



ombudsman
Public Defender of Rights

ANNUAL REPORT

ON PROTECTION AGAINST DISCRIMINATION

2018

Explanatory notes

 link to a webpage

 reference to a printed material

Public Defender of Rights

Equal treatment and discrimination

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MISSION OF THE PUBLIC DEFENDER OF RIGHTS

This Report deals solely with the activities of the Public Defender of Rights as the national equality body, a role which was bestowed on the Defender at the end of 2009. Act No. 349/1999 Coll., on the Public Defender of Rights, as amended, gives the Defender a broader range of powers.

Since 2001, the Defender has been defending individuals against unlawful or otherwise incorrect procedure of administrative authorities and other institutions as well as against their inactivity. The Defender may peruse administrative and court files, request explanations from the authorities and carry out unannounced inquiries on site. If the Defender finds errors in the activities of an authority and fails to achieve a remedy, the Defender may inform the superior authority or the public.

Since 2006, the Defender has acted in the capacity of the national preventive mechanism pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Defender systematically visits facilities where persons are restricted in their freedom, either ex officio or as a result of dependence on the care provided. The purpose of the visits is to strengthen protection against ill-treatment. The Defender generalises his or her findings and recommendations in summary reports on visits and formulates standards of treatment on their basis. Recommendations of the Defender concerning improvement of the ascertained conditions and elimination of ill-treatment, if applicable, are directed both to the facilities themselves and their operators as well as central governmental authorities.

Since 2011, the Defender has also been monitoring detention of foreign nationals and the performance of administrative expulsion.

In January 2018, the Defender became a monitoring body for the implementation of rights recognised in the Convention on the Rights of Persons with Disabilities, also helping European Union citizens who live and work in the Czech Republic. The Defender provides them with information on their rights and helps them in cases of suspected discrimination on grounds of their citizenship. The Defender also co-operates with foreign bodies with similar responsibilities regarding Czech citizens abroad.

The special powers of the Defender include the right to file a petition with the Constitutional Court seeking the abolishment of a secondary legal regulation, the right to become an enjoined party in Constitutional Court proceedings on annulment of a law or its part, the right to lodge an administrative action to protect a general interest or to file an application to initiate disciplinary proceedings with the president or vice-president of a court. The Defender may also make recommendations to the Government concerning adoption, amendment or repealing of a law.

The Defender is independent and impartial, and accountable for the discharge of his or her office to the Chamber of Deputies, which elected him or her. The Defender has one elected deputy, who can be authorised to assume part of the Defender's competence. The Defender regularly informs the public of his or her findings through the media, Internet, social networks, professional workshops, roundtables and conferences. The most important findings and recommendations are summarised in the Annual Report on the Activities of the Public Defender of Rights submitted to the Chamber of Deputies.



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

FOREWORD BY THE PUBLIC DEFENDER OF RIGHTS

Imagine you are applying for a new job, but your experience and skills are not relevant. What determines whether you get the job or not is the year when you were born. Would you think this improbable at the present time, when the Czech Republic is experiencing an economic upswing and record-low unemployment? I would, too, but it is true. Since 2014, I have often been approached by older people asking me for advice on how to defend themselves against age discrimination, especially in employment. The year 2018 was not an exception.

It is clear that demographic developments mean that there are more and more older people who want to have a job, live in decent housing and use all the services offered by society. Less favourable treatment or even exclusion of older people in the aforementioned area affects their dignity as human beings and can bring a significant decrease in their living standard, as well as their overall unhappiness. Age discrimination cannot be tolerated as it could affect each and every one of us given enough time.

Therefore, last year we decided to raise awareness of the phenomenon of age discrimination in all areas. Aside from successfully resolved cases, we raised the topic of collective bargaining agreements in our discussions with the trade unions and the labour inspectorate as these agreements contain certain vestigial provisions that adversely impact older workers. However, this is mostly not a result of deliberate ill will on the part of the companies, but rather a consequence of a lack of information or stereotypical views of “working pensioners”. We organised a number of seminars, one of which took place in the Chamber of Deputies of the Czech Parliament, which was a great opportunity for us. We reminded the lawmakers of the need to amend the Code of Civil Procedure in order to help people effectively defend themselves against age discrimination in the area of services, housing, healthcare and so on. We hope they will accept our recommendations.

The report you are reading also mentions a number of other important areas of our work. I am proud that we have provided specific guidelines on how to deal with spatial segregation in education, improving conditions for educating children with a different first language, ensuring dental care to children and youth with disabilities, achieving work-life balance in the civil service, and effective inspections of equal treatment at the workplace.

Our work does not end when this report is released. We must persist and continue promoting our recommendations in discussions with our partners. Only thus can we bring about a just society where each individual’s dignity is respected. However, we cannot do this alone. We must all walk on this road to fairness together.

I sincerely hope this text will prove to be an inspiration to your work.

Anna Šabatová

1. Complaints in focus



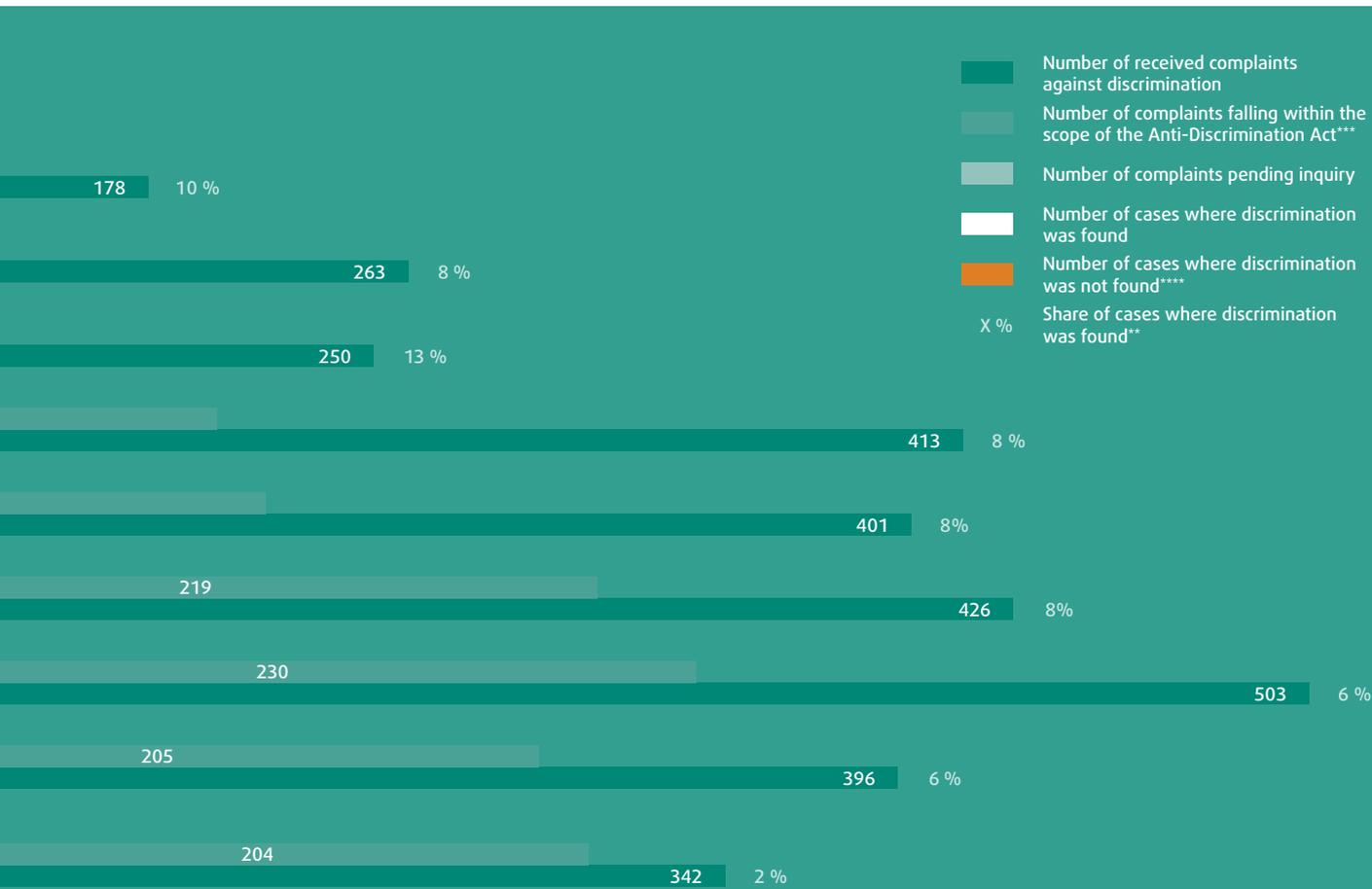
How many complaints did we address last year and what are the most common issues with which people approach us?

The number of complaints has significantly increased over the last nine years when we have been dealing with the issues of discrimination. We received **178 complaints** in the first year, but this number grew to **342 complaints** in the previous year. Year on year, the number of complaints slightly decreased: from 384 complaints in 2017 to 342 complaints in 2018.

Aside from directly helping the complainants, our work includes communicating with international entities (32 files), co-operating with bodies of public administration (17 files), responding to public queries (21 files), and co-operating with NGOs and the private sector (13 files).

The number of discrimination complaints decreased year-on-year:





* The Defender assumed competences in the area of combating discrimination as of 1 December 2009; December 2009 is counted as part of 2010
 ** Share of all discrimination cases resolved by 31 December 2018
 *** Category monitored since 2013 **** Category monitored since 2014

What do these figures tell us?

In approximately 8% of the complaints, we conclude that discrimination probably did occur (the proportion was lower for 2016, 2017 and 2018 because inquiries into dozens of complaints have not been closed yet). Most cases involved direct discrimination, but a minority of cases concerned indirect discrimination; other cases

involved retaliation (victimisation), harassment, instruction to discriminate, or incitement to discrimination. In a few percent of cases, it was impossible to either prove or disprove discrimination due to a lack of evidence (this is a new category included in our statistics since 2014).



Did you know that...

...since 2009, when the Public Defender of Rights began to promote the right to equal treatment, we have found discrimination in a total of 227 cases? In most of the cases, this involved discrimination on the grounds of disability (73 cases), age (48 cases) and sex/gender (39 cases), especially in the sectors of goods and services (60 cases) and work and employment (60 cases).

Types of discrimination found from 2009 to 2018*



* Share of the files closed by 31 December 2018



What is the difference between direct and indirect discrimination? What do harassment and retaliation entail? Are you not sure? That is alright. We have prepared a glossary for you explaining all the important terms. You will find it at the end of this report.

Most complainants object to discrimination in the area of labour and employment

In 2018, as in many previous years, people most often turned to us with complaints against discrimination in the area of work and employment (88 complaints). This is related to the indispensable role that work plays in a person's life, being essential to ensure income, provide people with a sense of purpose and self-fulfilment and help them form and maintain relationships. Obstacles in access to work and employment or unfair conditions at the workplace often result from factors that people are unable to influence, for example age, sex/gender, disability, race and ethnicity, which is considered very

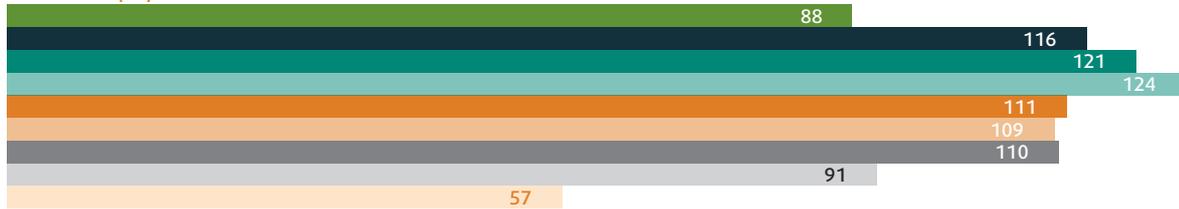
unfair. Consequently, people more often decide to try and deal with the situation. Significantly fewer discrimination complaints were raised in the area of goods and services (67), housing (49), other areas (miscellaneous) (48), education (32), and other areas of public administration (29).

People most often complain about discrimination on grounds of race and ethnicity.

