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Public Defender of Rights

PROTECTION AGAINST ILL-TREATMENT 2017

REPORT OF THE PUBLIC DEFENDER OF RIGHTS
AS THE NATIONAL PREVENTIVE MECHANISM



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Explanatory notes



link to a webpage



reference to a printed medium

Public Defender of Rights

Protection of Persons Restricted
in their Freedom

Asylum Act – Act No. 325/1999 Coll., on asylum, as amended

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Criminal Code – Act No. 40/2009 Coll., the Criminal Code, as amended

Health Care Services Act – Act No. 372/2011 Coll., on medical services and the conditions of their provision (the Health Services Act), as amended

Imprisonment Act – Act No. 169/1999 Coll., on imprisonment and on amendment to certain laws, as amended

Police Act – Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended

Residence of Foreign National – Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the territory of the Czech Republic and on amendment to certain laws, as amended

Social Services Act – Act No. 108/2006 Coll., on social services, as amended

Specific Health Care Services Act – Act No. 373/2011 Coll., on specific health care services, as amended

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SUMMARY BY THE PUBLIC DEFENDER OF RIGHTS

Each annual report represents an opportunity to evaluate our activities and successes as well as continuing challenges. There are numerous such challenges in protection against ill-treatment. In the twelfth year of our activities as the national preventive mechanism, we continued implementing long-term recommendations and also opened several new topics. I provide a brief summary of the most important ones:

As in the previous year, we carried out 22 visits to facilities. Some of them were a contribution towards broader topics: we made a series of visits focused on forensic treatment and also commenced visits to preventive detention facilities and homes for people with disabilities. It is our custom that comprehensive visits are preceded by intensive preparation of our team. Along with internships and training courses for lawyers, we also organised and improved our training for experts who participate in the visits.

The visits yielded only a few unambiguous findings on ill-treatment; however, certain risky practices are basically used to a certain extent in all visited facilities, and the safeguards are insufficient. We also generally recommend an increase in the standard of treatment as ill-treatment occurs in cases where various interferences with a person's integrity accumulate, even though the individual impacts alone would not be that serious. This was true, for example, of the Lotos Sanatorium – here, we were compelled to inform the Government of the prevailing ill-treatment.

We continue to be active in the prison sector – in 2017, our activities consisted primarily in maintaining a dialogue related to both individual and systemic recommendations presented in the previous year. Chapter 1 provides a brief overview of the recommendations. The trend of overcrowding of prisons is continuing. For the time being, the authorities have refused to transfer the provision of health care services to the civilian sector. The situation regarding the provision of specific conditions for prisoners with a health impairment, and especially those with a mental disorder, is unsatisfactory. Regarding the police detention I insist in the long term that the Police Presidium put an end to the improper practice of routine checks, where detained persons are forced to strip and perform squats before being placed in a police cell, and that routine use of handcuffs in escorts be abolished.

A greater space in this Annual Report is dedicated to the protection of foreigners restricted in freedom. In Chapter 3, I summarise the co-ordination of visits and monitoring of forced returns of foreign nationals. The monitoring is ensured by specialised lawyers, who share their experience with the rest of the team. In the long term, we strive to bring about a change in the approach of the Police to handcuffing escorted foreigners. We managed to achieve a certain standard procedure in preparing foreign nationals awaiting expulsion in prison.

The manner of dealing with patients subject to forensic treatment ordered by the courts will require the formulation of systemic recommendations. Primarily, there is no governmental concept of protective treatment and there are thus differing opinions among physicians, experts and judges as to the purpose of the protective treatment and the time when the patient should be released. Most therapeutic teams are overburdened. I add that the visits made in 2017 again yielded findings regarding incorrect use of means of restraint and absence of systemic efforts to reduce the actual need for their use, both in hospitals and by the Ministry of Health.

Chapter 8 provides an overview of long-standing dues of the Czech Republic in terms of preventing ill-treatment. But, on a positive note, the year 2017 also brought us encouragement and success. We issued and disseminated two summary reports – on visits to police cells and on visits to hospitals for long-term patients. We deserve credit for the fact that after a long 17 years, the Government finally raised prisoner's remuneration for work. We successfully co-organised a meeting of European national preventive mechanisms in Prague.

I wish you inspiring reading!

Anna Šabatová

Basic overview

Facilities visited in 2017

Kostomlaty pod Milešovkou – H

Kosmonosy – C

Horní Beřkovice – C

Praha – A

Praha – L

Praha-Zbraslav – I

Krásná Hora nad Vltavou – J

Lidmaň – E

Havlíčkův Brod – C

Javorník – E

Jindřichův Hradec – A

22



systematic visits were carried out by the Defender's team in 2017

1 prison, 1 preventive detention facility, 4 police facilities, 5 psychiatric hospitals, 3 facilities for the elderly, 3 homes for people with disabilities, 1 facility for children requiring immediate assistance, 1 children's home, 1 educational institution

