

# Annual Report



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# Annual Report

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## COLOUR SCHEME – COLOUR LEGEND

- generally about the Public Defender of Rights
- government
- supervision over restrictions of personal freedom
- equal treatment and discrimination
- protection of rights of people with disabilities

## PUBLIC DEFENDER OF RIGHTS

Údolní 39, 602 00 Brno

information line: **+420 542 542 888**  
telephone (switchboard): **+420 542 542 111**  
e-mail: [podatelna@ochrance.cz](mailto:podatelna@ochrance.cz)

[www.ochrance.cz](http://www.ochrance.cz)  
[www.facebook.com/verejny.ochrance.prav](https://www.facebook.com/verejny.ochrance.prav)  
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**JUDr. Stanislav Křeček**  
Public Defender of Rights



**Mgr. Monika Šimůnková**  
Deputy Public Defender of Rights

# Foreword by the Public Defender of Rights

The Annual Report on the Activities of the Public Defender of Rights in 2020 looks back at an absolutely extraordinary year. If circumstances were different, I would probably start by introducing myself as the new occupant in the office of the Public Defender of Rights, as the previous Defender Anna Šabatová completed her mandate in February and I was elected in her stead. Looking back at the year as a whole, however, this change and possible thoughts regarding the future mission of the entire institution become irrelevant in view of the obstacles and challenges that the Office of the Public Defender of Rights and all of society had to overcome.

Over its modern history, global society has probably never faced such a serious threat outside of war, and the Czech Republic was not spared. People, institutions and states had to get accustomed to fundamental changes in everyday life, new challenges, new methods of communication, and previously unknown and unexpected problems. The crisis is far from over, but I am immensely proud of how our institution dealt with this challenge.

Since the very first weeks of the Covid-19 pandemic, we have made it clear to the public that we are here to help, even if we have to embark on some new, unexplored paths. We inquired into complaints, offered explanations and provided information about the changes and options brought by the new legal regulations. At the end of these paths, we found not only a greater number of various suggestions, queries and complaints, but especially new topics to deal with. I would like to mention two of them – an extraordinary increase in the number of complaints regarding package tours cancelled by travel agencies, and the ban on visits to facilities where people are restricted in their freedom.

While new topics appeared in all the areas of our work, old problems did not just go away with the outbreak of the Covid-19 pandemic. There will be no clear dividing line between the times preceding the pandemic and following it.

Therefore, I would like to draw attention in this Annual Report not only to the most important issues we encountered during the year and the urgent cases we addressed, but also to a number of systemic problems in society that are still to be tackled. You can find them in my recommendations; while some of them are novel, I would like to point out the problems persist in the long term.

I have heard many voices saying that the year 2020 was anomalous, a year we should simply “write off”. I disagree. We should not use the pandemic as an excuse and neglect problems for another year, without making any attempt to resolve them.

I believe that this report on the activities of the Public Defender of Rights will provide the Deputies, Senators and the Government with further feedback and help us improve the lives of people in the Czech Republic and look for ways of solving the problems we are all facing.

I am hopeful that this report will be inspiration for your work.

**Stanislav Křeček**, Public Defender of Rights  
1 February 2021



# **Legislative Recommendations, Relations with Constitutional Bodies and Defender's Activities**



**The Defender makes general conclusions that reflect the problems and findings encountered in his activities and points out the necessary changes to the legislation. He proposes possible solutions to the Chamber of Deputies in the form of legislative recommendations and also responds to the way his previous recommendations were followed.**

# Recommendations for 2020

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## 1. REDUCTION OF THE PERIOD OF INSURANCE REQUIRED TO BE ELIGIBLE FOR (REGULAR) RETIREMENT PENSION

The Defender has long pointed out cases where an applicant for retirement pension fails to meet the condition of 35 years of insurance when he or she reaches the pensionable age. This minimum required duration of insurance is unusually long even in the European context (for more details, see Chapter 3, Social security, [p. 44](#)).

In December 2020, the Ministry of Labour and Social Affairs presented a legislative draft introducing fundamental changes in the basic pension insurance ([press release of 11 December 2020](#)). As regards the period of insurance required for an entitlement to retirement pension, the Ministry suggested re-enacting the legislation effective before 1 January 2010, where the eligibility period of insurance for regular retirement pension or what is called "early retirement pension" would again be set at 25 years.

In general, the Defender supports the return to the previous, shorter eligibility period within the presented draft.

Statements made by top Government officials indicate, however, that this fundamental reform will likely not win the necessary political support in the Government or in the Chamber of Deputies.

Therefore, the Defender **reiterates** the need to reduce the period of insurance required for an individual to



become entitled to retirement pension, i.e. modify the basic eligibility condition. This change can be achieved by adopting the aforementioned reform draft of the Pension Insurance Act or by presenting a new proposal to amend the parameters of the existing Pension Insurance Act. The Defender leaves it open whether the total period of insurance required for an entitlement to regular retirement pension should be reduced or whether those who do not meet the condition of 35 years of insurance at the time when they reach the pensionable age should be given the option to receive a smaller retirement pension, corresponding to the reduced period of insurance.

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## THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

If a comprehensive pension reform is not approved by the Parliament, the Public Defender of Rights recommends that the Chamber of Deputies call on the Government to present a proposal for a change in the parameters of Act No. 155/1995 Coll., on pension insurance, as amended, which would loosen the current condition of 35 years of contributory and non-contributory period of insurance or 30 years of contributory period of insurance, required for an entitlement to retirement pension.

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## 1. Legislative Recommendations, Relations with Constitutional Bodies and Defender's Activities

security, p. 44). The Minister of Labour and Social Affairs informed the Defender that the eligibility condition for a housing allowance consisting in presentation of an annual bill of costs might be eased in justified cases within the pending review of housing benefits.

A draft Housing Allowance Act (Ref. No. of the submitter – [the Ministry of Labour and Social Affairs: 2019/248918-510](#)), which includes a review of housing benefits, was submitted to the interdepartmental commentary procedure in December 2019. Most of the consulted bodies, including the Defender, presented fundamental objections to the draft. Among other things, the Defender proposed to lay down an exemption from the duty to present an annual bill in a situation where the landlord refuses to co-operate in issuing the bill ([File No. 2757/2020/S](#)). The comments have not been resolved thus far. The Defender therefore considers it necessary to address the current problem at least by adopting a partial amendment to the State Social Assistance Act.

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## THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

That the Chamber of Deputies adopt a Deputies' motion to add a fourth sentence to Section 25 (2) of Act No. 117/1995 Coll., on State social assistance, as amended, reading as follows: "Where an applicant for a housing allowance or a recipient of a housing allowance has made a sufficient effort to obtain a bill of the housing costs paid by means of advance payments, the regional branch of the Labour Office may waive the requirement for presenting the bill."

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## 3. ENSURING ACCESS TO COMPENSATION AIDS FOR EVERYONE SUFFERING FROM A SERIOUS MOBILITY IMPAIRMENT

For several years now, the Defender has been drawing the attention of the Minister of Labour and Social Affairs to the unfair list of disabilities qualifying people for a special-aid allowance (an allowance for people with disabilities towards payment of the costs of compensation aids).

The situation of people with mobility impairment caused by severe disability is the most urgent problem, in the Defender's opinion. This is because the list of disabilities qualifying people for a special-aid allowance (given in an annex to Act No. 329/2011 Coll.) is limited merely to 13 severe disorders of the musculoskeletal system (e.g. anatomical loss of both lower limbs) and 12 impairments of internal nature (e.g. heart failure in persons waiting for a heart transplant).

## 2. DENIAL OR WITHDRAWAL OF A HOUSING ALLOWANCE BECAUSE OF A FAILURE TO PRESENT AN ANNUAL BILL FOR SERVICES

According to Section 25 (2) of the State Social Assistance Act, an applicant for a housing allowance or a recipient of this allowance has to present to the relevant regional branch of the Labour Office annual bills of housing costs which are paid for by means of advance payments. If the applicant or recipient rents the flat or house, his/her landlord – as the utilities provider – is required to draw up an account (bill) for the tenant.

The Defender has seen cases where the landlord failed to issue the required document despite repeated requests from the tenant and the labour office. One of these cases even culminated in a lawsuit brought by the tenant against the landlord. Even in these instances, however, branches of the Labour Office withdrew or denied the allowance because of the failure to present an annual bill. In the Defender's opinion, such a restrictive approach is contrary to the very purpose of the housing allowance, i.e. to assist low-income people with covering the costs of obtaining or maintaining housing.

Although the Defender tried to address the above-described problem by finding suitable interpretation of the applicable legislation, neither the Labour Office nor the Ministry of Labour and Social Affairs accepted such interpretation (for more details, see Chapter 3, Social

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## **1. Legislative Recommendations, Relations with Constitutional Bodies and Defender's Activities**

The list of eligible disabilities cannot be extended within the assessment of the disabled person's health condition, not even if the person suffers from another, equally severe disability leading to comparably severe mobility impairment. A typical example is a severe mobility impairment caused by a disease or damage to the brain (multiple sclerosis, Parkinson's disease, dementia and many others). According to the interpretation of the Ministry of Labour and Social Affairs, disability of this nature cannot be classified as a disorder of the musculoskeletal system or an internal disability, although it may lead to the same functional limitations, i.e., to a comparably severe mobility impairment. Therefore, the labour offices and the Ministry regularly dismiss applications filed by people with such disabilities.

The Defender points out that the current situation is at variance with the State's obligations under the Convention on the Rights of Persons with Disabilities. Pursuant to Article 28 of the Convention, the State shall ensure equal access by persons with disabilities to devices (compensation aids) and other assistance for disability-related needs. The States are also obliged to take effective measures to safeguard that devices (compensation aids) and other measures to ensure mobility of persons with disabilities are available at affordable cost.

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### **THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS**

**That the Chamber of Deputies call on the Government to present a comprehensive amendment to Act No. 329/2011 Coll., on granting benefits to people with disabilities and amending related laws, as amended, to ensure that everyone who suffers from a serious mobility impairment is entitled to special aids regardless of the disability causing the mobility impairment.**

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## **4. RIGHTS OF PERSONS WITH DISABILITIES ACCOMPANIED BY SPECIALLY-TRAINED DOGS**

Some persons with disabilities require help of assistance or guide dogs.

These animals help people with disabilities to exercise their rights in practice and are thus an aid for them in their everyday lives.

Nevertheless, people with disabilities face obstacles in some situations that make it impossible or difficult for them to use assistance of their specially-trained dogs ([in public transport](#), in a hospital, in access to a school building or when [travelling by train](#)). Based on the cases he dealt with, the Defender has prepared

an [information leaflet](#) containing practical advice for people with disabilities.

As far back as in 2016, the Defender recommended ([File No. 23/2015/SZD](#)) that the Government draw up and submit to the Chamber of Deputies a bill specifying certain rights of people with disabilities accompanied by specially trained dogs, the related duties of service providers and the requisites of training and certification of specially trained dogs. The Government complied and [tasked](#) the Ministry of Labour and Social Affairs with preparing the relevant legislative draft by the end of 2016. However, the Ministry has yet to submit the draft to the Government. A group of Deputies presented their own legislative draft to the Chamber of Deputies in June 2020 (the Chamber of Deputies, 8th electoral term, [Chamber of Deputies document No. 883](#)). The Defender supports this draft, but it has yet to be discussed by the Chamber.

The rights of people with disabilities who use assistance and guide dogs are still not sufficiently protected. The case of a blind woman thrown out of a taxi because the driver would not transport her guide dog caught substantial media attention in 2020. The Defender is therefore convinced that this topic deserves attention of the Chamber of Deputies and recommends that it adopt the draft legislation.

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### **THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS**

**That the Chamber of Deputies adopt a law regulating certain rights of people with disabilities accompanied by specially-trained dogs.**

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## **5. INCREASED FOSTERING ALLOWANCE FOR TEMPORARY FOSTER PARENTS**

The Defender has already dealt in the past with the inequality in fostering allowances for long-term and temporary foster parents who take care of a disabled child (a child dependent on care of another individual in degrees 1 to 4). The Defendant pointed out in this regard that temporary foster parents, too, had to cover increased costs, just like long-term foster parents.

At the same time, he noted that the amount of the fostering allowance should reflect the difficulty of the care provided. The Defender therefore urged the Ministry of Labour and Social Affairs and the Chamber of Deputies to properly compensate temporary foster parents for the costs associated with children dependent on care of another individual ([File No. 2763/2020/s](#) and the relevant legislative recommendation in the Defender's [Annual Report for 2018](#)).

Although the original draft amendment to the Social and Legal Protection of Children Act submitted to the commentary procedure partly reflected this fact, the Government eventually presented a bill (Chamber of Deputies, 8th electoral term, [Chamber of Deputies document No. 911/o](#)) which completely abandoned the original intent.

The Defender recalls in this regard that the fostering allowance paid to temporary foster parents has not changed for seven years and is still set to CZK 20,000. In the draft amendment submitted to the Government, the Ministry of Labour and Social Affairs proposed to increase the temporary fostering allowance to CZK 27,000 if the foster parents cared for one child without disability or currently had no child in care, which the Defender highly appreciated. However, after the amendment was discussed by the Government in June 2020, these changes were retracted and the temporary fostering allowance was reduced from the proposed CZK 27,000 to CZK 22,000, indiscriminately for all groups of temporary foster parents regardless of the complexity of the care they provide.

The Defender considers these modifications a huge step in the wrong direction, in view of the debated need to support foster care. On the contrary, he believes that it is crucial to support current foster parents and find new ones. However, if the Government bill were approved in its current version, this would quite certainly cause the number of temporary foster parents to drop, which the Defender considers completely unacceptable in view of the Czech Republic's commitment to proceed with deinstitutionalisation of care for small children (see also the following recommendation "Deinstitutionalisation of care for small children", [p. 13](#)).

Temporary foster parents have to meet stringent conditions as regards their expertise, professionalism and the need to co-operate with other stakeholders. They must be prepared to accept a child into (crisis) care on a day-to-day basis and are asked to make child care their full-time mission. They usually cannot hold any other regular job and temporary foster care is thus their only source of income. Furthermore, the Defender considers it necessary that the amount of the fostering allowance also reflect the difficulty of the care, i.e. whether or not a temporary foster parent takes care of a child dependent on care in degree 1 or in degrees 2 to 4.

- › **CZK 27,000, in the case of temporary foster parents who currently have no child in care**
- › **CZK 30,000, in the case of temporary foster parents who have one child in care**
- › **CZK 32,000, in the case of temporary foster parents who have in their care one child that is dependent on care of another individual in degree 1 (slight dependence)**
- › **CZK 36,000, in the case of temporary foster parents who have in their care one child that is dependent on care of another individual in degree 2 (medium dependence), 3 (high dependence) or 4 (complete dependence).**

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## 1. Legislative Recommendations, Relations with Constitutional Bodies and Defender's Activities

## 6. DEINSTITUTIONALISATION OF CARE FOR SMALL CHILDREN

The Czech Republic fails to sufficiently address in the long term the issue of placing small children in children's homes for children under the age of three ("infant care centres", or "children centres"). This has also met international criticism. Most recently, a critical voice has been raised by the European Committee of Social Rights, which [decided](#) to file a collective complaint against the Czech Republic. The Committee found unanimously that the current system of placing children in infant care centres was at variance with Article 17 of the European Social Charter. This provision requires the parties to the Charter to take all appropriate and necessary measures ensuring the effective exercise of the right of mothers and children to social and economic protection. In its [decision-making](#), the Committee has also previously inferred the parties' duty to initiate the process of deinstitutionalising care for small children, in a reasonable time, with measurable progress and using the available resources as much as possible.

In the relevant decision, the Committee stated, in particular, that the application of the legal framework of institutional care and operation of children centres as provided for by the Healthcare Services Act does not ensure appropriate protection and care for children under the age of three. Indeed, the Czech Republic has yet to adopt adequate measures to provide children under the age of three with services in family-based and community-based family-type settings, nor has it taken steps to progressively deinstitutionalise the existing system of early childhood care.

The Committee also criticised the Czech Republic for not adopting necessary measures to ensure the right to appropriate protection and appropriate care services of Roma children and children with disabilities under the age of three. In this respect, the Committee referred, among other sources, to the [Report of the Public Defender of Rights on Systematic Visits to Infant Care Centres of 2013](#).

The UN Committee on the Rights of Persons with Disabilities, too, called on the Czech Republic, in its [Concluding observations on the initial report of the](#)

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### THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

**That the Chamber of Deputies adopt a Deputies' motion to amend Act No. 359/1999 Coll., on social and legal protection of children, as amended, increasing temporary fostering allowances as follows:**

Czech Republic (paragraph 16), to implement the Convention on the Rights of Persons with Disabilities.

While the Civil Code prefers family and substitute family care to institutional care, Sections 43 and 44 of the Healthcare Services Act do not specify the precise legal conditions for the admission of a child to an infant care institution (e.g. there is no requirement to specify the maximum possible duration of the child's stay in this facility or to assess the need to place the child in an institution). The system of social and legal protection of children, according to which institutional education should be the last resort, might thus be circumvented in practice. The Czech Republic was also advised of this fact by Eurochild, which pointed out in its report **New opportunities for investing in children** that there was a lack of preventive services in the Czech Republic that would enable children, if possible, to stay in their original families, as well as the unavailability of support services for families whose children have been taken away.

Since small children can also be placed in other facilities of institutional education (e.g. children's homes and homes for people with disabilities), the Defender is convinced that the situation will not be resolved by simple abolition of infant care centres. The Defender also considers it necessary to set an age limit for placing children in institutional education, while simultaneously increasing support for community services and improving the conditions for foster care.

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## **THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS**

**That the Chamber of Deputies call on the Government to submit a draft amendment to Act No. 372/2011 Coll., on healthcare services and the conditions for their provision (the Healthcare Services Act), as amended, which would abolish children's homes for children under the age of three.**

**At the same time, the Public Defender of Rights recommends that the Chamber of Deputies call on the Government to submit a draft amendment to Act No. 89/2012 Coll., the Civil Code, as amended, specifying an age limit under which it would not be possible to place a child in institutional education.**

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## **7. REINFORCING CONSUMER PROTECTION IN RELATION TO UTILITY SUPPLIES**

The Defender has repeatedly received consumer complaints against vendors offering utility supplies (hereinafter "brokers"), i.e. persons operating their business without a licence, and also against utility suppliers proper (hereinafter "suppliers"), i.e. entities

operating with a licence from the Energy Regulatory Office.

In 2019 and 2020, the Defender focused in this respect on the procedure of the Czech Trade Inspection Authority in supervising brokers and that of the Energy Regulatory Office in supervising suppliers. Based on an inquiry carried out of his own motion ([File No. 362/2019/VOP](#)), the Defender found that while the Energy Regulatory Office's supervision was performed correctly, the Czech Trade Inspection Authority was ineffective in this regard. The inquiry also revealed gaps in the Energy Act in terms of ineffective consumer protection and the division of supervision over entities operating in this area (both suppliers and brokers) between two entities. Therefore, the Defender believes that it is necessary to adapt the Energy Act to current practical issues.

Within an amendment to the Energy Act, it would be suitable to focus on concentrating the supervision over brokers and suppliers in a single authority, specifically the Energy Regulatory Office, which has many years of experience in this area. The Defender further believes that the brokers' activities should be regulated in the same way as those of utility suppliers, i.e. that they should be subject to a licence issued by the Energy Regulatory Office.

Better protection of consumers would be ensured if the Energy Act laid down, e.g., the mandatory requisites of a brokerage agreement, the duty of brokers to provide information in the process of negotiating contracts, the consumer's right to withdraw from a contract without a penalty, and limitation of the power of attorney granted to the broker. It is also important for consumer protection that the Energy Regulatory Office be authorised to resolve disputes between consumers and brokers.

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## **THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS**

**That the Chamber of Deputies call on the Government to present a draft amendment to Act No. 458/2000 Coll., the Energy Act, as amended, which would comprehensively regulate consumer protection in negotiating contracts with utility suppliers and brokers, concentrate supervision over these entities, and extend the competences of the Energy Regulatory Office to resolve disputes between consumers and utility brokers.**

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## **8. INDEPENDENT COMPLAINTS MECHANISM IN SOCIAL SERVICES**

Social services clients are a vulnerable group of people. Each client should be entitled not only to receive social services in accordance with the basic principles of the

Social Services Act and fundamental human rights and freedoms, but also to effective defence in cases where a service is at variance with the defined principles and standards. Insufficient quality of care can have serious consequences for the clients and even constitute ill-treatment within the meaning of Article 7 of the Charter of Fundamental Rights and Freedoms and Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The instruments for the protection of clients' rights currently comprised in the Social Services Act are insufficient. It is not possible to lodge an appeal with an independent authority against the manner of resolution of a complaint by the service provider. The Social Services Inspectorate is not required to address individual complaints (filed by the clients or other persons, such as relatives). The same is true of regional authorities, which merely supervise compliance with the registration conditions laid down for the social service providers.

The Defender has long been pointing out – in the reports for the Chamber of Deputies dating back to 2016 – the need to adopt an (independent) complaint mechanism. While the Ministry of Labour and Social Affairs included a possible solution in the draft amendment to the Social Services Act prepared in 2019 ([Ref. No. MPSV-2019/239277-510/2](#)), this amendment was not discussed by the Government. The Defender therefore repeats the recommendation.

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### **THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS**

**That the Chamber of Deputies call on the Government to submit a draft amendment to Act No. 108/2006 Coll., on social services, as amended, to introduce an effective complaints mechanism.**

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## **9. RECLASSIFICATION OF INTERFERENCE WITH PERSONAL DIGNITY IN THE PROVISION OF HEALTHCARE SERVICES AS AN INFRACTION**

According to the Healthcare Services Act, healthcare providers may receive an administrative penalty if they fail to comply with the prescribed formalities. That being said, a number of serious violations of personal dignity, privacy, safety and integrity of patients are not punishable as infractions under the Act. The Defender has seen cases of very serious interference with the personal dignity of patients, occasionally even exceeding the "minimum threshold" for them to be classified as ill-treatment prohibited by Article 7 of the Charter of Fundamental Rights and Freedoms and Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. An interference with the patients' fundamental rights thus

escapes punishment unless it amounts to a criminal offence (e.g. in cases where no harm to health occurs) and the same is also true in cases where the aggregate severity of individual acts or omissions of various persons – which are not sufficiently severe as such – attains the threshold of ill-treatment of the patient. This also concerns acts and omissions of the healthcare staff that are predetermined by the conditions in which care is being provided and which are objectively beyond their control (e.g. the use of means of restraint in front of other patients because of a lack of single bedrooms). However, the country's international commitments require that the State punish ill-treatment in an adequate way and thus also dissuade from such treatment.

Such cases of interference with the fundamental rights of patients may also be ascertained by administrative authorities when they deal with complaints or perform inspections. Since they have no means of punishing such conduct, they can only require corrective action from the providers pro futuro. This is not sufficient, however, to ensure remedy in cases where fundamental rights were violated by one-off, non-recurring action or where it is crucial to quickly prevent the recurrence or continuation of such action. Victims of ill-treatment can theoretically defend themselves using private-law remedies (by filing a lawsuit for the protection of personal rights). This, however, is beyond the capabilities of many patients dependent on care. Because the relevant infractions are not defined in the law in this sense, the providers do not sufficiently respect the rights of patients or their supervisory authorities.

During the interdepartmental commentary procedure, the Defender tried to ensure that a solution would be included in the draft amendment to the Healthcare Services Act prepared by the Ministry of Health in 2020; however, the Defender's comments were not discussed ([File No. 38187/2020/S](#)).

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### **THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS**

**That the Chamber of Deputies call on the Government to submit a draft amendment to Act No. 372/2011 Coll., on healthcare services and the conditions for their provision, as amended, which would define an infraction of unlawful interference with personal dignity, privacy, integrity and safety of patients.**

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## 10. RECLASSIFICATION OF INTERFERENCE WITH PERSONAL DIGNITY IN THE PROVISION OF SOCIAL SERVICES AS AN INFRACTION

The providers of social services help people in adverse social situations. A number of clients find themselves in a vulnerable position because they are powerless and dependent on care, or are de facto deprived of liberty. The law therefore provides various means for their protection. However, no infraction is defined with a view to punishing violations of personal dignity, privacy and integrity of the clients.

As explained with regard to the Healthcare Services Act, criminal offences defined by the law, in themselves, do not suffice for the punishment of such violations, as some of the defining elements are often missing in practice (no harm to health, lacking wilful intent, etc.). Despite that, the clients' human dignity can be violated very severely, reaching even the intensity of ill-treatment. Consequently, violation of fundamental rights of individuals must also be punishable under administrative law, where such a sanction would represent an adequate response to an interference, which may be of a non-recurring nature or which must urgently be stopped.

The Defender has already recommended to amend the Social Services Act and define a new infraction, including a penalty of prohibition to operate as a social services provider.

The Ministry of Labour and Social Affairs accepted this recommendation and such an infraction has been incorporated in the comprehensive draft amendment to the Social Services Act ([Ref. No. MPSV-2019/239277-510/2](#)). According to this draft, misconduct by a provider could also be a reason for revoking the provider's registration under certain conditions, and simultaneously an obstacle to its renewed granting; the Defender considers this a suitable and effective instrument. One more proposal for defining a similar infraction was presented to the Chamber of Deputies, this time by a group of Deputies as a separate amendment to the Social Services Act (Chamber of Deputies, 8th electoral term, [Chamber of Deputies document No. 520/o](#)). The Defender supports both these proposals. However, they have not been discussed so far and the Defender has therefore decided to point this problem out to the Chamber of Deputies.

Coll., on social services, as amended, which would define an infraction of unlawful interference with personal dignity, privacy, integrity and safety of persons to whom a social service is being provided.

## 11. ENSURING CONFIDENTIALITY IN THE PROVISION OF HEALTHCARE SERVICES TO PRISONERS AND PERSONS DEPRIVED OF LIBERTY BY THE POLICE

The right to see a physician is one of the basic safeguards against ill-treatment of persons deprived of liberty. At the same time, medical findings and evidence of ill-treatment represent an important prerequisite for investigating ill-treatment. For both these functions to be effective, it is important that medical examination and treatment take place in privacy, while adhering to measures necessary to ensure safety of the medical staff (emergency button, guards within reach, etc.). Indeed, the presence of police officers or of prison guards might dissuade a potential victim of ill-treatment from disclosing all information to the physician, including the circumstances of an injury. These principles are reflected in the standard of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which requires that all examinations of persons deprived of liberty should be conducted out of the hearing and – unless the doctor concerned requests otherwise – out of the sight of prison officers or the police.

As regards persons remanded in custody, serving a prison sentence or subject to secure preventive detention, Section 46 (1)(g) of the Healthcare Services Act requires healthcare services providers to ensure that examinations take place "in the presence of a Prison Service officer, in his/her sight", and in case of danger, also within his/her earshot. Consequently, the provider is illogically required to do something that can only be ensured by another entity; furthermore, the interference with privacy in the doctor's surgery is indiscriminate and, based on request, even excessive, which is inadmissible. The Defender's findings confirm that the privacy of prisoners and inmates in secure preventive detention is commonly violated in cases where they are in the position of a patient. The law does not lay down any special regime for medical examinations of persons deprived of liberty by the Police of the Czech Republic; however, a binding instruction of the Police President prescribes that at least one police officer shall remain present "in direct audio-visual contact", unless the physician explicitly rejects the presence of police officers.

The current wording of the Healthcare Services Act thus not only fails to meet the standard of prevention of ill-treatment, but even directly prevents compliance in

### THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

That the Chamber of Deputies call on the Government to submit a draft amendment to Act No. 108/2006

one instance. The Czech Republic is therefore rightfully criticised by international human rights bodies. A solution would be to amend the Healthcare Services Act and lay down a precisely defined exemption from the patient's right to privacy in the provision of healthcare services (Section 28 (3)) and abolish the unsystematic duty on the part of the healthcare services providers (Section 46 (1)(g)).

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## **THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS**

**That the Chamber of Deputies adopt a Deputies' motion to amend Act No. 372/2011 Coll., on healthcare services and the conditions for their provision, as amended, so that new paragraph 6 is added to Section 28, reading, including the footnote, as follows:**

› "In cases where healthcare services are provided to persons remanded in custody, serving a prison sentence or subject to secure preventive detention, and to persons restricted in their freedom under another legal regulation,<sup>1</sup> the patient's right to privacy set out in paragraph 3(a) and the right to reject the presence of third persons set out in paragraph 3(h) may exceptionally be limited by the presence of a member of the Prison Service or the Police of the Czech Republic in sight, if required by

a) the provider of healthcare services with reference to a justified concern about a threat to life, health or safety of a healthcare worker or some other professional worker or property; or

b) a member of the Prison Service or the Police of the Czech Republic on the grounds of a realistic and imminent risk of absconding or abduction,

if the aforementioned threats cannot be averted otherwise.

<sup>1</sup> Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended."

- › Section 46 (1)(g) shall be repealed without replacement.  
› In Section 51 (5)(f), the text "Section 46 (1)(g)" shall be replaced by the text "Section 28 (6)".
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## **12. CANCELLATION OF THE SUBJECTIVE PERIOD FOR INITIATING REVIEW PROCEEDINGS (SECTION 96 (1) OF THE CODE OF ADMINISTRATIVE PROCEDURE)**

In its Section 96 (1), the Code of Administrative Procedure sets a subjective period of two months for initiating review proceedings. The time when the administrative authority learns of the grounds for initiating review proceedings marks the beginning of this period – this is most often the date of receipt of the administrative file.

In case of inactivity of the administrative authority, the relatively short subjective period may completely prevent a review of the decision, even if the party whose rights were infringed in the preceding administrative proceedings intends to file a well-founded motion. The main purpose for setting this period was to protect good faith of other parties, which, however, is already protected by other provisions of the Code of Administrative Procedure, or is even completely irrelevant where the administrative proceedings involve a single party.

At the same time, review is a relatively effective way to achieve remedy of errors committed by the public administration, which satisfies the legitimate interest of the party without it being necessary to resort to administrative justice. Thus, along with ensuring better functioning of public administration, review proceedings can help in some cases to reduce the workload of administrative courts, without restricting access to these courts.

In the Defender's opinion, there is no rationale behind the presence of the subjective period in the law that would outweigh its drawbacks in terms of functioning of the review. The parties may be prevented, without their fault, from having a decision reviewed. The Defender therefore recommends that the subjective period be completely removed from the law.

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## **THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS**

**That the Chamber of Deputies adopt a Deputies' motion to amend Section 96 of Act No. 500/2004 Coll., on social services, as amended, by replacing its current paragraph 1 by the following: "A resolution to initiate review proceedings may be issued not later than within one year of the legal force of the decision on merits."**

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## **13. SHARED BURDEN OF PROOF**

As far back as in 2015, the Defender already recommended that the Chamber of Deputies modify the rules for sharing the burden of proof in court disputes so that all victims of discrimination have the same procedural rights. However, the Code of Civil Procedure still allows the burden of proof to be shared only in certain areas (especially in the area of work and employment) and based on certain protected

characteristics (e.g. ethnicity, sex). The Chamber of Deputies is currently discussing a deputies' motion to amend the Code of Civil Procedure which consolidates the rules for sharing the burden of proof (Chamber of Deputies, 8th electoral term, [Chamber of Deputies document No. 424](#)).

In cases where the burden of proof is shared, the plaintiff is required to allege and prove in the litigation that he/she has been subjected to less favourable treatment. Subsequently, with reference to suspicious circumstances, the plaintiff can merely assert that this occurred based on one of the protected characteristics. The burden of proof is then shifted to the defendant, who must allege and prove that less favourable treatment never occurred or that it was driven by justifiable reasons. This regulation has its merits because only the defendant can explain the motives for his/her conduct, while the plaintiff has no way of proving the incentives to the defendant's action. According to the current legislation, victims discriminated on the basis of their age or disability have a worse procedural standing if they defend themselves against discrimination in access to education, healthcare, but also housing, goods and services. Consequently, if a restaurant operator refuses to serve a disabled person or if a municipality refuses an applicant for a municipal flat on the grounds of his/her age, this constitutes discrimination and the victim can file a lawsuit.

However, the victim's position in the ensuing litigation is much worse than in cases where discrimination is claimed on the grounds of race or ethnicity, although it is equally difficult to prove the motives of the person guilty of the alleged discrimination.

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## **THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS**

**That the Chamber of Deputies adopt a Deputies' motion to amend Section 133a of Act No. 99/1963 Coll., the Code of Civil Procedure, as amended, to read as follows:**

**"If the plaintiff's testimony in court reveals facts indicating that the defendant is guilty of discrimination**

- a) on the grounds of race, ethnic origin, nationality (národnost), sex, sexual orientation, age, disability, religion or belief in matters concerning**
  - 1. right to employment and access to employment;**
  - 2. access to occupation, enterprise and other forms of self-employment;**
  - 3. employment relationships, service relationships and other dependent activities, including remuneration;**

- 4. membership of and activities in trade union organisations, works councils or employers' organisations, including the benefits provided by such organisations or councils to their members;**
  - 5. membership of and activities in professional associations, including the benefits provided by such public corporations to their members;**
  - 6. social security;**
  - 7. granting and provision of social benefits;**
  - 8. access to and provision of healthcare;**
  - 9. access to and provision of education and professional training; or**
  - 10. access to and provision of goods and services, including housing, if provided to the public;**
- b) on the grounds of race or ethnic origin in access to public contracts and membership in associations and other interest groups; or**
  - c) on the grounds of nationality (státní příslušnost) in legal relations in which a directly applicable regulation of the European Union concerning the free movement of workers applies<sup>56b</sup>;**

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

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

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# Evaluation of Recommendations for 2018 and 2019

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1. Legislative Recommendations, Relations with Constitutional Bodies and Defender's Activities

## Recommendations for 2019

### 1. CONFIDENTIALITY DUTIES OF HEALTHCARE PROFESSIONALS AND ILL-TREATMENT

The Defender recommended to amend the Healthcare Services Act so that healthcare professionals and providers would not break confidentiality by reporting signs of ill-treatment. Under the current law, healthcare services providers and healthcare professionals are required to maintain confidentiality of all facts they learn in relation to the provision of health services. The Healthcare Services Act (Section 51 (2)) provides several exemptions from this rule. As regards reporting of unlawful acts, an exemption from confidentiality applies only to most serious felonies (murder and grievous bodily harm). However, this does not cover all possible forms of ill-treatment and, moreover, it requires that physicians be familiar with the definition of individual criminal offences and assess whether they may have been committed. Disclosure of findings on ill-treatment to authorities competent to investigate it is crucial for effectively combating ill-treatment at places of detention [cf. [the rules of the UN General Assembly and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#)].

