration of the excessively long proceedings. The Defender also stated that the conclusion of the Supreme Court expressed in the opinion of its civil-law and commercial division of 13 April 2011, file No. Cpjn 206/2010, that compensation in money for the first two years of excessively long proceedings shall be reduced to one half, cannot ipso facto apply to administrative proceedings, which are subject to deadlines fixed by procedural regulations. Due to the maximum possible duration of administrative proceedings, the Defender deemed reasonable that appropriate compensation should be reduced to one half only for the first year of excessively long proceedings.

The Minister of Labour and Social Affairs agreed with the conclusions of the Defender and promised to take them into consideration in further procedures of the Ministry. The Defender subsequently requested file

documents from the period following the inquiry in order to assess whether the Ministry achieved a uniform practice and remedied the determined inadequacies. The requested documents revealed only one error, remedied by the Ministry after a notification from the Defender; therefore, the Defender closed the inquiry.



4 The Defender and Places where Persons are Restricted in their Freedom

Pursuant to Section 1 (3) and (4) of the Public Defender of Rights Act, the Defender shall systematically visit all places where persons restricted in their freedom by public authority, or as a result of their dependence on care provided, are or can be confined (the so called *national preventive mechanism).*

In 2014, 19 systematic visits were carried out. On the basis of the Defender's instruction, the visits were carried out by groups composed of lawyers from the Department of Supervision over Restriction of Personal Freedom of the Office of the Public Defender of Rights and external consultants of other professions. In 2014, the Defender co-operated with 18 experts (6 physicians, psychologists, experts in special education, nurses, a clinical pharmacologist and a nutritional therapist).

The results of the systematic visits form a basis for the Defender's preventive action against ill-treatment in a wide range of other activities. The Defender summarises the recommendations for the individual types of facilities in summary reports from systematic visits drawn up upon completion of each series of visits. These reports contain recommendations for governmental authorities and serve as an underlying material for subsequent meetings and comments on proposed amendments to legislation. The Defender published her 2014 **Summary Report on the Systematic Visits to Sobering-up Stations** and initiated talks on this issue with the Ministry of Health. In 2014, the Defender used her previous findings from visits to children's facilities in negotiations with the Ministry of Labour and Social Affairs and the Ministry of Education, Youth and Sports. The Defender discussed her findings from systematic visits personally with chief officers of the Police of the Czech Republic and the Prison Service of the Czech Republic. The Summary Report on Visits to Residential Facilities Providing Care without Authorisation **and** the Summary Report on Systematic Visits to Retirement Homes and Special Regime Homes **were also completed.** Using her findings from the systematic visits, the Defender participated in **commentary procedures** on eight instances in 2014.

Utilisation of findings from the visits in **awareness-raising** in relation to public authorities, facilities and experts represents another form of the Defender's preventive activities. In 2014, the Defender organised seven events of educational and awareness-raising nature and the employees of the Office of the Public Defender of Rights actively participated in further 21 events.

The Defender contributes to the **international co-operation** of national preventive mechanisms. In 2014, the Defender organised two meetings aimed at sharing experience with foreign colleagues and sent employees of the Office of the Public Defender of Rights to another 7 similar events abroad.

In 2014, the Defender concluded **an agreement on co-operation with the Supreme Public Prosecutor**. This agreement provides for the manner of co-operation between the Defender, the Supreme Public Prosecutor's Office and other Public Prosecutor's offices when pursuing their statutory roles, with a special emphasis on protection of persons restricted in their freedom. The agreement does not cancel the statutory confidentiality duty which binds both the Defender and Public Prosecutors and it does not jeopardise the independence of the two institutions.

1/ Systematic Visits in 2014

1/1 Prisons

The inspection groups visited **5 high-security (C – closed) prisons** in total (Znojmo, Pardubice, Příbram, Karviná and Nové Sedlo). A physician participated in each of the Defender's systematic visits as an external consultant; a psychologist participated in one of the visits.

Attention was paid particularly to the material conditions in the prisons (e.g. cell equipment and capacity, convict outfits), hygienic conditions (contents of the "personal hygiene packages", frequency and conditions of showering, privacy in sanitary facilities and their technical condition), health care (availability of health-care services, storage and administration of medication, presence of guards during examinations), catering, security (the manner of performance of inspections, the use of coercive measures, separate confinement of convicts), contact with the outside world, achieving the purpose of imprisonment and meeting the cultural and social needs of the prisoners (disciplinary rewards and punishments, discharge department, provision of outings and sporting activities, purchases in prison canteen, religion, library equipment), employment and addressing the complaints of the prisoners. The Defender paid attention in particular to the conditions of imprisonment of unemployable prisoners, i.e. prisoners with disabilities, and the treatment of convicted foreigners. The Defender paid attention in particular to the conditions of imprisonment of unemployable prisoners (prisoners with disabilities), and the treatment of convicted foreigners.

The Defender found ill-treatment in case of one of the prisons; however, all the reports have not yet been released and the negotiation procedure concerning the recommendations given has not been finished yet.

Addressing individual complaints from the prisoners required **another ten inquiries on site** (beyond the activity of the national preventive mechanism).

1/2 Police Cells

Visits to police cells in Brandýs nad Labem and Břeclav focused on informing the detained on their rights and duties, issuing of documents containing advice to the detained in the cells, implementation of the right to legal advice and availability of a list of attorneys-at-law, provision of meals at reasonable intervals and the material equipment of the cells.

On the basis of an inquiry into an earlier complaint by an individual relating to police cells in Břeclav, the Defender requested that **uninterrupted access to water and toilette** be provided to detained persons to remedy the existing situation. The systematic visit revealed that the remedial measure had not been adopted.

Therefore, the Defender contacted the head the Regional Police Directorate, who ordered that security of the cells in Břeclav be ensured by two policemen in order to prevent undesirable delays in providing access to the toilette.

The visit to the cells in Brandýs nad Labem revealed that **the beds in the cells were not equipped with mattresses with washable surfaces** at variance with Article 3 (a) of Annex No. 1 to the Binding Instruction of the Police President of 2 December 2009, No. 159, on escorts, guarding of persons and on police cells. Since the same shortcoming was found in 2012 on the part of the Police of Central Bohemia in police cells in Beroun, the Defender requested that the head of the Regional Directorate of the Police of the Central Bohemian Region should find out if there were other cells without the required mattresses. The head informed the Defender about further five police stations containing cells without the required mattresses and promised to address the problem.

In July 2014, The Defender discussed the findings from systematic visits to police cells with the Police President and they agreed on the manner of their future co-operation. One of the forms of prevention of ill-treatment consists in training courses on the rights of persons placed in the cells provided to the Police by lawyers from the Office of the Public Defender of Rights. Pilot training for 60 police officers from the South Moravian Region took place in October 2014.

1/3 Facilities for Institutional and Protective Education

In 2014, the inspection groups visited two facilities for children. In both cases the facility involved was classified as "**children's home with a school**": Children's Home with a School in Králíky (part of the "Educational Institution, Children's Home with a School and School Canteen in Králíky") and Children's Home with a School in Slaný (part of the "Diagnostic Institution, Children's Home with a School, Children's Home, Educational

Care Centre and Elementary School in Dobřichovice"). The Children's Home with a School in Slaný is a facility providing educational-therapeutic regime. In both cases, the teams also included child psychiatrists, a psychotherapist and an expert in special education. The Defender participated in one of the visits personally.

Aside from the usual issues subjected to inquiry in visits such as the right to privacy, right to personal liberty and security and ensuring the right to education, the visits also focused in particular on the quality of care of children with mental disorders, including the provision of health care.

Findings from both visits led to the realisation that the professional capacity of educational-therapeutic regime is insufficient. **The Defender found ill-treatment in case of the facility in Králíky**, consisting in inexpert care (the failure to take into account mental disorders of some of the children), unjustifiable regime measures, lack of respect for the dignity of the children and excessive restrictions, the intensification of dependence on the care provided and lack of independence. In one case, the Defender gave evidence of hazardous handling of psychiatric medication, which did not consist in individual misconduct, but stemmed from erroneous instructions for the staff of the facility. Immediately upon publication of the report from the visit, the Defender asked the founder of the facility, Ministry of Education, Youth and Sports (hereinafter the "Ministry") to provide redress. The Ministry replaced the facility management and, in co-operation with bodies for social and legal protection of children, it moved the children to another facility and closed down the facility in Králíky.

The Defender paid close attention to legislative regulation of the **educational-therapeutic regime**. The necessary findings were obtained also during study visits in facilities providing educational-therapeutic care in Jiříkov (children's home with a school) and in Boletice (children's home with a school and educational institution), an internship in children's home with a school in Ostrava-Kunčice, and through a detailed psychological analysis of several case reports of children with imposed institutional education. Although the law assumes the existence of the educational-therapeutic regime, there are no legal requirements concerning its contents, the therapy provided or the qualifications of the personnel. Furthermore, provision of true therapy directly in educational facilities is virtually prevented by administrative obstacles. Currently, "educational-therapeutic care" may be provided by any educational facility, without having to conform to any professional or quality requirements. This may lead to serious violations of the rights of children in need of true education-therapeutic care (this often includes children with mental illness combined with behavioural disorders). The Defender considers very dangerous especially the replacement of educational-therapeutic care by various restrictions (restriction to use things, to leave the facility, body searches). The Defender repeatedly emphasised the problem to the Ministry, which had previously responded in this respect only with vague references to plans for increasing the professional competence of the employees in institutional care facilities.

1/4 Psychiatric Hospitals

A systematic visit to the Psychiatric Hospital in Havlíčkův Brod was performed in the last quarter of 2014. The systematic visit focused on **electroconvulsive therapy** (the specific method of performance, the existence of informed consent and the conditions of therapy without the patient's consent). The matter has not yet been concluded.

1/5 The Facility for Detention of Foreigners

The inspection group visited the facility for detention of foreigners in Bělá-Jezová – the only facility of its kind in the Czech Republic. The facility serves the purpose of administrative detention of foreigners detained under the Act on the presence of foreigners in the territory of the Czech Republic and on amendment to some laws, as amended (Act No. 326/1999 Coll.), in particular for the purposes of administrative expulsion and surrendering the foreigners to the authorities of another country. The facility also performs decisions of the Ministry of Interior on the duty of the applicant for international protection (asylum seeker) to stay in the facility on the basis of the Asylum Act (Act No. 325/1999 Coll.). A physician also participated in the visit.

The visit focused in particular on the **living conditions of applicants for international protection and their children** detained in facility for the purpose of surrendering to another European Union member state on the

basis of Regulation No. 604/2013 of the European Parliament and of the Council of 26 June 2013, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). The matter has not yet been concluded.

1/6 Residential Facilities without Authorisation to Provide Social Services

In late 2013 and in the first half of 2014, seven systematic visits were carried out to the following residential facilities which provided elderly persons with care without the necessary authorisation to provide social and healthcare services: Centrum komplexních služeb pro rodinu a domácnost (Comprehensive Family and Household Services Centre) in Kunštát na Moravě, Penzion Jiřinka (Jiřinka Guest-house) in Brno, Domov Petruška (Petruška Home) in Šestajovice u Prahy, Senior dům Marta (Marta Senior House) in Říčany u Prahy, Domov spokojeného stáří (Home for Comfortable Retirement) in Luhačovice, Penzion pro seniory Atrium (Atrium – Guest-house for the Elderly) in Liberec and Domov Na kopci (Home on the Hill) in Červený Újezd. Among the members of the inspection group were also healthcare professionals with nursing expertise; a nutritional therapist also participated in one of the visits. The Defender participated in one of the visits personally.

The facilities provided care to persons requiring assistance without the necessary authorisation; therefore, the Defender assessed the range of the services provided, the needs of individual clients and examined the relationship between the personnel and the facility operator. The inspection group monitored in particular the environment and equipment in the facility, observing of the autonomy of will, ensuring privacy of the residents, freedom of movement, provision of safety, quality of care provided or the conditions of arrangement and the contents of the contracts on provision of services. The Defender generally seeks to ensure the dignity and protection of (not only) the fundamental rights and freedoms of the residents.

The operators of the facilities visited focused on highly vulnerable persons (the elderly and people with mental disorders) to whom they attempted to provide care (including nursing care) in residential-type facilities (similar to a hotel) in a scope corresponding to the residential social service designated as "retirement home" or "special regime home". **The facilities were not authorised to provide social services, they were therefore not subject to standard system of control of the quality of provided social services, protecting the clients from ill-treatment.**

Persons with no expertise in the fields of social and health-care services (e.g. a shop assistant with vocational training, cook and receptionist) participated in client care. These persons were also performing nursing care tasks (administered medicine, rebandaged decubitus ulcers, treated wounds, etc.). Nursing care as provided by non-professionals exposed the clients to considerable health risks.

