Veřejný ochránce práv
OMBUDSMAN

Report on cases in which remedy was not achieved even using the procedure under Section 20 of the Public Defender of Rights Act

In accordance with Section 24 (1)(b) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended, I provide information to the Chamber of Deputies of the Parliament of the Czech Republic on cases where adequate remedial measures were not ensured even by means of notifying the superior authority or the Government or by informing the public of the findings made by inquiries under Section 20 of the Public Defender of Rights Act.

A. Health insurance companies are obliged to provide information under the Act on Free Access to Information (File No. 7250/2015/VOP)

I was approached by a complainant to whom the **Coalfield Brotherhood Cash Office (CBCO) refused to provide information he required**. A complainant inquired whether a person who had physically attacked and injured him had paid the costs of his treatment to the health insurance company.

The insurance company declined his request. The insurance company argued that it was subject to the Free Access to Information Act (Act No. 106/1999 Coll.) only to a limited extent, i.e. only in relation to its decision-making activities (for example, in matters of insurance premiums). In other areas the insurance company did not regard itself as a party having the duty to provide information.

This, in my opinion, is a wrong line of argument because **insurance companies are public institutions** and as such they have the duty to provide information to a greater extent than just on their decision-making activities.

The **Supreme Administrative Court** confirmed in 2007 that the General Health Insurance Company (GHIC, in Czech: VZP) was a public institution under the Free Access to Information Act. In this respect, all other health insurance companies have the same status as the GHIC.

The Free Access to Information Act does not define “public institution”, nevertheless the **Constitutional Court** has defined the hallmarks of a public institution through its 2007 judgment. Not all these hallmarks have to be present at the same time. It is sufficient that they are present enough to identify the institution as being of the nature of a public institution. These hallmarks are as follows: public purpose; state supervision over the institution’s activities; individual bodies of the institution being established by the state; the state being the founder of the institution; the institution being incorporated on the basis of a public-law act (legal regulation, decision, etc.).

In my opinion, health insurance companies show many of these hallmarks. CBCO was founded through a decision of the Ministry of Labour and Social Affairs; one third of the members of its supervisory board and management board are appointed by the Government; it is subject to supervision by the Ministry of Finance and Ministry of Health;

it provides public health insurance, i.e. manages public funds for the purpose of satisfying public needs – public healthcare.

CBCO is hence a public institution and as such it belongs among obliged entities with the full information duty under Section 2 (1) of Act No. 106/1999 Coll.

Therefore, I proposed that the CBCO insurance company:

a) accept that CBCO is an obliged entity under Section 2 (1) of Act No. 106/1999 Coll., Coll., on free access to information, as amended; and

b) amend to this effect its internal regulations and information on CBCO as an obliged entity published on its website.

CBCO refused to accept these proposals. Since I could not achieve remedy, not even by using my powers to impose penalties, I am hereby informing the Chamber of Deputies of the Parliament of the Czech Republic of this matter.

B. Refusal to grant "miner's old-age pension" (File No. 704/2016/VOP)

I dealt with a complaint regarding non-granting of the **"miner's old-age pension" upon reaching 59 years of age**. After examining the case, I concluded in the inquiry report that the Czech Social Security Administration (hereinafter the "CSSA") had erred in the complainant's case by refusing to recognise his employment period spent in seniority category II for the purposes of reducing his pensionable age.

Since the CSSA did not agree with my conclusion, I issued my final statement, indicating that the matter is undoubtedly **complicated** and has probably not been subject to judicial review to date. One likely reason is that this matter emerges only sporadically in the evaluation of job categories. Consequently, there are varying views. However, in my opinion, in the case concerned it is possible to aggregate employment in job category I and seniority category I with employment in seniority category II.

I believe that in Section 174 (1)(d) of the Social Security Act, the legislator put employment in seniority category II on an equal footing with employment in seniority category I specifically with a view to allowing aggregation of employment period spent in these categories for the purposes of reducing pensionable age (… or 15 years in employment set forth in Section 14 (2)(b) to (l) or 15 years in employment in seniority category I or II). Otherwise, the cited provision, or its relevant part, would be useless. In that case, the legislator would not mention seniority category II at all in the provision in question.

