Report on the Activities of the Public Defender of Rights of the Slovak Republic for 2018

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Pursuant to §23(1) of Act No. 564/2001 Coll. on the public defender of rights, as amended: "The public defender of rights shall submit in the first quarter of each year to the National Council an **activity report in which he/she presents his/her findings concerning the observance of the fundamental rights and freedoms of natural persons and legal persons by public authorities, and his/her proposals and recommendations to remedy the identified shortcomings**."

Based on the aforementioned statutory provision and in compliance with it, I hereby

submit

in the first quarter of 2019 to the National Council of the Republic the Report on the Activity of the Public Defender of Rights for the calendar year of 2018 in which I present my findings concerning the observance of the fundamental rights and freedoms of natural persons and legal persons by public authorities and my proposals and recommendations to remedy the identified shortcomings.

Mária Patakyová
Public Defender of Rights

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Abbreviations used

Antidiscrimination Act
Act No. 365/2004 Coll. on equal treatment in certain areas and on the protection against discrimination and on amendments to certain other acts (hereinafter the "Antidiscrimination Act") as amended
The Convention
European Convention for the Protection of Human Rights and Fundamental Freedoms
Road traffic inspectorate
a district road traffic inspectorate of the Police Corps District Directorate
TIW
temporary incapacity to work
ECHR
European Court of Human Rights
Land Register Act
Act No. 162/1995 Coll. on the Land Register and on the registration of ownership and other rights to real estate (the Land Register Act) as amended
LGBTI
lesbian, gay, bisexual, transgender and intersex
Finance Ministry
Ministry of Finance of the Slovak Republic
Agriculture Ministry
Ministry of Agriculture and Rural Development of the Slovak Republic
Labour Ministry
Ministry of Labour, Social Affairs and Family of the Slovak Republic
Justice Ministry
Ministry of Justice of the Slovak Republic
Education Ministry
Ministry of Education, Science, Research and Sports of the Slovak Republic
Interior Ministry
Ministry of the Interior of the Slovak Republic
Health Ministry
Ministry of Health of the Slovak Republic
SHPP
small hydro power plants
Supreme Court
Supreme Court of the Slovak Republic
National Council (parliament) - National Council of the Slovak Republic
Civil Code
Act No. 40/1964 Coll. the Civil Code, as amended
OSCE
Organization for Security and Co-operation in Europe
OPCAT
Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UN
United Nations Organization
RRLR
register of renewed land records
Administrative Code
Act No. 71/1967 Coll. on administrative proceedings (the Administrative Code), as amended
Schools Act
Act No. 245/2008 Coll. on training and education (the Schools Act) and on amendments to certain acts, as amended
ÚGKK
Geodesy, Cartography and Cadastre Authority of Slovak Republic
Labour office
labour, social affairs and family office
Constitution
the Constitution of the Slovak Republic
Constitutional Court
Constitutional Court of the Slovak Republic
Central Labour Office
Central Office of Labour, Social Affairs and Family
Imprisoned persons
Persons in remand custody and/or serving custodial sentence
PDR
public defender of rights
OPDR
Office of the Public Defender of Rights
CPT
European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
One-off Financial Benefit Act
Act No. 150/2002 Coll. on the provision of a one-off financial benefit to members of Czechoslovak foreign or allied armies, as well as to domestic resistance members in the years 1939-1945, as amended
Personal Data Protection Act
Act No. 18/2018 Coll. on the protection of personal data and on amendments to certain acts, as amended by Act No. 35/2019 Coll.
Assistance in Material Need Act
Act No. 417/2013 Coll. on the assistance in material need and on amendments to certain acts, as amended
Health Care Act
Act No. 576/2004 Coll. on health care, health care related services and on amendments to certain acts, as amended
Registry Offices Act
Act No. 154/1994 Coll. on registry offices, as amended
Name and Surname Act
Act No. 300/1993 Coll. on the name and surname, as amended
Act on Certain Measures concerning Ownership Arrangements to Lands
Act No. 180/1995 Coll. on certain measures concerning ownership arrangements to lands, as amended
National ID Card Act
Act No. 224/2006 Coll. on national ID cards and on amendments to certain acts, as amended
Municipalities Act
Act No. 369/1990 Coll. on the organisation of municipalities, as amended
Wastes Act
Act No. 79/2015 Coll. on wastes and on amendments to certain acts, as amended
Act on the Organisation of Local State Administration
Act No. 180/2013 Coll. on the organisation of local state administration and on amendments to certain acts, as amended
Act on the Residence of Aliens
Act No. 404/2011 Coll. on the residence of aliens (foreign nationals) and on amendments to certain acts, as amended
Police Corps Act
Act No. 171/1993 Coll. on the Police Corps, as amended
Family Act
Act No. 36/2005 Coll. on the family and on amendments to certain acts, as amended
Freedom of Information Act
Act No. 211/2000 Coll. on the free access to information and on amendments to certain acts (the Freedom of Information Act) as amended
Employment Services Act
Act No. 5/2004 Coll. on the employment services and on amendments to certain acts, as amended
Social Insurance Act

Act No. 461/2003 Coll. on social insurance, as amended

Act on Social Security for Police Officers
Act No. 328/2002 Coll. on social security for police and military officers and on amendments to certain acts, as amended

Act on the Social and Legal Protection of Children
Act No. 305/2005 Coll. on the social and legal protection of children a social guardianship and on amendments to certain acts as amended

Social Services Act
Act No. 448/2008 Coll. on social services and on amendments to Act No. 455/1991 Coll. on licensed trade (the Trades Act) as amended, as amended

Complaints Act
Act No. 9/2010 Coll. on complaints, as amended

Act on State Administration in Education and on School Self-Governing Bodies
Act No. 596/2003 Coll. on state administration in education and on school self-governing bodies and on amendments to certain acts, as amended

Citizenship Act
Act No. 40/1993 Coll. on state citizenship of the Slovak Republic, as amended

State Budget Act
Act No. 333/2017 Coll. on the state budget for 2018

PDR Act
Act No. 564/2001 Coll. on the public defender of rights, as amended

Remand Custody Act
Act No. 221/2006 Coll. on remand custody, as amended

PCGC Act
Act No. 4/2001 Coll. on the Prison and Court Guard Corps, as amended

Labour Code
Act No. 311/2001 Coll., the Labour Code, as amended

Local Taxes Act
Act No. 582/2004 Coll. on local taxes and local charge for municipal wastes and minor construction wastes, as amended

PCGC
Prison and Court Guard Corps

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

Introduction

It is an obligation of the PDR to submit to the National Council an activity report for the previous calendar year before 31. march of the current calendar year. This obligation embodies the links within the normative construction of the constitutional as well as legislative definition of the PDR's position, due to which we may characterise the PDR as a parliamentary control body sui generis.

The activities performed in the framework of such separate controlling mechanism directly depend on how the condition and requirement of the autonomy in the discharge of the function is respected, as it is vital for the existence of this constitutional institution. I believe that the autonomy can primarily be described as such a state of affairs when public authorities do not take actions through which they would give orders or bans in relation to the formulation of a decision to apply or not to apply the authority, or on the manner of exercising the power, of the PDR. The effectiveness of this constitutional institution is subsequently, and again within the framework of the valid normative construction, intertwined with the functionality and effectiveness of controlling mechanisms. "Individual means of control set by law will become dysfunctional, similarly as in the Weimar Republic, if the society is not ruled by the atmosphere of democracy, spirit of cooperation, discussion (dialoguel, tolerance, decency, justice, and solidarity."[1]

I took an oath as the public defender of rights on 29 March 2017, however, even in 2018 the OPDR still monitored and assessed the complaints and initiatives related to the period when the position of the PDR had been held by JUDr. Jana Dubovcová.[2]

For the sake of convenience and better readability, 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 right, 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 law-making recommendations which have resulted from the work of the PDR and from the work of the ODPR conducted in 2018.

My work as the PDR in 2018 was driven by my effort to discharge my function independently, impartially, apolitically and professionally. My ambition was to amplify the voice of natural persons and legal persons whose complaints fall within my competence so that it resonates in the work of public authorities. I was led by the principle that the public powers must be exercised in good faith, fairly, wisely and in line with their true purpose.

1 PRUSÁK, J. Teória práva. (Theory of Law.) Bratislava : VO Praf UK, 1995, pg. 153.

2 Where the text refers to the former public defender of rights, the reference is made to JUDr. Jana Dubovcová.

I

Right to life, personal freedom and human dignity

Introduction

This part of the report discusses the observance of the fundamental rights and freedoms in those cases when citizens are confronted with the coercive power of the state. They particularly include 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, as well as placement in psychiatric institutions.

Examples from complaints

Placement in a psychiatric institution

Based on a complaint received in 2018, I focused on the investigation of the observance of procedural guarantees of a patient placed in a mental health care facility. In order to examine the complaint, the OPDR lawyers visited the psychiatric department of the Bratislava University Hospital - Ružinov Hospital and the Philippe Pinel's Mental Hospital in Pezinok. They examined the meeting of the statutory conditions of the patient's hospitalisation in both facilities. These also include the consent of a competent court to the hospitalisation in case when a patient has not signed informed consent (so-called involuntary hospitalisation) or when a patient has signed the consent but his/her freedom of movement or contacts with the outside world are later restricted.

The patient whom the complaint concerned had been hospitalised based on his informed consent but his contacts with the outside world had been restricted based on an oral agreement between the hospitals and the law enforcement authorities without any of the health care facilities having notified a court about the admission of the patient. Since such an agreement cannot substitute a judicial decision, such conduct constitutes a violation of the patient's fundamental right to personal freedom as guaranteed by Article 17(1) of the Constitution, as well as by Article 5(4) of the Convention.

Disproportionate use of coercive means by PCGC officers

A PCGC officer used disproportionate coercive means against an individual serving a prison sentence when escorting him for an outdoor walk. The convict did not respect the command of the PCGC officer to move to a prison yard; instead, he remained standing in his place with his hands crossed in front of him. In response to his behaviour, the PCGC officer pushed him into a room that was not monitored by a camera surveillance system and used a coercive means against him - a self-defence punch - causing several wounds to the convict. A medical examination performed on the convict and a subsequent expert opinion proved, however, that the convict had received not only a single self-defence punch, as recorded in an official report on the use of coercive means by the PCGC officer, but at least two such blows that had caused flesh wounds on the convict´s head. Hence, the PCGC officer used coercive means against the passively resisting convict, i.e., he used them against an individual who did not attack him, nor was he threatening to attack. A PCGC officer on duty is entitled to use coercive means against a convict who is marring the purpose of the custodial sentence or disturbing activities and the order in PCGC facilities. It means that the use of coercive means by the PCGC officers against a convict is legitimate, but the coercive means must only be used insofar as necessary and proportionate. In the case at hand, the PCGC officer did not only use the coercive means disproportionately but also unlawfully, given the nature and dangerousness of an "imminent" attack against the PCGC by the convict, which resulted in inhuman and degrading treatment of the convict, hence, in the violation of his rights under Article 16(2) and Article 19(1) of the Constitution and Article 3 of the Convention.

After the incident, the convict was disciplinary punished to spend 10 days in an confined section of the correctional facility; the convict was exempted from the punishment following the investigation of the incident which had resulted in a bodily injury inflicted upon him by the PCGC officer. I made five recommendations to the correctional facility which were accepted in full and the PCGC officer was disciplinary sanctioned.

Provision of health care in prisons

The public defender of rights is also contacted by the imprisoned individuals in order to look into the provision of health care services in prison facilities. Such complaints include, for example, problems with their access to health care services, the scope of health care, and payments for health care expenditures, as well as complaints concerning the provision of health care.

The remand custody, being a custodial criminal and procedural institute, represents quite an intensive interference with the exercise and possibilities to apply the fundamental human rights of the accused

persons. Accordingly, the prison sentence, its conditions and rules applied thereunder naturally affect the fundamental human rights and freedoms of the convicts. Therefore, the content and nature of some of the fundamental human rights are, naturally, incompatible with both the remand custody and the prison sentence. The group of rights which the imprisoned persons cannot exercise at all and have to suffer the restriction of some fundamental rights and freedoms also includes a right to choose a physician and a health care facility.

It is the state that has assumed the obligation to ensure health care for the persons kept in custody.

As far as the history of addressing this issue by the public defender of rights is concerned, a 2013 inquiry needs be mentioned. The inquiry focused on the access of imprisoned persons to health care. The inquiry discovered a number of areas in the provision of health care which are "rather lame".

I closely cooperated with health care providers when handling the complaints submitted by the imprisoned individuals concerning the provision of health care services. Before decision No. So3782-2017-OP of the Health Ministry was adopted, such providers had been the individual detention and correctional facilities. Pursuant to said decision, Nemocnica pre obvinených a odsúdených (Hospital for the Accused and Convicts) and Ústav na výkon trestu odňatia slobody (Correctional Facility) Trenčín has become the sole health care provider for all health care centres in PCGC facilities as of 3 January 2018. Subsequently, in February 2018, a MEMORANDUM of cooperation in ensuring health care services was signed between the Health Ministry and the Justice Ministry. The memorandum reflects the needs to ensure health care for the persons held in custody in order to provide them with specialised outpatient care. In order to seek and find solutions in this area and to effectively exercise the fundamental right to the protection of health of the prison inmates, I have initiated several working meetings with the PCGC General Directorate.

As one of the examples of the violation of the fundamental right to health care I present a complaint by a convict who asked me for assistance with respect to protective drug addiction treatment. This was not the first complaint addressed by the claimant to the public defender of rights from the prison. However, I was first contacted by him in connection with the assistance concerning the protective drug addiction treatment only in April 2018. Several personal meetings were held with the claimant, communication was exchanged with the relevant facilities and it was found that the protective inpatient drug addiction treatment was ordered by a decision of the Košice I District Court in 2014, as well as by a decision of the Košice II District Court in 2013. In the proceedings held before the Košice I District Court, the court, however, adopted a decision to waive the ordered protective inpatient drug addiction treatment; nevertheless, the decision of the Košice II District Court still remained in effect as the underlying basis for the claimant to undergo the protective drug addiction treatment. The court send a notification to the Detention and Correctional Facility in Košice, where the claimant was held in custody at that time, informing it about the treatment ordered to be performed in the Hospital for the Accused and Convicts and the Correctional Facility in Trenčín in September 2014. The Košice facility acted based on an order of the PCGC Director General, establishing the place of performance of protective treatments in correctional facilities, correctional facilities for juveniles, and hospital for the accused and convicts.

While the claimant was serving his prison sentence in a minimum security prison, the court reclassified his sentence. Under a Košice I District Court decision in conjunction with a resolution of the Košice Regional Court, the claimant was reassigned for a maximum security imprisonment in 2017, and transferred to the Detention and Correctional Facility in Leopoldov. The claimant was held in custody in the Leopoldov facility from October 2017, when the facility also registered him for the protective treatment. During the claimant's stay in the Leopoldov facility, two dates were set for him to start the protective drug addiction treatment. The claimant could not be admitted for the treatment on the first date (31 October 2017) because he had been registered for the treatment as late as 27 October 2017, i.e., there was very little time to take all the necessary actions prior to his enrolment for treatment. At the time of enrolment for treatment on the second date set (6 March 2018), the claimant was hospitalised in the prison hospital in Trenčín. The file kept on the claimant contained, throughout the entire term of his imprisonment, the information that he had been registered for protective treatment, but the treatment could not be provided due to the obstructions on his part, as well as due to capacity reasons. This resulted in a situation where the claimant was approaching the end of his prison sentence but the treatment had yet not been provided. According to applicable legislation, the protective drug addiction treatment should be provided to the convict if imposed along with the prison sentence and if there are at least five months to go before his sentence ends. At the same time, if the convict's health so permits, the protective treatment should start as soon as possible after the convict has started his prison sentence, taking into account the available capacities of the psychiatric ward.

The protective treatment could have been provided to the claimant at any time during the five years of his prison sentence. The failure to provide the treatment over such a long period of time cannot reasonably be explained by the obstructions on the part of the convict. The purpose of the drug addiction treatment is to assist the convict in dealing with his addiction on narcotics and psychotropic substances. If provided as soon as possible after the start of the prison sentence, it may have a significant impact on the objective possibilities of social rehabilitation of the convict. While looking into other complaints, the OPDR lawyers learned during the visits in person that the claimant's addiction and attempts at using illicit substances continued even in the prison.

According to the Health Care Act, health care is a set of work activities performed by health professionals, including the administration of medical products, medical devices and dietetic foods in order to extend the life of a natural person, improve the quality of their life and healthy development of future generations. Health care includes prevention, dispensary services, diagnosis, therapy, biomedical research, nursing care, and midwifery. It follows from the above list that the protective drug ad-

diction treatment is a form of providing the health care services. A failure to provide health care as and when necessary constitutes an interference with the fundamental right protected by the provision of Article 40 of the Constitution.

I have reported the outcome of the complaint investigation, along with a proposal for recommendations, to the PCGC Director General with whom I continue discussing the solutions to problems in this field.

Insufficient protection of health of a female convict in connection with a failure to provide recommended diet

The convict was repeatedly diagnosed with histamine intolerance, both by physicians outside the correctional facility and by in-house doctors, and was recommended to go on a special diet. She had not been provided the recommended diet for some four to five months in two correctional facilities in which she was serving her sentence. The facilities argued that the histamine intolerance diet did not exist under the applicable internal prison food regulations, and the convict had to buy food in a prison cafeteria with her own money. During that period, the convict was transferred to a third correctional facility for two weeks, whose personnel worked out a special menu for her in line with the medically recommended diet even though such diet is not covered by the internal prison food regulations. According to the ECHR case-law, it is the national authorities that are responsible for the provision, preparation and specification of a special menu for the prisoners with special dietary requirements and a failure to provide the necessary diet as prescribed by a doctor to the prisoners cannot merely be excused on the grounds that the correctional facility lacks financial resources but, in addition, it constitutes an interference with the fundamental rights and freedoms of inmates. The ECHR has also held that the prisoners' bad health cannot impose a heavier economic burden on them due to the correctional facility being unable to provide the necessary diet compared to that borne by prisoners without health problems. In other words, a prison facility cannot leave the prisoners with specific dietary requirements to rely on procuring the meals from the prison cafeteria or from an outside supplier. Due to the failure of the two correctional facilities to provide the convict with the histamine diet recommended by doctors, the convict was exposed to mental and physical conditions exceeding the level of restriction of fundamental rights and freedoms that is necessary to achieve the purpose of the prison sentence and, at the same time, her right to respect for human dignity and her right to the protection of health were violated.

All measures that I had recommended to the PCGC General Directorate were accepted and, based on this case, the PCGC issued a special guideline on how to treat persons who have been prescribed a low histamine diet.

Undignified material conditions in detention and correctional facilities

In 2018, I drew attention to undignified material conditions in detention and correctional facilities in Žilina, Želiezovce, and Košice-Šaca. A number of different aspects resulting in a violation of the right to human dignity and the right to privacy of the inmates accumulated in the Žilina prison – namely the size of the (criticised) prison cell that did not provide enough room for three inmates to move freely; windows that did not let in enough daylight and did not allow effective circulation of fresh air; the toilet placed inside the cell that was insufficiently separated from the remaining area of the cell, hence, the inmates did not have at least the minimum level of privacy, and was located near the table used by the inmates to eat their meals. I also observed cases of the violation of the convicts' right to human dignity and right to privacy in the case of prison cells designed for disciplinary punishments and prison cells in the special treatment block in the Košice-Šaca prison. I requested the PCGC General Directorate to ensure the reconstruction of the premises in question in line with the requirement to respect the right to human dignity and the right to privacy of the prisoners. The proposed measures were accepted in all cases and the correctional facilities have already commenced reconstruction works in those premises.

Conflict between the right to religious freedom and the conduct of security searches

The claimant, a Muslim serving his prison sentence in Slovakia, complained against strip searches carried out by PCGC officers. Specifically, he complained that, from the point of view of his religion, by being forced to get completely naked before a same-sex individual he is subject to degrading treatment. He argued that his religion prohibits him to undress before the persons of the same sex but, if the search was carried out by a female or a doctor, it would not be in conflict with his religion. The strip search as such is not in conflict with the right to inviolability of the person and his/her privacy, with the prohibition of cruel, inhuman or degrading treatment or with the right to the preservation of human dignity provided that the strip search is carried out if and as required by law (the Remand Custody Act, the PCGC Act), pursues a legitimate objective (protection of the safety and health of persons and property), is not carried out on any other grounds, is carried out proportionately, and the searched inmate is not subject to cruel, inhuman or degrading treatment and, at the same time, the search is carried out in a manner that respects the human dignity of the convict. In this case it can be observed that the restriction of said fundamental rights is in compliance with the proportionality requirement pursuant to Article 13(4) of the Constitution.

The freedom of religion and belief contains two fundamental elements. The first one is the so-called forum internum, that is, an individual's inner realm of thoughts and beliefs, and absolutely no interference with this right is permitted in a democratic state governed by the rule of law because it is an absolute and unrestricted right of every individual. The second element is the so-called forum externum, i.e., a right to freely manifest one's religion or faith, alone or together with other persons, in private or in public. This right, however, is a relative right and can legitimately be restricted in certain cases. But such restrictions must be prescribed by law if a measure is necessary in a democratic society to protect public order, health, morals, or the rights and freedoms of others. A detailed body search, or a strip search, however, meets, even in connection with the right to the freedom of religion, the legitimacy requirement because it is prescribed by law, or, by law, pursues a legitimate objective, namely the protection of public order (preventing the manufacture and possession of articles that

can be used to disrupt the prison 'house rules' or which could help the inmates escape from a prison), the protection of the rights and freedoms of others (preventing the manufacture or possession of articles that may pose a risk to the safety of persons or property), and the protection of health (searching for the signs of physical violence on the convict's body). It meets the requirement of proportionality, the principle of equality and the prohibition of discrimination because all convicts must submit to a strip search. Considering the above grounds, the correctional facility did not violate the claimant's fundamental rights and freedoms.

Detention in a reserved area at a police station

I was approached by a claimant who felt physically threatened by her parents after she had had an argument with them, therefore, she had called 158 and asked the police for help. In response to her phone call, a police precinct sent a police patrol to the scene of incident. The patrol arrived along with a medical ambulance and contacted the claimant. She seemed agitated and was screaming. The claimant's parents informed the police patrol about the bad state of mind of their daughter – the claimant.

After the police had checked the situation, they advised the claimant that she had committed an offence against public order. The patrol asked her to report to the police precinct to provide an explanation. Since the claimant refused to cooperate and report to the police station, she was arrested at 8.40 pm with the use of coercive means. After she had been transported from the scene of incident to the police station, she was put in a room marked "waiting room" and the procedural actions were not taken immediately. The so-called "waiting room" where the claimant was put is an area that is not a holding cell, is not properly equipped for that purpose and does not meet the prescribed criteria. The claimant was not questioned immediately after her detainment; the questioning was done at 0.30am, that is, nearly four hours had lapsed since her detainment.

The police precinct in question does not have a holding cell in which the claimant should have been placed as required under the Police Corps Act; therefore, they could not have carried out actions related to the placement of a person in the holding cell. Having been confined by the police officers in a room other than the holding cell, the claimant's fundamental rights had been violated.

The ECHR has held in this respect that measures depriving an individual of his/her liberty may often result in a certain inevitable element of suffering or humiliation. The state, however, has an obligation to ensure that a person is detained under the conditions that respect human dignity so that the manner and practice applied in conducting these measures do not subject that person to anxiety or suffering of such an intensity that would go beyond the inevitable level of suffering inherently associated with the detainment and so that the person's health and well-being are ensured in a manner appropriate to the practical requirements for the restriction of that person's liberty.

Holding the persons in a confined area inside a police building other than a police holding cell may, at the same time, be considered a violation of Article 3 of the Convention, as well as of Article 16(2) of the Constitution which prohibit torture, cruel, inhuman and/or degrading treatment or punishment. According to the ECHR case-law, the principal purpose of Article 3 of the Convention is respect for human dignity.

It then logically follows that the prohibition of degrading treatment and the respect for human dignity are so closely intertwined that even if the individual in question has not suffered any long-term consequences resulting from degrading treatment, one may observe a violation of Article 3 of the Convention if the state authorities has treated the person in question not as a subject but rather as an object of law.

It is my opinion that placing the individuals whose personal liberty has been restricted in illegal premises constitutes exactly this kind of degrading treatment, i.e., they are treated not as subjects, but rather as objects of law.

Based on the facts established during the investigation of the complaint I concluded that the actions taken by the police precinct in conflict with the applicable legislation had violated the claimant's right to personal liberty protected under Article 17 of the Constitution, her fundamental right not to be subject to cruel or degrading treatment or punishment protected under Article 16 of the Constitution and Article 3 of the Convention, and her fundamental right to the preservation of human dignity under Article 19(1) of the Constitution.

The notion of human dignity associated with the case at hand must be construed as an expression of our conception of the value of a human being. The questions of human dignity or respectful treatment of a human being are associated with the problems in the attitude of society and an overall social, economic and societal structure, which is eventually reflected in the quality of an individual's life. Therefore, the respect for human dignity must be observed in every area.[3]

Unlawful arrest

Police officers have a right to request an explanation and to summon an individual to a police station. If the individual does not report voluntarily, they may arrest them. In the examined case, the police officers summoned the claimant to provide an explanation on a specific date. Even before the scheduled time of interrogation, the police took the claimant in, arguing he had not accepted the summons right on the first day of its deposition at a post office. Given that there were no serious grounds for the arrest in this case and the claimant did not even have a chance to voluntarily come to the police station to provide the explanation, I concluded that his personal liberty had been violated. In response to our findings, the head of the respective police department stated that the officers had already been retrained on this matter.

Systematic use of handcuffs in correctional facilities

3 This issue is discussed in detail in a 2015 report entitled Report on the results of the survey into protection and compliance with the fundamental rights and freedoms of persons placed in police holding cells. It is also discussed 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 (**http://www.vop.gov.sk/files/Mimoriadna%20spr%C3%A1va%20VOP%202016.pdf**).

The PCGC officers may only restrict the exercise of such rights by the accused or convicted persons that could impair the purpose of custody/sentence, or pose a risk to the safety of other persons or property. However, the presence of an officer during a confession or a meeting with a psychologist can certainly not be considered such a permitted restriction. Accordingly, I considered it inadmissible to systematically handcuff inmates taking out the rubbish because every single use of coercive means must be sufficiently justified and decided on a case-by-case basis. The prison management accepted my proposals and this unauthorised practice is no longer applied by the PCGC officers.

