



**ombudsman**  
Public Defender of Rights

# ANNUAL REPORT 2017





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Public Defender of Rights

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2017**

## Explanatory notes



link to a webpage



reference to a printed medium

generally about the Public Defender of Rights

government

supervision over restrictions of personal freedom

equal treatment and discrimination

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# Public Defender of Rights

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# FOREWORD

The Annual Report you are opening now marks the conclusion of the fourth year of my mandate as the Public Defender of Rights. I hope that it will serve its readers not just as a document summarising our work, but as an inspiration to think deeper about the standards of public administration and the state of society in the Czech Republic.

The activities of the Public Defender of Rights change over time and each year; we bring up new topics and deal with different complaints. This is determined by the very nature of our institution – the Public Defender of Rights always responds to problems that affect society at the given time and which people complain about. However, the fundamentals remain the same. The Defender's opinions and recommendations are always based on the results of inquiries, revealing how public administration works and how laws and regulations affect people's lives.

This report, too, comprises mostly feedback which I believe can be helpful to the Chamber of Deputies and the Government in their decision-making to contribute to the citizens' content lives in this country. This is true especially of the specific recommendations to the Chamber of Deputies regarding urgent matters that cannot be resolved otherwise than by amending the legislation.

The topics are changing, but the high number of complaints I receive from the citizens remains. I am glad to see a slightly increasing share of complaints that fall within my competence and I can thus inquire into them. Nevertheless, over thirty percent of complaints I receive concern matters that lie outside my statutory mandate.

In 2017 we managed to remedy a number of errors identified in specific cases and also to resolve certain systemic problems brought to my attention by the public. I am pleased that the number of cases where I was unable to ensure a remedy was not high in 2017. Perhaps, this is also a result of the awareness raising and educational activities we have been pursuing in recent years; we have organised a number of educational events to lead the authorities towards good practice.

I hope you find the following text interesting.

Anna Šabatová, the Public Defender of Rights  
13 February 2018



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

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## RECOMMENDATIONS TO THE CHAMBER OF DEPUTIES, RELATIONS WITH CONSTITUTIONAL BODIES AND SPECIAL POWERS



JUDr. Stanislav Křeček  
Deputy of the Public Defender of Rights

# »»»»» Legislative recommendations



## Defender's recommendations for 2017

### **1/ Exemption from real estate acquisition tax should also apply to residential units in private homes**

A methodological guideline of the General Financial Directorate of 2017 unified the practice of tax administrators in the collection of real estate acquisition tax. On its basis, all residential units in private homes were indiscriminately excluded from the possibility to claim exemption from the real estate acquisition tax. The tax administration's narrow linguistic interpretation has subsequently manifested in a higher number of complaints received by the Defender in this area. In her assessment, the Defender reflected on the purpose of the legislation and concluded that if private homes as a whole were exempt from real estate acquisition tax and the same was true of units in residential buildings, then excluding residential units in private homes from the exemption constituted unjustified different treatment of taxpayers. The Defender recommended that the General Tax Directorate change its methodological guideline. The General Directorate did not accept the advice, and this is why the Defender supported a deputies' draft

amendment submitted to the Chamber of Deputies in the previous electoral term (7th electoral term, document No. 1098/0), which was supposed to partially address the problem. Unfortunately, the Chamber of Deputies eventually did not discuss the draft. The Defender believes that the tax exemption already follows from the current legislation. Therefore, she recommends to amend the law to increase legal certainty of taxpayers and to further supplement the original deputies' draft with a transitory provision.

### **2/ Obligatory registration in the Special Registry**

The "Special Registry" (*zvláštní matrika*) maintained by the City Ward Authority of Brno-střed registers data on births, marriages, registered partnerships (since 1 July 2008) and deaths of citizens of the Czech Republic occurring abroad. The Special Registry has existed since 1 January 1950.

The duty to submit a document issued by the Special Registry was and is explicitly specified by Act No. 328/1999 Coll., on citizen's identity cards, and Act No. 329/1999 Coll., on travel documents, as amended, only in connection with the issuance of an identity card or a travel document. However,



The Public Defender of Rights hereby recommends that the Chamber of Deputies adopt a deputies' draft amendment to Statutory Measure of the Senate No. 340/2013 Coll., on real estate acquisition tax, as amended by Act No. 254/2016 Coll.

— to change its parts as follows:

- In Section 7 (1)(c) of the introductory part, replace the words "in a residential building which" by "in a residential structure if this unit".
- In Section 7 (1)(c), item 1, replace the words "of this building" by "of this structure".
- In Section 7 (2), replace the words "in residential building" by "a residential structure".
- and add a transitory provision with the following wording: "Statutory Measure of the Senate No. 340/2013 Coll., as amended by this amendment, shall apply to tax duties concerning real estate acquisition tax, as well as the related rights and duties, arising prior to the date of effect of this Act, unless the tax duty has been assessed by a final decision of the tax administrator."

an amendment to Act No. 301/2000 Coll., on the registries of births, deaths and marriages, names and surnames and on amendment to certain laws, as amended, which came into effect on 1 January 2014, introduced a general requirement to submit a document issued by the Special Registry in any dealings with the authorities. This requirement applies to Czech citizens and to foreigners who entered into a marriage or registered partnership with a Czech citizen abroad. This made the process of obtaining official documents more difficult and longer.

The Defender inquired into complaints filed by Czech citizens working abroad in the long term who had objected to the lengthy process of obtaining a Czech passport for their children born abroad, protracted process of applying for parental allowance in respect of children born abroad, and

delays in dealings with the Czech Social Security Administration.

The Defender is of the opinion that the relevant Czech legislation goes against the European trend of automatic recognition of personal status documents among EU Member States. This is documented e.g. by Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016, which greatly simplifies the formal requirements for presenting civil status documents issued by other EU Member States.



For this reason, the Public Defender of Rights recommends that the Chamber of Deputies invite the Government to submit a draft amendment to Act 301/2000 Coll., on the registries, as amended; Act No. 328/1999 Coll., on citizen's identity cards, as amended; and Act No. 329/1999 Coll., on travel documents, as amended, to remove the duty of Czech citizens and foreigners to submit documents issued by the Special Registry in dealings with the authorities.

### **3/ Sterilisation as a precondition for administrative gender reassignment in cases of transgender persons**

The Defender received a complaint against the standing requirement to undergo a surgery with sterilisation and gender reassignment surgery as a precondition for administrative gender reassignment (indicating personal details corresponding to the experienced sex). Act No. 89/2012 Coll., the Civil Code, as amended, and Act No. 373/2011 Coll., on specific healthcare services, as amended, define gender reassignment as a state of fact achieved by a gender reassignment surgery and the ensuing sterilisation of the person.

This legal requirement mainly results in practical problems in the lives of transgender people who cannot or do not want to undergo the surgery on account of serious personal reasons. As a result, they cannot achieve full legal and administrative gender reassignment. According to the current case law of the European Court of Human Rights, making administrative gender reassignment conditional

on a surgery or treatment with a high probability of resulting sterility is at variance with Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The legal status of transgender persons must be perceived as a personal status and treated with proper respect. Interference with the bodily integrity of these persons must be kept at a minimum. Legal recognition of gender identity of transgender persons cannot be made conditional on their giving up on their right to preservation of bodily integrity. Where a person has been unambiguously diagnosed with gender dysphoria (permanent dissonance between the biological and assigned gender) and if the person can demonstrably live as a person of the opposite gender, the Defender believes this to be a sufficient guarantee that the act of gender reassignment will not be abused in the absence of serious medical reasons.



The Public Defender of Rights recommends that the Chamber of Deputies invite the Government to submit a draft amendment to Act No. 89/2012 Coll., the Civil Code, as amended, and Act No. 373/2011 Coll., on specific healthcare services, as amended, to abolish the requirement of a surgery or treatment with a high probability of resulting sterility as a precondition for an administrative gender reassignment.

that these applications are addressed in administrative proceedings, which are governed by the Code of Administrative Procedure as the general procedural rule.

Taking into account the high number of reimbursement applications and the low number of physician reviewers, the Defender is of the opinion that the current legal state of affairs (i.e. full application of the Code of Administrative Procedure) is at variance with the insured persons' interest in expedient decision-making and access to the required healthcare services.

The Defender's findings indicate that insurance companies do not apply the Code of Administrative Procedure to reimbursement proceedings in the required scope. The procedural deviations which they have introduced and continue to apply are based merely on their own methodologies and, consequently, are at variance with the conclusions of the administrative courts.

The Defender believes that the aforementioned situation is highly undesirable. This problem has already been identified by the former Public Defender of Rights, JUDr. Pavel Varvařovský, who mentioned it e.g. in the 2013 Annual Report to the Chamber of Deputies. The current Defender raised similar objections in 2014 as part of the commentary procedure concerning Act No. 48/1997 Coll., on public health insurance and on amendment to certain related laws, as amended. Despite the fact that the Ministry of Health has promised to amend the procedure on several occasions in the past, this is yet to materialise.

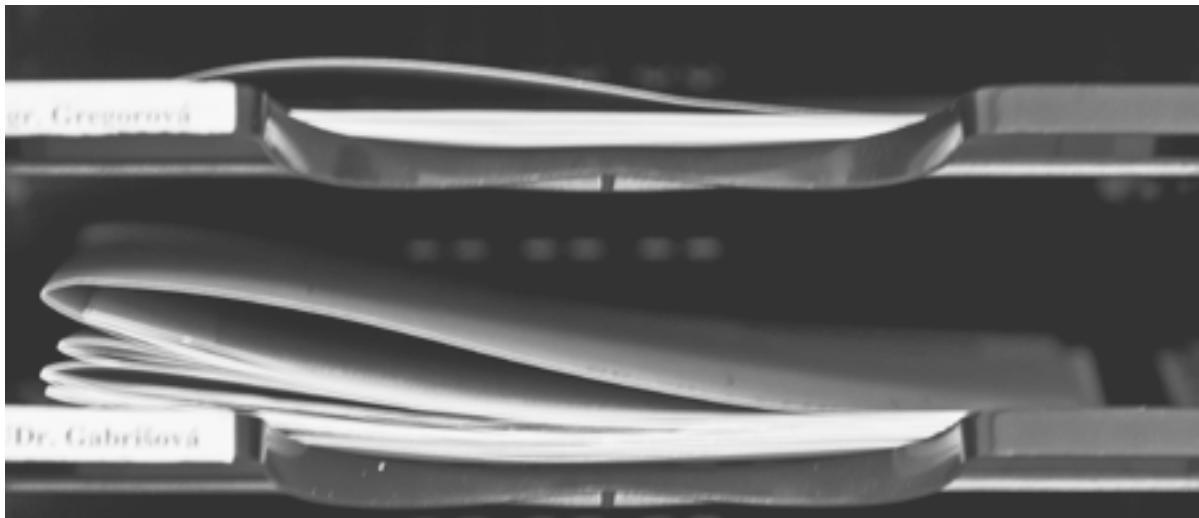


#### 4/ Proceedings on reimbursement of certain healthcare services from public health insurance

The reimbursement of certain healthcare services from public health insurance is conditional on a prior consent of the insurance company's physician reviewer. These services include e.g. spa therapeutic rehabilitation care, extraordinary reimbursement of healthcare otherwise not covered by the insurance company, and stay of a person accompanying an insured person over 6 years of age in an in-patient facility.

Neither the Public Health Insurance Act nor any other law or regulation in the area of health insurance specifies the insurance companies' procedure with regard to an insured person's application for reimbursement. Administrative courts have inferred

The Public Defender of Rights recommends that the Chamber of Deputies invite the Government to submit a draft amendment to Act No. 48/1997 Coll., on public health insurance and on amendment to certain related laws, as amended, to introduce a special administrative procedure to deal with insured persons' applications for reimbursement of certain healthcare services from public health insurance.



## 5/ Interference with personal dignity in course of provision social services to be reclassified as an infraction

Providers of social services help and assist individuals in adverse social situations. At the same time, however, most clients of social services facilities are vulnerable and adequate steps must be taken to protect them.

Inappropriate conduct infringing on personal privacy, safety and integrity or any kind of degrading treatment is often not so severe as to constitute a criminal offence. Nevertheless, it can constitute a serious interference with the person's dignity. This may occur, for example, in cases of a failure to address malnourishment of the clients, neglecting decubitus care, or ignoring a client's seriously meant disapproval with the provision of residential social service.

The State has a duty to punish such conduct appropriately for reasons of deterrence. The State's obligation to proactively adopt appropriate legislation to protect the fundamental rights of individuals (e.g. inviolability of the person, prohibition of inhuman or degrading treatment, and right to privacy) clearly follow from the Charter of Fundamental Rights and Freedoms and Convention for the Protection of Human Rights and Fundamental Freedoms, which fact has been confirmed by established case law of the Constitutional Court and the European Court of Human Rights.

Consequently, the above cases of violation of fundamental rights of individuals must be punishable under administrative law, where such a sanction will represent an adequate response to an interference, which may be of a non-recurring nature or which must urgently be ceased.



The Public Defender of Rights recommends that the Chamber of Deputies invite the Government to submit a draft amendment to Act No. 108/2006 Coll., on social services, as amended, to introduce a new body of infraction to punish unauthorised interference with privacy, safety and integrity of recipients of social services, including the possibility to impose on the perpetrator the punishment of suspension of such activity.

## Evaluation of the recommendations for 2016

### 1/ Supervision by the Public Prosecutor's Office in other detention facilities

The Defender recommends to incorporate the supervisory powers of the Public Prosecutor's Office in respect of the facilities for detention of foreigners into the Foreigners' Residence Act; in respect of reception centres, the powers should be enshrined in the Asylum Act, and in respect of psychiatric hospitals providing protective treatment, in the Specific Healthcare Services Act. Unfortunately, my recommendation has not been implemented yet.

Pursuant to the Public Prosecutor's Office Act, the Public Prosecutor's Office supervises, under the conditions and in the manner stipulated by law, compliance with legal regulations in places of remand, imprisonment, protective treatment, security detention, protective or institutional education or in other places of detention based on statutory

authorisation. However, the Public Prosecutor's Office may only do so where authorised by another law which specifies the subject and conditions of the supervision. Unlike in the case of prisons or children's homes, there is no such legal regulation for supervision in the aforementioned facilities. The Defender notes that this change would not confer any new powers to the Public Prosecutor's Office, but merely enable it to exercise its powers in the manner anticipated by the Public Prosecutor's Office Act. The absence of an independent supervisory authority with adequate powers means that the Czech Republic fails to create conditions for compliance with Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms.



The Public Defender of Rights recommends that the Chamber of Deputies invite the Government to submit a draft law to incorporate the supervisory powers of the Public Prosecutor's Office in respect of:

- facilities for detention of foreigners, into Act No. 326/1999 Coll., on residence of foreign nationals in the territory of the Czech Republic and on amendment to certain laws, as amended;
- reception centres, into Act No. 325/1999 Coll., on asylum, as amended;
- psychiatric hospitals providing protective treatment, into Act No. 373/2011 Coll., on specific healthcare services, as amended.

registered as healthcare services providers since providing healthcare is not conditional on a valid licence to provide healthcare granted by the registering authority; it is sufficient for a social services facility to simply notify the fact that some healthcare is provided.

The complaints mechanism stipulated by Sections 93 and 94 of the Healthcare Services Act makes a pointless distinction between registered healthcare services providers and entities providing healthcare services on notification basis (i.e. especially social services facilities). Furthermore, the Act stipulates certain duties of social services facilities whose violation is not classified by law as an administrative infraction. Consequently, social services facilities cannot be punished for such breaches of duty.

Although the Defender has called attention to the aforementioned problem before, she must unfortunately note that no corrective amendment to the law has been adopted yet.



The Public Defender of Rights recommends that the Chamber of Deputies invite the Government to submit a draft amendment to Act No. 372/2011 Coll., on healthcare services and the conditions for their provision, as amended, to stipulate that the rules for handling complaints against healthcare also apply to healthcare provided in social services facilities.

## 2/ Patient's right to file a complaint about healthcare provided in social services facilities

While social services facilities may offer expert healthcare services to their clients (e.g. people with dementia or permanently bedridden patients), these persons are not allowed to file complaints under the Healthcare Services Act if they are dissatisfied with the healthcare provided. Under the current legal regulation, only patients of registered healthcare services providers (typically hospitals) may file complaints with the provider against the quality of healthcare and have the provider's procedure reviewed by administrative authorities. In most cases, social services facilities are not

## 3/ Allowance v. increasing minimum wage

Since 2015, the Defender has received a number of complaints concerning the problematic calculation of the compensation for loss of earnings after the concerned person ends their period of unfitness to work or in case they are granted disability allowance ("renta") in connection with an accident at work or occupational disease to aggrieved employees registered with the Labour Office. Pursuant to the Labour Code, the calculation in respect of these employees is based on the legal presumption that the earnings were in the amount of the minimum wage.

Based on Government Regulation No. 567/2006 Coll., on minimum wage, on the lowest levels of guaranteed salary, on definition of an unfavourable working environment and on the amount of extra pay for work in an unfavourable working environment, as amended by Government Regulation No. 286/2017 Coll., the amount of minimum wage increased from CZK 11,000 to CZK 12,200 as of 1 January 2018 (previously, it increased from CZK 9,900 to CZK 11,000 as of 1 January 2017). For many people, this meant that their allowance was decreased again or they even lost it completely.

While the Defender welcomes the increase of the minimum wage, she is cognisant of the negative implications of the increase, as is the case of the allowance recipients registered with the Labour Office. In the Annual Report for 2016, she recommended that the Chamber of Deputies invite the Government to submit a draft amendment to the Labour Code which would modify the method applied to calculate the allowance.

In January 2018, a commentary procedure took place in respect of a draft amendment to Act No. 262/2006 Coll., the Labour Code, as amended, to further specify the problematic Section 271b (3) of the Labour Code (a part of the first sentence following the semicolon) and change the manner in which the allowance is calculated in the case of allowance recipients registered with the Labour Office.

The Defender believes that a partial change in the rules for the allowance calculation is not sufficient and notes that it is necessary to completely revise the entire system for compensating employees for accidents at work and occupational diseases. The Defender will pursue such a change in the future.



The Public Defender of Rights recommends that the Chamber of Deputies invite the Government to submit a draft amendment to Act No. 262/2006 Coll., the Labour Code, as amended, to revise the problematic Section 271b (3) of the Labour Code (a part of the first sentence following the semicolon) and change the manner in which the allowance is calculated.

#### **4/ Independent mechanism for complaints in social services to be introduced**

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 efficient 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 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Act No. 108/2006 Coll., on social services, as amended, provides for certain practices that are intended to help protect the rights of clients. However, they are not sufficient. It is not possible to lodge an appeal with an independent authority against the manner in which a complaint has been resolved by the service provider. The Social Services Inspectorate is not obliged to address each of the individual complaints filed by the clients or other persons. The regional authorities merely supervise compliance with the registration conditions laid down for the social service providers.

The protection of rights of social services clients needs to be ensured via an independent complaints mechanism to investigate complaints against the quality of social services. Looking at current options, it seems best to establish a complaint mechanism similar to the one that exists in healthcare, where complaints are handled by the regional authorities.

The Defender therefore already recommended to amend the legislation last year. Unfortunately, her recommendation has not been implemented yet.



The Public Defender of Rights recommends that the Chamber of Deputies invite the Government to submit a draft amendment to Act No. 108/2006 Coll., on social services, as amended, to introduce an efficient and independent complaint mechanism.

## Evaluation of the recommendations for 2015

### **1/ Shift of the burden of proof in discrimination disputes**

The Defender believes that the constitutional principle of equality before the law implies that all potential victims of discrimination should enjoy the same procedural safeguards in court proceedings. The current provisions concerning the shift of the burden of proof under Section 133a of the Code of Civil Procedure do not cover all cases in which the Anti-Discrimination Act (Act No. 198/2009 Coll., as amended) prohibits different treatment.

If healthcare is denied to a member of an ethnic minority, it is sufficient if the person concerned proves in court the existence of unfavourable treatment (consisting in the non-provision of healthcare) and asserts that the treatment was unfavourable due

to his or her ethnicity. The burden of proof is then shifted to the defendant who is required to prove that the conduct in question was not motivated by the plaintiff's ethnicity (as grounds of discrimination). However, in the same situation involving an elderly person, a person with a disability, or a member of a sexual minority, the burden of proof is not shifted and the plaintiff must prove the defendant's motivation.

The recommendation also takes into account the requirements related to the free movement of workers within the EU pursuant to 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.

The Defender already issued this recommendation in previous years, but it has yet to be accepted.





The Public Defender of Rights recommends that the Chamber of Deputies amend, by means of a Deputies' motion, Section 133a of Act No. 99/1963 Coll., the Code of Civil Procedure, as amended, to read as follows:

"Shall the plaintiff state such facts before the court that the direct or indirect discrimination by the Defendant may be deemed established

A) based on race, ethnic origin, nationality, sex, sexual orientation, religion, age, disability, religion, belief or conviction in the matters of

- 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 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/ award of social benefits;

8/ access to and provision of healthcare;

9/ access to and provision of education and professional training;

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 56b);

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 56b);

# »»»»» The Defender and the Parliament



## Chamber of Deputies

The Chamber of Deputies did not discuss the 2016 Annual Report on the Activities of the Public Defender of Rights (document No. 1083).

In the 3rd reading, the Government withdrew its bill (document No. 379) which would have amended the Public Defender of Rights Act so that the Defender would be able to seek abolition of a law by the Constitutional Court, initiate public litigation in the area of discrimination and monitor protection of the rights of people with disabilities.

From 1 January 2018, the Defender will systematically monitor **protection of the rights of people with disabilities** pursuant to the Convention on the Rights of Persons with Disabilities (document No. 1015). The Defender also received authorisation to systematically monitor and promote **the right of EU citizens and their family members to free movement**, including the rights of family members derived from free movement of EU workers and the prohibition of their discrimination on grounds of nationality (document No. 688).

The Defender worked closely with the Chamber of Deputies, especially through its individual Committees.

### Petition Committee

The Petition Committee discussed the Defender's 2016 Annual Report (and recommended the Chamber of Deputies to take due note of it), the reports for the 1st and 2nd quarters, the reports on individual cases where the Defender had not achieved remedy even after using all her statutory powers, as well as the 2018 budget of the Office of the Public Defender of Rights.

### Security Committee

The Defender informed the Committee (as the guarantor), as well as the sponsor (submitting party), of non-compliance of the proposed amendment to the Government's draft **amendment of the Foreigners' Residence Act** (document No. 990) with the constitutional order and EU law. Moreover, the proposed amendment had been prepared by the Ministry of the Interior, which had ignored the binding rules for preparing each legal regulation

(the Government's legislative rules). The most controversial part was, according to the Defender, the exclusion of court review in matters of residence of some foreign nationals, which interferes with the right to fair trial.

## The Senate

On 20 July 2017, the Senate discussed and took due note of the 2016 Annual Report on the activities of the Public Defender of Rights.

### **Committee on Regional Development, Public Administration and the Environment**

### **Committee on Legal and Constitutional Affairs**

### **Committee on Economy, Agriculture and Transport**

The Defender advised the aforementioned committees as well as the rapporteur of Senate document No. 108 of the pitfalls of the currently discussed amendment to the Construction Code. She informed the Senators of the objections she had already raised during the commentary procedure.

