



ombudsman
Public Defender of Rights

PROTECTION AGAINST ILL-TREATMENT 2018

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



ombudsman
Public Defender of Rights

PROTECTION AGAINST ILL-TREATMENT 2018

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

Explanatory notes



link to a webpage



reference to a printed medium

Public Defender of Rights

Protection of Persons Restricted
in their Freedom

Asylum Act – Act No. 325/1999 Coll., on asylum, as amended

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Criminal Code – Act No. 40/2009 Coll., the Criminal Code, as amended

Foreigners' Residence Act – Act No. 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic and on amendment to certain laws, as amended

Healthcare Services Act – Act No. 372/2011 Coll., on healthcare services and the conditions of their provision, as amended

Police Act – Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended

Social Services Act – Act No. 108/2006 Coll., on social services, as amended

Specific Healthcare Services Act – Act No. 373/2011 Coll., on specific health care services, as amended

»»»»» Table of Contents

■	SUMMARY BY THE PUBLIC DEFENDER OF RIGHTS	7
■	Basic overview	8
	1. Police cells	10
	2. Foreign nationals restricted in freedom	12
	3. Prisons and security detention	14
	4. Healthcare facilities	17
	5. Social services facilities	18
	6. Facilities for children	19
	7. Outstanding issues in effective prevention of ill-treatment	20
	8. Further activities to prevent ill-treatment	24
	ANNEX 1: The mission of the Public Defender of Rights	26
	ANNEX 2: Basic information on the NPM	27



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

Public Defender of Rights

Údolní 39, 602 00 Brno

information line: **+420 542 542 888**
telephone (switchboard): **+420 542 542 111**
e-mail: **podatelna@ochrance.cz**

www.ochrance.cz
www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom
www.facebook.com/verejny.ochranceprav
www.twitter.com/ochranceprav

SUMMARY BY THE PUBLIC DEFENDER OF RIGHTS

In the thirteenth year of our activities as the national preventive mechanism, we continued conducting systematic visits and implementing long-standing recommendations in the area of prevention of ill-treatment. I provide a brief summary of the most important achievements:

We visited a total of 27 facilities. Some of them were visited as part of larger thematic projects: we completed a series of visits to security detention and visits to homes for people with disabilities. Findings obtained from these visits serve as the basis for summary reports, where the report on security detention has already been drawn up and discussed with experts across the Czech Republic. Further to the systematic visits, we renewed monitoring of general psychiatric facilities and prepared a special programme for monitoring of the use of means of restraint. In future, we plan to visit facilities for children placed in institutional education. In accordance with our standard procedure, we begin with an intensive preparation of our team.

In Chapters 1 to 6, we summarise our activities in 2018 according to the individual areas of detention. I consider the assessment of conditions of people in security detention to be the most important topic of our current activities. This form of a protective measure has been available under the Czech legislation for 10 years, which means it is a good time to summarise the way it has functioned until now. Therefore, I have decided to also prepare an analysis of court decisions whereby security detention was imposed on inmates who are/have previously been placed in the relevant institutions. We aimed to get a picture of the current situation and establish the ratio between direct imposition of security detention and requalification from forensic treatment. We obtained a completely unique material and legal overview of the current state of security detention. In Chapter 3, we outline only the essential findings and I invite anyone interested to study all our published reports.

The visits yielded only a few unambiguous findings on ill-treatment; however, certain risky practices are basically used to some extent by everyone, and the safeguards are insufficient. As in last year's report, I address this separately in Chapter 7. Foreigner detention facilities and forensic treatment institutions lack independent supervision and protection against potential interference with the inmates' rights. Recording and reporting of medical findings indicating ill-treatment does not correspond to international standards and is frustrated by the lack of privacy during examinations by physicians. The situation in social services is especially grave as this area lacks an independent complaints mechanism, the State's inspectors cannot access parts of the documentation kept by service providers and there is a lack of a legal basis to punish infractions. I have found similar problems plaguing psychiatric care.

One of the tasks of the Defender is to monitor the detention of foreign nationals and perform monitoring of administrative and court expulsions. We linked this activity with our systematic visits. In 2018, we focused on monitoring of return operations, which are described in more detail in Chapter 2.

I sincerely hope this text will prove to be an inspiration to your work.

Anna Šabatová

Basic overview

Facilities visited in 2018

Liberec – **B**

Bohnice – **C**

Javorník – **G**

Cheb – **A**

Mnichov u Mariánských Lázní – **E**

Zvíkovec – **D**

Plzeň – **C**

Merklín u Přeštic – **E**

Psáry – **D**

Příbram – **A**

Osek u Strakonice – **E**

Opařany – **C**

Zboží – **D**

Jihlava – **A**

27



systematic visits

1 prison, 1 security detention, 6 police facilities, 3 psychiatric hospitals, 1 hospital for long-term patients, 1 facility for the elderly, 13 homes for people with disabilities, 1 facility for children requiring immediate assistance

