

I. INTRODUCTION

1. The institution of Public Defender of Rights was established in the Czech Republic by virtue of Act No. 349/1999 Coll., on the Public Defender of Rights. The Defender is independent and impartial, and accountable for the performance of his or her office to the Chamber of Deputies, which elected him or her.
2. Every person may submit a complaint to the Defender in a matter falling within the Defender's competence.
3. Since 2001, the Defender has been defending individuals against unlawful or otherwise incorrect procedure of administrative authorities and other institutions as well as against their inactivity.
4. Since 2006, the Defender has acted in the capacity of the national preventive mechanism pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
5. At the end of 2009, the Defender became the national body responsible for equal treatment and protection against discrimination (equality body).
6. Since 2011, the Defender has also been monitoring detention of foreign nationals and the performance of administrative expulsion.
7. The Parliament of the Czech Republic currently discusses an amendment to the Public Defender Act which would vest in the Defender the competence to monitor enforcement of the rights of persons with disabilities under the Convention on the Rights of Persons with Disabilities, published in the (Czech) Collection of International Treaties under No. 10/2010.
8. The special powers of the Defender include the right to file a petition with the Constitutional Court seeking the abolishment of a secondary legal regulation, the right to become an enjoined party in Constitutional Court proceedings on annulment of a law or its part, the right to lodge an administrative action to protect a general interest or to file an application to initiate disciplinary proceedings with the president or vice-president of a court. The Defender may also make recommendations to the Government concerning adoption, amendment or repealing of a law.
9. The Public Defender of Rights currently does not have the status of **an accredited National Human Rights Institution (NHRI) in accordance with the Paris Principles**. Nonetheless, considering the Defender's activities and development to date, the Defender de facto fulfils the role of a NHRI in the Czech Republic.
10. The Report of the Public Defender of Rights is based on the evaluation of the state of the protection of human rights and represents a follow-up to the Report of the Czech Republic on the Implementation of the Recommendations Made During the Second Cycle of the Universal Periodic Review,¹ prepared by the Czech Government in 2015. The evaluation is based on findings gained from the received complaints, completed research and co-operation with other relevant bodies.

1 <http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/CZ/CzechRepublicMidTermReport.pdf>

II. FIGHT AGAINST DISCRIMINATION

11. I would like to point out the results of my 2015 research², which showed that 11% of the respondents had faced discrimination or harassment in the previous 5 years. The vast majority of the persons concerned never complained, citing lack of trust in governmental institutions, lack of evidence and lack of information as the main obstacles. Apart from that, embarrassment and fear of retaliation were also mentioned as discouraging factors. Experts from amongst judges and governmental officials referred to various measures which could help to remove such obstacles, including the adoption of a law on free legal aid, providing the Defender with the competence to lodge a public action and continued education of judges and attorneys-at-law in the field of anti-discrimination law. The research also showed that even where acts of discrimination have been penalised by the competent authorities, the penalties do not have a deterrent effect due to the amounts imposed. I have submitted several recommendations which, if fulfilled, would improve the protection against discrimination.
12. **The Defender's power to lodge a public action** was envisaged in a draft amendment to the Public Defender Act; however, the amendment was pulled from the Chamber of Deputies of the Czech Parliament at the beginning of 2017 due to a lack of political support for extending the Defender's competences (in addition to lodging a public action, the Defender was to be vested with the power to submit to the Constitutional Court a motion to cancel a part of a law). I have also repeatedly recommended a legislative amendment that would **decrease the court fee in discrimination cases or transfer the burden of proof for all victims of discrimination**. However, I have not yet succeeded. My other recommendations, as well as the research itself, are publicly available. I have presented the results of the research³ to the Office of the Government, certain ministries, inspection authorities, non-governmental organisations and the general public.

