SYSTEMATIC VISITS TO FACILITIES WHERE PERSONS RESTRICTED IN THEIR FREEDOM ARE HELD

In 2008 the Defender continued to perform systematic visits (Section 1 (3) and (4) of the Public Defender of Rights Act) and he also performed follow-up visits to some of the homes for the elderly which he had visited in 2007.

1. MENTAL HOMES

Given that the treatment of patients in mental homes is not subject to efficient external control (the existing control mechanisms are strictly sector-oriented, e.g. on hygienic rules, management of funds, compliance with insurance companies' limits, etc.) and general courts assess only justification of hospitalisation (rather than its conditions) within the proceedings on the admissibility of reception or holding a person in a healthcare institution, the Defender performed systematic visits to eight mental homes in the first quarter of 2008.

The objective of the two- to three-day visits consisted, in particular, in assessment of the **legal regime of the stay of persons** in the **reception departments** (mostly enclosed, intended primarily for a period of time before placement of the patient to a specialised department), specifically because many patients in the regime of **involuntary hospitalisation** are placed there. The visits were also directed at evaluation of the legal aspect of hospitalisation and treatment on the one hand and, on the other hand, comprehensive assessment of the regime in the enclosed departments of mental homes. Gerontopsychiatric departments and departments for mentally handicapped patients were also visited. The Defender invited psychiatric experts to participate in the visits and help him evaluate the medical records.

The table below lists the visited facilities. Except for the mental home in Lnáře, founded by the South Bohemian Region, all the homes visited had been founded by the Ministry of Health.

Name of facility	Region	Number of visited departments	Capacity	Number of patients at the time of the visit	Average duration of hospitalisation (in days)
Šternberk MH	OL	3	530	509	85,2
Kosmonosy MH	SČ	3	600	554	86
Kroměříž MH	ZL	4	1083	1019	60
Havlíčkův Brod MH	VY	3	845	747	107
Dobřany MH	PZ	5	1260	1220	132,6
Opava MH	MS	6	1015	930	54
Horní Beřkovice MH	ÚS	4	587	544	96
Lnáře MH	JČ	2	70	70	52

Table explanation:
Acronyms: MH = mental home; SB = South Bohemian Region, PZ = Plzeň region, ÚS = Ústí nad Labem Region, OL = Olomouc region, CB = Central Bohemian Region, MS = Moravian/Silesian Region, ZL = Zlín Region, VY = Vysočina Region.

The Defender did not ascertain treatment that could be labelled as cruel or even torture. However, he ascertained cases of a formalised detention facility and the performing of interventions with only the formal consent of the diseased (also without consent), cases of a dehumanised regime in departments or an undignified environment for treatment.

The Defender would like to make the general observation that the position of patients greatly differs from institution to institution. There are also differences between comparable departments within a single institution (e.g. a department for men and a department for women). There are established regimes of rules without support in the legal regulations justified by organisational rather than therapeutic reasons.

The Defender ascertained in relation to the reception departments that patients showing agitation are generally placed there. Thus, they involve both newly received patients and already hospitalised patients whose disease is accompanied by agitation. The Defender criticised this situation as the **varied composition of patients** places considerable demands on the coping of the patients and the cohabitation of patients with different diagnoses is problematic.

As for material conditions, the Defender stated that the **internal environment of the visited departments is, with a few exceptions, very unfortunate and undignified.** The technical condition and design of the departments are the reason for many regime limitations: they aggravate supervision over the patients, the latter have impaired access to leave outside the premises, and the departments for agitated patients are not separated from the other departments, etc. Small therapy groups cannot operate due to the state of repair of the buildings.

The Defender consulted on his findings with the heads of the visited institutions during their meetings and subsequently addressed systemic recommendations to the Ministry of Health, the Ministry of Labour and Social Affairs, the Ministry of Justice and the regional authorities. The Defender requires a report on the implemented measures by June 2009. The Defender also appealed to the Ministry of Health to initiate, in cooperation with the representatives of mental homes and health insurance companies, a professional discussion concerned with the funding of psychiatric care.

