



Public Defender of Rights  
OMBUDSMAN


# PROTECTION AGAINST ILL-TREATMENT

# 2016

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

## Explanatory notes

 website link

 booklet link

Public Defender of Rights

Protection of Persons Restricted in their Freedom



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# INTRODUCTION

Dear readers,

This is a Report on the activities of the national preventive mechanism in 2016. My activities for the past year prove that the fight against ill-treatment is a never-ending process and requires considerable endurance. This fact may be illustrated for instance by the case of conditions in the Educational Institution in Chrastava improved only after ten years of effort, with the third report from the visit to this facility issued by the third Public Defender of Rights. Another example consists in the many years of effort on the part of the Defenders and other actors which was required before a Government resolution was adopted on the unification of services for vulnerable children under one responsible ministry. It is my wish that the shortcomings we are dealing with this year will be remedied faster, whether this includes systemic recommendations in the area of prisons, a change in the conditions of the detention of foreign nationals' families and children, or measures for ensuring the necessary care for residents of social services facilities.

The national preventive mechanism also saw modifications in the last year. We gradually try to visit all kinds of places of detention. We will no longer focus solely on visiting one or two types of facilities in a given calendar year. We also started publishing anonymised reports in the Register of Defender's Opinions (ESO) from the visits to facilities which I had already concluded. Therefore, everyone can get acquainted with my activities not only through annual and summary reports from the visits to a certain type of facilities, but also through findings and recommendations contained in the individual reports.

As I want to inform you on these and other issues, events and challenges to the widest possible extent, you will find a number of direct links in the text, which will be especially suitable for readers of the electronic version of this Report.

I hope this Report will prove inspiring to you.

Anna Šabatová

# 1. Summary

## Facilities visited in 2016

Bělá-Jezová

Mladá Boleslav

Litoměřice

Chomutov

Most (ul. K. H. Borovského)

Mariánské Lázně

Drahonice u Lubence

Trnová u Plzně

Plzeň

Mělník

Benešov

22



systematic visits in 2016 were carried out by the Defender's team

1x



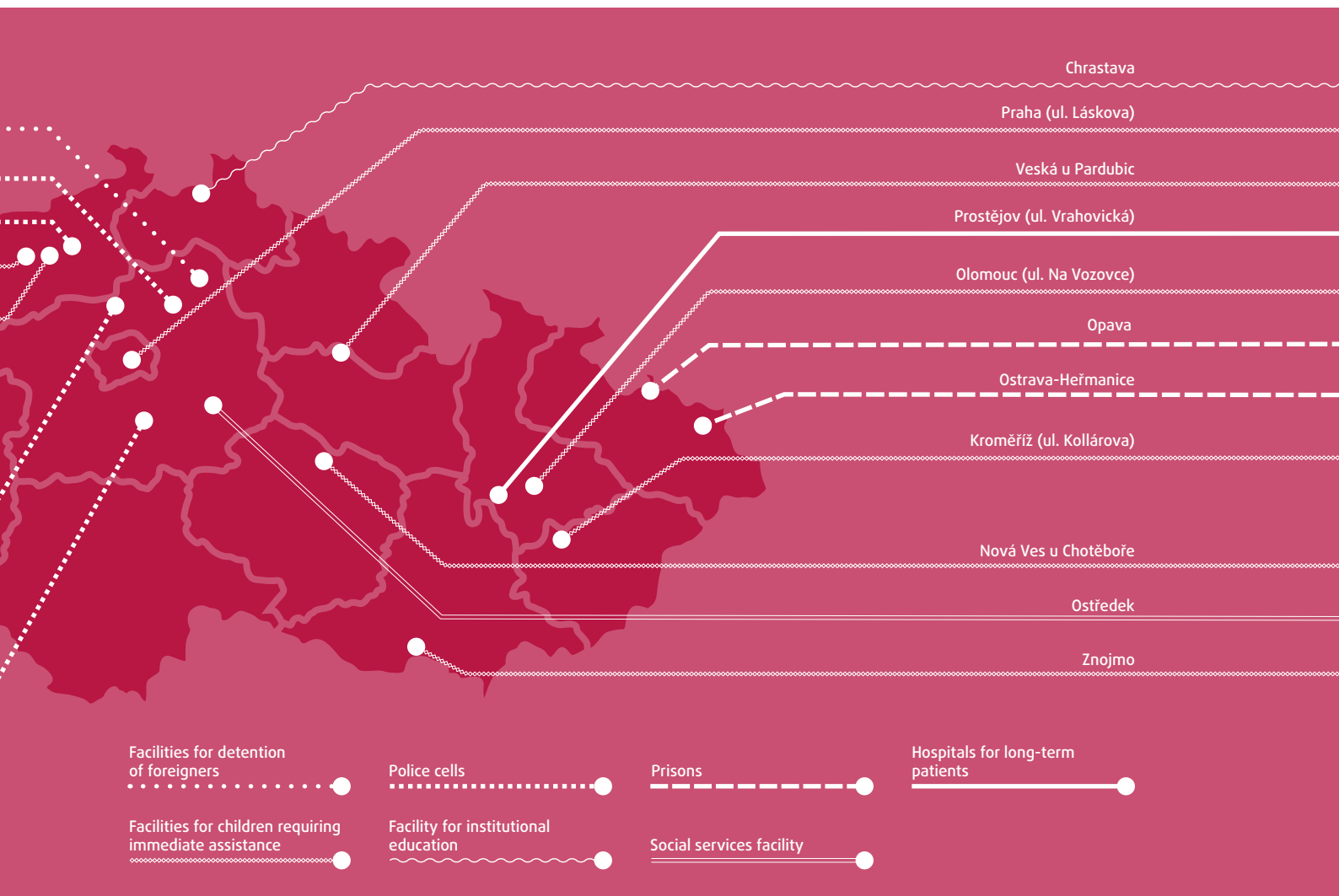
the Defender communicated a case to general public, as a sanction against the facility

2x




the Defender requested a statement from the founder of the facility or from competent authorities

(2 prisons, 6 police facilities, 9 facilities for children requiring immediate assistance, 1 educational institution, 1 hospital for long-term patients, 1 social services facility, 2 facilities for the detention of foreigners)



In 2016, the team of the national preventive mechanism consisted of

7  lawyers

12  external experts (2 physicians, 2 nurses, 2 psychologists, 4 experts in special education, 1 expert in social education and 1 social worker)



## Eleven highlights of 2016

1

**The Defender issued a summary report on the visits to prisons.** The report includes general findings from seven prisons and recommendations for the General Directorate of the Prison Service of the Czech Republic and the Ministry of Justice. The Defender continues to discuss the implementation of the proposed measures.



2

**The team of the Defender performed 22 systematic visits – both as part of a focus series as well as regular monitoring.** The objective of nine of the visits was to more deeply examine the standard of treatment in facilities for children requiring immediate assistance, two visits focused on the execution of protective treatment in a prison. Regular monitoring was carried out in police and foreigners facilities, social service facility and facility for institutional and protective education. The repeated visit to a hospital for long-term patients focused on monitoring the implementation of the previous recommendations.

3

**The facilities for children requiring immediate assistance were visited within a single project (9 visits).** They were performed by a special team of lawyers and external experts. The lawyers did an internship in facilities with good practice beforehand, while the Office prepared training for the experts regarding the methodology of visits and prevention of ill-treatment. The Defender will present the findings from the visits along with the recommendations in a summary report in 2017.

4

**In two cases, the Defender addressed the founder of the facility or the competent authorities to provide protection to persons at risk of ill-treatment.** These were the cases of the Facility for Institutional and Protective Education in Chrastava and the special regime home Sanatorium Lotos. In the first case, the Ministry of Education, Youth and Sports ensured remedy. The Ministry is taking steps (conducting inspections) in the second case as well, but at the same time, it proves difficult to provide immediate protection to users of residential social service facilities, as the powers of the inspection bodies are limited. The Defender proposes to make specific changes to the legislation.



5

**Some of the previous recommendations and remedial measures came closer to being implemented in 2016.** The Parliament has been discussing the establishment of independent supervision in facilities for the detention of foreign nationals; the Prison Service adopted better rules for conducting body searches; child care quality standards in facilities for the performance of institutional or protective education and for preventive educational care became binding for the organisations directly subordinate to the Ministry.

6

**In 2016, the Defender reiterated several systemic recommendation and issued new ones.** These include, for instance, the unification of care for vulnerable children, finding a solution for the provision of so called social-health care, establishment of an independent complaint mechanism for social services and improvement of conditions in which the children of foreign nationals are held.

7

**The Defender pointed out to other topics concerning the prevention of ill-treatment.** She requests that the Ministry of Health implement the CPT recommendation, which concerns documenting medical evidence of ill-treatment and reporting to the competent authorities. She supports the review of administrative punishment of ill-treatment. She recommends the establishment of independent supervision and effective remedy in institutional protective treatment.