In 2020, the Ministry of Health prepared the relevant draft amendment to the Healthcare Services Act; nevertheless, the discussion on the draft ended before it was submitted to the Government (which was originally planned for 30 June 2020). This hesitation in the legislative process raises concerns, which is why the Defender repeats the recommendation.

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## **THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS**

That the Chamber of Deputies call on the Government to submit a draft amendment to Act No. 372/2011 Coll., on healthcare services and the conditions for their provision, as amended, which would enable medical staff to report signs of ill-treatment without violating confidentiality.

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## **2. INADEQUATE LEGAL REGULATION OF FORENSIC TREATMENT**

The Defender has pointed out the lack of a comprehensive regulation of forensic treatment. In connection with systematic visits to psychiatric hospitals focusing on forensic treatment, the Defender found a number of problems caused by insufficient legal regulation: no conditions are set that would have to be met by the provider of forensic treatment; the rights and obligations of the patient are not comprehensively regulated; there are ambiguities regarding treatment without the patient's consent, legitimacy and scope of "regime measures" (possibility of wearing one's own clothes and using own things, including a telephone, getting outside on a daily basis) and the use of security measures (cameras, bars, etc.). The legal regulations do not envisage at all that the patients could be transferred and the institutional forensic treatment interrupted, which, however, is necessary in practice.

Public authorities may only legitimately interfere with the freedom and integrity of a human being if the interference has a basis in the law. If such a basis is currently missing, this represents a serious interference with the rights of patients and legal certainty of healthcare services providers and healthcare professionals.

There were no developments in this area in 2020. While the Ministry of Health acknowledged that forensic treatment deserved a comprehensive review regarding its the legal foundations, it nevertheless interrupted the work on the forensic treatment policy, which must precede any such changes. The Defender considers it very urgent to adopt a comprehensive legal regulation of forensic treatment, creating preconditions for effective protection of the integrity, life and human dignity of patients. In view of the delays of the Ministry of Health in the preparation of the legislative documents, the Defender has decided to repeat the recommendation.

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## **THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS**

That the Chamber of Deputies request the Government to present a bill that would comprehensively regulate the issue of forensic treatment.

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## **3. TRANSFORMATION OF INSTITUTIONAL FORENSIC TREATMENT INTO SECURE PREVENTIVE DETENTION**

The Defender recommended that the conditions for transferring persons from institutional forensic treatment to secure preventive detention be specified in the Criminal Code. The number of instances where secure preventive detention was ordered increased as a result of an amendment (Act No. 330/2011 Coll.) to the Criminal Code effective from 1 December 2011.

According to the current wording of the Criminal Code (Section 99 (5)), transformation of institutional forensic treatment into secure preventive detention is possible without it being necessary to meet the conditions for direct imposition of secure preventive detention (Section 100 (1) and (2) of the Criminal Code). This means in practice that the perpetrators of "mere" misdemeanours, rather than felonies, whose treatment in a psychiatric hospital is not serving its purpose can be transferred from forensic treatment to secure preventive detention. According to the Defender's analysis of 2018, cases where the conditions for direct imposition of secure preventive detention were not met amounted to approximately 20% of measures newly imposed by the courts. This means that the 2011 amendment to the Criminal Code significantly interfered with the existing practice and has been contributing to the overburdening of secure preventive detention facilities.

Certain progress was achieved in 2020 – a minor change to the relevant provision, i.e. Section 99 (5) of the Criminal Code, was prepared based on a Deputies' initiative (the draft was enacted as Act No. 333/2020 Coll.). As a result, it is no longer possible to transform institutional forensic treatment into secure preventive detention on the grounds that forensic treatment is not serving its purpose or does not ensure sufficient protection of society as the patient has "displayed a negative attitude towards forensic treatment". However, transformations are still possible without fulfilment of the conditions for direct imposition of secure preventive detention and the reasons for a review of the legislation stated by the Defender thus remain valid. The capacities of secure preventive detention facilities are full and the pressure on their

expansion is thus growing. The Defender recalls the original concept of secure preventive detention, which was introduced in 2009 as an extraordinary instrument – the strictest protective measure for those offenders who posed extraordinary danger to society.

It is wrong to randomly substitute for institutional forensic treatment by extending the target group of secure preventive detention.

**recommends to the Chamber of Deputies to adopt a Deputies' motion to amend Section 38 (4) of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended, by adding after the words "or its part" the following: "and the duty of the administrative authority to send copies of the file or its parts to persons indicated in paragraphs 1 and 2 at their request".**

**1. Legislative Recommendations, Relations with Constitutional Bodies and Defender's Activities**

## Recommendations for 2018

### 1. REMOTE INSPECTION OF AN ADMINISTRATIVE FILE

The Defender has recommended that the legal regulation of administrative proceedings explicitly include the right to remote inspection of files. This means that people could obtain information from their administrative file – to which they are entitled under the law – without having to appear at the office in person.

The previous Defender's inquiry ([File No. 2600/2018/VOP](#)) revealed that the practice of administrative authorities was highly fragmented in this regard, as some administrative authorities did provide (send) documents from administrative files but others refused to do so, believing no such right existed under the Code of Administrative Procedure.

The Defender was not successful with his requirement for unification of the administrative practice at the Ministry of the Interior, as the authority responsible for the Code of Administrative Procedure, or at the Government of the Czech Republic, which decided in January 2019 to reject the Defender's recommendation for amending the Code of Administrative Procedure ([File No. 15/2017/SZD](#)).

The proposed amendment to the Code of Administrative Procedure would increase user comfort for individuals, be economical and reduce the burden imposed especially on the parties to administrative proceedings. Moreover, in the past year marked by the Covid-19 pandemic, this would also be a desirable form of communication between citizens and public authorities.

### 2. CLASSIFICATION OF UNAUTHORISED USE OF MEANS OF RESTRAINT IN HEALTHCARE AS AN INFRACTION

The Defender recommended to adopt an amendment to the Healthcare Services Act that would make it possible to punish as an infraction unauthorised use of means of restraint and failure to comply with other duties related to their use by a healthcare services provider. Under the current regulation, people can defend themselves against such treatment only by private-law means (by filing a lawsuit for the protection of personal rights). However, this option is not sufficient because any use of means of restraint represents a serious interference with the personal integrity of a human being, and their abuse or non-compliance with other related duties has to be effectively punished and prevented (indeed, it can easily attain the severity of ill-treatment, which is strictly prohibited by the Charter of Fundamental Rights and Freedoms and by the Convention for the Protection of Human Rights and Fundamental Freedoms). Protection of patients cannot be left to their own initiative and means, and it is also necessary to provide an appropriate tool to the supervisory bodies. Similar legislation is already in place in the area of social services.

While the Ministry of Health prepared a draft amendment to the Healthcare Services Act in 2020, including the definition of a new infraction related to the use of means of restraint, it suggests to punish merely those cases where the patient's legal representative or guardian has not been notified of the use of means of restraint. The Defender raised a fundamental **objection** against such a concise measure because it is imperative to punish as an infraction any serious interference with the patients' rights, such as primarily the use of means of restraint at variance with the principles of necessity and proportionality, or their use without proper supervision or without the necessary safeguards – i.e. without a physician's decision or without making a proper record in the documentation. Nevertheless, the discussion on the draft presented by the Ministry of Health ended before it was ever submitted to the Government (which was originally planned for 30 June 2020). The unwillingness to deal with material issues and hesitation in the legislative process raises concerns. Therefore, the Defender decided to repeat the recommendation.

### THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

**The Public Defender of Rights is convinced about the need for the proposed change and again**

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## THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

**That the Chamber of Deputies call on the Government to submit a draft amendment to Act No. 372/2011 Coll., on healthcare services and the conditions for their provision, as amended, introducing a new body of infraction to punish unauthorised use of means of restraint and non-compliance with other duties of healthcare services providers related to the use of means of restraint.**

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### 3. AMOUNT OF REMUNERATION FOR A TEMPORARY FOSTER PARENT CARING FOR A CHILD ASSESSED AS FALLING IN DEPENDENCY DEGREE 2 TO 4

Effective from 1 January 2018, the allowance for long-term foster parents was increased in connection with the amendment to the Social and Legal Protection of Children Act. However, the amount of the temporary fostering allowance remained unchanged. The Defender therefore asked the Chamber of Deputies to remedy this undesirable state of affairs, or at least increase the allowance for a temporary foster parent caring for a child assessed as falling in dependence degree 2 to 4. The Defender thus tried to ensure that disabled children are placed more often in temporary foster care. Although the Ministry of Labour and Social Affairs strived to reflect on the Defender's recommendations, the required modification of the amount of temporary fostering allowance did not come through.

The Defender still considers it necessary to increase the remuneration for temporary foster parents caring for a child in dependence degree 2 to 4. In addition, the Defender considers it desirable to also increase the allowance for other groups of temporary foster parents (see the Recommendations for 2020, Increased fostering allowance for temporary foster parents, [p. 12](#)).

### 4. PUBLISHING COURT DECISIONS IN A PUBLIC DATABASE

The Defender has repeatedly pointed out the problem of inadequate publication of lower courts' decisions in the publicly accessible electronic database of the Ministry of Justice ([File No. 4292/2015/VOP](#)).

The Defender believes that publication of anonymised court decisions can significantly contribute to public confidence in justice, equality before the law, unification of court decision-making and its transparency. Similar

criticism has also been voiced by professionals and the general public.

The Ministry of Justice has so far showed a negative attitude towards the Defender's proposals to lay down the courts' duty to publish their decisions directly in the law. Until recently, the publication of judicial decisions was governed solely by an instruction issued by the Ministry of Justice on 20 June 2002 under No. 20/2002-SM. In 2020, the Ministry of Justice substantially modified the instruction and, after years of preparations, launched a new electronic database of court decisions in December of the same year. Although this represents a substantial improvement in the situation as compared to the previous years, only some of the decisions issued (especially in civil matters) by district courts are currently published in the database.

As from July 2022, court decisions should also be published based on an amendment to the Courts and Judges Act approved by the Chamber of Deputies in 2021 (Chamber of Deputies, 8th electoral term, [parliamentary press No. 630/o](#)). Although this undoubtedly represents a significant progress in this regard, the Defender notes that, in his opinion, the legislation enacted leaves too wide a discretion for the Ministry to decide on whether, to what extent and since when court decisions will be mandatorily published. Indeed, according to the approved amendment, all these issues are to be regulated by a ministerial decree. Although, on the one hand, the form of regulation chosen undoubtedly provides the Ministry with some flexibility in performing this task as it will be able to take into account the current technical capacities and staffing of the courts, on the other hand, it does not define any target situation and timeframe for the Ministry within which this task should be fulfilled. The legal regulation should be supplemented in this regard.

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## THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

**That the Chamber of Deputies adopt a provision that would incorporate in Act No. 6/2002 Coll., on courts, judges, lay judges and governmental administration of the judiciary and on amendment to some other laws (the Courts and Judges Act), as amended, the duty of the courts to publish their decisions in a public database within a scope defined by the law.**

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## **5. FEE FOR LODGING A COMPLAINT WITH THE OFFICE FOR THE PROTECTION OF COMPETITION REQUESTING THE OFFICE TO INITIATE EX OFFICIO REVIEW OF CONTRACTING AUTHORITY'S PROCEDURE**

The Defender recommended to annul Section 259 of the Public Procurement Act, which had introduced an administrative fee for filing a complaint with the Office for the Protection of Competition in the amount of CZK 10,000 for each contested public contract. By virtue of its judgement Pl. ÚS 7/19 of November 2019, the Constitutional Court annulled the contested provision on the grounds of its contradiction with the concept of supervision over public procurement, which is governed by the officiality principle. The Defender welcomed this result as, in his opinion, the ruling implies that even a fee in a different, lower amount would be contrary to the Constitution. The Defender's recommendation was thus put into practice as a result of the aforementioned judgement of the Constitutional Court. No legislative initiative aimed at re-introducing the fee appeared in 2020.

## **6. ADVICE ON THE RIGHT TO LODGE COURT ACTION AGAINST AN ADMINISTRATIVE DECISION**

Since 2012 already, the previous Defenders recommended that the Chamber of Deputies introduce a legislative requirement on administrative authorities that their final administrative decisions comprise advice on the possibility to contest the decision in court.

The Chamber of Deputies' resolution adopted in 2014 acknowledged the recommendation and requested that the Government address it. In the same year, the Government then agreed with the recommendation and undertook to propose this modification as part of the next suitable amendment to the Code of Administrative Procedure. In 2018, the Defender contacted the Government in this matter and asked that this pledge be put into practice. This led, in turn, to a vague promise by the Government in January 2019 that the Defender's recommendation ([File No. 25/2018/SZD](#)) would be taken into consideration within the next suitable amendment to the Code of Administrative Procedure. Two years later, it can be stated that the Government is yet to deliver on its pledge given to the Chamber of Deputies.

### **THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS**

Therefore, the Defender considers it necessary to repeat the previous recommendations and again propose that the Chamber of Deputies adopt a Deputies' motion to

- 1. add into Section 68 of Act No. 500/2004 Coll.,  
the Code of Administrative Procedure, after  
paragraph 5, new paragraph 6 of the following  
wording (including footnote):**  
“(6) A non-appealable decision shall include  
advice on whether it is possible to lodge a court  
action pursuant to a special legal regulation,<sup>1</sup> the  
deadline for lodging the action, the date  
from which the deadline is counted, and the  
court holding substantive and local jurisdiction  
to accept and hear the action.

<sup>1</sup> **Act No. 150/2002 Coll., the Code of  
Administrative Justice, as amended. Part Five of  
Act No 99/1963 Coll., the Code of Civil Procedure,  
as amended.”**

**Former paragraph 6 shall be designated as  
paragraph 7.**

- 2. add into Section 181 of Act No. 361/2003 Coll.,  
on the service relationship of members of the  
security corps, as amended, after paragraph  
6, new paragraph 7 of the following wording  
(including footnote):**  
“(7) A non-appealable decision shall also include  
advice on whether it is possible to lodge a court  
action pursuant to a special legal regulation,<sup>1</sup> the  
deadline for lodging the action, the date from  
which the deadline is counted, and the court  
holding substantive and local jurisdiction to  
accept and hear the action.

<sup>1</sup> **Act No. 150/2002 Coll., the Code of  
Administrative Justice, as amended.”**

**Former paragraphs 7 and 8 shall be designated  
as paragraphs 8 and 9.**

- 3. add into Section 247 of Act No. 99/1963 Coll.,  
the Code of Civil Procedure, as amended, after  
paragraph 1, new paragraph 2 of the following  
wording (including footnote):**

**“(2) The deadline is deemed met if the action  
was filed after the lapse of the two-month  
period because the applicant proceeded  
according to incorrect advice provided by the  
administrative body.<sup>1</sup> If an administrative  
body's decision does not contain advice on the  
possibility to lodge an action, the deadline for  
doing so, or identification of the court where it is  
to be lodged, or if the decision contains incorrect  
advice on the admissibility of lodging a court**

**action, the action may be filed within 3 months of the delivery of the administrative decision.**

**<sup>1</sup> Section 68 (6) of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended.”**

**Former paragraph 2 shall be designated as paragraph 3.**

- 4. add into Section 72 of Act No. 150/2002 Coll., the Code of Administrative Procedure, as amended, new paragraph 5 of the following wording (including footnote):**

**“(5) The deadline is deemed met if the action was filed after the lapse of the two-month period, unless a special law specifies a different deadline, because the applicant proceeded according to an incorrect advice provided by the administrative body.<sup>1</sup> If an administrative body’s decision does not contain advice on the possibility to lodge an action, the deadline for doing so, or identification of the court where it is to be lodged, or if the decision contains incorrect advice on the admissibility of lodging a court action, the action may be filed within 3 months of the delivery of the administrative decision.**

**<sup>1</sup> Section 68 (6) of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended.”**

## **7. HANDLING COMPLAINTS AGAINST THE PROCEDURE OF HEALTHCARE SERVICES PROVIDERS**

Since 2018, the Defender has been recommending to amend the Healthcare Services Act to resolve two problems related to handling complaints against healthcare services providers. The first problem relates to unsuitable provisions on handling complaints against the procedure of a healthcare services provider in cases where the provider is an individual physician (e.g. a general practitioner). Such complaints should be addressed by the physician him/herself under the currently applicable legislation, which can be formalistic and slow down the procedure. Another problem affecting the effectiveness of complaint proceedings consists in unnecessary restrictions regarding the access to the patient’s (complainant’s) medical documents by the administrative authority dealing with the complaint. According to the current legislation, the administrative authority first has to ask the complainant for consent to inspection of the medical documents. If the complainant does not grant it, the administrative authority will terminate the inquiry. However, this duty to ask for consent is superfluous as the complainants are obviously aware of the fact that the administrative authority will have

to learn about the contents of their medical files as the basic material necessary for handling the complaint.

The Ministry of Health acknowledged both these problems, which have an easy legislative and technical solution, and prepared a proposal for the relevant amendments to the Healthcare Services Act. However, the draft has yet to be submitted to the Government (this was originally planned for 30 June 2020). The mentioned delays in the preparation of the legislative material have led the Defender to repeat the recommendation.

## **THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS**

That the Chamber of Deputies call on the Government to submit a draft amendment to Act No. 372/2011 Coll., on healthcare services and the conditions for their provision (the Healthcare Services Act), as amended, which would:

- provide that lodging a complaint against a provider of out-patient care with the administrative authority which authorised that provider to provide healthcare services does not depend on an unsuccessful previous complaint lodged with the provider,
- add to Section 65 (2)(b) that the patient’s medical documents may be inspected to the necessary extent without the patient’s consent provided that this is in the patient’s interest or necessary for another reason following from this Act or other legal regulations, by persons carrying out tasks of the relevant administrative authority in relation to an investigation into a complaint; and annulled Section 94 (2) without replacement.

## **8. CHANGE IN THE PROVISION OF REASONABLE SATISFACTION IN MONEY FOR INTANGIBLE DAMAGE CAUSED BY DISCRIMINATION**

In 2018, the Defender recommended to the Chamber of Deputies to amend Section 10 of the Anti-Discrimination Act so that, for the purposes of determining the manner and amount of reasonable satisfaction, it would refer to the Civil Code (Sections 2956 and 2957), which – unlike the Anti-Discrimination Act – complies with the requirements of EU law and case law.

This year, the Defender reiterated the importance of this recommendation in his survey titled **Decision-making of Czech courts in discrimination disputes**

**2015-2019.** The Defender will also deal with this topic in the "Plan to Expand the Human Rights Activities of the Public Defender of Rights".

The first monitoring report will be issued in March 2021.

In 2020, the Ministry of Justice commented on the recommendation and admitted that the law could be amended to ensure consistency of the legislation. The Defender still considers the amendment crucial and therefore repeats the recommendation.

## THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

**That the Chamber of Deputies adopt a Deputies' motion to amend Section 10 of Act No. 198/2009 Coll., the Anti-Discrimination Act, as amended, to replace existing paragraphs 2 and 3 by new paragraph 2 in the following wording, including footnote:**

"(2) The manner and amount of reasonable satisfaction is governed by provisions of civil law.<sup>1</sup>

<sup>1</sup> Sections 2956 and 2957 of Act No. 89/2012 Coll., the Civil Code, as amended."

## 9. TRANSPARENT PAY AND SALARIES AS A PREREQUISITE FOR FAIR REMUNERATION

In 2018, the Defender recommended several measures aimed at increased transparency of salaries and pay, and thus also at ensuring fair remuneration. Subsequently, in 2019, the Defender presented these measures to the Work-Life Balance Committee attached to the Government Council for Gender Equality.

An Action Plan for Equal Pay is currently being prepared as part of the "22% TOWARDS EQUALITY" project of the Ministry of Labour and Social Affairs, where legislative measures should be proposed with regard to the transparency of salaries and equal pay. The project will also create guidelines for labour inspection authorities; the Defender has presented a recommendation concerning the employees' confidentiality obligation regarding the amount of their remuneration. A Strategy for Gender Equality for 2021-2030 is also being prepared, including a task for the Ministry of Labour and Social Affairs to draw up a legislative proposal to ensure higher transparency of remuneration. These documents are currently under preparation.

In June 2020, the European Committee of Social Rights published a decision in which it stated that due to insufficient transparency of remuneration in practice and a lack of comparison of jobs in the private

sector, no measurable progress had been achieved in promoting equal opportunities for women and men, also in terms of equal pay, and the Czech Republic thus failed to comply with its obligations following from Art. 4 (3) of the European Social Charter and Article 1 (c) of the 1988 Additional Protocol.

The Czech Republic has yet to adopt any specific actions and the Defender therefore repeats this recommendation to the Chamber of Deputies.

## 1. Legislative Recommendations, Relations with Constitutional Bodies and Defender's Activities

## THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

**That the Chamber of Deputies call on the Government to submit a draft amendment to Act No. 262/2006 Coll., the Labour Code, as amended, Act No. 435/2004 Coll., on employment, as amended, Act No. 251/2005 Coll., on labour inspection, as amended, and Act No. 134/2016 Coll., on public procurement, as amended, incorporating measures towards greater transparency in remuneration.**

## 10. MODIFICATION OF CZECH LANGUAGE EXAMINATIONS FOR CHILDREN WITH DIFFERENT FIRST LANGUAGES

In the past, the Defender recommended to change the setting of exemptions with regard to the single admission examination in the Czech language and the common part of the school-leaving examination ("maturita") in the Czech language so that these exemptions reflected the minimum time needed by children with a different first language to attain the required language skills, which equals 5 to 7 years according to available scientific findings.

In 2020, communication continued in this regard with the Ministry of Education, Youth and Sports, which has been working on a comprehensive regulation of language support for people with a different first language. However, the Ministry has yet to come up with any specific time schedule for the new policy and has not presented any of the relevant regulations into the commentary procedure.

Since this is an important change which is necessary for ensuring that children with a different first language are able to pass Czech-language examinations, the Defender decided to repeat the legislative recommendation.

## THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

That the Chamber of Deputies call on the Government to submit a draft amendment to Section 20 (4) of Act No. 561/2004 Coll., on pre-school, primary, secondary, higher vocational and other education (the Schools Act), as amended, to change the exemptions related to the unified entrance examination in the Czech language and the common part of the maturita examination in the Czech language in order to take into account the period necessary to master the language at the required proficiency level.



# The Defender and the Parliament

## CHAMBER OF DEPUTIES

In January 2020, the Chamber of Deputies opened the debate on the **2018 Annual Report on the Activities of the Public Defender of Rights** (Chamber of Deputies document No. 444), but the debate was later suspended. It was resumed in March 2020 and the Chamber of Deputies eventually acknowledged the report. At the same time, it requested that the Government address the legislative suggestions set out in Chapter One and submit to the Chamber of Deputies, by the end of April 2020, a report on how these suggestions were followed in terms of their incorporation in the Government's legislative plan.

As of the editorial deadline for this Report, the Government **had yet to submit a report on the follow-up on the legislative suggestions** to the Chamber of Deputies.

The Defender sent his **Annual Report for 2019** to the Chamber of Deputies in March 2020. The Chamber of Deputies **had not discussed** the report by the editorial deadline for the present Report.

The Defender also worked closely with the Chamber of Deputies, especially through its Petition Committee and individual Deputies.

## PETITION COMMITTEE

The Petition Committee discussed the Defender's 2019 Annual Report, the quarterly reports as well as the reports on cases where the Defender had not achieved remedy even after taking all the steps envisaged by the law. The Committee also discussed the State final account for 2019 and the budget of the Office of the Public Defender of Rights for 2021.

## SENATE

On 10 June 2020, the Senate discussed and took due note of the Annual Report on Activities of the Public Defender of Rights in 2019 (document of the Senate No. 221).

The work of the Public Defender of Rights is followed in more detail by the Committee on Legal and Constitutional Affairs and the Committee on Education, Science, Culture, Human Rights and Petitions, which also regularly discuss the Defender's annual reports.

## COMMUNICATION WITH INDIVIDUAL DEPUTIES AND SENATORS

The Defender appreciates that the Deputies and Senators make use of their right to convey to the Defender the complaints they receive from individuals (who address them), and that they are actively interested in the real-world impact of laws on society. The Defender welcomes the opportunity to inform them about his findings and conclusions from all the areas of competence entrusted to him.



# The Defender and the Government

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1. Legislative Recommendations, Relations with Constitutional Bodies and Defender's Activities

The Public Defender of Rights advises the Government whenever a ministry fails to adopt adequate measures to remedy a shortcoming or general maladministration. The Defender may also recommend that the Government propose the adoption, amendment or annulment of a law, or adopt, amend or annul a Government regulation or resolution.

In 2020, the Defender informed the Government twice about the ministries' unlawful practices. The Defender considers his participation in commentary procedures a simplified form of legislative recommendations to the Government.

## THE DEFENDER'S NOTIFICATIONS TO THE GOVERNMENT

### POSITION OF STATELESS PERSONS

Since 2018 already, the Defender has been dealing with the position of applicants for the status of stateless person. All inquiries were directed towards the procedure of the Ministry of the Interior, the Department for Asylum and Migration Policy. Indeed, the Ministry of the Interior did not issue the applicants with any document certifying their legal status following the submission of an application under the Asylum Act, nor did it specify their legal status for the duration of the proceedings. As a result, they – for example – lacked access to the system of public health insurance and were not allowed to stay in one of the residential centres managed by the Refugee Facilities Administration of the Ministry of the Interior.

The problematic nature of this specific situation stems from imperfect legislation, which lays down merely that the Ministry of the Interior is to decide on applications submitted under the Convention relating to the Status of Stateless Persons. The Asylum Act comprises no other explicit provisions on these proceedings or on the individual's legal status during or after the proceedings. The absence of an explicit legal regulation governing the position of applicants for the status of stateless person thus represents a "genuine" gap in the law. Such a gap has to be bridged using analogy, based on application of the given legal regulation also to cases that are not explicitly mentioned in its wording. In the given case, the question of legal status of applicants for the status of stateless person must be resolved analogously by applying the legal status of applicants for international protection as defined in the Asylum Act.

## **1. Legislative Recommendations, Relations with Constitutional Bodies and Defender's Activities**

This conclusion has already been repeatedly confirmed by the Supreme Administrative Court. It has been, in turn, also adopted by the Municipal Court in further proceedings concerning the individual aspects of the position of applicants for the status of stateless person (specifically, regarding denial of an identity card to the applicant, security or denying access to a residential centre).

In his further inquiries, the Defender also addressed the status of persons who had already been recognised as stateless. By analogy, such persons should have the same legal status as successful asylum seekers. Consequently, stateless persons should be issued with a permanent residence permit.

The Ministry of the Interior disagreed with the above interpretation and refused to take the proposed remedial measures. In such a case, the Public Defender of Rights Act requires the Defender to inform the Government. The Government discussed both related cases at its meeting on 11 January 2021. For more details, see also the chapter Lost in the system, [p. 78](#).

**Notification addressed to the Government:** File No. 32/2020/SZD of 14 December 2020

**Notification addressed to the Government:** File No. 33/2020/SZD of 14 December 2020

Little less than one half of the comments addressed was accepted (49%); disagreements persisted in a further 13%. The number of comments increased markedly compared to the previous year (from 192 to 404); the success rate remained roughly the same (52% of the comments were at least partially accepted in 2019).

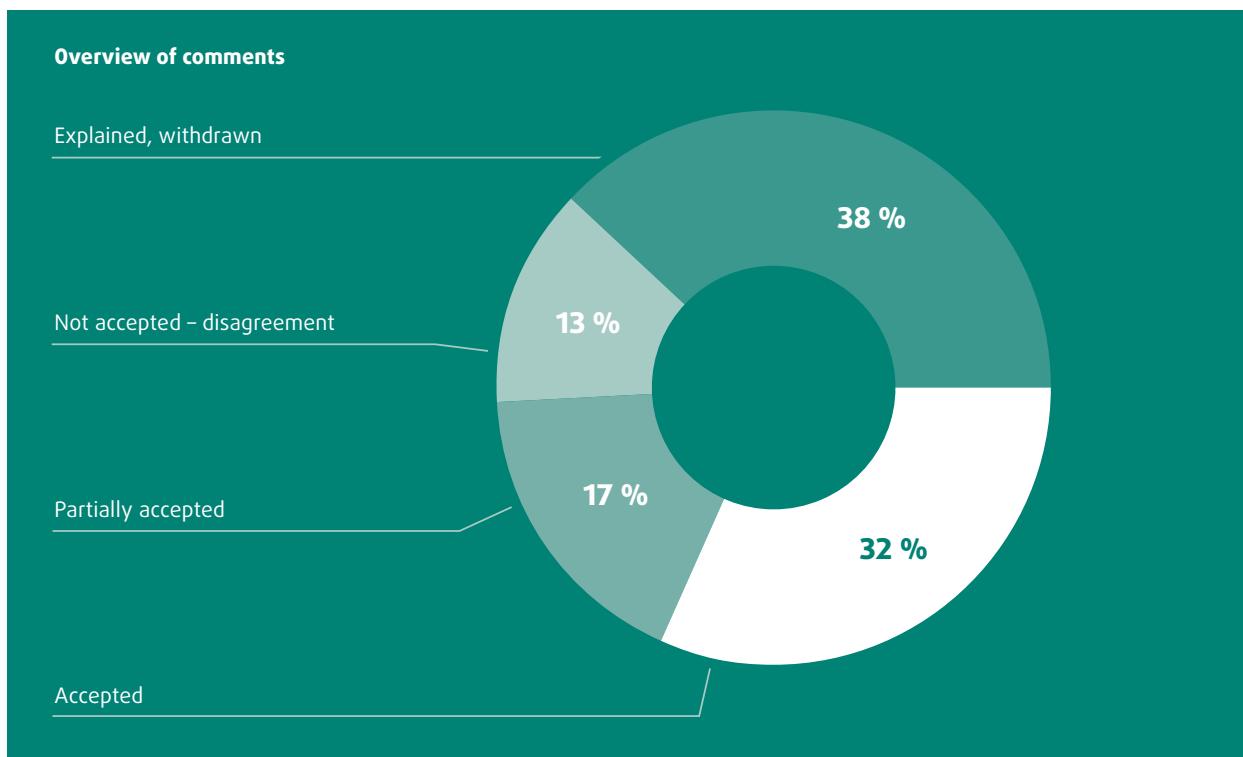
The Public Defender of Rights raised relatively extensive comments on the draft Defender of Children's Rights Act, the new Construction Code, an amendment to the Healthcare Services Act, an amendment to the Roadworthiness Act, and also on amendments to the Social Services Act and the Social and Legal Protection of Children Act.

Most comments addressed – a total of 43 – concerned the draft new Construction Code. The greatest number of non-accepted comments (15) were also raised in respect to this draft. However, it should be noted in this respect that, in view of the specific way the comments were addressed by the submitter, we cannot speak of an absolute number of comments not accepted, because only a part of all the comments raised were addressed in view of the subsequent progress of this material in the legislative process, which occurred before all the comments were addressed.

The overview only includes fundamental comments (suggestions) to which the submitters have already responded.

## **DEFENDER'S COMMENTS ADDRESSED TO THE GOVERNMENT**

In 2020, the Public Defender of Rights raised a total of 404 comments concerning 37 materials of the Ministries (of which 31 were draft pieces of legislation).



# The Defender and the Constitutional Court

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1. Legislative Recommendations, Relations with Constitutional Bodies and Defender's Activities

## PROCEEDINGS ON ANNULMENT OF LAWS

With effect from 1 January 2013, the Public Defender of Rights may join proceedings on annulment of laws or their individual provisions as an interested party. In 2020, the Defender thus joined two out of twenty-four sets of proceedings.

## RULES OF CROSS-BORDER MOVEMENT BY COMMUTERS AND OTHER PERSONS

In the wake of the Covid-19 outbreak and the ensuing regulatory measures, the Defender received several dozen complaints concerning the impact of the measures regulating cross-border movement to and from other EU Member States.

Although the Government's resolution contested by an application for annulment of certain provisions was cancelled in the meantime with effect from 11 May 2020, it was replaced by Resolution of the Government of the Czech Republic of 4 May 2020, No. 511, on the adoption of an emergency measure, having similar contents as the previously contested resolution. The provisions of Government Resolution No. 495, whose annulment was proposed earlier by a group of Senators, are identical in contents with the provisions in paragraphs I./2 (d), I./3. (a) and (d) and I./9. of Resolution No. 511, effective during the state of emergency.

Despite the above, the Defender decided to join the proceedings, supported the application filed by the group of Senators and familiarised the Constitutional Court with his findings. The Defender pointed out, in particular, that the duty to submit a negative test certificate once every 30 days was not a suitable measure for the protection of health. Indeed, the incubation time for Covid-19 ranges from 2 to 14 days, and an infected person, who can further spread the disease, might not exhibit any symptoms of the illness.

The duty to present a negative test certificate once every 30 days thus cannot prevent the spread of the disease.

The Defender also pointed out that the same conditions as those which apply to cross-border workers under the Government Resolution also applied to students. He described a case where he had been approached

by a family with three children whose members are all citizens of the Czech Republic residing in Slovakia, approximately 100 metres from the border. Before the state of emergency was declared and all the emergency measures adopted, the children had attended a school in the Czech Republic.

If they were required to present a medical certificate of a negative test once every 30 days after school attendance was renewed, this would substantially affect the family's budget.

