Activities of the Public Defender of Rights During Her 2017-2022 Tenure

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Public Defender of Rights

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ABBREVIATIONS AND ACRONYMS

CJEU	- Court of Justice of the European Union
Constitution	- Constitution of the Slovak Republic
Constitutional Court	- Constitutional Court of the Slovak Republic
CPT	- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSFR	- Czecho-Slovak Federative Republic
Defence Ministry	- Ministry of Defence of the Slovak Republic
ECHR	- European Court of Human Rights
Education Ministry	- Ministry of Education, Science, Research and Sport of the Slovak Republic
EU	- European Union
Finance Ministry	- Ministry of Finance of the Slovak Republic
GPO	- General Prosecutor's Office of the Slovak Republic
Health Ministry	- Ministry of Health of the Slovak Republic
Interior Ministry	- Ministry of the Interior of the Slovak Republic
Justice Ministry	- Ministry of Justice of the Slovak Republic
Labour Ministry	- Ministry of Labour, Social Affairs and Family of the Slovak Republic
Office	- Office of the Public Defender of Rights
OPCAT	- Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
Parliament	- National Council of the Slovak Republic
PHA	- Public Health Authority of the Slovak Republic
Transport Ministry	- Ministry of Transport and Construction of the Slovak Republic
UN	- United Nations Organization
ZSSK	- Železničná spoločnosť Slovensko, a. s., a national railway carrier

Even though the mandates and characteristics of ombudsman institutions around the world are varied, the principle of independence undoubtedly is the cornerstone of their constitution and subsequent operation. If the public defender of rights is to impartially examine complaints against practices, procedures and actions taken by public authorities and provide recommendations on the basis of national laws and legal principles in compliance with the principles of democracy and the rule of law while taking into account international law commitments arising from the conventions and treaties by which the Slovak Republic is bound, and to interpret them in line with the EHCR's and the CJEU's case-law, than it must not be dependent on the power of the state. His/her mission is to investigate complaints while preserving the Audi alteram partem principle, and if any violation of the rights of a claimant is ascertained, to consistently side with the claimant, that is, to propose measures for a public authority to take, expecting a positive feedback from that authority, and where no feedback is received, to continue communicating with the authority concerned in order to rectify the situation. What he/she may do in that case is to repeatedly remind and require that the recommendations be complied with; if they are rejected, to communicate the matter with a superior authority, including up to the level of the Government of the Slovak Republic. Where a system-level failure is involved, the public defender of rights may propose that the conclusions of an extraordinary report be discussed by the Parliament, or, if the relevant conditions are met, to make use of his/her ultimate right to refer the matter to the Constitutional Court with a proposal to rule on its unconstitutionality. If the investigation does not find any violation of the claimant's fundamental rights and freedoms, the public defender of rights will notify the result to the claimant and the public authority against which the complaint has been filed.

The presented account of the public defender of rights' activities for the period from 29 March 2017 to 29 March 2022 summarises the kay actions and follow-up proposals, measures and recommendations for the period, and draws on the 2017-2021 annual reports, extraordinary reports of 2018 and 2020, a half-year report on the public defender of rights' activities (September 2019), as well as on proposed recommendations and measures submitted by the public defender of rights to the Parliament for the 2016-2019 period in March 2020.

01 PRIORITIES, INVESTIGATIONS AND SURVEYS: 2017-2022

Pursuant to §13(1) of the Act on the Public Defender of Rights, the public defender of rights takes action based on a complaint lodged by a natural or artificial person, or at his/her own initiative. Therefore, I defined the following topics as the priority areas of my work for 2017-2022 at the beginning of my tenure:

- rights of senior citizens,
- rights of "people in shadow",
- rights of sole traders, small and medium-sized entrepreneurs,
- rights of pupils and students,
- rights of patients,
- Us and Future Generations – right to the environmental protection.

01.1 RIGHTS OF SENIOR CITIZENS

In 2017 and 2018, I conducted **a nation-wide survey focused on the level of inspection of the observance of human rights in social care homes for the elderly.** The following were identified as the most pressing problems.

Too little inspections

If state authorities monitor the conditions in senior care homes insufficiently, violations of human rights are likely to occur in many of them. This have been proved in a number of cases, such as the one involving the *Iris* senior care home where the services were provided by incompetent and unqualified personnel, posing a threat to life of its clients.

The survey specifically focused on inspections in three types of social care facilities that often provide long-term housing to persons of older age; they are senior homes, specialised facilities and social care homes (and their possible combinations). At the end of 2016, a total of 756 providers delivered these three types of services to a total of 36,121 clients. The survey showed that the number of inspections carried out is disproportionally low compared to the number of existing facilities. The Labour Ministry on average performed eight inspections a year, higher territorial units 90 and municipalities 120; these figures are insufficient given the total number of facilities (756).

Powers of inspection authorities are not defined clearly by law

It is evident that inspection authorities are diverse and, moreover, the legislation is relatively fragmented and confusing in this respect. The *Iris* case illustrates this problem, too. Four inspection authorities did not investigate the situation in this facilities despite having indications about problems, as they believed that the competence to inspect this particular facility belonged to another authority.

Most inspections focus on formal aspects only

My survey also found that, in addition to the low number of inspections, the way they are performed presents a problem, as well. They often focus mainly on written documents and files, failing to reflect the actual conditions and quality in the provision of social care services. For example, an investigation carried out by the Office found serious deficiencies in a facility that had already been inspected, which the inspection had not identified: no separate toilets and showers for women and men available, no telephone or signalling system installed in rooms, some corridors insufficiently lit. In addition, the clients must observe the mandatory wake up and lights out hours and lack the active application of support procedures for individual clients. Clients with impaired mobility are inactive during the day; they only sit or lie in bed in their rooms. It is, therefore, necessary not only to increase the number of inspections, but also to change their focus. State authorities have to take interest in examining the actual conditions in which the seniors live.

I presented my findings to all authorities concerned, along with my proposals for improvement. As part of the continuous survey focused on the rights of the senior citizens, the Office employees have visited six facilities in order to examine what the real conditions are in them. The survey has showed that the needs of the institutions still often prevail over the needs of individual clients. Examples include the mandatory wake up and lights out hours, early morning hygiene routines, no use of room dividers, or toilets and showers that cannot be locked.

In the context of recommendations, stemming from the survey, addressed to the relevant authorities, I appreciate that the Labour Ministry's inspection capacities in social care facilities were strengthened in 2019.

I also appreciate a draft law on inspection in social affairs submitted by the Labour Ministry in 2021. The proposal is set to create legislative arrangements for the performance of inspections in social affairs.

Its purpose is to establish a functioning system of administrative supervision, thus contributing to enhanced effectiveness and quality of social care services delivered as part of the right to social security.

01.2 "PEOPLE IN SHADOWS"

National preventive mechanism in facilities for persons with restricted personal liberty

An essential element in preventing mistreatment are systematic visits to facilities which hold or may hold persons with restricted personal liberty or persons who are reliant on institutional care. Such visits need be carried out by an independent institution with expert capacities in medicine, psychology, paediatrics or geriatrics.

Dignified treatment of persons whose liberty has been restricted contributes to their easier social reintegration at a later stage, and to reducing recidivism. Strengthening the prevention of ill-treatment of persons with restricted personal liberty is also one of the objectives

pursued by the OPCAT. Slovakia signed the OPCAT in December 2018 but has not ratified it so far.

The OPCAT establishes a two-pillar system of monitoring the treatment of persons deprived of their liberty. The first pillar consists of so-called national preventive mechanisms, the second pillar is the UN Subcommittee for the Prevention of Torture and Other Inhuman or Degrading Treatment or Punishment. Each State Party to the OPCAT has committed to establish one or more independent national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment at the national level.

Slovakia has yet to set up a national preventive mechanism to ensure the regular and systematic monitoring of facilities where people with restricted personal liberty are held. The CPT has also warned of this issue.

The Justice Ministry has been working for years on the legislative arrangements to set up the national preventive mechanism. A second version of the draft law was already submitted for a legislative procedure in 2021. However, the legislative procedure was discontinued after the inter-ministerial consultation procedure, even though the law was expected to enter into force on 1 January 2022.

To enhance the standards of protection of fundamental rights of persons deprived of their liberty I consider it important to complete the ratification of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and to adopt the legislation on the national preventive mechanism in the shortest time possible.

01.3 RIGHTS OF SOLE TRADERS, SMALL AND MEDIUM-SIZED ENTREPRENEURS

In order to promote improvements in the business environment, I included the review of the functioning of business registers and their digital interconnection among the priorities of the Office.

Its purpose was to map the possibilities for improvement of the business environment, in particular with respect to small and medium-sized entrepreneurs, with the focus on temporal effectiveness and trouble-free operation of registers. The actual investigation took form of a questionnaire-based survey among competent registry courts.

The survey carried out in 2019 identified a number of issues the registry courts consider problematic and impairing the effectiveness of registry procedures. The main problems involved insufficient interconnection of the business register with reference registers and the missing interconnection between a so-called disqualification register with the CORWIN software, as well as an overall functionality deficiency of the CORWIN system. The problem with understaffing is most prominent at the Bratislava I District Court where the disproportion between the high number of submissions and the number of senior court officers has long been an issue.

I presented my findings to the Justice Ministry and asked it to adopt measures to remove the identified technical and operational shortcomings and, as far as possible, partial personnel problems and obstacles that are the cause of decreased work effectiveness and impaired functioning of the Slovak business register.

The justice minister informed me about **partial corrections** made in response to my recommendations in 2020. The Justice Ministry's civil law section organised a meeting of registry courts' representatives where the registry courts were asked to designate contact persons for the purpose of cleaning the business register, linking it to the reference registers and for the new process of winding-up and liquidation of companies in order to promote effective cooperation and remove delays in the processing of their agenda. At the same time, the Justice Ministry prepared and presented a non-legislative document entitled "Proposal of Measures for Effective Functioning of the Business Register" which contains a comprehensive system of a whole range of changes, legislative, technical and managerial measures to bring about an effective change and establish a new business register information system.

01.4 RIGHTS OF PUPILS AND STUDENTS

Discrimination and segregation of Roma children in the Slovak education system

The Office has closely monitored the observance of the right to education without discrimination for the Roma children in the Slovak education system for a long time. The shortcomings in the functioning of the educational system in Slovakia were repeatedly identified not only by the findings from the surveys carried out in 2013,[1] 2014[2] and 2015,[3] but also by several organisations engaged in this area.

In 2015, the European Commission initiated proceedings on the suspected violation of Council Directive 2000/43/EC with respect to the ongoing discrimination of Roma children in the Slovak education system.

International human rights organisations, as well as individual submissions handled by the Office repeatedly hinted at improper inclusion of Roma children in schools and classes intended for children with mild mental disabilities, as well as the unlawful practice of establishing ethnically homogenous classes and/or ethnically homogenous regular schools for Roma children.

[1] Report by the public defender of rights on the exercise of the right to education for Roma children/pupils with special educational needs, Bratislava, July 2013.
[2] Report by the public defender of rights: The impact of school ability tests on the basic rights of the child from non-stimulating environment with a cultural, social and language barrier, especially from the Roma minority, Bratislava, July 2014.
[3] Report of the public defender of rights on the results of the survey on the obtaining of informed consent from parents of primary school pupils (with the special focus on how schools obtain informed consent from Roma parents of a pupil suffering a cultural, social and language barrier and of a pupil with special educational needs), Bratislava, December 2015.

In light of these facts, I decided to prepare a comprehensive analysis[4] of the measures proposed by my predecessor in the office, Mrs Jana Dubovcová. Based on the results of the audit on the observance and protection of the fundamental right to education, I arrived at the conclusion that the changes adopted by the Education Ministry since the start of the Commission's proceedings against Slovakia have not led to a visible progress in the elimination of discriminatory practices and segregation in the education system.

The shift to remote schooling due to the COVID-19 pandemic has exacerbated access of Roma children from marginalised Roma communities to education even more. Surveys estimate that up to 60% of Roma children had no contact with their teachers during the first wave of the pandemic, and as much as 70% could not attend online classes due to the lack of necessary technology, internet connection or due to insufficient skills and family background for the work in the online environment.

