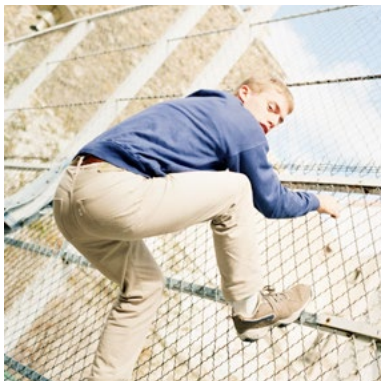




Public Defender of Rights
OMBUDSMAN



Protection Against Ill-treatment

Report on the Activities of the Public Defender of Rights
as the National Preventive Mechanism

PROTECTION AGAINST ILL-TREATMENT

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

in 2014

Public Defender of Rights

Údolní 39, 602 00 Brno, Czech Republic

information line: +420 542 542 888

telephone (switchboard): +420 542 542 111

e-mail: podatelna@ochrance.cz

www.ochrance.cz

www.facebook.com/verejny.ochrance.prav

<http://www.ochrance.cz/ochrana-osob-omezenych-na-svobode>

© Office of the Public Defender of Rights, 2015

© Omega Design, s.r.o.

ISBN 978-80-87949-10-8

Content

Foreword	5
1. The Mission of the Public Defender of Rights	7
2. Basic Information on the National Preventive Mechanism	9
3. Systematic Visits in 2014	13
3.1 Prisons	13
3.2 Police Cells	13
3.3 Facilities for Institutional and Protective Education	14
3.4 Psychiatric Hospitals	15
3.5 Facilities for Detention of Foreigners	15
3.6 Residential Facilities Without Authorisation to Provide Social Services	16
3.7 Sobering-up Stations	18
4. Procedure in Imposing Penalties by the Defender	21
4.1 Residential Facilities Without Authorisation to Provide Social Services	21
4.2 Sociální a zdravotní centrum Letiny, s. r. o. (<i>Social and Health-care Centre Letiny</i>)	22
5. Special Topics Regarding Detention 2014	25
5.1 Dementia	25
5.2 Social Detention	25
5.3 Criminal Penalties for Ill-treatment	26
5.4 Inspection of Use of Restriction	27
5.5 Showers for Prison Inmates	28
6. Other Activities of the NPM	31
6.1 Comment Procedures	31
6.2 Negotiations and Co-operation	32
6.3 Events Hosted	33
6.4 Educational Events Organised by the Office of the Public Defender of Rights	35
6.5 Popularisation of Protection Against Ill-treatment	35
7. International Co-operation	39
7.1 Sharing of Experience of the NPM – Meetings Organised by the Office of the Public Defender of Rights	39
7.2 Active Participation in International Forums	40
7.3 Study Visits	40



The Public Defender of Rights has entered its tenth year in the role of the national preventive mechanism of the Czech Republic. This report provides an account of the ninth year of work of the national preventive mechanism – for the first time presented separately, unlike in the preceding years, where such information was provided in several chapters of the relevant Annual Reports on the Activities of the Public Defender of Rights.

Ever since the beginning of our work, we have always explored ways of promoting preventive measures against maltreatment, which seem necessary on the background of the findings made during the systematic visits. In addition to information on the visits made in 2014, the report also discusses special prevention topics and numerous activities in the field of negotiation, education and promotion.

In 2015, the family of European nations celebrates the 25th anniversary of the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The CPT not only continuously updates its standards, but also submits new calls for protection of persons restricted in their freedom.

Combating impunity of the personnel of detention facilities guilty of maltreatment was one of the central issues of the annual conference in Strasbourg. In its 24th annual report, the CPT identifies as an important task to effectively respond to the phenomenon of intimidations and reprisals of personnel against detained persons.

I drew inspiration from the work of the CPT and its standards when building the Czech national preventive mechanism together with my colleagues, and it continues to be an important source for us. My experience suggests that a special challenge in relation to monitoring is this task must be performed on continuous basis without the results being visible every day. It places demands on patience and plausibility, as well as consistency in staying independent.

By the beginning of 2015, more than 70 countries worldwide had acceded to the Optional Protocol to the Convention against Torture (OPCAT), 60 national preventive mechanisms had been established and the UN Subcommittee on Prevention of Torture had established itself as an important actor in international human rights affairs. This shows that we have made progress and we are not alone in our endeavours to protect individuals and the society as a whole from the most serious manifestation of disrespect for the right to life and prohibition of torture. The Czech national preventive mechanism participates in the current international discussion regarding, for example, the above-mentioned problems raised by the CPT and will work to explore ways of effectively responding to them.

Mgr. Anna Šabatová, Ph.D., 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 democratic rule of law and good governance** or in case the authorities fail to act. If the Defender finds shortcomings in the activities of an authority and if subsequently the authority 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 conditions found and elimination of ill-treatment, if applicable, is directed both to the facilities themselves and their operators and the 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 foreigners and the performance of administrative expulsion**.

The **special powers** of the Defender include the right to file a petition with the Constitutional Court to repeal subordinate legal regulations, the right to become an enjoined party in Constitutional Court proceedings on repealing 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 may 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/her office only to the Chamber of Deputies which elected him/her.

The Defender has one **deputy** elected in the same manner, who can be authorised to assume a part of the Defender's competence. The Defender regularly acquaints the public with his or her findings through the internet, social networks, professional workshops, roundtables and conferences. The most important findings and recommendations are summarised in the **Annual Report on the Activities of the Public Defender of Rights** submitted to the Chamber of Deputies of the Parliament of the Czech Republic.



Since 2006, the Public Defender of Rights has acted in the capacity of the national preventive mechanism (hereinafter the NPM) to protect against ill-treatment in places where personal freedom is restricted.

The mandate of the national preventive mechanism covers all places where freedom is restricted; in fact its mandate is broader than required by the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The mandate follows from the Public Defender of Rights Act [Section 1 (3) and (4)], which provides that the Defender shall systematically visit all places where persons restricted in their freedom by public authority, or as a result of their dependence on care provided, are or can be confined.

The Defender visits both public and private facilities, detention facilities and also facilities whose primary purpose is to provide care (social, educational, or health-care). As a rule, the visits are unannounced. Members of the monitoring team have access to all facility premises at their request, speak with anyone they wish and have access to all documentation, including medical.

The Defender enjoys absolute freedom in the choice of places to visit. The Defender prepares an annual plan, which is then flexibly supplemented with several facilities based on strong ad hoc instigations from the public or from the press. The plan always follows up on the previous period. This monitoring is not conceived as taking the form of individual visits, but rather as being carried out in thematic units which allows for easier generalisation of the findings and better formulation of systematic recommendations. The number of visits each year depend on the size of the facilities selected for visit by the Defender. Each year, the Defender visits facilities restricting freedom both *de iure* and *de facto*. To ensure that the findings are truly representative, the Defender selects facilities both large and small, public and private, and located in cities and in rural areas.

Table 1: Number of visits to facilities performed

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Number	44	43	29	42	55	44	32	29	19

Table 2: Types of the facilities visited

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Prisons	7	3	–	4	7	1	1	–	5
Police cells	19	4	–	–	34	4	5	4	2
Institutional education facilities	4	1	–	–	2	24	18	3	2
Facilities for foreigners	4	2	–	–	2	1	–	–	1
Facilities for asylum seekers	–	2	–	–	2	–	–	–	–
Social services facilities	5	29	21	31	7	1	5	16	7
Health-care facilities	5	2	8	7	1	13	3	6	2

In 2014, 19 systematic visits were carried out. The Defender started a series of visits to high-security (C – closed) prisons (5 of these visits have already been carried out and another 2 will follow in 2015), one foreigner detention facility and two police facilities with cells. (Since the Defender deals with almost 300 complaints from prisoners within her mandate each year, the employees entrusted with this agenda – which is not part of the NPM – also carried out a further 10 on-site inspections in prisons.) The Defender further undertook one follow-up visit in a facility for the elderly and one visit in a children's facility; she visited another such facility based on media coverage of a very serious extraordinary event and also responded very quickly in respect of one psychiatric clinic. Further, the last in the series of visits focusing on treatment of patients in sobering-up stations was carried out and there were 6 visits in the series aimed at residential facilities providing care to helpless elderly people without proper authorisation. **In 7 cases the Defender exercised her right** to refer the case to governmental authorities competent to remedy the situation; 4 cases were referred to prosecuting bodies (for more see Chapter 4.1).

