Report on the Activities of the Public Defender of Rights of Slovakia for 2017

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In the office of the public defender of rights I have so far followed the objective to execute my function independently, impartially, apolitically and professionally. My ambition has been to amplify the voice of natural and legal persons so that it resonates in the work of public authorities. I have been led by the principle that the public powers must be exercised in good faith, fairly, wisely and in line with their true purpose.

Mária Patakyová,
Public Defender of Rights

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Introduction

Pursuant to Act No. 564/2001 Coll. on the public defender of rights, as amended (hereinafter only referred to as the "Act on the Public Defender of Rights"), the public defender of rights is required to submit an annual report on their activities to the National Council of the Slovak Republic (hereinafter only referred to as the "National Council") in the first quarter of each year. The report includes information on how the public authorities observe the fundamental rights, along with the public defender of rights' proposals and recommendations to remedy any identified shortcomings.

I assumed the office of the public defender of rights (also referred to as the "ombudswoman" in this text) by taking an oath on 29 March 2017. The ombudswoman's duties had been performed by JUDr. Jana Dubovcová for the first three months of 2017, in whose work I then continued. Despite this, I decided to take a different approach to my first annual report in order to make it clearer and easier to read and understand. The report is structured along several categories of fundamental rights and freedoms as follows:

I Right to life, personal freedom and human dignity.

II Private and family life, rights of children and parents.

III Right to work, social security and health care.

IV Ownership right and right to the healthy environment.

V Freedom of expression, right to information, petition rights, election affairs, right of assembly and association.

VI Right to judicial protection.

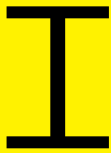
Individual chapters cover several mutually related fundamental rights and freedoms; each chapter gives examples from complaints received and findings made by the public defender of rights, information about extraordinary reports submitted to the National Council, a brief summary of the analyses made, and other activities.

Each chapter that discusses the fundamental rights and freedoms is followed by information about key activities in the field of international cooperation, cooperation on the national level, and fundamental law-making recommendations which have resulted from the work of the public defender of rights and from the work of the Office of the Public Defender of Rights (hereinafter only referred to as the "Office") conducted in 2017.

And this is the highest statesmanship and the soundest wisdom on the part of a good citizen, not to divide the interests of the citizens but to unite all on the basis of impartial justice.

Cicero,
De Officiis – excerpt

Right to life, personal freedom and human dignity



Introduction

The first part of the report discusses the observance of the fundamental rights and freedoms in situations when citizens are confronted with the state's coercive powers. Such situations include, for example, restriction of personal liberty and adequacy of the actions taken by the police, inaction or delays in the police work, conditions of remand custody and custodial sentence, adequacy of the actions taken by officers of the Prison and Court Guard Corps (hereinafter only referred to as the "PCGC"), etc.

Examples from complaints

Disproportionate treatment of minors by the police

Two boys aged 16 and 13 were stopped in the evening by three men dressed in plain clothes who had gotten out of a civil car. The men said they were police, briefly showed their official IDs and started to ask questions about suspicions of a drug crime allegedly involving the two boys. The boys, however, did not believe the men wearing plain clothes they were police officers and the older of them tried to run away. The men then used coercive means and techniques that caused injuries to the boy (the police said the boy's injuries were self-inflicted). The younger of the two boys was scared, cried for help and wept. A witness of the incident reported that even though one of the men had showed her his official ID, telling her he was a police officer and that she did not need to call a uniformed police patrol, she had not believed him and called the patrol.

When performing their official duties, the police officers must, in addition to observing the moral and professional ethic, pay careful attention to the vulnerable position of children and have to keep in mind that they are required to treat them differently than they treat adults, which they failed to do in this case. The police officers' intervention against the underage boys was disproportionately intensive and resulted in the violation of the boys' fundamental rights, including degrading treatment and breach of human dignity.

Other cases of disproportionate use of coercive means and measures by the police

A claimant complained that when he had come to a police department after he had been summoned by a phone, he had been showed in an office and, during an interrogation which he said had lasted from 7:30pm to 2:30am, he had been repeatedly subjected to physical and psychological violence by the police investigators. According to his opinion, the treatment by the police bordered on torture and brutality. The medical records showed that the police actions had caused a flesh wound on the claimant's head, chest contusion, central perforation of tympanic membrane and other disorder of the external ear. One of the police officers involved was subsequently charged with misconduct in office in conjunction with the crime of torture and other inhuman or cruel treatment. The public defender of rights held in this case that the police treatment had led to a serious violation of the claimant's right not to be subjected to torture, cruel, inhuman or degrading treatment. A disproportionate use of coercive means and measures by the police officers against a

claimant upon his arrest also occurred in another case. The fact that the intensity with which the coercive means were used had exceeded the necessary extent was demonstrated by the claimant with medical records made shortly after the police intervention against him.

The police officers themselves provided contradictory accounts of how the coercive means had been applied and how the claimant had been injured. The use of coercive means by a police officer is only legitimate if its intensity has not exceeded what is necessary to achieve the purpose of an intervention. In this case, the police failed to reliably and convincingly prove the necessity of using coercive means, therefore they had violated the claimant's fundamental right not to be subjected to torture, cruel, inhuman or degrading treatment.

Detention in "reserved area"

A claimant under influence of alcohol was detained and his personal liberty restricted by police officers. Following his transport to a police station, he was placed into a room for arrested persons – the so-called reserved area – until he would be able to undergo procedural actions. The police proceeded this way even though it was evident that, due to his current condition, the procedural actions could not be taken immediately. The so-called reserved area – the room for arrested persons in which he was placed is not an official police detention cell (hereinafter only referred to as the "PDC") and does not meet the conditions specified by the law. Before he was moved to a PDC, the claimant had spent more than 12 hours in the room for arrested persons. During that period, he received no medical treatment and the police did not request a medical opinion as to whether he may be placed in the cell. He was not offered any food within a time limit prescribed by the law (six hours from his arrest). This conduct by the police was in conflict with the applicable legislation and violated the right to personal freedom and the right to human dignity. [1]

Disproportionate use of coercive means by PCGC officers

The PCGC officers used disproportionate coercive means against a convict serving a prison sentence. The convict suffered from several mental disorders of which the correctional facility had knowledge. Due to the use of coercive means, he had to be hospitalised with a concussion and numerous fractures of facial bones (eight fractures).

In cases when a need arises to protect the property, health or life against an unlawful conduct of a convict, the use of coercive means by the PCGC officers against the convict is legitimate, but the coercive means must only be used insofar as necessary and proportionate. Equally, the mental condition of the convict needs also be taken into consideration. The documented injuries the convict suffered prove in this case that the PCGC officers subjected him to an inhuman and degrading treatment.

Another claimant filed a complaint in relation to the correction facility management regarding the size of the cell, insufficient air circulation – especially during summer months, and the placement of a WC which

1 The issue is discussed in more detail in the "Special report by the public defender of rights concerning the facts indicating a severe violation of the fundamental rights and freedoms by the practices applied by the police authorities" of 2016.

did not provide the convicts with privacy and was located in a very close proximity to the table at which the convicts ate their food.

As early as 2013, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter only referred to as the „CPT Committee“) recommended this correctional facility to make significant material improvements for the persons detained in the facility, including the priority of completely separating toilets in all multi-bed cells. The case-law of the European Court of Human Rights (hereinafter only referred to as the "ECHR") also implies that the facilities in which persons whose personal liberty is restricted are placed must comply with the requirement of respecting human dignity, as well as a positive commitment to ensure that those persons have access to sanitary facilities (toilets) that are separated from the remaining area of the cell in the prison in such a way that guarantees the detained persons at least a minimum level of privacy. Having investigated this complaint, we found that by failing to meet the prescribed minimum requirements, the facility infringed the claimant's right to human dignity and his right to privacy.

The investigation of another case of violation of fundamental rights in a correctional facility was completed in 2017, whose preliminary findings are described in the 2016 Annual Report of the Public Defender of Rights.[2] The case involved the use of coercive means by PCGC officers which resulted in the convict's injuries witch such consequences as brain damage, partial paralysis and restricted ability to communicate. The injured is now a lying patient, fully dependent on the help and assistance of others. The public defender of rights held that the conduct by the facility personnel violated Article 3 of the European Convention on Human Rights and Article 16(2) of the Constitution of the Slovak Republic (hereinafter only referred to as the "Constitution") which prohibit the use of torture and inhuman or degrading treatment or punishment. Moreover, the conduct also violated the fundamental rights of the convict to the protection of life under Article 15(1) of the Constitution and to personal inviolability and privacy under Article 16(1) of the Constitution. The correctional facility concerned and the Ministry of Justice of the Slovak Republic (hereinafter only referred to as the "justice ministry") have implemented and/or plan to implement a number of measures to avoid and prevent such conduct by PCGC officers in the future. Among the adopted measures were drawing the consequences against the PCGC officers who had used disproportionate force against the convict and reviewing the location of in-house cameras in order to minimise "blind spots" within the premises where the convicts are present, or re-training the facility personnel with respect to the rights and obligations regarding the use of coercive means.

The method of execution of personal search during a visit to a correctional facility

In a case heavily covered by the media, we reviewed how a personal search had been performed on parents visiting a convict in a correctional facility. The claimants

2 More details can be found in the 2016 Report of the Public Defender of Rights, https://bit.ly/2EX6A2R, page 22 et seq.

claimed that during their visit to the correctional facility, she and her husband had been subjected to a personal search during which they had to strip naked and do a squat, among other things. In addition, the personal search was performed in an unpleasant room and in the presence of a police dog. The mother of the convict described her experience as traumatising, adding she had been all shaken up and highly disturbed and had to end the visit early. Having examined the complaint, we held that the fundamental right not be subjected to degrading treatment and the claimant's and her husband's right to human dignity had been violated.

The public defender of rights concluded that such conduct by the facility personnel has no support in law and that the treatment to which the convict's parents had been subjected could induce the feelings of fear, anxiety, humiliation and degradation in them and cause them an emotional harm and mental distress. The public defender of rights proposed several measures to be taken by the facility in order to eliminate the risk of unlawful conduct in performing personal searches of its visitors in the future.

Police intervention in Zborov

Prohibition of torture: No one shall be subjected to torture or to inhuman or degrading treatment or punishment. (Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms)

Based on another complaint, we conducted an investigation into the use of coercive means by the police during an intervention in the Roma settlement of Zborov in April 2017. After a fight among local inhabitants had been reported, the police allegedly entered this section of the village and attacked and beat the Roma at random, including children and elderly persons. Several of them had to seek medical assistance afterwards. The victims reportedly included also a child and persons with disabilities. A link to a video that captured a part of the incident was attached to the complaint.

Having examined the complaint, the public defender of rights concluded that the police intervention was disproportionate to the severity of the situation that had emerged, and which had to be resolved. The police officers should show a high degree of professionalism and should pay increased attention to the use of coercive means, especially if applied during interventions against particularly vulnerable groups of individuals (women, children, older persons). The gathered evidence clearly showed that the police used the coercive means in excess, i.e., they used them to a greater extent than necessary, and even used them when it was not at all necessary, including against vulnerable individuals. On that account, the public defender of rights concluded that the actions taken by the police during the intervention had violated the prohibition of degrading treatment and infringed the right to human dignity. At the same time, the public defender of rights has repeatedly held that the Control and Inspection Service Section at the Ministry of the Interior of the Slovak Republic (hereinafter only referred to as the "interior ministry") which is in charge of investigations into a suspected felony misconduct in office does not meet the independence

requirement contained in the Convention for the Protection of Human Rights and Fundamental Freedoms, thus violating its procedural aspect. Even though the public defender of rights has been warning of this problem since 2013, no measures to address the situation have been adopted so far. The fact that the issue of the independence of investigation into police practices was not addressed in Slovakia in 2017 was also highlighted by the public defender of rights at an international event held on 4 December 2017, namely at a follow-up seminar regarding the Framework Convention for the protection of National Minorities organised by Slovak government proxy for national minorities László Bukovszky. The fourth evaluation report on the Framework Convention for the Protection of National Minorities contains Recommendation No. 44: "The Advisory Committee further urges the authorities to establish an independent and specialised body to investigate all cases of alleged police abuse and misconduct, and to inform the public about the available legal remedies in such cases, so as to ensure that trust in the police, in particular among Roma communities, is restored." Since the presentation of this report Slovakia has still not accepted this recommendation and has not established such a body.

Prevention of ill-treatment in facilities restricting the liberty of persons

At this point we feel the need to emphasise the important role the protection against torture and other cruel, inhuman or degrading treatment or punishment plays in the protection of human rights, especially in facilities where the liberty of persons is restricted.

The facilities which treat the persons deprived of liberty with dignity contribute to their easier social reintegration and help reduce their recidivism.

Reinforcing the prevention of ill-treatment is a goal of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter only referred to as the "OPCAT"). The OPCAT is based on the idea that the more open and transparent the facilities restricting the liberty of persons are, the less cases of ill-treatment will occur. The convention has already been adopted by 83 countries world-wide, with Slovakia and Latvia being among the last European Union (hereinafter only referred to as the "EU") Member States that have not done so yet.

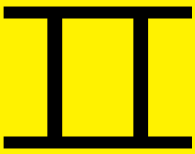
An important aspect in the prevention of ill-treatment are systematic on-site visits to places where persons are, or may be, restricted in their personal liberty. The visits, however, must be conducted by an independent institution which should also have sufficient legal capacities to conduct systematic visits, as well as experts in medicine, psychology, paediatrics or geriatrics at its disposal. Even though partial issues in the facilities are already subject to review by various institutions, Slovakia currently does not have a single independent institution with expert personal capacities as required by the OPCAT. Equally, OPCAT is not a "hammer" against individual countries; quite the contrary. Its uniqueness is in that it offers a system of prevention based on cooperation, not on condemning individual countries. The system serves for

the countries to exchange best practices in resolving (sometimes) too complicated problems.

This is one of the reasons why we believe that the adoption and ratification of OPCAT results in system-level improvements in treating persons deprived of liberty which, in turn, reflects in better integration of such persons into everyday life.

The opposite is also true – each case of ill-treatment causes another human tragedy. The state, therefore, is required to do everything to make sure such ill-treatment is avoided. According to the information provided by the Ministry of Foreign and European Affairs of the Slovak Republic (hereinafter only referred to as the "foreign affairs ministry"), Slovakia will sign OPCAT in 2018 and, subsequently, ratify the document. This will put an end to the untenable situation not only as regards our international commitments but, most of all, it will create conditions for comprehensive prevention of ill-treatment in facilities for persons deprived of liberty.

Private and family life, rights of children and parents



Introduction

The next part of the report discusses the socio-legal protection of children and juveniles, facilities for children, decision-making on legal arrangements in the school and education sector, including desegregation of pupils from the socially disadvantaged environment (socially marginalised children). It also covers births and deaths registers and the population register, protection of privacy, and freedom of movement and establishment.

The state and the rights of the child

"When a parent teaches the children to hate the other parent, the parent teaches them to hate a half of themselves." (Kateřina Šimáčková, judge of the Constitutional Court of the Czech Republic)

The complexity of cases when children are exposed to complicated or even critical situations resulting from the conflicts between their parents has been considerably growing in the recent years. Many complaints indicate unsatisfactory performance by offices of labour, social affairs and family (hereinafter only referred to as the "labour offices") in the field of socio-legal protection of children in these cases. The labour offices play an important and irreplaceable role in safeguarding the fundamental right and the best interest of the child. They fulfil several functions that help the children and protect them in various situations. They should be an authority that always lends a helping hand to a child when its parents and/or other authorities fail in protecting and satisfying the needs of the child. The labour offices may be seen as a "megaphone" that amplifies the voice of the child when the child alone cannot assert and defend its own interests due to its dependence on the others, parents in particular. However, if the labour offices are unable to perform their duties, either for various objective or subjective reasons, or if they even "fail to hear" the child, they contribute to causing even more harm to the child.

Examples from complaints

In our work, we often encounter situations when a labour office does not fulfil its function the way it should. In some cases, the misconduct by labour offices is so serious that we consider it a violation of the fundamental rights of the child by the labour office, hence by the state. We observed four cases of such serious misconduct by labour offices last year. Two of them involved misconduct consisting of long-term inaction and indifference towards the developments in a family, even though the family was, or should have been, monitored by a labour office due to the existence of risk factors threatening the child. In one case, the labour office repeatedly proposed such solutions for the child that were primarily based on the organisational needs of the labour office, rather than being in the child's best interest. In one case, we believe the function of a child's custodian in criminal proceedings was absolutely misapprehended.

In the case involving minor children whose father had been arrested and later put in jail on charges of family violence, the

labour office considered the case resolved and closed by physical "removal" of the father from the family. It had basically failed to provide any long-term support and assistance to the mother and the children – the victims of the family violence; consequently, one of the minors was placed in a re-educational/diagnostic centre for children after having committed petit crimes and slipped into drug problems, while a school warned of negative signals in the behaviour of the remaining children. The labour office did not monitor the situation, took no active interest in the minors' development or in their stay in the diagnostic centre; most of the time it only passively collected information and performed necessary actions requested by other authorities (mainly the court). It showed some initiative in the final phase only, when the situation in the family had been stabilised. The labour office argued that it was the father who had warned of the ongoing problems in the family, who showed his interest in the children even from the jail; hence, solely on the ground of a subject who warned of the problems, the labour office considered them irrelevant even though they were more than relevant from the perspective of the children's best interest. The labour office seemed to forget in this case that its "role" is not to take the side of one or another parent in their conflict, or to decide who of them is right, but it should respond to any facts of which it learns, assess their importance for the child and, based on its own judgment, further work with those facts for the purpose of the socio-legal protection of the child, independently of the parent's expectations.

A similar approach was also adopted by the labour office in a long-term dispute between the parents concerning the custody of and contact with the child. In the described case, the parents have failed to find an agreement since the birth of the child, i.e., approximately for 11 years. Over time, the labour office became completely passive, taking only the necessary actions it was requested to take by a court or another authority but stopped to actively cooperate with the family. It concluded that the situation was unsolvable, even though there were no improvements at all from the child's point of view and the child remained an object of disputes among its parents. Leaving the child in an unfavourable situation without any help and assistance and passively waiting for the situation to escalate, as well as underestimating the negative consequences of the lasting pressure on the child by its parents, constitutes a severe neglect of the socio-legal protection of the child.

If the labour office, the court and the state are unable to deal with the situation, how can we expect the child to deal with it in its everyday life?

In another case, a court decided that the children were to be seeing their father in the premises of a labour office under the supervision of a social worker. However, the labour office sought to change this so that the children be allowed to see the father in his household without the presence of another person. The labour office did not base its arguments on assessing what was in the children's best interest, but instead sought to reduce the burden of performing the long-term supervision over the children's contacts with their father. The opinion and documents presented by the labour office

clearly showed that, in the case at hand, it did not feel to be anything else than an inappropriate place for the children to be seeing their father, of which it was sending formal reports to a court, and its sole goal was to get rid of this "burden".

In the last case, we found that the labour office was only formally discharging its duties as the child's custodian in criminal proceedings. The investigation involved an alleged crime

A labour office that sees itself only as an executor of the will of one of the parents, or as an auxiliary body of the court, is unable to duly meet the purpose of the socio-legal protection of children.

the victim of which was reportedly a minor child and its mother was a suspect. In order to investigate the crime, it was necessary that the child be examined by an expert. The examination, including transporting the child to the expert, was organised by a police investigator who invited a labour office employee to participate. The labour office ignored the fact that it should be a support to the child in such a serious case and guarantee the protection of the child's rights and best interest (since, logically, the parent being the suspect cannot fulfil these tasks). The labour office did not communicate with the child in this highly sensitive and traumatising situation at all, leaving it on the mother to explain the purpose of the examination by the expert and how it would be performed. The labour office was only a formal participant to this examination, in contradiction to the very essence of the function of a custodian in criminal proceedings, as well as in conflict with the need to protect the child's best interest.