Even though the Education Ministry announced in 2020 its commitment to eliminate discrimination and segregation of Roma children in the education system, it has so far failed to adopt all necessary specific measures to eliminate them in practice. A positive shift in this respect is the introduction of compulsory pre-primary education for five-year olds, approved by the Parliament in 2019. In order for this change to be successful in practice, pre-primary education capacities must be enhanced.

Improper inclusion of Roma children in special classes and schools for children with mild mental disabilities has a major negative impact on their prospects and chances on the labour market in the future. By violating the right to education without discrimination and segregation we keep entire generations of children from marginalised Roma communities in the vicious circle of poverty.

01.5 RIGHTS OF PATIENTS

Forced removal of reproductive organs of transgender persons

In 2018, I examined complaints related to the procedure of legal gender recognition of transgender people in Slovakia, a procedure conditional upon them undergoing a surgical intervention to have their reproductive organs removed and/or ensure the sterility in such persons.

This procedure was introduced to practice by a 1981 notice of the Ministry of Health of the Slovak Socialist Republic. The notice, however, has since become invalid and ineffective and is in contradiction with Article 13(1) of the Constitution which stipulates that obligations may only be imposed by law or on the basis of a law, within its limits and must preserve the fundamental rights and freedoms.

[4] Report by the public defender of rights on the progress in the implementation of the measures proposed in 2013, 2014 and 2015 in the educational process in Slovakia to improve the protection and observance of individuals' fundamental rights and freedoms, Bratislava, May 2018.

Moreover, such medical interventions and surgeries, including sterilisations, affect vital physical functions of an individual and also have an effect on several aspects of the individuals' integrity, their physical and mental health, and their emotional, spiritual and family life.

While sterilisation may be performed legitimately upon an individual's request, for example, as a means of contraception or for therapeutical purposes, i.e., in cases where the intervention has conclusively been medically indicated, the situation is different in cases where mentally competent adult patients are required to undergo sterilisation against their wish. Such practice is incompatible, or in conflict with the requirement of respect for human freedom and dignity, which is one of the fundamental principles on which the Convention for the Protection of Human Rights and Fundamental Freedoms has been built.

On that account, I recommended the Health Ministry to issue, in the shortest time possible, new methodology guidelines and/or standards on the provision of health care to transgender persons in connection with the procedure of legal gender recognition that will have, on the one hand, the legal force corresponding to the obligations arising from them and, on the other hand, will comply with Slovakia's positive commitment to respect the right of transgender people to human dignity and private life pursuant to Article 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Health Ministry is aware of this situation of transgender persons and has set up a working group to develop a methodology and/or health care guideline for transgender people. These standards have not been adopted yet.

01.6 US AND FUTURE GENERATIONS – RIGHT TO THE ENVIRONMENTAL PROTECTION

In October 2020, I exercised my right under §24 of the Act on the Public Defender of Rights and submitted the "**Extraordinary report by the public defender of rights on the situation with resolving environmental burdens in the Slovak Republic"** to the Parliament.

The reason for the submission of the extraordinary report were the findings indicating that actions taken by some public administrative bodies had not only resulted in a serious violation of fundamental rights and freedoms, but that this violation had also affected a larger number of persons.

For the sake of protection of the constitutional right to the protection of health (Article 40 of the Constitution), the right to the healthy environment and environmental protection (Article 44 of the Constitution), and the right to timely and complete information on the state of the environment (Article 45 of the Constitution), **I deemed it necessary to present this extraordinary report in order to draw attention to my findings and to propose multiple measures which should contribute to an accelerated removal of environmental burdens in Slovakia.**

Environmental burdens became an issue both for the general public and public authorities and other public administration bodies in the early 1990s (especially in connection with the departure of the occupying forces of the former Soviet Army from the CSFR territory and in connection with the elimination of the environmental damage they had left behind), and were also partially addressed as part of the so-called "large-scale privatisation" where the legislation on the conditions of transfer of state-owned property to other persons included an obligation to assess the liabilities of an enterprise from the environmental perspective and, where any environmental pollution was identified, to quantify the damage caused to the environment.

Like many other things associated with the "large-scale privatisation", this aim, unfortunately, was not achieved in full, and many former state-owned enterprises were transferred into private hands without their new owners having assumed liability for their environment-related debts (the obligation to remove environmental burdens the privatised state enterprises had produced in the past).

Despite the generally increased attention the issue of environmental burdens has received in the recent years, Slovakia has to this date failed to remove the majority of this hazardous and health-threatening heritage of industrial, military, mining, transportation or farming operations.

Of the total 152 environmental burdens classified as category B burdens (confirmed environmental burden) with high priority (K > 65) in the Register of Environmental Burdens, i.e., environmental burdens located in the territory of individual Slovak regions that are classified as the most hazardous not only to the environment but also to the life and health of all residents in contaminated areas, originators have still not been identified in 73 case because competent authorities have not even started proceedings to identify persons responsible for their removal pursuant to §5(1) of the Act on Certain Measures on Environmental Burdens.

I deem this extremely alarming, especially in view of the fact that all of them are high-priority environmental burdens that have been a threat not only to the environment but also to the life and health of all residents for decades.

They are not "time bombs" that may go off at any moment (as the environmental burdens are often described) but, in my opinion, they are actually "bombs already gone off" whose devastating impacts on the environment, human health and nature in general are already at work, though we cannot always recognise it with sufficient speed and precision.

In this respect I have noted the adoption of an amendment to the Act on Environmental Burdens in the Parliament in November 2021 the aim of which is to ensure the return on public funds spent on the removal of environmental burdens on lands of private owners. At the same time, however, I am also aware of the doubts raised by experts, as well as by President Zuzana Čaputová who vetoed the amendment, saying she had doubts about its compliance with the Constitution.

A positive shift in this regard is the submission of an amendment to the Act on Geological Works for a legislative procedure which, if approved by the Parliament, will strengthen public access to information about environmental burdens.

02 NEW TOPICS IN THE OFFICE: 2017-2022

During my tenure, I have also paid attention to new topics, arising from individual submissions delivered to the Office, as well as those I have examined of my own initiative.

In addition to resolving complaints filed by individuals, i.e., specific cases involving violations of their rights, the mission and the task of the public defender of rights is also to cultivate the legal environment in general so that the fundamental rights and freedoms of every person are protected and excercised to the extent required not only by the Constitution but also by international treaties and conventions that take precedence over the national laws pursuant to Article 7(5) of the Constitution. It means the public defender of rights also carries out abstract protection of fundamental rights and freedoms.

This role manifests, for example, in the public defender of rights' power to submit petitions to the Constitutional Court to examine the compliance of legal regulations with the Constitution if their continued application may put at risk fundamental rights and freedoms or human rights and fundamental freedoms arising from an international treaty ratified by Slovakia and promulgated in a manner prescribed by law.

The public defender of rights is also entitled to act of his/her own initiative, if necessary. Investigations conducted regardless of actions, decision-making or inaction of a particular public administration body, or regardless of the existence of a concrete violation of rights of a particular applicant, focus on examining whether the specific system is sustainable from the point of view of the protection of human rights.

02.1 VOTING BY POST FROM ABROAD

The possibility to participate in the governance of public affairs by electing one's own representatives is one of the fundamental pillars of democracy. Despite the organisational complexity of postal voting, Slovak nationals living abroad must be enabled to vote by post or electronic means of communication in all types of elections, not just in parliamentary elections or referendums.

The Council of Europe has also pointed out the need to remove obstacles to the effective exercise of voting rights, namely in Parliamentary Assembly resolution 1459/2005 which urges member countries to enable their citizens living abroad to vote during national elections.

Representatives of Srdcom doma (*Heart at Home*), an NGO representing Slovak citizens who often stay abroad but want to be able to vote in all elections, asked me in 2019 to support their effort to push through changes in this area.

I, therefore, recommended the Parliament to adopt new legislation enabling the citizens who are eligible to vote in Slovakia to exercise their constitutional right to participate in public governance through having the possibility to vote in elections and referendums even if they are staying abroad at that time. The legislation has not been adopted yet.

02.2 UNLAWFUL STERILISATIONS OF WOMEN

Unlawful sterilisations of Roma women have been on my agenda since 2018. Forced sterilisations represent a gross infringement of women's physical integrity and dignity, leaving irreversible impacts on their private and family life.

Slovakia has repeatedly been criticised for this unlawful practice by international organisations for fifteen years now.[5] Most recently, in October 2019, the UN Committee on Economic, Social and Culture Rights urged Slovakia to provide proportionate, effective and timely remedies to all victims of forced sterilisation.[6]

The practice of sterilising women as a means of controlling birth rate of socially worse-off groups of population goes back to the socialist Czechoslovakia of 1970s and 1980s. However, this practice has not been abandoned even after the change of the regime and the establishment of an independent Slovakia. Non-governmental organisations for the first time gathered and presented quite comprehensive evidence of unlawful sterilisations performed mainly on Roma women in eastern Slovakia in a 2013 report.[7]

The women were either sterilised without their informed consent, or such consents were obtained based on misleading and intimidating information or in situations when the women, under the circumstances, were unable to recognise the consequences of their decision.

Having failed before national courts, some of the unlawfully sterilised Roma women submitted their individual complaints before the ECHR. The ECHR found the violation of rights of the applicants in all cases and awarded them pecuniary compensations. Nevertheless, as evidenced both by continued objections raised by international organisations and the ECHR's case-law, the existing national legislative framework does not provide effective remedies to victims of forced sterilisations.

[5] Concluding observations of the UN Human Rights Committee for Slovakia of 2003, 2011 and 2016; Concluding observations of the UN Committee on the Elimination of All Forms of Racial Discrimination for Slovakia of 2004, 2013 and 2018; Concluding observations of the UN Committee on the Elimination of All Forms of Discrimination against Women for Slovakia of 2008 and 2015; Concluding observations of the UN Committee against Torture for Slovakia of 2009 and 2015; Concluding observations of the UN Committee for People with Disabilities of 2016; Reports of the Commissioner for Human Rights of the Council of Europe CommDH(2003)12, CommDH(2011)42, CommDH(2015)21.

[6] Concluding observations of the UN Committee on Economic, Social and Cultural Rights for Slovakia of 2019.

[7] Body and Soul: Forced Sterilisation and Other Assaults on Roma Reproductive Freedom, Center for Reproductive Rights and Poradňa pre občianske a ľudské práva (Centre for Civil and Human Rights), 2003.

The only possibility to seek remedy under the current legislation is filing a civil action. It, however, seems ineffective in many cases, as the chances of success in court proceedings are minimal.

The best solution to provide victims of forced sterilisations with access to effective remedies and proportionate compensations seems to adopt a special law. In this respect, I have recommended the Parliament to adopt specific legislation that would allow taking into account all specificities of the cases involving illegal sterilisation and ensuring access to effective means of redress and adequate compensation for all victims.

Combination of my urges and the willingness of state institutions to accept responsibility for the harm done, contributed in 2021 not only to the Slovak government making a symbolic gesture in the form of condemning the violations of human rights and apologising to women for unlawful sterilisations (November 2021), but also to setting up a platform of experts to create a legal framework to introduce a mechanism to ensure quick and effective access to compensations for victims of forced sterilisations. Since the process is in progress, it still deserves the necessary attention.

02.3 LET'S TALK ABOUT CHILDBIRTHS: HUMAN RIGHTS-BASED APPROACH IN CHIDLBIRTH CARE

The concerns about the violation of women's right in the provision of health care during childbirths have been raised in the recent years by numerous international human rights organisations, including the UN[8] and the Council of Europe[9]. Surveys[10] carried out by non-governmental organisations in Slovakia have identified such violations in Slovakia as well. In view of the above mentioned facts and in light of individual complaints the Office has received in this respect, I have decided to investigate this issue on my own initiative.

The provision of health care services during childbirth must be considered in the context of the protection and observance of women's

[8] UN Special Rapporteur on violence against women, Report on human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence, 2019, UN Committee on the Elimination of Discrimination against Women. 2015. Concluding observations: Slovakia, CEDAW/C/SVK/CO/5-6, 2015, para. 33(b).