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 separate department within the Office of the Public Defender of Rights (hereinafter the Office) as well as external consultants in other fields of expertise. There are 8 full-time employees responsible for the NPM agenda plus one person heading this department. In 2014, the Defender co-operated with 18 experts employed part-time (of which 6 were physicians; the other fields of expertise included psychologists, experts in special education, nurses, a clinical pharmacologist and a nutritional therapist). Employees responsible for the NPM agenda are allowed to participate in all training programmes and professional stays they request in relation to the performance of their tasks and they have been provided with technical support including a van and passenger vehicles for their trips, as well as accommodation, computers and cameras. They work according to special methodologies, use separate documentation and have special training and education.

The Defender's activities in prevention of ill-treatment in the capacity of the national preventive mechanism is based on performing visits and on a broad range of other activities. The Defender summarises the findings and recommendations for individual types of facilities in **summary reports** drawn up upon completion of each series of visits. The reports are thematically focused, summarise the findings and recommendations in relation to the facilities, but also include recommendations for governmental authorities. On their basis, the Defender further engages with e.g. the ministries and promotes changes in practice and legislation with a view to bolstering prevention of ill-treatment. The Defender published her 2014 Summary Report on the Systematic Visits to Sobering-up Stations and initiated talks with the Ministry of Health. In 2014, the Defender took advantage of the previous findings from visits to children's facilities in the subsequent negotiations with the Ministry of Labour and Social Affairs and the Ministry of Education, Youth and Sports. The course of personal talks with the chief officers of the Police of the Czech Republic and the Prison Service of the Czech Republic are summarised below. The Summary Report on the Visits to Residential Facilities Providing Care without Authorisation and the Summary Report on Systematic Visits to Retirement Homes and Special Regime Homes was also completed. Using her findings from the systematic visits, the Defender has provided **commentary on draft legislation** on eight instances in 2014.

Utilisation of NPM findings in **raising awareness** in relation to public authorities, facilities and experts represents another form of the Defender's preventive activities. In 2014, the Defender organised 7 events of educational and awareness-raising character and employees of the Office actively participated in further 21 events.

The Public Defender of Rights endeavours to participate actively in the **international co-operation of national preventive mechanisms**. In 2014, the Defender organised two meetings aimed at sharing experience with foreign colleagues and sent employees of the Office to another 7 similar events abroad.



3 ■ Systematic Visits in 2014

3.1 Prisons

3.1.1 Facilities Visited

The employees of the Office visited 5 high-security (C – closed) prisons in total: Znojmo prison, Pardubice prison, Příbram prison, Karviná prison and Nové Sedlo prison.

3.1.2 Team Composition

The Defender tasked the lawyers employed by the Office to carry out systematic visits; she participated on the visit to the Pardubice prison in person. A physician participated in each of the Defender's systematic visits as an external consultant. A psychologist also participated in one of the visits.

3.1.3 The Issues Addressed

The following issues were of special interest within the systematic visits: material conditions in the prison (e.g. cell equipment and capacity, convict outfits), hygienic conditions (contents of the "personal hygiene packages", frequency and conditions of showering, privacy in sanitary facilities and their technical condition), health care (availability of health-care services, storage and administration of medication, presence of guards during medical examinations), catering, security (the manner of performance of inspections, the use of coercive measures, separate confinement of convicts), contact with the outside world, achieving the purpose of imprisonment and meeting the cultural and social needs of the prisoners (disciplinary rewards and punishment, discharge department, provision of outings and sporting activities, purchases in prison canteen, religion, library equipment), employment and addressing the complaints of the prisoners. The Defender paid attention in particular to the conditions of imprisonment of unemployable prisoners, i.e. prisoners with disabilities, and the treatment of convicted foreigners.

3.1.4 Evaluation

The Defender found ill-treatment in case of one of the prisons; however, all the reports have not yet been released and the negotiation procedure concerning the recommendations given has not been finished yet.

3.2 Police Cells

3.2.1 Facilities Visited

Police cells in Brandýs nad Labem and Břeclav were visited.

3.2.2 Team Composition

The systematic visits were performed by the authorised lawyers of the Office.

3.2.3 The Issues Addressed

Attention was paid to informing the detained on their rights and duties, issuing of advice documents to the detained in cells, implementation of the right to legal advice and availability of a list of attorneys-at-law, provision of meals in reasonable intervals and the material equipment of the cells.

3.2.4 Evaluation

On the basis of investigation in complaint by an individual, File No. 6079/2013/VOP, performed within the scope of her Ombudsman competence and relating to police cells in Břeclav, the Defender requested that uninterrupted access to water and toilette be provided to the detained persons to remedy the existing situation. The systematic visit revealed that the remedial measure was not adopted. Therefore, the Defender contacted the head of the Regional Police Directorate, who ordered that security of the local cells will be ensured by two policemen in order to prevent undesirable delay in providing access to the toilette.

The visit to the cells in Brandýs nad Labem revealed that the beds in the cells were not equipped with mattresses with washable surfaces at variance with Article 3 (a) of Annex No. 1 of Binding Instruction of the Police President of 2 December 2009, No. 159, on escorts, guarding of persons and on police cells. Since the same shortcoming was found in 2012 also in case of the Police in Central Bohemia in the police cells in Beroun, the Defender invited the head of the Regional Directorate of the Police in the Central Bohemian Region to find out if there are other cells without the required mattresses. The head informed the Defender that an inspection had found further five police stations containing cells without the required mattresses and promised to address the problem.

3.3 Facilities for Institutional and Protective Education

3.3.1 Facilities Visited

In 2014, the employees of the Office visited two facilities for children; in both cases the facility involved was classified as “children’s home with school”: Children’s Home with School in Králíky (part of the facility Educational Institution, Children’s Home with School and School Canteen in Králíky) and Children’s Home with School in Slaný (part of the facility Diagnostic Institution, Children’s Home with School, Children’s Home, Educational Care Centre and Elementary School in Dobřichovice). The latter is a facility with an educational-therapeutic regime.

3.3.2 Team Composition

In both cases, the teams included, in addition to the Office’s lawyers, also child psychiatrists, psychotherapists and experts in special education. The Defender participated in one of the visits personally.

3.3.3 The Issues Addressed

Aside from the usual issues investigated in visits such as the right to privacy, right to personal liberty and security and ensuring the right to education, other issues investigated included in particular the quality of care of children with mental disorders, including the provision for health care.

3.3.4 Evaluation

Ill-treatment was found in one case. Findings from both visits led to the realisation that the educational-therapeutic regime is insufficiently regulated.

The Defender has paid close attention to the educational-therapeutic regime and its legislative regulation systematically, i.e. also outside the performed visits. Further findings were obtained during study visits in facilities providing educational-therapeutic care in Jiříkov (children’s home with school) and in Boletice (children’s home with school and educational institution), an internship in children’s home with school in Ostrava-Kunčice, and through a detailed psychological analysis of several case reports of children with imposed institutional education.

Although the law assumes the existence of an educational-therapeutic regime, there are no legal requirements concerning its contents, the therapy provided or the qualifications of the personnel. Furthermore, provision of true therapy directly in educational facilities is virtually prevented by administrative obstacles. Currently, any children's home with a school or educational institution may choose to provide "education-therapeutic" care, without having to conform to any professional or quality requirements. This may lead to serious violations of the rights of children in need of true education-therapeutic care who will not get it as a result (this often includes children with mental illness combined with behavioural disorders). It is equally dangerous if education-therapeutic care is substituted with a restrictive regime. The Defender has repeatedly notified the Ministry of Education, Youth and Sports, which has so far responded only with vague references to plans for increasing the professional competence of the employees in institutional care facilities. The correspondence between the Defender and the Ministry is publicly available at the Defender's web pages. The Defender's next steps will depend on the outcome of personal meetings with the representatives of the Ministry in 2015.

3.4 Psychiatric Hospitals

3.4.1 Facilities Visited

A systematic visit to the Psychiatric Hospital in Havlíčkův Brod was performed in 2014.

3.4.2 Team Composition

The Defender tasked the lawyers employed by the Office to carry out the systematic visit.

3.4.3 The Issues Addressed

The systematic visit focused on the issue of use of electroconvulsive therapy. During the visit, the main points of investigation were the manner of use of electroconvulsive therapy and whether this type of therapy was performed with informed consent of the patients, or rather under what conditions it was used if such consent had not been given.

3.5 Facilities for Detention of Foreigners

3.5.1 Facilities Visited

Employees of the Office visited the Facility for Detention of Foreigners in Bělá-Jezová, which is the only facility of its kind in the Czech Republic. The facility for detention of foreigners serves the purpose of administrative detention of foreigners detained under Act No. 326/1999 Coll., on the presence of foreigners in the territory of the Czech Republic and on amendment to some laws, as amended, in particular for the purposes of administrative expulsion and surrendering the foreigners to the authorities of another country. The facility for detention of foreigners also performs the decision of the Ministry of Interior on the duty of the applicant for international protection (asylum seeker) to stay in the facility on the basis of Act No. 325/1999 Coll., on asylum, as amended.