Minimum personal space in prison cells

According to international standards, the minimum required living space per person held in a shared prison cell is 4 m². Therefore, the situation when an individual has less than 3 m² of living space available is clearly in conflict with the standards. The Justice Ministry is aware of this situation and, according to its response, the conditions are improving through reconstruction and increasing the capacities in prisons in Bratislava and Dubnica nad Váhom, as well as through the use of wristband trackers for inmates.

Problematic cooperation with the police inspection

The communication between the OPDR and individual police authorities is extremely troublesome in some cases. For over a half-year we had been seeking access to a file from the "police inspection", i.e., from the Control and Inspection Service Section of the Interior Ministry, an autonomous Interior Ministry department responsible for discovering and investigating crimes committed by police officers; to borrow photocopies of the files that we need in order to examine complaints is equally lengthy.

Undignified treatment of patients undergoing electroconvulsive therapy

In cooperation with an independent expert in psychiatry, we examined the provision of electroconvulsive therapy in a mental hospital in Veľké Zálužie in 2018. An on-site probe by authorised OPDR employees concluded that the treatment was provided to patients by the hospital personnel in a professional manner and in compliance with the requirement to respect their right to human dignity. In particular, it means that the electroconvulsive therapy is administered to patients under general anaesthesia with the use of a muscle relaxant and state-of-the-art devices that enable precision dosing based on a patient's individual response to treatment. Some shortcomings on the part of the hospital were identified during the on-site probe, which as yet do not constitute, or have not reached the intensity to be classified as, a violation of the patients' fundamental human rights and freedoms, but if piled up, they could result in a violation of the fundamental rights and freedoms in future. Therefore, in order to avoid a possible violation of the fundamental rights and freedoms of the patients in future, I proposed a number of measures to be taken by the hospital. The hospital agreed with the outcomes of the probe into the complaint and accepted the measures I had proposed to adopt in order to avoid a possible violation of the patients' fundamental rights and freedoms and has already implemented them.

However, the major finding concerning the use of electroconvulsive therapy was the fact that the Slovak Republic had no uniform methodological guideline issued by the Health Ministry in place to lay down the standards for the delivery of the electroconvulsive therapy which would equally apply across all hospitals. Individual mental hospitals are currently free to develop their own electroconvulsive therapy standards. Even though the electroconvulsive therapy is to date considered the most efficacious method of depression treatment whose efficacy exceeds that of the pharmacology treatment, it still remains one of the medical interventions which, from the human rights perspective, significantly affect the integrity of an individual, due to which it is deemed essential that its use should be governed by individual standards that guarantee the respect for the fundamental rights and freedoms of the persons receiving this type of treatment. I am of the opinion that the development of therapeutical standards for the provision of electroconvulsive therapy would not only enhance the protection of fundamental human rights and freedoms of patients who receive electroconvulsive therapy, but would also remove the myths and fears surrounding the use of this method. Therefore, I approached the Health Ministry to ask them to consider developing binding and uniform therapeutical guidelines to govern the use of electroconvulsive therapy. The Health Ministry promptly responded to my letter concerning the absence of a uniform methodology guideline laying down the uniform standards for the provision of electroconvulsive therapy in health care facilities. As a result, an expert working group for "Psychiatry", operating under the Health Ministry's standard preventive diagnostic and therapeutic guideline department, has decided to address this issue beyond its tasks for 2019 and to prepare a standard electroconvulsive therapy guideline based on the most recent medical evidence and recommendations.

Police intervention in Moldava nad Bodvou (2013)

I have also continued to closely follow the developments in the case of a police raid in Moldava nad Bodvou which was carried out more than five years ago. Some of its victims turned to the ECHR in Strasbourg which has commenced proceedings against the Slovak Republic in this matter. In order to assist the ECHR in delivering a just and fair decision based on the largest possible volume of information, I requested to be permitted to join the proceedings as a third party (amicus curiae). The ECHR granted my request and I sent it my findings from the investigation carried out by the OPDR lawyers in January 2019.

In addition to my involvement in the judicial proceedings before the Strasbourg court, I have also been monitoring related judicial proceedings held in Slovakia against the persons accused of giving a false testimony and/or false accusations against the police officers who participated in the raid. I attend these proceedings in person, or through OPDR representatives acting on my behalf.

II

Private and family life, rights of children and parents

Introduction

The needs of the children deserve to be given a priority attention. The state has recognised this necessity by, inter alia, accepting the obligations under the Convention on the Rights of the Child and committing its authorities to take into account the best interests of the child in all areas of life and to take the necessary steps towards meeting all rights of the child.

One of the key roles performed by the state with respect to the children is providing protection in cases where, for various reasons, they cannot be protected by parents/family or where such protection fails. A child cannot function without a well-functioning family and the state is obliged to implement all the necessary steps to avert such situations, to prevent them in good time and to minimise the negative impacts on the child that occur when the family fails.

Realising the importance of the system of social and legal protection of the child as an essential task performed by the state with respect to the children, I continuously pay attention not only to individual cases that require that actions be taken in order to protect the child, but also to the general functioning of the system across its individual components (prevention and work with the families, measures for the social and legal protection of the child, guardianship ad litem, provision of substitute care, care provided to children in children's homes and specialised institutions such as social rehabilitation centres, re-education centres, diagnostic centres and hospitals).

As early as 2012 and 2013, my predecessor in the office found, based on a systematic investigation carried out at labour offices, substantial flaws in the system of the social and legal protection of children and defined numerous measures needed to make the system function and be able to protect the children, especially in the most severe cases.

(http://www.vop.gov.sk/files/Sprava_SPOD.pdf;http://www.vop.gov.sk/files/Spr%C3%A1va%20VOP-KO.pdf). Visible changes have since been introduced in the system, with the Labour Ministry, in co-operation with the Central Labour Office, having implemented several good measures, including the adoption of a major amendment to the Act on the Social and Legal Protection of Children. Nevertheless, the OPDR still encounters cases where the social and legal protection of children is failing in the long run.

Due to recurring complaints, the OPDR employees had to more closely focus their attention on the functioning of a Bratislava labour office and its ability to address, in particular complex and long-lasting, disputes between parents that have especially negative impacts on the basic needs, as well as the rights of the child. We found that there had been a considerably high turnover of employees within its department for the social and legal protection of children and a continuous lack of new employees; in other words, the replacement of experienced employees by the new, untrained ones had translated into the labour office underperforming in individual cases under review.

Once again, it was confirmed that in order for the system of the social and legal protection of children to be actually functional and capable of improving the situation of the children who need it, the labour offices must carry out their tasks proactively and of their own initiative, for which they need well trained and skilled employees working in good working conditions. Otherwise the work of the labour officers is limited to the inevitable tasks they are required to perform by law and instead of actively assisting the child, they become mere long-term passive observers, bystanders and archivists of parental errors and failures.

The inability of the system for the social and legal protection of children to help out a child in truly complicated cases was encountered by the OPRD employees outside the Bratislava district, too; the cases mainly involve maintaining the contacts between the child and parents after divorce and/or after the parents' break-up. It is sad to see a child losing one of its parents owing to a parental conflict. In a worse-case scenario, the child will develop an aversion to that parent and I find it alarming that even though such cases are, essentially from the outset, in the hands of labour offices, courts and other institutions that are supposed to provide protection to the child, they often end up with a conclusion that the relations within the family (between parents, and between the child and the parent) are so deeply eroded that they seem unlikely to recover.

Much hope is now pinned on the operation of new Children and Family Centres that should perform and deliver a wide range of measures for the social and legal protection of children. I will closely watch their implementation in practice and their effects on the protection of the rights of children.

Examples from complaints

Underperformance by labour office

I was approached by a mother of three minor children who described her difficult life situation to me (especially disputes with her ex-partner). She said she had sought help from a competent labour office, but to no avail.

The examination of the case revealed that the situation in the claimant's family had long been monitored by an authority for the social and legal protection of children for a number of problems. The claimant's care of her children was affected by her mental problems, instability, impaired intellectual capacity, and poor social habits. The mother was able look after her children, but only when assisted and supervised. The mother's mental condition and, subsequently, her care of the children deteriorated as a result of her living with a partner who consumed large amounts of alcoholic beverages and was unable to look after her and the children. The partners frequently got into fights to which police patrols were often called. The situation in their household was deteriorating. The authority for the social and legal protection of children had a social plan of work with the family prepared and its employees visited the mother's household at regular intervals. During these visits, they advised the mother on the things she should improve (especially the cleanness and order at home). Having learned that the mother often stays away from home for the better part of the day, leaving the very young children in the care of her partner incapable of looking after them, the mayor of the municipality in which they live also started bringing attention to the parents' incapability to look after the children properly. She repeatedly sent notifications to the labour office, but the office carried on with the same measures for the social and legal protection which were already clearly insufficient at that time.

In many respects, it was as if the mayor had taken over the tasks of the authority for the social and legal protection, since she responded to the situation in the family more adequately (she submitted a proposal to a court to assess the mother's legal capacity) and more actively (she organised supporting activities for the family, handled the necessary official formalities, monitored the situation in the family). I found that the labour office performed some measures for the social and legal protection and social guardianship. However, such measures need be targeted so that the intervention is delivered adequately, timely, and effectively and takes into consideration specific circumstances of a particular case. This was not the case. Even though the labour officer sought to preferentially address the mother's situation so that she could continue looking after her children, it failed to realise that its measures had not helped and that it was necessary to take actions which would be in the best interests of the children, not the mother.

By transferring the responsibility of the labour office on the mayor, by failing to respond to the deteriorating situation in the family and by the insufficient and/or late intervention, the fundamental rights of the children under Article 41(1) of the Constitution (the special protection to children and juveniles shall be guaranteed), as well as under Article 3(1) of the Convention (the best interests of the child must be a primary consideration) had been violated. The labour office only arranged for the mother and her children to be accommodated in a specialised housing facility after it found that the situation in the family had for at least two years – according to the labour office's records – been considerably bad for the children. This step helped stabilise the situation. I requested the labour office to implement appropriate measures to ensure that it would not repeat similar mistakes when discharging the powers entrusted to it. The labour office does not agree that it has violated the rights of the children. I am considering how to further proceed with this case.

Placing a child with serious behavioural disorders to institutional care

In addition to one of the key tasks to be performed by the labour offices, that is facilitating resolution of ongoing disputes between parents, thus seeking to preserve the family as the basic building block of our society, it is equally important that the labour offices also provide help and assistance in those cases when children have, unfortunately, been separated from their parents and placed in institutional care facilities.

One of the cases the OPDR helped to resolve concerned a transfer of a boy with an organic moderate mental retardation and a severe behavioural disorder from a children's home to an re-educational centre. The boy's parents had long been unable to look after their child due to his severe disability. Therefore, the boy was ordered to be placed in an institutional care. Over five years, the boy went through several institutions of different type which were unable to provide him the adequate help and support under the existing system for the social and legal protection of children. Eventually, the boy was placed in a re-educational centre which the children's home in which he was staying and the labour office saw as the best way to ensure an adequate care for him. It turned out after his relocation, however, that the re-education was not meeting its purpose, given the boy's health conditions. It was evident that his behavioural issues were the result of his severe mental retardation and not of his lack of

social adaptive skills, personal qualities or development of personality traits.

Reference should here be made to Article 7(2) of the Convention on the Rights of Persons with Disabilities which states that in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. A proposal submitted to a court regarding an institution in which a child with disabilities is to be placed must also consider, among other things, the institution's capabilities of providing the adequate health care (corresponding to the child's health conditions/disabilities), its previous experience and the profile/specialisation of the institution's team of experts so that the needs of the children with disabilities are taken into account. This case can be seen, in its entire context, as institutionalised torture of the child, lacking any reflection on the need for safety and security as a primary consideration in the case of a child with this type of anamnesis. The competent labour office, as well as the Central Labour Office, eventually arrived at the conclusion that the boy's placement in the re-educational centre is not in his best interest because it is unable to provide him with the adequate level of health care. The boy was, therefore, transferred to a children's home in which a separate specialised group for children with mental disorders has recently been set up, where the boy will receive the adequate care. However, this is not a rare case, and the number of children with severe mental disorders is constantly increasing. Under the existing system for the social and legal protection of children and social guardianship, there is no specialised institution for children with severe mental diagnoses combined with severer behavioural disorders who require maximally individualised, professional and special care.

Freedom of movement and change of name

There are many situations in everyday private and public life that require that a person prove his/her identity, for example, by presenting a birth certificate, ID card or passport. In the case of Slovak children with a name or surname according to the applicable Slovak legislation who live with their parents abroad and use a different form of name or surname on foreign official documents, proving their identity, especially during international travels, may be quite problematic. This was also the case with a complaint addressed to me by a mother of two minor children. The mother asked the Slovak registry authorities to change the children's surname recorded on their Slovak birth certificates and passports to a form of surname which she had decided to register for them in a country in which they were living with their father.

It should be noted that, according to the Slovak legislation, a change of the surname is always permitted if a Slovak citizen whom the change concerns is also a citizen of another country. The change may particularly be permitted if the name and surname have a pejorative connotation, or where there are reasons deserving special consideration. In the case at hand, the children had the Slovak citizenship only; therefore, the practice usual in dual citizenship cases could not be applied. The competent authorities did neither find other reason deserving special consideration, even though such reason was evident – now: complications during travels and proving their identity before authorities; in future: complications in banks or when taking school exams and proving their education. However, even if the competent registry authorities had recognised the reasons deserving special consideration, changing the surname of the minor children would not have been possible under the applicable Name and Surname Act. By law, such a change is not permitted if it contradicts the rule according to which a child of unmarried parents with different surnames may only have the surname of one of them, as agreed by the parents. In this case, the children used the surname of one of their parents in Slovakia, but used the surnames of both their parents abroad.

That the registry authorities proceeded in compliance with the Name and Surname Act does not necessarily mean that their decisions not to permit the change of the surname of the minor children do not constitute an interference with their fundamental rights and freedoms, namely with the freedom of movement. The case-law of the Court of Justice of the European Union clearly states that the fact that a natural person is forced to have a name in a Member State of which they are a national different to that determined and registered in a Member State of their birth and residence represents an obstruction to the exercise of the right to move and reside freely within the EU Member States as embedded in Article 21 of the Treaty on the Functioning of the European Union.

I criticised the competent registry authorities for having proceeding incorrectly, even unlawfully, when they had only based their decision on the national law - the Name and Surname Act – since they had been obliged to also consider the primary law of the European Union which takes precedence in the event of a conflict with the national law. After the accession of a particular country to the European Union, the lawfulness in administrative proceedings is no longer governed solely by the national laws. In these cases, an account needs be taken of their European dimension. In response to my appeal to the Interior Ministry which has the authority over the registry office and the status agenda, the mother was permitted to again request the change of the surname of the minor children and, if the proof of their habitual residence abroad is presented, their surname will be changed.

Right of the child to be heard in criminal proceedings

Following up on the 2016 survey and the February 2017 report (http://www.vop.gov.sk/files/Sprava-VOP-o-uplatnovan-%20zakladneho-prava-dietata-byt-vypocute.pdf), the OPDR continued dealing with the exercise of the rights of the child in criminal proceedings and the protection of child victims in criminal proceedings in 2018. We monitored to what extent the measures we had proposed had been implemented, and discussed, in cooperation with non-profit civic organisation Náruč - Pomoc deťom v kríze and with the representatives of key ministries and institutions, the pitfalls and possible improvements in the standing of child victims (http://www.vop.gov.sk/detsk-obete-n-silia-mus-me-obzvl-chr-ni).

We found that that the Police Corps Presidium only managed, compared to the original plan, to complete a public tender in 2018 so that the first interrogation rooms should start to be built in 2019 and a methodology guideline should be completed to help the police officers with contacts with children.

Our common discussions again highlighted the persisting lack of expert witnesses in child psychology and child psychiatry, as well as of child psychologists and psychiatrists, which considerably complicates the work with children and/or support to children, especially to child victims of violent crimes.

I still consider the adoption of measures in this area slow and lengthy. I am aware of the persisting lack of active cooperation between the ministries or extending theoretical activities at the cost of the implementation of actual changes in practice.

Provision of adequate housing

In 2018, I continued monitoring the housing situation of the residents of the Bratislavská street in Žilina, in particular in the context of the implementation of the measures proposed to the city authorities under the "Report on the inquiry into the actions taken by the City of Žilina to ensure protection and assistance to families hit by fire" prepared in March 2017.

To that end, I requested the city authorities in June 2018 to provide information about the current situation. The documents submitted by the city authorities indicated that even though the situation of some of the families had indeed improved, quite a large group of people has remained living in unbearable conditions. Hence, it was clear that the measures I had proposed have not yet been adopted.

Moreover, I learnt at the end of October 2018 that another residential house at Bratislavská street 44 had been torn down, thus again reducing the available capacities of municipal rental flats and increasing the number of residents transferred to temporary shelters provided by the city in the form of container houses. The former city management told the media in this respect that they were planning to tear down more residential houses in the future and build a relaxation zone in their place. This approach by the city authorities is unacceptable from my point of view due to being incompatible with the obligations for the protection of fundamental rights and freedoms and, at the same time, implies that they do not take my conclusions and recommendations seriously enough.

Therefore, I will continue dealing with this situation and seek such a solution with the new city management which will bring a permanent solution and ensure adequate housing for all affected residents.

Child as a payer of local municipal waste fee

In response to the inquiry into the actions taken by the City of Žilina with respect to ensuring the right to education and respecting the best interests of the child, carried out of my own initiative, as well as on the basis of two individual complaints, I arrived at the conclusion in 2017 that the wording of §77(2)(a) of the Local Taxes Act violates the fundamental rights. Under said provision, each natural person, including minors, is considered a payer of the local fee for municipal waste and minor construction waste. At the time of inquiry, a total of 347 minors were subject to distraint proceedings in Žilina. The interpretation of the statutory provision according to which distraint proceedings shall be held against a minor as a taxpayer in the case of fee arrears was also upheld by a Finance Ministry opinion.

Therefore, I submitted a proposal in January 2018 to commence proceedings before the Constitutional Court to examine the compliance of the provision in question with the Constitution and international treaties and conventions. Even though the Constitutional Court dismissed the proposal, it upheld my opinion that considering the best interests of the child also requires the protection against a situation when a minor child would bear the sole liability for a debt it cannot objectively repay.

The Constitutional Court arrived at the conclusion that, in the case of the disputed provision, such protection may be ensured through its constitutionally conform interpretation. At the same time, it held that the disputed provision should also be read and interpreted in conjunction with other provisions of said act (especially its §77(7) which effectively "transfers" the obligation to pay fees from the minor taxpayer to his/her legal guardian) and other relevant laws (e.g., the Civil Code and the Family Act). Following up on this interpretation, the Constitutional Court then confirmed that "the obligation to pay the fee for municipal waste and minor construction waste is assumed by the legal guardian under the law, therefore, a rectification of the failure by the legal guardian to meet this obligation cannot subsequently be sought from the minor child in distraint proceedings."

The Constitutional Court also noted in its decision that, in case of doubts, all public authorities have an obligation to interpret the laws so as to favour the realisation of the fundamental rights and freedoms. I will therefore seek to use all my powers to ensure that the aforementioned rule is thoroughly applied in practice and that the special protection of children and juveniles with respect to local fee payments is guaranteed not only de jure, but also de facto. I am planning to address the finance minister in this respect and recommend the adoption of a methodology guideline which would reflect the finding of the Constitutional Court.

Ensuring the accessibility of school

In connection with the monitoring of the situation at Bratislavská street in Žilina, I have since 2017 observed the actions taken by the municipal authorities with respect to ensuring the right to education and respecting the rights of the child, especially in response to an Education Ministry decision to exclude the detached facility (in Slovak: elokované pracovisko, i.e., a school facility located away from the main school buildings) of the primary school with kindergarten at Do Stošky 8 street in Žilina from the official network of schools and school facilities. This facility was located at Hollého 66 street, i.e., in the immediate proximity of the homes of the children from Bratislavská street.

Given the findings from the survey and on-site inspection performed in May 2018, I evaluate the exclusion of said detached facility and the subsequent actions implemented by the City of Žilina quite positively. I can conclude that the affected children were evenly distributed across nine schools and school facilities administered and operated by the City of Žilina; this has undoubtedly contributed to the elimination of segregation. However, I keep monitoring the existing situation due to my concerns about a possible deterioration in school attendance of the children who now have to commute to more distant schools.

Ban of mobile phones on school premises

A claimant complained against a provision of the school rules adopted by a primary school attended by her children, which bans pupils from taking mobile phones to, and using them on the school premises.

In response to a recurring negative experience with the misuse of mobile phones by pupils in the school, the school's pedagogical board approved an amendment to the school rules which banned all pupils without exception from taking mobile phones into school. The school rules stipulated in this respect that all pupils are "banned from carrying and using mobile phones in full and without exception." The ban applied to the school building and the entire school premises, to the teaching lessons, extracurricular activities offered by the school, and to all events organised by the school.

Having examined the complaint, I arrived at the conclusion that by adopting the provision of the school rules which completely bans all pupils from using mobile phones in the school and from taking them into the school, the primary school in question had disproportionately interfered with the private life of its pupils and that this interference may be in violation of the pupils' right to inviolability of privacy as guaranteed under Article 16(1) of the Constitution, and/or the right of children to protection against unauthorized interference in private and family life pursuant to Article 19(2) of the Constitution.

Said constitutional articles stipulate that everyone has the right to protection against unauthorized interference in private and family life. The inviolability of the person and its privacy is guaranteed. It may be limited only in cases laid down by law. Since the violation of the fundamental rights had been proved in this case, the headmaster was subsequently asked to provide an opinion on the outcomes of the examination of the claimant's complaint and to take measures to redress the situation.

Insufficient investigation into a school accident

Prompted by another complaint, I examined the actions taken by a primary school headmaster in connection with a serious bodily injury suffered by a pupil during a school Olympics event. The complaint was addressed to me by a desperate parent of the injured girl who sought from the headmaster, to no avail, that the whole incident be properly investigated, consequences drawn and appropriate measures taken to remedy and/or avoid similar situations in future. The girl suffered a serious head injury during the incident on a sports field and had to be transported by a helicopter to a specialised health care facility to undergo a surgical operation.

Since the school employees and management had completely failed immediately after the incident, both professionally and personally, by not providing the proper first aid to the girl and failing to inform her legal guardians (the family was informed by her schoolmates), the parents requested the headmaster to investigate the incident, provide explanation and assume responsibility. At the same time, they had recourse to a number of other competent public authorities. Subsequently, information began to show up hinting at serious issues in the practice and procedures applied by the school with respect to ensuring the protection of safety and health of its pupils.

I found that criminal charges had been brought against the headmaster for his conduct before, during and immediately after the incident. Therefore, given the scope of my powers, I could not further investigate this part of the case. However, I concentrated on the headmaster´s actions after the incident – that is, how the incident had been investigated, shortcomings identified and removed, and what measures had been adopted.

Severe shortcomings and errors on the part of the headmaster were discovered in this respect. The school did not follow the relevant laws and methodology guidelines of the Education Ministry for the protection of safety and health of children and pupils. The headmaster did not review the established practice and internal regulations of the school of his own initiative. He did not draw any consequences – neither for the responsible teacher nor for himself. Only after the inspection, and several warnings issued by the school founder and the education department of the competent district office, some progress occurred in the case. It was necessary to redraft the school´s internal regulations and amend its procedures in the area of the protection of safety and health of children and pupils, however, the headmaster failed to take the necessary remedial actions duly and timely. For example, an internal directive which would bring the school´s procedures in the case of school accidents into compliance with the applicable legislation was finally adopted as late as 18 months after the incident in question. The headmaster violated his official duties not only through his passivity, lax approach and qualitative defects in ensuring the protection of pupils' safety and health. In an attempt to cover up his serious errors in connection with the investigation of the incident, the headmaster also tampered with the provisions of the school rules by backdating them and, moreover, he did so without properly discussing them with the school self-governing bodies and with the pedagogical board.

In the present case, I found a violation of the fundamental rights of the child under Article 3(1) (the best interests of the child shall be a primary consideration) and Article 3(3) of the Convention on the Rights of the Child (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). The headmaster's reluctance to examine the case and admit failures was also evident during the investigation of the circumstances of the case and how the incident had actually happened. The headmaster had only interrogated the responsible PE teacher on the matter, but had not invited the legal guardians of the injured girl to the hearing, and had not heard out the girl herself, her schoolmates and other school employees. Such conduct was not only in conflict with an Education Ministry methodology guideline which requires that all circumstances of an accident need be established, including by questioning its witnesses, but also with the fundamental right of the minor child to express his/her own views under Article 12 of the Convention on the Rights of the Child. I brought the identified violation of the child's fundamental rights to the headmaster's attention and requested him to adopt remedial measures. The headmas-

ter positively responded to my letter and adopted the proposed measures.

Indirect discrimination – exclusion from the school district

Access to education is another key area where the state plays an important role and carries positive obligations towards children.

The children have a right to equal access to education and training. Under Article 28(1)(e) of the Convention on the Rights of the Child, the right of the child to education shall be realised on the basis of equal opportunity. The measures or decisions adopted by the state and its authorities in charge of education should, therefore, promote real equality among children. However, as follows from a case I looked into, the actions taken by a municipality in order to resolve a situation that occurred after three Roma pupils had attacked their non-Roma schoolmate do not promote real equality among children. After the incident that occurred in a school founded by the municipality of Demandice, the municipal authorities had decided to exclude Ipeľský Sokolec and Lontov, the municipalities from which the attackers came, from the joint school district.

Due to this decision, the pupils from the two excluded municipalities lost their entitlement to reimbursement of travel expenses. The measure adversely affected other 37 pupils who commuted to the Demandice school from the two municipalities but had not been involved in the incident. Many of them come from socially disadvantaged families. I consider the decision made by the Demandice municipality to resolve the situation an instance of indirect discrimination on grounds of ethnic origin, because the 37 pupils from the marginalised Roma community living in the two excluded municipalities who lost their entitlement to reimbursement of travel expenses are in a considerably worse position compared to the pupils from other municipalities with which the Demandice municipality had concluded agreements on the joint school district. Even though the perpetrators of the physical attack were given a criminal sentence, all other Roma pupils were "sentenced", too. By imputing blame for the actual attack committed by three individuals to the entire group, the Demandice municipality applied the principle of collective guilt en bloc. The joint school district was restored following an intervention by the education department of the Nitra District Office. This decision "from above" indicates a positive shift in the understanding of education without segregation.

