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Annual Report

2021

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21

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Table of Contents

Mgr. Monika Šimůnková
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Foreword by the Public Defender of Rights

The Annual Report on the Activities of the Public Defender of Rights provides a regular overview of the most important matters my colleagues and I dealt with during the past year. Its limited length, however, means that I cannot offer more than a "sneak peek" at what we do. After all, nearly 8,000 people asked for our help in 2021 with their problems and difficulties! Behind each complaint or question is a story of a particular person, family or child who is looking to our Office, located in the centre of Brno, for a promising solution to their seemingly hopeless situation. I cannot tell you about all the happy endings. And you cannot read about every single case we were unable to resolve to everyone's satisfaction. What I can offer you, however, are samples of success and failure across all the policy areas falling within my statutory remit. Our sample of cases reflects current social issues and developments.

We got used to calling 2021 'Year Two' – the second year of the pandemic. This logically had a major impact on our work. We persistently inquired whether the public health measures adopted by the Government were in line with the law, and that authorities and organisations were not overstepping their powers in applying the measures. We were successful at drawing attention to problematic aspects and unintended consequences of the regulations being adopted. Our work during the pandemic is discussed in more detail in the individual chapters.

That the world is slowly returning to normal and people are again starting to deal with issues other than those related to Covid-19 is also reflected in the fact that, after a decline in 2020, the number of complaints falling within the Defender's remit rose again last year to 70% of all the complaints filed. We also tried to help complainants whose cases we could not deal with directly, and provided them with advice and guidance on how they should proceed.

In addition to another wave of infections, the autumn also brought unexpected turbulences on the energy market, affecting almost one million Czech households. When several utility suppliers had gone out of business, people contacted us with questions about the rules for the supplier of "last resort". I personally discussed the matter with representatives of the Energy Regulatory Office and came to the conclusion that the current Energy Act had to be modified. I consider it essential to clarify the duties borne by the suppliers of last resort and ensure that vulnerable customers are protected.

On a different note, I translated the findings from my inquiries into the circumstances of the recent water pollution incident on the Bečva River directly into my legislative recommendations for the year 2021. I am submitting this Annual Report to the new Chamber of Deputies convened after the autumn's general election. I firmly believe that the Chamber will soon have time to discuss it and to consider my suggestions for legislative amendments.

I hope you will find this overview of our most important efforts related to the protection of rights interesting and instructive.

Stanislav Křeček, Public Defender of Rights
1 February 2022

1

Legislative recommendations, relations with constitutional bodies and Defender's activities

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

Legislative recommendations

1. MODIFICATION OF THE LEGAL RULES GOVERNING WATER POLLUTION INCIDENTS (SECTIONS 40 TO 42 AND 107(1)(D) OF THE WATER ACT)

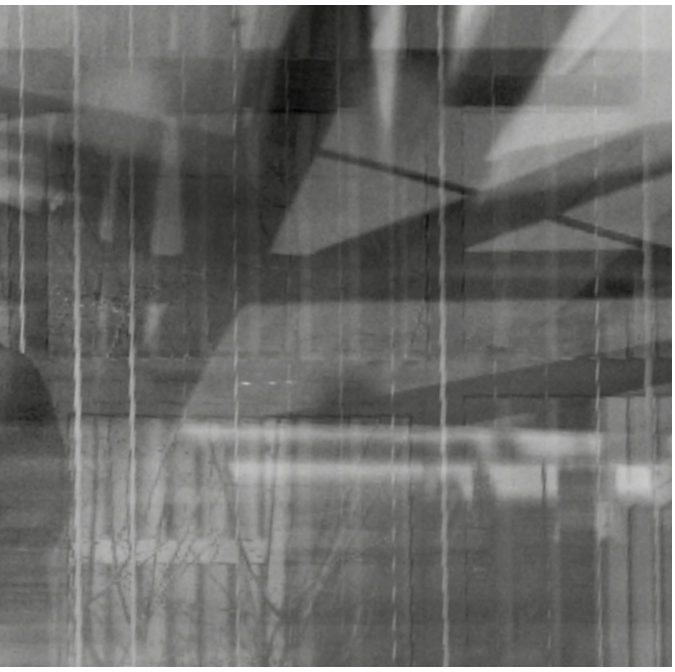
The current legislation regulating water pollution incidents is relatively concise. Until a major accident caused a massive fish death in the Bečva River in September 2020, the Defender had no hint of any significant issues in the resolution of water pollution incidents. In the course of his inquiry into this incident (File No. 7643/2020/VOP), however, the Defender identified certain shortcomings in the current legal regulation:

- lack of clarity in the regulation of reporting incidents;
- ambiguity as to when management of the clean-up work should be taken up by a regional authority;
- ambiguity as to which regional authority should manage the work in cases where an incident has affected the territory of several regions;
- and further, insufficient regulation of what the management of clean-up work consists of and what tasks the individual actors have in the resolution of an incident.

In relation to incident reporting, the Bečva accident has confirmed that the relevant legislation is so confusing that it can be said with some exaggeration that everyone is supposed to inform everyone. It can then be easy to lose track of who has informed whom and when, and whether someone who is also supposed to be involved in the recovery work might have been forgotten. It is essential that all the entities concerned be informed of the incident in due time and that they can use the powers the law gives them to deal with water pollution incidents.

In terms of the competence of water-law authorities at the regional level, the Defender's inquiry revealed that the individual authorities used different interpretations of Section 107(1)(d) of the Water Act, which includes among the competences of regional authorities the adoption of measures in case of incidents going beyond the administrative district of a municipality with extended competence. The Water Act currently does not specify explicitly how to determine which regional authority is to take action (manage the clean-up work) in cases where several administrative regions are affected by a water pollution incident.

The event on the Bečva River has shown that in order to effectively deal with an incident, it needs to be specified in more detail what the management of clean-up work entails, and it is essential to clearly define the competences of the individual entities concerned, such as the water-law authorities, the Czech Environmental Inspectorate, the river basin manager and others, also in investigation of the causes of an incident. The general legal framework needs to be incorporated in the Water Act; a more detailed specification can then be provided in an implementing decree and a methodological guideline.



The Ministry of the Environment drafted an amendment to the Water Act with a view to eliminating these and other shortcomings. However, the Government did not manage to discuss the proposed amendment to the Water Act before the end of its term in office, and the change thus did not materialise. The Defender nonetheless considers the change in legislation urgent.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

That the Chamber of Deputies request the Government to submit a draft amendment to Act No. 254/2001 Coll., on waters and on amendment to certain laws (the Water Act), as amended, to

- **provide a clear and transparent system of reporting water pollution incidents;**
- **specify explicitly which regional authority is to manage the clean-up work in the event that an incident extends beyond the administrative district of one administrative region;**
- **and specify the content of management of clean-up work and the powers of the individual entities concerned in the resolution of an incident.**

2. COMPREHENSIVE REGULATION OF GUARDIANSHIP AND SUPPORTING MEASURES FOR ADULTS

The Defender has long drawn attention to the inadequate legal regulation of guardianship, and especially public guardianship (exercised by a municipality or its legal entity). In recent years, he has also gained insights into other supporting measures. The legal framework for all the supporting measures available in cases where an adult has an impaired capacity to engage in legal conduct – i.e. decision-making assistance, representation by a household member and restriction of legal capacity, and the related guardianship of adults – is provided by the Civil Code. Based on inquiries into complaints regarding the practice of public guardians and activities related to monitoring the implementation of the Convention on the Rights of Persons with Disabilities, the Defender has identified the following persistent systemic shortcomings.

First, it has long been apparent that there is no one specifically responsible for the agenda of supporting measures. Past efforts to designate a ministry accountable for public guardianship have always reached an impasse. The individual areas related to this legal instrument were then divided among the Ministry of the Interior (the contribution towards the exercise of guardianship), the Ministry of Justice (reporting and statistics; education of guardians), the Ministry of Labour and Social Affairs (education in connection with the deinstitutionalisation of social services), and administrative regions (methodological support and control). However, this division is not enshrined in any law, so the activity in this area depends purely on the will of the individual bodies. Moreover, none of them is primarily responsible for supporting measures. More than 50 000 adults in the Czech Republic benefit from such measures at the moment. It is thus essential that a body be appointed to ensure uniform oversight of high-quality public guardianship and further supporting measures.

Second, the current concise legal regulation of supporting measures enshrined in the Civil Code is clearly insufficient. In practice, the courts are still leaning towards the invasive measure of restricting legal capacity, and are doing so on a large scale. The Defender's survey focusing on the courts' practice in decision-making on supporting measures (File No. 61/2018/OZP) revealed, for example, that the courts imposed a "summary restriction" in as many as 40% of

judgements restricting legal capacity. This means that the person concerned cannot act legally in any way, except for ordinary matters of everyday life. Such a decision then has essentially the same effects as the former deprivation of legal capacity, which however is no longer possible under the Civil Code. The courts also often interfere with fundamental rights of people who are being restricted, such as the right to vote, the right to enter into marriage and the right to work. The fact that the law does not clearly define the rights and obligations of guardians and those under guardianship also has an impact on the practical use of this instrument.

Furthermore, the existing legislation does not guarantee effective control of guardians and supporting persons. Although individuals benefiting from supporting measures can be considered particularly vulnerable, supervision is only established for guardianship, and even there only inadequately. Primarily, the supervision of guardianship falls to the competence of courts and should include inherently a regular review of the guardian's reports. However, in the absence of rules in this regard, the reports are not formally evaluated in any way. It is, in fact, unclear how the information contained in a report has been reflected in further steps taken by the court, or whether the court "merely placed the report in the file". The Defender even encountered a situation where a guardian had failed to submit mandatory reports to the court for as long as five years, without the court taking any action. Along with the courts, guardianship control is also carried out by regional authorities and the Ministry of the Interior. These authorities, however, focus exclusively on public guardians, i.e. municipalities. Regional authorities lack effective tools to ensure remedy and the control thus tends to be only methodological.

Finally, the Civil Code itself explicitly envisages a special guardianship law (see Sections 468, 471 (2) and 3033). Seven years after the Civil Code entered into effect, the Government still has to present such a law. The Defender is therefore convinced that this legislation needs to be adopted and thus a step taken towards the implementation of Article 12 of the Convention on the Rights of Persons with Disabilities.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

The Defender therefore recommends that the Chamber of Deputies request the Government to present a bill to regulate comprehensively the matter of guardianship and supporting measures, including the appointment of a central body responsible for this area.

3. ADOPTION OF A NEW LAW REGULATING ABORTIONS

The Defender has long considered the legislation on abortions inadequate (File No. 32/2011/DIS). The conditions for an abortion are laid down in a decree implementing the Abortion Act, although the conditions for the exercise of any right should generally be laid down by statutory law, and not by an implementing regulation. Furthermore, the Defender considers the exclusion of certain women from the option to have an abortion depending on their age and the number of children they have given birth to discriminatory on the grounds of age and parenthood. The Defender has found the legislation to be contradictory to EU law and discriminatory on the grounds of nationality, as the Abortion Act excludes from abortion foreign women who are staying only temporarily in the country. The Defender pointed out to the Ministry that the mentioned decree, and especially the relevant rules of European Union law, clearly imply that an abortion can be lawfully performed in the Czech Republic to all EU citizens and third-country nationals if they have any kind of a residence permit in the Czech Republic. He also communicated with the Czech Medical Chamber on a similar matter (File No. 25/2021/DIS).

Therefore, in 2020 and 2021, the Defender repeatedly contacted officials at the Ministry of Health and tried to convince them to change the legislation. The Ministry indeed confirmed that the legislation was outdated from the medical, legal and social perspectives. However, although the Ministry promised the Defender to make changes, it has not come forward with any concrete proposal.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

That the Chamber of Deputies request the Government to submit a draft new legal regulation on abortions that will fit into the valid legal system, and correspond to the current social reality and state-of-the-art in medicine.

Evaluation of recommendations for 2019 and 2020

Recommendations for 2020

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

The Defender increasingly often encounters cases where people do not receive a retirement pension because they have not completed the required 35 years of insurance by the date they reach retirement age. This is why the Defender has long been drawing attention to the unusually long period of insurance required to become eligible for retirement pension, and calling for changes in the legislation.

In December 2020, the Ministry of Labour and Social Affairs submitted to the inter-departmental consultation procedure a draft amendment to the Pension Insurance Act (submitting party's Ref. No. MPSV-2020/216544-510), which was supposed to bring fundamental changes in the area of pensions and reduce the required period of insurance to 25 years. The Defender raised a few individual comments, but otherwise expressed support for this pension reform proposal, as its basic pillars correspond to his ideas of a fairer legislation (File No. 1084/2021/S). However, the proposed amendment to the Pension Insurance Act was not discussed at all by the Chamber of Deputies in 2021.

The Defender considers this state of affairs undesirable. He is concerned that if the existing legislation remains unchanged, there will be an increase in the number of senior citizens of pensionable age who are ineligible for retirement pension, as well as increased

poverty among this group of people, putting a possible strain on the benefits system.

The aforementioned circumstances thus led the Defender to repeat his recommendation.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

That the Chamber of Deputies request the Government to present a draft amendment to Act No. 155/1995 Coll., on pension insurance, as amended, which would loosen the current condition of 35 years of contributory and non-contributory period of insurance or 30 years of contributory period of insurance, required for an entitlement to retirement pension.

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

The Defender encountered several cases where a landlord refused to co-operate with a tenant in issuing an annual bill of housing costs (Section 25 (2) of the State Social Assistance Act). Despite this, the labour offices decided to withdraw or not grant a housing allowance because this very document had not been presented.

Since the Defender did not succeed with his request to the Minister of Labour and Social Affairs for a change in the labour offices' decision-making practice, he recommended that the Chamber of Deputies adopt a partial amendment providing an exemption from the duty to submit these bills in similar cases.

In December 2020, Deputy Marek Novák, MBA submitted comprehensive motion No. 7034 to modify the amendment to the Assistance in Material Need Act (Chamber of Deputies, 8th electoral term, Chamber of Deputies document No. 652). While this motion reflected the Defender's recommendations, it simultaneously aimed to tighten the conditions for receiving certain assistance in material need and State social assistance. The Defender therefore raised objections and concerns regarding this motion (press release of 2 March 2021). The debate on the draft amendment was later closed with the end of the Chamber's electoral term.

A similar bill is currently awaiting discussion in the Chamber of Deputies (Chamber of Deputies, 9th electoral term, Chamber of Deputies document No. 3), which effectively reflects the changes to the legislation proposed in the motion previously presented by Deputy Marek Novák. In view of the Government's negative opinion, it is uncertain that the bill will be passed. Therefore, the Defender decided to repeat his recommendation.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

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

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

For many years, the Defender has been drawing attention to the unfair list of disabilities qualifying people for a special-aid allowance. The existing legislation (Annex to Act No. 329/2011 Coll.) unjustifiably prioritises some disabilities over others, even though they have comparable effects on the mobility of the individuals concerned. In this situation, for example, people who suffer from a severe mobility impairment caused by a disease or brain damage (e.g. multiple sclerosis, Parkinson's disease, etc.) are not able to obtain reimbursement for compensatory aids.

Although the Defender has repeatedly advised the Ministry of Labour and Social Affairs and the Chamber of Deputies of the mentioned shortcoming in the legal regulation, no legislative material has yet been submitted that would eliminate it and thus ensure equal access to compensatory aids for all people with disabilities, and help their mobility.

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

The Defender still considers it necessary to adopt a complete amendment to Act No. 329/2011 Coll. He therefore repeats his recommendation.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

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

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

The Defender pointed out the missing legal regulation concerning rights of people with disabilities accompanied by specially-trained dogs. Assistance and guide dogs are an important tool in the everyday lives of many people. They, unfortunately, still face situations where their dogs' help is hindered or even impossible. In the course of his work, the Defender has been advised, for example, of problems encountered in public transport, during hospitalisation in a healthcare facility, while using taxi services, when entering a school building or when travelling by train.)

Based on the Defender's recommendation (File No. 23/2015/SZD), the Government already instructed the Ministry of Labour and Social Affairs in 2016 to draft a bill that would lay down certain rights of persons with disabilities accompanied by a specially-trained dog. No such bill was submitted, but the Government issued an affirmative opinion on the Deputies' bill of June 2020 (Chamber of Deputies, 8th electoral term, Chamber of Deputies document No. 883). The Defender supported the adoption of the bill, but the Chamber of Deputies eventually failed to discuss it during its electoral term.

The Defender therefore again recommends that the Chamber of Deputies adopt the draft legislation and resolve this long-existing unfortunate situation.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

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

5. INCREASED FOSTERING ALLOWANCE FOR TEMPORARY FOSTER PARENTS

For several years, the Defender dealt with the inequality in fostering allowances for long-term and temporary foster parents who take care of a disabled child (a child dependent on care of another individual in degrees 1 to 4). Temporary foster parents' allowance had not been increased since 2013, although there had been several increases in the minimum salary, and long-term foster parents had received an increase in 2018. The Defender pointed out that temporary foster parents, too, had to cover increased costs, just like long-term foster parents. The amount of temporary foster parents' allowance should also reflect the complexity of the care provided. The Defender therefore urged the Ministry of Labour and Social Affairs and the Chamber of Deputies to properly compensate temporary foster parents for the costs associated with care for children dependent on assistance of another individual (File No. 2763/2020/S; the relevant legislative recommendation in the Defender's Annual Report for 2018 and in the Defender's Annual Report for 2020).

An amendment to the Social and Legal Protection of Children Act was approved during 2021, reflecting the Defender's recommendations. The allowance for both temporary and long-term foster parents was thus raised effective from 1 January 2022. The allowance is linked to the minimum salary and is graduated according

to the number of children entrusted to the foster parent's care and the child' degree of dependency. However, the Deputies' motions simultaneously reduced the allowance for kinship and other non-mediated foster parents. In the case of foster parents who do not have a duty to maintain and support, the Defender does not consider this reduction appropriate, and has therefore again contacted the Ministry of Labour and Social Affairs in this matter.

6. DEINSTITUTIONALISATION OF CARE FOR SMALL CHILDREN

The Defender demanded that young children under the age of three stop being placed in children's homes (known as infant care centres or children's centres) in the Czech Republic. He referred in this context to the international commitments of the Czech Republic following from Article 17 of the European Social Charter and Article 7 of the Convention on the Rights of Persons with Disabilities, as well as to the criticism of the Czech Republic for non-compliance with these obligations coming from the relevant international institutions (decisions of the European Committee of Social Rights, recommendations of the UN Committee on the Rights of Persons with Disabilities). In view of the above, the Defender suggested that children's homes for children under three years of age should be abolished in the Healthcare Services Act and that the Civil Code should set an age limit under which a child could not be placed in institutional care.

The Chamber of Deputies responded to the above shortcomings by amending the Healthcare Services Act and the Social and Legal Protection of Children Act.

The rules for placing children in a children's home changed as from 1 January 2022 (Section 43 (1) of the Healthcare Services Act). Children under three years of age can no longer be placed in a children's home based on social reasons. This also eliminated an inconsistency with the Civil Code, according to which the social situation of a child's parents alone is not a sufficient reason for placing the child in institutional care (Section 971 (3) of the Civil Code).

Effective from 1 January 2025, the Social and Legal Protection of Children Act will also be modified to set the lower limit of three years of age under which a judicial behaviour management order cannot be issued with a view to temporarily institutionalising a child. However, the age limit of three years should not apply to children with disabilities (with dependency degrees 3 and 4) who cannot receive care in a (substitute) family environment.

Although the Defender considers the changes in the legislation adopted in 2021 to be fundamental and perceives them as a positive step towards deinstitutionalising care for young children, the problem has still not been completely resolved, in his opinion. Institutional education of children with disabilities will continue to be possible without any age limitation, which the Defender sees as a possible contradiction with the Czech Republic's commitments under the Convention on the Rights of Persons with Disabilities. Under Art. 7 (1) of the Convention, States Parties are required to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. Article 23 (3) of the Convention then enshrines an explicit obligation of the States Parties to ensure that children with disabilities have equal rights with respect to family life.

As part of monitoring the implementation of the Convention on the Rights of Persons with Disabilities, the Defender will therefore look thoroughly into the strategy of the Ministry of Labour and Social Affairs to support the right of children with disabilities to live in a family environment, and does not rule out that he will submit a follow-up recommendation to the Chamber of Deputies in this matter.

7. REINFORCING CONSUMER PROTECTION IN RELATION TO UTILITY SUPPLIES

The Defender has long been approached by consumers with complaints against the procedure of vendors offering utility supplies (hereinafter "brokers"), i.e. persons operating their business without a licence, and also against utility suppliers proper (hereinafter "suppliers"), i.e. entities operating with a licence from the Energy Regulatory Office. In an inquiry that the Defender made on his own initiative (File No. 362/2019/VOP) with a focus on the Czech Trade Inspection Authority's supervision over brokers, the Defender determined that consumer protection in this field was ineffective.

The Defender therefore considered it necessary to modify the Energy Act. He recommended that the Chamber of Deputies request the Government to present a draft amendment to the Energy Act to comprehensively regulate consumer protection in negotiating contracts with utility suppliers and brokers, concentrate

supervision over these entities, and extend the competences of the Energy Regulatory Office to resolve disputes between consumers and utility brokers (legislative recommendation in the Annual Report for 2020). He considered it appropriate for the Energy Act to lay down, e.g., the mandatory requisites of a brokerage agreement, the duty of brokers to provide information in the process of negotiating contracts, the consumer's right to withdraw from a contract without a penalty, and limitation of the power of attorney granted to the broker.

An amendment to the Energy Act approved during the year 2021 comprised modifications to the Act recommended by the Defender. As from 1 January 2022, the Act newly regulates the issue of brokers in the energy industry. Brokerage activity in energy sectors can now only be performed on the basis of an authorisation granted by the Energy Regulatory Office (on the basis of an application) for a term of 5 years. Conditions are specified for the prolongation, termination and revocation of this authorisation. The brokers' new duty to provide information and the rules for brokerage agreements, such as specification of the essential requisites and the consumer's rights associated with execution of the agreement, also serve to protect consumers. What is also important is the reinforced position of the customer: termination of the authorisation no later than 12 months of the date of execution of the brokerage agreement; the consumer's right to terminate the obligation under the brokerage agreement by notice at any time without any penalty and without a notice period; the right to revoke the authorisation to conclude a supply contract; and also the consumer's right to terminate the obligation under the supply contract concluded with the broker without any penalty. The Energy Regulatory Office is newly authorised to resolve disputes concerning the performance of obligations under the brokerage agreement in energy sectors.

8. COMPLAINTS MECHANISM IN SOCIAL SERVICES

A complaints mechanism in social services is an important safeguard against interference with the clients' rights and a defence option in cases where the service provided does not correspond to the statutory principles and the set parameters. Social services clients represent a vulnerable group of individuals and an unsatisfactory quality of care can have major consequences for these people. It might even amount to ill-treatment within the meaning of Article 7 (2) of the Charter of Fundamental Rights and Freedoms and Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It is thus a major problem that the instruments for the protection of the clients' rights currently enshrined in the Social Services Act do not comprise an effective complaints mechanism.

The way a complaint has been resolved by the service provider cannot be contested by an appeal to an authority that would be independent and could provide redress. The Social Services Inspectorate is not required to address individual complaints (filed by the clients or other persons, such as relatives). The same is true of regional authorities, which merely supervise compliance with the registration conditions laid down for the social service providers.

The Defender has long been pointing out the need to adopt an (independent) complaints mechanism, and is in agreement on this with the Ministry of Labour and Social Affairs. Most recently, a possible solution was incorporated in a Government bill amending the Social Services Act (submitting party's Ref. No., MPSV-2019/239277-510/2). The bill, however, was not discussed by the Chamber of Deputies and the Defender therefore repeats his recommendation.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

The Public Defender of Rights again recommends that the Chamber of Deputies request the Government to submit a draft amendment to Act No. 108/2006 Coll., on social services, as amended, to introduce an effective complaints mechanism.

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

The Healthcare Services Act does not allow for administrative punishment of healthcare services providers for interfering with the dignity, privacy, safety and integrity of patients, because it does not define any relevant infraction. The Defender has long drawn attention to this problem, and presented reports on findings of even very serious violations of the patients' dignity, whether based on actions of individuals or due to unsuitable conditions of care. In

some cases, these might even amount to ill-treatment prohibited by Art. 7 (2) of the Charter of Fundamental Rights and Freedoms and Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This kind of interference currently cannot be penalised unless it constitutes a criminal offence. The reason is, for example, that there has been no harm to health or that the conduct in question represents a series of actions or omissions that, as such, do not attain the gravity of a criminal offence.

Administrative authorities also find various irregularities when dealing with complaints or during inspections. Since they have no means of punishing such conduct, they can only require corrective action from the providers pro futuro. This is not sufficient, however, to ensure remedy in cases where fundamental rights were violated by one-off, non-recurring action or where it is crucial to quickly prevent the recurrence or continuation of such action. Victims of ill-treatment can theoretically defend themselves using private-law remedies (by filing a lawsuit for the protection of personal rights). However, this is beyond the capabilities of many patients dependent on care and the process is too tedious. Due to the absence of an infraction defined in the law, the providers do not sufficiently respect the rights of patients or their supervisory authorities. However, the country's international commitments require that the State punish ill-treatment in an adequate way on its own initiative and thus also dissuade from such treatment.

The Defender elaborated on this legislative recommendation in more detail in the comments on the Government bill amending the Healthcare Services Act (File No. 38187/2020/S), which was not discussed by the Chamber of Deputies and thus did not bring any remedy. The Defender therefore repeats his recommendation.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

The Public Defender of Rights again recommends that the Chamber of Deputies request 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 define an infraction of unlawful interference with personal dignity, privacy, integrity and safety of patients.

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

The providers of social services help people in adverse social situations. A number of clients find themselves in a vulnerable position because they are powerless and dependent on care, or are de facto deprived of liberty. The law therefore provides various means for their protection. However, no infraction is defined with a view to punishing violations of personal dignity, privacy and integrity of the clients. This is a problem because existing criminal offences as defined in the law do not suffice for effective punishment. Not all the criteria are often met in practice (no harm to health, lack of intent, etc.). Despite that, the clients' human dignity can be violated very severely, reaching even the intensity of ill-treatment. Consequently, violation of fundamental rights of individuals must also be punishable under administrative law, where such a sanction would represent an adequate response by governmental authorities.

For several years, the Defender has pushed for an amendment to the Social Services Act to define a new infraction, including a penalty of prohibition to operate as a social services provider. Such an infraction was incorporated in the comprehensive Government bill to amend the Social Services Act (submitting party's Ref. No. MPSV-2019/239277-510/2), which, however, was not put on the agenda of the Government following the inter-departmental consultation procedure. An individual Deputies' motion introducing, among other things, a similar infraction was submitted to the Chamber of Deputies in 2019 (Chamber of Deputies, 8th electoral term, Chamber of Deputies document No. 520/0), which the Defender was ready to support. Since these legislative drafts had not been discussed by the end of the electoral term, the Defender decided to notify the Chamber of Deputies of this problem.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

The Public Defender of Rights again recommends the Chamber of Deputies request the Government to submit a draft amendment to Act No. 108/2006 Coll., on social services, as amended, to define an infraction of unlawful

interference with personal dignity, privacy, integrity and safety of persons to whom a social service is being provided.

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

Even a person deprived of liberty has the right to preservation of human dignity and privacy, including as a patient. While specific security concerns may justify interference with confidentiality in the provision of healthcare services, the rule of law principles require that such an interference have a clear basis in the law, pursue a legitimate objective (e.g. preventing a specific risk of absconding or assault) and be proportionate to this objective.

The Defender has long pointed out that the very first condition – legality – is not met since the Healthcare Services Act does not provide proper authorisation for members of the Prison Service of the Czech Republic and the Police of the Czech Republic, specifying in what situations and how they may perform inspections or supervision in the provision of healthcare services. As regards persons remanded in custody, serving a prison sentence or subject to secure preventive detention, Section 46 (1)(g) of the Healthcare Services Act requires healthcare services providers merely to ensure that examinations take place "in the presence of a Prison Service officer, in his/her sight", and in case of danger, also within his/her earshot. It thus illogically imposes on the provider an obligation which can only be fulfilled by another entity – the Prison Service of the Czech Republic. However, the Act does not grant the corresponding supervisory authority to that other entity. Under the current legislation, an interference with the patient's privacy may occur automatically in the physician's office, and even to an extraordinary extent if so requested, which is unacceptable. The Defender's findings confirm that in practice, members of the Prison Service of the Czech Republic are routinely present in the physicians' offices, which violates the prisoners' rights on a daily basis. The officers' presence is preferred over the development of more sensitive measures to ensure security in the provision of healthcare services (building secure offices, installing emergency buttons, reinforcing the medical staff with men, etc.). The law does not lay down any special regime for medical examinations of persons deprived of liberty by the Police of the Czech Republic; however, a binding instruction of the Police President prescribes that at least one police officer shall remain present "in direct audio-visual contact", unless the physician explicitly rejects the presence of police officers.

There is one more important aspect to this illegal practice. The right to see a physician is one of the basic safeguards against ill-treatment of persons deprived of liberty. At the same time, medical findings and evidence of ill-treatment represent an important prerequisite for investigating cases of ill-treatment. To fulfil both these functions, it is important that the examination or treatment take place in privacy. Indeed, the presence of police officers or of prison guards might dissuade a potential victim of ill-treatment from disclosing all information to the physician, including the circumstances of an injury. The principle of privacy during medical examination is reflected in the standard of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) as well as the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The current wording of the Healthcare Services Act thus not only fails to meet the standard of prevention of ill-treatment, but even directly prevents compliance in the case of prisoners. The Czech Republic is therefore rightfully criticised by international human rights bodies. A solution would be to amend the Healthcare Services Act and lay down a precisely defined exemption from the patient's right to privacy in the provision of healthcare services (Section 28 (3)) and abolish the unsystematic duty on the part of the healthcare services providers (Section 46 (1)(g)).