III. CHILDREN'S RIGHTS

13. I have repeatedly emphasised the **necessity to unify the care for vulnerable children**. Unfortunately, the bill on family support was not adopted and no steps are currently being taken towards the unification. The transformation of the care for vulnerable children as such (gradual abandoning of institutional care, establishment of community-type facilities, etc.) cannot be considered adequate either. It is true that the Ministry of Labour and Social Affairs has submitted two legislative amendments providing for the establishment of a parallel network of facilities, which would fall under the remit of the aforementioned ministry and would in practice replace the current children's homes falling under the remit of the Ministry of Education, Youth and Sports. Nonetheless, I could not but criticise such process of unification of the care for vulnerable children, which is not based on any expert discussions, which has been rejected by the Ministry of Education and which involves no practical training of the relevant staff whatsoever. Unfortunately, no substantial development or substantive transformation steps can be seen **in the area of institutional and protective care** either. The Minister of Education has issued quality standards for institutional and protective care, but these are binding only on facilities operated by the Ministry of Education. Moreover, I understand that in practice, there is nobody overseeing

2 http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/diskriminace_EN_fin.pdf

3 http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/diskriminace_EN_fin.pdf

the compliance of the standards, and the manner of application of the standards depends on the facilities' discretion. My recommendation was to adopt the standards in the form of an implementing regulation, which would mean that the standards would be binding on all institutional- or protective-care facilities. Regrettably, my recommendation was not followed. The New Civil Code introduced an express **prohibition to remove children from families purely on the grounds of housing issues**. Such practice was to be further prevented by virtue of **the Social Housing Act**, which would also guarantee the right to dignified housing for low-income or socially deprived persons and families, as well as for persons facing social exclusion. The corresponding bill was submitted to the commentary procedure only at the end of 2016. In this context, I have to note that the final wording of the Act largely deviated from the initial ideas. In my opinion, the essential shortcomings lie in the fact that municipalities will have no duty to provide for social housing (see also paragraph VI) and that two current types allowances for payment of the housing costs have been joined, which means that many families and senior citizens will lose their current entitlement to the allowance.

14. With respect to the Civil Code, note should also be taken of the substantial **prolongation of court proceedings in cases involving minor children** (or cases concerning legal capacity). The authority to make certain decisions has been vested exclusively in judges, but this fact has not been reflected in the staffing of courts. Proceedings involving minor children suffer from substantial delays.
15. Regretfully, I have also noted that the **Social Workers Bill** has been pulled from the Parliament, even though its final wording substantially deviated from the original intention; for example, it no longer envisaged the establishment of an independent professional chamber.
16. On the other hand, I appreciate that the authorities responsible for social and legal protection of children and the courts have implemented the **Cochem Model** in certain cases. Certain Czech district courts commenced applying the model in 2016 and in early 2017 in decision-making on care for minor children. The model is based on interdisciplinary co-operation, especially co-operation among the court, the competent authority responsible for social and legal protection of children, a professional counselling facility, the parents and their legal counsels. The parents are encouraged to adopt a non-contentious approach and resolve their differences amicably. The initial experience shows that the model helps to substantially shorten the court hearings involving arrangement for the relations to children.

IV. INSTITUTIONAL FRAMEWORK OF THE PROTECTION OF HUMAN RIGHTS

17. In practice, the Defender already fulfils a number of duties of a NHRI. The Defender's position was to be further strengthened the (aforementioned) legislative amendment, which was however pulled from the Chamber of Deputies. Subsequently, the Deputies submitted their own motion to amend the Public Defender of Rights Act, which introduces only one new competence of the Defender, namely monitoring the enforcement of the rights of persons with disabilities in the sense of Art. 33 (2) of the Convention on the Rights of Persons with Disabilities. I am prepared to take steps aimed at accreditation of the institution of Public Defender of Rights as a NHRI. Nonetheless, I believe that full implementation of the duties of a NHRI requires appropriate amendments to the Public Defender of Rights Act, although I do not consider such changes realistic, considering the

fate of the previous legislative amendment. The institution is further limited in terms of personnel, since the number of complains has increased significantly in the last years and my primary task is to provide effective help to individuals. Despite this, I would like to open the question of the “Public Defender of Rights as a NHRI” at least at meetings with non-governmental organisations, but also with governmental authorities.