3.5.2 Team Composition

The systematic visit was carried out by the employees of the Office and a physician as the external consultant for the Defender.

3.5.3 The Issues Addressed

During the systematic visit, the Defender focused in particular on the living conditions of applicants for international protection and their children, if they were detained in facility for the purpose of surrendering to another European Union member state on the basis of Regulation No. 604/2013 of the European Parliament and of the Council of 26 June 2013, establishing the criteria and mechanisms for determining the Member

State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

3.5.4 Evaluation

During the visit, the Defender found ill-treatment whose causes stem both from systemic and operational reasons. The most serious finding was that families with children are placed in a facility which resembles a prison in terms of its regime and appearance. The Defender has also criticised and found as illegitimate some of the other restrictions associated with the needs of the foreigners placed in the facility. The report is currently the subject of further talks.

3.6 Residential Facilities Without Authorisation to Provide Social Services

3.6.1 Facilities Visited

In the latter half of 2013 and in the first six months of 2014, visits to 7 residential facilities providing social and/or health services without authorisation, in particular to the elderly, were performed. The facilities visited (in chronological order from the end of 2013): Centrum komplexních služeb pro rodinu a domácnost (*Comprehensive Family and Household Services Centre*) in Kunštát na Moravě, Penzion Jiřinka (*Jiřinka Guest-house*) in Brno, Senior dům Marta (*Marta Senior House*) in Říčany u Prahy, Domov spokojeného stáří Luhačovice (*Home for Comfortable Retirement*) in Luhačovice, Penzion pro seniory Atrium (*Atrium – Guest-house for the Elderly*) in Liberec and Domov Na kopci (*Home on the Hill*) in Červený Újezd.

3.6.2 Team Composition

The Defender tasked the lawyers employed by the Office to carry out the systematic visits; the systematic visit in Home on the Hill in Červený Újezd was carried out by the Defender personally. External consultants to the Defender with the professional qualification of general nurse and (in one case) a nutritional therapist were invited to participate in the visits.

3.6.3 The Issues Addressed

Considering the fact that the facilities provided care to people requiring constant assistance without having the necessary authorisation, the Defender investigated the scope of the services provided, what kind of clients used the services, what kind of personnel actually provided the services and what were the relationships between the personnel and the operator of the facility. The visits monitored in particular areas such as the environment and equipment in the facility, observing of the autonomy of will, ensuring privacy of the residents, freedom of movement, provision of safety, quality of care provided or the conditions of arrangement and the contents of the contracts on provision of services. The common purpose of investigation in these areas was ensuring human dignity and protection of (not only) the fundamental rights and freedoms of residents.

3.6.4 Evaluation

The operators of the facilities visited focus on highly vulnerable persons (the elderly and people with mental disorders) to whom they attempt to provide care (including nursing care) in residential-type facilities in a scope corresponding to the residential social service designated “retirement home” or “special regime home”. **Since these facilities lack authorisation for provision of social services, they operate completely outside the existing system of quality and inspection in social services and of protection of their clients’ rights. This activity carries a high risk of ill-treatment of the accommodated clients (residents).** The facilities were circumventing the duties of providers of social services to conform to the social services quality standards and the statutory duties of the providers to ensure services are provided by qualified personnel and to let the clients retain 15 % of their income after payment for services.

Persons with no expertise in the fields of social and health-care services (e.g. a shop assistant with vocational training, cook and receptionist) participated in care. These persons were also performing nursing care tasks (administered medicine, rebandaged decubitus ulcers, treated wounds, etc.). Nursing care as provided by non-professionals exposed the residents to considerable health risks.

The most common shortcoming found in investigation of the material conditions was the **lack of adjustment of the environment to the needs of persons dependent on care, in particular persons with impaired mobility and with dementia**. The buildings were not barrier-free (in one facility the staff had to manually carry the clients from upper floors down the stairs), corridors and staircases often lacked any safety features to prevent falls, the spaces were not marked for ease of orientation although persons with dementia in particular experience troubles with spatial orientation. Furthermore, none of the facilities was equipped with an effective signalling equipment allowing to call for assistance even though this was often the only way for bed-ridden clients to call in the staff in case of need.

In all of the facilities visited, the low quality of care provided reached the severity of ill-treatment. The way care was provided was random, intuitive and amateurish, not standardised as required by the Social Services Act and the social services quality standards. This was especially clear in the case of nursing care, which was usually provided on a completely non-professional basis. The following are examples of shortcomings criticised by the Defender: administration of medication by unqualified staff using insufficient tools (i.e. various schedules), misuse of psychopharmaceuticals, neglectful storage of medication (there was a risk of unauthorised use of medication and overdose), rebandaging of decubitus ulcers and wounds by non-professionals, no prevention of falls, absence of a bladder voiding regimen and acceleration of the onset of incontinence. The above was associated with negligent keeping of records of the care provided, which lacked the necessary information value and thus could not represent a sufficient guarantee of continuity of care.

In all the facilities visited, the Defender paid close attention to the issue of proper nutrition of clients. Particularly the clients with reduced ability to communicate or bedridden clients are completely dependent on the care provided by the staff, which must include also a provision of nutrition. Foods were not adjusted to the needs of persons with dementia – they were not varied and nutritious enough and on certain occasions there was not even enough food. The Defender found that in neither of the visited facilities did the staff monitor the clients' weight, food and fluid intake (there was no reaction if clients were not finishing their foods or drinks), co-operate with a nutritional therapist, or paid attention to the prevention of malnutrition, not even in persons most at risk of malnutrition or already malnourished. In some of the facilities, the Defender encountered degrading conditions in serving of meals (meals were served in unsightly plastic bowls and in a rush), the meals were often cold and foods had expired use-before date.

Restriction of the freedom of movement of residents counted among the most serious shortcomings in all of the facilities visited. Typically, the restriction meant that the clients were prevented from leaving the facility or their room. The Defender had reason to suspect that some facilities also used sedative medication to restrict the clients' movement. Likewise, bed rails and fixation straps were sometimes used for restriction purposes. In some of the facilities, selected clients were locked in their rooms for the night (this concerned particularly clients with mental illness manifesting through increased restlessness). In her reports on the visits, the Defender warned that the above acts may constitute the criminal offence of restriction of personal freedom.

Processing of personal and sensitive data of residents by the facilities without the residents' consent also represented a major shortcoming. This included data contained in service provision contracts, documents gathered on the clients' health, (official) documents stored, records made, etc. A wide range of persons had access to the data (including sensitive data on medical condition). In some of the visited facilities, identity cards and insurance cards were taken away from the residents and stored centrally.

The fact that in majority of the facilities visited the clients handed over all their income to the facility is a cause for serious concern. Given the fact that the "residential-type" facilities are not registered providers of residential social services, they are not required to let their clients retain 15 % of their income. This

significantly increases the residents' financial dependence on the facility operator and thus substantially diminishes their chance for leaving the facility on their own.

If the operator provides the social service without registration, it is guilty of the administrative offence of unauthorised provision of social services which should be penalised by the competent Regional Authorities (local governments). On her own initiative and based on complaints from citizens, physicians and other administrative bodies, **the Defender has called on the Regional Authorities to be active in penalising the socially harmful phenomenon of providing social services without registration.** The Ministry of Labour and Social Affairs promised the Defender that it will issue an appropriate methodology for the Regional Authorities. However, prevention remains a priority. This is why in her summary report the Defender issued a warning and recommendations for the family members of people looking for a residential social service, their guardians, physicians and municipal authorities of municipalities with extended competence.

Pursuant to her competences under the Public Defender of Rights Act, the Defender notified the competent Regional Authority in all of the cases and referred four of the cases to the prosecuting bodies on the basis of suspicion that a criminal offence may have been committed.

3.7 Sobering-up Stations

3.7.1 Facilities Visited

In 2013 and 2014, the national preventive mechanism carried out a series of systematic visits to sobering-up stations. It visited 6 out of the 18 active sobering-up stations in the Czech Republic; the last visit, to the sobering-up stations in Liberec operated by the Krajská Nemocnice Liberec, a.s. (*Regional Hospital in Liberec*), was performed in 2014.

3.7.2 Team Composition

The Public Defender of Rights tasked the Office's lawyers to carry out the visits and selected issues were subsequently consulted with the external consultants for the Defender in the fields of medicine and nursing care (as part of individual consultations and roundtable discussions).