In 2021, the Defender discussed his specific legislative proposal with the Prison Service of the Czech Republic, modified it based on its suggestions, and received support for its final version.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

The Public Defender of Rights again recommends that the Chamber of Deputies adopt a Deputies' motion to amend Act No. 372/2011 Coll., on healthcare services and the conditions for their provision, as amended, so that

› **new paragraph 6 is added to Section 28, reading, including a footnote, as follows:**

"In cases where healthcare services are provided to persons remanded in custody, serving a prison sentence or subject to secure preventive detention, and to persons restricted in their freedom under another legal regulation,[1] the patient's right to confidentiality and privacy set out in paragraph 3(a) and the right to reject the presence of third persons set out in paragraph 3(h) may exceptionally be restricted by the supervision of a member of the Prison Service or the Police of the Czech Republic (hereinafter an "officer") where this is necessary due to justified fears of absconding or fears regarding the safety of persons involved in the provision of the healthcare service or of the patient, and the threat cannot be avoided otherwise. The exercise of supervision and its intensity must be proportionate to the given danger and the conditions in which the service is being provided; in extreme cases, where a more lenient procedure would not achieve the purpose pursuant to the preceding sentence, the officer may be present within eyeshot and earshot. The officer shall determine the form of supervision, if required, in co-operation with the medical staff. A record shall be made in the patient's medical records of the exercise of supervision and its form.

[1] Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended."

› **Section 46 (1)(g) is repealed without replacement.**

› **In Section 51 (5)(f), the text "Section 46 (1)(g)" is replaced by "Section 28 (6)".**

12. CANCELLATION OF THE SUBJECTIVE PERIOD (TIME LIMIT) FOR INITIATING REVIEW PROCEEDINGS (SECTION 96 (1) OF THE CODE OF ADMINISTRATIVE PROCEDURE)

In 2020, the Defender drew attention to the legal regulation of review proceedings in the Code of Administrative Procedure, which he did not consider appropriate. This was true specifically of the very short subjective period (time limit) of two months for initiating the review. Moreover, the law sets the start of this period quite vaguely as the date when the administrative authority becomes aware of the reason for initiating the review.

In the Defender's opinion, the subjective period for review does not carry a significance that would outweigh the risks following from its existence. One of the main risks is that it will not be possible to cancel an unlawful decision simply because the authority failed to initiate review proceedings within the subjective period. In such a case, it will be up to administrative courts to provide for a remedy with a considerable delay.

Since the Chamber of Deputies had not been able to take the Defender's legislative recommendations into consideration or instruct the Government to address them before the end of its electoral term, the Defender decided to repeat the recommendation. At the same time, the Defender will exercise his statutory authorisation and turn to the Government with a recommendation to amend the Code of Administrative Procedure to remove the subjective period for initiating review proceedings from Section 96.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

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

13. SHARED BURDEN OF PROOF

The Defender repeated his 2015 recommendation to the Chamber of Deputies to unify the procedural position of all victims of discrimination across protected grounds and areas of life. Under the current legislation, the burden of proof can only be shared in certain areas and only for certain reasons.

In cases where the burden of proof is shared, the plaintiff is required to allege and prove in the litigation that he/she has been subjected to less favourable treatment. Subsequently, with reference to suspicious circumstances, the plaintiff can merely assert that this occurred based on one of the protected characteristics. The burden of proof is then shifted to the defendant, who must allege and prove that less favourable treatment never occurred or that it was driven by justifiable reasons.

It thus still holds that victims discriminated on the basis of their age or disability have a worse procedural standing if they defend themselves against discrimination in access to education, healthcare, but also housing, goods and services. Consequently, if a restaurant operator refuses to serve a disabled person or if a municipality refuses an applicant for a municipal flat on the grounds of his/her age, this constitutes discrimination and the victim can file a lawsuit. However, the victim's position in the ensuing litigation is much worse than in cases where discrimination is claimed on the grounds of race or ethnicity, although it is equally difficult to prove the motives of the person guilty of the alleged discrimination.

In September 2020, the Defender published a survey on court decisions in discrimination disputes (File No. 61/2019/DIS). The survey again revealed the need to change the existing regulation on sharing the burden of proof. In 2020, the Defender also began monitoring the exercise of the right to equal treatment and protection against discrimination. In the first monitoring report (File No. 62/2020/DIS), he recalled that the indicator "Legislative expansion of grounds for sharing the burden of proof in the Code of Civil Procedure" had not yet been met. Indeed, the Chamber of Deputies failed to discuss, before the end of its electoral term, the deputies' motion to amend the Code of Civil Procedure that would consolidate the rules for sharing the burden of proof (Chamber of Deputies, 8th electoral term, Chamber of Deputies document No. 424). The Defender is therefore turning to the Chamber of Deputies again.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

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

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

a. on the grounds of race, ethnic origin, nationality (národnost), sex, sexual orientation, age, disability, religion or belief in matters concerning

1. right to employment and access to employment;

2. access to occupation, enterprise and other forms of self-employment;

3. employment relationships, service relationships and other dependent activities, including remuneration;

4. membership of and activities in trade union organisations, works councils or employers' organisations, including the benefits provided by such organisations or councils to their members;

5. membership of and activities in professional associations, including the benefits provided by such public corporations to their members;

6. social security;

7. granting and provision of social benefits;

8. access to and provision of healthcare;

9. access to and provision of education and professional training; or

10. access to and provision of goods and services, including housing, if provided to the public;

b) on the grounds of race or ethnic origin in access to public contracts and membership in associations and other interest groups; or

c) on the grounds of nationality in legal relations in which a directly applicable regulation of the European Union concerning the free movement of workers applies[56b]);

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

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

Recommendations for 2019

1. CONFIDENTIALITY DUTIES OF HEALTHCARE PROFESSIONALS AND ILL-TREATMENT

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

The Defender elaborated on this legislative recommendation in more detail in the comments on the Government bill amending the Healthcare Services Act (File No. 38187/2020/S), which was not discussed in the legislative procedure and thus did not bring any remedy. The Defender therefore repeats his recommendation.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

The Public Defender of Rights again recommends that the Chamber of Deputies request 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 enable medical staff to report signs of ill-treatment without violating confidentiality.

2. INADEQUATE LEGAL REGULATION OF FORENSIC TREATMENT

The Defender has long pointed out the lack of a comprehensive regulation of forensic treatment. Through systematic visits and inquiries into individual complaints, the Defender has found many problems in the performance of forensic treatment in psychiatric hospitals which are caused by insufficient legislation: no specific conditions are set for the provider of forensic treatment; the rights and obligations of the patient are not comprehensively regulated; there are ambiguities regarding treatment without the patient's consent, legitimacy and scope of "regime measures" (possibility of wearing one's own clothes and using own things, including a telephone, getting outside on a daily basis, the possibility of control or prohibition of contact with certain persons) and the use of security measures (cameras, bars, searches etc.); there is no provision on interruption of institutional forensic treatment, which is sometimes necessary in practice.

There was no visible progress in this matter in 2021. The Ministry of Health acknowledges that forensic treatment deserves a comprehensive review of its legal basis and, in mid-2021, it renewed work on a forensic treatment policy, which should precede any legislative changes. This, however, has yet to yield any results and, above all, no actual dialogue is going on with the other ministry involved – the Ministry of Justice. Merely a partial amendment to the Code of Criminal Procedure (Act No. 220/2021 Coll.) was enacted based on its initiative, finally enabling the courts to order the performance of forensic treatment also to a healthcare facility other than the catchment facility (i.e. to transfer the patient).

Public authorities may only legitimately interfere with the freedom and integrity of a human being if the interference has a basis in the law. If such a basis is currently missing, this represents a serious interference with the rights of patients and legal certainty of healthcare services providers and healthcare professionals. The absence of a comprehensive legal regulation of forensic treatment then also impairs the work of healthcare services providers and the achievement of the purpose of treatment for individual patients. In view of the delays of the Ministry of Health in the preparation of the legislative documents and the problems occurring in inter-departmental co-operation, the Defender has decided to repeat the recommendation.

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

The Defender therefore again recommends that the Chamber of Deputies request the Government to present a bill to comprehensively regulate the issue of forensic treatment.

3. TRANSFORMATION OF INSTITUTIONAL FORENSIC TREATMENT INTO SECURE PREVENTIVE DETENTION

The Defender recommended that the conditions for transferring persons from institutional forensic treatment to secure preventive detention be specified in the Criminal Code. As a result of an amendment to the Criminal Code (through Act No. 330/2011 Coll.) effective from 1 December 2011, a transformation of institutional forensic treatment into secure preventive detention is now possible without it being necessary to meet the conditions for direct imposition of secure preventive detention (Section 100 (1) and (2) of the Criminal Code). This means in practice that the perpetrators of "mere" misdemeanours, rather than felonies, whose treatment in a psychiatric hospital is not serving its purpose can be transferred from forensic treatment to secure preventive detention. According to the Defender's analysis of 2018, cases where the conditions for direct imposition of secure preventive detention were not met amounted to approximately 20% of measures newly imposed by the courts. This means that the 2011 amendment to the Criminal Code significantly interfered with the existing practice. The Defender recalls the original concept of secure preventive detention, which was introduced in 2009 as an extraordinary instrument – the strictest protective measure for those offenders who posed extraordinary danger to society. It is wrong to randomly substitute for institutional forensic treatment by extending the target group of secure preventive detention. Unsurprisingly, the pressure on secure preventive detention caused the available capacity to fill up, so new facilities had to be established at the beginning of 2022. Therefore, the Defender proposed to abolish the regulation of transformations set in this way, and specifically to delete the last sentence of Section 99 (5) of the Criminal Code.

This problem has persisted even after a minor amendment to Section 99 (5) of the Criminal Code of 2021 (through Act No. 333/2020 Coll.). Thanks to the amendment, however, it is no longer possible to transform institutional forensic treatment into secure preventive detention on the grounds that forensic treatment is not serving its purpose or does not ensure sufficient protection of society as the patient has "displayed a negative attitude towards forensic treatment".

THE PUBLIC DEFENDER OF RIGHTS RECOMMENDS

The Public Defender of Rights again recommends that the Chamber of Deputies request the Government to submit a bill to regulate the issue of transformation of forensic treatment into secure preventive detention so that such transformations are not possible in the absence of the conditions for a direct imposition of secure preventive detention.

The Defender and the Parliament

CHAMBER OF DEPUTIES

In March 2019, the Chamber of Deputies discussed the **Annual Report on the Activities of the Public Defender of Rights for 2018** (Chamber of Deputies, 8th electoral term, Chamber of Deputies document No. 444) and took due note of the report. At the same time, it requested that the Government address the legislative suggestions set out in Chapter One and submit to the Chamber of Deputies, by the end of April 2020, a report on how these suggestions were followed in terms of their incorporation in the Government's legislative plan. The Government **has yet to submit** to the Chamber of Deputies **a report on how it followed up on the Defender's legislative suggestions.**

The Defender sent his **Annual Report for 2019** to the Chamber of Deputies in March 2020 (Chamber of Deputies, 8th electoral term, Chamber of Deputies document No. 802). The mentioned annual report was subsequently discussed by the Petition Committee. However, the Chamber of Deputies **has yet to discuss** the report.

The situation was similar in 2021. The Defender sent his **Annual Report for 2020** to the Chamber of Deputies in March 2021 (Chamber of Deputies, 8th electoral term, Chamber of Deputies document No. 1193). Shortly afterwards, the report was discussed by the Petition Committee.

During the debate, some members of the Committee expressed certain concerns regarding the approach of the Plenum of the Chamber of Deputies to the Defender's annual reports. The Defender appreciated this initiative, as he considers the information provided in the annual reports important and the adoption of certain legislative recommendations crucial.

However, the Chamber of Deputies had yet to discuss the 2020 Annual Report by the date of the editorial deadline of the present report.

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

PETITION COMMITTEE

The Petition Committee discussed the Defender's Annual Report for 2020. Unfortunately, it **did not discuss the quarterly reports** for the 4th quarter of 2020, 1st quarter of 2021, 2nd quarter of 2021 and 3rd quarter of 2021, which are also accompanied by reports on matters where the Defender did not achieve a remedy even after exhausting the procedures envisaged by the law.

In May 2021, the Petition Committee discussed the State final account for 2020.

for humanly dignified survival and will tend to push the persons concerned indirectly to provide for their livelihood in undesirable (unfavourable loans) or downright illegal (theft or undeclared work) ways. We therefore recommended that Deputies not adopt the legislation in this form. However, despite our reservations, the law was enacted in the wording of the comprehensive motion for amendment.

In the case of Chamber of Deputies document No. 652, we criticised, in particular, the disproportionate tightening of penalties for a failure to comply with the duty to document facts decisive for the entitlement to the benefit or its amount. The legislative process was not completed by the end of the electoral term of the Chamber of Deputies of the Czech Parliament, so the proposal was not adopted.

BUDGET COMMITTEE

In May 2021, the Budget Committee discussed the draft budget for the Office of the Public Defender of Rights for 2022.

SOCIAL POLICY COMMITTEE

During the discussion of the Deputies' amendments to the Assistance in Material Need Act (Chamber of Deputies, 9th electoral term, Chamber of Deputies documents Nos. 290 and 652), we wrote to all the members of the Social Policy Committee to warn them about the possible negative effects of adopting of a comprehensive motion to amend the above.

With regard to this motion, enshrined in Chamber of Deputies' document No. 290, we pointed out especially the possible unconstitutional nature of the intended solution – deducting unpaid fines for selected infractions. We also noted the potential cumulative impacts of the current and proposed legislation on families with dependent children. The imposition of an administrative penalty for neglect of compulsory school attendance on a legal representative can already cause him/her to drop out of the system of material need in the current settings. This would newly be augmented by a deduction of unpaid fines from the regular assistance in material need. In such a case, families with dependent children would be left for several months with only the minimum subsistence amount for the dependent children.

Deduction of unpaid fines from the subsistence support and housing contribution without any protection limit (an adult may not even have the subsistence minimum amount left) does not allow

SENATE

On 10 June 2021, the Senate discussed and took due note of the Annual Report on Activities of the Public Defender of Rights in 2020 (document of the Senate No. 70).

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

COMMUNICATION WITH INDIVIDUAL DEPUTIES AND SENATORS

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

The Defender and the Government

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

In 2021, the Defender informed the Government five times about the ministries' unlawful practices. The Defender considers his participation in consultation procedures to be a simplified form of legislative recommendations to the Government.

THE DEFENDER'S NOTIFICATIONS TO THE GOVERNMENT

FAILURE TO TAKE PROPER REMEDIAL ACTION IN CARE ALLOWANCE AND SPECIAL AID PROCEEDINGS

Decisions on allowances contingent on medical condition are made at first instance by the Labour Office of the Czech Republic, based – among other things – on assessment of the medical condition made by the medical assessor of the district social security administration. The Ministry of Labour and Social Affairs then has the position of appellate administrative body. Assessment of the medical condition for the purposes of appellate proceedings is carried out by the assessment committee of the Ministry of Labour and Social Affairs.

The Defender lacks the capacity to assess and review the applicant's medical condition. He checks merely whether the assessments are complete and conclusive. In doing so, the Defender focuses on whether the assessment body, i.e. the medical assessor or the Ministry's assessment committee, as the case may be, dealt with all the decisive facts, especially those invoked by the person subject to assessment, and whether the conclusions of the assessment are clearly substantiated. It must be clear from the assessment that the medical condition was evaluated comprehensively on the basis of full medical records and taking into account all the difficulties claimed, and that the medical assessor used all the legal means to establish all the facts.

If an administrative authority draws up its decision on the basis of an incomplete or inconclusive assessment, it thus vitiates the proceedings by a defect that can result in an incorrect decision in the matter. Such a decision is at variance with the legal regulations and the superior administrative authority has to cancel the decision and return it to the administrative authority with a request for remedy.

If the Defender finds any irregularities during his inquiry, he will notify the Minister of Labour and Social Affairs and request corrective action. The Defender most often suggests that a defective appellate decision be cancelled in review proceedings. However, there are also other remedies, such as new assessment of the medical condition as part of a review medical examination.

In 2021, the Defender drew the Government's attention to four most serious cases, three of which concerned a care allowance and the fourth related to an allowance for a special aid. The common denominator were serious shortcomings in the medical assessments that could not be remedied otherwise than by a new proper assessment of the medical condition that would no longer leave space for doubt. However, the Minister refused the suggested corrective action without giving proper reasons for the refusal. She even generally rejected the performance of review medical examinations as a possible remedy, although such examinations would be the most time-effective and also the cheapest remedy. According to the Defender, a similar procedure has worked very well in the

past in inquiries concerning disability pensions. The Czech Social Security Administration routinely uses such review examinations and the ensuing assessments are of high quality.

The Defender will therefore continue to push for practical use of review examinations.

- Notice to the Government: File No. 25/2021/SZD
- Press release of 18 October 2021, serving as a sanction

OPERATION OF THE MÍR PRÁČE RETIREMENT HOME WITHOUT STATUTORY REGISTRATION

The Defender has found that the Mír Práče senior citizens association provides accommodation and social and health services to elderly people with reduced self-reliance without the necessary authorisation. Formally, it is only an association formed by the accommodated seniors as members. In reality, however, the facility operates as a retirement home and should thus be registered as a residential social service. For almost two years, the association has steadfastly refused to comply.

Registration of social services is a safeguard that the given facility provides services to clients through qualified staff and with adequate amenities. The Defender considers the operation of such a facility under the association's name a purpose-driven evasion of the law.

During the visit to the facility in September 2019, authorised employees of the Defender's Office, together with an external expert in the field of healthcare, established that care for the senior citizens was provided by unqualified lay staff. The senior citizens had contracts concluded with "social care assistants". The latter also performed tasks reserved for healthcare professionals, such as the administration of medication.

Most seniors in the facility used incontinence aids – including those who would be able to use the toilet independently or with assistance. Clients did not have sufficient privacy in some toilet or shower cubicles. During the visit, the Office staff witnessed the transport of inadequately draped seniors to the bathrooms.

The association has refused the compulsory registration for almost two years, even after being urged to do so, referring to the "right of association". The Defender disagrees. He has been drawing attention to the problem of unregistered social services facilities in the long term. Systematic visits to residential facilities providing care without authorisation carried out in 2014 revealed numerous irregularities ranging from unsuitable environment, poor quality care and inadequate food, to restrictions on clients' movement and their financial dependence on the facility operators.

In the case of the Mír Práče senior citizens association, which has been refusing to register its facility as a social residential service, the Defender has exhausted all the statutory options to force the facility to ensure remedy. He therefore decided to use his statutory authorisation and inform the public and the Government. At the same time, the Defender also asked the Regional Authority of the South Moravian Region to check on the activities of the association. The provision of a social service without authorisation constitutes an infraction. For committing this infraction, the operators of such facilities are liable to a fine of up to CZK 2 million.

- Notice to the Government: File No. 11/2021/SZD
- Press release of 29 June 2021, serving as a sanction

DEFENDER'S COMMENTS ADDRESSED TO THE GOVERNMENT

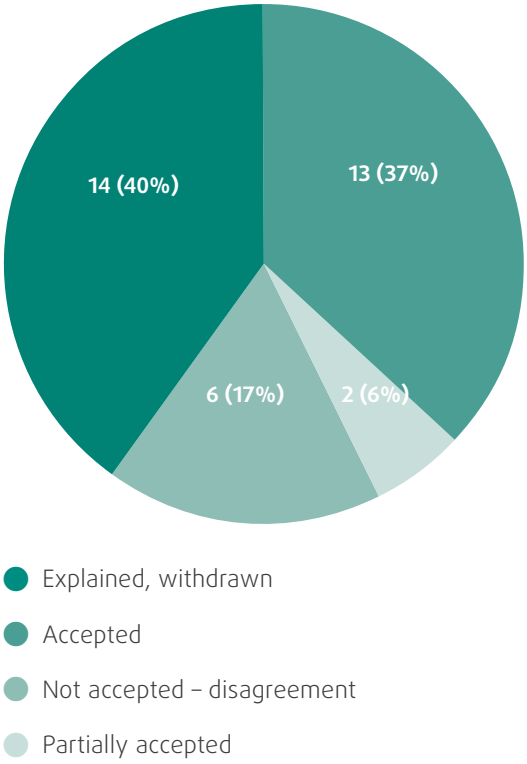
In 2021, the Public Defender of Rights raised a total of 35 comments concerning 11 materials of the ministries (of which 8 were legislative drafts). Little less than one half of the comments addressed was at least partially accepted (43%); disagreements persisted in a further 17%.

The number of comments raised and settled significantly decreased year-on-year (from 185 to 35), as did the number of materials commented on (from 33 to 11). This is mainly due to the general pandemic situation and the related lower diversity of legal regulations proposed by the individual ministries, as the legislative drafts submitted related primarily to the fight against Covid-19. At the same time, the legislative activity was slowed down in view of the upcoming elections to the Chamber of Deputies, as the discussion of bills is a lengthy process which would not be completed by the end of the electoral term. The success rate of the Defender's comments remained roughly the same (49% of the comments were at least partially accepted in 2020).

The Defender was successful in less than a half of the cases (37% of the comments were accepted completely, and a further 6% were

accepted partially). The largest number of comments addressed (nine in total) pertained to the First Action Plan for the period 2021–2024 with regard to the 2021–2029 National Strategy for the Protection of the Rights of the Child. Most unaccepted comments (a total of three) were raised with regard to an amendment to the State Social Assistance Act.

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



The Defender and the Constitutional Court

PROCEEDINGS ON ANNULMENT OF LAWS

With effect from 1 January 2013, the Public Defender of Rights may join proceedings on the annulment of laws or their individual provisions as an interested party. In 2021, the Defender **joined four** out of fifteen **sets of proceedings.**

In **two cases,** the Defender filed an application to annul a part of the legal regulation with the Constitutional Court himself as the applicant.

"THREE STRIKES" AMENDMENT TO THE ASSISTANCE IN MATERIAL NEED ACT

Following the previous criticism of the amendment to the Assistance in Material Need Act (Act No. 327/2021 Coll.), which had made it possible to deduct unpaid fines for selected infractions from regular assistance in material need (for more details, see page 64), the Defender exercised his right to join proceedings on the annulment of a legal regulation before the Constitutional Court as an intervening party.

He joined the application of a group of Senators who proposed to annul some of the newly adopted provisions of the Act on the grounds of their variance with the constitutional order, specifically the right of anyone who is in material need to be provided with assistance necessary to ensure basic living conditions (Art. 30 (2) of the Charter) and the right to human dignity (Articles 1 and 10 (1) of the Charter).

The Defender argued in particular that constitutional protection of the right to assistance in material need also comprises the rule that assistance in material need may not be subject to the enforcement of a decision. The new legal regulation disregards this rule. If it were possible to confiscate assistance in material need from adults without any protective limit, this could interfere with the essential contents of the right to assistance in material need, which is not permitted by the constitutional order. Moreover, the law does not even allow for an exception based on administrative discretion in cases where the deduction of an unpaid fine would have an exceptionally severe social impact. The important element of individualisation is thus missing.

The challenged legislation also makes it possible to confiscate the whole contribution towards housing, which in some cases might be the only benefit helping to pay housing costs. This can ultimately lead to an increase in homelessness and socially undesirable phenomena, and is in direct contradiction with the purpose of the Assistance in Material Need Act.

These reasons led the Defender to support the Senators' application to annul the regulation.

The Constitutional Court has yet to decide on the case.

Defender's statement: File No. 29/2021/SZD

"HOUSING BENEFIT-FREE ZONES"

On 31 August 2021, the Constitutional Court annulled, on application of a group of Senators, a part of the Assistance in Material Need Act which allowed municipalities to declare certain areas with an increased incidence of socially undesirable phenomena as "housing benefit-free zones". New residents in these areas were then unable to receive a contribution towards housing – a benefit intended for people in a difficult social situation. The Defender joined the proceedings as an intervening party in 2018.

In his opinion, the problem was that the legislation in question applied indiscriminately and without any exceptions to anyone who newly moved to such a "housing benefit-free zone". It could also prevent mobility within the given municipality – for example, seniors or single parents could find it more difficult to move to a smaller flat at a lower cost. If such an individual moved to a "housing benefit-free zone", he/she would lose the entitlement to this contribution.

In his statement for the Constitutional Court, the Defender illustrated the situation using an example of a mother of three children aged 2 to 15. Along with subsistence support and child benefits, she also received a contribution towards housing. She wanted to move to a town where her family lived and where she had found a job. However, as an available rental flat was located in the "housing benefit-free zone", she lost not only future housing, but also the possibility to find a job in a municipality where her extended family would help her with childcare. The existence of the "housing benefit-free zone" thus effectively prevented the woman from improving her life, in spite of all her efforts.

The Defender had also previously mentioned concerns about a domino effect, where once a "housing benefit-free zone" was declared, neighbouring municipalities would also take a similar step to avoid the immigration of people in material need. This merely transferred social problems to other areas, without the municipalities, or the State, for that matter, actually trying to find a solution.

The Constitutional Court annulled the contested legal regulation with effect from publication of the judgement in the Collection of Laws; while doing so, the Constitutional Court agreed with a number of arguments put forth in the Defender's statement.

Defender's statement: File No. 5/2018/SZD

Press release of 31 August 2021

Judgement of the Constitutional Court: File No. Pl. ÚS 40/17

LEGALISATION OF UNLAWFUL PROVISION OF LEGAL SERVICES

As from 1 July 2021, a Government regulation allowed people to operate an unqualified trade titled "Provision of services for legal persons and trusts". In the opinion of the Defender and professional organisations, especially the Czech Bar Association, the substance of this trade coincides with the content of work carried out by attorneys-at-law, and thus, in practice, makes it possible to provide legal services without authorisation. The Defender therefore decided

to exercise his powers and filed with the Constitutional Court an application to annul the part of Government Regulation No. 278/2008 Coll. which specifies the contents of this new trade.

According to the Defender, the Government regulation created – besides attorneys-at-law, who must comply in their work with a number of fundamental conditions following from the Legal Profession Act – another group of persons who require merely legal capacity and clean criminal record to carry out identical work, regardless of their education and qualifications.

The Defender pointed out in this regard that the sense and purpose of the relevant limitation, based on which legal services may only be provided by attorneys-at-law and further entities listed exhaustively by the law, is primarily to protect the rights of the clients themselves. This purpose is reflected in a number of provisions comprised in the Legal Profession Act. An attorney-at-law has to be independent in the provision of legal services, is bound by the legal regulations and, within their limits, also by the client's instructions. An equally important safeguard of client protection is the attorney's liability to the client for any damage related to the performance of the legal profession (attorneys-at-law must have an insurance cover for such cases). Moreover, attorneys-at-law are subject to the disciplinary powers of the Czech Bar Association.

The Constitutional Court has yet to decide on the case.

- Defender's application: File No. 20/2021/SZD
- Press release of 24 August 2021

PROCEEDINGS ON THE ANNULMENT OF SECONDARY LEGISLATION

UNFAIR REMUNERATION OF ATTORNEYS-AT-LAW – GUARDIANS

In previous years, the Constitutional Court has already repeatedly annulled individual parts of Section 9 (5) of the Attorney's Tariff (Decree No. 177/1996 Coll.), which governs the calculation of fees for attorneys-at-law who have been appointed as guardians in court proceedings. The fee paid to these attorneys serving as guardians was based on a flat-rate tariff amount of CZK 1,000, and the resulting amounts of the fee thus substantially differed from the remuneration payable to other attorneys-at-law under the same regulation. The attorneys pointed out that representing clients as a guardian was not any easier; quite the contrary, this often involved more demanding tasks, both in human and in professional terms. For example, an attorney-at-law had to defend the interests of an absent client, a client with a mental illness, etc.

Although the Constitutional Court had thus far always granted applications to annul these provisions and that there were no reasonable grounds for such differentiation in fees, the Constitutional Court had been unable to annul the given provision as a whole as it had been bound by the relief sought in each constitutional complaint. The Defender therefore exercised his power and filed with the Constitutional Court an application to annul the disputed provision as a whole. He also pointed out that gradual annulment of the individual parts of the provision in question had ultimately given rise to a new difference in treatment among attorneys serving as guardians themselves. For example, attorneys acting as guardians for people with a mental disorder or for those who were unable to express themselves were clearly disadvantaged in this regard. The Defender considered such a situation unacceptable also because his mission includes monitoring how the Convention on the Rights of Persons with Disabilities is being implemented. This Convention requires special protection of vulnerable persons in terms of the approach to vulnerability.

The Constitutional Court agreed with the Defender's arguments, granted his application and annulled the disputed provision of the Attorney's Tariff as a whole. According to the Constitutional Court, capping the fee payable to an attorney-at-law serving as a guardian is not only contrary to the principle of equality and at variance with the attorney's right to obtain means for his or her living needs through work, but also contrary to the right of the person under guardianship to legal assistance.

- Defender's application: File No. 37/2020/SZD
- Decision of the Constitutional Court: File No. Pl. ÚS 17/21
- Press release of 1 November 2021

Activities of the Public Defender of Rights in numbers

In 2021, we received a total of 7 988 complaints. The number of complaints falling within the Defender's mandate returned to almost the pre-pandemic levels. This could indicate that despite many persisting restrictions, society is returning to business as usual. We were able to help 70% of the people who approached us.

7988
complaints were received

446
people came to the Office of the Public Defender of Rights in person to seek advice and ask for information; 281 of them took the opportunity to file their complaint orally on the record.

