



Report on activities for the 3th quarter of 2018

Pursuant to Section 24 (1)(a) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended, I hereby inform the Chamber of Deputies of the Parliament of the Czech Republic of my activities.

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A. Number of complaints, inquiries

A total of **1899** complaints were received in the 3rd quarter of 2018, which is 145 less than in the same period last year. The proportion of complaints falling within the Defender's mandate **increased to 71%** (the figure for the previous year was 68%). While most complaints were related to prisons (125 complaints), many also concerned pensions (124) and assistance in material need (89).

In **60** of the total number of complaints received, the complainants objected to unequal treatment. The number of complaints against discrimination within the meaning of the Anti-Discrimination Act reached **51**. In **11** cases, we also provided discrimination-related information and analyses to international entities and national bodies (e.g. the French ombudsman, European network of equality bodies, and the Ministry of Foreign Affairs of the Czech Republic).

In the third quarter, we performed **3** systematic visits to facilities where persons restricted in their freedom are or may be present. Regarding the area of monitoring detention of foreign nationals and performance of administrative expulsions, we monitored **2060** decisions.

The following figure illustrates the numbers of complaints.





B. Defender's activities

B.1 Public administration

B.1.1 Recording of an interview with a child carried out by a body of social and legal protection of children (File No. 1024/2017/VOP)

I was approached by a mother whose son had been removed from joint custody and entrusted to the sole custody of the father by virtue of a court injunction. She complained, *inter alia*, about the procedure taken by the body of social and legal protection of children (BSLPC) in performing curatorship *ad litem*. The body had supported this major change in her son's situation, to be made through a court injunction, without informing the court about further details on the boy's preferences.

Even the parents lacked this information because a social worker filed a detailed recording of interviews with the boy in a "special restricted folder" and did not indicate in the file any information on what the boy had told him.

After inquiring into the case, I concluded that even in situations where a recorded interview with the child has to be filed in a special restricted folder which the parents cannot inspect, the BSLPC must indicate in the regular file essential information obtained in the interview. The information obtained in the interview with the boy was especially significant because it served as a basis for the social worker to support the major change in the boy's situation, i.e. being entrusted into the sole custody of his father by a court injunction.

The BSLPC agreed with my opinion and has since adopted sufficient remedial measures. Consequently, I closed the case.

B.1.2 Local dog fees (File No. 5489/2017/VOP)

The Defender was approached by a complainant requesting inquiry into a city hall's procedure in administration of local dog fees. The complainant was obliged to pay dog fees at least since 2009. In 2012, the dog was put down at a veterinary clinic. However, the complainant failed to report the fact to the city hall.

The city call then assessed fees for the period from 2009 to 2015. The complainant did not dispute the assessment in any way. Only in 2017, when the city hall started enforcing the outstanding amount, did the complainant send the confirmation that her dog had been put down. At this point, she approached the Defender and complained that until 2012, she as a retiree should have been paying a reduced fee and for the period from 2012 onward, she should not have been assessed any fees at all.

Retirees (recipients of old age pension) are entitled to a reduced amount of dog fees, as low as CZK 200 compared to the full amount of CZK 1,500. The complainant would thus have been entitled to the reduced fee if she had claimed it in time and submitted the necessary documents. As the deadline for reassessment of fees expired in 2012, this matter could not have been resolved to the complainant's satisfaction. We thus only dealt with the matter of



whether it was fair for the complainant to pay the fees even for the period of 2012-2015, when she did not have a dog.

Since the complainant failed to properly inform the city hall of this fact, the city hall had no reason not to request payment of the fee. After we contacted the city hall and explained the whole situation, the proceedings on the dog fee were discontinued and the woman was no longer required to pay the fee for the period when she had not had a dog.

B.1.3 Applications for travel documents for children entrusted to custody (File No. 14/2018/SZD)

I repeatedly encounter the complaint that an individual who has been granted custody of a child by a court must needlessly ask for the court's consent to filing an application for a passport. I found that the administrative authorities responsible for issuing passports request this consent merely on the basis of an oral instruction based on the Ministry of the Interior's opinion given by employees of said Ministry at a meeting with the representatives of Regional Authorities.