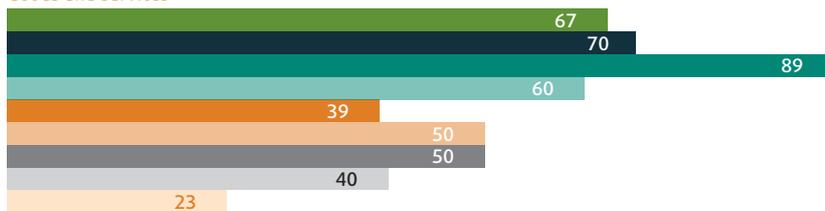
As in recent years, the summary of complaints according to the individual discrimination grounds shows that "discrimination" continues to be a rather poorly understood concept.

Number of complaints according to area

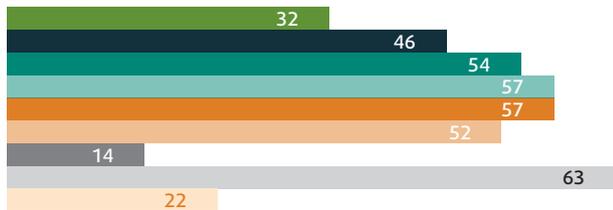
Work and employment



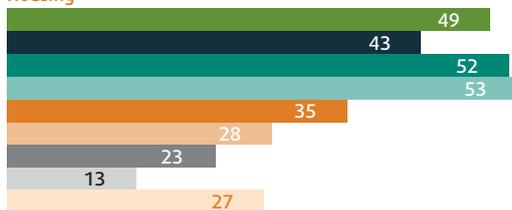
Goods and services



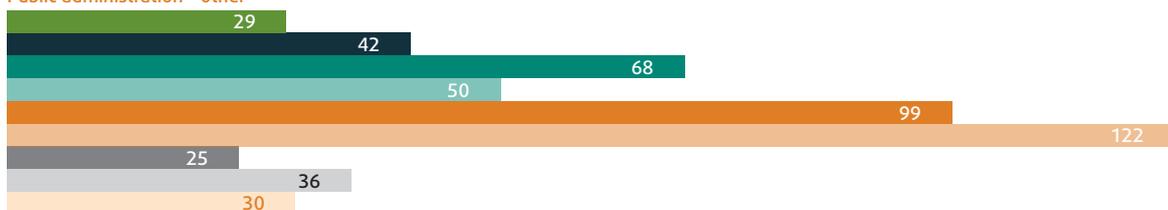
Education



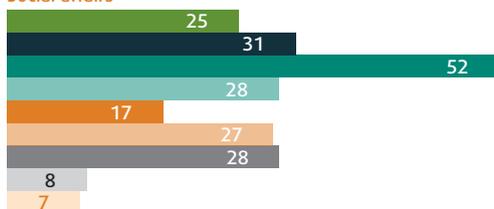
Housing



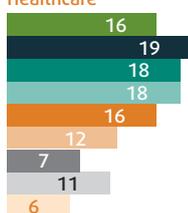
Public administration – other



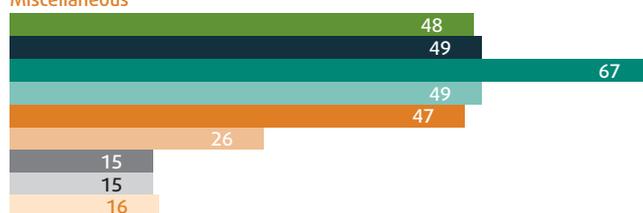
Social affairs



Healthcare



Miscellaneous



In the past seven years, people most often complained about discrimination on grounds that are not recognised by the Anti-Discrimination Act or other legal regulations or did not specify any reason at all (these complaints fall under the “miscellaneous” category). These complaints often concern conflicts between people motivated by personal antipathies that, although potentially very unpleasant for those involved, do not constitute discrimination in the legal sense of the word.

What are the most common grounds for discrimination complaints? As opposed to recent years, discrimination on grounds of race and ethnicity was claimed most often (69 complaints) in 2018. Discrimination on grounds of disability was pushed to the second place (50 complaints) while age discrimination ended up third as in the previous year (47 complaints).

Multiple discrimination: when several discrimination grounds apply simultaneously

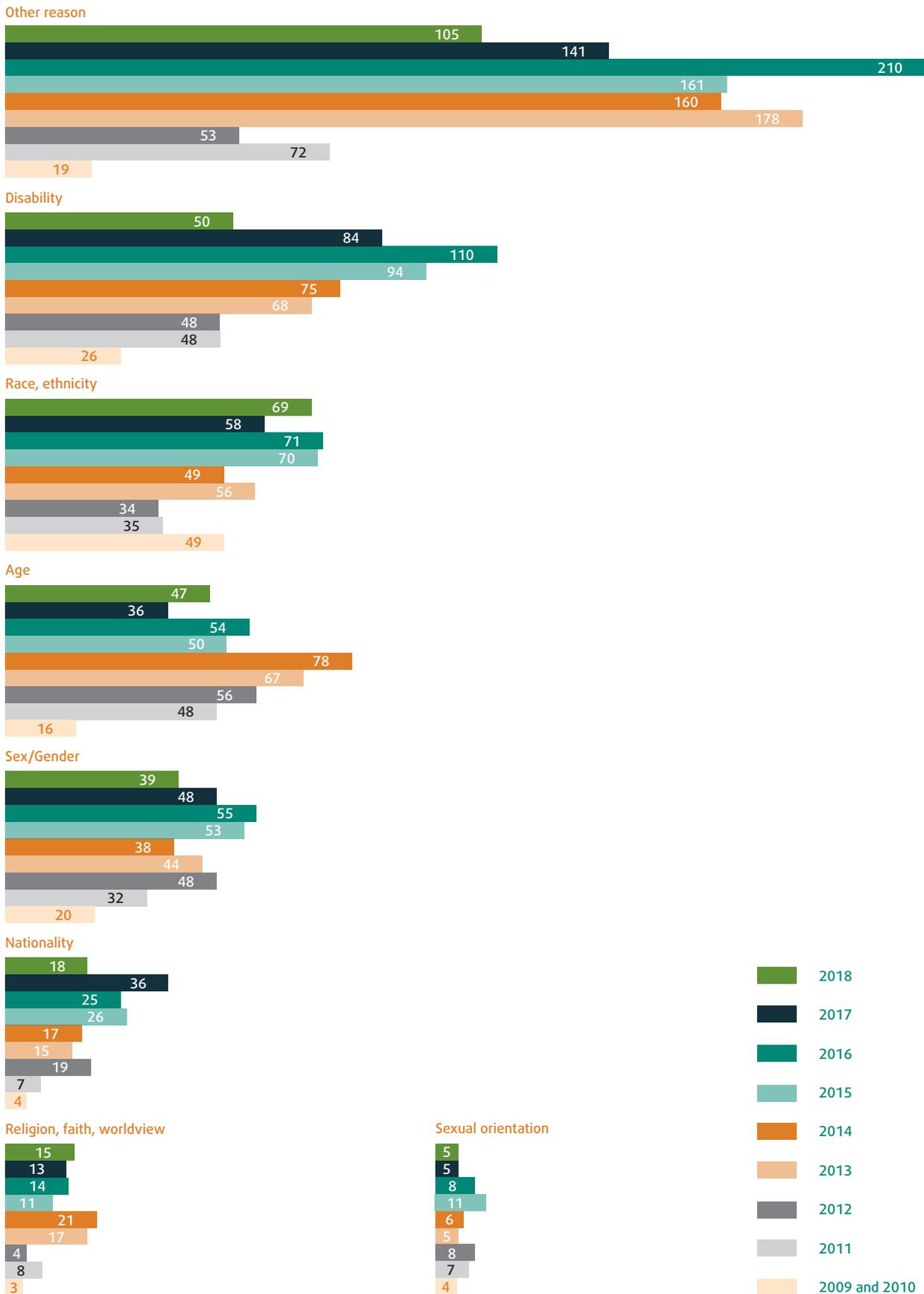
In many cases, someone can be discriminated against for several different reasons. Such cases therefore involve *multiple discrimination*, where a person is subjected to unequal treatment based on several discrimination grounds. This year, we have received 20 complaints involving multiple discrimination, where the grounds cited most often involved a combination of age and disability (4 cases), age and sex/gender (3 cases), and citizenship and nationality (3 cases).



A subjectively perceived act of injustice does not necessarily constitute discrimination. In general, discrimination means different treatment in comparable situations without a reasonable justification. The feeling of being discriminated against is not sufficient in itself – legally speaking, discrimination only means conduct described and prohibited by law. The grounds and areas where discriminating between people is inadmissible are listed primarily in the Anti-Discrimination Act.



Number of complaints according to discrimination grounds



2. Czech courts deciding in discrimination cases

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People encounter discrimination in many situations but they have the same rights in court proceedings.

“

Last year, the courts dealt with two cases involving equal treatment in various areas of life. An employee, a student or a consumer – they all can become victims of discrimination. In this part, we summarise the most important decisions of Czech courts in the area of discrimination in 2018.

 News concerning the area of discrimination from 4 January 2019

The Defender's cases which were decided by courts in the previous year

Survivors of a victim may lodge an anti-discrimination action

In our opinion, compensation for harm caused by discrimination serves not only to provide satisfaction to the victim, but also to penalise and deter the perpetrators. For this reason, anti-discrimination legislation cannot exist only to defend the interests of the victim but also has to protect the interests of other persons potentially affected by the discriminatory conduct (especially relatives and other close persons). The Supreme Court agreed with our opinion.

 Defender's Report File No. 61/2015/DIS of 6 November 2015

 [Judgment](#) of the Supreme Court of the Czech Republic of 13 December 2017, File No. 30 Cdo 2260/2017



“Section 10 of the Anti-Discrimination Act must be interpreted broadly in that claims following therefrom can be exercised not exclusively by the (primary) victim of the discriminatory conduct, but – taking into consideration the circumstances of the case – also by persons close to the direct victim of discrimination who justifiably regard the harm caused to the victim as their own, i.e. as discriminatory conduct that affects them as well.”

(reasoning contained in the judgment of the Supreme Court)

Apology and compensation for intangible damage caused by bullying

A complainant lodged an anti-discrimination action because she was discriminated against by her employer (a higher education institution) because of her age. The employer's fault consisted especially in frivolous application of law vis-à-vis the complainant (e.g. selective controls of compliance with working hours or unjustified request to undergo an extraordinary medical examination), creating hostile working environment and rude demeanour.

The court awarded to the complainant a compensation for intangible damage in the amount of CZK 50,000.

 [Defender's Report](#) File No. 134/2013/DIS of 14 December 2015

 Judgment of the District Court in Ostrava of 8 March 2018, File No. 85 C 20/2016.

Paying for a teaching assistant

I was approached by parents of a minor girl with disability who is a student with special needs. Expert counsellors recommended that she go to a standard school with support from a teaching assistant during the entire time at school. Neither the school nor the responsible regional authority had sufficient funds available to cover the costs of the teaching assistant. The student's parents thus had to partially pay for the teaching assistant's salary. The court agreed with us that if the State fails, despite expert recommendations, to provide sufficient funds for a teaching assistant helping a disabled child, the State commits discrimination. For this reason, the State had to compensate the student's parents for the costs they expended to pay for the teaching assistant.

was unhappy that she had to co-fund the salary of a teaching assistant and that the school had refused to adapt her son's individual education plan to account for his disability. We stressed that the school could only request a contribution to the funding of a teaching assistant from the child's legal representative if it had exhausted all the available means to obtain sufficient funding and paying the teaching assistant's salary would constitute a disproportionate burden for the school. Otherwise, the school would be committing indirect discrimination on grounds of disability. However, the court came to the conclusion that there was no discrimination because the school had provided the boy with sufficient conditions for teaching in a standard class. The court did not address the question of whether or not the school had exhausted all the options to secure funds needed to pay for the teaching assistant. The case was thus referred to an appellate court.

