

PART IV - SYSTEMATIC VISITS TO FACILITIES WHERE PERSONS RESTRICTED IN THEIR FREEDOM ARE CONFINED

In 2007 the Defender continued to perform systematic visits in the sense of Section 1 (3) and (4) of the Public Defender of Rights Act.

A change in the method of performing the visits occurred in comparison with 2006 in that all the visits (except for the Prague-Ruzyně Reception Centre) were **unannounced**. The head of the facility concerned was advised of the visit by the authorised personnel of the Office of the Public Defender of Rights (hereinafter the "Office workers") immediately after the Office workers' arrival and, in case of his or her absence, the deputy employees were requested to advise him or her. The Defender ascertained in connection with the unannounced arrival of the Office workers that **the head** or director was not always **represented by deputies** in the facilities. In some cases the personnel were unable to say who represented the head; in some rare cases neither the director nor his/her deputy were present and the facility was "entirely abandoned".

Visits to 27 retirement homes or apartment homes for retired people (hereinafter "**homes for the elderly**") were carried out in the first half of 2007. A meeting with the authorised personnel of the Ministry of Labour and Social Affairs took place on the provision of social care in such facilities and the Defender organised a special conference on "*Social Services in Homes for the elderly*" on May 21, 2007. Two **reception centres for asylum seekers** (i.e. all such facilities in the country) were visited in the second half of 2007 and **follow-up visits in the facilities** were underway subsequently with the objective of ascertaining how the measures proposed by the Defender for individual types of facility in the past year were implemented.

1. Homes for the Elderly

Systematic visits to **27 homes for the elderly** were carried out from January to June 2007 with the objective of verifying how the clients of the facilities were treated and their rights respected. The visits also took place due to the current situation in the area of social services, in particular the transfer to the new circumstances introduced by the Act on Social Services (Act No. 108/2006 Coll. as amended) effective from January 1, 2007. The latter act substantially changes the conditions for the provision of social services by introducing contractual elements, changing the method of financing of services and imposing new obligations on municipalities and regions.

The systematic visits were carried out during the **half-year period for registration of facilities** as the providers of some of the social care services in the sense of the provisions of Section 120 (5) of the Act on Social Services. By name, the visited facilities include retirement homes, homes for the elderly and apartment homes for retired people. The visited facilities can be defined, with some exceptions, as providing permanent **housing, catering and care to elderly people**, mostly to some degree dependent on the care of another person. The necessary degree of care and support is paid by the user from the allowance for care, while housing and catering are paid from their income (the law limits the payment to 85% of the income). The relevant performance takes place on the basis of an agreement on the provision of social service (Section 91 of the Act on Social Services).

There was a considerable **uncertainty resulting from the new legislation** among both the providers and users of the services at the time of the visits. Allowances for care were gradually granted for the elderly people; in several facilities, barely half of the clients were receiving the allowance. The founders had generally not been impacted by the change in the system of funding from public budgets so far, but anticipated this in 2008 and the expected decrease in redistributed assistance.

The table below shows the facilities visited by the Office workers. All the regions of the Czech Republic, all types of founders and facilities of various sizes were represented.

Name of facility	Status	Region	Founder	Capacity
Albrechtice nad Orlicí Retirement Home	HSR	HK	Region	57
Bechyně Home for the Elderly	RH	SB	Region	65