**Defender's Statement: File No. 18/2020/SZD** of 18 May 2020

**Decision of the Constitutional Court: File No. Pl. ÚS 20/20** of 16 June 2020

## **YOU HAVE DEBTS! AND YOU STILL WANT TO BE A TUTOR?**

The Deputy Defender agreed to act as a guardian ad litem for a minor boy in proceedings on a constitutional complaint filed by a woman whom the court refused to appoint the boy's tutor and justified this by referring to her debts. The Deputy Defender concluded that the Constitutional Court should grant the complaint and cancel the decisions of the Regional and Municipal Courts in Brno. Indeed, the courts focused solely on the complainant's debts, which she moreover had managed to gradually reduce in recent years, and failed to evaluate the situation as a whole.

# **Activities of the Public Defender of Rights in numbers**

In 2020, we received 7,926 complaints, which is a little more than in the previous year. In spite of the difficult situation and a number of crisis measures aimed combat the Covid-19 pandemic, the public did not lose confidence in the Ombudsman.

**7 926**

complaints were received

**591**

people in total came to the Office of the Public Defender of Rights in person to seek advice and ask for information

**324**  
of them filed their complaint orally on the record

**6 464**

people called our information line to find out whether their problems fell within the Defender's mandate, obtain information on how to deal with their problems, or to check on the progress of inquiry into their complaints.

**729**

inquiries initiated, of which  
**42**  
of the Defender's own motion

**7 844**

complaints were resolved (including complaints from previous years that were closed in 2020)

**671**

inquires were closed, where:  
**in 188**  
cases, we found no maladministration or discrimination

**in 490**  
cases, we identified maladministration or discrimination, of which  
**in 349** cases, the authority itself remedied the maladministration following the issue of the inquiry report

**in 85** cases, the authority did not remedy the maladministration and the Defender had to release a final statement, including a proposal for remedial measures, and the latter were taken by the authority

**in 19** cases, the authority failed to remedy the maladministration even after a final statement was released.  
The Defender therefore decided to exercise the authority to impose penalties and inform the superior authority or the public.

The boy had already been living in the complainant's family for some time and, despite of his hearing impairment, the complainant had always been able to take good care of him; they had strong emotional ties to one another. The complainant also co-operated with the boy's school and physicians.

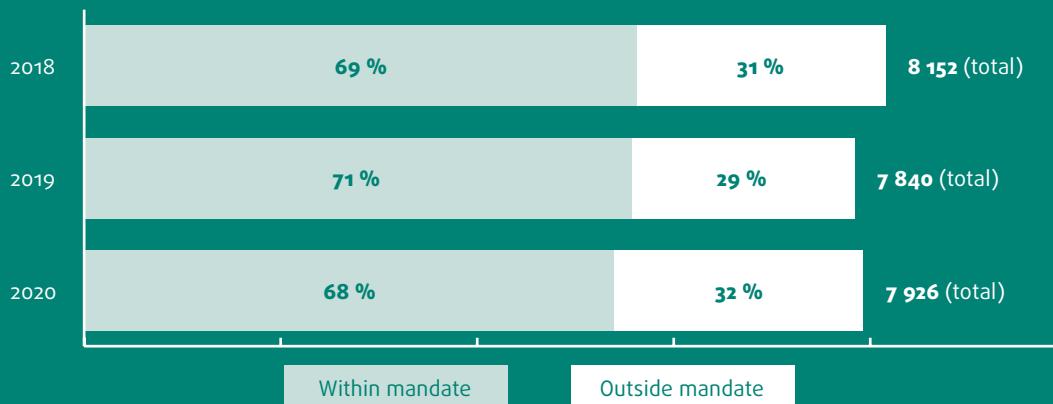
When a tutor is being appointed, his or her potential debts should not be the decisive factor in this regard. The case must be assessed as a whole, including evaluation of the quality of the care and the relationship between the applicant and the child, and with a focus on the best interests of the child.

When assessing the applicant's debts, it is then important to take into consideration how he/she approaches this situation, whether he/she is paying the debts or creating new ones, whether he/she co-operates with supporting non-profit organisations, etc.

The Constitutional Court granted the complaint and cancelled the contested judgements, because a mere reference to the existence of debts, without a consideration given to the whole context of the case, is not, in itself, a sufficient proof of inability to properly perform the duties of a tutor. [Statement for the Constitutional Court: File No. 15/2020/SZD](#)

## 1. Legislative Recommendations, Relations with Constitutional Bodies and Defender's Activities

### Complaints received in 2018 – 2020



### Complaints received within mandate by area

Social security	1 361
Construction and regional development	623
The army, police and prisons	430
Foreign nationals	352
308 Rights of children, youth and families	
289 Healthcare administration	
269 Miscellaneous fields within the competence of the PDR	
241 Infractions	
233 Taxes, charges and customs duties	
232 State administration of courts	
226 Administration of employment and work	
215 Environmental protection	
195 Transport and communication	
180 Discrimination	
155 Property law and restitutions	
60 Internal administration	
37 Self-government, regional governance, right to information	
9 Public Prosecutor's Office administration	

# Important moments and events in 2020

## JANUARY

- › We presented our report on visits to facilities for people with disabilities. The situation in these facilities shows that the transformation of social services has basically come to a standstill.
- › We managed to return to a disabled mother her child who had been entrusted after birth to her grandmother's custody. The BSLPC failed in the role of a guardian ad litem as it had not given the mother the opportunity to prove that she would be able to take care of the child.

## FEBRUARY

- › We issued the Collection of Opinions: Information, dedicated to the right to free access to information.
- › We filed an action in public interest against a decision of the Olomouc City Hall on the location of the Šantovka Tower. We claimed that the City Hall had violated the State Heritage Act, the Nature Conservation and Landscape Protection Act, the Code of Administrative Procedure, the Construction Code and also the obligations of the Czech Republic under the Convention for the Protection of the Architectural Heritage of Europe.
- › Stanislav Křeček became the Public Defender of Rights by taking an oath before the Deputy Speaker of the Chamber of Deputies..

## MARCH

- › While we appreciated an amendment to the Disability Benefits Act, as it had partially extended the range of people eligible for a special aid, it failed to deal with the most pressing issues.
- › The Chamber of Deputies discussed the 2018 Annual Report.
- › Personal contacts were limited because of the Covid-19 pandemic; the activities of the Office of the Public Defender of Rights in relation to the public were not affected to any significant degree.

## APRIL

- › We objected to the irregular and unpredictable procedure taken by the Ministry for Regional Development in connection with the draft Construction Code.
- › The Constitutional Court confirmed that "sins of youth" could not be taken into account when deciding on appointment of a tutor. A child was

represented by the Deputy Public Defender of Rights as a guardian ad litem in proceedings before the Constitutional Court.

- › We pointed out that protective equipment and other means intended for social services and follow-up care for senior citizens also had to be supplied to facilities taking care of the elderly without the necessary authorisation.

## MAY

- › We advised ministers of the Government that some of the Government's measures against Covid-19 were disproportionately affecting vulnerable groups, especially endangered families, people with disabilities and their carers.
- › Restriction of cross-border movement – we contacted the Minister of the Interior in respect of measures concerning cross-border movement adopted in connection with the epidemic.
- › Together with the Ministry for Regional Development, we contacted travel agencies' operators and outlined exact procedures how travel agencies should treat their clients in case of cancellation of package tours due to the Covid-19 pandemic.
- › We published a recommendation, not only for the media, on how to speak and write about people with disabilities and how to communicate with them. People with disabilities must be treated as equal partners.

## JUNE

- › We issued a survey report mapping how municipalities approached individual applications for reserved parking spaces for people with disabilities. Only a quarter of the municipalities actually try to accommodate their needs.
- › The Senate acknowledged the Defender's Annual Report for 2019.
- › We published a report on a survey concerning municipal housing in terms of the right to equal treatment. In the survey, we dealt especially with the rules for the assignment of municipal flats.

## JULY

- › We published a report on visits to facilities reflecting on the time of the Covid-19 pandemic. People living in various facilities were sometimes completely "cut off" from the surroundings. Limited visits, lacking contact with close persons

and, in many cases, a ban on leaving the building were among the most problematic consequences of the measures taken against spreading of the disease.

- › Exemption of a flat in a single-family house from real estate acquisition tax can be applied retroactively. People who acquired a flat in a single-family house before 1 November 2019 could claim this exemption if the deadline for specification of tax had not yet expired for them. This remedied several years of injustice caused by the legislator's omission, which we had pointed out in the long term.

## AUGUST

- › We initiated a survey on whether game enclosures were accessible to the public and how the visitors could move around such enclosures.
- › Allowance to cover expenses associated with school attendance should be provided to anyone entitled under the law. We published a survey report with recommendations on how applications for extraordinary immediate assistance aimed to cover justified costs related to education and special-interest activities of a dependent child should be assessed.
- › We prepared an information leaflet intended for children placed in children's homes or juvenile correctional institutions. The leaflet focuses on their rights and the most common problems they face.

## SEPTEMBER

- › We pointed out that it was inadmissible for public guardians to delegate their duties, including management of the property belonging to the person under guardianship, to a social services provider on whom the given individual is dependent. By doing so, the guardians not only circumvent the law, but also expose the persons under their guardianship to an unreasonable risk of abuse.
- › We criticised that the remuneration for sworn interpreters, translators and court-appointed experts was insufficient and did not correspond to the professional qualifications or the responsibilities borne by these professionals.
- › We pointed out that the envisaged amendment to the Healthcare Services Act was insufficient, especially in terms of the rights of people with disabilities.

## OCTOBER

- › We issued the Collection of Opinions: Removal of Structures II. This is an updated publication for the public and authorities.
- › We urged the Government and political representatives to deal with the gradual

extension of the pension insurance period to an extraordinarily strict 35-year period. This will result in an increased number of senior citizens who are not eligible for retirement pension.

- › We helped the mother of a seventeen-month girl who had commenced her prison sentence to ensure that she would be able to take care of her child in the prison, although the child would be over four years old when her mother is released. Otherwise, the child would have to be placed in a children's home.
- › We criticised the inactivity of governmental authorities of all levels regarding the New Railway Connection between Prague's Main Station and Masaryk Station, and Libeň, Vysočany and Holešovice. It is unacceptable to use an unapproved structure for ten years based on repeatedly renewed permits for test operation.

## NOVEMBER

- › We pointed out the possibility of visiting terminally ill patients in a healthcare facility during emergency measures adopted to prevent the spread of Covid-19.
- › We started inquiring into the "Nová Masaryčka" construction project in Prague; we will review the procedure of the authorities and their possible maladministration.
- › We published a survey on court decision-making on supporting measures. The courts mostly opt for a restriction of legal capacity – the number of people with limited legal capacity has reached approximately 40 thousand in the Czech Republic. The survey analysed 256 court decisions issued in the period from 2013 to 2019.
- › We launched a series of podcasts titled "Have a coffee with the Ombudsman", where we provide advice for various life situations.

## DECEMBER

- › We began inquiring into the activities of governmental authorities in connection with the leakage of harmful substances into the Bečva River.
- › We completed a survey on the lives of clients in homes for people with disabilities. The survey focused on independent living, specific features of providing services to children, education of clients, exercise of the right to personal and family life, and the right to health.
- › We prepared a recommendation concerning the contact of children in foster care with their parents, siblings and other close relatives. Only a court may prohibit contact with a parent.
- › We translated the UN Standard Minimum Rules on the Treatment of Prisoners, known as the "Nelson Mandela Rules". They serve as the basic guidance for the creation, application and interpretation of national laws.

# 2

# Family, Healthcare and Labour





**1218**

complaints, of which:

**691**

within the mandate

**527**

outside the mandate

**88**

of our inquiries revealed  
maladministration, of  
which:

**4**

were cases where  
it was not possible  
to ensure that the  
authorities rectify their  
errors

Our activities in 2020 were significantly affected by the Covid-19 pandemic in all areas covered by our mandate. In the area of healthcare, we thus recorded an increase especially in the number of complaints concerning visits of patients and the presence of parents in healthcare facilities at times when anti-pandemic restrictions were in effect. We also frequently dealt with the issue of visits concerning children in institutional care and permits for them to temporarily leave the institution. We also helped sick job seekers who had been removed by the Labour Office from the job seekers' register because they had failed to report their illness in time.

We focused closely on raising awareness among children and created new information materials for them:

- The leaflet "The Ombudsman for children" will teach them who the Public Defender of Rights and his Deputy are, how they can help and how to contact them.
- The information leaflet "I am in a children's home or educational institution" focuses on the rights of children in institutional care and mentions the most common problems and queries of children who have previously contacted the Public Defender of Rights.
- We made an entertaining video presenting the institution of the Public Defender of Rights to children. The video is available at <https://youtu.be/iiw2OM4jDbA>.

# We help change the rules



## WHEN CAN I SEE MY MUM AND DAD?

We repeatedly dealt with cases where someone unlawfully prevented children in foster care from contacting their parents, siblings and other close relatives. This is why we prepared a recommendation on this topic and sent it to the bodies for social and legal protection of children, regional authorities, the Ministry of Labour and Social Affairs, organisations supporting foster parents and guardianship courts. We would like to point out, for example, that without a court decision, it is not possible to prohibit parents from contacting their children merely with the argument that the child must first get used to staying in the foster family, and that a foster parents' organisation or a body for social and legal protection of children cannot simply decide that the child's contact with his or her parents will take place with assistance of a third person.

 Defender's recommendation: File No. 6985/2020/VOP

## LOSS OF FREEDOM DOES NOT MEAN LOSS OF THE RIGHT TO INFORMATION AND CONTACT WITH CHILDREN

A mother serving a prison sentence complained that nobody had told her that her two children were no longer in a children's home, but rather with foster parents, and that the foster parents would not allow her to contact the children by telephone.

We found that the BSLPC had indeed failed to inform the mother, had not co-operated with her, had not communicated with her during the term of her sentence, and had not taken any initiative to deal with her case.

We pointed out that the duty to visit the parent of a child who has been placed in institutional care at least once every three months continued to apply even if the parent was in prison. The BSLPC is required to discuss fundamental changes in the child's life with his or her parent in person. The BSLPC also has the duty to inform the parents of the child's current situation, what further steps it proposes and where the child is placed. This is because parents have parental responsibilities even when they are in prison. We emphasised that only a court could specify how the contact between the parents and their children should be organised, and could restrict or prohibit such contact.

Based on our report, the BSLPC adopted a measure to avoid the mentioned shortcomings in the future.

 Defender's report: File No. 6799/2019/VOP

## CHANGE OF RESIDENCE MUST NOT AFFECT THE CONTINUITY OF WORK WITH A FAMILY

On our own initiative, we inquired into a case of a boy who had died as a result of abuse from his mother's



partner. The boy's family had been supervised by the BSLPC for a long time as the mother had been unable to take proper care of her son.

During the first two years, the mother and the boy had relocated several times, causing delays and ambiguities as to the supervision by the responsible BSLPC. However, the court erred in the case as it updated the individual plan for the child's protection with a delay of several months and also neglected the supervision duty. It failed to exercise proper supervision on its own and asked merely for a one-off inquiry by the BSLPC responsible for the administrative district to which the family relocated; moreover, it only did so eight months following the previous inquiry.

The BSLPC acknowledged that the child's individual protection plan had been updated too late and promised a remedy in the form of more consistent supervision by the head of the department. Although it denied that the supervision had been neglected, it nevertheless adopted measures for future cases, aimed at setting clear rules for co-operation with the BSLPC at the place of the family's new residence, in cases where the family supervised by the BSLPC relocates.

 [Defender's report: File No. 4436/2019/VOP](#)

## **IF YOUR CHILD IS NOT VACCINATED, WE WILL REPORT YOU TO THE BSLPC**

The complainant disagreed with the way the regional authority resolved her previous complaint against a paediatrician who had informed the BSLPC that the complainant's son was endangered because she

had not had him vaccinated according to schedule. However, the doctor reported no other problems or suspicion of neglect.

We found maladministration on the part of a regional authority which, among other things, agreed to report an "endangered" child to the BSLPC. However, the mere fact that a child has not been vaccinated according to schedule does not warrant reporting the child as endangered.

The regional authority acknowledged the mistake and accepted our opinion.

 [Defender's report: File No. 408/2019/VOP](#)

## **PARTICIPATION OF UNINSURABLE CHILDREN IN PUBLIC HEALTH INSURANCE**

We were approached by the parents of "uninsurable minors" who found themselves in a difficult situation. The health insurance company had not confirmed their participation in public health insurance based on an application for a permanent residence permit on grounds deserving special consideration. The insurance company referred to the residence status of the children's parents. The children's medical condition was serious, and one of them died.

We advised the insurance company of the court's opinion that a child became a participant in public health insurance once the relevant application was filed. After several rounds of negotiations, the insurance company insured the children retroactively since their birth.

 [Defender's opinion: File No. 7437/2019/VOP](#) (also 7438/2019/VOP and 7440/2019/VOP)

## **SPECIALISATION OF INDEPENDENT EXPERTS?**

We inquired into the procedure of a regional authority which had been asked to deal with a complaint against a healthcare services provider. We criticised the authority, among other things, for not appointing an independent expert specialising in the field where the misconduct allegedly occurred.

Although the term "independent expert" is not defined by the law, we consider that the regional authority should have interpreted it using an analogy with the closest legal concept available – an independent expert committee. The law requires that an independent expert committee comprise at least two qualified healthcare professionals specialising in the relevant field. Therefore, if it requires that two specialists in the relevant field of care be members of such a committee,

it is all the more necessary that the same qualification requirements be met by an independent expert.

The regional authority rejected the criticism even after the final statement was presented, and we therefore referred the case to the Ministry of Health. The Ministry agreed with our opinion that the selection of an independent expert to investigate a patient's complaint regarding the procedure of a healthcare services provider should reflect the field or type of care to which the complaint pertains. The Ministry forwarded the conclusion to all the regional authorities and the Prague City Hall.

 **Defender's opinion and sanction:** File No. 6710/2018/VOP

## HOW TO CORRECTLY APPROACH COMPLAINTS ABOUT FEES RELATED TO CHILDBIRTH?

We contributed to setting rules for regional authorities that address complaints about fees related to childbirth. Indeed, expectant mothers have long been complaining about fees – often quite incomprehensible – charged for the presence of another person (partner, doula, midwife) during childbirth.

With regard to one such complaint, the regional authority asked for an opinion of the Ministry of Health as to how this type of complaints should be resolved. The reason was that we had been inquiring into the procedure of this regional authority and had criticised its practice. We pointed out that, based on case law of the Constitutional Court, a fee could only be collected for certain acts and only in the amount of the costs actually incurred. The regional authority should take this into account when addressing complaints against childbirth fees.

The Ministry, as the methodological body, issued such an opinion where it reflected our conclusions (only certain acts could be subject to a fee and only in the amount of the costs incurred). The opinion is binding on all regional authorities.

 **Defender's report and opinion:** File No. 2749/2018/VOP

## ONE SHORT SENTENCE AND YOU'RE OUT OF THE REGISTER!

The Labour Office removed a job seeker from the register because it concluded that it could no longer seek a job for him in view of his medical condition.

Such removal from the register is possible, but the inability of a job seeker to co-operate with the Labour Office must be documented by a medical report with the requisites pursuant to the Specific Healthcare

Services Act. In the given case, however, the Labour Office relied merely on a single sentence in the medical report.

We noted maladministration in this regard. The Labour Office rejected our assessment by stating that it had merely followed the existing practice of relying on an "ordinary" medical certificate. It admitted, however, that it might change its approach if its superior authorities, i.e. the General Directorate of the Labour Office of the Czech Republic and the Ministry of Labour and Social Affairs, changed their stance in line with our legal opinion.

The General Directorate of the Labour Office did accept our opinion and, in co-operation with the Ministry of Labour and Social Affairs, reconsidered the existing practice and changed the methodology.

 **Defender's report:** File No. 4793/2019/VOP

## ENFORCEMENT PROCEEDINGS MUST NOT BE AN INSURMOUNTABLE OBSTACLE TO THE PROVISION OF AN ALLOWANCE

We inquired into the case presented by a complainant who had asked the Labour Office for an allowance towards creating a job for a disabled person with a view to self-employment. According to the legislation, such an allowance can only be provided by cashless transfer to the applicant's account. While the Labour Office did approve the application for the allowance, it did not actually provide it in view of the pending enforcement procedure and attachment of the complainant's account. We pointed out that the allowance was earmarked for a certain purpose and could not be attached.

However, we learned that in practice, enforcement agents seized even these funds in a bank account, although the law prohibits this. Neither the court nor such an agent examine the type of funds remitted to the obliged party's account at the time when the enforcement is ordered. A solution could lie in partial discontinuation of the enforcement procedure to the extent of non-attachable claims. The Labour Office erred when it did not provide the allowance to the applicant solely on the grounds of the enforcement procedure and attachment of his account. It should have advised the complainant of steps that could be taken to protect the allowance by means of an application for partial discontinuation of the enforcement procedure. It could also have informed the enforcement agent itself that a non-attachable earmarked allowance was being paid to the complainant's attached account, and request that the enforcement procedure be partially discontinued.

The Labour Office respected our conclusions and presented them to the responsible employees. It

apologised to the complainant for its inconsistent procedure.

 Defender's report: File No. 7786/2018/VOP Press release of 17 April 2020

## VISITING CHILDREN DURING THE COVID-19 PANDEMIC

During the state of emergency, we learned that a family-type children's centre with a facility for children requiring immediate assistance had indiscriminately prohibited any visits from the outside due to the risk of spreading Covid-19. During our inquiry, we advised the facility director on our own initiative that both the children and their parents had the right to a regular personal contact.

We carried out a proportionality test, where we weighed the rights of employees, referred to by the director, against the rights of the children, and concluded that an indiscriminate ban on visits was not proportionate. The use of protective equipment would be sufficient. We pointed out that even the Ministry of Labour and Social Affairs had stated in its official opinion that visits by parents and other close persons could not be prohibited indiscriminately even during a pandemic. The Ministry of Health also set an exemption for visits of minor patients.

The facility's director lifted the general ban on visits and also promised to make ad hoc decisions on temporary stays of children outside the facility.

 Defender's report: File No. 2081/2020/VOP

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2. Family, Healthcare and Labour

# We are here to help

## CHILDREN'S HOME MUST NOT HAVE UNLAWFUL VISITING RULES

We were approached by a 11-year-old boy living in a children's home. He complained that the management had significantly restricted the frequency of his parents' visits.

Our inquiry confirmed this and we also determined that the visiting rules at the home were generally incorrect in many other aspects. The visiting hours were quite restrictive and this could have been limiting for the children's parents. A member of the staff was always present at the first visits of newly admitted children. However, such conditions for the parents' contact with a child may only be set by a court in a specific case, and not indiscriminately for all children by an internal regulation of the children's home. Visits also had to be approved by the staff. However, visits are a manifestation of the statutory right of the children and their parents to stay in contact and are not subject to any approval, as a matter of principle. Finally, any visit to the home had to be announced in advance. While this is clearly practical, prior announcement cannot serve as a precondition for a visit.

Subsequently, we also found out that the children's home had completely banned all visits and cancelled all children's stay with their parents ("leaves") during the spring nationwide state of emergency declared in response to the pandemic. We urged the management of the home to acknowledge that there was no substantive reason or statutory authorisation to introduce such indiscriminate bans.

The management of the children's home responded positively to our criticism and changed its visiting rules both in general and in the case of the boy who had approached us.

 Defender's report: File No. 269/2020/VOP

## SOCIAL EXCLUSION OF CHILDREN IS NOT JUSTIFIABLE BY TRANSFORMATION OF A CHILDREN'S HOME

We found out that a "children's home" had transformed itself into a "children's home with a school". The lives of those children who stayed in the home after its transformation became inadmissibly restricted to the premises of the facility, which substantially limited the children's preparation for their future independent lives. The children were transferred from normal schools which they had attended until then to the school located directly in the facility. Activities which the children had previously pursued outside the children's home were also gradually relocated to the facility. The management of the children's home agreed with our conclusions. It explained that almost all the children we were talking about had already left the facility for regular children's homes (and hence normal schools) or back to their families. The management also downsized the facility to only two family groups (i.e. 16 children in total, as compared to the original 32), which reduced the burden on the staff and enabled the children to practice certain stressful situations and experiences in normal society outside the facility.

 Defender's report: File No. 296/2019/VOP

## DOES A HIGHLY DISRUPTED RELATIONSHIP BETWEEN CHILDREN AND THEIR PARENTS ENDANGER THE CHILDREN?

We inquired into a case of a mother of two children who had complained about the work of the BSLPC. After many previous rulings, the court provided for an indirect contact between the mother and the children via e-mail; this lasted for more than a year. The mother asked the BSLPC to convene a case conference, order family mediation, etc. The BSLPC rejected her suggestions, stating that these instruments of social and legal protection of children could not be reasonably employed in her case.

### We helped and advised:

**86**

people with health insurance premiums and activities of health insurance companies

**236**

families

**129**

people who had problems with the labour office

**41**

children

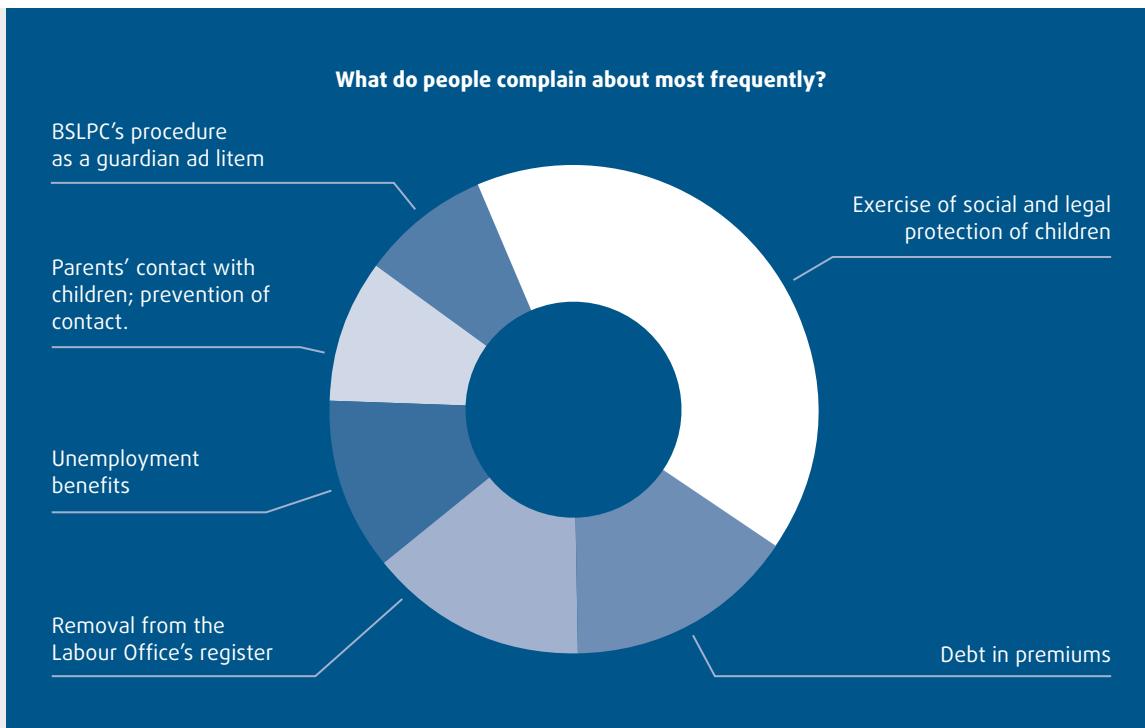
We found out that the BSLPC had not met with the mother in person for several years and had not considered the children endangered. In its opinion, the gradual restriction of the mother's contact with the children was appropriate to the situation and it considered e-mail communication sufficient.

We reproached the BSLPC for not concluding that the children were endangered. Indeed, they live amidst an escalating and unresolved conflict between their parents and have a strongly disrupted relationship to their mother, who, however, seeks to stay in contact with the children. We also pointed out that indirect contact should only be a temporary solution. The BSLPC is thus required to work proactively with the family to resolve the crisis. We issued an opinion where we proposed that the authority discuss the mother's requests with her in person and explain to her comprehensibly what steps she should take to improve her relationship with the children, and to reassess whether the children were at risk. The BSLPC accepted our proposal for a remedial measure.

 Defender's report and opinion: File No. 543/2019/VOP

## PERENNIAL PROBLEMS WITH THE NOTIFICATION DUTY

We stood up for a complainant who had been removed from the register of jobseekers because she had failed to notify the Labour Office in due time that she had been issued a job seeker's sick note. According to the law, she was supposed to report this fact on the date when the sick note was issued. She did not do so until the next day because she had neither a telephone nor



the internet, and in view of her medical condition, she was unable to comply with this duty on the day the doctor issued the sick note

We criticised both the Labour Office and the Ministry of Labour and Social Affairs for their formalistic approach and failure to take into account case law of administrative courts, which emphasise the need to strike balance between the consequences of removal from the register and the gravity of the job seeker's non-compliance. There can be no doubt that the complainant failed to comply with her duty in due time, but her failure lacked any signs of a frivolous evasion of duties. The harshness of the ensuing penalty was thus disproportionate. The Minister of Labour and Social Affairs accepted our proposal and annulled the decision of the Labour Office in review proceedings.

We also dealt with further cases where the Labour Office had removed job seekers from the register because they had failed to report a sick note in due time. They left the doctor's office at a time when the Labour Office was already closed for the day. Therefore, they saw no point in calling there by phone and had no means of sending an e-mail. They notified the Labour Office of their temporary unfitness to work on the next day. Because of removal from the register, they lost their allowance for an accident at work.

In two cases, the Ministry of Labour and Social Affairs did not accept our suggestion that the decision on removal should be cancelled. However, administrative courts eventually agreed with our opinion – they found the reasons for non-compliance compelling and justifying the failure to report a sick note in due time. The insurance company then paid the allowance to all the complainants retroactively.

A new wording of the notification duty was incorporated in an amendment to the Employment Act, based on our comments. With effect from 14 April 2020, a job seeker is required to notify the Labour Office of a temporary unfitness to work not later than three calendar days of the date when he/she is issued a sick note (i.e. not on the same day).

- [Defender's report: File No. 3750/2019/VOP](#)
- [Defender's report: File No. 3371/2019/VOP](#)
- [Defender's report: File No. 4133/2019/VOP](#)
- [Defender's report: File No. 3901/2019/VOP](#)
- [Press release of 5 August 2020](#)
- [Press release of 25 September 2020](#)

## ROAD CLOSURE IS RELEVANT FOR CALCULATION OF THE DISTANCE TRAVELED

We stood up for a complainant who had to take a longer route to see his doctor because of a road closure. His health insurance company, however, refused to compensate this longer trip based on the number of kilometres travelled. To prove the need for the detour, the complainant even presented a statement issued by an employee of the municipal authority's transport department.

After we initiated our inquiry, the health insurance company acknowledged that the complainant had become entitled to a higher compensation for travel expenses than originally paid to him, and reimbursed the difference without delay.

- [Defender's report: File No. 7055/2019/VOP](#)

## ACCESSIBILITY OF A HEALTHCARE SERVICES PROVIDER

A wheelchair-bound disabled person complained to the regional authority, amongst other things, that his doctor's office lacked barrier-free access. The building was only accessible by stairs and he was also forced to use a restroom in the neighbouring building, where he again had to ask his wife for help with negotiating a staircase.

However, when responding to his complaint, the regional authority completely failed to deal with this particular objection. Only after our inquiry did the authority ask the physician to adopt suitable measures in view of the options available at the given place, e.g. install a ramp to the office.

 Defender's report: File No. 5715/2019/VOP



# We communicate

## ROUNDTABLE ON HANDLING COMPLAINTS

We organised a meeting for representatives of public authorities and ministries where they discussed the manner of addressing complaints in healthcare. We familiarised the participants with the Defender's legal opinions on the topics discussed. One of these topics was the presence of legal representatives and other persons in the provision of healthcare to children. Indeed, we receive regular complaints in this regard and strive to ensure the broadest (preferably continuous) contact between parents and their children in hospital.

## REMOVAL FROM THE REGISTER OF JOBSEEKERS

We continued to raise awareness about the topic of removal from the register of jobseekers. We had success in this regard last year and received a positive response from the participants. We managed to organise an expert seminar for social workers of the Pardubice Regional Authority and also an online expert seminar for social workers of the Liberec Regional Authority.



## SEMINAR FOR NGOS

We organised an expert seminar focusing on selected aspects of social and legal protection and substitute family care. The seminar was intended for representatives of non-governmental non-profit organisations providing social and activation services for families in Brno and vicinity. We discussed, for example, the protection of children as victims of domestic violence, the position of NGOs as clients' attorneys in court proceedings and (the lack of) criminal liability of children and juveniles.

## NATIONAL CHILDREN'S PARLIAMENT

We participated in a meeting of the National Parliament of Children and Youth. At the meeting, we presented the Defender's activities in the area of protection of children's rights. We described what we helped children with and how, and also what they should do to contact us. We also discussed the Children's Ombudsman.

## SUITABLE ENVIRONMENT?

As part of a methodological meeting organised by the Regional Authority of the Moravian-Silesian Region

with representatives of the bodies for social and legal protection of children and facilities for children requiring immediate assistance, we presented the topic of placing children in a suitable environment.

## ON-LINE SUBSTITUTE FAMILY CARE

We organised two on-line seminars on the topic of substitute family care intended for employees of regional authorities, bodies for social and legal protection of children, foster parents' supporting organisations and non-governmental non-profit organisations, as well as of facilities for children requiring immediate assistance from the Pardubice and Moravian-Silesian Regions. The aim was to illustrate, on specific examples, the issues we often encounter when inquiring into complaints related to substitute family care. We focused primarily on the contact of children placed in foster care with their families, children's rights to participate, foster care allowances and family foster care.