 [Defender's Report](#) File No. 189/2012/DIS of 21 August 2013

 Judgment of the Municipal Court in Prague of 15 March 2018, File No. 29 Co 466/2017

 [Defender's Report](#): File No. 7075/2015/VOP of 22 May 2017

A different complainant whose son attended a primary school objected to discrimination in a similar case. She

 Judgment of the District Court in Kolín of 26 June 2018, File No. 12 C 447/2015



Defender's cases pending final court decision

Changing birth identification number in relation to a person's gender identity

A complainant whose personal documents indicate male sex identifies as a gender-neutral person and requests a change in the birth identification number. The complainant requests that the Ministry of the Interior reassign the birth identification number so that it has a neutral or female form without having to undergo a sex reassignment surgery. The Municipal Court

dismissed the complainant's action and pointed out that the State's activities are governed by the provisions of the law; therefore, the State did not unlawfully interfere with the complainant's rights. The complainant lodged a cassation complaint against the decision with the Supreme Administrative Court.

 [Defender's Report](#) File No. 206/2012/DIS of 29 June 2015

 Judgment of the Municipal Court in Prague of 14 May 2018, File No. 3 A 153/2017



"Taking into account the applicable legal regulations and the complainant's situation, the court concludes that the only way for the complainant to achieve a change in the birth identification number without undergoing a sex reassignment surgery is an amendment to the applicable legislation.

(reasoning of the Municipal Court in Prague)

Foreign-language reports in TV news – subtitles not sufficient

We were approached by the Czech Blind United (known under the Czech abbreviation SONS), an advocacy organisation for blind and visually impaired people, which informed us that Czech Television (the national public service broadcaster) was using subtitles in news reports instead of voiceover translation. This seemingly neutral practice adversely affects people with disabilities by making information inaccessible to blind people, people with other visual impairments or persons with reading disorders. We believe that a television broadcaster should choose such a form of conveying information that does not discriminate against people with disabilities. Since Czech Television did not address the problem, the case will be heard by the District Court for Prague 4.

 [Defender's Recommendation](#) File No. 44/2015/DIS of 27 May 2016

Dismissal from a leadership position prior to commencing maternal leave

A complainant turned to the court in 2014 after being dismissed from a management position by her employer prior to commencing maternal leave. In our opinion, an employer cannot dismiss an employee because of pregnancy or maternity as this would constitute discrimination on grounds of sex. The action was originally dismissed, but since June 2018 the case is being heard again by a first-instance court; the case was also given to different judge.

 [Defender's Report](#) File No. 1594/2014/VOP of 25 August 2014

 Resolution of the Municipal Court in Prague of 20 June 2018, File No. 23Co 128/2018 - 246

The following people lodged a court action based on our help:



A teacher with a visual impairment who was bullied because of her disability by her employer, who tried to fire her. With our help, she managed to secure a withdrawal of the notice of termination.

Court proceedings on the discrimination action are still ongoing.

 Defender's press release of 20 September 2018

 Defender's Report File No. 3381/2017/VOP of 28 August 2018



An employee fired by her employer during the trial period after she notified her pregnancy. Although the Labour Code enables to terminate an employee during the trial period even without giving a reason, European law has to be interpreted in that pregnant employees cannot be fired for this reason even while they are still in the trial period. Court proceedings are currently ongoing before the first-instance court.

 Defender's press release of 30 January 2019

 Related judgment of the Court of Justice of 22 February 2018 in case C-103/16.



A man with an autism spectrum disorder who was unsuccessfully looking for a suitable social service corresponding to the nature of his disability. In our opinion, he was a victim of indirect discrimination by the regional authority, which had failed to provide for such a service. The man lodged an anti-discrimination action. The regional authority subsequently reached an amicable settlement with the man and compensated him with money.

 [Defender's Report](#) File No. 851/2018/VOP of 7 June 2018



3. Anti-discrimination in Europe

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Ensuring equal and dignified treatment of people is an important pillar supporting the international community. This has again been emphasised by European courts.

“

In 2018, we noted many interesting European court decisions sharing one common theme – all strive to ensure maximum dignity in the lives of individuals, groups and families. New decisions were rendered concerning human identity, sex life, faith, religion and worldview.

We selected a number of judgements of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJ EU) which could influence the development of Czech legislation, court decision-making or the Defender’s work.

We should also remind that since 2012, we also provide information on important decisions of important European courts on our website. Do not miss our news and updates there.

Selected judgements of the European Court of Human Rights

Alekseyev and Others v. Russia (Application no. 14988/09 and 50 others)

Member States should not take steps to prevent peaceful assemblies organised for the purpose of promoting the rights of sexual minorities and their social status. The Court considered opposite steps as a violation of the freedom of assembly. If the ban on such assemblies is motivated by the public authorities’ unfavourable views, it constitutes unjustified discrimination on the grounds of sexual orientation.



Unlike in Russia, demonstrations supporting the rights of sexual minorities (“LGBT pride”) have a tradition in the Czech Republic, sometimes being organised in co-operation with cities and some governmental authorities.

This was not the first time the ECtHR criticised Russia for discriminating against sexual minorities. In the case of Bayev and Others v. Russia (application no. 67667/09 and 2 others), the Court noted that the legislative ban on “propaganda of homosexuality aimed at minors” violated the ban on discrimination.

Enver Şahin v. Turkey (Application no. 23065/12)

Taking account of equal access to education, Member States must create such conditions for disabled students that will provide them with conditions as close as possible to the conditions for non-disabled students. It is necessary to decide based on the real needs of disabled students and provide them with a form of support that enables them to live independently as much as possible. In this particular case, the obligation concerned a university.

 News concerning the area of discrimination from 16 March 2018

A. R. and L. R. v. Switzerland (Application no. 22338/15)

Parents of a 7-year-old girl opposed their daughter's attendance of sex education at school. The Court found that sex education at school could also be provided to small children without infringement of the right to private and family life of the children and their parents. One of the aims of sex education is to prevent sexual violence, which poses a threat to children of all ages. In this specific case, teachers provided information to children in a sufficiently sensitive manner, having regard to their early age.

 Application no. 22338/15, A. R. and L. R. v. Switzerland

Selected judgments of the Court of Justice of the European Union

Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne (Case C-673/16)

Member States cannot deny conferring a derived right of residence for a period of longer than three months on third-country nationals because the law of those Member States does not recognise marriage between persons of the same sex. The applicant (a citizen of Romania) entered into a lawful marriage with a US citizen in Belgium and both spouses wished to live together

in Romania. The Romanian authorities did not allow that. The freedom of movement of EU citizens and members of their family must not depend on national rules on marriage.

 News concerning the area of discrimination from 23 July 2018

MB v Secretary of State for Work and Pensions (C-451/16)

M. B. was born a male and, as a man, married a woman. In the 1990s, M. B. started to live as a woman and underwent sex reassignment surgery. She refused to annul her marriage and, consequently, she did not obtain a full certificate of recognition of her change of gender. As a result, British authorities did not recognise her as a woman for the purposes of determining her statutory pensionable age. The CJ EU noted that the condition of annulment of marriage in order to be able to claim a State retirement pension constituted direct discrimination on grounds of sex as it only applied to persons who have changed their gender.

 News concerning the area of discrimination from 24 August 2018



The situation in the UK has changed significantly since 2008, when the incident occurred. Issuing a gender recognition certificate is no longer hindered by an existing marriage (if the other spouse agrees) and the British legislation on marriage understands the institution as a union of two persons regardless of their gender. In 2018, a group of Czech parliamentarians submitted a bill that should open door to same-sex marriage in the Czech Republic.

Workplace discrimination? Church exemptions are not without limits!

In the case of *Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung e. V.* (C-414/16), the CJEU dealt with the requirement raised by a church that newly hired employees be its members. The vacancy to be filled involved drafting legal documents.

In the case of *IR v JQ* (C-68/17), the Court addressed the matter of dismissal of a physician who had divorced his wife and entered into a new civil marriage. This was unacceptable to the physician's employer who was a Catholic charitable organisation.

In both cases, the CJEU stressed that the lawfulness of different treatment based on religion was conditional

on an objectively verifiable existence of a direct link between the occupational requirement imposed by the employer and the activity concerned. Such a link may arise either as a result of the nature of the activity, for example where it involves taking part in the determination of the ethos of the church or organisation in question or contributing to its evangelising mission, or of the circumstances in which the activity is to be carried out, for instance, where it is necessary to ensure that the church or organisation is presented in a credible fashion to the outside world. The employee must have the option to turn to a national court, which must review whether the employer's requirement is appropriate.

F v Bevándorlási és Állampolgársági Hivatal (C-473/16)

Hungarian authorities violated the right of the applicant (a citizen of Nigeria) to respect for private and family life guaranteed by the Charter of Fundamental Rights of the European Union. The authorities rejected his asylum application, where he stated his fear of being persecuted in his country of origin on account of his homosexuality. He underwent psychological evaluation, which did not confirm his homosexuality.

According to the CJEU, consent to such a psychological evaluation is not given freely, being de facto imposed under the pressure of the circumstances. The evaluation itself also interferes with the most intimate aspects of a person's life, is unreliable and does not constitute a necessary proof of the plausibility of the applicant's claims.



Did you know that...

... the issue of determining the sexual orientation of applicants for international protection is touched upon by various court decisions, including decisions of the Czech Supreme Administrative Court? The Court noted that an applicant in such asylum proceedings should not be automatically subjected to a penile plethysmography test (phallometry), which serves as a basis for an expert report. The Court agreed with the UNHCR and the ECtHR, which concluded that the use of phallometry is at variance with the right not to be subjected to degrading treatment and the right to private life. The Supreme Administrative Court thus found evidence based on such an expert report inadmissible.

Other European decisions relevant to the Czech Republic?

The European Committee of Social Rights issued its decisions in case Transgender Europe and ILGA-Europe v. the Czech Republic (application No. 117/2015), which indicates that the current legislative requirement of sterilisation as a precondition for administrative gender

reassignment for transgender persons is at variance with the right to protection of health guaranteed by the European Social Charter. Indeed, this precondition seriously interferes with the health and physical and mental integrity of the person and is at variance with human dignity.



Did you know that...

we have been actively opposing the Czech legislative rules requiring that transgender people undergo sex reassignment surgery associated with their sterilisation in order to be able to achieve administrative gender reassignment? In 2017, we recommended to the Chamber of Deputies to ask the Government to submit amendments to the relevant laws. The Chamber of Deputies accepted our recommendation. We are now in touch with the responsible governmental authorities to shape the new legislation.

 Defender's suggestions of 20 July 2018



4. Whom did we help?

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With our help, discrimination victims can achieve justice.

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Roma girls from a children's home can now attend a good primary school

We were able to persuade the director of a children's home to enrol three Roma girls in a good primary school. He had originally planned to enrol them in a nearby school where he claimed there was a good teacher for the first grade. However, the share of Roma children going to the school was high. The Czech Schools Inspectorate had objections to the school's functioning and some parents had complained about verbal abuse and

violence on the part of the school's employee against Roma children. There was also a good-reputation primary school nearby where the girls had already gone to kindergarten. The director of the children's home finally enrolled the girls there.

 Defender's Report File No. 1613/2018/VOP of 27 March 2018

Financial compensation for dismissal based on age

We inquired into the procedure of a district labour inspectorate in a case of a woman who had been bullied and discriminated against at work because of her age. In the end, the employer had fired her. We found errors in the procedure of the labour inspectorate which had not sufficiently established the facts of the case. The woman lodged a court action against the employer. The employer subsequently came with an offer of amicable settlement and the dispute was settled – the employer

withdrew the notice of termination and offered her to return to the job or claim financial compensation. The complainant had found a new job in the meantime so she took the financial compensation.

 Defender's Report File No. 3560/2016/VOP of 5 September 2017

 Press release of 5 December 2018

”

I am very grateful for your expertise and professional help. I believe the fact that you inquired into my case forced my former employer to seek settlement.

(Jana (57), social worker)

“

Fair termination of employment after parental leave

We helped a woman who wanted to return to her job as primary school teacher after a parental leave. However, the headteacher informed her she no longer had a job for her because she had already hired a new teacher

for the position. She offered the woman an agreement on termination of employment and severance pay in the amount of two monthly salaries. We advised the woman that the headteacher did not have the right to

force her to sign the agreement just because she had a small child to care for. That could constitute discrimination in the form of harassment. The woman was then

able to secure a higher severance pay in the amount of 6.5 monthly salaries. When she completed her parental leave, she started teaching in another school.

”

I'd like to thank you for your willingness to help, your interest in my case and the materials you provided. These four months of negotiating with my employer were a good experience that taught me I could deal with a personal attack and that if you knew the law, you could assertively defend yourself against oppression, even though this would be very unpleasant. I found my 'armour' in your report, so I'd like to thank you again for that. I appreciate the time and effort you spent to help me.