6010
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 difficulties, or to check on the progress of inquiry into their complaints.

849
inquiries were initiated

56
on the Defender's own initiative

8092
complaints were resolved

including complaints from previous years that were closed in 2021

840
inquiries were completed, where:

in 207
cases, we found no maladministration or discrimination

in 633
cases, we identified maladministration or discrimination, of which

in 484 cases, the authority itself remedied the maladministration following the issue of the inquiry report

in 114 cases, the authority did not remedy the maladministration and the Defender had to release a final opinion, including a proposal for remedial measures, and the latter were taken by the authority

in 17 cases, the authority failed to remedy the maladministration even after a final opinion was released. The Defender therefore decided to exercise the authority to impose penalties and inform the superior authority or the public.

COMPLAINTS RECEIVED IN 2019–2021

	Total complaints	Within mandate	Outside mandate
2019	7 840	71 %	29 %
2020	↑ 7 926	↓ 68 %	↑ 32 %
2021	↑ **7 988**	↑ **70 %**	↓ **30 %**

COMPLAINTS RECEIVED WITHIN MANDATE BY AREA

Social security	**1 412**
Construction and regional development	**577**
Healthcare administration	**523**
The army, police and prisons	**420**
Rights of children, youth and families	**401**
Miscellaneous fields within the competence of the PDR	**303**
Foreign nationals	**278**
State administration of courts	**242**
Taxes, charges and customs duties	**239**
Transport and communication	**209**
Infractions	**208**
Discrimination	**184**
Administration of employment and work	**170**
Environmental protection	**166**
Property law and restitutions	**125**
Internal administration	**76**
Self-government, regional governance, right to information	**76**
Public Prosecutor's Office administration	**17**

Important moments and events in 2021

JANUARY

- We stood up for business owners who were not eligible for a compensation bonus in connection with a ban or restriction on business activities due to the Covid-19 pandemic.
- We issued an information leaflet on the vaccination of clients in residential social services facilities whose legal capacity has been restricted. Social services providers will learn how to inform clients and their guardians about vaccination and how to proceed if the guardian should not agree with vaccination of the person under his/her guardianship. In March, we followed up with a more detailed recommendation.
- At the first of their six meetings in 2021, the members of the Advisory Body on the Rights of Persons with Disabilities dealt with the employment of people with disabilities and problems faced by these people on the labour market. They also discussed the accessibility of testing and vaccination sites for people with disabilities.

FEBRUARY

- We pointed out that the Regional Authority of the Central Bohemian Region repeatedly and consistently issued incomprehensible, flawed and unlawful administrative decisions in proceedings concerning the existence of publicly accessible special-purpose roads.
- We published the results of a survey on the lives of people living in homes for people with disabilities. We focused especially on the way the service was set up for minors, on the employment of clients and on the provision of healthcare.

MARCH

- We strived to ensure that the main news programme of Czech Television – "Události" – was also available in the Czech Sign Language in Czech Television's online archive.
- We warned that if proposals amending the Assistance in Material Need Act and the State Social Assistance Act were enacted, this would substantially worsen the situation of people in material need and of those receiving housing and parental allowances.
- We urged the Government and Deputies to modify the rules for granting extraordinary remuneration to healthcare professionals for their work during the Covid-19 pandemic and to ensure that this remuneration was not subject to debt collection or debt relief.
- We stood up for a land owner who, after eight years, had been asked by the authorities to pay a land appreciation charge without this charge actually being assessed to him.

APRIL

- We pointed out an error in the system of electronic motorway vignettes, which made it possible to enter a non-existent licence plate number. At the same time, people were unable to correct or recover the money they had already paid.
- We published our Annual Report for 2020.

MAY

- We demanded improvements in retirement homes and special regime homes. The curfew remained in place for their clients even after the state of emergency ended.
- We issued a Recommendation on establishing reserved parking spaces for people with disabilities.
- We urged the President of the Czech Statistical Office to renew the assistance of census enumerators or contact points in filling out the census forms.

JUNE

- Together with representatives of the Capital City of Prague, we called on the Ministry for Regional Development to change the approach of construction authorities to flats used for shared accommodation. Thus far, construction authorities had not requested re-approval of flats intended for permanent housing in cases where they were used regularly for the provision of short-term accommodation services.

- We published an inquiry report regarding the circumstances of the water pollution incident on the Bečva River. According to the Defender, complications in reporting the incident and cleaning up the site were caused by an unclear legal regulation.

- We drew attention to the operation of an unregistered social services facility in the Znojmo region. Formally, this is only an association formed by the accommodated seniors as members. In reality, however, the facility operates as a retirement home and should thus be registered as a residential social service.

- In response to our inquiry, the Council for Radio and Television Broadcasting commissioned an analysis of the latest episodes of the Wife Swap programme. In turn, the Council notified TV Nova of a violation of the Radio and Television Broadcasting Act in connection with the vulgarities displayed and the screening of one episode before 10 p.m.

JULY

- We published our inquiry report concerning the Methodology of compensation for personal injury. We pointed out that the new expert field focusing on assessment of personal injuries had been created without an in-depth discussion with physicians.

- We issued a Recommendation titled "Participation of a child in decision-making on matters related to the child's psychiatric hospitalisation". We consider it crucial to provide information to paediatric patients in an age-appropriate manner. The Recommendation was then also published in Official Journal of the Ministry of Health 10/2021.

- We found that an unusual name could cause problems in registration for the Covid-19 vaccine. We advised people on how to proceed in this case.
- We issued a Collection of Defender's opinions in the area of education.

AUGUST

- We filed with the Constitutional Court an application to annul a part of the Government regulation specifying the contents of the new trade "Provision of services to legal persons and trusts". According to the Defender, this trade makes it possible to provide legal services without authorisation, and thus without proper safeguards for clients.
- We objected to the termination of free Covid-19 testing for children and adolescents.
- We pointed out that the severe restrictions on entry into the Czech Republic from non-EU countries with an extreme risk of Covid-19 infection had an impact on international families.

SEPTEMBER

- We presented indicators that will make it possible to monitor how the Czech Republic proceeds in implementation of the UN Convention on the Rights of Persons with Disabilities.
- We published a video explaining the basic concepts and context of migration in the Czech Republic.
- We drew attention to discrimination against civil servants on the grounds of parenthood. The problem lay in the fact that civil service offices would also abolish positions of employees on maternity or parental leave as vacant.

OCTOBER

- At a press conference, we summarised the 15 years of our work in the prevention of ill-treatment of people restricted in their freedom and the 10 years of monitoring expulsions and transfers of foreign nationals.
- At a meeting of ombudspersons of the V4 countries held in Visegrád, Hungary, the Defender presented the work of his office during the Covid-19 pandemic. He also introduced several cases related to environmental protection.

NOVEMBER

- The Constitutional Court granted the Defender's application and annulled the unconstitutional capping of fees for attorneys-at-law appointed as guardians.
- We looked into the activities of the Energy Office related to the market exit of Bohemia Energy and further energy suppliers. We also actively helped their former clients. We pointed out that the applicable legislation lacked clearer rules for "suppliers of last resort" and for the protection of customers at risk of energy poverty.

DECEMBER

- We published the results of a survey on public guardianship. Municipalities lack uniform methodological guidance in this area and communicate with courts in various ways. The situation thus affects the persons under guardianship themselves, who cannot be sure that public guardians in different places will take care of them in the same way.
- In our Recommendation concerning workers from the European Union, we advised authorities, municipalities, administrative regions and ministries on how they could improve their approach to migrant workers.

2

Family, healthcare and labour

WE HELPED AND ADVISED

107
people with health insurance premiums and activities of health insurance companies

423
families

124
people who had problems with the labour office

86
children

PEOPLE MOST OFTEN SOUGHT HELP IN THE FOLLOWING AREAS

with activities of public health authorities	231
with the exercise of social and legal protection of children	124
with BSLPC's as a guardian ad litem	46
with parents' contact with children or prevention of contact	30
with unemployment benefits	29
with child's removal and placement in an institutional facility	29
with removal from the Labour Office's register	26
with debt in premiums	21

1543
complaints, of which

906
fell within the Defender's mandate

637
fell outside the Defender's mandate

126
of our inquiries revealed maladministration

5
cases where it was not possible to ensure that the authorities would rectify their errors

In 2021, we again addressed the impacts of measures to prevent the spread of Covid-19. We achieved recognition of vaccination from abroad and reimbursement of tests for children. We succeeded in ensuring access to Covid-19 vaccination also for people not covered by public health insurance who were willing to pay for the vaccine themselves. We pointed out the excessive length of 14-day quarantine in case of a contact with a positively tested person in school groups, and managed to get it shortened. We were repeatedly approached by parents who wanted to be with their hospitalised children.

Removal of job seekers from the labour office's register was also a heated topic – job seekers and unemployment benefit claimants found themselves in a difficult position when filing the relevant applications because of the restrictions in place during the pandemic, and had to face new situations in communication with the labour office and during job placement.

We completed an extensive inquiry focused on the procedure of regional authorities and the BSLPC in seeking general foster parents and adoptive parents for children in temporary foster care. We also launched another systemic inquiry dealing with contact between children and their parents serving imprisonment.

We contributed to the adoption of a law on compensation for unlawfully sterilised persons. By doing so, we completed the Defender's long-term effort in this area. Subsequently, we worked with the Ministry of Health on a methodology for filing applications for compensation.

We help change the rules

SEARCH FOR FOSTER PARENTS AND FOR ADOPTIVE PARENTS FOR CHILDREN IN TEMPORARY FOSTER CARE

We conducted an inquiry focused on the procedure of regional authorities and the bodies for social and legal protection of children (BSLPC) in seeking general foster parents and adoptive parents for children in temporary foster care. The inquiry included a survey, which confirmed that the practice of administrative authorities was highly fragmented in this respect.

We pointed out that regional authorities were obliged to seek suitable applicants for foster care or adoption forthwith in their own records. If a suitable applicant could not be found in their records, they should, even repeatedly, approach other regional authorities – either the neighbouring ones first or all regional authorities at the same time. If all other regional authorities were approached at the same time, it had to be borne in mind, among other things, that it was crucial to ensure the shortest possible distance between the respective places of residence of the selected applicants and of the biological family. The regional authority had to contact other authorities again if proceedings on the child's transfer to institutional care had been initiated. The BSLPC and regional authorities had to co-operate actively and share accurate information on the current situation of foster parents.

The inquiry revealed the need to create a nationwide database of applicants for foster care and adoption. The database should be created by the Ministry of Labour and Social Affairs and it should be accessible to all regional authorities. The Ministry should also unify the authorities' procedures in this area by means of a methodological guideline.

The Ministry of Labour and Social Affairs has already partially implemented our recommendations. It plans to introduce standards for keeping files for applicants and children, and promised to create a single nationwide database of applicants for foster care and adoption, and a database of children who need to be placed in foster care or adopted.

Defender's report: File No. 2226/2020/VOP

Survey report

HOSPITALS CANNOT SERVE AS EDUCATORS

We inquired on our own initiative into the procedure of a hospital and the BSLPC in the case of a mother who had refused treatment recommended by the hospital for her daughter and signed a waiver to get her out of the hospital. According to the hospital, the girl was in a serious life-threatening condition, and yet it discharged her to home care and did not use the option of involuntary hospitalisation, which is at hand precisely in these cases. Instead, the hospital informed the BSLPC, to which it de facto shifted its responsibility. Under time pressure, the BSLPC filed an application for a quick preliminary injunction based on which the girl would be placed in the hospital's custody. There was effectively no other instrument for the child's protection at the time.

While the BSLPC used an unsuitable instrument in this case, given the circumstances, such as time constraints and the hospital's statement that the girl's life was in imminent danger, we could not consider its procedure incorrect. We pointed out nevertheless that in cases of a child's acute medical condition, healthcare professionals should use the tools designated for this purpose under the healthcare regulations (emergency care, involuntary hospitalisation). Placing a child in the custody of a hospital by way of a preliminary injunction does not fulfil its statutory purpose, which is to place the child in a suitable

educational environment, and this option is not intended to replace proceedings on involuntary hospitalisation. The BSLPC should bring this to the attention of healthcare services provider in similar cases. We were promised that the BSLPC would proceed in this way in the future.

Defender's report: File No. 7716/2020/VOP

ADMINISTRATION OF THE CHILD'S ASSETS BY THE BSLPC

We inquired into two cases where the BSLPC had encountered problems in the administration of a child's assets. In the first of these cases, an eleven-year-old boy inherited property after his mother's death, but his father managed it wastefully. At the same time, the father owed the boy a large amount towards maintenance and support because he had not participated in the boy's upbringing for many years before the mother's death. The boy's grandmother repeatedly pointed out the boy's situation, but the BSLPC remained passive. Following our inquiry, the BSLPC acknowledged its mistakes and adopted a more pro-active approach with regard to quantification of the father's debt to the boy and its repayment. It also promised to change its practice in the future.

The second case involved a 13-year-old girl growing up in the custody of her mother, whose legal capacity was restricted. After the death of the girl's father, the BSLPC acted as the girl's tutor and made a proposal for the sale of inherited land without checking more thoroughly other options for its use that might have been more advantageous for the girl. In this case, too, the BSLPC acknowledged its mistakes.

Defender's report: File No. 5083/2020/VOP

Defender's report: File No. 2309/2021/VOP

CHILDREN CAN ALSO COMPLAIN ABOUT DOCTORS

Even a paediatric patient may file a complaint against a physician or hospital pursuant to the Healthcare Services Act. However, a methodological opinion issued by the Ministry of Health indicated that only parents could file a complaint on behalf of children under 18 years of age. We brought the discrepancy to the attention of the Ministry, which agreed with our opinion. The Ministry then added to the methodological opinion on complaints in healthcare the option that a child could also file a complaint against a physician or hospital, depending on his or her intellectual and volitional maturity.

From the Defender to children and teenagers – Children can also complain about doctors

CHILDREN AND THEIR PARENTS IN A HOSPITAL

We inquired into the possible presence of a parent in the operating room during induction of anaesthesia and awakening of the child. The right of a hospitalised child to continuous presence of a parent does not apply under all circumstances. In exceptional cases, a hospital may restrict the presence of a parent, but only if it properly justifies such a decision, e.g. in view of the space available, staff shortages and hygiene. This is also true when placing a child under general anaesthesia for an MRI scan.

Further cases related to the impossibility or limited possibility for parents to stay with their child in a standard room. It must be borne in mind that a parent is not a visitor of the hospitalised child and visiting hours are irrelevant in this regard. We believe that when investigating complaints, the authorities should require hospitals to set reasonable and transparent conditions, approach individual situations on a case-by-case basis, and consider how a parent's presence can be arranged.

We agreed with the Ministry of Health that, based on our findings, it would prepare a methodological material for hospitals with regard to specific situations.

Defender's report: File No. 320/2021/VOP

Defender's report and opinion: File No. 321/2021/VOP

Defender's report and opinion: File No. 1000/2021/VOP

A COURT-APPOINTED LIQUIDATOR IN THE REGISTER OF JOB SEEKERS?

The complainant – a court-appointed liquidator – applied with the Labour Office for job placement and unemployment benefits. At the same time, he asked the court to remove him from

the position of liquidator on the grounds of his ill health, and informed the Labour Office accordingly. The latter subsequently stayed the proceedings on unemployment benefits until the court made its decision on the liquidator's discharge.

Under the Employment Act, a person appointed as a liquidator cannot be registered as job seeker while he or she is carrying out this activity. What is thus decisive is not whether the person is a liquidator based on the Commercial Register, but rather whether he or she is actually performing the activity. This also follows from extensive case law.

We advised the Labour Office that it could not just wait for the court to decide on the liquidator's discharge. It had to determine whether the job seeker was actually performing the liquidator's tasks, obtain proactively the underlying documents required for the decision and take the necessary evidence. The Labour Office acknowledged our argument and instructed its contact points as to how they should proceed in similar cases.

The Labour Office retroactively included the complainant in the register and also retroactively granted him unemployment benefits.

Defender's report: File No. 116/2021/VOP

We are here to help

THE DEFENDER FOR CHILDREN

In 2021, we helped more than eighty children and teenagers. To protect the privacy of our child complainants, we present their stories under different names.

Nineteen-year-old Tereza asked us for help because she wanted to get out of living with her parents and deal with financial problems. She wrote to us that her parents beat her at home and forced her to take more and more loans. We helped Tereza to find the nearest intervention centre that provides help to victims of domestic violence and recommended that she visit the centre. We also advised her to contact the social welfare department at her place of residence (adult curator) and informed her about the possibility of applying to the Labour Office for extraordinary immediate assistance to cover the housing rent deposit.

Fourteen-year-old Lucie did not like the fact that the children's home where she lived would not allow her to apply to the secondary school she had chosen. We got involved in communication between the relevant BSLPC and the children's home and helped to arrange everything to Lucie's satisfaction.

We were also approached by seventeen-year-old Adéla, a mother to an eight-month-old girl. She did not get along well with her mother, who was appointed as the child's tutor. We advised the girl and discussed with her the legal options available to resolve her situation, whether it was parental responsibility, custody rights, determination of paternity, the court's recognition of her legal capacity or her acquisition of legal capacity by marriage before the age of 18.

Fifteen-year-old Matěj complained that the municipality had placed a public address speaker on a pole just outside his window. Thus, apart from warning messages such as regular siren tests, he also had to listen to announcements about when and where apples would be sold. These announcements bothered Matěj and his younger brother, and disturbed them even during distance learning. According to Matěj, his parents had repeatedly asked the mayor to relocate the speaker. She had always refused to do so. We recommended that Matěj discuss the situation in person at a meeting of the municipal assembly, or send a request for discussion and resolution of the problem in writing. If even that did not help, he would have to go to court. If the radio announcements were regular and very frequent (e.g. every hour) and lasted for a long time (at least a few minutes), it would also be possible to file a complaint about the noise from

the public address system with the regional public health station.

We also dealt with systemic issues. For example, we advised the Ministry of Health of an error in its methodological opinion according to which only parents could file a complaint about healthcare on behalf of children under 18 years of age. Even a paediatric patient may file a complaint against a physician or hospital pursuant to the Healthcare Services Act. The Ministry of Health agreed with us and added to the methodological opinion on complaints in healthcare the option that a child could also file a complaint against a physician or hospital, depending on his or her intellectual and volitional maturity.

We also advised children on our website at www.ochrance.deti.cz:

- We prepared a multilingual leaflet explaining who the Defender is, when the Defender can help, and how to contact him.
- We introduced the issues of vaccination to children in an understandable way.
- We explained what rights were available to children in a psychiatric hospital.
- We answered the most common questions regarding problems during distance learning.
- In our podcasts, we gave advice on what to look out for during a summer job or how to help families of children with disabilities. In as many as five episodes (34 to 38), we gradually analysed problems pupils and students might encounter in education in all types of schools and specifically in the case of children with disabilities.

We also launched our first awareness video for children on social media. The guide of the pilot episode of the upcoming miniseries is a twelve-year-old girl going by the name Anička. In a video blog, she introduced her peers to the Defender's mandate, summarised how children could contact the Defender, and described what would happen next with various complaints. In further videos, we will again use Anička's help to introduce our work to children and adolescents in more detail.

HEALTH INSURANCE DEBT IN CASE OF MATERIAL NEED

We were asked for help by a man who had developed a health insurance debt. He wrote to us that at the time the debt arose, his only income was assistance in material need. He was unable to pay the monthly insurance premiums; the amount he got was just enough for his necessities and hygiene.

The inquiry revealed that the health insurance company failed to take into account that the State was also the payer of premiums for persons receiving assistance in material need. The insurance company then took the submitted documents into account and adjusted the insurance payments.

Defender's report: File No. 7178/2020/VOP

AGREEMENT OR A DECISION ON CONTACT?

The court decided to change custody and entrusted a 13-year-old girl to her father. The girl had wanted a change of custody for a long time because the relationship with her mother had badly deteriorated. The mother did not appeal the court's decision and did not even apply for arrangement of contact with her daughter. Later, however, she repeatedly complained to the BSLPC about her father's care of their daughter.

The BSLPC underestimated the dysfunctional communication and strained relations between the parents, even though previous work with the family had shown that the parents' ideas about the mother's contact with the daughter differed and that the mother was not in favour of concluding agreements or directly resolving contact and other matters concerning the daughter. We therefore pointed out to the BSLPC that, as the girl's guardian ad litem, it should have proposed to the court at least a basic arrangement of the daughter's contact with her mother in order to prevent possible problems in the future.

The principle of primacy of the parents' agreement over court arrangement does not prevent the BSLPC, as a guardian ad litem, from proposing an arrangement of contact in custody proceedings even if the parents do not request such an arrangement themselves. Such a proposal is in the best interest of the child if the conflict between the parents is manifested by confrontational communication and inability to agree.

Defender's report: File No. 2379/2020/VOP

INSUFFICIENT ASSISTANCE FROM THE BSLPC FOR A YOUNG MOTHER

The complainant gave birth at the age of nineteen. She came to the BSLPC herself saying that she was not able to take care of the child. With her consent, the court placed the child in temporary foster care. In the meantime, the mother was trying to improve her life. The BSLPC did not provide her with any relevant assistance. Moreover, it did not consider it sufficient that the mother had just occasional jobs through an agency, lived with her mother in an accommodation facility, co-operated with the social activation service and an addiction centre, and could start parental leave after taking custody of the child. The BSLPC required her to prove that she had stable housing and a regular job, and to undergo substance abuse testing. The mother could only see the child with the assistance of the accompanying foster parent organisation. After the transition of the child to general foster care, the mother did not see her child for more than five months. The BSLPC "prohibited" this on the grounds that the child needed to get used to being with her foster mother. The mother's conditions for personal contact with the child were also significantly hindered by the fact that the regional authority had chosen a foster mother who lived almost 170 kilometres from the biological mother's home.

Both the BSLPC and the regional authority committed a number of errors. The BSLPC failed to provide any assistance and support to the mother to stabilise her situation, in particular in the area of housing and material support. She was excluded from individual child protection planning and forced to undergo substance abuse testing at the BSLPC. Furthermore, the authority unlawfully prohibited the mother's contact with the child or made it conditional on assistance. Moreover, it did not advise the mother about the possibility of judicial arrangement of access to the child. It also failed to advocate the child's placement in the care of general foster parents closer to the mother's home. The regional authority erred as it did not take into account the mother's current place of residence when selecting a general foster mother, and did not guide the process methodologically, although it was aware of significant errors made in the BSLPC's procedure.

Both authorities acknowledged their mistakes and took extensive corrective action. The BSLPC invited us, among other things, to a case conference where it set up co-operation among all the stakeholders and support for the mother so that the child could return to her custody.

Defender's report: File No. 6863/2020/VOP

CONTACT BETWEEN CHILDREN AND THEIR MOTHER IN PRISON

For over a year, a mother serving a prison sentence had been asking the BSLPC and foster parents to allow contact with her child, but without success. The foster parents either refused because the child was too young and the visit would be stressful for the child, or they made various specific demands. The possibility of arranging a visit was also complicated by the epidemiological situation and the foster parents' reluctance to travel with the child at such times. The BSLPC concluded and wrote to the mother that it did not consider her contact

with the child beneficial and the child would have to be gradually prepared for this. However, no preparations were made and the BSLPC did not initiate them. It actually did not address the option of arranging a visit at all. The BSLPC did not support indirect contact in the form of phone calls or video calls either, because it concluded that the child was too young for this.

We pointed out to the BSLPC that it had the duty to influence foster parents to maintain and develop the child's relationship with the parents as far as possible, and that it also had to seek possibilities of personal contact between the child and the mother. For telephone contact with a young child who has yet to acquire sufficient communication skills, it may be sufficient for the child to listen to what the parent is telling him or her over the phone, and respond as best he or she can. However, communication via video call would be preferable for such a young child – so that the child could see the mother and associate her voice with her face.

The BSLPC immediately contacted the prison's social department and asked about the possibility of arranging contact. It also approached the foster parents and agreed with them that they would take the child to a psychologist who would recommend (to start with) an appropriate frequency and form of contact. Subsequently, it set the interval of contact between the child and the mother to once every 6 to 12 weeks, in the form of a video call. The first contact went very well. The BSLPC then admitted that there was nothing preventing a personal visit to the prison, and as soon as this was permitted by the epidemiological situation, it would reconsider the regime. It did not rule out the possibility of more frequent contacts.

Defender's report: File No. 5618/2020/VOP

THE DIRECTOR OF A CHILDREN'S HOME PREVENTED A FORMER EDUCATOR FROM CONTACTING CHILDREN

We were approached by a former educator at a children's home who wanted to stay in contact with the children after she left the facility. She wanted to take the children she used to take care of on trips or short holidays, and visit them in the children's home. However, the director of the children's home did not like the idea, as she felt that the former educator was too immature for this. She did not allow visits and did not refer requests for children's stay outside the facility to the BSLPC. The BSLPC's approval is necessary for a child's stay outside the facility. The director even returned to the former educator a parcel with a Santa Claus gift for the children. We advised the director that her procedure was not in line with the law. Following our inquiry, she promised that she would no longer prevent the former educator's contact with the children.

Defender's report: File No. 7637/2020/VOP

UNEMPLOYMENT BENEFITS GRANTED TO A SWEDISH TEACHER WHO RETURNED HOME FROM THE CZECH REPUBLIC

We were approached by a Swedish citizen who had worked as a teacher at a private university in Prague between 2019 and 2020. After his return to Sweden, he applied with the Swedish Unemployment Office for unemployment benefits. The latter then contacted the Czech Labour Office and requested information on the gross earnings attained by the complainant in his last employment. The Czech Labour Office confirmed the earnings, but the complainant disagreed with the amount because he knew he had earned more in the Czech Republic. The Swedish authority subsequently asked the Czech Labour Office five times to explain whether the amount confirmed represented the total earnings for the period of employment in the Czech Republic. However, it did not receive a single satisfactory answer.

In our inquiry, we found that the Swedish Unemployment Office requested from the Labour Office a confirmation of "gross earnings during employment". On the other hand, the information on the amount confirmed by the Labour Office corresponds to the English term "average monthly income". This information is commonly used in the Czech Republic for labour-law purposes and the determination of unemployment benefits. However, in Sweden, the amount of unemployment benefits is calculated on the basis of an amount corresponding to the taxable gross earnings from employment.

In response to our inquiry, the Labour Office confirmed the complainant's earnings as per the Swedish legislation. Several months later, the man was awarded unemployment benefits.

Defender's report: File No. 915/2021/VOP

Press release of 8 November 2021

We were also involved in addressing key issues of children's rights protection within the Government Committee on Children's Rights.

In Listy sociální práce (Social Work News), we published an article titled Contacts between children and parents in prison, where we recalled that even in this situation, children and parents had the same rights to contact as any other parents and children. All interventions, limits and conditions must be in accordance with the law and the best interests of the child, and can only be decided authoritatively by a court.

The periodical Právo a rodina (Law and Family) published articles titled Mandatory residential services for children with addiction issues and How to best approach the hospitalisation of a child without parental consent?

We communicate

PROTECTION OF THE RIGHTS OF CHILDREN AND FAMILIES

We organised several online seminars for the staff of the bodies for social and legal protection of children and regional authorities on the topic of substitute family care. As part of seminars for the Agency for Social Inclusion and Aperio – Healthy Parenting Association, we dealt with the issue of children at risk and mutual co-operation among the family, the BSLPC, healthcare facilities and NGOs.

With members of the Czech Bar Association, we discussed the topic of representing minor children. We participated in an inter-regional workshop of social-legal protection methodologists and methodological meetings of the Prague City Hall and the Regional Authority of the Olomouc Region. With representatives of the BSLPC, we talked about topical issues related to institutional education, the performance of guardianship ad litem, and social curatorship for children and youth.

We also met with representatives of organisations accompanying foster parents and discussed with them questions related to contacts of children in foster care with their parents and close persons. For students of the Faculty of Law of Palacký University in Olomouc, we organised a traditional seminar focused on the agenda of social and legal protection of children.

COMPLAINTS ABOUT HEALTHCARE IN BROADER CONTEXT

We organised a meeting for representatives of NGOs and other experts on the handling of complaints in healthcare, and presented them with the Defender's legal opinions on selected topics. We discussed the presence of legal representatives and other persons in the provision of healthcare to children, and pointed out the trends related to fees for the presence of a close person at birth, which were being gradually abandoned by hospitals.

We were actively involved in the conference People, Healthcare and Law 2021, where we presented the topic "Problematic aspects of independent experts' work in complaints handling".

In Listy sociální práce (Social Work News), we published an article dealing with complaints about healthcare in social services.

AUTONOMY OF THE PATIENT'S WILL AND THE RIGHT TO PERSONAL INVIOLABILITY

We reacted to the recommended practice of the Czech Gynaecological and Obstetric Society JEP CMA published in the magazine Gynekologie a porodnictví (Gynaecology and Obstetrics), where the authors likened the gynaecologist with

whom a future mother is registered to a parent and the pregnant woman to a minor daughter who has started compulsory schooling and could eventually go on a school trip or to a school camp (maternity hospital). We objected to this allegory and also pointed this out to the Minister of Health.