[9] Commissioner for Human Rights of the Council of Europe, Women's sexual and reproductive health and rights in Europe, 2017, resolution 2306 (2019) – Obstetrical and gynaecological violence, Parliamentary Assembly of the Council of Europe.

[10] See: DEBRECÉNIOVÁ, J. (ed.); BABIAKOVÁ, K. – DEBRECÉNIOVÁ, J. – HLINČÍKOVÁ, M. – KRIŠKOVÁ, Z. – SEKULOVÁ, M. – ŠUMŠALOVÁ, S.: *Ženy – Matky – Telá: Ľudské práva žien pri pôrodnej starostlivosti v zdravotníckych zariadeniach na Slovensku* [Women - Mothers - Bodies: Women's Human Rights in Obstetric Care in Health Care Facilities in Slovakia]. Bratislava: Občan, demokracia a zodpovednosť [Citizen, Democracy and Accountability], 2015; BABIAKOVÁ, K. – DEBRECÉNIOVÁ, J. – HLINČÍKOVÁ, M. – KRIŠKOVÁ, Z. – SEKULOVÁ, M. – ŠUMŠALOVÁ, S.: *Ženy – Matky – Telá II: Systémové aspekty porušovania ľudských práv žien pri pôrodnej starostlivosti v zdravotníckych zariadeniach na Slovensku* [Women – Mothers - Bodies II: Systemic Aspects of Violation of Women's Human Rights in Obstetric Care Provided in Healthcare Facilities in Slovakia]. Bratislava: Občan, demokracia a zodpovednosť [Citizen, Democracy and Accountability], Ženské kruhy [Women's Circles], 2016; Poradňa pre občianske a ľudské práva [Centre for Civil and Human Rights] and Center for Reproductive Rights: *Vakeras zorales – Hovoríme nahlas: Skúsenosti rómskych žien so zdravotnou starostlivosťou o reprodukčné zdravie na Slovensku* [Vakeras Zorales – Speaking Out: Roma Women's Experiences in Reproductive Health Care in Slovakia], 2017.

rights. The right to health is the fundamental right guaranteed under Article 40 of the Constitution. The enjoyment of this right is also closely related to the enjoyment of other human rights that are enshrined not only in Slovakia's national legislation (mainly in the Constitution and applicable laws), but also in the international conventions by which Slovakia is bound.

I have primarily focused on the observance of the right to informed consent, to the protection of human dignity, respect for physical and mental integrity, as well as the observance of the right to enjoy the benefits of scientific progress and its application and to protection of privacy. The right to human, ethical and respectful treatment by health care professionals and the right to respect for private and family life are also important components of childbirth and maternity care.

Since I consider data collection to be an integral part to the effective monitoring of human rights protection, I have decided to carry out an online survey to identify, quantify and better understand the underlying causes of possible violations of women's rights in the provision of healthcare services during childbirth as seen by the women themselves. The online survey took form of a mapping study.

A total of 3,164 women participated in the survey, describing their childbirth experience. I have much respect for every single woman who participated in the survey and provided important information about their experience. The report and the authentic testimonies by women it contained created room to initiate a society-wide professional debate on this issue.

The results of the survey show that despite the improvements in some areas (for example, with respect to the treatment of women in labour by the medical personnel), the childbirth care does not fully respect the scientific and medical progress, while respecting the women's rights. The most important findings include the violations of the right to protection of privacy, to informed consent, to protection of human dignity, to respect for physical and mental integrity, and to enjoyment of the benefits of scientific progress.

I have presented my findings to the Health Ministry, along with the proposals for measures to remove identified deficiencies. For example, I have suggested introducing uniformly applied standards that will be based on the scientific and medical evidence and fully respect the rights of women.

Monitoring their uniform and consistent application so that all expectant mothers in Slovakia have access to high-quality healthcare services is an important part of these efforts.

With respect to protecting the women's right to privacy and intimacy, I have proposed in the report to allocate sufficient funds to healthcare facilities to ensure a decent and respectful environment for women in labour and adequate working conditions for medical personnel.

I have also recommended adopting new legislation to guarantee the right of women in labour and patients, including minors, to be accompanied by a close person/person of their choice when receiving health care.

Further important recommendations include organising workshops for medical personnel to raise their awareness of violence against women, introducing regular training on how to obtain free and informed consent from patients, and strengthening education on human rights standards in health care at medical schools. It is also important to set up an effective complaint handling mechanism that will guarantee independent investigation and sanctioning of institutions concerned where the human rights of women giving birth, and patients in general, have been violated, and provide victims with adequate compensations and remedies.

I presented these grave findings at a meeting with the health minister Vladimír Lengvarský in June who supported my conclusions and recommendations. He also noted that, in the 21st century, the issues described in the report should have been resolved long ago. He pledged to take steps to improve the protection of women's rights during childbirth. His aim is to transfer the healthcare system so that the focus is on patients, specifically mothers in this case.

In this respect, I highly appreciate that one of my recommendations was adopted in a few months after the publication of the report on the observance of women's rights in childbirth care. In October, the Health Ministry published uniform childbirth care guidelines which reflect the findings from the report. Many of the measures I proposed have been incorporated in the new guidelines. They include rules relating to accompanying persons, informed consent, right to privacy or, for instance, episiotomies.

It was not only me but also non-governmental organisations that had long been calling for the adoption of such standard guidelines. Their implementation into practice is now another important step we must take.

02.3 RIGHT OF SAME-SEX COUPLES TO LEGAL RECOGNITION IN SLOVAKIA

Acting of my own initiative, I published the Position of the public defender of rights regarding the right of same-sex couples to have their relationship recognised in the legislation of the Slovak Republic in 2017.

Legal recognition of same-sex partnerships is an important element in the protection of fundamental rights and freedoms as it bears heavily on their private and family life. The restricted scope of rights of the same-sex couples is, moreover, in a clear conflict with, to say the least, the principle of equality defined in Article 12 of the Constitution. Even more so, since the level of protection afforded to same-sex partnerships has recently been increasing across the member states of the Council of Europe.

The ECHR case-law and the parameters important for establishing a positive obligation to recognize same-sex couples (e.g., an opinion poll affirmative of ensuring a certain level of recognition and protection) indicate that the absence of legal recognition of same-sex partnerships contravenes the human rights commitments of the Slovak Republic.

Therefore, I have recommended the Parliament to develop a legal framework for a so-called minimum standard for recognition of same-sex partnerships in compliance with the relevant ECHR case-law. No legislation reflecting my recommendation has been adopted.

02.3 THE RIGHT OF SAME-SEX PEOPLE TO BE GRANTED RESIDENCY UNDER A FAMILY MEMBER STATUS

Another area involving the rights of same-sex couples is their discrimination in the process of granting permanent residence to a third-country national on the grounds of sexual orientation.

In 2018 I reviewed a complaint made by a same-sex married couple who had been legally married in a third country. One spouse is a Slovak national, the other one is a citizen of New Zealand. The couple contested the impossibility of the New Zealander spouse to receive a residence permit in Slovakia based on a status of a family member of a Slovak national.

Having analysed their complaint, I have concluded that non-granting the right to permanent residence to a third-country national (who is a spouse of a Slovak same-sex national) interferes with the fundamental rights and freedoms of both spouses. The fact that same-sex marriages are not allowed under the Slovak law bears no difference to this conclusion.

Several jurisdictions around the world allow same-sex marriages. The fact that Slovakia refuses to recognise a person in a same-sex marriage as a family member for the purpose of granting the permanent residence represents an interference with the fundamental rights and freedoms of such spouses.

As long as the Slovak authorities grant permanent residence to opposite-sex spouses of Slovak nationals, while refusing to grant permanent residence to same-sex spouses of Slovak nationals (based on their marriage legally concluded under a third-country legislation), such practice must be identified as discrimination on grounds of sexual orientation.

Therefore, I recommended the Parliament to pass a legislative amendment enabling an undisturbed enjoyment of the right to family life by permanent residence applicants on the grounds of family ties (legally concluded marriage) irrespective of their sexual orientation. No legislation reflecting my recommendation has been adopted so far.

02.3 SUBMISSIONS MADE TO THE CONSTITUTIONAL COURT

Enforcement procedures involving minors

During my review of the actions taken by the City of Žilina and based on two individual complaints, I found out in 2017 that enforcement procedures had been initiated against minors for arrears on the local fee for municipal waste under §77(2)(a) of the Act on Local Taxes and on Local Fee for Municipal Waste and Minor Construction Waste.

When recovering arrears on the local fee, the City of Žilina applied an assumption that a taxpayer must automatically be considered a tax debtor, i.e., a person against which a potential enforcement procedure should be held. This interpretation was also supported by the Finance Ministry.

In light for the foregoing considerations, I arrived at the conclusion that children are actually subject to an obligation which they cannot be reasonably expected to meet because, unlike the adult persons, they are not in the position to comply with the obligation to pay local fees/taxes.

I asked the Constitutional Court on 11 January 2018 for a constitutional review of the relevant provision of the Act on Local Taxes and on Local Fee for Municipal Waste and Minor Construction Waste. The Constitutional Court rejected my petition as clearly unfounded on 12 September 2018. However, it upheld my opinion that considering the best interests of the child also requires the protection against a situation when a minor child would bear the sole liability for a debt they objectively cannot honour.

In the context of the Constitutional Court's finding, a distinction needs be made between a taxpayer and a tax debtor. The term '(tax)payer' serves record-keeping purposes only and may also include minors. However, the payment obligation is transferred to a child's parent/legal guardian who thus becomes a tax debtor. It means that where any debt exists, the enforcement procedure must be held against the legal guardian, not against the child.

Nevertheless, even several months after the Constitutional Court's resolution had been published, the practice in the City of Žilina did not change and the enforcement proceedings against children continued. I alerted the city that, by doing so, they are disrespecting the best interests of the child and I called on the city to take measures to remedy this situation. I also thought it necessary to address this issue at the system level and, in April 2019, I recommended that the Finance Ministry adopt methodological guidelines for the act that would reflect the Constitutional Court's resolution. The Finance Ministry expressed an interest in resolving the issue through a legislative change, which formed part of an amendment to the Waste Act.

The amendment has already been passed by the Parliament and provides a greater level of legal certainty. It clearly defines the transfer of the obligation to pay the municipal waste fee from a minor to his or her legal guardian. At the same time, by setting a time limit for settling the debt on behalf of the minor by his or her legal guardian, it resolves the problem of the enforcement proceedings against minors that are already underway. After the expiry of this time limit, if the debt is not settled, it becomes the debt of the legal guardian by law.

Age limits in obtaining compensation allowance

On 2 April 2020, the Constitutional Court ruled on my proposal concerning the discriminatory age-related requirements for the award of financial allowances for personal assistance and for the purchase of a motor vehicle, prepared in cooperation with the commissioner for people with disabilities.

I had been alerted of this issue by the commissioner for people with disabilities who had forwarded complaints from people with disabilities to the Office. Having reviewed these complaints, I arrived at the conclusion that the existing legislation was discriminatory and violated the rights of people with disabilities to autonomous living and full enjoyment of all fundamental rights. Therefore, I decided to file a motion for constitutional review with the Constitutional Court in order to change the existing legislation and remove the discriminatory requirements.

The Constitutional Court declared the pertinent legislation incompatible with the Constitution and with Slovakia's international obligations. I appreciate the decision as it opens the door to financial allowances for many people with disabilities who could not receive these allowances in the past.

Maternity benefits for the police, military and rescue services members

My activities also focused on reviewing legislative arrangements on maternity benefits under a special social security scheme which covers members of the police, the military and rescue services.

Having analysed the existing legislation, I arrived at the conclusion that male members of the police, the military and rescue services have more difficult access to maternity benefits compared to other employees insured under the general social security scheme.

The legislation governing the general social security scheme permits that a father of the child receives, not sooner than six weeks after the child was born, a maternity benefit provided that the mother of the child receives no maternity or parental benefit for the same child. The legislation on the social security for the police and military officers does not contain such a possibility at all.

Even though they may, shortly after the child is born and upon agreement with the mother, assume the care of the child and take parental leave equal to maternity leave for this period, they are not entitled to maternity benefits. Sole exemptions include situations exhaustively listed in the Act on Social Security of the Police and Military Officers, which include mother's inability to take care of the child on defined grounds (her death, the child being entrusted to the father's care by court, etc.).