Kosmonautů Retirement Home, Brno	HEP, HSR	SM	Statutory city	119
Český Dub Retirement Home	RH	LB	Region	104
Čížkovice Retirement Home	RH	US	Region	55
Doksy Home for the Elderly	HEP	LB	Town	60
Domažlice Home for the Elderly	HEP	PZ	Region	140
Dubí Home for the Elderly	HEP	US	Region	343
Cheb Home for the Elderly	HEP	KV	Region	105
Chválkovice Retirement Home	HEP	OL	Region	201
Kladno Retirement Home	HEP	CB	Town	197
Nechanice Private Retirement Home	RH	HK	Natural person	52
Saint Zdislava Home, Opava	HEP	MS	Religious order	21
Pačlavice Home for the Elderly	HEP	ZL	Municipality	54
Podlesí Home for the Elderly	HEP	ZL	Region	227
Polička Retirement Home	HEP	PD	Town	50
Prague 4 Retirement Home	RH	PR	Region (Prague Municipal Office)	195
Apartment Homes of the Prague 8 Retirement Home	AH	PR	Region (Prague Municipal Office)	258 home 457 AH
Home in the Rychmburk Castle	HEP, HSR	PD	Region	72
Skalice Home for the Elderly	HEP	SM	Region	64
Soběsuky Home for the Elderly	HEP	OL	Town	54
G-centrum Tábor, Home for the Elderly	HEP	SB	Town	147
Telč Home for the Elderly	HEP	VY	Town	60
Tmavý Důl Retirement Home	RH	HK	Region	110
The Sosna Home for the Elderly, Třinec	HEP, HSR	MS	Town	185
Velké Meziříčí Home for the Elderly	HEP, HSR	VY	Region	165
Všestudy Retirement Home	RH	CB	Region	51

Glossary with the table:

The acronyms in the table in the Status column are based on the situation at the time of the visit (often before registration pursuant to the Act on Social Services): RH = retirement home; HEP = home for the elderly; HSR = home with special regime; AH = apartment home for retired people according to the original wording of Section 61 (1) (l) of Decree No. 182/1991 Coll.

Acronyms in the Region column: HK = the Hradec Králové Region, SB = the South Bohemian Region, SM = the South Moravian Region, LB = the Liberec Region, PZ = the Plzeň Region, US = the Ústí nad Labem Region, KV = the Karlovy Vary Region, OL = the Olomouc Region, CB = the Central Bohemian Region, MS = the Moravian and Silesian Region, ZL = the Zlín Region, PD = the Pardubice Region, PR = the Capital City of Prague, VY = the Vysočina Region.

The Defender's Findings and Recommendations

Technical Condition of Buildings, Protection of Privacy

The technical condition of buildings, a circumstance not directly dependent on the efforts of employees and yet strongly influencing the quality of life of elderly people, was also an issue included in the Defender's recommendations. Unfortunately, most elderly people housed in a social service facility enjoy very little privacy in rooms of three and more (up to six) beds where they can only keep the most essential personal belongings and clothing, sometimes without lockable cabinets or tables. The recommendations addressing the facilities or their founders directed a **better standard of housing** (barrier-free housing, three-bed rooms as a maximum, at least one lockable piece of furniture).

Internal Regulations

The internal regulations (house rules) of some facilities contain provisions contravening the legal regulations. These include the making of the clients' outings or visits conditional on the consent of the workers of the facility, setting of the obligation to undergo medical examinations, removal of identity papers, etc. A number of cases of **restrictive approach to clients** was furthermore identified during the visits: failure to issue keys to rooms, prohibiting TV at night, lack of a chance not to follow the diet prescribed by the doctor, not allowing (or prohibiting) the use of kitchen appliances, prohibiting smoking and the use of alcohol, failure to return at least a part of payments for days spent outside the facility. As for the daily regime in the facility, with only minor exceptions it is not based on the habits and needs of the housed clients, but instead operational aspects. Many facilities do not take account of the elderly people's dignity and embarrassment: the personnel do not knock on the door before entering a room, it is impossible to lock toilets and bathrooms or otherwise indicate that they are in use, personal hygiene and other intimate acts are performed without shielding curtains or other provisions to ensure privacy of non-self sufficient clients.

Provisions Limiting Freedom of Movement

The use of provisions limiting the freedom of movement (Section 89 of the Act on Social Services) is relatively frequent in facilities for the elderly. Given the **protection of the fundamental right to freedom of movement and residence**, the Defender repeatedly criticised some inappropriate uses of the limiting measures: (1) the personnel of the facility administers tranquillisers at their own discretion based on a general prescription of the medicament by the doctor made in advance, "*in case of unrest*"; (2) in some facilities, demented clients were without further consideration locked in their rooms, including for a whole day; (3) sideboards of beds are used everywhere, often regardless of the clients' mobility, without analysing the client's risks and possibilities. In this respect the Defender voiced the **principles for using legitimate limiting measures**.