2x

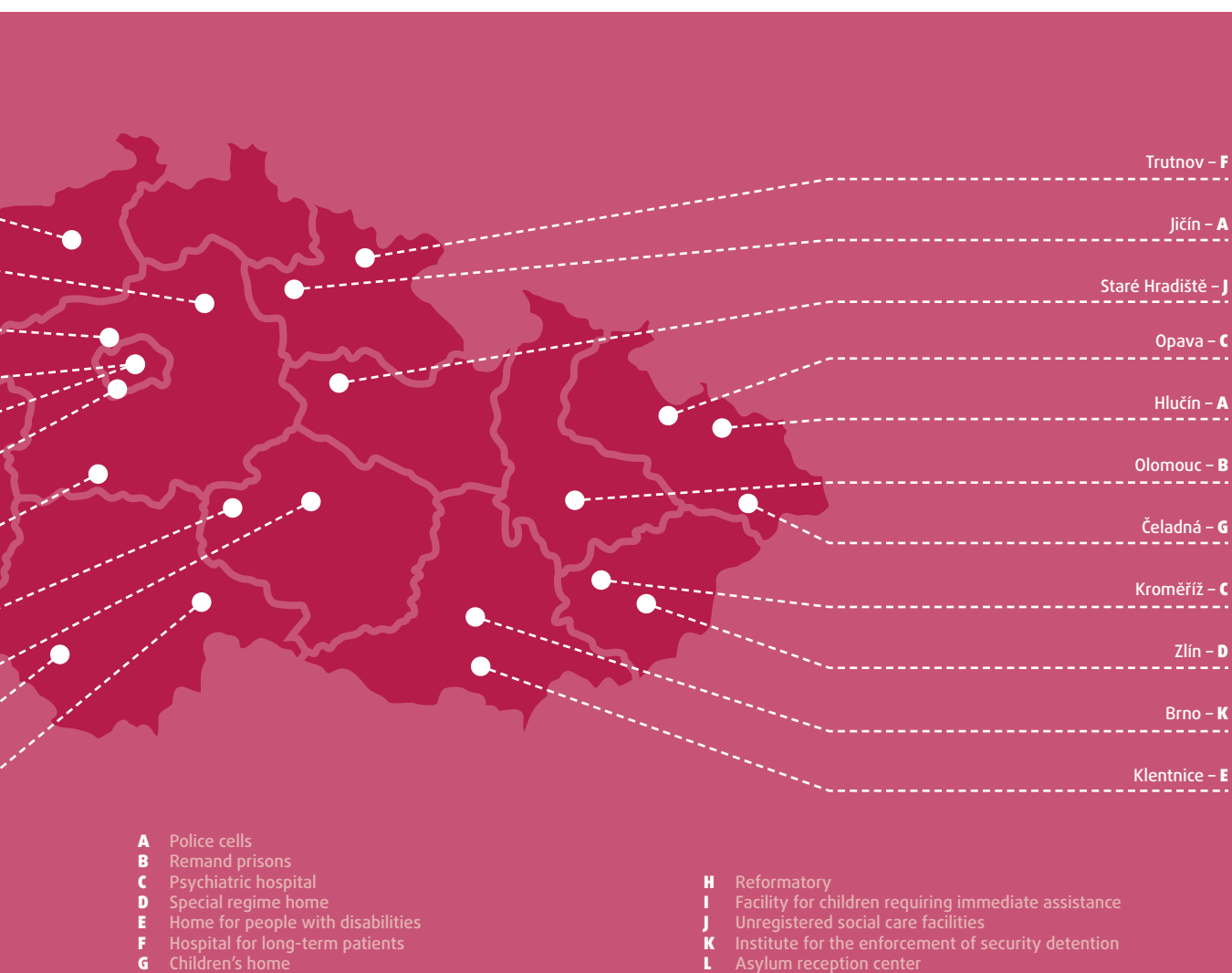


the Defender used her authority to impose sanction: she informed the Government of ill-treatment found in a facility for the elderly and the Police Presidium of a police section's failure to provide for a remedy

2



topical reports summarise the findings from visits to police cells and hospitals for long-term patients



8



full-time lawyers constituting the permanent team of the national preventive mechanism

12



external experts took part in the visits

4 psychiatrists, 1 geriatrician, 3 general nurses, 3 psychiatric nurses, 1 specialist in education of children with behavioural disorders, 2 psychologists, 3 social services experts

ESO

anonymised reports from visits to facilities are published in the Defender's Opinions Register and on the Defender's website

1. Prisons and preventive detention



1+1 visit

to a prison and institution for preventive detention



First visit to a preventive detention facility

Visits focusing on forensic treatment in psychiatric hospitals were followed by visits to facilities implementing another protective measure – preventive detention. There are currently two institutions for preventive detention – one in Brno and one in Opava. In 2017, we visited the institution in Brno.

Together with experts in the fields of psychology and psychiatry, we looked into the following issues:

- nature of the therapeutic programmes and availability of health care
- ensuring internal security, use of coercive measures
- composition of daily activities
- regime measures
- contact with the outside world
- availability and process of review of the reasons for continued detention



The long-standing recommendations of the NPM regarding the prevention of ill-treatment can be found on [page 22](#).



Did you know that since 2017, the Criminal Code provides for only two types of prisons?

The court will now automatically place offenders who have committed an especially serious crime in a **high security prison** and others in a **standard security prison**. Furthermore, the decision on imposing the specific security regime – **assignment to low, medium or high security blocks** – is made by the prison director on the grounds of individual risk assessment.

We provided comments on the draft amendments. We achieved that judicial review of the prison director's decision is not excluded. However, we were not successful in our effort to ensure jurisdiction of administrative courts, rather than of a criminal court in the prison's district.

News on transgender issues

Until now, we have not encountered, in our systematic visits to prisons, any issues related to persons who have undergone a sex change. The complaints presented to the Public Defender of Rights also dealt with this issue only marginally. This could change, also because since 2017, the law permits a sex change for persons on remand, serving imprisonment and in preventive detention.

Neither Czech law nor the internal regulations of the Prison Service of the Czech Republic provide the conditions for the imprisonment of these persons. International human rights laws require the State to ensure safety of vulnerable categories of convicts. However, this does not mean that a potentially vulnerable prisoner should be kept in isolation.



Prisoner after sex change

Before his conviction, Mr X underwent an administrative change of sex (from woman to man). In the prison, he was assigned to the category of "potential object of violence". He was formally subject to the normal regime of standard security prison, but in fact his cell was outside the block. He was alone and spent there up to 23 hours a day. He had no activities or opportunity to spend time outside with the other convicts, he even dined himself. He merely undertook regular activities with an educator and interviews with a psychologist and a chaplain. He was bothered by the social isolation, as well as the fact he was not allowed to work.

Shortly after the systematic visit, Mr X was assigned among other convicts under the supervision of the prison staff for a part of the day and eventually found a safe job.

Overview of recommendations made in the summary report of 2016

In 2016, we presented to the Ministry of Justice and the General Directorate of the Prison Service of the Czech Republic, together with our report on visits to prisons, a number of recommendations to improve the unsatisfactory situation in the visited prisons.

 [Report](#) on visits to prisons

Ministry of Justice

- ✗ **Draw up a strategy changing the penal policy in the way of reducing the numbers of convicted persons, using elements of restorative justice.**

The Minister established a Committee tasked to permanently strive to reduce the numbers of imprisoned persons. The total use of the prison capacity in September 2017 reached 106%, and in the case of the (then) standard security prisons, 119%. Since a change was made in the types of prisons, no data on prison overcrowding are available and the situation is unclear.

- ✓ **Increase the prisoners' remuneration for work.**

- ✗ **Propose a change to the statutory definition of "permanently unemployable convicts" so as to reflect primarily the medical condition of the convicts, rather than the possibility of their employment.**

Special treatment is required by law for this category of convicts. However, its definition is too broad (also including pensioners and handicapped persons), which in fact prevents suitable modifications based on the type of health impairment. The Ministry perceives the need for a greater differentiation; in the future, this category should only comprise persons with health issues. No actual change has occurred yet.

- ✗ **Pay due attention to convicts with mental illness in implementing the prisons strategy.**

The prison staff are at a loss when dealing with certain convicts, who are then effectively isolated. Due to the lacking suitable adjustments to the regime, the Defender noted two cases of ill-treatment in 2016. No actual systemic change has been made so far.