For this reason, I contacted the director of the Administrative Activities Department at the Ministry of the Interior and informed him that children's travels abroad did not constitute an important matter and that school and family trips abroad were commonplace in the Czech Republic. For this reason, it is not reasonable to refer to Section 934 (1) of the Civil Code, according to which "any decision of a tutor in a matter other than an ordinary matter concerning the child must be approved by a court".

The director of the Administrative Activities Department then informed me that the Ministry of the Interior had discussed the issue with the Ministry of Justice and changed its opinion so that the child's tutor (*poručník*) would be able to apply for a passport and ID card for the child without needing court's approval. As regards applications lodged by foster parents or other caring persons, the director informed me that these persons could lodge the application in accordance with the law with consent of the child's legal representative attached. In case there are insurmountable obstacles preventing them from obtaining the consent, this fact should be documented by means of a confirmation issued by the BSLPC. I closed the case because a remedy had been achieved.

B.1.4 Taking overpayment of parental allowance into account in assessment of housing allowance (File No. 4636/2017/VOP)

I inquired into the procedure of the Labour Office which ordered a complainant to refund an overpayment on parental allowance because the complainant had failed to report she was entitled to receive maternity benefits due to the birth of another child. The complainant also objected to the fact that the Labour Office did not grant her housing allowance because it had considered the refunded parental allowance to be a part of her overall income.

I found that the Labour Office's procedure had been compliant to the State Social Assistance Act with respect to the overpayment on the parental allowance.



However, I found errors in the proceedings on the housing allowance. The Labour Office had subtracted the refunded overpayment on the parental allowance merely from the income of the complainant alone but had based its assessment of the amount of the housing allowance on income of three persons assessed together with her (i.e. her three dependent children). Such a procedure is unlawful. According to the State Social Assistance Act, if an entitled person (a “person assessed together [with others]” under Czech laws) refunds overpayment on the parental allowance, the assessed family income has to be reduced by the amount of the overpayment for the relevant period in which the overpayment was refunded. The Act thus clearly specifies that the whole assessed amount of income should be reduced, not just the assessed income of the entitled person.

Since the Labour Office did not adopt remedial measures even after I issued my final statement, I used my power to inform its supervisory body, i.e. the Ministry of Labour and Social Affairs. The Ministry agreed with my opinion and ordered to initiate proceedings on unlawfully denied allowances. The Labour Office initiated the proceedings, reassessed the complainant’s claim for the housing allowance and its amount and also paid her the owed amount of underpayment. Subsequently, I closed the case.

B.2 Supervision over restrictions of personal freedom and expulsion monitoring

Within the Defender’s mandate to prevent ill-treatment and ensure supervision over restrictions of personal freedom, authorised employees of the Department of Supervision over Restrictions of Personal Freedom at the Office of the Public Defender of Rights performed a total of 3 **systematic visits to facilities** and monitored 15 **instances of administrative and criminal expulsions**, both by land and by air, in the third quarter of 2018.

Specifically, they visited a **treatment facility for long-term patients** at Jesenická nemocnice, a. s., a retirement home operated by SEN pro SEN, s. r. o. in Čtyřkoly, and a **psychiatric clinic** at the Plzeň University Hospital.

B.2.1 Preparation of important publications

Employees of the Office prepare publications summarising my activities and promoting prevention of ill-treatment. One such publication is a **collection of the Defender’s opinions on topics related to the prison system**. Other documents include the **summary report on visits to facilities for children requiring immediate assistance and summary report on visits to institutions tasked with the performance of security detention**, where I analyse the decisions that served as a basis for ordering security detention of individuals. We are in the early stages of preparing the **summary report on visits to homes for people with disabilities**. I concluded a series of visits to these facilities in August of this year.

B.2.2 Presenting the Defender’s findings to the expert community

On the occasion of the Prague Gerontology Conference, a representative of the Office informed the expert community on the findings and recommendations obtained through systematic visits to treatment facilities for long-term patients.



B.2.3 Co-operation with the Austrian NPM

As part of our bilateral co-operation, our Austrian colleagues visited the Brno Remand Prison and learnt about the local conditions of imprisonment, remand in custody and security detention.

The employees of the Office then visited the Korneuburg Prison in Austria in preparation for systematic visits of remand prisons with a focus on the conditions of remand in custody.