# **3**

# **Social**

# **Security**



**1 315**

total complaints

**28%**

increase in the number of complaints related to sickness insurance benefits

**26%**

increase in the number of complaints concerning a housing allowance

**77%**

increase in the number of complaints related to carer's allowance

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**99**

of our inquiries revealed maladministration, of which

**5**

were cases where the error could not be remedied

**As part of our regular podcast "Have a coffee with the Ombudsman", we prepared six episodes focusing on pensions.**

**In the Commission on Fair Pensions, we pointed out the disproportionately strict condition of 35 years of insurance required to become eligible for retirement pension.**

**We wrote a total of eight articles for the expert community on certain aspects of social security.**

# We help change the rules

## INCONSISTENT DECISION-MAKING ON EXTRAORDINARY IMMEDIATE ASSISTANCE FOR DEPENDENT CHILDREN

We inquired into the procedures followed by the Labour Office in the provision of extraordinary immediate assistance to dependent children, helping them to cover expenses related to their education and hobbies. We conducted the inquiry by means of a questionnaire survey addressing the contact offices of the Labour Office and by analysing more than 500 decisions completely or partly denying the benefit.

We found that people with low income most often asked for money to finance textbooks, learning aids, schoolbags, school camps, sports courses and after-school groups. The applications concerned mainly children under 18 years of age; only 3% were older. We encountered marked differences in the numbers of applications filed in the individual regions; the degree of "success" also varied. In some regions, we felt that the numbers of applications were very low and we therefore asked the General Labour Office Directorate to guide the staff of individual branches of the Labour Office to provide more consistent advice to families with dependent children regarding the entitlement to this benefit. We also urged that the relevant application forms be available at the individual branches. The survey also revealed that practically no one challenged a negative decision – an appeal was filed by less than 1% of the applicants.

We encountered the following incorrect or insufficient reasons for rejection:

- this is not an unexpected expense; the family should have known about the student's expenses and should have saved money or not have left the purchase of learning aids to the last moment; repeated payments of assistance in material need are intended only to secure basic necessities and cannot be used to generate savings
- the applicant, his/her family or co-habitant are not trying to increase their income – this justification is at variance with the purpose of the allowance, i.e. ensuring proper performance of the child's compulsory school education
- the child still has learning aids from previous years – while this reasoning is generally acceptable, it was not documented in the cases under scrutiny whether and, if so, how the authority had determined this fact (the authority cannot issue its decisions based on mere assumptions).

We asked the Ministry of Labour and Social Affairs to unify the procedures of the Labour Office and to guide it not to rely on inadmissible grounds for the denial of applications.

Both the Ministry and we organised meetings with representatives of the regional branches of the Labour Office, where the results of the survey were discussed in detail. We are further negotiating on their incorporation in the Ministry's guidelines.

 Survey report: File No. 25/2020/SZD



## INFORMATION NECESSARY FOR CHOOSING THE MANNER OF DRAWING PARENTAL ALLOWANCE

With regard to the parental allowance, we saw repeated complaints about incorrect advice regarding the possibilities of drawing this allowance. We repeatedly criticised the Labour Office for failing to advise the child's parents of the maximum possible amount of the parental allowance and about the duty to report an entitlement to maternity benefits, and also for not making a record of its meeting with the parents. As a result, the parents often claimed the benefit in an amount that was not favourable for them (e.g. in view of the upcoming birth of another child).

While the application form contains information on the possibility of choosing the amount of parental allowance, it is only provided in the fine print in a footnote. We also saw a problem in the fact that a parent is not advised anywhere (not even in the notice of granting the allowance) of the specific maximum amount or duration of the allowance.

We therefore used our special authorisation and recommended that the Ministry of Labour and Social Affairs amend its internal regulation and require the Labour Office to keep records of advice provided to a party also in the area of State social assistance. In the notice of granting the allowance, the Labour Office must always specify the maximum possible amount of the parental allowance, the chosen amount of the allowance and information on the end date depending on the option chosen.

The Ministry agrees with the proposed general measure; however, its implementation will require a change in the relevant software application and will therefore take some time.

 [Inquiry report: File No. 4787/2019/VOP](#)

## THE CZECH SOCIAL SECURITY ADMINISTRATION SHOULD NOT SEND NOTICES OF INCREASED PENSION BY POST TO SENIOR CITIZENS WHO HAVE A DATA BOX

We were contacted by a senior citizen who complained that the Czech Social Security Administration repeatedly delivered notices to her regarding an increase in her pension by post, although it was aware that she had a data box. First, she pointed out to the authority the general provisions of the Code Administrative Procedure according to which an administrative authority is to deliver documents primarily via the public data network to a data box. In its response, the Czech Social Security Administration argued that it was aware of its duty, but lacked the technical capacity to adhere to it. The notices of increased pension were automated and the system did not make it possible to send automated documents to data boxes.

We suggested to the Czech Social Security Administration that it send copies of such notices to data boxes manually. We are convinced that insufficient technical equipment does not relieve the authority of its duty to deliver documents to the data box. The Czech Social Security Administration stated that it would adopt the proposed measure in the case of the complainant, but it was beyond the capacity of its staff to do the same for all owners of data boxes.

We informed the Minister of Labour and Social Affairs and pointed out, among other things, that delivery of printed documents by post was uneconomical. In her reply, the Minister proposed three possible solutions. The least expensive and fastest option was "half-automated" sending of notices of increased pension to data boxes. However, this would require a change in the software settings at the Czech Social Security Administration and would thus not be put into practice until 2022.

 [Defender's report, opinion and sanction: File No. 4668/2019/VOP](#)



# We are here to help

## PARENTAL ALLOWANCE FOR AN ADULT PARENT LIVING IN A CHILDREN'S HOME

We were approached by a young mother of a three-year-old child who had lived with her child in a children's home based on an accommodation contract; this arrangement had applied until she finished secondary school. Her child was institutionalised at that time. In September 2019, the mother had ended her stay at the children's home, moved to a "training" flat and asked for the child's institutional care to be cancelled. The body for social and legal protection of children dealt with the child's stay by means of a leave permit; the child was no longer under the facility's direct supervision and was in her mother's care. However, the Labour Office

had withdrawn her parental allowance and did not pay it to the children's home, either.

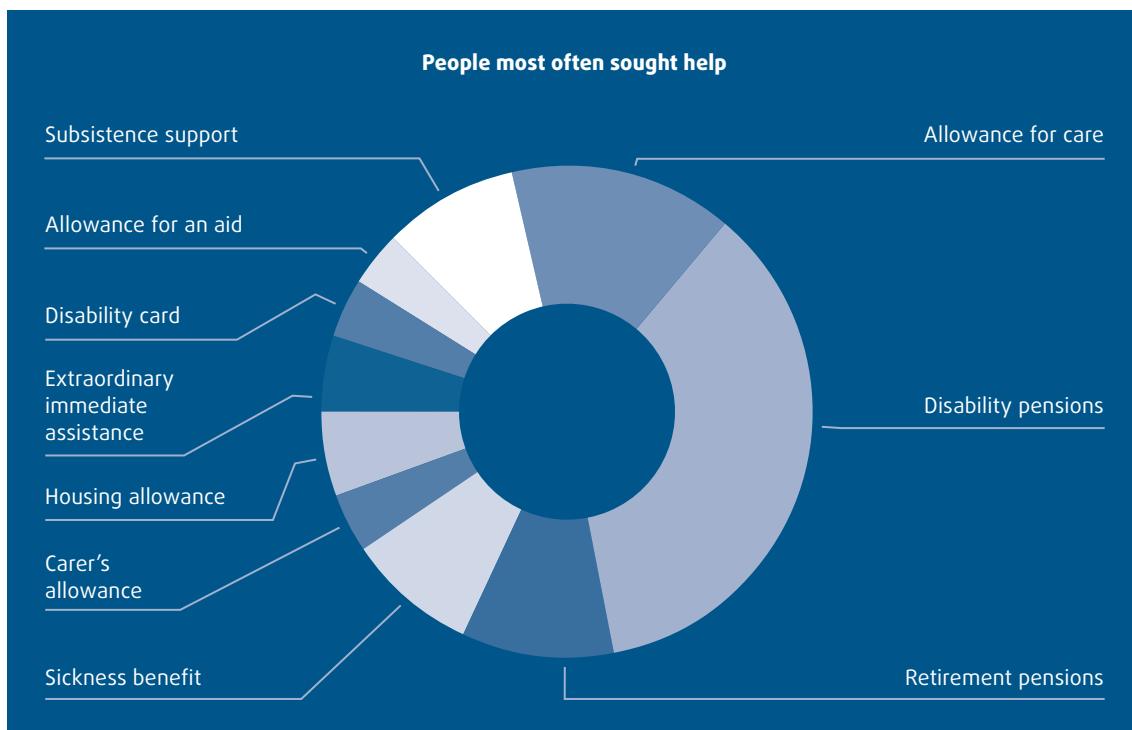
Since the law does not explicitly provide for these situations, we asked the Ministry of Labour and Social Affairs for an opinion as to whether the allowance should be paid to the facility or directly to the mother. We concluded that an interpretation of the law according to which the allowance would be provided to neither of them, although the mother had the child in her care, was unlawful and contrary to the sense and purpose of the law. Even after moving out of the children's home, the young mother met the condition of whole-day personal and proper care for the child, and the Labour Office thus should not have withdrawn the benefit, but rather merely changed its beneficiary. The Ministry of Labour and Social Affairs accepted this argument and cancelled the Labour Office's decision on withdrawing the benefit. The Labour Office also incorrectly withdrew the child benefit. Although the child's institutionalisation had not been cancelled, the complainant's child was no longer under the institution's direct supervision, but was rather in her mother's care, all that based on approval from the children's home and the BSLPC. Therefore, the Labour Office should have paid the child benefit directly to the mother. Based on the inquiry report, the Labour Office provided for a remedy, initiated proceedings on the unlawfully denied benefit, and paid out the two benefits retroactively.

Defender's report: File No. 7338/2019/VOP

## HOUSING ALLOWANCE SHOULD NOT BE WITHDRAWN AUTOMATICALLY BECAUSE OF THE TENANT'S FAILURE TO SUBMIT A BILL FOR SERVICES

We dealt with a complaint against the procedure of the Labour Office, which had withdrawn a housing





allowance from the complainant because he had failed to submit bills for water and sewer charges for the previous billing period. The complainant argued that he had tried to obtain the bills from his landlord, both on his own and through his attorney-at-law, but the landlord refused to issue them.

The landlord even responded to repeated requests by terminating the lease. After the vain attempts to obtain the bills, the complainant turned to the Labour Office and asked it to call on the landlord to submit the bills. However, the landlord failed to respond to the Labour Office's request. The Labour Office subsequently withdrew the complainant's housing allowance due to his failure to present the bills, and the Ministry of Labour and Social Affairs confirmed the decision in the subsequent review proceedings.

We considered the procedure of the Labour Office excessively formalistic. In view of the circumstances of the case, the Labour Office was able to calculate the housing allowance even without the presented bills, and could continue to claim the bills strictly from the landlord. If the Labour Office later ascertained, on the basis of the presented bills, that the housing allowance had been overpaid, the Office would be able to claim a refund of the overpayment from the landlord because it was the landlord's conduct that caused the overpayment. By doing so, it would not give up on its duty to properly ascertain all the decisive facts of the case. Moreover, if the payment had been continued, this would have served the purpose of the housing allowance, which is to help people with low income to pay the costs of housing, and thus help them maintain their housing.

Nevertheless, the Labour Office neither accepted nor remedied its error, and maintained its interpretation

of the law. Its conclusions were also supported by the Minister of Labour and Social Affairs, whom we subsequently asked for a statement. Therefore, we informed the public of our findings. Given the persisting contradictions in opinions, we recommended to people who find themselves in a similar situation to refer their case to court.

At the same time, we tried to ensure that the Ministry does not neglect this issue within the planned amendment to the legislation governing housing benefits (see also the Defender's legislative recommendations for 2020, No. 2, p. 11).

 **Defender's opinion and sanction:** File No. 5848/2019/VOP

## THOROUGH RE-EVALUATION OF THE ONSET OF DISABILITY LED TO A HIGHER PENSION

We dealt with a complaint filed by a man who had been receiving 3rd degree disability pension because of cancer and an urological disease. He asked us to inquire into the procedure of the Czech Social Security Administration in determining the amount of pension, which equalled CZK 8,000 per month in 2019. We determined that the man had been found partially disabled from April 1999 and fully disabled since December 1999. However, the assessment lacked any further justification of the dates of onset of the disability. It was clear that the authority had erred when it decided on the application for a pension although the disability assessment was incomplete and inconclusive. After we pointed this out, the Czech Social Security Administration ordered an extraordinary medical examination, which already yielded a properly



justified disability assessment. Based on the newly obtained data, the medical assessor reconsidered the onset of the disability as, in her opinion, the facts determined in 1997 and 1998 had later proven to be significant in this regard.

She concluded that, at that time already, the medical condition of the person being assessed had limited the possibility of his work assignment and performance. She therefore newly found him partially disabled from February 1997 and fully disabled from December 1999. The Czech Social Security Administration then increased the complainant's pension retroactively by almost CZK 2,000, including payment of a one-off balance of over CZK 100,000.

Defender's report: File No. 1723/2019/VOP

## AN INSURED PERSON MUST LEARN ABOUT THE TERMINATION OF HIS/ HER TEMPORARY UNFITNESS TO WORK

Increasingly often we receive complaints related to sickness insurance, especially complaints concerning termination of temporary unfitness to work, with non-extension of sickness benefits after expiry of the support period. One of these complaints was submitted by a woman who complained that the medical assessor had dismissed her application for payment of sickness benefits after the lapse of the support period, even though her treatment had still continued; she had been forced to quit her job because of her illness and register herself at the Labour Office.

In our inquiry, we determined that the complainant's medical condition had been assessed in her absence. The assessing doctor had found no biological reasons for continued temporary unfitness to work and granting her application.

We pointed out that the temporary unfitness to work had been terminated at variance with the law. If the sickness insurance body ascertains reasons for termination of temporary unfitness to work, it decides on its termination using the prescribed form, unless this has already been done by the examining doctor. But the temporary unfitness to work ends only on the date when the insured person is notified of this fact. The notice may be made either orally if the insured person is present when the decision is made or by delivering the decision in writing to an absent insured person. Since the complainant was not present to the assessment, her temporary unfitness to work should have ended on the day when she learnt about this fact. She should also have been granted sickness benefits even after the lapse of the support period, until the date of enforceability of the decision.

Based on our inquiry, the Czech Social Security Administration provided for a remedy through renewal of the proceedings and granted the complainant sickness benefits even after the lapse of the support period.

Defender's report: File No. 6347/2019/VOP

## MEDICAL ASSESSOR'S CONCLUSION LACKING REASONING IS NOT AN APPROPRIATE BASIS FOR A DECISION

We were approached by a woman who objected to the rejection of her application for an increase in the allowance for care for her mother suffering from Alzheimer's disease.

The allowance for care was left in the original amount of CZK 4,400 even though, according to the complainant's statement, her mother's medical condition had deteriorated to such a degree that she had to ask the

court to restrict her mother's legal capacity in almost all areas. She claimed that because of her deteriorated perception abilities, at the time when the application for an increase in the allowance had been filed, her mother had needed supervision of another person for almost all her basic necessities. She also presented a medical report documenting her mother's medium-severe dementia.

However, the medical assessors acknowledged the need for daily assistance only with regard to six basic necessities, specifically mobility, orientation, communication, going to the toilet, care for health and care for the household. They did not acknowledge the requirement for daily assistance also in dressing, putting on shoes and eating.

The assessment issued for the purposes of the appellate proceedings did not contain the necessary explanations as to why the need for daily assistance in eating, dressing and putting on shoes had not been recognised. An assessment comprising insufficiently substantiated conclusions is incomplete, unreviewable and cannot serve as a proper basis for issuing a decision.

We advised the Minister of Labour and Social Affairs of the shortcomings found and asked her to cancel the decision in review proceedings. The Minister accepted our request, annulled the incorrect decision and referred the case back to the appellate body for new proceedings. In the new proceedings, the Ministry increased the allowance for care even to the 4th degree of dependence, i.e. to CZK 19,200.

 [Defender's report: File No. 4516/2019/VOP](#)

## SICKNESS BENEFITS CANNOT BE RETAINED ON ACCOUNT OF AN OVERPAYMENT OF PREVIOUS BENEFITS NOT CAUSED BY THE BENEFICIARY

3. Social security

We were approached by a complainant who had asked for assistance in addressing a difficult social situation. For several months, the Prague Social Security Administration had been retaining her sickness benefits.

The complainant suffered an injury in Italy in January 2019. Through her employer, she applied for sickness insurance benefits. The Prague Social Security Administration informed her that it recorded a one-day overpayment of sickness insurance benefits related to her previous temporary unfitness to work and refused to pay the benefits on this ground. Since the complainant had been without income for several months, she agreed that the overpayment for one day of her previous unfitness to work would be deducted from the new benefits. The Prague Social Security Administration did not send her the relevant decision or written notice of the duty to return the overpayment.

During our inquiry, we found this procedure incorrect. The Prague Social Security Administration had failed to pay the benefit within the statutory deadline of one month and made its payment conditional on the complainant returning an overpayment of the benefit for the previous period of temporary unfitness to work. However, she was not accountable for this overpayment. It was caused by her employer, and the fact that the complainant had benefitted from the employer's incorrect procedure was not decisive according to the law. Based on our advice, the Prague Social Security Administration paid the sickness benefits to the complainant.

 [Defender's report: File No. 3641/2019/VOP](#)



# We communicate



## PODCASTS ON PENSIONS WITHIN OUR REGULAR SERIES "HAVE A COFFEE WITH THE OMBUDSMAN"

During the autumn months, we prepared a series of podcasts for the general public focusing on pensions. We gathered queries and topics in which people had shown interest. Based on these sources and our findings obtained in addressing specific cases, we prepared six episodes of our podcast, focusing on the topics of How to prepare for retirement, Period of insurance and the most frequent misconceptions and myths, and others. We published the podcasts at the turn of 2020 and 2021.

All the podcasts from the series Have a coffee with the Ombudsman are available at: [www.youtube.com/playlist?list=PLWNv\\_IxgJdEKvV9-ZYu7VTxvc1SjDRb2i](https://www.youtube.com/playlist?list=PLWNv_IxgJdEKvV9-ZYu7VTxvc1SjDRb2i)

## CONDITIONS FOR GRANTING RETIREMENT PENSION ARE DISPROPORTIONATELY STRICT

As part of our membership in the Commission on Fair Pensions, we repeatedly pointed out the very long insurance period which had to be completed to become eligible for retirement pension, and pushed for more relaxed legislation based on our experience with complaints from people whose application for a pension had been rejected.

There is a growing number of cases where people reach the pensionable age, but do not become eligible for retirement pension.

The reason is they do not meet the very strict condition of 35 years of insurance. Many people will have

completed, e.g. 32 years, but this is not sufficient for retirement pension; when they reach the pensionable age, they receive no pension, not even in a reduced amount. After 2010, the conditions were gradually tightened and the minimum period of insurance for the entitlement to a pension was gradually extended from 25 years to the current 35 years. Moreover, certain substitute insurance periods (e.g. the period of studies beyond 18 years of age) are no longer included after 2009, and since 2019, they have been even further reduced in terms of pension eligibility. Interruptions in the periods of insurance completed by unsuccessful applicants for a pension are often caused by health or work complications at a pre-retirement age. We are convinced that the number of these people will grow. In Europe, eligibility for retirement pension is usually attained after 15 years of insurance. This is true in Slovakia, Austria and other countries.

We understand that setting up the pension system is a political decision. However, we point out the stricter conditions for retirement pension to the public and also pursue a dialogue with the Ministry of Labour and Social Affairs. In October 2020, we organised a press conference on this topic. We also noted that a reduction in the period of insurance necessary for the entitlement to retirement pension could be achieved by a partial amendment to the Pension Insurance Act if a comprehensive pension reform was not finalised by the end of the current Parliament's electoral term.

In the Commission on Fair Pensions, we supported a material which proposed a reduction in the period of insurance necessary for retirement pension eligibility. This material was a response to comments raised by members of the Commission and also reflected the latest conclusions made in an OECD preliminary study which criticised the unusually long period of



insurance required for retirement pension. A change in this condition should be a part of the pension reform submitted by the Ministry of Labour and Social Affairs to the commentary procedure in December 2020.

## **WE ACQUAINT JUDGES AND ASSISTANTS OF ADMINISTRATIVE COURTS WITH THE WORK OF THE PUBLIC DEFENDER OF RIGHTS**

In January 2020, we organised a professional seminar for judges of administrative courts and their assistants at the Supreme Administrative Court, in co-operation with the Judicial Academy in Kroměříž. We informed them about the most common problems addressed by the Defender in the area of pensions and assistance in material need. We discussed the issue of administrative

discretion in the area of non-insurance social benefits as well as the latest findings obtained by the Defender in addressing complaints related to pensions and as part of the Defender's membership in the Commission on Fair Pensions.

## **WE CONTINUE EDUCATING STUDENTS OF THE FACULTY OF LAW OF PALACKÝ UNIVERSITY AT LEGAL CLINICS**

As in the previous year, we helped organise legal clinics at Palacký University, both within the general ombudsman clinic and as part of a specialised clinic on social rights. Given the epidemiological measures that prevented in-class teaching, the lecturers gave the lessons on-line.



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4

# Public Policy

Tomáš Kadecka / Petr Průcha  
Filip Rigel / Vít Šťastný

# zakon o odpovědnosti za přestupky a vyřízení o nich



In 2020, we paid increased attention to consumer protection. Spring saw a major increase in the number of complaints concerning package tours cancelled because of the Covid-19 pandemic. In addition, we inquired on our own initiative into the procedure of the Czech Trade Inspection Authority in supervising utility brokers (non-licensed vendors). We also reviewed the practice of the Energy Regulatory Office in the supervision of utility suppliers (vendors with a licence). We determined that supervision by the CTIA was ineffective. Due to a lack of guidance, utility brokers are not punished in due time for their unfair commercial practices.

With regard to infractions, we noted that spiteful action could be a continuing infraction and that an authority which has a video recording of an infraction at its disposal could not simply discontinue the proceedings on the grounds that no infraction had been proven. In co-operation with the Equal Treatment Department, we inquired into the practice of cities and towns in establishing reserved parking spaces. We initiated a survey regarding entry into buildings which also host a public authority. We also determine how often regional authorities and ministries deal with an abuse of the right to information. We continue to lead authorities to greater comprehensibility, timeliness and relevance of their answers and decisions they make.

**2 523**

complaints, of which:

**996**

within the mandate

**1 433**

outside the mandate

**more than**

**100%**

increase in the  
number of complaints  
concerning cancellation  
of package tours

**44%**

increase in the  
number of complaints  
concerning entry of  
rights in the Land  
Registry

**15%**

increase in the  
number of complaints  
concerning traffic  
infractions

**13%**

increase in the  
number of complaints  
concerning infractions  
against public policy,  
civil cohabitation and  
property

**51**

of our inquiries  
revealed  
maladministration

**2**

cases where we did  
not manage to achieve  
a remedy

# We help change the rules

## REMOTE INSPECTION OF FILES

It is our long term ambition to persuade the authorities to allow "remote inspection of files". We want them to send electronic copies of the file or its parts to the parties whenever they so request. We can see no rationale behind forcing a party to physically come to the given authority only to inspect the file, especially as this could take up the whole working day.

This is well illustrated by the case of a man from Děčín who filed a request with the Ostrava City Hall and, subsequently, with the Regional Authority of the Moravian-Silesian Region. He asked for documents available to the authority in electronic form and filed his application through a data box.

Public administration is, among other things, a service for the public. Authorities are required to accommodate the requests of affected persons. Moreover, electronic communication is now a common standard. There exists no valid reason for the complainant to travel from Děčín to Ostrava just to inspect the file kept with respect to his case. This holds all the more if he requests the data via his data box and there is thus no doubt as to his identity, the number of requested documents is not large and the administrative authority has them all available in electronic form.

The regional authority promised to proceed in accordance with the Defender's recommendation, while taking into account the circumstances of each individual case, and also to instruct the subordinate administrative authorities within its methodical activity.

 Defender's report: File No. 2980/2020/VOP



## APPLICANTS FOR INFORMATION MUST ALSO HAVE ACCESS TO DECISIONS THAT HAVE YET TO ENTER INTO LEGAL FORCE

We achieved that the Office for the Protection of Competition is not allowed to refuse decisions that have yet to enter into legal force. We presented a comment concerning the envisaged amendment to the Protection of Competition Act where we pointed out that the Office for the Protection of Competition consistently rejected individual applications for decisions that had not entered into legal force, although the courts had found this approach unlawful. The provision of decisions rendered the Office, regardless of whether or not they have already come into legal force, is in line with the right to information. The Office accepted our objections and removed the disputed paragraph from the amendment.

 Defender's comments: File No. KVOP-19263/2020/S

## REGISTRY OFFICES AND DATA BOXES

We inquired into an allegedly inconsistent approach of registry offices to the acceptance of applications for a verbatim extract from the registry book filed through a data box, and to delivery of such extracts. The complainant correctly pointed out that the law made it possible to perform certain acts vis-à-vis public authorities through a data box, and required public authorities to prioritise delivery of documents through a data box.

In response to our recommendations, the Ministry of the Interior issued a guideline for the procedure of registry offices in communication with applicants via data boxes.

 Defender's report: File No. 21/2020/SZD



## LAND REGISTRY OFFICES PLAYING "PING-PONG"

We inquired into the case of a complainant who had turned to the Land Registry Office with a request for correction of an error. The Office indeed found the error, as a plot of land was missing in the land-registry map, and added it to the map by means of a non-surveying record. In appellate proceedings, the Inspectorate for Surveying, Mapping and the Land Registry stated twice that the non-surveying record was defective, cancelled the decision and referred the case back for a new hearing. In the second case, the defective non-surveying record was, in principle, the only reason for cancelling the decision and referring the case back. We criticised the repeated referrals because the proceedings thus became protracted. The Inspectorate argued that a non-surveying record could only be made by the Land Registry Office and, therefore, the case had to be returned to it. We rejected this argument, stating that the Inspectorate could ask the Land Registry Office to make the given non-surveying record.

The Inspectorate refused to admit the error, and we therefore turned to the Czech Office for Surveying, Mapping and the Land Registry as its superior authority. The latter did agree with our opinion, admitted that the Inspectorate had erred and informed the subordinate authorities about our legal opinion.

 [Defender's opinion: File No. 3802/2018/VOP](#)

## A TYPO WORTH CZK 2,000

We were approached by a complainant who objected to steps taken by the Land Registry Office in proceedings on permitting an entry in the Land Registry. The Land Registry Office rejected the entry on the grounds of an inconsistency between the application for registration and the enclosed purchase contract. The land identified

in the purchase contract differed from that given in the application for registration; instead of 1448, the contract identified the plot as number 1488. The complainant corrected the contract, filed a new application for registration and again paid an administrative fee of CZK 2,000. The Land Registry Office granted the application this time. The complainant contacted us because he considered procedure followed by the Land Registry Office excessively formalistic.

We agreed with his opinion. If the contents of a purchase contract can be inferred beyond any doubt in spite of a typing error or an error in numbers and if the thus-determined contents are in accordance with the application for registration, the Land Registry Office may not reject the application because it does not correspond to the contents of the presented document. In the case at hand, the error concerned only one of four numbers; the purchase contract also provided for a transfer of the building located on the land and the contract identified the plot correctly in this case. The contract also specified the number of the title deed on which the land being transferred was registered. We informed the Land Registry Office that the entry could already have been made the first time round.

The Land Registry Office admitted the error. It added that based on previous court rulings on lawsuits brought against decisions of the Land Registry Offices to reject an entry in the registry, the authorities in the sector of surveying and the land registry have been gradually abandoning the previous formalistic approach to assessment of the deeds to be registered.

 [Defender's report: File No. 3528/2020/VOP](#)

## PRICELESS INFORMATION

No unnecessary barrier should stand in the way of exercising the right to information. Such a barrier could, for example, consist even in the amount of the fee paid for the requested information. Based on our inquiry concerned with the tariff of fees charged by the State Land-Use Authority, we noted the disproportionately high price of data carriers (CZK 30 for a CD and CZK 50 for a DVD) on which it provided the information, and an hourly rate for extraordinarily extensive search in the amount of CZK 500.

Based on our inquiry, the authority reduced the amount of the fee for the data carriers to CZK 20 and the rate for a search to CZK 400.

 [Defender's report and opinion: File No. 7718/2018/VOP](#)

**We helped:**

**225** people whose package tour has been cancelled

**100** people with problems involving the Land Registry and land-use authorities

**58** people with the police

**35** people with problems concerning registry offices and population records

**102** people with problems concerning the use of roads

**46** people with problems concerning the right to information or personal data protection

**88** people with traffic infractions

# We are here to help

## WHERE AN INFRACTION CONTINUES

If an authority fails to initiate infraction proceedings involving neighbours within one year of the disputed conduct, the infraction becomes time-barred. But what if your neighbour builds screens on the boundary between your and his land and the screens block the view from your windows? We have long been involved in precisely such a situation, as the competent authority has refused so far to examine whether this is an infraction of spiteful action; as one year has elapsed since the installation of the screens, it considers the whole case time-barred, although the screens are still in place and block the view. We consider such a conclusion absurd and are trying to convince the authority to take action and hear the case.

 **Defender's opinion and sanction:** File No. 1205/2018/VOP

## NO ADDITIONAL NOTICE NEXT TIME

We dealt on our own initiative with the case of traffic signs that ordered people on a wheelchair to be accompanied when using the street; this instruction was displayed on an additional notice affixed beneath

prohibitory traffic signs B2 "No entry" and B29 "No parking".

However, the traffic signs under which the additional notice was placed regulate the movement of vehicles and not of pedestrians, including persons in wheelchairs. The aforementioned prohibitory signs thus cannot be combined with such an additional notice. The Office fully accepted our arguments and decided to remove the additional notices.

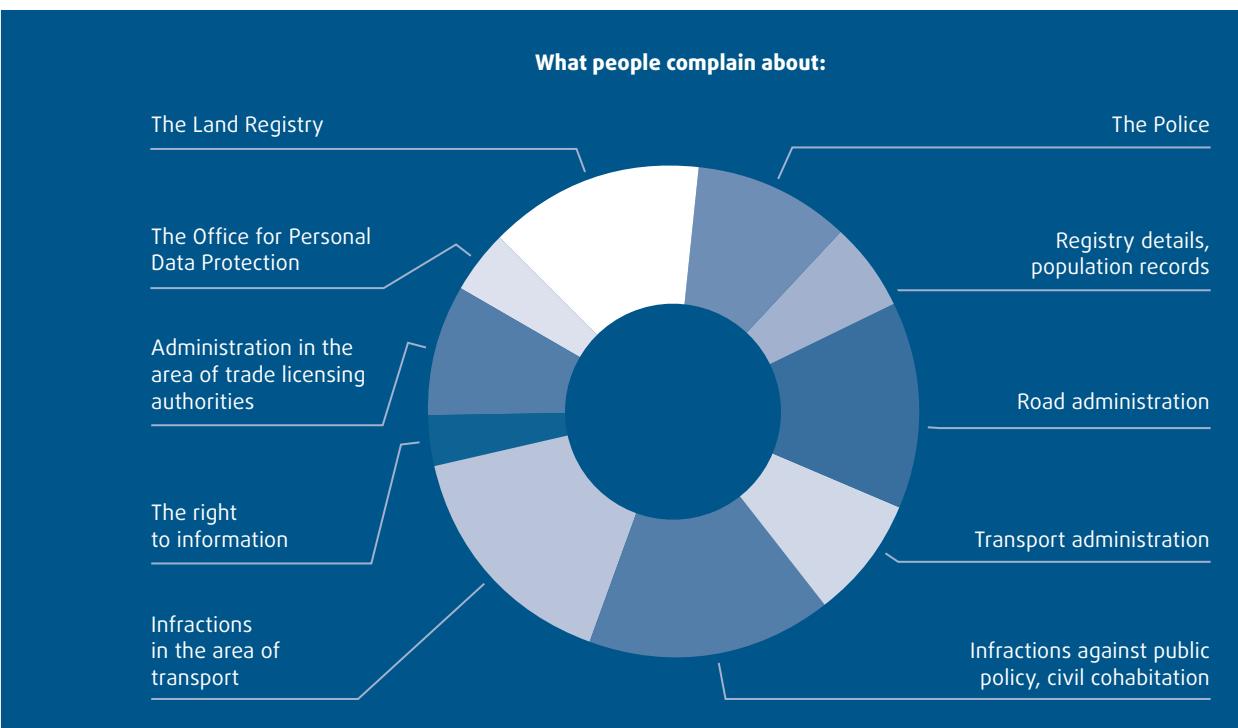
 **Defender's report:** File No. 6905/2019/VOP

## QUALIFICATION ALLOWANCE

We were approached by a soldier who had not been granted a qualification allowance. This allowance is provided to soldiers assigned to a service position for which a higher degree of education is required and the soldiers attain this education during their service relationship, without having concluded an agreement on increasing or extending their education.

The dispute turned on the question of whether the complainant was entitled to the qualification allowance despite the fact that the Army of the Czech Republic had no use for his new qualification. The complainant completed his studies at Mendel University in Brno in the Agrobiology Bachelor's degree programme, the field of General Agriculture.

We acquainted ourselves with the usual practice of service bodies in decision-making on granting the qualification allowance at the time when the complainant applied for it.



We wanted to know to what extent the service bodies actually examined during the given period the possibility of utilising the completed education at the new service position. We found that the Army's claim that other soldiers had been treated similarly as the complainant was not supported by the presented documents, and we therefore did not take it into consideration. In contrast, the documents in the file revealed that, during the time under scrutiny, the service bodies generally granted a qualification allowance without previously examining the potential for utilising the given education for the needs of the Army.

We thus concluded that the service bodies had violated the complainant's legitimate expectations that he would be granted the qualification allowance. The Minister of Defence promised to issue a new decision to the complainant.

Defender's opinion: File No. 5570/2019/VOP

## THE POST DELIVERED OTHER PEOPLE'S CONSIGNMENTS, BUT NOT MINE

Complainants argued that the Czech Telecommunication Office had not investigated their complaints regarding the work of Czech Post's delivery persons. They noted that consignments addressed to other people were regularly delivered to them, while their own consignments were automatically left at the post office for collection, with any attempt at delivery.