It was ascertained in connection with the proceedings on the reception or holding of a patient in a medical facility without his/her consent (detention proceedings) that although courts make decisions within the statutory periods, the decision is delivered much later to some institutions. Thus, the medical personnel are not aware of the result of the proceedings at the end of the statutory period (Section 191b (4) of the Civil Code) and the institution itself does not seek the information.

The Defender recommended the heads of the institutions actively ascertain the progress of the proceedings in order to make clear at the end of the period whether the patient may leave the institution or a decision has been made on his/her involuntary hospitalisation.

It was ascertained in connection with the issue of admissibility of holding a patient in an institution that the institutions require patients to provide written consent to hospitalisation, treatment, observance of the internal rules and sometimes other rules within the reception procedure. Yet the placement of patients into the *"agitation departments"* is usually a consequence of their poor psychological condition.

The Defender therefore recommended that the consent be submitted gradually to these patients (i.e. only in a situation when the patient is able to perceive the advice and make a qualified decision on his/her consent or disagreement).

Although decisions on involuntary hospitalisation are made by a court, it is virtually impossible for an involuntarily hospitalised patient to be released in the case that his/her further holding in the institution is unsubstantiated. If he/she lacks support from family or friends, there is no help available in the institution to help them succeed before the court or even to be heard by the court. The same applies to legal assistance

in the initiation of proceedings aimed at restoring legal capacity. The institutions are unable to provide consultancy and assistance in this respect.

The Defender therefore recommended the Ministry of Justice submit a proposal that would legislatively stipulate the tools of protection of persons with a mental disorder.

As for the issue of the annulment of protective treatment, which is usually imposed by the court in criminal proceedings in addition to or instead of serving a sentence, the Defender ascertained that although the medical facility should report to the court "*without delay*" that the grounds for further protective treatment have ceased to exist, the patient usually waits for months for the ordering of a hearing after the lodging of the proposal. The court is not bound by any deadlines for decision and the patient may stay in the institution for a long time even though the doctors do not consider it necessary from the medicinal view or do not consider his/her being at large dangerous.

The Defender recommended the Ministry of Justice submit a proposal to enact deadlines for decision-making by the court on the annulment of protective treatment. The Defender addresses the same recommendation to the Chamber of Deputies.

Informed consent

The Defender holds the view that Arts. 6 (3) and 7 of the Convention on Human Rights and Biomedicine have not been implemented in the Czech legal order (Advice of the Ministry of Foreign Affairs No. 96/2001 Coll. of Int. Tr.). Although the Care of People's Health Act (Act No. 20/1966 Coll. as amended) provides for the patient's consent to treatment in Section 23, it does not adequately respond to situations where the person is not able to give qualified consent due to his/her mental health and has no legal representative (Art. 6 (3)), or does not wish to give consent and his/her health is very likely to be seriously harmed without intervention aimed at the treatment of his/her mental disorder (Art. 7).

The Defender also encountered a situation in five of the visited institutions where **consent to hospitalisation was combined with consent to treatment.** Patients are required to sign a very general form containing not only consent to hospitalisation, but also all diagnostic and therapeutic actions. Refusal to of sign is commonly reported to the court and a decision on involuntary hospitalisation usually follows. No additional consent is usually required after the consent is signed.

Such formalised procedures comply neither with the requirements of the Convention on Human Rights and Biomedicine, nor the national legislation contained in the Care of People's Health Act. The statutory exemptions from the requirement for performing a medical intervention without informed consent (Section 23 (4) of the Care of People's Health Act) do not apply to all situations of patients placed in mental homes.

The Defender therefore addressed the Ministry of Health with a legislative recommendation that it reflect in the medical laws under preparation the need for national regulation of the provision of consent to treatment in mental homes. The Defender addresses the same recommendation to the Chamber of Deputies.