(Markéta (35), teacher)

“



Did you know that...

... parents with children under 4 years whose employment has terminated after a return from parental leave only have three days to register at the Labour Office?



Press release of 2 January 2019

The Ministry of Labour and Social Affairs has issued a leaflet with useful advice for parents looking for a job after returning from parental leave.

Help for children and youth with special needs

We were approached by a mother whose son had an attention disorder and dyslexia. The school he attended stopped providing suitable support because the recommendation issued by the pedagogical-psychological consulting centre had expired. The woman's son educational results had suddenly dropped by as much as two grades, which could have affected his chances of admission to a secondary school. The wait for a new recommendation was long – the counselling centre offered an appointment date in four months' time and even month after the appointment took place, the recommendation had still not been issued. The school was well-aware of the boy's educational needs and the only thing standing in the way of providing the necessary support was the formal obstacle in the form of a missing new recommendation from the counselling centre. We informed the mother that the school had the option to provide a minimum standard of support

in the meantime even without the counselling centre's recommendation.

The mother's subsequent talks with the school yielded solutions. The school informally contacted the counselling centre and the recommendation was issued within five days.

We similarly helped a student who had completed a Bachelor's degree at one university and wished to continue pursuing his Master's at another. Since he had to use a wheelchair due to having suffered cerebral palsy, he had passed the State examination later than other students. There was a risk the Bachelor's diploma would not be issued in time for the enrolment into Master's studies. We advised the student about the legal provisions he could use in dealing with the universities. All ended well and the diploma was issued in time.

”

I want to thank you for your co-operation and support, it helped me a lot that I knew whom to turn to. I am now getting to know my new and great school and I am very happy there!

(Jiří (23), university student)

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We also inquired into the case of a kindergarten pupil whose parents had requested (in line with their worldview) that he have the option to eat vegetarian food. They requested that the cooks in the kindergarten not serve meat to the boy and substitute it for vegetarian food brought from home. After the mother produced an opinion of a public health body and the Defender's report, the headteacher allowed the parents to bring their own food for the boy.

When our help has wider implications

In 2018, we again inquired into cases which will ensure fair treatment to a large number of people.

Accessibility of pedagogical education to persons with hearing impairments

A hearing-impaired student was unable to enrol in Czech language teaching Master's programme because she lacked a certificate that she had no speech defect. We contacted the faculties of education of several universities to find out how they approached students with hearing impairments. In some cases, the rules used raised suspicion of discriminatory conduct,

so we prepared recommendations on how to suitably amend them. Some universities heeded our recommendations and deal with hearing-impaired students on case-by-case basis.

 [Defender's Report](#) File No. 3180/2016/VOP of 5 December 2017

Conditions for granting consent to special use of a road in the form of creating a reserved parking space

Based on a large number of complaints, we inquired into the situation in reserve parking in Brno. The rules used by the individual city wards were not uniform and relied on a methodological guideline issued by the Brno City Hall. We issued several recommendations concerning rule for granting the road owner's consent. The Brno

City Hall accepted the recommendation and repealed the problematic methodological guideline.

 [Defender's Recommendation](#) File No. 14/2017/SZD of 11 June 2018

Issuing university diplomas with modified personal data to transgender persons

We inquired into the case of a university graduate who identified as a woman. The graduate was undergoing a gender reassignment therapy and prior to the surgery, the graduate asked the university to reissue the diploma with details corresponding to the graduate's new gender identity. The university refused to issue such a diploma. We found that the universities' practice was not uniform in this regard and we contacted the

Ministry of Education, Youth and Sports with a request to issue a methodological guideline on issuing university diploma with modified personal details. The Ministry accepted our recommendation and issued methodological guidelines to the individual universities.

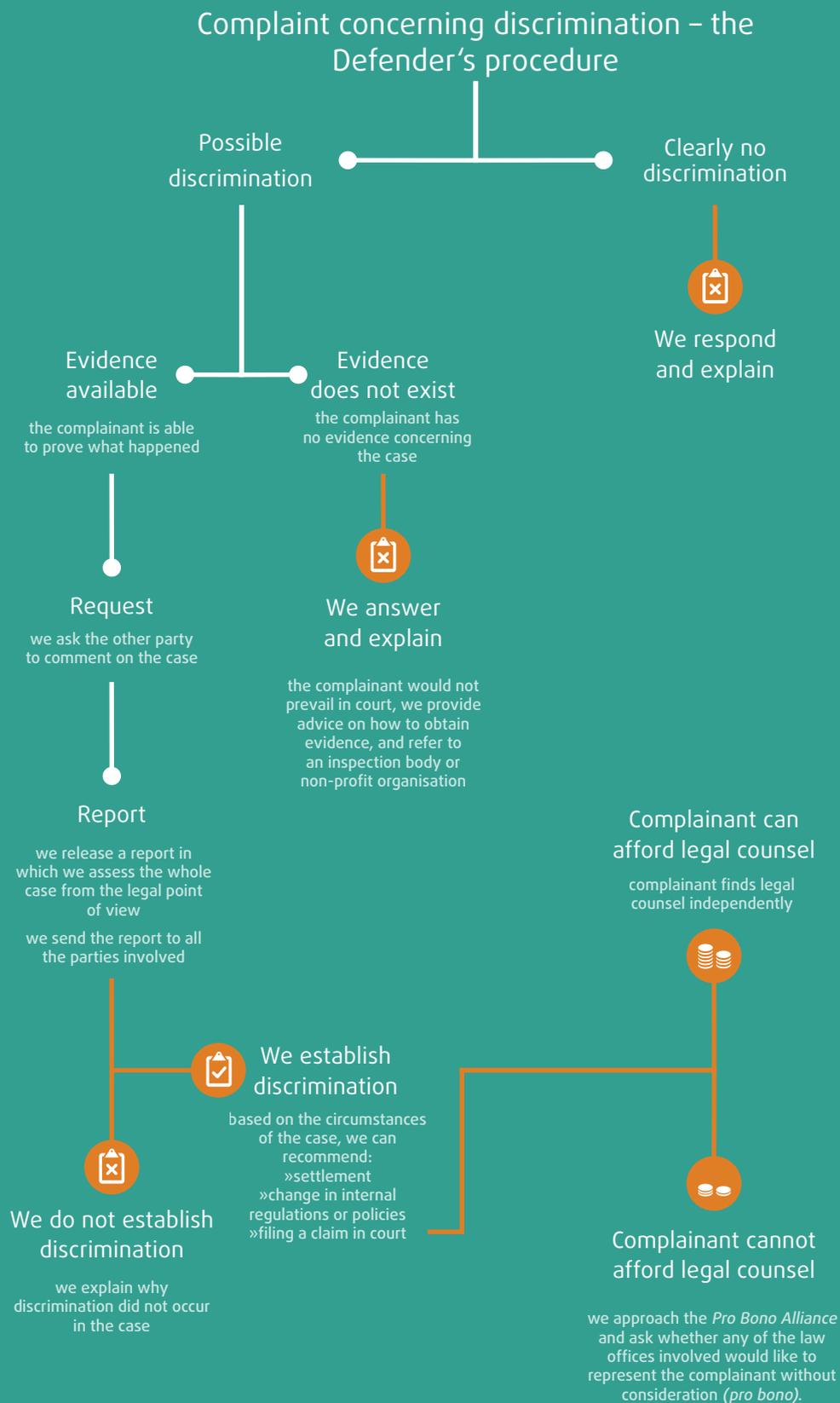
 [Defender's Recommendation](#) File No. 4/2018/SZD of 19 April 2018

Employment as a requirement for receiving municipal flats

We were approached by a top representative of a city with a request for an opinion on the planned amendment of the city's internal rules for the assignment of municipal flats. We especially focused on the requirement that applicants for municipal flats be economically active. We came to the conclusion that the proposed amendment to the internal rule would unfavourably

affect certain groups of people (e.g. older people or people with disabilities). In the end, the proposed amendment was not adopted and the internal regulation remained unchanged.

 [Defender's opinion](#) File No. 16/2018/DIS of 19 March 2018



5. Topic of the year: Discrimination on grounds of age

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Older people have much to offer to society. They should not face prejudices because of their age.

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Each year, we are contacted by approximately 2,000 people over 60 years of age. The range of problems they seek assistance with is very wide. They most often require help in the area of pensions and allowance for care, but they also often complain about noise or seek

advice in relation to the Land Registry. We often visit facilities for the elderly and other places where people's freedom is restricted and they face a risk of inadequate care and ill-treatment. Many older people also complain about discrimination, especially in employment.

We empower older people

Older people are often reluctant to deal with their situation and defend themselves, even though discrimination infringes on their rights. To empower them in their effort to assert their right, we issued a leaflet introducing five true stories of older people who were not afraid and

successfully defended themselves. We sent the leaflet to a wide range of organisations.

 Leaflet

Age discrimination and collective bargaining agreements

We encounter cases where discrimination occurs on the basis of collective bargaining agreements, which are sometimes not favourable to employees of higher age. For example, we dealt with a rule included in a collective bargaining agreement which stipulated that recipients of old-age pension would not receive the employer's contribution towards supplementary pension insurance.

We recommended to one employer to take necessary steps to cancel the provisions of the collective bargaining agreement constituting unequal treatment of employees on grounds of their age. The employer rejected our recommendation and the labour inspectorate initiated proceedings against it.

 [Defender's Report](#) File No. 1966/2016/VOP of 26 January 2018

 Defender's press release of 17 May 2018

If there is no objective reason to treat employees receiving old-age pension differently on the basis of the work performed, then the employer is committing direct discrimination on grounds of age.



Did you know that...

The entitlement to the old-age pension arises upon reaching the elderly age specified by the law. If a particular measure applies exclusively to persons receiving the old-age pension, it constitutes a criterion inseparably and directly linked to a prohibited discrimination ground.

We have dealt with discriminatory provisions of collective bargaining agreements before. In some cases, the collective bargaining agreement excluded recipients of the old-age pension from the entitlement to receive higher than statutory severance pay or turnover bonuses; in other cases the agreement specified a duty to fill vacancies with people “in the productive age”.

All these cases involved direct discrimination based on age. The principle of equal treatment applies to all kinds of employee remuneration, including non-claimable salary components and benefits. Employers are often unaware of this fact and believe that assignment of benefits is fully discretionary.

Collective bargaining agreements are a result of negotiations between the employers and trade unions, who are jointly responsible for their contents. Supervision is carried out by the labour inspectorate. For this reason, we invited representatives of the State Labour Inspectorate and the Bohemian-Moravian Confederation of Trade Unions to talk about the causes of discriminatory provisions in collective bargaining agreements and the possible solutions. Next year, we would like to follow up on the meeting and invite representatives of the employers as well. We believe that mutual talks are a better way to resolve the situation than lawsuits.

 Defender's press release of 4 May 2018

What did we deal with in 2018?

Can an older employee be disqualified from a share of profits?

Employers are often unaware that their collective bargaining agreement contains discriminatory provisions. Remedy can often be achieved if someone notifies the employer of the problem. In the case of one of the complainants, the collective bargaining agreement excluded recipients of the old-age pension from receiving shares of profits on the basis of attaining campaign goals. We advised the complainant to refer the case to the labour inspectorate. The inspectorate came to the conclusion that the provision of the collective bargaining agreement was at variance with the principle of equal treatment. During the inspection, the employer agreed with the trade union body to amend

the collective bargaining agreement to remove the discriminatory provision.



If an employer is unsure whether its collective bargaining agreement contains discriminatory provisions, the employer may approach us for advice.

When is a research worker too old?



I want the same working conditions as my younger colleagues – a full time employment contract for an indefinite term. I don't think it is fair when the employer automatically reduces working hours for employees over 65 and forces them to work on the basis of an agreement to complete a job or agreement to perform work. Researchers over 65 are often the most productive ones.



(Josef (67), researcher)

A research worker alleged that his employer was discriminating against employees because of their age. Allegedly, employees over 65 years of age were being offered less favourable contracts. The complainant had also notified the labour inspectorate, whose inspection did reveal discrimination, but the body failed to initiate administrative proceedings in time.