8

**With a view to increasing awareness of ill-treatment, the Defender held 2 press conferences and published 6 press releases and 26 online updates.** To maintain professional dialogue and to raise public awareness in relation to authorities, facilities and experts, the Defender held a round table, the Office employees engaged in work groups, contributed to professional journals, actively participated in 14 events and trained 630 police officers, social service workers and schools inspectorate workers.

9

**Dialogue and exchange of experience with colleagues from national preventive mechanisms in Europe** has long contributed to the training of the Office employees and development of work methods. Eight times in 2016, the Defender sent her colleagues to participate in educational events abroad or to perform study visits, or participated in such events herself.

10

**There are plans to improve the coordination of visits and monitoring of forced returns of foreign nationals.** The participation of the Office in new projects increased its personal capacities for monitoring criminal and administrative expulsion of foreign nationals. Common topics include the preparation of foreign nationals for the termination of their stays in facilities for the detention of foreign nationals and the problem of automatic handcuffing during escorts.

11

**The Optional Protocol to the Convention against Torture (OPCAT) and the Public Defender of Rights as the national preventive mechanism marked their 10th anniversary.** Those unfamiliar with OPCAT can watch this video (<http://opcat10.apr.ch/>)

## 2. Topics concerning the prevention of ill-treatment in 2016



The national preventive mechanism recommends measures to improve the treatment of people restricted in their freedom and holds a dialogue on their implementation. The aim is to prevent torture and other cruel, inhuman or degrading treatment or punishment [cf. Article 19 (b) and Article 22 OPCAT].

This chapter presents our activities via selected topics that we addressed in 2016.

### A/ Prisons

#### The prison system faces complex problems

The Czech prison system has been stagnant for a long time. In the 1990's, a significant progress was made in the prison system. Unfortunately, the pace of change has ground to a halt in the decades that followed. The Czech Republic's prison population index has long been among the highest in Europe; Czech prisons have long been very overcrowded and even the artificial reduction of the number of convicts after the presidential amnesty in 2013 did not reverse the unfavourable trend of growing prison populations. Czech prisons are designed to hold large numbers of convicts in shared accommodation, which does not correspond to the modern approach to imprisonment. The remuneration of convicts who work was set by a government regulation in 1999 and has not been adjusted for inflation ever since. Although the crime rate is generally getting lower, the share of recidivist convicts in the prison population is growing. The lack of specialists employed in the prison system does not permit individualised rehabilitation work with the convicts.

In early 2016, the government adopted the Prisons Outlook 2025. The Defender welcomes its basic objectives, as they reflect the overlaps with other policy areas. But the concept needs to be actually implemented, which requires the support of the government as a whole. The findings of the systematic visits clearly show that the Prison Service by itself cannot enact qualitative changes in the prison system that would ensure efficiency and a much greater degree of rehabilitation of the convicts.

It is clear that overlaps with criminal-law and social policy as such are a necessary precondition for the improvement of the situation in Czech prisons and require inter-departmental co-operation.

In 2016, the Defender issued a summary report on a series of systematic visits to prisons and submitted her systemic recommendations to the competent authorities.



The summary report is available on our website at [bit.ly/report\\_prisons](https://bit.ly/report_prisons)

#### No reform of prison health care

The health care in prisons is in need of a reform. It faces long-term problems especially in ensuring available and good care, which is partially related to the lack of physicians motivated to work in prisons. The European trend, which is in line with the recommendations of both the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the World Health Organization, lies in transferring the responsibility for the provision of medical care to imprisoned persons to the civilian health care system.

In 2016, we made a significant effort in the work group of the Ministry of Justice, which was tasked with proposing the necessary changes. From the viewpoint of the Defender, the result is unsatisfactory – the reform is nowhere in sight and, instead of interconnecting the prison and civilian health care system to

a higher degree, the work group prefers to change the nature of employment of physicians who currently work as civilian employees of the Prison Service to that of a service relationship. As part of her responsibilities as the Ombudsman, the Defender continues to inquire into the manner of addressing complaints of convicts regarding the quality of health care provided by the Prison Service.

### Conditions of imprisonment for people with disabilities or mental disorders

In two prisons, visited back in 2015, the Defender identified ill-treatment in the form of degrading conditions for convicts with disabilities or mental disorders. The main issues were as follows:

- **inadequate material conditions, i.e. lack of barrier-free environment in prisons, unadjusted bathrooms and toilets, lack of accessible emergency alarms;**
- **insufficient provision of assistance to persons dependent on the help of others, because despite the fact that help with the basic daily activities, food, hygiene, moving and certain nursing tasks should be provided by designated convicts, it is not supervised and sometimes not even paid;**
- **persons with behavioural disorders held in de facto solitary confinement without safeguards against arbitrariness.**

In prisons, handicapped convicts are unsuitably mixed with the elderly convicts, which are two groups of people with different needs. However, state of health of convicts must be the primary criterion when determining the specifics of their treatment programmes.

The Defender requests remedy from the competent authorities. In 2016, she carried out two follow-up visits, this time aimed at the treatment of convicts in the protective treatment regime, i.e. with different types of mental disorders (see page 19). It turned out that the conditions in the visited specialised prison blocks for convicts in protective treatment are good. Convicts that cannot be placed in specialised blocks for capacity reasons must serve imprisonment in regular blocks, which is an undesirable state of affairs.

### Strip-searching

Generally speaking, a strip-search violates human dignity of those subjected to it. However, in the prison environment, it constitutes legitimate interference, insofar as it is carried out with a view to ensuring internal security

(prevention of carrying prohibited items into the prison), but only if the search is carried out proportionately and in a manner which as far as possible respects human dignity. It is not proportionate when convicts are routinely forced to squat naked or lift their genitals during strip searches without a real suspicion justifying this procedure. The problem consists in taking a sweeping approach, which is something the Ombudsman identified and tried to change many years ago.

 See Annual report on activities in 2013, page 61 at [bit.ly/annualreport\\_2013](http://bit.ly/annualreport_2013)

The Prison Service and the Ministry of Justice ignored the Defender's criticism until one of the convicts lodged a complaint with the European Court of Human Rights. Subsequently, under the weight of circumstances, the Prison Service changed the internal regulation regarding the rules for carrying out strip-searches in 2016. The Defender will continue to monitor whether the change in internal regulations is reflected in the prison practice.

## B/ Detention of foreigners

### Is the Bělá-Jezová detention facility a suitable place for children?

In the last two years, we repeatedly criticised the conditions in the Facility for Detention of Foreigners in Bělá-Jezová for being unsuitable in terms of detention of families with children. Despite that, it is this facility where families with children and women are concentrated. During the 2016 visit, we learned that in certain aspects, the conditions had improved. Nevertheless, the European Court of Human Rights decided via a preliminary injunction to release one of the detained families due to unsatisfactory conditions of accommodation. Therefore, the facility is still unsuitable for the accommodation of families with children.

Compared to 2015, the number of detained persons significantly decreased and, for this reason, the conditions improved in many respects. The facility removed bars from windows and from a few places inside the buildings, removed internal fencing from between the residential buildings and purchased outdoor games for children. Despite that, many restrictive measures are still applied within the facility: there are uniformed private security guards which oversee and accompany the foreigners during internal transfers, barbed wire fences and dog handlers for external security patrols.



By issuing another preliminary injunction on the release of families with children from this facility (decision in case 61025/16 of 21 October 2016, *L. P. and others v. the Czech Republic*), the European Court of Human Rights confirmed that the situation is still unsatisfactory. The view of the Court is strict, as witnessed by its decisions on complaints against France in 2016 (Judgement in case 11593/12 of 12 July 2016, *A. B. and others v. France*). In the Czech Republic, the decision on the complaint against the conditions of accommodation of a family with children in the Bělá-Jezová facility will also be rendered by the Constitutional Court. In light of the new decisions of the European Court of Human Rights, the Defender supplemented in 2016 the statement that she had provided in the past to the Constitutional Court at its request (see also p. 27).

### Strip-searches and inspections of dormitories

When visiting the facility in Drahonice, the foreigners complained about the degrading nature of strip-searches and inspections of dormitories. Strip-searches with squats were allegedly conducted collectively and personal items were allegedly damaged during the inspections. The inspections were conducted by police officers from various departments and uniformed Prison Service officers without identification numbers, with the presence of riot police officers wearing face masks, helmets and truncheons. The Defender requests that strip-searches and inspections of dormitories of detained foreigners be carried out by the police only when necessary and in a proportionate manner, that the procedure of the police be governed by an internal regulation and that the inspections of dormitories be taped.