Restrictive measures

The Defender paid attention to the use of restrictive measures the legal definition of which, including the conditions of their legal use, are missing in the Czech legislation. The practice is based on the 2004 methodological instruction of the Ministry of Health, which is respected only partly. The conduct of mental homes is non-uniform, restriction is not stipulated adequately in their internal regulations and some measures are not at all perceived as restrictive measures in a number of homes (for example the

use of medication for the management of agitation, placement in an enclosed department or the use of sideboards).

Furthermore, the Defender points out that the most fundamental **safeguards against excessive use and misuse of such measures** are not used (there are no central records of these measures, adequate records are not made within medical records, the competences of individual employees and the maximum period of validity of consultations are not laid down).

The fact that personnel other than **doctors** (most often nurses) regularly **make decisions** on the use of restrictive measures in some institutions is regarded as a fundamental shortcoming by the Defender. The Defender also encountered a situation in a number of institutions where doctors provided inadequate consultations in the sense that nurses lacked clear instructions concerning the type, quantity, possible repetition and conditions for the use of a restrictive measure.

The use of restrictive measures was many times ascertained in situations where the patient or his surroundings were not at risk (Section 23 (4) (b) of the Care of People's Health Act). As an example, a patient whose behaviour was causing agitation among other patients was locked up so as to be separated from them, or **patients of gerontopsychiatric departments** were locked in netted beds overnight to avoid their falling off the bed. The Defender also encountered a situation where some patients were locked up because the personnel were unable to ensure systematic supervision over them. The Defender also noted that the restriction on some mentally handicapped patients was permanent (**these persons are permanently placed in a netted bed**). This approach is perceived by the Defender as particularly alarming.

As for the use of netted beds, the Defender noted in some of the institutions that **netted beds** were included in the stock of normal beds, allocated as such and the net was used when needed. The Defender considers this conduct to be undignified and involving the risk of excessive use of netted beds. In addition to this, a patient who normally sleeps in such a bed faces a permanent threat that the net will be used or that he/she will be moved to vacate the place for another patient.

For the aforementioned reasons, the Defender made comments on the draft law on health services which is to provide for the use of restrictive measures. The Defender simultaneously requested the Ministry of Health to address the fact that patients are placed permanently in netted beds.

Lack of privacy

The Defender noted that there was virtually no privacy in all of the visited reception departments. Based on the regime in place, all the patients (an average of 35 people) spend several months in joint premises and are placed in **multi-bed rooms** at night. There are no *"rest areas"* and the patients are exposed to noise and the other patients all day. The departments are often not equipped with suitable rooms for visits and social rooms.

The patients are most often accommodated in three- to five-bed rooms, although twelve-bed rooms or walk-through rooms are often the case. With a few exceptions, the bedrooms are locked all day and it is not ensured that each patient has a lockable space for everyday items.

The privacy of patients in the toilet and in performing personal hygiene is not respected by the visited departments. Shielding curtains are not used in the performing of nursing and hygienic procedures on bedridden patients. The joint toilets are not lockable, some departments have not equipped their toilets with doors and some even lack toilet compartments.

In order to resolve these most serious cases, the Defender directed a recommendation to the heads of the mental homes and the Ministry of Health to ensure that the patients have lockable

cabinets, their privacy is protected in the performing of hygienic and nursing procedures, toilet compartments are provided with lockable doors, toilet compartments are available in selected departments and shower stalls are furnished with curtains.

The Defender also concentrated on the protection of patients' privacy during ward rounds. Although the latter are performed *"privately"* as a standard in some departments, they still take place summarily in many others with participation of all the patients in the department and sensitive information on the health condition is communicated publicly.

The Defender therefore recommended the heads of the institutions perform ward rounds so as to protect the sensitive data communicated during the ward round.

The Defender perceives as problematic the operation of camera systems in six of the visited institutions, as the law does not provide the relevant authorisation for their installation in the present form and consent of the relevant persons has not been obtained. In addition, attention is not paid to proper informing of the persons of the placement of the cameras and security of the recordings made is not ensured. Some cameras are directed in an unacceptable manner (e.g. to a squat toilet in the isolation room, or to a toilet compartment with no door).