Inclusion of a pupil with disabilities

It is the role of the state to fulfil the right of the children to equal access to education and training. The state should ensure that the children, and especially those with disabilities, can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live.[4]

Due to a conflict between Roma minority pupils and a pupil from the majority population in a southern Slovak municipality, school districts were abolished for the municipalities from which the conflict instigators came. As an indirect consequence, one of the two special classes at the school was dissolved. The municipality's mayor, as the founding authority of the primary school in question, in addition to giving the abolishment of the school district as one of the reasons, also justified his disagreement with the functioning of the second special class by the lack of classroom capacities in the school, even though there had been no spatial modifications or changes in the use of individual classroom made prior to the start of a new school year. The last reason he gave was that the school's special pedagogue had handed in his notice. However, he omitted the fact that the special pedagogue had only done so after he had been told that the special class would be dissolved, and said he was willing to return to school if the special class was reopened.

Inclusion of pupils with disabilities in primary schools is a process that depends on all stakeholders involved. Persons with disabilities have no means at their disposal to affect whether they will be included or not. These persons encounter different barriers and problems in their everyday life than the healthy population and simply being conscious of their permanent disability makes them feel insecure about their own position in society.

The society should treat the inclusion of people with disabilities, and especially the inclusion of children with disabilities, with the highest level of attention and effectiveness. The most effective approach in practice is to enable the child to attend a primary school as close to his/her home as possible, in a community where he/she has social attachments. The child is most likely to live in that community also in the future, after completing his/her primary education. It is, therefore, essential for the child to find his/her place in the community to fully realise his/her skills and potential. I asked the mayor to adopt a measure to remedy the existing situation and avoid its possible recurrence in future.

School accessibility – a change in school district

Solving the problems with school districts does not concern only the school attendance of the children from the Roma minority, but also the areas with mixed Slovak and Hungarian populations. I came across a case when a town school district was abolished and the affected municipality agreed with another town on establishing a joint school district but, according to the information obtained so far, the school is not the nearest possible one. In similar cases, it is essential to also take into consideration the accessibility of the school, including in the context of the age of the children and possibilities of their transport, or possibilities of spending time after classes and taking care of them. Parents of Slovak-speaking children living in the south of Slovakia have long been struggling with the lack of schools having the Slovak as the language of instruction, therefore, I appreciate the approval of an amendment to the Act on State Administration in Education and on School Self-Governing Bodies which has directly enacted these requirements (school accessibility, transport possibilities...). However, it is important how they will be applied in practice, which I will further monitor.

Access to education in a kindergarten

In 2018, the OPDR employees happened to find a "classic" example of improper practice in ensuring the right to education in a kindergarten. The state and the school as its representative authority in charge of the

4 Article 24(2)(b) of the Convention on the Rights of Persons with Disabilities.

education sector are obliged to act so as to ensure that all children enjoy equal access to education, i.e., they must not discriminate against any child, for example, due to his/her disabilities. At the same time, they are obliged to create such conditions that all children, including those with disabilities, could receive education in the mainstream educational system, insofar as possible.

In the examined case, however, the kindergarten did not only fail to create any conditions for a child with disabilities but, moreover, it neither considered the child's actual special educational needs, consisting of simply devoting more attention to the child; it "labelled" the child as problematic and risky to all other children and concluded it was in the child's best interests not to attend a mainstream kindergarten in the place of his residence but to travel to a mainstream kindergarten in a neighbouring municipality, which requires to take two different public bus lines to get there. In the declared effort to provide the child with education in his best interests and reflecting his alleged special educational needs, the kindergarten actually considerably hindered the child's access to preschool education, thus violating his rights.

This repeated two years in a row. The kindergarten director argued that the kindergarten was generally not equipped to enrol and serve children with special educational needs and, therefore, in general, it does not enrol such children, and he also referred to an Education Ministry decree. Therefore, I notified the ministry of this situation, too. In its opinion, the ministry upheld my position that the kindergarten director's conduct had been incorrect, and promised to adopt a number of preventive measures for the kindergartens to enrol children for pre-primary education with a full respect and understanding of the content of the right to education and related rights of the child. The Education Ministry promised to consider incorporating this issue into a decree on pre-primary schools and committed to provide guidance to pre-primary schools, and/or their founding authorities, through district offices.

The right of the convicted persons to maintain contacts with minor children placed in children's home

The Charter of Fundamental Rights and Freedoms stipulates that the care of children and their upbringing is a parental right. The children have the right to parental upbringing and care. 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.

Article 9(3) of the Convention on the Rights of the Child recognises the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

I investigated complaints submitted by female claimants serving a prison sentence who complained they had not been allowed to maintain contacts with their minor children.

The children were put to the care of children's homes. The children's homes were reluctant to allowing children to visit their mothers in correctional facilities. They particularly argued that it was not good for children from the psychological point of view and that this environment was stressful for the children. They also argued that the children were placed in the care of foster parents where they encountered significant adaptation issues and problems, also referring to children's health problems, their young age, as well as a long distance between the children's home and the correctional facility. There were also considerable concerns as to how a particular visit of the children to the correctional facility would go on. I have found out that the correctional facilities are prepared for visits by minor children, that such visits are commonly held, and that social workers at correctional facilities assist in their organisation.

I contacted the particular children's houses, competent labour offices, as well as the correctional facilities in which the claimants were held. In one instance, the OPDR lawyers visited the claimant directly in the correctional facility and also paid a visit to the particular children's home. In addition, one of the OPDR lawyers actively participated in arranging a date of a mother-child meeting in this case, which she also attended in person. The visit was also attended by the claimant, her minor children, correctional facility personnel, a foster parent, a psychologist and a social worker from the children's home. The visit was well organised and went without problems. Two more visits were organised afterwards and the claimant has now been released from the correctional facility. She contacted the children's home after her release. In another case, two visits have so far been held and the children's home seeks to regularly update the claimant about her child in writing.

When handling these complaints, I have pointed to the children's homes and competent public authorities the right of the child to regular contacts with both parents as guaranteed by the Charter of Fundamental Rights and Freedoms and the Convention on the Rights of the Child.

If a judicial decision is to restrict the contacts of a parent serving a prison sentence with a child, the respective court should consider all the circumstances and specific aspects of the particular case and give appropriate reasons. When handling these complaints, I have also encountered arguments that children's visits to these facilities are not good for them because of the stressful environment, and that they have a negative effect on their mental state of mind. However, this reason needs be considered and evaluated on a case-by-case basis, including based on expert opinions.

The ECHR case-law contains examples of violations of the right to family life in cases where parents serving a prison sentence have been denied to receive visits by their children and other family members. The case-law of individual European states also implies that the parent shall not be prevented from maintaining contacts with a minor child only because he/she is serving a prison sentence in a correctional facility, provided, of course, that the conditions have be created for maintaining personal relations and direct contact with the child which so that the child's interest is not at risk.

Hence, the mere fact that the parent is held in the correctional facility should not be a sufficient reason for denying the parent the right to maintain contacts with the child. Account should be taken of, inter alia, the nature of the crime committed by the convicted parent, conditions created for children's visits in individual correctional facilities, children's health, distance, costs, as well as how the convict complies with

his/her treatment programme. Maintaining regular contacts between the convicted parent and the minor child also considerably contributes to preserving their mutual relationship and affects its further development. In addition, it has a considerable positive effect on the convicted parent's social rehabilitation in the future.

Re-granting citizenship

In 2017, I was contacted by a claimant who had been a Slovak citizen in the past but requested to be released from the Slovak citizenship because he had been promised a foreign citizenship. However, he was not granted this citizenship due to which he has been a stateless person since 2001.

The claimant applied for the renewal of his Slovak citizenship as early as 2007, but the procedure was discontinued on grounds of criminal proceedings being held against the claimant. He was only granted a tolerated stay in Slovakia, which he had to renew in regular, six-month intervals since 2008. In order to resolve his residential status, he applied for a permanent residence for an unlimited time for reasons deserving a special consideration. The Slovak Border and Immigration Police Authority, however, decided not to grant him the permanent residence for an unlimited time, arguing that it considered the claimant's tolerated stay sufficient for the claimant's right to private and family life to be respected. The basic characteristic of the tolerated stay is its temporality. It cannot be used to resolve a long-term residential status. At the same time, a person with the tolerated stay status is considerably restricted in exercising his/her fundamental rights and freedoms, namely the freedom of movement and of residence, the right to vote and be elected into public functions, or the right to engage in entrepreneurial and other gainful activity in the territory of the Slovak Republic. In connection with the disproving decision issued by the Border and Immigration Police Authority I concluded that the violations of the fundamental rights and freedoms contained in the Constitution and in the international conventions and treaties by which the Slovak Republic is bound had been identified, and I recommended the competent authority to review its disapproval. The Border and Immigration Police Authority did not accept my recommendations, rendering the claimant's status unchanged.

The situation described above only changed after more than 11 years. The criminal proceedings held against the claimant were discontinued in January 2018 on grounds that it was beyond any doubt that the claimant had not committed the crime. It is important to note in this respect that I have also identified a violation of the right to have the case tried without undue delays by the National Crime Agency with respect to the length of the criminal investigation which had lasted since 2005. Since the statutory obstacle for continuing the procedure for the granting of the state citizenship had thus been removed, I re-engaged in the case and intensively communicated the issue with the Interior Ministry. Even though the citizenship procedure was still within its statutory time limits, I appealed to the competent authority to speed up the decision on the granting of the state citizenship given the fact that, having comprehensively examined the actions taken by the state authorities against the claimant, I could conclude that for more than eleven years they had not actively engaged in resolving the claimant's situation, thus considerably limiting the scope of his fundamental rights and freedoms with negative effects on his private and family life, in particular. The Interior Ministry eventually granted the claimant the Slovak citizenship in October 2018.

Right of residence procedure – family reunion

In 2018, we encountered the greatest difficulties with obtaining cooperation from a Bratislava immigration policy department as part of examining a complaint, widely covered by the media, by which a wife (a Slovak citizen) of a Pakistani citizen objected against the immigration police's conduct in decision-making on her husband's application for a five-year permanent residence in the Slovak Republic for the purpose of family reunion. The complaint was aimed against the conduct of the Bratislava immigration police department with respect to the submission and assessment of a statement from the register of criminal records and of an officially authenticated and translated declaration of honour on the integrity of the claimant's husband, to the department's reluctance to communicate with his wife, and to the length of the decision-making on her husband's application.

During the examination of the complaint, the Bratislava immigration police department refused to provide the necessary cooperation to the OPDR employees in charge of the case, in particular, the police department repeatedly refused to allow them to peruse the claimant's file. They made three personal visits to the police department, but its officers did not permit them to peruse the file. In addition, the police department did not provide them with a complete written explanation. Given the lack of communication and cooperation afforded by the Bratislava immigration police department to the OPDR to resolve the complaint, I reported this situation to the Border and Immigration Police Authority as the police department's superior authority and requested it to secure cooperation in the resolution of the complaint.

In response to my activities, the application procedure moved forward and the claimant's husband was granted permanent residence in Slovakia even before the investigation of the complaint was completed. Subsequently, personnel changes were also made at the Bratislava immigration police department which I consider positive and facilitating improvements in practices and procedures at this department.

The examination of the conduct taken by the Bratislava immigration police department in the case at hand showed, given the department's actions and inactivity, a violation of the claimant's husband's fundamental right to good governance under Article 1(1) in conjunction with Article 2(2) of the Constitution, the right to other legal protection under Article 46(1) of the Constitution, and the right to have his case decided without undue delays under Article 48(2) of the Constitution. Therefore, I asked the Border and Immigration Police Authority to inform me about the steps it had taken to remedy the situation and I also proposed, as one of the measures, to re-train the Bratislava immigration police department officers on the observing of the fundamental human rights and freedoms in residence permit procedures involving foreign nationals, namely on the lawful decision-making in accordance with the Administrative Code and the Act on the Residence of Aliens, with a special

focus on the protection of the fundamental rights and freedoms of the parties to the proceedings. The Border and Immigration Police Authority accepted my proposal. We also agreed that the training on the observance of the fundamental human right and freedoms in residence permit procedures involving foreign nationals would also be attended by the OPDR employees who would give concrete examples to illustrate when the violations of the fundamental human rights and freedoms may occur in such procedures.

Deficiencies in the work of the immigration police

We have a number of negative experiences with the immigration police. I was told by two claimants that the immigration police would settle their cases, namely their applications for residence permit in the Slovak Republic, only after they would withdraw their applications for the examination of their conduct by the public defender of rights. A competent immigration police department has usually 90 days to decide in this matter. Having investigated a complaint in another case, I learnt that the police had lost the documents attached to a claimant´s application for residence permit in the Slovak Republic and they had asked the claimant to go back to a country he had last worked in (India) at his own costs in order to retrieve the documents again.

Forced removal of reproductive organs of transgender persons

My activities also involved examining complaints related to a procedure of legal gender recognition[5] of transgender persons in Slovakia, a procedure conditional upon them undergoing a surgical intervention to remove their reproductive organs and/or ensure the sterility in such persons. Having examined these complaints I found that the procedure had been introduced to practice by a 1981 notice of the Ministry of Health of the Slovak Socialist Republic. The notice, however, has since become invalid and ineffective and is in contradiction with Article 13(1) of the Constitution which stipulates that obligations may only be imposed by law or on the basis of a law, within its limits and while complying with the fundamental rights and freedoms.

Medical interventions and surgeries like sterilisation, moreover, affect vital physical functions of an individual and also have an effect on several aspects of the individuals' integrity, their physical and mental health, and their emotional, spiritual and family life. While sterilisation may be performed legitimately upon an individual's request, for example, as a means of contraception or for therapeutical purposes, i.e., in cases where the intervention has conclusively been medically indicated, there is a different situation in cases where sterilisation is required to be performed on mentally competent adult patients without their consent. Such conduct is incompatible, or in conflict with the requirement of respect for human freedom and dignity, which is one of the fundamental principles on which the Convention has been built.

Making the recognition of gender identity of transgender persons conditional upon undergoing medical sterilisation and treatment which are very likely to result in the sterility of a person, which the transgender individual does not wish to undergo, therefore amounts to making the full exercise of his/her right to respect for private life under Article 8 of the Convention conditional upon waiving the full exercise of his/her right to respect of physical integrity protected under Article 8 of the Convention, as well as under Article 3 of the Convention, and is in conflict with them. On that account, I recommended to the Health Ministry as a competent authority to issue, in the shortest time possible, new methodology guidelines and/or standards on the provision of health care to transgender persons in connection with the procedure of legal gender recognition that will have, on the one hand, the legal force corresponding to the obligations arising from them and, on the other hand, will comply with Slovakia's positive commitment to respect the right of transgender people to human dignity and private life pursuant to Article 3 and Article 8 of the Convention.

During the examination of the complaint I was informed that the Health Ministry was aware of this situation of transgender persons and that it had set up a working group to develop a methodology and/or health care guideline for transgender people, which consists solely of medical experts. Against the interior minister's insistence, members of the transgender community are not represented in the working group, even though the group "decides" about the future health care services for this community. Therefore, I have recommended to the Health Ministry, as another measure, to also include a representative of the transgender community in the working group.

Right to family and private life of same-sex couples

I examined a complaint submitted by a same-sex married couple. One of the spouses is a Slovak citizen, the other one is a citizen of New Zealand. The couple complained that the NZ spouse cannot be granted a residence permit in the Slovak Republic based on his status of a family member of the Slovak citizen.

Based on an analysis of the Slovak legislation and the ECHR case-law I have arrived at the conclusion that the applicable Slovak laws do not permit to record marriages between a Slovak citizen and a third-country (non-EU) citizen validly entered into in the third country in compliance with its laws into a special vital events register. In view of the fact that the Act on the Residence of Aliens requires a marriage certificate be attached to the application for a five-year permanent residence permit submitted on grounds that a third-country national is a spouse of a Slovak citizen, the existing legislative framework de facto prevents the undisturbed enjoyment of the right to family life, namely due to the sexual orientation of the claimants. However, sexual orientation represents prohibited and unacceptable grounds, both under the Constitution and the Convention, for different treatment of persons in otherwise same or similar situations. Moreover, such a discriminatory treatment based on sexual orientation de facto prevents the spouse, who is a Slovak

5 With respect to the subject-matter of this complaint, the Slovak legislation uses the medical term "sex reassignment (surgery)" and does not recognise the internationally applied term "transitioning" or "gender recognition". From the human rights perspective, as a public defender of rights, I consider appropriate to use "gender recognition" instead of "sex reassignment surgery" and "transgender persons" instead of "transsexuals", as these terms represent a non-pathological view of the persons undergoing the transitioning.

citizen, from undisturbed enjoyment of the freedom of movement and of residence in the Slovak Republic, thus violating these rights equally as if they had been violated if the application of his spouse, who is a citizen of New Zealand, for permanent residence had been rejected, namely his right to free return to a homeland. In case that the spouse having the Slovak citizenship is unable to exercise his right to private and family life in the Slovak Republic, it can legitimately be expected that this citizen will leave the Slovak Republic, whereas the sole reason for this decision will be the rejection of the application for permanent residence permit for his spouse – the New Zealand citizen.

Therefore, I have recommended to the Interior Ministry, as an authority competent for the agenda governed by the Act on the Residence of Aliens and the Registry Offices Act, to adopt a measure to remedy this situation which is in conflict with Article 19(2) of the Constitution and Article 8 of the Convention by amending the discriminatory legal arrangement concerning the granting of residence permits in the territory of the Slovak Republic to same-sex couples facing a similar situation as that of the claimants in question, which will result in legislation complying with the ECHR case-law (case Taddeucci and McCall v. Italy). In its response, the Interior Ministry did not accept the results of my investigation nor the proposed measures. I am now considering further steps to take in the case at hand, specifically filing a petition with the Constitutional Court.

Rights of same-sex couples

I have pointed at the situation of same-sex couples in Slovakia also with reference to that fact that the lack of legislation governing the family and private life of same-sex couples in Slovakia is unsustainable over the long term from the point of view the Slovak Republic's commitments under international human rights law.

During the summer months, the Slovak media gave a wider coverage to the statements of one of the ruling coalition parties who said that even though they would not support the introduction of the concept of a civil union (or a civil partnership) for same-sex couples in Slovakia, they did not rule out supporting proposals that would allow partners in the civil union to access each other's medical records or that will simplify the inheritance procedure for same-sex couples. It was also reported that the Justice Ministry was considering in this respect possible amendments to contractual relations which would reflect property arrangements for same-sex couples. After this information had been presented, I contacted the justice minister.

In my letter, I repeated the conclusions I had arrived at and, subsequently, presented in the 2017 Position on the Rights of Same-Sex Couples to Have Their Relationship Recognised in the Legislation of the Slovak Republic, and noted that in order to fulfil the requirement of respecting and protecting the family and private life of same-sex couples, it will be necessary to amend not only selected aspects of the life of same-sex couples but their co-existence in the broadest sense.

The justice minister responded to my letter by informing me that the Justice Ministry was preparing several partial legislative amendments concerning the family and private life of same-sex couples, and allowed a representative authorised by me to cooperate in the development of basic concepts of this amendments as a part of a narrower working group at the Justice Ministry.

Domestic child adoptions in Slovakia

In view of the growing number of instances where doubts have arisen as to whether the children are not stranded in the institutional system for too long and whether all effort is taken to find them new families, I decided in 2018 to examine the legislative setup of the child adoption process and how this setup is applied by labour offices in practice. To that end, the OPDR lawyers held a number of meetings with experts, with employees of all selected offices - the labour offices that are involved throughout the entire process – even before the courts become engaged, and they also prepared a questionnaire available to be completed by anyone who has had an experience with child adoptions.

The survey especially showed the lack of standard procedures applied by individual entities involved in the adoption process. Everyone who wishes to adopt a child must complete compulsory adoption training. Such training is provided by the labour offices, as well as by so-called accredited entities which include civic organisation Návrat, civic organisation Úsmev ako dar, and non-profit organisation Miesto pod slnkom. The pre-adoption training is an extremely important component of the entire process because its aim is not only to ascertain that the prospective adoptive parents are capable of parenting an adopted child, but also to prepare them for situations they may encounter. The survey showed that the content of training, as well as the way it is provided, differs depending on a training provider. It is absolutely necessary that the training has the same quality across the whole of Slovakia, regardless of who provides it.

Another important finding is that the labour offices interpret the existing legislative arrangements in different ways. Specifically, inconsistencies occur in the work with single persons – single adopters. The Act on Social and Legal Protection of Children permits that a single person may also adopt a child in exceptional cases. Some labour offices view as exceptional those cases where no married couple is willing to adopt a child and, therefore, such a child is offered for adoption to a single person. However, a labour office prefers married couples on a waiting list, irrespective of the ranking of a single adopter on the list. On the other hand, the second half of the selected offices sees the exceptional circumstances in that that the single adopters have complied with all requirements and have been identified as eligible and capable of parenting. It means that they consider as exceptional those cases where an exceptional decision is taken upholding that a single adopter is eligible and capable of parenting. Such differing interpretations result in unequal treatment of prospective candidates for adoptive parents. This gives rise to a situation where the course of the adoption process depends on which labour office the prospective adopter deals with (a competent labour office is

identified based on the adopter's place of residence). In this case, too, I have urged that the procedures applied by individual labour offices be harmonised and that they ensure that all prospective candidates for adoptive parents receive equal treatment.

Last but not least, the survey showed that the number of children who could be adopted is considerably lower than that of the individuals who wish to provide them a new home through adoptions. At the same time, the prospective adoptive parents have very specific ideas of what they expect from a child they wish to adopt. Most often, they wish to adopt a child from the majority population, without any health complications and as young as possible, ideally a newborn. Such expectations combined with the small number of children who are legally available for adoption mean that the prospective adoptive parents wait for their desired child even for several years during which they, naturally, grow older, but their desire for a baby often remains unchanged.

The existing approach to the adoption process which largely protects the rights of the candidates for adoptive parents needs be changed and more attention should be given to the rights of the children, adjusting the whole system in a way that puts the best interests of the child in the first place. More information on this topic can be found in the "Report of the Public Defender of Rights on the Protection of the Fundamental Rights and Freedoms in the Process of Domestic Adoptions in Slovakia."

Unlawful sterilisations

In 2018, I became engaged in the issue of unlawful sterilisations of women, mostly the Roma women – a topic that Slovakia has for years been unable to resolve. I issued a statement in this respect, available on the OPDR website at the following address: (http://www.vop.gov.sk/stanovisko-k-nez-klonn-m-steriliz-ci-m-na-slovensku).

The practices involving unlawful sterilisations of women primarily from Roma communities in eastern Slovakia were for the first time relatively comprehensively documented in "Body and Soul", a report published by a group of non-governmental organisations in 2003. The publication reported cases where women had been sterilised either without their informed consent, or they had been compelled to give informed consent on the basis of misleading and intimidating information, or where such consent had been signed by women already suffering from labour pains or under sedatives. Several individual cases of unlawful sterilisations of Roma women had been referred to the ECHR which held that their fundamental rights had been violated and obligated the Slovak Republic to award them non-pecuniary damages.

However, many of the aggrieved women have to this date not received any compensation for this extremely severe violation of their rights. I believe that the applicable national legislation does not even permit to afford effective redress to them. Filing a civil action seems an ineffective means of redress for several reasons. In addition to formal barriers (e.g., the plaintiff's obligation to bear the burden of proof and the complexity of evidence-taking after many years), the problem must also be considered from the perspective of the social situation of the aggrieved women who often come from a marginalised community. This is also connected with their lack of awareness of available legal means, as well as with their fear to turn to competent authorities for help. Another problem is their lack of trust and confidence in public institutions because Slovak courts have for many years failed to decide on the legal actions filed by the aggrieved women.

I am of the opinion that the Slovak Republic must start to intensively deal with this issue, as prompted by its constitutional principles and international commitments, and to adopt specific legislation that would allow taking into account all specific aspects of the cases involving forced sterilisation and ensuring access to effective means of redress and adequate compensation for its victims. The best system-level solution is, in my opinion, to set up an independent body to investigate the scale of practices involving unlawful sterilisations of Roma women and to ensure financial and other compensation to all victims.

I recommended to the Justice Ministry to initiate the adoption of such legislation in November 2018. In its response, the ministry said that the unlawful sterilisations had already been examined by the ECHR and the Committee of Ministers of the Council of Europe had ended their monitoring in 2014. Therefore, the Justice Ministry considers this issue sufficiently examined and sees no reason for its re-examination.

From my point of view, however, this argument does not suffice because the ECHR decisions only dealt with several individual cases. Moreover, in addition to the Convention, the Slovak Republic also has commitments under other international treaties and, in the light of recommendations made by the bodies set up for their monitoring, it can clearly be held that this issue still remains a pressing one. Therefore, I will continue urging competent authorities to initiate the adoption of separate legislation to address this issue on the system level.

III

Right to social security and social assistance

Introduction

The system of social insurance constitutes an important component of the social security system. It provides protection in various life situations (e.g., old age, disabilities, sickness, accident, loss of employment, motherhood) that adversely affect an individual's ability to satisfy his/her necessities of life one his/her own. A majority of the population is covered by a "universal" social insurance scheme, the performance of which is vested in the Social Insurance Agency (SIA). The SIA decides, among other things, about entitlements to sickness, old-age pension, accident, guarantee or unemployment insurance benefits. It also decides about social insurance premiums, penalties and fines. The SIA's decision-making activities may also interfere with the fundamental rights, namely the right to adequate material provision in old age, in the event of incapacity to work, as well as after losing their provider (Article 39(1) of the Constitution), the right to claim one's 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 (Article 46(1) of the Constitution), and the right to have one's case heard without undue delays (Article 48(1) of the Constitution).

A majority of complaints against the Social Insurance Agency concerns pension benefits. People often point out that they have very low old-age pensions, insufficient to cover even their basic necessities of life. In most cases, however, they do not give any examples of particular errors they believe the Social Insurance Agency has made in the calculation of their old-age pension benefits. They often argue that, in their opinion, the applicable legislation is unjust or discriminatory and they expect the public defender of rights to intervene by filing a petition with the Constitutional Court for non-compliance of the law with the Constitution, or by eliminating the strictness of law. Unfortunately, our social insurance legislation does not cover the mechanism of eliminating the strictness of law and, therefore, it is not possible to award a social insurance benefit where the statutory requirements for the entitlement to that benefit are not met. Therefore, I often have no other option than to conclude that there has been no violation of law and, thus, no violation of the fundamental right, even though I fully sympathise with their feelings of disappointment and injustice. However, there are also cases when the investigation of a complaint shows that the Social Insurance Agency has actually erred. A number of such cases investigated last year concerned the award of disability pensions, in which the misconduct by the SIA amounted to a violation of a fundamental right.