At the same time, I found that despite the equal rate of insurance premiums paid on sickness insurance under the general and special social security scheme, the police, military and rescue services members are entitled to a lower maternity benefit that the persons insured under the general social security scheme. The maternity benefit under the Act on Social Security of the Police and Military Officers represents 70% of their net service pay only, compared to a maternity benefit equal to 75% of a daily assessment base under the general social security scheme, which is identical to a gross wage in the case of dependent activity.

This difference contravenes one of the basic ideas behind creating the special social insurance scheme for the police, military and rescue

services, which was to afford their members a higher standard of social security. Since this deficit was not offset by any other benefit to mitigate this unequal treatment, I decided to submit a proposal for an amendment of the existing legal arrangement which, however, has repeatedly been rejected by the Interior Ministry.

Therefore, I filed a petition with the Constitutional Court on 4 November 2020 to initiate proceedings under Article 125 of the Constitution to review the compliance of legal regulations with the Constitution.

At its 28th session held on 13 May 2021, the Parliament adopted a draft amendment to the Act on Social Security of the Police and Military Officers which increased the maternity benefit from 70% to 100% of net service pay.

The amendment entered into force on 1 July 2021 and the reasons for which I had initiated the compliance review proceedings in this matter ceased to exist. In response, I withdrew my proposal in the part related to the amount of the maternity benefit paid under the special social security scheme. However, I have maintained my proposal in the remaining part, that is, the one involving the impossibility for the male members of the police, military and rescue services to receive maternity benefits, except for the cases specifically listed in the Act on Social Security of the Police and Military Officers.

Labour unions of military professionals

Upon a submission delivered to the Office, I have also examined the existing legal arrangements governing the right to freely associate with others in order to protect one's economic and social interests in the Armed Forces of the Slovak Republic. Both the Act on Civil Associations and the Act on the State Service of Military Professionals effectively prevent the military professionals, unlike the police officers, to be organised in labour unions, with a membership of any such unions constituting the reason for ending a service contract of a military professional.

The military professionals are only allowed to associate in civil associations with professional ties to the Slovak Armed Forces but the legal and factual position of such associations is not equivalent to that of labour unions. I have established that our existing legislation is based on the post-revolution distrust of state authorities towards the Armed Forces which were a support to the former Communist regime. Now, when Slovakia is a member of international transatlantic and European organisations, such distrust should have no longer be justified, neither in fact nor constitutionally. However, the legislation in question has yet not been amended.

Based on the ECHR's case-law and decisions adopted by the European Committee of Social Rights, I have arrived at the conclusion that even though restrictions may be put in place for Armed Forces members with respect to their right to strike or their right to associate in labour unions, such restrictions must not go as far as depriving the right in question of its substance and preventing the military professionals from associating in labour unions without further measures. When examining this submission, I have asked the Defence Ministry for an opinion based on

the presumption of constitutionality of the national legislative provisions concerned.

Since I found that the contested legislative provisions may be in conflict with the Constitution and Slovakia's international obligations and commitments, I have requested the Defence Ministry to amend the relevant legislation. The Defence Ministry did not agree with my conclusions, even when presented at a meeting in person; therefore, I have decided to submit a petition to the Constitutional Court to review compliance of the legislation with the Constitution.

The Constitutional Court has not decided on this petition so far.

03 PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS AT THE TIME OF PANDEMIC

The major policy and legal challenge faced by individual countries at the time of COVID-19 pandemic is their ability to respond to this crisis in a way that will ensure that the measures adopted by governments do not endanger the fundamental pillars of democracy, rule of law and human rights.

I examined the actions taken by state authorities participating in the implementation of pandemic measures based on the submissions made in 2020 and 2021.

However, my active engagement in the protection of fundamental rights and freedoms during the pandemic is limited by the powers of the public defender of rights defined in the Constitution and in the Act on the Public Defender of Rights. Since my powers do not apply to the Slovak government, I could not examine the measures taken at the government level.

Under the Constitution and applicable legislation on the position and powers of the ombudsman institution, the government is excluded from the mandate of the public defender of rights in the period of "normality" and this situation is also preserved at the time of the state of emergency when the decision-making powers with potential impacts on fundamental rights and freedoms are concentrated in the hands of the Slovak government acting as an executive body.[11]

At the same time, under the applicable laws, the public defender of rights has no standing rights before the Constitutional Court with respect to the adoption of a decision declaring the state of emergency and to follow-up decisions to the declaration of the state of emergency. Such submissions may only be made by MPs, the Slovak government, the president, or the prosecutor general.

Of all public authorities representing the individual branches of government, the public defender of rights thus cannot intervene in the discourse – very useful from the point of view of a free civil society – on

[11] §3(2) of the Act on the Public Defender of Rights

the current exceptional societal situation, formalised in the review of the government's decisions, or in the form of the proceedings before the Constitutional Court.[12]

I consider this scope of the mandate of the public defender of rights self-contradictory. At the time of the state of emergency, when the government concentrates the executive power in their hands in order to contain the pandemic, even by restricting several fundamental rights and freedoms, the institution, authorised to do so during "normal" times, is excluded from the discourse and disqualified from reviewing the scope of restrictions of the fundamental rights and freedoms.

For these reasons, I focused my attention mainly on decision-making and actions taken by the Health Ministry, the PHA and regional public health offices.

With respect to the measures taken to protect public health, I pointed out several interventions in human rights whose proportionality seemed rather problematic. Such measures included, for example, the introduction of state quarantine, procedural practices of preventing foreign nationals from entering Slovakia, a general ban for senior citizens to shop outside specified hours, restrictions applying to seniors in social care homes, restrictions on the provision of standard healthcare services, or quarantining entire Roma communities.

During the first wave of the pandemic, I reviewed several complaints against the pandemic measures – such as school closures and their re-opening during the first wave of the pandemic, mandatory face masks at schools, preferential placement of children of certain professions in kindergartens – and, after considering the proportionality criterion, arrived at the conclusion that they had not violated fundamental rights.

Quarantining Roma communities

Throughout 2020 and 2021 entire Roma communities were put under the quarantine by regional public heath offices. Having examined these measures and their implementation in individual cases, I came to believe that they violated fundamental rights and freedoms of people in the quarantined communities.

Since my previous notifications to the PHA had not led to the desired change, I decided to refer the matter to the GPO, along with a request to review the lawfulness of regulations by which quarantines in Roma communities had been imposed. Also, I asked the GPO to consider the possibility of referring this matter to the Constitutional Court.

The GPO referred my petition to individual regional prosecution offices for scrutiny. However, they dropped the matter one by one as the quarantines had meanwhile ended and reviewing the contested regulations no longer made sense.

Religious freedoms

[12] *Mutatis mutandis,* Constitutional Court finding No. 22/2020, point 19, second sentence.

In addition to other restrictions imposed on the citizens, the adverse epidemiological development also resulted in temporary suspension of public church services.

I received a submission in the first half of 2020 in which the applicant complained he had been prevented from freely manifesting his religious creed. He asked me to review the proportionality of the restrictions imposed by the PHA in relation to the freedom of religion within the meaning of Article 24(2) of the Constitution.

The restriction of public church services evidently limited the enjoyment of religious freedom for all believers in Slovakia which may undoubtedly be considered an interference with fundamental rights.

Such interference is only permitted if necessary for the protection of a public interest whose protection is a priority for the state. Therefore, I applied a proportionality test to find out whether this interference with the freedom to participate in religious ceremonies was in compliance with the Constitution.

The primary purpose of the implemented measures was the public interest of protecting human life and health. The contested measures prohibiting mass public events were adopted universally and applied to all entities, not only churches and religious societies.

It must be noted that the pandemic measures tended to restrict participation in collective religious ceremonies, i.e., their purpose was to restrict close contacts among larger groups of people in order to reduce the risk of contagion, not to restrict the freedom of religion which is primarily an internal, intimate affair of every religious person. The restriction, therefore, did not interfered in the core of religious freedom. Religious societies could continue their public work and perform religious rites and services that were available to public mainly through TV broadcast and online.

To that end, I consider comparing this situation to the totalitarian repression of religious freedoms inappropriate.

I also examined a complaint against a PHA measure of 19 May 2020 which governed the conditions for organising collective public gatherings and events, including religious ones.

Under the measure, organising public events, including religious ones, for more than 100 persons was prohibited, save for 29 specific exemptions. The exemptions included specific religious practices and events – the Mass, first holy communion, confirmation, funeral and wedding rites.

The main problem was that, apart from the church services (Masses), funeral and wedding rites, the competent authority did not define other religious practices generally, but rather specifically. On that account, the specific collective church services of the largest Church in Slovakia were permitted (first holy communions, confirmations), but similar religious rites and practices of other, smaller and registered religious societies and churches, were prohibited.

It is relevant in this respect, that the principle of equality and prohibition of discrimination also apply to the restriction of fundamental rights, including the freedom of religion and the right to manifest religion in community with others.

The way the measure in question was formulated and the particular exemptions defined did not meet, in my opinion, the requirements of the principle of equality and appeared discriminating against smaller registered churches and religious societies.

Therefore, I asked the prosecutor general for cooperation and to initiate proceedings before the Constitutional Court under Article 129(6) of the Constitution. The prosecutor general did not file a petition with the Constitution Court on this matter, neither did he inform me about the results of his review of this matter.

In general, when defining exemptions from the restrictions on the fundamental right to manifest religion in community with others and/or when defining conditions for the realisation of this right, we always have to bear in mind that Slovakia, in accordance with its Constitution, recognises the plurality of religions and the right to choose religious creed and this plurality is reflected in the plurality of registered churches and religious societies that are equal. Therefore, such restrictions and their exemptions should not be formulated specifically for any particular religious practices or religious events of only one or some religious societies, but they should be defined in a general way allowing all religious societies and churches to hold collective religious events, services and practices under the same conditions.

School closures during the first wave of the pandemic

The Office received multiple complaints during the first wave of the pandemic to review several decisions taken by the Education Ministry with respect to emergency interruption of in-classroom learning. I must note that emergency restrictions on in-classroom (face-to-face) learning, in particular those affecting children subject to compulsory school attendance, have the nature of interventions in the substance of the right to education in terms of its qualitative aspects.

Compulsory school attendance is undoubtedly a standard across Europe. Therefore, any interventions in the substance of the right to education must be reviewed with great caution and assessed strictly. They must be lawful, pursue a legitimate aim, be necessary and proportionate. They must always be reasonably justified.

During my review of the procedures and decisions made by the Education Ministry in the first wave of the pandemic I found that, save for a disputable initial action when the in-classroom learning had been suspended by an education minister's guidance of 12 March 2020, albeit in compliance with an Education Ministry regulation, all decisions on the emergency interruption of in-classroom learning had always been adopted on a legal basis. The legal basis had been provided by an appropriate and prompt amendment to the Schools Act. In my opinion, the COVID-19 pandemic undoubtedly meets the fundamental legal and material requirement of students' and teachers' life and health being at risk.

The interruption of in-classroom learning during the first wave of the pandemic also pursued a legitimate goal, this being the protection of human life and health in light of the gravity of the disease, the way it spread and experience from other countries.

Considering the nature of COVID-19, a disease posing a largely unknown risk at that time, and taking into account the fact that the emergency interruption of in-classroom learning had subsequently been replaced by online classes with a major support by the Education Ministry, I arrived at the conclusion that such interruption in the first wave of the pandemic had been proportionate during all individual periods under review. Even though rather conservative, overcautious and protectionist, the reviewed decisions of the education minister concerning the emergency interruption of in-classroom learning and its gradual resumption during the first wave of the COVID-19 pandemic did not constitute, in my opinion, an unconstitutional interference in the fundamental right to education.

School closures during the second wave of the pandemic and mandatory testing

Initially, the emergency interruption of in-classroom learning took place on 11 October 2020 at high schools, with the measures becoming subsequently more stringent. Also, the applicable exemptions were adjusted.

By a decision of 4 December 2020, the education minister allowed in-classroom learning to resume at the second primary education stage and in secondary schools, provided that students, pedagogical staff and at least one legal guardian of the student sharing the same household provide a proof of a negative test for COVID-19.