We issued a report in which we addressed not only the alleged discrimination, but also the labour inspectorate's procedure. We confirmed that the employer had committed discrimination on grounds of age. In contrast to younger colleagues, employees over 65 years of age were mainly offered fixed-term contracts and their salaries were largely paid from grant funding (which

was limited). These rules meant that the numbers of hours worked by older employees were often reduced. We identified a number of errors in the procedure of the labour inspectorate.

The affected research worker is now considering an anti-discrimination lawsuit. The labour inspectorate promised to carry out a new inspection in 2019.

 [Defender's Report](#) of 3 April 2018, File No. 898/2015/VOP

 Defender's Final Report of 20 August 2018, File No. 898/2015/VOP

Education for the young only?

Not all people wish to retire and relax after reaching the pensionable age. Some people want to continue working or even increase their qualifications. One complainant continued working as a teacher after reaching the retirement age. However, the employer refused to grant her a study leave to which she, as a pedagogical worker, had a statutory entitlement. The employer referred to the school's internal regulation which excluded recipients of the old-age pension from exercising this option.

We informed the complainant that her case could potentially involve discrimination. The complainant informed the school's management of our conclusion and the school stopped applying the relevant regulation to the complainant for the rest of the school year.

 Press release of 13 September 2018

We help educate the expert community

In 2018, we organised three legal seminars on age discrimination. The seminars were attended by judges, attorneys-at-law, employees of Ministries, inspection bodies, non-profit organisations and representatives of the academia. We prepared three materials to help experts prevent age discrimination and find solutions to it.

 Age discrimination in the case law of the Court of Justice of the EU.

 Age discrimination in employment – case law of Czech courts.

 Age discrimination – Defender's cases.

We organise events that make a difference

We organised a benefit concert. The proceeds went to the Hurá na výlet (“Let’s go on a trip!”) association, which organises trips and cultural events for the elderly to fill their spare time. The association wants to offer social events to senior citizens so that they do not participate in bogus promotion events that aim to exploit their vulnerability. The concert’s programme included musical songs performed by the students of Janáček Academy of Music and Performing Arts.



We also screened the Swedish documentary “Life Begins at 100”. The documentary and its protagonist bust the stereotype of old people who do not understand modern technology, are slow and lonely – the film shows that life can be fun even after turning 100.

6. Survey: Dental care for people with mental disabilities and an autism spectrum disorder

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Disabled people have the right to receive good dental care corresponding to their needs.

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Medical condition in combination with other factors undoubtedly affects satisfaction, well-being and quality of life of people. Dental care is a major area of general healthcare, although many people do not appreciate it enough.



Did you know that...

... according to literature, people with mental disorders are more likely to experience oral health problems than others?

The complaints that we received and the experience of NGOs and dentists indicate that people with mental disabilities and an autism spectrum disorder often face a number of distinctive problems in the area of dental care. These people or their close ones often mentioned the following issues:

- inappropriate communication on the part of the medical professionals;
- shortcomings in providing information on the interventions being performed;
- refusing to provide care completely, which can lead to discrimination.

The physicians we consulted noted that:

- medical professionals are often unsure about how to communicate with disabled persons correctly;
- they do not receive adequate remuneration for the extra work with disabled patients.

In the previous year, we decided to study this area in more detail. After discussing what to focus on, we chose to look closer at the practice of providing conservation dental care under general anaesthesia.



If you are unsure what this means,
see the glossary at the end of this report.

Some people with mental disorders and an autism spectrum disorder are unable to sufficiently co-operate with the dentist during an examination in an ordinary dentist's surgery and they require examination under general anaesthesia. Our preliminary findings suggested that the waiting times for such interventions were disproportionately long.

The survey involving 17 workplaces providing conservation dental care under general anaesthesia especially revealed the following:

- Such workplaces are not evenly distributed. There are several such workplaces in some regions while others have none.
- In 2015-2017, the average waiting time for these interventions was approximately 4 months for adult patients. Children's waiting time was 12 days longer on average.
- Almost 50% of workplaces do not consider "their" waiting times acceptable from the medical point of view.
- The reason for treatment of adult patients under general anaesthesia lay mainly in the impossibility of providing care in an ordinary dentist's surgery due to their mental disability or autism spectrum disorder (57 %); regarding child patients, the majority (50 %) were "non-cooperating" patients without particular health problems (e.g. children who are too afraid to go to a dentist, often because parents do not take them for regular examinations and the children are not accustomed to the environment).
- The conditions that a patient must meet to qualify for general anaesthesia differ among the workplaces – there are no uniformly applied criteria. Moreover, treatment is provided chaotically across workplaces with different specialisations; many workplaces only perform such interventions in addition to their main purpose.
- Workplaces are not proceeding uniformly as concerns the matter of reimbursements for care.

What are the next steps?

Based on the survey findings, we prepared a set of recommendations which we believe will help people with mental disorders and an autism spectrum disorder to gain access to good dental care.

The key measures include:

- defining a network of workplaces with sufficient capacity specialising in conservation dental care under general anaesthesia;
- defining diagnostic criteria for providing conservation dental care under general anaesthesia and creating a set of recommended procedures for care of patients in the in-patient sector with the aim of reducing the number of interventions under general anaesthesia;
- clarifying the terms of reimbursement for conservation dental care under general anaesthesia from public health insurance.

We believe the survey provides a basic outline of the problem and we are prepared to discuss the recommendations and possibilities of their implementation with:

- the Ministry of Health;
- the Czech Dental Chamber;
- health insurance companies;
- the Ministry of Education, Youth and Sports;
- non-profit organisations;
- professional associations;
- higher education institutions;
- workplaces providing treatment under general anaesthesia.

Do you want to know more about our survey and recommendations?

Visit our website at www.ochrance.cz and download the entire survey report under the section "[Discrimination / Research](#)".



Did you know that...

... in 2018, we published the result of another survey concerning the need of people with an autism spectrum disorder to receive suitable social services?

We have also prepared a comprehensive information leaflet for families with children with an autism spectrum disorder, where we provide useful advice for various life situations.

7. Recommendations: Inclusive education of Roma and non-Roma children

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We offer a guideline on how to address segregation in education.

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There are approximately 4,000 primary schools in the Czech Republic. In 136 of these, Roma make up a third or more of pupils. Twelve such schools are attended exclusively by Roma children. This situation carries a number of negative implications. Ethnic segregation in education:

- reduces the chances of the segregated pupils to attain higher education;
- strengthens social exclusion and prevents individuals from lifting themselves out of poverty;
- lays disproportionate demands on pedagogical work and creates a risk of teacher burnout;
- leads to lower economic activity of the graduates of such schools, which represents a significant loss for the Czech GDP;
- increases the economic burden on the school's founder due to the need to provide additional funding from municipal budgets.

Segregation in education is unlawful. Headteachers are not allowed to segregate pupils according to their ethnicity. Similarly, a municipality may not reserve one of its schools exclusively for Roma children nor designate school districts to achieve this goal. Such conduct would constitute direct discrimination in violation of the Anti-Discrimination Act. It is also necessary to avoid situations where a Roma class or school would be created due to the application of a seemingly neutral criterion (e.g. the school readiness test). This could constitute indirect discrimination.

Based on experience from the Czech Republic and abroad, we formulated ten measures to help achieve inclusive education of Roma and non-Roma children:

- 1/ good and inclusive pre-school education of Roma and non-Roma children;
- 2/ suitable delimitation of school districts;
- 3/ suitable transport or accompaniment of pupils to more distant schools (bussing) with the aim of ensuring even representation of Roma and non-Roma pupils in a municipality's schools;

- 4/ demonstrating to the school that inclusive education is meaningful and must be declared in its educational programme;
- 5/ good preparation of teachers for ethnically diverse classes (further education, sharing best practices among schools, visits, mentoring);
- 6/ help provided by additional non-pedagogic staff (teaching assistants, social pedagogues, school assistants, mediators) and support from local external entities;
- 7/ creating opportunities for meetings between Roma and non-Roma families to improve community relations;
- 8/ tutoring and mentoring of pupils;
- 9/ preventing bullying and creating a friendly school environment;
- 10/ helping poor families pay the costs of education.

We were especially interested in opinions from the field. Therefore, we contacted headteachers of ten primary schools experienced in educating Roma children, open to inclusive education, or trying to provide good education to all regardless of their ethnicity. The headteachers identifying the following causes of segregation:

- segregated neighbourhoods;
- inactivity or inappropriate interference by the founder;
- parent opposition to inclusive education;
- unwillingness of some schools to enrol Roma children;
- concentration of pupils with higher support needs in segregated schools; and
- absence of a systemic solution with a clear political support.

Aside from the ten aforementioned measures, headteachers believed it was necessary to promote good reputation of their schools in order to attract non-Roma children and ensure regular meetings with the stakeholders (other schools, town leaders, municipal police, bodies for social and legal protection of children, non-profit organisations).

”

All I can say is that we are trying to desegregate the school. When my deputy and I started here in 2013, we had 80% to 90% Roma pupils, while now it is 44%. Of course, this is quite a challenge. We must prepare events, improve the quality of teaching, offer things not available elsewhere. Our first order of business was to create a Facebook page for the school because the website simply didn't work as a tool for communication with the public. We try to make a name for our school, let others know that we are open – come and see for yourselves.

“

(Headteacher of a primary school with 35-49% Roma children)

The headteachers generally understand segregated education as a problem, but do not know how to deal with it. Schools often have only limited possibilities for addressing the situation and the municipality as the founder must act proactively.

”

We, as a school, can't do anything about the fact we are seen as a 'Roma' school, even though we don't like it. Well, you see, this is how the system works and we have to respect it. We are not having a breakdown because of it, we just made provisions for a situation that has come up here. We are doing all we can to ensure the kids are happy. We do all we can to attract non-Roma kids as well and we've had some limited success.

(Headteacher of a primary school with over 75% Roma children)

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I think that non-inclusive education results in an intolerant society – we see racism on the rise again now, but this doesn't happen with inclusive education.

(Headteacher of a primary school with 35-49% Roma children)

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We have thus prepared a practical guideline for municipalities facing segregation in education on how to deal with it. We have also formulated a series of recommendations addressed mainly to the Ministry of Education, Czech Schools Inspectorate, municipalities and schools.

 Defender's press release of 12 December 2018

 Defender's Recommendation File No. 86/2017/DIS of 12 December 2018



Did you know that...

... in 2018, we updated the Recommendation on equal access to preschool education?

 [Defender's Recommendation](#) File No. 25/2017/DIS of 22 March 2018

If there is insufficient capacity, kindergarten headteachers should primarily accept 5-year-olds and older children with mandatory preschool education. When these children are admitted, the headteachers can preferentially admit children according to their age, presence of siblings in the kindergarten, parent's employment status, social situation, and adherence to alternative teaching methods. A simple chart is available here.

8. Recommendations: Work-life balance in the civil service

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Work-life balance measures provide both women and men with the possibility to share their family duties more equally, giving them the flexibility to strike a balance between their family lives and careers.

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The Recommendation directly follows up on the 2017 survey on work-life balance in civil service at most Czech Ministries. The Recommendation is meant for the various Ministries, especially the Ministry of the Interior, the Section for Civil Service and the Department of Gender Equality of the Office of the Government. Some parts of the Recommendation can serve as inspiration to other civil service authorities and can help them improve the situation of civil servants.

 [Defender's Report](#) File No. 101/2017/DIS of 22 December 2017

 Defender's Recommendation File No. 32/2018/DIS of 8 June 2018

 Defender's press release of 4 October 2018

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People are diverse, but most want to work, have a family, as well as a personal life. In the 21st century, they should not be asked to sacrifice one of those things for the others. I believe that this does not help society prosper and, therefore, I have considered work-life balance as one of my priorities ever since I assumed by office.

(Anna Šabatová, the Public Defender of Rights)

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We welcome the Defender's recommendations. There have been differences in application of work-life balance measures among civil service offices. Improving this situation could attract new people to work in the public service in future.

(Rudolf Pospíšil, Vice-Chairman of the Union of Employees of Governmental Bodies and Organisations)

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We recommend that all civil service offices

- Focus on diverse groups of employees.
- Monitor the interest among employees in the work-life balance tools and reflect it in planning.
- Provide for training of managers in co-ordinating employees performing civil service in a flexible work regime.
- Transparently inform employees about the available flexible forms of work.