Another area I specifically focused on in 2018 is the assistance to persons in adverse social conditions. As part of my survey, I sought to find out how the inspections in the residential facilities where such persons are accommodated are performed.

The OPDR is also long engaged in the area of employment services where I regularly encounter complaints indicating that people do not receive such services as they have expected to receive in accordance with law.

Examples from complaints

Disability assessment in persons with mental disorders

A decision on the entitlement to disability pension benefits requires that the disability onset date is established properly. Even though the pension benefits can, in principle, be awarded not more than three years back from the date of application for such benefits, the disability onset date should be established as the date when the disability actually occurred or was acquired and not as at the date on which the applicant requests to be awarded the pension benefits. This may have fatal consequences on the establishment of the entitlement to the disability pension because the older the person is at the time of disability, the more years he/she has to have been covered by the pension insurance scheme in order to be eligible for the benefits at all. In other words, if disability occurs in or is acquired by, for example, a twenty-year old person, it is enough that he/she has participated in the pension insurance scheme for one year. However, if disability occurred in or was acquired by a person over 45, that person would have

to have been insured for at least 15 years. If someone becomes disabled at a young age, they do not have to meet any insurance coverage period. This problem is especially delicate in the case of persons with mental disorders. The process of recognising the severity of such disorder, let alone admitting that there is a problem and treatment is necessary, may even take several years. These people are often unable to work, only surviving with the help from their closest family. Therefore, they do not participate in the pension insurance scheme and will not qualify for disability pension benefits. However, if the disability onset date is properly established, they may become entitled to such benefits.

Last year, I dealt with several complaints that specifically concerned the disability assessment in persons with mental disorders. In all reviewed cases, I had to conclude that there was a violation of the fundamental right under Article 46(1) of the Constitution owing to the fact that the actual facts of the case had not been properly established in the proceedings and the decisions issued by the Social Insurance Agency had not been duly, comprehensibly and convincingly justified. This raised considerable doubts about their correctness.

Insufficiently established facts of the case in disability assessment

The OPDR was contacted by a lady who contested the actions taken by the Social Insurance Agency in decision-making about the entitlement of a 35-year-old man to disability benefits. Even though the claimant has no family relationship with the man in question, she and her husband look after him because they were not indifferent to his life story. Mr B applied for disability pension in 2017. An assessing physician acknowledged his disability on grounds of a severe mental disorder. She established the disability onset date approximately six months prior to his application for disability pension, when Mr B was 33 years old. In order to be eligible for disability pension he, therefore, needed to have at least five years of pension insurance coverage. But he had never worked. Although the assessing physician mentioned in her medical report that the patient had only completed seven years at a special primary school, had never been employed and, at the same time, had for several years been seeing a psychiatrist, she did not at all consider that the disability could have occurred earlier. She based her assessment solely on the medical reports from 2016. Following my notification, the Social Insurance Agency reviewed its original decision. The SIA took further evidence and recognised that Mr B's disability had occurred prior to the completion of his compulsory education and awarded the disability pension to him. The Social Insurance Agency director general also informed me that SIA's assessing physicians had again been alerted to the requirement to thoroughly ascertain the actual facts of the case and to seek and acquire even such evidence which has not been presented or proposed by a party to the proceedings.

Another two complaints which I investigated last year and equally found be in violation of a fundamental right followed a similar scenario. I emphasised that the Social Insurance Agency is obliged to issue a decision only on the basis of the actual facts of the case established in a reliable manner. Hence the principle of material truth, which emphasises objectively finding the facts of the case, is applied in the proceedings concerning social insurance matters, as well. The Social Insurance Act also includes the so-called search principle under which the Social Insurance Authority is required to obtain the evidence necessary for this purpose by its own means. In doing so, the SIA is not bound to consider only the proposals submitted by the parties to the proceedings. The search principle applied in the social insurance proceedings is to a certain degree counterbalanced by the obligations of the parties to the proceedings (e.g., their obligation to propose evidence to support their claims). It is therefore their obligation to present, or at least propose, the evidence that is important in order to establish the facts of the case. However, when considering the extent to which it will perform the necessary evidence-taking by its own means and what share of this task it will transfer on the party to the proceedings, the Social Insurance Agency has to take into account individual aspects of the proceedings on a case-by-case basis. Such aspects may also include the party to the proceedings himself/herself, his/her intellectual capacities, overall mental conditions, or his/her property and social status. Making decisions about entitlements of people suffering from mental disorders undoubtedly requires a special, more sensitive approach.

Long-lasting problems with the so-called Czechoslovak pensioners

I dealt with the problem of the so-called "Czechoslovak" pensioners last year (2018), too. They are people whose pension insurance (security) period achieved during the existence of the former Czechoslovakia is assessed by the Czech Republic for the purposes of pension calculation. The decisive factor for the determination of the competent successor state is mainly the country of residence of the employer at the time of the dissolution of the common state. Many Slovak citizens, therefore, receive two pensions – Czech and Slovak one – even though they, for example, worked their whole life in the territory of the Slovak Republic, but were employed by a company having its registered office in the territory of the Czech Republic. However, the two, so-called partial pensions do not always add up to such an amount as the pension would have been if the entire period of the pension insurance coverage had been assessed solely in accordance with the Slovak legislation. Therefore, many such pensioners feel discriminated against when compared to those who only receive a single pension. My predecessor has also identified another problem in this respect, namely that the calculation of the pension benefits for the Czechoslovak pensioners does not count in the income they earned during the existence of the common state. After the common state split up, many companies were dissolved and their former employees who had just a few years before retirement could often not find a new job. They were registered as job seekers, or performed short-time jobs for a considerably lower wage. Where these earnings are used in the calculation of pension benefits, the final amount of pension benefits is much smaller. I have also encountered cases where no entitlement to the pension for the Czechoslovak period of insurance coverage whose assessment falls under the competence of the Czech Republic (pursuant to Czech legislation) is established at all. These pensioners than only receive pensions calculated based on the period of time they had been insured in

Slovakia, and such pensions are often below the subsistence minimum, sometimes amounting to a few dozen euros only.

The situation of the Czechoslovak pensioners partly improved by the introduction of the so-called compensatory bonus, effective from 1 January 2016, which should make up for the differences in pensions caused by the dissolution of the common state. However, not all Czechoslovak pensioners become entitled to the compensatory bonus. Eligibility conditions include, for example, that they must have at least 25 years of pension insurance coverage in Czechoslovakia and that they have been awarded a pension for this period in the Czech Republic. Only old-age pensioners and early old-age pensioners are eligible. It means that other groups of pensioners do not receive such compensations, nor do the persons who will not become entitled to pension in the Czech Republic. The number of people who cannot meet the minimum 25 years of Czechoslovak pension insurance requirement at all is increasing over time. On that account, I consider the compensatory bonus mechanism insufficient to remedy the situation caused by the split-up of the common state which resulted in a violation of the fundamental right to adequate material provision of a certain group of persons.

Courts case-law also plays an important role in the case of the Czechoslovak pensioners. The courts have in numerous cases concluded that a pensioner was discriminated against in relation to his/her fundamental right to adequate material provision and have ordered the Social Insurance Agency to pay him/her the difference. It is evident from the courts case-law that their application practice awards a larger extent of remedy of the existing situation compared to the compensatory bonus mechanism and that despite this more recent legislative arrangement, they continue adhering to their previous conclusions which they apply in the cases that are not covered by the compensatory bonus legislation. Hence there are currently two parallel options existing to remedy the consequences of the split-up of the common state that has adversely interfered with the fundamental right to adequate material provision – the judicial practice and the compensatory bonus mechanism.

Moreover, it is obvious that the way the pension is "topped up" may be different under the compensatory bonus mechanism and different when it is done based on a court's decision in the absence of relevant legislative arrangements. I consider this situation ill-suited. I believe that the conduct of the Social Insurance Agency should not be based merely on the practice of the courts which does not lay down any clear method to be used for the calculation of pension compensations. Therefore, I consider it indispensable to adopt the necessary legislation to eliminate the discrimination of pensioners in their social security which arose as the consequence of the dissolution of the common state. However, the legislation must be such that it ensures elimination of the discriminatory approach to the right to adequate material provision for all affected persons, without exception, namely irrespective of whether they have met the 25 years of Czechoslovak pension insurance coverage requirement or not, and whether they have been awarded an old-age (or other) pension for that period according to the laws of the Czech Republic. The minister of labour, social affairs and family of the Slovak Republic has informed me that his ministry is currently working on a new legislative arrangement which will reflect the current situation in the application practice.

Recalculation of old-age pensions

The pension system reform introduced by the Social Insurance Act on 1 January 2004 provoked a great surge of discontent among a large group of pensioners. They are those whose pensions were calculated based on the previous legislation ("old pensioners"). They feel to be discriminated when compared to the pensioners whose pensions were calculated in accordance with the new legislation because they believe the calculation of the pensions for the "new pensioners" is much more advantageous than that of theirs. Even though this opinion generally prevails among the pensioners, the new legislation does not guarantee higher pensions in all cases.

The truth is that the previous legislation did not adequately reflect, especially in the case of people with above-average income, their contributions to the pension system, because the monthly wage based on which the pensions were calculated was considerably reduced, with its maximum amount being SKK 4,067. Earnings exceeding SKK 10,000 were not considered at all. The maximum amount of a pension benefit was also fixed. This situation could not be removed even by annual pension adjustments. Some partial improvements were made by a 2006 amendment to the Social Insurance Act which removed the maximum amount of pension benefits and introduced a new way of calculating an average monthly income which served as the basis for the calculation of the pension so that it also took into account the incomes in excess of SKK 10 000 by incorporating one-tenth of such income. However, complaints kept coming even after such adjustments had been made in the old-age pensions, in which the claimants sought that their pensions be re-calculated in accordance with the new legislation. They objected to discrimination and unequal treatment because they believed the amended Social Insurance Act had created two different groups of pensioners with considerable differences in the calculation of pension benefits. The year 2018 brought a long-expected change for a large group of the "old pensioners" in the form of another re-calculation of old-age pensions. However, they did not see the so much desired and expected universal re-calculation of all pensions awarded and calculated pursuant to the previous legislation, including determination of their new amounts in accordance with the Social Insurance Act. This provoked yet another swell of discontent and disappointment, accompanied by a number of complaints addressed to the public defender of rights.

The pensions are not calculated anew according to the current legislation. It is only the average monthly wage, serving as the basis for the calculation of pension benefits, that is determined in a new way. The re-calculation does not apply to all "old pensioners" but only to those who achieved at least the average amount of monthly income prescribed by law, while this amount is set separately for each year, just as is the method of determining the average monthly income based on which the pension is calculated anew. Moreover, the re-calculation again applies to the old-age pensioners only. The new legislation is hence relatively complicated and hard to

understand for regular pensioners. Since the re-calculations only apply to the pensions that were calculated from an average monthly income starting from a specific amount, the pensioners with small pensions feel discriminated because, in their opinion, the pensions have again increased only for those who have considerably larger pensions.

Calculation of pension after a longer time from the effective date of entitlement

With respect to the calculation of pensions according to the legislation effective until 31 December 2003 (the Social Security Act), the public defender of rights warned of a serious problem in the past, a problem that has not been resolved to this date. The problem pertains to the cases where the pension benefits are awarded and calculated more than three years after an entitlement to such benefits arose. In general, the pension benefits should be awarded and calculated in compliance with the legislative effective at the time when the entitlement to such benefits has first arisen. It means that, for example, if a person attains the retirement age and meets the requirement of having the necessary years of pension insurance in 2000, his/her pension will be awarded and calculated using the legislation that was applicable in that year (i.e., 2000), even if awarded in 2018, for instance. However, the pension is awarded not more than three years back from the application for pension benefits. It needs be noted here that the pensions awarded pursuant to the Social Security Act, in effect until 31 December 2003, were, starting from 1994, adjusted at award in a manner set for each calendar year by a separate law. It was a one-off adjustment of the pension at its award (depending on the year in which it was awarded), not its annual adjustment.

For illustration – the old-age pensions awarded in 2000 were adjusted by 81.4% of a monthly pension amount to which the person is entitled at the date of the pension award, and by the amount of SKK 1,010 a month. Hence if the pension was calculated using the maximum assessment base of SKK 4,067 and its percentage portion accounted for 67% of the average monthly income, the pension benefit was SKK 2,725 a month. This amount was then adjusted by the aforementioned 81.4% and the fixed sum of SKK 1,010, increasing the final amount of the pension benefit by more than 100%. The last such adjustment of pensions was set by law for 2003. No adjustments have ever been set for the subsequent years because the Social Security Act has meanwhile been repealed; however, a situation may still occur when the amount of the pension benefits is determined in accordance with this (repealed) piece of legislation. It would not be much of a problem if the Social Insurance Agency applied, when calculating the pension benefits in such cases, the pension adjustments for each calendar year from the effective date of pension entitlement to the date from which the pension is awarded. But the Social Insurance Agency does not do so. Irrespective of the year in which the entitlement to pension arises, it makes the adjustment set for 2003 plus adds an increase for that year, but makes no subsequent increases (adjustments), or only makes them for not more than three years prior to the date of pension award. For example, if the SIA awarded in 2018 the pension the entitlement to which arose in 2000, it would only award the adjustment for 2003 and then adjustments for 2016 2017 and 2018.

This practice considerably decreases the total amount of the awarded pension benefit. The pension is not awarded in the amount it would have reached if it had been paid from the effective date of entitlement, but in a considerably smaller amount. The Social Insurance Agency argues it cannot make adjustments because the literal wording of the law prohibits so. The reason is that increases are only made to pension benefits awarded at a specific time, or paid as at a specific date, and their increase depends on the amount in which the pension benefit is paid at the date as of which it is increased. It means that if no pension benefits are actually paid, no additional adjustments are possible. This is, in my opinion, in stark contrast with Article 12(1), second sentence, of the Constitution which stipulates that the fundamental rights and freedoms are inviolable, inalienable, imprescriptible, and indefeasible. The right to pension, as a fundamental right, is imprescriptible and, under the law, the entitlement to pension does not cease by a lapse of time; only the entitlement to the benefit payment or its portion may cease. Therefore I believe that the Social Insurance Agency should interpret the law in these cases in a manner that does not intervene in the fundamental right under Article 39(1) of the Constitution.

Advance pension payments

Last year I also found a fundamental right violation in connection with advance pension payments. I was approached by a claimant who contested the delays in the proceedings about her entitlement to disability pension. She applied for disability pension in 2015 but no decision was delivered even a year later. The examination of the complaint established that the Social Insurance Agency could not deliver a final decision due to objective reasons outside its control. In order to make the decision, the SIA needed cooperation from foreign social insurance authorities because the claimant worked in several foreign countries (Canada, USA, Austria). However, I discovered serious discrepancies in advance pension payments. The Social Insurance Agency was required to pay pension benefits in the form of advance payments in this case. However, it did so late and in an insufficient extent. It is evident that the Social Insurance Agency may start making advance pension benefit payments only after it has information that the client has met the eligibility conditions for such benefits. That, however, does not mean that the advance payments should only be provided for the period of time from the date on which the decisive facts were established because the entitlement to pension had arisen much earlier. In the case at hand, the Social Insurance Agency started to pay advance pension benefits nearly two months after it had ascertained that the eligibility requirements for disability pension had been met. In addition, the advance payments were only provided for the period starting from the date when the SIA had learnt of the facts decisive for the entitlement to disability pension, not from the date when that entitlement had actually arisen. The claimant in the case at hand had become entitled to the pension starting already from August 2016 but the advance payments were only made for the period starting from June 2017. Also, the Social Insurance Agency is required to make the advance benefit payments in an amount as close as possible to that in which the

pension benefit is likely to be paid. The size of advance payments made in this case was approximately two-thirds of the amount of the disability pension to which the claimant would be entitled based on the information obtained by then; in my opinion, this cannot be considered sufficient.

It needs be noted that the likely amount of the disability pension was very low in this case, therefore, I believe it was all the more important that the advance pension payments be provided in the largest amount possible. Proceedings in which the EU rules on coordination of social security systems are applied, as well as other proceedings with an international element, are usually associated with a more difficult fact-finding process, because they require cooperation of competent institutions and authorities from other countries. Their communication is often complicated, problematic and requires more time; this also has an effect on the length of the proceedings on entitlements to social security benefits. In addition, it is an area that has a direct impact on the living conditions and often also on ensuring the basic necessities of life of the applicants. It is evident that the provisions on advance and provisional payment of benefits in EU coordination rules has been adopted exactly with the aim of mitigating negative effects on affected person for the sake of protection of their social security rights. These provisions are directly applicable and impose an obligation on the Social Insurance Agency to start paying the advance pension benefit payments immediately after it ascertains that the applicant meets the eligibility requirements for an independent benefit, which the Social Insurance Agency failed to do in the case at hand. At the same time, if the advance pension benefit payments are to serve their purpose, their amount must be as close as possible to the regular pension benefit payments. Therefore, in my opinion, the pension should be paid in the form of advance payments for the entire period from the moment when the entitlement arose and in the amount which is as close as possible to the amount of the pension benefits that are likely to be awarded.

Accident benefits

The Social Insurance Act introduced a major change in the area of employer's liability for damage caused by an accident at work or occupational disease. Employees' claims are covered mainly by the accident insurance, a component of the social insurance, and are subject to decision by the Social Insurance Agency. In the case of a dispute between the injured employee and his/her employer whether there actually was an accident at work, and/or whether and to what extent the employer is liable for the accident at work, the Social Insurance Agency must also be engaged. This brings along significant problems, because the parties involved do not always refer the case to a court. In such cases, the Social Insurance Agency must also deal with the labour law issues, yet it sometimes fails to do so to the sufficient extent, based on the experience from the complaints delivered to the public defender of rights. Problems also arise in the assessment of health conditions. Last year I found a fundamental right violation, in the form of a decision lacking sufficient reasons, in two cases involving claims to additional accidental benefits.

Additional accidental benefit

I was contacted by a claimant who had suffered an accident at work by falling on his back in 2016. He was awarded an additional accidental benefit because the accident at work resulted in his incapacity to work. He has undergone all medical examinations and rehabilitations but his health problems still persist. Despite that, his additional accidental benefit was withdrawn after approximately four months of his temporary incapacity to work. The reason was that, according to the assessing physician, the claimant's temporary incapacity to work is no longer the consequence of the accident he had suffered at work. However, the decisions of the Social Insurance Agency lack the clear, comprehensible and compelling reasons. Although the decisions do not explicitly say so, according to the assessing physician, the cause of the claimant's adverse health conditions for which he was still recognised as temporary incapacitated for work were degenerative changes in his spine, and/or other condition unrelated to the accident at work.

It follows from the courts case-law that whether an employee had any congenital or otherwise acquired predispositions making him/her susceptible to health damage is irrelevant to employer's liability for accident at work. From the point of view of assessing an accident as an accident at work, this fact is insignificant. A causal link is established if the accident was one of the causes of health damage, which usually requires that such cause is important, significant and considerable, or that it is a cause which has only added to the previous bad health of the employee. The analogous situation exists when assessing the causal link between an accident at work and temporary incapacity to work. On that account, the causal link between the claimant's accident at work and his temporary incapacity to work cannot be ruled out merely on grounds that the he was diagnosed with degenerative changes in the spine and another condition – carpal tunnel syndrome. In order to state that, as of a certain date, there is no causal link between the claimant's accident at work and his temporary incapacity to work, it is necessary to prove that the degenerative changes in the spine and/or other health conditions unrelated to the accident at work are the single significant cause of his health problems for which he has been recognised as temporary incapacitated for work, and/or that the damage to his health caused by the accident at work does not contribute to his health problems for which he has been recognised as temporary incapacitated for work to such an extent which could be established as important, significant or considerable, or as a cause that has only added to his previous bad health, and that he would have suffered from this bad health even if the accident at work had not happened. The Social Insurance Agency's decisions, however, do not indicate this at all.

The complaints I receive show that the complexity and ambiguity of existing legislation often put an "ordinary man" at an disadvantage. In 2018 alone, nine different laws were passed through which the Social Insurance Act was amended. Ambiguities, or even absurd situations are not rare. Some of them can be offset by courts case-low to a lesser or greater degree. However, this process is relatively lengthy and requires a goodly share of courage and patience from affected individuals. Many give up, or cannot manage on their own.

Ambiguities in the social security system for the police and the military

The situation is quite familiar, for example, to the police officers and military personnel who are not covered by the aforementioned universal social insurance scheme during the time of their service, but are covered by a separate social security scheme. With effect from 1 July 2002, they are covered by a separate legislation on social security for police officers. However, their social security had before undergone a lengthy development and had been organised differently. This is one of the main reasons why it is sometimes unclear which public authority is competent to decide on their entitlement to a pension benefit. There are cases when they submit their application to the Social Insurance Agency which, however, concludes that it is not competent to make that decision. Therefore, it forwards their application to another authority (e.g., the ministry, the Military Social Security Authority). However, such authority does not feel competent to decide on the matter either and returns the application to the Social Insurance Agency. The legislation is ambiguous in these cases and the courts have also made their precedents. Individual cases differ, however, and not each such situation can be likened to the existing case-law. Therefore, the affected individuals have no other option than to refer their case to a court. However, neither are the courts always uniform in their view on these issues.

The general practice now is that the persons covered by the special social security scheme become entitled (once they meet the statutory requirements) to a service pension for the years served and, if they have also had a civilian job for some time and are covered by the universal social insurance, they may also become entitled to a pension awarded by the Social Insurance Agency. They then receive both pensions simultaneously, without any reductions.

Firefighter's service pensions

Last year, revocation of the service pensions payable to firefighters has been a dominant issue in this area (general vs. special social security scheme). Until the end of 2007, firefighters were insured only under the general social insurance scheme, i.e., in the Social Insurance Agency. At the same time, they were receiving a bonus to their pension for serving in the fire brigade. As from 1 January 2008, firefighters were transferred to a special social security scheme, which covers police officers or professional soldiers. Therefore, they are entitled to a service pension – and also for the pension insurance period which they completed before 2008.

Following the adoption of this major change, a transitional provision about firefighters whose service terminated between 2008 and 2010 has been inserted into the applicable legislation. According to that provision, these firefighters are entitled to apply for an old-age or early retirement pension from the general scheme run by the Social Insurance Agency. However, if they submit such application, they will no longer be entitled to the service pension from the special scheme. There is no distinction whether a firefighter applies for the pension only for the period which he/she completed as a civilian employee, or also for the period when he/she worked as a firefighter.

Shortly before Christmas in 2017, the Interior Ministry gradually started revoking service pensions of firefighters whose service ended between 2008 and 2010 and they were awarded, by the Social Insurance Agency, only pensions for the insurance period completed as civilian employees. In certain cases, the service pension was revoked nearly ten years after the aforementioned event occurred. The Interior Ministry claims it had no information about it. However, this turned out not be true in some cases. It was actually the Interior Ministry itself which informed the firefighters – upon awarding the service pensions – that, because of the concurrent entitlement to service pension benefits and entitlement to pension benefits from the general scheme, the recipients continue to be entitled to service pension benefits in the full amount. A sudden change in the Interior Ministry's approach was prompted by a ruling of the Supreme Court which pointed to the controversial transitional provision when deciding on a factually different case and arrived at a conclusion that the entitlement to the service pension would cease to exist upon the submission of an application with the Social Insurance Agency. However, the Supreme Court did not address this issue as such and did not carry out a detailed analysis to that effect.

The result was that the Interior Ministry revoked the service pensions to several tens of firefighters just before or after the Christmas holidays. I was approached by nearly 40 of them. At the same time, there was a chance that the Interior Ministry would request them return the service pension that has already been paid. Many firefighters were thus left with a minimum income, not even reaching the subsistence minimum level. The Interior Ministry did not coordinate its actions with the Social Insurance Agency and only advised the affected firefighters to request an increase of their pension benefits also for the periods completed while serving as firefighters, as well as to apply for pension bonuses. However, the Social Insurance Agency did not agree with the Interior Ministry's standpoint and asked the Supreme Court to issue a unifying opinion. During the appellate proceedings, however, the Interior Ministry eventually annulled its decisions concerning the revocation of the service pensions, explaining that it would wait for the opinion which has not been issued to date.

After examining the matter at hand, I consider the biggest problem to be that the Interior Ministry, in applying a mere grammatical interpretation of the transitional provision, failed to make a distinction whether firefighters applied for the pension with the Social Insurance Agency only for insurance periods completed as civilian employees or also for the period during which they served as firefighters. This means that this group of firefighters is treated differently than other firefighters (whose service terminated after 2010), because they can apply for a pension with the Social Insurance Agency for the insurance period which they completed as civilian employees, and even it is awarded to them, it has no impact on their entitlement to the service pension benefit. In my opinion, there is no reason for such unequal treatment. By means of the disputable transitional provision, the firefighters concerned can only be given such right that they would not otherwise have. But even if the transitional provision did not exist, every firefighter whose service terminated after 31 December 2007 is entitled, under the conditions set by law, both to the service pension from the special scheme and to the pension from the

general scheme for the pension insurance period completed in civilian employment. The transitional provision therefore cannot mean anything else than the fact that these firefighters are awarded, in addition to the above entitlement, a pension benefit from the general scheme to which they otherwise would not be entitled, i.e. to the pension reflecting the period during which they worked as firefighters. In this case, if firefighters apply for old-age pensions, they are no longer entitled to the service pension security from a special scheme, because the period during which they worked as firefighters cannot be covered by both social security schemes. Nonetheless, these firefighters remain entitled to a civil service pension bonus.

I addressed a notification to the interior minister to inform her about my conclusions that the actions undertaken by the Interior Ministry constituted a breach of the fundamental rights of the persons concerned. The reply did not arrive directly from the minister, but from the head of the social security department at the Interior Ministry. As implied by the response, the Interior Ministry did not agree with my conclusions and stated that it would continue to pay out the service pension benefits and wait until the unifying opinion is issued.