Labour offices often argue that they cannot bear the responsibility for the child instead of its parents and that it is the parent(s) who has harmed the child in the first place by failing their parental duties. Even if it was true, this argument is unacceptable as an excuse for the passivity and inaction of the labour office in applying the whole range of measures and tasks entrusted to it by the legislation on the socio-legal protection of children. There is no reason for labour offices to take any action as long as the parents duly discharge their responsibilities. They should become active only if a failure occurs in the family, or a situation which the family cannot or is unable to cope with on their own. If labour offices cannot address these situations and are unable to come to help the child, there is nothing else for us left than to say that the socio-legal protection is failing as such.

Report on the application of the child's fundamental right to be heard in criminal proceedings

In 2017, a survey was completed and a report of the previous public defender of rights was issued regarding the application of the fundamental right of the child to be heard in judicial proceedings and related rights during the hearing of the child in criminal proceedings. The survey focused on the practices applied by district courts and police departments (district departments, district and regional directorates) during the hearings of children as crime

victims or witnesses for the 2015 to 1H2016 period. We examined how the children's rights are observed during hearings, in particular the rights under Article 12 of the Convention on the Rights of the Child[3]; the survey was based on written information obtained from courts, on personal visits to police departments and on a random sample of minutes from children's hearings. We compared our findings against the requirements under the General Comment to Article 12 of the Convention on the Rights of the Child and against the requirements under the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (which should have been transposed to the Slovak legislation by November 2015).[4]

Based on the findings from our survey we concluded that the child is often perceived as an object, not a subject of the criminal proceedings, which has also an impact on the level of fulfilment of its rights. The child mainly "serves" as a source of evidence. The contact between a police officer and the child is restricted to the minimum (hearing) in order to avoid its victimisation. We also found, however, that such restriction is applied to the detriment of other, especially procedural rights of the child (e.g. the child's right to information). Special interrogation rooms are missing, too.

We recommended to the justice ministry to submit to the Government of the Slovak Republic (hereinafter only referred to as the "government") for discussion a draft legislation on the position and rights of victims of crime, to provide regular training for judges to acquire the necessary skills to work with children in judicial proceedings and to ensure a sufficient number of experts in psychology, child psychology in particular, for criminal proceedings and for the needs of all law enforcement authorities. Recommendations were also made to the interior ministry and the Police Corps Presidium to build the planned special interrogation rooms for victims of crimes at police departments that would meet all material and technical requirements pursuant

3 Article 12 of the Convention on the Rights of the Child reads as follows:
① States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
② For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

4 The special rights of child victims, and/or the minimum standards under the directive include, in particular: appointing a special representative for child victims; the right to legal advice and representation; the right to individual assessment to identify the specific protection needs; conducting interviews only insofar as necessary and in premises designed or adapted for that purpose; conducting interviews without undue delay from making a criminal complaint; interviews with the victim being carried out by or through professionals trained for that purpose; interviews with the child victim should be audiovisually recorded and such recorded interviews should be used as evidence in criminal proceedings; void contact between victim and offender, including by creating separate waiting areas for victims.

to the Directive on Victims[5], and to provide regular training for police officers to acquire the necessary skills to work with children in criminal proceedings.

In October 2017, Act No. 274/2017 Coll. on victims of crime and on amendments to certain acts was adopted by which one of the important recommendations made by the public defender of rights was implemented and the legal position of victims of crimes, including children, reinforced. According to the information received from the Police Corps Presidium, several steps are planned to be taken in 2018 towards the implementation of the legislation on assistance to victims of crime, including the establishment of special interrogation rooms. However, the public defender of rights considers the adoption of these changes slow (see a presentation on this topic at a conference in Žilina – https://bit.ly/2J9hJjE).

Special report concerning the facts indicating a severe violation of the fundamental rights and freedoms of children by authorities of socio-legal protection of children and social guardianship

My predecessor in the office of the public defender of rights submitted a Special report concerning the facts indicating a severe violation of the fundamental rights and freedoms of children by authorities of socio-legal protection of children and social guardianship to the National Council in January 2017.

The special report highlighted the shortcomings in the system of the socio-legal protection of children. They primarily involved insufficient diagnostics performed on children prior to their placement in social rehabilitation facilities by a court decision, insufficient attention given to obtaining a child's opinion in proceedings affecting the child, and the absence of independent, effective and periodic controls. The report also pointed out the preference given to institutional needs over the child's best interest and to the absence of statistical data on relapses by children who have undergone social rehabilitation. At the same time, the public defender of rights proposed a set of legislative measures she considered necessary to be adopted in order to improve the socio-legal protection of children. The measures primarily concentrated on how the children are placed in facilities for the implementation of the measures of socio-legal protection of children, on the preparation of binding standards for the performance of inspections, improvement of personnel and material capacities of labour offices and, last but not least, for ensuring the statistical monitoring of relapses by children who have undergone social rehabilitation.

In October 2017, the Ministry of Labour, Social Affairs and Family of the Slovak Republic (hereinafter only referred to as the "labour ministry") informed the pub-

5 For example, interviewing rooms should be furnished in a child victim-friendly manner without any equipment resembling official police premises such as bars, handcuffs, steel cabinets; devices for making audiovisual recordings should be placed in the interviewing room so that they do not attract attention and with the possibility to follow their outputs outside the interviewing room.

lic defender of rights it had submitted an amendment to the Act on the Socio-legal Protection of Children and Social Guardianship for a legislative procedure. The amendment will become effective on 1 April 2018. Effects of the adopted measures will therefore be analysed by the public defender of rights in 2018.

In addition to the legislative measures, the public defender of rights also requested that consequences be drawn, as quickly as possible, in connection with the accreditation of the Čistý deň rehabilitation centre because she was convinced of the existence of justified concerns that this accredited entity, its statutory representatives, responsible persons or other employees, or the manner in which it operates, may put the life and health of the child or its sound mental, physical and social development at risk.

By a decision of 12 February 2018, the labour ministry revoked the accreditation of the rehabilitation centre because it arrived at the conclusion, in its capacity as a competent administrative authority, that the facility's rehabilitation programme fails, or ceased to meet its purpose. Since the ministry's decision of 12 February 2018 is a first-instance decision, the public defender of rights will continue monitoring further progress in the administrative proceedings concerning the revocation of accreditation.

Supporting 'Perceptive Projects – from Emotions to Knowledge', Eduma, n.o.

As part of the Perceptive Projects, the public defender of rights awarded a video story authentically depicting the situation of a biological parent whose children had been taken away and placed in an institutional care. She commented:

"Understanding and accepting the parents as they are, and their complicated life situation, has a potential to remove the biggest barrier in mutual communication with employees, educators, carers, and professional parents. It is the only way to work with a dysfunctional family to remove problems and possibly help return the children to a family setting. It is in the child's best interest to be with its biological family in the first place. Therefore, even if the family is going through a crisis and the children are temporarily placed in an institutional care, all involved professionals and representatives of public authorities should actively work towards a solution which is in the child's best interest.

This is the key message of the awarded video project which described in a comprehensible manner what the parents are going through in such situations and why they may be uncommunicative. When the parents do not communicate with the authorities, it may seem they are not interested in their children and in resolving the situation. However, it does not have to be true in many cases, and the parent's behaviour is just their way of responding to the emotionally demanding developments. First of all, if it is the least bit possible, it is important to seek and try to improve the family conditions to such an extent that it would be possible to return the children to their natural family setting. This path is not always easy, especially if the parents do no cooperate or are giving up on themselves. Children's homes' employees and social workers have to be prepared for such situations and must be sufficiently sensitive and able to understand the complex and complicated situation in the family. The project very accurately described the re-

lationship between the parent and state authorities, thoroughly and sensitively explaining the causes for the often lacking communication and encouraged social workers and children's homes' employees to adopt a pro-active and empathetic approach when communicating with the parents. The project, in the form of a live library of the mother who had lost her children but won them back through proper communication and family rehabilitation, brought not only a general description of the problematic situation at its beginning when the family falls into crisis, but also described how the family had recovered from the situation and, at the same time, presented recommendations as to what deserves more detailed attention in the communication with the parents and what should be avoided in the family recovery process. I consider this contribution an extremely valuable material which may help all employees of public authorities involved in the protection of the rights of the children, as well as employees of non-governmental organisations that help families to overcome a family crisis. It makes us think about the actions of parents who find themselves in a crisis and their children are taken from them to be placed in an institutional care, thus helping to overcome prejudice and a negative mindset of professionals against the parents. The project also deserves to be noted because it describes the very essence of the protection of the fundamental rights of children, that is, that they should spend their childhood in a family setting."

Report on the inquiry into the actions taken by the City of Žilina to ensure protection and assistance to families affected by fire and on the inquiry into the actions taken by the City of Žilina to ensure the right to education for persons affected by fire

First inquiry

In December 2016, my predecessor in the office of the public defender of rights initiated an inquiry to review the actions taken by public authorities and observance of the fundamental rights and freedoms in providing protection and assistance to families whose homes at Bratislavská Street in Žilina had been damaged by fire. It primarily concerned the assistance provided by the public authorities to protect lives, health and personal property of these families during the fire and during the first days afterwards; the help with providing shelters and necessary social, financial, medical and other assistance and support to the families over the period after the fire; as well as ensuring the special protection for minor children of pre-school and school age, the ill and the pregnant women.

The "Report on the inquiry into the actions taken by the city authority to ensure protection and assistance to families affected by fire" was published in March 2017, containing the conclusion regarding a serious violation of the fundamental rights of the citizens.

Already the first steps taken by the city authority when deciding on the demolition of the residential house damaged by fire were highly questionable. The demolition decision was issued by a procedure governed by Act No. 50/1976 Coll. on zone planning and the building code (hereinafter only referred to as the "Building Act"), which, in case of natural disasters and accidents, allows to remove a building even without prior permit and/or prior notice. However, the presented documentation and two structural opinions containing differing conclusions did not indicate that the house had been damaged by fire to such an extent that would require its demolition in the manner chosen by the competent building authority – that is, without prior permit and/or prior notice. Moreover, the decision was issued by the building authority which shares a building authority with the city, the owner of the building.[6]

When addressing the housing issue of the citizens who had a valid lease agreement to a flat in the house slated for demolition, the city authority violated their right by failing to provide them with an adequate substitute housing (in terms of tenancy duration, as well as in terms of the size of the flat). This was a violation of the fundamental right of the families concerned to the protection from arbitrary interference with private and family life.

The inhabitants of the demolished house were provided temporary housing in the form of container houses. According to the technical specifications, the internal dimensions of a single container house are 13.5 m2. At the time of the inquiry, there were 11, 12 and up to 17 people living in some of the container houses with the aforementioned dimensions. It means that in some cases a single person had less than a meter square of living space. On average, a single person had a living area of 1.84 m2 (after two more container houses were installed, it increased to 2.03 m2).

Under the agreements on the provision of the shelter, the price of a single container house was €200 a month; this amount included a monthly fee for the provision of the assigned space in the amount of €40 and a payment for the service provided in the amount of €160. Having recalculated this amount, we found that the price for the use of a container house was 6.85 times higher on average that a rent payment for a two-room flat.

The findings from our inquiry also showed that the inhabitants had not filed an application for a one-off financial support after the fire, which can be provided pursuant to Act No. 42/1994 Coll. on the civil protection of population as amended. It is not clear from the presented documentation whether they were properly advised on this option. The fact that the competent city officials did not help the victims of fire to write an application for the provision of a one-off financial support is, in our opinion, in conflict with the principles of good governance.

The report concluded that the housing provided by the city authority did not meet the requirements under regulation No. 259/2008 Coll. on the details of requirements for building interiors and on the minimum requirements for lower-standard flats and for accommodation facilities, as amended, both in terms of the minimum

6 See also "Proposal for legislative changes in building permit procedure" in this report's chapter "Key recommendations for legislative changes" (pg. 68).

surface area per occupant and in terms of other requirements concerning their furnishings. The city authority violated the fundamental right of its citizens to human dignity and their right to the protection of health could also be violated from a long-term perspective. The entire report is available at https://bit.ly/2HbQ9FP.

Second inquiry

The situation of the inhabitants of the Bratislavská street in Žilina, especially that of minor children, became even more complicated in the course of the year. Originally, the children from the Bratislavská street attended a school within a walking distance of their homes, which allowed them to go to school on foot. However, the Ministry of Education, Science, Research and Sports of the Slovak Republic (hereinafter only referred to as the "education ministry") decided in March 2017 to exclude it from the network of schools. With respect to the newly emerged complications with the inclusion of the children into the educational process, affecting their right to education, the public defender of rights decided on 20 July 2017 to commence new proceedings of her own initiative. She commissioned the Office to conduct an inquiry in this respect, specifically focused on the actions taken by the City of Žilina when ensuring the right to education, respecting the best interest of the child, and observing other rights arising from the Convention on the Rights of the Child and from other national and international legal standards.

The Office employees found out that the children who had previously attended the abolished school were enrolled to nine elementary schools administered and operated by the City of Žilina. These schools were located farther from their homes, therefore, the children need to use public municipal transport to travel to school. The Office employees also found that the city authority had introduced a free municipal transport service for pupils and students with permanent residence in Žilina under condition that they had no debt towards the city authority.[7]

This was a serious problem for many of the children from Bratislavská street. They needed to travel over longer distances (more than 5 km in some cases), but they could not use the free municipal transport service because they owed waste disposal and liquidation fees to the City of Žilina. Pursuant to Act No. 582/2004 Coll. on local taxes and on local fee for municipal waste and minor construction waste, as amended (hereinafter only referred to as the "Act on Local Taxes"), each person, including minors, is considered a tax payer with respect to the waste disposal and liquidation fee. Since several parents could not pay these fees, owing to their social situation, their children had no right to use the free municipal transport service.

The situation could be resolved by amending the conditions for the free transport service, but city authority has repeatedly rejected such proposals, arguing that it puts pressure this way on the children's parents to start fulfilling their obligations towards the city. The public defender of rights has repeatedly stressed that the best interest of the child must be a top priority in any actions affecting children and that punishing children for the mistakes of their

7 The "no debt" condition was approved by resolution of the Municipal Council of the City of Žilina No. 48/2016 of 16 May 2016.

parents directly contravenes this principle. It is in the interest of all of us to take measures that will help children to break free from poverty and social exclusion, and the best step we can take on this road is to provide them the easiest possible access to education. The city authority changed its mind only after a repeated vote proposed by city MPs. The "no debt" requirement with respect to children was abolished as the condition for the free use of municipal transport in December 2017.[8]

When addressing this issue, the Office held that one of the problems is the existing legislation, namely the aforementioned provision of §77(2)(a) of the Act on Local Taxes, which says that the waste disposal and liquidation fee also applies to minor children. This legislative arrangement is extremely disproportionate because, on the one hand, it puts a payment obligation on children but, on the other hand, it completely ignores the fact that children rarely have means to comply with this obligation. The children are subjected to an obligation under the contested provision of the Act on Local Taxes, which they cannot reasonably be expected to fulfil. Moreover, the Labour Code prohibits individuals under 15 years of age to engage in a paid work. The payment obligation imposed on the children, coupled with overall bad social and economic conditions of their families, has a negative impact on their education. The children are held liable for a situation that is absolutely beyond their control.

On these grounds, the public defender of rights concluded that the wording of §77(2)(a) of the Act on Local Taxes violates the fundamental rights and freedoms and prepared a petition to commence proceeding before the Constitutional Court to review the compliance of the Act on Local Taxes with the constitution (the petition was filed on 11 January 2018).

Report by the public defender of rights to evaluate the implementation of measures for the protection of fundamental rights and freedoms in education, with the focus on persons from socially disadvantaged environment

The public defender of rights commissioned the Office to carry out an audit of the measures taken in the area of training and education in order to improve the protection and observance of the fundamental rights and freedoms of individuals from national minorities and ethnic groups (especially persons from the marginalised Roma community), and persons from socially disadvantaged environment (hereinafter also referred to as "SDE"). They are the measures proposed in 2013, 2014 and 2015 by my predecessor in the office.

The significance of implementing these measures derives from the fact that access to quality education represents the basis for a successful life and prosperity of individuals and is guaranteed by Article 42(1) of the Constitution. Regarding the persons from socially disadvantaged environment,

8 Resolution of the Municipal Council of the City of Žilina No. 308/2017 of 20 December 2017.

people at risk of poverty and marginalised groups of population, several research studies indicate the continued existence of a system-level discrimination and segregation, especially of Roma children and pupils, in Slovakia. It was due to a suspected violation of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin in education that the European Commission commenced so-called infringement proceedings against Slovakia. In 2015, the European Commission reproached Slovakia for disproportionate placement of Roma children in special schools and/or special school classes intended from children with mental or other disabilities where subjects are taught in a limited scope. The Commission was also critical of other ways these children are segregated, for example teaching in "Roma only" classes at regular schools (the case of elementary school in Šarišské Michaľany). In 2017, two years after the infringement procedure commenced, discussions were held between the European Commission and Slovakia with the aim to adopt specific measures and legislative changes which would eliminate the ongoing discriminatory practices in education.

The audit on measures conducted by the Office shows that the main steps taken by the education ministry to gradually eliminate discrimination and segregation in the Slovak education system were primarily of a legislative nature. One of them was amending the provision of §107 of Act No. 245/2008 Coll. on training and education (the School Act) and on amendments to certain acts, as amended (hereinafter only referred to as the "School Act"), which now directly stipulates that a child or a pupil whose special educational needs arise solely from their upbringing and development in socially disadvantaged environment shall not be enrolled in a special school or a special class in kindergarten, elementary or secondary school. It means that the sole fact that a child comes from socially disadvantaged environment cannot be the reason for its placement in a special school. The government has introduced a special subsidy for SDE pupils in this respect. Effective from 1 September 2016, a rule has been in place that the subsidy is only awarded to SDE pupils who have received an opinion from a centre for pedagogical and psychological counselling and prevention and are included in a regular elementary school class. The subsidy is not awarded to pupils in special elementary schools and/or in special elementary school classes and pupils individually integrated in elementary schools. The government stated that reintroducing the "SDE children" diagnostic category and linking it with the financial subsidy would become an important tool to remove the ongoing practice of incorrectly diagnosing Roma children and including them in the category of children with "minor mental disabilities".

Another change designed to remove the shortcomings in the Slovak training and education system was the introduction of a legal arrangement for specialised classes which should help children integrate in the educational process and, with an individual assistance provided by a qualified pedagogue, catch up on what the may be lagging behind in. Last but not least, the powers of the State School Inspection were considerably reinforced; effective form 1 September 2015, it has now the authority to inspect the quality of activities carried out in school

facilities for educational counselling and prevention. The State School Inspection is in charge of supervising the selection and correct use of selected diagnostic practices and if it finds that a school facility for educational counselling and prevention has failed to act in the best interest of the child and its educational needs, it may present a proposal to recall its director or to exclude that facility from the network of schools and school facilities.[9]

These and other changes and modifications are covered by the report of the public defender of rights focused on the assessment of the implementation of measures proposed by the public defender of rights in previous years in order to improve the exercise of the rights of children and pupils to education. Having examined the current state of changes in this area, we can state that their implementation received an increased attention in connection with the commencement of the infringement procedure with respect to Council Directive 2000/43/EC on racial equality. Undeniably, the education ministry continuously worked, and still works, on the preparation of steps to improve the fulfilment of the rights of all children and pupil to education, with a special focus on children and pupils with a certain type of disadvantage, irrespective of whether due to health, social or other reasons. Some of them has translated into legislative arrangements, others have the form of short or long-term project to support inclusive educational practice.