3.7.3 The Issues Addressed

The visits to sobering-up stations generally took one day each and included an inspection of the facility, the medical records and interviews with the personnel present. During the visits, the Defender monitored in particular the observance of statutory conditions for placing a person in a sobering-up stations (restriction of freedom), ensuring the safety of the detained and the facility personnel, the staff operating the facility, and provisions for privacy and personal hygiene of the detained. The problem area of use of restrictive measures was given special attention.

3.7.4 Evaluation

The systematic visits showed that **provision of safety in handling of the detained in sobering-up stations is one of the key problems.** Safety risks involve especially the inability of the personnel to react quickly to aggression on the part of the detained. This is mainly due to the insufficient staffing of the facilities (insufficient number of staff, predominately female staff members) as well as insufficient material equipment (no signalling equipment or rooms for solitary confinement of aggressive individuals). **In a majority of the visited sobering-up stations, the Defender found serious shortcomings in the use of restrictive measures** (unauthorised use of restrictive measures, insufficient supervision of persons subjected to restriction, order to use a restrictive measure given by an unauthorised person, excessive duration of restriction and gaps in the documentation). The Defender's legislative recommendations also concern the need for **statutory definition of the conditions under which personal freedom may be limited in a sobering-up stations.**

The Defender compared her findings with the opinions of experts and representatives of the visited facilities during roundtable discussion organised on this topic in March 2014. The outputs of the visits and roundtable discussions were subsequently incorporated in the Summary Report on the Systematic Visits to Sobering-up Stations released by the Defender in June 2014. She noted that a large part of the shortcomings found during the visits to sobering-up stations was caused by insufficient statutory regulation, which includes also the ambiguous legal basis for the service. She also sent her recommendations to the Ministry of Health. The degree of their implementations is a subject of ongoing talks.



4 ■ Procedure in Imposing Penalties by the Defender

The powers of the national preventive mechanism to impose penalties are based on the Public Defender of Rights Act [Section 21a (4) in conjunction with Section 20 (2)]. The Defender uses these powers in those cases where she cannot ensure remedy in relation to a specific facility by negotiations. The Defender either informs the superior body or publishes the relevant case in the media, or both. At the same time, the law also enables the Defender to request remedial measures from “other authorities”. In some cases, the Defender thus gives instigation for penalisation in administrative proceedings and, exceptionally, files a criminal complaint. In 2014, the Defender has done so in a total of 12 cases.

4.1 Residential Facilities Without Authorisation to Provide Social Services

After the systematic visits to each of the seven facilities selected for visit, the Defender drew up a report containing her findings and recommendation for remedy. The Defender sent the report to the management of the facility and invited it to provide, within 30 days, a written statement to her findings and recommendations. The Defender found ill-treatment in all of the facilities visited. She received statements responding to her reports from five of them.

In two cases (Comprehensive Family and Household Services Centre in Kunštát na Moravě and Petruška Home in Šestajovice u Prahy), the Defender exercised her power to impose penalty under Section 21a (4) in conjunction with Section 20 (2)(b) of the Public Defender of Rights Act and, in 2014, she informed the public of her findings through a press release and publication of the report on her website. The Defender did so after the facilities failed to implement her recommendations and continued to provide social services without authorisation. In the first facility, the ill-treatment had the form of unprofessionally provided care, insufficient foods and zero prevention of malnutrition, restriction of the free movement of clients and failure to respect the clients’ privacy. The circumstances in the other facility were similar. In addition to the above shortcoming, the Defender found hazardous handling of medication, unauthorised supervision and neglect in ensuring the safety of the clients.

The Defender informed the public about the situation in parallel to the release of the Summary Report on the Visits to Residential Facilities Providing Care without Authorisation in early 2015. In order to raise awareness in this area, the Defender prepared an information leaflet and set up a special web page at <http://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/zarizeni/neregistrovane-socialni-sluzby/>.

In all the facilities visited, the Defender urged the competent Regional Authority to initiate proceedings on the administrative offence of unauthorised provision of social services. The Defender decided to monitor further steps taken by the Regional Authorities.

Two of the visited facilities had authorisation to provide field social services. However, the “field social service” provided had the character of a residential service and, additionally, ill-treatment was found in its provision to the residents. Therefore, in these two cases the Defender notified the competent regional branch of the Labour Office, which inspects the provision of social services, and invited it to assess the quality of the field services provided.

The Defender referred four of the visited facilities to the prosecuting bodies to assess whether the severity of the ill-treatment found in them reached the level of a criminal offence. The Defender’s instigations

suggested the possibility of the criminal offences of unauthorised operation of a business and restriction of personal freedom. In case of one of the facilities, the shortcomings found indicated the possibility that the criminal offences of bodily harm caused by negligence and failure to provide assistance occurred.

4.2 Sociální a zdravotní centrum Letiny, s. r. o. (*Social and Health-care Centre Letiny*)

In August 2013, the Public Defender of Rights carried out a systematic visit to the registered social and health-care services facility named “Sociální a zdravotní centrum Letiny, s. r. o.” and found that the clients of the facility were subjected to **severe ill-treatment**. This consisted in gross violation of the fundamental human rights of the clients as well as violation of rights protected by Act No. 108/2006 Coll., on social services, as amended.

The facility is a **private registered social services facility** providing the “special-regime home” type of service. The capacity of the facility is 260 beds. Another 30 beds fall under the registration “healthcare facility – follow-up care beds”. The clients are persons with mental disability, persons with other disabilities, the elderly with dementia and even persons suffering of mental disorder such as schizophrenia. In other words, these are persons extraordinarily vulnerable due to their medical condition.

The Defender informed the Regional Authority of the Plzeň Region as the competent registration body, the regional branch of the Labour Office in Plzeň, which is authorised to inspect the provision of social services, and the Ministry of Labour and Social Affairs of the Czech Republic of her findings.

In 2014, a **second systematic visit** to this facility was carried out. A nutritional therapist and a medical professional qualified as psychiatric nurse participated in the visit as external consultants to the Defender. Again, **ill-treatment** was found in the facility. This consisted primarily in the following problems.

Lack of respect for the client’s dignity. A number of clients with diapers were dressed only in upper body clothes (T-shirts, pyjamas coat), lacking trousers. This makes changing diapers faster for the staff, but the practice is unacceptable in terms of maintaining the clients’ dignity. Some of the clients were wearing dirty or torn clothes (torn sweatpants marked “Lázně Letniny” – Letniny Spa). The staff refer to the clients in an inappropriate manner (clients receiving minced food are referred to as “mincers”) and treats them like children, frequently using inappropriate diminutives. The underlying problem is the **lack of qualification on the part of the personnel; in addition, there is a lack of workers**. During the day, 11 to 13 staff members in direct care are responsible for 180 clients housed in two interconnected buildings. There were 6 day-shift workers in the third building, which housed over 100 clients.

The staff can only barely handle the basic elements of care, they **cannot provide individualised care** or participate in activation of the clients, which severely impacts their quality of life (about 20 immobile clients in one of the buildings are forced to stay in their rooms for most of the day; the staff only has 3 wheelchairs available and is thus incapable of moving them to the facility canteen for lunch). Most of the clients are apathetic, left to **spend their days passively**.

The staff does not address the risk of malnutrition, no screening for malnutrition is implemented and no records are kept on the clients’ food intake. The nutritional therapist concluded on site that some of the clients were already malnourished or at risk of malnutrition. **Regular drinks are not provided**. Fluid intake is not monitored, clients do not have drinks available in their rooms, only in the facility canteen. A number of clients who spend their day in the canteen have their cups placed out of reach. The only drink available is tea with artificial sweeteners. The facility **cycles 7 weekly menus**, which were considered unsuitable by the nutritional therapist due to the lack of regard for the individual nutritional needs of the clients. No menu containing foods suitable for diabetic diet has been prepared. Thus, in order for all clients to be able to eat the same foods, all foods contain solely artificial sweeteners; also the sweet foods bought (jams, preserved fruits) are all intended for diabetics. However, overuse of artificial sweeteners may cause health problems and they are completely unsuitable for persons with dementia and malnourished persons. Clients on blended foods are receiving **meals where all the components are blended together**.

Rules for **storage of certain potentially hazardous medication** are not observed. Medication is administered by a nurse who does not prepare the dose and does not know what kind of medication she is administering; this is generally considered a hazardous practice.

All clients' cabinets with all their belongings are **locked**. The lock is often placed unsuitably and the client cannot reach it. Not all of the clients even have a key. Those who have lost it may only access their belongings once per week during cleaning. Persons with dementia incapable of handling the key have their keys hung on the neck on a string of bandage, which is undignified.