In 2020, I have received numerous complaints alleging a violation of fundamental rights by the education minister's decisions concerning the exceptional interruption of in-classroom learning during the second wave of the pandemic, as well as contesting the requirement to show a proof of a negative test for COVID-19 in order for in-classroom learning to be resumed in secondary schools and at the second primary education stage.

It must be said is that, in contrast with the first wave of the COVID-19 pandemic, the evaluation of these decisions had to be based on partially different assumptions. The competent authorities were afforded ample time between the first and the second wave of the pandemic to apply the lessons learnt from the first wave and prepare a strategy for responding to the potential second wave.

Also, more knowledge about the COVID-19 disease, the modes of its transmission, treatment options, etc. became available to authorities (it was not a completely unknown situation, as was the case with the first wave of the pandemic). Therefore, the very fact that people contracted the disease in greater numbers during the second wave of the pandemic when the epidemiological situation became worse does not imply that any measures of varying intensity, albeit acceptable during the first

wave, could have also been acceptable during the second wave of the pandemic.

The assessment of interference with the right to education was also affected by the findings of the Education Policy Institute pointing to essential differences in the quality of online and offline distance learning, as well as to insufficient access to online distance learning for some children, which borders on denial of access to education as such.

On the other hand, I have always kept a reserved attitude as regards assessing the inevitability of measures. After reviewing the individual decisions constituting an exceptional violation of in-classroom learning during the second wave, it was possible to note that all of them have been issued on a lawful basis.

However, the evaluation of lawfulness rests not only in assessing compliance with the legitimate grounds for the application of a restrictive measure, but also in assessing compliance with the legitimacy of the process aimed at restricting fundamental rights. Based on an analysis, I have arrived at a conclusion that the emergency interruption of in-classroom learning during the second wave of the COVID-19 pandemic had violated the fundamental rights of students concerned.

In light of these findings I asked the Education Ministry to take remedial actions. I did not request that in-classroom learning be resumed immediately; I mainly requested the preparation and adoption of a predictable plan of procedures for abolishing restriction measures affecting the right to education, not only depending on the national epidemiological situation, but also on the regional (district-level) situation.

I also requested that this plan needs to take into account the fact that, in imposing emergency interruption of in-classroom learning and in ordering distance learning, the access to in-classroom learning should be guaranteed, whenever possible, at least for those students where distance learning would mean denial of access to education (even under strict compliance with epidemiological measures). If in-classroom learning is to require repeated negative testing for COVID-19, such a requirement can apply only to the student concerned (and not to his/her legal guardian), testing must be accessible and free of charge, and must be organised by the state (both in terms of finance and personnel).

Because the emergency interruption of in-classroom learning was already becoming a measure of permanent nature, I requested that the state education programme be updated in terms of long-term distance learning and the scope of knowledge that could be effectively conveyed to students during such periods.

Proceedings concerning compliance of certain provisions of the Public Health Protection Act before the Constitutional Court of the Slovak Republic

At the beginning of 2021, I filed a motion for constitutional review of several provisions of the Public Health Protection Act with the Constitutional Court of the Slovak Republic. The petition primarily focused on three issues.

Firstly, it covered the possibility of isolation and quarantine in medical facilities and other facilities determined by the government (the so-called state quarantine). I arrived at a conclusion that the provisions of the Public Health Protection Act concerning the state quarantine were in conflict with the fundamental right to personal liberty in terms of its substantive and procedural aspect. In particular, the relevant provisions of the act fell short of establishing the reasons under which personal liberty of persons could be restricted by placing them in state quarantine, and there was no maximum permissible duration of such restriction of personal freedom specified either. Therefore, it was not clear which legal act allows restricting personal liberty by means of the "state quarantine". Moreover, persons placed in "state quarantine" did not have an effective remedy available for examining the lawfulness of restriction of their personal liberty through a fast-track judicial review, with the court being able to order their immediate release, as also required by constitutional and international standards for the protection of the right to personal liberty.

Another provision, the unconstitutionality of which I contested before the Constitutional Court of the Slovak Republic, was a provision of the Public Health Protection Act, according to which the costs incurred when carrying out measures imposed under the Public Health Protection Act are to be borne by those persons who are required to carry them out. I contested this statutory requirement primarily in the context of the "state quarantine" when persons deprived of their personal liberty were obliged to pay the costs for their stay in facilities designated by the state, even in a situation where they faced a reduction in their income due to the restriction of their personal liberty. When placed in the "state quarantine" for a long time, these costs were reaching significant amounts.

Finally, the last group of provisions which I contested before the Constitutional Court of the Slovak Republic because of non-compliance with the Slovak Constitution were those which allowed the public health authorities (Health Ministry, PHA, regional public health offices) to adopt, during the pandemic, additional measures not specified in more detail in the act. These provisions have unacceptably interfered with the separation of powers in a democratic society through an extensive possibility of delegated lawmaking – the lawmaking body allowed the executive bodies to set the limits for the restriction of fundamental rights and liberties. According to the Constitution, however, the limits of fundamental rights and freedoms may only be set by law.

According to the Constitutional Court's finding under file no. PL. ÚS 4/2021 of 8 December 2021, most of my petition was upheld – both in the section discussing "state quarantine" and the section concerning the unreasonably extensive powers of public health authorities.

As regards the "state quarantine", the Constitutional Court ruled that it involved deprivation of personal liberty which, however, does not meet the standards of personal liberty protection under Article 17 of the Constitution and under Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. As regards the concepts of "isolation in a health care facility or other designated facility" and of "quarantine measures", the Public Health Protection Act did not specify

the scope in which personal liberty could be restricted, nor did it determine the maximum duration of personal liberty restriction or establish sufficient procedural guarantees for persons with restricted personal liberty. However, the finding issued by the Constitutional Court of the Slovak Republic had no impact on isolation at home which, due to its intensity, does not constitute interfering with the fundamental right to personal liberty, but is "only" seen as a restriction of the freedom of movement that is subject to less stringent standards.

As regards the obligation to pay the costs of "state quarantine", the Constitutional Court did not agree with my proposal. The Constitutional Court considered that this obligation was also applicable to all of the remaining obligations under the Public Health Protection Act and that it did not seem to be non-proportional in relation to them. Logically, after the ruling on non-compliance as regards allowing the public health authorities to order "state quarantine", it will no longer be possible to impose an obligation to pay the costs of such quarantine, thus preventing – in the future, after the Constitutional Court's decision – any obligation to pay unreasonably high costs associated with the imposed measures while income has been reduced due to the "state quarantine".

As regards the contested provisions establishing the public health authorities' powers to "adopt further measures through which other activities may be prohibited or imposed", the Constitutional Court ruled that these provisions were not in line with several provisions of the Constitution. According to the Constitutional Court, the lawmaker (i.e., the National Council of the Slovak Republic) may not leave such authorisations to the bodies of executive power which allow them to determine, through secondary legislation, a restriction of certain rights and freedoms, how they will be restricted and to what extent (limits for restricting the basic rights and freedoms). Pursuant to Article 13(2) of the Constitution, the limits to basic rights and freedoms may only be determined by the lawmaking body, while any restriction of basic rights and freedoms by means of secondary legislation (such as decrees issued by the bodies of executive power) must be explicitly supported by law and may not constitute a blank cheque handed to the bodies of executive power so that they could prohibit or impose other activities at their own discretion.

In response to the Constitutional Court's finding, the Parliament adopted an amendment to the Public Health Protection Act, removing those shortcomings that were in conflict with the Constitution. The possibility of isolation and quarantine in health care facilities and other designated facilities has been renounced. Isolation and quarantine may thus be occurring only at home. The legal definitions of quarantine and of other measures, such as increased health surveillance and medical supervision, were detailed as well. The provisions establishing unreasonably wide powers of public health authorities have been abolished without any replacement.

In addition, the Constitutional Court's decision under file No. PL. ÚS 4/2021 also overrides the existing case-law of the Constitutional Court when, in the past, the Court narrowed – inappropriately and beyond the framework of the constitutional and legal wording – the right of the public defender to file a motion for constitutional review. In the decision concerning the admission of the case for further proceedings, the Court

ruled that the existence of a risk to the basic rights and freedoms was the only restriction applicable the public defender of rights with regard to the proceedings held before the Constitutional Court under Article 125 of the Constitution (paragraphs 39 and 34 of the resolution).

Unlawful issuance of invoices for "mandatory state quarantine" during the first wave of the COVID-19 pandemic

At the end of 2020 and the beginning of 2021, I received several complaints from claimants who completed, following their entry to the territory of the Slovak Republic in the first half of 2020, the so-called "mandatory state quarantine" imposed under the measures of the Public Health Authority. After completing the quarantine, these persons received invoices for the payment of the costs of accommodation in state facilities where they stayed during the mandatory quarantine. These invoices were issued by the Interior Ministry.

Having examined the invoices and analysed the applicable legislation, I arrived at a conclusion that these payments were unlawful. Even though the Public Health Protection Act imposes a requirement to pay the costs incurred when carrying out the obligations imposed by this act on persons who are obliged to comply with such obligations (i.e., including the persons who had mandatorily completed the "state quarantine"), it also specifies other conditions for imposing an obligation to pay the costs.

The Public Health Protection Act provides that the obligation to pay the costs of "mandatory state quarantine" can only be ordered by the Public Health Authority of the Slovak Republic and by the regional public health offices. The payment of costs may only be ordered on the basis of a formal decision issued within administrative proceedings, which can be appealed against and subjected to review within administrative justice. The invoices issued by the Interior Ministry have thus been issued by a body not having competence in this area, because the Interior Ministry was not authorised to impose the obligation to pay the costs of "state quarantine". Furthermore, the invoices did not even comply with the formal requirements of the decision and did not constitute a result of an administrative proceedings.

Considering the limited powers of the public defender of rights as regards the valid and effective decisions of public administration bodies, as well as the impossibility to initiate proceedings to review the lawfulness of acts issued by public administration bodies within administrative justice, I have decided to refer these complaints, along with my legal analysis, to the General Prosecutor's Office. Subsequently, the GPO has notified me about its own analysis referring to the absence of GPO's jurisdiction in this case, because the GPO does not consider the issuance of an invoice for meals during quarantine to be an act of a public administration body.

Right to the presence of an accompanying person in the provision of healthcare

During the first, second and also the third wave of the COVID-19 pandemic, there were cases of the restriction of the right of patients (minors and women during childbirth) to an accompanying person. In

practice, individual healthcare facilities would set their own rules for accompanying persons or they treated them as visitors or even completely banned their presence.

The right to the presence of an accompanying person based on mother's choice is part of the right to respect for private and family life. In its Q&A on Covid-19, pregnancy, childbirth and breastfeeding, the World Health Organisation noted that all pregnant women, including those with confirmed or suspected COVID-19 infections, have the right to high quality care before, during and after childbirth. This right includes the presence of an accompanying person of mother's choice during childbirth.

By the same token, the presence of parents during the provision of healthcare services to their child cannot be considered a standard visit. The right to the parent's presence is not only based on international conventions for the protection of human rights, but also national legislation. The child is represented by the legal guardian who holds parental responsibility for the child, which also entails protection of the child. Pursuant to Article 41(4) of the Constitution, child care and upbringing are the rights of parents; children have the right to parental care and upbringing. Parents' rights can be restricted and minors can be separated from their parents against their will only by a court ruling on the basis of law. At the same time, pursuant to Article 2 of the Charter of the European Association for Children in Hospital, children in hospital shall have the right to have their parents or parent substitute with them at all times.

Therefore, in November 2021, based on complaints received, as well as in connection with the reports of non-governmental organisations and the media, I asked Slovakia's Chief Public Health Officer for an amendment to the decree[13] which, in addition to exemptions from the prohibition of visits, would also cover the issue of accompanying the minors and women in labour. At the same time, I requested that the conditions for this category of persons be specified in accordance with the Guideline of the Ministry of Health of the Slovak Republic[14] which, in addition to visits, also covers accompanying persons. According to this guideline, women in labour and minors have right to the presence of an accompanying person. In this case, the Public Health Authority provided its statement to the media, based on which the decree regulates visits at inpatient wards in healthcare facilities. Accompanying the hospitalised children and women in labour is not a visit; for this reason, it is not covered and, therefore, not restricted by this decree.