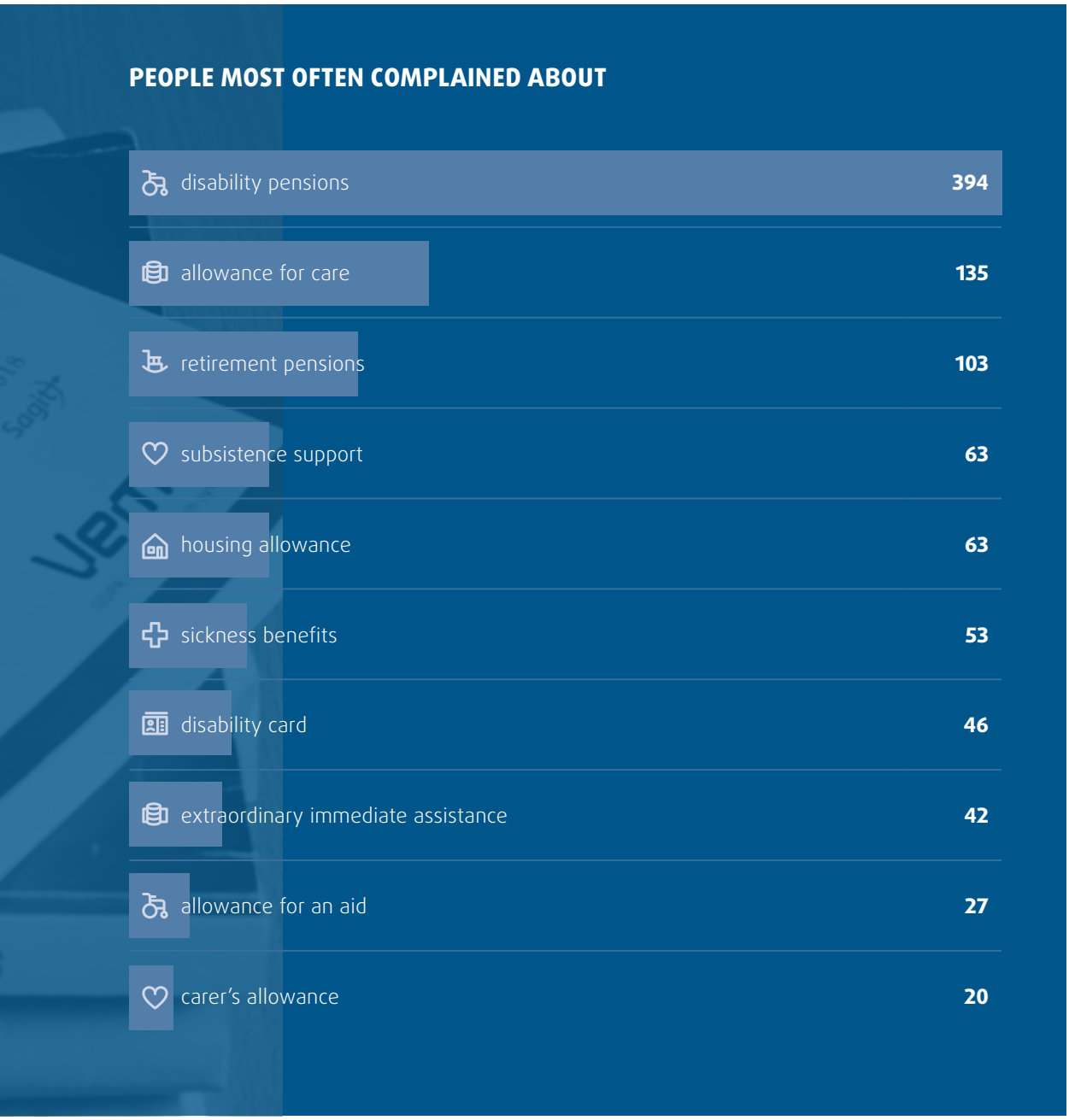
INFORMATION SHARING

We established closer co-operation with the General Directorate of the Labour Office of the Czech Republic. We agreed to meet on a regular basis, and share our findings and conclusions following from completed inquiries.

We managed to build on last year's success and organise further professional seminars on the topic of "Removal from the register of jobseekers". On the same topic, we published an article in the March edition of the Sociální služby (Social Services) magazine.

3 Social security

PEOPLE MOST OFTEN COMPLAINED ABOUT



disability pensions	394
allowance for care	135
retirement pensions	103
subsistence support	63
housing allowance	63
sickness benefits	53
disability card	46
extraordinary immediate assistance	42
allowance for an aid	27
carer's allowance	20

1 362
complaints

20%
increase in the number of complaints related to pensions compared to the previous year

168
of our inquiries revealed maladministration

100 %
of cases where the error was remedied

In 2021, we commented on a pension reform proposal. We stressed that in the further preparation of the reform, the legislators should give sufficient consideration to those who had cared for a dependent person in the long term and therefore had little or no income at that time.

We also issued 7 new information leaflets for the general public on the topic of pensions.

We wrote a total of 9 expert articles on social security.

We prepared infographics on disability pensions for people with mental illness.

We help change the rules

CARER'S ALLOWANCE FOR ADULTS AND GRANDCHILDREN NO LONGER REQUIRES COHABITATION

When inquiring into complaints concerning the carer's allowance, we frequently encountered cases where an allowance claim had been refused because of a failure to meet the strict condition of cohabitation. This was true where a working offspring cared for an aging parent for a short period of time or where an employed grandparent was taking care of a grandchild. If they had not lived in the same household before the care started, they could not receive a carer's allowance from the sickness insurance scheme, even though they had previously contributed to the system.

The Defender repeatedly pointed out this injustice to the Ministry of Labour and Social Affairs. He noted that social relations were changing and it was common for several generations not to share a household; nevertheless, if care was required due to short-term illness or injury, the carer would accommodate the relative or move into his or her home for a short period of time. A functional and targeted insurance scheme should also cover these cases.

The Ministry of Labour and Social Affairs agreed with these objections and supported a Deputies' motion which included this change and further partial adjustments for the benefit of the insured. The motion was approved and published in the Collection of Laws under No. 330/2021 Coll. With effect from 1 January 2022, the requirement of cohabitation in a shared household was waived in cases where the carer and the person being cared for are mutually related.

Press release of 4 January 2022

AUTHORITIES REFUSE TO PROVIDE A COMPENSATORY PAYMENT TO FAMILIES RECEIVING PARENTAL ALLOWANCE FROM ANOTHER EU COUNTRY

When dealing with a complaint from parents who worked abroad and applied for parental allowance, we found that the Czech Labour Office and the Ministry of Labour and Social Affairs refused consistently to provide a compensatory payment on top of parental allowance to families with children up to the age of four who were living in the Czech Republic, but both parents were covered, on the basis of their employment, primarily by the legislation of the State of employment, and not the State of residence. We are convinced that these families should receive the compensatory payment up to the total amount of the parental allowance paid in the Czech Republic, because EU social law guarantees such assistance to migrant workers.

At the time when the complaint was made, the deadline for filing an administrative action had not yet expired for the complainant. We concluded that the general practice of administrative authorities had to change. As part of our long-term co-operation with the Pro Bono Alliance, we arranged legal assistance for the complainant with a view to filing an administrative action. We provided her lawyer who took on the case with our legal analysis, on which he eventually based the action. The complainant's legal counsel then suggested that the Regional Court make a reference to the Court of Justice of the EU for a preliminary ruling as to whether or not these families were eligible for a compensation payment related to the Czech parental allowance. The Regional Court did not refer the question to the Court of Justice of the EU and dismissed the action. The complainant's lawyer therefore filed a cassation complaint with the Supreme Administrative Court.

We are here to help

AN AMOUNT DRAWN BY A CHILD'S BIOLOGICAL PARENT CANNOT BE TAKEN INTO CONSIDERATION WHEN GRANTING PARENTAL ALLOWANCE TO A LONG-TERM FOSTER PARENT

We were approached by a long-term foster parent who complained about decision-making on the parental allowance. After a two-year-old child was placed in her foster care, she only received the parental allowance for two months. This amounted to a total of CZK 22,400. The Labour Office declined any further monthly payments. It argued that CZK 197,600 of the parental allowance had been used up in the past by the child's father, bringing the total amount paid to CZK 220,000, i.e. the maximum amount a parent can draw until the child reaches the age of four.

We considered the Labour Office's practice of taking account of an amount previously drawn by the child's biological father to be incorrect. We pointed out the contradiction of such interpretation with Section 30 (1) of the State

Social Assistance Act, as well as with the legal conclusions expressed in judgements of the Supreme Administrative Court and the Regional Court in Hradec Králové.

The complainant, on the one hand, and the father of the child, who had drawn CZK 197,600 from the parental allowance, on the other hand, are not jointly assessed persons. In case of a change in the child's family, the total amount of the parental allowance of CZK 220,000 cannot be considered an amount shared by the two carers coming from the first and second families. The Labour Office should have recalculated the amount of the parental allowance based on the whole sum of CZK 220,000.

The Labour Office did not acknowledge its error, so we asked the Ministry of Labour and Social Affairs to provide for a remedy. The Ministry ordered the Labour Office to initiate proceedings on a wrongful denial of benefits. The Labour Office complied and eventually paid the balance of the benefit for the whole period from the withdrawal of the benefit until the child reached the age of four, in the total amount of CZK 183,200.

Defender's report and opinion: File No. 6954/2020/VOP

REASSESSMENT OF DATA ON RENT USUAL AT A GIVEN PLACE LED TO AN INCREASE IN THE CONTRIBUTION TOWARDS HOUSING

We inquired into a complaint filed by a man who had not received the subsistence support and contribution towards housing from the Labour Office, although he had presented all the necessary documents. During our inquiry, we found, inter alia, that the Labour Office had incorrectly determined the amount of rent usual at the given place, which constitutes a notional ceiling for reflecting the rent in the contribution towards housing.

The amount of rent usual at the given place should be ascertained by the Labour Office on the basis of a comparison of rent for at least three flats comparable to the flat used by the complainant. In his case, however, the Labour Office did not base its decision solely on data on rent for comparable flats. Moreover, it included municipal flats among the flats compared, even though the complainant lived in a flat with market rent and presumably did not have the option to rent a municipal flat. The amount of rent for municipal flats was substantially lower than in flats with a market rent. The resulting amount of rent usual at the given place was also distorted by the fact that the Labour Office failed to compare exclusively flats of similar sizes. It also included in the comparison flats substantially larger than that used by the complainant (23 m2). These flats, however, were significantly cheaper per square metre.

The Labour Office accepted our objections and set the usual rent based on new underlying documents. The new amount of rent usual at the given place led to an increase in the contribution towards the complainant's housing. The Labour Office paid a balance to him in an amount exceeding CZK 21 000.

This case was not isolated and we therefore decided to inquire, on our own initiative, into the procedure of all labour offices in determining rent usual at the given place. We are currently evaluating the data we collected.

Defender's report and opinion: File No. 6882/2019/VOP

DATE OF INCEPTION OF DISABILITY MUST BE CONCLUSIVELY JUSTIFIED

We helped a man who had asked for a review of his disability pension. Before he applied for a pension on the grounds of his illness, he spent several years in vain attempts to find a job. We found that the Czech Social Security Administration had made a decision on his pension even though the disability assessment had not been convincingly substantiated. The set inception date of the applicant's full disability was derived from the date of his medical examination. However, the complainant's illness is congenital; he has been treated for the illness in the long term and has been repeatedly hospitalised. At the same time, the medical report failed to evaluate the impact of his medical condition on the ability to perform work in the previous period.

The Czech Social Security Administration acknowledged that the disability reports were not convincing and remedied its error. It arranged for a new extraordinary medical examination. The new, properly reasoned opinion established an earlier date of onset of the complainant's disability. On its basis, the Czech Social Security Administration decided to grant a partial disability pension and, subsequently, full disability pension in the newly determined, almost double amount,

and also pay the outstanding balance. The complainant's pension increased from less than CZK 6,500 to more than CZK 12,000 per month.

Defender's report: File No. 51/2020/VOP

THE PERIOD OF STUDY BEFORE THE AGE OF 18 IS ALSO TAKEN INTO ACCOUNT WHEN ASSESSING ELIGIBILITY FOR DISABILITY PENSION

In the area of pension insurance, we encountered several cases of incorrect evaluation of the period of study with regard to the eligibility for disability pension. One of these was the case of a man who approached us after the Czech Social Security Administration had repeatedly dismissed his application for disability pension in 2016 and 2017. According to the authority, he had failed to complete the period of insurance required to become eligible for disability pension. An applicant aged between 26 and 28 years of age must be insured for at least four years before the inception of his/her disability.

We found that the Czech Social Security Administration had failed to include in the period of insurance the complainant's study at secondary school although the applicant had indicated this study in his application for disability pension and this had taken place before 1 January 2010, i.e. at a time when the period of study had still been counted as time of pension insurance. The Czech Social Security Administration then included merely the period of study starting when he turned 18. However, this still did not suffice to qualify for a pension. The complainant also failed with his request for remedy filed with the Minister of Labour and Social Affairs on grounds of harshness of the law.

We notified the Czech Social Security Administration of the incorrect procedure. The period of study at a secondary school or higher education institution in the Czech Republic before the age of 18, following the completion of compulsory schooling, must also be taken into account when assessing eligibility for a disability pension. The same also applies to studies after 2009.

Following our notice, the Czech Social Security Administration assessed the period of the complainant's studies correctly and granted him retroactively a disability pension, and also paid a balance of almost CZK 250,000.

Defender's report and opinion: File No. 2056/2020/VOP

DECISION TO GRANT SICKNESS BENEFITS AFTER EXPIRY OF THE SUPPORT PERIOD MUST BE COMPREHENSIBLE TO THE INSURED PERSON

We persuaded the Czech Social Security Administration to change its decision in the case of a man who had been temporarily unfit to work after the support period had expired. He complained that the District Social Security Administration and the Czech Social Security Administration had rejected his application for sickness benefits following the end of the support period. The authorities based their decisions on the conclusion of medical assessors that "this [was] not an insured person who could be expected to regain fitness to work within a short time after the expiry of the support period". At the same time, however, the medical assessors stated that they expected the complainant to regain fitness to work not later than by the date of expiry of the support period.

We advised the Czech Social Security Administration that the decision on the provision of sickness benefits was inherently contradictory. Following review proceedings, the Czech Social Security Administration made a fresh decision and awarded the complainant a sickness benefit following the expiry of the support period, together with a balance payment of almost CZK 48 000.

In cases where temporary unfitness to work lasts after the expiry of the support period and the state of health of the insured person allows him/her to regain his/her fitness to work in a short period of time, an application for payment of sickness benefits must be granted until the date when the authority decides on the application.

Defender's report: File No. 5846/2020/VOP

FAILURE TO PROVIDE THE MEDICAL ASSESSOR'S REPORT ON THE DEGREE OF DEPENDENCY IN DUE TIME HAS TO BE ADDRESSED BY THE LABOUR OFFICE

We were approached by a senior citizen who disagreed with the way her request for remedy of the Labour Office's inaction had been handled. In January 2021, she applied for an increase in the care allowance. At the end of the month, the Labour Office asked the District Social Security Administration to assess the degree of the complainant's dependency. In May, following a request from the complainant, the Labour Office sent a reminder to this authority. As this still did not speed up the process, the complainant contacted the Ministry of Labour and Social Affairs in July with a request for remedy of the Labour Office's inaction. The Ministry responded that the Labour Office was not inactive

because it had stayed the proceedings while the complainant's medical condition was being assessed and, thus, the time periods for issuing a decision were not running. It also stated that the Labour Office was not a superior body of the District Social Security Administration and recommended that she direct her request for remedy of inactivity to the Czech Social Security Administration.

We disagreed with the Ministry's conclusion. The District Social Security Administration must prepare the report within 45 days. If this is prevented by serious reasons, it must inform the Labour Office without delay. Staying the proceedings for the time when medical condition is being assessed does not release the Labour Office from its responsibility for proper conduct of the proceedings or the duty to resolve the case without undue delay. The assessment procedure must be perceived as part of the administrative proceedings despite the latter being stayed, as the report is a necessary and fundamental basis for the decision on the care allowance. Consequently, if the District Social Security Administration fails to issue the report within the statutory time limit, nor does it inform the Labour Office of serious reasons preventing it from doing so, the Labour Office should take the necessary steps to ensure that the report is issued as soon as possible. However, the Labour Office did not proceed in this way in the present case. We also criticised the Ministry for not informing the Czech Social Security Administration directly of the inactivity on the part of the District Social Security Administration.

The Ministry agreed with our conclusions. It referred the complainant's request for remedy to the Czech Social Security Administration and ordered the Labour Office to take prompt steps to ensure that the District Social Security Administration draw up the report. The correct procedure was also communicated to other employees of the Labour Office and the Ministry who are involved in this area.

Defender's report: File No. 4514/2021/VOP

THE AUTHORITIES FAILED TO SUFFICIENTLY ASSESS THE COMPLAINANT'S DEPENDENCY ON A STATIONARY OXYGEN DEVICE WHEN DECIDING ON THE ALLOWANCE FOR CARE AND DISABILITY CARD

The complainant asked us to inquire into the procedure of the Labour Office of the Czech Republic and the Ministry of Labour and Social Affairs in proceedings on care allowance and in proceedings on a disability card. He pointed out that he had been diagnosed with a severe lung disease – idiopathic pulmonary fibrosis, and that his health insurance company had approved long-term home oxygen therapy in this regard. According to the medical report, any physical exertion provoked his shortness of breath. He was able to walk only a very short distance and was connected to a stationary oxygen machine for up to twenty hours a day. Despite this, the Labour Office rejected his application for care allowance and he was only issued a disability card with the TP symbol. The Ministry confirmed its decision.

In the care allowance proceedings, the District Social Security Administration's medical assessor recognised only a single basic life necessity that the complainant was unable to handle – care for the household. The assessment committee of the Ministry of Labour and Social Affairs then concluded that he was unable to manage two basic necessities – mobility and household care. With regard to the remaining eight basic necessities, the Ministry's assessment committee justified their non-recognition only in very general terms, without any consideration of the primary illness and without consideration of the long-term home oxygen therapy. It stated merely that mental, psychological and sensory functions were maintained, which was never in dispute. However, the report lacked a respiratory function assessment and information on how the assessment committee evaluated the acceptable standard criterion in the context of almost all-day reliance on a stationary oxygen device.

We found that while the committee had cited the medical report in the proceedings on a disability card, it did not elaborate further on the information contained in the report. It did not ascertain the actual distance the complainant was able to walk without an oxygen device. However, the extent and range of walking, not only indoors, are basic parameters that the assessment body must ascertain in order to determine the degree of functional mobility impairment.

We pointed out these errors to the Minister of Labour and Social Affairs, who annulled both decisions and referred the case back to the appellate body for new proceedings. Unfortunately, the complainant died during the proceedings.

Defender's report: File No. 6328/2020/VOP

We communicate

THE POSITION OF LONG-TERM CARERS WITH LOW EARNINGS CANNOT BE OVERLOOKED IN THE PREPARATION OF PENSION REFORM

In early 2021, we commented on a draft systemic amendment to the Pension Insurance Act (pension reform). We welcomed the main goal of the reform, which was to split the pension into a solidarity component provided in a fixed amount and a merit component, and to reduce the period of insurance required to qualify for retirement pension to 25 years. Based on his findings, the Defender has been seeking this step for a long time.

At the same time, we had to call for the preservation of a preferential calculation of retirement pensions for people caring in the long term for a person dependent on their care. We did not consider the Ministry's general explanation regarding the improved situation of low-income carers through the solidarity pillar to be sufficient.

It was not clear from the proposal how the situation would be addressed of people who had higher earnings outside the period of care, but decided to limit themselves to part-time work or a job performed outside an employment relationship during the time they would care for a dependent person, and could be harmed by the dilution of earnings in the calculation of their pension. We did not consider the Ministry's vague promise to introduce fictitious assessment bases in the future to be sufficient in this respect.

The contradiction thus remained unresolved in the bill; nonetheless, the amendment to the Pension Insurance Act was not discussed in the Chamber of Deputies anyway.

We will continue to look at the potential impact of pension reform on the situation of long-term carers in the future, as we expect the newly appointed Government to also bring forward a pension reform proposal.

Defender's comments: File No. 1084/2021/S

WE PRESENT TO THE PUBLIC THE DEFENDER'S OUTPUTS CONCERNING PERSONS WITH MENTAL ILLNESS

In October, as part of the event "Mental Health Days" organised by Práh jižní Morava, z. ú., we presented the Defender's findings from the field of disability pensions paid to people with mental

illness and from visits to psychiatric hospitals. The introduction of the topic was followed by a detailed discussion.

We presented the most frequent complaints concerning proceedings on granting and increasing disability pension, and summarised the conditions for its reduction or withdrawal, and determination of the amount of disability pension. We focused especially on the practical aspects of determining the date of inception or change of disability for people with a mental illness. We also prepared infographics on the topic, which we shared via our website and social networks.

People with mental illness and disability pension

TRAINING COURSES FOR SOCIAL WORKERS OF NGOS AND MUNICIPAL AUTHORITIES IN ASPECTS OF MATERIAL NEED

In co-operation with the Agency for Social Inclusion, we organised two online training courses for social workers from NGOs and municipal authorities. We focused on the topic of handling material need assistance benefits and the provision of extraordinary immediate assistance, with a focus on benefits for children's school aids and leisure activities. The Defender had previously monitored the practice of labour offices in this area in detail within his survey on the Provision of extraordinary immediate allowance for dependent children. In total, we trained approximately 90 people in this way.

4

Public policy

WE HELPED OR ADVISED

106
people with problems concerning the use of roads

87
people with problems involving the Land Registry and land-use authorities

82
people with the police

48
people with traffic infractions

43
people with problems concerning registry offices and population records

5
people with problems concerning the right to information or personal data protection

PEOPLE MOST OFTEN COMPLAINED ABOUT

road administration	122
infractions against public policy, civil cohabitation	122
the Police	93
the Land Registry	90
traffic infractions	86
registry details, population records	49
transport administration	47
the right to information	44

2 183
complaints resolved, of which

905
fell within the Defender's mandate

1 278
fell outside the Defender's mandate

59
of our inquiries revealed maladministration, of which

in 2
cases we did not manage to achieve a remedy

4
online seminars "Right to information and personal data protection"

65
persons trained

In the second year into the pandemic, we wanted to learn how measures adopted to prevent the spread of the disease affected the fluency of administrative proceedings. We inquired into delays in infraction proceedings and led the authorities to decide on guilt and punishment before liability expired.

We also examined whether the police, public health stations and the social security administration were transferring personal data of quarantined people in accordance with the law.

We criticised restrictions on attendance of family members at weddings. A wedding cannot be equated with a visit to a restaurant or cinema. It is a significant milestone not only in the lives of the engaged couple, but also of their loved ones, especially their parents. The emotional component is not the only important aspect in planning a wedding; time is also often a factor (planned or ongoing pregnancy, health or age of the fiancés and their parents or grandparents), and the State should take these needs into account.

Defender's report: File No. 1873/2021/VOP

We examined a police intervention in the city of Teplice. We determined that the police officers could have called the ambulance earlier. They failed to monitor Mr. T's condition during the intervention and therefore did not observe his collapse. We pointed out shortcomings in the police training methodology and called on the Police President to make modifications.

We help change the rules

TRUST, BUT VERIFY

We persuaded the Ministry of the Interior to change its current practice and check whether municipalities published documents required by the law on their electronic official notice boards in due time. We found that the Ministry did not usually examine objections if the municipality claimed to have published the given document. According to the Ministry, the municipality's statement benefited from a "presumption of correctness".

At our request, the Ministry changed the procedure. If there are doubts as to the publication of a document during a certain period of time and statements of the complainant and of the municipality are mutually contradictory, the Ministry will newly base its examination of the complaint not only on documents from the municipality attesting to the publication of the document on the analogue and electronic official boards, but also on further documents and facts proving the content of the electronic official board. Such proof may include, in particular, metadata on publication of the document.

Defender's report and opinion: File No. 5112/2020/VOP

HOW TO COMPLAIN ABOUT THE MUNICIPAL POLICE

Based on several complaints, we inquired into whether regional authorities were competent to review complaints against the municipal police. Regional authorities denied having this power.

We found that the methodology of the Ministry of the Interior was not sufficiently clear and comprehensible. People complaining about the municipal police would receive contradictory information from the authorities as to who should handle their complaint. This rightly caused uncertainty and mistrust in the complainants.

After the matter was discussed with the Minister of the Interior, the Ministry supplemented the methodology. It now clearly states who can complain about the municipal police, in which situations and how, who is to handle the complaint, and who is to investigate the manner in which the complaint was handled.

Defender's report: File No. 554/2020/VOP

E-MAILS CANNOT BE IGNORED AND VERBAL ADVICE DOES NOT COUNT

The complainant objected to the way the section manager had dealt with her complaint against bossing by the head of department. She sent her complaint by e-mail. The section manager told her that she would not comment on the accusations in any way and made no further inquiry. The complainant also objected that the section manager had failed to take into account that the complainant was medically fit for work provided she was not in contact with clients. The service body responded that measures had been suggested that would allow the complainant to carry out her service. The complainant countered that no one had acquainted her with the proposed measures; this is why she had decided to terminate her service relationship. The competent body was unable to prove its case because the measures had been communicated orally.

We noted that the section manager should have treated the email as a complaint and handled it properly. We then reproached the service body for having no way of proving that it had acquainted the complainant with the measures. The body acknowledged the errors made and adopted the remedial measures proposed – it trained senior officers in dealing with complaints and ensured that a civil servant would always be acquainted in writing with any measures which are suggested to accommodate for his or her medical fitness.

Defender's report and opinion: File No. 5512/2019/VOP

LACK OF ATTENTION CAN BE COSTLY

A change in the way tolls are paid for passenger transport brought some new complications. The payers made mistakes when entering the licence

plate numbers of their vehicles. Because of a typo in one of the characters, people mistakenly entered into the system another vehicle's licence plate number or the number of a non-existent vehicle. However, the options to correct this were rather limited.

We convinced the Ministry of Transport of the need to change the system settings so as to enable rectification of incorrectly entered data. When a non-existent vehicle licence plate number is entered, the system will now allow for a refund of the fee.

Press release of 12 April 2021

ABUSE OF THE RIGHT TO INFORMATION

We inquired into the practice of regional authorities and ministries in refusing information on the grounds of the applicant's abuse of the right to information. We concluded that authorities could refuse a request for information on the grounds of a purported abuse of law. This, however, should be considered only in absolutely exceptional cases if the circumstances of the particular case show that the applicant is pursuing a purpose other than obtaining information (e.g. trying to "paralyse" the authority, cause it to incur unnecessary costs, annoy the officials). The mere number or frequency of requests is not indicative of abuse of the right to information.

Defender's report: File No. 4579/2020/VOP

SHORTCOMINGS IN CONSUMER ADVICE?

We repeatedly encountered complaints about the procedure of the Advisory and Information Services Department at the Central Inspectorate of the Czech Trade Inspection Authority (CTIA). The advice provided was not commensurate with the content of consumer enquiries. Subsequent complaints did not help either.

After being alerted to the shortcomings in advisory activities, the Central Director of the CTIA modified the CTIA website to make it clear to consumers how they could contact the CTIA.

The newly created CTIA working group started revising the internal guidelines to ensure a uniform procedure for processing and handling the submissions received. As the Central Director of the CTIA resigned at the end of September 2021 and the Minister of Industry and Trade had not appointed a new one by the end of the year, the modifications of the guidelines have yet to be finalised.

Defender's report and opinion: File No. 5997/2020/VOP

Defender's report: File No. 7613/2020/VOP

WHEN OUT-OF-COURT CONSUMER DISPUTE RESOLUTION FAILS

Based on a specific complaint, we found that the CTIA (the ADR department) did not proceed correctly when it failed to mediate a consumer dispute. It assessed incorrectly the consumer's claim as manifestly unfounded and violated its own procedural rules as well as the Consumer Protection Act.

Our findings contributed to a revision of the existing rules and to limiting a potential rejection of consumer proposals on the grounds of them being potentially unfounded.

Defender's report and opinion: File No. 4570/2020/VOP

ELIMINATION OF AN INCONSISTENCY BETWEEN LAWS

In our 2018 Annual Report, we drew attention to an inconsistency between the Criminal Procedure Code and the Road Traffic Act regarding the return of driving licences once a commitment to refrain from driving motor vehicle ended. In some cases, the duration of such a commitment might have been shorter than the probationary period of a suspended sentence. But the driving licence would only be returned on the condition that its holder documented that he/she had proved him/herself during the probationary period. That, however, was not possible before the expiry of the whole probationary period. As a result, the person in question could not drive motor vehicles for a period exceeding his/her commitment. The above inconsistency was eliminated with effect from 1 July 2021 by Act No. 220/2021 Coll.

We are here to help

SUFFICIENT INFORMATION FOR PERSONS WHO HAVE MADE A MOTION TO INITIATE AN INSPECTION

The Ministry of Labour and Social Affairs failed to provide a complainant with sufficient information on an inspection it carried out as the founder of its major contributory organisation providing social and health services. The Ministry constantly invoked confidentiality under the Inspections Act and provided the complainant, at most, with generalised information.

We pointed out that the Ministry's inspection in its contributory organisation was initiated based on that person's motion. The inspection body should always deal adequately with all the points raised in the motion for inspection and explain to the person who made the motion all the relevant facts it dealt with. It should also acquaint him/her with the inspection findings and conclusions reached during the inspection. This means that the inspection body must, at the very least, state whether or not it has found the irregularities that the complainant pointed out in the motion. The authority should also inform the complainant whether it has ascertained any other violations of the legal regulations or duties, including information on which legal duties the inspected person breached and how. The inspection body shall also inform the complainant about any remedial measures it imposed.

The Minister promised to provide the complainant with detailed information on the outcome of the inspection.