The facility **does not sufficiently provide for the safety of the clients. The risk of falls is not addressed, the causes of falls** are not dealt with and nobody is looking to implement preventive measures. A number of clients wear completely unsuitable footwear (unstable, too large), which may contribute to the falls. During the visit, the floors in the building were very slippery and unmarked after sweeping (two of the clients stated that they prefer to remain in their rooms after having experienced a fall). Rooms in the whole facility **lack functioning signalling equipment**, which prevents the clients from calling in help.

The Defender published her findings in early 2015 and referred the case to the authorities competent to address the specific problems.



5.1 Dementia

Dementia syndrome is a health condition that affects many clients of social services facilities visited by the Defender as the national preventive mechanism in 2013 and 2014. It entails special requirements with respect to the care provided. A failure to ensure such care infringes human dignity and may lead to ill-treatment.

Systematic visits have shown that awareness of special needs of persons with dementia is low even in specialised facilities. **Therefore, the Defender decided to bring the rights of persons with dementia in residential facilities to the centre of her preventive activities in 2014.**

Within evaluation of her visits to retirement homes and special regime homes that started in the spring of 2013, an **analysis** was carried out of **medication cards**, i.e. aids for the staff used when preparing and administering medication, which include a list of medication and its doses for individual clients. During the systematic visits, the staff of the Office of the Public Defender of Rights made copies of medication cards of clients that were indisputably suffering from a certain degree of dementia. Subsequently, over 300 cards were provided to a clinical pharmacologist, who analysed e.g. whether medication is administered correctly (with respect to food, maximum doses) and, in particular, whether the individual therapeutic classes of medication are represented in accordance with the expectations – as compared to professional literature. Amongst other findings, the pharmacologist established that only 20 % of the clients from the sample received painkillers, even though, according to general research, 40 – 80 % of clients in long-term care facilities suffer from pain. The complete analysis with other expert findings is published on the Defender's website.

In February, the Defender hosted a two-day **international conference on Protection of Rights of Elderly People in Institutions, with an Emphasis on People Suffering from Dementia**. Apart from lectures by experts, the conference included workshops for the staff of social services facilities. The conference was attended by guests from foreign national preventive mechanisms (France, Hungary, Poland, Slovakia and Slovenia). On the second day of the conference, discussions were held with the foreign guests on topics related to performance of visits. **Papers were published in a collection published in Czech and English and are available at the Defender's website at <http://spolecne.ochrance.cz/dokumenty-ke-stazeni/konference/konference-ochrana-prav-senioru-v-instituci-s-durazem-na-osoby-s-demenci/>.** The papers cover a wide range of topics related to rights of the elderly in institutions and the manner in which they are treated, e.g. the autonomy of will, nursing care, malnutrition and administering of sedatives. For more information on the contents, see Chapter 6.3.1.

5.2 Social Detention

Czech legislation does not define the conditions under which one's freedom may be restricted in social services facilities ("social detention", situations covered by Section 5 (1)(e) and Section 5 (4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms). This is a practical problem related to the protection of rights of persons living in institutions. The Defender encounters this problem quite often when performing systematic visits and, therefore, she actively attempts to contribute to solving the problem within her preventive activities against ill-treatment.

To remedy this deficiency in protection of fundamental human rights, it is necessary to amend Act No. 108/2006 Coll., on social services and Act No. 292/2013 Coll., on special court proceedings.

The Defender asked the Ministry of Labour and Social Affairs to initiate the legislative process by preparing a draft law since the Ministry has been inactive for a long time in this respect. In 2014, a working group indeed began meeting with participants from the Ministry of Labour and Social Affairs, the Government Office, the Office of the Public Defender of Rights, the Supreme State Attorney's Office and NGOs. The next step is implementation of the prepared amendment to the law through the legislative process. The Defender continuously follows the developments in the matter and is prepared to use her special competences if unjustified delays occur in case of this – rather technical – amendment.

5.3 Criminal Penalties for Ill-treatment

The Public Defender of Rights has repeatedly provided information about cases of ill-treatment at places where persons are, or can be, restricted in their freedom. The related legal questions necessarily arise whenever ill-treatment is found. **What response is appropriate when the intensity of ill-treatment amounts to degrading treatment? Does the Czech legislation offer any means of penalisation that would satisfy the requirements of the Convention against Torture the European Convention for the Protection of Human Rights and Fundamental Freedoms?** The Public Defender of Rights hosted an informal discussion about the above topics in Brno in 2014.

If a facility that was visited fails to take remedial measures, the Defender may publish the case, which is the option the Defender uses most frequently. Where, however, the Defender makes a very serious finding, she can approach the competent authorities in accordance with the Public Defender of Rights Act. In 2014, the Defender referred to the prosecuting bodies four cases of ill-treatment in residential facilities for the elderly which provided care without authorisation to provide social services. The Defender suggested that the conduct in question could amount to crimes of restriction of personal freedom, bodily harm, failure to provide assistance and exceeding trade licence. However, this does not seem to address the main negative phenomenon – namely that the existing conditions generally increase the risk of ill-treatment (liability of operators and managers) and unintentional ill-treatment without causing harm to health (degrading treatment).

Ill-treatment has to be considered from several perspectives. **In the context of the Czech Republic, we can pose two basic questions. Firstly, how is ill-treatment criminalised by the law?** We can base our considerations on the rights following from Art. 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in light of the case law of the European Court of Human Rights. In Czech law, question marks hang in particular over criminalisation of degrading treatment, which is not defined by incurrance of bodily harm, but rather the intention of the perpetrator in relation to the consequences of his acts. **The second question is related to the practical aspects of effective investigation.**

The discussion, to which the Defender invited prominent Czech experts in criminal law and international protection of human rights, related in particular to the interpretation and application of Section 149 of Act No. 40/2009 Coll., the Criminal Code, which includes a legal definition of the criminal offence of torture and other inhuman and cruel treatment. Even though voices are heard that this provision reflects the international commitments of the Czech Republic and the Commentary inspires interpretations inclined to penalise even degrading treatment as a criminal offence under Section 149, the actual lack of use of this interpretation by the prosecuting bodies gives rise to scepticism as to whether we in fact have an effective instrument in criminal law to penalise ill-treatment. The stigma surrounding the term “torture”, as well as the twenty-year experience with the failure to apply the merits of this crime in practice, led a majority of participants to conclude that an amendment is indeed required. The Public Defender of Rights considers it important to increase social sensitivity to ill-treatment, since application of criminal law is always related to the perception of the given phenomena in the society.

The national preventive mechanism will continue to present findings on the situation in the relevant facilities. The Defender believes that national preventive mechanisms will play, on the national level, a role similar to the activities of the European Committee for the Prevention of Torture, which contributed to development of case law of the European Court of Human Rights. **The Defender also finds it important**

to focus on the aspect of administrative penalisation of conduct representing or causing ill-treatment. This is the case since administrative penalisation is complementary to the system of criminal penalisation and must also be analysed.

5.4 Inspection of Use of Restriction

5.4.1 Penalisation of Ill-treatment in Social Services

During visits to retirement homes and special regime homes, a suspicion arose on several occasions that the relevant facility infringed the clients' rights in a manner that may represent an administrative offence. In particular, these cases concerned **misuse of sedatives as a measure restricting the freedom of movement** at variance with the statutory conditions. The Defender submitted her suspicions and the evidence secured to the competent branches of the Labour Office of the Czech Republic authorised to inspect provision of social services, which are also competent to hold proceedings on the administrative offence of use of a measure restricting the freedom of movement at variance with the law. A suspicion that an administrative offence occurred arose in four of the facilities visited. In two cases, the administrative authority has already decided that an administrative offence occurred and imposed a fine on the relevant facilities.

The Defender followed the procedure of the regional branches of the Labour Office when investigating administrative offences consisting in violation of rights of clients of social services facilities. She found out that **administrative bodies do not always adopt a uniform approach to such investigation**, which may lead to inefficiency of the entire proceedings on administrative offences. The reasons for this may include disunited interpretation of the relevant legal regulations and missing methodological guidance.

In order to clarify some of the relevant questions, the Public Defender hosted a **round table with social services inspectors** in October 2014 in co-operation with the Ministry of Labour and Social Affairs. The aim was to discuss the possibilities and the practices of the inspection authority (regional branch of the Labour Office of the Czech Republic) in ascertaining and prosecuting infringements in the fundamental rights of clients of residential social services facilities. Furthermore, the round table focused on sharing experience between the staff of the Office of the Public Defender of Rights and the inspectors. Amongst other conclusions, it emerged during the meeting that efficiency of the procedure may be hindered by insufficient powers on the part of the inspectors, in particular with respect to perusal of medical records when investigating unlawful restriction of the clients' movement by administration of sedatives.