She also pointed out the adverse implications of:

- significant broadening of the range of constructions approved in the simplified regime;

- unclear definition of the range of persons whose approval must be documented by the investor;
- exclusion of civic associations from planning and construction permit proceedings, which could impact environmental interests; and
- reduced protection of cultural monuments and heritage protection areas.

### **Committee on Legal and Constitutional Affairs**

### **Committee on Foreign Affairs, Defence and Security**

The Defender advised the above committees (as well as other Senators) of non-compliance of certain provisions of the **amendment to the Foreigner's Residence Act** approved by the Chamber of Deputies (Senate document No. 111) with the Constitution and EU law. In addition to the objections already raised in the Chamber of Deputies, the Defender warned against the implications of the proposed amendment submitted by the Chamber's Security Committee, which cancels the proposed supervision by the Public Prosecutor's Office in facilities for detention of foreigners. The Defender backed her analysis by the opinion of the EU Directorate-General for Justice and Consumers. The Senate did not approve the bill, but the Chamber of Deputies overturned the Senate's veto.



# »»»»» The Defender and the Government



**The Public Defender of Rights advises the Government whenever a ministry fails to adopt adequate measures to remedy a certain failure or general maladministration. The Defender may also recommend that the Government propose the adoption, amendment or abolishment of a law, or adopt, amend or abolish a Government regulation or resolution. In 2017, the Defender approached the Government with one new material and continued negotiations on a previous matter. The Defender regards her participation in commentary procedures as a simplified form of legislative recommendations provided to the Government.**

## The Defender's notifications to the Government

### **Funding of removal of dangerous buildings**

Construction authorities do not enforce their decisions issued in the public interest (e.g. orders to maintain a structure which poses a risk of collapse, secure the structure, or remove the structure) because the municipalities lack funding for such follow-up action. The costs are to be ultimately paid by the owner of the structure, but these owners are often unknown or overindebted.

A working group composed of representatives of the Ministry for Regional Development, Ministry of the Interior, Ministry of Finance, Association of Regions and the Union of Towns and Municipalities has agreed that the State's financial participation is necessary. However, despite repeated assurances, the Ministry for Regional Development has not submitted the promised funding programme.

Based on the Defender's recommendation, the Government tasked the Minister for Regional Development to prepare a programme by 31 March

2017 containing rules for provision of funding from the State budget to cover the costs of enforcement of construction authorities' decisions made under the Construction Code in the public interest in cases where the obliged person fails to comply with the decision (Government Resolution No. 56 of 25 January 2017).

The Ministry for Regional Development delayed the solution by requesting further analyses and by promoting a form of financing that was not supported by the working group's conclusions. On 11 September 2017, the Government tasked the Minister to carry out, by 31 December 2017, an analysis of the actual situation concerning the aforementioned enforceable decisions, including the expected amount of funding required. The Minister should submit a proposed funding solution to the Government by 31 January 2018.

 File No. [6/2011/SZD](#) of 2 December 2016

#### Non-cooperation on the part of a social care facility visited by the Defender

The Defender notified the Government that Sanatorium Lotos, a social care facility, had still not fulfilled, not even after repeated requests, its duty to inform the Defender on the implementation of certain remedial measures which the Defender had recommended after its last (already third) systematic visit in the facility.

The facility was used by elderly people with 2nd and 3rd degree dementia. The Defender found insufficient nursing care, lack of expertise and adjustments for dementia care, reliance on sedatives instead of addressing problematic behaviour caused by dementia, inexpert handling of medication, unlawful restraining, lack of respect for the clients' privacy, and insufficient measures to prevent malnutrition in clients. The Defender concluded that the found shortcomings constituted degrading treatment within the meaning of the Charter of Fundamental Rights and Freedoms and the Convention for the Protection of Human Rights and Fundamental Freedoms. Given the gravity of the situation, she also informed the competent supervisory bodies of my findings.

 File No. [2/2017/SZD](#) of 20 March 2017

#### The Defender's comments provided to the Government

 **108** comments were provided

in respect of  **18** draft laws

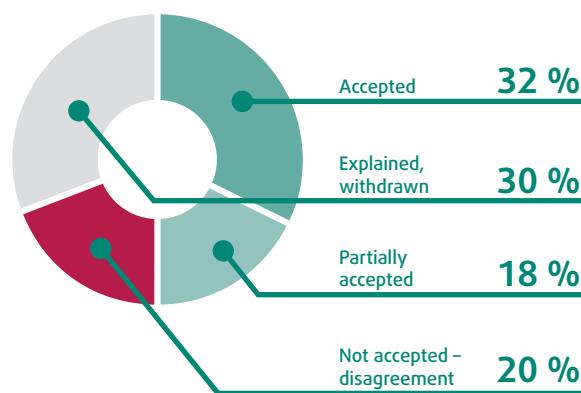
A half of the comments were at least partially accepted; disagreements persisted in about a fifth of the cases. The Defender was successful especially with those comments she considered especially important (almost a half of which were fully accepted). The number of comments made as well as the success rate decreased in comparison to the previous year.

In 2017, the Defender commented on 18 drafts (for comparison, she commented on 25 drafts in 2016; 34 drafts in 2015; and 30 drafts in 2014). 32% of comments were accepted completely, while another 18% were accepted at least in part.

Most comments (33 in total) concerned the draft Foreigners' Residence Act; 17 of them were fully accepted. The greatest number of non-accepted comments (7) were also raised in respect to this draft.

The overview only contains the most important comments concerning drafts that advanced through the inter-departmental commentary procedure.

#### Resolution of comments provided within commentary procedures in 2017



# »»»»» The Defender and the Constitutional Court



## Proceedings on abolishing laws

With effect from 1 January 2013, the Public Defender of Rights may join proceedings on abolishing laws or their individual provisions as an intervening party. In 2017, the Defender joined one of twenty-one such proceedings.

### **Exclusion of civil society from construction proceedings**

The Defender endorsed a motion of a group of Senators to abolish certain provisions of the Nature Conservation and Landscape Protection Act and of the Construction Code, which, effective from 1 January 2018, exclude civil society (including environmental groups) from proceedings conducted under the Construction Code.

The Defender is convinced that the efforts to exclude civic associations from construction proceedings is at variance with the Constitution as well as the Czech Republic's international commitments. I thus voiced my support for the proposers' arguments and I added a detailed legal analysis as well as the Defender's long experience with the matter. Contrary to common notions of "spiteful"

environmental organisations, it is usually the local citizens (joining in an association) who try to prevent the implementation of construction projects that could adversely affect not just their lives but also the environment in the given locality.

The Constitutional Court should decide whether excluding the association from such proceedings conforms to the Czech Constitution.

 File No. 28/2017/SZD

 File No. Pl. ÚS 22/17

## Proceedings on abolishing secondary legislation

The Public Defender of Rights may seek abolition of a secondary legal regulation or its individual provisions by the Constitutional Court.

### **Indiscriminate ban to sit in public spaces and on objects not intended for sitting**

In late 2015, the Defender sought abolition of parts of generally binding municipal ordinances

issued by the towns of Varnsdorf and Litvínov, which in the whole area of the respective towns prohibited sitting on curbs, walls and other structural elements not intended for sitting. She submitted the matter to the Constitutional Court only after unsuccessful negotiations with the towns' authorities and the Ministry of the Interior, which is competent to review municipal ordinances.

In July 2017, the Constitutional Court abolished the relevant provisions of the municipal ordinances. The Constitutional Court agreed that the prohibition of sitting anywhere than on benches while being outside cannot solve the problem of vandalism. Such a draconian measure would only lead to giving infractions to anyone who would, for example, sit down on a parapet or a railing in front of a school to eat their ice cream. People have a right to freely sit anywhere they want.

Generally speaking, municipalities should not be deprived of their authority to determine where people can sit in public areas. However, a town-wide indiscriminate prohibition to sit anywhere else than on benches cannot be compared to a justified prohibition of sitting on the pavement in specific places, such as in the town square, in front of churches, offices or other similar places, especially if these public areas are equipped with benches for this purpose. Municipalities can punish perpetrators vandalising property even without any ordinances. They also have tools for preventing this kind of unlawful behaviour. The Constitutional Court confirmed these conclusions.

 [File No. 22/2015/SZD](#)

 [File No. Pl. ÚS 34/15](#)

### Proceedings on constitutional complaints

The Constitutional Court can request assistance in seeking the necessary underlying materials.

#### **Death of a mental patient shortly after being tased by a police officer**

At the request of the Constitutional Court, the Defender joined proceedings on a constitutional complaint filed by a sister of a mental patient who died in a hospital shortly after a police officer used a Taser (an electroshock incapacitation weapon) on him and after two injections of sedatives were administered. The medical staff called in the police after the patient's behaviour rapidly worsened.

The Defender acquainted the Court with the results of her inquiry.

Generally speaking, the Defender considers using a Taser against a person lying on the floor and held tightly by two or more police officers to be disproportionate unless the person must be immediately pacified due to extraordinary circumstances of the case. In this case, the Defender admitted this might have been necessary given the very specific circumstances, i.e. the risk that the person would be electrocuted because of exposed electrical wires and water on the floor (sprayed by the patient himself from a water hydrant).

The Defender considered the case in its entirety. Unlike the police, she does not consider the Taser to be a non-lethal weapon. The Defender believes that it should not be classified as standard coercive means, because it is closer to actual weapons in its dangerousness. She also recommended steps to ensure correct use of the Taser, including information on the health risks associated with its use. The Defender generally urged caution before using force against mentally ill people. She made specific recommendations to the Police Presidium and the Ministry of Health on measures to correct the current practice.

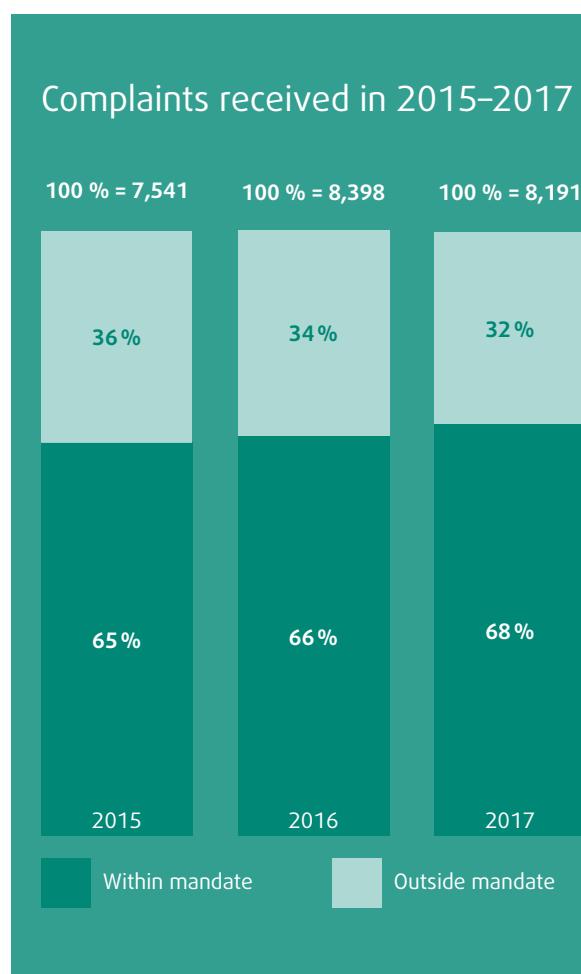
The Constitutional Court rejected the constitutional complaint against the decision to set aside the suspected negligent homicide regarding the use of the Taser by the intervening police officer and the related charges.

 [Defender's Report and Opinion:](#)  
[File No. 2618/2016/VOP and 12/2017/SZD](#)

 [File No. IV. ÚS 4150/16](#)



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



In 2017, we received 8,191 complaints, of which 68% fell within the Defender's mandate. This marked another increase in the percentage of complaints concerning problems which the Defender may inquire into and assist the citizens with.

971

people in total came to the Office of the Public Defender of Rights in Brno in person to seek advice and ask for information about the Defender's competencies; 415 filed their complaints orally on the record

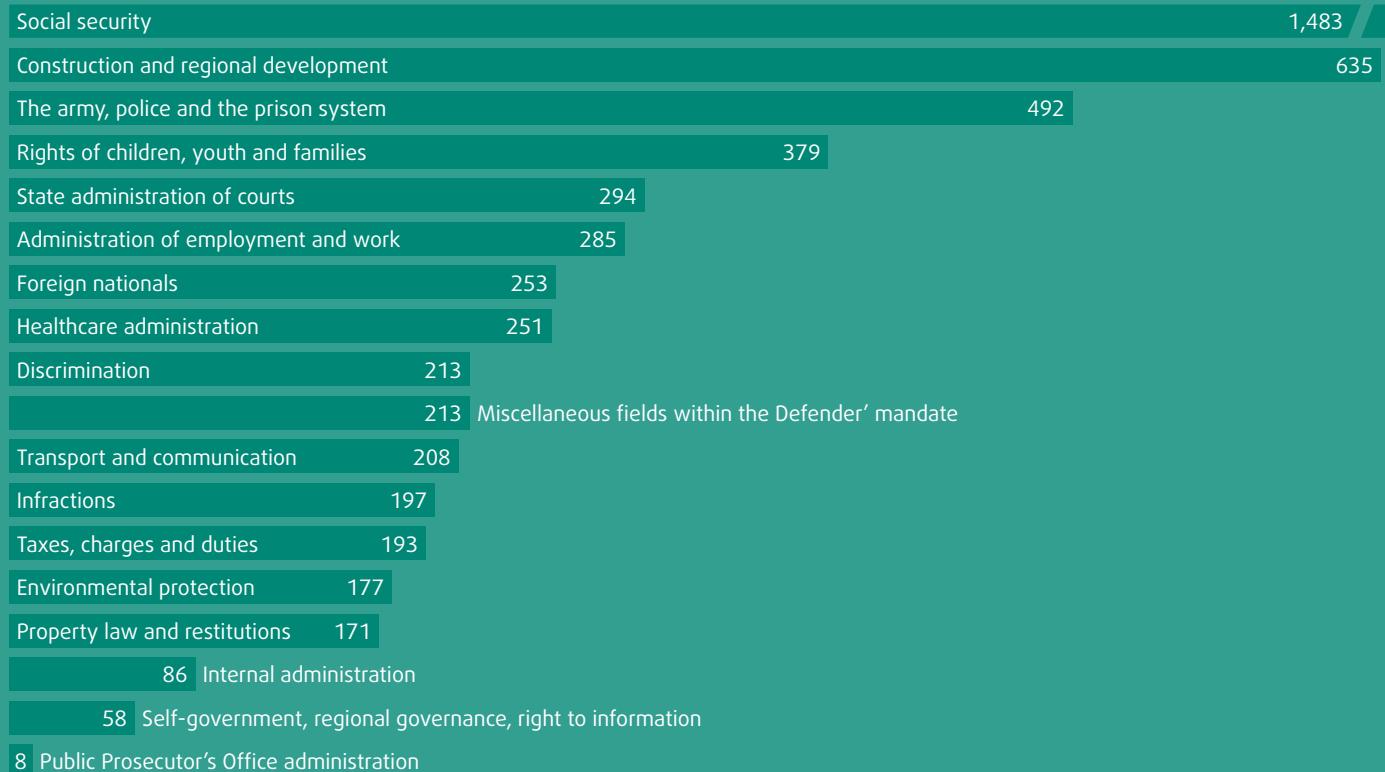
7,583

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

754

inquiries were initiated, of which 32 on the Defender's own initiative

## Complaints received within the mandate by area



**8,191**



complaints were received

**8,266**



complaints were resolved (including inquiries from previous years closed in 2017)

in **576**



cases, we found an error or discrimination.  
In **528** cases, we managed to achieve remedy

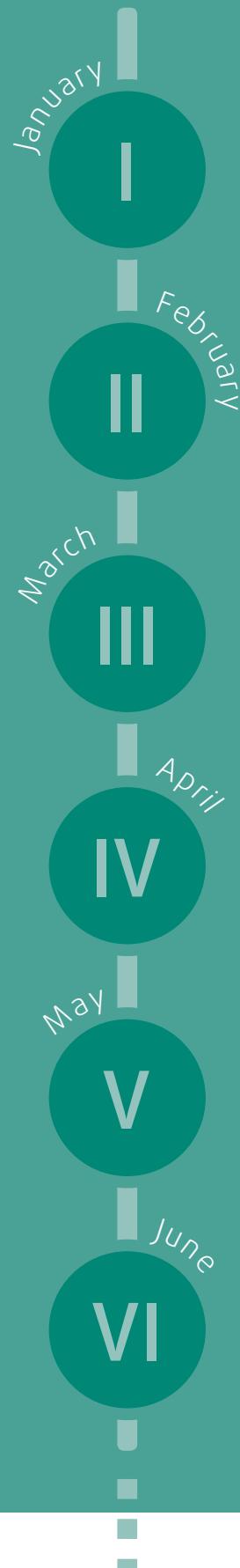
in **29**

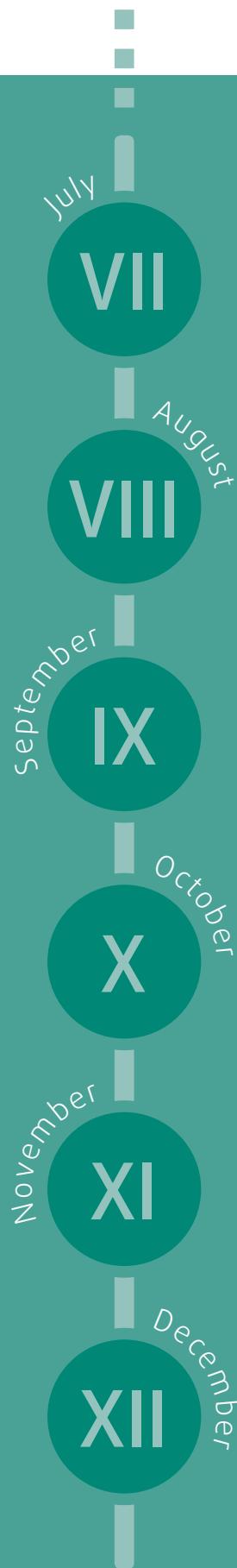


cases, the Defender used her power to impose a sanction  
(informing the superior authority or the public)

## Important events in 2017

- At the Defender's request, the Government tasked the Minister for Regional Development to deal with the issue of financing the enforcement of construction authorities' decisions in cases where the owners of dangerously dilapidated buildings ignored their responsibilities.
- 
- We updated the recommendation on enrolment in primary schools and provided targeted information to Roma parents on how to proceed when enrolling children in non-segregated schools.
- We managed to put an end to the four years of inactivity of the Ministry of Labour and Social Affairs in decision-making on a removal of a man from the records of a Labour Office as punishment.
- 
- We submitted our annual report on activities in 2016 to the Chamber of Deputies.
- The Minister of Transport promised to introduce a possibility for individual remedy with regard to administratively expired vehicles.
- 
- We condemned a disproportionate police action against an elderly woman suspected of involvement in a traffic accident. A police officer handcuffed her despite the fact she was not behaving aggressively.
- We provided training to public curators and, in matters of discrimination, also 90 inspectors of the Czech Schools Inspectorate.
- 
- We approached the Senate in regard to the discussed amendment to the Construction Code and advised the Senators of the shortcomings of the draft legislation.
- We organised a benefit concert in support of combating violence against women.
- 
- We asked the Ministry of Finance and the General Tax Directorate to deal with the issue of a legal "gap" concerning tax on acquisition of a residential unit in a private home.
- The extended chamber of the Supreme Administrative Court confirmed our opinion regarding the dysfunctional Visapoint system.





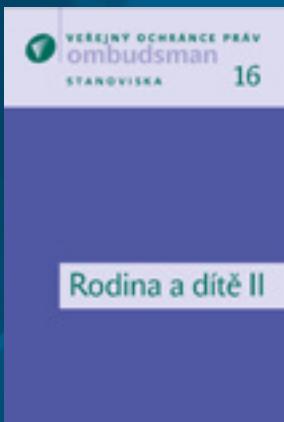
- We issued the "Ten Principles of good practice in social work with people in adverse social situations".
  - At our motion, the Constitutional Court abolished certain provisions of municipal ordinances issued by the towns of Varnsdorf and Litvínov.
  - We monitored the course of 3 expulsions of foreign nationals.
- .....
- We issued our report containing findings from our visits to police cells.
  - We organised a seminar on equal gender pay with participation of representatives of European equality bodies.
- .....
- We organised a meeting of ombudspersons from the Visegrad Group countries.
  - A complainant living in a cottage used the arguments we provided to win a case involving contribution towards housing.
  - After five years of trying, we managed to achieve a decrease in the fee for filing an anti-discrimination complaint.
- .....
- We initiated a series of visits to facilities for people with disabilities.
  - We issued our publication named "Assistance in Material Need" and organised a symposium titled "Social Assistance at a Crossroads".
  - We joined as an intervening party proceedings before the Constitutional Court involving a motion to abolish certain provisions of the Construction Code and the Nature Conservation and Landscape Protection Act.
- .....
- We issued our report containing findings from our visits to treatment facilities for long-term patients.
  - We criticised the police for fining an elderly woman at a hospital because she fell down and injured herself while getting off her bicycle.
  - We issued the publication "Family and Children II"
- .....
- Responding to our recommendation, the Ministry of Justice unified the practice of the courts in dealing with requests for a list of court proceedings.
  - We issued "Citizenship of the European Union", a collection of Defender's opinions and cases concerning EU citizenship.
  - We published our report on inquiry into the procedure of the Tax Administration involving the use of retention orders.



# 2

## FAMILY, HEALTHCARE AND LABOUR

In the past year, we focused on ensuring that the authorities correctly address healthcare complaints and prevent splitting of siblings when entrusting children to foster care. The number of complaints concerning substitute family care has nearly tripled since 2016. We also issued a new publication on children's rights.



Family and children II  
<http://bit.ly/rodina-dite-2>

We handled

1,384 complaints;

of which

→ 777 fell within the Defender's mandate,

→ 607 fell outside the Defender's mandate.

# »»»»» We help change the rules



**In 2017, several of our past recommendations were implemented. The labour inspectorates may now fine employers who are violating the right of their employees to privacy (e.g. by an excessive use of CCTVs at the workplace); also, the State will now pay health insurance for patients of psychiatric hospitals who have been ordered by court to undergo institutional treatment (as is the case of convicted persons).**

Regional authorities must also investigate complaints against inappropriate conduct of healthcare staff

In the Annual Report for 2016, we noted our discussions with regional authorities on how to correctly address complaints against healthcare services providers. This year, we issued the Principles for Handling Complaints. The publication contains the ten basic principles for the regional authorities to follow. Based on the complaints we inquired into, the Principles also reflect the recommendation that regional authorities cannot pass complaints against violations of the right to respect and dignity (e.g. inappropriate conduct on the part of healthcare staff) to the Czech Medical Chamber without first addressing it.