### C/ Coordination of visits and monitoring of forced returns

**Since 2011, one of the tasks of the Defender is to monitor the detention of foreigners and the enforcement of administrative and criminal expulsion. In 2016, the Defender engaged in projects that helped to further boost this work. There are now opportunities to interconnect these activities with systematic visits.**

First of all, we have been financing a three-year project “Support for the Effective Monitoring of Forced Returns” from the EU Asylum, Migration and Integration Fund. Thanks to said project, the Office hired 2 lawyers that are fully engaged in monitoring forced returns of third-country nationals. The project envisages to monitor at least 40 administrative and criminal cases of expulsions of non-EU nationals. Until now,

due to our limited personnel capacities, we monitored 5 cases of expulsions per year.

The Office further participates in implementing a two-year project “Forced Return Monitoring II”, which is also financed from the EU Asylum, Migration and Integration Fund. The aim of the project is to train persons charged with supervising the process of the return operations and to exchange experience in this area. Thanks to this project, the Office employees gain unique expertise and qualification to engage in the Frontex operations. In 2016, they already participated in several multi-day seminars abroad on the rules and tactics of police work.

How does the monitoring of expulsions overlap with the activities of the national preventive mechanism? There is the common challenge consisting in repeated shortcomings in the preparation of foreigner for departure from the country or the application of coercive measures.

 For more details, see NPM annual report 2015, part 2.D and 2.E at [bit.ly/NPMreport2015](http://bit.ly/NPMreport2015)

### D/ Unification of care for vulnerable children

**The Defender has consistently drawn attention to two systemic problems in the provision of care for vulnerable children and their families: the number of children living in institutions is too high and the responsibility for the provision of services is fragmented. The government addressed this issue in 2016 and tasked the Minister of Labour and Social Affairs to take several measures. The Defender is monitoring their implementation.**

Over the past ten years, we checked the living conditions of 2200 children placed in institutions. A number of shortcomings could have been remedied promptly. However, when the problems were due to e.g. a lack of employees or interconnectedness among the services, it was usually beyond our means to ensure an effective solution.

The main problem of care for vulnerable children in the Czech Republic is the high number of children in institutional care. The alternative forms of care, work with families and prevention services are still not sufficiently developed. Institutional facilities with collective-based internal regime are the predominant form of residential care. Placing infants in infant care centres, a phenomenon not seen elsewhere, is an issue in itself.

The care for vulnerable children is governed by many laws and is split between the Ministry of Labour and Social Affairs, the Ministry of Education, Youth and Sports, and the Ministry of Health. But none of them individually has a sufficient power to transform the system. The system involves the State administration, local governments and the public and private sector. The responsibility for the fates of individual children is fragmented and the efforts of individual experts is not coordinated. If certain facilities are improving, it is only thanks to individual initiative.

Therefore, the unification of the system of care for children is one of the essential prerequisites of improving the current state of affairs. This has been the subject of debates for many years, but no tangible result has been achieved. The current government “shelved” one of the proposals, but in Autumn 2016, it acknowledged the instigation of the Government Council for Human Rights regarding the unification of services for vulnerable children and adjustment of conditions of providing residential services to these children. According to Government Resolution No. 1033 of 23 November 2016, the Minister of Labour and Social Affairs should submit to the Government by 30 June 2017 a draft legal regulation for the unification of services, the strategy of their development with respect to their territorial accessibility and draft legislation changes necessary for the gradual restriction of the possibility of placing children under 7 years of age in collective care facilities.



### More information

- see the [special report](#) submitted by the Defender to the Deputies in 2016
- in the resolution of the Committee on the Rights of the Child of the Government Council for Human Rights

## E/ Residential social services

### Health care and social needs of long-term patients and elderly

**Many residents of social service facilities need nursing care, but this has been chronically underfunded and the providers restrict it at the expense of the residents’ quality of life. Furthermore, patients of hospitals for long-term health care do not have access to the kind of social assistance necessary for return to**

**their homes, because hospitals receive practically no funding for it. A solution would require the co-operation of the ministries of social affairs and health, but none is in sight so far.**

During the ten years as the national preventive mechanism, the Defender carried out 18 visits to treatment facilities for long-term patients and 85 visits to social service facilities for elderly. Many shortcomings have been remedied. But there still is an (increasing) systemic problem. Hospitals have the status of health care facilities. Patients are placed there for supplementary treatment with limited availability of social workers’ services due to the low number of working hours for which they are hired. However, the patients need social care. On the other hand, in social services facilities, caring e.g. for people with Alzheimer’s disease, there are mostly social workers. The facilities can also provide health care, but they are limited by an unfair reimbursement system – public health insurance only covers 2/3 of the actual costs of nursing care and rehabilitation care is not covered at all. For this reason, some providers literally neglect the residents.

The problem is thus twofold – an unfair system of reimbursements for nursing care in social services and a lack of interconnectedness of social and health services. However, long-term patients (typically the elderly) have both health and social needs. The needs of a person must be the primary criterion.

In 2015, the Defender requested a solution from the Ministry of Labour and Social Affairs and Ministry of Health. Both departments have been tackling this issue for almost twenty years, but it seems they will not manage to prepare the necessary legislative changes during the current Government’s term of office. In 2016, the Defender submitted [special information to the Deputies in an annex to her quarterly report](#).

### Standards for staff and material and technical resources

**In 2015, the Defender recommended that the Ministry of Labour and Social Affairs determine the standard for personal and material and technical resources by means of a legal regulation. For this to happen, an authorisation to issue a decree must first be inserted in the Social Services Act. But this step is being delayed, along with defining the standard.**

Some social service facilities lack sufficient material resources for providing care or are insufficiently staffed, which results in the ill-treatment of the residents. Both aspects are examined before issuing the registration for the provision of social services. However, the Social

Services Act does not set clear and predictable requirements for the staff and material and technical resources necessary for each type of services, and hence fulfilment of the conditions for registration does not guarantee safety and quality of service. In addition, the legal regulations do not provide sufficient means of cancelling registration when the above shortcomings are found.

The remedy requires two steps: to insert the authorisation to issue a decree in the Social Services Act and then to actually issue the decree. The Ministry of Labour and Social Affairs promised to provide for both with the set deadline, but it has already expired to no effect. The draft “major amendment” to the Social Services Act, which was supposed to come into effect on 1 January 2017, was not even discussed by the Government by that time. The Defender, expecting this unfavourable development, addressed directly the Chamber of Deputies of the Parliament of the Czech Republic and proposed that the required authorisation to issue a decree be inserted in the Social Services Act through a Deputies’ amendment.

 See the Annual report on activities in 2015, page 10 at [bit.ly/defender\\_report2015](http://bit.ly/defender_report2015)

### The lack of a complaint mechanism

**The Defender recommends that an independent complaint mechanism be established in the area of the provision of social services.**

Social services users constitute a vulnerable group of people. Each person should be entitled not only to the provision of social services in accordance with the basic principles of the Social Services Act and basic human rights and freedoms, but also to the possibility of efficient defence should this not be the case. Insufficient quality of the provided care can have serious consequences and can gain the form of ill-treatment within the meaning of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Social Services Act provides for certain practices that are intended to help protect the rights of users. However, they are not sufficient. It is not possible to lodge an appeal with an independent entity against

the manner of resolution of a complaint by the service provider. The social services quality inspection is not obliged to address each of the individual submissions of the user or other persons. The Regional Authorities merely supervise the performance of registration conditions of the social service providers.

The protection of rights of the user of social services needs to be ensured via an independent complaint mechanism. The Defender submits this recommendation to the Chamber of Deputies of the Parliament of the Czech Republic.

 See the Annual report on activities in 2016, page 9-10 at [bit.ly/defender\\_reports](http://bit.ly/defender_reports)

### Social detention in practice

**The amendments to the Social Services Act and Special Court Proceedings Act (through Act No. 189/2016, Coll.) came into effect in August 2016 and Czech laws know now the institute of involuntary stay in social services facilities. The legislative changes need to be introduced to practice, with emphasis on the social service providers.**

No one can be deprived of his or her freedom except for cases explicitly defined by the law. Even in the area of social services, a situation might occur when it is necessary and reasonable to hold a person against his or her will in a facility. Until the said Act was adopted, this was happening informally, i.e. contrary to the fundamental human rights. A person that was not allowed to leave the facility was at risk of arbitrariness on the part of the service provider or guardian and had no means to defend himself or herself. The European Court of Human Rights sentenced the Czech Republic for this in one particular case ([judgement in case 62506/12 of 13 October 2016, Červenka v. the Czech Republic](#)).

The new rules must be introduced into practice, where mainly the social service providers and guardians are in need of being acquainted with them. The Defender therefore welcomes the commitment of the Ministry of Labour and Social Affairs to provide them with methodological guidance.





## What is “social detention”?

Today, the Social Services Act stipulates in Section 91a the conditions under which the guardian may execute an agreement on the provision of residential social service on behalf of the person under guardianship and against his or her will. This is only possible in the following cases:

- a) a failure to provide immediate assistance in addressing adverse social situation would put the life of the person at risk or put their health at risk of serious harm due to weakening or loss of abilities resulting from adverse state of health caused by a mental disorder, or the same risk would threaten other persons in their surroundings; and
- b) no milder and less restrictive measure can be taken to provide for the necessary support and assistance to the person.