The Defender has already used her findings on the inadequate administrative procedures with respect to penalisation of ill-treatment within the comment procedure concerning an amendment to health-care regulations and, in future, she will summarise the findings in order to ensure that remedy is provided to the maximum degree possible. This activity falls within the scope of preventive activities of the national preventive mechanism in a broader sense of the word.

5.4.2 Analysis of the Inspection of Use of Restriction in Health-care Services

In view of the fact that during her visits to health-care facilities the Defender has repeatedly encountered errors in use of restrictive measures, she has decided to adopt systematic steps with respect to this matter within her preventive activities.

In 2014, the Defender decided to map the manner in which Regional Authorities, as administrative bodies endowed with the broadest competence in the area of inspection of health-care services provision, perform inspections and supervision over the provision of health-care services in psychiatric hospitals and the use of restrictive measures in health-care facilities in general. Data was collected in the form of an electronic form published at the Defender's website and sent directly to all Regional Authorities, requesting that the Authorities fill it out. In this manner, information was collected on the number and nature of the individual complaints related to treatment of persons in psychiatric facilities and the use of restrictive measures in health-care facilities, on the inspection activities of the Regional Authorities in the relevant areas, the staff performing the inspections and dealing with the agenda of complaints at the Regional Authorities and methodological guidance provided by the Ministry of Health.

If follows from the results of the analysis that between 2012 and 2014 the Regional Authorities investigated a relatively low number of complaints concerning the use of restrictive measures in health-care facilities (14 altogether), where only one complaint was found justified. Complaints concerning treatment in psychiatric hospitals were more frequent (27); however, none of them was found justified. The results regarding inspection activities of Regional Authorities were assessed as alarming by the Defender: **in 2012 – 2014 no inspection was carried out aimed at the use of restrictive measures, three inspections were aimed at treatment of persons in psychiatric facilities** and none of them found any shortcomings. It also follows from the analysis that Regional Authorities would welcome better methodical guidance from the Ministry of Health and further training of their personnel. The Defender will submit the results of the analysis to the Ministry of Health and these will serve as an underlying material for subsequent meetings aimed at prevention of ill-treatment in use of restrictive measures.

5.5 Showers for Prison Inmates

The Defender's long-term efforts to improve the standards of hygiene in prisons materialised in the amendment to the imprisonment rules (Decree of the Ministry of Justice No. 345/1999 Coll.), prepared by the Ministry. A rule was re-introduced in the Czech legislation that prison inmates are entitled to bathe (i.e. take a hot shower) at least twice a week as stipulated by European standards (European Prison Rules). So far, inmates could take a shower only once a week.



6 ■ Other Activities of the NPM

This part of the Report is devoted to further activities of the Public Defender of Rights as the national preventive mechanism supplementing the actual performance of systematic visits [in the sense of Art. 19 (b) and (c) and Art. 22 of OPCAT]. Within her activities aimed at boosting protection against torture, cruel, inhuman or degrading treatment or penalisation, the Defender submits proposals and statements regarding the applicable or drafted legal regulations, leads a dialogue with governmental and public authorities and raises awareness of her findings and recommendations.

6.1 Comment Procedures

Primarily, the Defender responds to submissions of draft legal regulations by the Government for comment procedure and she is invited to meetings of the Government Legislative Council. In 2014, she participated in comment procedures regarding the following drafts:

- Draft amendment to Act No. 108/2006 Coll., on social services.
- Draft substantive intent of the Guardianship Act.
- Draft decree amending Decree No. 109/1994 Coll., promulgating the custody rules, and Decree No 345/1999 Coll., promulgating the imprisonment rules.
- Instigation of the Council of the Government for Human Rights concerning the issue of imprisonment.
- Draft amendment to Act No. 325/1999 Coll., on asylum, Act No. 326/1999 Coll., on the presence of foreigners in the territory of the Czech Republic, and other related laws.
- Government Legislative Work Plan for 2015.
- Draft amendment to Act No. 89/2012 Col., the Civil Code, and other laws.
- Draft amendment to Act No. 372/2011 Coll., on health-care services.

Moreover, the Defender contributes to drafting and submission of draft legal regulations by virtue of her recommendations and active efforts.

- In 2014, the Defender contributed to the drafting of the **statutory delimitation of the conditions under which one's freedom may be restricted in social services facilities** ("social detention") – amongst others, she inspired the Ministry of Labour and Social Affairs to establish a working group, in which the Defender was represented and which drafted the new substantive and procedural regulation. In order to increase the pressure she exerts, the Defender is now addressing the Chamber of Deputies of the Parliament of the Czech Republic, recommending that the Chamber request the Government to submit the prepared draft for the legislative procedure.
- Furthermore, the Defendant directed a number of legislative recommendations to the Ministry of Health in relation to evaluation of a series of visits to sobering-up stations.. Primarily, she requests **that the statutory conditions for restriction of personal freedom in sobering-up stations be reformed and the principle of subsidiarity in use of restrictive measures in general be embedded in the law.**

The success of the recommendations and the Defender's next steps will depend on negotiations that will take place in 2015. The Defender has been partially successful in her attempts to **improve hygienic conditions in prisons**, which materialised in an amendment to the regulations on conditions in prisons. The Defender uses her experience from systematic visits relating to the position of persons whose legal capacity has been limited by a court and who are placed in institutions when exerting pressure aimed at adoption of the **Guardianship Act**. The professional public, guardians and persons subject to guardianship have been waiting for adoption of the Guardianship Act for several years. The efforts of the Ministry of Justice have so far been inadequate, since not even a substantive intention has been submitted for Government approval. In order to increase the pressure she exerts, the Defender is now addressing the Chamber of Deputies of the Parliament of the Czech Republic, recommending that the Chamber request the Government to submit the draft law.

- In 2013, the Public Defender of Rights recommended to the Ministry of Education, Youth and Sports to submit a draft **decree providing for quality standards for institutional and protective education** and for preventative educational care. The Defender participated in this matter by submitting comments and participating in negotiations on the drafting of the standards, which have, however, not been translated into a decree so far. The Ministry also failed to act on the recommendation of the Public Defender of Rights to provide for the nature and conditions for provision of educational-therapeutic care. The success of the recommendations and the Defender's next steps will depend on negotiations that will take place in 2015. The Defender was successful in an interdepartmental comment procedure on an amendment to the Asylum Act and the Alien Act, relating to **preparing aliens in detention centres for expulsion or their surrender and informing them in advance of the date and time of and reason for their release from the detention centre**. The draft was submitted for discussion in the Parliament.

6.2 Negotiations and Co-operation

6.2.1 Agreement on Co-operation Between the Public Defender of Rights and the State Attorney's Office

In 2014, the Public Defender of Rights, Mgr. Anna Šabatová, Ph.D., and the Supreme State Attorney, JUDr. Pavel Zeman, concluded an agreement on co-operation providing for the manner of co-operation between the Defender and the Supreme State Attorney's Office and other state attorney's offices when pursuing their statutory roles. The agreement envisages mutual active sharing of analytical findings. The common topics include protection of persons restricted in their freedom from torture, cruelty, inhuman or degrading treatment or penalisation and other forms of ill-treatment. However, the agreement does not cancel the statutory confidentiality duty which binds both the Defender and state attorneys and its conclusion does not jeopardise the independence of the two institutions.

6.2.2 Negotiations with the Police President

In July 2014, a meeting of the Defender and Police President col. Mgr. Bc. Tomáš Tuhý took place. The meeting offered the participants the opportunity to discuss the Defender's summary of findings from systematic visits to police cells and to agree on the manner of their future co-operation. The Defender and the Police President agreed that the Police of the Czech Republic will inform the Defender on extraordinary cases related to restriction of personal freedom and placement of persons in cells. The participants also agreed that ill-treatment would be better prevented, amongst other measures, by training courses on the rights of persons placed in the cells provided to the police by the Defender and the staff of her Office.

6.2.3 Negotiations with Director General of the Prison Service of the Czech Republic

In October 2014, a meeting of the Defender with the Director General of the Prison Service BG PhDr. Pavel Ondrášek took place. The aim was to discuss topical issues arising from investigations into individual complaints from prisons and the Defender's findings from systematic visits to prisons. The Defender and the Director General agreed that regular meetings will be held three times per year in the future.

6.2.4 Rights of Children in Institutional Care

In 2013, after assessing an extensive series of visits to facilities performing institutional and protective education, centres for educational care, infant care centres and children's psychiatric hospitals, the Public Defender directed several recommendations to the competent bodies: Ministry of Labour and Social Affairs, Ministry of Education, Youth and Sports and Ministry of Health. In 2014, negotiations were held with representatives of the Ministries and results can be expected in 2015. The Defender's correspondence with the authorities is available at the Defender's website.

6.3 Events Hosted

The Defender organises ad hoc meetings with experts, usually in the form of round tables, seeking weaknesses and topical issues in the area of restrictions of freedom.