Even though Act No. 365/2004 Coll. on equal treatment in certain areas and protection against discrimination and on amendments to certain acts ("the Antidiscrimination Act"), as amended, sets out the principle of equal treatment and, at the same time, all forms of discrimination, and segregation in particular, are prohibited under the School Act, the legislation alone cannot prevent the occurrence of, and eradicate discriminatory practices in day-to-day school settings. Making legislative changes is not enough. The change which is expected to be in the best interest of children and society not only by the European Commission, but also by the public defender of rights, can only be delivered by internalisation of the goals pursued by the amendment provisions, by their actual application in practice, and by changing the mindsets of all who are involved in making changes in the school system. However, the practice in the recent years has built on the traditional educational model that does not work with "otherness", especially when it comes to the Roma minority.

Having examined the package of specific measures adopted by the education ministry to help improve the overall situation in the school system and comparing them against the measures proposed by the former public defender of rights, we concluded that the reforms implemented by the ministry did not result in an obvious

9 The chief school inspector used this new power several times and submitted a total of 15 proposal to the education ministry during the 2015/2016 and 2016/2017 academic years. These were proposal to exclude a school or a school facility from the network of schools and school facilities, or to recall a school headmaster. Decision-making powers on such proposal fall within the authority of the education ministry. The education ministry has not approved all of the proposals submitted by the chief school inspector. In some cases, the proceedings on the proposals of the chief school inspector have been discontinued due to an action filed with a court/ongoing judicial proceedings.

progress in this area. In order to meet their promised purpose, the government should implement them by means of maximally specific and, above all, sustainable desegregation measures.

The key motivation to implement all measures to put an end to the segregation and discrimination in the educational process in Slovakia should not be driven just by an effort to avoid judicial proceedings by the supreme European institutions, but mainly by the genuine commitment to ensure equal treatment for all, to ease tensions between the majority and minority populations, and the effort to improve the conditions in the training and education of our children to ensure their universal personal development, social inclusion and good prospects in the future.

"Detský ombudsman" (Children's Ombudsman) website

For nine years, the Office runs www.detskyombudsman.sk, a website intended to raise the awareness among children and young people of the fundamental rights and freedoms, of their rights in school, family and interpersonal relations, and of the means to exercise them. The Office considers this pivotal, because it is more difficult for children and young people to exercise their rights than it is for adults, if they lack information. The website contains information, prepared in a manner comprehensible for young users, about the work and competences of the public defender of rights, about her activities concerning children and protection of their rights, and about the Convention on the Rights of the Child. It also provides contact information of organisations that help and assist children, as well as a FAQ section.

An online form is available on the website for children to directly communicate with the Office. The can ask questions, with responses being delivered to their specified email address. The questions asked by children mostly covered school and family issues, rights and obligations in connection with parents' divorce, child maintenance payments, payment of social benefits, etc.

Examples from the work of the Children's Ombudsman

Good morning, my parents are divorced, and I am in their shared care; I want to ask whether I can go to a doctor with my grandma, when my daddy cannot. My mom says no.

Hello, health care services are basically provided based on a **so-called informed consent,** unless the law stipulates otherwise. The law differentiates two categories of patients in this respect: those who are competent to provide informed consent, and those who are not competent to give informed consent, including **minor children.**

Under the provision of §6(1) of Act No. 576/2004 Coll. on health care, health-care-related services and on amendments to certain acts, as amended, unless the law (§6a) stipulates otherwise, the attending medical personnel **is required to provide information** about the purpose, nature, consequences and risks related to the provision of medical treatment, about the options to choose proposed treatments and about the risks of rejecting the medical treatment to

a) the person who is to receive medical treatment or to another person designated by that person;
b) **a legal guardian;** a caregiver; a tutor; a natural person other than the parent, if the child has been entrusted to that person's care; a person who has the child in his/her substitute personal care; a person who has the child in his/her foster care; a person who intends to become its foster parent and the child has temporarily been placed to that person's care; a future adopter; a person to whom the child should be entrusted pursuant to separate regulations; or a statutory representative of the facility in which the child has been placed based on a court decision on institutional care or on protective custody (hereinafter only referred to as the "legal guardian"), **if the person who is to receive medical treatment is a minor child,** a person deprived of legal capacity or a person with restricted legal capacity (hereinafter only referred to as the **"person incapable of giving informed consent"**) and , in an appropriate manner, also the person incapable of giving informed consent.

Informed consent means a demonstrable consent to medical treatment, preceded by an advice given as described above or by a rejection to receive such advice.

Unless the law stipulates otherwise, **informed consent is given by**
a) the person who is to receive medical treatment; or
b) **the legal guardian** in case the person who is to receive medical treatment is not capable of giving informed consent; **such person participates in making the decision within the limits of his or her capacities.**

Under the law, a full legal age is usually attained by reaching 18 years of age. Prior to this limit, the full legal age may only be attained by marriage.

You say you are 16, **it means you are still a minor child** with respect to whom the advice is provided to a legal guardian – **usually a parent – who then has a right to give consent to receiving medical treatment,** and/or decide to refuse to give such consent. Therefore, you should go to a doctor accompanied by one of your legal guardians – parents.

Good morning, I wish to ask if I can suspend my studies prior to completing the compulsory school attendance if it is recommended by a psychologist and/or by a centre for pedagogical and psychological counselling and prevention (for example, in the case of a social phobia, etc.) How should I proceed in this case? Thank you for your answer!

Good morning, this issue is governed by Act No. 245/2008 Coll. on training and education (the School Act) and on amendments to certain acts, as amended (hereinafter only referred to as "the School Act"). Pursuant to §34(1) of the School Act, a secondary school headmaster may grant a permit to suspend studies **to a student who has completed his/her compulsory school attendance** upon request by his/her legal guardian (upon his/her own request if the student is of full legal age) for a maximum period of three years; based on a request made by a female student or her legal guardian, the headmaster must suspend her studies if she is pregnant or has become a mother, or allow her to continue studies pursuant to an individual teaching schedule.

Such suspension is possible for students who have completed their compulsory

school attendance. However, if an everyday presence in school is not fit for the child (e.g., for health reasons), the issue should be resolved in consultation with the school management.

The School Act knows so-called special forms of school attendance and some of them do not require that the child be present in school every day (this is what your question is aiming at, I suppose).

Pursuant to §23 of the School Act, special forms of school attendance include

a) individual education performed without regular presence at school according to this act;

b) education provided at schools outside the territory of the Slovak Republic;

c) education at schools established by another state in the territory of the Slovak Republic with consent from that state's embassy office, provided that the embassy office has notified the education ministry of having given consent to establish a school that does not belong the network of schools and school facilities under a separate regulation;

d) education at schools where the training and education are provided in accordance with international programme based on an authorisation of the education ministry;

e) individual education abroad for elementary school pupils;

f) **according to an individual teaching schedule;**

g) education in European Schools.

A permit to **use one of** the aforementioned special forms of school attendance is issued by a headmaster upon request by a legal guardian, who should take into account **individual circumstances of the student** and choose such form of education that is best for that particular student.

We therefore recommend that the child's legal guardian visits the school headmaster and gives him/her all information about the child's situation to jointly, based on all the information and the child's individual needs, choose the best form of education for the child.

We wish you luck

People are free and equal in dignity and in their rights. Their fundamental rights and freedoms are sanctioned, inalienable, imprescriptible and irreversible.

The fundamental rights and freedoms shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, gender or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds.

(Article 12 of the Constitution)

Right to work, social security and health care

III

Introduction

The most frequent problems people wish the Office to help them with in this area relate to social security benefits (pension, sickness and accident benefits, unemployment benefits, guarantee insurance benefits), support in material need, benefits for compensation of severe health disability, petitions/complaints related to the commencement, termination and duration of social or health insurance, insurance payments or payments for health care provided in Slovakia and abroad. Equally, this chapter also covers the provision of social services (e.g., domiciliary care services, personal assistance) or observance of the fundamental rights in social and health care facilities.

Examples from complaints

Incorrectly calculated old-age pension may be a violation of the basic right to adequate material security in old age and incapacity to work

A claimant who had applied for old-age pension contacted the public defender of rights in 2014. His entitlement to the old-age pension had arisen back in 2002 already. The Social Insurance Agency calculated the amount of his pension as at the effective date of entitlement (i.e., 1 February 2002), but failed to include all benefit adjustments made each year from 2002 to 2014. As a result, the amount of its pension benefit is much lower than it would have been if the benefits had been paid out since 2002. However, being a basic right, the entitlement to the old-age pension does not cease by a lapse of time and cannot be time-barred. The Social Insurance Agency has argued that the applicable legislation only permits to adjust those pension benefits that are actually being paid as at the effective date of adjustment. Legislative changes with respect to the calculation of pension benefits that are being awarded more than three years after the entitlement has arisen would help make the practice more unambiguous. In such cases, the pension benefits should be awarded in such an amount as it would have been awarded if it had continuously been paid from the effective date of entitlement, including all corresponding adjustments.

Another claimant complained that the Social Insurance Agency had failed to include his earnings from some years in the calculation of his pension benefit because they could not be proved. It also failed to properly gather evidence to ascertain the missing data about claimant's earnings and, in addition, incorrectly determined the period relevant for the calculation of the benefit amount. Following additional evidence-taking and correct determination of the relevant period, the Social Insurance Agency raised amount of the pension benefit awarded to the claimant.

In another case from 2006, a claimant asked the Social Insurance Agency to increase his disability pension because his health conditions had deteriorated. He was awarded a higher pension with effect from the date on which he had submitted his application. However, the claimant's health conditions justified increasing the level of his disability, hence also a raise in the invalidity pension, already in 2008. After correctly determining the effective date of disability, the Social Insurance Agency increased the claimant's disability pension and retroactively made corresponding pay-

ments for three years prior to the submission of the application.

Labour inspectorates are also responsible for the protection of satisfactory working conditions

A claimant approached a labour inspectorate with a complaint that her employer had refused to grant her a leave. The labour inspectorate, however, did not examined her case properly and failed to duly safeguard her rights, especially her right to rest leave. The basic right under Article 36 of the Constitution guarantees the employees a right to satisfactory and fair working conditions, and demonstratively list some of them that are to be provided by law. The labour inspection authorities should enforce the effective protection of said rights of the employees as their fundamental rights. From this perspective, the protection of employees by the labour inspection authorities as such should also be consider inherent in their basic right to satisfactory and fair working conditions.

Assistance in material need and permanent residence

A claimant living in a village where he is not registered for permanent residence could not, according to a labour office, perform activation works in that village to become entitled to an activation allowance. The labour office mainly argued that the village would not allow the claimant to engage in activation works. The mayor of the village, however, assured us that he saw no reasons why the claimant could not carry out activation works in his village. The labour office subsequently also advised the claimant of an option to apply for an activation allowance.

Be careful when registering for social insurance

A claimant who is a caregiver to his mother complained that the Social Insurance Agency had retroactively excluded him from the register of persons whose social insurance is paid by the state. The problem was that the claimant had for two months been contracted to work outside an employment relationship, which resulted in termination of his social insurance as a caregiver. However, he failed to notify this to the Social Insurance Agency, did not deregister from the insurance scheme and did not renewed his insurance after completing the contracted work. In the course of handling this complaint, however, the Social Insurance Agency re-registered the claimant to the pension insurance scheme because it admitted its partial fault in that it had not informed him about the termination of his insurance in a timely manner.

Insufficiently justified decision related to medical review

When a labour office decides on the entitlement to a protection allowance, it makes its judgment based on a medical opinion as to whether adverse health conditions still exist or do not. A labour office decided to terminate the entitlement to a protection allowance without giving any reasons and explanation on how it had arrived at the conclusion that adverse health conditions no longer existed. However, the labour office must examine each case in a due and responsible manner and include in its decision the facts that served as the basis for its decision-making, as well as describe any considerations it has made when assessing those facts.

Resolving so-called Czech-Slovak pensions

The public defender of rights has long been dealing with the issue of so-called Czech-Slovak pensions. After the dissolution of the former Czechoslovakia, it was necessary to specify which of the two successor states would award pension benefits for the period a person had been covered by the pension insurance during its existence (Czechoslovak term of insurance). The decisive factor in such cases is the country of residence of an employer either at the date of the dissolution or at the last date prior to the dissolution of the former Czechoslovakia. Several claimants have made submissions concerning the method of pension calculations in those cases when the Czechoslovak term of insurance is considered Czech one and the pension is awarded by the Czech Republic. The Social Insurance

Agency does not consider an income earned by the insured persons during the existence of the common state when calculating the Slovak partial pension for Slovak terms of insurance, which leads to lower amounts of pension in some cases. The former public defender of rights has already arrived at the conclusion that the practice applied by the Slovak Insurance Authority in these cases is not in compliance with the applicable legislation. The incumbent public defender of rights also agrees with the legal opinion of her predecessor. In her opinion, the Social Insurance Agency is obliged to calculate the amount of a Slovak pension both with and without considering the income earned during the existence of Czechoslovakia and award the pension equal to a more favourable of the two amounts. Since the Social Insurance Agency ignored the proposed practice, the public defender of rights referred this matter to the minister of labour, social affairs and family of the Slovak Republic (hereinafter only referred to as the "labour minister"). The Social Insurance Agency has ultimately adopted the public defender of right's legal opinion and will proceed according to her opinion when calculating pension benefits.

The public defender of rights has consulted the labour minister in one more matter in connection with the issue of Czech-Slovak pensions. She has noticed several cases involving people whose Czechoslovak term of insurance is assessed according to Czech laws, but they have not become eligible for pension in the Czech Republic even though they meet the pension eligibility criteria pursuant to the Slovak legislation. They may include individuals who worked their whole life in Slovakia, but their employer was officially headquartered in the territory of the Czech Republic. These people feel discriminated compared to those whose Czechoslovak term of insurance is assessed according to Slovak legislation, because the Czech Republic applies stricter pension benefit eligibility criteria. The public defender of rights suggested to the labour minister that the pension for the Czechoslovak term of insurance be awarded by the Slovak Insurance Agency in such cases. In his reply, the labour minister said, among other things, that the suggested measure required that changes be made in the applicable legislation which must be preceded by a thorough factual, legal and economic analysis. He added he would inform about further progress in solving the problems notified by the public defender of rights after the analysis was completed.

Insurance of employees under contracts for a definite period of time

Another issue referred by the public defender of rights to the labour minister involved legislative arrangements concerning employees working under contracts for a definite period of time. These employees enjoyed more favourable unemployment benefit eligibility criteria compared to other employees, but unlike them, they were entitled by law to receive the benefits for four months only (compared to a six months period applicable to other employees). The public defender of rights was addressed by a claimant who had been employed under a contract for a definite period of time. Even though he met the general, i.e., more stringent, unemployment benefit eligibility criteria, he could not receive these benefits for six months, but only for four. He felt discriminated compared to employees who work under a contract for a definite period of time. The labour minister responded to the initiative of the public defender of rights, not ruling out a possible adoption of a new legislative arrangement. Subsequently, in October 2017, the National Council approved the government's draft amendment to the act on social insurance which unified, with effect from 1 January 2018, the unemployment benefit eligibility criteria and the length of the period over which they can be received.

Analysis of health insurer's practices in observing the fundamental right to protection of health and to free health care covered by insurance

Some practices applied by health insurance companies and their compliance with the Constitution were examined in a survey in 2017. The survey specifically focused on practices in two areas – refunding health care costs and including individuals on a list of debtors.

As far as decision-making by health insurance companies on refunding healthcare costs is concerned, the Office employees held, already in the 2016 report by the public defender of rights, that a claimant's basic right to judicial and other legal protection under Article 46(1) of the Constitution had been violated. The finding was based on the fact that the health insurance company had responded to the claimant's request by informal letters only and had not decided the case even though the decision-making had concerned the claimant's individual rights and obligations. The health insurance company did not agree with our conclusions and refused to adopt the measures proposed to remove the violation of the basic right. The Office, therefore, had referred the case of the Regional Prosecutor's Office in Nitra which, however, claimed it was not competent to deal with the case (reasoning that decision-making on the provision and/or non-provision of health care is not within its jurisdiction because these proceedings assess expert, not legal aspects). In response, the Office had asked the General Prosecutor's Office of

the Slovak Republic for cooperation, which revised this opinion.[10]

Subsequently, the Office launched an investigation to find out how health insurance companies decide on refunding or non-refunding the health care costs. The Office employees examined whether such decision-making guarantees an appropriate role of affected persons – insurees, whether the health insurers act in line with the rules of administrative procedure, and whether they apply uniform or differing practices. We have ascertained that none of the health insurance companies issues decisions in administrative proceedings and/or other proceedings governed by a separate regulation, which would give the insurees a possibility to appeal the decision. The insurers apply a different practice when informing insurees – some will send a notification of the non-payment for medical treatment both to the insuree and a health care provider, others will only send it to a health care provider which is in a contractual relationship with the health insurance company. It means it solely depends on the insurer's "good will" whether it directly informs its insuree at all that his/her health care costs will not be refunded and on what grounds.

In our opinion, decision-making by a health insurance company on the refund of health care costs, and, in particular, if it decides not to refund those costs, constitutes proceedings by a body which, in this context, has a nature of a public authority whose actions affect the fundamental right to the protection of health. Accordingly, all health insurance companies should considerably strengthen the rights of the affected insuree, make decisions in accordance with the rules of administrative proceedings or other proceedings under a separate regulation, always provide due justification for their decision, and enable the insurees to have the decision reviewed, if necessary.

The second issue addressed by the Office is the practice of including the insurees on a list of debtors, which has implications on refunding the health care costs. If an insuree has been included on the list of debtors even for a very short period (and even if wrongfully), the consequence is that he/she will only be able to receive urgent medical care throughout that period. The insurers are required by law to publish and update, always by the 20th day of a calendar month, the list of debtors on their websites. An insuree has a right to appeal against his/her inclusion on the list and the health insurance company is obliged to review his/her appeal and provide its comments within a set time limit. The law does not prescribe how an insuree should be notified that has been included on the list of debtors. It is

10 The General Prosecutor's Office of the Slovak Republic has "agreed with the legal opinion expressed in individual submissions made by the public defender of rights, according to which, if a health insurance company decides about the scope and conditions of a payment for medical drugs, medical devices and dietetic food covered by the public health insurance scheme, it has a position of a public authority that decides about the right of an insuree to health care and its immanent component, i.e., about the provision of, and payment for medicinal drugs, arising from the provision of §9(1) of Act No. 580/2004 Coll. in conjunction with the provision of §2(1) of Act No. 576/2004 Coll. on health care, healthcare-related services and on amendments to certain acts, as amended (in the wording effective at the date of decision) which defines the term 'health care'. A notification by the health insurance company of rejecting the entitlement to the refund of intended indicated health care ... has a nature of a decision that can be subject to review by prosecution bodies."

upon the insurer's sole judgement whether it will inform its insurees of this fact; therefore, the insuree does not necessarily have to know that he is only entitled to receive urgent medical care in a given moment. As in the previous case, the practices adopted by health insurance companies in these situations differ as well. The last difference in the practices applied by the health insurers identified by the 2017 survey is how they treat their insurees who have been placed on the list of debtors when their debt becomes disputed.

The practice currently applied by the health insurance companies must be changed in order for the protection of the basic right to the protection of health and to free health care covered by health insurance, as well as of the basic right to judicial and other protection to be effective. The conclusions made by the Office will be verified in expert consultations with all relevant institutions, currently being prepared by the Office.

Investigation into the quality of control of the observance of the fundamental rights and freedoms in facilities for persons whose personal liberty is restricted, specifically focused on senior citizens

Supporting "Old's Cool" festival in October 2017

"I think the OLD'S COOL festival beautifully conveyed the idea of bringing together people of different age. Let's find some time to learn from people who have been a few years ahead of us on this journey we call life. Let's gift the people who may feel lost or even useless in today's fast-paced world with attention, patience and kindness. Make them smile over stories both old and new, because a face shining with a smile is the sign of humanness." (Mária Patakyová, public defender of rights)

One of the priorities set for 2017 was to examine the quality of control of the observance of the fundamental rights and freedoms in specific types of social service facilities such as facilities for senior citizens, specialised facilities and social service homes.