- ✓ **Familiarise the courts' presidents with the fact that disciplinary punishments and rewards are used less frequently so as to ensure that this is not to the detriment of the prisoners when deciding on parole.**

General Directorate of the Prison Service of the Czech Republic

- ✓ **Enable direct legal representation of prisoners in each phase of disciplinary proceedings.**

- ✗ **Ensure that the real number of convicts per educator in each prison section does not generally exceed the number of 20. Reconsider the educators' job description so as to reduce red tape.**

- ✗ **Aim at accommodating convicts in single-occupancy cells or double cells when restoring existing accommodation facilities and/or building new ones.**

The current capacity issues paralyse any attempts at improving the accommodation standard.

- ✓ **Unify the rules for determining which work for the prison is subject to remuneration for a prisoner and which is not.**

The Prison Service issued an internal regulation which no longer permits any differences.

- ✓ **Ensure that prison doctors can use the services of a professional interpreter.**

- ✗ Carry out an analysis of the structural-technical condition and material equipment of all the specialised prison blocks where convicts with disabilities are placed.
- ✗ Introduce standard assistance to prisoners with disability – whether in the form of a social service or the work of a social service assistant.
- ✓ Modify the rules for performing strip searches to make it clear that they may only be performed in individually justified cases instead of on a general basis.



The remuneration for prisoners' work has been increased after 17 years

The Government adopted a new regulation (No. 361/2017 Coll.) on the amount and conditions of remuneration of sentenced persons assigned to work during imprisonment. This change was adopted thanks to the efforts made by the Minister of Justice and – we must note – also our repeated reminders of this topic.

The temporal component of remuneration per month newly equals, for full-time employment, e.g.:

- CZK 5,500 for work not requiring professional qualification (formerly CZK 4,500);
- CZK 8,250 for work that requires vocational training (formerly CZK 6,750).

We want to further achieve the introduction of a regular increase mechanism.



2. Foreign nationals restricted in freedom



1 visit

to an asylum reception centre



Visit to an asylum reception centre at the Prague airport

We visited the reception centre located on the premises of Václav Havel Airport in Prague. The facility is intended for asylum-seekers awaiting the permission to enter the territory of the Czech Republic. The recommendations are concerned primarily with aspects of material background and conditions for outdoor exercise. We also dealt with the preconditions for the possibility to apply for international protection (asylum), especially in terms of protection of the interests of vulnerable groups.



The long-standing recommendations of the NPM regarding the prevention of ill-treatment can be found on [page 22](#).

Success: introduction of social work with foreigners serving imprisonment

We repeatedly pointed out the need for proper preparation of foreign nationals for their return to the country of origin. The year 2017 brought an improvement for foreigners waiting for expulsion in prison. A new regulation issued by the Director General of the Prison Service of the Czech Republic lays down the procedure in dealing with foreigners so as to encompass proper preparation and thus minimise the risk that the return will be frustrated. Foreigners being expelled must now be advised of the date, time and place of

return sufficiently in advance so that they can inform their families of their arrival and ask for possible help.

Employees of the prison service should direct the foreign nationals to deal, already during the imprisonment, with issues related to their families, children and property, and not leave these matters to the last moment. The prison staff also informs foreigners of possible support and assistance in the target destination if required by their personal situation.

Monitoring of forced returns and ill-treatment prevention

One of the tasks of the Defender is also to monitor the detention of foreign nationals and the performance of administrative and criminal expulsion. We linked this activity with our systematic visits and also substantially increased its intensity in 2017.

Monitoring in 2017



Recording and analysis of decisions

- 6,383 decisions on expulsion, including decisions on appeals,
- 787 decisions on detention, including decisions on continued detention

In 2017, the Office of the Public Defender of Rights continued to implement the project of the national programme under the Asylum, Migration and Integration Fund. The project is titled Support for the Effective Monitoring of Forced Returns, Reg. No. AMIF/8/02.

Monitoring of expulsion contributes to an increased standard of treatment of foreign nationals restricted in freedom and better protection especially of vulnerable persons, such as minors, unaccompanied minors, people with disabilities, elderly people, pregnant women, single parents with minor children and persons who have been tortured, raped or exposed to some other serious form of psychological, physical or sexual violence.

We are present to transfers both by land and by air, we have service passports, an authorisation to enter non-public premises at Václav Havel Airport in Prague, and in view of our mandate, we can also be present in police escort vehicles.



Challenge for 2018

We have repeatedly encountered resentment on the part of Police officers escorting foreign nationals toward our participation in escort vehicles together with the foreigners being expelled. The presence on premises and in vehicles where a foreign national being expelled and restricted in freedom is present is necessary for obtaining direct findings on treatment during the entire process of forced return. If the Police refuse to provide this type of collaboration, they prevent full attainment of the purpose of monitoring as well as exercise of the authorisation granted to the Public Defender of Rights by national law and by the Return Directive. The Czech Republic has to fulfil its duties following from the Directive and introduce an effective system for monitoring forced returns. We discussed the issue with representatives of the Foreigner Police in 2017, but to no avail.

Routine use of coercive measures

We point out in the long term that it is not appropriate to routinely handcuff foreign nationals who are being escorted. It has been repeatedly found that the police officers decide on the use of handcuffs without taking proper account of the specific aspects of each case.

Under the Police Act, the escort leader may decide on the use of handcuffs if there is a substantiated concern regarding security or if there is a danger that the person being escorted may try to escape. The concern may be justified by the behaviour of the person being escorted or by some other imminent risk. At the same time, the Act requires the Police to proceed so that any potential interference with the rights and freedoms of the persons against whom the given measure is aimed does not exceed the degree necessary to attain the purpose of the act. Handcuffs may be used only if this is really necessary to ensure smooth course of the escort, for the necessary period of time and if there is no other, less restrictive measure.

Are there no indications that smooth course of the escort is endangered? Then there is no reason to interfere with the rights of the persons being escorted by handcuffing them.

In a majority of cases, there is no indication that the safety of persons, property or public order might be endangered, and nothing warrants the assumption that the person being escorted will try to escape.

The Defender resolved to impose a sanction in 2017. Following futile efforts to make the Directorate of the Foreigner Police to provide for a remedy in specific cases, she informed directly the Police President of the shortcomings.