The most common shortcoming found in an inquiry into the material conditions was the lack of adjustment of the environment to the needs of persons dependent on care, in particular persons with impaired mobility and with dementia. The buildings were not barrier-free (in one facility, the staff had to manually carry the clients from upper floors down the stairs), corridors and staircases often lacked any safety features to prevent falls, the spaces were not marked for ease of orientation although persons with dementia in particular experience troubles with orientation. None of the facilities was equipped with an effective signalling equipment allowing to call for assistance, although this would often be the only way for the bed-ridden clients to call the staff. In all of the facilities visited, the low quality of care provided reached the severity of ill-treatment. The way care provided was random, intuitive and amateurish, not standardised as required by the Social Services Act (Act No. 108/2006 Sb.) and the social services quality standards.

The Defender also assessed the nutrition of the clients. Particularly the clients with reduced ability to communicate or bedridden clients were completely dependent on the care provided by the staff, which must include also a provision of nutrition. The provided foods were not adjusted to the needs of persons with dementia (they were not varied and nutritious enough and on certain occasions there was not even enough food). The Defender found that in neither of the visited facilities did the staff monitor the clients' weight, food and fluid intake (there was no reaction if clients were not finishing their foods or drinks), co-operate with a nutritional therapist, or pay attention to prevention of malnutrition, not even in malnourished persons or persons otherwise at risk of malnutrition.

Restriction of the freedom of movement of residents counted among the most serious shortcomings in all of the facilities visited. Most often the restriction meant that the clients were prevented from leaving the facility or their room. The Defender had reasons to suspect that some facilities also used sedative medication to restrict the clients' movement. Some of the clients were also restricted by the use of side rails on the beds and holding strips. In some of the facilities, selected clients were locked in their rooms for the night (this concerned particularly clients with mental illness manifesting through increased restlessness). The Defender notified the facilities that their acts may constitute the criminal offence of restriction of personal freedom.

The facilities processed personal and sensitive data of the residents without their consent. This included data contained in service provision contracts, documents gathered on the clients' health, (official) documents stored, records made, etc. A wide range of persons had access to the data (including sensitive medical data). Some of the facilities collected personal identity cards and insurance cards from their clients and did not ensure their safe storage.

In a majority of the facilities visited the clients handed over all their income to the facility. The "residential-type" facilities are not registered providers of residential social services, therefore they were theoretically not required to let their clients retain 15% of their income. In such cases the clients are fully financially dependent on the operator and they are practically unable to leave the facility on their own. In many of the facilities there was also chaos in the payments – the clients did not know the amount of their obligations.

An operator providing a social service without registration is guilty of the administrative offence of unauthorised provision of social services which should be penalised by the competent Regional Authorities (local governments). The Defender urged the Regional Authorities to actively prosecute such dangerous activities on their own initiative, using the suggestions from citizens, physicians and other administrative bodies. The Ministry of Labour and Social Affairs promised the Defender that it would issue an appropriate methodology for the Regional Authorities.

However, prevention is vital; therefore, the Defender summarizes her warnings and recommendations for family members of persons in need of residence social services, their carers and physicians and municipal authorities of municipalities with extended competence in her Summary Report from Residential Facilities Providing Care without Authorisation (http://www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom/facilities/unregistered-social-care-facilities/).

However, the solution to the problem of unregistered residential social services facilities and ill-treatment occurring in them does not lie in repression. Due to demographic trends, the demand for social services for the elderly and persons with dementia is expected to grow. In accordance with its commitments in the field of social rights, the State needs to support legal social services and seek to promote families and community services, so that persons dependent on care of others could remain in their natural social environments for as long as possible. At the same time, the State needs to support (also financially) the resolution of the situation of people who found residence in these facilities or are planning to do so in the near future.

1/7 Sobering-up Stations

In 2013 and 2014, the Public Defender of Rights performed a series of systematic visits to Sobering-up Stations. The inspection groups visited six out of the 18 functioning Sobering-up Stations in the Czech Republic. In 2014, only the last visit took place — the visit to the Sobering-up Station in Liberec, operated by the Regional Hospital in Liberec (Krajská nemocnice Liberec, a. s.).

The Defender monitored in particular the observance of statutory conditions for placing a person in a Sobering-up Station (restriction of freedom), ensuring the safety of the detained and the facility personnel, the staff operating the facility, and provisions for privacy and personal hygiene of the detained. During the visit, attention was paid especially to the use of restrictive measures. The findings from the visits were consulted with external experts in the fields of medicine and nursing.

One of the key issues in Sobering-up Stations is ensuring safety. Risks involve especially the inability of the personnel to react quickly to aggression on the part of the detained. This is mainly due to the insufficient

staffing of the facilities (insufficient number of staff, predominately female staff members) as well as insufficient material equipment (no signalling equipment or rooms for solitary confinement of aggressive individuals). **In a majority of the visited Sobering-up Stations, the Defender observed serious shortcomings in the use of restrictive measures** (unauthorised use of restrictive measures, insufficient supervision of persons subjected to restriction, order to use a restrictive measure given by an unauthorised person, excessive duration of restriction and insufficient documentation).

The Defender compared her findings with the opinions of experts and representatives of the visited facilities. The outputs of the visits and roundtable discussions were subsequently incorporated by the Defender in the **Summary Report on Systematic Visits to Sobering-up Stations** from June 2014. In the Summary Report, the Defender stated that a substantial part of the errors found is caused by insufficient legislation, including ambiguous legislation on the operation of Sobering-up Stations. She also sent her recommendations to the Ministry of Health.

2/ Procedure in Imposing Penalties

The sanctioning powers of the National Preventive Mechanism (notification of the superior authority or publication of details of the case) follow from Section 21a (4) in conjunction with Section 20 (2) of the Act on the Public Defender of Rights. The Defender uses these in cases when the given facility refuses to provide redress. The Defender may also request that "other authorities" take remedial measures. The Defender therefore gives instigations to initiate proceedings on administrative offences to administrative authorities and, exceptionally, files a criminal complaint. In 2014, the Defender did so in a total of 12 cases.

2/1 Residential Facilities without Authorisation to Provide Social Services

The Defender found ill-treatment in all of the seven facilities visited. She received statements responding to her reports from five of them. In 2014, the **public was informed about two cases** (Centrum komplexních služeb pro rodinu a domácnost in Kunštát na Moravě and Domov Petruška in Šestajovice u Prahy) in the form of a press release and a report from the visits published on the website of the Defender, because the facilities had not fulfilled her recommendations and continued to provide social services without authorisation. In the first facility, the ill-treatment had the form of unprofessionally provided care, insufficient foods and zero prevention of malnutrition, restriction of the free movement of clients and failure to respect the clients' privacy. The circumstances in the other facility were similar. Furthermore, the Defender identified hazardous handling of medication and neglect in ensuring the safety of the clients. Later the Defender informed the public about the situation in another four facilities (Penzion Jiřinka in Brno, Domov spokojeného stáří Luhačovice, Penzion pro seniory Atrium in Liberec and Domov na kopci in Červený Újezd) and in early 2015 the **Summary Report from Residential Facilities Providing Care without Authorisation was released**.

In all the facilities visited, the Defender urged the competent **Regional Authorities** to **initiate proceedings on the administrative offence** of unauthorised provision of social services. Two of the facilities had authorisation to provide field social services. However, these services were in reality provided in the form of residential services and the accommodated clients were ill-treated. The Defender therefore notified the competent **regional branch of the Labour Office**, which **inspects the provision of social services**.

In case of four facilities the Defender also addressed the competent prosecuting bodies to assess whether the severity of the ill-treatment found in them reached the level of a criminal offence (unauthorised business activity, restriction of personal freedom, in one case also bodily harm caused by negligence and failure to provide assistance).

2/2 Sociální a zdravotní centrum Letiny, s. r. o. (Social and Health-care Centre Letiny)

A systematic visit to Sociální a zdravotní centrum Letiny, s. r. o., in August 2013 revealed **severe ill-treatment of the clients** consisting in gross violation of fundamental human rights of the clients as well as violation of rights protected by the Social Services Act (Act No. 108/2006 Coll.).

The facility is a **private registered social services facility** providing the "special-regime home" type of service. The capacity of the facility is 260 beds. Another 30 beds fall under the registration "healthcare facility" (follow-up care beds). The clients are extremely vulnerable persons – persons with mental disabilities, persons with other disabilities, the elderly with dementia and persons suffering from other mental disorders.

The former Defender Pavel Varvařovský informed the Regional Authority of the Plzeň Region as the competent registration body, the regional branch of the Labour Office in Plzeň, which is authorised to inspect the provision of social services, and the Ministry of Labour and Social Affairs of the Czech Republic of his findings.

In 2014, a **second systematic visit** to this facility was carried out. A nutritional therapist and a medical professional qualified as psychiatric nurse participated in the visit. Again, the inspection group observed **ill-treatment**.

The clients' dignity was not respected. A number of clients with diapers were dressed only in upper body clothes (T-shirts, pyjamas coat), lacking trousers. Some of the clients were wearing dirty or torn clothes (torn sweatpants marked "Lázně Letiny" – Letiny Spa). The staff referred to the clients in an inappropriate manner (clients receiving minced food were referred to as "mincers") and treated them like children, frequently using inappropriate diminutives.

The underlying problem is the lack of qualification on the part of the personnel and an overall lack of workers. The workers can therefore provide only basic elements of care of a poor quality, they cannot provide individualised care or participate in activation of the clients, which severely impacts their quality of life. Most of the clients are apathetic, left to spend their days passively.

The staff does not deal with the risk of malnutrition. The nutritional therapist concluded on site that some of the clients were already malnourished or at risk of malnutrition. Regular drinks were not provided. Fluid intake was not monitored, clients did not have drinks available in their rooms, only in the facility canteen. The nutritional therapist assessed seven weekly menus, which were continuously repeated. She considered the foods unsuitable and without regard for the individual nutritional needs of the clients. Thus, in order for all clients (including diabetics) to be able to eat the same foods, all foods contain solely artificial sweeteners; also the sweet foods bought (jams, preserved fruits) were all intended for diabetics. However, overuse of artificial sweeteners may cause health problems and they are completely unsuitable for persons with dementia and malnourished persons. For clients who needed their food minced, all components of their meals were minced together.

All clients' cabinets with all their belongings were locked. The lock was often placed unsuitably and the client could not reach it. Some of the clients did not even have keys. Those who had lost it could only access their belongings once per week during cleaning. Persons with dementia incapable of handling the key themselves had their keys hung on the neck on a string of bandage, which was undignified.

The facilities did not tend to the safety of the clients – they did not deal with the risk of falls, they did not assessed their causes or seek precautionary measures. Rooms in the whole facility lacked functioning signalling equipment, which prevented the clients from calling in help.

3/ Special Prevention Topics 2014

3/1 Dementia

Many clients of the social services facilities visited by the Public Defender of Rights in 2013 and 2014 suffer from the dementia syndrome. These clients require special care. Without it, their dignity is encroached on and they are generally ill-treated. Systematic visits have shown that awareness of special needs of persons with dementia is low even among the personnel in specialised facilities. Therefore, the Defender focused in 2014 on **securing the rights of persons suffering from dementia in residential care facilities**.

The series of fifteen systematic visits to retirement homes and special regime homes conducted in 2013 was followed by a roundtable discussion for the representatives of the facilities visited. With the standards of care of persons with dementia in hand, the Defender wanted to hear the opinions of experts to learn more about the pitfalls and problems of their everyday practice. The Defender therefore invited the representatives of the facilities visited, as well as experts from the Czech Alzheimer Society, Czech Association of Nurses and other experts to the discussion. The findings from the discussion were used by the Defender in the **Summary Report on Visits to Retirement Homes and Special Regime Homes**. The lawyers of the Office of the Public Defender of Rights together with the invited experts also provide all-day **training workshops for the personnel of social services facilities**. Two of these workshops have already taken place in 2014.

Within evaluation of the visits to retirement homes and special regime homes, an **analysis** was carried out of medication cards, i.e. aids for the staff used when preparing and administering medication, which include a list of medication and its doses for the individual clients. The Defender asked a clinical pharmacist to process 300 anonymised medication cards of clients of the facilities visited, who were indisputably suffering from a certain degree of dementia. Amongst other findings, the pharmacologist established that only 20% of the clients from the sample received painkillers, even though, according to general research, 40 – 80% of residents in long-term care facilities suffer from pain.