6.3.1 International Conferences

- **Protection of Rights of the Elderly in Institutions, Focusing in Particular on Persons with Dementia, Brno, February 2014.**

Findings from visits to facilities for fragile elderly people became the basis for a two-day international conference aimed at provoking discussion on the conditions in which the elderly live, the treatment they are exposed to, the care provided to them and the degree to which their rights and dignity are respected.

The Defender centred the programme of the conference around topics that seem vital with respect to protection against ill-treatment: specific needs of persons with dementia, nourishment of persons with dementia, multidisciplinary approach to care, regime, and individual approach. The plenary sessions included presentations by prominent experts in the relevant fields. On the second day of the conference, workshops were held focusing on the topics of nourishment, nursing care, legal aspects of the stay of the elderly in social service facilities and the possibilities for social work.

A collection of papers presented at the conference was published and is available in both Czech and English at the Defender's website at <http://spolecne.ochrance.cz/dokumenty-ke-stazeni/konference/konference-ochrana-prav-senioru-v-instituci-s-durazem-na-osoby-s-demenci/>.

6.3.2 Round Tables

- **Topical Issues Associated with Treatment at Sobering-up Stations, Brno, March 2014.**

The meeting followed a series of systematic visits to sobering-up stations in 2013 – 2014. The aim of the round table was to provide space for professional discussion about the problematic aspects of treatment of persons at sobering-up stations and other issues related to operation of such facilities. For this purpose, the invited parties included representatives of six of the visited sobering-up stations as well as experts in care for intoxicated persons. The Defender also invited representatives of the Ministry of Health and the Ministry of Justice.

- **Recommendations to Increase the Standard of Care for the Elderly in Residential Social Services Facilities, Brno, March 2014.**

The meeting followed a series of 15 systematic visits to retirement homes and special regime homes, which took place in 2013. The aim of the round table was to present standards of care for persons with dementia that were formulated on a continuous basis within the reports from the visits to the individual facilities. In the context of the formulated standards, the Public Defender of Rights wished to hear the opinions of experts with practical experience in order to obtain a more profound knowledge of the difficulties and problems these experts face every day. The parties invited to the meeting included representatives of the facilities visited, experts from the Czech Alzheimer Society and the Czech Association of Nurses as well as other experts with whom the Defender had been co-operating in the long term within

the framework of the visits. The Defender's individual recommendations were confronted with practical experience of the directors and experts in direct care and the experts engaged by the Defender. Findings from the round table were utilised in the summary Report from Visits to Residential Social Services Facilities Caring for Persons with Dementia issued in 2015.

- **Administrative Offence in Social Services Facilities, Prague, October 2014.**

The round table brought together lawyers from the Office of the Public Defender of Rights, selected inspectors of social services, staff of Regional Authorities and representatives of the Ministry of Labour and Social Affairs. It was aimed at discussing the Inspectorate's possibilities in penalising interference with the fundamental rights and freedoms of clients of residential social services facilities and sharing of experience. The staff of the Office informed the inspectors of the manner in which visits to residential social services facilities are performed (length, composition of the team, topics of investigation, manner of establishing specific shortcomings etc.) and of the most serious findings relating to interference with the fundamental rights of the clients. A discussion followed regarding the possible solutions available to the Inspectorate of Social Services and possibly other governmental authorities to address the discussed manners of interference. Special attention was paid to measures restricting the freedom of movement of persons in social services. The inspectors pointed out that it is more difficult for them to inspect the manner in which facilities handle measures restricting the freedom of movement or rather whether they comply with the statutory conditions for their use. The inspectors have no access to medical records unless they obtain the relevant client's consent, which is very problematic in case of e.g. persons with dementia. The Defender can use these specific findings in the future when planning the focus of her visits and formulating recommendations.

6.3.3 Other Events Hosted by the Defendant

- **Protection of Rights of Persons Restricted in Personal Freedom – Assessment of 2013, Forecast for 2014, Brno, January 2014.**

A meeting aimed at discussion with foremost experts in protection of human rights in the Czech Republic, and specifically on defining current challenges and priorities in the area of protection of the rights of persons restricted in personal freedom.

- **Meeting with public guardians focusing on unregistered facilities, Ostrava, August 2014.**

The Defender found ill-treatment when performing a systematic visit to a residential facility providing care without the relevant authorisation. Together with the Regional Authority for the Moravian-Silesian Region, the Defender organised a meeting with the staff of municipal authorities who, as public guardians, placed persons subject to guardianship in the problematic facility. The goal was to raise awareness of the activities of the national preventive mechanism and prevention of ill-treatment and to discuss alternatives to unregistered facilities in ensuring provision of social services.

- **Discussion on Definition of Torture and Other Forms of Ill-treatment from the Viewpoint of Criminal Law, Brno, December 2014.**

The Public Defender of Rights has repeatedly provided information about cases of ill-treatment at places where persons are, or can be, restricted in their freedom. Within her preventive activities, she also wishes to engage experts in law and the academia in the discussion on penalisation of ill-treatment. Therefore, she organised an informal meeting to discuss the issue of criminal penalisation of ill-treatment, especially with respect to the category of degrading treatment (for more information, see Chapter 5.3). The Defender can use the findings from the discussion as valuable impulses for formulation of recommendations and her activities within drafting of the relevant legal regulations.

6.4 Educational Events Organised by the Office of the Public Defender of Rights

6.4.1 Training for Policemen Guarding Cells

Based on agreement with the Police President, the Defender prepared a training programme for police officers responsible for guarding persons placed in police cells. The training is aimed at fostering the prevention of ill-treatment, especially in those areas where shortcomings are regularly found on the part of the Police during our systematic visits. Pilot training for 60 police officers from the South Moravian Region took place in October 2014.

Lectures were delivered on individual rights of persons placed in cells and the corresponding duties of police officers. Specifically, advice was provided on the rights of persons placed in cells; exercise of the right to legal assistance; notifying a third party of such placement; exercise of the right to receive medical treatment from a physician of choice; serving meals three times a day at reasonable intervals; removal of medical devices; lodging of complaints. The second part of the training provided a general introduction to fundamental rights and freedoms; international treaties on fundamental rights and their protection; the status and activities of the European Committee for the Prevention of Torture (CPT) and Inhuman or Degrading Treatment or Punishment, including the standards issued by the Committee; and activities and powers of the European Court of Human Rights and the binding effect of its rulings on the Czech Republic. The principles governing the possibility to bind persons in cells to a fixed piece of furniture and the use of restrictive/coercive measures in the safe environment of cells were explained using specific examples from the case-law of the European Court of Human Rights, including the legal case of *Kummer v. the Czech Republic*. This concerns e.g. the principle of using restrictive/coercive measures only under exceptional circumstances (the principle of subsidiarity), the principle of proportionality, the principle of achieving the objective of handcuffing and exclusion of unjustified harm.

6.4.2 Protection of Rights of the Elderly in Residential Social Service Facilities

In November 2014, the Office of the Public Defender of Rights organised two educational events for the staff of social services facilities. The seminars were devoted to the rights of clients in retirement homes and special regime homes. The staff of the Office informed the participants of examples of ill-treatment found by the Defender when performing systematic visits. The objective was to explain the nature of interference with the rights of clients in the area of dignity, privacy, autonomy of will and personal freedom, and to provide examples of bad practice in handling sedating medication and ensuring safety. The Defender's recommendations to combat this interference were presented. Among the lecturers was a nutritional therapist who concentrated on the nourishment of persons with dementia, a consultant of the Czech Alzheimer Society who spoke about some specific aspects of care for persons with dementia, as well as a woman suffering from dementia who shared her personal experience with Alzheimer's disease. The workshops were prepared as a model for communicating findings of the national preventive mechanism to the professional public and will be repeated on a regular basis.

6.5 Popularisation of Protection Against Ill-treatment

6.5.1 Presentations at Conferences and Educational Events

- 1) Conference of the Federation of Children's Homes, topic Findings of the Public Defender of Rights with Respect to Stay of Children in Facilities.
- 2) International conference Strategy for a Common Approach of Contributory Organisations with Respect to Care for Persons with Alzheimer's Disease, topic Findings of the Public Defender of Rights from Systematic Visits to Social Services Facilities Caring for Persons with Dementia.
- 3) Panel discussion within the festival One World, topic Dying in Institutions.

