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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 achieved even by means of notifying the superior authority or the Government, or by informing the public of the findings obtained in inquiries under Section 20 of the Public Defender of Rights Act.

A. Discriminatory conditions for leasing flats (File No. 6596/2016/VOP)

I inquired into the procedure of Ostrava City Hall (hereinafter the "City Hall") concerning supervision over approved **Lease Policy** for Flats Owned by the Statutory City of Ostrava, delegated to the municipal district of Moravská Ostrava a Přívoz (hereinafter the "Policy"). Specifically, this concerned the **rule that people drawing "assistance in material need" benefits for an uninterrupted period of 6 months** prior to the proceedings were excluded from the selection procedure. I consider such a rule to be at variance with the Charter of Fundamental Rights and Freedoms (hereinafter the "Charter") and suspect it violates the Anti-Discrimination Act.

I discussed a change in the Policy directly with the mayor of the municipal district of Moravská Ostrava a Přívoz. This did not meet with success. Therefore, I asked the City Hall to exercise its supervisory powers with respect to the Policy. The City Hall responded that it did not consider the Policy rule to be at variance with the law and failed to take any action. For this reason, I issued a **report on the case, where I noted that the City hall had made an error** consisting in the failure to address the conflict between the rule and the Charter. The City Hall had further made an error when it concluded that the rule was not discriminatory in terms of ethnicity.

I am convinced that in the case at hand, individuals are being penalised for their exercise of the fundamental right to **assistance in material need** pursuant to Article 30 (2) of the Charter; indeed, by receiving the "assistance in material need" benefit, they exercise their constitutionally guaranteed right. **Inability to participate in a selection procedure for the lease of a municipal flat can be considered a harm in the above sense.**

A remedy was not achieved even after I issued my final statement, since the Mayor of Ostrava informed me that he insisted on his legal assessment of the issue. For this reason, I exercised my power to impose a penalty in the form of informing the superior authority, i.e. the competent regional authority, and requested that it take steps against the City Hall, which continued to ignore my recommended remedial measures and was inactive in the matter.

The regional authority rejected its competence in the case as it was convinced that the City Hall's supervision over the independent competences of city wards/districts constituted an independent competence in itself. Both I and the Ministry of the Interior believe that this constitutes a delegated competence and the regional authority is thus a higher-ranking body *vis-à-vis* the City Hall.

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.

For the sake of completeness, I note that I officially informed the Ministry of the Interior of this fact and requested a change in the Municipalities Act so that the competence of city halls to supervise the exercise of independent competences of city wards/districts is explicitly listed under delegated competences. The Ministry then informed me that the proposed legislative change was currently being prepared as part of the Ministry's amendment to the Municipalities Act, which is planned to be put for inter-ministerial commentary procedure in January 2019.

In Brno, on 30 January 2019

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