Requesting the return of a grant for sheltered workshop

In 2018, I managed to achieve redress for a claimant who had been trying to convince, for four years to no avail, the labour office that its actions in connection with the early termination of the sheltered workshop was not correct and that the claimant was not required to return to the labour office a portion on the provided grant in the amount of more than EUR 5,000 because there were no faults on the part of the claimant. Upon investigating the matter, I learnt that the labour office incorrectly applied the provisions of the Employment Services Act, as well as of the contract for the provision of a grant for setting up a sheltered workshop, entered into between the claimant and the labour office, and required her to return a part of the grant without any legal grounds, thus violating her right ownership right in conjunction with the right to judicial and other legal protection. The labour office at first refused to admit its mistake, even though it decided to make changes in such contracts so that the faults identified in the claimant's case would not be occurring in the future. We consulted the matter with the prosecutor's office which, however, says it was not competent to deal with it. I addressed a written notification of the identified violation to the labour office, as well as to the labour ministry, based on which the labour office decided to return the amount of more than EUR 5,000 to the claimant.

Requesting the return of the benefit in material need

I have encountered the labour office's unwillingness to refund unlawfully revoked allowances also with regard to a benefit in material need when the labour office incorrectly concluded that the benefit recipient had not been not performing activities (based on the Act on the Assistance in Material Need) which were supposed to be part of recipient's active effort to address a particular life situation, and therefore revoked the benefit payable to the recipient. The labour office's action was wrong because the recipient was participating in activation policies in a different manner, and therefore was not required to also perform activation works for 32 hours per month. Albeit missing the deadline, the recipient filed an appeal and sought the payment of the material need benefit to which he was entitled. The labour office concluded that the appeal was not submitted within the required time limit, and did not even address the fact that the office had erred in its actions and that the recipient, who is dependent on assistance in material need, was in fact right, and therefore the office failed to correct its error even though it was required to do so, and should have done so, under the Act on Assistance in Material Need. The office only did so upon my warning that it had breached the recipient's rights to assistance in material need pursuant to Article 39(2) of the Constitution, and paid the benefit amount to the recipient.

Incorrect procedure upon deregistration of jobseekers

I also deal with situations where labour offices have erred in keeping the applicants in the records of jobseekers. Even though this involves a service provided by the state, i.e. assistance in exercising the right to engage in work, I have frequently seen a totally opposite approach when labour offices, instead of trying to find jobs for as many registered jobseekers as possible, concentrate their efforts on finding the legal grounds for cleaning their records of persons who have been, so to speak, spoiling the statistics in the long term. One such case was brought to my attention also this year when the labour office attempted to deregister a long-term unemployed jobseeker by inspecting his adherence to the prescribed medical treatment regimen. However, the office made several errors in its actions which are pointing to insufficient mutual communication between the individual organisational units of the labour office, which resulted in the Central Labour Office revoking the decision concerning deregistration of the claimant from the register of jobseekers.

Change in the registration and deregistration dates of jobseekers

I also investigated an absurd case of a retroactive change in the jobseeker registration and deregistration dates which have considerably complicated the social situation of a claimant acting in good faith and which cast doubts on her past entitlements to assistance from the state. I found that, even though the labour office had correctly identified that the claimant was not entitled to be registered as a job seeker at a particular period of time, it had reached this conclusion only after two years, or one and a half years, despite the fact that the necessary information was available to the office; therefore, incorrect registration was caused by the labour office itself by its own error. In order to remedy the situation, the office's actions were absolutely informal, without applying the relevant procedural rules setting the statutory limits of when and how the state is able to interfere with the existing legal status quo, in particular when the eligible person enjoyed the status quo in good faith, i.e., not through such person's wrongful conduct. The labour office, by acting unreasonably when attempting to correct the error, had breached the claimant's right to judicial and other legal protection in conjunction with the right to have the case tried without undue delay. At present, the labour office, in cooperation with the Central Labour Office, is seeking

legal avenues to remedy the situation in manner that would not cause harm to the claimant.

Slovak language – mother tongue as a requirement in a selection procedure

I have been approached by a claimant with a complaint where he pointed to a possible violation of the equal treatment principle in employment relations and in access to employment. The job offer objected to by the claimant was published in an advertisement on an internet website and contained a requirement of the language knowledge "Slovak - mother tongue". The claimant thought that the requirement formulated in this manner might constitute a breach of the equal treatment principle.

Employment relationships, including pre-contractual relationships in the recruitment of a natural person, fall under private law as an area that is excluded, by law, from the scope of authority of the public defender of rights. Therefore, I had to discontinue the complaint.

However, the claimant was notified that the equal treatment principle (the prohibition of discrimination) is enshrined not only in the Constitution, but also in several separate laws governing employment relationships (e.g., the Labour Code, the Anti-discrimination Act, the Act on Employment Services, etc.). Under these laws, employers may not breach the principle of equal treatment – even in those cases that involve access to employment. As implied by the legislative provisions, the employer may not, inter alia, publish job offers containing any restrictions and discrimination, for instance, based on language. Even though the requirement concerning the knowledge of the state language is legitimate when used as a criterion for recruitment to certain job positions, it must be formulated in a manner that clearly implies that it involves knowledge of the state language rather than mother tongue. If employers proceed in this manner, the principle of equal treatment would not be breached.

Withholding of personal documents of the users of social services

Social services are primarily intended for providing assistance and support to natural persons not fully able to take care of themselves for various reasons and should be aimed towards renewing or developing the ability to lead an independent life and integrate into society. Every user of social services has the right to contact a person of his/her choice in any manner in order to establish and maintain social links, be it with his family or the community, as well as partner relationships.

Deinstitutionalisation of social care facilities reflects independence in the lives of the users of social services and their integration into society, as provided for by Article 19 of the Convention on the Rights of Persons with Disabilities. In many cases the social care facilities are separated, entrances are locked and the clients can leave only in the company of the facility staff or in the presence of family members. Such restrictions on a leave from the facility, subject to the presence of the facility staff or a family member, can be legitimate in many cases and are in fact related to "due oversight", but this must be implemented in line with the principles of individualisation and flexibility. Only when adhering to these two principles the provider can avoid the effect of group treatment of the users of social services (the same means of oversight must be used for all in the same way).

In connection with the right of the users of social services to maintain a relationship with a partner and de facto their right to family and private life, they should be allowed to be accompanied by a significant other who, even though not being a member of the family, is in many cases replacing their role. In a non-public provider's facility in which I pointed to this problem, I also learnt that the facility was withholding personal documents of the clients upon their admission (ID card, health insurance ID card) and keeps them during their entire stay in the facility. However, pursuant to the Act on Identity Cards, an ID card may not be handed over or withheld upon entry into a facility or land and may not be handed over or withheld in connection with the provision of services. I addressed my objections to the relevant facility and warned that such conduct was significantly restricting the users of social services in their personal liberty.

At this point it must be emphasised that the human rights dimension to the provision of social services has found its way into the Slovak legislation already in 2014 when the commitments in terms of compliance with fundamental human rights and freedoms became part of Annex 2 to the Social Services Act as one of the areas for assessing the quality requirements with respect to the provided social services. With the Social Services Act, an obligation has been introduced for the providers of social services in order to meet the quality requirements with respect to the provided social services in accordance with the annex referred to above. Quality assessment has been put off several times by means of legislative amendments. According to the transitional provisions of the Social Services Act, the Ministry of Labour was not assessing the quality requirements in the period between 1 March 2012 and 31 December 2015, or until 31 December 2017 and, based on a legislative amendment of November 2017, these requirements will not be assessed until 31 August 2019 as well.

Inspection system in social care facilities focusing on senior citizens

The social care facilities, characterised by the provision of long-term care, are home to almost 50,000 residents of the Slovak Republic. And these persons are in many cases out of the limelight as regards the attention of society and oversight. For this reason, in my capacity as public defender of rights, I focused on how inspections are carried out in selected types of social care facilities.

The findings from this investigation raised many concerns. The system of inspections, the standards of provided services and the distribution of competences are unclear, which can result in insufficient quality of services and buck-passing, as was the case with the responsibility for mistakes in a widely publicised case of the IRIS facility.

The frequency of inspections is a huge problem. Self-governing regions, which are supposed to supervise the provision of social services, performed only 11 inspections per year on average, even though the average number of facilities per self-governing region was as many as 95. The Ministry of Labour carried out oversight inspections over the provision of social services in eight cases on average. With this frequency of oversight inspections, it would take the Ministry of Labour roughly 94 years to check every facility at least once. As regards inspections aimed at checking the health care provided in facilities, the figures are even worse: on average, the Health Care Surveillance Authority performed only two inspections per year, while the number of selected facilities was some 750. The way such inspections are carried out is also very disputable because, in many cases, they focus only on checking the written documents and records rather than the services provided by a facility or equipment used in a facility.

On the other hand, regional public health offices and the Fire and Rescue Brigade were a shining example. On average, the regional public health offices performed some 1,300 inspections per year on average and identified a breach of hygiene regulations in about one tenth of the checked facilities. The Fire and Rescue Brigade carried out 433 inspections per year on average and identified violations of the law in four fifths of the checked facilities, with some of its findings being quite alarming – locked escape routes, non-functioning fire extinguishers, immobile persons accommodated on higher floors without an evacuation lift, unsuitable buildings that were originally intended for other purposes and were not designed for accommodation of immobile persons, insufficient staff during night shifts and weekends.

I believe that my findings will be a warning sign for the competent authorities. I am actually convinced that, by performing thorough and regular inspections, the quality of provided services will inevitably improve, as will the protection of human dignity of persons accommodated in these facilities.

In 2019, we will continue to pay attention to the rights of senior citizens and, in my investigations, I will focus on the conditions existing directly in senior care facilities.

IV

Ownership right and right to a healthy environment

Introduction

Even in 2018, in my capacity as public defender of rights, I dealt with the issue of restitution proceedings which showed at least a partial progress towards a solution. In addition, we also dealt with the problems of citizens related to the environment or proceedings conducted by land registers, building authorities and the Register of Renewed Land Records.

Examples from complaints

Problematic waste container zone

The claimant complained that, ten years ago, a waste container zone has been set up at the adjacent plot of land nearby her house and that waste was not regularly collected, thus impairing the quality of living and polluting the environment. By investigating the complaint, I learnt that the municipality failed to build a fence around the bio waste container zone or to use other means aimed at preventing the theft and entry of unauthorised persons, as required by the Wastes Act. I also discovered facts that were casting doubts on compliance with the municipal waste handling system designated by the city authority, including at least fourteen-day interval for the collection of biodegradable waste. Moreover, the regional public health office has long been issuing its repeated findings that were pointing to insufficient fulfilment of the obligations in the municipality of Turčianske Teplice as regards compliance with waste handling requirements applicable to the waste container zone in question.

Based on the ascertained facts I arrived at a conclusion that the municipality has breached the fundamental right to the protection of the environment, as guaranteed by Article 44(1) and (4) of the Constitution, by insufficient compliance with its statutory obligations in handling municipal waste and minor construction waste at the bio waste container zone and, despite repeated complaints and findings of the state health supervision body, it neglected effective environmental care. Therefore, I imposed several specific measures (building a fence around the waste container zone, ensuring the handling of waste and adjusting the frequency of waste collection), which the municipality subsequently adopted.

Unlawful correction of an error in the cadastral documentation

In another complaint, I was addressed by a claimant who complained about the proceedings and decision-making of the cadastral department in the proceedings concerning the correction of errors in the cadastral documentation. The claimant objected that the cadastral department had unlawfully divided his plot of land and registered part of it under the ownership title of another person. By investigating the complaint I found out that the cadastral department was not authorised to do so. The cadastral authority may not correct an error in the land register if the case at hand is disputable, otherwise it would interfere with the free exercise of ownership right acquired by other owners in good faith. Judging the nature of rights in rem and decision-making in ownership disputes falls under the sole jurisdiction of the courts.

Having investigated the complaint, I learnt that the cadastral department, by its actions in the proceedings concerning the correction of errors in the cadastral documentation, had breached the fundamental right of the claimant under Article 46 (1) of the Constitution. Because a final decision has already been made within the proceedings, I asked the district prosecutor's office for cooperation, and the prosecutor's protest against the cadastral department's decision has already been filed.

Failure to deliver a decision on the change in data in an approved register of renewed land records (RRLR)

I was addressed by a claimant who was not satisfied with how some of her complaints, by means of which she requested the correction of data in the RRLR, were handled. According to Section 7(6) of the Act on certain measures concerning ownership arrangements to lands, it is the administrative authority which must decide, within five years from the registration of RRLR data in the Land Register, about the change of data in the approved RRLR, if it contains such data about lands and legal relationships concerning the lands which is in contrast with the data used as the basis for the compilation of the RRLR.

By investigating the complaint, I found out that the administrative authority did not treat the submission by the claimant as a request for the correction of data in the approved RRLR. The administrative authority considered the submission by the claimant to be a request for inquiry and a request for information from the Land Register, and sent its reply to the claimant by a letter.

When investigating the case, I learnt that the rights and legally protected interests of the claimant might have been affected, and therefore the administrative authority should have assessed the claimant's submission in accordance with Section 7(6) of

the Act on certain measures concerning ownership arrangements to lands. The failure to issue a decision has in fact seriously interfered with the rights of a party to the proceedings, one of which is, by law, the right to defend oneself against a decision in a legally appropriate manner by lodging an appeal, which has been prevented by the failure to issue a decision (even though the matter has been handled by sending a letter). Based on the facts stated above I considered that the actions of the cadastral department were proved to have constituted a breach of the claimant's fundamental right to judicial and other legal protection, as guaranteed by Article 46 (1) of the Constitution. As a specific measure, I suggested that the submission by the claimant concerning the change of data in the approved RRLR be duly addressed by the administrative authority and that a decision fully respecting the requirements of reviewability be issued. The administrative authority fully agreed with the imposed measure and initiated administrative proceedings pursuant to Section 7 (6) of the Act on certain measures concerning ownership arrangements to lands.

Long suspension of the zoning permit procedure for a water project in a duration of several years

The complaint was addressed to me by a civic association, representatives of organisations, as well as several citizens. They warned me about the unlawfulness of a decision by the district office's construction and housing policy department quashing a building authority's decision on the suspension of the zoning permit procedure concerning the location of the Vodné dielo Slatinka water works and the case was referred back to the building authority for a new decision. They also said that, by then, the zoning permit procedure had already lasted for more than five years and that it could take forever because of the erroneous decision which resulted in the suspension of the zoning procedure. The claimants objected that, as a result of the suspension, the real estate owners could not peacefully enjoy the land property affected by the project and that the territorial development had stalled, because the construction of the Slatinka water works was at an advanced stage of preparation – a request for the issue of a zoning decision has been filed (although there is no mention of the fact that this happened five years ago).

By examining the complaint I learned that the contested decision of the district office's construction and housing policy department affected the building authority's subsequent erroneous actions, because the district office gave incorrect guidance, on several counts, to the building authority as to how the matter should be addressed within the proceedings. Because the decision was more than three years old, I could not request cooperation from the prosecutor's office (in order for the prosecutor to file a protest). However, I warned the construction and housing policy department about the incorrect official procedure and a violation of Article 46(1) of the Constitution. This decision has ultimately caused that the building authority, bound by the legal opinion of the appellate body, suspended the zoning permit procedure until it would receive the documents requested from the applicant. However, the applicant has never supplemented the documents. On the one hand, it is true that, in some cases, cooperation of a party to the proceedings is inevitable for the proceedings to continue (for instance, by removing the deficiencies in the petition to commence proceedings, by supplementing the relevant documents). On the other hand, however, it is necessary to realise that the administrative authority is responsible for the proper conduct of the administrative proceedings, for which purpose it was afforded, through legislation, the appropriate legal means. First and foremost, it is the responsibility of the administrative authority to take care of the proper conduct of the proceedings and its completion without undue delays. The building authority cannot remain inactive for years, waiting whether the applicant supplies the necessary documents some day. Even incorrect actions undertaken by a public authority may result in the violation of the right guaranteed by the Constitution under Article 48(2). As a specific measure to eliminate undue delays, I ordered the building authority to start performing actions aimed at completing the proceedings and I also gave it detailed guidelines on how to proceed further within the zoning permit procedure. Based on the measures imposed, the building authority started taking the necessary actions within the zoning permit procedure.

Upon the OPDR's initiative, a working meeting between the representatives of the Geodesy, Cartography and Cadastre Authority of the Slovak Republic (GCCA) and the Public Defender of Rights was held in GCCA's premises in July 2018 to discuss the practical problems encountered by district offices' cadastral departments in their agenda.

The PDR's representatives warned about the complaints related to lengthy proceedings or failures to handle the cases within the statutory time limit by the district offices' cadastral departments. In particular, the PDR's representatives warned about the then current situation at the cadastral department of the District Office in Bardejov. The GCCA's representatives said that, on the basis of information from the PDR, an inspection had been carried out at the cadastral department of the District Office in Bardejov, within which the reasons for non-compliance with the statutory time limits were also tackled. The above situation was to be stabilised within a reasonable timeframe, and it was explained by maternity leaves and staff shortages. In this connection, the GCCA informed that, following the ESO reform for an effective, reliable and open public administration (in particular, the Act on the Organisation of Local State Administration), the GCCA did not have any means of influencing the staffing of district offices' cadastral departments or any possibility to increase the number of employees including the related payroll issues. The GCCA had also warned the Interior Ministry about the problem of understaffed cadastral departments at several district offices, and the GCCA's requests in this matter will be provided to the PDR as well. The GCCA will also provide the PDR with the performance statistics in cadastral proceedings which clearly indicate where the number of employees needs to be increased. In this regard, the GCCA said the Interior Ministry did not respond to the above warnings.

The PDR's representatives warned that investigations of complaints frequently involve problems in the proceedings concerning the correction of errors in cadastral documentation pursuant to Section § 59 of the Land Register Act which are related to incorrect application of the Administrative

Code. Cadastral departments of district offices do not issue decisions, and they only communicate with the parties to the proceedings by letters. The GCCA said the described problem was also highlighted at the training sessions held for the employees of district offices' cadastral departments where it was expressly explained that decisions must be issued as long as the Administrative Code is applied. The GCCA said the above findings would continue to be tackled at the training sessions in the future.

The PDR's representatives also warned about insufficient justification as regards the non-recording of entries in the Land Register when the district office's cadastral departments only return the underlying public instrument without stating the reasons. At the training sessions, the GCCA will instruct the employees of district offices' cadastral departments that it is necessary to provide the reasons as to why the public instrument is being returned.

Pending restitution proceedings

In March 2018, after publishing "Report No. 2 on undue delays in restitution proceedings involving farming and forest land", I also presented a special report on this issue to the National Council. In that report I proposed, inter alia, an appropriate remuneration for personnel at the land and forestry departments of district offices in a way that would prevent the high staff turnover. In this connection I appreciated the fact that the wages of civil servants would see a 10% increase as of January 2018, as well as an additional 10% rise in the subsequent calendar year. I advised the members of the Slovak Parliament that, when approving the budget, they should primarily keep in mind the availability of funds necessary for strengthening the capacities at the land and forestry departments of district offices.

In the report, I imposed upon the relevant authorities several specific measures aimed at speeding up the completion of restitution proceedings. Reinforcing the personnel capacities in some of the land and forestry departments of district offices appears to be inevitable. The situation seems to be critical at the Land and Forestry Department of the District Office in Košice, where at least three employees would be needed immediately. Following the publication of the Report, I was also approached by the head of the Land and Forestry Department of the District Offices in Košice who further sought support in issues relating to the reinforcement of personnel capacities in her department. It is equally necessary to immediately strengthen the personnel capacities at the Land and Forestry Department of the District Office in Bratislava, because this department is handling a high number of restitution claims that are still pending. Further strengthening of capacities in some of the district offices' land and forestry departments might arise from inspections that I proposed to be carried out in cooperation with the land and forestry departments of district offices, remedies departments of district offices and the Agriculture Ministry. As announced by the minister of agriculture in her letter, these inspections were undertaken in May 2018. Another of the proposed measures was to appoint, within the relevant district offices' land and forestry departments, an employee(s) who would be solely in charge of the restitution agenda. The minister of agriculture informed me that she agreed with the proposed measure and asked, by a letter, all administrative authorities with more than 50 pending restitution proceedings to appoint at least one employee who will deal solely with the restitution agenda. One of the measures proposed in the Report was to ensure that employees who are making decisions within the restitution agenda are provided with specialised training on restitution issues in 2018 (the trainers should be persons with personal experience in decision-making processes in this area, preferably lawyers). The Ministry of Agriculture said it was not possible, for capacity reasons, to organise a nation-wide training workshop for all employees. As regards individual requests, the ministry's employees would continue to provide the necessary consultations as they did before. Because the decisions on restitution claims are made in many cases by employees without legal qualifications and because there are also other factors such as high employee turnover and complexity of the subject (the departments have been left with the most difficult cases) that come into picture, I will keep pointing to the need for specialised training workshops (as organised, for instance, by the GCCA for its own employees on an as-needed basis). The need for such training appeared to be justified also in those cases when it became necessary to assign an employee who would deal solely with the restitution agenda. However, for reasons of efficiency, several departments chose not to use this option due to the complexity of the issue, a longer learning curve and their staff numbers.

Subsequently, in September 2018, the minister of agriculture informed me about the results of inspections carried out at the relevant land and forestry departments of district offices:

- Land and Forestry Department of the District Office in Bratislava – four employees have been tasked solely with the restitution agenda since April 2018. It will be necessary to keep track of the impact of this measure on how the handling of restitution filings in general would be accelerated in the future, as well as the impact on other types of agenda that are dealt with by the department, i.e. whether the handling of other agenda would not be stagnating as a result of higher performance achieved in restitution filings. Because of lower salaries, this department suffers from a high turnover of employees which affects the speed of the decision-making processes in restitution claims. The Ministry of Agriculture will propose that the Interior Ministry increase the number of employees by two job positions, preferably for persons with legal qualifications. At the same time, it would be advisable to hire another employee to take care of less complex legal paperwork in handling the restitution agenda;
- Land and Forestry Department of the District Office in Malacky – the measure has been implemented by assigning two workers to deal solely with this issue. In the future, it will be necessary monitor its continued impact. The Ministry of Agriculture will suggest that the Interior Ministry consider increasing the number of employees by one position.
- Land and Forestry Department of the District Office in Senec – one employee has been assigned to be deal solely with this agenda. Assigning another employee to this task is not viable due to the number of staff and the scope of

the agenda. The Ministry of Agriculture will suggest that the Interior Ministry increase the number of employees by one job position, preferably a lawyer.

- Land and Forestry Department of the District Office in Dunajská Streda – still no employee has been assigned to deal solely with the restitution agenda. Assigning such an employee or redistributing the workload is not possible due the number of employees and the scope of the agenda. As part of the measures, it was necessary to analyse the impact of the fact that one job position in the department has been cancelled. Reinforcing the staff by one job position, which the department had previously lost, was found to be necessary, i.e., solely for the purposes of handling the restitution proceedings;
- Land and Forestry Department of the District Office in Nitra – three employees have been tasked solely with the restitution agenda since March 2018. It will therefore be necessary to monitor the continued impact of this measure. Some measures have also been taken by the head of the department – every employee will be filling in a simple time sheet and an analysis of restitution claims submitted by land associations will be prepared;
- Land and Forestry Department of the District Office in Prievidza – one employee has been tasked solely with the restitution agenda. The head of the department plans to assign another employee to deal solely with the restitution agenda as well. It will be necessary to monitor the continued impact of this measure;
- Land and Forestry Department of the District Office in Námestovo - no employee has been assigned to deal solely with the restitution agenda in this department. Assigning such an employee or redistributing the workload is not possible due the number of employees and scope of the agenda. The Ministry of Agriculture will suggest that the Interior Ministry increase the number of employees by one job position, preferably for a lawyer.
- Land and Forestry Department of the District Office in Michalovce – one employee has been tasked solely with the restitution agenda, it was proposed that at least one additional employee should be dealing with restitutions. It will be necessary to monitor the continued impact of this measure;
- Land and Forestry Department of the District Office in Humenné – two employees were assigned to deal solely with the restitution agenda. It will be necessary to monitor the continued impact of this measure. The head of the department also adopted other measures (e.g. reassessment of every case file, regular monthly meetings, pending cases checked by the head of the department);
- Land and Forestry Department of the District Office in Prešov – one employee has been tasked to deal solely with the restitution cases. As it seems, it would be advisable to assign one more employee. It will be necessary to monitor the continued impact of this measure.

As I was later informed by the minister of the interior, her ministry was working with the Ministry of Agriculture towards increasing the number of civil servant positions at the selected land and forestry departments by transferring civil servant positions from other land and forestry departments. If necessary, the Ministry of Finance will also be asked to cooperate. Because this requires increasing the Interior Ministry's budgetary resources, I also urged the minister of finance to grant the Interior Ministry's request and ensure that sufficient funds are allocated for reinforcing the selected land and forestry departments of district offices during the preparation of the budget proposal. As I was told by the Ministry of Finance in its statement, it holds the view that the Interior Ministry's budget provides sufficient elbow room for streamlining the activities implemented under the budget envelope, from which the relevant land and forestry departments could be reinforced, if necessary. In the light of the above statement, the Ministry of Finance elects not to adjust the binding indicators of the state budget, but instead recommends that the necessary funds be obtained by reallocating the expenditures and staff numbers from the ministry's own resources. Considering the scope and complexity of the agenda, as well the numbers of employees working in the land and forestry departments, I do not hold the view that increasing the staff numbers by transferring civil servant positions from other land and forestry departments would be an effective and systemic solution. It is very likely that staff reshuffles would most supposedly affect those departments that would lose an employee. For this reason I support a solution whereby the staff woul be reinforced by adding new job positions (a temporary reinforcement is also possible).