Recommendations to Ministries

- Assign one or more persons with responsibility for the area of gender equality as part of their service tasks. It is necessary that all standards for the activities of gender focal points at the Ministries be observed.
- Support education of gender focal points in co-operation with the Department of Gender Equality of the Office of the Government.

Recommendations to the Civil Service Department at the Ministry of the Interior

- Set objectives in the area of work-life balance so that they take into account the information mentioned in the annual reports. This information serves to enable civil service offices to create conditions enabling their employees to achieve a healthy balance between their family and personal lives and work.
- Support civil service offices in application of flexible forms of employment in the civil service and identify and support best practice.
- Hold regular training sessions for managers on the topic of flexible forms of work.

Recommendations to the Department for Gender Equality of the Office of the Government

- Use the information from the reports on work-life balance in civil service submitted by the Ministry of the Interior to the Government when drawing up reports on gender equality and include it in the updated gender equality enforcement measures and procedures of the Government.

A total of 67 civil service offices responded to our recommendations. Their responses showed that differences persist among the offices as to whether and which of our recommendations should be implemented. Therefore, we will stay in touch with the Deputy Minister of the Interior responsible for the civil service and ask him to co-ordinate specific steps in the area of work-life balance in the civil service.

We have successfully completed the “Bespoke Civil Service” project

The project focused especially on providing an overview of using work-life balance measures in the civil service. We were trying to increase awareness of equal opportunities not only among the heads of civil service offices but also their employees.

For this reason, we issued:

 [International Conference Proceedings: Work-life Balance \(2018\)](#)

 Leaflet: Civil service or a family? Let's have both!

In the area of work-life balance, the Defender's Office wants to set an example for other civil service employers. Therefore, we were looking for a way to adjust the important and demanding work at the Office to the needs of our employees. As a result, the Office has undergone a gender audit as part of the project. Based on the audit result, we expanded the opportunities for homeworking. We created a new Employee Care Department which prepared clear information on work-life balance measures and benefits. The Department has also prepared a material where employees in lower and managerial positions describe their positive experience with work-life balance measures.

Lawyers from the legal section have been acquainted with gender-sensitive writing principles.

To provide methodological assistance to victims of discrimination, we prepared an information leaflet for carers in the sense of the Labour Code.

 Leaflet: Employee benefits in the Defender's Office

 Material: Work-life balance stories in the Defender's Office

 Leaflet: Work or family? Let's have both!



9. Urgent challenge: children with a mother tongue different from Czech

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Cultural and language differences must not stand in the way of education.

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Besides native speakers, there are many children in Czech schools whose first language is not Czech. These children may be foreign nationals, but also Czech citizens, e.g. children from multilingual families or families returning from a long stay abroad. These pupils often

face many difficulties and obstacles, chiefly stemming from the fact that they are not fully proficient in the language of instruction. However, education is a key factor to ensure future access to employment and successful integration of these people into society.

Counselling centres require uniform methodology

We found that the current system of language support for these pupils at school is insufficient. For pupils with different first languages to receive essential supporting measures directly in classes, they require a recommendation issued by the pedagogical-psychological consulting centre. Ever since the effect of the September 2016 amendment to the Schools Act establishing inclusiveness as a key principle, the counselling centres started refusing to examine these pupils, arguing that they would have to face other disadvantages in addition to the language barrier.

We consider such a procedure to be in violation of the principle of equal access to education and so we urged the Ministry of Education, Youth and Sports to adopt remedial measures. The Ministry of Education finally

confirmed that insufficient proficiency in the language of instruction constitutes a special educational need and that pupils with a different first language are entitled to appropriate support. We also requested that the Ministry issue a clear uniform methodology for the school counselling centres to ensure that they know the correct procedure with regard to pupils with a different first language. The Ministry promised to issue such methodology by the end of March 2019.

 Defender's Report File No. 1345/2017/VOP of 25 October 2017

 Defender's Final Report: File No. 1345/2017/VOP of 21 November 2018

Things we encountered while inquiring into complaints

We were approached by a father of a first grader in a Czech primary school whose mother tongue was Ukrainian. The father complained that the school had failed

to take the son's insufficient proficiency in Czech into account, which resulted in unfavourable school results. The school also failed to inform the family about the

possibilities of language preparation and did not respect the counselling centre's recommendations. The family also faced a problem when they decided to transfer the son to a different school. Its headteacher allegedly tried to discourage the transfer arguing that the boy

would not manage the first grade and would probably get bullied by the other children. The case was also addressed by the Czech Schools Inspectorate, which confirmed most of our conclusions. We finally managed to find a school where the boy would be happy.



The helpful approach and the overall attitude was in sharp contrast with that of the previous school. This confirmed our belief that where people want to help, they do, and people should insist on a sensitive and individualised approach from the school management. My son's school results have improved and he is now cheerful, more motivated and happy to go to school.



(Bohdan (36), father of a child with a different first language)

Czech language examinations – a barrier to education of children with a different first language

Another problem faced by children with a different first language lies in secondary school entrance examinations where Czech proficiency is tested, as well as the common part of the school-leaving examination in the Czech language. Both examinations are designed for native speakers of Czech and are excessively difficult for non-native speakers, regardless of certain accommodations (more time, ability to use a dictionary). At the same time, it is generally known that leaving the

education system early contributes to future problems with getting a job and integration of people into society.

We recommend amending the Schools Act and the related implementation decrees so that the conditions of examinations in the Czech language take into account the minimum period non-native-speaker children require to master the Czech language at the required level, i.e. 5 to 7 years.



Do you want to know more about our legislative recommendations?
See the [Defender's Annual Report](#) for 2018.

Things we encountered while inquiring into complaints

Mr Alexei comes from Belarus and has lived in the Czech Republic for 6 years. His Czech is fairly good and he has worked as an orderly at a hospital for 2 years. He also studies at a secondary medical school to increase his qualifications and become a healthcare assistant. However, he was unable to successfully complete the studies because the school-leaving (maturita) examination included a test of Czech proficiency. He repeatedly failed the feared didactic test, being 1 point short of the pass-fail line because he was unable to work with

longer foreign-language texts within the set time limit. The hospital where Mr Alexei works has been facing long-term shortage of qualified medical staff and would like to hire him for a more qualified position, but it cannot because of the missing school-leaving examination (maturita) in Czech. Paradoxically, the same hospital employs nurses from Ukraine whose Czech proficiency is worse than Mr Alexei's – these nurses do not need to pass a school-leaving examination, they only need a simpler examination proving their basic fluency in Czech.

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This is not fair. Ukrainian nurses are able to work with patients under the supervision of a Czech-speaking nurse without any proficiency in Czech whatsoever. Passing a Czech language examination is a condition for unsupervised work with the patients, but it is up to them when they will undergo the exam – there is no deadline by which they have to pass it and they can repeat it as many times as they need. This is even though the exam is much easier than the maturita examination. I am not a native speaker and I can't manage so well with complex sentence analysis, idioms and layers of meaning in poems. Despite this, I am perfectly fluent and I've proven that in other parts of the maturita exam – and the hospital is very satisfied with my work as well.

(Alexei (23))

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This was also the case of a talented grammar school (gymnázium) student from equatorial Africa. The school-leaving (maturita) examination was an unsurmountable obstacle, even though he was gifted and had

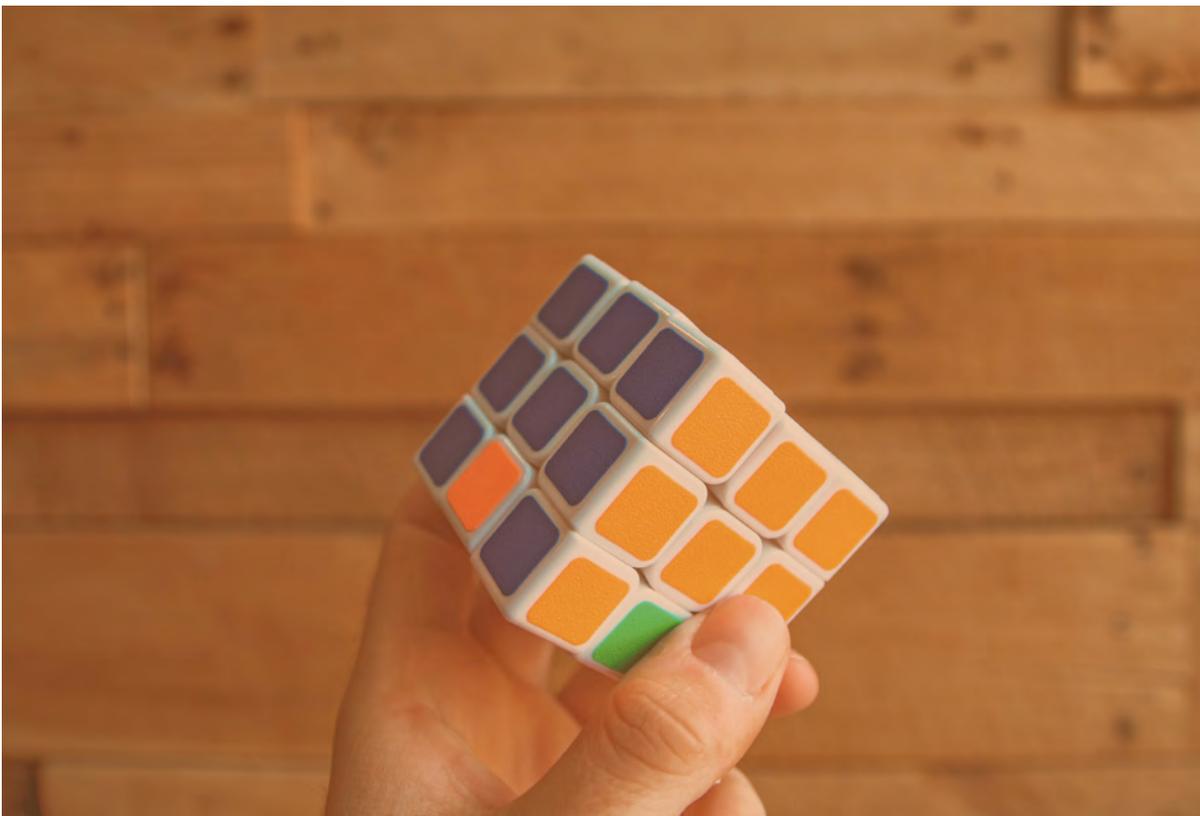
already been admitted to a technical university. Nevertheless, he was unable to commence his university studies because he had failed the maturita examination in the Czech language.

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His mother tongue is very different from Czech and our maturita examination, which is designed for native speakers, is just too difficult for him. He went to an intensive tutoring course, but just couldn't pass the exam regardless. I am very sad that we're wasting young talents and their potential to benefit our society.

(Jana (46), grammar school headteacher)

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10. Standards of equal treatment at the workplace

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We want to help victims of workplace discrimination and, to this end, we promote better controls and inspections of equal treatment.

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We are often approached by people who have become victims of workplace discrimination. As they lack the courage and financial means to file a lawsuit, they put their trust in the labour inspectorates and are often disappointed by the results. Our repeated inquiries show that the authorities are making several errors

in inspecting equal treatment of employees. Therefore, in 2018, we prepared a standard the authorities should observe.

 Defender's Final Report: File No. 5112/2014/VOP of 4 September 2018

What should the inspectorate do prior to the inspection?

The inspectorate's duties commence immediately after receiving a complaint from an individual (usually an employee) against unequal treatment at their workplace.

advise the person that the person may lift the confidentiality obligation from the inspectorate, as well as what that step would mean for the investigation of the complaint. .

The inspectorate has a duty to inform the person that the complaint has been received and comprehensibly

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They did not use the opportunity to look into the documents I have available and that would be relevant in combination with my testimony. They categorically refused to use the recordings I had made.

(Romana (40), accountant)

“

Some inspectorates refuse to accept audio and video recordings from the complainants arguing that their authenticity cannot be verified. We disagree. Workplace discrimination often consists in a subtle conduct “behind closed doors” with no witnesses. Recordings are often the only way to prove discrimination.

If a person states that he or she has additional materials available, the inspectorate has to request them.

Inspectorates have to decide whether they should carry out an inspection or immediately commence infraction proceedings. If they decide to set the complaint aside, they must provide a convincing reasoning.