Planning the Course of Provision of Social Service

According to the Act on Social Services (Section 88 (f)), it is the obligation of the facility to plan the course of the provision of the social service together with the user and appropriately keep the related records. The aforementioned activity is performed only **formally** in many facilities, often with identical outputs for all the clients and **without professional preparedness of the personnel**. The visits showed that the personnel of the facilities for the elderly are often unable to communicate with demented clients. In this context, the Defender recommended proper training of personnel and more intense use of individual plans.

Facultative Services

The Act on Social Services (Section 35) stipulates the basic and facultative services in the provision of social services. The Defender observed in a number of cases that the directors of the individual facilities opined differently on the activities falling within the "*mandatory standard*" and those that may be provided "*in excess*" (it is obviously necessary in the latter cases that the clients **pay extra** for such services since such care is not paid from the allowance for care). The Defender pointed out in these cases that the **law defines the basic activities for the homes for the elderly so broadly** (Section 49 (2)) that most of the activities regarded as facultative by the directors should in fact be regarded as "*basic activities*". The Defender offered a solution to the visited facilities based on the activities or, as the case may be, limitations, for which the allowance for care was granted to the specific client.

The client must receive the care with what he/she is unable to cope with given the **degree of his/her non-self sufficiency** at the price of the contribution (i.e. without additional payments). **The rest may be made subject to a fee.** This means that the client will pay for some activities in certain cases and some he/she will not pay for (depending on his/her abilities).

Agreements on the Provision of Care

The transition to the contractual system was **formal** in many places. The management of some facilities had been waiting and the conditions remained unchanged. The three-year transitional period of validity of the original "*decisions on admission to a social care facility*" (Section 120 (6) of the Act on Social Services) was ignored in some facilities and the clients were **forced to sign form agreements**; in other facilities the representatives openly admitted they were **in doubt regarding the legal position of the existing clients and the method of financing** during the transitional period. The Defender most often encountered the following shortcomings: (1) the management of the facility did not admit individualised contents of the agreement; (2) the existing clients were not informed of the three-year transitional period stipulated by law; (3) the facility failed to invite the clients' families to the negotiation of the agreements and failed to discuss the contents of the agreements with the clients; (4) the facilities entered into agreements with entirely demented clients (in fact incapable of legal acts); (5) some agreements prepared grounds for an illegal claiming of a "*debt*" (i.e. the difference between the calculated payment for the stay in the home and the actually paid amount corresponding to the maximum of 85% of the service recipient's income as stipulated by law).

Communication with Ministries

The Defender recommended the **Ministry of Labour and Social Affairs** as the central body responsible for the situation in social services deal *inter alia* with the following:

- the situation of the clients not legally incapacitated (not placed under restricted legal capacity) by a court who, given their physical/mental condition are in fact legally incapable, in order to ensure that they are not disadvantaged in the conclusion of the agreements on the provision of social service;
- the methodology of conclusion of agreements on the provision of social service (to eliminate the situation where the facilities misuse their position as a stronger party; unify notice terms, etc.);
- the methodology of use of measures that may cause limitation of the movement of persons.

The Ministry advised the Defender that his recommendations were fully in accordance with the Ministry's intentions (the Ministry is preparing a methodology for the conclusion of the agreements and a methodology for the use of measures limiting movement; the Ministry has simultaneously begun to work on a stipulation of custodianship and capacity to take legal acts).

The Defender recommended the **Ministry of Health** initiate a legislative process in order to ensure that the use of measures limiting movement in healthcare facilities is in accordance with the requirements of the international agreements by which the Czech Republic is bound. In the Defender's opinion, the legislation on the use of limiting measures in social and healthcare facilities should be unified.