We pointed out to the Office that both a failure to make

an attempt at delivering a postal item and delivery of consignments addressed to other people (violation of postal confidentiality) constituted an infraction which should have been examined more thoroughly by the Office.

The Office accepted our conclusions, reviewed the post office's procedure and initiated infraction proceedings against the post office. It apologised to the complainants for its previous inactivity.

Defender's report: File No. 3744/2019/VOP

## PROVISION OF NEWLY CREATED INFORMATION FOR A FEE

The complainant asked a city ward for information as to whether it would be possible to continue using a mobile partition wall to divide rooms after structural alterations were made at the seat of the authority. The city ward lacked the required information concerning its own property. It thus charged a fee to the complainant and justified this by the need to search for the information. In this fee, it included the cost of time spent measuring the walls and surfaces and also three hours of subsequent consultations with the contractors. The City Hall, which was asked to rule on a complaint against this fee for an extraordinarily extensive search for information, confirmed that the city ward's procedure had been correct.

We, on the other hand, found such a procedure inadmissible, because neither the costs of creating information nor the costs of determining whether the

obliged entity has the information in the first place can be considered costs of searching for information.

Non-existence of information is a factual reason for (partial or full) rejection of a request for information, provided that the obliged entity is not required to have the information at its disposal. Otherwise, it has to obtain the information at its own expense.

The City Hall agreed with our conclusion. Since its decision, whereby it confirmed the previous procedure of the city ward, was no longer reviewable, it promised to follow our conclusions if the complainant again requested information from the city ward and the City Hall was again called on to rule on the complainant's appeal.

 [Defender's report: File No. 4150/2019/VOP](#)

## REMOVAL OF PERSONAL DATA FROM INTERNET SEARCH ENGINES

A complainant asked for information pursuant to the Free Access to Information Act. When publishing the response, the obliged entity merely blacked out the complainant's personal data, and the document could thus be found on the internet once the name and surname were entered in the Google search engine. Once this had been pointed out by the complainant, the obliged entity sent to him a copy of Google's request form for removal of personal data. The complainant was advised that he should prove his identity by submitting a copy of his identity card.

The complainant therefore contacted the Office for Personal Data Protection, which in turn explained to him the reason for enclosing a copy of the identity document. The reason why Google asked for a proof of identity was to prevent fraudulent requests for removal of personal data made by people faking their identity in an attempt to harm the competition or to fraudulently conceal legal information.

However, the explanation provided by the Office missed the point in the given case. The controller's requirement for a proof of identity is appropriate if the controller has justified doubts as to the identity of the individual submitting the request. In this case, however, the obliged entity already knew the complainant's identity based on his previous request for information.

Following our notice, the Office ordered the obliged entity to provide for a remedy. The latter admitted the error, removed the response with blacked-out data from its server and asked the internet search engine operator to update the URL as soon as possible so that the document was also removed from cache memory. The obliged entity again placed its response on its website, but this time with data on the applicant consistently anonymised.

 [Defender's report: File No. 7808/2019/VOP](#)



# We communicate

## PROBLEMS WITH PACKAGE TOURS DURING THE COVID-19 PANDEMIC

In spring 2020, we received an increased number of complaints concerning package tours provided by travel agencies. People who had purchased a package tour but were unable to travel abroad had to pay cancellation fees, received vouchers or were even asked to pay the balance of the package tour price.

Since we lack the competence to inquire into the procedures followed by travel agencies, we at least tried to advise the complainants how they could proceed in this situation. At the same time, we negotiated with the Minister for Regional Development and achieved that the Ministry issued a methodological recommendation for travel agencies.

As the situation in tourism did not improve, we again met with the Minister and agreed to send a joint letter to the operators of travel agencies, where we described exact procedures as to how travel agencies should treat their customers in problematic situations. We also met with travel agencies and informed them about the problems we encountered most frequently and described what steps should be taken in these cases.

Based on our recommendations, some dissatisfied clients of the travel agencies contacted the Czech Trade Inspection Authority. We will now examine whether the CTIA proceeded correctly in addressing their complaints and made use of its supervisory powers.

 [Press release of 11 June 2020](#)

## LECTURES FOR SENIOR CITIZENS

In 2020, we joined forces with consumer associations and organised a series of lectures for senior citizens. We discussed especially the Defender's competences in the area of consumer protection. Among other things, we discussed with the senior citizens the practices used by utility brokers and vendors of package tours.

We dealt with the issue of consumer protection also in co-operation with the academia. We lectured students





at the Olomouc Faculty of Law and also participated in a December workshop for students of the Brno Faculty of Law, where we shared our experience on the practices of utility brokers.

## WE CONTINUE TO TRY AND ENSURE COMPREHENSIBILITY OF ADMINISTRATIVE DECISIONS

In 2020, we continued our efforts to improve the comprehensibility of appellate decisions rendered by the Central Bohemian Region in the sector of roads. Although the regional authority's representatives promised that they would instruct their officials, this eventually did not happen because of the epidemiological situation. Many decisions of the regional authority are therefore still so incomprehensible and inherently contradictory that it is unclear what the regional authority requires from the first-instance authority when the case is heard anew. Since we consider this a fundamental problem, we continue discussing this issue with the regional authority and request that changes be made.

 [Defender's report and opinion:](#)

File No. 911/2018/VOP.

## THE MINISTRY OF TRANSPORT HAS DIFFICULTIES RESPONDING IN DUE TIME TO PETITIONS IT RECEIVES

We have repeatedly found that the Ministry of Transport fails to respond in due time to the complainants' petitions.

In a specific case, the complainant approached the Ministry with an inquiry about type-approval of lights in December 2019 and again asked the Ministry to respond in January 2020; the Ministry eventually responded only in June 2020, based on our inquiry.

We discussed the situation with the Minister of Transport, who explained the delays by the workload of the given department and promised to pay attention to this problem.

## A WORD WITH THE DEPUTY MINISTER OF THE INTERIOR RESPONSIBLE FOR THE CIVIL SERVICE

We have talked with the new Deputy Minister of the Interior responsible for the civil service about topics we consider crucial in the area of civil service. We discussed, among other things, the situation in public administration and the code of conduct for civil servants. We tried to find a consensus regarding possible inspection of civil servants' personal files so that we could conduct effective inquiries.

## RESPONSE FROM AUTHORITIES HAS TO BE TIMELY AND COMPREHENSIBLE

We repeatedly received complaints about practices of the Czech Telecommunication Office, which allegedly failed to provide timely and relevant responses to objections, as it was unclear from its answers whether, and if so, how it could help.

We agreed with representatives of the Office that its responses should be timely and comprehensible. We pointed out that good governance requires that an authority respond to petitions from the public within 30 days, even without a request. We emphasised that in its answers, it should clarify the options and possible steps in the given case.

If the Office subsequently receives a response from the petitioner in which he/she expresses his/her disagreement, the Office has to assess whether or not

this is, in fact, a complaint. Such a complaint has to be examined and remedial measures adopted.

Representatives of the Office took our point, advised the relevant employees and promised to work harder on improving communication with the public; we will monitor its progress.

 **Defender's report and opinion:**

File No. 5000/2018/VOP

## ARE PAY PHONES NO LONGER NEEDED?

On our own initiative, we reviewed the intention of the Czech Telecommunication Office to cancel the duty to operate public pay phones.

In our discussions with the Office, we verified that pay phones had, over time, indeed been largely replaced by mobile phones, which can be considered a suitable and affordable alternative to pay phones. We pointed out, however, that one also had to provide for emergencies where there is no access to a mobile phone or network. If pay phones are actually removed, it is necessary to provide some other way of calling for help.

The Office promised to find a solution that would replace the function of pay phones in emergencies. We will continue the established co-operation.

 **Press release of 16 June 2020**

## TOGETHER FOR PROTECTION OF PRIVACY (NOT ONLY) IN FACILITIES WHERE PEOPLE ARE RESTRICTED IN FREEDOM

Along with our findings from practice, we discussed with the Office for Personal Data Protection especially the issue of cameras installed in facilities where persons are restricted in their freedom. We agreed that living in a space monitored by cameras was a very sensitive thing. We consider it desirable to share experience and opinions on this interference with the right to privacy of individuals.

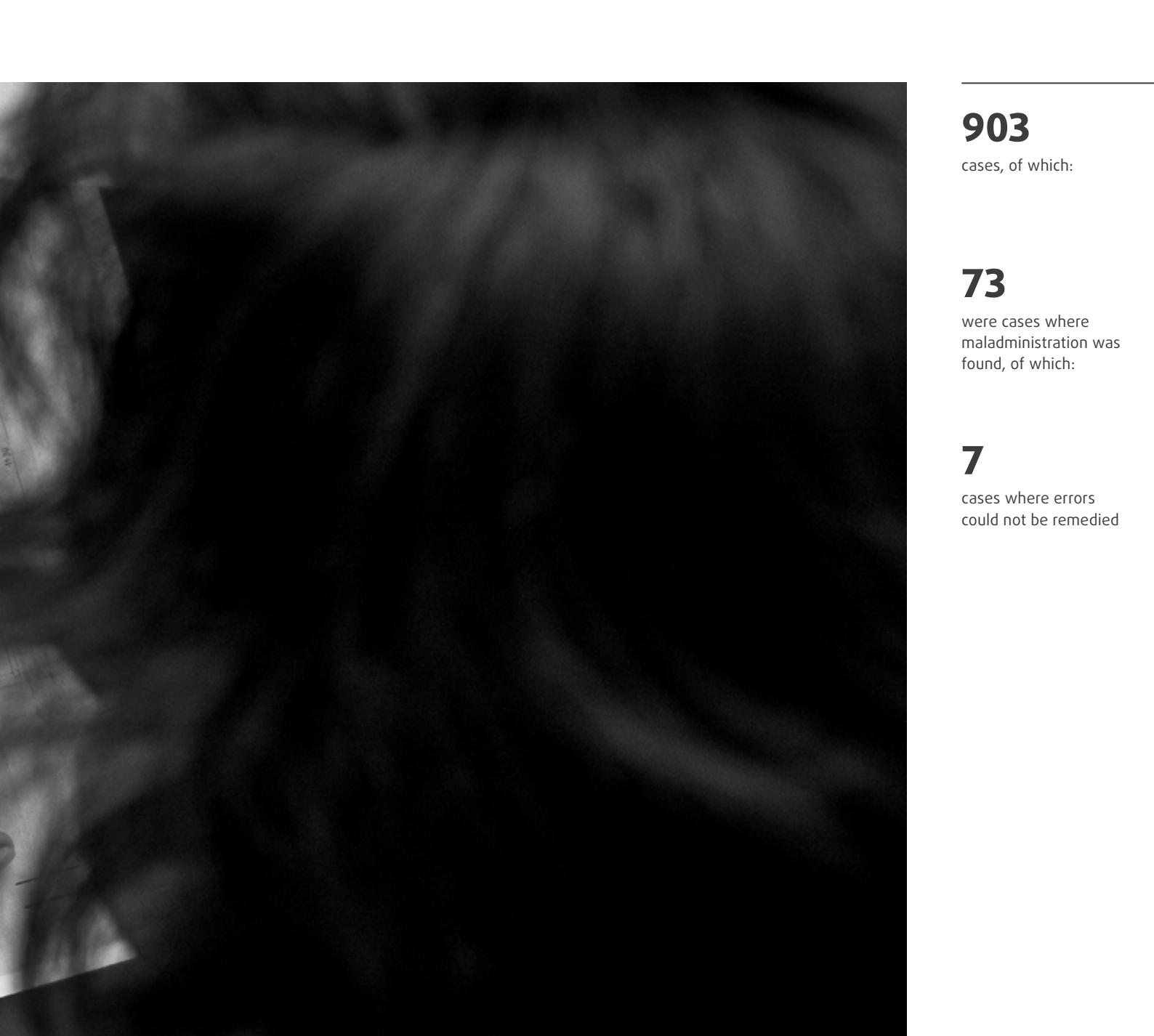


2. PATRÓ 18100



# 5

# Rules of Construction Procedure



**903**

cases, of which:

**73**

were cases where  
maladministration was  
found, of which:

**7**

cases where errors  
could not be remedied

**We consistently and repeatedly participated in commentary procedures on the individual concepts of construction law recodification, and pointed out numbers of shortcomings in the relevant materials, including non-compliance with the Government's legislative rules in the legislative process.**

**We filed an action in public interest to challenge the planning permit for location of the Šantovka Tower in Olomouc.**

**We capitalised on our findings in the area of animal protection in our new leaflet "Protection of animals". We updated our existing leaflets "Noise" and "Construction work" so as to make them more reader-friendly and to provide better help to people dealing with various life situations.**

# We help change the rules

## RECODIFICATION OF THE CONSTRUCTION CODE – OPEN LETTER TO THE PRIME MINISTER

The Construction Code deals with conflicts between private and public interests and is one of the pillars of public law. We thus simply could not ignore the steps taken by the Ministry for Regional Development in the preparation of its recodification.

Together with some other consulted bodies, we informed the Prime Minister that the Ministry for Regional Development had been discussing the new Construction Code at variance with the Government's legislative rules. The Ministry submitted to the Government a different articled wording of the new Construction Code than that which had gone through the commentary procedure. We urged the Prime Minister to ensure that the preparation of this important and crucial piece of legislation took place in line with the Government's legislative rules, which guarantee the quality and transparency of the future legislation.

 [Press release of 15 April 2020](#)

## ESTABLISHMENT OF A RESCUE CENTRE FOR LARGE CARNIVORES SEIZED FROM THE BREEDERS

We have long pointed out that when an endangered exotic animal is seized from the breeder, the authorities might realise that they have nowhere to place the animal. This is especially true of dangerous carnivorous animals. We have been addressing the problem together with the Ministry of the Environment. The Ministry decided to support the extension of existing rescue centres in zoos.

It announced a subsidy to finance these projects. The objective is to create space for the placement of 10-20 large carnivores.

## ADMINISTRATIVE AUTHORITIES MAY NO LONGER REFUSE GENERAL POWERS OF ATTORNEY

We successfully completed our inquiry concerning the acceptance of general powers of attorney for lawyers in administrative proceedings. In the past, we mapped the situation across the whole country and, based on the data we obtained, which had confirmed the inconsistent administrative practice, we asked the Ministry of the Interior to issue a guideline to ensure that general powers of attorney would be accepted by all authorities without exception. Based on our advice, the Ministry of the Interior issued a unifying methodological opinion dealing with the problem. Clients who are represented by a lawyer and grant a power of attorney to him/her for all administrative proceedings thus no longer need to worry about any unjustified requirements beyond the scope of the law or that they would lose their rights because the authorisation was not recognised.

 [Press release of 13 October 2020](#)  
 [Defender's recommendation: File No. 23/2019/SZD](#)

## REPEATED EXTENSION OF TEST OPERATION OF THE “NEW CONNECTION” RAILWAY LINE IN PRAGUE

We were repeatedly approached by citizens living in Příběnická street in Prague 3, who pointed out the nuisance caused by noise from the operation of a railway line (the New Connection). We determined that for 10 years already, the Railway Authority had been constantly extending the test operation permit for this line. The procedure of the authorities and repeated permission of test operation meant that for many years, the developer had not been forced to take additional measures to reduce noise. Only following our inquiry did the developer start adopting noise-reduction measures on the railway line in an attempt to eliminate the most bothersome noise from freight train transport during the night. However, since the authorities insisted on the incorrect procedure of extending the test operation and refused to remedy the shortcomings found, we decided to publish information on the case.

 [Press release of 26 October 2020](#)  
 [Defender's opinion and sanction: File No. 4990/2017/VOP](#)



# We are here to help

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## ŠANTOVKA TOWER – ACTION TO PROTECT PUBLIC INTEREST

We contested the planning permit issued for the "Šantovka Tower in Olomouc" high-rise building. Based on the planning permit we contested by our action filed to protect public interest, this structure can be erected in the protected zone of the Olomouc urban heritage area, which could irreversibly harm the historical panorama of the city of Olomouc as well as its landscape.

We came to the conclusion that the location of the structure violated the public interest in protection of the urban heritage area and breached the laws on spatial planning, nature conservation and landscape protection (the city landscape), and we also had a strong suspicion of a possible systemic bias on the part of the body that made the decision. The Regional Court in Ostrava, the Olomouc branch, has yet to decide on the action, but has granted a suspensory effect to the action, which means that the developer cannot apply for a construction permit. The developer responded by bringing his own lawsuit where he questioned the very existence of the protected zone of the Olomouc urban heritage area. However, the Olomouc Regional Court has yet to decide on this action as well.

 Press release of 14 February 2020

## MUNICIPAL FUNERAL AND RELEASING THE URN

The Covid-19 pandemic left a significant mark in complaints regarding funeral services in 2020. We received complaints against governmental measures related to the pandemic which limited the number of participants at a funeral and organisation of the service. People also complained, for example, that they had been unable to arrange for a funeral for their relatives within 96 hours of the announcement of their death as required by the Funeral Services Act. The relevant municipality therefore organised a municipal funeral and then refused to release the urn with the remains of the deceased to the survivors, although they were willing to pay for the costs of the funeral. The municipality argued that under the Funeral Services Act, it had to bury the remains at a public burial ground. However, the Civil Code must also be taken into consideration, along with the Funeral Services Act. According to the Civil Code, if the remains are not buried at a public burial ground, a person designated by the deceased before his/her death has the right to ask for the remains; if there is no such person, the right passes to the spouse, child, parent and heir, in that order. We believe that if any of these persons appears and asks for the urn in the period between the cremation and burial of the urn at a public burial ground, i.e. at a time when the remains have not been buried yet, the urn should be released by the municipality to that person.

 Press release of 29 October 2020

## INADMISSIBLE REQUEST FOR DOCUMENTS RELATED TO ILLEGAL CONSTRUCTION PROJECTS

We often encounter cases where simple structures are built without a permit. For example, we inquired whether the construction authority could request verified (authorised) documents instead of a simple technical description in proceedings on an additional construction permit for fencing. Such a requirement is practically excluded if a proper permit is issued for such a "structure". If verified documentation cannot be requested within the construction permit process, such a requirement should not be possible in proceedings on an additional permit either. Indeed, the objective of proceedings on additional approval of a structure is to cure an unlawful state of affairs, rather than to "punish" the reckless developer. Imposing stricter requirements on developers in proceedings on an additional permit is at variance with the requirement for proportionality of interference by administrative authorities with the legal sphere of the addressees. The superior regional authority agreed with our arguments and explained to the construction authority how it should proceed. This ensured a remedy for the complainant's benefit.

 Defender's report: File No. 6517/2019/VOP

### We most often helped or advised with:

**301**

people with problems regarding planning or construction permit proceedings or using a structure

**150**

people with problems concerning removal or additional approval of a structure

**55**

people exposed to excessive noise

**60**

people dealing with water mains, sewerage or water protection

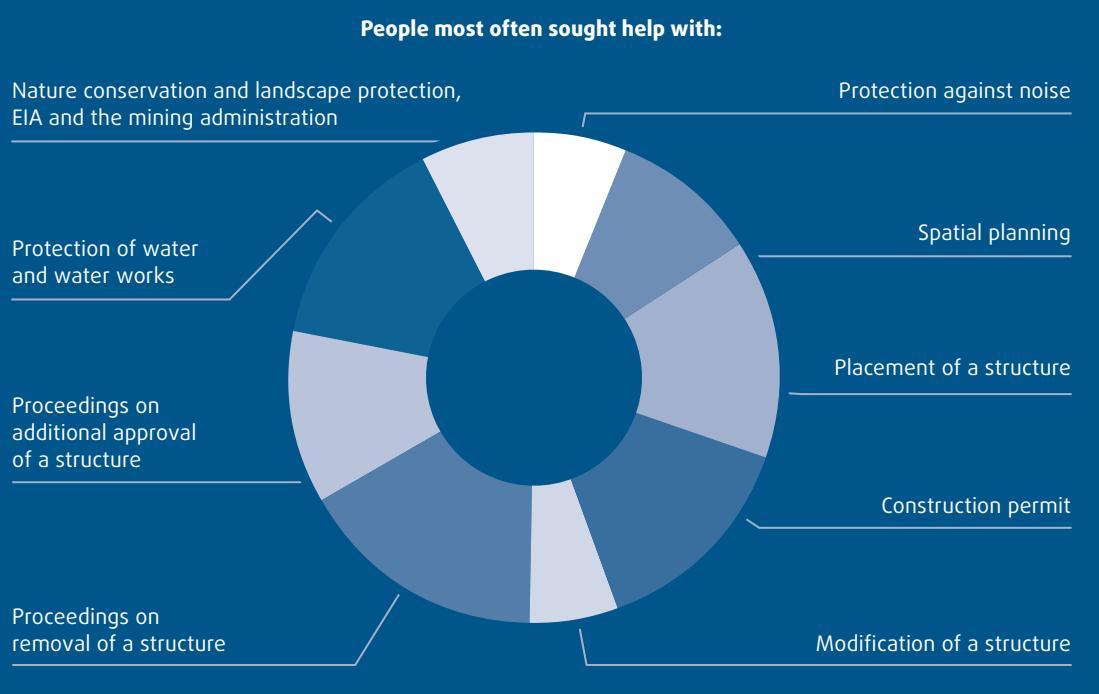
## SIMPLE GUIDE TO BUILDING A HOUSE

We added some useful information to our "Simple Guide to Building a House"; since 2019, people can visit this user-friendly website to find any explanation they need for building a house. We expanded this guide in 2020 to include further practical information that will be especially appreciated at the beginning of the whole process – at the stage of finding a suitable construction plot. We describe illustratively what a copy of the title deed from the Land Registry looks like (whether it is a copy of the printed original or a document downloaded from the internet); we describe what kind of information people can find in the individual parts of the title deed; and most importantly, explain comprehensibly what the data entered on the title deed can mean or indicate to the buyer. Thanks to this information, anyone can quickly verify the legal status of a piece of land and determine whether or not it has legal defects that would complicate the construction process. The choice of land to build a house is thus easier, more transparent and safer.

["Simple Guide to Building a House"](#)

## USE OF STRUCTURES – GRAPHIC AID

Although restaurants and bars had to be closed for the most of 2020 due to governmental measures related to the Covid-19 pandemic, we decided – based on our previous findings – to present to the public the issue of nuisance by noise from musical performances



We believe that citizens should get a brief guidance how to deal with situations that may occur once restaurants, bars and the like reopen.

Nuisance caused by noise from music played in bars and restaurants is one of the most common objections we are asked to deal with in the area of public health protection. People complain about noise because these establishments are often located in the immediate vicinity of residential and holiday buildings.

We tried to describe the aspects of organising music performances in buildings in an illustrative graphic material. The objective of the material is to provide the public with basic information on the legal instruments available to regional public health stations and construction authorities with regard to music performances taking place inside buildings.

[Press release of 14 December 2020](#)

## INACTIVITY OF A CONSTRUCTION AUTHORITY

We were asked to inquire into extensive construction modifications of a building (with a considerable enlargement of administrative spaces). The complainant was convinced that the developer did not have the necessary permit for the construction work, and criticised the construction and regional authorities for not achieving a solution to this problem, in spite of taking a number of steps in the past. He also protested that the construction authority was conducting proceedings on removal of the structure and on an additional permit only with regard to a part of the building.

We determined that, in the opinion of the construction authority, most of the construction works were not subject to proceedings on removal of a structure, where the authority would also have to deal with objections raised by the complainant, who – among other things – questioned compliance of the new use of the building with the spatial plan. Moreover, the superior regional authority erroneously believed that it had no option to ensure protection against inactivity of the construction authority, which had failed to initiate proceedings on removal of a structure. The regional authority inaptly followed conclusions of courts' case law which apply to protection against inactivity by administrative courts, and not by superior administrative authorities.

After our intervention, the construction authority carried out an inspection, requested that the developer stop the work and further specified the subject of the proceedings on removal of the structure. The regional authority also reconsidered its incorrect stance which caused it to neglect the superior authority's mission in this case – to effectively ensure remedy of an error made at first instance while also taking into account substantive aspects of the case (instead of playing "ping-pong" with the lower instance).

[Defender's report and opinion:](#)  
File No. 866/2020/VOP.

## LONG-TERM OPERATION OF AN UNAUTHORISED CAR SCRAPYARD

We occasionally encounter controversial operations which are a nuisance for their vicinity. We were approached by an association of citizens of the village of Lišnice, who were dissatisfied with the way authorities

addressed their complaints about the operation of a car scrapyard in the centre of the village.

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In our inquiry, we found that the premises of this business had been used for collecting, buying and dismantling vehicles illegally since 2013. The authorities were unable to effectively close this illegal business, their penalties and remedial measures were unproductive, and they were even unable to co-ordinate their steps. The authorities acknowledged their errors and promised, among other things, to file an application for revocation of the trade licence (suspension of operation of the trade).

The case is also a reflection of shortcomings in the legislation concerning disposal of vehicles imported from abroad (which are often used for spare parts and frequently end up at – often illegal – Czech scrapyards). We therefore welcomed that the Ministry of the Environment had prepared a new legal regulation for the disposal of scrap vehicles (end-of-life vehicles). The End-of-Life Products Act, effective from 1 January 2021, together with the new Decree on details of disposal of end-of-life vehicles, should provide new tools to prevent illegal disposal of scrap vehicles.

 Defender's report: File No. 6006/2018/VOP

## EXEMPTIONS FROM EMISSION LIMITS FOR THE CHVALETICE POWER PLANT

We inquired into the procedure of the Pardubice Regional Authority, which had granted an exemption from the emission limits to the Chvaletice Power Plant. We started our inquiry when the exemption decision raised public controversy and the case was discussed in the media. We focused our inquiry on several problematic aspects of the decision, such as incorrect specification of the daily limit value for nitrogen oxides, and also on the fact that the authority had granted the exemption even though evaluation of the exemption based on the Ministry of the Environment's methodology had been highly negative with regard to mercury emissions. The inquiry also concentrated on a procedural error made by the regional authority, which had not allowed the parties to the proceedings to comment on the underlying documents furnished by the applicant after the initial application had been filed. The inquiry was closed successfully as the Ministry of the Environment cancelled the regional authority's decision on the exemption.

 Press release of 18 February 2020  
 Defender's report: File No. 5689/2019/VOP

# We communicate

## COLLECTED DOCUMENTS: REMOVAL OF STRUCTURES II

We issued a second collection focusing on illegal (unauthorised) structures. The publication contains up-to-date legal opinions of the Defender based on the specific cases he/she has dealt with in the area of construction law. The collection contains useful legal advice for citizens who, as developers or neighbours, defend their rights in proceedings on an unauthorised structure. The professional public, and especially construction authorities, will find a number of recommendations and examples of good administrative practice in the collection.

 Collected documents: Removal of Structures II (2020)  
 Press release of 5 October 2020





## DO AUTHORITIES CO-OPERATE EFFECTIVELY IN ANIMAL PROTECTION?

Protection of animals against cruelty is based on co-operation of two authorities: the veterinary administration, which employs experts (veterinary surgeons) to assess the condition of animals, and the competent municipal authority, which decides on fines and remedial measures based on their findings. We decided to examine whether these two authorities co-operated effectively, whether they were able to improve the conditions of animal farming, and whether they used their powers to punish animal cruelty. If it turns out that the co-operation between the two authorities does not ensure effective animal protection, we will look for ways to change the situation.

## SURVEY OF ACCESS TO GAME ENCLOSURES

We initiated an inquiry in the form of a survey concerning public access to game enclosures. The reason lay in citizens' complaints regarding limited or no access to certain enclosures. In the first stage of the survey, we contacted governmental gamekeeping authorities, forest administration bodies and nature conservation authorities with a view to determining the number and location of the enclosures, becoming acquainted with their structural design and the extent to which the presence of visitors was allowed, and seeking the attitudes of governmental authorities to this topic as well as the numbers of complaints they encountered in this area.

Subsequently, we contacted those who used the game enclosures and asked them about their opinions as to the degree to which presence of the public in the enclosures could interfere with the hunting and fishing rights.

We will use the results of the survey in addressing matters related to gamekeeping and in further discussions with governmental authorities.

[Press release of 6 August 2020](#)

## CONSTRUCTION IN THE SECOND WATER SOURCE PROTECTION ZONE

The recent trends in climate and the growing concerns regarding future sources of drinking water warrant an ever increasing emphasis on the protection of drinking water sources. Protection of drinking water sources is in public interest. This is why we also focused on unauthorised construction of cottages, mobile homes and other buildings in the second protection zone of drinking water sources. We communicated with the authorities concerned and found shortcomings in the procedure of the construction authority and administrative authorities in the area of water protection and agricultural land fund. The authorities promised to adopt remedial measures and align their future steps with the law.

[Defender's report: File No. 7509/2019/VOP](#)



# 6

**Judiciary,  
Migration,  
Finance**



**1117**

complaints, of which:

**797**

within the mandate

**320**

outside the mandate

**84**

of our inquiries revealed maladministration, of which

**4**

were cases where errors could not be remedied

This year was marked by an increased number of petitions related to measures adopted in connection with the Covid-19 pandemic. We received, for example, complaints about the rules for the provision of compensation bonuses and subsidies, such as "Carer's allowance for self-employed persons", "COVID – Spas" and "COVID – Rent". We were also approached by people who found themselves in difficulties because of restrictions related to cross-border movement. In the spring, these complaints came especially from cross-border workers and citizens of the European Union who had exercised their right to free movement of persons in the European Union and were staying in the territory of the host Member State. In the second half of the year, the complaints pertained, in particular, to the restricted entry to the country by unmarried partners of citizens of the Czech Republic and of the European Union.

We followed up on our last year's Facebook campaign on income tax and, in co-operation with the Tax Administration of the Czech Republic and the Chamber of Tax Advisers of the Czech Republic, we summarised the most important information in our "[Beginner's guide: Income tax](#)".

In addition, we issued a number of new information leaflets to help people find their way in the maze of laws or file a complaint or a request related to delays in courts or inappropriate behaviour of judicial persons.

#### **[Waiver of interest by tax authorities](#)**

[Form – Complaint concerning delays in court proceedings](#), with an [annex](#)

[Form – Complaint concerning inappropriate behaviour of judicial persons](#), with an [annex](#)

[Form – Request for reasonable satisfaction for delays in court proceedings](#), with an [annex](#)

# We help change the rules

## **IMPACT ON FOREIGNER'S FAMILY LIFE ALSO HAS TO BE ASSESSED IN THE CASE OF A SUFFERANCE VISA**

The Ministry of the Interior did not grant the complainant a sufferance visa. The complainant justified her visa application by stating, among other things, that she was unable to leave the Czech Republic because her severely ill mother was dependent on her care. She supported her claim by a number of documents, including medical reports. In its decision, the Ministry of the Interior nevertheless failed to take into account the impact of the denial of visa on her family life.

We requested that, in case of a foreigner's objection, the Ministry of the Interior assess the proportionality of the impact on his/her private and family life, even though the Residence of Foreign Nationals Act did not explicitly require such assessment in decision-making on applications for sufferance visas. The duty to take the foreigner's private and family life into consideration follows from international commitments of the Czech Republic. The Ministry of the Interior accepted our conclusions and changed the methodology for assessing sufferance visa applications.

 **Defender's report** and **opinion:** File No.  
6825/2018/VOP

## **DOOR IS OPEN FOR REMEDYING ERRORS IN APPLICATION OF TAX RELIEF FOR A SPOUSE**

We inquired into cases of complainants who claimed an income tax relief for their spouse based on a confirmation issued by a district social security administration. However, it was later found that in



the certificate, the amount of the benefits paid was incorrect, as a lower amount was put there by mistake. The certificate did not include maternity benefits paid in January for December of the previous year. After the tax authority discovered the error, the complainants had to refund the relief because their spouse's income exceeded the decisive limit of CZK 68,000. At the same time, the tax authority charged them with default interest of several thousand crowns. The complainants applied for waiver of the interest, but the tax authorities initially dismissed their application.

The district social security administrations erred when they issued substantively incorrect and indeterminate confirmations on benefits paid in the calendar year, not including maternity benefits for December of the previous year, paid in January of the current year. The Czech Social Security Administration agreed with our conclusions. In the future, every confirmation should also include an accompanying text and explanation as to which sickness insurance benefits were included in the confirmation.

In our opinion, the tax authorities also erred in some cases when they automatically specified the amount of tax including the claimed relief, although the attached confirmation from the District Social Security Administration indicated that maternity benefits had been received. We pointed out that the tax authorities could be jointly liable for the increased default interest. Although this question remained disputed between the General Tax Directorate and us, a different solution was eventually found.

Indeed, what we considered crucial was the procedure followed by tax authorities in decision-making on waiver of default interest. The taxpayers acted in confidence in the given confirmation, i.e. in a public



instrument issued by some other public authority. We believe that this is a justifiable ground for waiving default interest. The General Directorate of Finance agreed with our opinion and, in June 2020, issued a new instruction on waiver of tax accessions. In this instruction, it reflected the specific situation of taxpayers relying on an incorrect confirmation issued by the district social security administration. It explicitly included this among justifiable grounds for waiver of interest.

In the end, the tax authorities reconsidered their procedure and waived the interest in full for the complainants.

- ❑ Press release of 20 September 2020
- ❑ Defender's report: File No. 1815/2019/VOP
- ❑ Defender's report: File No. 8050/2018/VOP

## IMPACT OF SUSPENSORY EFFECT OF ADMINISTRATIVE ACTIONS

We encountered a case where the tax administrator failed to respect the suspensory effect granted by the administrative court with regard to an administrative action against a tax specification decision.

The purpose of suspensory effect granted to an administrative action is to freeze the state of affairs existing prior to the issuance of the administrative decision challenged by the action. This effect can only be achieved by accepting the fact that the suspensory effect leads to a suspension of all legal effects of the challenged decision. The challenged decision must therefore be deemed not to have entered into legal force as from the date of the resolution to grant a suspensory effect to the relevant administrative

action. Consequently, the tax administrator is no longer authorised to record the tax assessment and take steps aimed at payment of the tax. If tax is paid before suspensory effect is granted, this constitutes overpayment of tax by the tax entity. Likewise, the tax administrator should not proceed with enforcement of interest related to tax with regard to which the court has granted suspensory effect.