The observance of the fundamental rights and freedoms of clients in these facilities should, first of all, be supervised by these facilities and their founders, along with higher territorial units and the labour ministry. Specific aspects should further

be inspected by the Health Surveillance Authority, regional public health offices, and district and regional directorates of the Fire and Rescue Service. Clearly, the inspection authorities are diverse both in their hierarchy and typology. Moreover, the applicable legislation is relatively fragmented and vague in this case (e.g., when defining what the level of provision of social services means).

Therefore, a question arises as to how and to what extent the system for inspecting the observance of the fundamental rights and freedoms of clients in aforementioned facilities functions in practice – frequency and planning of such inspections; key issues inspected by individual bodies and authorities, methods they use, how they conduct them in practice; outputs and main findings from such inspections carried out in the previous years; the extent to which individual sanctions are applied; personnel capacities for such inspections; and how these authorities communicate and cooperate. No synthetic analysis on this issue has been conducted so far, therefore, figuratively speaking, we have at best partial data on how individual "gears" work (yet not all) at our disposal, but we do not know how "the whole machine works".

The goal of the first stage of the survey was, therefore, to get the picture of inspection activities performed by the **labour ministry** as a body responsible for overseeing the provision of social services and, in its second stage (to be implemented in the course of 2018), the survey will focus on inspection activities performed by other authorities involved in this area.

According to the preliminary findings, the labour ministry performed inspections in eight providers of social services on average over the past three years (ten providers inspected in 2015, seven in 2016, and eight in 2017). Overall, the number of inspections conducted is very low relative to the total number of providers and the likelihood that a provider will be inspected by the labour ministry is minimal. For illustration – a total of 784 homes for senior citizens, social service homes for adults and specialised facilities operated in Slovakia in 2015 and 756 in 2016. Compared to that, the ministry's inspection department has only five employees. These figures show that the law number of inspections is clearly the consequence of the inspection department's insufficient personnel capacities. Non-compliance with the applicable legislation was identified in a majority of inspected entities (in seven out of ten in 2015, five out of seven in 2016, and five out of eight in 2017). All of them were required to remove the identified shortcomings, but only of them were fined (a fine of €700 was imposed on a social service home in 2015, a facility for senior citizens was fined €800 in 2017). Other types of sanctions (e.g., a repeated fine, fine for administrative offence, petition for deletion from the register of social services, ban on the provision of social services) were not applied over the past three years. It seems that other types of sanctions apart from measures to remove identified shortcoming are nearly not applied.

In 2018, the survey will focus on other inspection institutions and its comprehensive findings will be assessed in a summary report.

Ownership right and right to the healthy environment

IV

Introduction

The following chapter discusses ownerships rights to immovable property, including ownership rights in restitution proceedings, recording ownership rights in the Land Register, zone planning, building permit procedure, protection of the environment, etc.

Report on undue delays in restitution proceedings involving farming and forest land II.

The Office has long been receiving petitions from individuals who complain about inaction of competent authorities when deciding about their restitution claims. Since restitution claims have mostly been filed by older-age citizens, several of them express concerns whether they would live to see a valid restitution decision. The former public defender of rights published the "Report on undue delays in restitution proceedings involving farming and forest land" in September 2015. Given that not all restitution proceedings have yet been closed to date, the public defender of rights initiated a new inquiry in 2017 to examine the progress made in unfinished restitution proceedings so far and the implementation of measures imposed on the public authorities by the public defender of rights in 2015, and to impose additional measures to speed up the ongoing restitution proceedings. Based on the obtained data, the Office prepared the following overview.

Tab. 1 — Overview of estimated length of unfinished restitution proceedings.

Land and forestry department	Number of claims	Average number of proceedings closed per year	Estimated length of proceedings
Kežmarok	2089	×	×
Košice	1523	37	41,16 years
Bratislava	2170	164	13,23 years
Prešov	416	37,5	11,09 years
Malacky	402	32,5	12,37 years
Námestovo	322	64,5	4,99 years
Michalovce	319	25,5	12,51 years
Nitra	307	16	19,19 years
Prievidza	230	×	×
Senec	219	39	5,62 years
Dunajská Streda	201	21,5	9,35 years
Žilina	157	68,5	2,29 years
Poprad	139	74,5	1,87 years
Vranov nad Topľou	93	28	3,32 years
Martin	78	20	3,9 years
Humenné	76	4,5	16,89 years
Košice-okolie	74	63,5	1,17 years
Levice	58	18	3,22 years
Rimavská Sobota	54	9,5	5,68 years
Komárno	35	9,5	3,68 years
Svidník	32	5	6,4 years
Trenčín	30	3	10 years
Trnava	29	22	1,32 years
Pezinok	25	11	2,27 years
Lučenec	24	20,5	1,17 years
Piešťany	22	29	0,76 year

In the case of the remaining land and forest departments of district offices (hereinafter only referred to as "LFDs"), no system-level measures are necessary to be adopted because these LFDs should be able to resolve given number of restitution claims with their current personnel capacities in the foreseeable future. It means that administrative authorities **have been deciding on actual restitution claims** exercised pursuant to Act No. 229/1991 Coll. on arrangement of ownership titles to lands and other agricultural property, as amended, **for nearly 25 years**. With respect to Act No. 503/2003 Coll. on the restitution of ownership to lands and on amendments to Act No. 180/1995 Coll. of the National Council of the Slovak Republic on some measures to arrange ownership to lands, as amended, as amended, this involves administrative proceedings unfinished for roughly 13 years.

The mere length of the restitution proceedings still not resolved by a valid and effective decision after so many years since the exercise of a restitution claim may be considered incompatible with the imperative specified in Article 48(2) of the Constitution – that is, with the right to have one's case heard without undue delays. It follows from the Constitutional Court's case-law that such delays in the proceedings protract the legal uncertainty of an affected person to such a degree which render's that person's right to judiciary protection illusory, hence, threatens it in its very substance.

It is indisputable that the undue delays in restitution proceedings were also caused by that state which failed to provide sufficient personnel capacities to some LFDs that had been understaffed and lacked personnel who could continuously decide about restitution claims. Over the recent years, the interior ministry has not satisfied requests by LFD heads and the Ministry of Agriculture and Rural Development of the Slovak Republic (hereinafter only referred to as the „agriculture ministry") to strengthen their personnel capacities, arguing by the public administration reform, the so-called ESO[11] , and its overall concept. However, the citizens whose restitution claims have so far not been resolved must not be held victims of the state administration reform. A direct increase in personnel capacities was identified by the Office in the case of LFD Bratislava. At some LFDs, the personnel capacities have even decreased, or relevant functions have been moved.

Having analysed LFDs' activities over the recent years, the Office has concluded that more employees must be assigned at selected LFDs whose sole task will be to deal with the restitutions. The restitution agenda often requires extremely complex decision-making. Moreover, this agenda was even assigned to employees without legal expertise. On the one hand, it is complicated to hire such employees (for various reasons, such as low wages, complexity of the agenda, large number of files...), on the other, the competent authorities must create conditions necessary for their decision-making. Employees who deal solely with this agenda have a possibil-

11 ESO Programme (Efektívna, Spoľahlivá a Otvorená štátna správa) (Effective, Reliable and Open State Administration).

ity to familiarise themselves with it in more detail and faster, which results in increased effectiveness in handling the restitution claims. Regular training workshops for employees in charge of this specific agenda could also contribute to enhancing the effectiveness of their work. To that end, the public defender of rights has proposed to the labour ministry to organise, in cooperation with district offices' remedies departments, specific restitution training workshops for employees in charge of this agenda in 2018.

The public defender of rights considers the existing situation with restitution claims critical, especially at the LFD Košice. **It is unacceptable that the office would be deciding about individual restitution claims for another 41 years,** including with respect to their already unbearably long duration. With respect to the identified state of affairs and the large number of unresolved proceedings, strengthening this LFD's personnel capacities and subsequently assigning tasks to individual employees so that some of them will solely deal with the restitution agenda seems crucial to improve the situation. The public defender of rights has, therefore, proposed to the interior ministry to immediately increase the personnel capacities of this department by at least three employees. Once the personnel capacities are strengthened, she has proposed to the competent authorities that they assign at least three employees who will deal solely with the restitution agenda. The LFD Bratislava has one of the largest numbers of unresolved restitutions claims left to handle. Five employees are assigned to deal with the restitution agenda, but none of them has it as their exclusive responsibility. The public defender of rights has proposed to the interior ministry to immediately increase the personnel capacities of this department by at least one employee. At the same time, she has proposed to further strengthen personnel capacities based on the results of an inspection to be conducted at the LFD Bratislava, the remedies department of the Bratislava District Office, and the labour ministry. Further, the public defender of rights has proposed to the authorities concerned that they jointly perform an inspection to identify the LFD's overall workload and to examine how effectively the general agenda is distributed among individual employees. Based on the results of this inspection, measures will need to be adopted to make sure that a certain number of employees will deal solely with the restitution agenda.

With respect to the LFDs in Malacky, Senec and Námestovo, the public defender of rights has proposed to the competent authorities that they jointly perform an inspection to identify the LFDs' overall workload and to examine how effectively the general agenda is distributed among individual employees. Depending on the results in the inspections, measures will need to be adopted to enhance the effectiveness in handling the restitution agenda. If the inspections ascertain that the LFDs' personnel capacities need be strengthened, it will be necessary to communicate this request to the interior ministry which should, in turn, adopt the necessary measures.

With respect to the LFDs in Prešov, Michalovce, Nitra, Dunajská Streda, Prievidza and Humenné, the public defender of rights has proposed to the competent authorities that they jointly perform an inspection to identify the LFDs' overall workload and to examine how effectively the general agenda

is distributed among individual employees. Based on the results of these inspections, such measures, for example, will subsequently need to be adopted that will make sure that a certain number of employees will solely be assigned the restitution agenda.

Given the fact that the measures to enhance the effectiveness in handling the restitution claims have already been implemented in the LFD Trenčín and taking to account a small number of remaining unresolved restitution claims, the public defender of rights has asked the LFD Trenčín head for supervision over the fluency in restitution proceedings.

A specific situation in handling restitution claims exists in the LFD Kežmarok which is responsible for restitution claims related to former military district Javorina. For that reason, this office cannot be compared with other LFDs. The restitution claims in military district Javorina covered 26 cadastral areas whose cadastral documentation (in Slovak: **operát**) containing the data about original owners have varied technical level. For five cadastral areas (Levoča, Ľubica, Ľubické Kúpele, Podolínec, Závada), an integrated (single) cadastral documentation is available, and/or cadastral documentation where there are no problems with releasing/handing out the real property; in the remaining 21 cadastral areas (Jakubany, Hniezdne, Šambron, Lomnička, Kolačkov, Vyšné Repaše, Dvorce, Nižné Repaše, Torysky, Tichý potok, Blažov, Bajerovce, Poloma, Krásna Lúka, Holumnica, Hradisko, Jurské, Tvarožná, Ruskinovce, Majerka, Stotince), the land register and the land book data are not integrated in a single cadastral documentation. In the case of the cadastral areas without an integrated cadastral documentation, it was necessary to create simple land registers whose technical arrangement enables to identify the lands that had been transferred to the state ownership so as to ensure compliance between the lands released and the original lands. The simplified registers were completed for all the cadastral areas concerned by 31 December 2016. According to its opinion, the LFD Kežmarok started reviewing the simplified registers and the decisions issued so far in January 2017. At the end of 2017, the department has been working on the following cadastral areas: Nižné Repaše, Tvarožná, Tichý potok, Šambron, Vyšné Repaše, Majerka and Levoča. The work on cadastral areas Hniezdne and Podolínec is completed. Based on the data from the simplified register, the LFD Kežmarok will verify whether the decisions issued pursuant to separate regulations have been delivered in compliance with the data valid as at the date of transfer of the ownership title to the land to the state. If any discrepancy is identified during the verification, the LFD will correct the decision, or cancel and issue a new one, following the consultations by a commission for the simplified register. The three-year period from the effective date of an original decision does not apply where the original decision is to be corrected or cancelled and a new decision is to be issued. Before the verification and correction or cancellation, if any, of all restitution claims issued in the cadastral area so far, no new decisions on the restitution claims that have yet not been decided can be issued.

According to the department head, an ideal solution would be to temporary increase the number of employees in such a way that every single cadastral area is assigned to a single qualified and experienced

employee who would be familiar with the relevant area and could effectively work on its organisation. It is hard to imagine that a single employee could simultaneously handle several cadastral areas. Equally, it is difficult to imagine that the work on a single cadastral area would be assigned to several employees.

Given the complexity of ownership relations in former military district Javorina and further progress in settling ownership rights to the land, especially due the impact on the persons who have already been granted valid restitution decisions, the public defender of rights will continue paying special attention to this issue.

The cooperation of Slovak land administration authority **Slovenský pozemkový fond** (hereinafter only referred to as "SPF") in restitution proceedings still seems problematic. To that end, the public defender of rights has proposed to the SPF to conduct an analysis on how long it takes to process requests delivered by the LFDs to individual regional SPF departments for the preparation of geometric plans, and to find out whether the delays in their processing result from individual errors or whether it is a problem that requires a system-level solution.

Examples from complaints

SPF's inactivity in compensation restitution claims

The provision of restitution compensations – substitute lands – by the SPF constitutes a specific procedure because its outcome largely depends on an agreement between an eligible person (beneficiary) and the SPP on the release of the particular substitute land. If the eligible person meets the criteria for the provision of a substitute land, the process of releasing substitute lands by the SPF is finalised by signing a contract on the free transfer of ownership title (not by issuing a decision), concluded between the SPF and the eligible person. In view of the fact that the steps taken by the SPF in the provision of restitution compensations are a follow-up to a valid decision by an administrative authority, the SPF acts in this case in the capacity of a public administration body since it performs its activity in the area of public administration. Therefore, the public defender of rights has started to review the practice of the SPF in the provision of restitution compensations and, in the case of undue delays in the proceedings, she has held that the claimant's fundamental rights were violated.

Unreasonable inaction of the cadastral department in registration proceedings

The Claimant objected that a cadastral department had failed to decide on her proposal for registration in the land register. The cadastral department had unreasonably been inactive in the proceedings for a year and five months. It only resumed the proceedings and started to carry out the necessary actions to issue a decision in the registration proceedings in response to a request by the Office to submit a written opinion. Subsequently, after measures had been imposed, the actual registration in the land register was made.

"Decision-making" by a letter instead of a decision issued in administrative proceedings

A cadastral department did not issue a decision to correct an error in the cadastral

documentation but had for years communicated with the parties to the proceedings only in the form of letters in which it claimed that the correction they sought cannot be made. Where a proposal made by a party to the proceedings is concerned, an administrative authority is obliged to issue a decision in administrative proceedings. A decision is required even where the administrative authority rejects the proposal for correction. The claimants, having no administrative decision on this matter at their disposal, repeatedly sent letters to the cadastral department seeking their truth is acknowledge and the error corrected. The protection granted by the provision of Article 46(1) of the Constitution also includes a right of party to the proceedings to request that proceedings commenced upon its proposal be closed in a way enabling further protection of that party's rights, i.e., that a court or a competent public administration authority close the proceedings by issuing a decision. Based on the measures proposed by the public defender of rights, the cadastral department will decide on the correction of the error in the cadastral documentation in this case, and deliver a decision containing all formal requirement under the rules of administrative procedure.

Building authority cannot be a developer and an administrative authority at the same time

Having examined a complaint concerning a building permit procedure and cancellation of parking spaces, we found a violation of the petition right as well as of the right to other legal protection. The petition was not resolved within a statutory time limit (provision of §5(5) of the Act on the Petition Right), nor within a time limit in which its review and resolution would have made sense regarding its content. In addition, the competent authority failed to address its elements with a sufficient level of detail. No building permit was issued for the building in question; the construction works were only performed based on a notification, while the building authority acted both as the building developer and the administrative authority at the same time (which contravenes the principle of fair proceedings). We have found this to be a widespread malpractice resulting from an incorrect guidance by the Ministry of Transport and Construction of the Slovak Republic (hereinafter only referred to as the "transport ministry"), therefore, we have asked the ministry to prepare an amendment to prevent this practice and circumvention of applicable laws. We have also held that the principle of good governance was violated in decision-making on the cancellation of all parking spaces because the competent city district did not at all consider the legitimacy of inhabitants' request to preserve at least a portion of parking spaces.

Infringing the rights of parties to proceedings and the petition right

A complaint challenged the steps taken by a municipal authority with respect to a plan to build a fuel station and related facilities in the first protection zone of a natural medicinal water source in a spa territory. A petition was signed opposing this plan. Having examined the complaint, we have found that the municipal authority infringed the petition right because it failed to duly consider the petition and did not examine and resolve the petition in a manner that would have ascertained the actual state of affairs and its compliance with the applica-

ble regulations and with the public interest. The results of the resolution of the petition were not notified to a petition representative, or to a designated member of the petition committee, in writing.

Significant shortcomings leading to the violation of the basic right to judicial and other legal protection were also identified in the actions taken by the municipal authority within zoning permit procedure related to the described construction plan. The operative part of the zoning permit procedure and its reasoning did not comply with the relevant documentation and with the zoning permit decision, and the location of the building was in conflict with the applicable zoning plan. The municipal authority insufficiently cooperated with the Spa and Spring Inspectorate with respect to ensuring the protection of natural health spas and natural medicinal water sources and failed to sufficiently consider the objections raised by the parties to the proceedings who argued that the building could distort the nature of the health spa.

Serving decision against a citizen

A claimant objected to the actions taken by a land and forest department in the proceedings on declaring lands as non-hunting areas. The department issued a decision which it did not serve directly to the claimant but published it, contrary to the law, in the form of a public notice (despite the fact that an ineffective decision had already been issued in the same proceedings, which had directly been delivered to the claimant who successfully appealed against that decision). Very likely, the claimant would not have even learnt that another decision was already issued in his case and he would not have a chance to appeal. Having identified this misconduct of the land and forest department, we had asked a prosecutor's office for assistance and cooperation, which in turn filed a protest against that decision and the decision was subsequently revoked.

Evaluation of the implementation of measures from the Report on the protection of the right to the healthy environment by actions of public administration authorities in granting permits for construction of small hydropower plants

In March 2017, the former public defender of rights presented the findings from a survey and the Report on the protection of the right to the healthy environment by actions of public administration authorities in granting permits for construction of small hydropower plants (hereinafter only referred to as "SHPPs").[12] The report concluded that actions and decisions taken by competent public authorities when granting permits for SHPPs were infringing the fundamental rights and freedoms related to the right to the health environment, the right to timely and complete information about the state of the environment and about the causes and consequences of its conditions, as well as the right to judi-

12 The report is available here: https://bit.ly/2HbwF48.

cial and other legal protection. The most frequent issues included infringements of rights of the parties to the proceedings, failures to comply with the requirement of proper reasoning of the decision, failures to comply with the requirement to reliably establish the facts of the case, and violations of the obligation to dutifully and responsibly examine each case. Even though being an important public interest, the protection of the environment was often addressed formalistically in individual proceedings, without actually pursuing the objective the competent authorities had been entrusted to guarantee. In an absolute majority of cases, environmental impact assessments lacked a review of cumulative impacts of several SHPPs on the same watercourse or its section. This shortcoming has neither been removed in the preparation and approval of the "Update to the Concept of the Use of Hydropower Potential of Rivers in Slovakia until 2030".[13]

Responses provided by competent ministries, the Ministry of the Environment of the Slovak Republic (hereinafter only referred to as the "environment ministry") in particular, to the report and to the proposed measures indicate that even though they have been notified of specific malpractices, no will to remove them exists at all levels of decision-making. An example in this respect is a measure imposed on the environment ministry and its response to it:

The requirement to assess cumulative impacts of several SHPPs on a watercourse, both at the level of strategic documents and when assessing individual hydropower projects, is prescribed by law. Despite that, such assessments are neither performed at the level of strategic documents nor when assessing individual projects. An opinion provided by the environment ministry that is responsible for this situation shows that the compliance with this statutory provision has again been just put off for later.