In February 2014, the Defender hosted a two-day international conference on **protection of rights of elderly people in institutions, with an emphasis on people suffering from dementia.** The papers of the conference participants are summarised in the eponymous **collection of papers** *(http://spolecne.ochrance.cz/fileadmin/user_upload/projekt_ESF/Seniorska_konference/sbornik_EN.pdf).*

3/2 Penalisation of Ill-treatment in Social Services

Findings from visits to four retirement homes and special regime homes gave rise to a suspicion that the relevant facilities infringed the clients' rights in a manner that could represent an administrative offence. In particular, these cases concerned **misuse of sedatives as a measure restricting the freedom of the client's movement** (at variance with the statutory conditions). The former Defender Pavel Varvařovský submitted the evidence secured to the competent branches of the Labour Office of the Czech Republic authorised to inspect provision of social services, which were also competent to hold proceedings on the administrative offence. In two cases, the administrative authority has already decided that administrative offences occurred and imposed fines on the relevant facilities.

Regional branches of the Labour Office of the Czech Republic **do not always adopt a uniform approach when investigating administrative offences** consisting in violation of the rights of clients of social services facilities, which may lead to inefficiency of the entire proceedings on administrative offences and of the entire process. The reasons for this may include disunited interpretation of legal regulations and missing methodological guidance.

The Public Defender therefore hosted a **round table with social service inspectors** in October 2014 in co-operation with the Ministry of Labour and Social Affairs. The aim was to discuss the procedures and practices of the inspection authorities (regional branches of the Labour Office of the Czech Republic) in ascertaining and prosecuting infringements in the fundamental rights of clients of residential social services facilities. It emerged that **efficiency of the procedure may be hindered by insufficient powers on the part of the**

inspectors, in particular with respect to perusal of medical records when investigating unlawful restriction of the clients' movement by administration of sedatives.

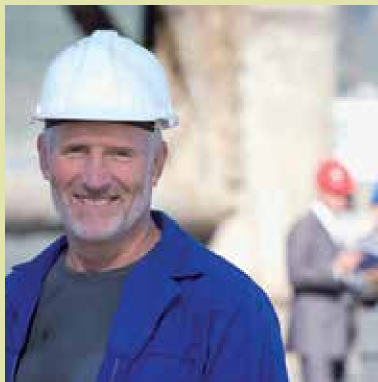
The Defender has already used the described findings within the comment procedure concerning an amendment to health-care regulations.

3/3 Criminal Penalties for Ill-treatment

The Defender repeatedly provided information about cases of ill-treatment found at places where persons are, or can be, restricted in their freedom. The Defender also wishes to engage other experts and the academia in the discussion of disputed legal questions on penalisation of ill-treatment. She therefore organised an informal meeting to discuss the following issues: What response is appropriate when the intensity of ill-treatment amounts to degrading treatment? Does the Czech legislation offer any means of penalisation that would satisfy the requirements of the Convention against Torture the European Convention for the Protection of Human Rights and Fundamental Freedoms?

In 2014, the Defender referred to the prosecuting bodies four cases of ill-treatment observed in residential facilities for the elderly which provided care without proper authorisation. The Defender suggested that the conduct in question could amount to crimes of restriction of personal freedom, bodily harm, failure to provide assistance and exceeding trade licence. **However, it does not seem that the existing legislation is able to effectively deal with the existing conditions which enable ill-treatment** (liability of operators, managers and legal entities) and unintentional ill-treatment without causing harm to health (degrading treatment), **due to lack of legislation on criminal liability of legal entities for offences occurring in the above-mentioned facilities.**

The discussion, to which the Defender invited prominent Czech experts in criminal law and international protection of human rights, related in particular to the interpretation and application of Section 149 of the Criminal Code (Act No. 40/2009 Coll.), which includes a legal definition of the **criminal offence of torture and other inhuman and cruel treatment**. Even though voices are heard that this provision reflects the international commitments of the Czech Republic and the Commentary inspires interpretations inclined to penalise even degrading treatment as a criminal offence under Section 149 of the Criminal Code, **the prosecuting bodies do not in reality use this interpretation, which gives rise to scepticism as to whether we in fact have an effective instrument in criminal law to penalise ill-treatment**. The general perception of the concept of "torture", as well as the twenty-year experience with the failure to apply the merits of this crime in practice, led a majority of participants to conclude that an amendment is indeed required. The Defender considers it important to increase social sensitivity to ill-treatment, since application of criminal law is always related to the perception of the given phenomena in the society. The Defender also recommends focusing on **punishment of ill-treatment under the regime of administrative penalisation**.



5 The Defender and Discrimination

The Defender's activities in the area of equal treatment and protection against discrimination in 2014 were characterised by thorough tackling of discrimination cases and intensive educational activities. Multiple cases were submitted by victims of discrimination to courts after they had been supported by the Defender's legal opinion (see part 2). Even though the courts are yet to decide, this already is a positive change (in the past, victims of discrimination often did not defend themselves).

The intensive educational activities provided by the Defender and her expert staff resulted in a close co-operation in the form of consultations, sharing of information and even participation of authorised employees of the Office of the Public Defender of Rights in inspections carried out by the competent bodies. Thanks to a closer co-operation with NGOs, the Defender received interesting insight from potential discrimination victims, who were in close contact with NGOs. The Defender's educational activities also cover the private sector, for which the issue of diversity and equal treatment represents an important social topic.

However, from the perspective of the society as a whole, the developments are only tentative. People are still little aware of equal treatment issues and they fear that they could be further harmed if their case was heard in court. Further barriers to enforcing anti-discrimination law traditionally include lack of proof, inaccessibility of good legal advice, length of proceedings and the amount of the judicial fee for filing an anti-discrimination action. These issues must be addressed from the point of view of the entire system at the level of the legislature and by the executive branch. It is also important to raise awareness in entities on which the anti-discrimination law imposes duties (employers, providers of services and education).

Free legal aid to discrimination victims

A case of a pregnant lady to whom a spa refused to provide services due to her medical condition was settled out of court. The spa management changed its mind after the case was taken up an attorney, who was contacted through the Pro bono aliance organisation and who entered into a memorandum of co-operation with the former Defender Pavel Varvařovský in 2012. The complainant accepted an apology and compensation for the expenses made in connection with transportation to, and accommodation in, the spa.

Pro bono aliance provided free legal aid to another two needy discrimination victims in 2014. The cases concerned housing and education. In the first case, the reason for unequal treatment was ethnicity; in the other case, it was religion.

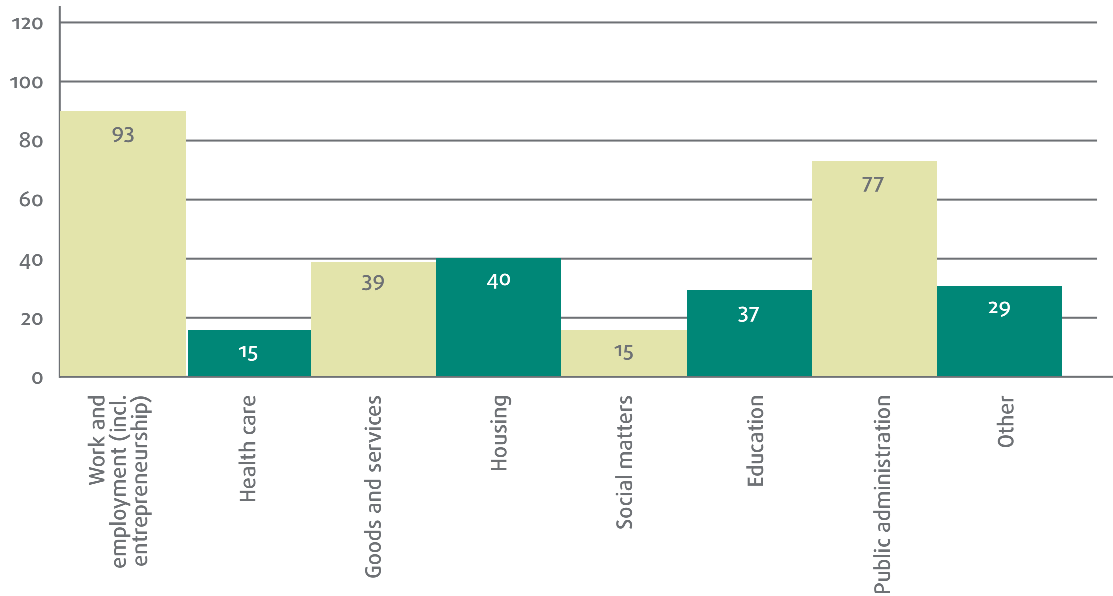
1/ Statistics

1/1 Statistical Data for 2014

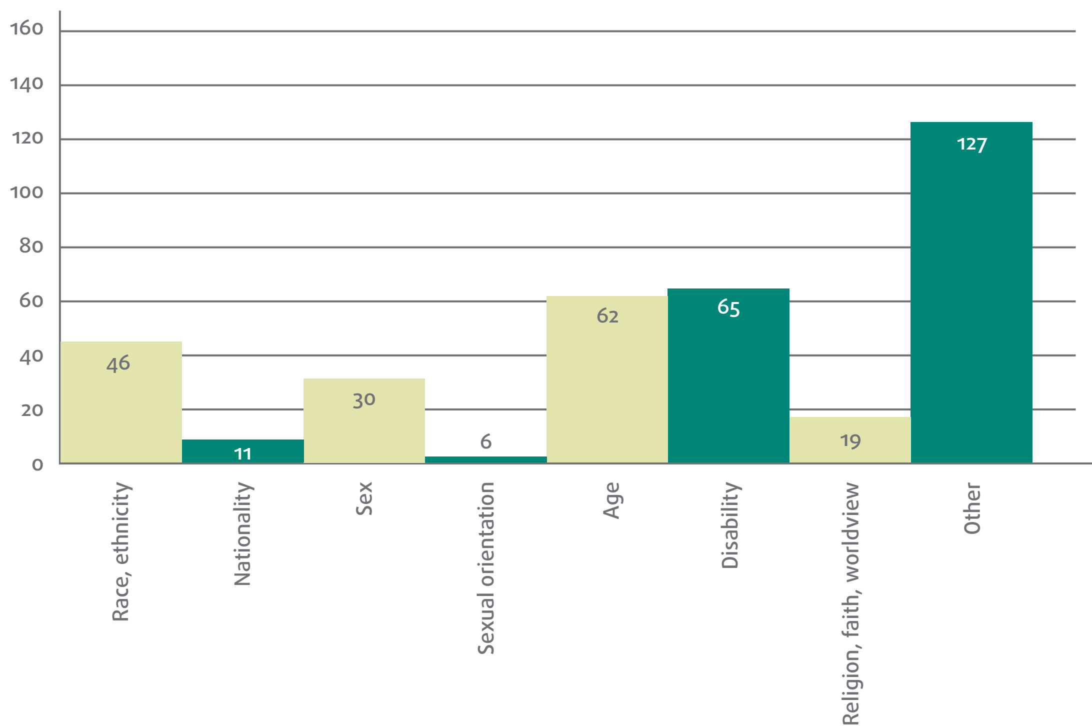
In 2014, the Defender received **332 complaints** concerning unequal treatment. **The Defender** addressed 398 complaints concerning discrimination. **She found that discrimination indeed occurred in seventeen cases** (some of the complaints were delivered in 2012 and 2013). Ten of the cases involved direct discrimination, four concerned indirect discrimination; one case concerned both direct and indirect discrimination; one case concerned harassment and the last one sexual harassment. In thirteen cases, it was impossible to prove discrimination due to a lack of evidence. In the other cases, the Defender provided the complainants with an analysis of the relevant issues and advice on how to protect their rights, should they choose to do so. It follows from the chart below

that **most** complaints in 2014 concerned discrimination in **work and employment** (a total of 93 complaints) and in **public administration** (a total of 77 complaints).

Complaints according to areas of discrimination



Grounds of discrimination



The Defender also found that people often believe that discrimination means any kind of unequal treatment or subjective perception of injustice. In those cases, the Defender explains to the complainants the legal meaning of the term "discrimination" and the available means of protection against it.