We found that there was currently a lack of consensus among administrative courts and the professional public as to the impacts of suspensory effect granted to an administrative action. We therefore decided to carry out a survey across the entire public administration to find out the views of various administrative bodies regarding the suspensory effect. In this way, we want to contribute to unification of the administrative practice.

In the complainant's case, the tax administrator agreed that it was impermissible to use an overpayment to offset an underpayment which is subject to a suspensory effect granted by a court. Concerning the enforcement of accessions of a tax in respect of which a court has granted suspensory effect, we then agreed with the General Directorate of Finance that this fact was a sufficient reason to postpone the enforcement procedure. However, we are still in disagreement with the tax administration as to the impacts of suspensory effect granted to an administrative action.

- ❑ Defender's report: File No. 1477/2018/VOP

## COURT PRESIDENT MAY NOT ISSUE A BLANKET BAN ON MAKING AUDIO AND VIDEO RECORDINGS IN A COURT BUILDING

The president of a court issued an instruction whereby he introduced a blanket ban on making audio and video recordings and live broadcasts in the court building outside the courtroom (the rules laid down in the Courts and Judges Act apply in courtrooms). The complainant believed that such a general ban had no basis in the law. An instruction issued by a court president has the nature of an internal regulation specifying the rules for members of the judicial guard as to how they should supervise the order and security in the court building. An internal regulation may not lay down prohibitions and duties beyond the scope of the law vis-à-vis entities outside the government.

The Courts and Judges Act contains no prohibition to make recordings in a court building. It specifies merely the rules for making recordings and live broadcasts during a court hearing. There is also no such prohibition in other laws and regulations. It cannot be inferred from the Civil Code either, as the Civil Code provides protection against interference with privacy, but allows a number of exemptions (e.g. recordings and broadcasts for journalist purposes or aimed to prove

unlawful conduct). If a judicial guard followed an instruction containing an unlawful prohibition, his/her intervention would be unlawful.

The Courts and Judges Act does not allow the court presidents to lay down such an indiscriminate prohibition in the exercise of State administration of courts, either. That is why we recommended that the president of the court in question modify the instruction. He accepted our recommendation.

 [Defender's recommendation: File No. 19/2020/SZD](#)

## QUESTIONS OF ETHICS WHICH JUDGES SHOULD ASK

The Judicial Union of the Czech Republic published on its website an Open Set of Judge's Ethical Dilemmas. This document elaborates in detail the general principles of the 2005 Code of Conduct, including questions that a judge should ask in certain situations. It also includes a summary of key case law on the individual groups of ethical dilemmas.

We participated in the preparation of this material. We analysed foreign codes of conduct which declare not only general requirements and principles of judges' ethical conduct, but serve primarily as a useful guidance for identifying and addressing ethical dilemmas.

It is not easy to formulate any clear rule of ethics and this is precisely why a set of questions and sub-questions can help judges proceed correctly in situations that can hardly be predicted by the law.

 [Press release of 10 August 2020](#)

## PUBLICATION OF JUDICIAL DECISIONS

We supported a Deputies' motion based on which lower-instance courts should be required by the law to publish their anonymised decisions in a publicly accessible database. Courts' decision-making must meet the requirements for predictability, transparency and equality. This cannot be achieved without publication of court decisions. We have been pointing this out to the Ministry of Justice for several years now. We organised expert roundtables on this topic, presented comments on proposed changes to the relevant instruction, and also suggested that the publication duty be incorporated in the Courts and Judges Act. In December, the Ministry provided a new database of decisions rendered by district and regional courts on the Judicial Portal and promised that the number of decisions published would increase. For the time being, this database is being filled rather slowly, which is especially true of decisions issued by lower courts, which hear an overwhelming majority of cases. In Slovakia, it took less than a year to put this database into operation after the duty was imposed by the law in 2011. The law was modified at the beginning of 2021, while specification of the basic rules for publication (e.g. types of decisions, commencement of the duty to publish, etc.) is left to a decree issued by the Ministry of Justice. We have objections to this version (see the Evaluation of legislative recommendations for 2018 and 2019, p. 19).

 [Press release of 18 November 2020](#)



# We are here to help

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## **TIMELY PAYMENTS FOR AGGRIEVED PARTIES IN CRIMINAL PROCEEDINGS**

Not even insufficient staffing can justify excessive length of court proceedings. It is the court management's task to ensure operation of the court in terms of staffing and organisation, and minimise the risk of excessive protraction of the proceedings. The duty to ensure a smooth course of proceedings pertains not only to the court proceedings as such, but also to the follow-up actions of the court, including payment of claims raised by aggrieved parties in criminal proceedings.

In the case we have inquired into, the complainant is one of 6,000 aggrieved parties involved in criminal proceedings who were granted the entitlement to proceeds from crime by a court ruling in 2016. However, the complainant still had not received the payment from the court in 2019. In 2016, he presented an incorrect account number and the payment returned to the court. However, the court intended to repeat failed payments only once the payments were remitted to all the aggrieved parties. Our inquiry revealed that by the end of March 2019, the court paid the claims to approx. 2 thousand parties. The reason was that the court lacked the necessary staff. The claims were dealt with by two court employees on top of their regular duties.

Our inquiry accelerated the payment of claims to the aggrieved parties. The complainant has already received his money.

 Defender's report: File No. 2098/2019/VOP

## **PAYMENT OF TAX MADE BY MISTAKE**

If the payer (a person other than the provider of payment services and postal services provider) proves that a payment was remitted clearly by mistake and, at the same time, has no tax arrears, he/she is entitled to a refund of the payment. However, if the payer has outstanding liabilities, the tax administrator will use the payment made by mistake towards settlement of the arrears.

In doing so, the tax administrator will not examine whether or not a refundable overpayment has arisen for the tax entity into whose account the payment was mistakenly made. The complainant's accountant entered an incorrect variable symbol with regard to payments of value added tax in an amount exceeding CZK 500,000.

The payments were therefore credited to the personal tax account of another tax entity. The complainant learned about the error several months later and asked the tax administrator to transfer the payments to his personal tax account. The tax administrator did not satisfy the complainant's request on the ground that the payments had been used to cover outstanding tax liabilities of the person to whose account the payments had mistakenly been remitted.

We noted an error on the part of the tax administrator, who refused to return the payments in spite of the obvious mistake. The complainant simultaneously brought the case to an administrative court, which granted his application and arrived at the same legal conclusions as we did previously. The tax administrator has therefore already refunded the payments remitted by the complainant by mistake on account of value added tax.

-  Defender's report: File No. 185/2018/VOP
-  Press release of 10 June 2020

## **PROBLEMS CAUSED BY WRONG PHRASING OF A GENERALLY BINDING ORDINANCE MUST BE BORNE BY THE MUNICIPALITY, NOT TAXPAYERS**

We dealt with a complaint regarding the procedure taken by a municipal authority which had not given the complainant any discount on the local fee for the operation of municipal waste collection, recycling and disposal services. The dispute between the complainant and the municipal authority concerned the question of whether the discount on the fee in the amount of CZK 200 was claimable only by payers with permanent residence in the municipality, or whether payers owning real estate within the municipal boundaries were also eligible, even though no one had a registered address in said real estate.

Following our inquiry, the municipal authority acknowledged that its generally binding ordinance was formulated more broadly than originally intended, and granted a discount on the fee to the complainant.

-  Defender's report: File No. 103/2020/VOP

## **PROTRACTED PROCEEDINGS REGARDING FOSTER CARE**

### **We helped and advised:**

**140**

people in connection with tax and customs duties issues

**282**

foreigners seeking fair proceedings

**106**

people encountering delays in court proceedings or inappropriate behaviour of judicial persons

In cases where a court is to arrange for the rights to children, it has to respect the principle of the child's best interest and should generally make its decision in a matter of months.

The complainant's daughter was removed from her parents' custody shortly after birth (in April 2018) by virtue of a court injunction. One year later, the relationships in the family were still arranged only on a temporary basis as the court had yet to rule on the merits of the case. This prompted the complainant's attorney in October 2019 to file a complaint about the protraction. The court's president dismissed the complaint as unfounded.

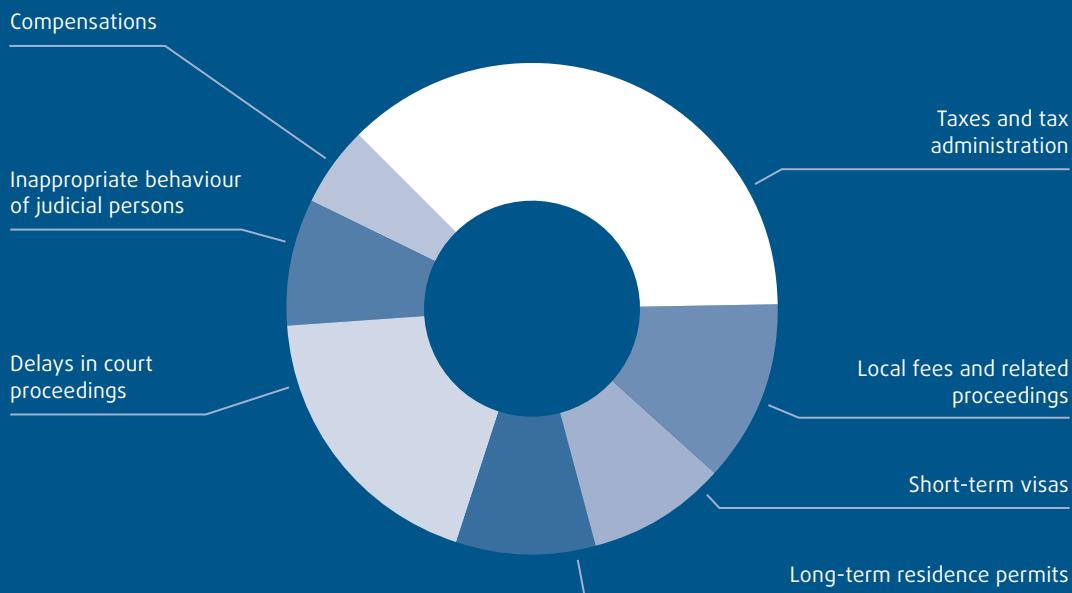
However, after our inquiry, the president did adopt several remedial measures. He sent replies to some of the general attorney's pleadings which had been previously unanswered. He also apologised for the insufficient resolution of the complaint and delays in the proceedings. Furthermore, he informed the judge in charge of the conclusions of our inquiry and promised to monitor the smooth course of the proceedings. The judge then decided the case in June 2020 (appellate proceedings are, however, still pending). Finally, the president recommended other judges to discuss future assignments with court experts in advance in cases where an expert report would be required, and make a copy of the relevant part of the file.

-  Defender's report: File No. 7234/2019/VOP

## **LOST IN THE SYSTEM**

We have been dealing with the position of stateless persons since 2018. Foreign nationals who have never

### People most often sought help in the following areas:



6. Judiciary, Migration, Finance

become nationals of any country or have lost citizenship over the course of their life find themselves in a very difficult situation. Without the required documents, they cannot obtain a residence permit or find lawful employment. As a result, they have no income and are also in danger of losing their homes. They also lack access to certain common services, such as collection of postal items.

The current legislation does not offer any genuinely effective solution to the issues faced by stateless persons.

First, we dealt with delays in proceedings on declaring a person stateless. In these proceedings, the State formally recognises that a foreigner indeed lacks state citizenship (nationality), which gives the individual a chance to gradually work his/her way out of this difficult situation. Subsequently, we dealt with the position of applicants for the status of stateless person. The Ministry of the Interior's practice did not correspond to the legal regulation. Indeed, at variance with the law, the Ministry denied applicants the same position that is granted to applicants for international protection. The last group of problems related to the position of individuals declared to be stateless. Even in their case, the Ministry failed to proceed in accordance with the law and the Convention relating to the Status of Stateless Persons. Although the Ministry disagreed with our conclusions, a number of aspects are being gradually dealt with in individual court proceedings. At the same time, a new legal regulation has been proposed for proceedings on granting the status of a stateless person, which should help eliminate certain problems. On this topic, see also the chapter Defender and the Government, p. 27.

#### [Defender's report and opinion:](#)

File No. 2959/2018/VOP

#### [Defender's report and opinion:](#)

File No. 6925/2019/VOP

#### [Defender's report and opinion:](#)

File No. 7081/2019/VOP

## THE JUDGE MAY ONLY PROHIBIT MAKING AN AUDIO RECORDING OF A HEARING ON THE BASIS OF THE LAW

This year, we again dealt with complaints regarding the prohibition of making audio and video recordings of court hearings. The option to make an audio recording of a hearing is an important expression of the principle of publicity of court hearings. Therefore, we carefully examine in each case whether a limitation or prohibition is based on grounds envisaged by the law. The Courts and Judges Act lays down that making an audio recording may only be prohibited if this could interfere with the course or dignity of the hearing.

The complainant and his legal counsel disagreed with the judge's procedure in guardianship proceedings, as she had repeatedly prohibited them from making an audio recording of the hearing. She justified this by referring to the fact that the adversary disagreed with making a recording by the court itself.

The management of the district court rejected the complaint as unfounded. The same conclusion was reached by the vice-president of the regional court, while noting that the judge had imposed the prohibition by means of a procedural resolution, and thus that the only remedy was an appeal. In our inquiry, we pointed

out to the presidents of both courts the case law and our settled opinion that the president of a court has to deal with objections concerning an unlawful prohibition to make audio recordings and should not force the complainant to bring his/her case to the Constitutional Court.

The regional court's president provided for a remedy. He found the complainant's objection justified and apologised for the incorrect procedure. He informed the court's vice-president and also the management of the district court of the change in the opinion. The president of the district court then advised the relevant judge about the evaluation of her procedure and pointed out in writing that the prohibition to make an audio recording was not based on statutory grounds.

 [Defender's report: File No. 581/2020/VOP](#)

## **MEASURES RESTRICTING CROSS-BORDER MOVEMENT**

After the nationwide state of emergency was declared in March, we received several complaints concerning the restriction of cross-border movement. Some of the complaints related to citizens of the Czech Republic who had exercised their freedom of movement and were staying in a neighbouring country. Although they lived abroad, they regularly crossed the borders under normal circumstances because they had relatives, schools, physician, etc. in the Czech Republic. Another group of complaints concerned the conditions for crossing the border by commuters. Further complaints related to the impossibility to enter the country for

unmarried partners from EU Member States. We contacted the Minister of the Interior and subsequently the Minister of Health and recommended a change to the then-applicable Government resolution and, eventually, the health-protection measure issued by the Ministry of Health in order to reflect the needs of these categories of people.

In the summer and autumn, we received several complaints concerning entry into the country by unmarried partners of citizens of the Czech Republic and the European Union. The applicable health-protection measure adopted by the Ministry of Health laid down an exemption from the prohibition of entry into the country for unmarried partners of Czech citizens. The same option was, however, not available to partners of European Union citizens. We advised the Minister of Health of this fact. We also pointed out that the regulations adopted at the level of the European Union restricting other than absolutely essential trips to the European Union did not justify different treatment of persons requiring a visa to enter as compared to those who do not need a visa. In September, the Ministry of Health already extended the scope of the exemption from the prohibition of entry to unmarried partners of EU citizens staying in the Czech Republic. A health-protection measure issued in November also provided an exemption from the order not to accept applications for short-term visas.

 [Defender's report: File No. 4691/2020/VOP](#)  
 [Defender's recommendation: File No. 17/2020/SZD](#)  
 [Press release of 9 April 2020](#)  
 [Press release of 21 December 2020](#)

# **We communicate**

## **WE CONTINUED ORGANISING SEMINARS ON ADMINISTRATION OF LOCAL FEES**

Despite the difficult conditions, we again organised seminars on the topic of Local Fees Administration, this time in the Vysočina Region, and also two online seminars for the officials of municipalities in the Zlín Region.

Most of the questions asked by the participants related to dog fees and the fee for the operation of municipal waste collection, recycling and disposal services.





The system of fees for the disposal of municipal waste will undergo major changes in 2021. We will focus our further awareness raising activities regarding these changes and also on other news in the administration of fees.

## **WE ARE DISCUSSING POSSIBLE IMPROVEMENTS IN THE AREA OF GUARDIANSHIP JUSTICE**

In September 2020, we again negotiated with representatives of the Ministry of Justice on measures adopted to improve the situation in guardianship justice. Although recent statistics show that the length of proceedings in family and guardianship law is being gradually reduced, a number of problems persist. For example, we discussed with the representatives of the Ministry of Justice the possibility of modifying spaces in court buildings so that they would be better suited to hearing children witnesses.

We discussed possible improvements in monitoring the statistics of guardianship justice and improving public access to this information. We also focused on the possibility of establishing a position of social secretary who would participate in interdisciplinary co-operation within guardianship disputes.

## **SEMINAR ON ASYLUM LAW**

We organised a two-day seminar on the topic of Selected Issues of Decision-making on Granting International Protection in co-operation with the United Nations High Commissioner for Refugees (UNHCR). The expert seminar was intended for employees of the Ministry of the Interior who deal with applications for international protection in the Czech Republic. We discussed with the representatives of the Ministry of the Interior, for example, the questions of assessing credibility of applicants for international protection, the treatment of information on the countries of origin, and identification of potential victims of torture.



# 7

# **Supervision over Restrictions of Personal Freedom**



**21**

facilities visited,  
of which:

**2**

follow-up visits

**2**

monitored expulsions

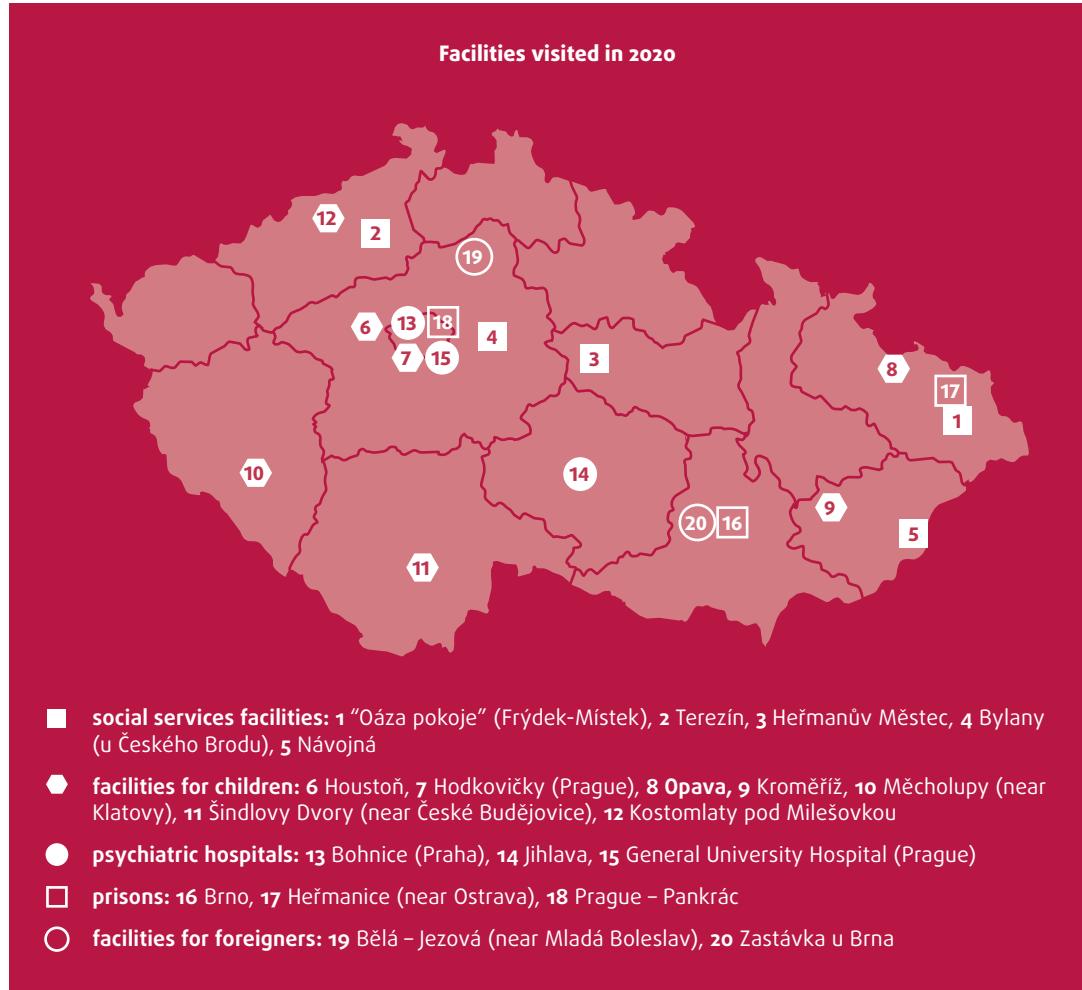
**510**

complaints raised by  
social services clients,  
patients and inmates

**50**

trained professionals  
from facilities for  
children requiring  
immediate assistance

**We visit places where persons are or may be restricted in their freedom. We thus perform the mandate of the national preventive mechanism. We also deal with complaints of prisoners and patients in institutional forensic treatment, and oversee expulsions and transfers of foreign nationals.**



# We help change the rules

## REPORT ON VISITS TO HOMES FOR PEOPLE WITH DISABILITIES

We issued our report on visits to facilities for people with disabilities. The report points out that these facilities still have the nature of institutions and do not look like normal homes. People living there lack the necessary support to maintain and develop their abilities and skills; quite the contrary, their dependence on care often increases in these facilities. We also point out that the transformation of social services has almost stopped and is no longer a social and political topic. Therefore, we request that the Ministry of Labour and Social Affairs adopt appropriate measures in this regard.



Defender's report: File No. 11/2017/  
NZ

## AMENDMENT OF LAWS AS A MEANS OF PREVENTING ILL-TREATMENT

For fourteen years already, we have been basically the only governmental institution that is supposed to prevent ill-treatment of people restricted in their freedom for various reasons. We point out all the shortcomings that often occur simply because they are permitted and tolerated by Czech laws. What would help in this regard are systemic changes we have been striving to achieve over the last few years. We point out several aspects of prevention that have been escaping public attention in the long term.

We consider them so fundamental that we submit

them to the Chamber of Deputies as legislative recommendations (see Legislative recommendations for 2020, p. 10).

- The safety, privacy, personal integrity and dignity of clients are often seriously curtailed in healthcare and social services facilities. However, no infraction is defined that would apply in these situations. **Some less serious forms of ill-treatment are thus currently not punishable.** Therefore, we have long been suggesting that the Social Services Act and also the Healthcare Services Act be supplemented with new infractions to ensure that no intentional degrading treatment is left unpunishable. This partly also relates to the fact that the clients of social services lack an effective option to complain to an independent body; their only point of contact in this regard is the facility's management or founder. While they can turn to the Social Services Inspectorate, they are not entitled to have their complaint investigated.
- Another problem pertains to recording and reporting medical findings of ill-treatment in prisons and detention facilities. In this case, physicians are often the first and only ones who can take note of ill-treatment. Such a finding should result in investigation.

However, our visits indicate that medical reports usually lack the parameters required for investigation of ill-treatment. The situation is further complicated by the definition of confidentiality, which does not allow the physician, without the patient's consent, to submit information on ill-treatment to authorities that could inquire into the problem. **The information thus does not reach the authorities that could investigate potential ill-treatment.** The culprit will remain undiscovered.

We have been striving in the long term to achieve modification of the Healthcare Services Act so that a report on findings of signs of ill-treatment would not represent violation of the physician's confidentiality.

- This problem also entails the issue of compromised confidentiality of medical examinations with regard to the police, prisons and detention facilities. **The right of a person restricted in freedom to see a physician** is one of the basic safeguards against ill-treatment. The presence of police officers or prison guards at medical examination deters the victim from disclosing information on any ill-treatment to the physician. Possible ill-treatment thus remains concealed and the culprit undiscovered. The standards on the prevention of ill-treatment require that no police officer or prison guard be present at all unless this is requested by the physician for security reasons, and even in that case, only in sight.

## UPDATED UNITED NATIONS RULES ON THE TREATMENT OF PRISONERS IN CZECH

We have translated into Czech the updated UN Standard Minimum Rules for the Treatment of Prisoners, commonly referred to as the "Nelson Mandela Rules". Although the rules are not binding (they represent "soft law"), their significance lies in the fact that they serve as the basic guidance for the creation, application and interpretation of national laws. The standards are also inspiring for Czech practice (reform of disciplinary punishment, employment of accused persons, etc.).

 [Czech version of the Rules](#)

 [Press release of 17 December 2020](#)



# We are here to help

## FOCUSED ON COVID

We continued in our systematic visits even during the Covid-19 pandemic, focusing especially on the impact of precautionary measures designed to stop the spread of the disease (identification and management of the pathogen, ensuring availability of basic necessities, use of restrictive measures, ensuring contact with the outside world, provision of legal advice, etc.). We carried out a total of 13 visits to facilities focusing on how the epidemic had affected the life in the facilities, what measures the facilities had adopted in this context, and whether or not the measures had disproportionately interfered with the rights of the residents.

No ill-treatment was found in any of the facilities. Our findings show that the staff always tried to do their best to ensure standard operations and to provide good care. After the initial difficulties, all the facilities managed to procure enough protective aids and sanitation equipment; problems, if any, were caused rather by a lack of relevant information and methodological guidance in certain cases. We consider the most problematic measures to be the restrictions of contacts with the outside world (prohibitions of visits, curfews). The strictest restrictions were introduced in facilities for foreigners.

Although we did not carry out systematic visits during certain periods of the year so as to avoid spreading of the infection, we used other monitoring methods to fulfil our mission and to protect people from ill-treatment. We contacted the management of various types of facilities to identify challenges these facilities were facing with regard to the provision of care and dignified conditions.

We have been looking for anyone willing to share their experience with the current situation in social services facilities, facilities for children and other facilities.



We have regularly presented our findings to the responsible ministries and other entities and asked them to remedy the shortcomings found, make changes in practice and provide methodological guidance. We have also provided extensive information to the public.

As we are a part of an international network, we share information and procedures with other national preventive mechanisms and further stakeholders in the field of prevention of ill-treatment. We presented to the Czech public, among other things, the recommendations of the European Committee for the Prevention of Torture (CPT) and the UN Subcommittee on Prevention of Torture (SPT) concerning the treatment of persons deprived of their liberty in the context of the pandemic.

- CPT and SPT recommendations for the treatment of persons deprived of their liberty in the context of the coronavirus disease pandemic
- Experience sharing

## **VISITS TO SOCIAL SERVICES FACILITIES AND COMPLAINTS IN THE AREA OF SOCIAL SERVICES**

### **COVID VISITS**

Two spring visits to social services facilities revealed that the staff were doing their best to ensure the clients' daily routine would be affected by the situation as little as possible. The clients received comprehensible information about the epidemic and standard care and they were allowed to engage in their usual activities, merely the size of individual client groups was limited. The facilities tried to facilitate contact between clients and their loved ones using online communication technologies such as Skype calls via tablets and other means. We pointed out, nonetheless, that many elderly people could not communicate in this way due to their medical condition.

We were concerned about bans on visits of the close ones and on free movement of the clients outside the facility or its premises. Long-term absence of personal contact leads to deprivation of all the parties involved. A ban on leaving facilities without gardens leads to social isolation and has adverse impacts on the clients' mental and physical health. We encouraged the facilities to look for ways to prevent contamination by the virus that do not lead to social isolation. Social services providers should in any case closely co-operate with regional public health stations and follow their recommendations.

In the autumn, we contacted over 20 social services facilities providing various types of social services. We asked about the practical implementation of the prohibition of visits and lockdown measures, possible shortcomings in the area of personnel and material capacity, and other problems encountered by the facilities. The providers stated that it was difficult for them to isolate those who had tested positive or were suspected of having contracted the disease. They often had problems explaining various measures to the clients. For example, why should those without symptoms remain in isolation? They often lacked protective equipment and were concerned about possible contagion among the staff, which would endanger the very provision of care in the facility. Even they had difficulty understanding the number of various measures and regulations, which moreover often changed.

We regularly presented our findings, together with requirements for a change in practice, to the Ministry of Health and the Ministry of Labour and Social Affairs, especially with regard to the ban on visits and ban on leaving the social services facilities.

We twice pointed out the risks associated with care provided in unauthorised facilities, as unlike registered

residential social services facilities, they escaped the spotlight and did not receive any direct help. For this reason, we also approached the chief public health officer and directors of regional authorities and asked them to deal with this situation.

-  [Press release of 30 July 2020](#)
-  [Press release of 5 November 2020](#)
-  [Press release of 7 April 2020](#)
-  [Press release of 2 December 2020](#)

### **PODCAST – “SOCIAL SERVICES AND COVID-19 IN 2020”**

One edition of our series of regular podcasts “Have a coffee with the Ombudsman” focused on evaluation of the year 2020, and thus especially how the pandemic and measures adopted in its context affected the lives of clients in residential social services facilities.

### **SYSTEMATIC VISITS TO RETIREMENT HOMES AND SPECIAL REGIME HOMES**

Despite the unfavourable situation connected with the epidemic, we continued a series of systematic visits focusing on special regime homes providing care to persons with reduced self-reliance due to a chronic mental illness or addiction to dependency producing substances.

In total, we visited four of these facilities and will continue our visits in 2021.

### **94 COMPLAINTS IN THE AREA OF SOCIAL SERVICES**

A number of complaints pertained to governmental measures aimed against the spreading of Covid-19 (bans on visits, bans on leaving the facilities, and antigen testing of clients and staff in social services). We were also asked for help by individuals and organisations dissatisfied with the quality of services or seeking methodological assistance.

We lack the mandate to deal with the individual complaints against the quality of care or review the impact of governmental measures. However, we always tried to clarify the specific situation and provide guidance regarding further steps.

## **VISITS TO PRISONS AND COMPLAINTS FROM PRISONERS**

### **COVID VISITS**

Our findings and recommendations from visits to two prisons in the spring related especially to the

possibilities to meet people from outside the prison. Problems were caused especially by the arrangement of visiting spaces where the physical barriers between the visitors and the convicts adversely affected communication (people had difficulties hearing each other). Additionally, there was also a general ban on visits. After this measure was relaxed, visits were limited to only one visitor per prisoner at a time; however, this prevented children from visiting since minors can only enter the prison facility if accompanied by an adult visitor. We therefore asked the Ministry of Justice to support our efforts to loosen measures in visits we had previously presented to the Ministry of Health. We were successful.

In the autumn, preventive measures were again adopted, including a ban on visits, because of the deteriorating epidemic situation. As part of distance monitoring, we contacted selected prisons and also non-governmental non-profit organisations focusing on prisons. We also drew findings from individual complaints filed by prisoners and their families. Two topics resonated throughout our findings. The primary issue was the participation of non-profit organisations in the rehabilitation of prisoners (the staff of non-profit organisations were not allowed to enter the prisons; they could contact their clients via Skype, but it was up to each prison whether it would allow this). The inadequate number of devices that could be used for Skype calls in prisons was the second issue. There were usually only a few such devices (computers) in prisons housing several hundred inmates. It is obvious that the prison has to use these computers to provide for

"Skype visits" (replacement of cancelled visits based on the law) and "Skype defence" (the statutory right of defence). Not much capacity is thus left for contacts with the non-profit sector.

We therefore contacted the General Directorate of the Prison Service and the Minister of Justice and asked them to purchase further devices for Skype contacts so that prisons could also meet the needs of the non-profit sector. The ban on visits will be lifted sooner or later, and this form of contact would help convicts placed in prisons far away from their homes to contact their loved ones and could also be used for distance learning and other needs.

One edition of our series of regular podcasts "Have a coffee with the Ombudsman", titled "Prisons and Covid-19 in 2020", focused on evaluation of the year 2020, and thus especially how the pandemic and measures adopted in its context affected the lives of prisoners.

-  [Press release of 22 April 2020](#)
-  [Press release of 8 June 2020](#)
-  [Press release of 30 July 2020](#)

## **VISITS TO REMAND PRISONS**

We completed a series of visits to four remand prisons and remand blocks in prisons, in which we focused on the conditions of remand in custody; we are preparing a summary report on our findings and recommendations from these visits.

## **346 COMPLAINTS FROM PRISON INMATES**

This year, we again most often dealt with complaints raised by convicts regarding the fact they were not placed in facilities close to where their families lived and complaints concerning the quality of healthcare in prisons. However, we also received complaints related to Government measures against the spreading of Covid-19, which interfered with the lives of convicts, accused persons and institutionalised persons.

## **PLACEMENT OF A CHILD WITH HER MOTHER DURING THE SERVICE OF IMPRISONMENT**

We were approached by the grandfather of a 17-month-old girl whose mother had commenced her prison sentence. The mother's request that she be allowed to take care of her child in prison was rejected on the grounds that the child would be over four years old at the time when the sentence ends – prisons usually allow the presence of children with their imprisoned parent only up to three years of age. However, the mother's request was backed by the body for social and legal protection of children, the paediatrician and psychologist, who all confirmed that the mother was both competent and interested in taking care of her daughter. The child's father died in a car crash and there was no one else to take care of her. She would have to be placed in a children's home. It is unacceptable to have a child bear the consequences of her mother's punishment. In such cases, it is necessary to follow the Convention on the Rights of the Child, which lays down that it is always necessary to act in the best interest of the child. During the inquiry, the child's mother filed a new request for assignment to the prison block for mothers with children; the prison director reflected on the broader circumstances of the case and granted the request. We could thus close the case.

 [Defender's report: File No. 687/2020/VOP](#)

## **INVESTIGATING INJURIES IN PRISONS**

Last year, we dealt with the case of an injured prisoner and pointed out errors in the medical records concerning the signs of injury. The case was also dealt with this year by the Constitutional Court (File No. IV. ÚS 1559/20), which agreed with our opinion.