 The [letter](#) on imposing penalty



Example of unjustified and thus illegitimate handcuffing

A foreign national spent a total of 16 years in the Czech Republic. However, he did not have a proper residence permit and had been repeatedly ordered to leave the territory of the Czech Republic. Since he did not obey, he is now awaiting forced return to his country of origin in a facility for detention of foreigners. He has accepted that he will have to leave. He speaks fluent Czech, communicates lively with the facility staff and has a good relationship with the social workers. Some of them have come personally to bid him farewell. He has never been aggressive or showed any active resistance in the past. The police officers escorting him would now handcuff him without any satisfactory explanation: they would inform the foreigner that the objective is to limit his movement and later explain to the monitors that based on a binding internal instruction, the Police are authorised to use the handcuffs and have thus taken advantage of this authorisation. There is no indication whatsoever during the entire process that the foreigner would mount resistance or would try to frustrate the expulsion in any way.

The police officers have utilised a means that is available to them under the law, regardless of the circumstances of the case. They failed to proceed in conformity with the principles of necessity and proportionality.

Foreign co-operation

Based on co-operation with our foreign counterparts, we have access to specialised training and workshops in the area of forced returns. The above take place within the EU Asylum, Migration and Integration Fund under the name Forced Return Monitoring II, co-ordinated by the International Centre for Migration Policy Development. The long-term objective of the project is to help the Member States create a functioning system of forced return monitoring. Measures taken to achieve this goal include improving qualifications of the forced return monitors, sharing of experience and comparison of practices in various EU Member States. Thanks to the project, we took part in several-day seminars in 2017 dealing with the rules and tactics of police work, principles of using force and coercive measures and formulation of recommendations. We also contributed

to the creation of a training publication for future forced return monitors and to the preparation of new overview materials regarding the system of monitoring forced returns in the individual Member States of the EU. Two employees also underwent intensive training to obtain a teaching qualification.

Within strengthened co-operation, the Public Defender of Rights nominated two lawyers to a pool of forced-return monitors established by the Frontex agency. Since 2017, our specialists have been monitoring return operations on request of other Member States of the European Union. On request of Germany and France, we thus provided these countries with assistance in monitoring forced-returns to Serbia, Montenegro, the FYR of Macedonia, Albania and Kosovo in 2017.

Two meetings on forced returns

A two-day seminar for the Foreigner Police, which we organised in co-operation with the UNHCR, served to communicate the findings obtained in forced returns monitoring. A Frontex officer made presentations on coercive measures and on activities of the agency in the area of return operations.

Further, we organised a round table meeting involving all entities participating in forced return operations (the Police, the Prison Service, the Refugee Facilities Administration, and the Ministry of the Interior).

The topic was organisation of return operations, including exchanging and sharing information among the individual entities involved in the exercise of administrative and criminal expulsion, preparation of persons to be expelled for their return, treatment of foreign nationals during the return operation and, last but not least, the presence of employees of the Office of the Public Defender of Rights in the escort vehicle. While the meeting did contribute to clarification of some problematic aspects, certain issues still remain disputed.



3. Police detention



4 visits of cells

for 66 persons in total



Report summarising visits in 2015 and 2016

We visited police cells in 14 police departments. The visits did not reveal any intentional ill-treatment, but in some of the facilities there were problems with using the basic safeguards against ill-treatment (delays in ensuring contact with an attorney, impossibility for detained person to write a complaint when staying in the cell), instruction on the rights and duties, and provision of hygiene articles.

For problems regarding confidentiality of medical check-ups and records thereon, see [Chapter 8](#).

 [Summary report](#) on visits to police cells

Continued routine strip searches with squats

Before placing a person in a police cell, the police officer is obliged to search the person. Such an interference with privacy and dignity of a person is only permissible to the extent necessary and proportionate to the circumstances. Routine requests for complete stripping and performing squats can constitute degrading treatment. However, we have repeatedly encountered this practice and the same has also been criticised by the CPT.

In 2015, the Government of the Czech Republic stated within its communication with the CPT that the police officers would be methodically directed not to carry out such searches automatically and as a routine measure, and that possible stripping take place in two steps. Since the situation had not changed in the 2015-2017 period, we asked the Police President to issue an internal instruction in this respect. This did not occur by the end of 2017, although one of the police sections operating the cells already issued its own instruction.



- When carrying out a body search prior to placing a person in the cell, police officers must try to minimise the overall embarrassment and humiliation.
- The Government promised to the CPT methodical direction of the police officers.

 [Response of the Government](#) to the CPT

»»»»»» 4. Hospitals for long-term patients



1 visit

"I appreciate the work of the personnel, who are overburdened and work for little money. Their numbers present in the facilities cannot provide the patients with corresponding care, in spite of all their efforts. This leads to infringements of dignity and privacy of patients. This is where the Ministry must help and provide more staff," said Ms Anna Šabatová at a press conference.

Report summarising visits in 2015 and 2016

The report comprises recommendations for practice and we have therefore sent it to all hospitals, supervisory bodies and vocational schools. Together with experts who took part in the visits, we want to present the contents of the report through lectures in individual regions.

Ill-treatment was undisputed in one of the cases where mechanical restraints were used illegitimately. Very risky is the use of tranquillizers as they are administered based on prescriptions that are vague and written very broadly. There is also a problem related to insufficient prevention of malnutrition, lack of rehabilitation and unwarranted interferences with the patients' intimacy and privacy. The premises in a number of facilities contain barriers, do not support activity and orientation in reality.

 [Summary report](#) on visits to hospitals for long-term patients

From recommendations for the Ministry of Health:

- Increase staffing and its financing.
- Promote the use of palliative care in the facilities.
- Raise awareness of the concepts of living will and declaration in anticipation of incapacity.
- Incorporate in the methodology materials on use of means of restraint, among other things, work with the plan of managing restlessness and principles of prescribing and administering tranquillizers.



Did you know that...

- many shortcomings can be avoided by a more sensitive and individualised manner of providing care? However, the minimum number of personnel in care set by the relevant decree is insufficient for this.
- sedatives may constitute a means of restraint ? A decision on the use of tranquillizers has to be made by a physician and all cases should be monitored.
- certain acts and tools of nursing care and regime measures also have a restraining effect? The principle of necessity and safeguards against misuse also apply here.

»»»»»»»»»» 5. Psychiatric hospitals



5 visits

focusing on forensic treatment



Visits focused on forensic treatment

All five visits to psychiatric hospitals focused on performance of court-ordered protective treatment. Protective treatment is ordered by a court in criminal proceedings and, in its institutional (in-patient) form, it takes place mostly in psychiatric hospitals. We carried out the visits with assistance of external physicians and nurses. After we issued reports on the visits to individual hospitals, we met with their representatives at a round table. We discussed disputable topics and heard proposals for systemic recommendations. The experts also provided their comments for the preparation of the summary report. We will issue the latter in 2018.

