



Report on legislative recommendations pursuant to Section 22 of the Public Defender of Rights Act

In accordance with Section 24 (1)(c) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended, I inform the Chamber of Deputies of the Parliament of the Czech Republic of my recommendations to adopt, amend or annul legal regulations I have addressed to the Government or an authority whose competence is concerned.

A. Information of the Public Defender of Rights to the Government of the Czech Republic on unlawful administrative practice of the Ministry of the Interior and Recommendation of the Public Defender of Rights to the Government of the Czech Republic on changing Section 38 (4) of Act No. 500/2004 Coll., Code of Administrative Procedure, as amended (File No.: 15/2017/SZD of 3 December 2018)

Inspecting a file is carried out in the form of providing a copy, but the Act does not specify the manner in which the copy is to be handed over. In my opinion, there is no reason to insist that the applicant appear at the authority's workplace in person.

The current problem is well-illustrated by a case of a woman from southern Moravia who was hit by car while riding a bicycle in southern Bohemia. Since she wanted to claim damages, she asked the relevant public authority if she could inspect the relevant documentation in the form of provision of a copy of documents included in the infraction (traffic accident) file. The authority informed her that sending such copies to her would be against the law, but that the authority was prepared to enable her to inspect the file in its building; however, the woman was unable to go there because of her injuries and continuing unfitness to work.

Such a procedure is, in my opinion, completely unnecessary and only reinforces the public belief that authorities are inflexible, obsessed with red tape and unwilling to assist and help the citizens. Based **on many complaints I received, I decided to conduct a general survey of the authorities' practice.** I found that their procedure was not uniform and not even the Ministry of the Interior was entirely sure how to approach the issue. However, the previous Minister of the Interior, Lubomír Metnar, believed that it was not an authority's duty to send copies of the files to applicants requesting to inspect an official file. For this reason, he rejected my recommendation to issue a methodological guideline to unify the authorities' practice. Jan Hamáček, the current Minister of the Interior, agreed with the opinion of his predecessor.

While I am convinced that the **right to remote inspection of an official file is based directly on the Code of Administrative Procedure** and corresponds to the fundamental basis of the right to inspect a file, I believe that if the Ministry insists on the impossibility of remote inspection under the current legislation, it is necessary to amend the law. For this reason, I used my special power and approached the Government with a request **to ensure that all parties to administrative proceedings have the option to remotely inspect a file and receive copies of documents.**

The Government discussed my recommendation on 11 January 2019 and **rejected it.**



B. Recommendation of the Public Defender of Rights to the Government of the Czech Republic on changing Section 68 of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended, and Section 181 of Act No. 361/2003 Coll., on the service relationship of members of the security corps, as amended (File No.: 25/2018/SZD of 17 December 2018)

Most administrative decisions are legally correct. However, there are also some defective or unlawful decisions as any system will inevitably generate errors. In order to ensure people's right to a fair and impartial procedure, all final administrative decisions **should contain an advice on the possibility to seek a legal action against the administrative decision**. Only this can **prevent the expiry of the right** to court protection due to ignorance of the law.

Providing a mandatory advice would not carry an excessive financial or administrative burden. It would consist in a single standardised sentence added to the existing advice on the inadmissibility of lodging an appeal. For example, the Czech Social Security Administration has been advising people of the possibility of lodging a court action for many years.

This recommendation was first made in 2011 by then ombudsman Pavel Varvařovský. He made the recommendation again in 2012 and 2013. In 2014, the Chamber of Deputies asked the Government to address this suggestion. One of the previous Governments then agreed with the recommendation and undertook to propose this modification as part of the next suitable amendment to the Code of Administrative Procedure. However, the Code of Administrative Procedure has been amended five times now without the previous Government's promise being put into practice.

Administrative authorities are assumed to be impartial, but not independent. Independence can only be guaranteed by a court. Given the fact that each person has a constitutional right for his or her matter to be heard by an independent and impartial court, I recommended that the Government **introduce the duty of administrative authorities to advise parties to proceedings of their right to lodge a court action against the administrative decision**.

The Government discussed my recommendation on 11 January 2019 and **rejected it**.

In Brno, on 30 January 2019

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Public Defender of Rights