



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. Inactivity of a Construction Authority (File No. 1194/2015/VOP)

My Deputy was dealing with a case of a complainant who pointed out that the **owner of a family home located on a neighbouring plot of land did not have a permit for water management required for legal operation of a well and a waste water treatment plant.** The water-law permit for drawing water from a well and discharging waste water from a household waste water treatment plant had actually been issued by the Municipal Authority of Nová Paka, but revoked by judgement of the Regional Court about two years later.

As a consequence, my Deputy considered **the use of the entire family home utilising the water works wrongful** and argued along those lines in the inquiry report. The Municipal Authority stated that it approved the use of the well and the waste water treatment at a time both of the water works had water management permits. It also approved use of the family home, because, during the final inspection, the owner presented a proof of permission to use both of the water works. For this reason, the Municipal Authority did not consider the use of the family home wrongful. However, it provided no statement regarding the fact that the water works had no valid permit for water management. Therefore, my Deputy maintained his conclusion the family home was used wrongfully and contacted the Hradec Králové Regional Authority in writing to request a remedy.

The Regional Authority issued a comprehensive statement regarding the matter, but disagreed with my Deputy's opinion and, for that reason, did not even intervene – from the position of a superior authority – against inactivity which, according to my Deputy's opinion, the Municipal Authority committed by refusing to investigate the suspicion of wrongful use of the family home. Subsequently, my Deputy turned to the Ministry for Regional Development by means of a penalty notice, but even the Ministry took no measures to remedy the matter.

Since remedy could not be achieved, not even by imposing a penalty, I am hereby informing the Chamber of Deputies of the Parliament of the Czech Republic of this matter.

B. Removal of fencing (File No. 959/2016/VOP)

My Deputy dealt with the complaint of spouses requesting an inquiry into the procedure of the Construction Department of the Authority of the City Ward of Prague 8 (hereinafter the "Construction Authority") in dealing with their pleadings, in which they **repeatedly requested initiation of proceedings on removal of a non-permitted structure – a fence**

located at the border of plots of land in the land-registry territory of Dolní Chabry. The fencing had been constructed by the complainants' neighbours.

The developers had built a concrete foundation with steel poles and a binding wire, upon which they had affixed reed mats. Based on this fact, the complainants requested the Construction Authority to initiate proceedings on removal of a structure pursuant to Section 129 of the Construction Code. **The Construction Authority did not initiate proceedings on removal of a structure, stating the structure in question was not a fence.**

Based on an inquiry, my Deputy reached the conclusion that **the Construction Authority had erred where it had separately assessed the placement of a reed mat, considering it a shade screen, and the concrete foundation wall with steel poles and a wire, which it perceived as plant support, rather than assessing the final structure as a whole.** Indeed, the final structure should be considered a fence constructed without the required permission/ decision of the Construction Authority.

My Deputy summarised his findings in the inquiry report. Given the fact that the Construction Authority did not agree with my Deputy's opinion, the Deputy drew up a final statement regarding the matter, which also included proposed remedial measures consisting in the initiation of a proceedings on removal of a structure. **The Construction Authority did not adopt the proposed remedial measures** and refused to initiate proceedings on removal of a fence.

Therefore, my Deputy made use of a mechanism for imposing penalties pursuant to the Public Defender of Rights Act and approached the Prague City Hall as a superior authority. The statement of the City Hall revealed that it did not find the procedure of the Construction Authority to be erroneous.

Since remedy could not be achieved, not even by imposing a penalty, I am hereby informing the Chamber of Deputies of the Parliament of the Czech Republic of this matter.

C. Enforcement of decision on removal of fencing (File No. 6210/2016/VOP)

The Defender was approached by complainants requesting inquiry into the procedure of the Zlín City Hall and the Regional Authority of the Zlín Region regarding **execution of a decision on removal of a structure** identified as "fencing – foundation wall incl. fence and landscaping" located in the land-registry territory of Zlín.

The inquiry of my Deputy was concerned with a complaint about incorrect procedure of the administrative authorities concerning the execution of a decision removal of a structure. In the case at hand, **the developers voluntarily removed only a portion of the structure, specifically the steel poles and netting, the concrete foundation wall remained in place.** In their complaint, the complainants pointed out that the structure was not permitted and should have been removed as a whole based on a final decision of the Construction Authority, which, despite their repeated complaints, has not yet happened.

According to the Construction Authority and the Regional Authority, this partial removal of the fencing constituted a fundamental change of the assessed structure and resulted in new factual and legal status of the originally non-permitted structure. By partial removal, the

fencing became a retaining wall, which was not subject to any authorisation process. According to both the Construction Authority and the Regional Authority, it was not necessary to require execution of a decision on removal of a retaining wall, because, due to the change of a legal and factual status, the enforcement of a decision on removal of a structure had become devoid of purpose.

However, my Deputy did not consider the statements of both above-mentioned administrative authorities adequate as **a decision on removal of a structure, which had come into legal force and became enforceable had been issued in the matter, including a condition requiring the developer to renew the original condition of the land.** In such a case, it was necessary to **insist on compliance with the decision, regardless of the change of the structure due to removal of the steel poles and netting, because it could not be inferred from any legal regulation that the Construction Authority could refrain from enforcement of a final and enforceable decision without further considerations.** The fact that, pursuant to the applicable Construction Code, the remaining portion of the structure would not require any authorisation did not change anything about the above.

Considering that none of the authorities adopted remedial measures, my Deputy informed the Ministry for Regional Development as a means of penalisation. Subsequently, the Minister informed my Deputy that she would adopt no measures related to the subordinate Regional Authority.

Since remedy could not be achieved, not even by imposing a penalty, I am hereby informing the Chamber of Deputies of the Parliament of the Czech Republic of this matter.

Brno, 21 July 2017

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