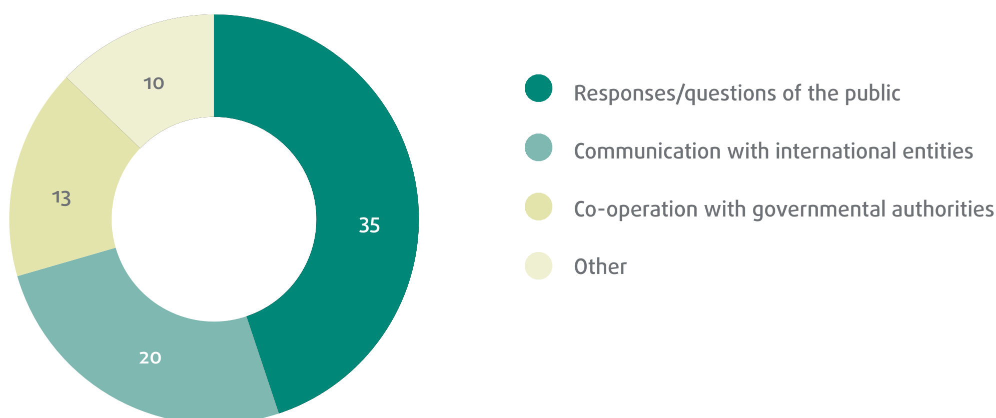
It follows from the chart that, in 2014, people complained about discrimination on grounds that **were not included** in the Anti-Discrimination Act (Act No. 198/2009 Coll.). The Defender pools these reasons in the category **"Other"** (127). However, the number of these complaints decreased as compared to 2013. As regards the **traditional** discrimination grounds, those most frequently invoked included **disability (65), age (62) and race and ethnicity (46)**. A decrease was seen in discrimination on the grounds of gender (30) and a slight increase occurred in complaints based on religion and worldview (19).

The Defender also noted the occurrence of multiple discrimination (unequal treatment resulting from several discrimination grounds simultaneously). In 2014, she received a total of 27 such complaints; these mostly concerned a combination of age and disability (9 cases).

1/2 Other Activities of the Defender in the Area of Equal Treatment

In addition to methodological assistance to discrimination victims, the tasks entrusted to the Defender by law include **issuing recommendations** concerning issues related to discrimination, **conducting surveys** and communicating with various entities dealing with the issue of discrimination on both the national and international level. In 2014, the Defender most frequently responded to questions of international entities (35) and the Czech public (20) in connection with publicised cases. She also provided co-operation to governmental authorities that approached her with a request for an opinion (13). The category "Other" pools recommendations, research and co-operation with NGOs and the private sector (10).

Other activities of the Defender in the area of equal treatment



1/3 Developments from 2010 to 2014

In December 2014, the Public Defender of Rights marked a 5-year anniversary of becoming the national equality body. The Defender used this opportunity to submit a year-by-year comparison of the number of complaints in the area of equal treatment and protection against discrimination. As can be seen from the table, **the number of complaints is on the rise**. The slight decrease in 2014 can be explained by a change in the manner of recording documents – the queries from national and international entities and the public have been recorded separately since 2014 (see Chapter 1/2 "The Defender in the Area of Equal Treatment" above). **The share of cases where discrimination has been found consistently reaches approximately 10%.** The data for 2013 and 2014 is not complete in this respect, because over a hundred complaints have not been resolved yet.

For reasons of completeness, it should be added that the table shows the total number of complaints and the number of complaints where discrimination was found according to the years when the respective complaints were delivered to the Defender, not the years when the Defender concluded that discrimination had occurred. Therefore, the number of complaints where discrimination was found differs in Chapter 1/1 (see above) and in the data for 2014 in the table below.

Development from 2010 to 2014 (* incomplete data – unresolved cases)

	2009 and 2010	2011	2012	2013	2014
Number of complaints received	178	263	250	368	332
Number of complaints where discrimination was found	18	22	31	12*	6*
Share of complaints where discrimination was found	10 %	8 %	12 %	3 %*	2 %*

It becomes clear that, in the last five years, people **most frequently complained about discrimination in work and employment**. Each year, complaints in this category are the most numerous (approx. **every third** complaint falls into this category). The year 2013 is the only exception; in that year, the Defender received numerous complaints concerning the abolition of the tax allowances for taxpayers receiving old-age pension. This caused a significant increase in the number of complaints in the area of public administration. The number of complaints in the area of public administration has been growing steadily. A relatively large share of complaints **regularly** concerns the areas of **housing** and goods and services (averaging 13 % of complaints in each of the categories).

The most frequently invoked discrimination grounds fall under the "Other" category (averaging up to a third of the complaints received). The share of these complaints remains steady, which shows that despite the five years of the Defender's activities in the area of equal treatment, **the public still considers discrimination as any unequal treatment or subjective perception of injustice**, regardless of the grounds. As regards traditional discrimination grounds, the complainants most frequently invoked discrimination on the grounds of **age and disability** (in both cases averaging 15 % of the complaints received each year). It can also be said that the share of complaints concerning discrimination on the grounds of race and ethnicity has been falling. In the beginning of the analysed period, these complaints made up almost a third of the complaints; in recent years, they only averaged 13 % of the complaints received. Only a part of these complains are actually lodged by members of ethnic minorities; a considerable share of the complaints consists of complaints lodged by members of the majority population against affirmative action concerning various minority groups. There was a slight increase in the share of complaints where the complainants invoked discrimination on the grounds of religion, faith and worldview (rising from 1 % to current 5 %).

2/ Selected Complaints and Commentaries

2/1 Work and Employment

A significant part of the Defender's agenda in the area of equal treatment involves **complaints concerning discrimination in the area of labour law and employment**. This topic is sensitive since discrimination can affect the victim's means of obtaining a livelihood. Thus, many discrimination victims face the dilemma of whether to tolerate being subjected to unequal treatment or defend themselves against it (by submitting a complaint to the Defender or the Labour Inspectorate). Therefore, in 2014 the Defender devoted special attention not only to the acts of employers, but also the approach adopted by the Labour Inspectorate, which addresses the right to equal treatment within its labour-law agenda.

Access to employment

Similarly to the previous years, people continue to encounter discrimination on various grounds prior to being hired. The most frequently claimed ground of discrimination is **age**. As in the past, discriminatory conduct is preceded by queries concerning information that is not immediately connected to the work performed. By acting in this manner, the employers also breach the Labour Code (Act No. 262/2006 Coll.). Some employers use recruitment agencies to select employees according to certain criteria. In doing so, they technically do not breach the statutory duty not to request certain information; however, this does not affect their duty to avoid discrimination.

Complaint – file No.: 77/2012/DIS/ZO

From the viewpoint of the Anti-Discrimination Act, the activities of a recruitment agency or employment agency which offers job seekers placement services should be regarded as falling within the area of access to employment and occupation (Section 1 (1)(a) and (b) of the Anti-Discrimination Act and Framework Directive 2000/78/EC.

If an agency fails to include a job seeker in its database because the job seeker refuses to provide information about his/her age, this constitutes discrimination on grounds of presumed age (Section 2 (5) of the Anti-Discrimination Act).

If an agency pre-selects job seekers using the age criterion and fails to invite a job seeker to the selection procedure or interview with a potential employer on this ground, such conduct amounts to direct discrimination on grounds of age in access to employment and occupation.

If an agency is forced to select job seekers by age, being asked to do so by a potential employer, the employer is guilty of discrimination in the form of abetting (Section 4 (5) of the Anti-Discrimination Act).

The complainant was attracted by an advertisement published on the internet, providing information about a selection procedure for the position of an HR officer, for which the complainant was qualified. Therefore, she sent her CV to the agency, without indicating her age. An employee of the agency subsequently asked her to supplement the information about her age. The complainant found the conduct of the agency discriminatory and she therefore approached the Defender.

During the inquiry, the agency insisted that it had included the complainant (her CV) in its database of job seekers. However, the documents presented showed that the curriculum vitae had been included in the database with a fictitious age because the electronic database apparently did not make it possible to enter a new record without filling in the age. The complainant was 38 years old according to the record, while in fact she was 57. The agency had not been able to ascertain or verify this fact because the communication between the complainant and the agency had ended soon after the initial e-mail communication. The complainant was not invited to the selection procedure for the position she had applied for and for any later vacancy. She ultimately found a new employment on her own.

After considering all the circumstances of the case, the Defender concluded that discrimination could not be proven in this particular case.

Termination of employment

Discrimination can lead to termination of employment even though the Labour Code provides employees with significant protection, for example by stipulating appropriate reasons of termination. However, an employee can sometimes be dismissed or demoted without the reason being stated (e.g. during the trial period). The employer may also remove an appointed senior employee for any reason (without stating a reason). However, the employer may not discriminate against the employee in any case.

In 2014, the Defender encountered several cases of termination of employment on the grounds of **age**. She also addressed a case of a senior employee removed from her office just two days before the commencement of her **maternity leave**. In that case, the victim also lodged an anti-discrimination action.

Complaint – file No.: 1594/2014/VOP/ZO

If a senior employee can be removed in the sense of Section 73 of the Labour Code, the employer can generally do so at any time, for any reason and even without giving a reason. However, even in such a situation, the employer is bound by the duty of non-discrimination and, therefore, it cannot remove an employee on discriminatory grounds.

The removal of the senior employee from her office due to her motherhood or pregnancy amounts to direct discrimination. The loss of the opportunity to return to the complainant's original post after her maternity leave (guaranteed by the Labour Code) represents a form of secondary less favourable treatment in the sense of Section 2 (3) of the Anti-Discrimination Act.

The complainant stated that the employer had removed her from the senior office shortly before the commencement of her maternity leave. She considered this to be discriminatory and protested against the employer's conduct in writing. The employer responded by referring to Section 73 of the Labour Code and claiming that she could be removed from such a position without being given a reason.

The Defender agreed with the conclusion that if a senior employee could be removed in the sense of Section 73 of the Labour Code, the employer could generally do so at any time, for any reason and even without giving a reason. However, she emphasised that, even in such a situation, the employer was bound by the duty of non-discrimination and could therefore not remove the employee on discriminatory grounds (for example on grounds of maternity). In this conclusion, the Defender relied inter alia on the case-law of the Supreme Court, which had opined analogously on termination of employment during the trial period. The Defender also stated that a mere removal from office would not be the only unfavourable treatment if discrimination was found. The complainant would also not be able to return to her original job after her maternity leave despite the fact that this was guaranteed by Section 43 of the Labour Code; instead, she would have to accept the offer of some other (lower) position (generally corresponding to her qualification and employment contract), and her employment could even be terminated on the grounds of redundancy (if she refused that offer).

In assessing whether discrimination had occurred, the Defender referred, on a subsidiary basis, to Section 133a of the Code of Civil Procedure (Act No. 99/1963 Coll.), which lays down the concept of "shared onus of proof". Considering that the complainant had been removed from office only two days before the commencement of her maternity leave, unfavourable treatment was obvious prima facie. Therefore, the Defender was of the opinion that the complainant would be able to bear her onus of proof in potential litigation and it would be up to the employer to prove other (non-discriminatory) grounds for her removal. Thus, the Defender asked the employer to provide a statement to ascertain its motivation. The employer's official explanation was proper operation of the department.

Since the employer did not provide any other reason for the removal, and did not further specify the proper operation of the department, the Defender concluded that the actual reason consisted, beyond any reasonable doubt, in the complainant's pregnancy and the employer was guilty of direct discrimination in the sense of Section 2 (3) of the Anti-Discrimination Act. The complainant brought the case to the courts, lodging an anti-discrimination action. The court is yet to decide on the action.

Discrimination in remuneration

People who claimed discrimination in remuneration most frequently referred to discrimination on the grounds of **age, gender and disability**. As regards people with disabilities, the Defender addressed a special form of discrimination in remuneration. This was because she had received a significant number of complaints from persons receiving disability pensions who had claimed to receive smaller salaries than other employees, allegedly on the basis of Section 4 of Government Regulation on minimum salary (No. 567/2006 Coll.), which stipulates a smaller minimum salary and lower level of guaranteed salary in case of the employee's limited ability to perform working tasks. However, the Defender strongly emphasised the duty to comply with the principle of "equal

salary for work of equal value", which follows from Art. 28 in conjunction with Art. 3 (1) of the Charter of Fundamental Rights and Freedoms, which is also expressly stipulated in Section 110 of the Labour Code. **Therefore, an employee with a disability may not receive a smaller salary than other employees provided that his/her disability does not affect his/her performance.**

Harassment at the workplace

In 2014, the Defender received a number of complaints concerning bullying in the workplace. If bullying is motivated by discriminatory grounds, then it also amounts to harassment (or sexual harassment) and, thus, to discrimination in the sense of the Anti-Discrimination Act. The Defender paid close attention to this topic, because harassment at the workplace has a very negative impact on the victims of discrimination and, at the same time, it is usually hard to prove.

