



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. **The Ministry of the Interior has been hindering my inquiry by refusing, at variance with the law, to submit the required documents (File No. [3/2019/SZD](#))**

The Ministry of the Interior claimed that it had dismissed applications for citizenship filed by the complainants based on statements of the police or intelligence services comprising classified information. In spite of repeated requests, it refused to make these statements available to me. It did not question my legal authorisation to become acquainted with classified information. However, it claimed that I did not need the statements for the performance of my duties.

The Public Defender of Rights is authorised and obliged to assess acts and decisions of administrative authorities, including the Ministry of the Interior. The Defender cannot perform this duty without becoming familiarised with documents underlying the relevant decisions. In its inquiry, the Defender does not evaluate an underlying statement, but rather only whether such a statement exists and how the authority decided in view of its specific content.

In order to remove obstacles to the exercise of competence of the Public Defender of Rights, I suggested that the Government order the Minister of the Interior to

1. make the documents requested for the purposes of inquiries recorded under File Nos. 7064/2017/VOP/MV and 4764/2018/VOP/MV available to the Public Defender of Rights by 31 March 2019;
2. ensure that the Ministry of the Interior comply with its duty under Section 15 (2) of the Public Defender of Rights Act and make available to the Public Defender of Rights, within her inquiry, all the underlying documents used for deciding on an application for citizenship of the Czech Republic, including statements of the Police of the Czech Republic and intelligence services of the Czech Republic comprising classified information.

The Government acknowledged my notice on 4 March 2019 and approved the unlawful procedure of the Ministry of the Interior.¹

I consider the Ministry's action, approved by the Government, a substantial unlawful interference with the activities of the Public Defender of Rights. **The Defender is one of the control mechanisms of the Chamber of Deputies and, being unable to perform her duty to**

1 [Resolution of the Government](#) of 4 March 2019, No. 152.



review the action of administrative authorities, she cannot fulfil this control function in this case. Applicants for citizenship now have no remedy available. They themselves do not have access to the statement as a result of which they were unsuccessful, and decisions in these matters are still excluded from court review.

B. Restraining the accused during medical escort (File No. [5630/2018/JM](#))²

The complainant, who was held on remand during his prosecution, was transported to a hospital outside the remand prison, where he underwent a complex examination. During the escort and examination he had to wear a transport belt and leg cuffs. Two officers of the Prison Service were present directly in the examination room. The Prison Service was unable to justify such an extensive use of coercive means by referring to individual circumstances of the complainant's case (e.g. his behaviour during the remand, gravity of the crimes, evaluation of the risk of escape, etc.). The prison warden merely referred to an internal regulation which stipulated that coercive means would always be used; they could be removed during an examination only if this was necessary. He did not even agree that the complainant should be allowed to take a shower prior to his medical examination, even without having made a specific request.

The Prison Service can use coercive means during escort outside the prison and during medical treatment in a civilian healthcare facility only if this is necessary. An internal regulation of the Prison Service cannot stipulate that certain coercive means (cuffs, restraining belt) would be used at all times regardless of the individual circumstances of the case.

In the case of the complainant, the need for the specific coercive means was not sufficiently individually evaluated. Persons held in prison must have the opportunity to take a shower before a medical examination without having to ask for this.

Neither the prison warden nor the Director General of the Prison Service agreed with these conclusions and the Director General refused to modify the internal regulation.

Brno, 23 April 2019

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Public Defender of Rights

² [Report on inquiry](#), [final statement](#), [notice to the superior authority](#).