54



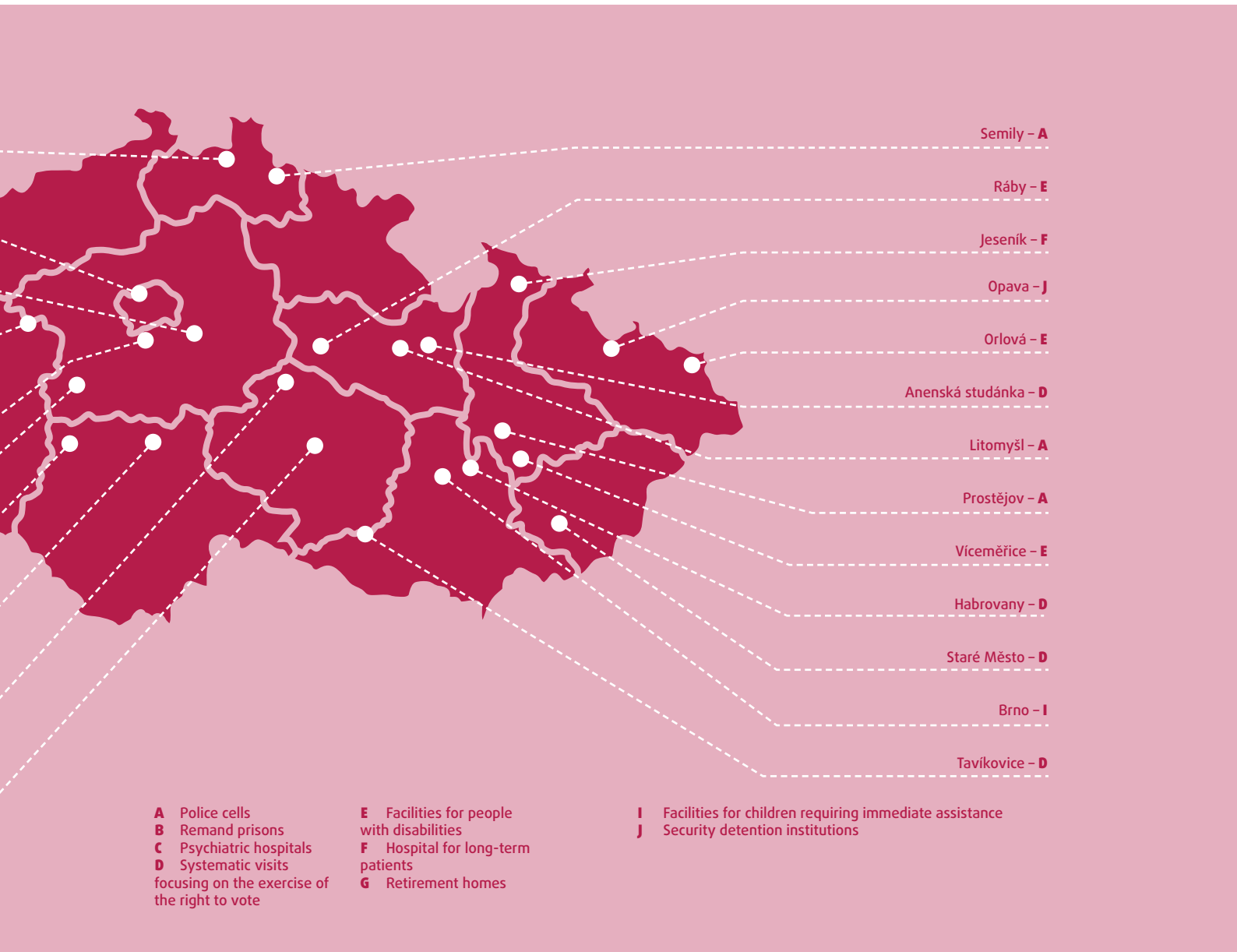
return operations were monitored

53 court and administrative expulsions, 1 transfer under the Dublin Regulation

111



professionals from facilities for long-term and psychiatric care and regional authorities' employees received training in the area of preventing ill-treatment



8



full-time lawyers constituting the permanent team of the national preventive mechanism

we are planning to increase our workforce via project-based activities

16



external experts took part in the visits

5 psychiatrists, 2 general nurses, 1 psychiatric nurse
2 psychologists, 1 social worker
5 social services experts

ESO

anonymised reports on completed visits to facilities are published in the Defender's Opinions Register and on the Defender's website

1. Police cells



6 visits to police cells

involving a total of 35 persons



Main topics in 2018

We discussed with the Police Presidium certain systemic measures to implement the recommendations outlined in the 2017 summary report.

As concerns body searches prior to placing a person in a cell, the Presidium promised to lay down an internal procedure for conducting strip searches to ensure that the dignity of a searched person is protected by enabling the person to remove clothing above the waist

and get dressed before removing further clothing below the waist.

However, the situation remains unsatisfactory in terms of privacy of examinations by physicians and compliance with a standard of prevention of ill-treatment by ensuring proper records and reporting of medical findings indicating ill-treatment ([cf. page 21](#)).