What we concentrated on in respect of forensic treatment:

- treatment and regime (concept of protective treatment in facilities, therapeutic activities, regime measures, means of restraint, social work, personnel) insofar as they are related to ill-treatment
- safety, security and safeguards (documentation of injuries, complaints mechanism, security at the department, LGBTI)
- material conditions
- contact with outside world



Preliminary comments on systemic problems of forensic treatment

- There is no governmental concept of forensic treatment and there are thus differing opinions among physicians, experts and judges as to the purpose of the protective treatment and the time when the patient should be released.
- The laws and regulations do not provide a list of patient's rights and obligations, and there are no recommended psychiatric and sexological procedures for a number of aspects of care – the situation in individual hospitals therefore unreasonably differs.
- Many hospitals are overburdened and there is no plan how to satisfy capacity requirements for protective treatment in the Czech Republic.
- Some of the departments are unsafe and there is a habit of prolonged use of restraints. The reason lies especially in insufficient staffing, unadapted environment and combination of patients with various problems.

In addition, we examined the use of ECT and means of restraint:

- Our experts studied individual cases with a view to verifying whether the patients' rights were respected.
- In one hospital, electroconvulsive therapy is applied to patients in spite of their protests, solely on the basis of consent granted by the patient's guardian. Such cases must be referred to the courts, as required by the Civil Code.
- The physicians mostly do not debrief the patients on cases where means of restraint were employed, and they do not consider administration of tranquillizers to control the patient's behaviour in spite of his/her resistance to be a restraining measure.
- In two psychiatric hospitals, we found long-term use of mechanical restraints. In one hospital, the lack of male personnel is dealt with by frequently calling in the Police.
- We encouraged the hospitals to take systemic measures to reduce the need for using restraints, especially by modifying the environment and increasing the personnel.



Did you know that means of restraint....

...are subject to new standards? In 2017, the CPT reviewed the standards for use of means of restraint in psychiatric establishments for adults. Its twelve points comprise the main aspects of preventing ill-treatment when using force against the patient. The ultimate goal of experts and governmental authorities should be to avoid the use of means of restraint as far as possible.



The 2006 standards in Czech are available at <http://bit.ly/2noBknx>



The revised standards in English are available at <http://bit.ly/2BHtTvP>

6. Social services facilities



In 2017, we advised the Government of the long existing ill-treatment in the Lotos Sanatorium.

 Notice to the Government, see <http://bit.ly/2DQ0x2q>

 Report on the visit, see <http://bit.ly/2rSYwPv>

”

Specifics of ill-treatment in the provision of care: degrading treatment does not necessarily inflict harm to health and can be caused by a combination of a number of less severe actions.

“

3



visits to facilities for the elderly, two of which non-registered

3



visits to homes for people with disabilities

We started a new series of visits

We focus on homes for people with disabilities. In 2017, we established a group of experts, underwent internships and training and compiled a programme of visits. The first three visits took place before the end of the year.

Topics for monitoring:

- ensuring safety and the principle of least restrictive option
- preconditions of normality, privacy and autonomy
- availability of health care
- challenging behaviour management and approach to inmate's sexuality
- safeguards against unlawful detention



We have repeatedly pointed out that...

- there is no independent complaints mechanism in social services;
- the inspection authorities supervising over the provision of social services lack the authorisation to peruse the medical documentation;
- infringements on the clients' dignity cannot be punished by an administrative penalty. For more details, see [Chapter 8](#).

7. Facilities for children



3 visits

to a children's home, educational institution and facility for children requiring immediate assistance

The Defender consistently draws attention to three systemic problems in the provision of care for vulnerable children and their families: the number of children living in institutions is too high; children under 3 years of age are placed in institutions; and the responsibility for the provision of services is fragmented. In addition, social housing is lacking.

Round table after the series of visits

In 2016, we visited a total of 9 facilities for children requiring immediate assistance. The details on the subject of inquiry and the findings are summarised in last year's annual report, on pages 21 and 22.

 [2016 Annual Report](#)

The summary report we are preparing will describe which of the ascertained problems could reach the level of ill-treatment. Round tables with representatives of the visited facilities and other experts serve us to clarify systemic and individual causes of the discovered flaws and to formulate recommendations for the individual facilities, for bodies for social and legal protection of children and for the competent ministry.



- The environment of institutional care itself poses a risk of ill-treatment.
- If a child is removed from the care of its family as an emergency measure, the child and family require immediate expert and crisis assistance.
- Facilities for children requiring immediate assistance should serve their mission in terms of providing a crisis asylum, rather than for long-term placement of children in an institutional environment.

»»»»»»»»»» 8. Long-standing issues in effective prevention of ill-treatment

”

We intend to remind the authorities of our systemic recommendations and provide expert assistance in their implementation.

“

Independent supervision and effective remedy

In facilities for detention of foreigners, in reception centres and in psychiatric hospitals where institutional forensic treatment is provided, there is no supervision by an independent authority that could provide for a quick remedy in case of ill-treatment. A person placed in such an institution can claim enforceable protection of rights in court, which is often a demanding and long path. Such a person could invoke violation of Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In prisons and facilities of institutional and protective education, the necessary authority is vested in the public prosecutor's office.

The latter supervises compliance with the legal regulations by means of checks and dealing with instigations, and can issue an instruction to release an individual or to comply with the regulations. The Government Council for Human Rights has prepared a recommendation for the Government to extend the supervision by the public prosecutor's office.

 See the Defender's summary report of 2017

§ To extend the supervision by the public prosecutor's office, it will be necessary to supplement the Residence of Foreign Nationals Act, the Asylum Act and the Specific Health Services Act.

Combating impunity



Methodical recording of injuries of persons restricted in freedom and reporting the cases to the competent authorities will substantially contribute to combatting ill-treatment.

 Viz the CPT standards available at <https://rm.coe.int/16806ccc4d>

The credibility of the prohibition of torture and other forms of ill-treatment is always weakened when persons responsible for such offences are not punished for their acts.

Recording and reporting medical findings of ill-treatment is lacking

Methodical recording of injuries of persons restricted in freedom and reporting the cases to the competent authorities will substantially contribute to combatting ill-treatment. The systematic visits indicated that the medical reports on examination and treatment lack the parameters required for investigation; in extreme cases, the examination is limited to several questions placed in the presence of a police officer. This is true of police detention, imprisonment and detention of foreigners, and there is also a danger of such a practice in initial examinations in psychiatric hospitals. The reason lies in the low awareness of the 1999 Istanbul Protocol (The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

The statutory requirement for confidentiality in connection with health care services then does not

permit a physician, without the patient's consent, to submit findings on marks of ill-treatment to authorities competent to investigate. Since 2015, remedy has been lacking due to inactivity of the Ministry of Health.