Section 91b of the Act stipulates that if a person who is not able to terminate an agreement on the provision of residential social service manifests a serious disagreement with the provision of the residential social service, the social services provider is obliged to notify the court of this fact within 24 hours.

## F/ Independent supervision and effective remedy

### Facilities for the detention of foreigners

**The Defender has criticized for a long time that no independent supervision authorities are available in the Facilities for Detention of Foreigners that could promptly ensure remedy. The Defender proposed that the supervision be carried out by the Public Prosecutor’s Office, which also supervises other kinds of detention facilities. This measure might be implemented in 2017.**

The Public Prosecutor’s Office can supervise the compliance with legal regulations in certain places of detention: in prisons, security detention institutes and facilities for institutional and protective education. It carries out regular inspections and addresses submissions, and it can issue an order to release a person or to adhere to the regulations. It cannot conduct supervision in the facilities for the detention of foreigners, as the Residence of Foreign Nationals Act and Asylum Act do not provide it with the necessary powers. No other authority supervises these facilities either and, therefore, there is no independent supervision at all. According to the Defender, the lack of independent supervision is in violation of Article 13 of the Convention for

the Protection of Human Rights and Fundamental Freedoms, which imposes on the Member States the duty to provide for an efficient remedy.

For this reason, the Defender recommended that the Ministry of the Interior in 2015 submit the corresponding draft amendment and simultaneously submitted her own draft. By the end of 2016, the government discussed the matter and submitted it to the Chamber of Deputies (parliamentary press No. 990). Whether the Defender’s recommendation succeeds now depends on the discussion of the Parliament. The recommendation is in line with the submission of the Committee against Torture of the Government Council for Human Rights.

### Forensic treatment

**The Defender addressed two complaints of patients placed in protective (forensic) treatment in psychiatric hospitals. The Defender identified ill-treatment in the hospital and also found out that one of the patients was unable to seek a remedy anywhere. The Defender also requests that the Public Prosecutor’s Office carry out independent supervision over the institutional protective treatment in health facilities, providing the patients with an efficient remedy of ill-treatment.**



## Case from the Psychiatric Hospital 1

On her own initiative, the Defender investigated the case of a patient who was held in strict conditions after being accused by another patient of planning to hurt a doctor. The Psychiatric hospital made no error in calling the police and separating the patient from others in reaction to the accusation. However, it erred in locating and holding him in an isolation room (which constitutes the use of a restraint) without justification, even though the patient did not pose a threat to anyone, nor exhibited any such tendencies. Furthermore, the conditions of the use of the restraint were degrading. Without justification, they kept on holding the patient in a regime with limited activities and limited access to therapy. The head of the psychiatric hospital promised to take measures to prevent this error from happening in the future.




## Case from the Psychiatric Hospital 2

The Defender addressed the case of a patient who complained about the strict regime and conditions at the ward. She concluded that the overly strict regime and the manner of using restraints reached the severity of ill-treatment.

The patient did not respect the treatment plan and put his own life at risk by intoxicating himself with various substances. The hospital took measures against his behaviour: it subjected him to a strict regime and placed him in an isolation room on several occasions. The patient spent 10 months in the strict regime. He lived constantly in the same bedroom, had to wear pyjamas and was under a 24/7 CCTV surveillance. He was not allowed to go outside, possess personal items and smoke, although he was a smoker, and he had to ask the staff for the permission to go to the toilet. He was only allowed to read. He was transferred several times to the isolation room (which constitutes a restraint that is subject to strict rules) where he spent (unlawfully, according to the Defender) 10, 13 and 7 days respectively. On several occasions, the decision to place him in the isolation room was made by the nursing staff (not the doctor), even in situations where delay would have led to no additional risk.

The Defender criticized these measures as disproportional, some of them even as unacceptable. The management of the psychiatric hospital promised to adopt specific remedies. It is, however, alarming that neither police, nor the court, which he both addressed in writing, provided protection to the patient.

 Defender's Report: File No. 2361/2016/VOP

Unlike security detention or imprisonment, legal regulations covering protective treatment do not contain a list of rights and obligations of patients and do not set the basis for the supervision by the Public Prosecutor's Office. Patients can use the general complaint mechanism: in the first step, their complaint is addressed by the provider of health care services, in the

second step by the Regional Authority. The Regional Authority can recommend a remedy on the hospital, but it cannot impose or enforce it. Only courts can provide for the enforceable protection of the rights of patients, but this procedure is too difficult and lengthy for the patients. Based on the nature of the complaint, this can also be in violation of the international

commitment of the Czech Republic to prevent and combat torture and ill-treatment. A potential victim is not only entitled to compensation, but they must also have access to an instrument to prevent the ill-treatment from continuing or reoccurring.

The Defender recommends that the Chamber of Deputies of the Parliament of the Czech Republic adopt legislation that will authorise the Public Prosecutor's Office to supervise the compliance with legal regulations during the execution of institutional protective treatment in health care facilities. This recommendation is in line with the submission of the Committee against Torture of the Government Council for Human Rights.

## G/ Criminal penalties for ill-treatment

**Since 2014, a discussion has been taking place in the Czech Republic on what is the appropriate reaction to cases of ill-treatment that is severe enough so as to constitute degrading treatment. The second question is whether the legislation allows for the criminal penalties for degrading treatment. In 2016, this matter was taken up by the Committee against Torture of the Government Council for Human Rights and the first legislative drafts were drawn up.**

### Criminal penalties for degrading treatment

Torture and other inhuman and cruel treatment constitutes a crime pursuant to Article 149 of the Criminal Code. However, the Criminal Code does not specifically mention degrading treatment, which means it can only be punished if it features elements of the bodies of other crimes, based on the type of behaviour or omissions on the part of the perpetrator. Does this state of affairs correspond to the requirements of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Act No. 143/1988 Coll.) and the Convention for the Protection of Human Rights and Fundamental Freedoms (Act No. 209/1992 Coll.)? And if not, what should be the criminal penalty for degrading treatment?

In 2016, the Committee against Torture of the Government Council for Human Rights decided to address these issues in more detail, engaging experts with the task of drawing up three studies in order to use them as a basis for submitting proposals to adopt legislative and other measures.

On this occasion, the Defender summarized her findings on the criminal penalties for the ill-treatment of persons restricted in their freedom. During the past ten years, the Defenders instigated criminal proceedings only in a small number of cases (prevention, not punishment and investigation is the objective of monitoring). The specific features of degrading treatment in the social and health-care service facilities are gradually becoming apparent. Degrading treatment does not necessarily inflict harm to health and can be caused by a combination of number of less severe actions, which makes it rather difficult to prosecute. Apart from that, the prosecuting bodies are not particularly familiar with the issues concerning social/health care. Persons without proper knowledge are not acquainted with the essence of the responsibilities of the providers of health or social care, the concept of lawfulness of the use of restrictive measures or regimes, the difference between legal capacity of a person and their right to free movement, the necessary prerequisites for maintaining the dignity of persons with dementia, etc. A criminal or administrative punishment of degrading treatment specifically would constitute a solution to these problems.

### Administrative punishment

In case of violating their obligations, the providers of health or social care face administrative punishment. Proceedings on an administrative offence are led by administrative authorities. We have already pointed out in the past to the inconsistency in the fact that on the one hand, regulations assume a penalty for the failure to comply with formal requirements, but on the other hand omit serious interference with the integrity and dignity of the service users. Such state of affairs renders the impunity of ill-treatment, albeit only in its least serious form, and frustrates the prevention of ill-treatment.

In 2016, the Ministry of Labour and Social Affairs submitted the first draft of such offence in the area of social services. The Defender submitted a commentary to the draft in the sense that the new elements of the offence should be concrete and clear and cover also the less severe cases of degrading treatment.



## H/ Medical evidence of ill-treatment

**Methodical documenting of injuries and reporting by the health care services to the competent authorities can prevent ill-treatment. This has been pointed out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Compliance with the CPT standard requires legislative changes and a professional discussion. The government made a commitment to provide for both, but failed to deliver.**

Documenting and reporting of medical findings significantly facilitate the investigation of cases of possible ill-treatment and the holding of perpetrators to account. For instance, health-care services in establishments which constitute points of entry into the prison system can identify the signs of ill-treatment in the period immediately preceding imprisonment, specifically when a person's freedom is restricted by the police. The problem occurs when injuries or signs of ill-treatment are recorded with delay or only superficially and when the statements of persons regarding their origin are not recorded at all. Apart from that, it is necessary to ensure that the documented medical findings will be transferred to the competent authorities.