Defender's report: File No. 6149/2019/VOP

EFFECTIVE SUPERVISION OF AUCTION OPERATIONS

We looked into the procedure of the CTIA inspection authority. In doing so, we inquired whether it effectively supervised a company operating an auction portal. Our objective was to make sure that the company was not misleading consumers when offering its services and charging for their use. The inspection authority's procedure was correct and its supervision effective. It found that the company had been in violation of several obligations, e.g. failed to inform the consumers properly of the price of the service offered, and more specifically of the amount of the registration fee that they had to pay to be able to use its services.

Defender's report: File No. 2953/2021/VOP

WHEN A TRADE LICENCE IS ILLEGALLY REVOKED

The complainant objected to revocation of his trade licences by the trade licensing authority. We established that the authority had revoked the trade licences because it was convinced that the complainant had been guilty of serious violation of legal regulations in terms of the Trade Act. The complainant later did not succeed with an appeal to the regional authority. On our initiative, the Ministry of Industry and Trade annulled the contested decisions. It concluded that the violations committed by the complainant could not be considered serious infringements justifying the revocation of licences.

Defender's report: File No. 5897/2020/VOP

REGISTRATION OF DEATHS IN A SPECIAL REGISTER

Based on a complaint filed by a woman whose thirty-eight-year-old son had died suddenly in England, we examined the procedure of the consular department of the Czech Embassy in London and the special registry maintained by the Metropolitan District Authority of Brno – Centre, where civil registration events of Czech citizens are recorded if they occur abroad. The special registry office made a record of the death a year and a half later and only after we had started looking into the case.

We found that the special registry office had erred on three occasions, namely by not establishing a file after having received information about the death from the consular department, by failing to mark the fact that the person was alive as

incorrect in the information system of the population registry, and by failing to draw up a record on the complainant's visit to the special registry office.

The case raises questions as to whether the current administrative practice and the legislation sufficiently guarantee the correctness of data in the information system of the population records and in the basic population register. The interaction among the embassy in the country of death, the special registry office and the municipality with extended competence according to the citizen's permanent residence needs to be better regulated in cases where a Czech citizen registered for permanent residence in the Czech Republic dies abroad. We will therefore approach the Ministry of Foreign Affairs, the Ministry of the Interior and the Metropolitan District Authority of Brno – Centre in this regard.

Defender's report: File No. 2872/2020/VOP

WHERE AN INFRACTION CONTINUES

In the 2020 Annual Report, we pointed out a case where the complainant's neighbour had installed window screens which permanently obstructed the complainant's view. The competent authority refused to deal with the case because more than one year had elapsed since the screens had been installed. We argued that this was a continuing infraction and proceedings could thus still be conducted in this regard.

With the support of the Ministry of the Interior as a methodological body, we persuaded the regional authority this year to order the first-instance body to stop being inactive and to initiate infraction proceedings.

Defender's report: File No. 5639/2019/VOP

WHEN THE MUNICIPALITY DECIDES ON A RESERVED PARKING SPACE AS BOTH THE AUTHORITY AND THE ROAD OWNER

We inquired into cases where the process of issuing a decision on establishing a reserved parking space for a disabled person was highly complex and even confusing, as the relevant municipalities were acting in dual capacity. While the permit is issued eventually by the municipality in its official role, the authority must obtain the opinion of the municipality as the road owner in the process. The procedure is thus often unclear not only to applicants, but even to the municipalities themselves.

In the first of these cases, we ensured that the municipal authority would issue a decision permitting the parking space to the applicant, and that he would thus learn where the reserved place was and how long the permit would be valid. The authority believed incorrectly that the municipality itself as the road owner was, in fact, in the position of applicant. In the second case, the authority did not conduct any administrative proceedings on the application because, despite its contents and specified addressee, it still considered this a communication between the applicant and the municipality as the road owner. We achieved that the authority recognised the submission in question as an application initiating administrative proceedings, and issued an administrative decision.

Defender's report: File No. 7899/2020/VOP

Defender's report: File No. 313/2021/VOP

We communicate

WITH THE CZECH NATIONAL BANK ON IMPROVING COMMUNICATION WITH THE PUBLIC

In April, we met with the Governor and other CNB officials. We discussed how to improve and streamline the handling of individual complaints raised by people who contacted the CNB. We were particularly interested in the clarity of the CNB's statements.

WITH THE ENERGY REGULATORY OFFICE, WE SEEK SOLUTIONS TO THE CURRENT SITUATION ON THE ENERGY MARKET.

In the autumn, we dealt with many complaints, requests and questions related to the current situation on the energy market. Among them were several notices regarding possible incorrect practices of the market regulator – the Energy Regulatory Office (ERO). Therefore, the Defender decided on his own initiative to inquire into the ERO's procedure. Both the established facts and personal meetings with the representatives of the ERO confirmed the need to change the Energy Act. It is imperative to regulate properly the status and obligations of "suppliers of last resort", who will be supervised by the ERO, and to define new concepts such as "energy poverty" or "vulnerable customer".

Press release of 25 November 2021

WE ALSO ADDRESS CURRENT PROBLEMS OF PEOPLE AT RISK OF POVERTY AND SOCIAL EXCLUSION

As part of our membership in the Government Committee on the Rights of Persons at Risk of Poverty and Social Exclusion, we regularly meet with representatives of governmental authorities and NGOs, not only to discuss issues related to debt collection and debt relief, but primarily to contribute to finding an effective solution. For example, we asked the Ministry of Labour and Social Affairs to prepare a draft methodological guideline to limit the negative side effects of the "Three Strikes" amendment to the Assistance in Material Need Act on persons at risk of poverty and social exclusion. Effective from 1 January 2022, the amendment allows to make deductions from assistance in material need to pay fines for selected infractions. The Defender exercised his authority and joined proceedings before the Constitutional Court as an intervening party to comment on an application to annul the relevant parts of the law (see the chapter "The Defender and the Constitutional Court").

CONSULTATION DAY ON INFRACTIONS

Last year, we had the first opportunity to attend the Ministry of the Interior's consultation days on infractions, at both its editions in June and November 2021. We acquainted participants representing the Ministry and the regional authorities with selected problems in the area of infractions and used this occasion to become actively involved in the debate. We are thankful to the Ministry for the invitation and are looking forward to further co-operation.

WITH THE MINISTRY OF DEFENCE, ON COMPENSATION FOR A LOSS OF SERVICE PAY AFTER A PERIOD OF UNFITNESS TO PERFORM SERVICE DUTIES ENDS

On our own initiative, we inquired into the existing practice in decision-making on and payment of compensation for a loss of service pay after the end of unfitness to perform service. We discussed with representatives of the Ministry of Defence the differences between the procedures followed by the Ministry and by the security forces. We welcomed that the Ministry had managed to meet a majority of applicants' requirements.

INCONSISTENT APPROACH TO THE PROVISION OF RESIDENT PARKING PERMITS

We focused on how rules were set for issuing resident parking permits. By means of a questionnaire survey, we established that statutory cities would issue parking permits in cases where the applicant was the owner of the vehicle or where the vehicle was provided by the employer for private use. We find it problematic that in most cities parking permits are not issued in situations where the owner of the vehicle is a natural person other than the applicant for a parking permit, even though the applicant agrees with the applicant's use of the vehicle and they have concluded a mutual contract in this regard. The purpose of the regulation is not to force applicants who already use a vehicle to buy their own car only to be able to park at their place of residence. Applications should be assessed on a case-by-case basis. According to the survey, only four cities currently allow for such case-by-case assessment.

We also found that most cities would not issue a parking permit to foreigners without a permanent residence. We do not consider it appropriate to tie the issuance of a parking permit to permanent residence. Specifically in the case of EU nationals, the criterion of permanent residence can be considered indirectly discriminatory and therefore contrary to EU law.

We acquainted the statutory cities with the conclusions of our survey and are prepared to discuss the issue with them.

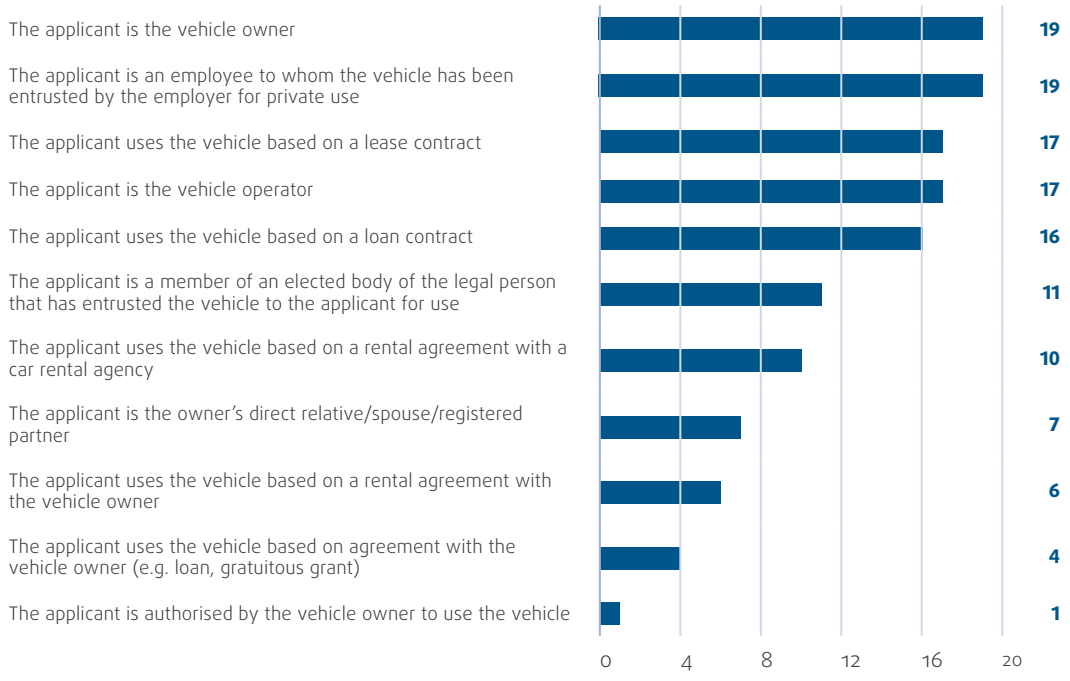
Defender's report: File No. 1761/2021/VOP

WINTER MAINTENANCE OF LOCAL ROADS

According to the complainant, her municipality failed to maintain a road serving for both vehicles and pedestrians (there is no separate pavement) in the winter, or did so haphazardly and inconsistently. We also communicated with the superior regional authority as a road administration authority and found that the relevant decree implementing the Roads Act went beyond the statutory authorisation, as it also deals with ensuring passability for pedestrians (and moreover, does so randomly and unsystematically). However, the Road Act envisages that an implementing decree will regulate merely the rules for ensuring passability for vehicles. We came to the conclusion that municipalities need not comply with the decree in terms of maintaining roads passable for pedestrians. The inconsistency – and therefore the confusing nature – of the legislation will be further addressed with the Ministry of Transport as the central authority in this area of State administration and the author of the implementing decree.

Defender's report: File No. 875/2021/VOP

Chart – Types of accepted legal relationships of the applicant for a parking permit



5

Rules of construction procedure

WE HELPED OR ADVISED

282
people with problems regarding planning or construction permit proceedings or using a structure

159
people with problems concerning removal or additional approval of a structure

72
people exposed to excessive noise

70
people dealing with water mains, sewerage or water protection

PEOPLE MOST OFTEN SOUGHT HELP IN THE FOLLOWING AREAS

proceedings on removal of a structure	101
protection against noise	77
construction permit	68
proceedings on additional approval of a structure	65
protection of water and water works	62
placement of a structure	40
independent construction supervision	37
spatial planning	37
waste, air, wastewater	26

852
complaints resolved, of which

90
were cases where maladministration was found, of which

10
were cases where errors could not be remedied

We discussed with the Ministry of Regional Development and other authorities the matter of fictitious binding opinions under the Construction Code and selected issues for review proceedings. At a traditional roundtable dealing with the construction procedure, we debated the concept of repeated construction proceedings. In order to disseminate our findings as widely as possible, we also paid attention to teaching the next generation of lawyers and construction engineers. We initiated three new surveys focusing on the issue of permitting children's groups, compliance with the requirements for barrier-free access, and the possibility of controlling airborne odours.

We also update our website "Simple Guide to Building a House" at domek.ochrance.cz, which is a simple interactive guide to building a house and should help primarily the developers (builders).

We help change the rules

NEED FOR A NEW HERITAGE LAW

At a conference organised in the Senate of the Czech Parliament, we pointed out the need for a new heritage law. We also drew attention to shortcomings in the applicable legislation, such as missing contributions to property owners in heritage protection areas, gaps in the records of immovable cultural monuments, and a failure to ensure public participation in procedures under the Heritage Act. We also mentioned a lawsuit for the protection of public interest pending before by the Regional Court in Ostrava. In proceedings on the construction of the Šantovka Tower in Olomouc, the Defender strives to protect the historical panorama of the city.

NOISE PROTECTION AS A TOPICAL ISSUE EVEN IN THE TIMES OF THE COVID-19 PANDEMIC

We continue to communicate with the Ministry of Health on the protection of public health from noise. We draw attention to the insufficient use of remedial measures by public health authorities, including primarily the suspension of operation of noise sources exceeding the limit values. We also repeatedly dealt with cases raised by complainants who had contacted us regarding noise from outdoor sports and leisure grounds, especially skate parks, and noise from tower clocks and church bells. The public health authorities do not consider these to be a source of noise and thus do not deal with complaints in this regard. We found that under certain circumstances, such noise could significantly reduce the comfort of living, and if it occurred over a long period of time or at night, it could also pose a risk to public health (e.g. due to sleep disturbance). We met with representatives of the competent Ministry and received a promise that they would address the issue and give methodical direction to the regional public health stations so as to make it clear how individual noise should be addressed.

OBJECTIONS MUST BE RESOLVED PROPERLY WHEN PERMITTING WELLS

Along with other effects of drought, groundwater levels in wells are declining in many places. If the owners of wells cannot connect to a public water mains, they try to solve the problem by deepening existing wells or building new ones. While the desire to provide enough water for one's own use is understandable, it can sometimes negatively affect the owners of nearby wells where water might be lost. In each individual case, therefore, the water-law authorities must carefully and properly assess the interests of individual persons in the proceedings on permitting a well and the abstraction of groundwater from it.

We encountered an incorrect procedure of these authorities when dealing with neighbours' objections to possible future groundwater abstraction in a volume exceeding the permitted quantity, which might affect their wells. The way such objections are resolved should be properly reasoned. We therefore contacted the Ministry of Agriculture, which promised to prepare a methodological guideline with instructions on how a water-law authority should deal with such objections.

We are here to help

NOT ONLY HUMANS BUT ALSO ANIMALS DESERVE PROPER PROTECTION

The town of Prachatice asked us for help in connection with the high costs of animal care. The town's municipal authority removed a significant number of abused animals – horses, dogs, cats and pigeons – from their owners and placed them into provisional substitute care. It then paid CZK 300 000 per month to the substitute breeders for taking care of the animals. Although the town recovered a part of the money from a Ministry of Agriculture's subsidy, this only concerned horses.

We appreciated that the authority had quickly and effectively prevented animal cruelty. We know of cases where the authorities did not take abused animals away because they were afraid of the ensuing costs. We outlined to the Prachatice authority how it could transfer the ownership of the animals to the State, which would then cover the costs of their care. We also asked the Ministry of Agriculture for co-operation. While the Ministry was unable to help financially, it did advise how the authority could recover the money spent. The costs of substitute care must be paid in the first place by the person

who abused the animal, and the authority can recover these costs from that person. The town could also try and persuade the current owners to transfer the animals to new breeders. They would then pay the costs of care.

As from February 2021, if the municipality's costs for taking care of animals removed from one breeder exceed CZK 200,000, the Ministry of Agriculture will provide money for provisional substitute care.

- Defender's report: File No. 3496/2021/VOP
- Press release of 20 September 2021
- Leaflet "Animal protection"
- Podcast, episode 20: Animal protection 1
- Podcast, episode 21: Animal protection 2

THE MINISTRY OF CULTURE INSISTED ON A CULTURAL HERITAGE PROTECTION ZONE REGARDLESS OF THE ACTUAL CONDITION OF THE AREA

We inquired into the procedure of the Ministry of Culture in assessing the complainant's proposal to change the protection zone around the cultural monuments on the grounds of the Basilica Minor of the Visitation of the Blessed Virgin Mary at Svatý Kopeček and the premises of the former Premonstratensian Monastery at Hradisko near Olomouc.

We found that the Ministry's answers and statements were not appropriate and did not reflect the actual state of the area, which in fact differed from the condition ensuing from the protection zone and the valid spatial plan. We asked the Ministry to organise a local inquiry on the complainant's property to properly investigate the matter, and based on discussion of the case on site with the complainant, to issue a fresh statement taking into account the actual condition of the area and the complainant's objections.

Unfortunately, the Ministry did not adopt the proposed remedial measure and we therefore informed the public about the case.

- Defender's report, opinion and sanction: File No. 3391/2020/VOP/MH
- Press release of 14 October 2021, serving as a sanction

A COFFEE ROASTING PLANT CAUSING NUISANCE TO THE NEIGHBOURHOOD CHANGED A CRUCIAL FILTER

We dealt with the problem of a housing co-operative whose members were bothered by an unpleasant smell coming from a coffee roasting plant located in the middle of the housing estate. The construction authority allowed the plant to operate without having notified the owners of nearby properties. We found that the planning consent could no longer be reviewed, but the construction authority nevertheless issued a request for remedy. In the request, the owner of the roasting plant was asked to limit the spread of smell into the neighbourhood. While the owner had informed the authority about the installation of filtration equipment, it turned out that the filter had already been installed many months before the request for remedy was issued. We therefore concluded that the request for remedy had not been complied with and asked the construction authority to address the matter further. The operator then installed a new filter which is more effective than the original one. This is also evidenced by the fact that people no longer complain about the smell.

- Defender's report: File No. 1842/2021/VOP

A CONSTRUCTION AUTHORITY MAY NOT DEPRIVE ANYONE OF THEIR PROCEDURAL RIGHTS

We inquired into unauthorised construction of four family homes. In all these cases, the construction authority initiated proceedings on removal of the structure and the developer subsequently applied for an additional permit. While the construction authority considered the complainants to be parties to the proceedings on additional approval of the structure, it failed to notify them it had initiated the proceedings. It justified this by noting that the applications for an additional permit were incomplete. In the meantime, the developer applied several times for postponement of the deadline for supplementing his applications, and the construction authority always granted the application. We criticised the construction authority's procedure. By failing to inform the parties to the ongoing proceedings, it deprived them of the opportunity to object to repeated staying of the proceedings, and thus failed to comply with the principle of equality of arms in the exercise of procedural rights. In response to

our findings, the construction authority informed the complainants of the initiation of all four sets of proceedings on an additional permit, and also served them with all the resolutions issued to that date.

Defender's report and opinion: File No. 420/2021/VOP

AUTHORITIES MUST ALSO DEAL WITH BUILDINGS THAT HAVE AN UNKNOWN OWNER

The administrative authorities find it difficult to trace the owners of some unauthorised buildings. However, it is in the public interest (e.g. for safety reasons) to deal even with such structures in the relevant proceedings and, if they are not subsequently permitted, to order their removal. We inquired into a case where the water-law authority had refused to initiate proceedings on removal of an unauthorised structure of a pipeline channelling a certain part of a watercourse because it considered the owner of the waterworks unknown. Based on our inquiry, the water-law authority initiated proceedings on removal of the unauthorised structure.

Defender's report and opinion: File No. 4662/2019/VOP

COAL DEPOSIT WITHOUT THE NECESSARY PERMITS

We inquired into a complaint concerning the operation of a wholesale fuel depot. We reproached the authorities for allowing the complex as a whole to be operated without a proper hearing and permission of this manner of use by the construction authority in co-operation with the public authorities defending the individual public interests concerned, and with the establishment of enforceable conditions for use. The authorities remedied the error. The construction authority forced the operator to prepare design documents for the whole complex. The operator's intention to sell solid fuels and construction materials is being discussed in administrative proceedings on a change of use. The regional authority is also paying attention to the case because the coal deposit may have an adverse impact on the neighbourhood.

Defender's opinion: File No. 2396/2019/VOP

PLANNED MASSIVE FELLING OF TREES IN A MUNICIPALITY

We inquired into the procedures of an authority which had permitted large-scale felling of trees. We found its decision-making unlawful. The authority subsequently refused to remedy the defects of its decision. There was a risk in this case that a large number of trees would be cut down at once and replaced by new trees, instead of taking a gradual approach, in stages and over a longer period of time. Following our inquiry, the authority undertook to rely on up-to-date expert assessments, including an independent expert report. For example, in contrast to the original intention to cut down a whole alley consisting of 95 trees, these assessments indicated that it would be necessary to cut down no more than 2 to 8 trees in the alley. The authority also promised to amend the original decision on felling the trees and remove its defects, such as the vagueness of the operative part as to the substance and specification of the replacement planting, the lacking reasoning and the absence of a precise felling schedule. The authority has informed us that further possible interference with trees would be dealt with in new administrative proceedings.

Defender's report: File No. 2393/2021/VOP

EARTHWORK AS UNAUTHORISED LANDSCAPING LEADING TO THE ACTUAL ESTABLISHMENT OF A RIDING ARENA

We inquired into a complaint regarding an incorrect procedure and inactivity of the construction authority in connection with earthworks taking place on a part of the neighbouring land where the owner operated a riding arena.

Apart from the fact that the establishment of the arena was contrary to the municipality's spatial plan, the construction authority failed to treat the earthworks as landscaping, which would require planning permit proceedings regarding a change in the use of the given area. The authority failed to deal with the changed use of the land during the period of temporary withdrawal of the land from the agricultural land fund, ignored the lack of building discipline and failed to establish the full facts during the inspection visits.

We persuaded the construction authority to carry out additional investigation, initiate proceedings on removal of unauthorised landscaping and on cessation of unauthorised use of the land, order a remedy consisting, among other things, in an immediate stoppage of the work and modifications of the land, as well as operation of activities on the land, and initiate infraction proceedings.

Defender's report and opinion: File No. 5633/2019/VOP

CHILDREN'S GROUP IN THE NEIGHBOURHOOD

The owners of neighbouring properties objected to the incorrect procedure of construction and regional authorities, which had failed to investigate the use of a private house and the adjacent garden as a facility for pre-school children in a children's group. They argued that the use of the house for a children's group was at variance with the municipal spatial plan. They also pointed out the negative consequences associated with the year-round operation of the group, such as increased noise and traffic (e.g. a lack of parking spaces in the area).

We found that the authorities had failed to properly assess all the circumstances surrounding the operation of the children's group in the family home. The Children's Group Act allows to house a children's group in rooms that meet the technical requirements on structures under construction regulations for residential and living quarters. This, however, does not mean that a children's group could be operated on such premises without the construction authority considering other factors that may have a significant effect on the use of the building and its impact on the surrounding area. It was not only the case in question that led us to launch an inquiry in the form of research into the practices of general construction authorities in permitting children's groups.

Defender's report and opinion: File No. 2450/2020/VOP

Press release of 22 September 2021

We communicate

WE DISCUSSED UNAUTHORISED CONSTRUCTION PROJECTS

Every year, we organise a roundtable for regional authorities and the Ministry for Regional Development to talk about problems of construction law. This time, we focused on the issue of repeated construction proceedings and removal of structures built without a permit which, however, had already been approved for use, and the occupancy permit or approval could no longer be cancelled. We also touched on cases dealt with by the Defender and administrative courts. Among them was the construction of the "Bauhaus Shopping Centre" in Brno – Ivanovice. This project obtained a permit thanks to an authorised inspector certificate. It turned out, however, that the certificate had no legal effects. Therefore, also based on our recommendation, the construction authority initiated proceedings to remove the unauthorised structure.

Defender's report: File No. 4977/2018/VOP

Bulletin of Construction Law No. 2/2021, article "The Ombudsman discussed the issue of repeated construction proceedings with representatives of the professional public"

FICTITIOUS BINDING OPINION – A NOVELTY IN CONSTRUCTION LAW

Since 1 January 2021, the Construction Code has comprised a new form of binding opinion called "fictitious affirmative binding opinion without conditions". The fiction arises once the time limit for issuing a binding opinion expires for the affected authority to no effect. This time limit is 30 days from the date on which the developer asks for the opinion. The binding opinion is crucial as the authority concerned expresses in this opinion whether a particular project is permissible in the area in terms of the public interest, such as the

interest in nature conservation and protection of the landscape, conservation of cultural heritage and protection of the air. Construction authorities are therefore bound to decide on specific construction activities in agreement with the authorities concerned.

We discussed the concept of fictitious binding opinions with the Ministry for Regional Development. Despite a number of still unresolved issues, we agreed that, to protect the public interest, the construction authorities should ask the affected authority, before permitting a project, whether the developer has indeed obtained a fictitious binding opinion. Further conclusions will be reflected when dealing with specific cases.

PLAN TO MINE GRAVEL CLOSE TO A NATURAL SPRING AREA

We have long been dealing with the case of planned gravel extraction between the towns of Uherský Ostroh and Moravský Písek. We had already been advised many times before that the project presented a threat to the underground water source in an area supplying drinking water to 130 000 inhabitants. In the past, we therefore negotiated with the administrator of the spring area, representatives of municipalities and regional public health stations. We pointed out possible deficits in the permitting processes. There are two legally protected interests in conflict here: the exploitation of mineral resources and the protection of water.

The case is specific because the mining was to take place solely within the boundaries of the Zlín Region, in the land-registry territory of Uherský Ostroh, but close to the border with the South Moravian Region. This administrative region could be adversely affected by the mining and a strategic water source might thus be jeopardised. We stressed that the opinions of institutions on both sides of the regional border should be taken into account for a project of this kind and magnitude. The decision on the determination of the mining space, which we proposed to review, was eventually cancelled by a regional court and the matter will therefore again be examined by the Czech Mining Authority. We continue to monitor the case.

Defender's opinion: File No. 6779/2018/VOP

PUBLIC ACCESS TO GAME ENCLOSURES

We completed a survey concerning public access to game enclosures. We found, for example, what percentage of enclosures was accessible to visitors in the Czech Republic at least in certain sections or at a certain time of day or night, or for how many enclosures the authorities issued a measure of general nature restricting or preventing access in the 2010–2020 period. We learned about problems encountered by the users who make their enclosures accessible to the public. The results of the survey serve as a basis for our further procedures in dealing with the accessibility of game enclosures.

Defender's report: File No. 3779/2020/VOP

6

Judiciary, migration, finance

WE HELPED OR ADVISED

235
people in connection with taxes and local charges

253
foreigners seeking fair proceedings

100
people encountering delays in court proceedings or inappropriate behaviour of judicial persons

PEOPLE MOST OFTEN SOUGHT HELP IN THE FOLLOWING AREAS

with taxes and tax administration	**169**
with inappropriate behaviour of judicial persons	**67**
with local fees and related proceedings	**62**
with delays in court proceedings	**58**
with short-term visas	**45**
with long-term residence permits	**36**

1 116
complaints resolved, of which

845
fell within the Defender's mandate

271
fell outside the Defender's mandate

110
of our inquiries revealed maladministration, of which

1
case where an error could not be remedied

In 2021, we had to deal with an onslaught of complaints relating to the compensation bonus and various subsidies prompted by the Covid-19 pandemic. We also dealt with public health measures aimed to combat the disease, whether they were conditions of entry into the Czech Republic and testing or the separation of international families due to the ban on entry from countries with an extreme risk of contracting Covid-19.

We made a video about migration in the Czech Republic. The topic of migration has long resonated in the media and public debate. Often, however, terms related to migration are used imprecisely or even interchangeably. Do you know, for example, what the most common reasons for migration are or what the difference is between a migrant and a refugee? Would you believe that illegally staying foreigners make up about 1% of the total number of foreigners in the Czech Republic? Watch our video and see the attachment.

We help change the rules

A COURT DOCUMENT DELIVERED TO THE PRISON GETS INTO THE RIGHT HANDS

The complainant, who was in prison, wanted to make clear what court proceedings he was involved in. He asked for a check of all proceedings to which he was a party at a certain date at a given court. Unlike other courts, he was unsuccessful with this request at the District Court in Sokolov. The court made the provision of the list conditional on the complainant's authenticated signature on the request so that no information on its proceedings reached unauthorised persons. However, this was problematic for the complainant in prison; moreover, other courts provided the list of court proceedings without any further conditions.

We concluded that the identification of an addressee serving imprisonment and the protection of his or her personal data is sufficiently guaranteed by the procedure for the delivery of court documents by the prison service, and that the requirement to resend the request with a certified signature was redundant. The President of the Regional Court in Plzeň promised that he would take care to unify the practice of the district courts in his jurisdiction.

Defender's report: File No. 786/2021/VOP

COMPENSATION BONUS EVEN FOR BANKRUPT PEOPLE

A number of complainants asked us for help regarding the way the conditions were set for the payment of the compensation bonus in the autumn of 2020. Anyone who was officially bankrupt as of 5 October 2020 could not receive the compensation bonus even if he or she continued to operate a business or other compensated gainful activity and was subject to the Government's restrictions. We considered such a condition unfair and contacted the Ministry of Finance. The Ministry concurred and, based on prior agreement with the European Commission, it submitted a draft law that removed the condition. The amendment was approved by the Parliament and the affected entrepreneurs could thus apply for the compensation bonus retroactively for all the autumn bonus periods.

Press release of 13 January 2021

FAMILY MEMBERS IN COUNTRIES WITH AN EXTREME RISK OF INFECTION

We inquired into cases of complainants whose family members were in countries with an

extreme risk of a Covid-19 infection. From June to August, the Ministry of Health prohibited, by means of a protective measure, the entry of these persons to the Czech Republic unless they had some kind of residence permit in the country.