2. Reception Centres for Asylum Seekers

Visits to two reception centres for asylum seekers in the Czech Republic were carried out in the third quarter of 2007, the centre in **Vyšní Lhoty** and the centre in **Prague-Ruzyně** (for the issue of the rights of persons placed in asylum facilities, see also Part III, paragraph 2.15).

Both facilities were founded by the Refugee Establishments Administration of the Ministry of the Interior. **Each centre has a different regime.**

The Prague-Ruzyně centre is a place where asylum seekers are concentrated within the so-called *“airport procedure”* (Section 73 of the Act on Asylum). Asylum seekers should be placed here for a relatively short time given the legislation and the **structural and technical design of the facility**. In practice however, some asylum seekers are placed at the centre for the whole period of the asylum proceedings (at the time of the inquiry, some asylum seekers were placed there until a court decides on their action against the decision on the denial of asylum; in many cases waiting until the Supreme Administrative Court would decide on a cassation complaint). As for the total length of the stay, the situation was somewhat complicated by the amendment to the Act on Asylum effective from December 21, 2007 (amendment No. 379/2007 Coll.), which sets a maximum of 120 days for a stay at the airport facility (then the asylum seeker must be transferred to another facility in the Czech Republic regardless of whether a court has decided in the matter). The defender finds the standard of housing to be inconvenient given the potential 4-month stay.

The Vyšní Lhoty facility is a centre where the asylum seekers stay until the acts listed in the law are taken (identification acts, medical examination, end of quarantine). Then they are transferred to other sojourn centres in the Czech Republic.

Reception centre	Total capacity	Number of people placed there	Of which children
Vyšní Lhoty	580	117	15
Prague-Ruzyně	45	39	6

Glossary with the table:

The “Number of people placed there” column gives the number of asylum seekers or foreigners who have shown their intention to apply for the granting of international protection, placed at the reception centre at the time of the visit of the Office workers.

The Defender’s Findings and Recommendations

Camera Surveillance System

The Defender ascertained that the outdoor areas and the corridors of both reception centres were covered by a camera surveillance system. Although introduced to prevent violence and bullying, the Defender pointed out that there were no legal grounds for the installation of audiovisual equipment in the Act on Asylum (the recently adopted Section 132a of the Act on the Residence of Foreigners is not a legal solution as it does not apply to asylum facilities). With regard to the above, **the Defender regards the installation of cameras in the premises of both facilities as a problematic matter** and continues to discuss it with the Refugee Establishments Administration of the Ministry of the Interior.

Accommodation Conditions

The visits to both facilities ascertained that the accommodation conditions in them significantly differed, the main difference being that the Prague-Ruzyně centre is adapted to the high security transit area of an international airport and the general **structural and technical parameters of the facility**. Paradoxically, asylum seekers should not stay here for prolonged periods for the same reason (the facility was designed for the short-term stay of asylum seekers whose applications are obviously ungrounded). However, the Defender ascertained that the centre is transforming into a traditional sojourn centre, which is inappropriate for several reasons. There is a poor standard of housing (as opposed

to other sojourn centres, the asylum seekers lack electrical appliances for preparing their meals, requirements for the capacity of accommodation rooms are not observed, bedrooms lack curtains, the spaces are not lit with direct daylight except for bedrooms, etc.), the facility lacks sufficient **space for the persons' spending time in the open air** (the premises only include a courtyard limited in space, in fact a reserved part of the airport area that makes being in the open rather unpleasant due to the noise and pollution from the airport traffic). The placement of children at the centre is also problematic as the facility is not equipped for their stay (the issue was recently solved by the above-mentioned amendment to the Act on Asylum that does not allow keeping vulnerable groups of people, including children, in these types of facilities).

As for the accommodation standard, the Defender proposed in the first place that the **number of people accommodated and the time they spend there is reduced as much as possible**. The Defender is discussing the matter with the Ministry of the Interior as of the date of drawing up this Report.