What and how to inspect at the employer?

A questionnaire survey among the employees is a suitable form of obtaining information. It must, however, be conducted correctly. Questions should be formulated as specifically as possible and the terms used in the questionnaire must be explained. The inspectorate should also correctly determine which persons need to be

questioned – e.g. people in the department managed by the person accused of harassment. The selection should not be random. Former employees can be a valuable source of insight as they are no longer afraid of the employer's retaliation. The results of the questionnaire must be evaluated reasonably by the inspectors.

”

They didn't even ask the people working the same shift, who'd witnessed the manager's aggressive behaviour. And because half of the people asked did not confirm discrimination to the inspectors, they closed the case saying that discrimination did not occur. That is just wrong!

(Jaroslav (22), factory worker)

“

Inspectors should always be sceptical of the explanations provided by the employer and verify them.

”

The head of the department did not extend my contract because I had allegedly been insufficiently academically active. Younger colleagues with results much less impressive than mine received the extension without any problems. The inspectorate did not care about this discrepancy, they simply took the employer's word for it.

(Jitka (56), academic worker)

“

How to evaluate discrimination in the inspection record?

Legal assessment may differ according to the form of workplace discrimination investigated (direct, indirect, harassment, victimisation (retaliation)).

We recommend that the inspectorate use the following direct discrimination test in formulating inspection findings:

- Are comparable individuals or groups involved?
- Are they treated differently based on one of the prohibited grounds of discrimination?
- Is the different treatment unfavourable for the individual?
- Can this different treatment be reasonably justified?

How to proceed after the inspection?

The inspectorate must inform the complainant about the inspection results. It should primarily comprehensibly explain how it processed the evidence and materials

provided by the complainant and how it proceeded in the inspection in order for the complainant to understand the procedure correctly.



Did you know that...

... if you disagree with the results of a workplace inspection, you can file an objection? The objection is delivered to the chief inspector, who will have 60 days to resolve it. If the chief inspector comes to the conclusion that the objection is justified, he or she must take remedial steps.

If the inspectorate does establish workplace discrimination, it must commence infraction proceedings. The penalties imposed must be effective, proportionate and dissuasive.

A topic deserving special attention

In 2018, we issued further three important opinions on the activities of labour inspectorates. All were related to inspections of recruitment of employees. We sent these to the labour inspectorates so that they could incorporate them into their inspection procedures.

The opinions explain that

- job advertisements in languages other than Czech are not necessarily discriminatory

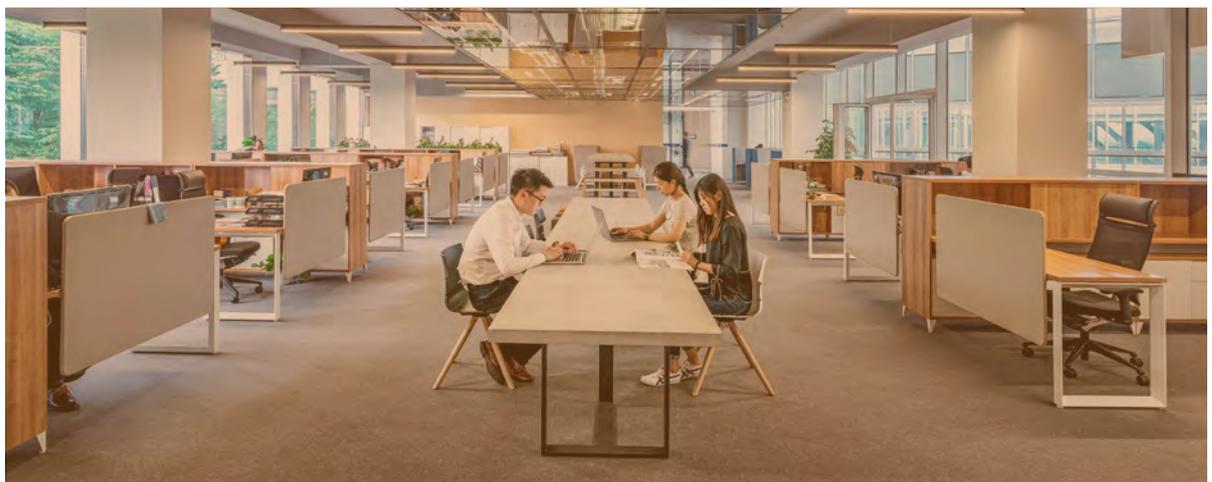
 [Defender's Opinion](#) File No. 1/2015/DIS of 4 April 2018

- the identity of entities who placed job ads online must be verified in co-operation with the operators of advertising portals

 [Defender's Report](#) File No. 1896/2017/VOP of 8 August 2018

- rejecting applicants who request payment of salary in cash can be qualified as discrimination on grounds of property

 [Defender's Opinion](#) File No. 39/2018/DIS of 7 June 2018



»»»»»» 11. We communicate

We stay in touch with public authorities, non-profit organisations and the private sector. We communicate our views on certain legal and social issues. Through various activities, we tried to raise awareness among students at Czech universities as well as among the broader public. We also joined the celebrations of important days commemorating the need to protect human rights and strive to improve the social status of vulnerable groups.

”

In 2018, we continued spreading the right to equal treatment in all directions.

“



The year 2018 in numbers

Press releases on discrimination **13**

News concerning the area of discrimination on the Defender's website **28**

Blogs concerning discrimination featured in Czech Television's show "This week in justice" **5**

Czech and foreign events with our active participation **52**

A year of bilateral talks with important representatives of the executive

In 2018, we engaged in multiple bilateral meetings with the leading representatives of institutions involved in enforcing the right to equal treatment in the Czech Republic.

We were happy to meet and talk with:

- Minister of Labour and Social Affairs;
- Minister of Education, Youth and Sports;
- Deputy Minister of the Interior for the Civil Service;
- Chief Public Health Officer of the Czech Republic;
- Inspector General of the State Labour Inspectorate;
- Chief Schools Inspector;
- Director General of the Czech Trade Inspection Authority.



We co-operate with key institutions on dealing with current challenges

Several important topics had to be specially addressed in 2018. We believed it necessary to meet representatives of all stakeholder bodies and institutions and look for common solutions to these challenges.

These discussions involved in particular:

— hate speech online and related procedure of the prosecuting bodies as well as the current legislation in the area – we communicated with the European Commissioner for Justice, Consumers and Gender Equality, Minister of the Interior, Police President, Supreme Public Prosecutor and the Government Commissioner for Human Rights;



— helping EU citizens to exercise their right to free movement, which is an area where the Defender assumed her statutory competence on 1 January 2018 – we talked with ambassadors of the European Union and the European Economic Area to inform

about the Defender’s new competence and arranging mutual exchange of information.

For these purposes, we commissioned an English translation of our collection titled “[Citizenship of the European Union](#)” in 2017.



Public administration – we engage, learn and explain

We organised the traditional “Together against discrimination” roundtable for inspection and central administrative authorities. In terms of the subject-matter, this year we focused primarily on the possibilities for using the Anti-Discrimination Act by the individual inspection bodies, the status of transgender persons in the context of gender reassignment, and citizenship as a “new discrimination ground”.

We trained several tens of employees of the Ministry of Finance, Tax Administration and the Ministry of Defence in matters concerning equal treatment in employment. We also talked with the Ministry of the Interior about when women and men could be preferentially hired in selection procedures for top positions in territorial self-governing units. We also educated regional co-ordinators for Roma affairs, liaison officers of the Police of the Czech Republic for minorities, and field social workers.

We co-operate with pro bono attorneys-at-law

As part of our long-term partnership with the Pro Bono Alliance, we continued focusing on educating attorneys-at-law providing free legal advice to victims of discrimination. We hosted a total of four seminars focusing on the following topics:

- Basics of anti-discrimination law.
- Harassment at work.
- Equal pay: How to win a court case?
- Discrimination in the provision of goods and services.



Did you know that...

... since 1 July 2018, there have been new conditions in place for the provision of free legal advice?

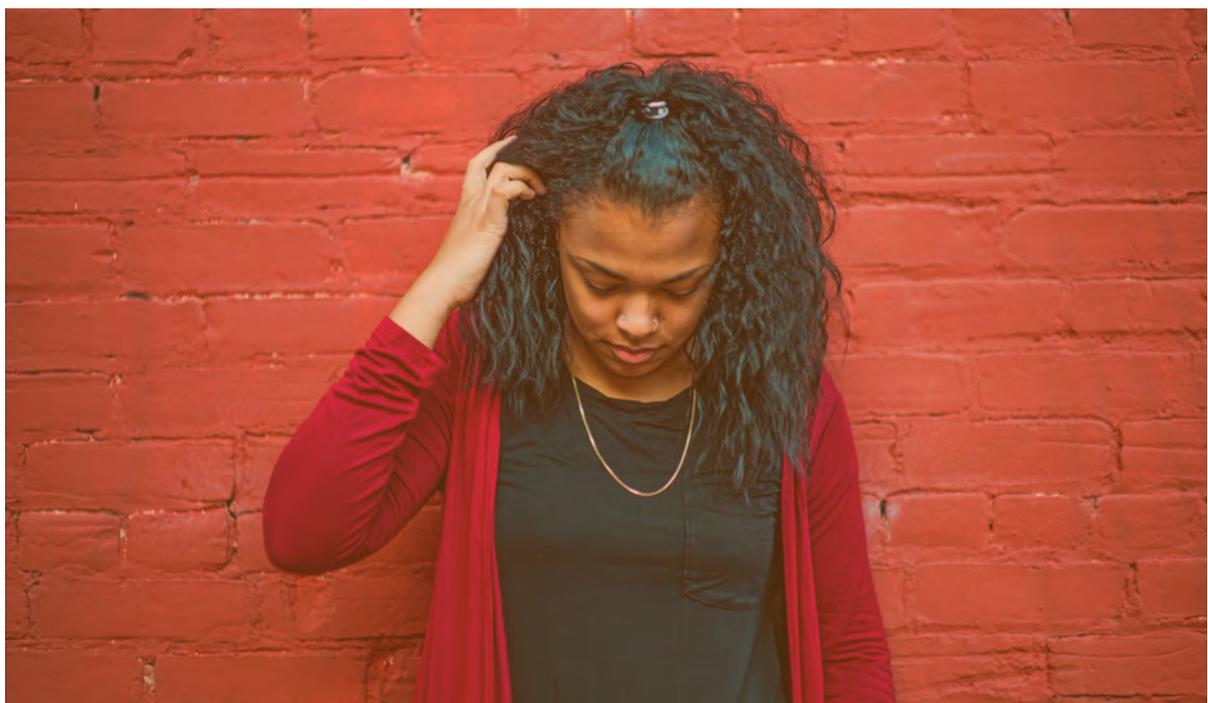
We have updated our information leaflet. You can read it [here](#).

We maintain a dialogue with non-profit organisations and share our experience

We organised a roundtable to discuss important topics with representatives of non-profit organisations, especially regarding issues related to hate speech in public space, discrimination of HIV-positive persons and less favourable treatment because of sex and gender in education.

We discussed certain pressing issues related to discrimination in personal meetings with representatives

of certain non-profit organisations. To name a few, we met with representatives of the following organisations: Rozkoš bez rizika, In Iustitia, Nesehnutí, Romodrom, and META. We also had meetings with the Union of Towns and Municipalities of the Czech Republic. We hosted a lecture on discrimination at events organised by Tichý svět, Open Society Fund Prague, Museum of Romani Culture, and Leges Humanae.





We also stay in touch with representatives of the private sector

We hosted a number of seminars for the Confederation of Industry of the Czech Republic, the largest employer association representing a majority of Czech industrial and transport sector.

We educate students about equal treatment

We consider educating future lawyers as a key piece in our awareness-raising strategy in the area of equal treatment. In 2018, we co-operated with the Faculty of Law of Masaryk University and Pro Bono Alliance on education projects such as “School of Human Rights”

and “Human Rights Live”. We organised expert seminars, excursions, summer internships for students of the Faculty of Law and Faculty of Social Studies of Masaryk University and the Faculty of Law of Charles University, and also workshops for secondary school students.