 [Principles: File No. 3447/2017/VOP](#)

 Case involving passing the complaint to CMC – Defender's report:  
File No. 1453/2016/VOP

**What is the procedure of regional authorities in dealing with healthcare complaints?**

Patients as well as regional authorities (and the Ministry of the Interior, Ministry of Defence or Ministry of Justice, as the case may be) should know the correct procedure for addressing complaints against healthcare services providers. The Healthcare Services Act tasks regional authorities (and the Ministries) to publish their procedure for handling complaints on a public notice board. We have found that regional authorities mostly perform their duties in this respect; the only objection concerns the comprehensibility

and completeness of the information provided. By contrast, the Ministries often do not fully perform their duties in this area. For this reason, we decided to prepare a form comprehensibly describing the regional authorities' (or Ministries') procedure and provided it to the authorities for use.

#### [Defender's Opinion: File No. 5312/2017/VOP](#)

### A contract between a director of a school facility and a young adult is not without challenges

In the 2016 Annual Report, we informed that if a child who has reached 18 years of age (i.e. a young adult) decides to stay in a children's care home because he or she is completing education, he or she has to enter into a contract with the director of the home. According to the decision of the Supreme Court, this contract is of a public-law nature. We thus recommended to the Ministry of Education, Youth and Sports to prepare a model contract including all the requisites that the directors can adjust for the particular young adult in question. The Ministry complied, but we are currently discussing certain clauses of the contract we have objections to. For example, the Ministry lists the young adult's refusal to submit to an alcohol test as a reason for immediate termination of the contract. In our opinion, this reason is redundant given that the contract can be immediately terminated on account of aggressive and inappropriate behaviour. We think it is disproportionate to apply the same sanction to a young adult who refuses an alcohol test but his or her behaviour is not problematic.

#### [Defender's Report and Opinion: File No. 5157/2015/VOP](#)

### Co-operation between BSLPC and schools in the case of parents' disagreement on the selection of a primary school

In a case we inquired into, parents were fighting over the choice of school their disabled child would go to. The father wanted to choose a special school, but the mother wanted a regular school. The headteacher of the special school knew about their dispute, but admitted the child nevertheless. Therefore, he was not acting in good faith that the parents were in agreement and, consequently, his decision was unlawful. The correct procedure was to refer the parents to a court and inform a body for social and legal protection of children (BSLPC).

The BSLPC should seek that a court appoint a curator pursuant to Section 943 of the Civil Code to decide on how the child will be educated. We communicated this opinion to bodies for social and legal protection of children at all regional authority offices as well as the Czech Schools Inspectorate.

#### [Defender's Report: File No. 2142/2015/VOP](#)

### Why get several used cars instead of a new one?

The complainant in a case we inquired into was taking care of two children in foster care and a further two disabled persons (a young woman she had fostered before, and the complainant's mother). Based on her application, she received a foster care allowance in the form of a contribution towards purchase of a motor vehicle in the amount of CZK 100,000. Both women with disabilities also applied for a contribution toward the purchase of a motor vehicle. They then used all three contributions and family savings to purchase a new vehicle together. However, after more than six months, the Labour Office decided that the complainant had violated the law and requested that she refund the CZK 100,000 contribution for the vehicle. The decision was subsequently upheld by the Ministry of Labour and Social Affairs. The Labour Office as well as the Ministry objected that the vehicle was not registered directly to the complainant, but rather to the disabled young woman. According to the authorities, the complainant was supposed to be the exclusive owner of the vehicle. They further believed that benefits provided to people with disabilities and a foster care allowance could not be combined. According to this logic, it would have been all right if each of the women in the family purchased a used vehicle using her "own" welfare contribution. We disagreed with this conclusion made by the Labour Office and the Ministry. After our prompt, the Ministry cancelled the Labour Office's decision and the complainant did not have to refund the money.

#### [Defender's Report: File No. 1768/2017/VOP](#)

### How to defend against workplace bullying

We issued a leaflet on workplace bullying, which can provide advice to victims of bullying, attorneys, NGOs and labour unions on how to proceed.

#### [Online version of the leaflet <http://bit.ly/sikana-letak>](http://bit.ly/sikana-letak)

# »»»»» We are here to help

## We helped

251  families

148  people who had problems with the Labour Office

## Returning to school and home

In the previous chapter, we mentioned the challenges of contracts between a young adult and the director of a children's care home where the young adult wishes to stay to complete education after reaching 18 years of age (after the completion of institutional education). Matters are not helped by the severe regulations included in the Institutional and Protective Education Act. This is illustrated by the following case we inquired into. We were approached by an 18-year-old man who had entered into such a contract, stayed in the home for about six months, and then terminated the contract, ended the education and obtained accommodation in a halfway house with the help of the home's director. However, he later rethought the situation and wished to return to the home and continue in his education. The home's management refused him, pointing out that he could not return. We advised the home's director that according to the Institutional and Protective Education Act, she was obliged to enter into such a contract at any time within one year of the end of institutional education. This "period of protection" had not elapsed in the young man's case. The director thus entered into a new contract with the complainant who now continues in his education.

People most often sought help in the following areas:

exercise of social and legal protection

unemployment and retraining benefits

outstanding insurance premiums/penalties

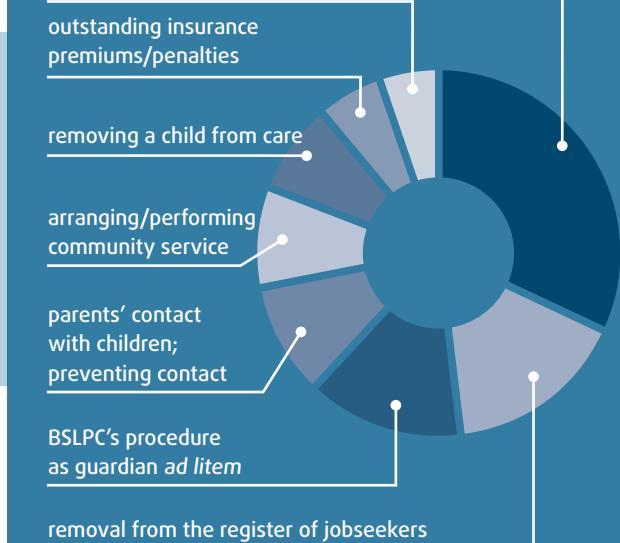
removing a child from care

arranging/performing community service

parents' contact with children; preventing contact

BSLPC's procedure as guardian ad litem

removal from the register of jobseekers



## Participation of a fosterling in the Wife Swap reality TV show is against the child's best interests

We were approached by the grandfather of a child in foster care (whose mother was in prison) who complained that the foster mother had participated in the Wife Swap reality TV show alongside her foster children, without this being prevented by the social worker. We found that just like us, the social worker had also come to the conclusion that the child's participation in such a TV show was not in her best interests (it's a matter for debate whether this could be in any child's interest). She informed the foster mother of this opinion and talked with her about the reasons why the child should not appear in the TV show; she was prepared to seek that a court ban the foster mother from involving the child in the making of the TV show. The foster mother gave the social worker her word in writing that the child would not appear in the TV show. However, she reneged on her promise and the child participated in the making of the TV show as broadcasted, without the social worker's knowledge. We lack the power to sanction the foster mother in any way, which is why we left further steps at the discretion of the body for social

and legal protection of children and the regional authority, which was also informed of the case.

#### Defender's Report: File No. 1183/2017/VOP

#### **Mothers should be housed with their children and children should not be deprived of a caretaker**

We were approached for help by an elderly woman whose daughter's child had been taken away from her shortly after the birth and placed in a facility. The reason allegedly was that the mother had schizophrenia and there were serious doubts about her ability to safely care for the child. We do not believe a body for social and legal protection should resort to such a radical solution (removal of the child from the mother) without at least attempting to create a safe environment where the mother and her child could stay together. The body should provide assistance to the mother to help her care for her child; a child cannot be removed from the mother in the absence of a clarification as to whether or not she can care for the child safely. In co-operation with the social workers, we managed to arrange a stay of both the mother and her child in a children's centre, where she would receive assistance and the child would receive the required care.

#### Defender's Report: File No. 5843/2017/VOP

#### **Trust, but verify**

We were contacted by a mother of children who were placed in a facility for children requiring immediate assistance. The application for removal of the children was filed by the body for social and legal protection of children merely on the basis of the father's suspicion the mother was abusing the children and training them for prostitution. A social worker decided to file this application although the older son had told the police that he loved his mother and had no conflicts with her. The BSLPC filed the application without evaluating the risk the children faced and corroborating the accusation raised by the father of one of the children using other sources. The BSLPC also made an error when it failed to check whether the children could be cared for by a relative, and failed to properly inform the children on what was happening and why (even though the older son was already 13 years old).

The body for social and legal protection of children admitted it lacked sufficient basis for the decision. It later started co-operating with four psychologists

and social workers got acquainted with good practice in a children's crisis centre and were trained in communication with children. According to latest information, the older son is now being cared for by his aunt and the younger son lives with his father. The mother is in regular contact with both children and the family receives psychological counselling.

#### Defender's Report and Opinion: File No. 1120/2015/VOP

#### **If a job interview includes a few hours of work as a test, this does not constitute illicit work**

We were approached with a complaint by a woman who had been removed from the register of job-seekers on account of her performing illicit work. The woman had participated in a selection procedure at the behest of the labour office. During the job interview, the prospective employer asked her to demonstrate her qualifications by performing a few hours of work in the company. Incidentally, the Labour Inspectorate carried out an inspection in the company and found that the complainant was "working" there without a contract. Despite the explanation that this work was a part of a selection procedure, the Inspectorate sent a notice of illicit work to the labour office, which subsequently removed the complainant from the register of jobseekers and ordered her to refund the unemployment benefits. However, we found that the Labour Inspectorate had later discontinued the proceedings against the employer due to doubts whether the act truly constituted illicit work and whether there could have actually been a relationship of dependence between the complainant and the employer. As a result, the only party actually punished was the complainant, which we considered unjust with regard to the Labour Inspectorate's conclusions. We thus suggested that the Ministry of Labour and Social Affairs review and cancel the labour office's decision on the complainant's removal from the register of jobseekers. The Ministry accepted our suggestion and the labour office paid to the complainant the owed insurance and unemployment benefits for the period when she was unlawfully removed from the register of jobseekers.

#### Defender's Report: File No. 5948/2016/VOP

**104**  **inquiries revealed errors**  
– we did not manage to ensure remedy in just **2 cases**

**in 40**  **cases, we were contacted by children**

# »»»»» Let's talk together



## Effective inspections in facilities for children requiring immediate assistance?

We wrote in our last annual report that inspections in facilities for children requiring immediate assistance could become more effective if regional authorities and labour offices better co-ordinated their steps, shared information, and if the labour office had effective powers to enforce remedy of any errors found. In 2017, we met with representatives of regional authorities and labour offices. Based on the conclusions we arrived at, we asked the Ministry of Labour and Social Affairs to issue a methodological guidance for regional authorities on how to carry out inspections, to update the methodological guidance concerning inspections carried out by labour offices, and in particular, to unify the procedure of the two bodies in certain aspects of inspection (by applying specific provisions of the Inspection Rules and the Social Services Act). The Ministry has so far not made any progress in this regard despite the fact we asked it to do so in February and later, again, in June.

[Defender's Report: File No. 2481/2016/VOP](#)

## Siblings in foster care

In May 2017, we met with representatives of regional authorities to discuss issues associated

with foster care, especially regarding siblings. We learned that some prospective foster parents would already give up on the original idea to accept several children during the preparation for foster care. The difficulty of finding foster parents grows with the number of siblings; it is even difficult to place groups of two siblings. Children with disabilities face even greater challenges. Regional authorities would welcome a single register of children in need of foster care, but especially a unified register of prospective foster parents. We stressed that children have a right to maintain family ties with siblings and foster parents have a duty to assist them in that. A family life comprises not only ties between parents and children, but also ties between siblings. If splitting the siblings becomes unavoidable, the body for social and legal protection of children should ensure an agreement on the frequency and form of contact between the siblings and monitor its implementation.

[Conclusions drawn from roundtable discussions: File No. 1313/2017/VOP](#)

## How do insurance companies decide on the insured persons' claims?

We organised a meeting of representatives of insurance companies and the Ministry of Health with the aim of sharing information on the insurance



companies' practice when deciding on the claims of insured persons under the Public Health Insurance Act. This area was significantly affected by case law according to which an insurance company deciding on an insured person's claim for reimbursement of a health service from the public health insurance "**clearly is not in a position equal to that of the insured person**", and is therefore "**bound inter alia by the Code of Administrative Procedure**", since it has the role of an administrative authority in the given proceedings. It has been confirmed that insurance companies do not **fully** proceed in accordance with the **Code of Administrative Procedure**. The participants often agreed that the **applicable legislation was insufficient** and decision-making on claims of insured persons should be subject to a special legal regulation. Consequently, this has been included in our legislative recommendations.

Defender's Report: File No. 5153/2017/VOP

### When the parents are drug addicts

We also encounter cases where a family gets into problems with the body for social and legal protection of children because the parents are or have been addicted to drugs and their ability to care for their children depends on circumstances. Since this is a special category of vulnerable families and the social workers' procedure is not uniform, we decided to organise meetings with all regional authorities and some NGOs assisting people with addictions. We came to the agreement that the body for social and legal protection of children should serve as a coordinator of all services received by parents using dependency-producing

substances. The body should search for and prefer services that enable parents to remain with their children. Social workers should make sure that the parents properly care for the children, do not neglect the care and especially that the life, health and proper development of children in the care of drug addicts are not endangered. We incorporated our conclusions in a material which we sent to all regional authorities. We have been informed that some are already preparing their methodologies for work with families threatened by drugs.

[Material for regional authorities:](#)  
File No. 6501/2014/VOP

### Removal from the register of jobseekers

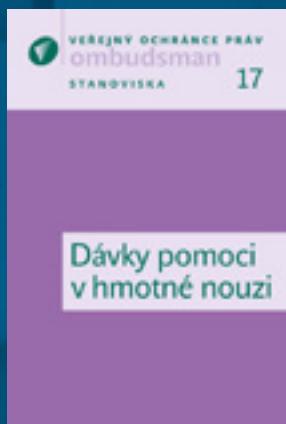
Many of our cases involve the procedure of labour offices, which can decide to remove a person from the register of jobseekers. Due to the harshness of such a step, we urged that the labour offices sufficiently and comprehensively advise the jobseekers on their rights and obligations associated with being included in the register. The aim is to prevent situations where a jobseeker fails to observe a duty (e.g. due to a wrongly remembered appointment date) and is removed from the register. The Ministry of Labour and Social Affairs offered us participation in the training of labour offices' employees, where we discussed cases we often encounter and which chiefly involve the definition of serious reasons excusing non-performance of a duty. The Ministry also created two leaflets with information on the register of jobseekers, including the conditions for receiving unemployment benefits and the consequences of a breach of obligations.

rozdíly  
průměrný  
nešetření  
efektivnost  
výdaje  
společnost  
mechanismus  
zlepšování  
ziskovost  
rychlosť  
ekonomie  
účinnost  
počet



# 3 SOCIAL SECURITY

In 2017, we focused on issues associated with assistance in material need. We issued our collected documents named "Assistance in Material Need" and organised a two-day conference titled "Social Assistance at a Crossroads". We were also approached by people complaining about the payment of benefits via vouchers and the functioning of the community service.



Assistance in Material Need  
<http://bit.ly/davky-pomoci-HN>

We handled a total of

**1,458** complaints;

→ in **120** our inquiry revealed erroneous procedure,

→ in **6** cases, we did not manage to ensure remedy.

# >>>>>>> We help change the rules



## Even a foster parent can apply for disability allowance on behalf of a disabled foster child

In 2016, we called attention to the fact that the Disability Allowance Act did not cover disabled children in foster care. According to the Act, foster parents were not allowed to apply for the allowance, because under the Civil Code, provision of allowances is not an ordinary matter in which foster parents can represent the child without further considerations. An amendment to the Act came into effect on 1 January 2018, allowing foster parents to apply for allowances on behalf of their foster children.

## When the tenant pays, but the owner keeps the money for himself

In the 2016 Annual Report, we mentioned cases of flat owners who received rent and advances on lease-related services from their tenants, but kept all the money and did not pay for services and contributions to the repair fund of the association of unit owners. This practice leads to debts on the part of the association. We suggested that

the Ministry of Labour and Social Affairs request that labour offices designate associations of unit owners as a special recipient of housing allowances and that the money be paid directly to the associations. However, the Ministry refused to direct the labour offices in this manner; for this reason, we supported an MPs' motion to modify the draft amendment of the Assistance in Material Need Act, which indeed came into effect in April 2017 and resolved the issue in the above-described manner.

## Indispensability of social work

We issued the "Ten Golden Rules of good practice in social work with people in adverse social situations" – a catalogue of principles which should be observed by social workers. The Golden Rules also summarise the responsibilities of the State (especially municipal authorities and labour offices) and potentially other employers to provide social workers with dignified and suitable working conditions, adequate pay and conditions for further education and personal growth. We stress that social work is a profession and calling where enthusiasm to help alone is not enough to succeed. It requires expertise, lifelong learning, and personal development

on the part of social workers. We call on the employers to recognise and respect social workers as professionals. We note that social work is very demanding and under-appreciated by society and sometimes even the clients and the employers.

 Ten Golden Rules of Good Practice  
<http://bit.ly/socialni-prace>

## Community service

The year 2017 saw the reintroduction of community service. Performing community service (or another activity such as participation in a project organised by the labour office) influences the amount of subsistence support benefits. If people who are in material need for longer than 6 months do not perform community service for at least 20 hours, their subsistence support is reduced to the minimum subsistence level. The benefit can be increased by CZK 605 only if they perform community service for longer than 30 hours. When the legislation was being prepared, we criticised indiscriminate reduction of benefits for anyone who does not work for the required number of hours, without the labour office looking into the reasons. People should not be punished for insufficient opportunities to work. The law also does not allow to refuse community service on account of medical condition. We consider it demotivating that there is no reward for performing 20 hours of community service, not even in the form of increased benefits.

We encountered several cases where benefits were reduced even despite the fact that the person affected was trying to get the necessary work assignment. For example, a 63-year-old woman from the Moravian-Silesian Region applied for community service at the municipal authority at the place of her residence, but there were no free places. She asked the labour office for help, but the office only told her to find the assignment herself and reduced her benefits to the subsistence minimum. In another case, a 61-year-old woman avoided the reduction of benefits only because she participated in the "job-club" project, whose aim was to improve skills necessary to find a new job (e.g. writing a CV). It is doubtful that the legislator wanted persons close to the retirement age to learn how to write a CV. The cases we encounter rather confirm the concerns we voiced when the legislation was being discussed. We will continue talks with the Ministry of Labour and Social Affairs and the Chamber of Deputies about the possibilities to soften the law at least in respect of some groups of people.

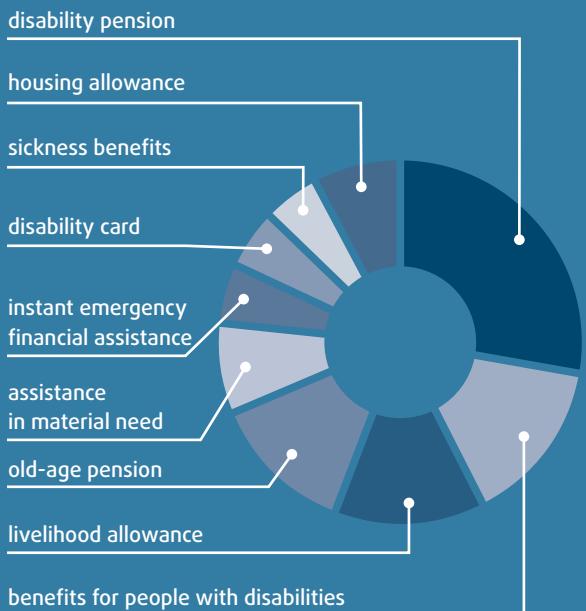
## Payment of subsistence support only in vouchers

Effective from 1 December 2017, the statutory rules for payment of subsistence support benefits have changed. The labour office must mandatorily pay 35 to 65% of the benefits to persons who are in material need for longer than 6 months in the form of vouchers for purchase of goods at the specified value. These vouchers are only available to persons in material need and this fact is obvious from their designation (different from standard meals vouchers). Even though this new measure was only in effect for one month at the end of the year, we have already received 34 complaints against it. People primarily complain that payment in vouchers restricts their freedom of choice as to where to shop. The vouchers are only accepted in some shops; the shops which accept them do not return change, which means it is necessary for the purchase to correspond exactly to the voucher's nominal value. As a consequence, people are forced to more expensive purchases than if they received the benefits in money. The vouchers also cannot serve to cover co-payments for reimbursable medicines or rent (if the housing allowance is insufficient). Many people consider paying with vouchers degrading and are ashamed to use them. Benefits are also paid in vouchers to elderly people with low pensions. To receive a part of the benefit in vouchers, the elderly citizens must travel to the labour office even though they used to receive the benefit via a postal order. The same method is used to send parts of the benefits to people in health and social services facilities. In their situation, payment in vouchers lacks any justification since people in these facilities are not able to misuse the benefits and cannot use the vouchers at all (in social services facilities, they need money to pay for meals and services).

We consider the indiscriminate payment of benefits in vouchers unjustified. However, we were unable to voice this opinion during the legislative process because the measure was only introduced by means of an MPs' motion submitted during the second reading at the plenary session of the Chamber of Deputies. Given the clearly unfair implications of this measure for people in material need, we will strive to bring about an amendment of the legislation and introduction of a more nuanced individual approach.

# >>>>>> We are here to help

People most often sought help in the following areas:



## An authority cannot request people to submit documents it does not need or it already possesses

We were approached by a young woman who left employment in Germany, returned to the Czech Republic and applied for subsistence support. The labour office requested that she submit a translation of the employment contract and of the document on termination of the employment, as well as an appraisal of the share in a house she inherited 10 years ago. The complainant did not submit the requested documents and the labour office consequently rejected her application. We came to the conclusion that the labour office's procedure was incorrect, because it asked for documents which were not necessary. The fact that the employment had terminated must have been known to the labour office, or else it would not have included the complainant in the register of jobseekers. Documenting the price of the share in the house could have been accomplished by submitting the real-estate acquisition title, i.e. the resolution on inheritance. The labour office's decision was subsequently annulled by the Ministry of Labour and Social Affairs. In the new proceedings, the labour office granted the complainant the subsistence

support, in arrears as of the month when she had filed her application.

 [Defender's Report: File No. 6679/2016/VOP](#)

## Housing allowance not granted because of a cottage's low ceilings

We dealt with a complaint filed by a man who lived permanently in a rented cottage. The labour office did not grant him the contribution towards housing because the cottage – based on the opinion of the construction authority – did not meet the dwelling standards under the Assistance in Material Need Act. We inspected the place and studied the construction authority's opinion in detail. The authority claimed that the cottage did not meet the standards because the indoor clearance was 25 cm lower than required and there was only a chemical toilet. We advised the construction authority that the Assistance in Material Need Act only requires reasonable fulfilment of certain general technical requirements in "other dwelling spaces" (e.g. a cottage). The construction authority may waive some of the requirements at its own discretion if the structure allows habitation at an acceptable

standard. The construction authority subsequently carried out an additional inquiry and found that the dwelling standards were indeed acceptable. The labour office then granted the complainant the assistance in material need. The case was also heard before the Supreme Administrative Court who agreed with the complainant's arguments. The labour office then paid the owed contributions towards housing to the complainant.