 [Summary report](#)



Using a taser in a psychiatric clinic

In November 2015, a patient died at a psychiatric clinic in Olomouc during police intervention where a Taser was used; the police were called in by the medical staff to help restrain the patient who was behaving dangerously due a psychotic seizure. Taser is an electrical discharge weapon and, as such, presents a risk of unintended, dangerous, and sometimes even lethal effects; the risk corresponds to the context of the weapon's use and the target person's vulnerability (stress, health problems, drugs that could contribute to cardiac arrhythmia, etc.). Taser also causes serious pain to the victim.

The Defender inquired into the case due to its extraordinary circumstances, focusing not only on the necessity of the use of force (she found no errors in the procedure). The Defender also made a systemic assessment of the use of electrical discharge weapons by the police and the protection of people with mental disorders against infringements of their right to life and the right not to be subjected to ill-treatment (errors were found).

The tragic event led to a number of systemic measures being adopted by the police. For example, police officers received clear instructions that a taser could only be used as a last resort before using a firearm; the training of police officers (e.g. concerning the risk of positional asphyxia and death when lying on a person in prone position, and the health risks associated with the use of a taser) and evaluation of the individual interventions was improved.

Some shortcomings remain even though the Defender contacted the Ministry of the Interior after talks with the Police Presidium. For example, stress resistance and faculty of discernment are not assessed as criteria for arming police officers with tasers and the data from the devices are not automatically available to superiors for evaluation. Police officers also receive no training for dealing with people with mental disorders (i.e. taking into consideration the effectiveness, discretion and safety of measures during arrest, methods of conflict management, co-ordination with medical staff). The Ministry of Health has so far been unwilling to monitor the use of force in psychiatric facilities and to issue methodological guidelines for co-operation between medical staff and the police.

The General Inspectorate of Security Forces investigated the incident. When the case was set aside, the family of the deceased filed a lawsuit. The Defender presented her opinion in the Constitutional Court proceedings as *amicus curiae*. The Court dismissed the constitutional complaint (judgment of 21 November 2017 in case File No. IV. ÚS 4150/16) and the relatives of the victim lodged an application with the European Court of Human Rights.

 [Final statement](#) and [Penalty Letter](#) with the authorities' responses

2. Foreign nationals restricted in freedom



54 monitored return operations



Supervision over forced returns

One of the tasks of the Defender is to monitor the detention of foreign nationals and perform monitoring of administrative and court expulsions. We linked this activity with our systematic visits. We analyse all decisions on expulsion and detention, which gives us information on the categories of persons detained in the relevant facilities and on the planned return operations. The annual round table with the representatives of the Directorate of the Immigration Police, Police Presidium, Prison Service and the Refugee Facilities Administration of the Ministry of the Interior was held in January 2019.



Long-standing recommendations of the NPM regarding the prevention of ill-treatment can be found on pages [20 and 21](#).

Monitoring in 2018

- 53 court and administrative expulsions
- 1 transfer under the Dublin Regulation

Analysis of decisions

- 7397 decisions on expulsion, including decisions on appeals
- 819 decisions on detention, including decisions on continued detention



In 2018, the Office of the Public Defender of Rights continued to implement the project of the national programme under the Asylum, Migration and Integration Fund. The project is titled Support for the Effective Monitoring of Forced Returns, Reg. No. AMIF/8/02 and enables us to set ourselves the goal of monitoring a total of 120 return operations over the course of three years.

Success of our recommendations

- Foreign nationals placed in facilities for detention of foreigners received access to computers with applications for online communication. The Refugee Facilities Administration also expanded the range of accessible Internet domains. This enables the foreigners to stay in regular contact with their close ones and arrange matters associated with their departure from the Czech Republic.
- We have repeatedly witnessed situations where the foreigners being deported received no food and drink from early morning's breakfast to late afternoon. Based on our recommendation, the Prison Service started distributing food packages.
- We have found a lack of co-ordinated practice in conducting body searches of the foreigners placed in remand prisons prior their deportation. There was a lack of clarity as to who should conduct the search – an employee of the Prison Service or an escorting police officer. Based on our recommendation, a meeting was held between representatives of both institutions to agree on a common practice in order to minimise the interference with the privacy of the searched persons. In future, only one search will be conducted (as opposed to two body searches under the current practice) by an employee of the Prison Service in the presence of the escorting police officers. We have also successfully recommended that the search adhere to CPT standards, i.e. by enabling the person to remove clothing above the waist and get dressed before removing further clothing below the waist.
- We encountered a problem during an examination by a physician. After an examination of a foreigner who was to be deported by air, the physician did not issue any certificate of medical fitness, even though the person had health problems. The Healthcare Facility of the Ministry of the Interior then adopted suitable remedial measures based on our recommendation.
- We have found a case where a foreigner was not allowed to access legal advice while being placed in a strict-regime unit of a facility for detention of foreigners. The Directorate of the Immigration Police had originally referred to Section 144 (4) of the Foreigners' Residence Act and claimed that a meeting with a lawyer would have had to be monitored by police officers. The aforementioned provision enables such an interpretation, but this is hardly in line with the lawmaker's intention, and comparison with other legal provisions on restriction of personal freedom as well as the case law of the Constitutional Court indicate that meetings with legal counsel must always take place in private, without the presence of third parties. The police have accepted this interpretation, but the aforementioned provision should be amended to remove ambiguities.