I welcome the fact that, based on the inspections carried out, specific measures have been adopted, in particular by allocating employees who would be dealing solely with the restitution agenda, as proposed in my Report. Another positive aspect is that further necessary measures have been undertaken by several heads of department in response to the performed inspections. I appreciate that the staff at the Land and Forestry Department of the District Office in Kežmarok has been strengthened, as it deals with a specific situation in handling the restitution claims in the former military district Javorina. On the downside, I have a negative view of the fact that personnel capacities have not yet been strengthened at: the Land and Forestry Department of the District Office in Košice – by three civil servant job positions, the Land and Forestry Department of the District Office in Bratislava – by two civil servant job positions and by another employee, the Land and Forestry Department of the District Office in Malacky – by one civil servant job position, the Land and Forestry Department of the District Office in Senec – by one civil servant job position, the Land and Forestry Department of the District Office in Dunajská Streda – by one civil servant job position, the Land and Forestry Department of the District Office in Námestovo – by one civil servant job position. In this particular context, I keep pointing to the critical situation which still prevails at the Land and Forestry Department of the District Office in Košice where, according to estimates, the department will be deciding about the pending restitution proceedings for another 40 years!!! Along with my predecessor, we have been pointing to this situation since 2015. Despite that NO MEASURES have been taken by the competent authorities to date in order to ensure the inevitable reinforcement of personnel capacities in this department.

V

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

Introduction

This part of the report discusses, for the most part, those rights that are important for ensuring the transparent performance of public administration.

Examples from complaints

Violation of the right to information, non-disclosure of information, inaction in handling complaints

I have been approached by a claimant, a former registered athlete, who asked, inter alia, the Education Ministry to investigate the lawfulness of actions undertaken by that ministry and the sports organisation (the Slovak Athletic Federation) in the preparation, organisation and funding of sports projects.

Because the Education Ministry failed to respond to the claimant's request, he asked the ministry to disclose information (pursuant to the Freedom of Information Act) about the status of his request and whether the ministry took any action in this matter. At the same time, he filed several complaints with the Education Ministry in connection with the matter at hand in accordance with the Complaints Act, and did not receive any reply to such complaints either. When handling the claimant's complaint, I investigated the actions carried out by the Education Ministry in disclosing the information and handling the complaints, and I discovered that the ministry, as the liable person, did not act in line with the provisions of the Freedom of Information Act and the Complaints Act. The requested information was not disclosed to the claimant and the Education Ministry did not even issue a decision rejecting the disclosure of such information. Furthermore, the Education Ministry did not take any action in connection with the complaints submitted by the claimant.

As demonstrated by the outcome from the investigation of the complaint, the Education Ministry has breached, by its actions, the claimant's fundamental right to information guaranteed by Article 26 of the Constitution. Along with the outcome from the investigation of the complaint, I also notified the Education Ministry about the facts implying that the provisions of the Complaints Act have been breached by its actions. Based on my involvement and in connection with the notification on the outcome from the investigation of the complaint, along with a request to adopt measures aimed at removing the identified shortcomings, the Education Ministry made the requested information accessible. The Ministry also expressed regret over its inaction and explaining that it was caused by problems with the application of the relevant statutory provisions and by a high workload associated with personnel changes. This allows me to note that the Education Ministry has acted accordingly to remedy the violation of the statutory obligations. The Ministry also stated that it adopted measures to prevent similar situations from occurring in the future.

Partially refused disclosure of information of a record-keeping nature – judicial decision-making

Another case involves a complaint wherein the claimant informed me about his request to review the Justice Ministry's actions in the disclosure of information – a document containing the status of

proceedings (concerning the Slovak Republic) brought before the European Union courts. The Justice Ministry made some of the requested information available, but refused to disclose information on pending proceedings in accordance with Section 11(1)(d) of the Freedom of Information Act because, based on the Justice Ministry's assessment, this information concerns judicial decision-making.

After investigating the complaint and the relevant legislative provisions, I arrived at a conclusion that, in handling the request for the provision of information, the claimant's fundamental right to information has been breached by the Justice Ministry's actions. In noted – in unison with the applicable judicial decisions – that information of record-keeping nature, which the requested document contains, does not constitute a factual basis for restricting access to information on the legal grounds of judicial decision-making. The requested information is, in essence, of record-keeping nature, as also stated in judicial decisions issued in an analogous case of the claimant. According to applicable Slovak and European case-law, restriction of access to information under Section 11 (1)(d) of the Freedom of Information Act does not apply to information of record-keeping nature.

I informed the minister of justice about the outcome from the investigation of the complaint, noting that the claimant's fundamental right to information had been breached, and I asked her to adopt measures aimed at removing this irregular situation and to disclose the requested information to the claimant. In response to the submitted outcome from the investigation of the complaint, the minister of justice announced that she was 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 Section 65 of the Administrative Code.

Later on, the incoming justice minister informed me that the minister of justice had quashed the contested decision. Subsequently, the Justice Ministry disclosed another part of the requested information within the new administrative proceedings and issued a new decision on non-disclosure of the remaining part of information, while partly agreeing with my legal assessment. To a certain extent, however, it still maintains its legal view that the remaining part of the information requested by the claimant was related to judicial decision-making and, therefore, it would not be disclosed to the claimant.

The claimant approached me again at the end of 2018 in an analogous matter. Therefore, addressing this issue and seeking a consensus in legal assessments is likely to be a part of my activities in the future.

Right to the protection of privacy of the head of the municipal office vs. right to information

In response to a question by a journalist I have decided, on my own initiative, to investigate actions of the municipality during the municipal council's sessions. Among other outputs from the sessions, audiovisual recordings have also been published on www.youtube.com. During some of these sessions, a local citizen was pointing to the actions of the head of the municipal office, which led a situation where the head of the municipal office was charged with a crime. However, these parts could not be heard on the published recordings because they were either muted down or covered by voice-over. In this case, it was first and foremost necessary to resolve the question whether the head of the municipal office could be considered a public office holder who is required to tolerate a higher degree of invasion of privacy and whether, in this particular case, the right of the Nováky citizens to be informed about the criminal prosecution of the head of the municipal office prevailed over his right to privacy.

Having analysed the case law of the Slovak courts as well as of the ECHR, I reached a conclusion that the head of the municipal office was a public office holder and that the right of the public to be informed about the criminal prosecution against him prevails in this case. It is worth noting that, according to an ECHR's decision, a person who committed an act that such person knew could result in criminal prosecution or that could damage that person's reputation cannot seek protection afforded by the right to privacy provided for in Article 8 of the Convention. Considering the fact that the minutes of the sessions of the municipal council, which every municipality is required to prepare pursuant to the Act on Municipalities, did not contain the citizen's statements about the charges brought, I arrived at a conclusion that the city's actions might have interfered with the rights of its citizens to information.

VI

The right to judicial and other legal protection

Introduction

The Constitution guarantees to everyone the right to claim their right in an independent and impartial court or at another body of the Slovak Republic. Also, everyone has the right to have his/her case tried without undue delay.

Based on my findings, undue delays in judicial proceedings remain an undesirable phenomenon that can still be seen in the courts of the Slovak Republic. Last year I have identified a breach of the fundamental right to have the case tried without undue delays in 48 cases. Civil proceedings are the most represented type in proceedings where undue delays have been demonstrated. Undue delays have also been identified in proceedings requiring particularly fast action (e.g. child maintenance proceedings, etc.). Even though civil litigations have recently seen the adoption of new civil procedure codes, I have not found – when discharging my function – any significant signs that the total length of proceedings is becoming shorter on that account. However, it is important to note that reducing the occurrence of undue delays in proceedings – as one of the objectives set out within the recast of the civil procedure legislation – will take some time and, subsequently, will also require a more thorough assessment.

For the most part, the courts are still attributing their inaction or inability to act faster to staffing problems and the associated high caseload. Some are pointing to a growing tendency of in the occurrence of certain types of proceedings that are stirred up by society-wide phenomena and problems. The president of one of the district courts has warned about a growing number of the so-called guardianship proceedings that depend, in terms of quality and quantity, on socio-economic and cultural-social shifts and shifts in values, as implied by knowledge gained by judges when pursuing their profession.

Examples from complaints

Right to have access to court

A claimant serving a prison sentence objected that the correctional facility failed to hand him over a resolution by the district court despite having duly collected the mail delivery, and the claimant was thus unable to observe the time limit for requesting a remedy.

I have requested a written position and the relevant documents regarding this complaint and I learnt that the mail for the claimant was delivered from the district court to the correctional facility already in April. The acknowledgment of receipt was signed by the facility's authorised employee. However, the employee working as a desk officer at the registry administration department has mistakenly identified the mail as one addressed to the facility. Because the correctional facility was not a party to the proceedings, the mail was subsequently inserted into the claimant's personal file. Such incorrect action on the part of the facility has been ascertained as late as in September during the review of the complaint referred from the PCGC General Directorate. According to a statement by the correctional facility director, a facility's employee immediately delivered this mail in person to the claimant and attempted to explain the mistake, recommended further course of action, while assuring the claimant that the correctional facility would inform the competent court to that effect.

Based on the facts stated above I have arrived at a conclusion that the correctional facility, by its incorrect action in handling the resolution of the district court, had breached the claimant's fundamental right to judicial and other protection guaranteed by Article 46(1) of the Constitution, according to which everyone may claim his 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. I have communicated the outcome from the investigation of the complaint in writing to the correctional facility and asked it to take measures aimed at preventing mistakes in handling mail deliveries.

Right of defence

In criminal proceedings, the right of defence is considered to be one of the most important rights of a person against whom the criminal proceedings have been initiated. At the same time, it represents one of the most fundamental principles which must be strictly met in order to comply with the condition of respecting the fundamental rights and freedoms in criminal proceedings. This entails a set of rights of the defendant, against whom charges have been brought, to conduct his defence. It is enshrined in the law, as well as addressed and supported through national and international legislation.

The investigated case involved a complaint by an accused claimant held in custody and concerned the exercise of his fundamental right to contact his legal counsel by phone. If an accused who is held in custody requests, using a prescribed form, the detention facility to allow a phone conversation with the legal counsel, he/she is required to provide information about the legal counsel which the facility verifies in cooperation with law enforcement authorities or through the court. The above implies that, in those cases where the accused requests a phone call with the legal counsel, it will suffice to submit a completed form directly to the detention facility without having to send it to the law enforcement authority or to the court. However, even this request for contacting the legal counsel over the phone was sent by the claimant to the law enforcement authority by mail. According to applicable legislation, the accused is allowed one phone conversation with the legal counsel per calendar week. Based on a written request by the accused, the director of the facility may allow the accused, under certain circumstances, to talk with the legal counsel over the phone even more frequently. A prior consent of the competent law enforcement authority or the court is not required for allowing phone conversation between the accused and the legal counsel. What happened in this case is that, after the request of the accused for a phone conversation with his legal counsel was delivered to the law enforcement authority, the reply given by the law enforcement authority to the request was negative and was sent back to the detention facility along with the opinion. Following the delivery of the request handled in this manner as regards the phone conversation with the legal counsel, the detention facility abided by the instructions of the law enforcement authority and did not follow the procedure laid down in the Remand Custody Act, according to which the phone conversation with the legal counsel should have been allowed. By not allowing the phone conversation with the legal counsel, the detention facility breached the claimant's fundamental right of defence which must inevitably be considered part of the right to a fair trial, as well as part of the procedural rights of the accused.

For the above reason I asked the detention facility to adopt the necessary measures and, at the same time, I have reported the outcome of the complaint investigation to the law enforcement authority. I did so because of the fact that the situation leading to the interference with the claimant's fundamental right was also caused by the actions undertaken by the relevant investigator who acted beyond the scope of her authority.

Delays in distraint proceedings

In one complaint I have investigated compliance with the fundamental right to have the case tried without undue delays in distraint proceedings which commenced already in 2001. The district court which dealt with the case had severely interfered with the above fundamental right of the parties to the proceedings. In comparison with other types of proceedings, the distraint proceedings and the role of the court in this regard are different. The role of the court and its decisions focus only on selected issues related to the distraint proceedings (e.g. granting the authorisation to bailiff, discontinuation of distraint proceedings, etc.). Within the distraint proceedings, the court is not acting continuously and the main bulk of work remains with the bailiff. However, if the court receives a request from a party to the proceedings or the bailiff, the court must make a decision about such request. In this case the court was inactive already when granting the authorisation for the bailiff to proceed with the distraint proceedings, in which case the authorisation was granted by the court seven years after the submission (or detailed supplementation) of the request. Based on the then applicable Enforcement Rules, the time limit for the deciding about such request was set to 15 days following its delivery. It is therefore clear that this time limit has been exceeded multiple times. In the end, the court did not grant the authorisation to the bailiff, and the eligible party thus filed an appeal. The district court again remained inactive for another six years. In 2015, the obliged party submitted an application for the suspension of the distraint proceedings. The court was inactive for more than two years until the obliged party filed a request in 2017, seeking that the distraint proceedings be discontinued and the freeze on its account be lifted. The court was supposed to decide on the suspension within 30 days. As the situation evolved, however, the court did not eventually issue a decision on the suspension, but instead it discontinued the distraint proceedings. The purpose of the obliged party's right to request the suspension of the distraint proceedings was thus marred. In the end, the relevant distraint proceedings were discontinued. However, I instructed the president of the court to adopt several measures to prevent such serious misconduct in the future. The situation where the total duration of distraint proceedings (17 years) is attributable primarily to inaction of the district court is not acceptable.

Delays in criminal proceedings

In a different case I was approached by a claimant, represented by a law firm, seeking a finding that his fundamental right to life and the right not to be deprived of his life pursuant Article 2(1) of the Convention and pursuant to Article 15(1) and (2) of the Constitution has been breached as a result of actions undertaken by the criminal police department at the district police directorate and the regional court. He also sought the protection of the fundamental right to have the case tried without undue delay within proceedings held before the district court. In the complaint he also stated that not a single decision has been issued in the civil proceedings.

The claimant's daughter died when a concert tent collapsed at the Pohoda music festival. For this reason, criminal prosecution has been commenced against the managing director of the company which erected the concert tent at the festival.

When the tent collapsed, two young people died and at least three persons suffered serious injuries.

Because the criminal proceedings involved criminal negligence while the Convention does not afford protection of human life in connection with negligent conduct, I did not find a breach of the fundamental right to life and the right not to be deprived of life pursuant to Article 2 (1) of the Convention.

In the request the claimant also objected to delays in the criminal proceedings conducted by the district police directorate. The conduct of the police officers in investigating the criminal offence was examined by the district prosecution office. In this part I therefore had to discontinue the request. If the case is handled by the prosecutor's office, I am required to do so.

In connection with the protection of the fundamental right to have the case tried without undue delays in criminal proceedings at the district court I have found that, over the period of nearly two years since charges were brought, the court had performed only a minimum number of steps aimed at arriving at a decision in the case. The court was inactive for six months when a translator joined the criminal proceedings. Another six-month period of the court's inaction occurred when the court submitted the case file to the Justice Ministry along with the request to refer the criminal case to the country where the company's managing director comes from. I therefore had to conclude that the fundamental right to have the case tried without undue delay, as guaranteed by the provision of Article 48 (2) of the Constitution, and the right to a fair and public hearing within a reasonable time pursuant to Article 6 (1) of the Convention have been violated. At the same time, I also asked the district court president to take appropriate measures aimed at removing prolonged inaction of the court in the proceedings. The issue was communicated by the district court president to the assigned judge who immediately scheduled a hearing so that the parents may finally, nine years after the tragic death of their daughter, see that the criminal offence will be tried and the guilty will be punished. In a written statement the district court president also promised to monitor, in regular intervals, the situation in the criminal proceedings until delivery of the final judgment.

In the related civil proceedings, the lengthiness of which was also objected to by the claimant, I have not found delays because, in the meantime, the judgment had been delivered.

Delays in the proceedings concerning the review of the lawfulness of the decision to disclose information

Another claimant approached me with a request for assistance as regards the protection of the fundamental right to have one's case heard without undue delay in the proceedings held before the regional court. The subject-matter of the proceedings was to review the lawfulness of a regional court's decision and of a fictitious decision of the district court about the disclosure of information in accordance with the Freedom of Information Act.

When investigating the complaint, it was ascertained that the existing unreasonable duration of the proceedings was attributable to the regional court. Therefore, the outcome from investigating this complaint was that a violation, by the actions of the regional court, of the fundamental right to have one's case heard without undue delay and of the right to a trial within reasonable time has been demonstrated. After I intervened, a hearing was scheduled and, on that same hearing, the court delivered its judgment.

Delays in the proceedings at the Personal Data Protection Office

In connection with the Personal Data Protection Office's procedure, I was approached by the claimant seeking the protection of his fundamental rights in the proceedings concerning the protection of personal data which were commenced at the claimant's request. The Personal Data Protection Office of the Slovak Republic had been deciding about the claimant's submission for more than two years (by the time when the public defender of rights started dealing with the complaint), three times at the first instance level and two times at the second instance level on the basis of the submitted administrative appeal.

I asked the head of the Personal Data Protection Office for her opinion. Subsequently, I examined the attached case file documentation which I assessed in the context of the relevant legislation that was in force at the time when the office was making its decisions. Having reviewed all first-instance and second-instance phases within the relevant administrative proceedings I did not identify any interference, by the office, with the claimant's rights in such intensity that would give rise to a violation of the claimant's fundamental rights. At the same time, however, I also discovered facts indicating that, within the proceedings concerning the protection of personal data, the obligations established by the Personal Data Protection Act and the Administrative Code had been violated. The Personal Data Protection Office of the Slovak Republic has breached the obligation to inform the parties to the proceedings, in writing and with appropriate reasoning, about the extension of the time limit for decision and the president of the Office failed to arrive at the decision within the time period prescribed by law. I also brought to the office's attention the circumstance of repeated annulment of the first instance decision by the superior authority which may result in inefficient decision-making (also in terms of lengthiness).

Based on my notification, the office has discussed the identified shortcomings at the relevant management levels to ensure that these shortcomings are prevented in the future. The office also informed me about the release of an internal regulation specifying the conditions for the extension of time limits within administrative proceedings in accordance with the applicable legislation.

Shortcomings in the investigation of a traffic accident

I received a complaint from a claimant who was a participant and a witness in a car accident. Within the offence procedure, based on the outcome from the investigation of the car accident by the traffic inspectorate, the claimant's daughter, as the driver of one of the vehicles, was found guilty of causing the car accident. According to the claimant, the decision establishing the committed offence and imposing a sanction for the offence did not correspond to the actual course of events during the car accident and, therefore, she viewed it as unfair and wrong. According the claimant, it was driver of the other motor vehicle who

was responsible for the car accident, or at least contributed to it.

I requested a position from the traffic inspectorate along with the relevant case file concerning the offence, including expert opinions and witness testimonies. After investigating the complaint and the relevant documentation describing the course of events during the car accident, I have identified multiple infringements and serious deficiencies in the statement of reasons for the traffic inspectorate's decision. Because the complaint involved the review of a final decision, I referred the complaint, along with my legal opinion, to the competent prosecutor in accordance with Section 14 (4) of the Act on the Public Defender of Rights.

I have subsequently received a notification from the District Prosecutor's Office about the outcome of the complaint investigation in which the prosecutor found that the contested decision was issued unlawfully. For this reason the traffic inspectorate received the prosecutor's protest against the decision in question, suggesting that the contested decision be repealed and a new, lawful decision be issued after taking evidence in a due manner.

Wrong administrative procedure concerning the application for a change of surname

In another case I received a complaint from a claimant concerning the change of surname. The claimant submitted a briefly justified application for the change of surname to the district office's department of general internal administration and requested that the surname be changed from X to XY or X-Y. Before submitting the application, the claimant visited the relevant workplace to seek advice about a change of surname. The administrative authority instructed the claimant on how to submit the application and which public instruments must be submitted with the application. After receiving the application, the administrative authority assessed it as incomplete and ambiguous, but due to the previous consultation it did not deem it necessary to ask the claimant to revise and supplement the application. The administrative authority sent a reply to the application and, because the claimant did not answer, the case file was closed.

In handling the claimant's application, the administrative authority did not act in accordance with the law. After receiving an incomplete application, the administrative authority failed to request the claimant to revise and supplement the application and provide the required annexes. Furthermore, it did not inform the claimant about the consequences of the failure to supplement the application, as required by the Administrative Code. At the same time, the administrative proceedings commenced on the basis of this application were not concluded by the administrative authority in a manner prescribed by law – by issuing a decision with all of its formal requirements, as well as requirements regarding its contents. This course of action resulted in a breach of the claimant's fundamental right to judicial and other legal protection under Article 46(1) of the Constitution.

I have pointed to the identified deficiencies and the district office's department of general internal administration took corrective actions and relevant measures – instructing the employees about the correct procedure and requesting the claimant to supplement the application – and it will continue the proceedings in accordance with the Administrative Code.

Non-granting of one-off allowance to war orphans

Article 46 of the Constitution also affords, in addition to the right to judicial protection (right to a fair trial), the right of a person to other legal protection, covering e.g., the right to the protection against unlawful decisions of the government authorities. I have investigated a complaint where I found a breach of the right to other legal protection by a decision of the Justice Ministry as regards non-granting the one-off allowance to war orphans. The father of the claimant – a pensioner and war orphan – was beheaded in the Pankrác prison in Prague in 1944 with a guillotine. The claimant delivered to the Ministry the documents necessary for granting the above allowance within the time limit set by law. The Justice Ministry rejected her application, including her appeal against the Ministry's decision on non-granting of the allowance, and referred to two other laws under which, according to the Ministry, the claimant was entitled to compensation or other form of financial allowance for the death of her father as a member of anti-fascist resistance. At the same time, the ministry informed that the claimant's father was not meeting, at the time of his death, one of the conditions required by the act on one-off financial allowance.

Having investigated the complaint I have learnt that none of the laws referred to be the Justice Ministry could be applied to the claimant' situation and that the Act on one-off financial allowance did not prescribe the period of life of a member of resistance during which the specified conditions must be met. Because the claimant's father was meeting, during a certain period of his life, all the conditions required by the Act on one-off financial allowance, I perceive the actions taken by the Justice Ministry as arbitrary and contradicting the intentions sought by the legislator when adopting the relevant act. Therefore, in the claimant's case, the Justice Ministry violated Article 46(1) of the Constitution.

Small hydro power plants

I am still keeping an eye on the issue of small hydro power plants (SHPP). As noted in the report of the former public defender of rights concerning the procedures followed by public administration authorities in granting permits for the construction of SHPPs, the 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 a healthy environment, the right to timely and complete information about the state of the environment and about its causes and consequences, as well as the right to judicial and other legal protection. The most frequent issues included infringements of rights of the parties to the proceedings by a failure to comply with the requirement of proper reasoning of the decision, by a failure to comply with the requirement to reliably establish the facts of the case, and by a violation 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.

In November 2018, the Banská Bystrica Regional Court quashed a decision by the Construction and Housing Policy Department of the District Office in Banská Bystrica and a decision by the city of Žiar nad Hronom as regards the zoning permit decision concerning the location of the structure "SHPP Žiar nad Hronom". The court has annulled the above decision after having identified several serious errors in the proceedings. For instance, the administrative body failed to deal with all technical documents and objections of the parties to the proceedings and thus failed to establish the actual facts of the case as regards the possible adverse impact of the SHPP Žiar nad Hronom on the already-completed SHPP Lutila. The administrative body also failed to deal with the objection of inconsistency between the first-instance decision and the zoning plan for the Banská Bystrica region. The parties to the proceedings called into question the linear nature of the structure and the building authority did not uphold the objection. Based on the above shortcomings the building authority was supposed to refer the case to the special building authority authorised to grant permits for water projects, which would assess the case and issue a final decision. Taken as whole, the operative part of the decision concerning the location of the structure is incomprehensible in that it does not lend itself to reaching a clear conclusion as regards the location of the structure "SHPP Žiar nad Hronom" (its individual construction structures and units) within the territory.

Last year the local residents, along with conservation organisations, challenged the environment impact assessment process for the planned SHPP in Hronský Beňadik before the court. They argued that, within the environmental impact assessment process concerning this construction, the fact that the hydroelectric plant might have a negative impact on the government-approved conservation area of European importance known as "Stredný tok Hrona" (middle basin area of the Hron River) was not taken into account. In this case, an insufficient environmental impact assessment was also criticised by the World Wide Fund for Nature which also supported bringing an action.

The applicable EU Water Directive requires the Member States to restore the rivers to a good ecological status. As indicated by the World Wide Fund for Nature, this criterion is not met by more than 46% of watercourses in Slovakia, not only because of pollution, but in particularly due to barriers. According to the most recent "Slovak Water Plan", there were 1,075 structures on the largest Slovak rivers in 2014. Since then, their number increased even further. The situation is the worst on the rivers of Váh and Hron. The Water Framework Directive is one of the most progressive environmental legislative acts of the European Union. The directive requires the Member States of the European Union to assess the status of surface water and groundwater and restore their good ecological status. The Water Directive is currently undergoing a planned revision; however, some 100 European non-governmental organisations called upon the European Commission to preserve this European legislation which protects rivers, streams, lakes, wetlands and groundwater. The request that the European Commission refrains from changing the form of the directive was supported by more than 300,000 Europeans, including Slovaks.

For the Slovak Republic, the document titled "Update to the Concept of the Use of Hydropower Potential of Rivers in Slovakia until 2030" will have essential implications on future decision-making about SHPPs and the outcome of the proceedings before the Bratislava Regional Court.

I will continue to pay attention to the issue of SHPPs due to the importance the protection of the citizens' right to a healthy environment.

Recommendations for the National Council

Legislation governing name and surname with regard to the free movement in the territory of the European Union Member States

The existing legislation governing the use of name and surname of a natural person having the nationality of the Slovak Republic does not allow a situation where the surname of a minor of unmarried parents with different surnames could be composed of the surnames of both the mother and father. The legislation set up in this manner is causing problems with its application, because the above double form of surname is indeed allowed by the law of the United Kingdom. As a result, in the case of a child born in the United Kingdom and having the surname composed of the mother's and father's surnames, the law of the Slovak Republic does not allow the possibility to recognise of such surname. I have therefore arrived at a conclusion that, even though the procedure followed by civil registration office is in line with the national legislation in such cases, it is capable of interfering with the fundamental rights and freedoms of such children, namely as regards their freedom of movement. It represents an obstacle for these children to enjoy their right to move freely within the territory of the European Union Member States that is guaranteed by Article 21 of the Treaty on the Functioning of the European Union, Article 45 of the Charter of Fundamental Rights of the European Union and Article 23(1) of the Constitution.

My conclusions arise in particular from the judgment of the Court of Justice of the European Union in Case C 353/06 Grunkin Paul, according to which the free movement of persons is precluded by all provisions of the national law that do not allow to recognise a child's surname, as determined and registered in a second Member State in which the child – who has only the nationality of the first Member State – was born and has been resident since birth.