Complaint – file No.: 231/2012/DIS/VP

Discrimination in the form of harassment (Section 4 (1) of the Anti-Discrimination Act) occurs where the relevant conduct reaches certain intensity. If discrimination consists of several acts which in their sum create a hostile working environment, it is necessary to assess all the acts not just in isolation, but also their overall impact. Harassment occurs if the acts that can be proven reach the decisive intensity either individually or in their sum (if there is a cause-and-effect relationship between them).

The complainant claimed unfavourable treatment by his boss, which was allegedly motivated by the complainant's parenthood. This assumption was inferred from the conduct of the boss, who allegedly banned the complainant from taking a leave of absence to take care of his pre-school child, because the boss believed that only women should take care of children. The complainant requested a leave of absence repeatedly and, ultimately, it was always granted to him.

The complainant claimed that he fell out of favour for this reason and the boss would take vengeance against him. According to the complainant, the unfavourable treatment consisted, inter alia, in imposition of an excessive number of night shifts, difficult tasks and lower remuneration as compared to the complainant's colleagues, and initiation of disciplinary proceedings, which the complainant alleged had been fabricated and which had been stopped after two days. As a result of the pressure exerted by the boss, the complainant ultimately handed in his notice.

The Defender focused on the individual claimed acts. In order to be able to state that bullying in the form of harassment occurred beyond any reasonable doubt, it is necessary to prove improper conduct in several (or all) of the claimed acts. If unfavourable conduct consisted of just one of the claimed acts, it would probably not amount to harassment in the sense of the Anti-Discrimination Act, because the requirement of systematic bullying would not have been met. Therefore, a statement on the complainant's discrimination was made conditional on proving several of the acts claimed by the complainant; otherwise an act that in itself amounts to harassment in the sense of the Anti-Discrimination Act due to its severity would have to be proven.

According to the Defender's conclusions, the treatment of the complainant did not deviate from normal treatment of the monitored group (in comparison to specific persons). Therefore, even if the complainant may have subjectively perceived less favourable treatment by the employer, it was impossible to prove any connection between the employer's conduct and the discrimination grounds asserted.

Sexual harassment

The Defender also encountered a case of discrimination in the form of proven and acknowledged sexual harassment. However, she had to address the justification of a public-law penalty (a fine) in a case where the employer had already remedied the situation.

Complaint – file No.: 250/2012/DIS/EN

If an employee who has engaged in discrimination in the form of sexual harassment terminates, acting as the employer's governing body, the employment contract with the victim of the sexual harassment by notice during the trial period, the employer is guilty of discrimination in the form of victimisation through its governing body.

If the employer who is guilty of discrimination remedies the situation, the competent governmental authority must consider in each case whether initiating proceedings on an administrative offence or imposing a fine for an administrative offence complies with the principle of subsidiarity of criminal repression. The governmental authority must duly justify the measures in accordance with the principles of good governance.

With her complaint lodged with the Defender, the complainant pointed out the failure of the labour inspection bodies in assessment of discrimination on the grounds of gender in the form of sexual harassment. The complainant had submitted a complaint to the regional Labour Inspectorate, where she had claimed, on the side, that she had been a victim of sexual harassment in 2011, committed by her superior, who had also held an office in her employer's governing body. The sexual harassment consisted in the director's suggested interest in the complainant, which escalated into open sexual advances. The complainant rejected the advances and, consequently, the director terminated the complainant's employment contract by notice during her trial period in May 2011.

The employee who had committed the sexual harassment ensured remedy – he re-hired the complainant and he apologised to her both in person and in writing and offered her financial compensation. Subsequently, this employee was dismissed (for some other reason). The complainant did not accept the financial compensation and contacted the Labour Inspectorate. She applied for a public-law penalty (a fine) to be imposed on the employer. The complainant proved the sexual harassment to the Labour Inspectorate with a copy of the written apology, where the director admitted that he had terminated her employment contract during the trial period because she had refused his sexual advances.

The Defender stated that if an employer who commits discrimination remedies the situation, the competent governmental authority must consider in each case whether initiating proceedings on an administrative offence or imposing a fine for an administrative offence complies with the principle of subsidiarity of criminal repression. According to the Defender, initiation of administrative proceedings in the above case would be at variance with this principle.

2/2 Goods and Services

In the area of goods and services, the Defender addressed a wide range of complaints in 2014. People contacted her, for example, because they had not been provided financial services (for reasons of age) and because they opposed different prices of services. Therefore, the Defender recommended in some cases that the complainants also contact governmental authorities supervising consumer protection (e.g. the Czech Trade Inspectorate, the Czech National Bank), whose activities are subsequently examined by the Defender.

Case – file No.: 74/2013/DIS/VP

A service provider may limit the provision of services to a target group of customers. However, the target group may not be defined by any of the grounds protected under the Anti-Discrimination Act, e.g. age. It is therefore legitimate if a bank offers a credit card to non-entrepreneurs only, because it pursues its business strategy and thus exercises freedom of contract. If a bank decides not to issue a credit card in view of the (entrepreneurial) nature of the applicant's transactions, this does not amount to discrimination, because this criterion does not depend on age.

The complainant had a bank account with a bank since 2008. In May 2008, his wife too opened an account with the same bank and, after some time, she received a credit card from the bank. Therefore, the complainant also applied for a card, but the bank rejected the application without stating any reason. Since the complainant was almost 80 years of age at the time of lodging the application, he believed that he had not been issued the card on the grounds of his age.

Through an inquiry, the Defender found out that the bank was offering the relevant credit card on its own initiative based on its own pre-selection (offers were generated based on pre-determined criteria); therefore, the bank automatically rejected all applications of clients for issuance of the credit card that had not been made in response to the bank's offer. The first criterion for selection of suitable clients for issuance of the credit card was that the relevant person had to be the bank's client for at least six months. Second, the bank assessed especially the turnovers on the account, the type, intensity and number of transactions in the accounts and the client's history of loans. The bank did not offer the complainant the credit card because of the nature and number of transactions in his accounts. This was because the bank only provided loan products with personal accounts, i.e. to clients whose income did not originate from entrepreneurial activities. Since the bank concluded that the complainant's transactions are of an entrepreneurial nature, it did not offer to issue him a credit card.

According to the Defender's opinion, the bank did not violate the right to equal treatment since it acted based on a criterion independent of age. This means that if a bank refuses to provide a service to a client who does not meet certain rational conditions stipulated by the bank, this does not amount to discrimination.

2/3 Education

Reasonable measures for pupils with disabilities

The Defender is most frequently approached by parents of children with disabilities who are not satisfied with the degree of support received by their child from the school or the Government in provision of pre-school or elementary education.

Education is a service of general interest and schools are obliged to provide children with disabilities with conditions that will allow them to exercise their right to education on an equal basis with other (healthy) children. If a school fails to adopt the relevant measures, it can be guilty of indirect discrimination under Section 3 (2) of the Anti-Discrimination Act.

The Defender agrees that a potential failure in the education of a student with a disability cannot be blamed on the school alone without any further considerations. When considering indirect discrimination on the grounds of disability, it is necessary to consider the specific procedures of the school in using supportive and compensatory measures (especially with respect to their timeliness and efficiency), on the one hand, and the overall approach to the studies and co-operation on the part of the specific student or his/her legal representatives, as applicable, on the other hand.

As a specific example of a reasonable measure (Section 3 (3) of the Anti-Discrimination Act), the Defender lists administration of **insulin to a child suffering from diabetes by a teacher** or **modification of the child's meals**. If the school does not accommodate the child, it cannot educate him/her, or the child's education will be associated with great difficulties.

Last year, the Defender again received complaints concerning the **lack of learning support assistants** for children with disabilities and/or disadvantages (as another form of a reasonable measure). In an overwhelming majority of inquiries, **the Defender found indirect discrimination of the child** in cases where a school counselling facility believed that the presence of a learning support assistant should be more frequent than ensured by the school (due to a lack of funds). The Defender again encountered cases where parents paid for the assistant's work on their own. The (lack of) learning support assistants in after-school groups represents a specific case (**direct discrimination).**

Case – file No.: 49/2013/DIS/ZO

The prohibition of discrimination in access to and provision of education under the Anti-Discrimination Act and the schools regulations also applies to after-school groups. An after-school group is an integral part of an elementary school where recreational learning takes place pursuant to Section 111 (1) of the Schools Act (Act No. 561/2004 Coll.).

A school may be guilty of direct discrimination on grounds of disability if it fails to enable a pupil with an autism spectrum disorder or with a behavioural disorder diagnosed as disability and requiring the care of a learning support assistant to fully participate in recreational learning in an after-school group on a daily basis to the same extent as children without disabilities. Unfavourable treatment cannot be justified by concerns that the school will not be able to handle the education process merely because of the absence of a learning support assistant in the after-school group.

The complainant's son started his compulsory education in 2011. He was exceptionally gifted and of above-average intelligence (IQ 130), but he also suffered from an autism spectrum disorder. The parents needed the son to attend an after-school group, because they were both employed. Moreover, the family lived far from the school.

The school did not enable her son to attend the after-school group with the explanation that this was impossible without the presence of a learning support assistant for the sake of the children's safety (the schools counselling facility had recommended a learning support assistant for the complainant's son only for 10 lessons per week and only for teaching purposes). The school management amended the internal rules of the after-school group to the effect that, from that point in time, students diagnosed with behavioural disorders and students who needed a learning support assistant could not be admitted to the after-school group at the elementary school. After unsuccessful negotiations with the school's representatives, the complainant had no choice but to de-register her son from the after-school group and search for a new school.

After making an inquiry into the case, the Defender concluded that the adoption of a general rule that students who need a learning support assistant or students diagnosed with a behavioural disorder would not be admitted to an after-school group represented direct discrimination on the grounds of disability. In the case concerned, the fact that the child was prevented from participating in recreational learning in the after-school group in the afternoon also had a very adverse impact on the complainant's professional life. Ultimately, she lost her job due to the difficulties in arranging care for her son. The complainant intends to assert her rights in court.

Religious symbols in education

For the first time since the adoption of the Anti-Discrimination Act, the Defender was confronted with the issue of religious symbols in education. Even though **dozens of decisions** (judicial and administrative) have been made on this issue abroad, **it has not been tackled by courts and administrative bodies** in the Czech Republic so far. However, the media coverage of the relevant single case showed that **the general public is very sensitive towards this issue** and shows considerable prejudice towards religious minorities. The Defender is well aware that, even in a democratic society, religious freedom has its limits but, at the same time, she notes that it is always necessary to assess each case **individually** in compliance with **the principles of reasonableness, necessity and proportionality**. The court to which a discrimination victim turns with an anti-discrimination action always has the last say.

Complaint – file No.: 173/2013/DIS/EN

Czech legislation does not contain any statutory limitation of use of religious symbols in the education system and in the public sphere in general. These issues are regulated in general terms by the Anti-Discrimination Act which permits difference in treatment on the grounds of religious belief and faith in Section 7 provided that it is justified by a legitimate aim and the means of its achievement are appropriate and necessary. Where the condition of legitimate aim is not satisfied, the headmaster of a school cannot limit the use of religious symbols through school regulations. Nor can (s)he decide whether or not a religious symbol can be permitted because (s)he lacks the statutory authorisation to do so.

A provision of school regulations which bans any head-dress including the Muslim headscarf, hijab, during theoretical education at a secondary medical school, constitutes indirect discrimination on the grounds of religion (Section 3 (1) of the Anti-Discrimination Act). Such a measure cannot be justified by the requirement for maintaining good manners because observance of social standards is not a legitimate objective in the sense

of Art. 9 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms and Art. 16 (4) of the Charter of Fundamental Rights and Freedoms.

A general ban on head-dress is also not adequate and necessary in case of physical education and training in vocational skills, where the protection of the students' safety and health is a legitimate goal, because an alternative solution can be adopted (e.g. in the form of Muslim headscarves intended for sports).

If personal protective equipment must be used in a specific task in compliance with Decree of the Ministry of Health No. 306/2012 Coll. (usually in connection with infectious diseases found in in-patient wards), it is necessary for the employees to cover their heads with a cap. Therefore, the wearing of a Muslim headscarf may be limited in those cases, because personal protective equipment is an adequate and necessary means of protection of health in those cases.