B.2.4 UN Committee Against Torture on the mandate of the Public Defender of Rights

The Czech Republic received the [final recommendations of the UN Committee Against Torture](#) (hereinafter the “Committee”), issued based on careful examination of the Sixth Periodic Report of the Czech Republic on measures implemented in order to perform its obligations under the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee received five reports from NGOs and also requested a statement from the Public Defender of Rights.

This time, the Committee’s recommendations (specifically paragraphs 36 and 37) directly concern the mandate of the Public Defender of Rights. The Committee is “concerned that the **State party has not established a consolidated national human rights institution in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights** (the Paris Principles) and that, despite the recent expansion of its capacity, the Public Defender of Rights still lacks the broad mandate needed to promote and protect all areas of human rights (art. 2)”. The Committee recommends that the Czech Republic should “expedite its efforts to amend the Act on the Public Defender of Rights, with a view to strengthening and bringing the human rights mandate of the Public Defender of Rights into full compliance with the Paris Principles. It should also ensure that the Public Defender of Rights has sufficient financial and human resources to carry out its mandate in an effective and independent manner.”

This statement is novel and apparently responds to international developments; otherwise, the contents of the concluding observations include no surprising parts. Aside from welcoming the progressive steps taken by the Czech Republic, the Committee voiced criticism concerning 17 topics. The most urgent issues include the problematic definition of torture in criminal law, persisting shortcomings in the role of doctors in combating ill-treatment (including the possibility of bringing findings to the attention of the Public Prosecutor’s Office), the effectiveness of the General Inspectorate of Security Forces and criminal punishment of ill-treatment, the need to revise the criminal policy with the aim of reducing the number of incarcerated persons, effective combating of hate crimes and investigation and compensation of unlawful sterilisations.

B.2.5 Police intervention and death in a psychiatric clinic (File No. [2618/2016/VOP](#))

In November 2015, a patient died at the psychiatric clinic in Olomouc during police intervention where a Taser (TASER X26) was used; the police were called in by the medical staff to help restrain the patient who was behaving dangerously due a psychotic seizure.



I inquired into the case on my own initiative, examining whether it was necessary to use force and assessing the tragic event in terms of its systemic implication, i.e. especially with regard to the use of electrical discharge weapons by the police and systematic protection of people with mental disorders from interference with their right to life and their right not to be subjected to ill-treatment. My inquiry revealed a number of shortcomings (i.e. lack of regard for the skills of individual police officer in operating the Taser, insufficient data obtained from the Taser device after the intervention, etc.); since neither the Police Presidium nor the Ministry of Health adopted remedial measures on their own, my final statement suggested to implement nine steps, with three specific measures. I later informed the Ministry of the Interior of the fact that some of them had not been implemented in full.

Albeit complete success has yet to be achieved in the case (the Ministry of Health seems to have given up in the long term on detailed monitoring of the use of force in psychiatric facilities and delegated all responsibilities in this regard to the police), the Minister's latest statement indicates that the Ministry understands the gravity of the problem, i.e. that Tasers or other coercive means are used directly on the premises of healthcare facilities, and promises to co-operate with the police as required and aid the hospitals in establishing their own internal procedures for co-operation with the police.

The intervention was also investigated by the General Inspectorate of Security Forces. When the case was set aside, the family of the deceased filed a lawsuit. In 2017, I also became an enjoined party in proceedings on a constitutional complaint lodged in the same case (File No. IV. ÚS 4150/16) and provided the Constitutional Court with my report as an expert opinion.

B.3 Protection against discrimination

B.3.1 Recommendations regarding measures for positive work-life balance in civil service (File No. [32/2018/DIS](#))

In 2017, I conducted a survey on work-life balance in civil service at most of the Czech Government's Ministries. My Recommendations stem directly from the survey and are therefore addressed especially to the Ministries involved, the Civil Service Department at the Ministry of the Interior, and to the Department for Gender Equality at the Office of the Government.

Recommendations to civil service offices

- (1) Focus the offer of work-life balance tools on diverse groups of employees.
- (2) Monitor the interest among employees in the work-life balance tools and reflect it in planning.
- (3) Provide for training of managers in co-ordinating employees performing civil service (work) in a flexible regime.
- (4) Transparently inform employees about the available flexible forms of work.