The Defender recommended the heads of the institutions obtain consent of the patients to the making and use of their visual recordings, apply with the Office for Personal Data Protection for registration of the camera systems and, most importantly, consider whether the use of camera systems is at all necessary in certain places.

Social services for mentally diseased persons

The Defender ascertained that a number of patients stay long-term in mental homes (especially in gerontopsychiatric departments, but also in some agitation departments) in spite of the fact that their placement there is not necessitated by the need for permanent institutional care, but instead a because of a lack of specialised social service facilities.

The Defender recommended the Ministry of Labour and Social Affairs extend the network of social services with facilities for mentally diseased patients.

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Themed visits to 17 social service facilities for elderly people (hereinafter the *"homes for the elderly"*) were performed from April to October 2008. During the themed visits, the Defender concentrated primarily on the issues he had pointed out in his 2007 Annual Report. These include, in particular, the issue of factual inequality of parties concluding an **agreement on the provision of a social service**, the unsatisfactory position of persons formally capable of legal acts but in fact unable to make decisions on themselves or the non-uniform approach of founders to the division of services into basic and facultative services. The Defender also dealt with the financial aspect of clients' stay in the facilities. The table below shows the facilities visited.

Name of facility	Region	Founder	Capacity	Number of agreements concluded
Home for the elderly, Vychodilova, Brno	JM	municipality	130	28
Home for the elderly, Jihlava-Lesnov	VY	municipality	134	134
Home for the elderly, Stará Role, Karlovy Vary	KV	municipality	23	21
Home for the elderly, Orlická, Ústí nad Labem	ÚS	municipality	186	45
Jindřichovice pod Smrkem home for the elderly	LI	region	67	67
Liberec-Františkov home for the elderly	LI	region	200	198
Letovice home for the elderly	JM	municipality	72	71
Vesna home, Orlová-Lutyně	MS	region	182	26
Home for the elderly, Kamenec, Ostrava	MS	municipality	98	91
Home for the elderly, Rybniční, Strakonice	JČ	municipality	120	119
Harmonie home, Mirošov	JČ	region	172	171
Sloupnice home for the elderly	PA	municipality	107	107
NADĚJE (Hope) Social Services Centre, Broumov, retirement home	KH	municipality	34	34
SENIOR Otrokovice	ZL	municipality	75	75
Šumperk retirement home	OL	region	250	55
Prostějov retirement home	OL	region	270	99
Mělník centre for the elderly	SČ	municipality	222	222

Table explanations:
Acronyms: SM = South Moravian Region; VY = Vysočina Region; KV = Karlovy Vary Region; ÚS = Ústí Region; LI = Liberec Region; MS = Moravian/Silesian Region; SB = South Bohemian Region; PA = Pardubice Region; HK = Hradec Králové Region; ZL = Zlín Region; OL = Olomouc Region; CB = Central Bohemian Region

2.1 THE OMBUDSMAN'S FINDINGS AND RECOMMENDATIONS

Treatment of the person interested in the service

Although in all the visited facilities the person interested in the service is acquainted with his/her rights and obligations, not every facility delivers this information in written form. The Defender holds the view that delivery of the basic information in written form is important for ensuring that the interested person and, where applicable, his/her family, can subsequently take their time and acquaint themselves with the provided information in detail. The requirement for it to be in written form is also necessary because the authorised personnel of the facility do not always act uniformly and there is no guarantee that all the information relevant for conclusion of the agreement will be delivered. The Defender believes that the home's rules should also be provided, especially in a situation where the agreement refers to them. It should go without saying that the facility is to provide and allow the interested persons to study a draft agreement.

The Defender recommended the heads of the homes for the elderly provide the persons interested in social services with information on their future rights and obligations in written form. The home's rules should be provided in the same manner.

The Defender ascertained that with a few exceptions, the facilities have not drawn up a uniform methodology and criteria for filling vacant places that would enable objective consideration of the urgency and necessity of receiving a person interested in being received. Although the personnel state that the facility is able to cope with a serious health condition of a client, they are unable to specify the procedure to be followed in that case.