An asylum-holder from Somalia began to study a secondary medical school in the "Nurse" programme. However, the school regulations banned any head-dress. The complainant withdrew from the studies because she is a Muslim and wears "hijab", i.e. a headscarf covering the hair and the neck, but not the face. She argued that the general rule banning any head-dress was indirectly discriminatory; it placed her at a disadvantage in comparison with others because the wearing of the Muslim headscarf is a manifestation of her religious belief in relation to other people. The complainant lodged a complaint with the Czech School Inspectorate, which found it unjustified in terms of violation of the principle of equal opportunities.

The Defender reached the conclusion that the school had indirectly discriminated against the complainant when it had banned her, on the basis of a neutrally formulated provision of the school regulations, from wearing a Muslim headscarf which is a manifestation of her religious belief in relation to other people. The school management justified its actions by the requirement for maintaining good manners; this, however, is not a legitimate goal in the sense of Art. 9 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (published under No. 209/1992 Coll.) and Art. 16 (4) of the Charter of Fundamental Rights and Freedoms. Furthermore, the Defender stated that the Czech Schools Inspectorate had failed to make sufficient findings of facts and it had assessed incorrectly the general obligation not to wear any head-dress in the school premises, which resulted in indirect discrimination of the complainant. It follows from the documents in the file that the headmistress of the school invited the complainant to put aside the Muslim headscarf and the complainant responded by signing a notification of withdrawal from her studies. The Czech Schools Inspectorate incorrectly concluded the investigation stating that the headmistress had not breached the principle of equal treatment. The Defender recommended that the Head Office of the Czech Schools Inspectorate take her assessment of the case into account when dealing with the complainant's complaint lodged in the sense of Section 175 (7) of the Code of Administrative Procedure.

The Head Office of the Czech Schools Inspectorate later agreed with the conclusions of the Defender and found the complainant's complaint justified. The Head Office of the Czech Schools Inspectorate sent this conclusion together with a draft amendment to the school regulations to the headmistress of the medical school and the founder of the school for further deliberation. It will be monitored in further inspection activities whether the headmistress of the school accepted the Defender's recommendations regarding the amendment to the school regulations. The complainant intends to assert her rights in court.

2/4 Housing

Similarly to the previous years, **ethnicity** was the most frequently asserted discrimination grounds in the area of equal access to housing. Discrimination on the grounds of **disability** has been asserted with an increased frequency.

Municipal housing

Allocation of municipal housing falls within the independent competence of municipalities and is ridden with variances in the rules. The rules in some towns and municipalities are not sufficiently transparent. Some municipalities and towns do not have any rules at all. Some towns and municipalities do not own any municipal housing, or they do not have sufficient capacity, because they sold all the apartments within the process of privatisation and they did not invest in construction of new apartments, relying instead on the "free market". Therefore,

they are often unable to comply with their statutory duty to meet the needs for housing to the detriment of their citizens who find themselves at the mercy of the operators of the infamous "accommodation facilities".

Municipalities also adopt various measures to combat debts on rent and the debtors. In some places, applicants for municipal housing are forced to take over with the apartments also the debts of the previous tenants, which sometimes reach hundreds of thousands of crowns. The Defender found this approach unreasonable and at variance with good manners, even though she admitted that no discrimination had occurred in the relevant cases and that the primary goal was in itself legitimate, i.e. to achieve balanced accounts and recovery of debts, even if collected from someone else than the actual debtors.

In another case, a municipality **denied access to housing to a disabled applicant**, even though he had offered the highest rent and had met all the conditions required by the municipality. A similar situation was encountered by **a Roma applicant**, who decided to defend herself against the town's approach in court.

Complaint – file No.: 233/2012/DIS/ZO

The selection procedure for a tenant for a municipal apartment was cancelled without a reason only in relation to the applicant, who had met all the conditions of the selection procedure, had been the highest bidder for the rent, had won the selection procedure and satisfied a discrimination ground prohibited by law (ethnicity); these facts alone are sufficient for claiming unequal treatment in access to housing and transfer of the onus of proof in potential litigation.

If a person with a disability shares the same household with the applicant before the application for the apartment is lodged, or if such persons show the intention to live together in the apartment being applied for, the disabled person should be regarded, for these purposes, as a person assessed jointly with the applicant provided that (s)he is the applicant's close person or a family member (typically parents and children). In that case, it is always necessary to ask, if an apartment is not assigned, whether discrimination by association could be concerned.

The Defender was approached through the Czech Helsinki Committee by the complainant who had repeatedly – and unsuccessfully – participated in a selection procedure for lease of a municipal apartment. The complainant had met all the conditions of the publicly announced selection procedure (provided a security deposit and had no debt towards the municipality at the time of the selection procedure) and she had objectively won the procedure as the highest bidder. Yet the lease agreement had not been entered into because the municipal council had subsequently cancelled the selection procedure for that apartment through a resolution.

The reason of the cancellation of the selection procedure was not apparent from the resolution of the municipal council and the municipality failed to communicate the reason despite repeated queries (first, by the complainant and, subsequently, by the Defender). Considering that the complainant is a Roma woman and, moreover, she lives in the same household with her disabled son, there arose a suspicion of discrimination in access to housing on the grounds of ethnicity and perhaps also on the grounds of disability (multiple discrimination).

In a situation where the municipality did enter into a lease agreement with another winner of a selection procedure for another apartment, the suspected unequal treatment can only be rebutted in litigation where the respondent will have to prove the actual (non-discriminatory) reason for its actions pursuant to Section 133a (b) of the Code of Civil Procedure.

Housing offered on the free market

So far, the **Act on Social Housing** has not been adopted and, therefore, it is above all the underprivileged (both families and individuals) who are most affected by the lack of housing. Roma families are among those frequently concerned, but this is not a rule.

The Defender recommended a housing co-operative to refrain from discrimination in the form of harassment and remove from its website a text that described the Roma globally as "maladjusted citizens". It is often

impossible to prove discrimination, even if there are many indications of its occurrence. In those cases, it is necessary to perform extensive taking of evidence, including **situation testing**.

Situation testing performed by Poradna pro občanství, občanská a lidská práva (Counselling Centre for Citizenship, Civil and Human Rights) **proved discrimination against consumers committed by real estate agencies**. An anti-discrimination action was lodged in the case.

Complaint – file No.: 112/2012/DIS/VP

If a published offer for lease of specific real estate, even if owned by a private person, excludes members of an ethnic group, the party making the offer (the owner or agent) is guilty of direct discrimination against such persons in access to housing on grounds of ethnicity (Section 2 (3) of the Anti-Discrimination Act). The real estate agent as the arranging party is by no means exonerated by following a requirement of the owner of the real estate.

If the owner of a real estate offered to the public (Section 1 (1)(j) of the Anti-Discrimination Act) informs the agent that s/he does not wish that the tenant be a person of a certain ethnicity, the owner is guilty of discrimination in the form of abetting (Section 4 (5) of the Anti-Discrimination Act).

Every person has the right to verify whether (s)he can exercise his/her rights without interference. If this person's rights are infringed unlawfully during such verification, (s)he has the same rights as if (s)he faced discrimination unexpectedly.

A social worker from a non-governmental organisation pointed out to the Defender that, when looking for housing for her clients, she had encountered a refusal by real estate agents to arrange leased housing for the Roma. It was only with great difficulties that the complainant's assertions could be verified and, therefore, the then Defender, Pavel Varvařovský, made use of the co-operation with Poradna pro občanství, občanská a lidská práva (Counselling Centre for Citizenship, Civil and Human Rights) (hereinafter the "counselling centre") and asked them to perform "situation testing". The employees of the counselling centre conducted three test telephone interviews in which they passed themselves off as persons interested in leased housing. In two cases the testing workers introduced themselves by the name of Horváthová (a common Roma name), in one case a Roma employee used her own name. The agents asked the women if they were Roma. When the employees gave a positive answer to this question, the agents told them that they were unable to arrange the required inspection of the flat because the owner would not agree with that.

The Defender concluded that the real estate agents were guilty of direct discrimination because it is the objective conduct of the service provider, not his/her inner motivations, which is relevant from the viewpoint of anti-discrimination law. If the statements of the agents concerning the instructions of the owners of the flats were true, the owners were guilty of discrimination in the form of abetting, which is an independent body of criminal offence from the viewpoint of law. The Defender also tackled intangible damage arising to those who fall in the potentially discriminated category (based on ethnicity in the present case) if they merely test the service provider. In the Defender's opinion, the damage is comparable to the damage arising to a person actually seeking housing, because the discrimination act primarily affects the dignity of the person and this occurs to the same degree even in the case of situation testing. While Czech courts have yet to deal with such a situation, the Supreme Court of Sweden has reached the conclusion in a similar case that testing persons may claim compensation, where the granted amount may be reduced so as to take into consideration that the relevant persons had not been deprived of something they had indeed wanted.

The dispute is now being heard in court. In the meantime, the Defender requested a statement from the Association of Real Estate Agencies of the Czech Republic, the Czech Chamber of Real Estate Agencies and the Real Estate Chamber of the Czech Republic.

2/5 Health Care

Mandatory vaccination

Several complainants challenged mandatory vaccination of children, referring also to discrimination. This is because some people refuse to have their children vaccinated on the grounds of their **worldview**. Such parents may be fined for an infraction in healthcare pursuant to the Infractions Act (Act No. 200/1990 Coll.). There also exist indirect sanctions, consisting in the **impossibility to admit a child** that has not been vaccinated according to the "vaccination schedule" to **pre-school education** and other educational activities. The Defender was also approached by a complainant who merely asked for a different vaccine, fully covered by the public healthcare insurance, to be used for his child and for postponement of certain vaccinations in view of the impact of vaccination on his child's health. In addition to legal argumentation, he relied on a number of expert findings.

The issue was repeatedly addressed by the Supreme Administrative Court and the Constitutional Court. **The Defender does not challenge the system of mandatory vaccination as such, but she is convinced about the necessity of a review** based on serious expert discussion regarding the necessity of the current scope of mandatory universal vaccination of children in contrast to the risks of non-vaccination for both individuals and the society, all the above in view of the possible adverse effects of vaccination. The necessary confidence in the selected system of vaccination may also be supported by a more sensitive individual approach (providing for the necessary exemptions), postponement of certain vaccinations and coverage of more sensitive vaccines from public health insurance.

The Defender generally **does not consider the conviction of unsuitability of vaccination of children** as such (and its rejection) **as a worldview or belief** complying with the requirement of cogency, seriousness, cohesion and importance. However, discrimination on the grounds of worldview could occur if the rejection of vaccination represented an elementary manifestation of religion, faith or conviction in the sense of Art. 16 of the Charter of Fundamental Rights and Freedoms.

In the Constitutional Court (Pl. ÚS 16/14), the Defender **supported an application for repealing Section 50 of the Act on Public Health Protection** (Act No. 258/2000 Coll.), **which prevents admission of a child who has not received all vaccinations** (with the exception of immune children and children with a permanent contraindication) to a pre-school facility. In the Defender's opinion, due to reasons of redundancy and disproportionality, the aforesaid provision cannot stand the "proportionality test". Despite having other means at its disposal, the State enforces fulfilment of the vaccination duty by denying children access to education without assessing the actual risk of endangering other children in the relevant the pre-school facility and, most importantly, without any exception – it disregards other reasons which may prevent a child from submitting to vaccination before entering a pre-school facility (including a combination of temporary contraindications).

Different regime of payment for drugs for children

Differences in the regime of payment for drugs from public health insurance raised the suspicion of **discrimination against children** with respect to access to healthcare. **Medicinal products intended for children are in some instances more expensive than the same products for adults.** Indeed, varieties of one preparation (with the same trade name) that only differ in the volume of the active substance may differ significantly in terms of price. While the drug with the higher volume of the active substance, typically used by adults, is only available based on a doctor's prescription and is covered from public health insurance, the same medicinal product with a smaller volume of the active substance is included in over the counter regime and it is thus sold for full commercial prices. The Defender also found that while a certain drug is almost fully covered by public health insurance (with a small co-payment) in the form of tablets, it is not covered at all in the form of suspension. Syrups are generally prescribed to small children because they can have trouble swallowing tablets.

The Defender invited the State Institute for Drug Control to issue a statement and informed the Ministry of Health of the result. Discrimination on the grounds of age could not be proven. The Defender will continue to monitor the system of payment for drugs.

3/ Awareness-rising and Educational Activities

The main discrimination grounds addressed by the Defender within her awareness-rising and educational activities was **gender** (pregnancy, motherhood, parenthood and gender identification). She focused on discrimination on the above grounds in a meeting with the inspection, supervisory and selected central governmental authorities (*Together against Discrimination*) and NGOs *(Combating Discrimination in 2013)*. A workshop was held for attorneys co-operating with Pro bono aliance (*Discrimination at the Workplace*), focusing on unfair treatment of men and women at the workplace. Awareness-raising activities culminated with a two-day international conference on *Work-life Balance*, which brought about fruitful discussion concerning the topics of flexibility and equal opportunities in view of the demographic changes taking place in Europe and the actual hindrances on the labour market.