 [Defender's Report: File No. 1092/2016/VOP](#)

 [Judgment of the Supreme Administrative Court of 26 July 2017, Ref. No. 6 Ads 331/2016 - 42](#)

### Disability arose 7 years before the date assessed by the medical assessor

We were approached by parents of a mentally ill man who had been declared disabled but had not been awarded disability pension on account of a missing period of insurance. We found that the report of the assessing physician specified the disability onset date according to his hospitalisation in a mental hospital in 2015; however, his medical condition in the preceding period had not been assessed. The seriousness of the man's medical condition did not exclude the possibility that the state of disability might have appeared even earlier. After our intervention, the Czech Social Security Administration checked the medical assessors' reports and agreed they were unreviewable. The administration ordered an extraordinary medical examination, based on which the complainant's disability onset date was pushed back to January 2008. The man thus met the required insurance period and the Social Security Administration granted him disability pension and paid past due benefits for the entire period from the disability onset date onward.

 [Defender's Report: File No. 7582/2016/VOP](#)

### An application need not be filed via a form

We were approached by a complainant to whom the Czech Social Security Administration had granted disability pension with the disability onset date set to September 2010. The complainant had sent a letter in which he requested an earlier disability onset date with payment of past due pension. The Czech Social Security Administration advised him that such an informal application could not serve

as basis for assessment of his medical condition and told him to fill in the required form and send it to the district social security administration. We advised the Social Security Administration that it should have assessed the application based on its contents, i.e. as a request for payment of past due pension. The law does not prescribe its form. Based on this intervention, the Social Security Administration commenced proceedings on the received application. Since it took a year and a half for the Administration to render its decision, we recommended to the complainant to file an application with the Ministry of Labour and Social Affairs for compensation for disproportionately long proceedings. The complainant's request was granted and he received financial compensation.

 [Defender's Report: File No. 7451/2016/VOP](#)

### When guardians do not care, the State saves money at the expense of persons in need

We were approached by a young man who complained that the court-appointed guardian did not provide him with due care. From employees in the sheltered housing where he lived, he had learnt that the State provides an allowance for care to other clients. We found the complainant was fully deprived of his legal capacity and the court had appointed a relative as the man's guardian. We also found that the labour office had withdrawn the allowance for care and that the guardian had not appealed against the decision. Since the assessment report for the allowance for care contained inconsistencies and the conclusion was not properly reasoned, we contacted the head of the medical assessment department of the Czech Social Security Administration. During an extraordinary medical examination, the medical assessor found that the complainant's medical condition was adverse and he required a long term assistance in five basic life needs, which corresponded to 2nd degree dependence on another person's help; he has been suffering from such condition since 2015. The labour office finally granted the allowance for care in the amount of CZK 4,400 to the complainant and paid past due benefits as well.

 [Defender's Report: File No. 519/2017/VOP](#)

# »»»»»»»» Let's talk together

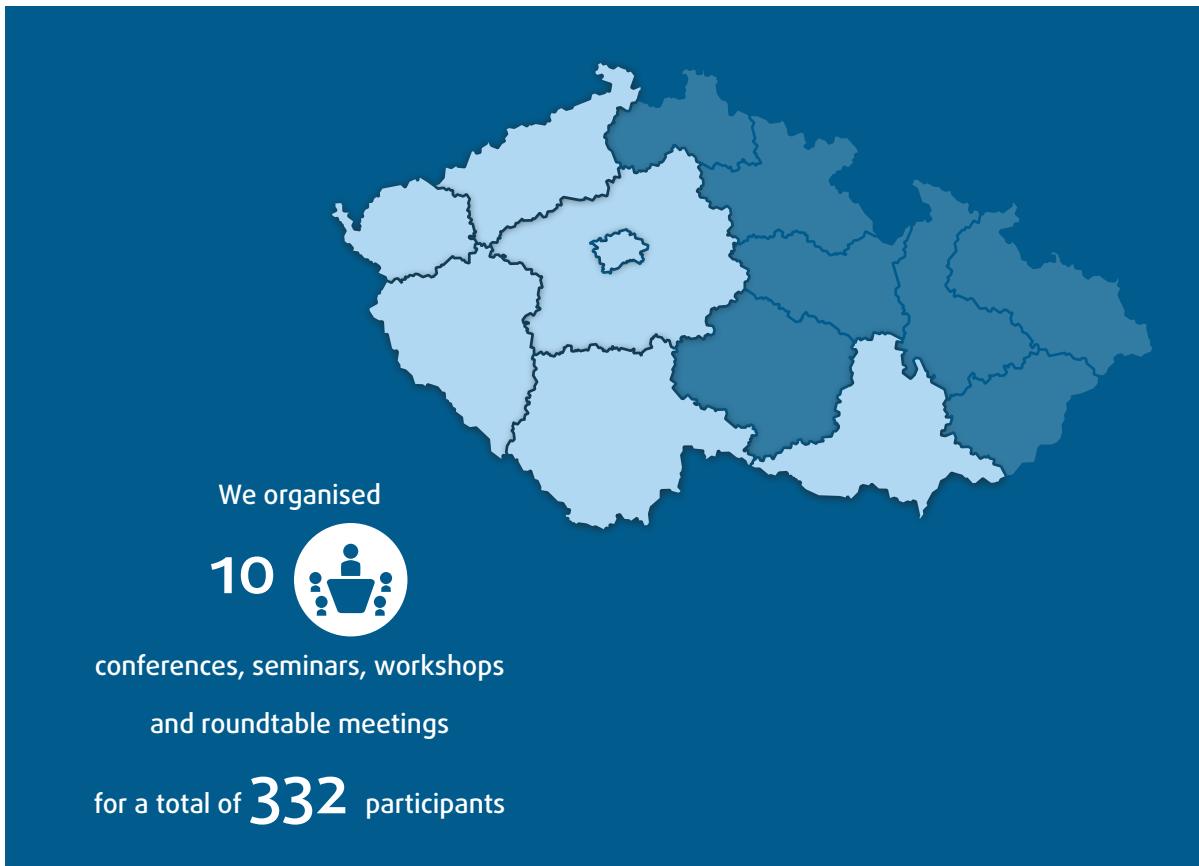


## We try to ensure that family benefits from Austria are paid on time

In November 2017, we met with representatives of the Austrian ombudsman to discuss issues with payment of family benefits from Austria to Czech citizens. We found that Austrian authorities have a 6-month deadline for dealing with applications for family benefits. However, if the family lives in the Czech Republic and has to send the necessary materials by mail or through the labour office, the proceedings may take even longer. For this reason, we decided to informally discuss lengthy cases directly with the representatives of the Austrian ombudsman in order to facilitate faster payment of benefits. We also contacted the European Commission and asked for its opinion regarding the procedure in cases where the Member State primarily obliged to pay benefits did not communicate with the Czech labour office.

## We have things to say about pensions

In January 2017, we presented our findings at the permanent seminar of the Expert Commission on Pensions. We noted especially the growing number of complaints from people about not being entitled to old-age pension due to not having completed the required insurance period (which is gradually increasing from 25 to 35 years). We also mentioned the low awareness among people of which activities counted as the so-called substitute insurance period. The aforementioned problem most often concerns the period of education, registration in the register of jobseekers and care for children. We discussed the possibilities the State had for improving public knowledge in this area. We also mentioned expanding the possibility to retroactively pay off the premium for voluntary pension insurance (currently, this can be done one year back at maximum), which could reduce the adverse effect of "non-insured periods" on pension entitlements and the amount of pension received.



## Social Assistance at a Crossroads

In October 2017, we organised the "Social Assistance at a Crossroads" conference and invited people active within the system for helping people in material need. We discussed how the system worked and its strong and weak points 11 years after the adoption of the Assistance in Material Need Act. The discussion also concerned the issues of social work in the area of assistance in material need, which has been confusingly divided between labour offices and municipal authorities since 2012.

The conference brought forward ideas on legal and conceptual issues related to the system of assistance in material need and positive as well as negative reactions to the reintroduction of community service, and especially voices critical of the fragmented system of social work. Practice shows that splitting responsibilities for social work between municipal authorities and the labour office brings unnecessary duplication of effort; at the same time, both responsible authorities lack sufficient personnel.

Workshops' participants mostly agreed that all housing benefits should be merged into one type of allowance and discussed its potential parameters. Another group of participants discussed the situations and purposes allowing provision of an extraordinary immediate assistance.

Video recording and presentation  
<http://bit.ly/socialni-pomoc-na-rozcesti>



# 4

## PUBLIC POLICY

In 2017, we were increasingly approached by people complaining about the civil service and the Office for Personal Data Protection. We also discussed civil service as part of our conference on work-life balance. We closed an inquiry we had started on our own initiative when the police had not sufficiently responded to a reported shooting at a summer camp.

We dealt with

1,635  complaints,

of which

→ 921 fell within the Defender's mandate and

→ 714 fell outside the Defender's mandate.

→ 76 inquiries revealed errors – we did not manage to ensure remedy

→ in just 7 cases

# »»»»» We help change the rules

## Should we pay the State for information it already has?

In proceedings on admission to a service relationship, the applicants have to demonstrate their clean criminal record by means of an extract from the relevant register. We suggested that the relevant authorities request the extracts themselves, based on the following facts: the extract costs CZK 100, which is not a trivial amount for some applicants; the extract cannot be substituted for by an affirmation as is the case e.g. with the document on medical fitness; and the extract must not be older than 3 months to be acceptable for the selection procedure, which makes it largely useless for other purposes. The most important fact was that the Criminal Records are operated by the State itself. This means that an applicant for a position in the civil service is paying the State for information the State already has. The Deputy Minister of the Interior for civil service agreed with our recommendation and changed the practice of the relevant authorities. The applicant can now choose to supply the required extract on his or her own or provide necessary information for the relevant civil service authority to obtain the extract directly.

 [Recommendation: File No. 5/2017/SZD](#)

## Did the subordinate employee receive the proposed bonus or not?

An inspector of the Czech Environmental Inspectorate complained that she had received no bonuses for the last quarter of 2015 because she had appealed against the decision on admission to



a service relationship and placement in a specific service post. We could neither confirm nor disprove her allegations because there were no materials on her bonuses. However, we found that the bonus awarding procedure was basically oral and the individual levels of management did not communicate with each other. This resulted in a situation where the senior officer who had proposed to award a bonus to a subordinate employee did not know whether or not the superiors had approved the proposal and awarded the bonus and why. Such a practice is not transparent in relation to the employees and may give rise to doubts about the fairness of the remuneration procedure.

We asked the Czech Environmental Inspectorate to change the salary rules so that the employees would be informed that their senior officer had proposed a bonus for them. The senior officer should subsequently be informed how his or her superiors responsible for awarding the bonus decided about the proposal. We also suggested that the proposals and underlying documents for the decision on awarding the bonus be kept for a certain period of time to ensure that the reasons for denial of the bonus are reviewable (e.g. if the employee has claimed unequal remuneration). Our suggestions have been incorporated into the salary rules applicable from 1 January 2018.

 [Defender's Report and Opinion:  
File No. 272/2016/VOP](#)

## Land consolidation decisions delivered to the mailbox

If the land-use authority decides to carry out a land-use measure (merge or make properties accessible, implement anti-flood or anti-erosion measures, etc.), this information is of great importance to the owners. However, we found that land-use authorities did not deliver such decisions to the mailbox. The letters were thus often returned to the sender unread. This procedure is based on the methodological guideline issued by the State Land-use Authority. The aforementioned decision is the most important part in the whole consolidation proceedings and the proposed measures are not published via the official notice boards of the land-use or municipal authorities. For this reason, we suggested a change in the methodological guideline to ensure that the decisions are delivered to the mailbox; the authority promised to include this in methodological guideline as part of the next update.

 [Defender's Opinion: File No. 24/2017/SZD](#)

## Disability is the reason why reserved parking places for the disabled exist

On our own initiative, we inquired into the practice of the town of Cheb in the establishment of reserved parking places for people with disabilities. We launched our inquiry on the basis of information published on the town's website which listed non-existence of debts towards the city as one of the conditions for being granted a reserved parking place. Also, the applicants for reserved parking for the disabled were obliged to "maintain passability at the place of reserved parking." Both conditions lie beyond the scope of the law. After receiving our warning, the town of Cheb removed both of the aforementioned conditions.

 [Defender's Report: File No. 2481/2017/VOP](#)

## What is the personal security code for in citizens' identity cards?

Since 1 January 2012, people have been obliged enter the "personal security code" (BOK) to take over their identity card. The 4 to 10 digit code serves for identification in communication with the public administration information systems (e.g. population records, register of addresses and real estate, etc.). The purpose was to make the process

easier for both the citizens and public servants. However, people often write to us that they are required to remember, under potential penalties, a code which is useless to them and cannot be used in official communication. We notified the Ministry of the Interior that six years after the effect of the amendment to the Identity Cards Act (which introduced the BOK code), the Ministry still had not ensured that offices and places of public administration were equipped with the necessary technology enabling the use of the BOK code. The Ministry of the Interior insists that the introduction of the BOK code was necessary and promised to exert its best efforts to ensure that the holders of current identity cards are able to use the BOK code to prove their identity by the date of expiry of their cards (i.e. by the end of 2022). The Ministry will also initiate the abolishment of the administrative fee collected for unblocking the BOK code if people forget it.

 [Defender's Report and Opinion:](#)  
File No. 1247/2017/VOP

## Determination of paternity by the parents' consensual declaration will become easier

In our practice, we encounter situations which were likely not anticipated by the 2008 methodological guideline of the Ministry of the Interior on determination of paternity by means of the parent's consensual declaration before a Registry Office. We asked the Ministry to update the guideline. We suggested that a medical confirmation should suffice as a substitute for a pregnancy card in paternity declaration made in respect of an unborn child. The Ministry accepted our suggestion. We also welcomed that the Ministry advised the registry offices that they should not mislead future parents by claiming that the consensual declaration on paternity requires the simultaneous presence of both parents. Many registry office published this erroneous piece of information on their websites. We also ensured that any identity documents, not just an identity card, can now serve as proof of identity of the parents..

 [Defender's suggestion and information:](#) File  
No. 20/2017/SZD

# »»»»» We are here to help

People most often sought help in the following areas:

Land Registry

traffic infractions

personal data protection

right to information

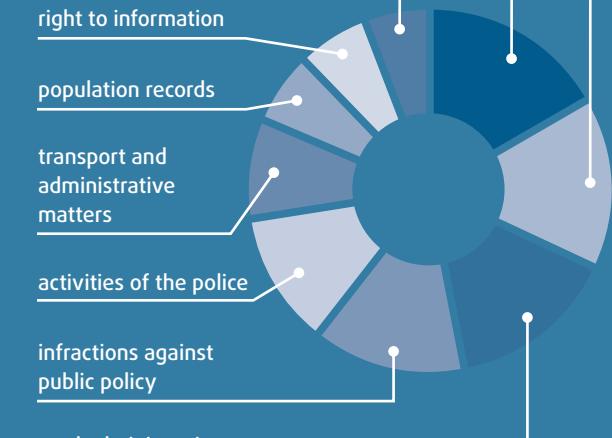
population records

transport and administrative matters

activities of the police

infractions against public policy

road administration



## We helped

- 96** people with problems involving the Land Registry
- 71** people with problems concerning the police
- 85** people with problems concerning the use of roads
- 51** people with problems concerning service relationships and the civil service

People in Česká Lípa can now pass driving licence examination faster

We found that the Česká Lípa Municipal Authority was seriously exceeding the statutory deadlines for driving examinations of applicants for a driving licence. According to the law, the examination should take place within 15 days of the application. We notified the municipal authority, which subsequently hired one additional examination officer to deal with the situation. There are no more delays in this area.

Defender's Report: File No. 6391/2016/VOP

No infraction without oral hearing and reliable witnesses

A woman complained about an incorrect procedure of the municipal authority which had declared her guilty of two infractions against civil cohabitation. She had allegedly attacked an employee of the labour office and had torn out a document from the file (which was qualified as "other rough behaviour"). She received a fine in the amount of

CZK 2,500 and was ordered to pay the costs of the proceedings in the amount of CZK 1,000.

We came to the conclusion that the municipal authority had not obtained sufficient evidence, since it had found the complainant guilty only based on the testimonies of the civil servants, without taking into account the complainant's assertion that they had attacked her first. The authority should have taken into account the objective doubts about the impartiality of the civil servants and witnesses and not considered them reliable without other considerations. The authority also made an error when it expanded the charges against the complainant in the course of the proceedings to a second infraction, which was not subject of an oral hearing as required by the Infractions Act. We thus advised the regional authority to conduct review proceedings and dismiss the decisions of the municipal authority on grounds of a manifest breach of legal regulations. The regional authority complied.

#### [Defender's Report: File No. 1103/2016/VOP](#)

### Parking in a parking zone only for permanent residents

We dealt with a complaint raised by the owner of real estate situated in a (paid) parking zone. The city refused to issue to her a parking card because she did not have registered residence address in the real estate. The Roads Act states that municipalities may specify areas where paid parking is only available to persons who have their registered addresses or own real estate property there. However, a municipality may not choose to issue parking cards only to one of the aforementioned groups of people, as was the case here. We notified the mayor that the complainant had a statutory right to be issued a parking card. The mayor informed us that a new regulation is being prepared to amend the procedure of issuing cards in line with the law and that they would issue the card to the complainant if she applied.

#### [Defender's Report: File No. 7744/2016/VOP](#)

### A problem with two different surnames

A Vietnamese citizen, born in the Czech Republic in 1997, wished to acquire Czech citizenship by a declaration, which can be done after reaching 21 years of age. However, the registry office did not accept her Vietnamese birth certificate issued by the Vietnamese Embassy in Prague. According to the

registry office, she should have been using the surname *H.*, but her identity documents (Vietnamese birth certificate, passport, residence permit card) were issued with the surname *D*. We recommended that the complainant should file a written request for an additional record of determination of paternity and change of surname in the book of births – this would ensure that the surname *D.* would be consistently indicated in all documents. However, the registry office replied that she had been using the surname *D.* unlawfully and that she first needed to contest *H.*'s paternity in a Czech court.

However, the Czech Republic and the Vietnamese Socialist Republic are parties to a Treaty on legal assistance in civil and criminal matters. Contesting paternity is thus governed by the legislation of the country the citizenship of which the child enjoyed at their birth. Only the Vietnamese authorities can thus contest the authenticity of the documents they issued and the Czech registry office must accept them as public documents, which can also serve as basis of an additional record requested by the complainant. The registry office should not have requested that the complainant submit a public document on contesting paternity with reference to the Czech legislation; it should have recognised the documents issued by Vietnamese authorities and changed the complainant's surname to *D*. We asked the regional authority to conduct review proceedings. The regional authority complied. In the new proceedings, the registry office issued a new birth certificate to the complainant with *D.* indicated as surname and the procedure of acquisition of Czech citizenship could continue.

#### [Defender's Report: File No. 2027/2016/VOP](#)

### Shooting at a children's summer camp

On our own initiative, we inquired into the procedure of the police after reported shooting at a summer camp in Jiřetín pod Jedlovou. We found that the police had made an error when they failed to come to the camp to check the situation after a shooting had been reported there, and did not verify whether the camp participants were still in danger. The police at the very least did not help calm the situation at the camp. We also found unprofessional conduct towards the camp participants who had come to the police station to provide information. The police admitted their mistake and promised to be more involved in similar cases in the future.

#### [Defender's Report: File No. 5996/2016/VOP](#)

# »»»»»»»» Let's talk together



## Meeting at the Czech Office for Surveying, Mapping and Land Registry

We met with representatives of the Czech Office for Surveying, Mapping and Land Registry to discuss the relationship between the Land Registry Act and the Free Access to Information Act. We agreed that the Land Registry Act constitutes a comprehensive legal regulation in terms of provision of data from the Land Registry. However, this legislation does not prevent applicants from obtaining some other "non-standard" information from the Land Registry using the Free Access to Information Act.

We also agreed there was a need to update the provisions of the Land Registry Act regulating the renewal of land registry records by means of new mapping. We want to harmonise the renewal of the land registry records by means of new mapping with land consolidation.

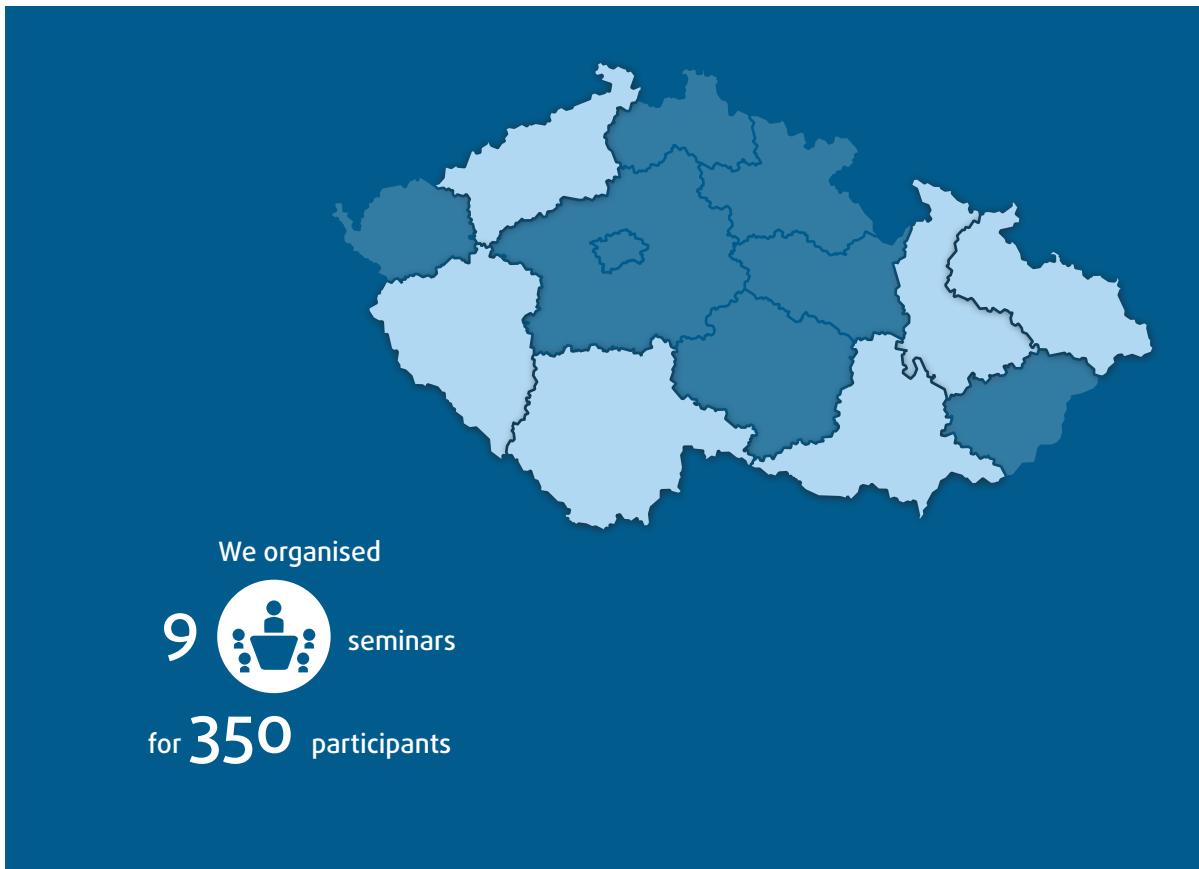
We also discussed the option of obtaining data from the population records' information system into the Land Registry's information system. Land Registry offices often complain about errors in the population records' information system. If the Land Registry Office obtains a document with the current

address of a person which is different from the address indicated in the population records, and if it has justified doubts about the correctness of the population records data, it informs a civil servant who enters the data in the system to mark them as incorrect. Representatives of the Czech Office for Surveying, Mapping and Land Registry would welcome if there was one place to report errors.