Based on my conclusions, I recommend that the National Council adopt such legislative amendments, in particular with respect to the Name and Surname Act, which would make it possible to recognise the child's double surname of the father and mother who have the nationality of the Slovak Republic in such form that is permitted by the legislation of the other EU Member State, where the child was born and has been resident there, regardless of whether such child has the nationality of such state.

The need to adopt specific legislation allowing the victims of unlawful sterilisation to obtain effective redress

Involuntary sterilisation represents crude interference with the physical integrity and dignity of a person and has an irreversible impact on the private and family life of an affected woman. Slovakia's commitment to protecting individuals from such interference is based on the Constitution (Article 16(1) and (2), Article 19 (1) and (2)) and also on several international treaties that are legally binding upon the Slovak Republic (e.g. the Convention, the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment).

The practices involving unlawful sterilisations of women primarily from Roma communities in eastern Slovakia were relatively comprehensively documented, for the first time, in a 2003 report by non-governmental organisations titled "Body and soul". The women affected were sterilised either without their informed consent, or they were compelled to give an informed consent on the basis misleading and intimidating information, or such consent was signed in a situation where the woman was not capable of making her own judgment.

Even though, in legislative terms, the recent years saw a significant shift in the prevention of unlawful sterilisations, no systemic solution capable of effectively compensating all illegally sterilised women for such extraordinarily serious interference with their fundamental rights has been adopted so far. Because of this fact, the Slovak Republic has faced repeated

criticism from international organisations. In 2016, the United Nations Human Rights Committee called upon the Slovak government to set up an independent body for the investigation of practices involving coercive sterilisations of Roma women and for ensuring financial and other compensation to all victims. In its definitive findings in January 2018, the UN Committee on the Elimination of All Forms of Racial Discrimination urged the Slovak Republic to ensure access to effective means of redress and to adequate compensation for the Roma women who underwent sterilisation without a valid informed consent, as well as punishment of the perpetrators of these acts and effective application of legislation and rules concerning informed consent in the cases involving sterilisation.

I am convinced that the current national legal framework does not allow the affected women to achieve effective redress. Filing a civil action does not constitute a sufficiently effective means of redress for several reasons. On the one hand, there are certain procedural and legal obstacles; in particular the plaintiff is required to bear the burden of proof, including the complexity of evidence-taking which may be difficult after many years. On the other hand, however, this problem must also be perceived from the perspective of the social situation of the affected women who often come from a marginalised environment. This also relates to their lack of awareness of available legal means, as well as their fear and distrust in institutions.

Based on the aforementioned facts, my recommendation to the National Council is that it should adopt specific legislation that would allow taking into account all specificities of the cases involving illegal sterilisation and ensuring access to effective means of redress and adequate compensation for all victims.

Establishing a legal framework for ensuring adequate care of children who are suffering from severe mental disorders and are placed in institutional care

Under the Act on Social and Legal Protection of Children, the labour office is required to implement measures in the area of social and legal protection of children in a way that respects the best interest of a child, and this requirement is also arising from the Convention on the Rights of the Child.

Under the existing system for the social and legal protection of children and social guardianship, there is no institution providing institutional care for children with psychiatric diagnoses combined with severe behavioural disorders requiring maximally individualised, professional and special care. In practice we are seeing situations where the existing system for the social and legal protection of children and social guardianship cannot provide adequate help to a child. Relocating a child from one facility to another (e.g. from the children's home to a re-educational centre) is a common practice which results in institutionalised torture of the child, lacking any reflection on the need for safety and security as a primary consideration in the case of a child with a severe psychiatric disorder.

I therefore recommend that the National Council adopt such legislation that will lay the groundwork for establishing a type of an institution where children with psychiatric and behavioural disorders requiring the provision of adequate health care (corresponding to the health conditions/disabilities) can be placed, while at the same time allowing such profile/specialisation of the institution's team of experts that the needs of the children with disabilities are taken into account.

Addressing the situation of pension recipients whose pension insurance (security) periods completed prior to the dissolution of the former Czechoslovakia are considered pension insurance periods of the Czech Republic

I consider the situation faced by a group of pensioners who are entitled to a pension benefit in Slovakia, without counting in the pension insurance periods completed until 31 December 1992 which are assessed in accordance with the legislation of the Czech Republic, as unbearable and, in terms of compliance with the fundamental rights, as unacceptable. For some of them, their entitlement to the pension benefit might probably arise at a later time in the Czech Republic (upon reaching age that is at least five years higher than their pension age), but others will not become entitled to the pension benefit at all. This applies not only to old-age pension recipients, but also to the recipients of invalidity pensions and early retirement pension. These persons are not entitled to a compensatory allowance and, in most cases, not even to an increase of their pension benefit in a way that it reaches the minimum pension benefit amount.

It is obvious that the pension insurance (security) periods completed during the existence of the federal republic are not and have never been insurance periods completed in a foreign country. They are treated this way only for the purposes of determining the successor state which would be awarding the pension for these periods. It is therefore inacceptable for these persons to find themselves in such a fundamentally different position than persons whose Czechoslovak term of insurance is assessed by the Slovak Republic.

For the reason stated above I deem it necessary that the National Council approve, as soon as possible, such legislation that will rectify the aforementioned unfavourable situation involving different treatment and address the situation of persons who did not become entitled to a pension benefit in the Czech Republic due to insufficient number of years of the pension insurance period or have not reached the retirement age, even though they became entitled to the pension benefit in the Slovak Republic.

The right of same-sex people to be granted residency based on the family member status

I consider the actions of public administration authorities aimed at preventing a third country citizen, who is the spouse of a same-sex citizen of the Slovak Republic, from accessing the right to permanent residence based on the existing matrimonial relationship when the marriage took place in a third country in accordance with the law of such country, to be an infringement of fundamental rights and freedoms of the applicant for residence. This conclusion is neither affected by the fact that same-sex marriages are not allowed under the law of the Slovak Republic.

In some countries same-sex marriages are common, but the Slovak legislation, in line with a legitimately pursued objective, restricts the rights of these persons in that these marriages are not valid in the Slovak Republic. Fundamental rights and

freedoms may be subject to a restriction only when it is supported by objective reasons of public interest and when it is proportionate to the objective legitimately pursued by such restriction. However, the restriction is proportionate when it is capable of achieving the pursued legitimate objective and does not go beyond of what is necessary to achieve it. Where preserving a marriage as "a unique union between a man and a woman" under Article 41(1) of the Constitution is to be the pursued legitimate objective, it must be noted that granting the residence permit to an applicant who is a third country national is not, in and of itself, capable of undermining this constitutionally enshrined value because it has no impact on the character of marriage under the law of the Slovak Republic.

Where administrative authorities grant permanent residence to a spouse in an opposite-sex marriage (a third country national), but refuse to grant permanent residence to a spouse in a same-sex marriage (entered into pursuant to a third country law), such practice establishes indirect discrimination based on sexual orientation.

The ECHR described sexual orientation as a most intimate aspect of an individual's private life, therefore leaving little margin of discretion to the state, which is required to demonstrate particularly serious reasons for interfering with the right to respect for private and family life as guaranteed by Article 8 of the Convention. The Convention does not guarantee the right of aliens to enter into or reside in a given country; despite that, however, the decisions adopted by the countries with regard to immigration may in certain cases be considered an interference with the right to respect for private and family life afforded by Article 8 of the Convention, in particular in a situation where the individuals concerned have strong personal or family ties in the host country which may be severely affected by that decision.

For this reason I recommend that the National Council adopt such legislative amendments that would allow undisturbed enjoyment of the right to family life by the applicants on the grounds of family ties irrespective of their sexual orientation.

Legislation for granting nationality to a stateless person

Based on the European Convention on Nationality which, in Slovakia's case, came into force in 1 March 2000, the Slovak Republic has committed to avoiding the cases of statelessness to the maximum extent possible. In particular, as referred to in Article 8 of that convention, the State Parties may permit their nationals to renounce their nationality provided the persons concerned do not thereby become stateless. Subsequently, according to Article 9 of the European Convention on Nationality, each State Party shall facilitate the recovery of its nationality by former nationals who are lawfully and habitually resident on its territory.

At present, I regard as problematic those provisions of the Citizenship Act which:

- allow the establishment of the status of a stateless person by the release of a citizen of the Slovak Republic even in a situation where such citizen has not been granted citizenship of another country yet (Section 9(2) of the Citizenship Act),
- do not address, in a situation where citizenship has not been granted by another state, a fast track procedure for granting state citizenship to the former nationals of the Slovak Republic. The only exemption concerning former nationals is the non-application of the condition of permanent residence in the territory of the Slovak for a continuous period of eight years before filing the application for citizenship. In this case, the time limit for the administrative authority's decision is the same as in other cases falling under the procedure of applying for citizenship, i.e. 24 months, while this time limit may also be extended if opinions from other competent authorities are necessary.

I recommend that the National Council adopt such amendments to the Citizenship Act that would prevent the occurrence of situations where former nationals of the Slovak Republic become stateless persons, as well to provide for a fast-track and simplified procedure of recovery of citizenship with a shorter time limit for an administrative body's decision than the period of 24 months so that the Slovak Republic complies with the commitments arising from the international law.

Summary of infringements of fundamental rights on the basis of delivered complaints

Document	Article	Number of identified infringements
Constitution	12 – prohibition of discrimination	3
	13 – restriction of fundamental rights, obligations may only be set by law	2
	16(1) – inviolability of the person and its privacy	1
	16(2) – torture, degrading and inhuman treatment	6
	17 – personal freedom	3
	19(1) – human dignity	6
	19(2) – protection of private and family life	7
	20 – ownership right	4
	23 – freedom of movement and residence	3
	26 – right to information	3
	33 – membership of a national minority	2
	39(1) – adequate material provision in old age and in the event of work disability	3
	39(2) – assistance in material need	1
	40 – right to the protection of health	1
	41(1) – special protection of children and juveniles	6
	42 - education	2
	44 – environment	2
	46(1) – protection against unlawful procedure	32
	48(2) – undue delays	51
		summary 138
Convention for the Protection of Human Rights and Fundamental Freedoms	3 – torture, degrading and inhuman treatment	6
	6(3)(c) – right of defence	1
	8 – private and family life	5
		summary 12
Convention on the Rights of the Child	3 – best interest of the child	8
	9 – the right to parental care	2
	12 – the right to express own views	1
	28 – education	1
		summary 12
Convention on the Rights of Persons with Disabilities	1 – equality of persons with disabilities	1
	2 – reasonable accommodation	1
	5 – non-discrimination	1
	7 – special obligations with regard to children with disabilities	5
	19 – living independently	1
	24 – education	2
		summary 11
EU Charter of Fundamental Rights	21(1) – non-discrimination	1
	45 – freedom of movement and of residence	2
		summary 3
Treaty on the Functioning of the EU	21 – freedom of movement and of residence within the EU	2

Cooperation with international and national institutions, awareness and meetings

Meetings with the President of the Slovak Republic

Meeting with the President of the Slovak Republic regarding the annual report for 2017

At a meeting with President Andrej Kiska on 23 May 2018 I presented my findings for 2017. We discussed the issues of lengthy proceedings, minority rights, as well as the police inspection. We also touched upon the prepared Police Corps Act and police oversight. We agreed that the duration of restitution proceedings is unacceptable already now. Unless systemic measures are taken, the proceedings may be extended by an additional 40 years in certain cases. We also discussed the Roma issue that is also related to education. Failure to address the problems of this community is grist to the mill for those who harbour extremist views. It is important to find the really efficient and effective measures that would help people from vulnerable groups of society. The President expressed his support and encouraged me in my endeavours to defend human rights.

Meeting with the President of the Slovak Republic in Moldava nad Bodvou

On 3 September 2018 in Moldava nad Bodvou, I attended the opening ceremony at the beginning of a new school year with the President of the Slovak Republic. We met with the municipality representatives, as well as the local residents and visited the Čierne srdce (Black Heart) community centre in a Roma settlement at Budulovská street. We also visited the elementary school with kindergarten attended by 500 Roma pupils. Speaking with the media, I said that field work and meetings with people responsible for solutions were part of my job. I noted that several pilot projects have been launched, such as "Škola otvorená všetkým" (School open for all), but are not continuing due to the absence of systemic measures that would facilitate their further progress. In my opinion, working with children in community centres is important; however, it is also necessary to work with parents from Roma communities and address the issue of their employment. I have been pointing to the situation of children who need to be guided towards a better position in life in order to be able to get out of generational poverty, so that they would be prepared for education and employment in the future.

Meeting with the President of the Slovak Republic to discuss the election of constitutional judge

On 20 November 2018 I discussed the election of constitutional judges with the Slovak president Andrej Kiska. In addition to professional chambers or universities, the candidates may also be proposed by the PDR, according to the new rules. I took this new authority solemnly and with responsibility. As the Constitutional Court is the last-resort guarantor of justice for all citizens, I considered it absolutely natural to involve civic society, through non-governmental organisations and associations, in the process of selecting the candidates for Constitutional Court judges.

International cooperation

Cooperation with the European Ombudsman institution

Upon invitation of the European Ombudsman, Emily O´Reilly, I attended a joint meeting of the committees of the European Parliament, i.e. the JURI Committee and the Petitions Committee, with the representatives of national parliaments, held on 27 November 2018. At the meeting, I presented the PDR's findings about small hydro power plants. The presented problems are specific in that this area involves a conflict of two interests which are both covered by European directives: promoting the use of energy from renewable sources, as the subject-matter of the directive of the European Parliament and of the Council, and environmental interests which, for instance, constitute the subject-matter of Directive of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment (SEA). At the end of my contribution, I presented a conclusion that a really detailed analysis of the benefits from generating energy from renewable sources and the losses in terms of the value of ecosystems caused by their construction could only be made after the actual comparison of similar categories. Only then will it be possible to answer the question whether energy produced in small hydro power plants in a given territory is really "green". These comparisons were demanded by several participants to the assessment and permitting procedures. The way their objections were addressed did not correspond, practically in any of the cases, to the demands placed on the decision-making of public authorities as dictated by the requirements of the rule of law and the principles of good governance.

Being a part of the European Network of Ombudsmen, the OPDR provides cooperation to the European Ombudsman as necessary. This year I took part in the consultation concerning the right to family benefits in a cross-border context where I shared my experience in handling two complaints from 2011–2012. In both cases, the core of the problem boiled down to diverging opinions of the Member States concerned (the Slovak Republic and Austria) on the issue of primary jurisdiction as regards the payment of family benefits. Until the dispute was resolved, the Slovak Republic was required, pursuant to the relevant provisions of the law of the European Union, to pay family benefits to the applicants on a preliminary basis, which the competent institutions have omitted to do. Even thanks to my interfering, these institutions finally acknowledged their jurisdiction in terms of preliminary payment of family benefits in cases where a child has his or her domicile in the Slovak Republic.

International cooperation related to the need to set up NPM

On 28 and 29 November 2018, an international conference in Yerevan, Armenia, organised by the Armenia's Human Rights Defender's Office to mark the 10th anniversary of setting up the National Preventive Mechanism system in Armenia, was attended by a representative of the OPDR.

Upon acceding to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), a country is required to set up an independent body for carrying out systemic visits to places where persons restricted in their personal liberty are placed.

The purpose of the conference was to promote the implementation of the OPCAT at national level and to create a platform for the exchange of experience among the participating partners, representing both the state authorities as well as civil society. In the Slovak Republic, no national preventive mechanism has been set up; despite that, however, OPDR's participation at the conference was useful. When sharing their experience in the national preventive mechanism, the participating member states identified the same problems that we are seeing in the Slovak Republic as well. This includes the issue of the so-called reserved areas to which the PDR was referring 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".

The above facts actually support the conclusions about the need to set up the national preventive mechanism also in the Slovak Republic in order to create an effective system for the prevention of ill-treatment in facilities with restricted personal liberty.

Conference of the European Network of Ombudsmen

During the conference held from 7 to 9 March 2018, OPDR's representatives spoke about the issue of minorities as one of the most pressing problems that we will have to deal with in Slovakia in the future. They presented the PDR's findings about access to potable water. They also warned that, despite the state having at its disposal European resources that can be utilised as contributions for the purposes of improving access to potable water, mayors of municipalities have shown little interest in using the funds.

Regional meeting of the representatives of ombudsman institutions

In February 2018 the OPDR hosted a meeting of representatives from Poland, the Czech Republic, Austria, Croatia and Slovenia. The meeting was organised by the European Network of Ombudsmen (ENO). The main topic revolved around migration and the related issues of verifying the identity of children, including the return of migrants to their country of origin. Moreover, they drew the attention to the activities of non-governmental organisations and their supervision by the state.

A visit by the OSCE High Commissioner on National Minorities Lamberto Zannier

At a meeting in Bratislava on 26 February 2018, the High Commissioner showed an interest in national minorities in Slovakia and their living conditions. I informed him about access to potable water in Slovakia based on the OPDR's findings related to this problem. Another subject discussed at the meeting was mother-tongue education and the situation of children from disadvantaged backgrounds.

A visit by the Council of Europe Commissioner for Human Rights

In March 2018 I received a delegation of the Council of Europe Commissioner for Human Rights, Nils Muižnieks, to whom I presented and summarised the OPDR's activities. At the meeting I also informed about the situation in society in the wake of the murder of journalist Ján Kuciak and his

fiancée Martina Kušnírová and I opened the issue of protection of journalists not only in Slovakia, but also around the world. Other topics discussed at the meeting included the education of Roma children, discrimination of the Roma minority in terms of police interventions, the issue of people with disabilities, the Istanbul Convention, and the situation surrounding LGBTI.

A meeting with the CPT representatives
At a meeting on 19 March 2018, I attended a discussion between the OPDR's lawyers and the CPT's delegation about the complaints received by the OPDR from citizens. We also touched upon the need to ratify OPCAT.

Support for the opinion of the Dutch Ombudsman for Children
In April 2018 I supported the Dutch Ombudsman for Children, Margrite Kalverboer, in her call upon the Dutch government to assume responsibility for the protection of children of parents who decided to leave the Netherlands and are currently staying in Syria in a dangerous environment in camps in northern parts of the country. In the call, she demanded that the children return back to the Netherlands safely.

A meeting with the Hungarian Ombudsman for the Rights of National Minorities
At a meeting with Erzsébet Sandor-Szalay in Bratislava at the end of June 2018, I presented an audit survey on compliance with and the protection of the fundamental right to education. I informed the Hungarian Ombudsman for the Rights of National Minorities that the survey pointed to the lasting discrimination and segregation in schools, for which Slovakia has been the subject of criticism by the European Commission since 2014, and if the situation does not improve, we may face an action to be brought by the Commission. The school reform failed to bring a noticeable change and did not put an end to seggregation, even though it is explicitly prohibited by the Schools Act. The meeting also revolved around problematic diagnostic and re-diagnostic tests in connection with special education and the need to introduce compulsory pre-school attendance, as well as the problem of insufficient education in the Roma language.

A meeting of ombudsmen from the Visegrad Four (V4) countries
At an annual meeting of the V4 countries' ombudsmen in mid-September 2018, the OPDR's representatives discussed the current issues such as freedom of expression, human rights education and the role of international treaties and conventions. As regards the freedom of expression, they pointed to the murder of journalist Ján Kuciak and Martina Kušnírová in February of that year and the growing need to ensure that journalists should enjoy increased protection.

As regards the application of international human rights documents, they drew attention to the need for the ratification of the OPCAT and for immediately setting up the national preventive mechanism in the Slovak Republic as the last European Union country that has not done so yet.

A courtesy visit of the Serbian public defender of rights
In Bratislava at the beginning of October 2018, at the meeting with Serbian ombudsman Zoran Pašalić, his delegation and Serbia's Ambassador to the Slovak Republic Momcil Babic, we exchanged our findings in the protection of the children's rights and education. The Serbian representatives informed us on how their country supports the education of refugees' children, whose headcount is approximately 5,000 in Serbia. We also discussed the issue of court backlogs. Because Serbian ombudsman's competences were extended to cover the review of time limits in judicial proceedings, we shared out experience with him. The meeting also laid the groundwork for signing the Memorandum of Understanding between the Protector of Citizens (ombudsman) of the Republic of Serbia and the PDR of the Slovak Republic.

Awareness-raising and other activities to promote human rights

Ombudsman's "Thank You" event in 2018
I traditionally extended my gratitude to prominent personalities involved in the protection of human rights. I did so on the occasion of the International Human Rights Day (December 10) declared by the UN General Assembly to commemorate the adoption of the Universal Declaration of Human Rights. This year I continued the tradition of the Ombudsman's "Thank You" event introduced in 2015 by the then PDR and I handed over the awards for the second time already.

The awards went to Lucia Mikulinová and Marián Ruňanin who actively participated in education on democracy as part of the Open Schools project of the Open Society Foundation. They received the award for their contribution to raising awareness about the functioning of a democratic state and rule of law among pupils, both intellectually gifted or those from marginalised groups. Mariana Kováčová was awarded for her efforts in the protection of the rights of children and women who became victims of domestic and gender-based violence. I appreciated her proactive approach and direct help to children and women in the crisis centre or in the advisory centre of the Centrum Slniečko civic association. I also thanked Eva Siracká for her sustained efforts in the battle against cancer and the protection of the vulnerable group of people suffering from this insidious disease. She received this award for medical achievements in research, developments in diagnosis, treatment of oncologic diseases, as well as for her care about cancer patients. Zuzana Pohánková deserved the award for her long-term work with homeless people and for providing them with opportunities to find a way out of the difficult situation and, in many cases, escape the impasse. I truly appreciate the contribution of the projects carried out by the Proti prúdu civic association, giving many homeless people a chance and a hope for a better life. I highlighted their best known project – the Slovakian street paper NOTA BENE which gives the homeless around Slovakia the means to earn money, as well as other projects designed to facilitate their employment and debt bailout. At the end of the event, I paid an in memoriam tribute to Anton Srholec for his lifetime contribution to the development of the idea of human rights protection. Throughout his life, as a priest and the founder of the Resoty civic association, he had to overcome many obstacles which prevented him from devoting

himself to theology studies, for which he was even put in prison. Having returned from the prison and facing a ban to pursue his theological endeavours, he was vigorously helping people from marginalised groups and defended their rights. In 1992, he founded the Resoty rehabilitation centre to ensure that vulnerable homeless people would have decent housing to lead a decent life. The award was handed over to his brother Michal Srholec.

Lectures and awareness-raising activities

In 2018, two primary schools, nine secondary schools (four of which were grammar schools) and three universities showed an interest in a lecture or a discussion with me or OPDR's lawyers. The purpose of the lectures and discussions was to present the issue of fundamental human rights, guaranteed by the Constitution or international documents, as well as PDR's activities to pupils and students. The subject of the lectures and discussions varied depending on a particular school's preferences, age structure of pupils and students and their field of study. In order for the pupils and students to get a comprehensive picture about the issue of human rights, the lectures always involved case studies which covered specific cases that I dealt with myself or which were brought before the ECHR.

A project to improve the comprehensibility of instructions

In this chapter, I would like to present my cooperation with the academia, namely the Faculty of Arts at the Comenius University in Bratislava and its Department of Ethnology and Museology. The university addressed me by a letter offering me cooperation in a project aimed at improving communication in our society, which would contribute to finding a solution to some significant problems.

Based on this offer, several in-person meetings with the relevant employees of the faculty took place in the OPDR's premises. The faculty was interested in situations/cases involving translation from/to a foreign language and also from/to technical language. More specifically, this covers the situations where various groups of persons (asylum seekers, parents handling school activities of their children, patients, persons subject to criminal prosecutions) have signed informed consents as confirmation that they have been instructed accordingly, even though they in fact did not understand the instructions encoded within the legal text. This problem seems to be related not only to minority groups or aliens, but also people of various education levels, or a different mother tongue, who would need to be given the necessary information in a different form so that they could understand it.

To address this problem, it is necessary to bring together multiple professions – lawyers, interpreters, translators, ethnologists – who would join forces in translating the complicated texts into comprehensible texts in Slovak and, subsequently, into other languages, including the languages of ethnic minorities. The translations would not be legally binding and would rather provide explanations, the only purpose of which is to inform individuals in a more comprehensible way. The legally binding form would remain with the legal wording of the instructions.

Week Against Racism

During the Week Against Racism, OPDR's lawyers discussed the issue of human rights with the students of secondary schools in Tisovec and Detva, covering the questions of what human rights are and how to defend oneself in cases where these rights have been interfered with. They also outlined the examples where the police took inappropriate actions against children. Because the lectures were given during the Week against Racism, they also focused on racial discrimination as an issue widely discussed in our society.

Human Rights Olympiad

The 20th Human Rights Olympiad was held under my auspices. As part of cooperation, OPDR's lawyers delivered lectures for students who decided to join the competition. At the same time they prepared, along with me, one of the subjects for the essays, i. e.: „Which human rights are, in your opinion, the most vulnerable to extremism? – Your advice for the public defender of rights on how she can contribute to their effective protection."

During a two-day Olympiad, the young people were asked to present their opinion on model cases where the violation of human rights might be taking place. One of the model cases was prepared OPDR's lawyers. They were interested in how the contestants perceive the situation in the city of Žilina where, in order for the local children to be able to use the city's public transport system free of charge, their parents are required to avoid any arrears in bills for waste collection. For this reason, free public transport was not available to all children and some of them were unable to commute to their school. The majority of young people have correctly identified that this situation interferes with the right of children to education. The students with zeal and enthusiasm for human rights also noted that they would welcome if the schools were more attentive to topics related to human rights. I awarded the authors of the winning essays with a short term internship in the OPDR.

Discussion on poverty and its consequence

The Proti korupcii (Against Corruption) civic association invited me to a public discussion about poverty, its causes and consequences. Although this societal challenge is faced only by a certain group of the population, in other to overcome this problem, it must be addressed systematically. As a separate chapter of the poverty problem, the Roma issue requires long-term and effective measures in education and housing and the associated employment. It is necessary to address the basic existential needs, education of children and their parents and find the ways of how they can be helped. Positive examples serve as evidence that it can indeed be done; however, in order to increase the number of such success stories, it is necessary to adopt systemic measures and solutions. Poverty also involves the issue of access to potable water, which has also been dealt with by the OPDR in the long term. The availability of potable water is one of the steps aimed at overcoming poverty in society.