Receiving of Visitors, Access to Social Workers

Additional drawbacks concerning the receiving of visitors result from the high security status of the airport. Although the accommodated persons have the right to receive visitors, the exercising of the right is considerably aggravated by the **formal procedure**, which is more complicated than for example in facilities for the detention of foreigners. Furthermore, foreigners do not have direct access (unlike the Vyšné Lhoty centre) to social workers for safety reasons (the space between the asylum seekers and the social workers is divided by bars). The Defender recommended to change the system of receiving of visitors and to ensure direct contact of asylum seekers with social workers.

Comparison of Both Facilities

The Defender stated after the performed inquiry that those travelling to the Czech Republic with an intention to seek asylum are exposed to two **different manners of treatment** depending on the reception centre they are placed at. The Defender will continue to discuss the aforementioned *"disproportion"* with the Ministry of the Interior and attempt to act vis-à-vis Department of Asylum and Migration Policy in order to ensure that only a small percentage of asylum seekers are accommodated at the airport facilities, and only for the shortest possible time.

3. Follow-up Visits

Since 2006, when the mandate of the Public Defender of Rights was broadened to the performing of detention visits, the Defender has visited various types of facility. Given the need to evaluate the effectiveness of the visits, it was necessary to carry out **follow-up visits to some of the facilities** visited in 2006 (the Defender engaged in these activities in the second half of 2007). Instead of focusing primarily on system shortcomings in the follow-up visits, the Defender was interested in ascertaining the degree of implementation of the promised changes that had resulted from the initial visit to the facility concerned.

The follow-up visits were made to:

- two social service facilities (a home with a special regime and a home for physically handicapped people),
- five police facilities,
- two facilities for the detention of foreigners,
- two institutes for long-term patients,
- three prisons,
- one reformatory.

3.1 Social Service Facilities

The Defender had chosen the Institute of Social Care for the Physically Handicapped in Hořice v Podkrkonoší and the Home with Special Regime in Bolevec for the follow-up visits.

The results of the follow-up visits in the two facilities sharply differed. In the Bolevec home, the Defender appreciated the goodwill, gradual implementation of the recommendations and an effort to meet the requirements resulting from the Defender's final statement after the visits in 2006. On the contrary, the Defender had to state in the **Hořice institute** that most of his **recommendations had not been respected and implemented** (primarily a failure to eliminate shortcomings in individual planning, to strengthen the privacy of clients, adjust the meal serving regime and the performance of personal hygiene). Given the persisting serious shortcomings, the Defender discussed the specific measures and procedures that would lead to implementation of his recommendations and a gradual fulfilment of quality standards in the facility with a representative of the founder.

3.2 Police Cells

Follow-up visits to four police departments that established police cells were made in August and September 2008. Three (Brno, Ostrava and Plzeň) were large prison/escort departments, and one (Chomutov) a patrol service department. In the follow-up visits, the Defender also concentrated on the implementation of the new internal regulation of the Police (Instruction of the Chief of Police No. 118/2007 on Police Cells), which has a significant impact on the rights of those placed in police cells.

The follow-up visits ascertained that **some partial recommendations of the Defender were respected** (for example the removal of the rails to which the detained person can be handcuffed, providing all bunks with mattresses, establishing a visiting room, etc.). There was also an effort to increase the number of female police officers, which has positive effects on the safety searches of detained women.

On the contrary, **many of the Defender's recommendations** that had been largely included in the new internal regulations of the Police and are therefore directly binding upon police personnel, **had not been implemented.** These include in particular material and technical accessories of police cells such as dual regime lighting (day and night, the latter using a dimmed light) or the separation of toilets from the bunk section in double-bunk cells. However, the police department are working towards the elimination of the aforementioned shortcomings and changes within a short time were promised to the Defender.

The most serious problem that has not been successfully eliminated to date consists of the **formalistically designed advising of the rights and obligations** of persons placed in police cells. The Defender observed in only exceptional cases that the copies of advice forms were submitted to the detained persons in order to ensure that the person placed in a cell is aware that he/she may request for example a tooth brush, blanket or toilet paper.