We issued proceedings from the conference on land-use law held in 2016 in electronic form  
<http://bit.ly/konference-pozemkove-pravo>

## Will there be less formalism in entering into registered partnership?

At a roundtable with representatives of registry offices, we discussed their practice and currently applicable legislation concerning registered partnership (civil union). We talked about the differences between entering into a marriage and entering into a registered partnership. The Ministry of the Interior has so far rejected our recommendation to make it possible for a registered partnership to be entered into before all municipal authorities with



extended competence, as is the case of marriage. The Ministry has also not responded to our suggestion to waive the administrative fee for adopting the surname of the other partner in relation to the conclusion of registered partnership. However, the Ministry has promised to prepare an amendment to the Civil Registry Act that would unify the provisions concerning the time and place of entering into a registered partnership with the provisions concerning marriages.

#### Meeting with representatives of regional authorities

In 2017, we continued to regularly meet with the representatives of regional authorities dealing with transport and administrative matters. We conduct a series of annual informal meetings where we share experience concerning administrative proceedings and discuss latest case law and legislation in this area. This is a good opportunity to inform the authorities of interesting results of inquiries in the preceding period and find out whether certain problems affect only a small area or the entire Czech Republic. For example, we have learned that general delays in appellate proceedings are still a

problem in the Central Bohemian Region because the authorities are unable to find employees to deal with transport and administrative affairs.

#### Is civil service considerate to parents?

As part of the Bespoke Civil Service project, we studied civil service in terms of enabling its employees to achieve work-life balance. It turned out that the demand for certain work-life balance measures was high (e.g. working from home), but the relevant offices were not able (and sometimes willing) to meet it. For more details on the conference, go to Chapter 8 – Equal treatment and discrimination.



# 5

## RULES OF CONSTRUCTION PROCEDURE

The number of complaints concerning the environment has almost doubled; we also dealt with issues related to changes in structures more frequently than in previous years. We do not handle complains while sitting in our offices – in more than 30 cases, we conducted inquiries on site. We published a number of scholarly articles, continued in co-operation with the Czech Construction Law Society and continued to hold lectures at the Faculty of Law in Brno as part of the “Construction Affairs in the Defender’s Practice” course. We also participated in preparing a commentary on the Construction Code.



We handled

863



complaints;

→ 101

inquiries revealed errors – we did not manage to ensure remedy,



in just 10 cases

# »»»»» We help change the rules



## Patience helps recommendations succeed, but not always

In our Annual Report for 2016, we wrote that we had managed to succeed in some of our recommendations for legislative amendments. Specifically, we sought a change in the assessment of the integrity of persons wishing to act as hunting guards (*myslivecká stráž*). We have already sought this change from 2013; we suggest that applicants only need to produce an extract, not a full disclosure copy (*opis*) of criminal records. Unfortunately, the Chamber of Deputies did not manage to discuss the amendment in 2017. Our recommendation concerning the Water Act met the same fate; we suggested a solution to situations where test boreholes resulted in a loss of water (or deterioration of its quality) in nearby wells. After several years of trying, we are back at the beginning and will have to raise our suggestions again during the commentary procedure.

## It is not fair if the only person who can inspect an authority is the authority itself

According to the Construction Code, some activities can only be performed on the basis of a consent of a construction authority (no permit is required). This includes e.g. the occupancy permit, consent to removal of a structure or approval of the notification of construction. If consent/approval is not given, the procedure of the construction authority can be reviewed. An application for a review can be filed against the construction authority's procedure. We believe it is logical for the review proceedings to be conducted by the superior authority and not by the construction authority whose procedure is under review. We criticised the current practice where construction authorities review their own consents/approvals instead of the superior authority (usually regional authorities). In our opinion, this practice raises doubts about its impartiality. There is further no reason why consents/approvals should

not be subject to the same procedure as ordinary decisions, where review proceedings are always conducted by superior authorities. Our opinion is supported by case law as well as the practice of some authorities (unfortunately not all of them). Therefore, we welcomed an amendment to the Construction Code which responds to our objections and introduces a clear competence of superior authorities to review consents/approvals.

#### Defender's Report and Opinion: File No. 4101/2013/VOP

### Assessing damage to a forest

Forests are often damaged by pollution. A decree thus gives a definition of endangered forest zones threatened by pollution and lays down the manner of assessing the damage caused by the resulting slower forest growth. It is currently debated whether and, if so, to what extent the current decree reflects the real situation and whether it should be regularly updated. We organised a meeting on this issue attended by representatives of the Ministry of Agriculture, Ministry of the Environment,

Ministry of Industry and Trade, the Forest Management Institute in Brandýs nad Labem, and heating plant industry. The Ministry of Agriculture is already working on a change in the conception of assessing the endangered forest zones. We also expect that the Ministry will soon submit a draft amendment to the decree regulating this area.

Defender's Report: File No. 1187/2017/VOP

### Amendment to the Funeral Services Act

We have become involved in work on an amendment to the Funeral Services Act, which will, effective from 1 September 2017, dramatically strengthen the protection of personal rights, especially the right of each individual to a respectful funeral according to local customs. We have also managed to carry through what we set out to accomplish: Parents of stillborn children now have a right to request that the hospital release their child's body regardless of the duration of the pregnancy or the weight of the foetus, allowing them to bury it with dignity.



# »»»»» We are here to help

We helped

**324**



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

**145**



people with problems concerning removal or additional approval of a structure

**71**



people with problems concerning noise nuisance

**64**



people with problems regarding water supply, sewer systems and water protection

People with disabilities have a right to see their doctor

We were approached by a person who complained about the procedure of a construction authority which had ignored a defective state of a public building (medical centre with offices of physicians and physiotherapists). The complainant argued that the entry into the building was through a ramp that did not meet the relevant technical requirements and was not safe. Consequently, the building was not accessible to people with disabilities.

We found that the construction authority had erred when it had approved (in 2012) the building owner's request to remove a fixed platform that had allowed disabled people to enter the building and replace it with a ramp. We requested that the

People most often sought help in the following areas:

placement of a structure

spatial planning

nature conservation

forest and land protection; gamekeeping

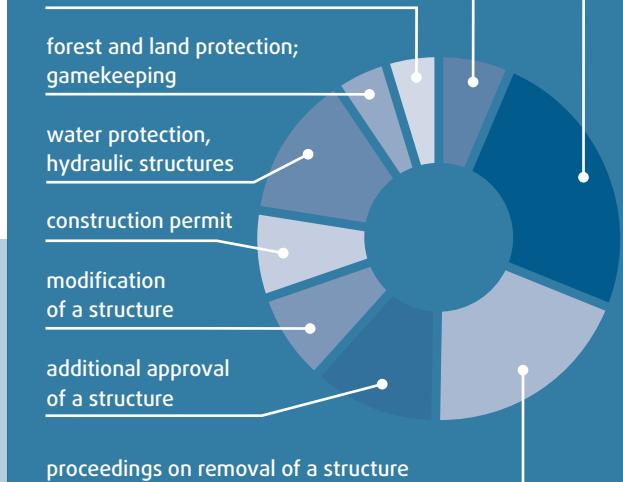
water protection, hydraulic structures

construction permit

modification of a structure

additional approval of a structure

proceedings on removal of a structure



construction authority carry out an inspection of the building, assess the facts and order the owner to carry out necessary modifications to ensure barrier-free access in accordance with the law. The owner carried out the modifications and the building has been accessible to disabled people again since autumn 2017.

**Defender's Report and Opinion:**  
File No. 5336/2016/VOP

## "Salami-slice tactics" in construction industry

The "Hodkovičky – Nad řekou" project in Prague plans for staged construction of 800 flats and parking places in an area of over 42 thousand square metres. To avoid the procedures required for such large-scale projects by the Environmental Impact Assessment Act (EIA), the developer chose to split the project into parts and gradually announce only the individual stages of construction which do not exceed the limits where EIA determination would become necessary. During the first stage, Prague City Hall confirmed that the project did not exceed the threshold for the "fact-finding procedure" (i.e. determination of whether the environmental

impact would be assessed in detail and whether further EIA procedures would be used). We received several complaints against this procedure of the City Hall and we, indeed, found errors in it. Even if the City Hall was unaware of the developer's "sa-lami-slice tactics", the information available to the City Hall indicated that the fact-finding procedure should have been conducted (at the very least). The City Hall must also have been aware that the project did not count with merely one stage, which was announced, but that other stages of development would follow. We stressed that the project had to be assessed as a whole and could not be split in order to evade procedures under the Environmental Impact Assessment Act.

The Ministry of the Environment as the superior authority came to the same conclusions and urged that the City Hall assess the environmental impacts of both stages taken together, even if the second stage was again announced as a below-the-threshold project. The City Hall informed us that it planned to be more careful in the future and accepted the need for assessing the cumulative impacts of the individual project stages (e.g. assessment of the total environmental impacts of all the stages taken together).

 [Defender's Report: File No. 482/2017/VOP](#)

### When the neighbour turns his house into a guesthouse

We encounter cases where buildings are used for a purpose other than the one specified in the occupancy permit. This typically involves situations where the owners of residential buildings start using them for commercial purposes, e.g. by turning a private home into a hotel or a guesthouse. However, the requirements for structures designed for these purposes are very different. If someone wishes to use a building e.g. as a guesthouse, they must comply with stricter requirements for safety, hygiene and other things. The effect of using the building in this way must also be assessed because there can be increased noise or traffic. These were the reasons why we were approached by the owners of the neighbours of such a "private home", whose complaints had been dismissed by the local construction authority and the trade licensing authority. Both authorities told them that the house was used correctly and the fact that other persons were temporarily living there did not mean that the registered use had to be modified. Neither authority, however, looked into the purpose for which the

house was really used, even though it was publicly known. We found that the house served as public lodgings with 27 beds. The building was advertised online as "suitable for a family holiday, company seminars, meetings with friends various kinds of celebrations." A travel agency described it as a "new, luxuriously furnished recreational facility with a swimming pool, suitable for demanding clients". We came to the conclusion that using the building in this way had undoubtedly completely different impacts on the surroundings compared to its declared use, i.e. as a residential house. The trade licensing authority as well as the regional authority agreed with us and ordered the construction authority to re-assess whether the building was being used according to the occupancy permit.

 [Defender's Opinion, Report, and sanctions:](#)  
File No. 3348/2014/VOP

### Municipality owns a building, its own construction authority deals with violations of the Construction Code

We were approached by a woman living in a flat under which there was a restaurant owned and leased by Prague 1 City Ward. She complained about excessive noise, regular playing of loud music late into the night and especially the inactivity of the construction authority for Prague 1 City Ward (hereinafter the "Construction Authority"). We found that the Construction Authority had ignored the condition laid down by the public health station that no music playing was to take place in the restaurant. Despite being advised by a superior authority, the Construction Authority repeatedly made procedural errors leading to delays in proceedings. Its inactivity also led to missing the deadline for imposing fines on the restaurant operator. To summarise, the Construction Authority was unable or unwilling to ensure a remedy for over 4 years.

As there was a justified suspicion that the procedure of the Construction Authority was motivated by the economic interest of the City Ward as the landlord, we suggested that Prague City Hall transfer the case to another construction authority to avoid potential systemic bias on the part of the City Ward's officials. The City Hall agreed and the procedure was later confirmed by the Ministry for Regional Development to which the City Ward appealed when it disputed the transfer of the case.

 [Defender's Report and Opinion: File No. 3210/2014/VOP](#)

# »»»»» Let's talk together



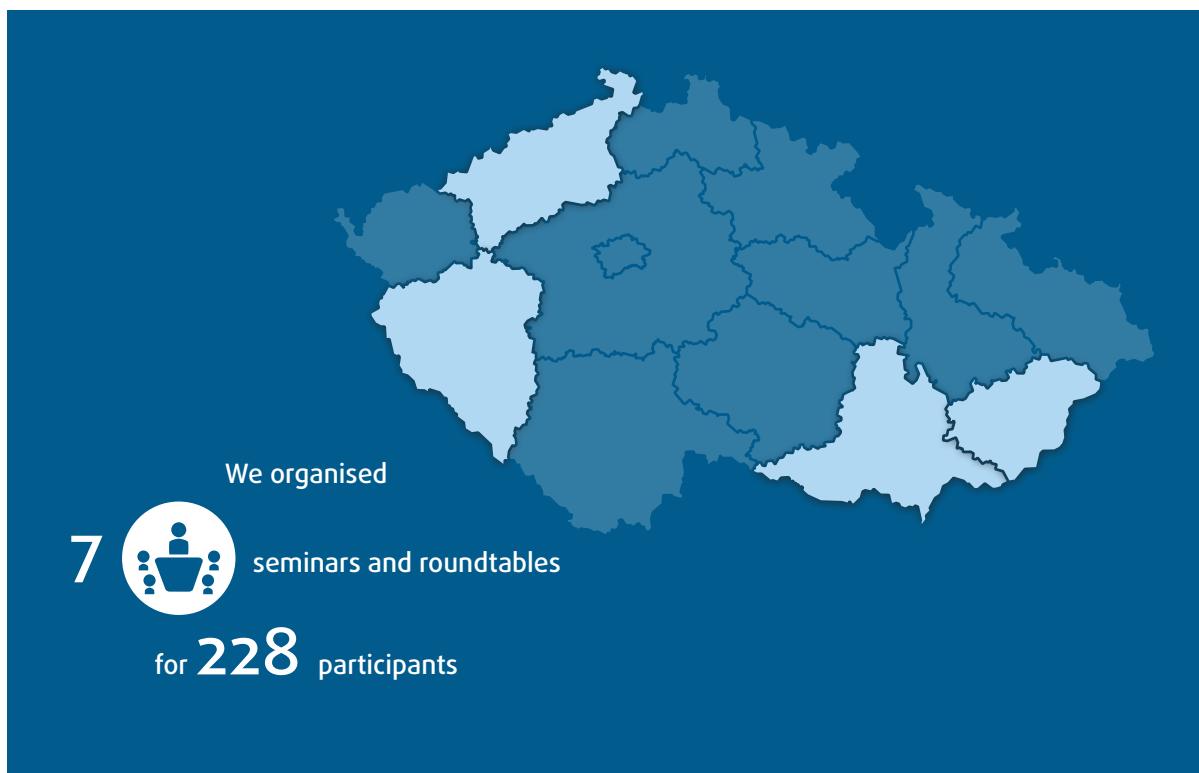
## We organised 7 seminars and roundtables for 228 participants

In 2017, we focused on some of construction authorities' refusal to provide copies of design documents to the parties of the proceedings. We asked all regional authorities whether they would provide the design documents in certain model situations and under what conditions. We found that the authorities' practice was very diverse. Some authorities would not provide the documents at all; some would provide them under certain conditions (e.g. with regard to the character of the structure and the interests of the parties); and others would provide them without other considerations. We believe that in respect of each application to provide design documents, construction authorities should take into account all the interests – the interest of the owner of the structure described by the design documents as well as the interest of the party to the proceedings requesting inspection of the documents in the fairness of the proceedings. Only then should they decide; applications for provision of the documents for inspection should not be denied outright. Since the practice in this regard is not uniform, we asked the Ministry for Regional Development to take steps to unify it.

## Animal welfare requires more than fodder and water

In the past two years, we have been focusing also on the issue of cruelty to animals, since we received a number of complaints against the inactivity of the competent authorities (regional veterinary administrations and municipal authorities, which deal with infractions in this area). When inquiring into the complaints, we encountered certain limitations of the Animal Protection Act, which complicate the authorities' procedure in specific cases (e.g. keeping exotic animals without permit). We continue to deal with the problem of insufficient funding for "substitute care" for animals taken away from their owners because they mistreated them. Although the Act obligates, under certain circumstances, the authorities to remove animals from owners who mistreat them, this is not done in practice, especially in cases involving large numbers of livestock, because the municipalities lack money to provide for the animals. In February 2018, we will organise a conference on the topic of cruelty to animals, where we plan to discuss potential changes to the Animal Protection Act and the ways authorities should assess animal welfare.

 Press release <http://bit.ly/problematika-zvirat>



### Some buildings not designated as cultural heritage monument are also valuable

There are buildings in many municipalities which are valuable because of their appearance, despite not being officially designated as cultural heritage monuments. We have repeatedly encountered cases where owners renovated such buildings and, in so doing, completely changed and ruined their original valuable appearance. Construction authorities did not require any special permit for these changes. We believe that construction modifications (renovations) which result in removal of decorative façade elements and different colour of the outer coat must be assessed as appearance-altering modification subject to a construction permit. Before giving such a permit, construction authorities must ensure that the proposed modification does not damage the urban and architectural value of the neighbourhood. These values must also be protected by construction authorities when structures are built near cultural monuments (we refer e.g. to the case of a structure which inconsiderately overshadowed the valuable St. Catherine Rotunda in Česká Třebová). In 2018, we plan to issue a summary of recommended procedure for construction authorities in similar cases.

Case of St. Catherine Rotunda – Defender's Report: File No. 3390/2017/VOP

### When construction authority approves the construction planned by its own municipality

At our meetings with representatives of construction authorities, we often discuss the problem of "systemic bias". From our practical experience, we know that parties to proceedings increasingly complain against biased officials or entire offices (systemic bias), which causes complications and delays in administrative proceedings. The Ministry for Regional Development has compiled a material on potential solutions to systemic bias. We commented on it and voiced our support for a solution consisting in the abandonment of the "mixed" model of public administration, i.e. separation of State administration from local government in the area of construction procedure. We support introducing a separate system of construction authorities (similar to the system of labour offices) independent of local governments. There is also an alternate solution being worked on based on the Government's resolution by the Ministry of the Interior in co-operation with the Ministry for Regional Development, consisting in an amendment to the Code of Administrative Procedure.

Press release  
<http://bit.ly/zatepleni-skoly>



# 6 JUDICIARY, MIGRATION, FINANCE

In the previous year, we focused on consumer protection. We also dealt with the fee for filing an instigation to review public contracts with the Office for the Protection of Competition. We will attempt to achieve reduction of the extraordinary CZK 10,000 fee. We again handled the issue of repeated appointment of court officials. We managed to launch co-operation with the Union of Towns and Municipalities concerning local fees and contributed to introduction of rules for awarding subsidies.

We dealt with

1,938  complaints;

of which

→ 874 fell within the Defender's mandate and,

→ 1,064 fell outside the Defender's mandate.

→ 107 inquiries revealed errors – we did not manage to ensure remedy,

→ in just 1 case.

# »»»»» We help change the rules



## Providing information on the number of court proceedings to which someone is a party

We found that there was a lack of uniform practice when courts inform of the number and type of proceedings to which a specific person is a party (summary of proceedings pending). The courts disagree on the manner of handling these requests, the fee they should charge and the scope of information that should be provided. In our opinion, such requests fall under the Free Access to Information Act and cannot be subject to a fee (except for compensation for costs under the Act). Simultaneously, however, the courts must take personal data protection into consideration. The fact that a person is a party to proceedings constitutes personal data. Therefore, we asked the Ministry of Justice to issue a methodological guideline to unify the court practice in this regard and provide the courts with guidelines for dealing with similar requests. The Ministry agreed and issued methodologies for the courts to follow.

 **Defender's Recommendation:**  
File No. 46/2015/SZD

## Repeated appointment of court officials will be prohibited by the Minister's instruction

In the Annual Report for 2016, we noted that we had asked the Minister of Justice to take measures preventing the re-appointment of the presidents and vice-presidents of courts, as such a practice was prohibited by the Constitutional Court's ruling. In 2017, the Defender was approached by the President of the Union of Judges with a request to lodge actions in public interest and contest the decisions of the Minister of Justice which re-appointed vice-presidents of courts. The Defender chose not to lodge such actions. The primary mission of the Defender is to protect the rights of individuals against unlawful acts or inactivity of the authorities. This, however, is a systemic problem and no clear violation of rights of specific individuals is identifiable. We also consider the power to file an action in public interest (*actio popularis*) to be a step of last resort reserved for situations where the standard ombudsman methods are not sufficient. The requested actions, even if successful, would not deal with the problem in a lasting manner. For these reasons, we decided to promote measures that would prevent the practice from recurring in the future. According to the statement of the

Minister of Justice, an amendment to the relevant instruction has already been prepared that will prohibit re-appointment of the presidents and vice-presidents of courts. Nevertheless, we think that this solution is also only of temporary nature and we will seek an amendment to the relevant legislation.

### Costs of remand in custody will be assessed sooner than after 16 years

We encountered a case where the complainant had been in remand from June 1997 to December 1998. In 2005, he was sentenced to one year in prison, i.e. a period shorter than the time he had already spent in custody. In 2007, the court imposed the duty to cover the costs of custody. However, the decision enumerating the outstanding costs in the amount of CZK 42,520 was not issued by the remand prison director until 2015. The complainant filed a complaint against the decision, where he also pleaded time limitation of the debt. The Director General of the Prison Service rejected the complaint and the complainant paid the costs in instalments. It is unacceptable to enumerate the costs of remand in custody 16 years after it took place.

This was an atypical case where the court first rendered a decision on the duty to cover the costs of custody, and these were subsequently assessed by the prison director. Only the prison director's decision thus constitutes the enforcement title. Unlike the Prison Service, we believed that the aforementioned amount constituted a receivable under public law and, consequently, the director could not have applied the Civil Code (in respect of the term and duration of the limitation periods); he should have proceeded according to public law, i.e. especially the Tax Rules and the Code of Administrative Procedure. Since this practice was systemic, we talked with the Director General of the Prison Service, who subsequently instructed prison directors to issue decisions on enumeration of the costs of custody within a 3-year deadline pursuant to the Tax Rules.

 **Defender's Report and Opinion:**  
File No. 4811/2015/VOP

### Rules for deciding on subsidies

Many complaints we received pointed out that decision-making on subsidies from the State budget was unclear and the applicants considered the

whole process non-transparent and unpredictable. Decisions often lack reasoning and the applicants do not know why they did not get a subsidy; sometimes they do not even receive a proper decision, but rather only information that subsidy was not awarded. We consider such a procedure unlawful. Matters not regulated by so-called "major" budget rules (*rules for the State budget and funds*) must, in our opinion, be governed by the Code of Administrative Procedure. At the same time, we are aware that full application of the Code of Administrative Procedure would complicate and prolong decision-making (which could entirely paralyse the subsidy system). For this reason, we recommended that the Ministry of Finance regulate the process of decision-making on subsidies within the "major" budget rules more precisely, but also in simpler terms compared to the Code of Administrative Procedure. The Ministry of Finance first refused to acknowledge that its procedure was unlawful, but eventually accepted our arguments and recommendations.