Week for Respecting Childbirth

During the International Week for Respecting Childbirth, I joined a project organised by Zuzana Límová entitled „Medzi nami" (Among us) who also asked other experts in

the given area to provide their comments on the individual problems of obstetrics in Slovakia. The project also involves Lucia Kantorová, a physician, Janka Debrecéniová, a lawyer, Iveta Lazorová, a midwife, Zuzana Krišková, an activist, Jozef Hašto, a psychiatrist, and Viliam Lokša, an obstetrician.

During the Week, I also spoke about suturing without anaesthesia:

"We must respect and protect human rights. Suturing without adequate anaesthesia implies a violation of the right not to be subjected to violence, torture and other cruel, inhuman and degrading treatment.

Women experience great suffering when stitches are made without sufficient anaesthesia or other means of numbing the painful area. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment describes such practices as a clear example of rough treatment. Rather than using the procedures which cause serious suffering to women, it is necessary to make full use of methods that enable alleviating the pain during labour or after the birth.

Suturing of obstetric lacerations is also associated with the problem of routine use of episiotomy. In Slovak university textbooks, this procedure is still presented as a measure to prevent lacerations; this, however, was not demonstrated by scientific studies. According to the World Health Organisation, episiotomy should be the last resort, for instance, when the baby's life is in danger. Where episiotomy is performed without medical indication, such practice also constitutes rough treatment."

Discussion on trust in the state

I have accepted an invitation to a discussion entitled "O tom potom" about trust in the state and in its institutions. The discussion on what trust is and how a credible state should look like was held with a journalist Dušan Karolyi and with Zuzana Révész, who is currently working in a special primary school.

Promoting the World Refugee Day

OPDR's lawyers attended an event called Nedeľná Paráda, prepared by the Milan Šimečka Foundation, which was held to celebrate the World Refugee Day. In the OPDR's information booth, the participants had the opportunity to get acquainted with the PDR's activities and obtain information about situations in which PDR may help them when state authorities infringe upon their rights and freedoms.

Constitutional aspects of the protection of LGBTI rights

Upon invitation from the Evangelical Church of the Augsburg Confession in Bratislava Staré mesto, I attended a conference where I outlined the current status quo in the protection of the rights of LGBTI people, de constitutione lata and de lege lata, in the context of the existing case law of the ECHR and the Court of Justice of the European Union. The fundamental conclusion, which should be decisive for the given area, is that the existence of special constitutional protection of marriage as a unique union between a man and a woman (Article 41(1) of the Constitution) does not pose an obstacle for establishing a legal framework for same-sex couples (this legal situation is in Croatia and Hungary).

Conference on "Active ageing an intergenerational cooperation"

I am also very committed to protecting the rights of senior citizens. At a conference in Bratislava, I presented the ways in which OPDR fights for the rights of the elderly and more vulnerable people. I specifically mentioned a survey on the inspections of compliance with fundamental rights in senior care facilities. I pointed to its results, which were preliminary at that time, indicating that, in Slovakia's case, there is still plenty of room for improvement in this area. During the discussion, I also warned that there are also other areas where we could do more for the protection of the rights of senior citizens, more specifically, age-based discrimination by the state. In the case of allowances for motor vehicles and personal assistance, which may be awarded only to people not older than 65 years, I asked the Constitutional Court and sought the removal of discriminatory criteria from the legislation. The Constitutional Court accepted my motion for further proceedings.

A working meeting with the representatives of embassies in Slovakia

Based on the invitation of the Canadian Chargé d'Affaires John von Kaufmann, I met with the representatives of some 20 embassies in Slovakia and presented PDR's activities in 2017 and 2018 (with references to specific complaints as indicated in the English version of the report on PDR's activities), provided the details of the constitutional and legislative regulation of this concept (with references to PDR's scope of authority through the Ombudsman's guide to public administration bodies, English version) and answered the questions asked by the participants at the meeting.

The "Romologické diskurzy - RODI 2018" conference

In Nitra, I opened the conference entitled "Romologické diskurzy - RODI 2018" (Romological discourses - RODI 2018) with a short contribution. Distinguishing between the characteristic features of this ethnic and the consequences of poverty constitutes the basis for understanding the Roma culture. At the same time, the key is to find such solutions that will help people from marginalised communities and socially disadvantaged environment to find a way out of generational poverty. In this context, education plays an irreplaceable role – either through the introduction of pre-school attendance or by steps aimed at preventing segregation and discrimination at schools.

Lecture given in remembrance to the Velvet Revolution

In the academia, I commemorated the Students' Day with the law students of the University of Trnava. The November 1989 events have not only revealed the dissatisfaction of people with the then regime, but also their courage and commitment to fighting for the freedom and human rights. We must continue the fight for freedom and democracy every day, because we can easily and quickly lose it. This is one of the reasons why we need to discuss these topics with the young people.

Human Forum 2018

Initiated by the civic platform "Nie v našom meste" (Not in our City), the fifth year of the human rights forum "HUMAN FORUM – Democracy in Danger?" was held under my auspices. In my contribution I focused on the subject of "How to become an active and responsible citizen?". I sought

the answer in three steps. First of all, it is necessary to realise that each one of us is important for society and that we have a real chance to influence how things work. Another important step is being interested in what is happening around us while attempting to identify the problems and challenges faced by our society. The last of the three steps is not to remain indifferent and instead start making use of available means and instruments that are offered by a democratic society.

Supporting the call regarding climate crisis

In connection with the climate crisis, I joined the call of expert and cultural community addressed to the Government of the Slovak Republic, the media and the public. The initiative responds to the climate change conference COP24 commenced in December 2018 in Katowice, Poland, attended by more than 200 countries of the world, as well as to an opinion presented by the scientific community in October 2018. The right to a healthy environment is threatened by a climate crisis, which has a key impact on our future. Unless we start seeking solutions to alleviate and slow down the crisis, it may be too late in a few years from now. For this reason I supported the initiative and asked the public to join it.

Presenting the "Vnímavá škola" (Responsive School) award

As part of the Responsive Projects awards, the head of the KVOP handed over the certificates in the "Responsive Schools" category. The schools' proactive and progressive approach to education, learning and seeking the ways to eliminate prejudices and stereotypes is very important today. Responsive teachers and students are a great inspiration to other schools which want to become open, inclusive and, in the end, „responsive".

Rainbow Pride

In 2018, I attempted to hold a round table on the rights of LGBTI people in Slovakia. I organised several preparatory meetings that were supposed to result in a joint round table meeting of the representatives of the LGBTI community and of the conservative or moderate groups. One of the three partial meetings focused on presenting the reasons (based on the published PDR's opinion on this subject) why a legal framework at the level of the so-called minimum standard should be ensured for same-sex couples based on the relevant ECHR's case-law. The round table could not be organised due to diverging opinions. Based on the invitation of the Inakosť (Otherness) initiative, I expressed my support by attending in person the Rainbow Pride event, the purpose of which is to point to the existence of human beings from the LGBTI minority even in Slovakia and to their activities aimed at the recognition of rights in a secular society (Article 1 of the Constitution).

Age cannot be an obstacle to the provision of assistance

I asked the Constitutional Court to review the legislative provisions which, in my opinion, are discriminatory. The legislation regulating the conditions for entitlement to an allowance for personal assistance or for a motor vehicle, limited by certain age threshold, was pinpointed by Zuzana Stavrovská, the commissioner for persons with a severe disability. By law, the personal assistance allowance may currently be provided to persons "aged at least six years and no more than 65 years". The situation is similar in the case of applications for motor vehicle allowance. Even though the lower age limit does not exist in this case, the upper limit is equally set to 65 years. In my opinion, the legislation is neither in line with the Constitution, nor with the international conventions. According to a decision dated 14 November 2018, the Constitutional Court will deal with my motion as part of further proceedings.

In 2018, in addition to the aforementioned cooperation, I also communicated with the Office of the Commissioner for Disabled Persons on the issue of investigation into the monitoring of compliance with fundamental rights in senior care facilities.

Together in combating segregation in education

At a press conference with the Government Plenipotentiary for Roma Communities Ábel Ravasz, the Chief School Inspector Viera Kalmárová and the Director of the Research Institute for Child Psychology and Pathopsychology Janette Motlová, we together signed the Joint Statement on the Desegregation of Slovakia's Education System. In the statement, we warned about deficiencies in the education system, reminded the Slovak Government of its commitments in this area under its Manifesto and proposed measures to improve the current state of play. One of the measures involved the introduction of compulsory pre-school attendance. The government representatives have decided at their session in November that, as of 1 September 2020, pre-primary education should be compulsory for all five-year olds.

Child victims of violence must enjoy special protection

I have been cooperating with the Náruč civic association, which focuses on the protection of the rights of children, for a long time. After several working meetings we have agreed on the need to open this topic in a broader context through a roundtable meeting organised under my auspices.

The meeting was attended by the representatives of ministries and other competent authorities and institutions. The discussion resulted in recommendations for improving the protection and position of children in criminal proceedings – in practical implementation, it is necessary that the status of victims be thoroughly applied as far as children are concerned. In addition, we agreed that the hearings of children should be conducted in a way that prevents their traumatisation as much as possible. This involves not only minimising the number of hearings, but also the manner and place in which the hearing is conducted. In 2019, around 15 special interrogation rooms suited to the conditions and age of children is expected to exist in Slovakia. In the future, however, it will be necessary to set up additional rooms of this kind. We also discussed the need to provide whistleblowers with the possibility of their anonymity being preserved by all subjects concerned.

Discussion on the right to housing

The discussion about the right to housing, organised by the SOCIA Foundation in cooperation with the Proti prúdu civic association (the publisher of the street paper Nota Bene), was held under my auspices. During the discussion, the "Right to Housing" pub-

lication written by Nina Beňová and Maroš Matiaško, was presented as well.

Civil Service Council

An OPDR's lawyer has been appointed to cooperate with the Civil Service Council in the preparation of the civil service employees' Code of Ethics. The working version of the Code of Ethics defines the principles of the performance of civil service duties uniformly for all employees. This involves, for instance, the principle of political neutrality, impartiality, public interest in the performance of civil service duties, etc. The Code of Ethics is to be approved by the Office of the Government of the Slovak Republic. (https://radaprestatnusluzbu.vlada.gov.sk/19216-sk/eticky-kodex-statneho-zamestnanca/),

Visits to regions

Žilina

In May 2018, during my visit to Žilina, the OPDR's representatives and I looked into the issue of housing of families living in temporary container houses following a fire in the residential building on the Bratislavská street. In one of the container houses with three beds, a family of eight lives in very confined spaces. The monthly costs covering the rent payments and utility charges amount to EUR 200. According to information provided by the employees of the Social and Housing Department of the City of Žilina, in order for the municipality to offer them a different rental flat, they cannot have debts and must have paid the fee for municipal waste collection. The criterion of absence of any debts towards the city also applied to urban public transport that is provided free for all children. Where the parents were not paying the bills for municipal waste, the children were considered debtors and were not allowed to the means of public transport for free. This principle is in contrast with the Constitution, as I already warned. As of January 2018, the situation in Žilina has been resolved by the abolition of the aforementioned criterion.

In the described zone where families live in container houses, the city set up a community centre with two social workers. Their job description is to work with people who live there, inform them and help the children with studying. However, the premises are relatively small and the centre is open only until 4:00 p. m. every day.

In addition to the issue of housing for people from socially disadvantaged environment, the visit also focused on education. Last year, Žilina discontinued the primary school attended by Roma children at Hollého street. Following the discontinuation of the school, the children were distributed among primary schools all around the city. Integration is a long-term process, but the teachers are trying to help the children and make the transition easier for them. However, a low number of assistants, for instance in the ZŠ Jarná primary school, remains a problem.

The Centre for Research of Ethnicity and Culture organises remedial teaching conducted by volunteers at the ZŠ Gaštanová primary school and attempts to help pupils with studying. In supporting children from socially disadvantaged environment with their school commitments and in their progress, the city relies on the Centre's volunteers.

While in Žilina, we also visited the Náruč child advocacy centre which provides protection for the victims of domestic and sexual violence. The fact that the Náruč civic association has set up, in its centre, an interrogation room that is specifically designed for children, thus making their hearings much easier, can be considered a significant advancement. The Centre allows the room to be used by the Police Force investigators, but they do not use it whenever necessary; in many cases they resort to obsolete questioning methods which, however, can be traumatising for children.

Prešov and Košice

I responded to an open letter from the Police Force members who work in eastern Slovakia and specialise in working with the Roma community. While in the regions of Prešov and Košice with the OPDR's representatives in June 2018, we visited the municipalities where people from the Roma community live and we looked at their living conditions. Potable water is key to achieving a higher living standard; unfortunately, it is not commonplace everywhere. The local residents in the Svinia municipality use only one well, but the quality of its water has not been tested. It is a generally accepted fact that without access to potable water and hot service water, it is not possible to form basic hygiene habits as an essential prerequisite for basic social contacts such as school attendance and work.

During the visit we held discussions with the police officers who approached me with their request for a visit. We learnt that, in their effort to reduce crime, the police officers cooperate with the so-called neighbourhood watch patrols, i.e. selected local residents in municipalities who contribute to preserving order and help prevent conflicts. In cases where police action is necessary, they would welcome functional cameras. In their opinion, the cameras are an effective instrument for preventing conflicts because when they wear them, they are perceived by potential attackers with more respect. I have been pointing to the need for functional cameras for a long time, as did my predecessor, because they make it easier to assess whether a particular police action was adequate and legitimate.

The Roma issue needs to be tackled in a comprehensive and systematic manner from the ground up. If we only focus on the consequences of problems, we cannot expect positive changes.

On the other hand, there are shining examples of how one can get out from an environment where the standard of living is low. For instance, in the Rankovce municipality, a non-governmental organisation provided microloans to people in order to allow them to build their own homes, thus ensuring sufficient living space and better conditions for life.

Trnava

I received an invitation for a work meeting from a head of the self-governing region for the first time. One of the topics discussed during the meeting in November 2018 included the scandal surrounding the "Čistý deň" (Clean Day) re-socialisation facility and the developments concerning the discontinued rental of the building to the operators of the facility and the use of the building for other purposes. According to Jozef Viskupič, the self-governing region seeks new avenues of supervision over social service facilities where, in his opinion, close cooperation with the OPDR would be possible. In addition, the meeting also covered the issue of education in connection with the division of school districts, with

which the OPDR has been dealing in the long term.

Nitra

During a visit to the region of Nitra in November 2018, a meeting was held with Eleonóra Grófová, director of the correctional facility Nitra – Chrenová where women are placed to serve their sentence. The director informed me about the current situation in the facility, and showed me around the prison and its premises and equipment. I was interested in how the facility provides health care. Because the facility manufactures shoes and various textile products – socks and occupational clothing for hospitals, I inquired about the conditions in which these work activities are performed by the convicts. Another purpose of the visit was to see the ongoing reconstruction of a new pavilion which should be available in 2019.

Internship programme

In 2018, the students of law, international relations and political sciences also had a chance to work as interns within the OPDR. In addition to Slovak universities, an internship in OPDR is also available to young people from foreign schools through the LEAF Academy. During their internship, the students have a chance to learn about the preparation of legal analyses on interesting subjects, such as education of children from a socially disadvantaged environment or methods used by the police, and many other issues. At the same time, they can also verify the theory directly in practice – during outreach visits, for instance in Roma settlements, social care facilities or at schools where OPDR's lawyers monitor the occurrence of segregation and discrimination. While on internship, they can also attend study programmes inside and outside of OPDR. In 2018, there were 14 internship students in OPDR, with some of them extending their stay to more than three months.

The Office of the Public Defender of Rights in 2018

OPDR's activities

Headquartered in Bratislava, the Office of the Public Defender of Rights is a government agency which, pursuant to the Act on the Public Defender of Rights, performs the 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 she needs in order to discharge her duties; such information may also be requested by OPDR's employees authorised by the public defender of rights. The tasks entrusted to the OPDR are performed by civil servants and employees performing works in public interest ; the number of the ODPR's staff is subject to approval by the PDR. Details on the organisation and tasks carried out by the OPDR are contained in the organisational rules issued by the PDR.

Flawless and effective delivery of the tasks entrusted to the OPDR 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 PDR and her Office.

Summary of the OPDR's activities

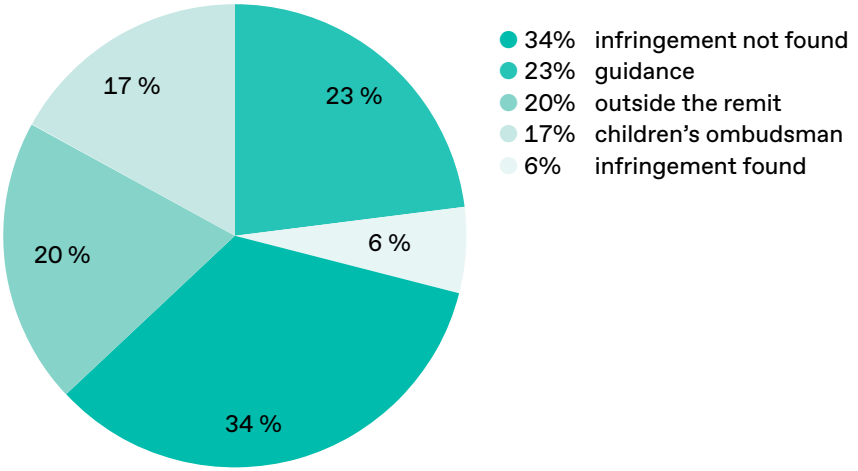
In 2018, the OPDR worked with 2,282 documents on the agenda. Of this number, 1,543 were complaints and 739 submissions which were delivered to the OPDR either in person, by mail, by electronic mail or via electronic mailbox (ÚPVS) No. E000557989 1.

When investigating the complaints, the PDR found that fundamental rights and freedoms were violated in 178 cases falling under 101 complaints. No infringement of fundamental rights and freedoms was found by the PDR in 634 complaints, while 369 complaints were outside the PDR's remit. There were 439 motions which have been carried over to 2019.

Of 739 complaints, 315 were submitted using the form available on the children's ombudsman website www.detskyombudsman.sk and 424 requests for guidance were received via electronic mail. All 739 submissions were handled in 2018.

Table: Graphical representation of the share of documents on agenda in 2018

Total/year		Total		Number
2 282	complaints	1 543	infringement found	101
			infringement not found	634
			outside the remit	369
	submissions	739	children's ombudsman	315
			guidance	424



Guidance to citizens

The OPDR is often contacted by people seeking help and assistance with problems that were outside the PDR's remit. They mostly involve civil law-related issues, such as distrainment procedures, disputes between neighbours, disputes with banks, while people often seek legal advice as well. The OPDR's 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 2018, approximately 424 such recommendations were provided in writing.

Assisting children via www.detskyombudsman.sk (children's ombudsman)

The OPDR **received** a total of **315 questions** via the website **www.detskyombudsman.sk** in 2018.

Through the website **www.detskyombudsman.sk** the OPDR is raising 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 OPDR 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 PDR, 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 an FAQ section.

An online form is available on the website for children to directly communicate with the OPDR. They 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.

Processing requests under the Freedom of Information Act

The right to information is enshrined in the Constitution and is also arising from international law, e.g., the Convention, the Charter of Fundamental Rights and Freedoms, the International Covenant on Civil and Political Rights. The procedure enabling the application of this right is generally governed by the Freedom of Information Act. Special legal aspects in this area are also contained in other laws and regulations. The purpose of this act is to ensure that public authority bodies are obliged to provide information on their activities in an appropriate manner.

The Act on Free Access to Information establishes two methods for making information accessible – mandatory disclosure, the so-called active disclosure, and the disclosure of information based on a request by the applicant, the so-called passive disclosure. The mandatory disclosure of information is ensured by the OPDR through its website where it publishes any mandatory information, including concluded contracts and orders placed. Upon requests, the OPDR is disclosing information on an ongoing basis, in line with the Act on Free Access to Information.

In 2018, the OPDR received 56 individual requests for disclosure of information from natural and legal persons, and the OPDR handled them all. In two cases, it issued a decision on non-disclosure of information and, in four cases, a decision on partial non-disclosure of information. In four cases, the requests or their parts were referred to a different competent authority, in particular the PCGC, the Ministry of Labour and the Justice Ministry. In one case, the requesting person withdrew the request.

Those requests which were handled by the disclosure of the requested information involved, for the most part, information of the status of investigation of the filed complaints, documentary copies of various opinions and documents from public authorities and OPDR's decisions concerning the complaints, information about the complaints submitted by the OPDR, information about the amounts of monthly wages and bonuses paid to senior OPDR's employees, petitions delivered to the Constitutional Court and the related decisions, by which

the Constitutional Court dismissed the submitted petitions, information about the number of employees and information about public defenders of rights who discharged this function so far.

The decisions on non-disclosure of information involved, in particular, opinions and legal interpretations, as well as information to which access is restricted by law.

All requests for the disclosure of information, which were delivered to the OPDR, were dealt with and resolved.

Organisational arrangements and the Office's financial management

Organisational and personnel capacities

By Resolution No. 471/2017 of the Government the Slovak Republic, a staff headcount threshold of 57 employees has been maintained for OPDR in 2018. The OPDR's budget for remuneration was set to EUR 841,539 in 2018, with an increase taking into account the indexation of salaries. In the preparation of the budget, the priority "Strengthening effectiveness in the protection of basic rights and freedoms" represented an opportunity for the OPDR to strengthen personnel capacities of the Office with a view to streamlining the legal protection of natural and legal persons Despite that, it was not possible to fill all job positions in OPDR that are considered necessary for due performance of the OPDR's activities.

In 2018, OPDR's tasks were carried out by 36 employees on average (excluding PDR), of whom 19 are specialist staff members – lawyers performing activities that are falling with the authority of the public defender of rights. The organisation and operation of the OPDR falls under the responsibility of 17 employees. Even though the OPDR permanently seeks to stabilise the staffing situation, the year 2018 saw an extraordinary staff turnover which, to a large extent, affected its smooth operation.

The performance of difficult tasks across many areas of expertise requires continuously increasing the qualifications of employees and creating an optimal working environment. In 2018, training focused not only on issues related to areas of expertise, but also on personal growth and managerial training of employees. Streamlined procedures in the management of human resources remain among the priorities for the upcoming period as well.

Students interested in human rights and freedoms covered by OPDR's activities are offered internships, typically lasting for three months, during which they can gain knowledge as well as practical experience and skills in the protection of rights and freedoms. Due to the available capacity, a total of 17 students were on internships in 2018, of whom three were the winners of the essay competitions entitled "Which human rights are, in your opinion, the most vulnerable to extremism? – Your advice for the public defender of rights on how she can contribute to their effective protection", declared by the PDR as part of the 20thHuman Rights Olympiad.

IT management

As in previous years, the regular partial replacement of obsolete IT equipment has been carried out and, in connection with the implementation of the budgetary priority "Strengthening effectiveness in the protection of basic rights and freedoms" and an increase in the number of employees, new IT equipment and extension of the structured cabling has been procured.

Property management

The OPDR does not own immovable property and has its registered office in rented non-residential premises in a building at Grösslingova street, No. 102461/35 in Bratislava, where it operates and whose sole owner is the Diplomatic Corps Services, a. s., Bratislava. Pursuant to the valid lease contract No. NZ/31/2014, the owner is also the property manager.

OPDR's movable property was acquired in the period between 2002 and 2003. Upon reaching the end of life and becoming obsolete (computer equipment), it is gradually replaced on an as needed basis. For this reason, as well as due to the implementation of the budgetary priority "Strengthening effectiveness in the protection of basic rights and freedoms" and in connection with an increase in the number of employees, additional office spaces were rented in 2018 at the same address, including the procurement of the necessary equipment. The OPDR also procured a new company car, Škoda Rapid, because the existing company car – purchased in 2002 – was too old and costly to operate. The old motor vehicle, with a value of equalling EUR 0.00, was provided to a municipality based on a donation contract.

Registry management and filing department

During the reported period, the Office's filing department registered a total of 7,630 delivered records. Overall, 5,441 records were sent by post, email or in person. OPDR's employees created a total of 4,831 internal records. Electronic versions of all delivered and sent records are part of the registry system.

Use of allocated budgetary resources by the Office/funding

The OPDR is a government organisation classified under the General Treasury Administration budgetary envelope and uses solely the resources from the state budget. Under the Act on the state budget for 2018, the Office's budget for 2018 amounted to **EUR 1,535,649** to cover current and capital expenditure under the 06Q programme "Protection of fundamental rights and freedoms", and under the inter-sectoral programme 0EKoW "Information technologies financed from the state budget" which was EUR 295,778 higher than the budget approved for 2017. In addition to regular wage indexation and the related insurance (totalling EUR 31,338), the increased funding was also used for the implementation of the "Strengthening effectiveness in the protection of basic rights and freedoms" priority (totalling EUR 264,440). This priority made it possible to partially increase staff numbers in accordance with the applicable organisational rules.

In the course of the budgetary period, the approved budget was adjusted in connection with the indexation of wages for 2018; the budget was increased by capital resources from previous periods and decreased by capital resources from 2018, transferred to the subsequent budgetary periods The budget after adjustments represented EUR **1,565,893.**

Budget as at 31 December 2018

budgetary item	approved (in €)	adjusted (in €)
Remuneration	820 440	841 539
Insurance	290 466	290 030
Goods and services	390 422	399 180
Current transfers	17 321	7 301
Capital expenditures	17 000	27 843
Total	1 535 649	1 565 893

The amount of budgetary funds announced in the schedule of binding state budget indicators for 2018, dated 20 December 2017, and allocated to cover expenditures in the remuneration category – wages, salaries, emoluments and other personnel-related payments – made it possible to increase the number of OPDR's staff by nine employees; however, it was still insufficient to provide tariff wages for the total number of 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. 471/2017.

The Office spent EUR 1,494,367, or 95.43%, of the total adjusted budget. More detailed information about the funds spent over the reported period is shown in the table below.

Expenditure in €	Adjusted budget, in €	Funds spent	
Remuneration	841 539	796 242	94,61 %
Insurance	290 030	270 826	93,37 %
Goods and services	399 180	392 394	98,30 %
Current transfers	7 301	7 211	89,57 %
Capital expenditures	27 843	27 694	99,46 %
Total	1 565 893	1 494 367	95,43 %

The time pattern in which expenditures were spent depended in particular on the time limits for rental payments and the payments for services, as well as payroll dates. The OPDR has not spent all funds earmarked for the remuneration of employees, insurance, current expenditures related to meals for employees and contributions to the social fund, because the headcount was increasing gradually throughout the entire budgetary period of 2018.

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.

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