The CPT standard is included in the 23rd General Report [CPT/Inf (2013) 29] and was also reflected in the

CPT report on the visit to the Czech Republic conducted in 2014. In point 77, the committee recommends the following: "Steps should be taken to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately and systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned." The Government promised the Committee to adopt the necessary legislative changes so that doctors do not violate their statutory confidentiality duty.

According to the Defender's opinion, the introduction of the CPT standard in the practice of the Czech health care providers should be accompanied by a discussion so that they accept it with understanding of the whole context and the relationship between the physician and patient is not impaired.

The preparation of the legislative draft and professional discussion falls under the responsibility of the Ministry of Health. The Defender offered the Ministry her help, without receiving any response. The Minister of Health failed to meet the objective set forth in the Government Resolution No. 609 of 29 July 2015 and did not submit a draft amendment to the Health Care Services Act by the end of 2016, nor does he plan to do so in 2017.



### More information

 [CPT Standards in English and in Czech and underlying materials \[CPT \(2010\) 14\]](#)

 [CPT report on the visit to the Czech Republic in 2014 and the government's response](#)

 [Resolution of the Government No. 609 of 29 July 2015](#)

# 3. Visits and recommendations 2016



The goal of the national preventive mechanism is to examine on a regular basis the treatment of persons deprived of liberty with a view of strengthening their protection against torture and other cruel, inhuman or degrading treatment or punishment. The national preventive mechanism therefore makes recommendations to the relevant authorities and enters into a dialogue with them on the potential implementation measures [see Article 19 (a) and (b) and Article 22 OPCAT].

**This chapter provides information on the systematic visits that were carried out and on the reports that were prepared and submitted. The text is organised by the type of deprivation of liberty.**

## A/ Prisons

### Summary report 2016

The Defender issued a [summary report](#) concerning seven systematic visits. The report contains generalised findings from visits and recommendations for the Directorate General of the Prison Service of the Czech Republic, which will be subject to further negotiation in 2017.

During the visits, we focused on the functioning of health services, conditions of imprisonment for people with disabilities, material conditions and prison capacities, problems with convict employment, non-functionality of certain regime-related measures and matters of the convicts' safety.

#### Our findings

- The prisons face long-term overcrowding.
- Specialist staff members who are supposed to work with the convicts are too few and too overwhelmed by paperwork unrelated to achieving the purpose of imprisonment. This prevents meaningful work with the convicts.
- The system of accommodation in multi-occupancy dormitories devalues any work done with the convicts and supports their so-called shadow life. This also reduces the chance of a successful rehabilitation of the convicted persons.

- Despite significant increases in prices in recent years, the remuneration the convicts receive for work has not been adjusted for inflation since the year 2000.
- The health care in prisons is in need of a reform ([see page 10 for more details](#)).
- We have found two instances of ill-treatment. Both concerned degrading conditions of imprisonment of persons with disabilities and mental disorders ([see page 11 for more details](#)).

#### Forensic treatment in prisons

During the visits to two prisons in 2016, we focused on the conditions of imprisonment of persons in protective (forensic) treatment. A court-ordered protective treatment during imprisonment is carried out in special prison blocks. In one of the prisons, we also inquired in a specialised block for imprisonment of convicts with mental disorders. Besides the Office's lawyers, a nurse and an expert in special education participated in the visits. We did not find any ill-treatment of the convicts, but we noted insufficient health care.

In the visited blocks, we found sufficient material conditions and a sufficient offer of therapeutic activities and the staff's qualifications were also good. It appears

that a convict at a specialised prison block is well motivated to adhere to the set treatment programme and therefore more readily achieves the purpose of imprisonment.

However, we encountered insufficient health care in both prisons. In neither of the prisons was a full-time

general practitioner available and psychiatric care was also problematic. The waiting time for a doctor's examination was long and many prisoners also complained about the quality of the health care itself. Prisons often try to address the issue by employing physicians part-time, but this is not a satisfactory long term solution.



## Requirements for effective investigation in prison

The complaints received by the Defender (Ombudsman) from prisoners also included a case of physical assault between convicts. A man complained to the administration of the Jiřice Prison against being repeatedly assaulted by the other convicts. The prevention and complaints department of the prison failed to resolve the situation, so the convict contacted the Defender. The prison erred by failing to carry out an effective investigation of the assault, even though the complainant raised an "arguable claim" in the sense of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. He was asserting facts that were not completely untrustworthy and, moreover, he substantiated the assertions with a medical report. The prison acknowledged its error.

## B/ Police cells

### Findings

#### **The form containing the rights and duties of a detainee must include all rights connected to placement in a police cell.**

In one case, we found the police officers were using an incorrect "Advice on Rights and Duties" form. It contained references to an obsolete wording of the law and did not include information on basic safeguards against ill-treatment and other rights of persons deprived of their liberty. Persons placed in cells were thus not demonstrably informed of their rights and duties, which constituted a serious shortcoming. At the same time, it was sufficient to simply use the form as provided by the Police information system.

#### **While carrying out the initial body search prior to placement in the cell, the police should not proceed routinely; the practice of forcing each person to strip naked and squat is erroneous.**

This is the case at present as each person placed in detention is required to fully undress and squat, sometimes multiple times. The Defender disagrees with the practice and recommends to proceed in accordance with the CPT recommendations ([CPT report on the visit to the Czech Republic in 2014, par. 22](#)):

"Every reasonable effort should be made to minimise embarrassment; detained persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and get dressed before removing further clothing." Sufficient reasons must exist to subject persons to a strip-search and to make them squat. These reasons must be included in the official documents.

#### **The personal search must always be carried out by an officer of the same sex as the detainee.**

A documentation of a female detainee placed in a police cell showed that the search was carried out by a male police officer. The police explained that this was an exceptional situation caused by a lack of staff and that the search was not full, i.e. it was not a strip search. However, such practice is still at variance with the law and is not permissible under any circumstances, regardless if exceptional.

6



systematic visits to  
police facilities in 2016

## Training of police officers completed

The year 2016 saw the completion of a two-year project aimed at training senior police officers in the area of prevention of ill-treatment in police cells. In six

regions remaining to cover the entire Czech Republic, 350 senior officers received training. [See page 28 for more details.](#)



### Facility for Detention of Foreigners in Drahonice

The facility was in operation from October 2015 to November 2016, when the Facility for Detention of Foreigners in Bálková was opened. Considering the fact that it was situated in a former prison complex, its living conditions were not suitable for the administrative detention of foreigners. The Defender criticised the facility for stark community rooms, community showers without screens or partitions, and unclean toilets. However, she also identified as sufficient the multi-purpose room for leisure-time activities, gym and the multi-purpose room for language teaching. The facility co-operated well and remedied a number of shortcomings.

## C/ Facilities for detention of foreigners

In 2016, the Defender carried out systematic visits in two facilities for detention of foreigners. She again noted that the facility in Bělá-Jezová continues to fail in meeting the standards for accommodation of children. She also requested a change in the police practice of carrying out body searches of detained foreigners and inspections of their accommodations. [See page 11 for more details.](#)

## D/ Facilities for children requiring immediate assistance

### Series of visits to 9 facilities in 2016

**Visiting team:** The visits were carried out by the Office's lawyers and external experts including psychologists, special education experts, social education experts and social workers. The Office selected the experts on the basis of a public call and prepared special training for them. This allowed them to get acquainted with the manner of carrying out systematic visits, the relevant legal regulations and general issues of ill-treatment. A part of the training also included the lawyers' visits to facilities with very good practice.

**Topics of monitoring:** Placing a child on the basis of lawful decision; too long stays; restriction of and conditions for contact between the child and its parents; approving the stay of children outside the facility; the practice of filing petitions to court to cancel the placement of a child in the facility if the reasons for placement no longer apply; representation of the child in everyday matters; visits to the facilities; co-operation with the authority for social and legal protection of children; safety and privacy in the facility; educational and psychological care; social work and counselling for the benefit of children and parents; co-operation with the family, providing therapy and practising parental skills.



These are emergency, shelter-type facilities. Their purpose is to provide care to children in need for a necessary, usually short period of time until their situation improves, i.e. until they can return to their original family or a substitute family care is arranged or the court decides to place the children in institutional care.

**Co-operation with experts:** The co-operation brought the integration of the legal, psychological, educational and social approach to the provision of protection and immediate assistance to children temporarily placed in the facility. The experts helped to identify risk areas, which were subsequently more closely inspected by the team during the visit. They also participated in the evaluation of the findings and formulation of the required remedial measures.

**Summary report 2017:** In the first half of 2017, a round table will take place with experts and, subsequently, also with representatives of the visited facilities. Conclusions from both meetings will serve as a basis for the Defender's summary report. Aside from findings from visits, the report will also include recommendations for achieving good practice and prevention of ill-treatment.



### Most important findings

- Children often stay in the facilities for long periods of time even though they are not designed for long-term care.
- Children sometimes do not receive timely and sufficient psychological care.
- Some facilities do not carry out social work, do not provide counselling to the children's parents, do not co-operate with the family or participate in working with them, and do not take care to provide therapies and training of parental skills.