In my opinion, the arguments on which CSSA relies cannot refute the unequivocal wording of Section 174 (1)(d) of the Social Security Act. In a situation where the Act does not provide any other clear formula for aggregating various categories, or a formula excluding an approach, the cited provision makes it possible to aggregate employment periods spent in work category I and in seniority categories I and II. Linguistic interpretation clearly shows that the legislator formulated both conditions in an inclusive sense because it used

the conjunction "or". The purpose of the thus-formulated conditions was to put both seniority categories on an equal footing. I believe that my view is supported by the explanatory memorandum on Act No. 235/1992 Coll., in the special text on point 29.

Nevertheless, I was not able to achieve a change even after issuing my final statement, and I therefore informed the Minister of Labour and Social Affairs in accordance with Section 20 of the Public Defender of Rights Act. In view of the fact that even the **Minister does not share my legal opinion**, I informed the complainant that in his case I had exhausted all the means conferred on me by the Public Defender of Rights Act. **Since I could not achieve remedy, not even by using my powers to impose penalties, I am hereby informing the Chamber of Deputies of the Parliament of the Czech Republic of this matter.**

C. Procedure of the Kuřim Municipal Authority in the performance of social and legal protection of a child (File No. 6899/2014/VOP)

In June 2016 I issued a final statement on the procedure of the Department of Social Affairs and Prevention of the Kuřim Municipal Authority (hereinafter the BSLPC) in the performance of social and legal protection of a minor. I found error in poor social work with the family and insufficient individualised planning of the child's protection. I considered that the employees of the authority failed to exchange information efficiently.

To summarise the facts of the case, the minor had been gradually refusing contact with her father since the parents' break-up in February 2013. Based on recommendation from the BSLPC, the family began to see a specialist and later a specialised facility, but even assisted contact with the father did not help restore their relationship. In early 2014 the minor's mother lodged a criminal complaint against the father for suspected cruel treatment of the child. In the same month the facility recommended that the father's contacts with the daughter be suspended. The court discontinued the minor's contacts with the father and made no further arrangements regarding the father's access to the child. In early September 2014 the prosecuting bodies initiated criminal prosecution of the father, accusing him of cruel treatment of a person entrusted into custody.

Already at the end of 2013, the BSLPC correctly concluded that the minor was a vulnerable child and subsequently produced an individual protection plan. However, an expert report prepared within the criminal proceedings in April 2015 diagnosed the child with residues of the battered child syndrome. In my opinion, the **BSLPC should have responded promptly to the expert's conclusions and incorporate specific steps and measures** in the individual plan that would help the minor cope with the situation.

Since the minor suffered from psychological problems, the mother ensured (based on recommendation from the BSLPC) psychotherapy for the daughter (which was provided until the summer of 2015). The statement of the BSLPC did not specify the exact period, problems, frequency and results of the minor's visits at the specialist. Unfortunately, I did not find any mention, details or explanation of the situation at the time even in the statement of the head of the department of social affairs and prevention. I stressed that **the BSLPC could not be satisfied with the assertion of the parent having custody that he or she deals with the child's psychological problems by visiting a specialist, or wait for the conclusions of an expert**

report. In my opinion, in such a serious case the BSLPC should participate in the assignment and monitor the results of the psychologist's intervention.

Given the fact that the Kuřim Municipal Authority did not agree with my assessment of the case, I advised the superior Regional Authority of the South Moravian Region, which promised to include the matter in the agenda of the next regular working meeting of subordinate authorities. Remedy is no longer possible in this **particular case, and I therefore inform the Chamber of Deputies of the Parliament of the Czech Republic of this matter.**

In Brno, on 23 January 2017

Mgr. Anna Šabatová, Ph.D.
Public Defender of Rights