§ It is necessary to modify the Health Care Services Act so that a report on findings of marks of ill-treatment does not represent violation of the physician's duty of confidentiality. Furthermore, it is necessary to initiate a professional debate so that physicians accept their role in combatting ill-treatment with understanding and without endangering the physician-patient relationship.

Criminal punishment of degrading treatment is complicated and sometimes impossible

Torture and other inhuman and cruel treatment constitutes a crime pursuant to Article 149 of the Criminal Code. However, the Criminal Code does not specifically mention degrading treatment, which means it can only be punished if it features elements of the bodies of other crimes, based on the type of behaviour or omissions on the part of the perpetrator. Nonetheless, for example in the field of social and health care services, the Public Defender of Rights most frequently encounters flaws that attain the level of degrading treatment.

A specific feature lies in the fact that degrading treatment does not necessarily inflict physical harm and can be caused by a number of less severe actions with combined effect. This complicates criminal punishment.

§ It is necessary to review the Criminal Code and sectoral laws so as to ensure that no form of intentional degrading treatment remains unpunishable.

Interference with the dignity of recipients of social services and patients cannot be penalised by administrative punishment, either

The Social Services Act provides for administrative punishment of social service providers in case of non-compliance with formalities, but defines no infraction covering often serious interferences with privacy, safety, integrity and dignity of service users. In the area of health care services, the situation is even worse, as no infractions apply to the use of means of restraint.

This results in non-punishability of less serious forms of ill-treatment and low respect towards control bodies.

§ It is necessary to supplement the list of infractions in the Social Services Act and in the Health Care Services Act.

 See the Defender's summary report of 2017

Safeguards against ill-treatment



The right of a person restricted in freedom to see a doctor is one of the basic safeguards against ill-treatment. The presence of police officers or prison guards deters the victim from disclosing information on any ill-treatment.

Confidentiality of medical examination is not ensured

As regards medical examinations of persons under the authority of the Prison Service of the Czech Republic, the Health Care Services Act (Section 46 (1)(b)) provides that they shall take place in the presence of an officer who has to be “in sight” and in cases of danger even “within earshot”. The Act lays down no special regime for medical examinations of persons presented by the Police of the Czech Republic, but the Police President’s binding instruction prescribes that at least one police officer shall remain in visual contact. The European standard requires that no police officer or prison guard be present at all unless this is requested

by the physician for security reasons, and even in that case, only in sight.

Standard presence of police officers in examination and treatment by a physician was again found in 2017.

§ It is necessary to modify the Health Care Services Act and direct police officers and members of the Prison Service of the Czech Republic to respect the rule that their presence is only possible on the physician’s request, and in that case only “in sight”.

There is no independent complaints mechanism in social services

The users of social services have no place to turn to with a complaint if they suspect violation of their rights, other than the management of the facility they live in. This also applies to nursing care provided in the facility: while there exists a complaints mechanism in health care, the Health Care Services Act does not cover the recipients of social services. The clients are thus in a very vulnerable position.

§ It is necessary to amend the Health Care Services Act so as to open the current complaints mechanism to recipients of nursing care in social services facilities. Furthermore, a complaints mechanism has to be established in the field of social services.

 See the Defender’s summary report of 2017

Prisons



In 2015, the Government pledged to prepare a draft amendment that would incorporate disciplinary proceedings comprehensively in the Imprisonment Act, reduce the time of solitary confinement and presence in an enclosed ward, and transfer decision-making on the most serious disciplinary misconduct to criminal proceedings.

 See the Government's response to the CPT at <https://rm.coe.int/168069568e>

The conditions of disciplinary punishment are not in conformity with international standards

The CPT recommended the Government to ensure that the maximum duration of solitary confinement does not exceed 14 days (3 days for juveniles) and that no subsequent penalties are imposed on prisoners that would de facto extend the duration of solitary confinement beyond the maximum scope. The CPT further repeatedly recommended that possible disciplinary punishment of

prisoners not include total prohibition of contact with family where the misconduct committed did not relate to such a contact.

§ It is necessary to modify the Imprisonment Act, which stipulates the relevant rules.

Social services facilities



The systematic visits yielded findings on ill-treatment in facilities for elderly citizens.

 See the 2015 [Report](#) on visits

 See the Report on visit to the Lotos sanatorium, available at <http://bit.ly/2rSYwPv>

The applicable regulations do not provide personnel, material and technical standards of social services

Some of the facilities lack sufficient conditions for the provision of care, which also leads to ill-treatment of clients. While the Social Services Act does generally require the providers to ensure personnel, material and technical conditions corresponding to the type of the social services provided, without further specification in the form of a decree this legal provision is

unclear and shortcomings almost cannot be penalised.

§ It is necessary to include authorising provisions in the Act and issue the relevant implementing decrees.

Social services inspectors are not authorised to access to medical records

If the inspectors are to effectively protect the rights of recipients of residential social services and prevent ill-treatment, they must have the right, within the inspection, to peruse the health care (treatment) documentation and make excerpts or copies even without the patient's consent. The Ministry of Health and the Ministry of Labour and Social Affairs are unable to

agree who will prepare the necessary amendments to the law.

§ It is necessary to amend the Health Care Services Act and include inspectors among entities authorised to peruse the health care documentation even without the patient's consent.

Psychiatric hospitals



The pending reform of psychiatric care aims to develop community services – many patients would thus no longer receive care in large institutions. However, large psychiatric hospitals will remain the main care providers for several years. The reform is yet to affect court-ordered forensic treatment.

See the Strategy of Reforming Psychiatric Care <http://bit.ly/2Fvyzay>

The use of means of restraint will not decrease without policy of their prevention and development of alternative measures, and without a clear signal from the Government that we no longer want care built on restrictions.

Unsatisfactory standard in psychiatric hospitals persists

- Patients who cannot independently leave the unit due to their medical condition are not offered the possibility of access to outdoor exercise on a daily basis.
- A number of facilities provide accommodation in dormitories housing several patients.

The attitude to the use of net beds has not changed

It is unknown how many net beds are used in Czech health care facilities. There were as many as 120 of them in psychiatric facilities in 2012. In response to criticism from the CPT, the Government of the Czech Republic stated in 2015 that it would abandon the practice of using net beds and would seek ways of replacing them by other means in the future. Since then, in view of the risks involved, it has been prohibited to use net beds in sobering-up stations, but remain a legal means of restraint in other health care services. The Ministry of Health remains inactive and some physicians are concerned that net beds will simply be replaced by other means of restraint.