 [Defender's report: File No. 7107/2018/VOP](#)

## **VISITS TO FACILITIES PROVIDING PSYCHIATRIC CARE AND PATIENTS' COMPLAINTS**

### **COVID VISITS**

In the context of our four spring visits to psychiatric facilities, we found that therapeutic care was limited only to the necessary extent (e.g. group activities, teaching at the children's ward) and no patient was placed in long-term isolation because of preventive measures related to Covid-19. Should a similar situation occur again in the future, we recommend that enough alternatives for meaningful spending of time be prepared in case that standard activities must be limited. We also recommended arranging the capacity for rapid testing of patients to prevent them being subjected to unnecessary restrictive measures upon their admission to the hospital that could worsen their mental state; we also urged not to ban visits of representatives, fiduciaries and supporters of involuntarily hospitalised patients. During our personal meeting, the Minister of Health promised to take our findings into account if his Ministry was forced to reimpose extraordinary measures again.

In one of the psychiatric hospitals visited, we also found that patients hospitalised without consent were not visited by any court official during the proceedings on the lawfulness of this procedure. We advised the Ministry of Justice of our finding and the Ministry

subsequently informed court presidents that this practice was inadmissible.

The findings from our autumn distance monitoring showed a significant improvement; the results are now available within several hours. However, it was not clarified whether a patient hospitalised without consent could see an assistant or confidant. We thus again approached the Ministry of Health and succeeded this time. We also again encountered a case where no court official met with a person hospitalised without consent. We informed the president of the relevant district court of our position on this matter.

 [Press release of 30 July 2020](#)  
 [Press release of 14 December 2020](#)

## **VISITS TO PSYCHIATRIC DEPARTMENTS OF UNIVERSITY HOSPITALS**

We continued the series of our visits to psychiatric departments of university hospitals with one visit this year. No more visits were allowed by the epidemic situation. We found, for example, that net beds were used quite often here, although this practice has generally already been mostly abandoned. We strongly criticised mechanical restraining of patients in rooms where they can be seen by other patients. We consider such a practice highly intrusive, bordering on ill-treatment in specific cases. We have long been pointing out the issue of cameras used in healthcare facilities; we are convinced that this topic is not sufficiently regulated, whether in legal or in practical terms.

## **63 COMPLAINTS FROM PATIENTS**

Patients most often complain about the conditions of the stay and treatment in psychiatric hospitals. However, we can only deal with complaints filed by patients undergoing institutional forensic treatment.

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## **7. Supervision over Restrictions of Personal Freedom**





## **TRANSFER OF A PATIENT SUBJECT TO INSTITUTIONAL FORENSIC TREATMENT BETWEEN PSYCHIATRIC HOSPITALS**

Transfer of a patient undergoing institutional forensic treatment based on a hospital's decision could violate, in particular, the patient's right to privacy. The law does not authorise hospitals to make authoritative decisions on the transfer (relocation) of patients who are ordered to undergo forensic treatment or to withhold information on a planned change of the place of treatment. In the absence of any special legal regulation, a decision on a change of the place of forensic treatment must be made by a court. We also dealt with the question of how much in advance a hospital should notify the patient of his/her transfer. In our opinion, informing the patient about his/her transfer less than 24 hours in advance represents maladministration unless the transfer takes place under absolutely exceptional circumstances.

 Defender's report: File No. 5068/2019/VOP

## **RECEIPT OF PARCELS FOR PATIENTS IN INSTITUTIONAL FORENSIC TREATMENT**

We inquired into the possible right of a psychiatric hospital not to hand over parcels to patients undergoing institutional forensic treatment. Section 85 (1)(a)(3) of the Specific Health Care Services Act makes it possible to prohibit the handover of correspondence to a patient. However, correspondence in this context does not

include parcels, and so a hospital cannot prohibit their receipt. It is only possible to check parcels and retain any objects that are prohibited in the hospital because of their nature. Should the hospital have a justified suspicion that a parcel contains, e.g., dependency producing substances that the hospital is unable to detect itself, it should contact law enforcement authorities.

 Defender's report: File No. 3519/2019/VOP

## **VISITS TO FACILITIES FOR CHILDREN**

### **COVID VISITS**

Especially during the spring months, facilities for children lacked practical information and instructions on how to proceed during the epidemic, affecting especially children's contacts with their families and close ones. At least during the first weeks of the epidemic, some of the facility managers did not allow children to engage in any personal contact with their families and recommended their parents to keep in touch using other means (phone calls, social networks, etc.). Their approach to permits enabling children to stay at home also differed. While one visited facility completely stopped issuing the permits with reference to the exceptional epidemiological situation, another facility permitted children to leave the facility and stay at home to the maximum possible degree.

The inconsistent approach of the facilities was a proof of insufficient methodological guidance. Central authorities provided no support to the facility managers who had to balance the children's rights to

keep in touch with their families, on the one hand, and their own duty to protect the health of children and employees, on the other hand.

Banning pupils from attending schools was also controversial as far as children's homes with schools are concerned. The ban aims to prevent transmission of the infection between children and their families; however, in a children's home with school, the children spend almost all of their time together in the respective community and educational group, shared canteen, hall and other areas.

We presented our findings to the Ministry of Education, Youth and Sports so that they would be taken into account in its methodological materials.

-  [Press release of 18 March 2020](#)
-  [Press release of 30 July 2020](#)

## **FOLLOW-UP VISIT TO A FACILITY FOR INSTITUTIONAL EDUCATION**

During a follow-up visit, we checked the implementation of the recommendations resulting from our previous systematic visit. The recommendations concerned, for example, the rules for independent movement of institutionalised children outside the facility, inaccessibility of psychological care and the settings of an evaluation system in the facility. A number of recommendations also followed from an inappropriate location of the facility and its unsatisfactory premises. The visit took place within the LP-PDP3-001 project financed from the 2014-2021 Norway grants.

## **PREPARATION FOR SYSTEMATIC VISITS TO FACILITIES FOR THE PERFORMANCE OF PROTECTIVE EDUCATION**

A series of visits to facilities for protective education was carried out this year. We asked the facilities to provide us with anonymised judgements concerning children with ordered protective education; we will analyse them in the future. We hope that the start of the visits will not be delayed by the development of the Covid-19 epidemic, as happened this year.

## **SYSTEMATIC VISITS FOCUSING ON CARE FOR DRUG-ADDICTED CHILDREN**

We have completed a series of visits to three facilities for institutional education whose primary purpose is to ensure care for drug-addicted children or children experimenting with dependency producing substances. Our aim was to analyse the practices and point out potential weak points in the system and care

in the facilities. We are preparing a summary report on these visits, where we will present our findings and recommendations both to the relevant facilities and to the competent governmental authorities.

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## **7. Supervision over Restrictions of Personal Freedom**

### **VISITS TO FACILITIES FOR FOREIGNERS**

#### **COVID VISITS**

We visited two facilities for foreigners during the spring months. One of them served as a quarantine (primarily preventive) for applicants for international protection and for detention of foreigners. Individual rights were significantly restricted in the facility we visited. While the purpose of the measures adopted in the facility was to prevent the spread of Covid-19, some were excessively restrictive. Neither women nor other vulnerable groups were separated from men. The foreigners lacked sufficient information. Their only contact with other persons was three times a day when the staff served them their meals. There was no access to open air. Legal and psychological counselling was practically unavailable. We informed the Ministry of the Interior of our findings and requested a remedy.

In the autumn, we decided to check how the Ministry of the Interior had delivered on its promises and assurances, and carried out a follow-up visit to the facility. Unfortunately, the conditions in the facility had not improved much. We therefore already called for an immediate change during the follow-up visit, and immediately afterwards, informed the Ministry of the Interior of serious findings that had not been remedied. The visit took place within the LP-PDP3-001 project financed from the 2014-2021 Norway grants.

# We communicate

Prevention of ill-treatment also requires proper awareness of the issue. To raise such awareness, we hold lectures on standards of treatment, our findings, recommendations and results of our work at various seminars, conferences and teaching activities at law schools, etc. We regularly publish, among others, articles in the Sociální služby (Social Services) monthly journal, where we try to respond to questions frequently raised by social services workers concerning the conditions of provision of social services.

## SEMINAR FOR THE STAFF OF FACILITIES FOR CHILDREN REQUIRING IMMEDIATE ASSISTANCE

We organised two expert seminars intended for employees who work in or co-operate with facilities for children requiring immediate assistance. We acquainted them with our findings from systematic visits to these facilities, which we had presented in our last year's report. In the report, we pointed out the possible risks of ill-treatment of children in these facilities (the importance of co-operation with the family, support for the child's contact with the family, and the provision of sufficient and timely psychological assistance to the children). **This seminar took place within the LP-PDP3-001 project financed from the 2014-2021 Norway grants.**



Report on visits to facilities for  
children requiring immediate  
assistance (2019)



## ROUNDTABLE WITH DIRECTORS OF THE FACILITIES FOR INSTITUTIONAL AND PROTECTIVE EDUCATION WE VISITED

Following up on the series of visits to 12 facilities for children, we organised an on-line roundtable with representatives of the facilities visited and representatives of the Supreme Public Prosecutor's Office.

The discussion focused especially on systemic problems, such as the need for a new legislation (unification of the legislation governing residential social services for children, separation of institutional and protective education), repeated delays in courts' decision-making on the placement or relocation of children, and an inappropriate environment in a number of existing facilities (especially those located in old palace buildings). The facilities' managers also shared their insights on dealing with the current pandemic situation, such as the arrangements for visits and leave permits for children, quarantine and isolation measures, including testing, and methodological guidance by the Ministry. The series of visits will be described in a summary report issued in early 2021. **This seminar took place within the LP-PDP3-001 project financed from the 2014-2021 Norway grants.**



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## 7. Supervision over Restrictions of Personal Freedom

### INTERNATIONAL ACTIVITIES RELATED TO FORCED RETURNS

In spite of the unprecedented measures to combat the pandemic in 2020, we continued to actively co-operate with our colleagues from other EU Member States, even if only by remote means. In co-operation with the International Centre for Migration Policy Development (ICMPD), we prepared teaching materials to reinforce the monitoring activities conducted by ombudsman institutions in Georgia, Moldova and Ukraine.

In co-operation with Frontex, we participated in the development of a new system of processing reports from forced returns monitoring for the needs of the monitors.

### YELLOW RIBBON RUN

For the fourth year in a row, a team from the Office of the Public Defender of Rights participated in the Yellow Ribbon Run. Reflecting on its subtitle "Run Away from Prejudice", this run visions a society that gives ex-offenders and their families a second chance for a decent life.





8

**Equal  
Treatment and  
Discrimination**



**353**

complaints against discrimination received by the Defender in 2020, which is:

**50**

fewer than in 2019

**17**

cases in which we found discrimination (from complaints closed in 2020), of which:

**8**

cases involved direct discrimination (i.e. a person was treated less favourably than another person in a comparable situation based on a discrimination ground)

**8**

cases involved indirect discrimination (i.e. a person was put in a less advantageous position as compared to others on the basis of an apparently neutral criterion or practice but actually on the same grounds as in the case of direct discrimination)

**1**

case involved harassment, instruction to discriminate, or incitement to discrimination

**21**

were cases where the suspicion of discrimination could be neither proved nor disproved.

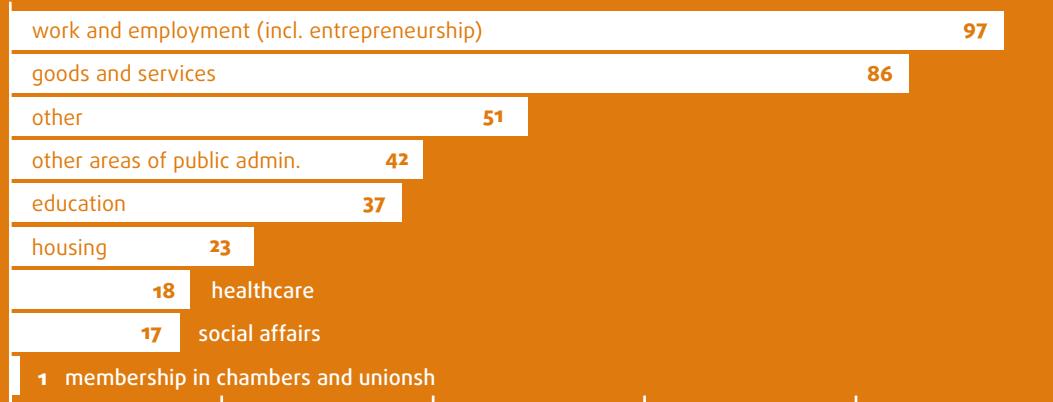
**The year 2020 was challenging for everyone because of the Covid-19 pandemic. This also showed in the types of cases with which people approached us. Some disagreed with the proposed Government measures to prevent the disease from spreading and considered them discriminatory. On top of that, we also dealt with some long-term issues – municipal housing, anti-discrimination case law, education of students with a different first language and reserved parking for people with disabilities.**

**110**

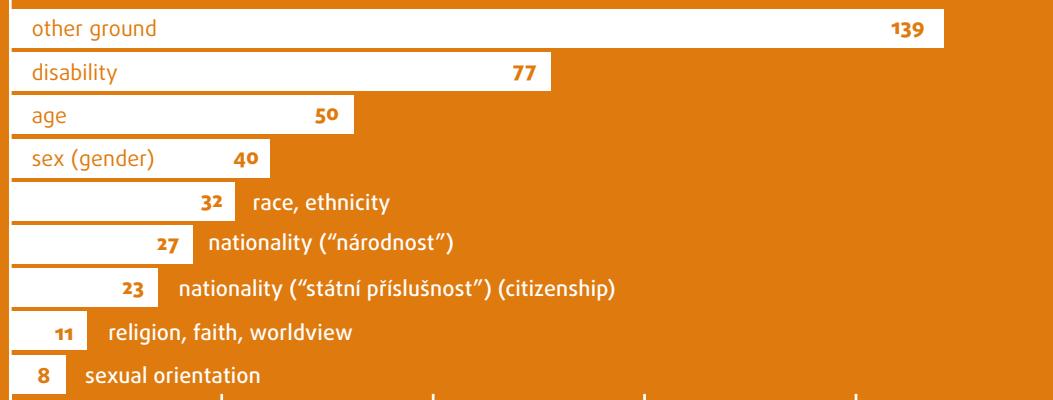
were cases where systematic issues were dealt with in the area of equal treatment (we communicate with authorities, private entities, non-governmental organisations, international entities and the public)

## Complaints in focus

**Areas in which people felt discriminated against (based on complaints received in 2020):**



**Reasons why people felt discriminated against (based on complaints received in 2020):**



Some people complain about discrimination in several areas or for multiple reasons. The sum therefore need not correspond to the total number of complaints.

# We help change the rules

## MEASURES TAKEN DURING THE COVID-19 PANDEMIC

In 2021, the Defender was approached by people who considered some measures to prevent the spread of Covid-19 discriminatory.

The rules for admission of students to secondary schools changed in the spring of 2020. The students had only one attempt to pass the entrance examination and could not file an appeal against a rejecting decision. We therefore asked the Minister to state whether these changes in the admission procedure had really been necessary. We subsequently supported a draft amendment to the law that would relax the conditions ([Chamber of Deputies document No. 855](#)). However, given the short period of time available, we were unable to remedy the situation in time.

Press release of 24 April 2020

Defender's comments: File No. 21262/2020/S

Schools were closed and distance learning was introduced during the epidemic. Primary schools reopened in May, with the exception of special schools for students with disabilities.

We thus asked the Minister of Education to allow these children to return to schools as well. Eventually, special schools were also opened.

#### Press release of 13 May 2020

The options for concluding a marriage or registered partnership were restricted during the nationwide state of emergency. Registered partnership could only be concluded in urgent cases (imminent death of a partner, expiry of a residence permit). No such restrictions were imposed on standard marriages. In response to our call and also thanks to the involvement of other entities, the Ministry remedied the error.

#### Defender's Facebook message posted on 20 November 2020

Artists were entitled to a subsidy to compensate for their loss of income. This option was, however, not available to foreigners without a permanent residence in the Czech Republic, even if they had long-term residence in the country. We pointed out the existence of possible discrimination against EU citizens and, eventually, the scope of potential beneficiaries in the subsidy programme was expanded.

#### Defender's recommendation: File No. 31/2020/SZD

The number of shoppers was limited in the autumn. Some shops checked compliance with this rule based on the number of shopping baskets and carts used. This, however, negatively impacted people unable to use a shopping cart because of disability. We therefore asked the shop managers to make an exemption for these people. At the same time, we asked the Government to quickly consider how the rules should be modified in view of the needs and possibilities of people using specific aids for movement.

#### Press release of 11 December 2020

## RECOMMENDATIONS FOR THE PROVISION OF MUNICIPAL HOUSING

We have repeatedly encountered rules for the assignment of municipal flats that were at variance with the principle of non-discrimination. We therefore decided to carry out a survey regarding the provision of municipal housing and social work in a municipality with clients in housing need. A total of 395 municipalities took part in the questionnaire survey. We analysed the principles for the assignment of municipal flats used in 241 municipalities.

The survey shows that the demand for municipal housing significantly exceeds the supply. On average, 17 potential buyers apply for one free flat. Most municipalities perceive this increased need for municipal housing, but only some of them plan to expand their housing stock.

To choose among applicants, some municipalities use methods that prioritise people with higher income or property. Almost a quarter of municipalities uses what is called the "envelope method", where a flat is assigned to the applicant who offers to pay the highest rent (the offer is submitted in a sealed envelope). Some municipalities choose the winners on the basis of their willingness to pay up a debt accumulated by the previous tenant or renovate the flat at their own expense. However, such a procedure contradicts the statutory task of municipalities and their social role.

We recommended that:

- the municipalities set clear and comprehensible rules governing the assignment of flats and publish these rules;
- the rules for the assignment of municipal flats do not handicap applicants whose income originates from a parental allowance, pecuniary assistance in maternity, disability pension or retirement pension;
- the Government consider preparing a bill on social housing.

#### Defender's survey: File No. 69/2019/DIS

#### Press release of 19 June 2020

We discussed the conclusions of our survey at a conference attended by representatives of municipalities, regional authorities, ministries, NGOs and social workers. Underlying documents and video recordings from the conference are available on the [website](#).

#### Press release of 14 February 2020



## HOW CZECH COURTS RULE ON DISCRIMINATION

As the national equality body, we provide methodological assistance to victims of discrimination, including preliminarily assessment of their claims and recommendation whether or not to lodge an anti-discrimination action in court. We should therefore know how independent courts deal with anti-discrimination disputes in practice.

We therefore decided to carry out a detailed survey on anti-discrimination case law of Czech courts. The survey is a follow-up on our previous activities, especially the 2015 survey report titled "Discrimination in the Czech Republic: Victims of Discrimination and Obstacles in Access to Justice". Said previous report focused on examination of anti-discrimination case law of Czech courts in 2010–2014. The follow-up survey thus concentrated on the 2015–2019 period. We analysed a total of 201 rulings made in 90 cases.

Summary of conclusions:

- Approximately one half of the plaintiffs claiming unequal treatment were unsuccessful in court (52%).
- Most lawsuits were initiated in the area of work and employment (ca. 60%).
- Disability was the most frequently invoked discrimination ground (ca. 23%).
- Plaintiffs most often asserted direct discrimination (ca. 55%).
- Plaintiffs most often sought financial compensation for intangible damage (ca. 57%).
- Persons claiming discrimination have the biggest problem with demonstrating it in cases where the defendants (e.g. employers) have a broad discretion and are not required to state reasons for their final decisions. Courts do not consider such conduct suspicious *prima facie*.

- The highest compensation for intangible damage claimed was CZK 10 million (EUR 388,531). The highest amount actually awarded was CZK 400,000 (EUR 15,546).
- In cases assessed by the Defender, the result of the court proceedings corresponded to the Defender's conclusion in ca. 64% of the cases.

Based on these findings, the Defender recommends to modify certain legal regulations:

- eliminate the ancillary nature of compensation for intangible damage in money;
- extend the shared burden of proof to all cases of discrimination;
- reduce the court fee paid for appeals in anti-discrimination disputes;
- incorporate discrimination by association into the Anti-Discrimination Act;
- publish court decisions in a public database.

The report analyses in detail how the courts approach proof of discrimination and compensation for intangible damage in money, and how they work with the Defender's conclusions. Separate chapters focus on case law in the areas of employment, healthcare, education, goods and services, and housing.

 [Defender's survey: File No. 61/2019/DIS](#)

 [Press release of 1 October 2020](#)

# We are here to help

We help people who have become victims of discrimination. We can advise them how to proceed in their situation and where to ask for further help. We can approach the adversary, find out what has happened and assess the situation in legal terms. Based on the above, we recommend to people who asked for our assistance whether it would be appropriate to deal with their case through mediation, in court or in some other way.

## IN 2020, WE HELPED:

- An employee whose employer had not been willing to renew his employment contract on grounds of high age. We inquired into the procedure of the Labour Inspectorate, whom the complainant had previously contacted. We found a number of errors, including insufficient investigation of the objection of

discrimination. Our arguments contributed to amicable settlement of the court dispute, and the agreement also includes compensation for intangible damage.

 [Defender's report: File No. 5676/2018/VOP](#)

- A visually-impaired woman to whom a vendor refused to sell a washing machine on an instalment plan. Even though the woman was accompanied to the shop, the vendor refused to provide an instalment plan, claiming that she was unable to read the consumer credit agreement. We noted that in such a case, the dealer is obliged to inform the customer of all necessary information in another suitable manner. At long last, the customer managed to buy the washing machine during her third visit to the shop.

 [Defender's report: File No. 4246/2019/VOP](#)

- › A Roma tenant who was offered a worse substitute flat than non-Roma tenants due to a building reconstruction. The substitute flat was in an inferior, noisier and dustier area of the town. The town rejected any allegation of discrimination, as well as the claim that the flat was worse than those offered to non-Roma tenants. Nevertheless, it offered the complainant forthwith a temporary flat in the same neighbourhood it provided to all the other tenants.

 [Defender's report: File No. 4817/2019/VOP](#)  
 [Press release of 2 April 2020](#)

- › A disabled woman who was denied consent by the housing co-operative to install a remote control door lock. The housing co-operative refused to allow its disabled member to install a remote control entrance door lock although she pointed out her medical problems and offered to pay the cost. She lives on the 7th floor and cannot constantly go downstairs to let visitors in. According to the Defender, this constitutes indirect discrimination on the grounds of disability and a vote taken by members of a co-operative cannot outweigh an entitlement based on the law. The Defender therefore recommended that the co-operative grant the complainant's request and proceed in accordance with the statutory purpose of the co-operative, which is to provide for the housing needs of its members.

 [Defender's report: File No. 3737/2019/VOP](#)  
 [Press release of 18 June 2020](#)

- › A wheelchair user with access to a sports stadium. The complainant pointed out that the visitor rules at a sports stadium allowed the holders of a disability card and persons with reduced mobility to enter the stadium only if accompanied by another person. Such a provision constitutes direct discrimination on grounds of disability. We recommended that the operator change the visitor rules, which he promised to do.

 [Defender's report: File No. 5708/2019/VOP](#)

- › Roma children who can attend a non-segregated school after the municipality changed its generally binding ordinance on catchment schools. According to the ordinance, children living in poor people's dormitories were to attend a school at the outskirts of the town, which was already mostly attended by Roma children. However, there were two other schools close to the dormitory. We contacted the Ministry of the Interior, which was discussing the ordinance with the town at the time. The town eventually adopted a new ordinance, which no longer contained the segregation aspect..

 [The Defender's report on activities for the 2nd quarter of 2020, p. 14](#)

- › A man who could not take his assistance dog to stay with him in a hospital. We inquired into the procedure of the hospital in assessing the complainant's application for hospitalisation and the section of the hospital's internal rules regulating the conditions for the presence of a specially-trained dog in the hospital. The hospital committed indirect discrimination against the complainant on grounds of disability in access to healthcare by rejecting his request to have a specially-trained assistance dog with him during hospitalisation.

 [Defender's report: File No. 6779/2019/VOP](#)

## INSPECTION BODIES

Along with helping individuals, we also focus on the procedures followed by authorities. We guide them to increase the efficiency of their work. For example, we inquired into the procedures of labour inspectorates regarding workplace bullying.

 [Defender's report: File No. 3639/2018/VOP](#)  
 [Defender's report: File No. 7315/2018/VOP](#)  
 [Press release of 23 April 2020](#)  
 [Press release of 29 October 2020](#)

We also communicated with the Czech Trade Inspection Authority on how to proceed in cases where access to a music club was denied based on race or ethnicity.

 [Defender's report: File No. 21/2017/VOP](#)

## PROTECTION OF EU CITIZENS AGAINST DISCRIMINATION

Since 2018, we have been helping EU citizens in cases where they encounter discrimination on grounds of their different nationality at work, in education, in the provision of health care, in housing or with regard to goods and services. We therefore organised an [information campaign](#) on social networks, where we explained (in English, Bulgarian, Romanian and Polish) what types of complaints EU citizens could submit to our office.

## INFORMATION LEAFLETS

We updated our information leaflets. People can thus learn what to do and how the Defender can help them with respect to [discrimination](#), [workplace bullying](#) (including [instructions for representatives of the victims of bullying](#)), [hate speech on the Internet](#), [mediation](#), [education](#) and situations related to free movement in the [European Union](#).



# We communicate

## **CONFERENCE ON EDUCATION OF CHILDREN WITH A DIFFERENT FIRST LANGUAGE**

In co-operation with the Meta organisation, we held a conference titled "Ignorance of language excuses no one!?" on the topic of educating children with a different first language.

The participants discussed the current state of support for children with a different first language and the planned changes. Jenni Alisaari of the Turku University presented an example of good practice as she described the way these children were educated in Finland.

Underlying documents and video recordings from the conference are available on the [website](#).

 [Press release of 21 January 2020](#)

## **CO-OPERATION OF LABOUR INSPECTION BODIES AND NON-GOVERNMENTAL ORGANISATIONS**

Non-profit organisations help people defend themselves against discrimination, while labour inspectorates investigate possible discrimination by employers. This is why we decided to connect these stakeholders so that they could share their experience with protection against discrimination at work. We discussed discriminatory practices in access to employment (job advertisements, job interviews, decisions not to hire an applicant), during employment (equality in pay, harassment, work-life balance,

adoption of measures for people with disabilities) and the possibilities of co-operation.

Underlying documents from the round table are available on the [website](#).

 [Press release of 11 February 2020](#)

## **AWARD FOR OUR RESEARCH "BEING LGBT+ IN THE CZECH REPUBLIC"**

We received the 2019 bePROUD award for our survey report "Being LGBT+ in the Czech Republic". This award is given each year for an accomplishment that raised the awareness of LGBT+ people or improved their lives.

## **HANDBOOK ON ANTI-DISCRIMINATION LAW FOR SOCIAL WORK EDUCATORS**

Victims of discrimination are often in contact with social workers. Therefore, we contacted the Association of Educators in Social Work and offered them free support in the preparation of courses on anti-discrimination law. In 2017 already, two workshops took place where the employees of the Office of the Public Defender of Rights discussed individual case reports on discrimination with educators, trying to find solutions.

The Handbook on Anti-Discrimination Law for Social Work Educators was published as a follow-up on the workshops. Its purpose is to make it easier for teachers of future social workers to prepare courses on protection against discrimination.

The handbook covers the following topics: housing, education, employment, healthcare, goods and services. It contains a number of model cases with solutions and other practical exercises for courses.

- ❑ [Defender's handbook: File No. 79/2020/DIS](#)
- ❑ [Press release of 24 September 2020](#)

## SURVEY AND ROUNDTABLE ON RESERVED PARKING FOR PEOPLE WITH DISABILITIES

In 2012, we issued a [recommendation](#) for municipalities on how to proceed in providing reserved parking spaces for people with disabilities. We intend to update this recommendation and we have therefore carried out a survey on this topic involving 342 municipalities. We found that:

- General criteria and rules based on which a road owner grants consent to establish reserved parking spaces for people with disabilities are formalised only in 41% of the surveyed municipalities.
- Disapproval of the road owner was found to be the most common hindrance preventing the establishment of reserved parking spaces.
- Merely 9 percent of municipalities consider non-holders of ZTP (severe health disability) and ZTP/P (severe health disability requiring special assistance) cards to be entitled to apply for a reserved parking space. Other municipalities require this card.
- About one quarter of the municipalities show a forthcoming and helpful attitude towards disabled applicants for individual reserved parking spaces and guide them through the whole administrative and implementation process.

- ❑ [Defender's survey: File No. 18/2020/DIS](#)
- ❑ [Press release of 16 June 2020](#)

We discussed the survey findings with the municipalities at a roundtable. We talked about the procedure in granting consent to reserved parking and individual assessment of applications with municipal representatives. The underlying documents are available on the website.

Some municipalities have defined the conditions for granting consent in a manner that makes it impossible to obtain reserved parking for whole groups of disabled people. This includes, for example, limiting the disability criterion only to mobility problems. The procedures followed by municipalities and their road administrative bodies in establishing reserved parking spaces also differ substantially. Some municipalities proceed too formally in granting consent to the establishment of a reserved parking space - they only examine whether the pre-defined criteria have been met, without assessing the specific needs of applicants on an ad hoc basis.

The discussions resulted in several proposals for changes and improvement of the whole process of establishing reserved parking. Representatives of municipalities and road administrative authorities discussed, among other things, the legislative options for a duty of municipalities, as road owners, to justify their consent.

We will issue an updated recommendation for municipalities on reserved parking spaces for people with disabilities during 2021.

## MEETING WITH THE DEPUTY MINISTER OF THE INTERIOR RESPONSIBLE FOR THE CIVIL SERVICE

We met with the Deputy Minister of the Interior responsible for the civil service. We discussed employment of people with disabilities in public administration, flexible working arrangements, experience gained during the state of emergency, and the problem of workplace bullying in civil service.

## CONFERENCE ON SEXIST ADVERTISING

We organised an online conference on sexist advertising in co-operation with the Nesehnutí non-governmental organisation. The individual contributions focused on courts' decision-making related to sexist advertising, the concept of good morals in advertising, activities of the Advertising Standards Council, perception of sexist advertising by the Czech public and on sexist advertising as unfair competition. Underlying documents and a recording are available on the [website](#).

## CO-OPERATION WITH EQUINET

We have already long been co-operating with the European Network of Equality Bodies (Equinet), which associates "national equality bodies" in Europe. In response to the Covid-19 epidemic, Equinet launched a [database](#) of cases involving a claim of discrimination presented by people to the equality bodies in these difficult times. Czech cases are also available in the database.

With contribution of its members (and thus also the Czech equality body), Equinet sent its first [amicus curiae](#) brief to the European Court of Human Rights. In the given case, a disabled applicant pleaded violation of the prohibition of discrimination and his right to vote because a polling station was not accessible to people using wheelchairs. The court had yet to decide on the case at the time when this Annual Report was published.



# 9

# Monitoring of Rights of People with Disabilities



**19**

members were appointed to our advisory body

**2**

meetings of the working group on the rights of people with psychosocial disabilities were organised

**2**

information leaflets were issued

**4**

surveys completed

**3**

surveys initiated

**67**

complaints we dealt with, pointing out systemic shortcomings related to the rights of people with disabilities

In 2020 we monitored how the Czech Republic honours its commitments following from the Convention on the Rights of Persons with Disabilities for the third consecutive year. Along with standard research activities, issuing recommendations and co-operation with disabled people and non-profit organisations, we also focused, among other things, on mapping the impacts of the Covid-19 pandemic and the related measures on people with disabilities.

**70**

complaints we dealt with in relation to limitation of legal capacity and other supporting measures

# We help change the rules

We conducted or initiated several surveys on the following topics in 2020 with a view to identifying any possible systemic shortcomings related to the rights of people with disabilities.

## **"CROSSROADS OF AUTONOMY" -SURVEY OF JUDICIAL DECISION- MAKING ON LIMITATION OF LEGAL CAPACITY AND OTHER SUPPORTING MEASURES**

As shown by our research, the restriction of one's legal capacity is still the most frequently used measure imposed on persons who require support in decision-making. Most often, courts restrict legal capacity of people in the area of disposal of property. The average limit for transactions allowed to these people does not amount even to the subsistence minimum (CZK 3,410 per month).

The survey confirmed that more than a third of people with limited legal capacity have less than CZK 1,000 a month to spend independently. Any payments beyond this limit are made by their guardian. The degree to which legal capacity is restricted is also very high in other areas; in up to 40% of judgements under review, courts decided to restrict people's legal capacity with respect to all or almost all types of legal acts. Thus, the interference with the legal capacity, in fact, borders on its deprivation; however, this is not permissible under the existing legislation. Nearly half of the people under guardianship were restricted by the court in the exercise of their right to vote.

A total of 40 thousand people with limited legal capacity live in the Czech Republic. The Convention



on the Rights of Persons with Disabilities requires protection of vulnerable people, for example by means of assistance in decision-making or representation by a household member, where a person is not deprived of legal capacity. However, the use of these instruments is hindered by the fact that many such people have no close person who could help them in their lives. The most common alternative to restricting legal capacity is the appointment of a guardian without limitation of legal capacity, i.e. representation of an individual by a family member or a municipality if he/she is unable to find appoint a representative, e.g. by drafting a power of attorney. Guardianship without simultaneous limitation of legal capacity is often used for people who have long been institutionalised and there is therefore no risk they would inflict harm on themselves through their action.



Defender's survey: File No. 61/2018/  
OZP

## **SURVEY ON AVAILABILITY OF EARLY CARE FOR CHILDREN WITH DISABILITIES AND THEIR FAMILIES**

According to Article 22 of the Convention (respect for privacy, home and family), children with disabilities and their families have the right to a timely and comprehensive support.

Early care, as a social service provided to families with children up to seven years of age, plays a key role in



this regard. We conducted a survey focusing on ensuring availability of social services for children with disabilities and their families with emphasis on early care.

Within our research survey, we addressed all the providers of early care as well as administrative regions, which are responsible for ensuring availability of social services. The research confirmed the hypothesis that there exist major regional disbalances and that the situation also considerably varies with regard to the individual types of disabilities. The duty of administrative regions to ensure availability of social services follows directly from the Social Services Act. But the regions themselves admitted that the existing system of financing and planning the development of social services did not allow for a flexible response to the current needs of people with disabilities.