3. Prisons and security detention



1 + 1 visit

remand prison
security detention institution

Visits to security detention

At the turn of 2017/2018, we visited both institutions for security detention of mentally deranged offenders. During our visits, we examined the therapeutic programmes and availability of healthcare; internal security regime including the use of coercive means; daily activities; regime measures; possibilities for contact with the outside world; and availability and use of the reasons for continuing detention.

In 2018, we conducted a visit in the facility in Brno, and also assessed all our findings and prepared a discussion with experts in the area of security detention, which took place in February 2019.

 [Summary report](#)

 [Report on visit to the facility in Opava](#)

 [Report on visit to the facility in Brno](#)

Main findings:

- The environment in the institutions is not sufficiently distinguishable from a prison environment. The premises are austere and lack provisions for privacy. Standard-issue clothes are worn because the inmates are unable to ensure washing of their own clothes. Possibilities of access to outdoor exercise should be expanded.
- Treatment provided to inmates was satisfactory, but its scope was limited. Especially due to insufficient staffing, the inmates did not have enough activities available in the afternoon and on weekends.
- Even when taking part in all offered activities, the inmates nevertheless spent approximately 16 hours a day (20 hours on weekends) in their cells.
- Practically all contact between specialist and medical staff and the inmates was conducted from behind bars, both in individual and group therapy sessions.



Did you know that security detention...

... has been a part of the Czech legal system since 2009, i.e. for 10 years?

It is the strictest possible protective measure applicable. Courts use it in cases of mentally ill offenders who present a serious danger to society and where forensic treatment would not sufficiently meet this purpose. Security detention facilities combine features of a prison and a psychiatric hospital. Inmates are guarded by the Prison Service and are offered therapeutic, psychological, educational, rehabilitation and activity programmes. Isolation in the detention facilities is not time-limited, but is subject to a review in 12 month intervals (6 months in the case of juveniles) where the court examines whether the reasons for detention continue.



Analysis of 100 cases involving security detention

On the occasion of 10 years of existence of the measure, we have conducted an analysis of court decisions whereby security detention was imposed on inmates who are/have previously been placed in the relevant institutions. This involved 100 persons in total. We aimed to get a picture of the current situation and establish the ratio between direct imposition and requalification from forensic treatment.

- As of 1 January 2018, there were 79 inmates in detention, mostly men. Another 48 were expected to start the detention since the measure was to follow after they completed their prison sentence.
- Security detention is an increasingly used measure.
- Usually, it involves a long-term stay where only a few persons are released in any given year. Detention has so far been terminated in case of 21 persons; in 17 cases, the persons continue receiving forensic treatment in a psychiatric hospital, while in 1 case, the person was released; in 2 cases, the inmates died, and another person began serving a prison sentence.
- There is also an increasing number of cases where forensic treatment is changed into security detention. Currently, this applies to nearly 50% of cases.

The analysis describes in detail the composition of the inmate population, imposition of secure treatment in detention and its termination.

 [Summary report](#), p. 29 et seq.





Long-standing recommendations of the NPM regarding the prevention of ill-treatment in prisons can be found on [pages 21 and 22](#).

Success of our recommendations to the Prison Service

- When dealing with healthcare complaints, the Prison Service will advise the complainants on the possibility of turning to an external authority (the Ministry of Justice) if their complaint is not resolved satisfactorily.
- In April 2018, remuneration for working prisoners was increased for the first time in 17 years. The Government is now discussing a proposal to link the amount of remuneration to the minimum wage. If the proposal is adopted, the monthly remuneration will correspond to 50% of the minimum wage. Prisoner labour is attractive for private employers and increased remuneration will help prisoners repay their debts already during the service of their term in prison. Debts are a factor influencing the convicts' tendency towards recidivism upon release.
- In the Kuřim Prison, the areas for barrier visits have been renovated.
- In the Bělušice Prison, a non-smoking area has been created after the smoking area was previously removed without substitute arrangements. Given the fact that a majority of convicts were smokers, the non-smokers were exposed to the adverse effects of passive smoking.



Will politicians focus on prisons?

- In September 2018, the petitions committee of the Chamber of Deputies tasked the Public Defender of Rights with monitoring the prison system in more detail, especially in terms of the conditions of imprisonment and their compliance with European standards.
- In December 2018, we met with the Minister of Justice to again remind him of problems caused by prison overcrowding and the lack of vision in penal policy.
- Nevertheless, systemic recommendations included in the summary report of 2016 remain unimplemented.

 [Report on visits to prisons](#)

 [A summary of the implementation of recommendations](#) as of the beginning of 2018 is included in the Annual Report on page 12.