### Discontinuation of the Visapoint system

As of 31 October 2017, the Ministry of Foreign Affairs terminated the oft-criticised Visapoint system. We were long calling attention to the dysfunctional nature and lack of transparency in Visapoint's operation in certain countries. We have been monitoring the system daily and publishing the results. Our findings concerning the long-term dysfunction of Visapoint were also used by the extended chamber of the Supreme Administrative Court, which noted in its decisions made in May 2017 that unless the situation improved, prior registration in Visapoint could not be required for applying for residence permit. This court decision as well as our findings subsequently contributed to the Ministry's decision to discontinue Visapoint entirely.

 **Press report on the functioning of Visapoint**  
<http://bit.ly/fungovani-visapointu>

 **Decisions of the Supreme Administrative Court:**  
[File No. 7 Azs 227/2016](#) and [File No. 10 Azs 153/2016](#)

 **Yearbook of asylum and foreigner law**  
<http://bit.ly/rocenka-cizinci>

# >>>>>> We are here to help

## We helped

91  people with problems concerning delays in court proceedings

134  people and companies with issues concerning taxes and customs duties

## Disseminators of advertisement have to guarantee it is not misleading

We were approached by a customer who had purchased a cosmetic product which had been advertised in a newspaper as permanent solution to varicose veins. Since the promised effect did not manifest, he asked the trade licensing authority to investigate a suspected unfair commercial practice consisting in dissemination of misleading advertisement. However, the authority did not punish anyone. We were convinced that the authority should have taken steps against the disseminator of the advertisement (i.e. the newspaper), who was responsible not only for the manner of dissemination, but also (together with the maker of the advertisement) that the advertisement was not misleading. After our warning, the trade licensing authority corrected its error. The authority concluded that if the newspaper was not able to evaluate the contents of the advertisement, it should have required an indemnity from the client who had ordered it, including a declaration on the accuracy of the contents of the advertisement and a confirmation that the advertisement complied with Czech legislation. The trade licensing authority concluded that such an indemnity did not constitute a sufficient reason to lift the newspaper's responsibility for spreading misleading advertisement for the aforementioned product, and initiated administrative proceedings concerning an offence committed under the Advertising Regulation Act.

 Defender's Report: File No. 3964/2016/VOP

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

### taxes and tax administration

### Energetický regulační úřad

### ČTU

### odškodňování

### inappropriate conduct of judicial persons

### long-term residence permits

### local fees

### consumer protection

### temporary residence permits

### delays in court proceedings

## Who may deal with an entrepreneur's unfair practices?

During the last year, we encountered several cases of authorities refusing to deal with consumer complaints against unfair (misleading or aggressive) business practices. The authorities told the consumers that another authority was competent to hear their complaints, but that authority subsequently also claimed it lacked competence. The consumers did not know who to turn to.

## When an operator offers a discount on a food product, complaints are dealt with by the Czech Telecommunication Office

We were approached by a complainant to whom his telecommunications operator had offered a special "reward" for loyalty in the form of vitamin supplements sold via another vendor's online shop. However, the complainant found that all other customers of the online shop received the same discount. He thus turned to the Czech Trade Inspection Authority, the Czech Telecommunication

Office and, given the nature of the reward as a food product, also the Czech Agriculture and Food Inspection Authority. All these authorities refused to deal with his complaint against the misleading practice. In our opinion, the Czech Telecommunication Office was competent to hear the complaint. It was the operator who promised a discount to its customers with the aim of influencing their consumer behaviour (e.g. whether they stayed with the operator or recommended the operator to others). This fact, not the nature of the reward as a food product, was relevant for determining official competence. The Czech Telecommunication Office agreed with our conclusions.

 [Defender's Report: File No. 7212/2016/VOP](#)

#### Make sure a utilities auction is really just an auction

We encountered complainants who had been visited by business representatives who had offered to prepare for them an "utilities auction", meaning a comparison of the terms provided by their existing supplier of utilities (meaning electricity or gas) with the offers of several other suppliers. They would then decide whether to switch to another supplier or not. Despite assurances about the non-binding nature of the auction, the complainants signed not just a utilities auction contract, but also a full power of attorney. The power of attorney authorised the company to enter on their behalf into a utility supply contract with the supplier whose offer in the auction would turn out the "best". When the complainants found they had been misled, they turned to the Czech Trade Inspection Authority and the Energy Regulatory Office. Both authorities rejected their complaints. We determined that the complaint should have been handled by the Czech Trade Inspection Authority. Even though the case involved the supply of electricity and gas, the misleading practices were employed by a "brokerage" company (offering a comparison of the suppliers' offers and brokering contracts with the suppliers). Such an act would only fall within the substantive jurisdiction of the Energy Regulatory Office if the same services were offered by a utilities vendor holding a valid licence under the Energy Act.

 [Defender's Report: File No. 7638/2016/VOP](#)

#### Very precious LED lightbulbs

We encountered cases where a consumer had been visited by a representative of a utilities energy

supplier (i.e. a licenced utilities vendor). The representative offered a "gift" in the form of a LED lightbulb set in exchange for switching from the previous supplier. If the consumer subsequently changed his or her mind about the switch (e.g. because it was not as favourable as it originally seemed) and used the statutory period for withdrawal from the contract, the energy supplier demanded disproportionate amounts (thousands of Czech crowns) as compensation for the "donated" LED bulbs. Since the unfair practices were used directly by licenced utilities supplier representatives, the Energy Regulatory Office was competent to handle the complaints. However, the subsequent dispute on the obligation to pay the price for the LED bulbs (a dispute arising from a purchase contract) is dealt with by the department of alternative dispute resolution for consumer disputes at the Czech Trade Inspection Authority.

 [Press release <http://bit.ly/darek-zarovsky>](#)

#### Foreign nationals who have been raised, live and study in the Czech Republic can now claim permanent residence

We were approached by an 18-year-old Armenian girl who has grown up in the Czech Republic and studies and lives here with her mother, siblings, grandparents, aunt and other relatives, who have all been granted permanent residence in the country. However, she was not granted permanent residence because according to applicable legislation, the five-year period necessary to obtain permanent residence did not include the time of stay as a family member of a Czech citizen. The girl was granted this type of residence in the past because her mother's long-term boyfriend (who also participated in the children's upbringing) was a Czech citizen.

This year, the courts accepted our opinion that under EU law, this time should also be counted for the purposes of acquiring permanent residence. In this case, the application for permanent residence can be filed in the Czech Republic, despite the fact this is not provided for in the relevant law. Therefore, the girl is not required to leave her family and go to Armenia where she would lack any means to support herself.

 [Defender's Opinion: File No. 1185/2015/VOP](#)

 [Judgment of the Municipal Court in Prague of 8 February 2017, File No. 3A 26/2015, and the Supreme Administrative Court of 24 May 2017, File No. 1 Azs 90/2017](#)

# »»»»» Let's talk together



## Current problems in administration of local fees

We organised a roundtable discussion with representatives of the Ministry of Finance, regional authorities and the Union of Towns and Municipalities on current problems concerning administration of local fees and other public-law receivables. We talked about waiving local fees, the use of forms, the manner of enforcing negligible debts and the authorities' responsibilities in administration of public-law receivables. We met with the representatives of regional authorities, the Ministry of Finance and the Ministry of the Interior again to discuss the administration of local fees. We showed a presentation of the most common errors made by municipal authorities and explained the situation of children who had incurred debts for collecting municipal waste due to their parents' negligence. Our findings were incorporated in a material that now serves as a manual for municipalities on how to deal with selected problems in the administration of local fees.

 **Manual for administration of local fees**  
<http://bit.ly/mistni-poplatky>

## Who will punish dealers of low-quality goods sold via teleshopping?

We participated in a meeting of representatives of the Czech Trade Inspection Authority, the Ministry of Industry and Trade and the Council for Radio and Television Broadcasting where they discussed their disputes on who was competent to intervene against unfair commercial practices in teleshopping. A complainant purchased jewellery via teleshopping; the jewellery was advertised to be of certain quality (carat gold, Swarovski crystal), but what goods she received were damaged and not as advertised. She turned to the Czech Trade Inspection Authority, which handed the complaint over to the Council for Radio and Television Broadcasting. The Council returned it back to the Trade Inspection Authority, because it could only review the course of the teleshopping itself, not any unfair practices consisting in sending a different product than advertised on TV.

We agree with the Czech Trade Inspection Authority and the Ministry of Industry and Trade that the Council for Radio and Television Broadcasting has substantive competence in this matter. Pursuant



to the Consumer Protection Act and the Radio and Television Broadcasting Act, the Council is competent to investigate unfair commercial practices in advertising and teleshopping. The unfairness of the commercial practice affects all the stages, including the sale itself and after-sale activities.

 [Defender's Report: File No. 63/2017/VOP](#)

#### We continue to meet and discuss current topics concerning the administration of court-appointed experts

This year's meeting with the representatives of regional courts and the Ministry of Justice focused on matters of application of a new instruction governing the activities and status of court-appointed experts and interpreters. We discussed inspections of the expert's journals and the risks involved in substantive review of expert reports by bodies of the State administration of experts while court proceedings are still pending. Representatives of regional courts also voiced their concerns about insufficient remuneration of experts. We, too, believe that a new remuneration decree is in order. The experts' fees have not changed since 2002.

#### Situation of stateless persons in the Czech Republic and current issues in the practice of the Immigration Police

We have organised two seminars in co-operation with the United Nations High Commissioner for Refugees (UNHCR). At the first seminar, we discussed problems concerning the legal status of stateless persons with NGOs, attorneys, judges of regional courts and the Supreme Administrative Court, academic workers and the Ministry of the Interior. This was a follow-up on a similar seminar we organised in 2016. We agreed that the Czech Republic had room for improvement in terms of complying with its international obligations and that its own legislation was insufficient in this regard. At the second seminar, we discussed the Dublin procedures, the situation of unaccompanied minors, detention of foreigners and implementation of forced returns with representatives of the Directorate of the Immigration Police and all its regional departments. The seminar included presentations by judges of the Supreme Administrative Court, Constitutional Court, representatives of the academia, UNHCR lawyers from the Czech Republic and the UK, representatives of the Red Cross from Austria and Frontex from Spain, and others.



# 7

## SUPERVISION OVER RESTRICTIONS OF PERSONAL FREEDOM

We visit places of detention where persons restricted in their freedom are or may be present, and deal with complaints concerning prisons and psychiatric hospitals. We also monitor the expulsions of foreign nationals and inquire into the procedure of municipalities as public curators.

This year, we:

- visited **22** facilities,  

- monitored **25** expulsions of foreign nationals,  

- dealt with **643** complaints raised by children, social services clients, patients, convicts and persons under curatorship  

- trained **288** public curators and employees of social services facilities  

- acquainted over **500** students, experts in various fields and senior citizens with our findings and recommendations  


You can find more information on the activities of the Department of Supervision over Restrictions of Personal Freedom in the Annual Report of the NPM for 2017.

 <http://bit.ly/NPM-report>



# »»»»»»»» We help change the rules

## Facilities visited in 2017

Kostomlaty pod Milešovkou - H

Kosmonosy - C

Horní Beřkovice - C

Praha - A

Praha - L

Praha-Zbraslav - I

Krásná Hora nad Vltavou - J

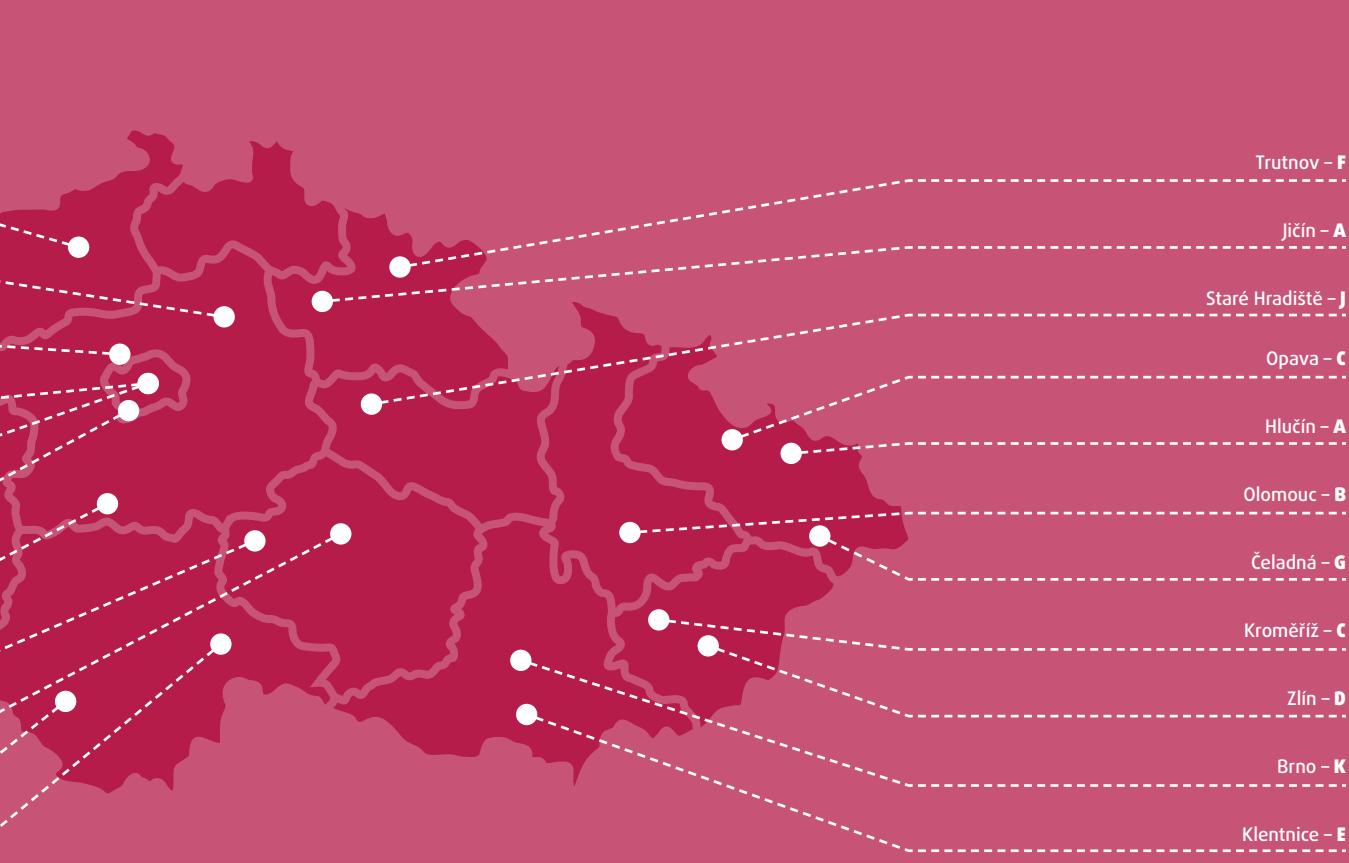
Lidmaň - E

Havlíčkův Brod - C

Javorník - E

Jindřichův Hradec - A





- A** Police cells
- B** Remand Prison
- C** Psychiatric hospitals
- D** Special regime home
- E** Facilities for people with disabilities
- F** Treatment facility for long-term patients
- G** Children's care home

- H** Educational institution
- I** Facility for children requiring immediate assistance
- J** Facilities providing social services without authorisation
- K** Institution for security detention
- L** Asylum reception centre

## Treatment facilities for long-term patients

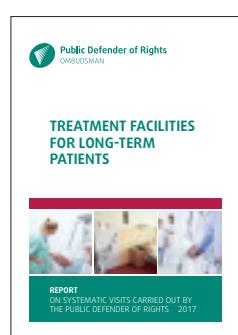
We visited 8 facilities for long-term patients. We encountered:

- neglecting the patients' nutritional needs
- insufficient rehabilitation
- insufficient mobilisation
- lacklustre support for the patients' self-sufficiency and other shortcomings..

Therefore, we issued a summary report where we presented our generalised findings. We formulated 7 systemic recommendations for the Ministry of Health and 102 recommendations for healthcare services providers on how to improve care. The summary report was also sent to all facilities for long-term patients, medical schools and professional associations. We are also preparing training

courses for the nursing staff working in the treatment facilities.

 Report on visits to treatment facilities for long-term patients  
<http://bit.ly/long-term-patients>



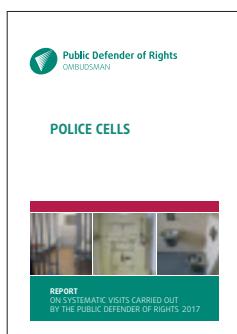
## Police cells

According to our findings obtained during visits to 47 police cells, persons detained in these cells

- must strip naked;
- must perform squats;
- are required to surrender their glasses;
- receive insufficient advice on their rights.

Such interference with the dignity and privacy of individuals is not always justified. We described these and other shortcomings in our summary report on visits to police cells and sent it to the heads of the police departments operating the cells. We asked the Police President to issue an internal instruction on carrying out body search specifying the circumstances and manner in which a body search may be conducted.

 Report on visits to police cells  
<http://bit.ly/police-cells>



## Protective institutional treatment in psychiatric hospitals

We carried out five visits to psychiatric hospitals tasked with performance of court-ordered institutional treatment. Even though protective institutional treatment constitutes a deprivation of personal freedom, the Czech Republic lacks any systematic supervision over it and the patients do not have any means to defend themselves against continuing or recurring ill-treatment. We have repeatedly called attention to this shortcoming (see legislative recommendations, [p. 11](#)).

A preliminary evaluation of the visits to psychiatric hospitals reveals other systemic problems as well:

- there is no governmental concept of protective institutional treatment and there are thus differing opinions among physicians, experts and judges as to its purpose and the time when the patient should be released;

- the legislation does not provide a list of patient's rights and obligations, and there are no recommended psychiatric and sexological procedures for a number of aspects of care – the situation in individual hospitals therefore unreasonably differs;
- many hospitals are overburdened and there is no plan on how to satisfy capacity requirements for protective treatment in the Czech Republic.

In 2018, we will issue a report on systematic visits to psychiatric hospitals tasked with performance of protective institutional treatment.

## Remunerations for working convicts

We called attention to the insufficient remuneration for working convicts in our summary report <http://bit.ly/prisons-2016> on visits to prisons in 2016. We were successful – Government Regulation No. 361/2017 Coll. stipulates a new amount of remuneration effective from April 2018.

## Treatment of persons being expelled

Social work with persons who are subject to expulsion from the Czech Republic helps them cope with the situation, reduces the risk of self-inflicted harm and other behaviour on the part of the foreign nationals that would preclude them from leaving the country. Through our recommendations published in the reports on expulsions, we contributed to the new regulation issued by the Director General of the Prison Service regulating the preparation for expulsions of foreign nationals.

We have long been following the practice of handcuffing the persons being expelled during escorts. We have analysed hundreds of escort decisions and monitor the use of handcuffs directly during the expulsions. We have identified a generalising and routine approach on the part of police officers. For this reason, we have used our sanction powers by informing the Police President, whom we asked to ensure that police officers always evaluated handcuffing during escorts on a strictly individual basis, taking into account the principle of proportionality. We also insist that police officers always provide justification for their decision to handcuff a person during escort.

 [Defender's Report and sanctions:](#)  
File No. 36/2016/VOP

# »»»» We are here to help



When we cannot deal with a complaint directly, we at least try to inform the complainant whom to turn to and how to deal with the situation.

**108**



complaints in the area of social services

Most complaints were related to the quality of social services. We have repeatedly called attention to the fact that there is no independent authority to review complaints raised by clients of social services (see legislative recommendations, p. 12). We also want to ensure that serious interferences with the dignity of persons to whom social services are provided are punished as an infraction (see legislative recommendations, [p. 12](#)).

**61**



complaints against facilities providing psychiatric care

Patients most often complain against the terms of the stay and treatment in psychiatric hospitals. Our request to introduce monitoring by the Public Prosecutor's Office to ensure compliance with the law in protective institutional treatment has still not been accepted (see legislative recommendations, [p. 11](#)).

409



complaints were received from accused, convicted and institutionalised persons

We most often dealt with complaints raised by convicts regarding the fact they were not placed in facilities close to where their families lived. They have complained often about the quality of prison healthcare.

• **Representation in disciplinary proceedings**

On our own initiative, we launched an inquiry into a case involving the right to legal aid in disciplinary proceedings against prisoners. We found that prisons' procedure in this regard was not uniform. Some prisons provide for such legal aid with reference to the Imprisonment Act, other prisons do not, citing the same. For this reason, we contacted the Directorate General of the Prison Service of the Czech Republic and informed it that convicts had a right to direct legal representation if they requested such aid. Our arguments were accepted and the Directorate General modified the internal regulation on disciplinary proceedings to clear up certain ambiguities.

• **Prison's report on convicts for the purposes of a court hearing**

A convict complained about the contents of evaluating reports prepared by the Pardubice Prison for a court hearing on the convict's transfer to a medium security prison. In our inquiry, we concluded that the prison had made an error when it did not provide the court with complete information on the complainant's medical condition and was unable to specify the basis for the negative assessment of the complainant. We pointed out that convict assessment reports prepared by the prison for courts had to both accurately reflect reality and have a solid basis. Evaluation backed by evidence (e.g. records in the prison information system, personal file, unified records sheet or evaluations of adhering to the treatment programme) significantly helped to eliminate concerns about the evaluator's bias. After we issued our final statement, the prison accepted our legal opinion.

Defender's Opinion: File No. 1572/2016/VOP

65



complaints concerning limitation of legal capacity, curatorship and other supporting measures.

We have repeatedly called attention to the need to adopt a law on public curatorship to regulate the manner in which it is performed and ensure proper supervision. If such a law had been enacted, we would not have to deal with so many complaints from persons under curatorship.

• **Interests of persons under curatorship in disposal of property**

On our own initiative, we inquired into the procedure of a public curator in disposal of the property of a person under curatorship, especially with regard to a lease of co-owned real estate. We concluded that the curator had not exerted a sufficient effort to ensure that the person under curatorship would receive adequate and transparent profits from the lease, which would have improved the person's financial independence.

Defender's Report and Opinion: File No. 1959/2016/VOP

# »»»» Let's talk together



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. We regularly publish articles in the *Sociální služby* (Social Services) monthly journal where we try to respond to questions frequently raised by workers in social services. We also contribute to *České vězeňství* (Czech Prisons), *Listy sociální práce* (Social Work News) and *Flor- ence* (a magazine for nonpractitioners).

## Training of workers in social services

We organised several seminars for specialists working with clients with dementia. The purpose of the training was to inform them about the Defender's findings from systematic visits to residential social services facilities with a view to preventively strengthening the protection of clients dependent on care of others and supporting social services workers in performing their duties.

A total of 92 social services workers participated in the seminars.