It is necessary to overcome the narrow belief that "the facilities take care of children while the parent's issues should be addressed by the authority for social and legal protection."

### Findings from the visits

#### **Too long a stay in an improvised environment is not good for children.**

Siblings were placed in the facility by a decision of the court in February 2011, first by a preliminary injunction and subsequently by entrusting the children into the facility's care. During the 2016 visit, the facility's employees correctly noted that the siblings no longer required any "immediate" assistance. However, they continued living under a short-term care regime. The staff lacked suitable qualifications and was not sufficiently gender-balanced for the purposes of long-term care. The length of the stay was not reflected in the work done with the children or in their individual plans. The facility was not monitoring the development of their character and skills. Individual protection plans only noted that suitable foster parents had not yet been found.

The facility should determine in co-operation with the authority for social and legal protection of children how long the children should be waiting in short-term care for a suitable foster family. The head of the facility

should then proceed in accordance with this goal – e.g. petition the court to cancel the placement of a child in the facility for children requiring immediate assistance. The siblings needed long-term care which was not provided in the facility.

#### **Interference in the children's contact with parents must be mandated by court.**

The facility's house rules stipulate that the head or an authorised person can, in justified cases, order supervision during visits. In the case of three siblings, this meant that if the mother came to visit the children alone, without her mother or husband, the visit could have only taken place with constant supervision of a staff member and taken 1 hour at maximum. The Defender noted that only the court may determine the conditions of the child's contact with parents, including determining which persons may participate in the contact. If supervised contact with their mother is in the interest of the children, the facility must petition the court to order it.



### A child's stay outside the facility is not always subject to the authorities' approval.

Parents of a child who was placed in the facility at the request of the municipal authority with the parents' consent requested approval for the child's weekend stay at home. The head of the facility approved the stay at home and requested a written consent of the authority.

The Defender noted that giving permissions for the child's stay out of the facility is not required by law for children who are placed in the facility (1) on the basis of a municipal authority's request with parental consent; (2) on the basis of the child's request with parental consent; or (3) on the basis of a request of the child's legal representative. In these cases, the stay in the facility is of a contractual nature and the regime of issuing permissions for stay outside the facility does not apply. Each such stay of a child out of the facility is subject to approval of the legal representative who originally applied for the child to be placed in the facility or consented to it.

An agreement, similarly as a private-law consent of the legal representative with the child's placement in the facility, should govern the terms of the child's stay outside the facility, including the persons with whom the child may stay.

### The children must receive immediate psychological care.

Siblings of 5 and 7 years of age took the separation from their parents very badly; the younger child cried and missed her mother. The facility's psychologist did not talk to the children for four weeks after their placement in the facility, which is too long a delay between the placement in the facility and first psychological intervention. Immediate help must also include expert and timely psychological care.

## E/ Facilities for institutional and protective education

### Ill-treatment in Chrastava

**In 2016, the Defender visited a facility that was already visited twice by her predecessors. She found out that the conditions improved only a little and continued to qualify as ill-treatment. For this reason, she asked the founder of the facility to take steps to protect the children placed there. The case attracted considerable media attention.**

The founding authority of the Educational Institution and Children's Home with School in Chrastava is the Ministry of Education, Youth and Sports. The facility has a capacity of 36 beds and is intended for boys aged 12 to 18 who exhibit serious behavioural disorders. The situation in the facility was repeatedly criticised by the predecessors of the current Defender after their visits in 2006 and 2012. The third visit revealed that a strict regime and non-educational procedures persisted in the facility.

The system of education and care was communitarian and focused on group procedures while accentuating punishment of negative behaviours. It did not sufficiently address the boys' individual needs and their mental and personal limits. The education was based solely on repression and restriction of basic needs (outside exercising, stay with the family, no extra portions of meals, etc.). Everything was subsumed under a point-based system, which was quite complicated and required unconditional adherence to disproportionately strict rules. This negatively affected the boys' escape rate, which reached 27% of the total facility's capacity. Cameras and bars were placed even in places where the law forbids it. In the children's everyday activities, there was no discernible effort to implement their individual development programmes, even though this was the facility's duty under the law. The care of a psychologist or specialist in the education of children with behavioural disorders was not sufficiently provided for. Schooling, which was only provided inside the facility, did not take into account the children's special educational needs. The facility did not create conditions for supporting the children's self-esteem, their emotional development and their active participation in society. The boys manifested tension and fear and saw their stay in the facility solely as a punishment, with no positive vision of their future. The climate in the facility was extremely hostile and resulted in an escalating tension.

Following the submission of her report, the Defender approached the Ministry of Education, Youth and Sports. The Ministry took radical steps and, following a transitional period, named a new head of the facility who was tasked with reforming the facility.

### Quality standards still do not have the power of a decree

The Defender has repeatedly drawn attention to the missing standards of care for institutionalised children. When an expert group began preparing the standards, the Defender provided assistance and subsequently pushed for the standards to become more

than a non-binding guideline. The Ministry of Education issued the standards in 2015 as a methodological guideline (Child care quality standards in facilities for the performance of institutional or protective education and for preventative educational care). In 2016, the standards became binding for organisations directly controlled by the Ministry by virtue of Ordinance of the Minister of Education, Youth and Sports No. 5/2016. The Defender maintains her recommendation for the standards to attain the power of a legal regulation (i.e. a decree implementing the Performance of Institutional and Protective Care Act).

## F/ Hospitals for long-term patients

**The Defender prepared her findings from a series of 8 visits carried out over the previous year; she re-visited one treatment facility and exercised her power to impose penalties in one instance.**

In 2015, a series of eight visits to facilities took place. The inquiry focused on the compliance with the right to privacy and respect for human dignity, specific needs of persons with dementia, the degree and manner of ensuring safety of patients, as well as some nursing issues such as malnutrition, hydration, decubitus

care, bladder voiding regimen, and pain management. The Defender will release a summary report in 2017. Aside from the findings from visits, the report will also include recommendations for achieving good practice and prevention of ill-treatment.

We have re-visited the ADP Sanco hospital for long-term patients in Prostějov to establish the degree in which the facility adopted the Defender's recommendations. The case is still open.

Finally, the Defender informed the public about persisting shortcomings in the Bubeneč Hospital. The hospital sufficiently responded to all points raised by the report, with the exception of one instance of the use of restraints. Communication in confidence did not bring about the intended goal, i.e. protection of patients from potential ill-treatment. For this reason, the Defender decided to publish the case, in accordance with the law. She prepared it as a case study for the journal *Geriatrica a gerontologie* (Geriatrics and Gerontology). The Defender hopes that this manner of publication will not cause an undue scandal for the hospital or the whole field of aftercare. Primarily, it will increase awareness among medical professionals concerning legal regulations and good practice in the use of restraints.



The State must make steps against ill-treatment if it is revealed, even if it occurs in (private) social services facility. The dependence on the care provided puts residents in an especially vulnerable position where they are unable to protect themselves.

## G/ Social services facilities for the elderly

**In 2016, the Defender revisited a facility which was already visited twice by her predecessor in office. She found no improvement of the situation there and continuing instances of ill-treatment. This is why the Defender asked the responsible authorities to intervene to protect the elderly residents and instigated criminal proceedings in the matter. She also informed the Government of serious gaps in the system.**

Sanatorium Lotos is a special regime home operated by a company personally connected with the operators of several other facilities. Its capacity is 70 persons and it presents itself as a specialised facility for the “mentally ill focusing on gerontopsychiatry”. The Defender’s team found that the facility did not implement recommendations promised already in 2008. The service provided was marred by restrictions of

the residents’ free movement, routine use of restraints, insufficient nursing care and individualisation and by falsification of documents. We also described cases of residents with incorrectly treated wounds and one instance of a neglected pain management. The fee for the service was calculated incorrectly to the residents’ disadvantage.

The Defender concluded that the residents of the Sanatorium Lotos were subjected to degrading treatment. After the visit, the Defender notified prosecuting bodies and other relevant authorities as she believed it was necessary to protect the residents from further ill-treatment. The inspections carried out by the Ministry of Labour and Social Affairs, the Regional Authority and the Regional Public Health Body confirmed that the facility suffered of serious shortcomings. It is not clear whether the residents will receive sufficient protection since even months after the visit, no significant steps were taken by the authorities.

### The case revealed a number of systemic problems that need to be addressed:

- There is no complaint mechanism in place that would enable users of social services to submit their complaints to an independent body.