 [Defender's survey: File No. 11/2019/OZP](#)

## **EMPLOYMENT OF PEOPLE WITH DISABILITIES IN PUBLIC ADMINISTRATION FROM EMPLOYER'S POINT OF VIEW**

We focused on the conditions of employing people with disabilities in the public sector. After all, we believe public administration should set an example and strive to ensure maximum involvement of people with various types and degrees of disability.

Based on a questionnaire survey and interviews with the representatives of employers, we identified the following recurring problems.

- **The way the mandatory share required by the law is achieved varies among the individual authorities.** There are authorities which employ people with disabilities as little as possible and do not deal with the issue in any way. Other authorities try to avoid a penalty in the form of a mandatory levy to the State budget and adhere to the mandatory quota mostly by combining employment of people with disabilities with purchases of products and services. Authorities that have experience with disabled employees and naturally exceed the mandatory four-percent quota by following specific strategies are sparse.
- **People with more serious limitations tend not to be employed in public administration very often.** People with visual or hearing impairments or mental disabilities are underrepresented among public administration employees and they rarely even apply for jobs in public administration. By the same token, employers are not actively seeking people with disabilities as their potential employees. The most frequent types of disability or special needs of employees are dietary restrictions, cancer or limited motor skills.
- **Limited work performance represents an obstacle to which the system is unable to respond.** Due to the systemisation, clearly defined structure and number of jobs, employers often cannot meet the requirements for reducing or dividing the working time, or in contrast, creating jobs for disabled people as required. The approach to employees with special needs is thus not very flexible.
- The principle of levies to the State budget (as penalties for not employing disabled people) is not functional in the case of public administration bodies.

 [Defender's survey: File No. 21/2019/OZP](#)

## **EMPLOYMENT OF PEOPLE WITH DISABILITIES IN PUBLIC ADMINISTRATION FROM THE VIEWPOINT OF POTENTIAL EMPLOYEES**

Further to our inquiry into the employers' attitudes, we also initiated a survey mapping the main impediments to employment in public administration from the viewpoint of job seekers and employees. We interviewed people with various types and kinds of disabilities. Based on the two surveys, we intend to organise a roundtable with representatives of the Ministry of Labour and Social Affairs, and also with representatives of the Ministry of the Interior, employers and representatives of non-profit organisations providing support to people with disabilities in seeking and performing a job.

We also intend to issue recommendations for the area of work and employment.

## **PROCESS OF DEINSTITUTIONALISATION OF RESIDENTIAL SOCIAL SERVICES**

In the context of the right to an independent life in a community instead of a social service institution, we began mapping the process of transformation and deinstitutionalisation of residential social services facilities for people with disabilities in the individual administrative regions of the Czech Republic. The objective of the survey is not only to identify the biggest obstacles to this process, but primarily to initiate a debate with regional authorities, the Ministry of Labour and Social Affairs and the Ministry of Finance, and also with the Ministry for Regional Development, with the aim to accelerate the process of deinstitutionalisation. Indeed, many aspects of high-capacity residential social services differ from the usual way of life and may even pose risk for the clients.

## **BARRIERS TO INDEPENDENCE OF YOUNG PEOPLE WITH DISABILITIES**

We also initiated a survey mapping barriers preventing young people with disabilities from becoming independent of their parents' support. At the age when their peers usually move to their first flat (rent, flat share), complete their education, look for their first job and enjoy their first relationships, young people with disabilities might face a completely different situation; we know this based on our work with these people. This is caused by a lack of community social services – which are absolutely crucial for young people – leading to their reliance on the support by their families. There is also a lack of suitable housing (e.g. fully accessible barrier-free residences) and job opportunities. The aim of the survey is to identify the entire spectrum of barriers preventing people with disabilities from living independently. Within the survey, we will interview young people with various types of severe disabilities (third and fourth degrees of dependency) between 18 and 35 years of age.

## **AVAILABILITY OF NATAL AND POSTNATAL CARE FOR WOMEN WITH DISABILITIES**

Based on our findings to date, as well as publicly available sources, we had information that women with disabilities, midwives and also maternity hospitals had been encountering problems in natal and postnatal care. We therefore decided to organise a questionnaire survey and interviews to determine to what extent this was a systemic issue or rather a matter of individual shortcomings at the individual workplaces. Based on the survey, we will issue recommendations for improving natal care.

## **LIVES OF CLIENTS IN HOMES FOR PEOPLE WITH DISABILITIES**

Using questionnaires addressed to social services providers, we mapped the living conditions of clients in homes for people with disabilities. We focused especially on the area of health and support of healthy lifestyle. We also inquired how they helped clients in matters of work and employment and what role the social service played in the clients' education. The main topics also included issues related to the conditions of providing social services to children.

Monitoring life in residential social services is among our top priorities in the long term, also because everyone has the right to an independent life in the least restrictive environment possible. The conditions in residential social services, especially those with a large capacity, are often contrary to the principle of normality.

 Defender's survey: File No. 6/2019/OZP

## **RECOMMENDATION ON "HOW TO SPEAK AND WRITE ABOUT PEOPLE WITH DISABILITIES"**

We issued a recommendation for journalists on how they should write about people with disabilities and speak to them. We aim to open a debate on the topic of communicating with disabled people in the long term. In the preparation of this text, we drew from many professional materials including similar documents from abroad. We also contacted people with disabilities themselves as well as experts, e.g. in the area of communication, special pedagogy and linguistics.

We are aware that parlance is constantly developing over time and that various individuals and groups might have different views as to what language should be used.



Defender's recommendation: File No.  
6/2020/OZP

## **RECOMMENDATION ON "HOW TO PROTECT THE RIGHTS OF PARENTS WITH PSYCHOSOCIAL DISABILITIES"**

The recommendation responds to an increasing number of complaints from parents with disabilities whose right to a family life has been drastically

interfered with. The publication summarises our findings in this area and contains several practical recommendations for public guardians, social workers, BSLPC representatives and providers of social and healthcare services. It also includes a simple checklist to assess the level of interference with parental rights and a short summary for the parents themselves. The entire recommendation is available on the Defender's website.



Doporučení ochránce:  
26/2020/OZP

## RECOMMENDATION ON THE "EXERCISE OF THE RIGHT TO VOTE BY PEOPLE LIVING IN HOMES FOR PEOPLE WITH DISABILITIES"

Providers of social services and even guardians often do not know whether their clients can vote and how to provide sufficient support so that everyone allowed by the law to vote can actually do so. This is why we issued a recommendation summarising the current legislation concerning the exercise of the right to vote by people with limited legal capacity and, at the same time, responding to the most frequent questions related to this issue.

We have long been trying to increase the accessibility of elections, both in terms of removing material and technical barriers, as well as barriers in the form of limited legal capacity affecting the right to vote.



Defender's recommendation: File No.  
28/2019/OZP

## PRÁVA RODIČŮ S PSYCHOSOCIÁLNÍM POSTIŽENÍM

### 9. Monitoring of Rights of People with Disabilities

#### 1. Rozhodování o rodičovství



- Každý člověk má právo se svobodně a zodpovědně rozhodnout o tom, kdy a s kým chce založit rodinu, jakž i o počtu svých dětí a jejich věkovém odstupu.
- Opatrovník, poskytovatel sociální služby ani jiná osoba nemohou do tohoto práva zasahovat (např. nutit ženu k potratu nebo nutit ženu či muže ke sterilizaci).

#### 2. Podpora před narozením dítěte



- Pokud si budoucí rodiče nejsou jisti, zda budou výchovu a péči o dítě zvládat, mohou se ještě před narozením dítěte sami nebo s pomocí opatrovníka obrátit na sociální pracovníky obecního úřadu.
- Podporu jim mohou také zajistit sociální služby nebo lékaři.
- Při komunikaci s úřady nebo službami může rodič využít doprovod své blízké osoby či tlumočen.

CELE DOPORUČENÍ NA: [bit.ly/pravarodicu](http://bit.ly/pravarodicu)



1

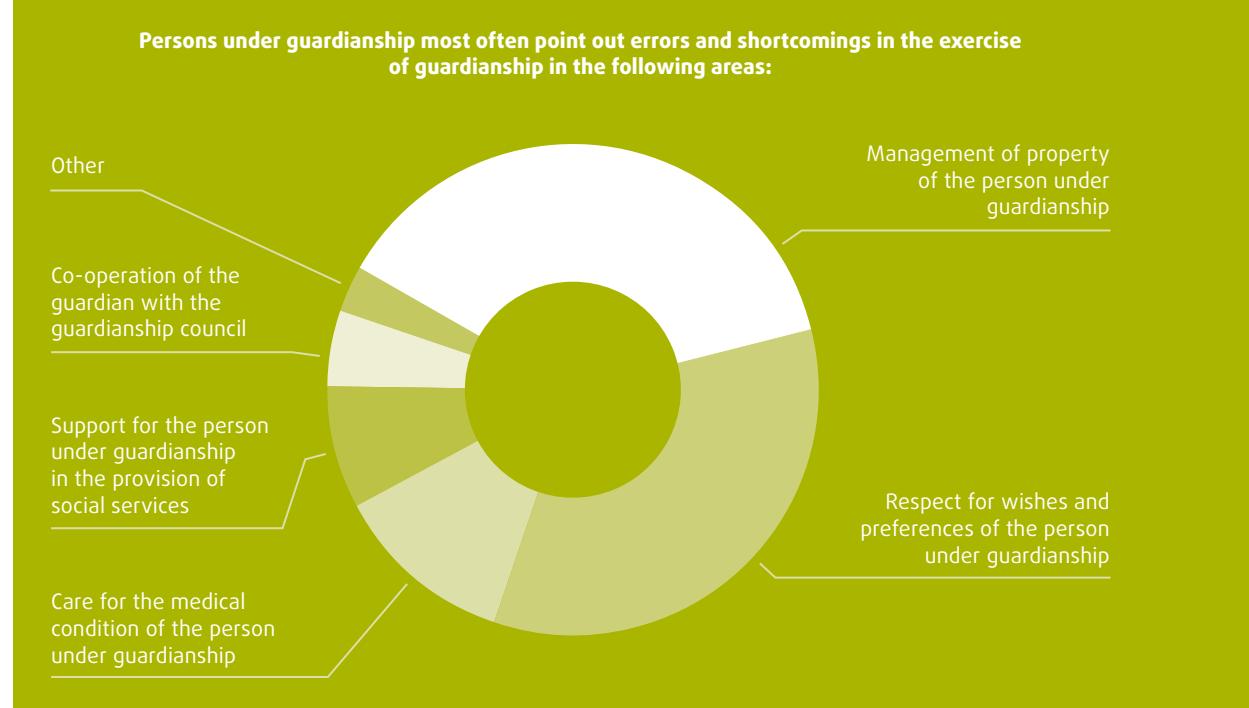
#### 3. Právo pečovat o své děti



- Rodičům náleží právo pečovat a vychovávat děti, jakž i rodičovská odpovědnost automaticky po narození dítěte.
- Zdravotní postižení, diagnóza ani omezení svéprávnosti bez dalšího neznamená, že rodič nemůže o své děti pečovat.
- Omezit rodičovskou odpovědnost může pouze soud, a to buď výslovně v rozsudku o omezení svéprávnosti rodiče, nebo v rozsudku o omezení nebo zbyavení rodičovské odpovědnosti.

CELE DOPORUČENÍ NA: [bit.ly/pravarodicu](http://bit.ly/pravarodicu)

2



# We are here to help

In addition to systemic problems encountered by people with disabilities, we also deal in individual cases with the exercise of public guardianship performed by municipalities.

## **GUARDIANS MUST SUFFICIENTLY INFORM THE PERSONS UNDER GUARDIANSHIP ABOUT THE STEPS THEY MAKE**

We inquired into a complaint filed by a transgender person who was dissatisfied that her guardian (municipality) failed to support her in an attempt to commence hormonal treatment. The application for approval of the treatment was filed with the guardianship court by the complainant herself, although she had limited legal capacity.

We determined during our inquiry that the authority had taken action. The employee appointed to exercise the guardianship herself contacted the complainant's sexologist and repeatedly asked the court about the state of the proceedings. We found a shortcoming in the fact that the appointed employee had failed

to sufficiently inform the complainant of her steps, although she had communicated with her regularly via e-mail and in person at the office.

Defender's report: File No. 5604/2019/VOP

## **GUARDIANS MAY NOT DELEGATE THEIR DUTIES TO A SOCIAL SERVICE PROVIDER**

Based on our visit to a home for people with disabilities, we initiated an inquiry on our own initiative in a municipality which served as a guardian for 41 clients of the facility. It was revealed during the inquiry that the guardian had been neglecting his duties towards these clients. It did not keep sufficient guardianship documentation and had delegated most of its duties to the social services facility. The guardian even authorised the facility's director to accept the clients' pensions and to manage their property, although this is contrary to the law.

After hearing our criticism, the guardian decided to hire a new full-time employee responsible for the exercise of guardianship for these clients, and cancelled the authorisation granted to the director of the facility.

Since a similar situation also occurred in other facilities, we made a press release advising guardians that they were not allowed to delegate their duties to other entities, especially social services providers.

Press release of 15 September 2020

among people under guardianship and social services supporting them.

## 9. Monitoring of Rights of People with Disabilities

### MYTHS AND FACTS ABOUT GUARDIANSHIP

We summarised the basic myths and facts about guardianship and also organised a small information campaign on social networks aimed to raise awareness not only of the guardians themselves, but also

<b>MYTH</b>	The guardian decides what is best for the person under guardianship.	<b>MYTH</b>	A private guardian will provide for the needs of an individual better than a public one.
<b>FACT</b>	Guardians do not make decisions for individuals under guardianship. The guardians' task is to help them fulfil their wishes and protect their rights. The guardians must also always explain the nature of the acts being taken on the individual's behalf, and their consequences.	<b>FACT</b>	This is not true under all circumstances. If a close person acts as the guardian, he/she will probably know better the person under guardianship and his/her wishes. On the other hand, a public guardian (i.e. an employee of a municipality) is specially trained in the performance of guardianship and has information, e.g., on the social services and housing available.
<b>MYTH</b>	The guardian is required to care personally for the individual under guardianship.	<b>MYTH</b>	If the person under guardianship causes damage, it will be paid by the guardian.
<b>FACT</b>	Even though a guardian may sometimes be also the caregiver, these two roles cannot be confused. Guardians provide representation in juridical acts and should also ensure that the individuals receive proper care. This in no case means that a guardian would have to cook, clean or administer medicines.	<b>FACT</b>	Guardians are liable for damage only if they neglect proper supervision. In other cases, any damage will be paid either by the individuals themselves (if they acted knowingly) or no one will be liable.
<b>MYTH</b>	The guardian has to find housing for the person under guardianship.	<b>MYTH</b>	The guardian may force the person under guardianship to undergo treatment.
<b>FACT</b>	Guardians should always pay interest to how the given individual lives and whether or not their needs are taken care of. They can also help seek housing or residential social services. However, if no housing is available to the person under guardianship or if he/she rejects the options offered, the guardian cannot be held liable for this fact.	<b>FACT</b>	Guardians may represent the individuals under their guardianship also in decisions regarding healthcare services; in that case, the physician must also provide all information necessary for the decision to the guardian. However, if the person under guardianship disagrees with certain treatment, neither the guardian nor the healthcare services provider can replace his/her consent. By way of exception, this does not apply in situations where an individual may be hospitalised or treated without his/her consent.
<b>MYTH</b>	The guardian may prohibit the person under guardianship to smoke.	<b>MYTH</b>	A hospital or social services facility needs consent of the guardian to allow their client to leave the premises.
<b>FACT</b>	Guardians may not interfere with areas that do not constitute juridical acts. They do not decide what the individuals under their guardianship should wear, whom they should meet with or whether or not they should smoke. Guardians may interfere with the rights and freedoms of the individuals under their guardianship only in justified cases, i.e. if there is an imminent danger of a harm to their health or life or if there is a danger that they will not have sufficient resources to cover their basic needs.	<b>FACT</b>	A person with limited legal capacity has the same right to personal freedom as anyone else. The provider of health or social care may restrict this freedom only where necessary, if there is a danger of harm to life or health. The provider does not need the guardian's consent to this. Moreover, court approval is required for long-term restriction of personal freedom, such as hospitalisation or placement in a residential social services facility without the given person's consent.

## We communicate

### ADVISORY BODY

After the new Defender had been elected, we also had to choose a new advisory body. Indeed, the term of office of the advisory body is linked to that of the Defender. We received a total of 41 nominations.

## **9. Monitoring of Rights of People with Disabilities**

The current advisory body has 19 members. It comprises persons with disabilities and also persons defending the rights of people with disabilities. Children with disabilities are also newly represented in the advisory body. The advisory body will participate, among other things, in the preparation of an alternative report on the fulfilment of the obligations of the Czech Republic in the area of protection of the rights of people with disabilities. In addition to regular meetings of all its members, which will take place quarterly, the advisory body will also act in smaller working groups.

### **Advisory body**

[www.ochrance.cz/pusobnost/monitorovani-prav-osob-se-zdravotnim-postizenim/](http://www.ochrance.cz/pusobnost/monitorovani-prav-osob-se-zdravotnim-postizenim/)



## **WORKING GROUP ON THE RIGHTS OF PEOPLE WITH PSYCHOSOCIAL DISABILITIES**

Because of the unfavourable epidemiological situation, the working group on the rights of people with psychosocial disabilities only convened twice in 2020. However, it focused intensively on the main topics of its activities, i.e. especially questions related to hospitalisation in psychiatric hospitals and the need for a reform of psychiatric care.

[www.ochrance.cz/monitorovani-prav-lidi-se-zdravotnim-postizenim/aktuality-z-monitorovani/aktuality-z-monitorovani-2020/setkani-lidi-s-psychosocialnim-postizenim](http://www.ochrance.cz/monitorovani-prav-lidi-se-zdravotnim-postizenim/aktuality-z-monitorovani/aktuality-z-monitorovani-2020/setkani-lidi-s-psychosocialnim-postizenim)

[www.ochrance.cz/monitorovani-prav-lidi-se-zdravotnim-postizenim/aktuality-z-monitorovani/aktuality-z-monitorovani-2020/ctvrte-setkani-k-problematice-lidi-s-psychosocialnim-postizenim](http://www.ochrance.cz/monitorovani-prav-lidi-se-zdravotnim-postizenim/aktuality-z-monitorovani/aktuality-z-monitorovani-2020/ctvrte-setkani-k-problematice-lidi-s-psychosocialnim-postizenim)



## **CO-OPERATION WITH FOREIGN COLLEAGUES**

We co-operate with our colleagues across Europe through the European Network of National Human Rights Institutions (ENNRI). We gathered and analysed the experience of seventeen European countries with regard to visits to facilities and their advisory bodies. We are now trying to incorporate useful findings into our practice.

On our part, we shared our experience with the Bulgarian monitoring body, which is just launching its operations. We also shared experience with our colleagues from Europe and other countries regarding the Covid-19 pandemic and its impact on the monitoring of rights of people with disabilities, and actively participated in an online conference on the same topic.

We established close co-operation with the Fundamental Rights Agency (FRA) in Vienna in developing indicators used in systematic monitoring of compliance with the Convention. Our co-operation is based on an exchange of information. An online seminar was also organised, with the participation of colleagues from other departments. We took part in creation of a publication of ENNRI and Mental Health Europe describing good practice in implementation of support with decision-making pursuant to Article 12 of the Convention on the Rights of Persons with Disabilities across the European Union. The entire publication is available on the ENNRI website.

## **BULLETIN**

In our bulletin, issued twice a year, we share news on the rights of people with disabilities. We inform about our activities and also on the latest developments at the Office and news from abroad, as well as of the activities of co-operating organisations. The spring and autumn issues of the bulletin in 2020 can be found here:



[www.ochrance.cz/vystupy/bulletin/](http://www.ochrance.cz/vystupy/bulletin/)

## **INFORMATION MATERIALS**

We strive to increase awareness among the general public about the topics we deal with. We issued two information leaflets to this end.

The leaflet titled "**Guardianship**" summarises the basic duties of a guardian and the related rights of persons under guardianship. The leaflet explicitly summarises which areas of life a guardian may not interfere with.

We also prepared a leaflet mapping the **process of preparing an alternative report to the UN Committee**. Indeed, anyone can comment on the regular Government's response to the report on the rights of people with disabilities in the Czech Republic. This material summarises how specifically one should proceed in this regard and how the UN Committee can be addressed.

## CONFERENCES, ROUNDTABLES AND TRAINING

In co-operation with the Department of Equal Treatment of the Office of the Public Defender of Rights, we organised an expert seminar for labour inspectorate bodies on the subject of the **Convention on the Rights of Persons with Disabilities in activities of labour inspectorates**. The aim of the seminar was for the labour inspectorates to become acquainted with the importance of the Convention; to work with the social model of disability in their practice; to use the Convention as a guideline in dealing with specific cases; to apply the conclusions of the Court of Justice of the European Union on the prohibition of discrimination; and to adopt the basic principles of communication with and about people with disabilities.

We participated in the "**Human Rights Live**" event, organised by the Pro Bono Alliance. In an interactive lecture, we described the Convention on the Rights of Persons with Disabilities and the methods of its monitoring to students of the Faculty of Law of Masaryk University.

We organised a webinar for representatives of NGOs on the right of people with disabilities to equal treatment in Czech courts' decision-making (2015-2019).

We arranged an online meeting of experts on the **issue of transformation of social services**. We jointly dealt with obstacles to transformation in the Czech Republic, possibilities for speeding up the processes and the quality of the social services provided at present.

We organised an on-line **workshop for law students on employment of people with disabilities**, where we presented our findings in this area and discussed with the students the problems faced by disabled employees.

We also presented a paper at an **international seminar for students of the Public Administration field at Osnabrück University**.

The seminar focused on the rights of people with disabilities in individual areas of life. We shared Czech experience with our foreign colleagues.

We took part in a **symposium of the Faculty of Law of Charles University on the topic of genocide** with a speech focusing on the topic of neglecting people with disabilities in the Genocide Convention.

On the occasion of the International Day of People with Disabilities, we held an on-line discussion on the topic called **People with Disabilities and the European Convention on Human Rights (1950-2020)**, with the participation not only of people with disabilities, but also of judges, representatives of the Office of the Government Commissioner [for Human Rights], lawyers and other representatives of the professional public.

## AWARENESS RAISING

We continued raising awareness about the lives of people with disabilities on social media in connection with several internationally recognised days: World Multiple Sclerosis Day, International Albinism Awareness Day, International Children's Day, and International Day of Families.

On the occasion of the International Day of Sign Languages, we recorded a short wish in the sign language:

[www.facebook.com/verejny.ochrance.prav/posts/3530389667008684](https://www.facebook.com/verejny.ochrance.prav/posts/3530389667008684)

We procured a translation of a video by ILO Global Business and Disability Network showing the damage caused by prejudice to individuals and society.

We commemorated the European Independent Living Day on 5 May. We used this opportunity to enable people to watch the film "Defiant Lives" online over a period of 24 hours. The documentary follows the struggle of people with disabilities for their rights and independence in the USA, UK and Australia, featuring stories of people with disabilities who have spent time in institutions and later chose to live in a normal environment.

By a series of posts on social networks, we commemorated the 70th anniversary of the ratification of the European Convention on Human Rights

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## 9. Monitoring of Rights of People with Disabilities



# 10

# Office of the Public Defender of Rights



# Budget and its Utilisation in 2020

## APPROVED BUDGET FOR 2020

152,615 THOUSAND CZECH CROWNS

The approved budget included expenses related to financing a project under the Operational Programme "Employment" titled "Children's Group Motejci II" (CZK 240,000).

In 2020, we also claimed non-utilised funds from the previous years in the amount of CZK 24,998 thousand. These expenses were used primarily to finance projects co-financed from the EU/FM budget:

- CZK 13,898 thousand for the project "Electronisation of the Office of the Public Defender of Rights", co-financed from the Integrated Regional Operational Programme;
- CZK 8,036 thousand for the project "Reinforcement of activities of the Public Defender of Rights in human rights protection", co-financed from the 2014-2021 Norway grants;
- CZK 720 thousand for the project "Children's Group Motejci III", co-financed from the Operational Programme "Employment".

Funds from the State budget were used to ensure standard activities of the Office in dealing with complaints and performance of other tasks that the Defender performs based on the law (especially systematic supervision of facilities where persons deprived of liberty are or may be present; assistance to victims of discrimination and citizens of the European Union and their family members living in the Czech Republic; monitoring of the rights of people with disabilities; monitoring of expulsions of foreign nationals). We also used these funds to co-finance projects from the EU/FM budget.

## UTILISED BUDGET FOR 2020

170,912 THOUSAND CZECH CROWNS

amounting to 111.99% of the approved budget. The budget overrun was covered by using claims from unutilised expenses. Claims from unutilised expenses were used to finance projects co-financed from the EU/FM budget, other personnel expenses (engagement of external experts) and the severance pay for the former Public Defender of Rights in connection with the end of her term in office.

Detailed economic results of the Office are published at [www.ochrance.cz/provoz/rozpoct-a-hospodareni](http://www.ochrance.cz/provoz/rozpoct-a-hospodareni).

# Staff in 2020

The binding limit on the number of employees of the Office in 2020 was 154 staff members. In addition, 9.25 employees were assigned to the implementation of the project "Reinforcement of activities of the Public Defender of Rights in human rights protection" (permitted excess of the staff limit – in 2020, the project was financed by using claims from unutilised expenses).

## 162.41 EMPLOYEES

is the average recalculated number of employees recorded in 2020 (of which 9.09 from a project co-financed from financial mechanisms). The number of employees was 0.68 under the limit.

A total of 121 employees were directly dealing with complaints and performing other tasks within the Defender's mandate (of which, just like in 2019, 99.5 were working in the Legal Section, 17 in the Administrative and Filing Services Department, and 4 in the Secretariat of the Defender and his Deputy). We continued co-operating with experts who are not our regular employees, but can nevertheless provide valuable contributions to a comprehensive assessment of certain cases. Among others, we co-operated with psychiatrists, general and psychiatric nurses, psychologists, social services experts, special pedagogues, experts in youth drug abuse, experts in access to information for people with various kinds of disabilities, etc. especially in the performance of systematic visits to facilities where persons deprived of liberty are present, as well as in tasks in the area of equal treatment and in monitoring of the rights of people with disabilities.





# Annual Report on the Provision of Information pursuant to Act No. 106/1999 Coll.

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10. Office of the Public  
Defender of Rights

The Office of the Public Defender of Rights as an obliged entity pursuant to Act No. 106/1999 Coll., on free access to information, as amended, received and processed a total of 68 requests for provision of information pursuant to this Act in 2020. The requests were received through the post, e-mail or via the data box.

In 55 cases, the information was provided; the requests mostly comprised queries about generalised results of the Defender's inquiries and opinions in the various areas of responsibility (the police and prisons; civil service; planning, construction and occupancy permit proceedings; discrimination; actions in public interest; environmental protection; competence of the Ministry of Justice; governmental administration of the judiciary; competence of the Ministry of Health; activities of public health protection bodies), requests for documents from the complainants' files, requests for provision of the Defender's Collection of Opinions on "Prisons", and information on the functioning, organisation and budget of the Office of the Public Defender of Rights or queries related to the Public Defender's competence.

No complaints were lodged pursuant to Section 16a of the Free Access to Information Act. In 16 cases, a decision was made to reject a request for information (or a part thereof); in 1 case, an appeal was lodged against the rejecting decision.

Total number of requests for provision of information		68
Section 18 (1)(a)	Number of decisions rejecting a request (or its part)	16
Section 18 (1)(b)	Number of appeals lodged against a decision	1
Section 18 (1)(c)	Copy of important parts of each court judgment	0
Section 18 (1)(d)	List of exclusive licences granted	0
Section 18 (1)(e)	Number of complaints lodged under Section 16a of the Act	0
Section 18 (1)(f)	Other information concerning the application of law	0

# Media and Public Relations



## TOPICS RECEIVING SIGNIFICANT MEDIA ATTENTION:

- › Election of a new Public Defender of Rights
- › A handbook, not just for journalists, how to write and talk about people with disabilities
- › If the payment of rent is postponed, people may lose their housing allowance
- › Findings from visits to facilities where people are restricted in their freedom, with emphasis on handling extraordinary Government measures
- › Refusal to provide loans to senior citizens because of their age may constitute discrimination
- › Parents are unaware of the option to draw benefits for children's school aids; the approach of regional authorities differs
- › Excessively strict conditions for obtaining retirement pension will increase the number of senior citizens not eligible for a pension
- › People in social services facilities are again isolated from the surroundings; we have to take care not only of their physical health, but also their mental wellbeing

## THE MEDIA WERE ALSO INTERESTED IN THE DEFENDER'S ACTIVITIES IN OTHER CONTEXTS:

- › The possibility to establish a Children's Ombudsman institution
- › Compensation for unlawfully sterilised women
- › Presence of fathers at childbirth at times when extraordinary Government measures are in force

## MOST POPULAR TOPICS ON SOCIAL NETWORKS

- › End of the mandate of the former Defender, Anna Šabatová, and election of Stanislav Křeček as the new Ombudsman
- › EU citizens with temporary residence in the Czech Republic can enter the Czech Republic until 5 April 2020

- › Children with disabilities have the right to go to school (at a time when anti-epidemic measures are in force)
- › Recent changes in income taxes
- › The Defender determines whether game enclosures are accessible to the public and how the visitors can move around such enclosures.
- › Do you work in the media? Are you shooting or writing a report on a disabled person? Or do you encounter people with disabilities? We have prepared a handbook for dealing with people with disabilities.

## SERIES RELEASED ON SOCIAL MEDIA

- › Safe holidays with the Ombudsman
- › EU citizens' rights
- › Myths and facts about guardianship
- › International Human Rights Day and 70 years from the adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms

We issued: 181 press releases and news

We organised: 4 press conferences

We started shooting a podcast titled "**Have a coffee with the Ombudsman**" – the first 4 episodes were broadcast at the end of 2020

**167 leaflets** in Czech and other 9 languages with instructions and solutions for frequent situations in life

## YOU CAN FIND US:

Website: [www.ochrance.cz](http://www.ochrance.cz)

Special website: [www.deti.ochrance.cz](http://www.deti.ochrance.cz)

and [www.domek.ochrance.cz](http://www.domek.ochrance.cz)

Facebook: [verejny.ochrance.prav](https://www.facebook.com/verejny.ochrance.prav)

Twitter: [@ochranceprav](https://twitter.com/ochranceprav)

Instagram: [verejny.ochrance.prav](https://www.instagram.com/verejny.ochrance.prav)

Youtube: [Ombudsman](https://www.youtube.com/user/Ombudsman)

On podcast platforms, e.g. Spotify and others.



# International Relations

In 2020, our international co-operation focused primarily on strengthening existing multilateral and bilateral international contacts and partnerships. We actively co-operated especially within the European Network of Ombudsmen (ENO), the European Network of National Human Rights Institutions (ENNHR) and the International Ombudsman Institute (IOI). We also continued our co-operation with the European Union Agency for Fundamental Rights (FRA). Within competences conferred on the Defender by the law, we continued to provide assistance to international organisations (or their bodies) responsible for monitoring of human rights obligations of their member states (e.g. the United Nations).

All communication with our international partners took place online in 2020. This included, for example, participation in online conferences, general meetings of organisations of which we are a member, working groups, education events, on-line consultations and meetings with foreign partners. Although it seemed initially that international co-operation would be subdued throughout 2020 because of the pandemic and the ensuing impossibility of travelling and conducting personal meetings, we gradually adapted to the conditions over the year and the vast majority of the planned international events and meetings took place on-line. As a result, we were able to maintain communication with many foreign partners and actively co-operate on challenges and topics brought by 2020.

## **1) MULTILATERAL INTERNATIONAL CO-OPERATION**

As part of multilateral international co-operation, we actively co-operated primarily with the European Ombudsman, FRA, IOI, ENNHR and United Nations (Office of the United Nations High Commissioner for Human Rights and the Committee against Torture).

The institution of European Ombudsman celebrated 25 years of its existence last year. An online conference was organised on this occasion in which we took part. The conference focused primarily on the past activities of the European Ombudsman, the current challenges and the strategic outlook for the future.

We also co-operated with the European Ombudsman institution in strategic initiatives, which the European Ombudsman decided to pursue in co-operation with her European colleagues. An online meeting of the staff of the two offices also took place at the end of the year, focusing primarily on the internal procedures in handling complaints. Our co-operation with the FRA concentrated especially on practical application of the Charter of Fundamental Rights of the European Union. This was also the topic of an online conference we took part in.

Together with our colleagues from the IOI, we especially promoted a stronger position of ombudsman institutions in the United Nations. We are members of two working groups in the ENNHRI network: a group on the rights of people with disabilities and the legal working group. Along with this co-operation, we regularly communicate about diverse issues relating to the protection of human rights and the ENNHRI strategy; by means of consultations and questionnaires, we also participate in the preparation of thematic reports on the protection of human rights and the rule of law. Last but not least, we participated in the ENNHRI Annual Conference and General Meeting, both organised online in late 2020.

During the first half of 2020, we shared in the United Nations our findings related to the protection of rights of persons during the pandemic. Further, we prepared a list of comments and findings from our activities for the Committee against Torture with regard to the fulfilment of the Czech Republic's obligations following for the country from the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## **2) BILATERAL INTERNATIONAL CO-OPERATION**

As part of bilateral foreign co-operation, we shared our experience and good practice, e.g. with our colleagues from Poland, Slovakia, Hungary, Austria, Lithuania, Latvia, the Netherlands, the United Kingdom, Norway, Croatia, Slovenia, Greece and Serbia. The co-operation focused, for instance, on the rights of children, internal working methods and the use of external specialists in ombudsman activities, procedural issues related to handling complaints, functioning of the UN committees, and sharing of experience and good practice with regard to security measures adopted in the time of the pandemic.

## **ANNUAL REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS IN 2020**

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### **Photo**

Mgr. Kateřina Pavláčková

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