With respect to the requirement to increase the transparency in "assigning" profiles for the construction of SHPPs, the environment ministry has not even tried to introduce, for example, an obligation to publish minutes of the meetings of the Committee for Hydropower Development and Optimum Use of Hydropower Potential of Rivers in Slovakia.

A constructive response to the need to train employees came from the transport ministry which proposed specific topics for their training.

Coordinating three ministries, namely the environment ministry, the transport ministry and the interior ministry, with respect to the proposed cross-sectoral measures still remains an open issue. For example, it is necessary to provide as comprehensive training as possible to employees on the principles of good governance, on Act No. 307/2004 Coll. on some measures related to reporting of antisocial activity and on amendment to certain acts, as amended, or on the Aarhus Convention.[14] However, these cross-sectoral themes cannot be comprehensively introduced to the employee training if

13 Approved by government resolution No. 12/2017 of 11 November 2017.

14 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (notification No. 43/2006 Coll. of the Ministry of Foreign Affairs of the Slovak Republic).

each of the ministries looks at them solely through the prism of its own competences (as showed mainly by the response provided by the environment ministry).

The document entitled “Update to the Concept of the Use of Hydropower Potential of Rivers in Slovakia until 2030” has essential implications on future decision-making about SHPPs.12 This lawfulness of this document is currently under judicial review based on an action filed with the Bratislava Regional Court.

Tab. 2 — Measure proposed by the public defender of rights and response by the environment ministry

Measure: To ensure that cumulative impacts of several SHPPs on a watercourse or its section are thoroughly, professionally and publicly assessed insofar as appropriate both at the level of strategic documents and when assessing and granting permits for individual water structures. For this purpose, to prepare a methodology material for assessment of cumulative and synergic impacts of small hydropower plants on the environment.

Response: It is necessary to note that it should not be a "methodology material" but it should be a "methodology guideline for the assessment of impacts of SHPPs on the environment" which would cover the issue of cumulative and synergic impacts. However, it makes no sense to prepare such a methodology guideline before the new legislation on environmental impact assessment is adopted. This legislation is currently under preparation and expected to be approved in the course of 2018.

Freedom of expression, right to information, election affairs, right of assembly and association

Introduction

This chapter discusses the rights important from the point of view of transparency in public governance, citizens' participation in decision-making and public oversight of the management of state assets. It also covers the petition right and election affairs.

Examples from complaints

Right to information about the costs of Slovakia's EU Presidency

Based on an NGO complaint, we have examined the actions taken by the foreign affairs ministry with respect to the claimant's requests for access to information under Act No. 211/2000 Coll. on free access to information and on amendment to certain acts (the freedom of information act) (hereinafter only referred to as the "Free Access to Information Act").

The claimant submitted six requests for access to information under the Free Access to Information Act to the foreign affairs ministry from August 2016 to December 2016. The claimant sought access to information and documents concerning the selection of an organiser, as well as the actual organisation, of a number of official events held as part of Slovakia's EU presidency. In a majority of cases, some part of the requested information was disclosed by the ministry while it rejected to provide the rest, stating that it has no such information at its disposal or that the requested information is confidential or represents personal data, and/or that it cannot be disclosed due to being under review.

Having examined the approach taken by the foreign affairs ministry, we have ascertained that the basic right to information was violated with respect to four requests for information submitted by the claimant where the ministry

- did not provide access to contracts and invoices for the procurement of goods and services that were to be procured by it under contractual obligations;
- **en bloc** refused to provide access to contracts concluded with artists performing at respective events;
- did not provide a clear answer to the claimant's question whether the contracts with the artists performing at an event where the official logo of Slovakia's EU presidency was introduced had been signed by a specific agency, or whether they had directly been contracted by the foreign affairs ministry;
- refused to provide access to information arguing that an internal review was underway and external reviews were also planned.

Further, we have found that the foreign affairs ministry violated the basic right to judicial and other legal protection under Article 46(1) of the Constitution with respect to one request for information, when it provided vague reasons for its decision not to allow access to information. No violation of fundamental rights and freedoms was identified with respect to one request for information.

The public defender of rights repeatedly communicated with the foreign affairs ministry in order to ensure maximum objectiveness in the evaluation of the ministry's actions in the context of the ECHR case-law. Despite this fact, legal opinions of the foreign affairs ministry and the public defender of rights on a lawful and proper manner of handling the requests for access

to information and on the interpretation of selected provisions of the Free Access to Information Act have remained divergent, even after several exchanges of written communication.

The public defender of rights considers it relevant to take into account the general context of submitting requests for access to information. The requests were delivered to the ministry at the time when suspicions emerged in the public of non-transparent and ineffective spending of public funds in relation to events organised as part of Slovakia's EU presidency that were, and have remained, the subject of considerable media and public interest. The information sought by individual requests directly related to the organisation and funding of those events. The claimant was a non-governmental organisation concerned with transparency and anti-corruption activities.

In **Hungarian Helsinki Committee v Hungary,** the ECHR has held that if non-governmental organisations draw attention to matters of legitimate public concern, they are acting in a role of "public watchdog" of similar significance as that of the press and media. Since accurate information is essential to their activities, it will often be necessary to grant them access to information in order for them to be able to perform their "public watchdog" role and provide information on matters of public concern.

The foreign affairs ministry's line of argument that personal data and privacy of the artists, as well as the rights arising from the intellectual property, need be protected is legitimate, but, in the public defender of rights' opinion, the ministry failed to properly consider the specific scope of the protection of their fundamental rights and freedoms that prevents disclosure of requested information, and whether some part of the information contained in the requested contracts can be separated from the information that apply to the protection of the fundamental rights and freedoms of the artists.

In addition, the ministry did not at all seek to find a balance between the protection of the fundamental rights and freedoms of the artists and the claimant's basic right to information about the activities of the foreign affairs ministry as a state authority, specifically including, in this case, the right to information about the spending of public funds, especially in the context of the ongoing public debate about suspected ineffective spending of funds on the events organised as part of Slovakia's EU presidency.

Another reason why the ministry did not disclose the requested information to the claimant was the ongoing inspection as well as the planned inspection, investigation or audit under §11(1)(h) of the Free Access to Information Act. Access to information should be restricted after thoroughly considering all circumstances of the case as well as the proportionate protection of the fundamental rights and freedoms that are affected. A strictly selective principle and a principle of individually reviewing whether there is a reason not to disclose information are also applied by EU institutions and the Court of Justice of the European Union (hereinafter only referred to as the "EU Court of Justice") in order to maximise the application of the right to information. The EU Court of Justice has held that restricting the access to information on grounds of ongoing or planned inspections, investigations and audits should apply only if disclosure of the

documents in question may endanger the completion of inspections, investigations or audits. Moreover, according to settled case-law, the examination required for the purpose of processing a request for access to documents must be specific in nature. The mere fact that a document concerns an interest protected by an exception (i.e., inspection, audit) cannot justify application of that exception. At the same time, the risk of a protected interest being undermined must be reasonably foreseeable and not purely hypothetical (judgment in Ciarán Toland v European Parliament, judgment in My Travel Group v Commission).

In conclusion, we hold that the common characteristic of the shortcomings which, in our opinion, led to the foreign affairs ministry having violated the claimant's fundamental rights and freedoms is that it insufficiently considered the circumstances under which the requests for access to information had been submitted and, also, insufficiently considered the proportionality of refusing to disclose the information as a whole. It means the ministry did not address the question whether, to what extent and with respect to which of the requested information the statutory reasons for non-disclosure apply and, on the other hand, whether the requested documents, contracts and invoices (after excluding protected information) may not contain further information which should be disclosed to the claimant.

Right to information about proceedings before EU courts

The justice ministry has repeatedly refused to disclose information on the progress in judicial proceedings held before EU courts. It specifically involved information about the activities of the office of the Slovak representative before the EU courts over the period from October to December 2016. We have held that the right to information under Article 26 of the Constitution was violated, namely by non-disclosure of the information of a record-keeping nature which does not fall under the definition of judicial decision-making, hence the access to such information cannot be restricted in accordance with the provisions of the Free Access to Information Act. In response to the notification by the public defender of rights concerning the infringement of the basic right to information, the justice ministry has announced it is beginning to implement measures in connection with the commencement of examination of the respective decision on a partial non-disclosure of information outside appellate proceedings pursuant to the Act on Administrative Proceedings.

Excessive anonymisation of judgment

Another complaint concerned disclosure of a district court's judgment. We have ascertained an infringement of the basic right to information in the form of excessive anonymisation of the judgment disclosed, where the court anonymised not only personal data and data protected by law, but entire sections of the text. Even though these sections did contain personal and privacy data, there was no reason not to disclose these sections at all. The protected data could be separated from other information contained in the respective part of the reasoning; moreover, they were necessary in order to understand the decision as such. A violation of a statutory requirement was also identified, namely the failure to handle the request within a statutory time

limit (the court requested additional information which were not required under the applicable law). In addition, the court did not respect the form of disclosure of requested information as specified by the claimant.

Right to participate in public governance

In February 2016, the former public defender of rights filed a petition with the Constitution Court to commence proceedings to examine the compliance of §4(b) of Act No. 180/2014 Coll. on the conditions to exercise the right to vote and on amendment to certain acts, as amended (effective from 31 May 2017) with the Constitution and international conventions.[15] The provision prohibited persons serving a prison sentence for a particularly serious crime to exercise their right to vote; this contravened the principle of the universality of the right to vote.

On 22 March 2017, the Constitutional Court ruled that the contested provision did not comply with the aforementioned legal regulations, thus satisfying the public defender of rights' petition of February 2016. The provision became ineffective on 31 May 2017 and invalid on 30 November 2017.

15 Namely with the first sentence of Article 1(1), Article 2(1) of the Constitution in conjunction with the first sentence of Article 30 (1) and the first sentence of Article 30(3), Article 3 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (notification No. 209/1992 Coll. of the federal ministry of foreign affairs) and Article 25(a) and (b) of the International Covenant on Civil and Political Rights (decree No. 120/1976 Coll. of the ministry of foreign affairs).

The freedom of speech and the right to information are guaranteed. Everyone has the right to express their views in word, writing, print, picture, or other means as well as the right to freely seek out, receive, and spread ideas and information without regard for state borders. Censorship is banned. The freedom of speech and the right to seek out and disseminate information may be restricted by law, if such a measure is necessary in a democratic society to protect the rights and freedoms of others, state security, public order, or public health and morals.

(Article 26 of the Constitution)

Right to judicial protection

VI

Introduction and examples from complaints

The Constitution guarantees to everyone the right to claim their right in a manner laid down by law in an independent and impartial court and, in cases laid down by law, at another body of the Slovak Republic. We identified 36 infringements of this right last year. Everyone also has the right to have their case tried in public, without undue delay, and in their presence and to deliver their opinion on all pieces of evidence. We identified 67 infringements of rights caused by delays in proceedings. The cases concerned involved varied durations of courts' inaction and decision-making at all instances. For example, in the proceedings on the enforcement of a decision in the case of minor children, we identified delays at a district court where the territorial jurisdiction was transferred to that court following the change of children's place of residence and the district court failed to act for eight months following that transfer. In the case of minor children, prompt and timely decision-making is absolutely crucial to the realisation of their rights. We identified more than a year long delay in the proceedings on old-age pension before the Supreme Court of the Slovak Republic.

Disciplinary proceedings

The public defender of rights' mandate to file a petition to commence disciplinary proceedings against a judge is derived from Article 151a(1) of the Constitution which stipulates that, in cases laid down by law, the public defender of rights may participate in holding the persons working in the public administration bodies accountable, if those persons violated a basic human right or freedom of natural or legal persons. The public defender of rights may consider filing a petition to commence disciplinary proceedings if a judge has infringed a basic right or freedom of a natural or legal person and the public defender of rights has a reason to assume that the judge has committed a disciplinary offence.

> Everyone has the right to have their case tried in public, without undue delay, and in their presence and to deliver their opinion on all pieces of evidence. The public can be excluded only in cases laid down by law. (Article 48 of the Constitution)

The public defender of rights exercised this power in two cases in 2017. In the third case, the public defender of rights filed an appeal against the judgment of a disciplinary tribunal which had acquitted a judge from a disciplinary charge filed by the former public defender of rights in 2013.

In the first of the three cases, the public defender of rights was contacted by a company executive director. He complained about the proceedings before a district court that have been going on for nearly 14 years despite relatively simple facts of the case. His case involves a civil dispute concerning a financial claim, which started by a payment order issued in 2003 against which a protest was filed, resulting in the revocation of the payment order. The proceedings have not been concluded with finality to the present day. The claimant stated in his complaint, among other

things, that the case had already been decided by the Constitutional Court which ruled that the district court had infringed his right to have his case heard without undue delays. Based on these facts, the public defender of rights has concluded that the conduct by the district courts represents an infringement of the claimant's basic right and freedom and constitutes a reason to assume that the judge committed a disciplinary offence. She decided to exercise her powers and submitted a proposal to commence disciplinary proceedings against the district court judge. The proceedings are now at their initial stage, waiting for the first hearing to be scheduled.

In the second case, the public defender of rights was contacted by a lawyer representing a party to the proceedings on the settlement of the joint ownership of spouses held before a district court. The claimant objected to the violation of the right to a fair trial before an independent and impartial court. He attached audio recordings from the court hearings to his complaint from which the public defender of rights concluded that a judge could have acted in a way that gave rise to justifiable doubts about her impartiality. These actions consisted of statements and behaviour of the judge towards the party to the proceedings after that party had filed a complaint against delays in the proceedings before the Constitutional Court, which the Court upheld. The public defender of rights arrived at the conclusion that the claimant's right to have his case heard before an impartial court had been violated and that a reason existed to assume that the judge had committed a disciplinary offence. Therefore, also in this case she decided to exercise her powers to submit a proposal to commence disciplinary proceedings which are now at their initial stage.

In the third case, the public defender of rights filed an appeal against the decision of a disciplinary tribunal which had acquitted a district court judge from the disciplinary charge filed by the former public defender of rights to commence disciplinary proceedings for her prohibition to make an audio recording from a hearing and for conditioning its further use by her consent. The judge infringed the basic right to information, with the infringement having also been upheld by a constitutional court decision. The public defender of rights delivered an appeal against the acquittal to the disciplinary tribunal within the statutory time limit. The proceedings are now at an appellate stage, waiting for a hearing to be scheduled and/or a decision by the appellate disciplinary tribunal made.

Evaluation of the measures to reduce delays in judicial proceedings by regulating the activity of sworn experts

In connection with the measures to speed up judicial proceedings, the Office has evaluated the measures taken by the justice ministry with respect to regulating the activities of sworn experts.

An electronic overview of the workload of, and conduct by sworn experts has been available to the justice ministry since 1 July 2016. The experts are obliged to record data in the electronic logbook for the justice ministry to use in assessing their workload and reasons for refusing to carry out an expert investigation, in considering

the amount of a penalty for causing undue delays in the proceedings, etc. A new expert specialisation was also created – Social Sciences and Humanities – which covers two domains: political extremism and religious extremism. The justice ministry contacted institutions dealing with these domains and professional examinations of experts were conducted in July 2017. The lack of experts is a long-term issue in two specialisations, Geodesy and Cartography, and Psychology. In October 2017, 120 experts were registered for the Geodesy specialisation, compared to 89 in 2012 and 95 in 2014. The lack of experts is also visible in the Civil Engineering specialisation which is, however, also associated with low remunerations for experts compared to commercial prices in this field, therefore, the justice ministry will consider, in consolations with the Ministry of Finance of the Slovak Republic, increasing remunerations in selected specialisations and industries. In October 2017, 929 sworn translators and 255 sworn interpreters were registered. Problems are with languages that are little widespread in Slovakia.

Tab. 3 — Summary of infringements of fundamental rights based on delivered complaints

Right	Article of the Constitution	Number of infringements
Right to life	Article 15	1
Inviolability of the person, privacy and integrity	Article 16(1)	2
Degrading treatment, torture	Article 16(2)	16
Right to personal freedom	Article 17	6
Prohibition of forced labour and forced services	Article 18	2
Right to the preservation of human dignity and honour	Article 19(1)	7
Right to the private and family right	Article 19(2)	2
Ownership right	Article 20	1
Right to the protection of home	Article 21	1
Freedom of residence and movement	Article 23	1
Freedom of speech and right to information	Article 26	11
Petition right	Article 27	3
Protection of satisfying working conditions	Article 36	1
Right to adequate material provision in old age and in the event of work disability	Article 39(1)	11
Marriage, special protection of children	Article 41(1)	6
Parents' right to assistance from the state.	Article 41(5)	3
Right to claim rights before a court or other body	Article 46(1)	36
Right to hearing without undue delays	Article 48(2)	67

In addition to the infringements of the fundamental rights and freedoms guaranteed by the Constitution of the Slovak Republic, the public defender of rights also identified infringements of the provisions of international conventions referred to in Table 4.

Tab. 4 — Infringements of the provisions of international conventions

Convention	Number of infringements
Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[16]	16
Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[17]	2
Article 3 of the Convention on the Rights of the Child[18]	5
Article 12 of the Convention on the Rights of the Child	1

16 Prohibition of torture:
No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

17 Right to respect for private and family life:
① Everyone has the right to respect for their private and family life, their home and their correspondence.
② There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

18 The interest of the child:
① In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
② States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
③ States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

International cooperation

Cooperation with third-country and international organisations is important for the exchange of experience and inspiration for the Office's own activities. One of the public defender of rights' first working trips abroad was to the Czech Republic where she met with Czech public defender of rights Anna Šabatová. The two ombudswomen compared their powers and competences, discussed the autonomy of the public defender of rights, the functioning of the National mechanism to prevent torture and other ill-treatment, the functioning of the system of socio-legal protection of children in the Czech Republic and Slovakia, etc.

A conference entitled "Sustainable development through social entrepreneurship" was held in Madrid in June 2017. The public defender of rights presented sustainable models of social entrepreneurship in Slovakia on an example of the village of Spišský Hrhov.

In the second half of 2017, the public defender of rights attended for the first time a conference of the European Network of Ombudsman organised by the European Ombudsman in Brussels, hosting dozens of ombudsmen from all over Europe. They discussed new challenges in the work of ombudsmen, especially the growing populism in EU countries. They also discussed Brexit which will also affects EU citizens living in the UK, as well as UK citizens living in EU countries.

In September 2017, the Visegrad Group ombudsmen met in Brno to discuss effective and transparent communication with claimants, how to increase their presence in regions, and how to promote and pursue system-level recommendations for public administration authorities to promptly eliminate infringements of rights.[19]

A conference entitled "Looking to the European Union of the Future: Renovation or Innovation" was held in September 2017 marking the 25th anniversary of the establishment of the British Law Centre in Central and Eastern Europe by the University of Cambridge. The public defender of rights accepted an invitation to attend the conference and deliver a speech entitled "European Society – Citizenship and Rights in the Context of Present Legal Challenges faced by Central and Eastern Europe, including Slovakia". Her presentation was based on the findings from complaints received, as well as those made of her own initiative.

During a November working trip to Strasbourg, the public defender of rights and the Office lawyers met with the European Ombudsman's office officials, CPT Committee representatives, and with Slovak ECHR judge Alena Poláčková.

On the occasion of the World Human Rights Day, the public defender of rights accepted an invitation to a lecture entitled "15 Years since the Establishment of the Public Defender of Rights in Slovakia". The lecture was delivered at the Faculty of Social Studies of the Masaryk University as part of the prestigious EIUC (European Inter-University Centre) series which had previously hosted such speakers as President of the Special Tribunal for Lebanon Ivana Hrdličková, former Chief Justice of the Supreme Court of the Czech Republic Iva Brožová, former Vice-President of the

19 The Joint Statement by the Ombudsmen of the Visegrad Group is attached as an annex to this report.

Constitutional Court of the Czech Republic Eliška Wagnerová, Czech Constitutional Court judges Kateřina Šimáčková and Vojtěch Šimíček, or judge of the Supreme Administrative Court of the Czech Republic Pavel Molek.