Subsequently, I sent a letter to the health minister in this regard, pointing to different practices applied by individual health care facilities in connection with accompanying persons and I asked him to provide a statement as to which legal basis is applied by individual healthcare facilities when, in their restrictions towards accompanying persons, they go beyond the measures adopted by public health authorities.

[13] Decree No. 231/2021 of the Public Health Authority of the Slovak Republic of 12 August 2021 imposing measures during public health emergency with regard to obligations of health care providers.
[14] Guideline for visits of patients hospitalised in inpatient healthcare facilities during the COVID-19 pandemic, Version: 2.7, published by the Ministry of Health of the Slovak Republic (Sekcia zdravia) on 25 May 2021.

In a letter, the Health Ministry informed me, that inpatient facilities, by applying measures as part of their internal regulations, are creating measures for assessing every patient including the accompanying person and for the provision of health care in a safe manner so that patients, women in labour, accompanying persons and medical workers are not put at risk of COVID-19. At the same time, the Health Ministry informed me that the responsibility for internal regulations of the healthcare facility rests with the provider of inpatient health care. The ministry also wrote that health professionals are trying to handle the presence of an accompanying person on a case-by-case basis and in a responsible manner, while preferring the best interest of the child and the wishes of the woman in labour, if the facility's capacities allow it.

Access to vaccination against COVID-19 and the state's responsibility for the side effects of vaccination

While our country is now encountering low vaccination rates and is trying to find a solution to address this unfavourable development, the situation at the beginning of the year was quite different. I have been approached by several claimants who, quite the contrary, complained about not having access to vaccination. This included various complaints in which the claimants pointed to injustice or discrimination in the determination of criteria for preferential vaccination. They also complained about problems in the registration for vaccination and various other shortcomings. I also consulted several issues with the Health Ministry. However, it is with pleasure that I can note all problems referred to in complaints have gradually been resolved, so I did not have to declare a violation of basic rights and freedoms in any of the cases.

In determining the criteria for preferential vaccination, I arrived at a conclusion that, according to healthcare experts, vaccination is currently the most efficient method of controlling the COVID-19 pandemic. Therefore, in responding to the pandemic, the role of the state is to provide safe and efficient vaccines as quickly as possible and in a sufficient quantity so that they could be served to the broad public, thus ensuring personal protection and building herd immunity against COVID-19.

In terms of standards applicable to human rights, I consider preferential vaccination of certain population groups or professions, as applied by the Interior Ministry, to be a legitimate instrument necessary for effective protection of lives and health of the largest population groups possible in a situation where the supply of approved vaccines from manufacturers is limited. As public defender of rights, I am not in a position to judge individual criteria for prioritising certain groups for vaccination, as determined by experts of the Health Ministry, because such judgment requires the necessary knowledge in medicine. In general, however, I hold the view that for the purposes of creating a list of priority population groups, preferring individuals who are significantly older than those who are much younger is reasonably justifiable, particularly in light of the fact that the risk of a more severe course and overall death rate of the COVID-19 disease rises with age.

However, as the vaccination gradually progressed in older population groups and new deliveries of vaccines started coming from

manufacturers, hand in hand with gaining new experience, the set measures were gradually slackening (reduction of the age limit of vaccinated persons, the possibility to choose a particular vaccine, extending the range of persons that can be vaccinated free of charge, removing shortcomings in the registration for vaccination, etc.).

Because of ongoing discussions with regard to the possibility of introducing mandatory vaccination against COVID-19, I asked the health minister, by a letter sent at the end of 2021, to ensure that the state's responsibility for potential side effects of vaccination be legislatively enshrined with respect to all vaccinations that are part of the mandatory vaccination scheme.

Without a doubt, vaccination interferes with the bodily integrity of a human being and constitutes and interference with the right to privacy. On the other hand, it helps to protect health and life of the whole society. Therefore, the role of the state is to find a balance between these interests, in particular by providing legal guarantees in the case of serious side effects associated with vaccination.

By a letter from the Health Ministry, I was informed that Act No. 532/2021 Coll. of 10 December 2021, amending the Act on medicinal products and medical devices, has broadened the state's responsibility for damage caused by administering a vaccine against COVID-19. The state's responsibility for potential side effects of vaccination also in relation to all vaccines that are part of the mandatory vaccination scheme has not been enshrined in legislation yet.

Imposition of fines to homeless people for lockdown violations

In 2021, I also dealt with complaints concerning the imposition for fines for lockdown violations during the declared state of emergency within the second wave of the COVID-19 pandemic. Homeless people were also charged with the fines, even though, in many cases and for objective reasons, they were not able to fully abide by the lockdown measures. These decisions on offences, issued in the form of fixed-penalty notices, were unlawful in many cases.

A claimant, who was a homeless person, had been fined by the police for violating lockdown measures pursuant to a provision of the Public Health Protection Act which was completely unrelated to the lockdown. Moreover, the imposed penalty in the amount of €100 was neither adequate to the nature of the committed offence nor to the offender's financial and personal situation, and the police did not even check whether the applicant was meeting any of the exemptions to the lockdown rules. Paradoxically, the applicant did meet one of these exemptions – being on the way to the day centre for homeless.

Considering the fact that the decision to impose the fine was also contested through a legal action before the administrative court (which constitutes an obligatory reason for dropping the complaint), I decided to exercise my authorisation and asked the administrative court to have the public defender of rights join the judicial proceedings as a separate subject of the proceedings on the claimant's side. In the end, the decision on the imposition of the fine was quashed.

However, this was not the only case of fines unlawfully imposed to homeless people for lockdown violations. As regards another homeless person, I referred the decisions imposing fines as a motion to the prosecutor's office for filing a prosecutor's protest. It is questionable whether such conduct of these people could be deemed as an offence, because many of them are unable to abide the lockdown measures as they have no household and the capacities of day centres have been insufficient in the long term.

04 CONTINUING THE PREDECESSORS' ACTIVITIES

One of the roles of the institute of the public defender of rights is to amplify the voices of individuals whose rights have been denied. Therefore, I continued the activities of my predecessors and carried out an audit of measures proposed by the Office for the period from 2012 to 2017. In order to remedy the situation, I have repeatedly appealed to competent authorities with regard to the recommendations of the public defender of rights.

04.1 PROTECTION OF THE RIGHTS OF THE CHILD IN CRIMINAL PROCEEDINGS

In majority of cases, suitable conditions tailored to the needs of children coming into contact with law enforcement bodies or courts, are not ensured in such proceedings. For a long time, the office has been dealing with the issue of the protection of the rights of the child within proceedings where the child is involved. During my tenure, I primarily dealt with the protection of child victims during criminal proceedings.

As regards the issue of child victims in criminal proceedings, one of the most serious problems is the lack of special interrogation rooms. In Slovakia so far, there are only four such rooms at the disposal of non-governmental organisations (Náruč – Pomoc deťom v kríze and Centrum Slniečko) and one training room which is the property of the state. However, in practice, even these rooms are used rather infrequently.

Most of the interrogations held during pre-trial proceedings are still taking place at police stations in premises that are not suitable for interviewing children and, ultimately, lead to lower effectiveness of interrogation.

In practice, usually all persons who must be present during the interrogation would gather in the investigator's office around the child. There is a video recorder placed in front of the child who must then talk about the worst and, in many cases, extremely intimate experience. It is alarming to see that, after several rounds of traumatising interrogation, the child would start thinking that keeping silent about the problem would have been better.

As regards creating the conditions for interviewing minors, it is clear that institutional interests dominate over the interests of child victims to a great extent. It is therefore necessary to change the system in a way that prevents secondary victimisation of child victims.

Insufficient coordination and multidisciplinary cooperation of all of the competent authorities is another serious problem. Ensuring the exchange of information between the law enforcement bodies, authorities for the social and legal protection of children and social guardianship already at the beginning of criminal proceedings is the most important aspect in this context.

In this connection I have recommended that the National Council of the Slovak Republic adopt an amendment to criminal law legislation ensuring that interrogation of child victims will be obligatorily held in a special interrogation room, if such a room is set up within the precinct of jurisdiction of the competent law enforcement bodies or if carrying out the interrogation in such a room set up outside the precinct of jurisdiction of law enforcement bodies is in the best interest of the child, provided that there are no objective reasons to prevent such approach.

At the same time, I also recommended that the National Council of the Slovak Republic adopt an amendment to criminal law legislation with a view to introducing immediate notification obligation for law enforcement bodies towards the competent authority for social and legal protection of children and social guardianship in cases where identified violent criminal acts have been committed on children.

In this connection, the adoption of an amendment to the Act on victims of criminal acts, effective from 1 July 2021, is regarded very positively. The amendment was submitted by the justice minister and focuses on strengthening the rights of children.

Based on the amendment, a network of the so-called intervention centres is being created. This model is based on interlinking the police intervention with crisis intervention and professional assistance which is provided to the victims or persons facing a threat of domestic violence immediately after such domestic violence has occurred.

04.2 THE ISSUE OF “CZECHOSLOVAK” PENSIONERS

The Office has been bringing forward the issue of the so-called “Czechoslovak” pensioners for a long time. They are people whose pension insurance (security) period completed during the existence of the former Czechoslovakia is assessed by the Czech Republic for the purposes of awarding a pension.

The situation is unacceptable for a group of pensioners who are entitled to a pension benefit in Slovakia, but without counting in the pension insurance periods completed until 31 December 1992 which are assessed in accordance with the legislation of the Czech Republic.

The Office has encountered several cases of people in this situation, receiving only very low amounts of the Slovak pension benefit, often below the subsistence minimum.

I consider their situation as unbearable and, in terms of compliance with the fundamental rights, as unacceptable. It must be noted that this

applies not only to old-age pensioners, but also those receiving disability pensions and early retirement pensions.

Therefore, I requested the Parliament to approve, as soon as possible, such legislation that will rectify the aforementioned unfavourable status and address the situation of persons who are not entitled to a pension benefit in the Czech Republic due to insufficient number of years of the pension insurance period or because of not having reached the retirement age, even though they became entitled to the pension benefit in the Slovak Republic.

It is positive that, in 2021, the situation of these individuals, which is unsustainable in the long term from the viewpoint of their basic right to adequate material provision in old age and in the event of work disability, was addressed by the Slovak government by means of a legislative proposal, according to which the Slovak Insurance Agency, in cases covering Czechoslovak pensioners not entitled to any pension benefit in the Czech Republic, would take over and assess the periods of pension insurance coverage prior to 1 January 1993 for the purposes of entitlement to the pension benefit in Slovakia, until the establishment of pension benefit entitlement in the Czech Republic. It is gratifying to see that this piece of legislation will not apply only to old-age pensions, but also to disability and early retirement benefits. The amendment to the Social Insurance Act addressing these cases is currently undergoing standard legislative process in the Parliament (following its approval by the Government of the Slovak Republic).

04.3 PRISON SYSTEM

For a long time, the Office has been dealing with complaints concerning the conditions and treatment of persons placed in remand custody or serving custodial sentence. Even though the Office has identified several areas in the past which need changes in order to reach the existing international standards, many of them are still waiting for legislation to change. The fact that the preparation of an amendment to the Act on remand custody and an amendment to the Act on the execution of custodial sentences has started in 2021 is regarded positively.

One example is the size of prison cells. Even in response to CPT's findings, I have long been calling for an increase in the prison cell area per convicted person to keep up with the international standards. Based on these standards, there should be at least four square metres of prison cell area per convicted person. According to preliminary information, this area is to be increased from the current size of 3.5 m^2 to 4m^2 for locked cells and to remain at 3.5 m^2 for non-locked cells. Slovakia would thus get closer to the international standards of the Council of Europe, even though more effort is still needed to fully harmonize our legislation with international requirements.

Another aspect covers personal appearance. In examining the complaints, I have noted on several occasions that mandatory appearance policies for convicted persons in the form of institution-approved hairstyles, including facial hair, constitute an inadequate and unjustified interference with the convicted persons' right to private life.

Based on the planned amendments to the Act, the obligation for inmates to follow the appearance policies based on prescribed hairstyles is to be abolished, whereas proper care of personal hygiene will remain the only condition.