## Training of public guardians

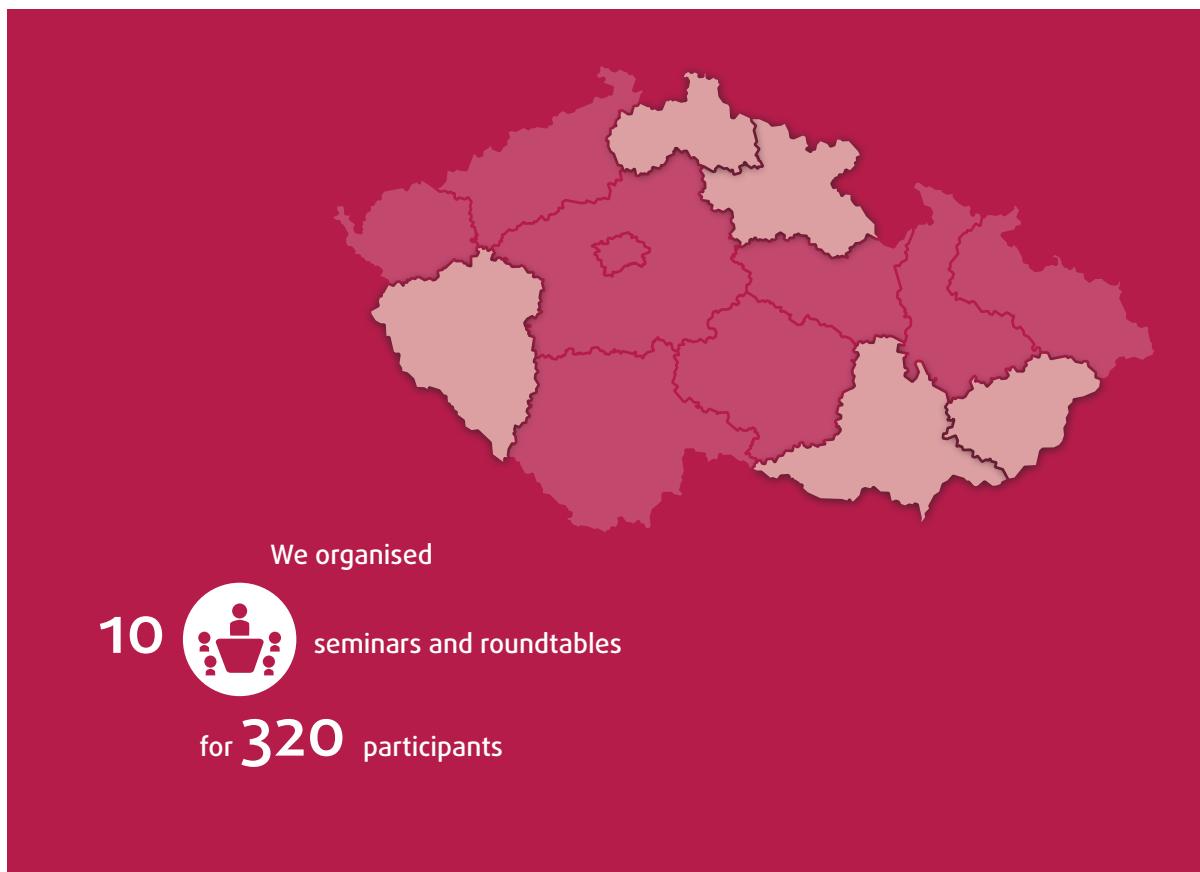
By providing training to public guardians, we tried to promote protection of persons with limited legal capacity and help public guardians who often lack sufficient methodological guidance. We provided training to 178 public curators at four seminars.

## “Senior Academy” – Municipal Police of Brno project

We have long been participating in the Senior Academy, a project led by the municipal police in Brno, which aims to improve awareness among the elderly of their rights concerning the provision of social and health services. To over 100 elderly people, we presented our findings from systematic visits to treatment facilities for long-term patients and retirement homes.

## “Days of Memory” in co-operation with the Czech Alzheimer Society

At the occasion of the World Alzheimer Day, we participated in the Days of Memory project led by



the Czech Alzheimer Society. The project includes memory screening and early recognition of memory disorders, which can represent early signs of dementia. An early diagnosis can help mitigate the onset of dementia using pharmacological and other treatments. Certified employees of the Czech Alzheimer Society screened nearly 140 volunteers over several days.

#### Roundtable discussion with heads of facilities for children requiring immediate assistance

After a series of 9 visits to facilities for children requiring immediate assistance, we organised a roundtable debate with the directors of the visited facilities on our findings and practical recommendations. We stressed that care provided in these facilities had to not only meet the basic needs of the children, but also provide for educational care, counselling (to children and their parents) and specialised care from a social worker and a psychologist. A stay in the facility should be of temporary and family-like nature and provide help aimed at returning the child back to his or her family.

In 2018, we will publish a summary report on visits to facilities for children requiring immediate assistance.

#### Roundtable debate with directors of psychiatric hospitals

After a series of 5 visits to psychiatric facilities tasked with the performance of protective institutional treatment, we organised a roundtable discussion with their directors and a representative of the Psychiatric Society of Czech Medical Association of J.E. Purkyně. We discussed systemic aspects of institutional treatment and the benefits of our recommendations for the psychiatric hospitals. The discussion also revealed that many hospitals were overburdened and there was no plan on how to satisfy capacity requirements for protective treatment in the Czech Republic. Participants in the roundtable discussion noted problems with institutional treatment of patients with addictions who lacked any motivation to co-operate in treatment; the purpose of the ordered treatment was impossible to achieve and these persons also frustrated the treatment of other patients.

In 2018, we will issue a summary report on systematic visits to psychiatric hospitals tasked with the performance of protective institutional treatment.

### **Roundtable discussion on expulsions**

We have been monitoring expulsions for over 7 years. We organised a roundtable discussion with representatives of the police, Refugee Facilities Administration and the Prison Service on systemic implications of expulsions. We agreed that good preparation of the expelled persons and organisation of the expulsion reduced the risk of ill-treatment and facilitated a successful performance of the expulsion.

to prevention of ill-treatment. Specifically, we discussed the use of means of restraints, respecting the principle of informed consent of psychiatric patients and handling of patients in protective institutional treatment.

### **International activities**

We have worked as the national preventive mechanism for over 12 years and want to share our experience, but we also strive to learn new things. For this reason, we participated in a number of meetings with foreign colleagues and organised an international conference of representatives of national preventive mechanisms in Prague.

### **Seminar for employees of regional authorities dealing with complaints against psychiatric care**

We prepared a seminar for employees of health departments at regional authorities who carry out inspections and handle complaints against health-care providers. The seminar dealt with legal and clinical issues which could help administrative bodies to correctly perform their duties and contribute





# 8

## EQUAL TREATMENT AND DISCRIMINATION

Our key topics in 2017 included protection against discrimination on grounds of race, ethnicity and nationality, conditions for work-life balance at Czech Ministries and problems faced by HIV-positive persons in healthcare. In the area of education, we most often inquired into the procedure of the Czech Schools Inspectorate.

In total, we received

**384**  discrimination complaints,

which was **113**  less compared to 2016.

We found discrimination in **13**  cases,

including  **7×** cases of direct discrimination

 **4×** cases of indirect discrimination

 **2×** cases of harassment/instruction to discriminate/  
incitement to discrimination/retaliation for reporting  
discrimination

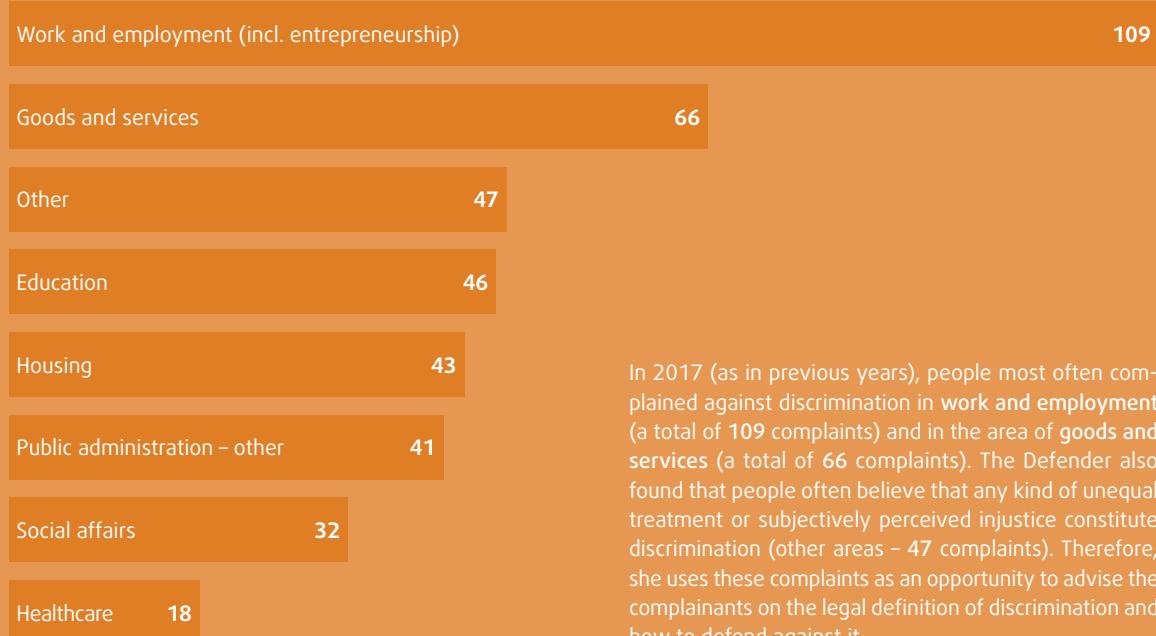
(nevertheless, 69 cases are still pending)

In 30 cases, the suspicion of discrimination could be neither proved nor disproved. The Defender also identified discrimination in a further 27 cases which she had received in the previous years (2013-2016). The details are included in the 2017 Annual Report on protection against discrimination.  
<http://bit.ly/DIS-reports>

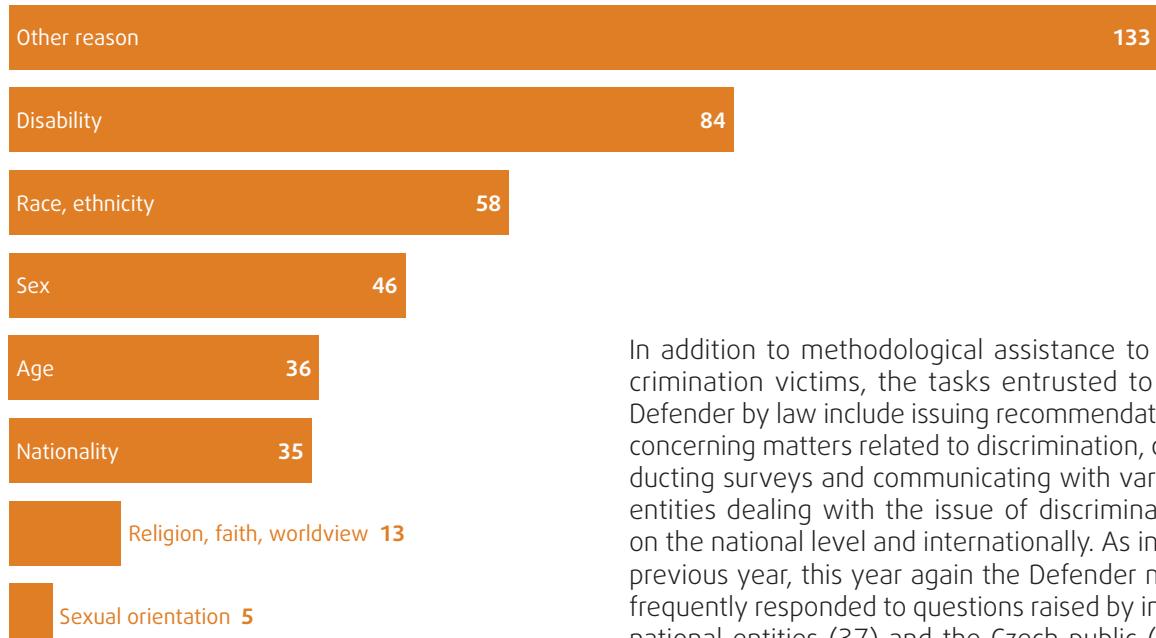


# »»»»» Complaints in focus

## Areas in which people felt discriminated against in 2017



## Why people felt discriminated against in 2017



In 2017, too, people complained about discrimination on grounds which are not listed in the Anti-Discrimination Act. The Defender puts complaints motivated by these reasons in the category "Other" (133). As regards the traditional grounds of discrimination, the most frequently claimed were **disability** (84), **race and ethnicity** (58), **sex** (46) and **age** (36).

# »»»» We help change the rules



## The fee for filing an anti-discrimination action was reduced

The Parliament complied with the Defender's recommendation from 2012. As of 30 September 2017, the judicial fee for filing an anti-discrimination action equals CZK 1,000. The courts may still decide to waive the fee if there are justified grounds. We believe that this step will facilitate access to justice for discrimination victims.

Act No. 549/1991 Coll., on court fees, as amended (Annex – Court Fees Rates, item 40) <http://bit.ly/sazebnik-poplatky>

## The Czech Schools Inspectorate must target its inspections better. It should also better listen to the children.

We request that the Inspectorate respond to cases of discrimination or bullying by performing inspections in order to guide the school to an effective remedy, or to impose a fine in infraction proceedings. The Inspectorate's written outputs should also refer to the Anti-Discrimination Act.

If the Inspectorate finds deficiencies in a school's economic management, it must inform the competent regional authority. Finally, the Inspectorate must sensitively interview children who might have witnessed illegal conduct of teachers in order to clarify investigated cases. The Chief Schools Inspector gradually accepted our recommendations and included them in internal guidelines.

Defender's Report: File No. 4043/2016/VOP

Defender's Report: File No. 5495/2015/VOP

Defender's Report: File No. 1616/2014/VOP

Defender's Report: File No. 1922/2015/VOP

## Screening of passengers at the airport must be transparent and fair

Roma passengers were not allowed to check in at Prague's airport for a flight to Canada, even though they had valid travel documents. At first, three individuals, who had not introduced themselves and were not wearing any name tags, asked the

Roma passengers about the purpose of their trip in the departure hall, and then sent them out from the airport without giving a reason. We could not prove with certainty that discrimination on grounds of ethnicity had occurred. However, we recommended a correct procedure for similar situations to the airline, the airport, and the security agency which checks the passengers' travel documents, in order to protect the right to equal treatment. We have not encountered similar cases since.

#### [Defender's Report: File No. 4637/2015/VOP](#)

#### HIV drugs and conditions for foreigners

A hospital was providing medication to HIV positive patients who were citizens of other EU Member States only for a period of one month, even though the period for Czech citizens was 3 months. The hospital may not proceed in this way in respect of patients with permanent residence in the Czech Republic as this would constitute discrimination on grounds of nationality, which is prohibited by EU law. The procedure is in order in relation to patients who only have temporary residence in the Czech Republic; however, the hospital should take the patient's personal circumstances into account and provide the medication for 3 months if the patient is likely to live in the Czech Republic for a longer period of time.

#### [Defender's Report: File No. 3951/2016/VOP](#)

#### How best to inform students with disabilities about the possibilities for adjusting their studies to their current medical condition?

If individuals with disabilities are not sufficiently informed, they cannot exercise their right to have their studies adjusted to their medical condition. That is why Charles University has accepted our recommendations and begun to inform new students with specific needs of the study conditions immediately upon their first login to the information system. In our view, the university will thus avoid further discrimination disputes similar to the one we dealt with in 2017.

#### [Defender's Report: File No. 5355/2015/VOP](#)

#### Access of EU citizens and long-term residents to municipal housing

The rules for renting flats stipulated by some municipalities and cities include the condition that the applicant must be a Czech or EU citizen. Both of these conditions are at variance with the prohibition of discrimination. We provided our analysis to the Ministry of the Interior and the authorities of statutory cities which are subdivided into municipal districts. These institutions may oversee the rules for renting flats owned by municipalities and municipal districts. Some municipalities and cities have already brought their rules into accordance with the legislation based on our recommendation alone.

#### [Defender's Report: File No. 3893/2015/VOP](#)

#### Special schools should be eligible to receive EU subsidies

Promoting inclusive education must not, without justification, be at the expense of children with medium and serious disabilities who attend special schools. This is why we recommended that the Ministries and the European Commission revise their decision to exclude these schools from receiving financial support as part of the Integrated Regional Operational Programme (IROP). Special schools (particularly special secondary schools), meaning schools for children with special needs, help build job opportunities for people who could otherwise hardly receive a proper education. The new rules which now include special schools among the potential recipients of funding have been effective since November 2017.

#### [Defender's Report: File No. 5434/2016/VOP](#)

#### Bank changes the rules of marketing campaigns in relation to minors

A bank was offering a discount on the purchase of a mobile phone. However, it turned down a client who was a minor. We advised the bank that indiscriminate insistence on the age limit for providing services was not acceptable. In our opinion, a reasonable solution would be to make the purchase of the phone conditional on the consent of the minor's legal representatives (e.g. parents). We also recommended that the bank inform the clients better on the availability of promotional offers to minors. The bank accepted our recommendations.

## Defender's Report: File No. 5618/2016/VOP

### School districts must not lead to residential segregation

Segregation in schools is one of the worst forms of discrimination; it results in a waste of talent and significantly affects the children's lives. Therefore, we welcome that the Ministry included our comments into the methodological recommendations for municipalities on how to organise school districts. The recommendation clearly states that cities and municipalities must define school districts so as to avoid creating ethnically homogeneous schools. Otherwise, they would be violating the Schools Act and the Anti-Discrimination Act. We will monitor the application of the recommendation in practice.

 Methodological recommendation on activities of local and regional governments No. 6: Generally binging ordinances. Defining school districts for catchment kindergartens and primary schools  
<http://bit.ly/metodika-spadovost>

### We advised an employer on fair conditions for severance pay

We helped an employer in public administration with the introduction of a severance scheme.

We assured the employer that discrimination on grounds of age would not occur if the severance pay system was transparent and all employees eligible for old-age pension were informed well in advance that they could either stay in the employment or terminate it and receive a severance pay.

## Defender's Opinion: File No. 84/2016/VOP

### May a homosexual donate blood?

We fight against stigmatisation. For this reason, we do not want gay people to be automatically considered promiscuous or even infected with a serious disease (HIV, hepatitis B or C). Rejecting a person as a blood donor based solely on that person's sexual orientation constitutes direct discrimination. We do not consider it discriminatory to refuse a man who has had sexual intercourse with another man in the past year. However, we recommended to the experts to re-evaluate this condition regularly, taking into account current developments in medical sciences and epidemiology. It should be noted that the period is shorter in other EU Member States.

## Defender's Report: File No. 3997/2016/VOP



# >>>>>> We are here to help



**We are pleased to note that our arguments still matter. Our activities prove that discrimination can be eliminated even without judicial intervention. If people know their rights and obligations, they can live happier lives.**

Therefore, in 2017, we helped, for example



people with disabilities to get reserved parking spaces at the place of their residence

 [Defender's Report:](#)  
File No. 864/2016/VOP

 [Defender's Report:](#)  
File No. 5945/2016/VOP



a family with an autistic child that needed a bigger municipal flat

 [Defender's press release](#)  
of 8 June 2017  
<http://bit.ly/autista-bydleni>



a civil servant who had asked for shorter working hours in order to care for her child

 [Defender's press release](#)  
of 27 July 2017  
<http://bit.ly/zamestnani-det>



a man who needed a certificate of identity change following gender reassignment in order to be issued a certificate of employment

 Defender's Report:  
File No. 7121/2015/VOP



a mother who could not enter a shop with her baby carriage

 Defender's press release  
of 23 November 2017  
<http://bit.ly/rodice-nakupovani>



a disabled boy who had problems when transferred to a new school

 Defender's press release  
of 11 January 2018  
<http://bit.ly/rodina-byt>

 Defender's Report:  
File No. 6899/2015/VOP

Despite these achievements, we encounter cases where discrimination cannot be clearly proven due to a lack of evidence. Most often, we encounter this lack of evidence in the area of employment. In 2017, this was the case, for example, of



a trainee attorney-at-law who claimed sexual harassment at work

 Defender's Report:  
File No. 2569/2016/VOP



a man whose service relationship had been terminated during the trial period after he had announced he wished to go on a parental leave

 Defender's Report:  
File No. 3849/2016/VOP



a woman who had been dismissed by her employer after returning from a parental leave

 Defender's Report:  
File No. 1206/2015/VOP

## Anti-discrimination actions before Czech courts

The year 2017 brought a number of court decisions. From among the ones we were involved in, we would like to mention the following:



A court found discrimination during enrolment of Roma boys in the 1st grade. The school was ordered to issue a formal apology in writing.

 Judgment of the District Court in Ostrava of 1 March 2017,  
File No. 26 C 42/2016-124.  
[http://bit.ly/ostrava-42\\_2016](http://bit.ly/ostrava-42_2016)

 Defender's Report:  
File No. 5202/2014/VOP



Town authorities discriminated against a blind applicant for a municipal flat. A court awarded the applicant an apology and a compensation in the amount of CZK 50,000.

 Defender's press release  
of 22 August 2017



The Supreme Court ruled that a collective bargaining agreement which excluded persons entitled to receive old-age pension from receiving severance pay was discriminatory.

 Judgment of the Supreme Court of the Czech Republic of 18 January 2017,  
File No. 21 Cdo 5763/2015

 Defender's Report:  
File No. 7077/2015/VOP

## Based on our activities, the following people initiated court actions in 2017



civil servants contesting unequal remuneration after return from parental leave

 [Defender's Report:](#)  
File No. 6862/2016/VOP



Roma tenants discriminated against by the city hall as the landlord

 [Defender's Report:](#)  
File No. 107/2013/VOP



an employee of a public higher education institution, who was given disciplinary warnings by the employer and was assigned work by her employer even though she was taking care of an ill family member at that time

 [Defender's Report:](#)  
File No. 3532/2016/VOP

## Free legal aid

Benefits successfully claimed for our clients by the attorneys-at-law co-operating with the Pro bono alliance



Video doorbell: A housing co-operative originally refused to install a video doorbell for a member with a hearing impairment.

 [Defender's Report:](#) File No. 2587/2015/VOP



A barrier-free flat: A municipality originally refused to exchange a standard flat for a barrier-free one, even though it had a barrier-free flat available.

 [Defender's Report:](#) File No. 1307/2014/VOP

In 2017, we referred to the Pro bono alliance a case of a blind man who was dissatisfied with the practice of Czech TV. We believe that using Czech subtitles for world news is not the best solution for people with visual impairments. Unfortunately, our intervention did not result in an improvement in the audio-description of reports from abroad. A court's opinion will be crucial for further media practice.

 [Defender's Recommendation:](#) File No. 44/2015/DIS

# »»»» Let's talk together



## Bespoke Civil Service

We initiated the Bespoke Civil Service project. Over its course, we conducted a survey of several Ministries. We were interested in how their employees managed to achieve a work-life balance.

The survey showed that there were differences between the Ministries in this area. Of flexible working arrangements, flexible working hours are the most common. Shorter working time or work from other places (home/working) are only available to a few percent of civil servants, even though many more are interested. We welcomed the fact that the Ministries tried to provide for pre-school care in the form of a children's group. In 2018, we will also organise a workshop to discuss further improvements.

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

We have organised a two-day international conference on work-life balance. There were 80 participants present <http://bit.ly/slakovani>.

## Ten years since D.H. and Others v the Czech Republic

D. H. and Others v the Czech Republic was a milestone judgment in the area of discrimination and education with importance for the Czech Republic and the whole of Europe. The Defender has been monitoring the implementation of the judgment since 2009. The Defender enumerated the Czech Republic's challenges in the area of inclusion in a joint statement with Council of Europe's Commissioner for Human Rights.