Cooperation with other institutions, visits to regions and awareness-raising activities

Audiences with the president of the Slovak Republic

President of the Slovak Republic Andrej Kiska received public defender of rights Jana Dubovcová in the presidential palace on 24 March 2017. At the meeting, he sought information concerning the observance of the fundamental rights and freedoms by public authorities in 2016. The two officials discussed the discrimination of children in education, failing socio-legal protection of children and the lack of independent police inspection which would impartially investigate police practices and procedures. This meeting was also the final meeting of public defender of rights Jana Dubovcová with the Slovak president who appreciated and thanked her for her work in the office.

On 10 May 2017, Slovak president Andrej Kiska received public defender of rights Mária Patakyová at a meeting in the presidential palace where they discussed her vision for the near future. They discussed the rights of senior citizens and patients on the observance of which the public defender of rights plans to focus. The president was also interested in the generation poverty circle of Roma children from which they cannot break free including due to, among other things, the current setting of the system of special schools. They agreed that in order to restore people's trust in public institutions, it was necessary to systematically eliminate shortcomings and irregularities in the work of those institutions.

Working meetings on public defender of rights' priorities

On 19 January 2017, public defender of rights Jana Dubovcová publicly presented the Office's 2016 findings on the barrier-free environment in selected buildings of public institutions. The barrier-free environment is an important prerequisite for people to equally enjoy and exercise their human rights. After the Office lawyers had examined barrier-free design of public administration authorities' buildings in 2014 and labour offices' buildings a year later, they focused on hospitals, schools, police and client centre buildings in 2016. Of all elementary and secondary schools they had visited as part of their investigation in the capital city, the requirement of a barrier-free movement inside the building was only met by a secondary vocational school for students with disabilities. Pupils, students and their parents cannot freely choose a school they will attend because a majority of them is not adopted to their needs. A positive shift in this respect can to some degree be seen at tertiary schools. Hospitals, where transferring patients on beds is commonplace by nature, are better prepared to accommodate people with disabilities than schools, but the situation for people with sight and hearing impairments is equally unsatisfactory. They lack audio information systems, guiding lines on the

floor or contrastive marking of glass doors for the sand-blind. The police and client centre buildings were a positive surprise in this respect, whose approach to people with disabilities has improved in the wake of the public and state administration reform. However, further improvements are still necessary to ensure access for people with sight and hearing impairments. At a meeting with Slovak government proxy for national minorities László Bukovszky on 13 July 2017, the two officials discussed the protection of fundamental rights and freedoms of national minorities living in Slovakia. Their key focus was on complaints the Office has investigated in this respect. For example, registry offices did not issue bilingual documents (e.g., birth certificates), i.e., documents written both in the official language and in a language of the national minority, arguing that the software they used did not enable such function. This argument is unacceptable. However, the interior ministry did not agree to the measures proposed by the public defender of rights to remedy this situation.

Commissioner for people with disabilities Zuzana Stavrovská met with the public defender of rights on 25 August 2017. The key topic of their meeting was coordinating cooperation in discharging the powers and duties of both offices. One aspect monitored by both institutions is the observance of fundamental rights of senior citizens. The meeting was very important in terms of designing surveys and investigations carried out by the two institutions so as to avoid duplicities and facilitate their complementarity. The meeting has showed that the Office of the Commissioner for People with Disabilities concentrates on how the rights are observed in particular facilities, while the Office primarily investigates the quality of control by founders, ministries, higher territorial units and other inspection bodies.

In early October 2017, a meeting with education minister Martina Lubyová and education ministry state secretary Peter Krajňák was held. Following a recent change at the post of the education minister, the public defender of rights considered it important to provide the new education minister with a summary of as-yet not adopted and not implemented recommendations which would eliminate segregation and discrimination of children in our school system in the form of a list of findings and recommendations of the public defender of rights, which the education ministry should adopt in this respect.

A discussion with Slovak government proxy for Roma communities Ábel Ravasz also focused on the proceedings initiated by the European Commission against Slovakia for discrimination of children in education, as well as on the basic right to access to safe and clean drinking water.

Visits to regions throughout Slovakia are among important activities carried out by the Office. In 2017, such visits were made to Košice and Banská Bystrica regions. The visits focused on personal meetings with directors and senior officials of prison and detention facilities and police departments, and with representative of non-governmental non-profit organisations engaged in the protection of fundamental rights and freedoms. Their aim was to seek the most effective ways to solve problems and issues in the protection of fundamental rights, as well as collection of data and investigations into complaints received by the Office. Educational and awareness-raising activities

were always included on the agenda of the regional visits, too.

Lectures at schools and awareness-raising activities

Schools across all levels, from elementary schools to universities, expressed an interest in lectures or discussions with the public defender of rights and/or Office lawyers. The lectures and discussions sought to explain the rights and freedoms guaranteed by the Constitution on real-life examples of situations the children and students may encounter. Topics addressed by lectures and discussions differed to match the interests of schools, the age structure of pupils and students and their study specialisations. In some cases, the lectures also included a value quiz, simulated oral hearings before a public authority, etc. Secondary school students solved case studies and/or discussed such topics as extremism, xenophobia or racism. Pupils and students were also interested in their rights, especially in relation to schools, public authorities or the police.

The public defender of rights also participated in the 20th Human Rights Olympics that involved Office employees attending educational and training events for secondary school teachers, which took place in October 2017 in Bratislava, Banská Bystrica and Košice.

The Office also carried out educational activities for the education ministry employees entitled "Public Defender of Rights in Education" which used real-life examples to explain the powers and competencies of the public defender of rights in relation to schools.

The Ombudswoman's Guide to the Galaxy of Public Authorities

One of the public defender of rights' priorities is to clearly and transparently communicate with the public about her powers and competences. The Ombudswoman's Guide to the Galaxy of Public Authorities explains the powers and competences of the public defender of rights on short examples. You can read the Guide here: https://bit.ly/2JuB280

Internship programme

Law students had a possibility to join an internship programme in the Office in 2017. In addition to the existing Memorandum of Cooperation between the public defender of rights and the Faculty of Law of Comenius University in Bratislava, the Office started to actively work on making this programme available to all law students, including from schools abroad. The Office also started cooperating with the LEAF Academy which focuses on Slovak students studying abroad.

Ten future promising lawyers from various schools from Košice, Trnava, Bratislava, Brno or London have participated in the programme since the summer of 2017. The internship programme fully engages the students in the practical work of the Office. They are assigned a mentor who assists them throughout the entire internship. The interns participated in the preparation for background documents necessary to address submissions and complaints, as well as in the proceedings initiated by the public defender of rights.

Acknowledgments by the public defender of rights

In honour of the adoption of the Universal Declaration of Human Rights and the pronouncement of 10 December as an International Human Rights Day, Mária Patakyová continued in the tradition of acknowledging and awarding individuals and organisations who contribute to the protection of the fundamental rights and freedoms in Slovakia, introduced by her predecessor in the office, Jana Dubovcová. In 2017, the public defender of rights thanked students Adriana Repáňová and Adriana Knošková, authors of Create & Control, a game developed in response to the growing populism and extremism in society, especially among their peers. She also appreciated the work and energy of Červený nos — Clowndoctors, an NGO whose 58 professional clowns regularly visit more than 40 hospitals and healthcare facilities all over Slovakia. Marek Roháček of NGO Návrat was awarded for the many years of assistance provided to parents who have decided to give home to children from incomplete or dysfunctional families and to families in distress. Political scientist Miroslav Kusý was awarded for his contribution to the protection of fundamental rights and freedoms after November 1989, when he introduced the idea of human rights protection in the academia. Writer and dissident Hana Ponická repeatedly showed her courage and sense of justice, protecting her colleagues and their right to artistic freedom as early as in 1950s. The award in memoriam was received by her daughter Katarína Jusková. Hana Ponická always fought for the truth, including in 1989 when she was arrested for commemorating the 1968 Soviet occupation of the former Czechoslovakia.

Key recommendations for legislative changes

Position of the public defender of rights regarding the right of same-sex couples to have their relationship recognised in the legislation of the Slovak Republic

A legal recognition of same-sex couples is an important human rights issue under the right to respect for private and family life. The level of protection afforded to same-sex partnerships has recently been increasing across the member states of the Council of Europe. From the ECHR case-law, from the development after an important ruling in the Oliary v Italy case and from the parameters important for establishing a positive obligation to recognize same-sex couples (e.g., an opinion poll affirmative of ensuring a certain level of recognition and protection), one can deduce that the actual absence of legal recognition of same-sex partnerships, so to say "legal ignorance" of such couples, contravenes the human rights commitments of the Slovak Republic.

It is up to a rational law-maker to pass a legislation answering to the requirements arising from the international conventions binding upon the Slovak Republic which will, at the same time, correspond to how the sensitive issues are perceived in Slovak society, the public defender of rights emphasised. The entire position is published here: https://bit.ly/2qOgvmq.

Protection of privacy and opening of postal consignments

When investigating the complaint concerning the opening of postal consignments in the National Council of the Slovak Republic, the public defender of rights arrived at the legal opinion that the recent social developments and several types of security risks (caused by physical, chemical and biological factors) related to the delivery of postal consignments create the need to refine the existing legislative arrangements. The applicable rules are currently incomplete and scattered across a number of laws[20], secondary regulations and/or internal rules of individual institutions (registry rules, guidelines, opinions, rules and procedure proposed by a technical security service). Therefore, she notified this fact to competent ministries.

Given a varied nature of security risks that may arise in connection with a postal consignment, this issue also relates to the protection of public health, civil protection, protection of the public order, as well as the protection of property.

The interior ministry held that a binding procedure for opening postal consignments applicable to all legal persons should be specified in the Postal Services Act; therefore, its legislative arrangement falls within the competence of the transport ministry and should be prepared in cooperation with the interior ministry. The transport ministry has noted in its official position that the issue in question does not fall under Act No. 324/2011 Coll. on postal services and on amendments to certain acts, as amended (hereinafter only referred to as the "Postal Services Act"), because its purpose is to govern postal services that end upon the receipt of a consignment by an addressee and/or an eligible recipient, whereas the owner of the consignment is its sender up to the moment of its delivery to the addressee. It does not recommend regulating the sit-

20 For example, Act No. 324/2011 Coll. on postal services and on amendments to certain acts, as amended, does not specify how to proceed in cases where a legal person or institution has a suspicion or reasonable concern about a possible occurrence of damage to health or property after a consignment has been received. There are no legislative arrangements as to who is authorised to open a postal consignment delivered to an address of a legal person/institution, and no legal definition of what may be considered a consignment with a security risk and/or a consignment suspected of being hazardous, and how to handle such a consignment.
Act No. 395/2002 Coll. on archives and registries and on amendments to certain acts, as amended, implies that, for example, defining what is deemed a private assignment is mainly left on individual registry rules. Decree No. 410/2015 Coll. of the Ministry of the Interior of the Slovak Republic on the details of registry management by public authorities and on creation of files provides general rules for sorting and opening of consignments which, however, apply to public administration bodies only. It does not deal with security issues and/or with defining a suspicious consignment or a consignment with a security risk, and how to dispose of such consignments. Act No. 124/2006 Coll. on occupational safety and health at work and on amendments to certain acts, as amended, does not govern the safe opening and handling of letters, or the procedure and handling of consignments where a consignment, or its content, is suspected to be hazardous, neither.

uation after the delivery of a consignment by the Postal Services Act but is open to cooperation with competent general government authorities in order to seek an appropriate legislative solution.

The labour ministry has noted that a recommended procedure to be taken with respect to a suspicious postal consignment is published on the interior ministry's website (instructions for the public). The procedure was prepared by the interior ministry and the Chief Public Health Officer of the Slovak Republic. This recommended procedure has been incorporated by some organisations in their own registry rules of their own initiative. Act No. 124/2006 Coll. on occupational safety and health at work and on amendments to certain acts, as amended, does not govern the safe opening and handling of letters, or the procedure and handling of consignments where a consignment, or its content, is suspected to be hazardous. It recommends taking further legislative arrangements only after a comprehensive review of the competences of the interior ministry, transport ministry, labour ministry, and the Ministry of Health of the Slovak Republic (hereinafter only referred to as the "health ministry"). The health ministry has held that the delivery of postal consignments does not fall within its competence but will cooperate in the preparation of an amendment to the existing legislation.

In light of the aforementioned facts, the public defender of rights has held that the fragmentation of the national legislation persists in this respect, and that it is the role of authorities in charge of security risks, public health protection, civil protection, etc., to find and formulate a legislative solution to this situation. The new legislation should, at the same time, guarantee the inviolability of the right to privacy and to warrant the secrecy of correspondence and protection of personal data.

Conclusions from the analysis on "Body the Exhibition"

Based on a complaint received, the Office has examined whether "Body the Exhibition" infringes human rights and international conventions by which the Slovak Republic is bound. Indeed, the exhibition has provoked much controversy in Slovakia as well as in other countries, and a broad public debate on legal, moral and ethical aspects of displaying plastinated dead human bodies. After a comprehensive analysis, we have arrived at the conclusion that the international Convention on Human Rights and Biomedicine[21] does not commit the Slovak Republic to ban the exhibition in question, and/or to adopt legislation in this respect. At the same time, we have pointed out incomplete legislative arrangements of a number of significant issues that are governed by different laws and regulations. For example, Act No. 131/2010 Coll. on funeral services (hereinafter only referred to as the "Funeral Services Act") does not specify in detail the conditions under which mortal remains can be embalmed or preserved. It does not specify whether embalming or preservation requires obtaining consent to such post-mortem treatment granted by an individual while still alive. Equally, it does not specify whether embalming or preservation requires obtaining consent from relatives of the deceased person. In addition, the

21 Notification No. 40/2002 Coll. of the Ministry of Foreign Affairs of the Slovak Republic.

Funeral Services Act does not define any basic framework conditions for exhibiting embalmed or preserved mortal remains; in only refers to the conditions specified by a person who did the embalming.

Similarly as with embalming and preservation of dead human bodies, there is no legislation expressly specifying whether the use of mortal remains for scientific or education purposes requires obtaining consent to such post-mortem treatment granted by an individual while still alive, and/or granted by relatives of the deceased person.

The above considerations clearly indicate that the Slovak legislation lacks arrangements governing the exhibition of dead human bodies, as well as arrangements with respect to granting the consent by an individual while still alive to such post-mortem treatment of his/her body. Any amendments to the relevant legislation will mainly depend on a legislator's decision and assessment whether this particular issue needs be addressed by the national legislation in detail.

Physicians' duty to provide first aid medical services

A group of claimants has submitted a complaint to the public defender of rights to challenge the statutory duty of physicians to provide first aid medical services (hereinafter only referred to as "FAMS") because they believe it to be in conflict with the Constitution, namely with its Article 18 (no one may be subjected to forced labour, or services) and Article 35(1) (everyone has the right to a free choice of profession and to training for it, as well as the right to engage in entrepreneurial or other gainful activity). The contested legislation was already examined by the Constitutional Court in 2012, which, however, did not uphold the petition filed by the Prosecutor General of the Slovak Republic at that time[22]. According to the public defender of rights, the general practitioners' duty to provide FAMS in the prescribed regime was – from the human rights perspective – problematic, to say the least (the Constitutional Court was also aware of the shortcomings in the existing legislation[23]). At the same time, the health ministry notified at that time it was considering changing the way the FAMS were provided. The public defender of rights, therefore, submitted a proposal to the health ministry to amend the relevant legislation.

An amendment to Act No. 576/2004 Coll. on healthcare, healthcare-related services and on amendments to certain acts, as amended, was approved with effect from 1 November 2017, including changes in the provision of FAMS. The effectiveness of adopted measures will be subject to an analysis by the public defender of rights in 2018.

Proposal for legislative changes in building permit proceedings

The public defender of rights has proposed to the transport ministry to initiate changes in the Building Act. The aim is to resolve a situation representing a conflict of interests in building permit proceedings. Specifically, it aims at addressing situations when the same entity is both an applicant/building owner and a competent specialised building authority. Another example are situations involving circumventing §119(3) of the

22 PL. ÚS. 113/2011 – 74.
23 PL. ÚS. 113/2011 – 74, pg. 23.

Building Act in such a way that a regional building authority specifies which building authority will conduct the proceedings and issue a decision instead of the affected municipality (which would be both an administrative authority and an applicant), but specifies such a municipality for which the affected municipality is the seat of the joint building authority. This leads to situations where the work of a building authority is performed by municipal employees of the affected municipality acting, for example, in the capacity of an applicant in the proceedings. A change in the Building Act should ensure that where there is a conflict of interests, territorial jurisdiction of the specialised building authority will be changed and, at the same time, it should expressly ban the possibility of designating such a municipality as a municipality competent for the proceedings, for which the affected municipality (applicant) is the seat of their joint building authority.

The Office of the Public Defender of Rights in 2017

Activities

Headquartered in Bratislava, the Office is a government agency which, pursuant to the Act on the Public Defender of Rights, performs tasks and duties related to the professional, organisational and technical aspects of the activities of the public defender of rights.

Under §17 of the Act on the Public Defender of Rights, the public defender of rights has a right to request documents and information from the public authorities he/she needs in order to discharge her duties; such information may also be requested by Office employees authorised by the public defender of rights. The tasks entrusted to the Office are performed by civil servants and employees performing works in public interest; the number of the Office staff is subject to approval by the public defender of rights. Details on the organisation and tasks carried out by the Office are contained in the organisational rules issued by the public defender of rights.

Flawless and effective delivery of the tasks entrusted to the Office requires experienced and highly professional personnel capacities, financial resources for their appropriate remuneration and effective working conditions, as well as sufficient budgetary funds to cover the costs related to the activities carried out by the public defender of rights and her Office.

Summary of Office activities

In 2017, the Office worked with a total of 2,831 submissions in the following structure: written complaints were submitted to the Office by 1,255 claimants (of that, 256 complaints were delivered in person to the Office), of which 702, i.e., 55.9%, fell under the jurisdiction of the public defender of rights. The growing trend in "jurisdiction" matters was confirmed in 2017 – increasing from 50.7% and 51.1% in 2015 and 2016, respectively. It means that slightly more than a half of submissions fell under the public defender of right's jurisdiction in 2017, compared to the previous years when the share of "jurisdiction" matters was around 40%.

The eighteen Office lawyers resolved a total of 2,443 submissions, including 651 written recommendations, 558 complaints submitted through the children's ombudsman website, and 367 submissions/complaints transferred from 2016. Of 1,001 so-called "jurisdiction"[24] complaints, 672 were resolved, in which the public defender of rights **found 177 infringements** of fundamental rights and freedoms. In addition to the infringements of **fundamental rights and freedoms** guaranteed by the Constitution, the public defender of rights also

24 New in 2017 + transferred from 2016.

found 24 violations of provisions of international conventions. 329 complaints and 59 submissions were transferred from 2017 to 2018. The Office lawyers worked on six proceedings initiated by the public defender of rights and carried out one thematic investigation in 2017.

Guidance to citizens

The Office is often contacted by people seeking help and assistance with problems that do not fall under the public defender of rights' jurisdiction. They mostly involve civil law-related issues, such as distrainment procedures, disputes between neighbours, dispute with banks, while people often seek legal advice as well. The Office employees seek to guide and advise them on how their problems can be resolved and/or refer them to a competent authority or institution that can help them. In 2017, 651 such recommendations were provided in writing, the same number as a year before.

Assisting children via www.detskyombudsman.sk

The Office received a total of 558 questions via www.detskyombudsman.sk in 2017.[25] More information can be found in the **"Detský ombudsman" (Children's Ombudsman) website** section on page 28 of this report.