See the Annual report on activities in 2016, page 9–10 at [bit.ly/defender\\_reports](http://bit.ly/defender_reports)

- Residents have no means to prevent continuance or re-occurrence of ill-treatment.
- Administrative authorities cannot penalise providers of social services for violations of the law in the provision of nursing care.
- Social services inspectors do not have access to medical records.
- Degrading treatment is very difficult to be punished under the Czech criminal law ([more info page 16](#))

# 4. Other NPM activities



The national preventive mechanism submits recommendations to the relevant authorities with the aim of improving the treatment of persons deprived of liberty and the conditions in which they are held. The mechanism further submits proposals and statements concerning the applicable or proposed legal regulations. It maintains a dialogue with governmental and public authorities and raises awareness of its findings and recommendations [in the sense of Article 19 (b) and (c) and Article 22 OPCAT].

This chapter focuses on the activities supplementing the systematic visits. In 2016, the Defender continued her dialogue with the authorities and raised a number of suggestions with respect to draft legal regulations. She further used her findings to assist the Constitutional Court and the Ministries. A great deal of effort was devoted to expert meetings, training and raising awareness among the public concerning the prevention of ill-treatment. As in the preceding years, international relationships and contact brought in additional experience.

## A/ Dialogue with governmental authorities

Compliance with the systemic recommendations and prevention of ill-treatment are common topics in the Defender's dialogue with senior government officials. In 2016, the following discussions took place:

- **with the Minister of Labour and Social Affairs**, the Defender discussed the procedure of the social services inspectorate in monitoring the usage of restraints and inspecting nursing records, the enactment of material and personnel standards in social services, modification of health and social

services, and the inspection in the Social and Health Centre Letiny;

- **with the Foreigners Police Directorate**, the Defender discussed her recommendations concerning body searches and inspections of the detainees' accommodations;

- **with the Director General of the Prison Service of the Czech Republic**, the Defender twice discussed the living conditions in imprisonment, taking into account her findings from the systematic visits.



## B/ Comment procedures

**The Defender responds to draft legal regulations submitted by the Government for comment procedure and she is invited to meetings of the Government Legislative Council. In 2016, she commented on the following draft Acts:**

- Draft amendment to Act No. 108/2006 Coll., on social services, as amended, and certain related laws

**Comment topics:** introduction of a new type of institutional facility for children, the absence of a complaint mechanism for users of social services, introduction of an administrative penalty of less severe violations of the prohibition of ill-treatment

- Draft substantive intent of the Act amending certain laws in relation to the broadening of State legal aid

**Comment topics:** provision of free legal aid to persons restricted in their freedom placed in police cells

- Draft Prisons Outlook 2025

**Comment topics:** proposal to review certain regime-related measures which accentuate security and organisational elements and operational limitation over working with the convicts; proposal to develop the details of the document

## C/ Opinion provided to the Constitutional Court

**The Defender supplemented the opinion she provided to the Constitutional Court in 2015.**

The still pending constitutional complaint concerns the restriction of liberty of a family with children and the conditions of their detention in the facility for detention of foreigners (File No. III. ÚS 3289/14). The Defender provided her first opinion to the Court at its request in 2015. She informed the Court about her findings from repeated visits to the Facility for Detention of Foreigners in Bělá-Jezová. She further informed the Court of her opinion that the conditions of treatment of detainees constituted ill-treatment, especially with regard to families with children.

The supplementation of her opinion takes into account developments in the case law of the European

Court of Human Rights in 2016. In assessing complaints, the Court continues to focus on three decisive factors: the age of the children, the suitability of the facility for placement of children, and the duration of detention. However, in its 2016 decision, the Court tightened the conditions for the detention of families with children in migration contexts and in so doing it further narrowed the already tight manoeuvring room for the States. The Defender believes that it is now clearer than ever that in the case of the pending constitutional complaint, the right of minor children not to be subjected to treatment at variance with Article 3 of the Convention was violated.

We have inquired into conditions in the facility during a systematic visit in 2016, [see page 11](#).



## D/ Co-operation, education and awareness-raising

### Expert assistance provided to the Government and its Ministries

- The Office's employees participate in the activities of the Committee against Torture of the Government Council for Human Rights. In 2016, they participated in the preparation of the Instigation to extend the Public Prosecutor's Office supervision over compliance with legal regulations in places of detention and the Instigation to prosecute ill-treatment in the Czech Republic.
- The Office's lawyers further participated in working groups at the various Ministries concerning topics of prison health care and reforming psychiatric care.
- The Defender assisted the Government in preparing the Sixth Periodic Report on measures taken to give effect to undertakings under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### Round table talks held in Brno concerning residential facilities without authorisation

Restraints, unsuitable food and living conditions, ill-treatment and unauthorised work with medication. The above constitute some of the problems in the unauthorised provision of social services (in the so-called unregistered retirement homes). In recent years, the Defender drew attention to these problems through her [summary report](#) and continues to promote better protection of the users of these services. We have organised an expert meeting for the representatives of Regional Authorities – bodies authorised and obliged to supervise and punish activities of unregistered facilities.

### Meetings with public prosecutors

The Public Prosecutor's Office monitors compliance with legal regulations in facilities serving for remand in custody, imprisonment, preventive detention, and protective or institutional education. In 2014, the Defender concluded a co-operation agreement with the Supreme Public Prosecutor establishing the basis for co-operation between the two bodies. In 2016, the Office's lawyers presented the current findings and priorities of the Defender at two meetings with public prosecutors and several informal consultations took place.

### Training courses for police officers

The year 2016 saw the completion of a two-year project aimed at training senior police officers in the area of prevention of ill-treatment in police cells. Training courses took place in the remaining six regions to cover the entire Czech Republic; in 2016 alone, 350 police officers received training. The Office lawyer

presented an analysis of key decisions of the European Court of Human Rights and the Defender's findings from the systematic visits to police cells.

### Training for the Czech Schools Inspectorate

In order to promote awareness of ill-treatment, a seminar titled Methods of inquiry and the Defender's findings in facilities for institutional and protective education was held. The seminar was attended by 70 inspectors of the Czech Schools Inspectorate.

### Training for employees of residential facilities for the elderly

We incorporate the findings from the visits to social services facilities for the elderly in our seminars for social services employees. These seminars are led by a lawyer and a nurse; in 2016, a total of 221 persons received training. These courses aim to introduce the topic of prevention of ill-treatment to people working in the field. Special attention is paid to the specific needs of persons with dementia. The Defender's findings and recommendations are published in the summary report and the opinions of the experts in the collection of papers from the conference.



The summary report is available at [bit.ly/retirement\\_homes](http://bit.ly/retirement_homes); the collection of papers is at [bit.ly/protection\\_elderly](http://bit.ly/protection_elderly)

### NPM staff training

- NPM experts training. The Office began to train experts in the specific elements of the prevention of ill-treatment for the purposes of the visits. In 2016, the NPM lawyers thus conducted two training courses for external co-workers selected for visits to facilities for children.
- Internships. A standard part of the training for conducting the visits includes study stays in facilities with good practice. In 2016, the employees of the national preventive mechanism completed stays in facilities for children requiring immediate assistance, in a facility for institutional and protective education, in a special regime home and in a psychiatric hospital.
- Training. Special training for the NPM employees covered the following topics: communication with mistreated and abused children, communication with persons with disabilities, introduction to psychiatry, criminal proceedings on the imposition of protective treatment, case law of the European Court of Human Rights concerning matters of restriction of liberty of persons with mental disorders, and presentation skills.

### Translation of CPT standards into Czech

The standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) consist of thematic excerpts from the annual general reports. The complete collection had so far only been available in English and French. In 2016, the Czech translation was substantially supplemented. This was achieved by the Office of the Government of the Czech Republic with the assistance of the Office of the Public Defender of Rights.

### Contributions to the journals Sociální služby (Social Services) and Listy sociální práce (Social Work News)

The Office lawyers contribute to the Sociální služby and Listy sociální práce scholarly journals. The Defender's recommendations in the area of prevention of ill-treatment thus reach workers in facilities where freedom is restricted de facto and also social workers. The articles published in 2016 concerned e.g. the role of nurses in facilities, the legal aspects of involuntary stay in the facility, the right to living in a natural environment or the recommendations of the UN Committee on the Rights of Persons with Disabilities.

### Contributions to the České vězeňství (Czech Prisons) journal

The Office's lawyers published contributions in the České vězeňství scholarly journal, concerning especially the requirements of effective investigation in prisons

### Media and public relations

- Two out of eight press conferences held by the Defender in 2016 were devoted to ill-treatment.
- The Defender's findings from visits to prisons attracted the most media attention in 2016. Information on the continuing effort to ensure protection of the rights of the elderly were among the most read and shared of the Defender's posts on social networks.
- Aside from the topics presented by the Defender publicly, the media most often mentioned her in 2016 in relation to the discussed amendment to the Public Defender of Rights Act and in connection with the situation in the Chrastava educational institution.
- The Czech Television produced a special episode of its series "The Defender" on the performance of the visits.
- A special information leaflet commemorated the 10th anniversary of the Defender acting as the national preventive mechanism.
- Association for the Prevention of Torture, an international non-governmental organisation, produced a short animated film to commemorate the 10th anniversary of OPCAT. It has been voiced over and is now available to Czech viewers.

