



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A. Housing allowance cannot be withdrawn due to the landlord's unwillingness to issue a document (File No. 5848/2019/VOP/IR)¹

The labour office cannot withdraw housing allowance from the tenant of a flat if, despite the tenant's best efforts, the landlord refuses to issue a bill for the services provided. In the Defender's opinion, this a procedure followed by the mentioned authority is formalistic and negates the purpose of the housing allowance.

The Defender dealt with a complaint against the procedure of the Labour Office of the Czech Republic in Olomouc, which had withdrawn a housing allowance from the complainant because he had failed to submit accounts of payments made for water and sewer charges during the previous billing period. The complainant argued that he had tried to obtain the account from his landlord, both on his own and through his attorney-at-law, but the landlord refused to issue the account. The landlord even responded to repeated requests by terminating the lease (against which the complainant successfully defended himself in court). After the vain attempts to obtain the account, the complainant turned to the Labour Office and asked it to call on the landlord to submit the account. However, the landlord failed to respond to the Labour Office's request and did not send the required document. The Labour Office subsequently withdrew the complainant's housing allowance due to his failure to submit the account, and the Ministry of Labour and Social Affairs confirmed the decision in the subsequent review proceedings.

The Defender believes that the Labour Office proceeded in a purely formalistic manner without taking into account the circumstances of the case and the purpose of the benefit in any way. "As rent is gradually increasing these days, many people, especially the elderly, people with disabilities, single parents and others, are unable to pay all the housing costs from their income and rely on State assistance in the form of a housing allowance. By withdrawing this benefit due to a failure to submit annual accounts, even though the beneficiaries have documented their best efforts to obtain the required underlying documents, the State puts them at risk of losing their housing, which goes completely against the purpose of the housing allowance," said Stanislav Křeček, the Public Defender of Rights, with regard to the procedure of the Labour Office, and added: "In this case, the Labour Office knew that the complainant had been trying to obtain the required documents from the landlord. Moreover, based on its own experience with the landlord's behaviour, it

¹ Press release



must have been clear to the Labour Office that the complainant would not be able to submit the required account. Under these circumstances, withdrawal of the allowance can only be seen as a formalistic step defeating the purpose of the benefit.”

According to the Defender, given the circumstances of the case, the Labour Office was able to calculate the amount of the housing allowance even without the account. Moreover, the Labour Office should have consistently demanded the provision of the document from the landlord. By doing so, it would not give up on its duty to properly ascertain all the decisive facts of the case. If the Labour Office later ascertained on the basis of the account that the housing allowance had been overpaid, the Defender believes that the Office would be able to claim a refund of the overpayment from the landlord because it was the landlord’s conduct that caused the overpayment.

Nevertheless, the Labour Office neither accepted nor remedied the error, and maintained its interpretation of the law. Its conclusions were also supported by the Minister of Labour and Social Affairs, whom the Defender subsequently asked for a statement. Since the Defender had exhausted all the means to remedy the criticised errors he had under the Public Defender of Rights Act, the Defender decided to inform the public of his findings.

Given that the complainant’s case is not unique and the Ministry of Labour and Social Affairs insists on its opinion, the Defender recommends people who find themselves in a similar situation to defend themselves against the decision on appeal by lodging an administrative action. The existing discrepancy between the Defender’s opinion and the Ministry’s conclusions in respect of the housing allowance can only be resolved in court.

B. The Labour Office refused to remedy erroneously stopped payment of unemployment benefits (File No. 1326/2018/VOP/MKZ)²

The Labour Office discontinued payment of unemployment benefits earlier than it should have. It did not issue a decision against which the job seeker could object. The Labour Office insists that it proceeded correctly and the Ministry of Labour and Social Affairs supports its opinion. Nevertheless, the Deputy Defender is still convinced that the legal opinion of the two authorities is wrong. Since she had exhausted all the options she had under the law and the authorities had refused to remedy the situation, she decided to publish the case.

A person seeking employment who is in the register of the Labour Office may work under certain conditions. Such a person may perform non-conflicting employment on the basis of an employment contract or an agreement to perform work. If he/she receives unemployment benefits, the payment of these benefits is suspended during the performance of his/her work. However, according to the Deputy Defender, the Labour Office and the Ministry determine incorrectly when the payment of unemployment benefits should be stopped. The Deputy Defender bases this conclusion on the case of a complainant who entered into an agreement to perform work and the Labour Office stopped the payment of unemployment benefits as of the date of execution of the agreement, rather

² Press release



than as of the agreed date of commencement of work. Moreover, the Labour Office did not issue a decision to this effect and so the complainant could not have defended himself by lodging an appeal against such a decision. The Labour Office responded to the complainant's request for payment of the outstanding amount of the benefits by means of a letter declining the request.

While the error consisting in the failure to issue a decision on discontinuation of payment of the benefits was remedied by the fact that the Ministry of Labour and Social Affairs advised the Labour Office to comply with the procedures under the Code of Administrative Procedure, there is still a conflict between the opinions of the Deputy Defender and the authorities in the matter of discontinuation of payment of unemployment benefits during the performance of non-conflicting employment.

“The rationale behind the legal regulation comprised in the Employment Act is to ensure that unemployment benefits are not paid at a time when a job seeker has income from a non-conflicting employment. However, the interpretation provided by both the Labour Office and the Ministry fails to reflect that an agreement to perform work can be concluded in advance. Consequently, if they suspend the payment of support as of the date of execution of the agreement without taking into account the time from which the work is performed, the job seeker is effectively denied State financial support during a period when he/she still has no income from work,” explains the Deputy Defender, Monika Šimůnková.

Furthermore, she points out that by this approach, the Labour Office and the Ministry disfavour job seekers who find a non-conflicting employment performed on the basis of an agreement to perform work, compared to those who enter into an employment contract on a non-conflicting job and thus perform it as proper employment. Unlike in the case of agreements to perform work, with regard to employment based on an employment contract, the authorities do not question that a legal relationship arises on the date of commencement of work, rather than on the date of execution of the contract. The payment of unemployment benefits is thus correctly suspended during the period covered by income from employment. According to the Deputy Defender, the different approach of the authorities to work performed on the basis of agreement to perform work goes against the sense of the Employment Act.

Both the Labour Office and the Ministry of Labour and Social Affairs refuse to reconsider their position and insist that they proceed in accordance with legal regulations. In this respect, they refer to the wording of the Employment Act, which explicitly states that the payment of unemployment benefits will be discontinued as of the date of creation of the legal relationship based on an agreement to perform work. According to the Ministry, it is undisputed that the legal relationship already arises upon execution of the agreement, rather than upon commencement of the work. The authorities thus continue to insist that payment of unemployment benefits must be discontinued as of the date of execution of the agreement to perform work, regardless of when the agreed work will actually be performed.

In Brno, on 1 February 2021

JUDr. Stanislav Křeček



Public Defender of Rights