In co-operation with Open Society Fund Prague and Open Society Justice Initiative, we organised an international legal seminar on strategic litigation.

After the seminar, we screened a Czech-British documentary film called "Europe: Which Children Matter?", and discussed the integration of Roma children into mainstream education.

We also prepared a miniseries titled "Každé dítě má právo na kvalitní vzdělání" (Every Child Deserves a Good Education). You can watch the videos featuring Arnošt Goldflam, Jana Horváthová, Pavel Liška,

Jan Bendig, and Kateřina Šimáčková on YouTube. The videos reached 25 thousand views.

Our new information leaflet on enrolments in non-segregated schools was received well by Roma parents, as well as organisations working with them. The leaflet is available on our website in Czech and Roma languages.

International legal seminar on strategic litigation <http://bit.ly/seminar-litigace>

Miniseries "Každé dítě má právo na kvalitní vzdělání" (Every Child Deserves a Quality Education) <http://bit.ly/miniserial>

### First benefit concerts

We wish to support a good cause. This is why we organised two piano concerts and managed to collect CZK 25,000 in donations. The money will be sent to two associations:

- The "Konsent" association, for its campaign "Když to nechce, tak to nechce" (No means no), whose objective is to refute the myths about sexual assault and rape..
- The META association, which supports integration of schoolchildren whose mother tongue is not Czech into Czech schools.

### New publications

We issued several new information leaflets to increase awareness of protection against discrimination and the Defender's mandate.

Education – frequently asked questions

Hate speech on the Internet

10 tips on how to help victims of workplace bullying <http://bit.ly/sikana-rady>

Inspiring stories – discrimination on grounds of race, ethnicity and nationality: information material in Czech and Roma languages.

Leaflet on enrolling in non-segregated schools in Czech <http://bit.ly/letak-skola> and Roma languages <http://bit.ly/romsky-skola>

Citizenship of the European Union – collection of the Defender's cases involving application of EU law  
<http://bit.ly/citizenship-EU>



We updated our recommendation on fair enrolment in the 1st grade to reflect legislative changes  
<http://bit.ly/doporučení-ZS>



### For social workers

We launched co-operation with the Association of Educators in Social Work. We organised four workshops in Prague <http://bit.ly/DIS-praha> and [Olomouc](#) for them.

### For attorneys-at-law

In co-operation with the Pro Bono Alliance, we held [five workshops](#). The topics concerned were:

- Basics of anti-discrimination law
- Harassment at work
- Equal pay: How to win a court case?
- Religious symbols at work and in education
- Material need: Discrimination on grounds of ethnicity

## Public administration

We organised the traditional "Together against discrimination" roundtable for administrative authorities. We trained 90 inspectors of the Czech Schools Inspectorate on issues concerning segregation. With registry offices, we discussed our findings on entering into a registered partnership. We focused on problems associated with education of children whose mother tongue is not Czech.

 [Roundtable discussion "Together against discrimination!"](#)

 [Seminar "Selected issues of equal access to education"](#)

 [Roundtable debate "Entering into registered partnership in the Czech Republic"](#)

 [Roundtable debate "Schoolchildren with other mother languages and Czech language exams: an obstacle in access to secondary education?"](#)

## NGOs

At the traditional annual roundtable, we discussed the most important issues regarding healthcare, education, and housing. We participated in events

organised by Prague Pride, Byznys pro společnost, Open Society Fund Prague, and Stálá asociace konferencí ve vzdělávání.

 [Roundtable debate "The year 2016 in combatting discrimination"](#)

## Private sector

An increasing number of complaints from the insurance industry led us to organise a roundtable. With the insurance companies, we discussed fair insurance terms and conditions. We shared our experience with discrimination claimed in relation to providing various kinds of insurance products.

 [Roundtable "Right to equal treatment in insurance"](#)

## International co-operation

We actively co-operated with our partners in Equinet – the European Network of Equality Bodies (see Foreign relations, p. 96). We also welcomed 15 international colleagues at a seminar on equal pay organised in Brno.

 [Seminar on equal pay](#)





9.

## OFFICE OF THE PUBLIC DEFENDER OF RIGHTS



# »»»»»»»»»» Budget utilisation in 2017



Approved budget for 2017

**110,895 thousand Czech crowns**

During the budget period, the budget was increased to cover the costs of a project of the national programme under the Asylum, Migration and Integration Fund, Reg. No. AMIF/8/02, titled "**Support for the Effective Monitoring of Forced Returns**" (CZK 1,018 thousand); a project of the Operational Programme "Employment", Reg. No. CZ.03.1.51/0.0/0.0/15\_027/0005638 titled "**Bespoke Civil Service**" (CZK 1,295 thousand); a project of the Integrated Regional Operational Programme, Reg. No. CZ.06.3.05/0.0/0.0/15\_011/0003134 titled "**Cyber security of the Office of the Public Defender of Rights**" (CZK 7,924 thousand); and the costs of a 10% increase in salaries incl. accessions in relation to the change in tariff tables in accordance with Government Regulation 564/2006 Coll., effective from 1 November 2017 (CZK 1,181 thousand).

In 2017, we also claimed non-utilised funds from the previous years in the amount of CZK 31,221 thousand. Of this amount:

- CZK 15,634 thousand was used for expenses not provided for in the relevant chapter (incl. CZK 1,914 for salaries and other payments for work, incl. accessions);
- CZK 9,553 thousand was used for operational expenditures; and
- CZK 4,167 thousand for programme funding expenditures (expansion of the Office's HQ).

The Office used the funds to provide for the standard activities of the Office related to handling complaints and performing other duties of the Defender, in particular under Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination (activities of the national equality body), the **Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (national preventive mechanism)**, and Act No. 326/1999, on residence of foreign nationals in the Czech Republic, as amended (monitoring of expulsion of foreign nationals). We also used the funds for co-funding of the following projects: "Children's Group Motejci", "Support for the Effective Monitoring of Forced Returns" and "Bespoke Civil Service".



## Utilised budget for 2017

# 123,678 thousand Czech crowns

amounting to 111.53% of the approved budget.  
Of which:

- CZK 872 thousand was used to fund the "Children's Group Motejci" project;
- CZK 1,117 thousand was used to fund the "Bespoke Civil Service" project;
- CZK 1,048 thousand was used to fund the "Support for the Effective Monitoring of Forced Returns" project.
- CZK 47 thousand was used to fund the "Cyber Security of the Office of the Public Defender of Rights" project.

The budget overrun was covered by claiming non-utilised funds (CZK 15,634 thousand was used). Claimed non-utilised funds were used for salaries and accessions for four employees (permitted excess of the staff limit), other personal costs (co-operation with external experts), increase in the salaries of the representatives due to a change in the pay base, operating costs (the operating costs were significantly reduced in the approved budget), and work associated with the extension of the Office's HQ, which will be predominantly funded from claimed non-utilised funds.

 Detailed economic results of the Office are available on the Defender's website  
[http://bit.ly/VOP\\_hospodareni](http://bit.ly/VOP_hospodareni)

# >>>>>> Staff in 2017



**136**



The binding limit on the number of employees of the Office in 2017 was 136 staff members. The original limit of 133 was increased to 136 during the year (on average by 2.5 employees, to 135.5 persons). These employees mainly participated in projects co-funded by the European Union.

**136.75**



The actual average recalculated number of employees recorded in 2017. The limit was exceeded due to an increase in the number of staff by 4 employees (3 employees at the legal department and 1 IT worker in the department of internal administration). The limit was exceeded with the prior consent of the Ministry of Finance of the Czech Republic and was covered claimed non-utilised funds from previous years. As a permanent measure, the increase in the number of employees was accounted for in the Office's draft budget for 2018.

**104**



A total of 104 employees were directly dealing with complaints and performing other tasks within the Defender's mandate (activities of the national preventive mechanism, the national equality body for protection against discrimination and monitoring of expulsions of foreign nationals).



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. Especially during systematic visits in places of detention and in performance of our responsibilities in the area of equal treatment, we co-operated with physicians, psychologists, medical and social workers, geriatricians and others. We also developed our co-operation with the faculties of law in Brno and in Olomouc in the form of teaching practice-oriented classes (the "clinics"), also including students' internships in the Office.

# »»»» Provision of information pursuant to Act No. 106/1999 Coll., on free access to information



65



We received **65** requests for information pursuant to the Free Access to Information Act. The requests were received through the post, e-mail or via the data box.

51



The requested information was provided in **51** cases. The requests mostly comprised queries about generalised results of the Defender's inquiries and opinions in the various areas of responsibility (the army, police and prisons; discrimination; social and legal protection of children; spatial, construction and occupancy proceedings; nature and landscape protection; EIA and mining administration; matters of foreigners etc.), requests for documents from the complainants' files, requests for the "Prisons" collection, and information on the functioning, organisation and budget of the Office.

19×



In **19** cases, the Office refused to provide the requested information (or its part). In 4 cases, the applicants filed an appeal against our decision not to provide information. The Office received 1 complaint against its procedure in handling a request for information.

	Total number of requests for provision of information	65
Section 18 (1)(a)	Number of decisions rejecting a request (or its part)	19
Section 18 (1)(b)	Number of appeals lodged against a decision	4
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	1
Section 18 (1)(f)	Other information concerning the application of law	0

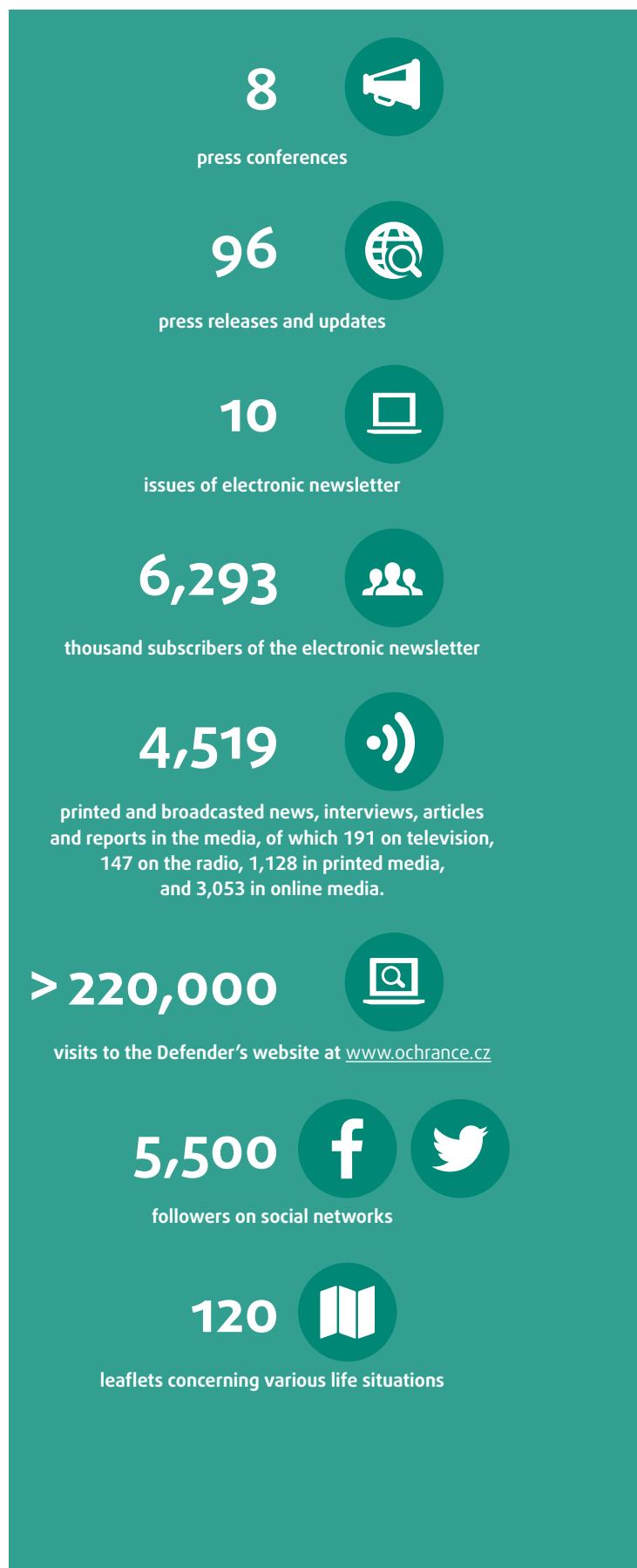
# >>>>>> Media and public relations

## Defender's topics most covered by the media

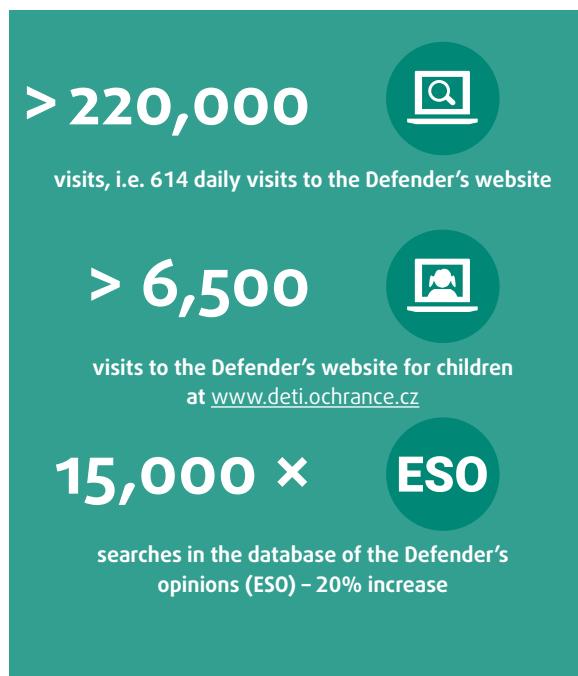
- findings from visits to police cells and treatment facilities for long-term patients
- insufficient sensitivity of society to the rights and needs of people with disabilities
- disputes among neighbours and changes in infraction proceedings
- inquiry into the procedure of the Tax Administration in the use of retention orders
- findings on the procedure of authorities in cases of cruelty to animals and mismanaged animal farming
- a case where the police fined an elderly woman at a hospital because she fell down and injured herself while getting off her bicycle

## The media were interested in the Defender's activities especially in connection with

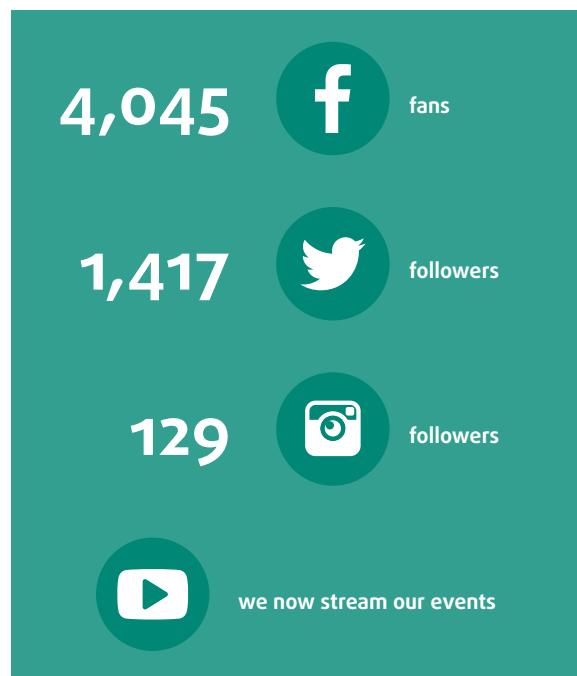
- activities of the police (89 contributions)
- problems of the elderly and social security in general (83 contributions)
- protection of children's rights, childcare and family issues (74 contributions)
- rights of people with disabilities (61 contributions)
- the area of construction and the environment (50 contributions)



## Website



## Social networks



### TOP topics on the website

- noise nuisance
- rules concerning contact of both parents with their child
- workplace bullying, mobbing, bossing
- allowance for care
- assistance in material need

### TOP topics on social networks

- the case of a woman who took care of her grandson, but the authorities were requesting that she refund a large amount of money due to a wrongly awarded fostering allowance
- the help we provided to a young mother whose child was taken away by authorities which wanted her to first prove she could take care of the baby
- the Every Child Deserves a Good Education miniseries
- cases where we helped people with disabilities and their families to secure barrier-free housing
- breaking the “vicious cycle” of a recurring official error which deprived a mother of several children of her widow’s pension

Last year, the Defender succeeded in raising public awareness with respect to resolving specific life situations also through her regular column in the Týdeník Květy magazine.

**120**  
leaflets



in Czech and 9 other languages with instructions and solutions to frequent life situations (English, French, Russian, German, Romani, Polish, Vietnamese, Arabic and Persian)

[bit.ly/letaky\\_zadosti](http://bit.ly/letaky_zadosti)

# »»»»» International relations



In 2017, we continued developing relations with international governmental and foreign non-governmental organisations and strengthened co-operation with other ombudsman institutions abroad. This year's traditional annual meeting of Visegrad Group ombudspersons was organised by the Defender in Brno. Near the end of the year, we became members of the European Network of National Human Rights Institutions (ENNHRI). We believe the membership will bring us many interesting opportunities for further co-operation and sharing of knowledge and experience.

## 1/ Meeting of Visegrad Group ombudspersons

In September 2017, the Defender organised a meeting of ombudspersons from the Visegrad Group countries – Poland, Slovakia, Hungary and the Czech Republic – in Brno. Aside from discussions on many practical topics and sharing experience, the conference produced a joint declaration titled "Human Rights for Everyone", which reacts to current challenges faced by ombudsman institutions in the EU and stresses the importance of mutual support and co-operation.

## 2/ Strengthening bilateral co-operation

In spring 2017, the Defender started co-operating with the new Public Defender of Rights in Slovakia, Ms Mária Patakyová. Bilaterally, she also met with the Armenian ombudsman, Mr Arman Tatoyan, and the Albanian ambassador in Prague, Mr Rize Poda. Over past year, she started a long-term co-operation with a team of the Austrian ombudsman which deals with cross-border social security issues. By the end of the year, the Defender participated in the First National Human Rights Congress organised

by the Polish ombudsman, Dr. Adam Bodnar, at the occasion of the 30th anniversary of the Polish Public Defender of Rights Act.

### 3/ ENNHRI membership

By the end of 2017, we became members of the European Network of National Human Rights Institutions (ENNHR). The network connects national human rights institutions from all over Europe and is a part of the global network of human rights institutions (GANHRI). The membership will be of great benefit to us because the network also associates many ombudsman institutions which serve as the national human rights institutions in their respective countries. No such institution has been designated in the Czech Republic, which is why many international human rights actors turn to us for co-operation. Although we may not fully perform the role of NHRI due to the statutory limitation of our mandate, we do as much as our mandate allows. We believe that the membership in ENNHRI will serve as a valuable source of experience and information on areas yet unexplored in the Czech Republic.

### 4/ International NPM co-operation

In 2017, we have continued strengthening bilateral co-operation with NPMs in other EU Member States, especially the Austrian and French NPMs. We participated in several international conferences and other educational events. The NPM activities in international co-operation culminated with our active participation at a conference held in Hammamat, Tunisia, which was organised on

the occasion of the establishment of the Tunisian NPM. We were invited by representatives of the Council of Europe to share our experience and practical knowledge and thus assist our Tunisian colleagues in developing their new institution and performing its tasks.

### 5/ International activities as part of Equinet

The equal treatment department was very active internationally in 2017, especially within the Equinet framework. Equinet is an association of national equality bodies founded over 10 years ago. Within the network, we were involved in four workgroups (law, policy making, gender, research). Petr Polák, the head of our equal treatment department, was elected for another term as a member of the Equinet Executive Board, and Veronika Bazalová, one of our lawyers, acted as a moderator of the Equality Law workgroup. Aside from several meetings of the Executive Board, we also attended various educational events organised by Equinet, e.g. a seminar on strategic litigation by equality bodies, a conference presenting the results of the EU's MIDIS II survey (discrimination against migrants and the Roma in the EU) and the seminar on disadvantaging women on the labour market.

In addition to Equinet, we co-operate with other international organisations as well. We presented our practical findings to the United Nations, the European Commission against Racism and Intolerance, the Committee on the Elimination of Racial Discrimination, the European Committee of Social Rights and the Committee on the Rights of Persons with Disabilities.



## Selected international activities in 2017

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- **Evolution and Challenges of Multi-mandated NHRIs** (Georgia, Tbilisi, 19 April). Topic of the conference: National human rights institutions (NHRI) and their diversity, co-operation between NRHIs and other actors, 20th anniversary of the Georgian ombudsman.
- **Reclaiming Human Rights in Europe: How to Enhance the Democratic Space?** (Croatia, Zagreb, 11 and 12 May). Topic of the conference: independence of ombudsman institutions, anti-terrorism measures and protection of human rights, freedom of speech and hate speech.
- **Annual Conference on European Data Protection Law 2017** (Belgium, Brussels, 10 to 12 May). Topic of the conference: introduction of the new EU data protection regulation.
- **Jahrestagung zum europäischen Sozialversicherungsrecht 2017** (Germany, Trier, 22 and 23 May). Topic of the meeting: presentation of draft amendments to specific regulations in social security law, case law of the Court of Justice of the European Union in the relevant area, expected Brexit implications for social law.
- **The Nordic Asylum Law Seminar** (Iceland, Reykjavik, 29 and 30 May). Topic of the conference: current issues in asylum law, management of migration, and human rights with regard to protecting refugees in crisis.
- **Recent Case Law of the European Court of Human Rights in Asylum Law Matters** (France, Strasbourg, 1 and 2 June). Topic of the seminar: detailed introduction to the case law of the European Court of Human Rights in the area of asylum law.
- **European Network of Ombudsmen Conference** (Belgium, Brussels, 19 and 20 June). Topic of the conference: populism in the EU, rights of EU citizens after Brexit, current and future challenges for ombudsman institutions.
- **Application of EU law: Challenges in complaint handling and own-initiative investigations. Shared experiences between the European Network of Ombudsmen and the Commission services** (Belgium, Brussels, 28 and 29 September). Topic of the seminar: ombudsman inquiries related to EU law.
- **Together for an Equal Europe** (Belgium, Brussels, 10 October). Topic of the conference: problems and challenges for equality bodies, reflections on the 10 years of Equinet.
- **Own Initiative Workshop** (Netherlands, the Hague, 6 and 7 November). Topic of the workshop: inquiry on own initiative.
- **ENNHR General Assembly** (30 November). Topic: presentation of the organisation's strategic plan for 2018–2021, ENNHR activities in 2017, report of ENNHR's financial committee, ENNHR workgroups presentations.
- **"We have the Same Rights": The Human Rights of Older Persons and Long-term Care in Europe** (28 November). Topic of the conference: rights of older persons and care for long-term patients in Europe.
- **The First Congress on Human Rights** (Poland, Warsaw, 8 to 9 December). Topic: current international challenges in the area of protection of civil rights, human rights from generational perspectives, women's rights.
- **International Colloquium of National Preventive Mechanisms Repositories and Practices** (Tunisia, Hammamet, 14 to 16 December). Topic: organisation and functioning of the NPM, methodology for systematic visits in facilities.



# ANNUAL REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS 2017

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