§ There is a pressing need for a strategic approach that would include search for and promotion of effective alternatives to the use, not only of net beds, but of means of restraint in general.

A strategic approach is also lacking to decreasing the need for using means of restraint.

The legal regulation of criteria for the use of means of restraint is currently in conformity with the European standard. Full compliance with the standard, including the principles of necessity and subsidiarity, is prevented by a number of issues persisting in practice.

- Special register of the use of means of restraint in the current form, as laid down by the Health Care Services Act, is an irrelevant statistic. It is therefore difficult to monitor their use.
- The doctors often do not distinguish between treatment and so called chemical restraint. Methodology and constant awareness raising are missing.
- At certain workplaces, means of restraint are used preventively and in the long term because of inadequate material background and staff, without this leading to any change in the manner of providing care. Not only patients, but also the attending personnel are in a danger of injury and trauma.

§ Constant methodical and supervision work is lacking.

Remedy of shortcomings found by the State inspection and investigation of complaints is unenforceable

State inspection in the field of health care services could help prevent ill-treatment, but its effectiveness is decreased by insufficient definition of powers in the law. Inspection bodies may impose measures to remedy the shortcomings found, set deadlines for adopting the measures and request reports on progress. However, if the provider remains inactive or adopts insufficient measures, the inspection body has no means of enforcing the remedy. The same is true of the results of proceedings on complaints. This reduces the effect of inspection activities as well as the providers' respect.

§ It is necessary to add into the Health Care Services Act the authority to impose a fine on a provider who fails to adopt a remedial measure.



»»»»»»»»»» 9. Other activities to prevent ill-treatment

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Prevention is a multifaceted and interdisciplinary endeavour. We therefore give lectures, engage in debates and educate ourselves.

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We work on the professionalism and quality of our visits

The topical focus on the exercise of forensic treatment and dealing with people with disabilities required the necessary preparation of the programme of visits and training of our team.

- The lawyers were present in a psychiatric hospital and in a social services facility for several days.
- They also underwent “tailor-made” training provided by experts in the field of criminal procedure, case-law of the European Court of Human Rights, sexuality and communication specifics of people with mental disorder, quality and individual planning of social services and method of leading interviews and drafting reports.
- For external experts, we organised two training sessions regarding prevention of ill-treatment and methodology of our monitoring.

We strive to achieve a long-term dialogue

The Public Defender of Rights again met regularly with the Director General of the Prison Service of the Czech Republic, the Police President and public prosecutors of the Supreme Public Prosecutor’s Office in 2017.



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round tables dealing with ill-treatment

Lively international co-operation

We have already worked as a national preventive mechanism for 12 years. We are happy to share our experience, but also need new inspiration. This is why we again, in 2017, took part in several meetings with our foreign colleagues – both bilateral and within the South-European Network of NPM and the new European project of meetings of NPM. We ourselves co-organised an international meeting held in Prague.

Comment procedures

We presented comments on governmental draft amendments to the Imprisonment Act and the Remand Act, the Social Services Act, decrees defining the material and personnel standard for sobering-up stations, and a methodical material on detention in social services.

Disseminating the standard of prevention of ill-treatment

Within regular teaching, our own training activities and participation in conferences, we

- trained some 90 workers in social services – the topic is prevention of ill-treatment of people dependent on nursing care and findings from our visits to facilities for elderly citizens;
- trained officers of regional authorities as to how they can contribute in inspection of psychiatric hospitals to the prevention of ill-treatment, especially as regards involuntary treatment and means of restraint;
- provided a lecture for a hundred senior citizens – participants in the Senior Academy of the Brno Municipal Police – as to how they should defend themselves against ill-treatment;
- provided a lecture to students of law and international relations, public guardians, workers in geriatrics and social services on the results of systematic visits.

We regularly contribute to professional journals Social Services and Czech Prisons and occasionally also to the journal Social Work Magazine and the Florence journal intended for paramedics.





The Defender provided auspices over the “Yellow Ribbon Run” – a marathon run dedicated to support for employment of prisoners following their release, which took place within the Prague Marathon. The picture shows our relay team after finishing the run.

»»»»»» ANNEX 1: Mission of the Public Defender of Rights

Pursuant to Section 349/1999 Coll., on the Public Defender of Rights, as amended, the Public Defender of Rights (Ombudsman) protects persons against the **conduct of authorities and other institutions** if such conduct is contrary to the law, does not correspond to the principles of a democratic rule of law and good governance or in case the authorities fail to act. If the Defender finds errors in the procedure of an authority and if the authority subsequently fails to provide for a remedy, the Defender may inform the superior authority or the public.

Since 2006, the Defender has acted in the capacity of the **national preventive mechanism** pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The aim of the systematic visits is to strengthen the protection of persons restricted in their freedom against ill-treatment. The visits are performed in places where restriction of freedom occurs ex officio as well as in facilities providing care on which the recipients are dependent. The Defender generalises his or her findings and recommendations concerning the conditions in a given type of facility in summary reports on visits and formulates general standards of treatment on their basis. Recommendations of the Defender concerning improvement of the ascertained conditions and elimination of ill-treatment, if applicable, are directed both to the facilities themselves and their operators as well as central governmental authorities.

In 2009, the Defender was also given the role of the **national equality body** pursuant to the European Union legislation. The Defender thus contributes to the enforcement of the right to equal treatment of all persons regardless of their race or ethnicity, nationality, gender, sexual orientation, age, disability, religion, belief or worldview.

For that purpose, the Defender provides assistance to victims of discrimination, carries out research, publishes

reports and issues recommendations with respect to matters of discrimination, and ensures exchange of available information with the relevant European bodies.

Since 2011, the Defender has also been **monitoring detention of foreign nationals and performance of administrative expulsion**. Beginning in 2018, the Defender **helps foreign nationals who are EU citizens** and reside or work in the Czech Republic, advises them of their rights and provides them with assistance in cases of suspected discrimination on the grounds of nationality. As from 2018, the Defender also monitors the fulfilment of rights of people with disabilities.

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

The Defender is **independent and impartial** accountable for the performance of his or her office only to the Chamber of Deputies by which he or she was elected. The Defender has one **Deputy** elected in the same manner, who can be authorised to assume a part of the Defender's responsibilities. The Defender regularly informs the public of his or her findings through the Internet, social networks, professional seminars, round tables and conferences. The most important findings and recommendations are summarised in the **Annual Report on the Activities of the Public Defender of Rights** submitted to the Chamber of Deputies of the Parliament of the Czech Republic.