In connection to the research devoted to the access of the elderly to financial services conducted in 2013 in co-operation with the Czech Banking Association, a workshop was held on the topic of *Discrimination in Access to Financial Services*. The Defender also took on a more profound role in the training of employees of the State Labour Inspectorate and the Czech Schools Inspectorate. In both of these bodies, three intensive meetings (seminars, round tables) took place with respect to discrimination. Beneficial seminars were also held for HR personnel of private companies concerning the issue of fair recruitment and valuable meetings took place with Roma co-ordinators with respect to the issue of employment and housing.

In addition to these activities, the staff of the Office of the Public Defender of Rights delivered presentations at a number of national and international events (concerning HIV infection as a disability, discrimination in employment on the grounds of age, religious symbols in the public space). They also maintained their teaching activities and supervised students of the law faculties in Brno, Olomouc and Prague in their internships.

The year 2014 was symbolically completed with the expert seminar "*Impact of the Case Law of the Court of Justice of the European Union on Anti-Discrimination Law*", which marked not only 10 years since the accession of the Czech Republic to the European Union, but also 5 years since the Public Defender of Rights was entrusted with tasks in the area of equal treatment.

4/ Communication with International Entities

The Defender intervened in the enforcement proceedings in the case of **D. H. and others v. the Czech Republic** and submitted to the Committee of Ministers of the Council of Europe a critical statement concerning the performance of the Action Plan, which the Czech Republic agreed to observe in 2012.

Within the Equinet (European Network of Equality Bodies), the staff of the Office of the Public Defender of Rights shared their experience in three working groups (Equality Law in Practice, Gender Related Issues, Communication Strategies and Practices) and in several topic-focused seminars and conferences (positive action, sexual harassment, applying the Directive on equal treatment between men and women in the access to and supply of goods and services). They also took part in preparations of several Equinet reports and publications.

In the course of the year, the Defender provided information related to national legal regulations and decision-making practice to equality bodies from Greece, Poland, Ireland, Belgium, Hungary, Lithuania and Latvia.

The Defender and her staff also received representatives of foreign NGOs, who were interested in situation testing, education of Roma children and the rights of persons with disabilities. Last but not least, the Defender provided information on interesting cases and national case law to the European Union Agency for Fundamental Rights and she met its Director in person.

6. Supervision over Expulsion of Foreign Nationals

In practice, the monitoring of detention of foreign nationals and enforcement of administrative expulsion, transfer and transit of detained foreign nationals and the punishment of foreign nationals consisting in expulsion, where the foreign nationals are taken into expulsion custody or serve the sentence of imprisonment, (hereinafter "expulsion monitoring") pursuant to Section 1 (6) of the Public Defender of Rights Act consists in analysing administrative and court decisions issued in cases of administrative detention or expulsion of foreign nationals and in supervision over the actual performance of expulsion based on criminal law or administrative expulsion, transfer and transit of foreign nationals. The Public Defender of Rights thus provides a guarantee of an effective system of monitoring of forced returns required by Art. 8 (6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (the "Returns Directive").

In 2014, the Defender received and analysed a total of **2583** decisions on administrative expulsion (in 2013, she received 2193 such decisions); **489** decisions on detention or its prolongation (in 2013, it was 258 decisions); **40** court judgements concerning court review of detention (in 2013, the Defender received 13 judgements); and **11** decisions on placement in the strict-regime ward (in 2013, the Defender received 9 decisions). The Defender was also informed of enforcement of a total of **654** expulsions, transfers or transits of persons (in 2013, there were 568 such cases).

1/ Expulsion Monitoring

In 2014, authorised employees of the Office of the Public Defender of Rights **monitored the enforcement of three expulsions**. They supervised two transfers on the basis of Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (hereinafter the "Dublin III Regulation"). The first case concerned the transfer of four applicants for international protection to Austrian authorities on the border crossing Mikulov (the Czech Republic) – Drasenhofen (Austria). The second case concerned the transfer of an applicant for international protection escorted from the reception centre in Zastávka u Brna to the Václav Havel International Airport in Prague. The third case concerned supervision over the transit of a foreign national to the Václav Havel International Airport in Prague in relation to her expulsion to Germany on the basis of criminal law.

The Defender found that an applicant for international protection transferred within scope of the Dublin III Regulation had not been informed of the time and place of the transfer, i.e. of his departure from the detention centre. He only learned of the police escort sent for the purpose of the transfer when the transport commenced, which was at night. Therefore, the foreign national had no chance to prepare for the transfer (e.g. contact his family, legal counsel, and say his goodbyes to his acquaintances in the reception centre). Furthermore, he was not examined by a doctor before the transfer, which was made by air.

With respect to the medical examination of the foreign national before his release from the reception centre, the Defender contacted the Healthcare Facility of the Ministry of the Interior. Even though the law does not require release medical examination, the Defender **recommended that, in view of the risks connected with the escort (especially if performed by air), foreign nationals leaving the reception centre for the purpose of a transfer under the Dublin III Regulation be subject to a release medical examination with their consent.**

The Defender recommended to the Ministry of the Interior that the Ministry inform foreign nationals in advance about the date, time and reason of their departure from the asylum facility or facility for detention of foreigners.

Furthermore, the Defender submitted comments on a draft law amending the Asylum Act (Act No. 325/1999 Coll.) and the Residence of Foreign Nationals Act (Act No. 326/1999 Coll.). She requested that the **law embed the duty of the operator of the facility for detention of foreign nationals to prepare the foreign national for departure from the country**. The preparation must correspond to the individual needs of the relevant foreign national and must take into account his/her personal, psychological and material needs (e.g. contact with family, prevention of self-harm, contact with domestic and foreign NGOs). Furthermore, the Defender requested in the form of a comment **that the law require the Police of the Czech Republic and the Ministry of the Interior to inform the foreign national about the date, time and reason of his/her departure from the asylum facility or facility for detention of foreigners at least 24 hours in advance.** The Ministry accommodated the comments.

2/ Visit to the Facility for Detention of Foreigners

The authorisation of the Defender to **monitor the expulsion of foreign nationals** embedded in Section 1 (6) of the Public Defender of Rights Act is, to a certain degree, identical to the authorisation under Section 1 (3) and (4) of the Public Defender of Rights Act to **perform visits to facilities** where persons restricted in their freedom are present. Therefore, the findings and recommendations of the Defender from the visit to the facility for detention of foreigners in Bělá-Jezová (see chapter "The Defender and Places where Personal Freedom is Restricted", p. 75) also fulfil the role of monitoring of detention of foreign nationals.

3/ Inquiry on the Defender's Own Initiative

The Defender initiated an inquiry on her own initiative into the matter of **decision-making of the Police of the Czech Republic on placing foreign nationals in the strict-regime ward** in the facility for detention of foreigners. The strict-regime is a special sort of a disciplinary penalty that deepens the restriction of the foreign national's personal freedom and its conditions are similar to imprisonment. The Defender verifies the fulfilment of the statutory conditions for placing foreign nationals in the strict-regime ward for a period exceeding 48 hours based on Section 135 of the Residence of Foreign Nationals Act.

4/ International Co-operation of the Monitoring Bodies

The Defender contacted **the National Agency for the Prevention of Torture** of the Federal Republic of Germany and the German Evangelic Deaconess. These entities participate in monitoring of expulsions in Germany. The bilateral declaration of co-operation has resulted in joint monitoring of an expulsion during which the Deaconess oversaw the processes involved in the expulsion of a foreign national in Germany and the Defender monitored the treatment of the foreign national in the territory of the Czech Republic during a transit through the Václav Havel Airport in Prague.

5/ Statistics of Notices of Expulsion, Transfer and Transit of Foreign Nationals in 2014

The statistical information on expulsions, transfers and transits of foreign nationals in 2014 relating to the preceding chapters is illustrated in more detail in the table below.

Statistics of notices of expulsion, transfer and transit of foreign nationals in 2014

	January	February	March	April	May	June	July	August	September	October	November	December
Expulsion based on criminal law in total of	12	18	18	18	28	24	24	24	15	20	29	20
which by air	6	9	9	7	15	20	14	13	7	15	17	9
of which by air with an escort	0	2	2	1	0	4	1	0	0	0	4	0
Administrative expulsion in total	11	9	1	4	6	4	8	14	8	15	6	9
of which by air	0	0	1	1	2	1	1	5	1	4	1	1
of which by air with an escort	1	1	0	0	0	0	1	0	0	0	0	0
of which by air with the IOM[1]	1	2	0	3	3	2	3	8	7	11	5	7
Transfers under the Dublin III Regulation in total	5	3	4	3	5	1	3	6	7	18	20	23
of which by air	1	0	0	2	0	0	0	0	0	0	1	2
of which by air with an escort	0	1	1	1	3	1	2	2	4	17	5	21
Transfers based on international treaties in total	7	0	0	10	1	0	2	5	3	5	16	10
of which by air	0	0	0	0	0	0	0	0	0	0	1	0
of which by air with an escort	0	0	0	0	0	0	0	0	0	0	15	0
Transit based on an international treaty or the Dublin III Regulation in total	3	7	8	11	31	23	25	6	6	15	5	12
of which by air	0	0	8	1	4	0	25	6	6	15	5	12
TOTAL IN 2014	**654**											

[1] Within the programme "Voluntary Return" ran by the International Organisation for Migration.

7. The Public Defender of Rights and Her Office

1/ The Budget and Its Utilisation in 2014

From the beginning of 2014, the Office of the Public Defender of Rights (hereinafter the "Office") operated with the approved budget of CZK 98,024 thousand. During the year, the budget was increased by CZK 9,371 thousand (of which CZK 9,000 thousand to fund the "Together towards Good Governance" project from the Operational Programme Human Resources and Employment (CZ.1.04/5.1.00/81.00007) and CZK 371 thousand to increase the funds for salaries, including accessories, in connection with an increase in the tariff tables in accordance with Government Regulation No. 564/2006 Coll. by 3.5 % since 1 November 2014). The budget was thus increased to CZK 107,395 thousand. The Office also made use of claims for unused expenses from the previous years in the amount of CZK 2,469 thousand (CZK 518 thousand as severance pay for the Public Defender of Rights after the expiry of the term of office and CZK 1,951 thousand for employees' salaries, including accessories, not provided for in the relevant chapter of the budget). **The final budget was CZK 109,864 thousand.**

The Office used the funds to provide for the standard activities related to addressing complaints and performing other tasks entrusted to the Defender, in particular under the Anti-Discrimination Act (activities of the national equality body), the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (national preventive mechanism) and the Residence of Foreign Nationals Act providing for residence of foreign nationals in the Czech Republic (monitoring of expulsion of foreign nationals). Furthermore, the Office co-funded the "Together towards Good Governance Project" programme. With a prior consent of the Ministry of Finance, the Head of the Office made use of the claims for unused expenses from previous years to cover the costs associated with the increase of the staff in the Department of Equal Treatment of the Office by five people in connection with the resolution of the Government Council for Equal Opportunities for Men and Women on increasing the staff of the Department of Equal Treatment of the Office of the Public Defender of Rights of 19 December 2013 and in connection with the performance of the activities of the Public Defender of Rights as an advisory body pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council. The average salary of the existing staff of the Office was slightly increased with the consent of the Ministry of Finance in order to stabilise the expert staff of the Office, using claims for unused expenses for the salaries.

In 2014, **the total amount of CZK 101,544 thousand, i.e. 92.43 %, was utilised** of the final budget in the amount of CZK 109 864 thousand (where the amount of CZK 6,106 thousand was received to fund the "Together towards Good Governance" program and CZK 2,469 thousand came from claims for unused expenses from previous years). The savings on adjusted budget for 2014 in the amount of CZK 8,320 thousand resulted, in particular, from utilisation of current funds (CZK 8,271 thousand, of which CZK 2,894 thousand for the "Together towards Good Governance" programme), especially from operating expenses (consultation, advisory and legal services, purchase of other services, training and education, travel expenses etc.). Investment expenditures were utilised with a saving of CZK 49 thousand. Detailed economic results of the Office are published at the website *http://www.ochrance.cz*.

