



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. Proceedings on removal of structures

(File No. 7527/2019/VOP/DP) ¹

I conducted an inquiry into an alleged unauthorised alteration to a structure – construction modifications of the attic of an older single-family home. Based on a complaint filed by neighbours, the Municipal Authority of Střelice, Construction Authority department (hereinafter the “Construction Authority”), inspected the complainant’s house; during the inspection, it was found out that the phrase “rooms in the attic” had been typed in the construction modifications permit of 1982 using different font than the rest of the text. The complainant argued that the written construction permit in question had been modified *ex post* by the then chairman of the locally competent Construction Department of the District National Committee.

The Construction Authority initiated proceedings on removal of the structure against the complainant who was subsequently accused of forgery and alteration of a public instrument. The competent district court acquitted the complainant of the charges because it had concluded that the claimed act did not constitute a criminal offence. However, the proceedings before the Construction Authority continued because the Construction Authority’s procedure required that the complainant apply for an additional construction permit.

Following my inquiry, I came to the conclusion that the Construction Authority failed to prove that the contents of the public instrument (the construction permit of 1982) had been forged because the suspected alteration of its contents by the complainant was not confirmed and the Construction Authority had no further piece of evidence to demonstrate that the construction modifications in the attic of the single-family home had not been permitted by the then Construction Department of the District National Committee. The Defender therefore came to the conclusion that there were no statutory grounds for the Construction Authority to order the removal of the unauthorised structure.

¹ Report on inquiry, final statement, notice to the superior authority.



During my inquiry, I proposed the following procedure to the Construction Authority: to discontinue the proceedings on an additional construction permit and subsequently issue a decision in the proceedings on removal of the structure, where the operative part of the decision would indicate that no removal of the structure would be ordered. The Construction Authority did not abide by my conclusions, not even after the final statement containing a recommendation for remedy was issued. I subsequently exercised my authority to impose sanctions and, on 22 July 2020, I notified the Regional Authority of the South Moravian Region as the superior authority. However, the Regional Authority did not agree with my conclusions and upheld the opinion of the Construction Authority.

In view of the current circumstances, the complainant has two possibilities on how to proceed: firstly, he can accept the legal opinion of the Construction Authority, which I find incorrect, i.e., that the respective part of his building (attic room) was built without authorisation, and thus admit that he had falsified the original permit. Subsequently, he would continue in his efforts to obtain an additional permit, meaning he would document his application filed with the authority and complete the entire proceedings on an additional construction permit. Secondly, the complainant can withdraw his application for an additional permit, as a result of which the proceedings on the same would be formally discontinued and the authority would continue with the proceedings on removal of the structure and would probably order the removal. The complainant would then file an appeal and, in case of its failure, he would file an administrative action, on which the court would then issue an authoritative decision.

Since remedy was not achieved even through this sanction, the information has been submitted to the Chamber of Deputies of the Czech Parliament.

B. Imposition of a disciplinary penalty for non-compliance with dress code (File No. 7115/2019/VOP/JM)²

During our inquiry, my Deputy found misconduct on the part of the Prague Pankrác Remand Prison in connection with the disciplinary penalty in the form of a warning imposed on the complainant due to his non-compliance with prison dress code and misbehaviour. Convicts cannot be punished for non-compliance with a duty that has not been imposed on them by any legal or internal regulation.

On 3 June 2019, a prison officer requested the complainant to adhere to dress code (permitted clothing and footwear); specifically she asked him to submit a valid permit, although the complainant was not wearing his civilian clothes. The complainant did not have a valid permit approved by a prison officer and submitted “merely” an exchange sheet / certificate (permit for overalls, sneakers and a cotton T-shirt without printing) issued by a physician. The complainant objected that he had not used the permit and, therefore, he neither had submitted it to the officer nor had asked for its official approval. The complainant was also punished for misbehaviour that allegedly occurred during the

² Report on inquiry, final statement, notice to the superior authority.



confrontation with the prison officer. The decision to impose a disciplinary penalty describes the complainant's misbehaviour as follows: "Furthermore, during the confrontation, the convict began to verbally attack the persons present, accusing them of unacceptable exploitation of the prisoner. He was arrogant and impolite towards the persons present." According to the decision [on the complaint \(on imposition of a disciplinary penalty? – trans.\)](#), three female employees were present when the complainant misbehaved.

The internal rules include no strict and unequivocal duty of convicts to submit each permit issued by a physician to prison officers and it is not justified and expedient to introduce such a duty, as it is sufficient for each convict to keep the physician's permit and submit it upon request. The complainant was penalised for his non-compliance with a duty that is not clearly defined in the internal rules; if such a duty were imposed on the convicts, it would have to be made clear that said duty applied even to convicts who did not actually make use of the issued permit. Moreover, the officer checked whether the complainant had the permit (certificate of relief) approved by a prison officer at a time when the complainant was not using said relief. If the prison wished to demonstrate the complainant's misbehaviour, it should have, in particular, specified his behaviour in much more detail, which, however, was not the case. The question of what behaviour is considered proper behaviour and what is unacceptable is always quite subjective. Only one employee of the prison was interviewed during the disciplinary proceedings; she described the convict's behaviour in general terms and her description of events was subsequently automatically incorporated into the decision on imposition of the disciplinary penalty.

In her final statement, my Deputy proposed remedial measures consisting in cancelling the imposed disciplinary penalty or in discussing the complainant's misbehaviour during a disciplinary interview. The Director General of the Prison Service did not agree with the above conclusions.

Since remedy was not achieved even through this sanction, the information has been submitted to the Chamber of Deputies of the Czech Parliament.

In Brno, on 3 November 2020

JUDr. Stanislav Křeček, signed
Public Defender of Rights
(this report bears an electronic signature)