The Defender therefore recommended creation of a methodology in retirement homes for assessment of the interested persons' applications, taking into account urgent cases.

The Defender has repeatedly encountered cases where agreements on the provision of a social service are concluded by persons who, although not incapacitated, are **in fact not legally capable.** A number of cases were ascertained where the agreements had been signed by clients disoriented due to Alzheimer's disease or some other dementia. They did not know at all that they had signed the agreement on the provision of the social service several days ago.

The Defender believes that in order to achieve legal certainty, Section 29 of the Commercial Code (Act No. 40/1964 Coll. as amended) should be applied in these cases, according to which the court shall appoint a **guardian** if this is necessary on serious grounds. It is also possible to use Section 91 (6) of the Social Services Act (Act No. 108/2006 Coll. as amended), which allows that a person who is unable to act independently and lacks a legal representative be represented by the municipal authority of a municipality with extended competence in the conclusion of the agreement. However, the Defender points out with respect to this possibility that the civil servant representing the client may find him/herself in a **conflict of interest** in cases where the homes for the elderly are founded by municipalities. The Defender therefore tends to prefer a procedure where the relevant facility uses the possibility of appointing a guardian on the basis of Section 29 of the Civil Code.

The Defender recommended the heads of the homes for the elderly ensure appointment of a representative for persons who are in fact incapable of legal acts. The representative should not be in a conflict of interest.

The Defender ascertained that agreements on the provision of a social service are usually in a form not incorporating the individual requirements and needs of the interested persons. The Defender also noted that the employees of many of the visited facilities have difficulties in formulating the extent of the provided care although the latter is a requisite of the agreement pursuant to Section 91 (2) (c) of the Social Services Act (agreeing the scope is also anticipated by Section 73 (1)). The law is copied in the agreement without the required individualisation.

The Defender therefore recommended laying down the extent of the provided service (care) with adequate precision in the agreement. It is possible to set a personal goal with reference to an individual plan, which will specify the extent.

The issue of a clear definition of the rights and obligations of the parties is associated with the requirement for precision of agreements. It is often indicated in agreements that the clients have the obligation to observe internal rules, without clearly stipulating them. The use of the general term "*observance of internal rules*" could in an extreme case constitute grounds for nullity of the agreement due to vagueness.

The Defender therefore recommended the heads of the homes for the elderly clearly define the content of the binding rules in the agreements or, as the case may be, refer to them in the agreement and use their text as an annex to the agreement.

In relation to the provision of a social service, the law imposes the obligation on the provider to plan the course of the provision together with the user. However, the Defender ascertained in this respect that some facilities fulfil this obligation only formally or restrict themselves only to the provision of healthcare. The Defender found that many employees did not have an adequate opportunity to acquaint themselves with the method of individualised planning and the goals therefore tend to be concentrated on basic activities of a non-nursing nature listed in Section 49 of the Social Services Act or goals which do not sufficiently take into account the clients' everyday life.

The Defender recommended the heads of the homes for the elderly pay sufficient attention to effective individualised planning and recommended that the relevant personnel be trained in this respect.

The Defender noted that the notice periods of agreements on care considerably differ between facilities. Notice periods of 7 days, two and three months can be encountered. The Defender holds the view that notice periods should be set appropriately to the social situation of the clients. They should also approximate to the conditions stipulated by the Civil Code for the relationship of leased housing. The Defender sees no reason for concluding only agreements for a fixed term. Many elderly people obviously intend to spend the rest of their lives in the social service facility and restricting the agreement is unreasonably stressful for them.

The Defender recommended that the notice periods of agreements on the provision of social services be approximated to the notice periods stipulated in the Civil Code for the notice of termination of the lease of a flat by the landlord. The Defender also opined that the agreements in general should not be concluded for a fixed term.

The Defender dealt with the issue of the amounts to be refunded to clients for services not used. These cases occur especially when the user leaves the home for a temporary period (for example for a holiday). As for the refunding of advances for catering, the Defender ascertained that individual meals could not be cancelled in any of the visited facilities. Refunding is possible only in case of an absence from the facility lasting several days. Yet the price of the individual meals is set, including specification of the overheads and the cost of the meals.

