

Additional information of the Public Defender of Rights to the state report concerning the human rights in the Czech Republic for the Universal Periodic Review

As stipulated by the Act No. 349/1999 Coll. on the Public Defender of Rights the Public Defender of Rights in the Czech Republic acts to protect the persons from conduct of offices and other institutions undertaking state administration, should such conduct be contrary to the law or even if not contravening the law then otherwise faulty, erroneous or incorrect. That means such conduct as does not comply with the principles of a democratic state respecting the rule of law and the principles of good administration or such conduct as can be defined as a failure of the relevant office or institution to act.

Particular areas of the Defender's activities, most common problems and conclusions:

Protection of the Rights of Children, Adolescents and the Family

There is a persisting issue of **disallowing contact of children with their parent or parents by persons to whom the child's custody has been awarded by a court**. The Defender is convinced that if the authority for social and legal protection of children fully dedicates itself to such cases from the very beginning without underestimating seriousness of such conduct, if it alerts the manipulating person of the illegality and consequences of manipulation of the child and properly informs the custody court, in a majority of cases the conduct of the manipulating parent or another person caring for the child improves and the child's right to contact with both parents is respected.

In 2000, **5 children (the youngest child being only 5 months old)** of Mrs. Wallova and Mr. Walla **were forcibly removed from their parents and placed in different institutions**. The reason was not abuse or neglect of the children, but, according to the opinion of the authorities, inadequate housing. The family was temporary living in an office, which was adequately heated, clean and hygienic. The parents applied to the local municipality of Tabor for social housing. The social housing was not provided and the children were placed into an institution instead. Child protection authorities did not provide the family any kind of social assistance or assisted to find suitable and affordable housing.

Conclusion of the Defender investigation in 2003 was that although the reasons given by the administrative and judicial authorities had been relevant, they had not been sufficient to justify such a serious interference in the applicants' family life as the placement of their children in public institutions. In addition, it was not evident from the facts of the case that the social protection authorities had made serious efforts to help the applicants overcome their difficulties and get their children back as soon as possible.

The Defender also drew the attention on the issue of "**social housing**", its non-existence in the Czech legal system, its connotations to the possible expulsion from the society and consequently to the right to respect for private and family life. In this area Czech Republic lost the case Walla&Wallova against Czech Rep. in 2006 (the European Court of Human Rights decided in the case of the Wallovi family that the Czech Republic violated Article 8 of the European Convention on Human Rights by placing the children into an institution only because of social reasons), which means that similar cases can be expected in the future.

The Work of the Police of the Czech Republic

In 2005 the Defender opened several inquiries towards the Police on his own initiative, among other things regarding the procedure of the Police against the CzechTek 2005 "technoparty" participants, the regime in police cells in Brno, complaint proceedings performed by Police bodies in charge of complaints and supervision and general issues regarding domestic violence.

The Defender examined the **procedure of the Police against the participants of CzechTek 2005** held in the Mlýnec nad Přimdou cadastral area between July 29 and 30. The Defender opened inquiry on his own initiative with the aim of assessing the competence, authority and reasonableness of the Police procedure.

According the Defender, the Police were entitled to act (in particular under the Act on the Police of the Czech Republic and the Rules of Criminal Procedure) against the 'technoparty' participants given the circumstances accompanying the event and the circumstances expectable based on the development and consequences of the same 'technoparty' in the preceding years. On the other hand the Defender

reprehended the Police for the way they chose to act. He stated that force should be resorted to as an extreme means of protection and restoration of public order that should follow only after the available and effective non-violent means that protect and restore public order are exhausted. At the same time the Defender proposed remedial measures to prevent future conflicts and improper procedures. Given that the Defender's inquiry generated considerable attention among the public and in the media, the Defender familiarised the public with the conclusions of the inquiry and the proposed measures and posted the final statement on his website at www.ochrance.cz. In order to detail the implementation of the proposed measures, the Defender met with the Head of the Riot Police Section of the Police Presidium in the first quarter of 2006 and presented his points aimed at improving the quality of Police measures at events like the 'technoparty' at a workshop of deputy directors of regional Police administrations.

The Work of the Prison Service of the Czech Republic

The number of complaints has been rising for a long time (in 2006 the Defender received 214 complaints in this area, in 2005 161 complaints, in 2004 109 complaints and 85 complaints in 2003); however, the complaints were structured similarly to preceding years.

Traditionally, the most frequent were requests for **transfer to another prison** or disagreement with dismissal of a request for transfer. Other complaints dealt with by the Defender related to various issues connected with **life in prisons**. These may be illustrated for example on problems of bullying by fellow prisoners and Prison Service officers (the number of complaints pointing out this issue increased in comparison with the preceding years), failure to provide a suitable diet, lack of work for inmates, employment and remuneration issues, or insufficient educational and therapeutic work with inmates

Systematic Visits to Facilities Where Persons Restricted in Their Freedom are Confined

Up until January 1, 2006, the Czech Republic lacked a body responsible for carrying out systematic precautionary inspections of places where persons restricted in their freedom are confined. A communication of the Ministry of Foreign Affairs on the conclusion of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was issued Under No. 78/2006 Coll. Int. Agr. This Protocol obliges parties to the Convention to establish so-called national preventive mechanisms. As of January 1, 2006, this national preventive mechanism is embodied by the Defender, who meets all the criteria required of this element of prevention by the Optional Protocol.