Other awareness-raising activities: important days

We participated in activities associated with important days to remind the public of the importance of protecting human dignity and equal treatment in society. This included especially the following:

- International Day Against Homophobia and Transphobia
- Human Rights Day
- European Independent Living Day
- World Autism Awareness Day.



International co-operation

Equinet – European Network of Equality Bodies

We actively participated in all permanent and temporary working groups (law, policy, communication, gender, migrant workers, data and research) of this European network.

We attended Equinet conferences and seminars.

We contributed our findings and knowledge and participated in the preparation of the following publications in particular:

– Faith in Equality: Religion and Belief in Europe.

 Available [here](#)

– Extending the Agenda. Equality Bodies Addressing Hate Speech.

 Available [here](#)

– Equality in the Classroom: Equality Bodies and Gender Equality in Education.

 Available [here](#)

Strategic Litigation Handbook.

 Available [here](#)

12. Welcome developments

The European Commission against Racism and Intolerance (ECRI) and the European Commission

“Both institutions called on Member States to strengthen the European equality bodies. According to them, the ombudsman would have the power to represent victims of discrimination in court. That is a clear impulse for the Czech Government in 2019 to draft a bill empowering the ombudsman in the area of combating discrimination.” – Petr Polák

 [Update](#) concerning the area of discrimination from 31 July 2018

 [Press release](#) of the European Commission of 22 June 2018

Dr Ryšánek of Nová Bystřice na Benešovsku

“To be able to treat a child patient with autism who would otherwise be very reluctant to co-operate, the doctor and his wife dressed as a panda and a tiger. This helped the boy relax and get treated. I hope others will be equally creative!” – Jana Vomelová

 [News report](#) at Aktualne.cz of 8 December 2018

Parliament of the Czech Republic

“Introducing long-term care allowance for carers effective from 1 June 2018 gives hope that carers will not have to give up their jobs and will be able to take care

”

We highlight a number of commendable feats in the area of equal treatment achieved by various people and organisations in 2018. Here we explain our reasons.

“

of their close ones in difficult times, with the State’s help. The amendment will strengthen gender equality because carers are predominantly middle-aged women.” – Eva Vyoralová

 [Useful information](#) on the website of the Czech Social Security Administration

“Changes in the pension insurance will especially benefit elderly women. Although they live longer on average, they have to make a living on a lesser income. One of five elderly women in the Czech Republic is at risk of poverty. I am convinced the new regulation will reduce this risk.” – Jiří Fuchs

 [Commentary](#) of the Minister of Labour on the amendment to the Pension Insurance Act

World Health Organization (WTO)

“The World Health Organization revised its International Classification of Diseases so that being transgender is no longer classified as a mental illness but as a sexual health condition. I am happy with this solution. It can help to reduce the stigmatisation of transgender persons but maintains their access to necessary health-care.” – Karel Suda

 [International Classification of Diseases – 11th Revision](#)

Karel Karika, deputy mayor of city district Ústí nad Labem – city

“When a dormitory was closed in said part of the city, Karel Karika worked with social workers and for many weeks actively tried to help people find new homes. He succeeded. At first, his only reward were threats and hateful messages. However, voters re-elected him in municipal elections.” – Jana Mikulčíková

 [Article](#) posted on a2larm.cz on 8 October 2018

Constitutional Court of the Czech Republic

“In response to a complaint raised by a person with an autism spectrum disorder, the Court stipulated that administrative regions had the duty to ensure the availability of suitable social services within their territory. The duty is reflected in the right of affected persons to receive these services. If a regional authority fails to take steps to provide suitable social services, affected persons may defend themselves in court through an action against unlawful intervention.” – Hana Brablcová

 [Press release](#) of the Constitutional Court of the Czech Republic of 14 February 2018

EURES – The European Job Mobility Portal

“The aim of the 50 Years of Free Movement and 60 Years of Social Security Coordination in the EU campaign (EU Movers Competition) was to showcase the benefits of free movement and settling within the EU Member States, both for those who took the opportunity to move as well as those who benefited indirectly. The campaign also includes a contest where the winner can win a travel voucher.” – Iva Fellerová Palkovská

 [Facebook](#) campaign

The Roma

“Many Roma have posted pictures of themselves at work on Facebook. They were doing so to respond to the stereotypes espoused by the Czech president, Miloš Zeman, who had noted that the Roma didn’t go to work. The initiative was launched by Jiří Kaleš, who

aimed to bust the majority’s stereotypes about the Roma. More than 9,000 people participated. It was an inspiring grassroots event.” – Veronika Bazalová

 [Article](#) published on Romea on 3 October 2018

Organisers of the 10th year of the “Crescent Moon over Prague” festival

“One of the objectives of the festival is to prove through various cultural and artistic means that a dialogue between two seemingly distant cultures is possible on the basis of mutual respect, exploration and co-operation. The festival is unique in the Czech Republic by its focus on literature and theatre. I believe that this year’s motto of “Inspiration in diversity” strikes at the heart misunderstanding and negative stereotypes about the Middle Eastern communities.” – Markéta Lavrinčíková

 [Official website](#) of the festival

Sparta football club in Prague

“For many years, Sparta had issues with racism among its fan and was repeatedly punished for their conduct by UEFA’s disciplinary body. In 2018, Sparta joined the #FootballPeople project. This undertaking is a brainchild of UEFA and Fare Network and aims to combat racism and discrimination in football. It represents a step in the right direction which will hopefully inspire other Czech football clubs as well.” – Jan Slavíček

 [Announcement](#) on Sparta Prague’s website

Office of the Government of the Czech Republic

“Inaccurate information on the Istanbul Convention appeared in mainstream and social media and caused quite an uproar among the Czech public. I thus welcomed that the Office of the Government issued a booklet busting the myths and setting the record straight about this convention of the Council of Europe. A good, timely response.” – Anna Katerina Vintrová

 [Booklet](#) issued by the Office of the Government on the Istanbul Convention

Člověk v tísní (People in Need)

“As part of the One World at Schools festival, the group organised a second year of Media Education Weeks. The event includes film screenings, seminars and debates held at schools with the aim of promoting critical thinking and media literacy among young people. This year’s motto – “Oh really?” – reminded of the need to be able to identify reliable information, which is especially relevant today when disinformation and fake news spread easily, especially via social media. The effort of People in Need to assist schools in this endeavour is commendable.” – Lenka Kříčková

 [Information](#) on Weeks of Media Education

Lucie Čechovská and Zuzana Ďaďová of NESEHNUTÍ – Independent Social Ecological Movement

“I often encounter trivialisation, belittlement or outright denial of the persisting structural gender inequality in society. Such attitudes are best debunked using stories of real people, which often have the strongest emotional impact on people. This is why I was pleased to see the study titled “Life Stories as a Mirror of Inequality”, which illustrates these structural and often not immediately obvious inequalities on the life stories of several women. I recommend all people to read this and I congratulate the authors.” – Barbara Kubátová

 “Life Stories as a Mirror of Inequality” [publication](#)

Markéta Oličová, graduate of the Faculty of Art and Design of Jan Evangelista Purkyně University

“She is not only a talented designer, but also helps others. As part of her diploma thesis, Markéta created a typeface called “Tactus type” whose 2D and 3D signs are meant to be read by people with visual impairments and blindness. Few people know Braille these days. Tactus type is easier to read by touch and I hope it will spread fast and make reading easier to people with visual impairments, as well as broaden the horizon to others.” – Sylva Hanáková

 [Information](#) on the Czech International Award for Student Design 2018

Creators of Thomas the Tank Engine

“The show creators decided to make it more diverse. Based also on complaints from parents, new international characters and female protagonists will appear. This may sound silly initially, but many prejudices are needlessly formed in early childhood. This is why I think that diversity is more important in children shows than in works meant for adult audiences.” – Martin Šmíd

 [Article](#) on the Independent of 1 September 2018



Glossary of terms

Anti-Discrimination Act – Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination and on amendment to certain laws (the Anti-Discrimination Act). This is a general law that prohibits discrimination in the areas it defines (e.g. work and employment and access to goods and services) and stipulates the underlying definitions of discrimination and the associated terminology.

Czech Schools Inspectorate (CSI) – an administrative body responsible for inspection and evaluation of the quality of education in the Czech Republic. The CSI consists of the headquarters in Prague and 14 regional inspectorates.

Grounds of discrimination – one of the grounds listed by the Anti-Discrimination Act (i.e. race, ethnicity, nationality, sex, sexual orientation, age, disability, religion, faith or worldview) or some other legal regulations, which may not be used to discriminate between individuals.

European Court of Human Rights – a court established by the Council of Europe, of which the Czech Republic is a member. The court is based in Strasbourg and decides especially on applications lodged by individuals against the Member States. Its decisions identify (non-) violation of the Convention for the Protection of Human Rights and Fundamental Freedoms by a Member State and the court can also award damages to the applicant.

Inclusive education – inclusion of all children into the learning process, without exceptions, i.e. educating children without “special educational needs” together with children with a different mother tongue, exceptionally gifted, with learning difficulties, socially disadvantaged or with disabilities, all in the same classroom. An inclusive school educates all kinds of children together and approaches each one individually according to their needs, which are regularly evaluated.

Labour Inspectorate – district labour inspectorates and the State Labour Inspectorate monitor compliance with duties following from the labour law, collective bargaining agreements and internal regulation of employers. In justified cases, the Labour Inspectorate may impose penalties for infractions or administrative offences.

Conservation dental care – dental treatment, especially of cavities (removal of cavities, placement of fillings, removal of decayed teeth, etc.).

Incitement to discrimination – persuading someone to discriminate against his or her employees or customers

without there being a relationship of seniority and subordination between the instigator and the person who commits discrimination.

Indirect discrimination – conduct or an omission where a person is put in a disadvantageous position on the basis of an apparently neutral provision, criterion or practice. Within the meaning of the Anti-Discrimination Act, such conduct occurs on the same grounds as direct discrimination. Provision, criterion or practice is not considered indirect discrimination if it is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary.

Harassment – unwelcome behaviour associated with grounds of discrimination leading to diminishment of a person and creation of a threatening, hostile, humiliating, degrading or offensive environment (e.g. making jokes about disability or depicting women or ethnic minorities at the workplace in an offensive manner). Harassment also consists in a behaviour that may be justifiably seen as a precondition for certain decisions (e.g. when a prospective female employee is asked about how many children she plans to have).

Instruction to discriminate – an instruction from a senior employee obliging a person in a subordinate position to discriminate against other employee(s) or, for instance, customers in the selling of goods or services.

Victimisation (retaliation) – punishment or unfavourable treatment of a person who reported discrimination or harassment.

Direct discrimination – an act or a failure to act, where one person is treated less favourably than another is, has been or would be treated in a comparable situation, based on any of the grounds of discrimination.

Segregation – separation of various social groups into distinct areas; in educational contexts, this means placing children in schools or classes according to their ethnicity or social status.

Work-life balance – a situation where the balance of life at work and out of work matches the individual's priorities, needs or plans in life; it represents the optimum of possibilities for combining work with other areas of life out of work such as family, friends, free time, leisure activities, etc. Work-life balance can be achieved e.g. through working part time, from home, etc. Work-life balance measures are important in relation to employment of mothers and their position on

the labour market. Insufficient measures supporting the balance between work and private life, be they legislative measures or measures taken by the individual employers, may disadvantage members of certain groups of people and thus lead to their discrimination.

Service relationship – contractual relationship between a civil servant and the State: to be accepted into a service relationship, it is necessary to meet the requirements stipulated by the Civil Service Act.

Civil Service Bodies/Offices – administrative authorities and other bodies or legal entities as defined by law; these are institutions in which civil servants are employed.

Civil Service Act – Act No. 234/2014 Coll., on civil service, as amended; the Civil Service Act provides for the service relationship of civil servants working at civil service offices, and expressly lays down the duty to create conditions for achieving work-life balance on the part of civil servants.

Court of Justice of the European Union – the court tasked with interpreting EU law in order to ensure its uniform application in all Member States, as well as settling legal disputes between the individual Member States and institutions of the European Union. Its mission is to ensure that the Member States and authorities of the European Union adhere to EU law.

ANNUAL REPORT ON PROTECTION AGAINST DISCRIMINATION IN 2018

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Published by the Office of the Public Defender of Rights in 2019

Graphic design, typesetting, production: Omega Design, s. r. o.

ISBN 978-80-87949-97-9