In the letter to the Minister of Health, we pointed out that the closest family members of EU citizens who had exercised the right of free movement had also the right to enter the country and the right to obtain an entry visa. This also applied to foreign nationals who were a family member of a Czech citizen. In the case of other family members (e.g. partners in a permanent relationship), a Member State should facilitate their entry and residence. We considered a complete ban on entry from countries with an extreme risk of disease disproportionate. We also pointed out that these people should be able to apply for a short-term visa. The Ministry of Health accepted our proposal and, in a new measure, it also made it possible to apply for a short-term visa in countries with an extreme risk of infection.

Defender's report: File No. 4518/2021/VOP

Press release of 3 August 2021

THERE ARE SEVERAL WAYS IN WHICH AN APPLICANT FOR FAMILY REUNIFICATION CAN PROVE HIS/HER INCOME TO THE EMBASSY

We inquired into the case of Ukrainian spouses who wanted to live together in the Czech Republic. The woman wished to move here to join her husband, who was studying and operating a business in the Czech Republic. However, she did not provide proof of income in the correct form with her application. The embassy therefore invited her to complete the document in the form required by the law. But it failed to inform her that she also had another option to prove resources required for staying in the country. In response to our inquiry report, the Ministry of Foreign Affairs modified the methodological guideline according to which embassies request proof of the necessary resources. Based on the new guideline, embassies will be more helpful towards applicants for family reunification. They will expressly point out that applicants have several options to prove their income.

Defender's report: File No. 3558/2020/VOP

We are here to help

DELAYS IN COURT PROCEEDINGS – PROLONGED AND REPEATED ABSENCE OF A JUDGE

We inquired into a number of complaints alleging delays in court proceedings. In one of these cases, the complainant contacted us when almost three years had passed since he filed his lawsuit (April 2017), and yet not a single hearing had been held in court. The complainant sued for a part of wages he had earned in addition to his invalidity pension.

We inquired into the case and found that the delays in the proceedings occurred especially because of repeated absence of the judge, owing to health reasons. The schedule of work at the given court did not contain the necessary rules that would enable the court's management to respond more flexibly to similar situations. Based on our inquiry, the president of the court adopted several organisational measures. She suspended allocation of new cases to the given judge and reassigned a part of her docket to a new court department. The court's president also promised to discuss the change in the schedule of work with the judicial council. We also asked the Compensation Department of the Ministry of Justice to adopt remedial measures. At the same time, we recommended that the complainant send to the Ministry a request for compensation for intangible damage based on excessive length of the court proceedings. The Ministry subsequently granted compensation to the complainant.

Defender's opinion: File No. 6948/2019/VOP

Podcast, episode 19: State administration of courts – the Defender and the courts

CONFLICT BETWEEN ADMINISTRATIVE SUPERVISION AND COURT PROCEEDINGS IN ASSESSMENT OF AN EXPERT REPORT

We inquired into the inactivity of the authorities supervising experts (president of the regional court and the Ministry of Justice). They were approached by the complainant because of expert reports based on which the courts had repeatedly ordered her to pay high amounts of compensation for damage to forest vegetation.

The complainant raised a number of objections, especially that the expert had failed to draw up the reports properly, that he had gone beyond the scope of the given expert branch and field, and that he was biased. However, the president of the regional court emphasised that the contested expert reports were still being analysed by the court as evidence, and that the complainant had not submitted any opposing or review report that would substantially question the expert's procedures and methods, and that would succeed in court proceedings. The courts had accepted the given expert's reports in the long term and these reports had also withstood the scrutiny of other expert reports. The Ministry confirmed the conclusions of the regional court's president.

We agreed with the conclusions of the two bodies. We recalled that the duty to review expert conclusions fully and thoroughly applied primarily to courts. The supervisory authorities monitor compliance with the expert regulations, but are not supposed to replace the role of reviewers of expert reports. However, we found it unconvincing how the objection of an excess of the expert branch and field had been handled. We emphasised that it was the State administration of expert activities itself that defined the various branches and fields of expertise, appointed experts and verified their qualifications. Based on our conclusions, the Ministry approached the advisory board and subsequently initiated administrative proceedings with the expert.

During the year, we also dealt with a number of other complaints about inactivity. They related to the adoption of the new Experts Act, where supervision over the expert has been carried out exclusively by the Ministry of Justice since 1 January 2021. The Ministry is struggling with a number of backlogs referred to it by regional court presidents, as well as the issue of understaffing.

Defender's report and opinion: File No. 3715/2019/VOP

POSSIBILITY OF ISSUING A FRESH DECISION ON THE PROVISION OF PECUNIARY ASSISTANCE TO VICTIMS OF CRIME

The Ministry of Justice rejected the complainant's request for pecuniary assistance which he had asked for as a victim of crime. When we were introduced to the case, it seemed hopeless at first. The Victims of Crime Act excludes review proceedings and the complainant had not lodged an administrative action.

Eventually, we managed to convince the Ministry of Justice that if the request had not been granted, although it should have been granted under the law, it was appropriate to order new proceedings and issue a fresh decision under the Code of Administrative Procedure. This option is envisaged by the Victims of Crime Act and, according to case law, it can be applied even in cases where the reason for not granting the request was an unlawful procedure of the authority in processing the original request. The Ministry accepted our conclusions and promised that if the conditions for issuing a fresh decision were met, it would do so not only in this matter, but also in other cases.

- Defender's report: File No. 3896/2020/VOP
- Defender's opinion: File No. 3896/2020/VOP

ENFORCEMENT OF AN UNLAWFULLY ASSESSED TAX

In 2013, the complainant sold a residential unit, whereby he lost the ownership title to any real estate in the tax administrator's jurisdiction. The complainant did not notify the tax administrator that he had sold the residential unit. He considered it sufficient for the new owner of the residential unit to file a tax return and pay tax in 2014. However, the tax administrator assessed taxes to the complainant for the period from 2014 to 2016. In 2019, the complainant received a notice of tax arrears and their amount. The complainant lodged an objection against the notice, which the tax administrator dismissed and subsequently charged default interest to the complainant and took steps to enforce the tax. The complainant therefore turned to us and also to an administrative court in the matter.

We concluded that the tax administrator had erred when it enforced a tax that was clearly assessed unlawfully. The complainant could not have been a taxpayer at all in the years 2014 to 2016 as he had not owned the property in question. In our view, the enforcement of the tax was thus manifestly unfair. Our inquiry led the tax administrator to cancel the enforcement order and the decision on the objection in review proceedings, of which it informed the administrative court. At the same time, the tax authority refunded the incorrectly assessed tax, including the collected enforcement costs, to the complainant, and granted him interest on the incorrectly assessed tax. The tax administrator also decided to verify the workflow of its relevant branch in enforcing tax arrears.

- Defender's report and opinion: File No. 3363/2019/VOP
- Press release of 25 August 2021

LOCAL MUNICIPAL WASTE FEE CHARGED TO PERSONS RESTRICTED IN FREEDOM

We were approached by a complainant who was serving imprisonment in a nursing ward. However, he was still liable to pay a fee in the municipality where he had formally his registered permanent residence. As a prisoner, he was required to pay the costs associated with his imprisonment at the time. Because of his ill health, the complainant was unable to work and thus pay the local fee from his earnings. He also pointed out that the law did not allow him to change his permanent residence to the prison address. He therefore repeatedly asked the municipal authority to waive the fee, but his requests were not granted.

We pointed out in our inquiry, among other things, that persons restricted in freedom were unable to make use of the municipal waste management scheme in their municipality. The Ministry of the Environment therefore accepted our comment and proposed to enact an exemption from the fee for people restricted in freedom based on the law. However, this legislative amendment had no impact on the complainant's case because it was not retroactive. The regional authority nonetheless agreed with our conclusions and ordered the fee administrator to review the denial of the complainant's application.

Also thanks to our initiative, people restricted in freedom who have their residence registered in a certain municipality will be exempted from the municipal waste management fee. However, they must report and document their claim to the municipality in due time. This is why we prepared an information material for the Prison Service of the Czech Republic and psychiatric hospitals, and asked them to co-operate and assist people restricted in freedom in the application of the exemption. We also created a form they can use if they are interested.

- Defender's report and opinion: File No. 6008/2019/VOP
- Defender's comment: File No. 20595/2019/S
- Podcast, episode 24: Local fees 1
- Podcast, episode 25: Local fees 2

ADMINISTRATIVE EXPULSION FOR VIOLATION OF A PROTECTIVE MEASURE

We were contacted by a complainant who had been administratively expelled for one year for entering the Czech Republic in violation of a protective measure. The complainant argued that, as a family member of an EU citizen, he was exempted from the entry ban. Following our inquiry, the Ministry of the Interior re-examined the complainant's case and accepted that he had indeed been covered by the exemption from the entry ban. In summary review proceedings, the Ministry cancelled the decision of the Immigration Police and referred the case back for a new hearing. The Police then decided to cancel the decision on administrative expulsion and discontinued the proceedings.

- Defender's report: File No. 7097/2020/VOP
- Podcast, episode 17: "Who will help us?"

IN DOUBT, IN FAVOUR OF THE SPOUSES

The Ministry of the Interior dismissed an application for a residence permit for the spouse of a Czech citizen. The reason was that it considered their marriage to be one of convenience. We pointed out that the Ministry had not obtained the necessary underlying documents to make a well-founded conclusion on the purpose-driven nature of the marriage. In response to the inquiry report, the Ministry promised to approach the assessment of the new application carefully and to take into account the current circumstances of the case. The Ministry granted the new application and the Czech citizen's husband was granted a residence permit.

- Defender's report and opinion: File No. 3944/2020/VOP

We communicate

WILL IT BE POSSIBLE TO ENSURE SMOOTH PROCESSING OF COMPENSATION CLAIMS?

When dealing with complaints related to compensation for an unlawful decision or malpractice, we again noted repeated non-compliance with the statutory time limit by the Compensation Department of the Ministry of Justice. We therefore looked into the causes of the delays and explored ways to remedy them. The main problem was especially the lack of staff. We therefore asked the Minister of Justice to examine the department's workload and consider a personnel reinforcement. This was only partially successful.

The limited budget of the Ministry does not allow for a greater increase in the number of systemic positions. However, the Director of the Compensation Department presented to us further measures to improve the efficiency of the department's work, such as the assistance of interns or the connection to the courts' information system for remote access to files. The statistics presented on the processing of applications show that the measures taken are starting to have a positive impact on the department's activities. In the future, we want to further support the stabilisation of the department in terms of personnel so as to avoid delays in processing compensation claims.

Defender's report: File No. 5006/2019/VOP

ROUNDTABLE OF THE MINISTRY OF JUSTICE ON EXPERT ASSESSMENT OF PERSONAL INJURY

We closed our inquiry concerning the Methodology of compensation for personal injury. The Defender criticised the circumstances in which the Methodology was drafted and, in particular, the problematic aspects of the related expert field titled "Assessment of personal

injuries" (currently: "Evaluation of the degree of pain and functional ability in personal injury"). We perceive the most serious problem of this expert field in the fact that it was created without in-depth discussion with physicians and without it being clear what will and can be the substance of the expert activity, and what experts (physicians) will be able to comment on in their expert reports.

The Ministry of Justice acknowledged the fundamental objections. Within its supervisory activities, it will no longer require and enforce the application of the Methodology, as it cannot be considered a generally recognised and universal standard of professional care. It will not require the completion of a training course on the application of the Methodology either.

The Ministry also organised a roundtable debate and invited representatives of the medical community. This venue provided valuable information on the problematic aspects of the expert industry. The Ministry is responsible for the regulation of the branches and fields of expertise, for setting the conditions for entry into these branches and fields, and for verifying the qualifications of applicants for expert authorisation. It also supervises that, in the performance of expert activities, the experts comply with the requirements of expert regulations and with generally recognised procedures and standards of the given branch and field. We will continue monitoring further steps taken by the Ministry in the matter of expert assessment of personal injury.

The topic of personal injuries will also be the focus of a standing conference organised by the Faculty of Law of Charles University, which aims to discuss in the longer term the individual aspects of the existing legislation and its application in practice.

- Defender's report: File No. 6709/2019/VOP
- Press release of 2 July 2021
- Press release of 23 September 2021

WE EDUCATE MUNICIPAL OFFICIALS

We followed up on the tradition of seminars for municipal authorities on the administration of local fees, but switched to an online version. Along with the already established seminar on the Local Fees Act, we also organised separate seminars on the latest changes to the Act, in particular the new municipal waste fees and changes to the Tax Rules. We also devoted a separate training session to the topic of the Tax Rules, focusing mainly on their general part. We illustrated the subject on practical examples of the use of selected concepts of the Tax Rules in the administration of local fees. All the seminars were well received by the participants. The feedback from the participants also indicated that there was interest in a separate seminar on tax enforcement. We would like to include this seminar in our training offer next year.

WE CO-OPERATE WITH THE MINISTRY OF FOREIGN AFFAIRS

In the summer, we invited representatives of the Visa Department of the Ministry of Foreign Affairs to the city of Brno. We wanted to discuss with them in person the system of access to applications for certain types of visas and residence permits at overburdened embassies, as well as certain questions regarding the assessment of marriages of convenience. We discussed, for example, what documents a foreigner could present to prove that he or she is a family member of an EU citizen. We also touched on individual cases we are dealing with at the present time. We agreed on the way forward with regard to most issues, but some questions remained open.

CURRENT ISSUES IN REFUGEE AND FOREIGNER LAW

In October, we organised a traditional scientific seminar, which was attended primarily by representatives of competent authorities, NGOs, the judiciary, academics and lawyers. The seminar included presentations on, among others, restrictions on cross-border movement, classified information, employment of foreigners and the public policy doctrine.

Contributions from the previous seminar can be found in the 2019 Yearbook

WHO ARE VULNERABLE PERSONS AMONG FOREIGNERS, HOW TO RECOGNISE THEM AND HOW TO TREAT THEM?

This was the main topic of a two-day online seminar held in November we organised together with the Czech National Office of the UN High Commissioner for Refugees for the Immigration Police. We hold similar meetings every two years, always focusing on topical issues that the police encounter in their work. The cases of vulnerable people, such as children or stateless people, are often complex in both human and legal terms. That is one of the reasons why we tried to make the seminar as practical as possible. The La Strada organisation explained how not to overlook victims of human trafficking in the field. We also focused on the issue of determining the age of unaccompanied minors and the complicated situation of stateless persons.

We addressed the age issue throughout the year. We met several times with representatives of the Immigration Police, the Department for Asylum and Migration Policy and representatives of the UN High Commissioner for Refugees. We discussed, in particular, the duty to prioritise non-medical methods of determining the age of unaccompanied minors. At the meeting, we also talked about specific non-medical methods applicable in the Czech Republic and emphasised the duty to treat a foreigner as a minor in cases of persisting doubt.

In December, we participated in an expert meeting on the situation of stateless persons in the Czech Republic. We discussed with experts the perspective and possibilities of implementing the recommendations of the UNHCR Study.

7

Supervision over restrictions of personal freedom

32
facilities visited

5
monitored expulsions of foreign nationals

476
complaints raised by social services clients, patients and inmates

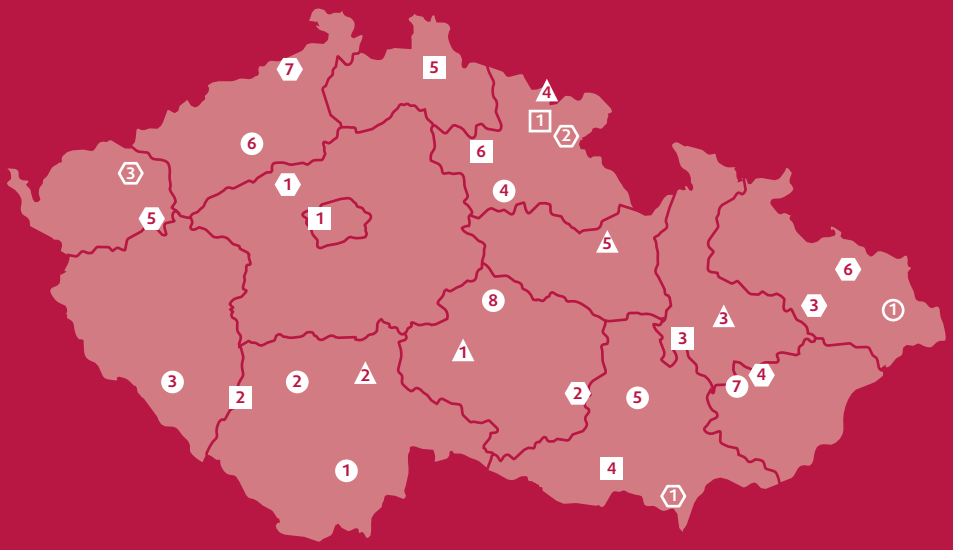
We monitored whether measures aimed to fight the pandemic resulted in excessive interference with the rights of people restricted in freedom, whether these were clients of social service institutions, patients, children or prisoners. For example, we considered the curfew for clients of retirement homes and special regime homes, which stayed in effect in the spring of 2021 even after the state of emergency had ended, to be disproportionate and illegal.

We pointed out the risks associated with the operation of unregistered social services facilities. In these facilities, it is not possible to check the quality of the services provided, i.e. especially whether the clients are cared for by a qualified staff, whether they live in appropriate hygiene conditions and whether they actually receive the care they need.

In the autumn, we looked back at the 10 years of our monitoring of expulsions and transfers of foreign nationals and the 15 years of our work as the National Preventive Mechanism. By visiting places where people are or may be restricted in freedom, we strengthen their protection from ill-treatment.

FACILITIES VISITED IN 2021

- **social services facilities:** **1** Domov Čenkov, **2** Domov pro osoby se zdravotním postižením Osek, **3** Centrum sociálních služeb Prostějov, **4** Emin zámek Hrušovany nad Jevišovkou, **5** Domov Maxov (Lučany nad Nisou), **6** Domov sociálních služeb Chotělice
- **facilities providing social services without authorisation:** **1** Dům Sluníčko Mladé Buky
- **children's facilities:** **1** Dětský domov se školou Slaný, **2** Dětský domov Hrotovice, **3** Výchovný ústav Nový Jičín, **4** Dětský domov se školou v Bystřici pod Hostýnem, **5** Výchovný ústavu Pšov, **6** Výchovný ústav Ostrava – Hrabůvka, pracoviště Polanka nad Odrou, **7** Výchovný ústav a dětský domov se školou v Děčíně - Boleticích
- **psychiatric hospitals and psychiatric wards of hospitals:** **1** České Budějovice, **2** Písek, **3** Klatovy, **4** Hradec Králové, **5** Brno, **6** Louny, **7** Kroměříž, **8** Havlíčkův Brod
- **prisons:** **1** Břeclav, **2** Odolov, **3** Ostrov
- **foreigner facilities:** **1** zařízení pro zajištění cizinců Vyšní Lhoty
- **police cells:** **1** Pelhřimov, **2** Tábor, **3** Olomouc, **4** Trutnov, **5** Ústí nad Orlicí



We help change the rules

15 YEARS OF WORK IN THE AREA OF PREVENTING ILL-TREATMENT AND 10 YEARS OF EXPULSION MONITORING

Since 2006, the Public Defender has acted in the capacity of the national preventive mechanism (NPM) pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The year 2021 was thus the 15th year of our visits to places where people are or may be restricted in freedom, and strengthening of their protection against ill-treatment. At the same time, we have already been monitoring for 10 years the course of expulsion and transfers of foreign nationals under the Returns Directive of the European Parliament (2008/115/EC).

Over the 15 years, we have visited more than 500 facilities of various types (children's facilities, prison facilities, social services facilities, inpatient psychiatry facilities and other healthcare facilities, police cells, etc.). We have also monitored almost 160 expulsions and transfers of foreign nationals. For example, we have achieved a ban on the use of cage beds and the introduction of foreigners' preparation for deportation, which contributes positively to its smooth conduct. Thanks to our efforts, among other things, convicts now have the opportunity to shower twice a week. And we made sure that children in children's facilities could wear their own clothes and use lockable lockers. However, there are many areas where we are still seeking systemic changes. These include, e.g., the establishment of clear rules for the performance of forensic treatment in psychiatric hospitals and review of the system of care for vulnerable children.

Press release of 5 October 2021

We are here to help

SOCIAL SERVICES FACILITIES AND COMPLAINTS IN THE AREA OF SOCIAL SERVICES

We completed a series of visits to special regime homes providing care to persons with reduced self-reliance due to a chronic mental illness or addiction to dependency producing substances. We will follow up by organising a roundtable with the directors of the facilities visited and issuing a summary report to generalise our findings and recommendations.

We initiated a series of visits to retirement homes and special regime homes providing care to people with dementia. In our visits, we focus especially on the way care is adapted for clients with dementia, on the provision of nursing care, prevention of malnutrition, free movement and ensuring security, as well as contact with the outside world, ensuring privacy and respect for the dignity and autonomy of the clients' will.

DISTANCE MONITORING

Due to the unfavourable epidemiological situation persisting at the beginning of 2021, instead of personal visits, we continued previous year's practice of monitoring what was happening in the facilities by means of online communication. In video conferences with the facility directors, we inquired about the current problems they were facing. The facilities' management found particularly problematic the ban on leaving the premises, which had already been in place for clients of retirement homes and special regime homes for a relatively long time. In some of the facilities interviewed, the clients actually routinely commuted to work.

The directors also struggled to provide sufficient medical and nursing care; doctors were overloaded and refused to travel to the facility. It was also problematic to ensure contact with close persons in the case of clients with dementia, where means of remote communication could

not be used. A major breakthrough came with vaccination against the Covid-19 disease, which largely enabled a return to normal life.

FACILITIES PROVIDING CARE WITHOUT AUTHORISATION

We focused on the issue of "unregistered facilities". These are facilities which provide services and care without the necessary authorisation. They usually offer care to elderly people and create the impression that they are a registered social service of "retirement home" or "special regime home for people with dementia".

The provision of care in these facilities must always be considered risky, because they may not meet the necessary conditions and are not bound by quality of care requirements (quality standards). They need not even respect other statutory requirements, such as the maximum amount of the client's monthly payment for staying in the facility. On top of that, they are not subject to inspection by the Inspectorate of Social Services at the Ministry of Labour and Social Affairs.

Along with visiting one such facility, we also issued a press release as a form of sanction and informed the public that the Mír Práče senior citizens association provided social and health services to elderly people with reduced self-reliance without the necessary authorisation. The association refuses in the long term to comply with the Defender's recommendations – to legalise its activities, register the services provided and thus guarantee the quality of the services provided and allow for its control. We also informed the Government of the matter (again as a punitive measure).

Press release of 29 June 2021

91 COMPLAINTS IN THE AREA OF SOCIAL SERVICES

A large number of complaints concerned measures related to the prevention of spreading of the Covid-19 disease. The complainants pointed out that they could not leave the premises of their retirement home, nor could their close ones visit the facility. While we lack the competence to deal with individual complaints against social services providers, we always tried to at least explain the situation and advise who these people could address. We contacted the Ministry of Health with regard to an unlawful extraordinary measure imposing a curfew on clients of residential social services facilities (see chapter 09, p. 104).

FACILITIES PROVIDING PSYCHIATRIC CARE AND PATIENTS' COMPLAINTS

We visited psychiatric hospitals for adults and also psychiatric wards of regular hospitals. We made a follow-up visit to a children's psychiatric hospital.

"COVID VISITS" TO PSYCHIATRIC HOSPITALS

We encountered hospitals locking patients in their rooms for epidemic reasons without there being any clear legal basis for this step. While the Public Health Act and the Pandemic Act allow this procedure, such a decision must always be reviewable. Hospitals took an intuitive approach to locking up patients based on epidemic reasons. We repeatedly informed the Ministry of Health about this and unsuccessfully asked for a methodological guidance for the providers.

One of the hospitals banned patient visits to a greater extent than followed from the Government resolution in force at the time of our inspection. We did not question the possibility of restricting visits more broadly, but we believe that such a decision must be made by a public health protection authority, rather than by the hospital itself.

VISITS TO FACILITIES PROVIDING INPATIENT PSYCHIATRIC CARE

During our follow-up visit to a children's psychiatric hospital and one psychiatric ward of an adult hospital, we noted cases of ill-treatment. The ill-treatment related to the use of a means of restraint for many days in the form of placement in a room intended for safe movement, and insufficient medical records on the course of the restraint. It was not clear from the medical records how the patient posed an imminent danger to himself or his surroundings throughout the period of restraint. In some cases, the restraint continued although it was documented that the patient was calm. The reports on visits to these facilities are not public, as communication with the facilities is still ongoing. The follow-up visit took place

within the LP-PDP3-001 project financed from the 2014–2021 Norway grants.

64 COMPLAINTS FROM PATIENTS

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

TREATMENT OF PATIENTS UNDERGOING FORENSIC TREATMENT WITHOUT THEIR CONSENT

The law does not allow treatment other than urgent care without the patient's free and informed consent. In the case of patients undergoing institutional forensic treatment, the relevant provisions of the Specific Healthcare Services Act cannot be considered an authorisation to treat a patient without consent, because the Act lacks the safeguards required by Article 7 of the Convention on Human Rights and Biomedicine. These safeguards include a legal regulation of supervision, control and the possibility of appeal. Specific treatment of a patient undergoing forensic treatment without his/her consent thus represents an interference by the public authority with personal integrity, and in the absence of a clear legal basis, the State should exercise restraint in interfering with the integrity of a person and interpret legal norms restrictively.

Defender's opinion: File No. 6378/2020/VOP

TREATMENT OF SOMATIC DISEASES DURING FORENSIC TREATMENT

The State is responsible for protecting the health of persons restricted in personal freedom and must provide them with appropriate healthcare. With respect to patients in forensic treatment, this obligation is attributable to the relevant hospital, to which the State has delegated the authority to detain persons against their will. The fact that the patient will be in daily contact with a physician cannot be considered sufficient to honour this obligation, unless the physician is a specialist appropriate to the needs of the patient's medical condition.

We found an error on the part of the hospital in that the complainant's medical examination connected with an alleged attack of multiple sclerosis had not been carried out by a healthcare professional qualified to do so. Indeed, in view of the variety of symptoms of such an attack and the complexity of its recognition, a healthcare professional without appropriate specialisation cannot reliably determine whether or not such an attack has taken place.

Defender's report: File No. 5901/2020/VOP

CHILDREN'S FACILITIES

We initiated a series of visits to facilities for children ordered to undergo protective education. We visited children's homes with schools and educational institutions where only a few children out of the total capacity were receiving protective education, and also institutions that focused directly on the implementation of protective education. We also visited two wards designed for children with extreme behavioural disorders. The series will continue in 2022.

In addition, we visited facilities for institutional education and also carried out one follow-up visit. The latter took place within the LP-PDP3-001 project financed from the 2014–2021 Norway grants.

We repeatedly encountered systemic issues resulting from the absent conception of institutional and protective education. The legislation is already considerably outdated, does not reflect the current needs of children, fails to take account of the specifics of care for children with special needs, and in some cases, does not even allow facilities to provide children with care appropriate to their difficulties in view of which the courts ordered the institutional education.

We found that although care for vulnerable children should be multidisciplinary, the facilities had very limited options to involve addictionologists, paediatric nurses and further experts who are key to working with the child and returning him or her to the family. For example, we repeatedly saw that even facilities providing educational-therapeutic care could not officially create a job position for medical staff, although they were housing children in need of treatment. The staff who in fact performs healthcare services is thus employed in teaching positions, which causes considerable difficulties.

PRISONS AND COMPLAINTS FROM PRISONERS

During our visits to three prisons, we focused – along with the usual issues of treating prisoners – on the impact of measures related to the

prevention of Covid-19 and on the conditions for the service of prison sentences by persons with disabilities.

DISCUSSIONS ON KEY ISSUES

We met with the Deputy Minister of Justice, JUDr. Jeroným Tejc, and representatives of the Prison Service of the Czech Republic, focusing especially on proper recording of signs of ill-treatment by prison physicians, and also regarding last year's Defender's legislative recommendation concerning privacy in the provision of healthcare services to imprisoned persons. Based on the joint meeting, the representatives of the Prison Service of the Czech Republic promised that by the end of the year, they would adopt an internal regulation specifying the tasks of prison healthcare professionals in connection with the recognition of signs of ill-treatment. We also jointly specified the requirements associated with the need to ensure privacy and security in the provision of healthcare services to imprisoned persons.

315 COMPLAINTS FROM PRISON INMATES

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

UNSUITABLE CONDITIONS FOR A PARAPLEGIC IN PRISON

We inquired into the case of a complainant serving imprisonment in the Litoměřice Remand Prison who was diagnosed with paraplegia and suffered from incontinence. He complained that conditions had not been in place for him to serve his imprisonment in dignity, especially with regard to medical and rehabilitation care.

We found an error on the part of the prison consisting in a failure to provide rehabilitative care and appropriate compensation aids, insufficient separation of sanitary facilities from the rest of the cell, and an unsuitable treatment programme. The prison also failed to provide the complainant with reasonable conditions enabling him to serve his sentence with dignity, such as wheelchair accessibility, sufficient space or the possibility to move around without the assistance of another prisoner. There was also a lack of proper assistance with daily routine tasks. The complainant was then transferred to the Ostrov Prison. The new prison offered the complainant a variety of activities and the possibility to watch television. The General Directorate of the Prison Service promised to address the provision of care by assistants from among the convicts, which we have been calling for since 2018.