Another important change is to take place with regard to the visits of convicted persons. It is proposed that prisoners should be allowed to receive visits without separation (open visits). Closed visits should be imposed only in justified cases if there is a security concern. The CPT accepts that in certain cases it is justified, for security-related reasons or for the sake of protecting the legitimate interests of an investigation, to have visits take place in booths. However, "open" visiting arrangements should be the rule and "closed" ones the exception, for all legal categories of prisoners. Any decision to impose closed visits must always be well-founded and reasoned, and based on an individual assessment of the potential risk posed by the prisoner.

Changes are to be made also with regard to imposing disciplinary punishments. Restrictions on contact with family and close persons should not be used as disciplinary punishment. According to the European Prison Rules, disciplinary punishments should never result in total prohibition of contact with family. Also, the CPT's reiterated its recommendation during the visit in 2018 that any restrictions on family contacts as a form of punishment be imposed only where the offence relates to such contacts. The possibility to impose a ban on phone calls as an alternative disciplinary punishment for inmates is planned to be abolished in its entirety.

04.4 THE USE OF BODY CAMERAS BY THE POLICE DURING INTERVENTIONS

A request that any use of coercive means by the police be documented by a camera recording was raised by the previous public defender of rights Jana Dubovcová already in 2013. This recommendation was based on examining the police intervention in Moldava nad Bodvou which took place in 2013.

In 2018, the Interior Ministry conducted a public procurement procedure for the delivery of camera systems for the police; however, it was cancelled on the basis of a decision by the Board of the Public Procurement Office which identified a violation of the law. Based on information published in the media, new preparatory market consultations in connection with the procurement of body cameras to monitor police interventions were launched in December 2021.

In 2021, within the inter-ministerial consultation procedure concerning an amendment to the Police Corps Act, I presented a substantial observation suggesting the introduction of mandatory camera recordings from every police intervention where coercive means are to be used.

My observation was not accepted by the Interior Ministry despite the fact that, under the prepared amendment to the Police Corps Act, name tags on the uniforms of police officers will be replaced by an identification number, which I consider to be a step backwards to a lower

standard in terms of possibilities for establishing objective facts whenever any doubts arise with regard to the lawfulness of police actions.

There is no doubt that making camera recordings during police interventions is important not only with regard to the protection of human rights, but it is also in the interest of the members of the Police Corps.

04.5 RIGHT TO INDEPENDENT INVESTIGATION OF POLICE INTERVENTIONS

Former public defender of rights Jana Dubovcová warned, in her extraordinary report in 2016, about the absence of an independent body to investigate the practices of the police and other state authorities towards natural persons. In the report, she indicated that the Slovak Republic has not yet created the conditions for independent and effective investigation of police practices and practices of other state authorities when physical violence was employed.

The public defender of rights recommended the Parliament to set up, by law, an independent body to investigate the practices of the police and other state authorities towards natural persons where use of force, torture, cruel and inhuman treatment is suspected. Such a body should not fall under the Government of the Slovak Republic and should not be part of the Interior Ministry, the Police Corps or the prosecutor's office.

In 2016, the report was discussed by the Parliament, which refused to acknowledge it. The recommended measure was partially implemented at a later date by a legislative amendment in 2019, based on which the Inspection Service Office has been set up as a separate body of the Police Corps, whose director is accountable to the Government of the Slovak Republic.

Even though, based on this amendment, the director of the Inspection Service Office is not directly accountable to the interior minister and the Inspection Service Office was formally excluded from the Interior Ministry's organizational structure, this situation still could not be considered satisfactory. In a similar case involving legislation in the Czech Republic, the European Court of Human Rights, in the Kummer v. the Czech Republic case, noted that, while the head of the Police Inspectorate was responsible to the Government and not to the interior minister, which increased the aspect of independence of the Police Inspectorate vis-à-vis the Police, members of the Police Inspectorate remained police officers, which is a fact that considerably undermines the independence of the Inspectorate vis-à-vis the police. In 2020, I approached the incumbent interior minister with a request for the adoption of legislation which would strengthen the independence of the police inspectorate in line with international standards.

Despite my recommendation, an act amending and supplementing the Act on civil service of the members of Police Corps, the Slovak Information Service, the Prison and Court Guard Corps and the Railway Police was approved on 30 November 2021. Its declared objective is to strengthen the involvement of the interior minister in the process of

appointing and recalling the President of the Police Corps and the Director of the Inspection Service Office. In fact, the approved wording of the act puts the whole selection procedure for appointing a new Inspection Service Office director solely to the hands of the interior minister.

As regards the process aimed at reinforcing the independence of the police inspectorate, I consider the adoption of the above amendment to be a step backwards. From my point of view, the procedure for selecting the director of the Inspection Service Office, as introduced by the amendment, can only be seen as weakening the hierarchical independence of the director and the entire Inspection Service Office vis-à-vis the interior minister and as weakening their collegial independence within the Police Corps. The adopted piece of legislation seems to be in a stark contrast with the Government's Manifesto for 2021-24. In the Manifesto, the Government undertook to "reconsider the position and activities of the Inspection Service Office and, based on the results of an analysis, make it more independent and efficient by means of legislative measures".

Because I consider it necessary to continue further discussion of experts in this regard, I asked the interior minister to send me an analysis which the Government undertook to prepare in its Manifesto. I also asked him to provide his opinion whether the selection procedure for the position of the director of this office, when in fact placed solely in the hands of the interior minister, functionally corresponds with the effort aimed at strengthening the independence of the Inspection Service Office.

As implied by the standpoint of the interior minister, the legal analysis has not been prepared yet and, as regards the adopted legislation, he noted that the parliamentary bill was proposed by MPs. Despite this standpoint, I consider it extraordinarily important that the concept around which the Inspection Service is set up needs to be subjected to a thorough analysis and that independence of the inspectorate should be strengthened in line with international standards.

04.6 "DESIGNATED AREAS" AT POLICE STATIONS

In the extraordinary report submitted to the National Council of the Slovak Republic in 2016, as mentioned in the previous chapter, the former public defender of rights Jana Dubovcová also pointed to systemic violations of fundamental rights and freedoms of persons by such practices of the police that have no backing in law, i.e. unofficial deprivation of personal liberty by holding a person in an enclosed space with no facilities (water, toilette or a bell to call for help).

Arrested persons are placed in this area for such time as needed at the discretion of the police officer, in many cases for several hours or overnight. Such practices commonly applied by the police are illegal and interfere with the basic right to personal freedom and dignity. The Slovak Republic was warned about the continuing violation of human

rights in connection with “designated areas” also during the CPT’s regular visit that took place in March 2018.[15]

On multiple occasions in my capacity as public defender of rights, I also noted the violation of basic rights of persons placed in the so-called designated areas. Even in 2021, I examined a complaint by a claimant concerning restriction of his personal liberty in connection with his detention at a police establishment in Bratislava. By examining the complaint I learned that the claimant was placed in the so-called designated area of the police establishment for nine hours, during which there were no procedural actions taken or planned for approximately eight hours. Therefore, I did not consider such placement of the claimant into an area not defined by law to be justified.

Despite my initiative, on multiple occasions, vis-à-vis the Interior Ministry, aiming towards the adoption of a systemic change, this practice – which has no backing in law – still persists to this day.

It is positive that the prepared amendment to the Police Corps Act, defining the legal framework for police officers’ authorisations to place arrested persons in a designated area, had been discussed during inter-ministerial consultation procedure in 2021. Based on my observations which were accepted by the Ministry of the Interior, the legislative proposal now also contains the limits restricting such authorisations in order to minimize any room for discretion and violation of the basic rights and freedoms of detained persons.

At the time of finalising this report, the legislative process leading to the adoption of the amendment to the Police Corps Act was not completed yet.

04.7 EQUAL ACCESS OF CITIZENS WITH DISABILITIES TO SERVICES PROVIDED BY PUBLIC ADMINISTRATION

Barrier-free access to public offices is essential for citizens with disabilities to have equal access to public administration services. However, surveys conducted by the Office show an alarming situation in particular in primary and secondary schools[16] where barrier-free environment is perceived to be above-standard and the necessary adjustments are often implemented in a partial, non-systematic fashion.

Another survey[17] conducted by the Office also pointed to a very bad situation in connection with barrier-free environment in healthcare facilities. It concluded that the right of persons with disabilities to have access to healthcare and to have obstacles and barriers to accessibility to health care facilities removed is implemented and respected inadequately in the Slovak Republic.

[15]Report to the Slovak Government on the visit to the Slovak Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 28 March 2018.

[16] Report on the results of a survey on barrier-free access to and barrier-free environment in school buildings, Office of the Public Defender of Rights, Bratislava, October 2016.
[17] Barrier-free access in public hospitals and other health institutions, Office of the Public Defender of Rights, Bratislava, September 2016.

Own-initiative survey of the public defender of rights – accessibility of passenger rail transport

At the end of 2019, I initiated a survey on the accessibility of passenger rail transport. I published the findings from this survey in 2021. This was a follow-up on previous surveys conducted by the Office with regard to accessibility as an important prerequisite for the full inclusion of persons with disabilities in the life of society and for the application of their basic rights and freedoms on a non-discriminatory basis.

The objective of the survey was to get the opinion of persons with disabilities on how their rights are respected when travelling by train. However, the key objective was to find out how the state itself perceives its role in ensuring accessibility of transport (in this particular case, the passenger rail transport), whether it is aware of its key responsibility in this area, whether it undertakes systemic and targeted actions towards attaining the desired objectives and whether these actions are sufficient and adequate.

In drawing the conclusions from the survey, I relied on knowledge gained directly from people with disabilities and from other persons travelling by train, as well as on knowledge from my own findings as well as from the statements of carriers, railway infrastructure operator, the Transport Authority and the Ministry of Transport and Construction of the Slovak Republic.

The provided standpoints in combination with my own findings indicate some progress in terms of removing the barriers in passenger rail transport over the recent years. It was particularly quantifiable in the ZSSK railway company. Many upgrades and reconstructions have been carried out in the area of railway infrastructure, albeit without any measurable indicator.

It is difficult to quantify the achieved progress in a situation when there is no information available about the real condition of railway infrastructure accessible to the travelling public. Comprehensive information about the accessibility of passenger rail transport for people with disabilities and with reduced mobility is actually lacking. There are differences in individual data, while information provided to the public is not clear and unambiguous, not containing all the necessary data.

Perhaps the greatest challenge in this area boils down to the existing railway infrastructure which also determines, to a great extent, the comfort and potential of the passenger transport alone. Even though the number of low-floor trains has increased over the past 10 years (or the ZSSK company did not actually own any low-floor trains equipped with a ramp before 2010), their potential can be used to a limited extent only. Railway stations, stops and platforms must be gradually adjusted to the needs of persons with disabilities, thus requiring considerable effort, large-scale construction works and, last but not least, significant financial investments.

As implied by the findings, competent entities have reduced the barrier removal process down to the requirement of building an environment accessible to people with disabilities in particular when undertaking

overall reconstructions and upgrades or within the procurement/construction of new elements (where the parameters have already been clearly set also in terms of barrier-free design). In its modernisation projects, upgrades and other construction works, the Železnice SR railway company takes into account the requirements for accessible environment also with respect to people with disabilities.

However, we have not noticed any barrier removal plan outlining specific steps within individual stages and with a defined timeframe for their implementation. Targeted construction works aimed at removing the barriers are taking place rather individually and are definitely not planned systematically. Even though ZSSK has prepared a strategy, it seems insufficient in certain indicators. Article 9 of the of the Convention on the Rights of Persons with Disabilities (on accessibility of the physical environment) does not require immediate remedies, but calls upon the signatory states to seek to achieve the defined objectives by gradual and targeted actions, including systemic elimination of existing obstacles and barriers.

The Ministry of Transport and Construction of the Slovak Republic did not respond to the question as to how it perceives its role and responsibility in the barrier removal process in the passenger rail transport. The fact that the Ministry was not able to provide a summary of progress achieved in the barrier removal process in passenger rail transport for the past ten years, while it could not even specify the funds allocated and spent for this purpose, implies that Slovakia is not making targeted and systemic actions towards attaining this objective and, if it is, then there is no evaluation mechanism for delivering results that could provide a clear answer to this question.