4. Healthcare facilities



4 visits

hospital for long-term patients
 psychiatric hospital
 children's psychiatric hospital
 psychiatric clinic of a university hospital

Hospitals for long-term patients

We have discussed certain systemic measures to implement the recommendations outlined in the 2017 summary report with the Ministry of Health. We have prepared specialised seminars for representatives of

the hospitals to inform them about standards in prevention of ill-treatment.

 [Summary report](#)

Psychiatric hospitals

In 2018, after a series of visits focusing on forensic treatment, we renewed our systematic visits to general psychiatric facilities and also prepared a special programme for monitoring the use of means of restraint. See [page 23](#) for long-term recommendations.



A cage bed in 2018!

During a systematic visit, we found that a psychiatric facility was using two net beds and one bed completely enclosed by a metal cage. The use of this means of restraint is not allowed under current legislation and we had not seen such a cage bed for years. It was removed shortly after our visit.



Did you know that the use of means of restraint...

...is now regulated by a new methodological guideline issued by the Ministry of Health? We have commented on its contents with the aim of strengthening safeguards against ill-treatment.

 [Methodological guideline](#)

...is subject to the CPT standard? In 2018, the translation to Czech was completed.

 [Revised standard](#)

5. Social services facilities



14 visits


a retirement home
13 homes for people with disabilities

Visits to homes for people with disabilities

We have been focusing on homes for people with disabilities. We visited 9 such facilities over the past 2 years (of which 6 were visited in 2018). Our visits focused on safety provisions and compliance with the principle of a minimum restriction; the principle of “normality” and autonomy of clients; availability of healthcare; working with problematic behaviour and sexuality; protection from unauthorised detention in a facility. After our series of visits was completed, we organised a round table with the representatives of the visited facilities and experts and we are currently evaluating the findings. A summary report will be released in 2019.

In 2018, we tested visits in co-operation with our colleagues in the Office of the Public Defender of Rights

who are responsible for monitoring of the rights of people with disabilities. Seven visits were conducted in relation to the municipal elections, focusing on the exercise of the right to vote on the part of people with disabilities, especially those with restricted legal capacity. The aim was to verify whether clients in the facilities received sufficient assistance to exercise their right to vote and determine the obstacles to voting faced by people with disabilities. The findings will be presented in a separate summary report.

 [Report on monitoring](#) of the exercise of the right to vote



We have repeatedly pointed out that...

- there is no independent complaints mechanism in social services;
- the inspection authorities supervising over the provision of social services lack the authorisation to peruse the documentation on care;
- infringements on the clients’ dignity do not qualify as an infraction.

See [pages 22 and 23](#) to find out more about the outstanding systemic issues.

6. Facilities for children



1 visit

facility for children requiring immediate assistance

The Defender consistently draws attention to three systemic problems in the provision of care for vulnerable children and their families: the number of children living in institutions is too high; children under 3 years of age are placed in institutions; and the responsibility for the provision of services is fragmented. Additionally, there is a lack of social housing and supporting social services for families.

Preparation of visits to be conducted in 2019

Simultaneously with analysing results of systematic visits to facilities for children requiring immediate assistance conducted in 2017, we have started preparing a new series of visits to facilities for children placed by a court in an institutional or protective education. Selected lawyers have undergone training and internships in facilities with best practices and we are preparing a detailed inquiry programme.

Our visits will focus on those elements of institutionalisation which affect the child's dignity. For instance, a child has a right to be evaluated and rewarded, but the "point systems" in common usage divert evaluation from a desirable relationship-based upbringing and lead to faked compliance on the part of the children

and a formalistic approach on the part of the adults. Body searches performed on children introduce prison-like elements and lack a legal justification.



**Facilities for children
requiring immediate
assistance**

 [Summary report](#)

7. Outstanding issues in effective prevention of ill-treatment

”

We intend to remind the authorities of our systemic recommendations and provide expert assistance in their implementation.

“

Independent supervision and protection from continuing ill-treatment



facilities for detention of foreigners, reception centres, and psychiatric hospitals providing forensic treatment

Issue: Lack of an independent body able to quickly ensure remedy in case of ill-treatment. A person placed in an institution can claim enforceable protection of rights in court, which is often a demanding and long path. Such a situation could amount to a violation of Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Potential solution: In prisons and facilities of institutional and protective education, the necessary authority is vested in the public prosecutor's office. The public prosecutor's office supervises compliance with the legal regulations by means of checks and dealing with complaints, and can issue an instruction to release an individual or to comply with the regulations. We recommend that the public prosecutor's office's supervision is expanded to cover forensic treatment and detention of foreigners.

§ **To extend the supervision by the public prosecutor's office, it will be necessary to supplement the Foreigners' Residence Act, the Asylum Act and the Specific Healthcare Services Act.**

Punishing degrading treatment is complicated

Issue: 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 other crimes, which do not cover the entire range of intentional degrading treatment. Nonetheless, for example in the field of social and healthcare services, the Public Defender of Rights most frequently encounters flaws that attain the level of degrading treatment. A distinct problem lies in the fact that degrading treatment does not necessarily inflict physical harm and can be caused

by a number of less severe actions with combined effect. This complicates criminal punishment.