The NPM employees presented their contributions at

14



seminars, conferences  
and education programmes.  
(page 35).

In 2016, the topic of ill-treatment was the subject of

6



press releases and

26



news updates

The lawyer of the Office took part in Prague Marathon as a member of Yellow Ribbon Prison Run relay team to support employ of released prisoners

10



kilometres

## E/ International co-operation

### Sharing experience with European NPMs

In May 2016, the Defender reciprocally visited the Croatian Ombudsman. During their meeting, they compared legal regulations and especially the everyday functioning of their institutions, including the national preventive mechanism responsibilities. The Defender found inspiration in the Croatian manner of working with measures recommended by the Defender, including the monitoring of their implementation.

In November, employees of the Albanian national preventive mechanism visited the Office of the Public Defender of Rights. They shared their experience especially in the area of monitoring of treatment of the elderly and prisoners.

In 2016, the Defender acceded to the [South-East Europe NPM Network](#) as an observer.

### Inspiration from abroad: conferences, seminars and study trips

- Brussels. Defence for Children International, an international non-governmental organisation, organised the [“Children’s rights behind bars”](#) conference. The participants were presented with the first European methodological guidelines for conducting visits, taking into account the specific features in relation to children and their rights as well as the guiding principles in monitoring. The conference was attended by a lawyer who serves in the Office as a guarantor of systematic visits in facilities for children.
- Barcelona. The Defender participated in the IOI’s [“Human Rights Challenges Now: The Ombudsman Facing Threats”](#) conference.
- Grendon. Two Office lawyers visited the [Grendon Prison in England](#). Their main focus of study consisted in the therapeutic work being done with convicts with mental disorders. The prison specialises in these issues as a one-of-its-kind experimental facility in England.
- Vilnius. One Office lawyer attended the [working meeting](#) with members of European national preventive mechanisms. This consisted in an interactive seminar with discussions in working groups as well as a practical training of a systematic visit to a psychiatric hospital.
- Leuven. One Office lawyer attended a three-day [workshop](#) dedicated to the ethical issues associated with the care of persons with dementia.
- Štrbské Pleso. Slovakia held the annual meeting of Visegrad Group ombudspersons, this time focusing on the issue of threats to human rights. The Defender also presented her findings obtained in the performance of her responsibilities as the national preventive mechanism concerning the conditions of detention of foreign nationals.
- Vienna. An employee of the Office participated in the [annual meeting](#) of national preventive mechanisms of members of the [Organization for Security and Co-operation in Europe](#)
- Vienna. An Office lawyer attended the final conference summarising the results of [a project prepared by the Ludwig Boltzmann Institute](#) in Austria. The project highlighted the necessity of co-operation between national courts and the NPM in criminal court proceedings with a cross-border dimension, especially with regard to the application of the four EU Framework Decisions.

February

April

May

June

August

September

October

November

## F/ Ten years of the OPCAT and the Czech national preventive mechanism

In 2016, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) marked its 10th anniversary. The Defender also summarised the ten years of her institution's activities as the national preventive mechanism.

At the end of 2016, the Optional Protocol had 83 parties and 16 signatories. The OPCAT created a system of regular visits by independent international and domestic authorities in places of detention. For this purpose, it established a Subcommittee on Prevention of Torture and introduced the obligation of the States (the parties) to create an independent national preventive mechanism. The States are thus required to enable the Subcommittee as well as the national preventive mechanism to conduct visits in places of detention that are under their jurisdiction.

The national preventive mechanism has been active in the Czech Republic since 2006. To commemorate the anniversary, the Defender prepared a number of events:

- **Events for the general public:** Information leaflet and vision titled Successes and challenges in prevention of ill-treatment in the Czech Republic (see Annex 3 to the Annual Report 2015).
- **Events for the Deputies:** Special appendix to the quarterly information for the Chamber of Deputies.
- **Events for actors of prevention of ill-treatment:** Meeting of the supporters and former and present co-workers of the national preventive mechanism. We have commemorated the beginnings, summarised the successes and milestones of our activities and introduced new challenges for the future.
- **Events for everyone:** A short animated film created by the Association for the Prevention of Torture, with Czech dubbing.



Division of Supervision over Places of Detention

# ANNEX 1: The mission of the Public Defender of Rights



Pursuant to Act No. [349/1999 Coll., on the Public Defender of Rights](#), as amended, the Public Defender of Rights (Ombudsman) protects persons against the conduct of authorities and other institutions if such conduct is contrary to the law, does not correspond to the principles of a democratic rule of law and good governance or in case the authorities fail to act. If the Defender finds errors in the procedure of an authority and if the authority subsequently fails to provide for a remedy, the Defender may inform the superior authority or the public.

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

In 2009, the Defender was also given the role of the [national equality body](#) pursuant to the European Union legislation. The Defender thus contributes to the enforcement of the right to equal treatment of all persons regardless of their race or ethnicity, nationality, sex, sexual

orientation, age, disability, religion, belief or worldview. For that purpose, the Defender provides assistance to victims of discrimination, carries out research, publishes reports and issues recommendations with respect to matters of discrimination, and ensures exchange of available information with the relevant European bodies.

Since 2011, the Defender has also been [monitoring detention of foreign nationals and performance of administrative expulsion](#).

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

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



# »»»»»» ANNEX 2: Basic information on the NPM

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

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

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

The visits are carried out by employees of the Office of the Public Defender of Rights on the basis of the Defender's instruction. The employees include

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

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

**After visiting a facility or after related visits to several facilities, the Defender compiles a report on his or her findings that may include recommendations or proposals of remedies.** If the Defender obtains findings that can be generalised, he or she releases a summary report. In the summary report, the Defender lays down systemic recommendations and proposals for prevention of ill-treatment, and sometimes also standards of good treatment that can also serve

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

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

“

as guidelines to unvisited facilities. The Defender monitors compliance with the recommendations and discusses them with the facility that was visited, its founder or the relevant authorities. If the Defender finds their response insufficient, he or she may inform the superior authority or, if no such authority exists, the Government; the Defender may also inform the public of his or her findings. Since 2016, the Defender releases the reports on the individual visits online (after the case is closed); in the previous years, as a rule, only summary reports were released to the public.

**Aside from performing visits, the Defender's preventive actions against ill-treatment consist in a number of other activities:**

- Selected summary reports are issued in print and distributed to authorities and other parties that may influence treatment in the facilities.
- The findings from systematic visits are used in the comment procedure for the legislation being drafted.
- The Defender participates in expert discussions and is active in labour and advisory bodies.
- The Defender meets with employees of the Public Prosecutor's Office who supervise compliance with legal regulations in some places of detention.
- The Defender performs and supports awareness-raising activities in the area of ill-treatment, including: publishing press releases and information materials, contributing to scholarly as well as popular periodicals, organising educational events and actively participating in educational events organised by third parties.
- The Defender endeavours to actively participate in the co-operation of national preventive mechanisms in Europe.

# »»»»»» ANNEX 3: Events with participation of employees of the Office

1. The South Moravian Region's seminar for social services facilities, topic: Unregistered residential social services facilities.	February
2. Lecture at the Faculty of Education of Palacký University Olomouc, topic: Rights of children in facilities.	April
3. Seminar titled Prisons outlook and the penal policy, topic: Prisons Outlook.	May
4. Conference of the Association of Providers of Social Services, topic: Catering and human dignity.	
5. Ombudsman Legal Clinic at the Faculty of Law of Masaryk University in Brno, topic: Imprisonment.	
6. Conference titled Discourse 2016, topic: Institutions and the Defender's view of the rights of children.	
7. Conference of the Association of Providers of Social Services titled "Operations and catering in social services, topic: The Defender's recommendations concerning catering in facilities for the elderly.	June
8. Seminar titled "Forensic aspects of care for patients with dementia", topic: Restraints, Defender's activities with regard to care for the elderly.	September
9. Conference held by UNCE on the occasion of the 10th anniversary of the Optional Protocol to the UN Convention against Torture, topics: The Public Defender of Rights as the national preventive mechanism, transformation of the Ombudsman into a national human rights body; and Ill-treatment found by the Defender – what's next?	
10. Legal Clinic of Social Rights at the Faculty of Law of Palacký University Olomouc, topic: Private and family life of children in institutional upbringing.	
11. Conference titled "Society and the mentally ill", topic: The Public Defender of Rights and persons with mental illness.	November
12. Conference titled "Children in institutional care from the viewpoint of co-operating experts", topic: Voluntary stays in school facilities. Research and inquiry results.	
13. 34. Conference on social psychiatry, topic: Dark corners of institutional psychiatric care.	December
14. Senior Academy, topic: Rights of the elderly in social services facilities.	

PROTECTION AGAINST ILL-TREATMENT 2016  
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AS THE NATIONAL PREVENTIVE MECHANISM

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