There is no overall concept/strategy for the elimination of barriers, in particular a definition of criteria for setting the priorities facilitating, at the very least, the fulfilment of partial targets, thus gradually leading to the improvement of the quality of travelling for persons with disabilities. The decisive initiative should be initiated by the Ministry of Transport and Construction as the central government body for railways and rail transport, serving as an umbrella organisation for coordination, management and monitoring.

It seems that, rather than being a signatory state to the Convention on the Rights of Persons with Disabilities, it is in particular the EU legislation and the effort to unify European railway system that are the drivers for Member States including Slovakia to undertake certain measures. But even in this area there are still many challenges and obstacles to tackle.

Another important finding is that, despite declaring many elements and services for people with reduced mobility or orientation ability, practical experience shows that these are not necessarily functional, or the competent persons are not able to operate them. Autonomy and independence of persons with disabilities is only a dream which is very far away and to which we did not even get any closer yet. In most cases, assistance by either railway personnel or at least other persons is still necessary.

Finally, the survey has shown a certain lack of interest, or rather a resigned attitude of persons with disabilities with regard to the

enforcement of their rights under the Convention on the Rights of Persons with Disabilities and other legislation.

Based on the findings and conclusions drawn from the survey, I suggested that the Transport Ministry create a job position for an employee responsible for coordination, monitoring and evaluation of the barrier removal process in passenger rail transport or create a framework document for a gradual and systemic removal of barriers in passenger rail transport, defining the specific tasks, goals, responsible entities and effective instruments (including financing), along with a mechanism for regular monitoring of its fulfilment.

04.8 RIGHT TO ACCESS TO DRINKING WATER

In Slovakia, according to research and strategic documents, as well as based on the Office's knowledge gained from previous surveys and handled complaints, the Roma belong among those people who are most exposed to the risk of social exclusion. In 2016, the Office conducted a survey[18] focusing on compliance with the basic rights and freedoms in connection with access to drinking water in Roma settlements.

In 2010, the UN called upon the states to ensure financial resources, build capacities and introduce technology in order to provide safe, clean, accessible and affordable drinking water and to ensure conditions for hygiene.

Ensuring the right to access to drinking water as a fundamental right represents a positive obligation for the government. The government has committed to creating suitable conditions for everyone to have access to drinking water while ensuring that such access remains affordable. This commitment is not only declaratory, but requires delivering some tangible results.

The outcomes of the research revealed that several municipalities in the territory of the Slovak Republic have not yet managed to ensure, through their own actions and with their own means, the provision of safe, clean, accessible and affordable drinking water and hygiene for all. The survey confirms that drinking water is not accessible for all people even in municipalities with their own water distribution network. Its accessibility is hindered by the prices for water supply.

In fulfilling the right to access to drinking water in Roma settlements, Slovakia is making only a very slow and small progress. In those settlements where inhabitants have resorted to the use of water posing a health risk, Slovakia is not even meeting the minimum scope of the right to access to drinking water.

The former public defender of rights Jana Dubovcová therefore recommended the National Council of the Slovak Republic to adopt such legislative changes which would define entities responsible for access to drinking water, including their duties, as well as entitlement to access

[18] Report on a survey on respect for fundamental human rights and freedoms – Access to drinking water and information on ensuring fire safety in Roma settlements, Office of the Public Defender of Rights, Bratislava, 2016.

to drinking water. She also recommended that this entitlement be included in the system of assistance in material need. I have again presented these recommendations to the labour minister after he assumed office in 2020; however, no systemic change has been made in this regard to date.

04.9 DELAYS IN JUDICIAL PROCEEDINGS

The right to have one's case heard without undue delays (within a reasonable time) is one of the procedural guarantees of a fair trial covered by the right to judicial and other legal protection guaranteed by the provision of Article 48(2) of the Constitution and the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms.
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The right to have one's case heard without undue delays has been repeatedly reaching the top position in the list of the most frequently violated fundamental rights in the complaints received by the Office from people.

I have been dealing with the issue of undue delays in judicial proceedings as part of individual complaints from claimants, but their sheer number compelled me to address this issue systematically in cooperation with the Justice Ministry.

In addressing the claimants' complaints, I communicated the cases of possible undue delays in judicial proceedings with the chairs of the competent courts acting as judiciary management and governance bodies. In each of the examined cases, I asked the chair of the competent court, in accordance with the provisions of the Act on the Public Defender of Rights, to provide a standpoint to the factual and legal circumstances concerning the course of the judicial proceedings under review, including a chronological overview of steps taken in the case at hand. If necessary, I communicated with the judiciary management and governance bodies even on a repeated basis and, whenever effective and available in terms of personnel and other capacities of the Office from the viewpoint of several aspects, I also requested access to the relevant case-file for perusal. Where a violation of the basic right to have one's case heard without undue delay during judicial proceedings was confirmed, I usually instructed the chair of the court, for each particular case, to take adequate measures to remedy the undesired situation and provide legal certainty for parties to the proceedings (parties to the dispute) as soon as possible; however, not to the detriment of sufficiently identifying the facts of the case, arranging high quality legal assessment of the case and ensuring lawful procedural actions of the court in the proceedings. In line with my authorisations I also requested information from every chair of the court as regards the adoption of measures to rectify the violation of the claimant's basic right, which I assessed subsequently.

From a systemic perspective, I carefully followed, in 2020 and 2021, the developments in the judicial reform in Slovakia through changes made in proposals regarding the new courts map.

As part of communication with the justice minister, and also in connection with the prepared reforms, I reiterated that ensuring adequate access to justice for natural and artificial persons was inevitable. In my letter to the justice minister, I also wrote that the statements made by several chairs of courts (for instance, the Bratislava Regional Court or several district courts in Bratislava) implied, on a repeated basis, inadequate burden on judges or complications related to personnel changes which are slowing down the trend of reducing the number of pending cases, thus causing undue delays in judicial proceedings. In this connection I expressed my concerns that the prepared processes involving organisational and structural changes will most likely contribute to an increase in the number of pending cases in courts as well.

Considering the fact that the judicial reform and the preparation of a new court map is an evolving process which has not been completed yet, it is necessary to keep up the communication with the Justice Ministry – as the sponsor of organisational and structural changes in the judiciary – also during the upcoming period.

Effective from 1 January 2021, the establishment of the Supreme Administrative Court of the Slovak Republic, as the top judicial authority for cases falling within framework of administrative justice, was definitely an important step under the judicial reform. This court was set up by a constitutional act amending and supplementing the Constitution and started to operate on 1 August 2021.

The Supreme Administrative Court of the Slovak Republic plays an irreplaceable role in a democratic society. By examining the decisions of administrative courts in the proceedings concerning cassation appeals, it ensures lawful decision-making by administrative courts in the provision of protection for subjective rights and legitimate interests of natural and legal persons against unlawful exercise of official authority by public administration bodies, while also guaranteeing the legitimacy of elections. Also, the Supreme Administrative Court of the Slovak Republic has the power to decide on disciplinary liability of judges, prosecutors and other persons defined by law.

In the matters of administrative justice, the Supreme Administrative Court ensures uniform interpretation and application of laws and other generally binding regulations by its own decisions and by adopting opinions with regard to unifying the interpretation of laws and other generally binding regulations, while also publishing its final judicial decisions of major importance in the Collection of Opinions and Decisions of the Supreme Administrative Court of the Slovak Republic.

04.10 DELAYS IN RESTITUTION PROCEEDINGS

At present, not all restitution proceedings have been completed with a final decision. Thousands of citizens are still waiting for the results, even though a long time has passed since they made their restitution claims.

In some cases, administrative bodies have been deciding on restitution claims for almost 27 years.[19]

The Office has been dealing with this issue since 2015, when the first survey on the matter was conducted.[20] Based on the survey findings and the fact that not all of the restitution proceedings had been completed with a final decision, I conducted another survey in 2017.[21] In the survey report, I imposed specific measures on the authorities concerned, which should help complete the restitution proceedings faster.

The need for reinforcing personnel capacities in some of the land and forestry departments of district offices seems to be inevitable. For instance, there is a critical situation at the land and forestry department of the Kosice District Office. The survey has shown that, considering the existing personnel capacities, this department would need a further 40 years to decide on the restitution claims.

Due to the serious nature of the issue which concerns a considerable number of individuals, the identified disproportionate length of the proceedings and the fact that the claims had been made mostly by older citizens, I presented an extraordinary report[22] on this issue in the Parliament in March 2018.

I advised the Parliament that, when approving the budget, it should take into account, in particular, the provision of the necessary funding to reinforce the land and forestry departments at district offices. Despite reinforced capacities of the land and forestry departments, I still have not noticed any significant progress in addressing this problem.

05 AWARENESS-RAISING ACTIVITIES

Ombudsman's "Thank You" event

Each year since 2005, the public defender of rights organises, in cooperation with the Office, a ceremonial event entitled "Ombudsman's Thank You" to commemorate the adoption of the Universal Declaration of Human Rights and celebrate 10 December as the International Human Rights Day.

The tradition was established by the then public defender of rights Jana Dubovcová to appreciate and acknowledge outstanding personalities and organisations whose engagement in awareness-raising and protection of fundamental rights and freedoms remains largely

[19] In the case of restitution claims made under Act No. 229/1991 Coll. on the arrangement of ownership relations to land and other agricultural property; in the case of restitution claims made under Act No. 503/2003 Coll. on restitution of land ownership and on amendment to National Council of the Slovak Republic Act No. 180/1995 Coll. on certain measures for the arrangement of land ownership, as amended, there are unfinished administrative proceedings taking around 15 years.
[20] Report on undue delays in restitution proceedings involving farming and forest land, Office of the Public Defender of Rights, Bratislava, September 2015.
[21] 2nd Report on undue delays in restitution proceedings involving farming and forest land, Office of the Public Defender of Rights, Bratislava, September 2017.
[22] Extraordinary report of the Public Defender of Rights on facts indicating a severe violation of fundamental rights and freedoms, Office of the Public Defender of Rights, Bratislava, February 2018.

unnoticed but whose work brings extraordinary benefits to society and shapes public opinion on human rights issues.

All awarded personalities receive a small ceramic heart produced in a sheltered workshop of the Rohov Social Services Home. The event is also an excellent informal meeting place for various human rights personalities.

Awards received

2020 SDGs Award in the Public Sector category

In 2020 I received the 2020 SDGS Award, granted by the Pontis foundation, for my contribution to meeting the sustainable development goals. These awards are granted to projects designed to make the world a better place by 2030, for example, by seeking solutions to eradicate poverty, fight inequalities or climate change.

Award for engagement in promotion of human rights and the rule of law

Since 2016, the French and German Ministries of Foreign Affairs have been awarding joint awards to commemorate the adoption of the Universal Declaration of Human Rights to 15 individuals in the field of human rights advocacy around the world each year. In 2020, I was awarded the Franco-German prize for human rights; which I received for advocacy in support of the rights of the Roma minority, reproductive rights and humane state-sanctioned quarantine measures, as well as for engagement in promoting the equal treatment of men and women and fight against discrimination on grounds of sexual orientation or gender identity.

Ray from Darkness

In November 2021, I received the Ray from Darkness award given by civic association eduRoma and the Institute of Romology Studies for commitment to improving the life of Roma men and women in Slovakia.

National design award for PDR's visual identity

The visual identity of the PDR Office won the 2020 National Award for Design in the Identity category. Its authors, Andrej & Andrej, have built the PDR's visual identity on a unique typeface using the exclamation mark as a symbol of warning against violations of fundamental rights and freedoms. A Denník N daily article writes: "the visual identity developed for the office of the public defender of rights rightly founds its place among the exhibited but also among the award-winning works. Its authors – Andrej Barčák and Andrej Čanecký – took an exclamation mark and turned it into a typeface element. The exclamation mark in the typeface thus naturally symbolises the very function of the ombudswoman in society, that is, that she warns about injustice." "It is a very timely design that may work for a long time and is easy to identify and build on further," Boris Meluš commented on the jury's decision.

The winning design came from a thoroughly prepared public tender organised by the PDR Office team, preceded by numerous consultations with experts on public procurement and graphic design professionals.