In response to our inquiry, the remand prison director also promised that the prison would establish co-operation with a civilian rehabilitation facility if a convict required rehabilitation care. The prison also started co-operation with the local non-profit Hospic Sv. Štěpána association, which is able to lend compensation aids. The association donated two wheelchairs to the prison. The prison simultaneously entered into negotiations with the Litoměřice Municipal Hospital concerning the acquisition of an adjustable bed. The director promised to redesign the walking areas to be wheelchair accessible.

Defender's final opinion: File No. 2996/2020/VOP/JM

WORK ACCIDENT IN A PRISON

We were approached by a complainant who had not been compensated for a work accident (hand injury) that had occurred during the working hours in the course of his work assignment at the Pardubice Prison. He had previously complained unsuccessfully to the prison's prevention and complaints department.

The employer is required to compensate an employee for any tangible or intangible damage caused by an accident at work provided that the damage arose in the performance of working tasks or in direct connection therewith. Performance of working tasks also means an activity performed for the employer on the employee's own initiative unless the employee requires a special authorisation for this activity or performs it despite an explicit prohibition by the employer. The prison objected that the complainant had no explicit instruction of a senior employee to perform the task during which the accident occurred. In our view, however, the complainant was, in fact, performing a working task. It did not appear from the way the complaint had been resolved that a senior employee had explicitly prohibited the complainant from carrying out the working task, which – by its nature – corresponded to the complainant's job description. The prison erred when handling the complainant's complaint because it did not consider it justified in a situation where the

individual findings showed that the complainant had suffered an accident at work.

In response to our inquiry, the compensation committee of the Pardubice Prison re-examined the case, and found the complaint partially justified. It concluded that the injury sustained by the complainant could be considered an accident at work and therefore recommended that the claimant be awarded 80% of his claim as part of amicable settlement.

Defender's report: File No. 2966/2021/VOP

PRESCRIPTION OF MEDICAL CANNABIS IN PRISON

The complainant sought a prescription for medical cannabis during his sentence for medical reasons. The remand prison in question declined on the grounds of, among other things, security considerations – the possibility of abuse. In our inquiry, we described the difference between cannabis as a dependency producing substance and cannabis as a medicine. Such differentiation is also envisaged in the legislation which specifies that convicts are not allowed to carry items, including dependency producing substances (which also means plants for their preparation) in order to maintain security, discipline and order.

The discovery of a dependency producing substance in a prison facility and its abuse is an extraordinary incident. However, the administration, use or possession of dependency producing substances is not considered an extraordinary incident if ordered by a physician. As a matter of fact, a number of herbal and chemical preparations that are prohibited as illegal drugs are now commonly used for treatment – e.g. medicinal products used for opiate substitution treatment, Tramal, Codein, etc.

In the end, the remand prison accepted our argument that a prisoner could be granted and administered medical cannabis if there was a medical indication in this regard. The prison doctors were instructed to this effect.

Defender's opinion: File No. 1871/2020/VOP

POLICE CELLS

We visited "multi-hour cells" at five police departments. Our visits to these departments included an inspection of two short-term cells. We focused primarily on the way body searches were carried out before a person was placed in a cell, on the removal of medical aids, and on cameras scanning the toilet and washbasin area. In most cases, our recommendations were heeded.

MONITORING OF EXPULSIONS AND VISITS TO FACILITIES FOR FOREIGNERS

We monitored five expulsions and visited one facility for detention of foreigners.

INSUFFICIENT POLICE CO-OPERATION

Based on the findings from two return operations and long-term unsuccessful communication with the Directorate of the Immigration Police, we informed the Police President of the insufficient police co-operation in the exercise of our expulsion monitoring mandate. This concerns specifically the inability of the Office's staff to monitor the course of expulsion directly in the escort cars. The authority to be present in an escort car follows from the mandate to monitor expulsions. The issue of our physical absence in escort cars was also pointed out by the Council of the European Union during the Schengen evaluation. The presence of monitors in all areas, including police cars, is also essential according to this year's statement of Frontex's Fundamental Rights Officer. This problem remains unresolved in the Czech environment and, therefore, we will continue in our dialogue with the police regarding our presence in escort cars next year.

We communicate

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

ROUNDTABLE ON THE SYSTEM OF INSTITUTIONAL CARE FOR CHILDREN WITH DRUG ADDICTIONS

We organised a seminar on the system of care for children with drug addictions in institutional education. The meeting was attended by representatives of the Office of the Government, the Ministry of Education, Youth and Sports, school facilities for institutional and protective education, as well as representatives of the area of children and adolescent addiction treatment. We presented our findings from the systematic visits to children's institutional facilities specialising in addictions. We discussed the problems in the current system that stemmed mainly from poor and incomprehensible legal regulations. The roundtable took place within the LP-PDP3-001 project financed from the 2014–2021 Norway grants.

We also shared our findings at the April meeting of the ad hoc Working Group on care for children at risk of addiction, organised by the Anti-Drug Policy Department at the Office of the Czech Government.

Press release of 12 March 2021

ROUNDTABLE ON CHILD PSYCHIATRY

In co-operation with the Ministry of Health, we organised a seminar focusing on the involvement of children in decision-making in connection with their psychiatric hospitalisation. The seminar was based on the findings from visits made to psychiatric facilities since 2018, which mapped the treatment of child patients. The visits revealed a lack of uniform practices and uncertainty among healthcare professionals and providers as to how to involve children in decision-making on matters concerning them, such as hospitalisation, treatment or complaints. This roundtable took place within the LP-PDP3-001 project financed from the 2014–2021 Norway grants.

Following the roundtable, we issued a recommendation titled "Participation of a child in decision-making on matters related to the child's psychiatric hospitalisation".

Recommendation

Press release of 25 March 2021

ROUNDTABLE ON THE FINDINGS FROM VISITS TO REMAND PRISONS

At a roundtable on the findings from systematic visits to remand facilities, we discussed with representatives of the Prison Service of the Czech Republic and the Supreme Public Prosecutor's Office options for ensuring contact of the accused with the outside world, the use of camera surveillance systems in remand prisons, leisure activities for the accused and the options for their employment, and a number of other topics. The roundtable was followed by the preparation of a summary report on remand in custody in the Czech Republic, which will be issued in 2022. This roundtable took place within the LP-PDP3-001 project financed from the 2014–2021 Norway grants.

INTERNATIONAL ACTIVITIES IN THE AREA OF EXPULSION MONITORING

Our employees participated as trainers in international training sessions for persons in charge of supervising the expulsion process, which took place under the auspices of the International Centre for Migration Policy Development (ICMPD) and newly also under the auspices of Frontex.

8 Equal treatment and discrimination

543

complaints accepted with regard to discrimination

16

closed cases where we found discrimination, of which

5

cases involved direct discrimination

8

cases involved indirect discrimination

3

cases involved retaliation (victimisation), harassment, instruction to discriminate, or incitement to discrimination

14

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

466

cases where discrimination falling within the Defender's remit was not involved; complainants lacked evidence to support their allegations, or they referred as discrimination to a situation that was clearly not discriminatory. We thus did not even investigate these cases and advised the complainants on how they could best deal with their situation.

In 2021, we continued to address topics related to the Covid-19 epidemic, whether it was testing of students in schools or access to vaccination for foreigners. However, we also covered other topics that were not related to the epidemic – we published a collection of the Defender's opinions in the area of education, drew attention to outdated abortion legislation, and gathered the experience of EU citizens living in the Czech Republic, especially with regard to employment. We were also interested in their access to library services.

In communication with authorities, private entities, NGOs, international bodies and the public, we dealt with 88 systematic issues in the area of equal treatment.

COMPLAINTS IN FOCUS (FROM AMONG COMPLAINTS RECEIVED IN 2021)

Areas in which people felt discriminated against

goods and services	126
work and employment (incl. entrepreneurship)	117
education	75
healthcare	49
other areas of public administration	41
housing	37
social affairs	23
membership in chambers and unions	1
other	110

Why people felt discriminated against

disability	93
age	46
race, ethnicity	33
nationality (state citizenship)	29
sex (gender)	29
nationality (ethnic origin)	13
religion, faith, worldview	10
sexual orientation	7
other characteristics	302

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

We help change the rules

MEASURES TAKEN DURING THE COVID-19 PANDEMIC

Even during 2021, the Defender was approached by people who considered certain measures to prevent the spread of the Covid-19 pandemic discriminatory.

In the spring of 2021, the Ministry of Health issued an extraordinary measure making the personal presence of students in class conditional on a negative result of a preventive antigen test. Some students and their parents had reservations about the system. In their opinion, for example, the Ministry had failed to sufficiently justify the frequency of testing. Students were to be tested twice a week while, for example, a weekly interval was sufficient for employees to enter the workplace.

The complainants also saw a problem in the fact that students who could not undergo the test due to mental disabilities or autism spectrum disorder would not be able to participate in the lessons. We contacted the Ministry of Health and asked for a remedy. The frequency of preventive testing in schools then decreased. The issue of testing children with disabilities eventually ceased to be relevant at the beginning of the 2021/2022 school year. Despite the fact that these children could not be tested, they were able to participate in the school lessons.

Defender's report: File No. 2382/2021/VOP

Press release of 23 April 2021

Some citizens of the European Union and third countries residing in the Czech Republic in the long term complained that they could not register for the Covid-19 vaccination, as the registration was conditional on participation in Czech public health insurance. Many complainants suffered

from a chronic illness or could otherwise have access to vaccination based on age. The State must not treat foreigners less favourably without rational justification. This is why we advised the Ministry of Health of their situation. In June 2021, this group of foreign nationals was given the opportunity to be vaccinated in at least one vaccination centre in each administrative region.

Defender's report: File No. 2151/2021/VOP

WHAT CONDITIONS DO CZECH LIBRARIES OFFER TO EU CITIZENS?

Since 2018, the Defender has been entrusted by the law with competence in matters related to the freedom of movement of citizens of the European Union and their family members. One of our tasks in this respect is to monitor the everyday reality encountered by migrant EU citizens in the Czech Republic, identify weaknesses and strive to improve the legal environment in this sense.

In response to the complaints received, we decided to examine the conditions for the provision of library services to citizens of EU Member States in 2021 and compare them with those for Czech citizens. All EU citizens should have equal access to library services. We analysed the library rules of 22 most important Czech libraries and found that some of them set problematic conditions for registration or for off-site and remote borrowing of books and documents.

In the case of on-site registration of new users from among foreigners from EU Member States, some libraries required proof of residence in the Czech Republic. However, EU citizens do not need this, i.e. they usually do not have it. Some libraries set a different minimum age for the registration of EU citizens than for Czech readers. In case of remote (online) registration, some libraries required that the applicant be a Czech citizen or asked for proof of permanent residence in the Czech Republic.

If libraries differentiate between Czech and EU citizens on the basis of citizenship alone, they may be committing discrimination. Following our findings, we therefore prepared several recommendations on how to set up library rules to avoid discrimination. We recommended that the libraries:

- provide citizens of the European Union with the same rights and benefits as Czech citizens;
- provide objective justification for any possible unequal treatment;
- not require EU citizens to present a residence permit or a temporary residence certificate; if necessary, they can require other proof of establishment (employment contract, rental contract, study certificate, etc.);
- do not require foreigners to have Czech citizenship or permanent residence in the Czech Republic during registration or for the purposes of off-site borrowing.

We sent the survey report with recommendations to the libraries. Discussions are currently underway on possible modifications of the library rules.

Defender's survey: File No. 7/2021/DIS

Press release of 10 June 2021

ABORTION AND FOREIGN WOMEN

The Abortion Act inappropriately formulates the admissibility of abortion for foreign women who are temporarily staying in the Czech Republic. This results ultimately in a restriction of foreigners' access to healthcare. The topic of abortions performed on foreign women resonated in the public sphere primarily in connection with the recent events in Poland. Information appeared in the media that some Czech medical facilities would not perform this procedure on EU citizens while referring to the opinion of the Czech Medical Chamber and an article in the chamber's journal Tempus Medicorum.

We decided to analyse the related legislation and concluded that abortion could be legally performed in the Czech Republic both on foreign women who are citizens of the European Union, regardless of whether they are settled in the country, and on third-country nationals if they have a residence permit in the Czech Republic. We sent our opinion to the Czech Medical Chamber and recommended that it reconsider its legal position. We learned that the Czech Medical Chamber saw the problem primarily in the legislation itself and that the Chamber's earlier opinion was intended to provide its members

with a legally safe interpretation. We agreed on the need to clarify the regulation and published an opinion on this issue in the chamber's journal.

- Defender's recommendation: File No. 25/2021/DIS
- Article "The Ombudsman calls for modification of the law on abortion performed on foreign women in the Czech Republic" in the Tempus Medicorum journal of the Czech Medical Chamber (p. 35 et seq.)

RECOMMENDATION ON ESTABLISHING RESERVED PARKING SPACES FOR PEOPLE WITH DISABILITIES

In 2020, we published a survey concerning reserved parking and presented its outputs to representatives of municipalities at a roundtable. Based on the survey, we prepared a recommendation addressed primarily to municipalities and authorities in 2021. The aim is to unify the practice in decision-making on the establishment of reserved parking so that people with disabilities who need reserved parking are not exposed to discriminatory procedures.

We recommended to the municipalities, in particular:

- to always provide written reasons for the approval or rejection of the establishment of a reserved parking space;
- to leave room for a case-by-case assessment when applying their own rules for granting approval;
- not to require compliance with criteria that are not relevant for assessing the applicants' situation;
- to grant approval if the applicant proves that he/she needs to park in a specific place due to his/her condition;
- not to refer solely to the lack of parking spaces as a justification for rejecting an application;
- to grant approval if there are sufficient parking spaces available, the applicant needs to park in the given space in view of the constraints resulting from his/her long-term disability, and there are no other obstacles to the establishment of a reserved parking space;
- not to restrict the possibility to apply for a reserved parking space only to persons with motor impairments;
- not to restrict the possibility to apply for a reserved parking space only to people who themselves own or drive a vehicle;
- not to exclude from the possibility to apply for a reserved parking space people without a ZTP or ZTP/P cards who are people with disabilities in the sense of the Anti-Discrimination Act.

Further recommendations were addressed to authorities such as road administration authorities, the Ministry of the Interior and the Ministry of Transport. We will continue monitoring compliance with these recommendations.

- Defender's recommendation: File No. 97/2018/DIS
- Press release of 18 May 2021

KINDERGARTEN HEADTEACHERS HAVE A CHANCE FOR HIGHER PAY

We were approached by an association seeking to improve the position of teachers in society. The association expressed dissatisfaction with the methodological guidance on remuneration of school staff and employees issued by the Ministry of Education, Youth and Sports. It turned out that part of the methodology was in contradiction with the Government Regulation on the catalogue of works. It was less favourable for some kindergarten headteachers who were assigned to a lower pay grade on its basis. After we acquainted the Ministry with our conclusions, the disputable passage was omitted from the methodology.

- Defender's report: File No. 6000/2019/VOP
- Press release of 2 September 2021

SURVEY AND RECOMMENDATIONS: CITIZENS OF THE EUROPEAN UNION IN THE CZECH REPUBLIC

In 2021, we examined the experience of migrant workers from the European Union and their

family members who are currently residing in the Czech Republic, in various areas of life in this country. The focus of the survey was the area of work and employment.

Summary of conclusions:

- Almost one third of EU citizens working in the Czech Republic stated they felt discriminated against in their working life because of their nationality (in the sense of State citizenship or "ethnic" nationality). Most often, this concerned the area of remuneration, assignment of work and job search.
- University-educated workers perceived discrimination to a much lesser degree.
- EU citizens who speak fluent Czech felt less often at a disadvantage.
- Almost two thirds of EU citizens living in the Czech Republic in no way defended themselves against conduct they considered discriminatory.
- Citizens of the European Union do not always perform work corresponding to their education in the Czech Republic. The differences lie mainly in where they come from.
- EU citizens are mostly satisfied with Czech healthcare.
- EU citizens living in the Czech Republic tend to evaluate communication with the authorities positively. They perceive some unwillingness, inappropriate behaviour and linguistic shortcomings especially in the actions of the Department for Asylum and Migration Policy of the Ministry of the Interior and the Immigration Police.
- Respondents mostly evaluated the quality of Czech schools as good; some parents pointed to a different approach to their children and a failure to address bullying at school.

Based on these conclusions, we prepared several recommendations that could help to improve the unsatisfactory situation in some areas. They are intended primarily for authorities – ministries and the State Labour Inspectorate – as well as municipalities and administrative regions.

Defender's survey and recommendations: File No. 72/2020/DIS

FIRST OF A SERIES OF MONITORING REPORTS ON EQUAL TREATMENT AND FOLLOW-UP ACTIVITIES

In the summer of 2021, we issued the first of a series of monitoring reports on equal treatment. We presented three areas we will systematically monitor until 2023: the level of education of Roma people; equal pay for women and men; and certain procedural issues. In the initial monitoring report, we describe the indicators we will evaluate in the individual areas. In addition to observation and evaluating the current situation, the monitoring activities will also include discussions with the authorities and other key stakeholders to achieve the desired changes.

Defender's recommendation: File No. 62/2020/DIS

Press release of 30 June 2021

We opened such a discussion in the autumn of 2021 as we met at a roundtable on education of Roma children with organisations focusing with this topic. The aim was to introduce them to the Defender's monitoring activities and to learn about their vision of the desired changes in this area, to which we could contribute through our work.

We are here to help

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

In 2021, we helped, for example:

- A woman with a disability who had been denied by the town an approval to establish a reserved parking space. We reviewed the town's procedure and recommended that it reconsider its position. We emphasised that even in the case of people with disabilities who do not hold a ZTP/P card themselves and do not drive, municipalities should make a sufficient consideration as to whether their mobility problems justify the establishment of a reserved parking space. The town council discussed the Defender's conclusions and ultimately approved the reserved parking space.

Defender's report: File No. 6462/2019/VOP

- A man whose employer provided motivational bonuses to all employees except those who received retirement pension. We called on the employer to remedy the situation when, even after an inspection by the Labour Inspectorate, which found this condition discriminatory, the employer had not paid the balance of remuneration to the complainant. After receiving the Defender's request, the employer decided to pay the remuneration back to the complainant and other working pensioners.

Defender's report: File No. 1897/2018/VOP

Interview with the complainant in the publication Equal Treatment 2020 (p. 8 et seq.)

- Female civil servants whose posts had been abolished by the authorities while they were on maternity leave or pregnant. We inquired into a claim of discrimination in three cases and concluded that the practice whereby posts of employees taking maternity and parental leave were cancelled as vacant on the basis of systematisation constituted indirect discrimination on the grounds of parenthood. Two of the three complainants received an apology from the authorities, together with a promise that the employer would find a suitable position for them to return to.

Defender's report: File No. 7036/2018/VOP

Defender's final opinion: File No. 7036/2018/VOP/JM

Press release of 14 September 2021

- People with disabilities who had been denied entry to a store with an assistance dog. We concluded that the company in question had committed indirect discrimination in access to goods and services. We assessed the actions of the security guards who had not allowed the complainant to enter the store as harassment. The company's representatives subsequently asked us to provide the complainant's contact details so that they could apologise.

Defender's report: File No. 5255/2019/VOP

- An academic with whom the employer wanted to terminate the relationship shortly before retirement. The employer pointed out that if the complainant's health problems worsened, he would not be able to work for the department "with full commitment". We outlined to the complainant a possible further course of action and our preliminary legal assessment. As a result, he managed to negotiate an extension of his employment contract until his retirement date.

- A student whose course supervisor refused to allow her to take an examination at the university by remote access, even though her disability did not allow her to attend it in person. We wrote to the complainant a brief e-mail with a legal assessment and an outline of a possible further course of action. The complainant handed it over to the student services department and the faculty management; following that, the school announced online examination dates.

- A woman who was dismissed by the employer during the trial period while she

was pregnant. The complainant approached us with a suspicion of discrimination on grounds of sex. Thanks to our co-operation with the Pro Bono Alliance, we arranged free legal representation for her. This year, the complainant succeeded at the Supreme Court, which accepted her arguments and referred the case back to the first-instance court. The Supreme Court concluded that the reason for termination of the complainant's employment during the trial period was indeed her pregnancy, and that the employer thus committed discrimination.

Judgement of the Supreme Court of 16 March 2021, File No. 21 Cdo 2410/2020-138

We communicate

CO-OPERATION WITH INSPECTION AUTHORITIES

As usual, we met with representatives of inspection authorities. With the Chief Schools Inspector, we discussed especially distance learning during the Covid-19 pandemic and its impact on students with special educational needs.

With the Governor of the Czech National Bank, we negotiated on the manner of handling complaints by the Czech National Bank, the relevance of the answers provided and inspection of files.

This was followed by a meeting with the Inspector General of the State Labour Inspectorate concerning the performance of inspections.

At the end of the year, we trained lawyers and inspectors of the Czech Trade Inspection Authority.

CO-OPERATION WITH INTERNATIONAL ENTITIES

Even during the pandemic, we participated in important international meetings and projects.

We continued our co-operation with the European Network of Equality Bodies (Equinet), which associates "national equality bodies" in Europe. Furthermore, we made an important contribution to the publication on reasonable accommodations in relation to people with disabilities. On the Equinet website, we published an article on the accessibility of polling stations for people with disabilities.

We also regularly participated in meetings of the Equinet working group on free movement of workers in the European Union. As part of these activities, Equinet, with the assistance of its members, prepared a publication on the experience of national equality bodies with regard to migrant worker issues and challenges for the future. A meeting concerning future co-operation was organised with the free movement authorities and representatives of the national SOLVIT centres. At the end of the year, we took part in meetings of the Advisory Committee on Free Movement of Workers within the EU, organised by the European Commission.

During the year, we participated in a meeting on implementation of the judgement in D.H. (education of Roma children), initiated by the Government's Agent before the European Court of Human Rights. At a meeting of the working group at the Slovak Ministry of Education, we presented our outputs on the education of Roma children and shared our experience.

We also met with representatives of the US Embassy in the Czech Republic. We discussed the situation related to the right to equal treatment in the past year.

EDUCATIONAL EVENTS FOR OFFICIALS AND STUDENTS

This year, the Defender continued to co-operate with the Office of the Government, with whom the Defender trains officials regarding prevention and treatment of sexual harassment at the workplace. The seminars were attended by investigators and other stakeholders from the relevant ministries.

We also participated in several educational events organised for university students on the topic of consumer protection (Pardubice University), non-discrimination (Masaryk University), and rights of trans-gender persons (Masaryk University). In co-operation with the Pro Bono Alliance, we spoke at two events where we discussed the right to equal treatment and discrimination against women in labour-law relationships (Human Rights Live). In an interactive form, we introduced students to the protection of the right to equal treatment in times of the coronavirus crisis (School of Human Rights).

EDUCATION

There are a number of children and students who require either direct professional health services or supervision in medication or other treatment while at school. These may be both children with disabilities and chronically ill children who, although they need no adjustments to their teaching or learning outcomes, cannot be in school for the full duration of the school day without the provision of medical support.

In connection with the amendment to the Healthcare Services Act based on which it has been possible to also provide healthcare services in schools since 1 January 2022, we met with representatives of the ministries of education and health, and also with the Chief Schools Inspector. We discussed the inclusion of all the relevant aspects in the forthcoming methodology related to this amendment. For example, there are still uncertainties regarding the school's powers – in particular, whether it is required to store medicines prescribed by a physician for a particular student. We will continue the talks.

We issued another collection in the Defender's Opinions series, this time on the field of education. The first part of the collection generally deals with the most common issues related to children's attendance in kindergartens, primary schools and secondary schools. In the second part, we present the conclusions of inquiries into the most important school cases during the existence of our institution.

9

Monitoring of rights of people with disabilities

1
collection of opinions dealing with the rights of people with disabilities as a minority

2
surveys

2
podcasts

6
meetings of the advisory body

6
recommendations

7
visits focusing on the conditions of clients living in homes for people with disabilities

77
complaints in the area of public guardianship and supporting measures

93
complaints pointing out systemic shortcomings related to the rights of people with disabilities

The year 2021 was the fourth year when the Defender acted as a monitoring body under the Convention on the Rights of Persons with Disabilities. In addition to the usual activities related to systematic monitoring of compliance by the Czech Republic with its obligations under this international treaty, we also dealt with the impacts of the continuing Covid-19 pandemic.

In our Recommendation to health and social service providers, we summarised in practical terms the issue of vaccination of clients and patients benefiting from supporting measures or having reduced decision-making capacity.

In further Recommendations, we focused, for example, on the accessibility of the census process and support for voters in residential social services facilities.

We help change the rules

RECOMMENDATION TITLED "PARTICIPATION OF A CHILD IN DECISION-MAKING ON MATTERS RELATED TO THE CHILD'S PSYCHIATRIC HOSPITALISATION".

Systematic visits to child and adolescent psychiatric care facilities showed that hospitals took a disjointed approach to the participation of minor patients in treatment decisions and sometimes neglected the child's participation. We therefore issued a recommendation to unify the practice and strengthen children's rights. The recommendation was developed in co-operation with experts in the field and representatives of hospitals, and in agreement with the Ministry of Health. We consider it crucial to provide information to paediatric patients in an age-appropriate manner. The recommendation was also published in Official Journal of the Ministry of Health 10/2021.

Defender's recommendation: File No. 36/2021/OZP

CENSUS OF THE POPULATION, BUILDINGS AND FLATS IN 2021

In connection with the census of the population, buildings and flats in 2021, we formulated recommendations to improve the accessibility of the census process for people with disabilities, especially people with hearing impairments and psychosocial disabilities.

We pointed out that the census was not sufficiently accessible for users of the Czech Sign Language. The information provided also did not conform to an easy-to-read format and may have been incomprehensible to people with mental disability. We urged the Czech Statistical Office (CSO) to allow people with hearing and intellectual disabilities to become acquainted with information about the census through a communication medium and in a format understandable to them. This is a key step towards achieving accessibility of the entire census process pursuant to Articles 9 and 21 of the Convention on the Rights of Persons with Disabilities.

At the same time, we recommended that the Czech Statistical Office introduce, without undue delay, a two-way transcription service with respect to both census support phone lines and distribute information materials in an easy read format to the relevant target groups. We also recommended that the Office advise the census officers that the census form may also be filled in by minors over 15 years of age and people with limited legal capacity who are factually capable of doing so.

Defender's recommendation: File No. 18/2021/OZP

RECOMMENDATION CONCERNING CURFEWS IN RESIDENTIAL SOCIAL SERVICES FACILITIES

We pointed out the unlawfulness of an extraordinary measure whereby the Ministry of Health made it mandatory for clients of residential social services to be isolated and retested for the Covid-19 disease every time they left the facility, even if it was only a short walk. This measure interfered excessively with the rights of the clients of these social services, which is why we called on the Minister of Health to cancel the measure. Our actions led to subsequent cancellation of the measure.

Defender's recommendation: File No. 15/2021/OZP

RECOMMENDATION ON VACCINATION OF CLIENTS BENEFITING FROM SUPPORTING MEASURES AND CLIENTS WITH REDUCED CAPACITY TO MAKE DECISIONS

Based on complaints from providers of social and healthcare services, public guardians and

clients' close ones, we issued a Recommendation concerning the legal aspects of vaccination of clients with limited legal capacity, clients subject to other supporting measures, such as assisted decision-making, representation by a household member, appointment of a guardian without limitation of legal capacity, or clients not benefiting from a supporting measure who are unable to give consent to vaccination. We addressed the Recommendation primarily to healthcare and social services providers and conceived it as practicable solutions to problems that may arise in connection with the vaccination of clients in these kinds of facilities. We also created an information leaflet to accompany the recommendation.

Defender's recommendation: File No. 8/2021/OZP

RECOMMENDATIONS ON ACCESSIBILITY OF THE "UDÁLOSTI" NEWS PROGRAMME BROADCAST BY CZECH TELEVISION

Therefore, as a monitoring body, we could not overlook that a public broadcaster did not sufficiently reflect the needs of people with disabilities. According to the Convention on the Rights of Persons with Disabilities, such people have the right to accessible information. This is why we recommended to Czech Television to start forthwith providing the main news programme "Události" in its video archive (iVysílání) in a version containing interpreting into the Czech Sign Language. Czech Television complied and, since 1 March 2021, the programme has been available in the archive with interpreting into the Czech Sign Language.

Defender's recommendation: File No. 45/2020/OZP

RECOMMENDATION FOR VOTER SUPPORT IN RESIDENTIAL SOCIAL SERVICES

Before the elections to the Chamber of Deputies, we issued a Recommendation on the exercise of the right to vote by clients of residential social services. The Recommendation guides social service providers and guardians step by step through the electoral process, starting with long-term preparation in the pre-election period and ending with the actual exercise of the right to vote at the polling station or using a portable ballot box at a residential social services facility. The aim of the Recommendation is to enable the widest possible circle of people with disabilities to exercise their right to vote through appropriate support. Following the Recommendation, we visited homes for people with disabilities after the elections to map how the clients of these services had been given the opportunity to participate in the elections and with what support.

Defender's recommendation: File No. 32/2020/OZP

RECOMMENDATION ON THE SITUATION OF PEOPLE WITH VARIATIONS IN SEX CHARACTERISTICS AND THEIR FAMILIES

We acted as the external application guarantor for a project conducted by Palacký University in Olomouc with a focus on the social and legal status of people with variations in sex characteristics in the Czech Republic. Indeed, some intersex people can be considered disabled in the light of the definition contained in the UN Convention on the Rights of Persons with Disabilities. The University's research pointed out the problems that people with variations in sex characteristics may face. We followed up on this research in our recommendation.

In particular, we recommended that the Ministry of Health create a working group to evaluate the practice of medical procedures in children with such variations. We consider it essential to inform the medical and general public, to support the formation of self-help parent-patient organisations, and to evaluate the extent of information collected by the registering paediatrician about the health status of a child with variations in sex characteristics. We also pointed out the importance of the availability of data on medical procedures in the case of people with variations in sex characteristics, including potential future collection of such data. Some of the other recommendations were addressed to the Czech Medical Chamber and, where appropriate, also to the Ministry of Labour and Social Affairs.