»»»»»»»»»» Basic information on the national preventive mechanism

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The Defender shall systematically visit places where persons restricted in their freedom by public authority, or as a result of their dependence on care provided, are or may be confined, with the objective of strengthening the protection of these persons against torture, or cruel, inhuman and degrading treatment, or punishment and other forms of ill-treatment.

(Section 1 (3) of Act No. 349/1999 Coll.)

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Since 2006, the Defender has acted in the capacity of the national preventive mechanism pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT; No. 78/2006 Coll. of International Treaties).

The Defender's mandate encompasses all places of detention, even places of detention de facto where restriction of liberty results from dependence on the care provided and where the primary purpose of stay is provision of social, educational and health. Systematic visits are carried out in facilities founded by both public as well as private entities.

The Defender enjoys absolute freedom in the choice of places to visit. The Defender determines the plan

of visits internally one year in advance, where this plan is sometimes operatively supplemented in reaction to pressing issues. In determining the plan, the Defender follows up on the previous period, where in view of the goal to act against ill-treatment, the Defender strives for maximum efficiency in carrying out individual visits as well as issue-focused series culminating in systemic proposals and recommendations. As a rule, the visits are unannounced. The number of visits each year depends on the size of the facilities selected for visit and the scope of the inquiry. To ensure that the findings are representative, the Defender selects facilities both large and small, public and private, and located in cities and in rural areas alike.

The visits are carried out by employees of the Office of the Public Defender of Rights on the basis of the

Defender's instruction. The employees include a group of lawyers from a special department within the Office as well as external consultants in other fields of expertise. The Defender most frequently co-operates with physicians and nurses, and often also with psychologists, social workers and special pedagogues. A clinical pharmacologist and a nutritional therapist helped working on special topics. The Office organises recruitment of experts ahead of a larger series of visits and is open to interest on the part of experts; the Defender entered into a special co-operation with the Czech Association of Nurses, the Czech Alzheimer Society and the Czech Society of Palliative Medicine. The employees of the Office have access to all the necessary training and internships focused on currently monitored issues. Their technical equipment includes a minibus and passenger cars for travel, accommodation, computers and cameras. They work according to special methodologies and use separate documentation.

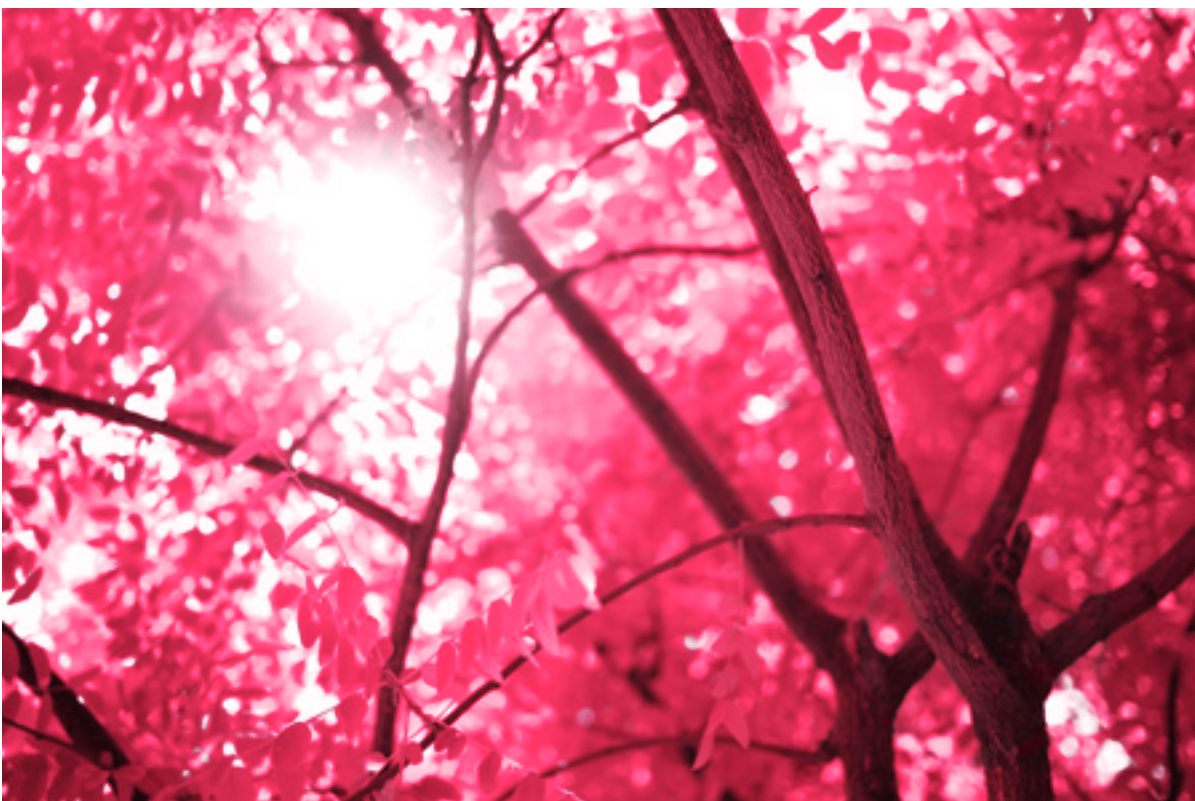
Members of the monitoring team have all the necessary authorisation to carry out visits: they have access to all facility premises at their request, may speak to anyone they wish in private and have access to all documentation, including medical files.

After visiting a facility or after related visits to several facilities, the Defender compiles a report on his or

her findings that may include recommendations or proposals of remedies. If the Defender obtains findings that can be generalised, he or she releases a summary report. In the summary report, the Defender lays down systemic recommendations and proposals for prevention of ill-treatment, and sometimes also standards of good treatment that can also serve as guidelines to unvisited facilities. The Defender monitors compliance with the recommendations and discusses them with the facility that was visited, its founder or the relevant authorities.

If the Defender finds their response insufficient, he or she may inform the superior authority or, if no such authority exists, the Government; the Defender may also inform the public of his or her findings. The Defender publishes reports on individual visits (after the case has been closed) in the Defender's Opinions Register (eso.ochrance.cz) and on the Internet.

Along with visits, the Defender and her team also pursue further activities to prevent ill-treatment: Publish selected summary reports in press and disseminate them. Comment on governmental bills. Work in advisory bodies. Co-operate with State inspection bodies. Raise awareness among professional public. Actively participate in the co-operation of national preventive mechanisms in Europe.



PROTECTION AGAINST ILL-TREATMENT 2017

REPORT OF THE PUBLIC DEFENDER OF RIGHTS AS THE NATIONAL PREVENTIVE MECHANISM

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