As concerns administrative punishment, no suitable infractions have been legislatively defined for the area of social and healthcare services. The Social Services Act provides for administrative punishment of social service providers in case of non-compliance with formalities, but defines no infraction covering often serious instances of interference with privacy, safety, integrity and dignity of service users. The Healthcare Services Act does not even include any infractions with regard

to incorrect use of means of restraint. This results in impunity for less serious forms of ill-treatment and contributes to low respect towards inspection bodies.

§ **It is necessary to revise the Criminal Code and define infractions in the relevant sectoral laws so as to ensure that no form of intentional degrading treatment remains non-punishable.**

Recording and reporting medical findings of ill-treatment



especially police and foreigner detention and prisons, but also other places of detention

Issue: The prohibition of torture and other forms of ill-treatment is always weakened when the perpetrators are not punished for their acts. If a credible allegation is received or there are injuries indicating ill-treatment, an effective investigation must be conducted. The systematic visits indicated that the medical reports on examination and treatment lack the parameters required for investigation of ill-treatment. In extreme cases, the investigation is limited to several questions asked in the presence of a police officer. This is caused by a low awareness of the principles governing documentation of ill-treatment. The statutory confidentiality requirement under the Healthcare Services Act

then does not permit a physician, without the patient's consent, to report findings on signs of ill-treatment to authorities competent to investigate.


Potential solution: It is necessary to provide methodological guidance to physicians, change the legislation on physician-patient confidentiality, and to initiate a professional debate so that physicians accept their role in combatting ill-treatment with understanding and without endangering the physician-patient relationship.


§ **Modify the Healthcare Services Act so that a report on medical evidence indicative of ill-treatment does not represent violation of the physician's confidentiality.**



Standards for documenting and reporting cases of ill-treatment

 [CPT standards](#)

 [UN principles](#) for effective investigation and recording

 More details on the [Defender's website](#)

Confidentiality of medical examination is not ensured



police and foreigner detention and prisons

Issue: The right of a person restricted in freedom to see a physician is one of the basic safeguards against ill-treatment. The presence of police officers or prison guards deters the victim from disclosing information on any ill-treatment. As regards medical examinations of persons under the authority of the Prison Service of the Czech Republic, the Healthcare Services Act (Section 46 (1)(g)) provides that they shall take place in the presence of an officer who has to be "in sight" and in cases of danger even "within earshot". The Act lays down no special regime for medical examinations of persons presented by the Police of the Czech Republic, but the

Police President's binding instruction prescribes that at least one police officer shall remain in visual contact. For the prevention of ill-treatment to be effective, CPT standards require that no police officer or prison guard be present at all unless this is requested by the physician for security reasons, and even in that case, only in sight.

§ **It is necessary to modify the Healthcare Services Act and direct police officers and members of the Prison Service of the Czech Republic to respect the rule that their presence in treatment is only possible on the physician's request, and in that case only "in sight".**

Disciplinary punishments



prisons

Issue: The legal limit for the duration of solitary confinement as a form of disciplinary punishment is 14 days. Subsequent disciplinary punishments can prolong the effective duration of solitary confinement even above the statutory maximum. The CPT has further repeatedly pointed out that the range of possible disciplinary punishment of prisoners should not include total prohibition of contact with family if the misconduct committed did not relate to such a contact.

Potential solution: In 2015, the Government promised to the CPT to prepare a draft amendment that would incorporate disciplinary proceedings comprehensively in the Service of Imprisonment Act, reduce the time of solitary confinement and placement in an enclosed ward, and transfer decision-making on the most serious disciplinary misconduct to criminal proceedings. The promise has yet to be fulfilled.

§ It is necessary to modify the Service of Imprisonment Act.

Social services lack an independent complaints mechanism



social services facilities

Issue: Clients of social services have no place to turn to with a complaint if they suspect violation of their rights, other than the management of the facility they live in. The Defender receives many complaints concerning the quality of nursing care, e.g. from children of senior citizens; unfortunately, there is no one to look into these complaints. Clients who are dependent on care and disabled are in an extremely vulnerable position and referring them to seek recourse in court is not an effective solution. While we have been pointing to this problem for many years, the Ministry of Labour and Social Affairs only started addressing it by the end of 2018.

Potential solution: There is a complaints mechanism in healthcare, but the law does not take into account nursing care provided as part of social services. It would thus be sufficient to simply change the law accordingly. However, the area of social services requires a systemic solution.

§ It is necessary to amend the Healthcare Services Act so as to open the current complaints mechanism to recipients of nursing care in social services facilities. Furthermore, a complaints mechanism has to be established in the field of social services.