Recommendations to Ministries



(5) Assign one or more persons with responsibility for the area of gender equality as part of their service tasks.

(6) Support the training of the gender focal points.

Recommendations for the Civil Service Department at the Ministry of the Interior

(7) Ensure that any aims to be defined in the area of work-life balance in civil service reflect the information presented in the annual reports on the evaluation of the efforts to create conditions promoting work-life balance of civil servants.

(8) Support civil service offices in application of flexible forms of employment (e.g. by creating manuals and guidelines for civil service offices); identify and support best practice.

(9) Hold regular training sessions for managers on the topic of flexible forms of work.

Recommendation to the Department for Gender Equality at the Office of the Government

(10) Use the information from the reports on work-life balance in civil service submitted by the Ministry of the Interior to the Government when drawing up reports on gender equality and include it in the updated gender equality enforcement priorities and procedures of the Government.

A total of 67 civil service offices responded to the recommendations. Their responses showed that differences persist among the offices as to whether and which of my recommendations should be implemented. Therefore, I will stay in touch with the Deputy Minister of the Interior responsible for the civil service and ask him to co-ordinate specific steps in the area of work-life balance in the civil service. I have informed the public of my findings through my press release of 4 October 2018.

B.3.2 Disabled parking (File No. [14/2017/SZD](#))

Since 2015, I have been dealing with complaints filed by applicants for disabled parking permits in the city of Brno against being denied a permit (“permit for a special use of road” under Czech laws) by a city ward.

Following consultations with the individual city wards, Brno City Hall (hereinafter the “City Hall”) issued a recommended methodology; some city wards then adopted their own methodology while others chose to use the one recommended by the City Hall.

While dealing with the cases brought to my attention, I concluded that the practice of some city wards was at variance with the Anti-Discrimination Act and the Recommendation of the Public Defender of Rights on equal treatment in establishing reserved parking spaces on local roads (2012), while being based directly on the City Hall’s methodological guidelines, i.e. rules and methodologies of the city wards that are based thereon.

I issued my recommendations in the case in June 2018, where I analysed the relevant legislation in detail and prepared a set of measures (individual recommendations) that should provide for a revision of the current methodological guideline and bring it into compliance with the Anti-Discrimination Act and the Defender’s Recommendation.



In July 2018, I received a response from the Mayor who informed me that he would call on the individual city wards to disregard the methodological guideline they had been using in proceedings on approval of establishing reserved parking spaces since 2015. The City Hall would also request that the city wards adhere to the “Recommendation” of June 2018.

I wish to inform the Chamber of Deputies of this example of a positive and prompt co-operation between local governments and the Public Defender of Rights. I will continue monitoring the practices of the individual city wards through addressing potential individual complaints related to this issue.

B.3.3 Labour inspection focused on discriminatory job ads published on an online advertising portal (File No. 1896/2017/VOP)

I was approached by a lawyer working for the DROM contributory organisation (hereinafter the “Complainant”) looking for assistance in the matter of job ads considered discriminatory on grounds of nationality and ethnicity. When helping their clients find employment, DROM staff had found an online ad placed by a company looking for construction labourers to work at a construction site of a residential building. The ad stated that the company was only looking to hire Czech citizens and that “foreigners” and ethnic minorities needed not apply.

I recommended to the Complainant that DROM file a complaint with the relevant District Labour Inspectorate requesting that a labour inspection be performed. As the Complainant was not satisfied with the inspection’s results (no violations of the law had been found), she approached me again. The District Labour Inspectorate based its opinion solely on the job portal operator’s response to several questions and concluded that the online advertising site was anonymous and that the identity of the company which had placed the ad could not be established. The State Labour Inspectorate found no errors in the District Labour Inspectorate’s procedure and did not support initiating administrative proceedings in the case.