3.3 Facilities for the Detention of Foreigners

Follow-up visits were also made to two facilities for the detention of foreigners in 2007 (Poštorná and Bělá-Jezová). An individual visit was made to the facility in Velké Přílepy (*see also Part III, section 2.15*) at a time when it temporarily served as a branch of the Prague-Ruzyně Reception Centre.

The follow-up visits verified that the **Defender's recommendations had been implemented** with respect to the provision of language versions of advice forms. The Refugee Establishments Administration of the Ministry of the Interior also shows efforts to accommodate foreigners separately based on national criteria; arresters on the outside of the doors to the foreigners' rooms have been removed, the conditions in the high security regime have improved (toilets separated from the rest of the rooms by a non-transparent partition, multiple language versions of the internal rules posted in the high security cells), the practice of placing foreigners with self-mutilation tendencies in the high security regime and the generally practiced presence of security personnel during visits received by the foreigners have been abandoned. The technical condition of the dwelling parts of the

facility has been improved (shower curtains, mirrors, electric kettles, etc.). The position of pregnant women has also generally improved, in particular in terms of catering.

On the contrary, **the Refugee Establishments Administration was not successfully persuaded** of the necessity to establish lockable cabinets for the foreigners, to remove bars from the foreigners' rooms so that they can regulate ventilation and heating without difficulty and to create foreign-language texts that would acquaint foreigners with the effects and nature of the medication they receive and the nature of the investigation acts they must undergo in the facilities. The Defender will continue to discuss the implementation of the aforementioned measures with the founder of the relevant facilities.

3.4 Institutes for Long-term Patients

In the course of the second half of 2007, follow-up visits were made to two institutes for long-term patients (five such facilities had been visited in 2006). Given the nature of the institutes (hospitalisation in them may extend to several years, the patients often suffer from a very serious health condition and lack of self-sufficiency), they are places with a significant risk of misuse of the dependence on care.

The Defender appreciated the constructive approach to the implementation of the recommendations in both of the institutes subject to the follow-up visits. It was ascertained that the fulfilled recommendations prevailed over those neglected. For example, the number of social workers had been increased, locks had been installed on the patients' bedside tables, the institutes' internal regulations and forms including house rules had been altered, and the rules for the patients' movement within the facilities had changed.

The situation had not improved due to conceptual problems in the area of reducing the number of beds per room, increasing the number of nurses, ensuring a standard of privacy and dignity in the personal hygiene acts on non-self sufficient patients and sometimes in healthcare acts.

3.5 Prisons

Follow-up visits were made to Bělušice, Plzeň and Valdice prisons. The purpose of the visits was to verify the remedial measures taken after the systematic visits conducted in the third quarter of 2006 to seven prisons profiled as medium security prisons and high security prisons.

The following may be placed among **implemented recommendations**: adjustment of the area for the inmates' outdoor exercise; more activities offered to the inmates; strengthened protection of potential targets of violence. Better conditions for visits were created in one of the prisons. **As for the unfulfilled recommendations**, they are dominated by the recommendation concerning the missing legal stipulation of the existence of departments and regimes with enhanced structural and technical security, which is only mentioned in an implementing legal regulation. The visited facilities continue to face a lack of professional medical personnel (although the required standard of healthcare is provided, it is delivered by external staff and not by the prison's own physicians). This results in increased costs of operation and demands for the organisation of work, in particular on the guards.

On the proposed conceptual changes in the prison legislation, see also Part VI.

3.6 Facilities for the Exercise of Institutional and Protective Education

Of the four institutes for the exercise of institutional and protective education visited in 2006, follow-up visits were conducted to the Polanka nad Odrou Reformatory. The facility had implemented *inter alia* the following recommendations: the institute is employing a psychologist, the inmates are allowed to wear clothing based on their own discretion, a prolongation of stay is no longer designated as a punishment in the internal regulations, boys in institutional education are now allowed to receive visitors according to the law and outings are permitted in accordance with the law. However, practical training has not been ensured to date and the material conditions for receiving visitors have not improved.