V. INTEGRATION OF ROMA PEOPLE AND INCLUSIVE EDUCATION

18. **Roma people** have practically no access to housing on the free residential market. In 2015, a district court convicted a real estate agent of direct discrimination on the grounds of ethnic origin for having refused to arrange an inspection of a flat for a Roma woman (since the owner did not want any Roma people as tenants). Although the case was largely published and discussed in the media, the common discriminating practice has not change in the least. Consequently, Roma people do not seek housing on the free market and continue living in ghettos. Moreover, penalties imposed by the Czech Trade Inspection Authority do not have adequate deterrent effect on real estate agencies engaged in discrimination.
19. According to my knowledge, even municipalities fail to satisfy the needs of this vulnerable group, either due to applying, directly or indirectly, discriminating criteria, or due to implementing a segregation strategy. One of housing segregation cases brought before me will be heard by the court in the framework of a strategic litigation organised by the European Roma Rights Center (ERRC). The Ministry of Interior as well as the statutory cities should intensify their supervisory efforts pursuant to the Municipalities Act (within their competence, they may control the compliance of the Rules for Awarding Municipal Housing with the law). The Social Housing Act cannot be expected to improve the situation of the Roma people since, as I have already mentioned above, the municipalities’ duty to provide social housing has been omitted in the corresponding bill.
20. In 2014⁴ and 2015⁵, I informed the Council of Europe Committee of Ministers that the **integration measures in education** implemented in the period 2011 – 2013 **had been mostly for the benefit of non-Roma children**. Therefore, I welcomed the 2015 amendment to the Schools Act, which introduced the obligatory one-year preschool education commencing from 2016. While it is still early to evaluate its impact, I have been informed of certain obstacles to the implementation of the supportive measures in practice (lack of teaching assistants). I have long criticised the overlapping of the staff of school counselling facilities and special schools (conflict of interests). I have pointed out that the municipalities do not adequately address the parents, which leads to the creation of schools attended only by Roma children (the white flight phenomenon). I have requested the Czech Schools Inspectorate to penalise spatial segregation in education. I have recommended that primary schools abandon unreasonable uniform testing of children upon the children’s registration for the first grade. This topic is addressed in detail in my 2015 Summary report on protection against discrimination (page 35)⁶, and also in this year’s Summary report (pages 26-28)⁷.

4 http://www.ochrance.cz/fileadmin/user_upload/ESO/58-2015-VOP-PPO-D-Opinion_EN.pdf

5 http://www.ochrance.cz/fileadmin/user_upload/ESO/16-2015-DIS-PPO-D-Opinion_EN.pdf

6 http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyrocn_i_zpravy/2015-DIS-annual-report.pdf

7 <http://www.ochrance.cz/en/discrimination/annual-reports-dis/> (available from April 2017)

VI. GENDER EQUALITY

21. The Czech Republic shows one of the widest gender pay gaps in Europe (22%). I have found out that even labour inspectorates fail to adequately control pay gaps. Pay transparency is inadequate both in private and in public sectors. The Czech Republic has not adopted any of the individual recommendations included in the 2014 Commission Recommendation on strengthening the principle of equal pay between men and women through transparency. Women do not fight against unequal pay at courts.
22. In certain regions, care for preschool children is unavailable, employers are not sufficiently encouraged by the government to establish alternative forms of care (playgroups), and part-time jobs and home office are literally “taboo” in certain companies. Complaints received by my office show the common practice of terminating employment of women after expiry of their parental leave, which is very long compared to other European countries (until the child is 3 years old). Awareness campaigns on the part of public authorities are inadequate and trade unions exert no efforts in this respect. The government does not explain to the employers the economic and ethical benefits of diversity at work.

VII. PROTECTION OF PERSONS RESTRICTED IN THEIR FREEDOM

23. Czech prison population rate is one of the highest among European countries. In the long term, prisons have been overcrowded and have to address the associated issues (such as accommodation shared by a large number of prisoners, lack of privacy, staff overloading, etc.). The state of the prison service in the Czech Republic is described in my general report from a set of visits to several prisons conducted in 2014 and 2015. More detailed information and recommendations to the competent governmental authorities can be found in Prisons: Report on systematic visits carried out by the Public Defender of Rights 2016⁸.

VIII. RIGHTS OF SEXUAL MINORITIES

24. In my 2015 report on protection against discrimination, I noted a practice that I consider inappropriate. The problem is that where transgender people wish to officially change their gender, they have to undergo an operation, which also involves sterilisation. For more details, see the 2015 Summary report on protection against discrimination ⁹, (pages 27 and 28) and the report on investigation of the complaint lodged by Ms T.H.¹⁰
25. I have also conducted a research concerning the **“willingness” of civil status registry offices to accept conclusion of civil partnerships**. I asked whether prospective civil partners were free to choose the time and place of the ceremony (in the same way as prospective spouses). I found out, among other things, that partners could not change the place of the ceremony in three out of the fourteen regions (for more information, see the Summary report on protection against discrimination 2016, page 22).