Processing requests under the Freedom of Information Act

The constitutional obligation of public authorities to provide information on their activities to the citizens, i.e., the constitutional right of citizens to access to information, is generally governed by the Act on Free Access to Information. Special legal aspects concerning the access to information are contained in other laws and regulations, too.

The Act on Free Access to Information governs the right to access to information available to public authorities and other public institutions and exercises the basic right to information. The right to information as the basic constitutional right is enshrined both in the Constitution and in the Charter of Fundamental Rights and Freedoms (Constitutional Act No. 23/1991 Coll. of 9 January 1991, introducing the Charter of Fundamental Rights and Freedoms). At the same time, access to information also contributes to the good and responsible functioning of public administration and good governance, reduces the risk of corruption, and strengthens citizens' trust in the state and its authorities.

In 2017, the Office disclosed information to natural and legal persons (hereinafter only referred to as an "applicant") in two ways – upon an applicant's request and through compulsory disclosures (signed contracts and purchase orders).

25 Most frequently asked questions involved problems at school – e.g., conflicts with classmates, teachers, unfair assessment, absences from school; children also sought assistance in choosing a right school or how to apply for a social scholarship. Children were also troubled by conflicts in interpersonal relations, relationships with classmates, friends, neighbours and, most of all, conflicts inside a family – most frequently asking about how to solve conflicts with parents, when they can move away from their parents, or who long they can stay out at night. They also sought information about some rights and obligations in connection with parents' divorce, child maintenance payments, payment of social benefits, etc.

The Office disclosed information based on 38 requests[26] for information in 2017; a decision not to disclose information was issued in three cases. The Office rejected requests that sought information which did not yet existed at the time when a request was made and information that did not directly related to the Office activities.

The disclosures concerned access to information on the state of affairs in the handling of submitted complaints, documentary copies of opinions issued by public administration authorities and documents of municipal authorities, anonymised notifications, and reports on the resolution of complaints concerning infringements of the basic right to information. They also concerned access to information on a barrier-free access to public administration buildings, access to the public defender of rights' petitions to commence proceedings before the Constitutional Court, proposals for disciplinary proceedings against judges, content of complaints processed by the Office, and information on the use of third-party services in public procurement.

The Office resolved the requests for information through disclosures made pursuant to the provision of §16 of the Act on Free Access to Information, i.e., by providing extracts or abstracts, copies of information or providing access to copies containing the requested information. In addition to directly resolving the claimants' requests, the Office handled three requests by forwarding them, pursuant to the provision of §15 of the Act on Free Access to Information, to other obliged persons who had the requested information at their disposal (the justice ministry, the General Directorate of the PCGC, the Public Procurement Office). Two requests for information were dropped in accordance with the Act on Free Access to Information. One due to the claimant's failure to provide his data pursuant to the provision of §14(2) of the Act on Free Access to Information, and one that had been delivered to the Office for information only.

All requests delivered to the Office were resolved without undue delays, not later than within the statutory time limit of eight business days of the delivery of a request to the Office.

Organisational arrangements and the Office's financial management

Organisational and personnel capacities

Under §27(6) of the Act on the Public Defender of Rights, details on the organisation and tasks carried out by the Office are governed by the organisational rules to be issued by the public defender of rights.

Under §27(1) of the Act on the Public Defender of Rights, the tasks entrusted to the Office are performed by civil servants and employees. The number of the Office staff is subject to approval by the public defender of rights.

Effective delivery of the tasks entrusted to the Office requires permanent experienced and highly professional personnel capacities, stabilised headcount, as well as an optimum working environment and care of employees with respect to their professional development, training and education, and social benefits.

26 Of this number, 16 requests were delivered by post directly to claimants' specified address and 22 requests via email.

The number of Office employees was limited to 57 for 2017 pursuant to government resolution No. 461/2016. EUR 646,451 was earmarked as a budget for the remuneration of the Office employees for the calendar year of 2017, including changes after wage adjustments. The limit of the number of employees corresponded with the planned personnel capacities of the Office as approved by the public defender of rights, however, the budgetary funds slated for employee remuneration would not even be sufficient to cover the basic tariff wages of the employees, if all positions were filled as planned.

The tasks and duties of the Office were performed by 35 employees on average in 2017 (excluding the public defender of rights herself); of that, 18 were lawyers in civil service, performing activities falling within the competence of the public defender of rights. Seventeen employees were responsible for organisational aspects and operation of the Office; of that, five were civil servants and 12 were employees performing works in public interest. Four employees were on a maternity and/or parental leave.

One of the priorities pursued by the new public defender of rights was to create conditions to strengthen personnel capacities of the Office. Under the visions and priorities for her 2017-2022 tenure, she affirmed her objective to strengthen the independence of the public defender of rights by initiating the restoration of a separate budgetary envelope for the Office, as well as by its completion in terms of personnel and material capacities, including ensuring the Office's presence in Slovak regions.

To that end, the Office proposed "Strengthening effectiveness in the protection of fundamental rights and freedoms" as one of its budgetary priorities for 2018. The finance ministry took this priority into account when preparing the 2018 budget; therefore, the Office will be able to increase the number of occupied positions in order to enhance the effectiveness of legal protection provided by the public defender of rights. Nevertheless, the power granted to the public defender of rights by law to independently decide about personnel capacities necessary to ensure the performance of the tasks entrusted to her cannot be – due to the financial resources annually allocated to the Office – realistically exercised in the long term.

The independence of the public defender of rights and some other public authorities also faced another risk in 2017. On 1 February 2017, the National Council again approved a government draft of the new Act on Civil Service which had been returned to the parliament by the president of the Slovak Republic. The new legislation was published in the Collection of Law as Act No. 55/2017 Coll., whose wording, with effect from 1 June 2017, indirectly disrupts the independent position of the public defender of rights and her Office, as well as the independence of some other authorities ensuring the performance of state affairs, namely the Office of the President of the Slovak Republic, the Constitutional Court and the Supreme Audit Office of the Slovak Republic. In this respect, the Office fully supported the initiative of the President of the Slovak Republic who, on 26 October 2017, filed a petition with the Constitutional Court to commence proceedings under Article 125(1)(a) of the Constitution to review the compliance of legal regulations. It involves not only the need to ensure a

uniform practice by comparable civil service offices in the application of the Act on Civil Service, but, in particular, to prevent the government from indirectly affecting other public authorities.

In order to enhance its performance, the Office puts an emphasis on the training and improving the quality of human resources and their adaptability to new challenges in the protection of human rights. In this context, the public defender of rights considers it extremely important to motivate students, especially at law schools, to seek their professional carrier in this area in the future. To that end, the Office has long been providing a possibility for tertiary school students to join an internship programme. The three-month internship programme is designed to provide knowledge of the protection and observance of fundamental rights and freedoms, as well as practical experience from the work of the public defender of rights in the Slovak Republic. As far as its capacities allow, the Office seeks to provide this opportunity to non-law students, as well. Sixteen students participated in the internship programme in 2017.

Material and technical resources

IT management

The Office, once again, did not manage to acquire funds to buy a new agenda management system and registry management system in 2017. The Office will continue in activities to obtain the funds in the next budgetary period, too.

Under the existing circumstance, the Office cannot meet the requirements under Act No. 305/2013 Coll. on the e-Government and the requirements under Act No. 272/2016 Coll. on trust services for electronic transactions in the internal market and on amendments to certain acts (trust services act). Given the Office's insufficient technical and technology capacities, no integration is possible between registry management system Fabasoft and Slovensko.sk (the system version used by the Office does to enable implementing such an extension), therefore, electronic submissions cannot automatically be migrated straight to the registry management system, employees must print out such submissions which then lose their authenticity.

The Office first requested funds to purchase a new electronic agenda management system in 2013, and then again in 2015, 2016, 2017 in 2018. The system currently used by the Office is not only technically obsolete, but as of 1 July 2017 it no longer complies with the applicable regulations and the Office can be penalised for it.

The capital resources saved in the previous budgetary periods were used to buy four multifunctional devices.

Property management

Most assets were purchased when the Office was established (in 2002 and 2003) and have since been used to date.

A Volkswagen Multivan was purchased using the capital resources the Office had obtained, among other things, from the transfer of saved current expenditure and with the use of a framework contract concluded with the interior ministry as part of centralised public procurement. A redundant service car, procured in 2002, with considerable wear and tear, requiring a major repair and with high operating costs was donated to a municipal authority.

Registry management and filling department

The Office's filing department registered a total of 7,751 delivered records during the report period. Overall, 5,304 records were sent by post, email or in person; all office Employees created a total of 4,900 internal records. Electronic versions of all delivered and sent records are included in the registry system.

Use of budgetary resources by the Office/funding

The Office is a government organisation included the General Treasury Administration budgetary envelope and uses solely the resources from the state budget. Under Act No. 357/2016 Coll. on the state budget for 2017, the Office was allocated EUR 1,239,871 to cover current and capital expenditure under the Protection of fundamental rights and freedoms 06Q programme, and inter-sectoral programme 0EK0W Information technologies financed from the state budget. The 2017 budget was EUR41,833 higher than that approved for the 2016 period. The increased funds were earmarked to cover previous wage adjustments, including related insurance, and to implement the "Ensuring awareness-raising of the conditions for the protection of fundamental rights and freedoms in the Slovak Republic" priority requested during the preparation of the 2017 budget.

The approved budget was adjusted during the budgetary period in connection with wage adjustments for 2017; the budget was increased by capital resources from previous periods and decreased by capital resources from 2017, transferred to the following budgetary periods. The budget after adjustments was EUR 1,291,045.

Tab. 5 — Overview of budget items

Budget as at 31 December 2017 (in €)

	approved	adjusted
Wage expenditure	628,618	646,451
Insurance	223,500	222,708
Goods and services	363,303	345,960
Current transfers	19,450	10,428
Capital expenditure	5,000	65,498
Total	1,239,871	1,291,045

The amount of budgetary funds announced in the schedule of binding state budget indicators for 2017, dated 8 October 2016, and allocated to cover wages of Office employees was insufficient to provide tariff wages to 57 employees as contemplated under the organisational structure issued by the public defender of rights. That number of employees was also reflected in Annex No. 1 to government resolution No. 461/2016. Due to the lack of financial resources, the Office could not fill in all positions under the valid organisational structure as at 31 December 2017.

The Office spent EUR 1,269,052, or 98.3%, of the total adjusted budget. More detailed information about spending over the report period is shown in the table.

Tab.6 — Budgetary spending by individual items

Expenditure	Adjusted budget (in €)	Funds spent (in € and as %)	
Wage expenditure	646,451	646,447	99.99%
Insurance	222,708	221,944	99.65%
Goods and services	345,960	325,184	93.99%
Current transfers	10,428	10,014	96.03%
Capital expenditure	65,498	65,464	99.95%
Total	1,192,681	1,269,052	98.30%

In the process of preparation of the 2018 budget, the Office again requested that funds be allocated for budgetary priorities "Strengthening effectiveness in the protection of fundamental rights and freedoms", "Electronic Registry Management System", and "Protection of the fundamental rights and freedoms of 'people in the shadow'".

The finance ministry agreed to the "Strengthening effectiveness in the protection of fundamental rights and freedoms" priority, the Office will be able to partially increase its headcount in 2017. A parliamentary schedule of the budget and related government resolution No. 471/2017 put the limits on the Office's activities in 2017 as shown in the following table.

Tab.7 — Possible increase in personnel capacities due to allocated budgetary funds

Year	Approved budget (in €)	Government resolution		No. of positions that can be filled in based on the amount of allocation
		Wage allocations (in €)	Approved number of employees	
2018	1 535 649	820 440	57	44

Conditions for the Office operation and public defender of rights' recommendations to the National Council

Conditions for the Office operation

The Constitution guarantees the principle of independence of the public defender of rights. The principle covers not only the way an ombudsman is appointed, but also the nature of his/her relations to individual state authorities. Even thought the public defender of rights is appointed by, and reports to the National Council, he/she is not subordinated to it. The independence of the public defender of rights from the executive power should be absolute.

Activities of the public defender of rights are limited in Slovakia by the fact that, on the one hand, the Office has no separate budget envelope and by the amount of funds allocated for the activities of the public defender of rights, on the other. The Office, which performs tasks and duties related to the professional, organisational and technical aspects of the activities of the public defender of rights pursuant to §27 of the Act on the Public Defender of Rights, is included under the General Treasury Administration budgetary envelope, therefore, the limits on its expenditure are proposed by the finance ministry during the preparation of a general government budget. The Office can prepare a breakdown by individual items of economic classification and object to the volume of financial resources proposed by the finance ministry and ask the ministry to approve budgetary priorities. It must be noted that due to the volume and structure of allocated financial resources, the Office's personnel capacities are insufficient. The lack of funds does not allow organising the Office according to its organisational structure as specified by the public defender of rights pursuant to the applicable law, because the allocated funds do not fully cover the costs of activities which the public defender of rights can perform based on the competences arising from the constitution, in a man-

ner and scope specified by law. This goes contrary both to Recommendation 1615 (2003) of the Parliamentary Assembly of the Council of Europe on the institution of Ombudsman and Resolution 1959/2013 of the Parliamentary Assembly of the Council of Europe on strengthening the institution of ombudsman in Europe.

Recommendations to the National Council

a) To guarantee the independence of the public defender of rights from the executive through the creation of a separate budgetary envelope.

b) To create conditions for the implementation of the organisational rules of the Office by adopting a budgetary measure that will enable to fill personnel capacities as approved by government resolution No. 471/2017.

c) When compiling a general government budget and setting an expenditure limit for the Office for the following budgetary periods, to proceed in line with Recommendation 1615 (2003) of the Parliamentary Assembly of the Council of Europe on the institution of ombudsman and with Resolution 1959/2013 of the Parliamentary Assembly of the Council of Europe on strengthening the institution of ombudsman in Europe, taking into account the budgetary requirements of the Office to be submitted to the finance ministry in 2018 in the process of preparation of the schedule of basis of the draft general government budget for 2019-2021.

Annex No. 1

Joint Statement by the Ombudsmen of the Visegrad Group: Human Rights for Everyone

We, the signatories to this Joint Statement, acting within our statutory competence, reaffirm the basic goals and principles of the Visegrad States' cooperation, especially the establishment of a democratic legal state fully respecting and protecting human rights, fundamental freedoms and the dignity of every person.

These objectives have become the fundamental values of the Visegrad Group States throughout the years of the existence of this cooperation. As public defenders of rights, we feel particularly obliged to overview and monitor the compliance with these principles as they serve as the cornerstones of democracy, freedom and prosperity of society.

The Visegrad Group cooperation was established as an alliance in which every participating state supports each other in respecting the above-mentioned values. It is, however, not only for the governments and ministries to fulfil this "promise", but also for any other state institution to find its own way, within its mandate and powers, to support the mutual cooperation. The public defenders of rights of the Visegrad countries have been organizing the annual meetings already for fourteen years. Ombudsmen have always been considered as "advocates of people" of all kinds and backgrounds; actual "advocating" the rights and freedoms of all people, especially the most vulnerable ones, might, however, not always find the understanding or support of the general public. This, however, we consider to be one of the very cornerstones of the democratic legal state – that the ombudsman may undertake this role without being under the risk of restriction in his or her powers or other form of persecution.

Therefore, we emphasize the importance of having an independent and strong ombudsperson who would always follow and try, to the best of his or her capacity, to fulfil the main objectives of this institution, i.e. to protect everyone against the misconduct of public authorities and promote and protect human rights and fundamental freedoms.

While following these goals we wish, as ombudsmen and ombudswomen of Visegrad Group's States, to support each other by strengthening the mutual cooperation and exchange of good practices, as well as by the individual support in times or situations when public opinion's or political pressure may influence the independence of the ombudsman's institution or in any other manner restrict or make it impossible to fulfil their mandate.

Signed in Brno on 6 September 2017 by

Anna Šabatová, Public Defender of Rights, Czech Republic; Gyula Bándi, Deputy Commissioner for Fundamental Rights Ombudsman for Future Generations, Hungary; Adam Bodnar, Commissioner for Human Rights, Republic of Poland; Mária Patakyová, Public Defender of Rights, Slovak Republic

Annex No. 2

Excerpts from the Constitution of the Slovak Republic
Chapter Two, Basic Rights and Freedoms

Part One GENERAL PROVISIONS

Article 11
Repealed since 1 July 2001.
Article 12
(1) People are free and equal in dignity and in their rights. Basic rights and freedoms are inviolable, inalienable, imprescriptible, and indefeasible.
(2) Basic rights and freedoms on the territory of the Slovak Republic are guaranteed to everyone regardless of sex, race, colour of skin, language, faith and religion, political, or other thoughts, national or social origin, affiliation to a nation, or ethnic group, property, descent, or any other status. No one may be harmed, preferred, or discriminated against on these grounds.
(3) Everyone has the right to freely decide on their nationality. Any influence on this decision and any form of pressure aimed at suppressing of anyone's nationality are forbidden.
(4) No one may be harmed in their rights for exercising of their basic rights and freedoms.
Article 13
(1) Duties may be imposed
a) by law or on the basis of a law, within its limits, and while complying with basic rights and freedoms,
b) by international treaty pursuant to Article 7, paragraph 4 which directly establishes rights and obligations of natural persons or legal persons, or
c) by government ordinance pursuant to Article 120, paragraph 2
(2) Limits to basic rights and freedoms may be set only by law under conditions laid down in this Constitution.
(3) Legal restrictions of basic rights and freedoms must apply equally to all cases which meet prescribed conditions.
(4) When restricting basic rights and freedoms, attention must be paid to their essence and meaning. These restrictions may only be used for the prescribed purpose.

Part Two BASIC HUMAN RIGHTS AND FREEDOMS

Article 14
Everyone can have rights.
Article 15
(1) Everyone has the right to life. Human life is worthy of protection already before birth.
(2) No one may be deprived of life.
(3) Capital punishment is not permitted.
(4) It is not a violation of rights under this article, if someone is deprived of life as a result of an action that is not deemed criminal under the law.
Article 16
(1) The inviolability of the person and its privacy is guaranteed. It may be limited only in cases laid down by law.
(2) No one may be tortured, or subjected to cruel, inhuman, or humiliating treatment or punishment.
Article 17
(1) Personal freedom is guaranteed.
(2) No one may be prosecuted or deprived

of liberty other than for reasons and in a manner which shall be laid down by law. No one may be deprived of freedom solely because of their inability to fulfil a contractual obligation.

(3) A person accused or suspected of a criminal act may be detained only in the cases specified by the law. The detained person must be immediately informed of the reasons for detention, questioned and either freed or handed over for trial within 48 hours, in cases of criminal offences of terrorism within 96 hours. The judge must interrogate the detained person within 48 hours and in cases of particularly serious criminal acts within 72 hours, and must decide whether to detain or free the person.

(4) An accused person may be arrested only on the basis of a written, substantiated order of a judge. The arrested person must be handed over to the court within 24 hours. The judge must question the arrested person and decide on their custody or release within 48 hours and in particularly serious crimes within 72 hours from the hand over.

(5) A person may be taken into custody only for reasons and for a period laid down by law and on the basis of a court ruling.

(6) The law shall lay down in which cases a person can be admitted to, or kept in, institutional health care without their consent. Such a measure must be reported within 24 hours to the court which will then decide on this placement within five days.

(7) The mental state of a person accused of a criminal act may be examined only on the basis of a written court order.

Article 18

(1) No one may be subjected to forced labour, or services.

(2) The provision of paragraph 1 does not apply to

a) work assigned according to law to persons serving a prison sentence or persons serving other sentence substituting a prison sentence,

b) military service or other service laid down by law in lieu of compulsory military service,

c) services required on the basis of the law in the event of natural disasters, accidents, or other dangers posing a threat to life, health, or property of great value,

d) activities prescribed by law to protect life, health, or the rights of others,

e) small community services on the basis of the law.