In my inquiry into the case, I found that the authorities’ procedure was at variance with the law. In performing its inspection, the District Labour Inspectorate should have made use of the legal concept of the “obliged person”, i.e. request the identity of the company that had placed the ad from the advertising site operator. As it failed to do so, it failed to establish the facts of the case within a scope necessary to meet the purpose of the inspection, thereby violating Section 9 (a) of the Inspection Rules. The State Labour Inspectorate should have discovered this error in the District Labour Inspectorate’s procedure and ordered it to initiate administrative proceedings, or should have done so itself. Since it did not do so, it violated Section 175 (6) of the Code of Administrative Procedure.

The State Labour Inspectorate has already informed the inspectors in all District Labour Inspectorates of the need to use information obtained from obliged persons for the purposes of identifying originators of discriminatory job ads. I consider this methodological instruction sufficient at the time being and will continue monitoring compliance therewith.



B.4 Monitoring of rights of people with disabilities

B.4.1 Second meeting of the advisory body

In August, a second meeting of the advisory body established by the Defender for the purposes of monitoring the **Convention on the Rights of Persons with Disabilities** (hereinafter the “Convention”) took place in the Office of the Public Defender of Rights (hereinafter the “Office”). The main topics discussed included the upcoming municipal and Senate elections. Members of the advisory body drew attention especially to **insufficient accessibility of the elections for people with hearing impairments**, where information on the elections were not available in the sign language and the usual form of written information was not necessarily comprehensible to this group of people. In relation to ensuring the elections’ accessibility, the members of the advisory body also agreed it was necessary to generally improve the accessibility of information on the elections, which should be [easy to read and comprehend](#).

Finally, the members were of the opinion that people with limited legal capacity and many others are not always sure about whether they can vote; this information is often unavailable even in the social services facilities where such people live. In this relation, **an information guide was created to explain the right to vote on the part of people with limited legal capacity**. This guide was posted on the Defender’s website and social media accounts, and was also distributed via NGOs.

B.4.2 Surveys and research activities

The main instruments of monitoring compliance with the Convention include various forms of surveys and research which could identify potential systemic problems in implementing the Convention on the Rights of Persons with Disabilities. For this purpose, I have initiated the following surveys and research activities in the past quarter.

Availability of housing for people with disabilities

Since I am planning to address issues associated with the availability of various forms of housing to people with disabilities, I have decided to inquire about the availability of shelters and similar accommodations and the use of such services by people with disabilities. The survey will be conducted by means of a questionnaire. The expected date of completion is December 2018.

Effectiveness of vocational and professional rehabilitation

In relation to Article 27 of the Convention on the Rights of Persons with Disabilities, which guarantees the right to work and adoption of necessary measures to **promote the employment of persons with disabilities**, I have initiated a research into vocational and professional rehabilitation. The objective is to evaluate its effectiveness and detect barriers to the use of this instrument on the part of the Labour Office and people with disabilities themselves. As part of the research, we will monitor the number of successful participants who have entered the labour market. The research will also aim to establish **whether the Labour Office and its branches ensure reasonable accommodation to persons with**



disabilities taking part in professional/vocational rehabilitation projects. We will also inquire whether the Labour Office and its branches provide people with disabilities with services corresponding to the principles of universal design such as barrier-free access to the buildings of regional branches of the Labour Office, easily legible forms, etc.

Limitation of legal capacity and use of supporting measures

I am currently conducting a survey on issues associated with limiting legal capacity and the use of other supporting measures. In qualitative analysis of relevant judgments, I focus on the position of persons whose legal capacity is the subject of court proceedings, e.g. whether the court met the person whose legal capacity is under review and whether the court considered less restrictive measures.

Availability of dental care

We are also conducting a survey concerning the availability of dental care with general anaesthesia, where some patients (especially autistic patients and patients with mental disorders) cannot be treated in the usual way and dental interventions have to be carried out in conditions of a surgical operation. My current experience indicates patients often have to wait many months to receive this type of medical attention. I will present the results of the survey in the next regular quarterly report.

Availability of social services to children and adults with autism spectrum disorders

In the previous period, I completed a survey of availability of social services to autistic children and adults, where I studied the possibilities for supporting this group of people through various kinds of social services. I focused especially on the **availability of services in the individual Regions of the Czech Republic**, the manner in which availability of social services in the Regions was planned and whether the recipients (clients) were involved in these activities. Based on the survey results, I formulated my **recommendations on improving the availability of social services**, which I addressed to the Regions and the Ministry of Labour and Social Affairs (as the primarily responsible authority), as well as to the Ministry of Education, Youth and Sports and the Ministry of Health and providers of social services. The full report and my recommendations are available [on the Defender's website](#).