8 http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Veznice/2016_prisons.pdf

9 http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyrocn_i_zpravy/2015-DIS-annual-report.pdf

10 http://www.ochrance.cz/fileadmin/user_upload/ESO/206-2012-DIS-VP-english_version.pdf

IX. UNLAWFUL STERILISATION

26. In the autumn of 2015, the Minister for Human Rights submitted a draft substantive intent of the Act on indemnification of persons unlawfully sterilised in the period from 1 July 1966 to 31 March 2012. One of the main goals of the draft legislation was to provide for indemnification of group of persons concerned with regard to the internal legal obligations of the Czech Republic following from the prohibition of ill-treatment. The vast majority of claims for indemnification enforced in civil proceedings were dismissed on the grounds of a plea of limitation. Unfortunately, the draft was rejected at a Government meeting (for various reasons, such as that the women should have sought and should seek indemnification in courts or that the proposed amount of CZK 300,000 is too high). Since then, the Government has taken no steps to revive the issue.

X. RIGHTS OF FOREIGNERS

27. I have repeatedly pointed out that the living conditions of children accommodated together with their parents detained in the Facility for Detention of Foreigners in Bělá-Jezová constitute infringement of fundamental rights of the child and amount to ill-treatment. During the repeated visits, I found ill-treatment whose causes stem both from systemic and operational reasons. The substantial shortcomings are noted in my report on my visit to the Facility¹¹, as well as in Reports on the Activities of the Public Defender of Rights as the National Preventive Mechanism for the years 2014¹², 2015¹³ and 2016¹⁴. I have also submitted my opinion on restricting freedom of families with children and the conditions of their accommodation in the Facility for Detention of Foreigners to the Constitutional Court, which addresses the issue in connection with a constitutional complaint lodged with the Court.

28. Although the conditions in the Facility for Detention of Foreigners in Bělá-Jezová gradually improved (increasing the number of social workers, removal of the demonstrations of power on the part of the guards, introduction of games for children, etc.), the fundamental problem of placing children in a detention facility has not been solved.

29. I have also repeatedly criticised the absence of an independent supervisory body vested with appropriate competence that would perform regular supervision in facilities for detention of foreigners. Consequently, there is no means of enforcing the right to effective remedy in the sense of Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This issue is discussed in my Report of the Public Defender of Rights as the National Preventive Mechanism 2015 (page 11).¹⁵

30. Deputies' amending motion to the bill amending the Residence of Foreign Nationals Act, currently discussed by the Chamber of Deputies of the Parliament of the Czech Republic¹⁶,

11 http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/Report_Bela-Jezova.pdf

12 http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/Zpravy-vyrocní/2014-NPM-Annual-Report.pdf

13 http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/Zpravy-vyrocní/2015-DET-annual-report.pdf

14 <http://www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom/annual-reports/> (available from April 2017)

15 http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/Zpravy-vyrocní/2015-DET-annual-report.pdf

16 Chamber of Deputies of the Parliament of the Czech Republic Amending motion to the governmental bill amending Act No. 326/1999 Coll., on residence of foreign nationals in the Czech Republic and on amendment to

envisages withdrawal of judicial review of lawfulness of detention in cases where the foreigner is released from detention before the court issues a decision *in rem*. I believe that such a motion directly violates the provisions of Art. 5 (4) of the Convention. Considering that the amending motion was submitted by a Deputy for a governing party with respect to a governmental legislative amendment and was apparently prepared in cooperation with the Ministry of Interior, I consider this an alarming development.

Brno, March 2017

Mgr. Anna Šabatová, Ph.D.
Public Defender of Rights

certain other laws, as amended, and other associated laws (Parliamentary press No. 990) [Pdf document]. Prague: Chamber of Deputies of the Parliament of the Czech Republic; 7th electorate term; from 2013, Parliamentary press No. 990/2 [retrieved on 20 March 2017]. The amending motion (in the Czech language) is available at: <http://www.psp.cz/sqw/text/orig2.sqw?idd=130138&pdf=1>