2/ Staff in 2014

The budget for 2014 set a binding limit on the number of employees of the Office at 119. In the course of the year, the number was increased by 3 employees assigned to the implementation of the "Together towards Good Governance" programme and, since 1 July 2014, the number was increased by another five persons by a decision of the Head of the Office with a prior consent of the Ministry of Finance. The actual average re-calculated registered **number of employees in 2014 was 122.5** and, thus, the limit set by the State budget was

exceeded by 0.5 employee. This occurred as a result of the necessity to implement the resolution of the Government Council for Equal Opportunities for Men and Women on increasing the staff of the Department of Equal Treatment of the Office of the Public Defender of Rights of 19 December 2013 and in connection with the performance of the activities of the Public Defender of Rights as an advisory body pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council. As a permanent measure, the increase in the number of employees was accounted for in the draft budget of the Office for 2015.

The re-calculated registered number of employees as of 31 December 2014 was 128.28. Of the total number of employees, 97 directly addressed complaints and performed otherwise the competence of the Defender (especially the national preventive mechanism, the national equality body and monitoring of expulsion of foreign nationals).

As the Public Defender of Rights assumed in the past years the obligations following from international law for the Czech Republic in that she performs systematic visits to places where people restricted in their freedom are present, and with respect to equal treatment and protection against discrimination, there was a significant increase in the need to use experts from fields other than law, who were not in-house employees of the Office. Thus, in order to achieve comprehensive assessment of the conditions in places where persons restricted in their freedom are present, the Office continued to co-operate with external experts in 2014 (doctors, special education teachers, healthcare professionals, nutrition experts, geriatricians, etc.). When performing the competence in the area of equal treatment, the Office co-operated with external collaborators especially in the area of research (necessary co-operation with sociologists, use of external workers in situation testing) and in educational activities. 2014 saw a continued co-operation with the law faculties in Brno and Olomouc in organising legal clinics for the students of these faculties, within which the students also served an obligatory internship in the Office.

3/ Annual Report on Provision of Information Pursuant to the Free Access to Information Act

The Office of the Public Defender of Rights as an obliged entity pursuant to the Free Access to Information Act (Act No. 106/1999 Coll.) received and processed a total of **48 requests** for provision of information pursuant to this Act in 2014.

The Office **provided the information in 32 cases**. These mainly concerned the results of the Defender's inquiries and her opinions on the individual agendas (e.g. administration of roads, administrative expulsion and detention of foreign nationals, performance of systematic visits in detention facilities, service relationships, protection of the environment), operation of the Office (e.g. information concerning the maintenance of the registry of notices pursuant to Act No. 159/2006 Coll., on conflict of interest), statistics of filings received according to the individual areas (e.g. discrimination) and documents from the complainants' files.

The applicants lodged **two complaints** pursuant to Section 16a of the Free Access to Information Act.

The Office **rejected 14** requests for information (or parts thereof); **4** of these decisions were subject to appeal lodged by the applicants.

By the judgement of 31 October 2014, file No. 31 A 1/2014, the Regional Court in Brno dismissed an action through which the plaintiff sought the cancellation of a decision of the Head of the Office of 4 November 2013 (Ref. No. PDCJ 2798/2013). *In addition to procedural defects, the plaintiff claimed that "the challenged decision of the respondent is unlawful, because it cannot be reviewed since even the challenged first-instance decision does not show the specific reasons for which the plaintiff's request was partially rejected. At the same time, it is not apparent in a comprehensible, precise and enforceable manner what part of the requested information will not be provided." After "thorough examination of the documents in the file", the Regional Court found that the "decisions of the respondent and the first-instance body are completely lawful both from the point of view of law and fact and it noted that, by not allowing access to certain information of a completely personal nature, the plaintiff and the first-instance body quite lawfully protected the constitutional rights to personal integrity of XY and his/her privacy as well as his/her private and family life and*

observed his/her right to protection against unauthorised collection, publishing and other misuse of personal data that could result if information was published in the scope requested by the plaintiff." The Regional Court in Brno summarised its findings by stating that "formal and material conditions for limiting access to information under the Information Act and under Art. 17 of the Charter of Fundamental Rights and Freedoms, or Art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms were simultaneously met and the respondent correctly applied Art. 7 (1) of the Charter, using Art. 10 (2) and (3) of the Charter; by not allowing the plaintiff to access certain information, the respondent lawfully protected the rights of XY guaranteed by the Constitution. The court also did not find procedural defects serious enough to conclude that the challenged or the first-instance decision were unlawful and, therefore, the court decided as indicated in the operative part of this judgement." The Office incurred no costs in connection with the above proceedings.

	Total number of requests for provision of information	**48**
Section 18 (1) (a)	Number of decision on rejecting a request (or its part)	14
Section 18 (1)(b)	Number of appeals lodged against a decision	4
Section 18 (1) (c)	Copy of important parts of each court judgement	1
Section 18 (1) (d)	List of exclusive licenses 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

4/ Media Presentation, International Co-operation, Conferences

4/1 Media Presentation, Communication with the Public

In 2014, the Defender held **8 press conferences** and issued more than **100 press releases** and updates. Hence, by means of the media, she introduced to the general public her activities, findings from inquiries regarding governmental bodies, systematic visits to facilities where persons restricted in their freedom are present, and also recommendations in the area of equal treatment. These included particularly:

- findings from inquiries into the state of declaring flood areas and determination of their active zones as the principal preventive measure against floods;
- notification of indirect discrimination in access to education based on religion in case of a Muslim student wearing a headscarf (a hijab not covering the face) who was forced to withdraw from her studies at a secondary school because the school rules prohibited any head-dress;
- interim results of visits to unregistered facilities providing residence social services [The Defender drew attention to cases of ill-treatment of the elderly, to unacceptable restrictions on freedom, hazardous handling of medication and danger to the elderly caused by poor nutrition.];
- findings of the Defender from visits to Sobering-up Stations (which were made for the first time ever) [The Defender emphasised especially the fact that this type of restriction of freedom of an individual must follow from a decision by a physician based on assessment of the detained person's condition when (s) he is brought to the Sobering-up Station.];

- repeated notifications of deficiencies in the system of monument care [In hundreds of cases, the owners neglect the care of the cultural monuments they own and the State is not able to act efficiently in order to preserve the value of the monument.];

- criticism of the rejecting opinion of the Ministry of the Interior which did not grant European Union citizens with confirmed temporary residence in the Czech Republic the right to vote, doing so at variance with the Treaty on the Functioning of the European Union [On the basis of a legal action, these European Union citizens were allowed to vote in the elections to municipals assemblies.]

Substantial attention of the media was drawn to the election of the Defender itself.

In the course of the year, the Defender was publishing selected reports from inquiries into, and opinions on, interesting cases on her website at *(www.ochrance.cz)* to enable both the professional and the general public to familiarise themselves on an ongoing basis with her legal arguments. Simultaneously, she was preparing a new electronic register of opinions (ESO), which allows potential users to use a simpler method of search.

She continuously updates and supplements almost 70 leaflets addressing the most frequent problems with which the citizens approach the Defender. These clarify the legislation in certain life situations and contain guidance to their resolution. The leaflets are available for visitors of the Defender's seat in Brno and also online.

In the "Opinions" series, the Defender published the document **Removal of Buildings,** including a detailed analysis of the legislation and case law, and legal assessment of specific cases.

The interest of the media in the Defender's activities is demonstrated by the **4,793 published and broadcast articles and reports.** Television stations mentioned her activities in **380** cases, the Czech New Agency in **404** reports. The online media, with total number of **2,289** news and articles, played a significant part in conveying the Defender's opinions and findings to the public. The Defender and her representatives appeared in television and radio, they were extensively interviewed, and they participated in live broadcasting and answered questions in online interviews.

The Defender's website recorded **228,325** visits. The special website for children and teenagers was visited by **6,584** users. In the course of the year, the Defender also intensively communicated with the public on Facebook. People interested in the Defender's activities also receive an electronic newsletter now.

4/2 International Talks and Conferences

- **Meeting of ombudspersons from the Visegrad Group (Poland, Białowieża, 12 – 14 June 2014)**

Topic: Enforcement of public authority (protection of minority rights, abuse of power by public authorities)

- **The International Ombudsman Institute Conference and Conference of the Estonian ombudsman (Estonia, Tallinn, 17 – 20 September 2014)**

Topic: The role of ombudspersons in a democratic state

- **A study visit to the Georgian ombudsman's office (Georgia, Tbilisi, 27 – 31 October 2014)**

Topic: Protection of children's rights, systematic visits to facilities

- **Active engagement in co-operation and experience sharing within the network created by the European ombudsman, the European EQUINET network, which brings together national equality bodies; engagement in co-operation with national preventive mechanisms in the area of supervision over restriction of personal freedom**

4/3 The "Together towards Good Governance" Programme

Since 1 January 2014, the Office of the Public Defender of Rights has been the beneficiary and implementer of the Together for Good Governance project (reg. No. CZ.1.04/5.1.00/81.00007). The project is financed from the European Social Fund through Operational Programme Human Resources and Employment and the State budget of the Czech Republic.

The main objective of the project is to identify opportunities for **increasing effectiveness of the work of the Office with the use of international co-operation.** The key activities of the project focus on exchange and comparison of experience and good practice examples with international partners, education of professional staff of the Office, organization of training seminars, round tables and conferences for target groups, stays and internship for students and activities to raise public awareness about the competence of the Public Defender of Rights.

In 2014, the following events in particular were implemented in the framework of the project:

- 27 seminars for public administration, NGOs and employers in the entire Czech Republic (1,172 persons);
- 12 seminars for students of the Faculty of Law of Palacký University in Olomouc, including a subsequent internship in the Office (22 persons);
- 15 round tables for public administration, NGOs and employers in the entire Czech Republic (326 persons);
- 2 two-day international conferences: Protection of Rights of the Elderly in Institutions, Focusing in Particular on Persons with Dementia, Work-life Balance (316 persons);
- 13 awareness-raising meetings entitled "We take interest in you" (390 persons);
- 8 international meetings with international partners and co-operating organizations focused on sharing of experience and good practice within the areas of competence of the Public Defender of Rights.

The awareness-raising campaigns for the public entitled "We take Interest in You" were carried out in the form of meetings in the some of the regions (Vysočina Region, Pardubice Region, Hradec Králové Region and Moravian and Silesian Region) and municipalities up to 10 000 of inhabitants (Dolní Bojanovice, Jemnice and Moravský Beroun). The meetings held in the regions included, amongst others, interactive presentations for students and evening events for citizens with a focus on practical response to specific procedures of the authorities or their failure to act. The Public Defender of Rights was always present at the awareness-raising meetings in the regions. In smaller towns, lawyers from the Office participated at the meetings.

8. Concluding Remarks of the Public Defender of Rights

In 2014, I became the Public Defender of Rights. My predecessor, Pavel Varvařovský, resigned in late 2013. Subsequently, in February of 2014, I was elected by the Chamber of Deputies as the new Public Defender of Rights. In the meantime, Stanislav Křeček carried out the Defender's responsibilities.

This Summary Report is a concise overview of the activities of the Defender, her Deputy and all her colleagues in the 14th year of the institution's existence. Sometimes, dramatic stories of individuals are hidden under the plain legal formulations. However, you can also find in them insight about how a modern, democratic state governed by the rule of law works, or rather should work.

The primary addressee of this Report is the Chamber of Deputies of the Parliament of the Czech Republic and many other state and public administration bodies. The publication is intended also for various associations and, of course, the citizens themselves.

A certain sense of realism leads me to the conclusion that, in these hectic days, not many people will read the report cover to cover. Rather, people will seek an answer to a specific question or information in the scope of their interest.

I often wonder how much information and knowledge can be gained from the many years of the Defender's work, whether this concerns addressing individual complaints, or awareness-raising and preventive activities in terms of discrimination and supervision over places where personal freedom is restricted. It seemed that it was not enough to inform the public on an ongoing basis via press conferences or information on the website. This led to the idea of making all the important documents available in a manner that would allow anyone to easily find the information they are looking for. It was already my predecessor who decided to establish the Register of Opinions (ESO). We worked on its improvements throughout last year and we now present it for use both to individuals and the professional public.

I think it was high time. The point of the Register is not only to inform people interested in the Defender's activities, but also to serve as a memory of the institution to be accessed by our employees. It will serve as a permanent record of what the Defender recommended, when and to whom. The years are passing by, some colleagues leave, new ones arrive and naturally many things disappear from our common awareness. Hopefully, the Registry will reduce this loss and, at the same time, allow to easily find the Defender's opinion on any given issue.

Brno, 20 March 2015

Anna Šabatová

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