I have also released an information document responding to the survey's results, which among other things revealed that families with autistic members often lacked comprehensive information on available assistance possibilities. The document addresses various areas of life and is also available [on the Defender's website](#).

B.4.3 Awareness raising

Monitoring compliance with the Convention is closely associated with raising awareness of certain issues, which should be aimed not only at the people with disabilities themselves, but the general public as well. My authorised employees participated in the following awareness-raising activities.

World Spinal Cord Injury Day in Paraple Centre



Members of the Office's staff have attended a conference on spinal injuries at the Paraple Centre, an NGO supporting paraplegics, and presented the Defender's competences in monitoring the rights of people with disabilities. During the entire conference, they also offered advice at an information stand on various ways in which the Defender could help in this respect.

Spinal Muscular Atrophy Awareness Month

In August, the Office's staff joined the expert community in a campaign to raise awareness of issues related to the spinal muscular atrophy (SMA) disorder. Using photographs, they tried to draw attention to the difficulties faced by people suffering from this disorder, which seriously impairs their self-sufficiency and leads to dependence on other people's help. The photographs were exhibited with an accompanying commentary in the Polárka theatre in Brno.

International Day of Sign Languages

Using a video in sign language, the Office's staff called attention to the International Day of Sign Languages and the fact that people with hearing impairments face everyday difficulties due to insufficient sign language interpreting services.

Prague Gerontology Conference

Each year, the Office's representatives attend the Prague Gerontology Conference on issues related to dementia care. They presented a contribution drawing attention to the Defender's new competence in monitoring the area the rights of people with disabilities and, more importantly, the State's obligation to provide adequate social services corresponding to the needs of various target groups of people and offering the possibility of living in a community.

C. Legislative recommendations and special powers of the Defender

C.1 Review of school leaving examinations will become more transparent

In recent years, the Defender repeatedly warned about **shortcomings in the procedure of the Ministry of Education in reviewing the results of school-leaving examinations** (the "*maturita*" exam used in numerous types of secondary schools). **Based on my comments, the Ministry of Education has amended the so-called "maturita decree"** and modified certain procedures and forms so that the students would now have better information on where and how to lodge a complaint. The students will also receive a more detailed reasoning in cases where the Ministry dismisses their application for a review.

In August this year, I carried out another survey in which I reviewed 350 randomly selected decisions of the Ministry concerning review of "*maturita*" examinations conducted in the spring exam period of 2018. Even though this year's survey showed that clearly formulaic responses only appeared in 13% of all cases, some degree of formulaicity appeared in 40% of answers. This documents that the practice of the Ministry of Education is far from perfect.



However, the Ministry confirmed to me that while it would continue to evaluate the whole didactic text in each review application to establish whether a question was incorrectly marked as wrong, illegible etc., the Ministry had supplemented forms for application for a review of the “*maturita*” examination based on my request. The students will thus receive an instruction to indicate the specific question or part of a test they wish to be reviewed. If a student’s objections are dismissed, the Ministry will provide a detailed explanation and reasoning. Indeed, proper reasoning addressing the specific complaints of the students who had failed the “*maturita*” examination was one of my key requests. As from the spring period of 2019, the Ministry has also promised to provide more detailed reasoning for decisions concerning math problems.

Regarding complaints against unsatisfactory classroom conditions during the test that could have negatively impacted students’ performance, the Ministry modified the procedure to allow students to include objections in an official record after the test concludes. The supervisors of classroom tests advise the students of their right to include their objections concerning the course of the examination in an official record. As from the spring exam period of 2019, they will also advise the students of the consequences of them not exercising this right (i.e. that it will weaken their position if they make their objections as to the conditions of the test known only during review proceedings at a later time).

Despite a number of improvements which will help future examinees object to the examination’s result, **some problems remain**, such as the (lack of) possibility to inspect all the materials on which the decision is based. Some disputed issues concerning reviews of the “*maturita*” examination would have to be authoritatively decided by a court, should the students lodge an action.

In Brno, on 31 October 2018

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