There is a lack of personnel, material and technical standards of social services



social services facilities

Issue: Some of the facilities lack sufficient conditions for the provision of care, which may also lead to ill-treatment of clients. While the Social Services Act does generally require the providers to ensure personnel, material and technical conditions corresponding to the type

of the social services provided, without further specification in the form of a decree this legal provision is unclear and shortcomings almost cannot be penalised.

§ It is necessary to include authorising provisions in the Social Services Act and then issue the relevant implementing decrees.

Inspection authorities are not allowed to peruse medical records



social services facilities

Issue: For the authorities inspecting the provision of social services to effectively protect the clients' rights

and prevent ill-treatment, they have to be able to access all documents kept by the social services provider. This means they must have the right to peruse documentation on nursing care and make excerpts or

copies even without the patient's consent. The problem is that documentation of nursing care constitutes a part of medical records and the relevant laws do not provide for the inspectors' access to it. The Ministry of Labour and Social Affairs has not been able so far to secure the necessary legislative changes with the Ministry of Health, which is responsible for this area.

§ It is necessary to amend the Healthcare Services Act and include social services inspectors among entities authorised to peruse medical records even without the patient's consent.

Unsatisfactory standard in psychiatric hospitals



psychiatric facilities

Issue: Patients who cannot independently leave the unit due to their medical condition have not access to outdoor exercise on a daily basis. A number of facilities provide accommodation in dormitories housing

many patients. The pending reform of psychiatric care aims to develop community services – many patients would thus no longer receive care in large institutional facilities. However, large psychiatric hospitals will remain the main care providers for several years.

A strategic approach is also lacking in terms of decreasing the need for using means of restraint



psychiatric facilities

Issue: The legal regulation of criteria for the use of means of restraint is not in conformity with the European standard. However, full compliance with the standard, including the principles of necessity and subsidiarity, is hindered by a number of persisting issues. In practice, there is a lack of specific conditions for alternative resolution of dangerous patient behaviour. At certain workplaces, means of restraint are used preventively and in the long term because of inadequate material equipment and insufficient staff, without this leading to any adjustment in the manner of providing care. Not only patients, but also the attending personnel are in a

danger of injury and trauma. The health staff often do not distinguish between treatment and pharmacological restraints. State oversight is ineffective. Because records of the use of means of restraint in the current form, as laid down by the Healthcare Services Act (Section 39 (4)), only provide an irrelevant statistic, effective monitoring and inspection of restraints remains difficult.

Potential solution: The use of means of restraint will not decrease without conceptual development of their prevention and alternative means, and without a clear signal from the Government that it will no longer tolerate care relying on the use of restraints. Constant guidance and supervision is also necessary.

The attitude to the use of net beds has not changed



healthcare services facilities

Issue: Although the CPT has regularly recommended to the Government of the Czech Republic to discontinue the use of this means of restraint since 2002, net beds remain in use. It is unknown how many such beds are used in Czech healthcare facilities. It is likely that the number is much lower than 120 established by the survey of 2012. However, the Government has not yet adopted the necessary steps to implement its 2015 promise to the CPT that it would seek ways to discontinue the use of net beds. Since then, in view

of the risks involved, it has been prohibited to use net beds in sobering-up stations, but they remain a legal means of restraint in other healthcare services. The Ministry of Health remains inactive and some physicians are concerned that net beds will simply be replaced by other means of restraint.

Potential solution: Adopt a strategic approach that would include search for and promotion of effective alternatives to the use, not only of net beds, but of means of restraint in general.

8. Further activities to prevent ill-treatment

”

Prevention is a multifaceted and interdisciplinary endeavour. We therefore give lectures, engage in debates and educate ourselves.

“

We strive to build a long-term dialogue

In 2018, the Public Defender of Rights and employees of the Office again met with the Director General of the Prison Service of the Czech Republic and public prosecutors of the Supreme Public Prosecutor's Office. Immediate talks with the management of the Refugee Facilities Administration of the Ministry of the Interior have proven effective in addressing problems found in the residential

facility for foreigners. We also met with the new Ministers to summarise our previous work in their respective areas of labour and social affairs, healthcare and justice. After a series of 9 visits to facilities for people with disabilities, we organised a round table discussion with the directors of the visited facilities, where we talked about our findings and practical recommendations.

We comment on proposed legislation

We commented on the proposed amendments to the decree on medical records and on guidelines regarding the use of means of restraint by healthcare services

providers, detention in social services, and placement of children in facilities for children requiring immediate assistance.

We are disseminating the standard of prevention of ill-treatment

Within regular teaching, our own training activities and participation in conferences, we

- trained 111 professionals working in long-term and psychiatric care and employees of regional authorities on issues of prevention of ill-treatment of people dependent on care, findings obtained through our visits to facilities, and the need to take prevention of ill-treatment into account within inspection activities;
- gave lectures for a hundred senior citizens – participants in the Senior Academy of the Brno Municipal Police – as to how they should defend themselves against ill-treatment;



Translations of CPT standards

We participated in the preparation of Czech translations of additional CPT standards and information overviews.