- 4) Conference of the Professional Association of Medical Professionals in Social Services, topic Rights of Social Services Users in the Context of their Rights and Nursing Care.
- 5) Conference Gerontology Days – North-West, topic Recent Findings of the Public Defender of Rights in the Area of Protection of Rights of the Elderly.
- 6) Conference System of Nutrition Care in Residential Facilities, topic Recommendations of the Defender Concerning Nourishment of Persons in Residential Social Services.
- 7) Conference Catering and Operation in Social Services, topic Rights of Social Services Users in the Context of Nursing Care.
- 8) Conference Prague Gerontology Days 2014, topic Presentation of Findings and Recommendations of the Public Defender of Rights.
- 9) 5th International Scientific Conference on Senior's Training and Nonpharmacological Intervention for Alzheimer's Disease, topic Findings of the Public Defender of Rights from Systematic Visits to Social Services Facilities Caring for Persons with Dementia.
- 10) Conference Hradec Days of Social Care, topic Responsibility of the Government to Ensure that the Rights of the Elderly Dependent of Care are Observed.
- 11) Meeting of the Committee of the Association of Regions of the Czech Republic for Social Issues, topic Conclusions from Visits of the Public Defender of Rights to Unregistered Facilities Providing Social Services.
- 12) Interdepartmental Meeting on Awareness on Social Services Providers in Relation to Observance of Rights of Clients, topic Findings and Recommendations of the Public Defender of Rights from Visits to Facilities for the Elderly Providing Care Without Authorisation to Provide Social Services.
- 13) Conference on Nourishment – Integral Part of Care for the Elderly, topic Providing Nourishment to Persons with Dementia.
- 14) 33rd Conference on Social Psychiatry, topic Experience from Visits Made by the Public Defender of Rights to Unregistered Social Institutions.
- 15) Senior Academy, topic Rights of the Elderly in Social Services Facilities.
- 16) Ombudsman Legal Clinic at the Faculty of Law of Masaryk University in Brno, topic Imprisonment.
- 17) Legal Clinic of Social Rights at the Faculty of Law of Palacký University Olomouc, topic Private and Family Life of Children in Institutional Upbringing.
- 18) Instruction at the Faculty of Education of Palacký University Olomouc, topic Findings of the Defender from Visits to Children's Facilities.
- 19) Instruction at the Faculty of Humanities of Tomas Bata University in Zlín, topic Findings of the Defender from Visits to Children's Facilities.

6.5.2 The “Sociální služby” (Social Services) Journal

Every month, the Public Defender of Rights publishes an article in the “Sociální služby” (Social Services) journal. She presents her findings especially from her activities as the national preventive mechanism to professionals in the area of social services and social work in order to prevent ill-treatment in facilities where freedom is restricted de facto.

In 2014, articles were published for example on legal provisions concerning social and health-care services, palliative care, provision of social services without registration and the lawfulness of testing clients for the presence of alcohol.

6.5.3 The Defender's Website

The Public Defender of Rights devotes an independent section of her website to her activities as the national preventive mechanism. In order to inform the public on a continuous basis, the Defender issues short updates (39) as well as press releases (6) in 2014. The website also offers all summary reports and other documents containing findings and recommendations of the Defender with respect to the topic of protection of persons restricted in their freedom, including presentations from educational and awareness-raising events.

6.5.4 Press Conferences

Eights press conferences were held by the Public Defender of Rights in 2014 of which two were devoted exclusively to ill-treatment. They related to ill-treatment in residential facilities providing social services without registration and restriction of freedom in sobering-up stations. The Defender has also appeared in the TV and radio from time to time. The Defender organised a press briefing upon the accession of the international conference on Protection of Rights of Elderly People in Institutions, with an Emphasis on People Suffering from Dementia.



7.1 Sharing of Experience of the NPM – Meetings Organised by the Office of the Public Defender of Rights

In 2014, **two workshops attended by selected NPMs and representatives of Ombudsman institutions** were held under the auspices of the Public Defender of Rights. The workshop was attended by representatives of the Czech, French, Georgian, Hungarian, Polish and Slovenian NPMs and staff of the office of the Slovak Ombudsman. The aim of the meetings was to share knowledge and practical experience relating to the supervision of places where persons restricted in their freedom are, or can be, found.

The first workshop, which took place in February, was held upon the occasion of the international professional conference on Protection of Rights of the Elderly in Institutions, Focusing in Particular on Persons with Dementia. At the conference, papers were presented by experts in the area of care for the elderly and persons suffering from dementia. Apart from the plenary conference, **foreign guests participated in a joint meeting where a number of topics related to the work of the monitoring teams were discussed.** Attention was paid in particular to the methods used within visits, co-operation with experts and NGOs, communication with the public, and other specific questions related to treatment of persons restricted in their freedom (e.g. the use of restrictive measures in health-care facilities and social services facilities, the issue of unregistered residential social services). The findings from the February meeting were summarised in a paper published in the collection of papers from the conference available in both Czech and English at the Defender's website at <http://spolecne.ochrance.cz/dokumenty-ke-stazeni/konference/konference-ochrana-prav-senioru-v-instituci-s-durazem-na-osoby-s-demenci/>.

Another workshop was held in Brno in November with relation to the topics discussed in February.

The meeting was designed as a two-day event, thus ensuring that a number of problems encountered by monitoring teams in their work could be discussed. At this workshop, the discussion centred on specific topics related to preparation for visits to detention facilities, methods, aids used within the visits, nature and contents of the visits and negotiations with the facilities visited. Attention was paid also to the issue of maintaining confidentiality of information obtained during the visits. The topics tackled included, for example, the duty to report criminal offences witnessed or ascertained by the NPM staff based on interviews or analysis of the documentation.

It became apparent that workshops of NPMs and representatives of Ombudsman institutions are an effective tool for sharing of experience and best practice as well as warning against unsuitable or unsuccessful practice. The Defender used the findings of her foreign colleagues in 2015 within an intervention of the methods of work of the NPM.

Both meetings were held as part of the project Together towards Good Governance (Reg. No. CZ.1.04.5.1.00/81.00007). The project is financed from the European Social Fund through operational programme Human Resources and Employment and the State budget of the Czech Republic.

7.2 Active Participation in International Forums

In June 2014, an employee of the Office of the Public Defender of Rights participated in a **symposium** of representatives of NPMs and international organisations in **Geneva** organised by the Association for the Prevention of Torture. The main topic was children's vulnerabilities in detention. The aim was to analyse risk factors and situations that could contribute to abuse and ill-treatment of minors.

In August 2014, the Public Defender of Rights sent an employee of the office to actively participate in a **study visit and workshop upon the occasion of a visit of the staff of the Georgian Ombudsman's office and NPM in Serbia**. At this event organised by the Council of Europe, she presented the activities of the Czech NPM.

In September 2014, the Public Defender of Rights accepted the invitation of the Ministry of Foreign Affairs of Republic of Poland to present her activities at a **seminar concerning protection of children's rights held in Warsaw**. The event was hosted by the Polish Ministry of Foreign Affairs in presence of the Children's Ombudsman for the benefit of representatives of countries in the West Balkans and Turkey. At the representative seminar held on the premises of the Senate of the Polish Parliament, papers were presented by the Polish Ombudsman, staff of Ombudsman institutions in the Czech Republic and Hungary and the Slovak Centre for International Legal Protection of Children and Youth.

The Public Defender of Rights was represented by a member of her staff at an **international meeting of NPMs in Belgrade** in November 2014. The meeting, focusing on prevention of torture of persons restricted in their personal freedom, was attended by representatives of the Subcommittee on Prevention of Torture, the European Committee against Torture, Council of Europe, NGOs (e.g. APT) and NPMs from 18 countries. The representative of the Czech NPM presented findings from systematic visits to facilities for persons suffering from dementia and to facilities providing services to persons dependent on care without having the relevant authorisation.

7.3 Study Visits

In January, three lawyers from the Office participated in a **study trip to London** organised by Lumos, an NGO focusing on children's rights. The aim of the trip was to introduce the participants to the British system of care for vulnerable children and families. The trip included excursions to family-type facilities and meetings with social workers, officials and a judge specialising in family law, who described their respective roles in the system and their experience.

In November 2014, employees from the Supervision Department undertook a **study trip to Georgia**, visiting their colleagues from the office of the Georgian Ombudsman, who is also active as the national preventive mechanism. The aim of the trip was sharing experience with respect to performance of visits. Apart from discussions in the ombudsman's office, the trip included an excursion to an SOS Children's Village and a prison.

**OCHRANA PŘED ŠPATNÝM ZACHÁZENÍM
ZPRÁVA VEŘEJNÉ OCHRÁNKYNĚ PRÁV JAKO
NÁRODNÍHO PREVENTIVNÍHO MECHANISMU**

v roce 2014

in 2014

**PROTECTION AGAINST ILL-TREATMENT
REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER
OF RIGHTS AS THE NATIONAL PREVENTIVE MECHANISM**