The obligations of the Defender have been broadened to include systematic visits to all places (facilities), where persons are or may be located who are restricted in their freedom (the provisions of Section 1 (3) and (4), provisions of Section 21a of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended – hereinafter the "Public Defender of Rights Act"). It is irrelevant whether the freedom of these people has been restricted by a decision or ruling of a public authority, or as a result of the real circumstances they have come to be in. During such visits, the Defender investigates how these persons are treated, and endeavours to secure observance of their fundamental rights and to reinforce their protection against maltreatment.

Social Care Institutions for Physically Handicapped Adults

Institutions fail to provide clients with a sufficient privacy. The privacy of clients in visited institutions depends on the number of clients housed together in one room. In recent years, it is possible to observe certain reductions in the number of beds per room, which is seen as a positive development.

Police Cells

The employees of the Office conducted visits to 19 police establishments (two–three police establishments in each of the regional police administrations). In the course of the visits a total of 110 police cells were inspected. The visits were all conducted unannounced, both during the day and in evening hours, on weekdays as well as weekends and public holidays.

The right of persons confined to police cells to be advised of their rights and obligations is not always observed.

Institutes for Long-term Patients

Not one of the visited facilities addressed the legal standing of patients in the correct way. Firstly, there is the question of voluntary hospitalisation (Section 23 of Act No. 20/1966 Coll., on Care of People's Health as amended, Art. 6 (3) of the Convention on Human Rights and Biomedicine) – healthcare facilities were not prepared to consult courts, they failed to require the consent of the patient to his/her hospitalisation or they substituted the agreement of another person for the agreement of the patient.

Institutes for long-term patients display a clear lack of privacy. Especially older ILP face the problem posed by multiple bedded rooms – up to six beds per room is a socially unacceptable state of affairs. Due to the long-term character of stays, patients have a greater need for privacy and a home-like environment. This state of affairs can thus be viewed as maltreatment in the sense of the Public Defender of Rights Act.

Circumstances of Hospitalisation in Mental Homes

The complainants mostly expressed dissatisfaction with enrolment in a mental home without their consent and demanded release. They also complained about insufficient communication by personnel and the limited possibility of participation in decisions regarding their health. Other frequent issues included: the **impossibility of studying one's medical records or disapproval of the use of coercive measures and the handling of a complaint by a senior mental home officer.** In terms of the regime in different departments, the Defender dealt in particular with the violation and compromising of the human dignity of patients: removal of mobile phones, restricting personal freedom, non-observance of the right to privacy of patients, violation of the privacy of correspondence, restricting the possibility of using own clothing and failing to deal with the patients' social circumstances.

The Performing of Sterilisations

In 2005 the Public Defender of Rights reviewed the results of an inquiry by the Ministry of Health and its conclusions in the individual cases of persons who had addressed the Defender to complain that they had been sterilised without their consent or on the basis of coerced consent or manipulation. The Defender found a number of serious and less serious shortcomings in these cases, as well as deviations from the conditions for the admissibility of performing sexual sterilisation by the legal order of the Czech Republic.

Through his inquiry the Public Defender of Rights reached the conclusion that in all the cases examined, shortcomings are identifiable in the legal quality of the sterilised persons' consent. The unlawful nature of the sterilisations lies in the fact that consent, without error and fully free in compliance with the Civil Code, was not given to the interventions.

In medical and legal terms it should be pointed out that the cases examined cast doubt on the process of properly informing the patient so as to enable her to make a mature decision.

Medical personnel's questionable conduct that casts doubt on the legal quality of consents to the intervention combines with the social workers' conduct in the case of the sterilisations of Roma women before 1990. The inquiry by the Public Defender of Rights has gathered indicia that under the implementation of the then state assimilation policy, Roma women were also persuaded to reduce the number of their children and thus approximate to the majority population's contemporary perception of a model functioning family. Sterilisation was one of the methods offered and the availability of a relatively high social benefit acted as an incentive for the Roma women's deciding whether to undergo sterilisation. This conduct of the social workers, regardless of how we perceive it historically, means from a legal perspective that the freedom of will of the persons exposed to such conduct was significantly compromised.

The Public Defender of Rights recommended to the Chamber of Deputies to adopt a legal regulation that will stipulate the provision of consent before the performing of sterilisation for health reasons or for other than health reasons within the legal regulation of informed consent.

The Defender further recommended to the Chamber of Deputies to consider the adoption of reparation provisions for persons who underwent sexual sterilisation between 1973 and 1990, under the conditions the Defender specified in his Final Statement in the Matter of

Sterilisations Performed in Contravention of the Law, from December 23, 2005 (for the full text please visit www.ochrance.cz).

Parliament heard the amendment of the Act on Care of People's Health in 2006. However, the adopted amendment was vetoed by the President.

Eviction of Romani families from Vsetín

The Defender also dealt in detail with the fate of the six families (68 persons) evicted by the Vsetín council to the Olomouc and Jeseník districts. In the first place the Defender ascertained that the *"media myth"* of the alleged bad payers was untrue. All the families concerned had been paying for the use of the apartments in the balcony house in Smetanova street. Three families had been in debt on rent from the previous lease, but they had been repaying it. The remaining three **families had been free of any debts**. The families had been moved to houses in a very poor structural and technical condition, and the planning authority had to order the demolition of the building in Čechy pod Kosířem in June 2007. If the eviction of the persons from the balcony house in Smetanova street had been determined by the adverse condition of the house and concerns about the residents' health, moving them to other inconvenient premises in the Jeseník, Prostějov and Uherské Hradiště districts had not resolved the issue.

In general, the forced eviction of the Romani families outside the territory of the Vsetín municipality is the most problematic aspect of the issue and it is reasonable to conclude that **fundamental human rights and freedoms** were actually **violated** by the aforementioned intervention (the freedom of movement and residence, the right to respect for private and family life).