— gave lectures to students of law and international relations, public guardians, Prison Service officers and workers in geriatrics and social services on the results of systematic visits and the standard of prevention of ill-treatment.

We regularly contribute to professional journals Social Services and Czech Prison System, and occasionally also to the journal Social Work Magazine and other scholarly journals.

We work to improve the professionalism and quality of our visits

The topical focus on institutional education and dealing with people with disabilities required the necessary preparation of the programme of visits and training of our team. Our lawyers completed a several multi-day internships in social services and school facilities. We organised a training course for communication with

people with mental disabilities, interviewing children, and methods of drafting reports. Our lawyers also completed a basic psychiatric course and “bespoke” training by experts in the area of case law of the European Court of Human Rights.

Lively international co-operation

We have already worked as a national preventive mechanism for 13 years. We are happy to share our experience, but also need new inspiration. In 2018, we thus continued meeting with our colleagues and deepening our co-operation with the Austrian NPM. This involved excursions into a prison with a treatment/detention institution in Brno and the Korneuburg Prison.

FRONTEX European return agency and the International Centre for Migration Policy Development. Employees of the Office provide training to persons tasked with monitoring expulsions in other countries and they monitor return operations personally as well. In March 2018, we co-operated with several partners to organise a seminar at Václav Havel Airport in Prague for representatives of EU countries active in monitoring of forced returns of foreign nationals.


In the area of monitoring of forced returns of foreigners to their home countries, we co-operate with the

Contact with UN bodies

In 2018, the head of the NPM working group met with the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) to inform it on the activities of the Czech national preventive mechanism. Representatives of the Subcommittee were mainly interested in ensuring NPM's independence and the current challenges in combatting ill-treatment. They praised the manner of conducting systematic visits as well as the individual and systemic topics we pay attention to during the visits.

which dealt with the sixth periodic report of the Czech Republic on measures implemented in order to perform its obligations under the UN Convention against torture. The Committee requested a statement from the Public Defender of Rights and asked additional questions.

 [Statement for the CAT](#)

 More information and concluding [remarks of the CAT](#)

In 2018, a member of the NPM team also participated in a hearing of the Committee Against Torture (CAT)

In 2018, the Defender again provided auspices over the “Yellow Ribbon Run” – a marathon run dedicated to support for employment of prisoners following their release, which took place within the Prague Marathon. This race has already been instrumental in securing jobs to hundreds of former convicts.

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



Pursuant to Section 349/1999 Coll., on the Public Defender of Rights, as amended, the Public Defender of Rights (Ombudsman) protects persons against the conduct of authorities and other institutions if such conduct is contrary to the law, does not correspond to the principles of 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 the recipients are dependent. The Defender generalises his or her findings and recommendations concerning the conditions in a given type of facility in summary reports on visits and formulates general standards of treatment on their basis. Recommendations of the Defender concerning improvement of the ascertained conditions and elimination of ill-treatment, if applicable, are 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 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 been monitoring detention of foreign nationals and the performance of administrative expulsion. Since 2018, the Defender has helped foreign nationals who are EU citizens and reside or work in the Czech Republic, advises them of their rights and provides them with assistance in cases of suspected discrimination on the grounds of nationality.

Effective from 2018, the Defender has been active as a monitoring body in the sense of the U.N. Convention on the Rights of Persons with Disabilities. The Defender publishes reports and issues recommendations regarding issues related to the fulfilment of rights of people with disabilities. For this purpose, it has created an advisory body.

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

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 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.).

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 care. Systematic visits are carried out in facilities founded by both public as well as private entities.

The Defender is free to choose 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.

The visits are carried out by employees of the Office of the Public Defender of Rights on the basis of the Defender’s instruction. These are 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, 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. Office staff receive all necessary training courses, internships and technical equipment, including cars, 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. The Defender monitors compliance with the recommendations and discusses the recommendations 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. The Defender publishes reports on individual visits (after the case has been closed) in the Defender’s Opinions Register (eso.ochrance.cz) and on the Internet. If the Defender obtains findings that can be generalised, he or she releases a summary report where the systemic recommendations are formulated and measures to prevent ill-treatment are proposed.

Along with visits, the Defender and her team also pursue further activities to prevent ill-treatment: Publish selected summary reports in press and disseminate them. Comment on governmental bills. Work in advisory bodies. Co-operate with State inspection bodies. Educate and raise awareness among professional public. Actively participate in the co-operation of national preventive mechanisms in Europe.

PROTECTION AGAINST ILL-TREATMENT 2018
REPORT OF THE PUBLIC DEFENDER OF RIGHTS
AS THE NATIONAL PREVENTIVE MECHANISM

Editorial board

Anna Šabatová, David Slováček;
Marie Lukasová, Ondřej Vala

Editor

Stanislav Biler

Published by the Office of the Public Defender of Rights in 2019

Graphic design, typesetting, production: Omega Design, s. r. o.

ISBN 978-80-7631-002-5

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

2018 ILL-TREATMENT PROTECTION AGAINST

ombudsman
Public Defender of Rights