Article 19

(1) Everyone has the right to the preservation of human dignity, personal honour, reputation and the protection of good name.

(2) Everyone has the right to protection against unauthorized interference in private and family life.

(3) Everyone has the right to protection against unauthorized collection, publication, or other misuse of personal data.

Article 20

(1) Everyone has the right to own property. The ownership right of all owners has the same legal content and protection. Property acquired in any way which is contrary to the legal order shall not enjoy such protection. Inheritance is guaranteed.

(2) he law shall lay down which property, other than property specified in Article 4 of this Constitution, necessary to ensure the needs of society, national food self-sufficiency, the development of the national economy and public interest, may be owned only by the state, municipality, or designated individuals or legal persons. The law may also lay down that certain things may be owned only by citizens or legal persons resident in the Slovak Republic.

(3) Ownership is binding. It may not be misused to the detriment of the rights of others, or in contravention with general interests protected by law. The exercising of the ownership right may not harm human health, nature, cultural monuments and the environment beyond limits laid down by law.
(4) Expropriation or enforced restriction of the ownership right is possible only to the necessary extent and in the public interest, on the basis of law and for adequate compensation.
(5) Other interference with property rights may be permitted only in the case of property acquired in an illegal manner or from illegal earnings, and if it is necessary in a democratic society in the interests of national security, preservation of public order, good morals or the rights and freedoms of others. Conditions shall be stipulated by law.

Article 21

(1) A person's home is inviolable. It may not be entered without the resident's consent.
(2) A house search is admissible only in connection with criminal proceedings and only on the basis of a written, substantiated order of the judge. The method of carrying out a house search shall be laid down by law.
(3) Other infringements upon the inviolability of one's home may be permitted by law only if it is necessary in a democratic society in order to protect people's lives, health, or property, to protect the rights and freedoms of others, or to prevent a serious threat to public order. If the home is used also for business, or to perform other economic activity, such infringements may be permitted by law also when this is necessary in the discharge of the tasks of public administration.

Article 22

(1) The privacy of letters and secrecy of mailed messages and other written documents and the protection of personal data is guaranteed.
(2) No one may violate the privacy of letters and the secrecy of other written documents and records, whether they are kept in privacy, or sent by mail or in any other way, with the exception of cases which shall be laid down by law. Equally guaranteed is the secrecy of messages conveyed by telephone, telegraph, or other similar means.

Article 23

(1) Freedom of movement and right of abode are guaranteed.
(2) Everyone who is rightfully staying on the territory of the Slovak Republic has the right to freely leave this territory.
(3) Freedoms under paragraphs 1 and 2 may be restricted by law, if it is necessary for the security of the state, to maintain public order, protect the health and the rights and freedoms of others, and, in designated areas, also in the interest of environmental protection.
(4) Every citizen has the right to freely enter the territory of the Slovak Republic. A citizen may not be forced to leave the homeland and may not be deported.
(5) A foreign national may be deported only in cases laid down by law.

Article 24

(1) The freedoms of thought, conscience, religious creed and faith are guaranteed. This right also encompasses the possibility to change one's religious creed, or faith. Everyone has the right to be without religious creed. Everyone has the right to publicly express their thoughts.
(2) Everyone has the right to freely express religion, or faith alone or together

with others, privately or publicly, by means of religious services, religious acts, by observing religious rites, or to participate in the teachings thereof.

(3) Churches and religious communities administer their own affairs, in particular, they constitute their own bodies, appoint their clergymen, organize the teaching of religion, and establish religious orders and other church institutions independently of state bodies.

(4) Conditions for exercising of rights under paragraphs 1 to 3 may be limited only by law, if such a measure is necessary in a democratic society to protect public order, health, morals, or the rights and freedoms of others.

Article 25

(1) The defence of the Slovak Republic is a duty and a matter of honour for citizens. The law shall lay down the scope of the compulsory military service.

(2) No one may be forced to perform military service if it is against their conscience or religious creed. Details will be laid down by law.

Part Three
POLITICAL RIGHTS

Article 26

(1) The freedom of speech and the right to information are guaranteed.

(2) Everyone has the right to express their views in word, writing, print, picture, or other means as well as the right to freely seek out, receive, and spread ideas and information without regard for state borders. The issuing of press is not subject to approval procedures. Enterprise in the fields of radio and television may be subject to the awarding of an approval from the state. The conditions shall be laid down by law.

(3) Censorship is banned.

(4) The freedom of speech and the right to seek out and disseminate information may be restricted by law, if such a measure is necessary in a democratic society to protect the rights and freedoms of others, state security, public order, or public health and morals.

(5) Public authority bodies are obliged to provide information on their activities in an appropriate manner and in the state language. The conditions and manner of execution shall be laid down by law.

Article 27

(1) The right of petition is guaranteed. Everyone has the right, alone or with others, to address requests, proposals, and complaints to state bodies and territorial self-administration bodies in matters of public or other common interest.

(2) A petition may not call for the violation of basic rights and freedoms.

(3) A petition must not interfere with the independence of a court.

Article 28

(1) The right to peacefully assemble is guaranteed.

(2) Conditions for exercising this right shall be laid down by law in the event of assemblies in public places, if such a measure is necessary in a democratic society to protect the rights and freedoms of others, public order, health and morals, property, or the security of the state. An assembly may not be made conditional on the issuance of an authorization by a state administration body.

Article 29

(1) The right to freely associate is guaranteed. Everyone has the right to associate

with others in clubs, societies, or other associations.

(2) Citizens have the right to establish political parties and political movements and to associate in them.

(3) The exercising of rights under paragraphs 1 and 2 may be restricted only in cases laid down by law, if it is necessary in a democratic society for reasons of state security, to protect public order, to prevent criminal acts, or to protect the rights and freedoms of others.

(4) Political parties and political movements, as well as clubs, societies, or other associations are separated from the state.

Article 30

(1) Citizens have the right to participate in the administration of public affairs either directly or through the free election of their representatives. Foreigners with a permanent residence on the territory of the Slovak Republic have the right to vote and be elected in the self-administration bodies of municipalities and self-administration bodies of superior territorial units.

(2) Elections must be held within deadlines not exceeding the regular electoral period as laid down by law.

(3) The right to vote is universal, equal, and direct and is exercised by means of secret ballot. Conditions for exercising the right to vote shall be laid down by law.

(4) Citizens have access to elected and other public posts under equal conditions.

Article 31

The legal regulation of all political rights and freedoms and their interpretation and use must enable and protect a free competition of political forces in a democratic society.

Article 32

Citizens have the right to put up resistance against anyone who would eliminate the democratic order of basic human rights and freedoms listed in this Constitution, if the activity of constitutional bodies and the effective use of legal means are rendered impossible.

Part Four
THE RIGHTS OF NATIONAL MINORITIES AND ETHNIC GROUPS

Article 33

Membership in any national minority, or ethnic group, must not be to anyone's detriment.

Article 34

(1) The comprehensive development of citizens belonging to national minorities or ethnic groups in the Slovak Republic is guaranteed, particularly the right to develop their own culture together with other members of the minority or ethnic group, the right to disseminate and receive information in their mother tongue, the right to associate in national minority associations, and the right to establish and maintain educational and cultural institutions. Details shall be laid down by law.

(2) In addition to the right to master the state language, citizens belonging to national minorities, or ethnic groups, also have, under conditions defined by law, a guaranteed

a) right to education in their own language,

b) right to use their language in official communications,

c) right to participate in the decisions on affairs concerning national minorities and ethnic groups.

(3) The exercise of the rights of citizens belonging to national minorities and ethnic groups that are guaranteed in this Constitution may not lead to jeopardizing of the sovereignty and territorial integrity of the Slovak Republic, and to discrimination against its other inhabitants.

Part Five
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 35

(1) Everyone has the right to a free choice of profession and to training for it, as well as the right to engage in entrepreneurial or other gainful activity.

(2) Conditions and restrictions with regard to the execution of certain professions or activities may be laid down by law.

(3) Citizens have the right to work. The state shall materially and to an appropriate extent provide for citizens who are unable to exercise this right through no fault of their own. The conditions shall be laid down by law.

(4) A different regulation of rights listed under paragraphs 1 to 3 may be laid down by law for foreign nationals.

Article 36

Employees have the right to just and satisfying working conditions. The law guarantees, above all

a) the right to remuneration for work done, sufficient to ensure them a dignified standard of living,

b) protection against arbitrary dismissal and discrimination at the work place,

c) labour safety and the protection of health at work,

d) the longest admissible working time,

e) adequate rest after work,

f) the shortest admissible period of paid leave,

g) the right to collective bargaining.

Article 37

(1) Everyone has the right to freely associate with others in order to protect their economic and social interests.

(2) Trade union organizations are established independently of the state. It is inadmissible to limit the number of trade union organizations, as well as to give some of them a preferential status in an enterprise or a branch of the economy.

(3) The activity of trade union organizations and the founding and operation of other associations protecting economic and social interests can be restricted by law, if such measure is necessary in a democratic society to protect the security of the state, public order, or the rights and freedoms of others.

(4) The right to strike is guaranteed. The conditions shall be laid down by law. Judges, prosecutors, members of the armed forces and armed corps, and members and employees of the fire and rescue brigades do not have this right.

Article 38

(1) Women, minors, and persons with impaired health are entitled to an enhanced protection of their health at work, as well as to special working conditions.

(2) Minors and persons with impaired health are entitled to special protection in labour relations as well as to assistance in professional training.

(3) Details concerning rights listed in paragraphs 1 and 2 shall be laid down by law.

Article 39

(1) Citizens have the right to adequate material provision in old age, in the event

of work disability, as well as after losing their provider.

(2) Everyone who is in material need is entitled to assistance necessary to ensure basic living conditions.

(3) Details concerning rights listed in paragraphs 1 and 2 shall be laid down by law.

Article 40

Everyone has a right to the protection of health. Based on public insurance, citizens have the right to free health care and to medical supplies under conditions which shall be laid down by law.

Article 41

(1) Marriage is a unique union between a man and a woman. The Slovak Republic comprehensively protects and cherishes marriage for its own good. Marriage, parenthood and family are protected by law. Separate protection of children and juveniles is guaranteed.

(2) Special care, protection in labour relations, and adequate working conditions are guaranteed to a woman during the period of pregnancy.

(3) Children born in and out of wedlock enjoy equal rights.

(4) Child care and upbringing are the rights of parents; children have the right to parental care and upbringing. Parents' rights can be restricted and minors can be separated from their parents against their will only by a court ruling on the basis of law.

(5) Parents caring for children are entitled to assistance from the state.

(6) Details concerning rights under paragraphs 1 to 5 shall be laid down by law.

Article 42

(1) Everyone has the right to education. School attendance is compulsory. Its period and age limit shall be laid down by law.

(2) Citizens have the right to free education at primary and secondary schools and, depending on their abilities and society's resources, also at higher educational establishments.

(3) Schools other than state schools may be established, and teaching in them provided, only under conditions laid down by law; education in such schools may be provided for a payment.

(4) A law shall lay down conditions under which citizens are entitled to assistance from the state in their studies.

Article 43

(1) Freedom of scientific research and in art is guaranteed. The rights to the results of creative intellectual activity are protected by law.

(2) The right of access to the cultural heritage is guaranteed under conditions laid down by law.

Part Six
THE RIGHT TO THE PROTECTION OF THE ENVIRONMENT AND THE CULTURAL HERITAGE

Article 44

(1) Everyone has the right to a favourable environment.

(2) Everyone is obliged to protect and enhance the environment and the cultural heritage.

(3) No one may endanger, or damage the environment, natural resources, and the cultural heritage beyond the extent laid down by law.

(4) The state looks after a cautious use of natural resources, protection of agricultural and forest land, ecological balance, and effective environmental care, and provides

for the protection of specified species of wild plants and animals.

(5) Agricultural and forest land are non-renewable natural resources and enjoy special protection by the state and society.

(6) The details of the rights and obligations according to paragraphs 1 to 5 shall be laid down by law.

Article 45

Everyone has the right to timely and complete information about the state of the environment and about the causes and consequences of its condition.

Part Seven
THE RIGHT TO JUDICIAL AND OTHER LEGAL PROTECTION

Article 46

(1) Everyone may claim their right in a manner laid down by law in an independent and impartial court and, in cases laid down by law, at another body of the Slovak Republic.

(2) Anyone who claims to have been deprived of their rights by a decision of a public administration body may turn to the court to have the lawfulness of such decision re-examined, unless laid down otherwise by law. The re-examination of decisions concerning basic rights and freedoms may not, however, be excluded from the court's authority.

(3) Everyone is entitled to compensation for damage incurred as a result of an unlawful decision by a court, or another state or public administration body, or as a result of an incorrect official procedure.

(4) Conditions and details concerning judicial and other legal protection shall be laid down by law.

Article 47

(1) Everyone has the right to refuse to testify if, by doing so, he might bring on the risk of criminal prosecution of himself or a close person.

(2) Everyone has the right to legal assistance in court proceedings, or proceedings before other state or public administration bodies from the start of the proceedings, under conditions laid down by law.

(3) All participants are equal in proceedings according to paragraph 2.

(4) Anyone who declares that he does not have a command of the language in which the proceedings under paragraph 2 are conducted has the right to an interpreter.

Article 48

(1) No one must be removed from their assigned judge. The jurisdiction of the court shall be laid down by law.

(2) Everyone has the right to have their case tried in public, without undue delay, and in their presence and to deliver their opinion on all pieces of evidence. The public can be excluded only in cases laid down by law.

Article 49

Only the law shall lay down which conduct constitutes a criminal act, and what punishment, or other forms of deprivation of rights, or property, may be imposed for its commitment.

Article 50

(1) Only the court decides on guilt and punishment for criminal acts.

(2) Everyone against whom a criminal proceeding is conducted is considered innocent until the court establishes their guilt by a legally valid verdict.

(3) The accused has the right to be granted the time and opportunity to prepare their defence, and to defend himself either alone

or through a defence counsel.
(4) The accused has the right to refuse to testify; this right may not be denied in any way.
(5) No one may be criminally prosecuted for an act for which he has already been sentenced, or of which he has already been acquitted. This principle does not rule out the application of extraordinary remedies in compliance with the law.
(6) Whether any act is criminal is assessed, and punishment is determined, in accordance with the law valid at the time when the act was committed. A more recent law is applied, if it is more favourable for the perpetrator.

Part Eight COMMON PROVISIONS FOR CHAPTERS ONE AND TWO

Article 51
(1) The rights listed under Article 35, Article 36, Article 37, paragraph 4, Articles 38 to 42, and Articles 44 to 46 of this Constitution can be claimed only within the limits of the laws that execute those provisions.
(2) The conditions and scope of limitations of the basic rights and freedoms during war, under the state of war, martial state and state of emergency shall be laid down by the constitutional law.
Article 52
(1) Wherever the term "citizen" is used in Chapters One and Two of this Constitution, this is understood to mean a citizen of the Slovak Republic.
(2) Foreign nationals enjoy in the Slovak Republic basic human rights and freedoms guaranteed by this Constitution, unless these are expressly granted only to citizens.
(3) Wherever the term "citizen" is used in previous legal regulations, this is understood to mean every person, wherever this concerns the rights and freedoms that this Constitution extends regardless of citizenship.
Article 53
The Slovak Republic grants asylum to foreign nationals persecuted for upholding political rights and freedoms. Asylum may be denied to those who acted in violation of basic human rights and freedoms. Details shall be laid down by law.
Article 54
The law may restrict the right of judges and prosecutors to engage in entrepreneurial and other business activity and the right listed under Article 29, paragraph 2; the right of employees of state administration bodies and territorial self-administration bodies in designated functions listed also under Article 37, paragraph 4; and the rights of members of armed forces and armed corps listed also under Articles 27 and 28, if these are related to the execution of their duties. The law may restrict the right to strike for persons in professions that are vital for the protection of life and health.

When you suffer, when you’re down,

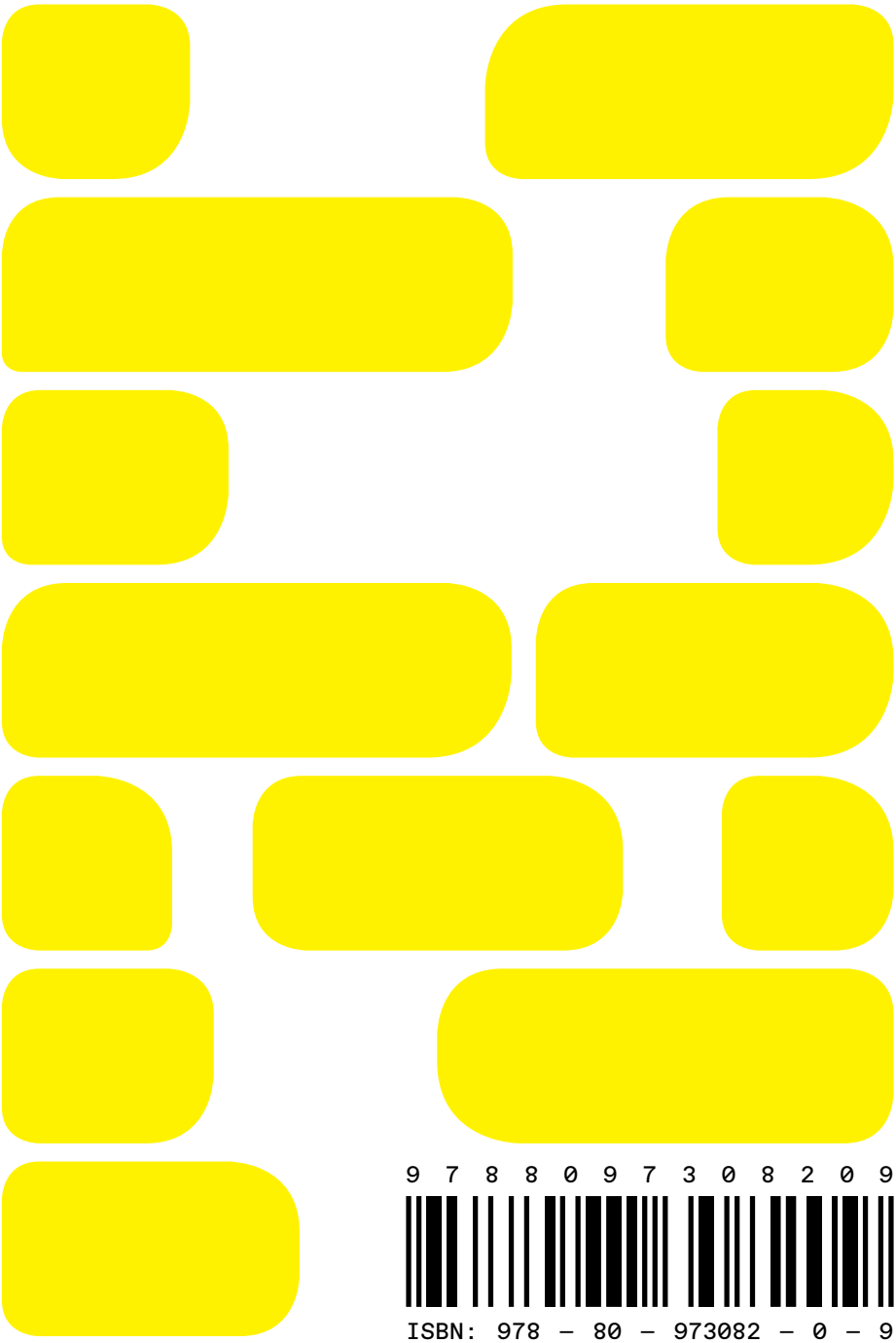
when authorities shackle your rights,

When you think that justice has died in the darkest of the nights,

Listen, dear citizen, to the greatest of the news

The public defender of rights is here to take away your blues.

Ondrej Hoffman



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