A practical website was also created, where people with variations in sex characteristics, their relatives, physicians and institutions concerned can read our recommendations and other interesting information and materials.

Defender's recommendation: File No. 54/2021/OZP

RECOMMENDATION ON THE ACCESSIBILITY OF TELEVISION BROADCASTING

The Czech Association of Organisations of People with Hearing Impairments advised us of the adverse impact of the Government's bill on video-sharing platform services on people with hearing impairments. The bill envisaged the removal of the quotas for closed captioning, which ensure accessibility of audio-visual content for people with hearing impairments. Instead, television stations would newly have a legal duty to prepare action plans where the degree of accessibility would be left entirely up to their discretion.

The Government's bill was created without consulting people with hearing impairments. In our recommendation, we called on the involvement of people with hearing impairments in the discussion on redrafting the bill so that it would not have a negative impact on them. The meeting took place in July 2021 at the Ministry of Culture. However, the bill was not discussed by the end of the Chamber of Deputies' electoral term. We will closely monitor further developments.

Defender's recommendation: File No. 3/2021/OZP

RECOMMENDATION ON ACCESSIBILITY OF THE "1221" INFORMATION LINE

In September 2020, the Ministry of Health established the 1221 hotline for the provision of up-to-date information on Covid-19. However, this service was practically unavailable to people with hearing impairments, who prefer written communication. The Ministry did not make a two-way simultaneous transcription operational until the beginning of March 2021. We criticised the Ministry for not introducing this service immediately upon launching the said line, but only six months later. During the autumn and winter waves of the Covid-19 pandemic, line 1221 was thus not accessible for a certain group of people with hearing impairments in their preferred communication system. We recommended that the Ministry look for ways to increase the accessibility of the line also for users of the Czech Sign Language. The Ministry accepted the Defender's recommendations and made the 1221 line available to users of the Czech Sign Language while using existing tools.

Defender's recommendation: File No. 50/2020/OZP

NEW INQUIRY TOOL FOR MONITORING THE RIGHTS OF CLIENTS IN HOMES FOR PEOPLE WITH DISABILITIES

As part of monitoring the rights of people with disabilities, we visit regularly residential social service facilities and ascertain the conditions of living in institutionalised services. For these purposes, we created a new inquiry tool inspired by the Quality Rights Tool Kit of the World Health Organisation (WHO). This is an effective means of quality assessment in the context of the Convention on the Rights of Persons with Disabilities. The aim is to comprehensively assess the individual service providers. After evaluating all our findings, we will propose appropriate measures. The tool can be used for any target group from children to adults, elderly people, people with various types of disabilities, people with addictions, etc. It is based on process quality assessment methods and uses three basic elements to obtain information about the service:

- interviews with clients of the service, staff, relatives and close persons;
- direct observation of the service delivery;
- study of documents related to the service delivery.

We pre-defined the relevant standard of service delivery for the conditions of social service homes for people with disabilities in five basic areas. We evaluate the findings from each visit using a scale, and if appropriate, make a recommendation intended primarily for the service provider. Based on generalised findings, we will make a recommendation aimed at potential systemic problems.

In 2020, we also started testing a new monitoring tool in two visits to homes for people with disabilities. We conducted them under the mandate of the Defender as the National Preventive Mechanism (see Chapter 07, p.84), and also focused on the prevention of ill-treatment.

SURVEY: ACCESSIBILITY OF SOCIAL SERVICES – SHELTERS AND ACCOMMODATION FACILITIES FOR PEOPLE WITH DISABILITIES

We completed a survey on accessibility of social services – shelters and accommodation facilities for people with disabilities. The results showed a number of obstacles to the use of these services by people with disabilities. Due to barriers in buildings, these services are not accessible to people with severe disabilities. The staff often lacks competence in communicating with people suffering from a sensory impairment. The results of the survey also confirmed that there still is no conceptual solution to social housing in the Czech Republic. People with disabilities or health problems who are without income and social support, are falling through the aid net set up by the system. Following our survey, we met with experts at a December roundtable to discuss the negative definition of the target group for the social service provided, various problems with the concurrence of several social services for one client (e.g. the use of personal assistance for a client of an accommodation facility) and the pitfalls associated with obtaining a care allowance. We also addressed the possibilities and limitations of social work in the given environment. We will issue a recommendation for this area in 2022.

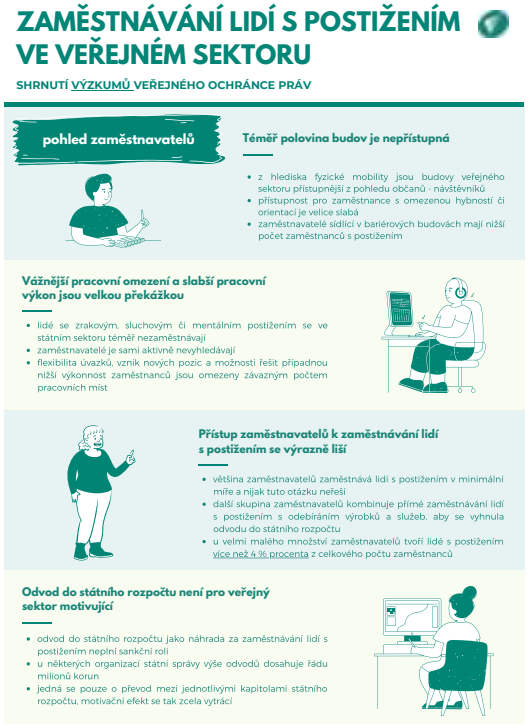
Defender's survey: File No. 75/2018/OZP

SURVEY: EMPLOYMENT OF PEOPLE WITH DISABILITIES IN THE PUBLIC SECTOR FROM THE PERSPECTIVE OF POTENTIAL EMPLOYEES

We issued a second survey report on the employment of people with disabilities in the public sector. While the first report mapped the attitudes and experience of employers, the second focused on the experience of people with disabilities themselves. The report was created based on group interviews with disabled people. We found that the course of selection procedures was often problematic for many people with disabilities and that they preferred to keep their health limitations hidden during the selection process. When looking for a job, people with disabilities rely especially on their own

efforts and contacts. In job advertisements, they lack a more detailed specification of the working environment and the specific job description. There is no uniform approach to providing reasonable accommodation to employees with disabilities in the public sector, and this depends primarily on the given individuals. Nevertheless, people with disabilities perceive the public sector positively as an employer. In 2022, we will follow up on the survey findings and issue a recommendation for employers and public sector institutions.

- Defender's survey: File No. 23/2020/OZP
- Press release of 8 April 2021
- Infographics



SURVEY: FUNCTIONING OF EXPERT WORKING GROUPS ON WORK REHABILITATION

We found that the functioning of expert working groups on work rehabilitation of people with disabilities (hereinafter the "working groups") was not sufficiently participatory at the contact points of the Labour Office of the Czech Republic. This means that it does not allow people with disabilities to participate in the individual steps of decision-making or at least take part in the meetings. People with disabilities are rarely members of the working groups and similarly, people with disabilities as applicants for work rehabilitation participate only absolutely exceptionally in meetings of the working groups.

We communicated the results of the survey to the General Directorate of the Labour Office. We proposed six remedial measures and will monitor their implementation.

- Defender's survey: File No. 2919/2019/VOP
- Defender's report and opinion: File No. 2919/2019/VOP

VISITS TO HOMES FOR PEOPLE WITH DISABILITIES

In 2021, we made a total of five monitoring visits to homes for people with disabilities. In view of the elections to the Chamber of Deputies, we focused on compliance with Article 29, safeguarding the right to participate in political life. We inquired whether the issue of elections was one of the topics they worked with, how they supported their clients in this area and how they co-operated with guardians, if at all. We will describe the findings and main shortcomings in a summary report.

We are here to help

ISSUING AN IDENTITY CARD TO AN INDIVIDUAL WITH RESTRICTED LEGAL CAPACITY

A woman whose legal capacity is restricted due to her mental disability wanted to have her own identity card so that she could identify herself in everyday life situations. However, the public guardian refused to file the relevant application on her behalf with reference to her vulnerability. He was concerned about the possible misuse of her identity card in the conclusion of contracts. However, he did not explain this to the complainant. We advised the guardian that a disadvantageous contract could be concluded even without an identity card. We explained that it was therefore important to act preventively and reduce the degree of potential risk threatening the person under guardianship by increasing her autonomy and self-reliance in accordance with her wishes and interests (e.g. in the form of social rehabilitation). After the inquiry report was issued, the guardian did apply for an identity card on the complainant's behalf.

Defender's report and opinion: File No. 2869/2020/VOP

We communicate

ADVISORY BODY

The advisory body met five times in total and dealt especially with the topics of work and employment (Article 27 of the Convention), the cross-sectional topic of children with disabilities (Article 7 of the Convention), and the current topic of elections (Article 29 of the Convention). It also co-operated in the development of indicators for selected articles of the Convention. The advisory body also repeatedly dealt with the draft amendment to the Social Services Act (Chamber of Deputies document No. 1143, Senate document No. 157). It concluded that the proposed changes to the legislation were at variance with Article 19 of the Convention and

could have a negative impact on social services clients. The Defender subsequently informed all the entities involved in the legislative process of the advisory body's conclusions.

Press release of 10 May 2021

The topic of the ongoing Covid-19 pandemic also permeated the individual meetings. The members of the advisory body drew attention, for example, to the difficulties encountered by some people with disabilities when wearing face masks or respirators, the inaccessibility of testing and vaccination sites, and the impact of restrictive measures on children with disabilities.

In 2022, the advisory body will preferentially deal with social services, functionality of the assessment system, and the education of children with disabilities.

BULLETIN

Last year, we published two new issues of our Bulletin, where we report on our activities and news.

CO-OPERATION WITH FOREIGN COLLEAGUES

We co-operate on an ongoing basis with other monitoring bodies across Europe within the European Network of National Human Rights Institutions (ENNHRI) and other international bodies in the field of protecting the rights of people with disabilities. Despite the ongoing pandemic, we managed to hold several working meetings.

In co-operation with the EU Agency for Fundamental Rights (FRA) and the Government Commissioner for Human Rights, we organised an international seminar titled "Development and use of indicators to measure the implementation of the Convention on the Rights of Persons with Disabilities". Representatives of the government, people with disabilities and academia discussed which data should be collected by the State on people with disabilities in order to assess whether their legal status in the Czech Republic was improving. We also presented a set of indicators for the four articles of the Convention that most affect the lives of people with disabilities. Based on the outcomes of this seminar, we plan to issue the first of a series of monitoring reports on the situation of people with disabilities in 2022.

Press release of 9 September 2021

In the framework of the co-operation with the UN Committee on the Rights of Persons with Disabilities, the Defender participated in the preparation of the General Comment on Article 27 of the Convention on the Rights of Persons with Disabilities. We passed on to the Committee our findings on the employment of people with disabilities we gained through research and inquiries into individual complaints. Based on information from monitoring bodies, the Committee should then issue a General Comment on interpretation of the right of people with disabilities to work and employment.

We also responded to the European Ombudsman's request and described the situation regarding the process of deinstitutionalisation and transformation of social services in the Czech Republic. In our letter, we pointed out primarily that there was still no strategy for deinstitutionalisation of social services in the Czech Republic. Such a strategy should include a clear goal, a deadline for implementation and gradual steps towards the abolition of institutional care for people with disabilities, and its replacement by community-based services. We also identified as problematic the fact that the legal system did not clearly define the terms "deinstitutionalisation", "transformation" and "community service". This leads to various inconsistent interpretations and causes difficulties in practice.

We actively participated in an online educational event organised by the Academy of European Law in Trier. At a webinar designed especially for lawyers, civil servants and NGO staff from all EU countries, we summarised the knowledge on the protection of the rights of people with disabilities under the Convention and the relevant EU directives. We focused especially on cases of people with disabilities dealt with in the past by the Court of Justice of the European Union.

We participate regularly in the CRPD working group (protection of the rights of people with disabilities) of the European Network of National Human Rights Institutions (ENNHRI), which operates on the basis of sharing experience in monitoring the rights of people with disabilities in individual European countries.

CONFERENCES, ROUNDTABLES AND TRAINING

We participated in a seminar held in the Senate of the Parliament of the Czech Republic dealing with the issue of public guardianship. We pointed out the lack of a comprehensive law regulating

supporting measures, the insufficient use of alternatives to the restriction of legal capacity, and the poor awareness of the general and professional public in this area.

Together with the Rytmus organisation and the Society Supporting People with Mental Disabilities in the Czech Republic, we organised an online meeting about supporting people with mental disabilities at work. At the meeting, we presented the conclusions of our surveys. We discussed the method of supported employment, contributing to the employment people with mental disabilities on the regular labour market. We also talked about the experience of employers themselves.

Recording of the online meeting on Youtube

Press release of 3 March 2021

We met with secretaries of municipalities with extended competence to discuss the employment of people with disabilities in local government. At a regular meeting with the Ministry of the Interior, we presented the results of surveys and recommended certain procedures that could increase the share of people with disabilities employed in municipal and metropolitan authorities. We also discussed the employment of people with disabilities and their work rehabilitation at a working meeting organised by the General Directorate of the Labour Office of the Czech Republic. We agreed with representatives of the Ministry of the Interior – the Civil Service Department, Ministry of Labour and Social Affairs and the Secretariat of the Government Committee for Persons with Disabilities on further education of senior service bodies that would increase the share of people with disabilities in the civil service.

At a methodological meeting of social workers in the Vysočina Region, we presented findings from our survey on court decision-making in the area of supporting measures, from inquiries into individual complaints in the area of public guardianship and from an upcoming survey on the experience of municipalities in the performance of guardianship as well as other activities in the protection of vulnerable adult persons.

Together with the Czech Bar Association, we organised two meetings for attorneys-at-law dealing with procedural guardianship of people with disabilities. At the meetings, we discussed our findings from visits to facilities, surveys and individual suggestions, as well as on how to improve access of vulnerable persons to justice. We pointed out that patients in involuntary hospitalisation and people undergoing legal capacity proceedings have limited options to secure their own legal assistance, and court-appointed attorneys should be more proactive in contacting their clients and fulfilling their wishes. On the other hand, attorneys should also be entitled to a corresponding fee for their often demanding work with these clients.

Report from the October seminar in the Law Journal

We also participated in a conference titled Social Psychiatry with a paper on the possibilities of protecting and supporting people with psychosocial disabilities in legal conduct. The issue of patient autonomy in decision-making on treatment and hospitalisation is highly topical given the ongoing Mental Health Care Reform. However, few people know that, in addition to restriction of legal capacity and appointment of a guardian, there are also other, less intrusive measures that can be used to support a person with decision-making difficulties.

RAISING AWARENESS

In co-operation with the Faculty of Law of Charles University, we published a collection of works titled People with disabilities as a "new minority" – legal challenges and context. Together with other authors from the professional community, we deal with various aspects of the lives of people with disabilities, such as the right to autonomy, access to justice, employment and education, and financial relief for people with disabilities.

Collection of works People with disabilities as a "new minority"

We became involved in the pan-European 2021 Diversity Month campaign, which was aimed at highlighting the importance of diversity in working teams. By means of a ten-episode Facebook series "Rights of people with disabilities", we raised public awareness of appropriate measures for employees with disabilities.

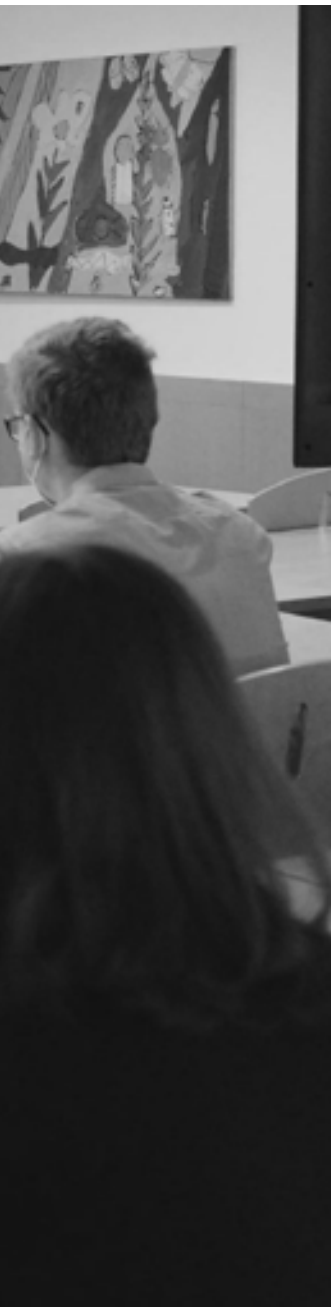
Press release of 11 June 2021

Interview with a member of the advisory body, Sylva Šuláková, of 8 April 2021

We also joined the European Independent Living Day and, at a meeting with self-advocates suffering from psychosocial disabilities, discussed obstacles preventing disabled people from living independently.

10

Office of the Public Defender of Rights



Budget and its utilisation in 2021

APPROVED BUDGET FOR 2021

169 138 thousand Czech crowns

The approved budget included expenditures related to funding the project "Children's Group Motejlci III" within the Operational Programme "Employment" (CZK 1 260 thousand) and the project "Reinforcing the activities of the Public Defender of Rights in the protection of human rights" co-financed from the Norway Grants (CZK 10 000 thousand).

In 2021, we also claimed non-utilised funds from the previous years in the amount of CZK 4 750 thousand. These funds were used for expenditures not covered from the budget, primarily:

- CZK 2 836 thousand for employees' salaries and other personnel expenses, including expenditures for the project "Reinforcing the activities of the Public Defender of Rights in the protection of human rights" co-financed from the FM resources;
- CZK 1 144 thousand for accessions to salaries (compulsory insurance for public health insurance, basic allocation to the Social and Culture Needs Fund, and compensation for salaries during illness) and operating expenses;
- CZK 654 thousand to finance accessions to salaries and operating expenses within the project "Reinforcing the activities of the Public Defender of Rights in the protection of human rights" co-financed from the FM resources;

Funds from the State budget were used to ensure standard activities of the Office in dealing with complaints and performance of other tasks that the Defender performs based on the law (especially systematic supervision of facilities where persons restricted in freedom are or may be present; assistance to victims of discrimination and citizens of the European Union and their family members living in the Czech Republic; monitoring of the rights of people with disabilities; monitoring of expulsions of foreign nationals). We also used these funds to co-finance projects from the EU/FM budget.

UTILISED BUDGET FOR 2021

162 139 thousand Czech Crowns

Compared to the approved budget, 4.14% of expenditures (including expenditures on projects co-financed from the EU/FM budget) was underspent. The reason was the restriction of some activities due to the poor epidemiological situation – the occurrence of the Covid-19 disease caused by the SARS-CoV-2 coronavirus.

Detailed economic results of the Office are available on the Defender's website

www.ochrance.cz/provoz/rozpocet-a-hospodareni/

Staff in 2021

163.25 was the binding limit on the number of employees of the Office for 2021, of which 9.25 employees were assigned to the implementation of the project "Reinforcement of activities of the Public Defender of Rights in human rights protection".

165.87 employees

is the average recalculated number of employees recorded in 2021 (of which 10.10 employees were involved in the implementation of a project co-financed from FM). The employee limit was exceeded by 2.62. The over-expenditure on the salaries of these staff members, including the accessions (compulsory social security and health insurance contributions and the basic allocation to the Social and Culture Needs Fund), was covered by claims from unspent expenditure.

A total of 121.5 employees were directly dealing with complaints and performing other tasks within the Defender's mandate (of which 99.5 were working in the Legal Section, 17 in the Administrative and Filing Services Department, and 5 in the Secretariat of the Defender and her Deputy).

We continued co-operating with experts who are not our regular employees, but can nevertheless provide valuable contributions to a comprehensive assessment of certain cases. Among others, we co-operated with psychiatrists, general and psychiatric nurses, psychologists, social services experts, special pedagogues, experts in youth drug abuse, experts in access to information for people with various kinds of disabilities, etc. especially in the performance of systematic visits to facilities where persons restricted in freedom are present, as well as in tasks in the area of equal treatment and in monitoring of the rights of people with disabilities.

Annual report on the provision of information pursuant to the Free Access to Information Act (Act No. 106/1999 Coll.)

The Office of the Public Defender of Rights as an obliged entity pursuant to Act No. 106/1999 Coll., on free access to information, as amended, received and processed a total of **107 requests** for the provision of information pursuant to this Act in 2021. The requests were received through the post, e-mail or via the data box.

In **87** cases, the Office provided the requested information, primarily in response to queries regarding generalised results of the Defender's inquiries and his opinions in the individual areas of competence (protection of children, youth and families; army, police and prison system; construction and regional development; assistance to victims of discrimination; lawsuits in public interest; protection of the environment; State administration of the judiciary; healthcare administration; protection of persons restricted in freedom), requests for documents from the complainants' files, requests for the provision of the Defender's Collection of Opinions on "Prisons", and also statistical information related to the resolution of complaints filed with the Defender, and information on the functioning, organisation and budget of the Office of the Public Defender of Rights or queries related to the Public Defender's competence.

The applicants lodged **4** complaints pursuant to Section 16a of the Free Access to Information Act. In **27** cases, the Office decided to reject the request for information (or a part thereof); in **2** cases, the applicants lodged an appeal against the rejecting decision.

	Total number of requests for the provision of information	**107**
Section 18 (1)(a)	Number of decisions rejecting the request (or its part)	**27**
Section 18 (1)(b)	Number of appeals lodged against a decision	**2**
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	**4**
Section 18 (1)(f)	Other information concerning the application of law	**0**

Media and communication

Information about our work was regularly carried by the print media, radio and television. The public and the media took note of our assessment of the government measures to combat the Covid-19 pandemic, as well as other cases, such as our inquiry into the circumstances of the water pollution incident on the Bečva River and the police intervention in Teplice, as well as our assistance to people following the market exit of some energy suppliers. The stories of people we had successfully helped with their problems equally captivated the viewers and readers.

We upgraded the website at www.ochrance.cz. The site is now more accessible to complainants and is easier to navigate.

On the website at deti.ochrance.cz, we addressed the youngest generation of children and young people looking for advice or help.

We also described our work to children in a video blog hosted by twelve-year-old Anička.

THE YEAR 2021 IN NUMBERS

102 press releases

4 press conferences

224 news on Facebook

PODCASTS "HAVE A COFFEE WITH THE OMBUDSMAN"

In 2021, we made 46 podcasts in which we advise people on how to deal with various life situations. For example, we focused on energy scams, animal protection and employment of people with disabilities. We also offered several miniseries. In them, we covered topics such as education, unemployment and practical advice for holiday activities.

GALLERY TRAM

In March, the residents of Brno could take a ride in "Ombudsman's" Gallery Tram. In the tram, we showed how the Defender helps. The Gallery Tram is a non-commercial project of the Brno Public Transit Company. Each month, it presents the work and creations of a different author.

SOCIAL MEDIA

- **7 092** people like our page
- **7 625** people follow the page
- **2 707** followers
- **1 056** followers
- **214** subscribers

On social media, readers were interested not only in posts related to health measures to combat the pandemic, but also in topics from other agendas, such as the possible establishment of an office of social worker in the judiciary, the provision of medical services during school hours, advice for drivers in the event of a collision with wildlife, and the rejection of an amendment to the Social Services Act.

A video about migration in the Czech Republic and a video interview on the topic "What does work mean for people with Asperger's syndrome" also caught attention.

WE ARE HERE TO HELP

In 2021, we contributed to the traditional Three-Kings' Collection and within the Cake for Hospice event, both online and directly into a money box at our Office.

After the tornado destroyed part of Moravská Nová Ves, we went to help with reconstruction of houses in the town. On several occasions we took material aid to the villages affected by this natural disaster.

For the fifth time, we participated in the Yellow Ribbon Run cross-country skiing race. Reflecting on its subtitle "Run Away from Prejudice", this sports event visions a society that gives ex-offenders and their families a second chance for a decent life.

YOU CAN FIND US

- Website: www.ochrance.cz
- Special websites: deti.ochrance.cz a domek.ochrance.cz
- Facebook: verejny.ochrance.prav
- Twitter: @ochranceprav
- Instagram: verejny.ochrance.prav
- Youtube: Ombudsman
- LinkedIn: Veřejný ochránce práv - ombudsman
- On podcast platforms, e.g. Spotify, Apple Podcasts, Google Podcasts, etc. anchor.fm/nakavusombudsmanem

International relations

The international activities of the Office of the Public Defender of Rights partially returned to pre-pandemic levels in 2021. However, face-to-face meetings were still complemented by those held in virtual space. We became convinced that the move to an online environment did not impair the efficiency, quality or intensity of the collaboration.

MULTILATERAL INTERNATIONAL CO-OPERATION

Within competences conferred on the Defender by the law, we continued to collaborate with international organisations (or their bodies) responsible for monitoring of human rights obligations of their member states.

EUROPEAN NETWORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS (ENNHRI)

For the European Network of National Human Rights Institutions, we prepared a report on the rule of law in the Czech Republic in 2020. The report will serve as a basis for the ENNHRI's summary report on the rule of law in the EU Member States, on which the Commission bases its annual monitoring. In addition to participation in two General Assemblies, we were also active in three working groups: the Working Group on the Rights of Persons with Disabilities, the Asylum and Migration Working Group, and the Legal Working Group.

INTERNATIONAL OMBUDSMAN INSTITUTE (IOI)

At the IOI international online conference, which focused mainly on the rights and problems of people belonging to particularly vulnerable groups, we discussed issues such as the elderly and people with disabilities, asylum and migration, and homelessness. The conference was held in conjunction with the IOI General Assembly, where we discussed, for example, the Principles on the Protection and Promotion of the Ombudsman Institution (the "Venice Principles") and the activities of the IOI European section over the past year and in the future. At the end of the year, the Slovenian Ombudsman, Peter Svetina, became the new Regional President for Europe.

EUROPEAN UNION AND ITS BODIES

We worked with the European Ombudsman Emily O'Reilly mainly on issues related to the rights of people with disabilities. The European Union Agency for Fundamental Rights (FRA) participated with us in the seminar "Development and use of indicators to measure the implementation of the Convention on the Rights of Persons with Disabilities" (see page 112 for more details).

We advised the European Commission on various issues related to the rule of law in the Czech Republic.

ORGANISATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE) AND ITS OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (ODIHR)

During 2021, we met twice with representatives of the OSCE – ODIHR. The first time, we addressed the topic of protection of human rights defenders in the Czech Republic. The second time, they visited us as part of the monitoring mission for the elections to the Chamber of Deputies. In both cases, we shared lessons learned from our work and possible recommendations for improvement.

At the request of the OSCE – ODIHR, we also prepared a report on independence issues and threats to the Public Defender of Rights institution for the monitoring period.

UNITED NATIONS

For the UN Special Rapporteur on the human rights of migrants, we prepared a report on the impact of Covid-19 on the human rights of migrants.

We submitted our observations to the UN Subcommittee on Prevention of Torture on the interpretation of Article 4 of the Optional Protocol to the Convention against Torture, which requires the Czech Republic to allow independent monitors to visit ex officio facilities where people are deprived of their liberty.

Ahead of the seventh monitoring cycle of compliance with the Convention against Torture in the Czech Republic, which will take place in 2022, we also shared our findings from practice with the UN Committee against Torture.

MEETING OF V4 OMBUDSPERSONS

In October 2021, Hungarian Ombudsman Ákos Kozma hosted a meeting of representatives of the V4 ombudsman institutions in Visegrád. The main topic was the role of ombudspersons in protecting the rights of vulnerable populations during the Covid-19 pandemic.

Press release of 22 October 2021

BILATERAL INTERNATIONAL CO-OPERATION

One of the most important bilateral meetings was a several-day workshop with the Norwegian National Human Rights Institution (NIM), with which we co-operate closely within the framework of the project LP-PDP3-001 funded by the 2014–2021 Norway grants. The aim of the project is to strengthen the human rights perspective in the work of the Public Defender of Rights. At the workshop, colleagues from NIM shared with us practical findings and experience related to the functioning of a national human rights institution.

With the Deputy British Ambassador in Prague, Ms Lucy Hughes, the Defender talked mainly about the impact of measures to fight the pandemic on the protection of human rights, the issue of equal treatment and selected issues related to environmental protection.

With representatives of the US Embassy in the Czech Republic, we discussed the right to equal treatment and our activities in this area over the past year.

OMBUDSMAN AND HUMAN RIGHTS INSTITUTIONS IN EUROPEAN COUNTRIES

We established ad hoc co-operation with a number of European human rights and ombudsman institutions on specific topics, such as:

- We described the issue of clandestine births and assisted reproduction to the Luxembourg Consultative Human Rights Commission.
- The Finnish National Human Rights Institution was interested in the unchangeable provisions of the Constitution of the Czech Republic.
- The Croatian Ombudswoman dealt with institutional issues related to the functioning of the Office of the Public Defender of Rights.
- We provided the Danish Institute for Human Rights with information on the Action Plan against Hate Crime.
- The European Institute of Mediation and Public Ethics inquired about the issue of administrative mediation.

STUDY VISITS

With the Vice President of the Egyptian State Council and Judge at the Court of Appeal, Mr. Mohamed A. M. Ismail, we discussed the functioning of the ombudsman institution in the Czech context, its scope and some interesting cases that we covered in 2021. We prepared a presentation for a group of U.S. university students on the general scope of the Defender's mandate and the education of Roma children.

ANNUAL REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS IN 2021

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