The Defender recommended that the clients be refunded also for advances for individual meals under preset conditions.

The Defender continues to encounter a situation where some services are designated as facultative by the facilities (the client pays an extra on top of the allowance for care for them) in spite of the fact that the law designates them as "*basic activities*". The Defender criticises this fact and points out that the "*handicap*", based on which the client receives the allowance for care, should always be taken into consideration. The Defender holds the view that the facility may charge the provision of care interventions that can be subordinated to "*basic activities*", but not in a situation where the user is dependent on the help of another person in the relevant interventions due to his/her handicap and the allowance for care is therefore provided to him/her.

The Defender requested that care interventions be not charged as facultative in cases where "basic activities" pursuant to the Social Services Act are concerned, to the extent that the specific user is dependent on the help of another person.

The Defender performed follow-up visits to four homes for the elderly where he wished to verify observance of the recommendations he had addressed to the management of the homes for the elderly after the visits in 2007. The Defender selected the Domažlice home for the elderly, the Kladno retirement home, the Podlesí home for the elderly, the Skalice home for the elderly, the Telč home for the elderly and the Krč home for the elderly for his follow-up visits.

The Defender ascertained that a part of the recommendations had been fully implemented by the facilities. These included, for example, the installation of bedside signalling, temperature controllers on heaters and increased specialisation with respect to elderly people suffering from dementia. There was also an improvement in the application of the standards of quality of social services and **more intense work with the individual plans.** The home rules of many facilities had also been reworked and the earlier practice of *"permitting"* or *"approving"* leave outside the home were no longer used. The homes had also accepted the recommendations directing the **possibility of locking cabinets, rooms** and **toilets.** Almost all the homes increased the number of their personnel, in particular carers and social workers, and the homes were also **establishing new jobs** (a worker for leisure time activities, occupational therapist, etc.). Some homes had introduced external supervision to support their personnel.

On the other hand, some measures had not been implemented, for example the **re-registration of permanent residence.** Although the internal regulations grant the clients the right to a free decision as to whether to re-register their permanent residence, in fact the personnel still force them to re-register. The personnel also often do not provide the possibility of **choosing the method of payment of pension** (the only option in some facilities still being a *"collective list"*, where the pensions of all clients are remitted to the home's joint account). In some cases the personnel of the facility (primarily social workers) perform the role of the clients' guardians and the possibility of conflict of interest still persists.

As for the use of provisions restricting the freedom of movement, the personnel of the facilities pay increased attention to it (for example by documenting it more thoroughly or taking a more careful approach), but the Defender must reiterate that the use of provisions restricting the freedom of movement has accurate rules stipulated in Section 89 of the Social Services Act, which must be observed (e.g. the practice concerning the use of sideboards has not changed). A certain progress lies in the fact that clients with psychiatric diagnoses are no longer locked in their rooms.

The Defender deems the situation in the Podlesí home for the elderly as unsatisfactory. The facility has not yet adopted a revision of the home rules so as to correspond to the new legislation on social services (because the draft new text was sent one year ago to the operator (Vsetín Social Services) and the latter has not approved it to date)). A controlling approach to clients persists in the facility, the care plans concentrate only on satisfaction of basic needs (catering, housing, hygiene), and individualised planning of the provision of the service has not been introduced. Curtains for hygienic procedures are not used, the personnel is still not aware of how to use restrictive measures, sideboards for the prevention of falling are used in an entirely arbitrary manner and no records are kept of their use.

The elderly people are locked in the department for clients suffering from Alzheimer's disease without permanent presence of the personnel. Haloperidol and other psychiatric drugs are used to sedate them only on the basis of a preliminary or general consultation (the doctor is not contacted after the application and the latter is not properly documented).

It can be summarised in spite of the aforementioned shortcomings that the facilities have usually paid attention to the Defender's recommendations and implemented a number of them in practice within the framework of their capabilities.