

# Special Powers of the Public Defender of Rights

The task of the Public Defender of Rights is to protect individuals against unlawful actions of authorities or their inactivity, supervise over the protection of rights of individuals restricted in their freedom, and assist in protection against discrimination. In respect of authorities, the Defender investigates complaints directed against specific acts of specific authorities. If the Defender ascertains a shortcoming in the relevant authority's actions, (s)he issues a report on the investigation and provides a recommendation aimed at remedy, if applicable. With respect to protection of individuals restricted in their freedom, the Public Defender of Rights performs systematic visits of places where such individuals can be found and makes recommendations aimed at improvement of treatment of such individuals. If the Defender receives a complaint concerning discrimination, (s)he issues a report on the presence or absence of discrimination.

Apart from these powers, the Defender is also vested with „special powers of the Public Defender of Rights”, which may be used where the Defender ascertains systematic shortcomings in the practice of administrative authorities or in legal regulations.

These powers include:

## **1. Recommendations to the effect that an authority issue, amend or repeal its own legal or internal regulation<sup>1</sup>**

The Defender may recommend that a law be adopted, amended or repealed. These are non-binding recommendations. The Defender is not entitled to submit draft laws to the Parliament („legislative initiative”). Legislative initiative is reserved for individual MPs, groups of MPs, the Senate, the Government and Regional Assemblies. The Public Defender of Rights addresses his (her) recommendations for adoption, amendment or repealing to the Government and notifies the recommendation to the Chamber of Deputies of the Parliament of the Czech Republic. The Defender submits his (her) recommendations to the Government with a draft resolution whereby the Government assigns the legislative work to the relevant Ministry. As a rule, the material is discussed in the presence of the Defender.

In practice, the Public Defender of Rights only adopts this step if, based on his (her) past investigations, the Defender concludes that the existing legal regulation has a significant negative impact on the rights of individuals or that the regulation is inefficient, inadequate or unclear and the Defender has an idea of how this should be remedied. For example, the Defender used this procedure where (s)he recommended to the Government that damage to public tertiary roads should be penalised as an administrative offence under the Roads Act.<sup>2</sup>

The Defender usually does not exercise his (her) powers in cases where there are only few complaints and findings related to a certain issue or in matters that are essentially of political nature (e.g. restitutions).

A list of specific recommendations to adopt, amend or repeal legal regulations is included in the annual Summary Reports on the activities of the Public Defender of Rights.<sup>3</sup>

The Defender may also recommend the adoption, amendment or repealing of other legal regulations, such as decrees of Ministries or Government regulations. In such cases, the Defender contacts the authority that issued the relevant regulation (or the authority that should have issued the relevant regulation); the Defender adopts an analogous approach when recommending that internal regulations be adopted, amended or repealed (e.g. recommendation that the conditions of imprisonment should be modified<sup>4</sup>).

<sup>1</sup> Special powers enshrined in Section 22 (1) of the Public Defender of Rights Act.

<sup>2</sup> Recommendation from 8 August 2011, File No. 7/2010/SZD/DS, available at <http://eso.ochrance.cz/Nalezene/Edit/2566>.

<sup>3</sup> Electronic version available at <http://www.ochrance.cz/zpravy-o-cinnosti/zpravy-pro-poslaneckou-snemovnu/>.

<sup>4</sup> Recommendation from 10 June 2014, File No. 8/2014/SZD/MS, available at <http://eso.ochrance.cz/Nalezene/Edit/1958>.

Apart from that, the Public Defender of Rights may comment on draft legal regulations prepared by the Government (in particular laws, but also Government regulations) within the „interdepartmental comment procedure” in compliance with the Government’s legislative rules. However, in these cases, the comments submitted must concern the subject of the legal regulation delimited in the draft (the comments may not exceed the scope of the draft) and have the nature of mere recommendations. For example, we may refer to legislative comments on the draft law on liability for infractions and proceedings concerning infractions.<sup>5</sup>

## 2. The Defender as a Party to Proceedings before the Constitutional Court

The special powers of the Public Defender of Rights also include the possibility to participate in proceedings on repealing legal regulations held before the Constitutional Court. This power does not stem directly from the Public Defender of Rights Act, but follows from the Constitutional Court Act.<sup>6</sup>

In case of subordinate legal regulations (Government regulations, decrees of Ministries, generally binding decrees and regulations of municipalities and Regions), the Public Defender of Rights may contact directly the Constitutional Court with a petition for their repealing due to their variance with the constitutional order or a law. The Defender adopts this step on a rather exceptional basis, typically in cases where a decree or regulation has a significant impact on the rights of individuals or in cases where it would be difficult for the individuals affected by the decree or regulation to lodge a constitutional complaint. The Defender used this option, for example, in case of the petition for cancellation of controlled rent<sup>7</sup> and the petition for repealing a decree introducing a toll on a road between two municipalities.<sup>8</sup>

Apart from that, the Defender may also join proceedings on repealing such legal regulations initiated by other authorised parties as an intervening party, based on a request of the Constitutional Court. The Defender used this option e.g. when a generally binding decree of a municipality regulating the placement of video lottery terminals was addressed by the Court.<sup>9</sup>

The Defender may not apply directly for repealing of a law. However, since 1 January 2013, the Defender may join proceedings initiated by other authorised parties as an intervening party at request of the Constitutional Court and express his (her) opinion concerning the compliance of the relevant law (or its part) with the constitutional order (e.g. the statement of the Public Defender of Rights for the Constitutional Court in a case concerning a transitional provision of the draft Dstraint Rules<sup>10</sup>).

## 3. Action to Protect Public Interest

With effect as from 1 January 2012, the Public Defender of Rights may lodge actions to protect public interest. This power does not stem directly from the Public Defender of Rights Act, but follows from the Code of Administrative Justice.<sup>11</sup> By virtue of this power, the Public Defender of Rights may challenge in court final decisions of administrative authorities within three years of the date when the relevant decision becomes final.

<sup>5</sup> Comment in the legislative procedure from 15 September 2014, File No. 2440/2014/PDCJ; available at <http://eso.ochrance.cz/Nalezene/Edit/2046>.

<sup>6</sup> Section 64 (2)(f) and Section 69 of Act No. 182/1993 Coll., on the Constitutional Court, as amended, in conjunction with Section 87 (1)(a) and (b) of the Constitution.

<sup>7</sup> Petition lodged with the Constitutional Court on 4 March 2002, File No. 5847/2001/VOP/IPo; available at <http://eso.ochrance.cz/Nalezene/Edit/2506>. Judgement of the Constitutional Court (full court) of 20 November 2002, File No. Pl. ÚS 8/02; available at <http://nalus.usoud.cz>.

<sup>8</sup> Petition lodged with the Constitutional Court on 17 January 2011, File No. 2482/2010/VOP/PKK; available at <http://eso.ochrance.cz/Nalezene/Edit/2434>. Judgement of the Constitutional Court (full court) of 24 April 2012, File No. Pl. ÚS 12/11; available at: <http://nalus.usoud.cz>.

<sup>9</sup> Statement for the Constitutional Court of 9 March 2011, File No. 658/2011/VOP/PKK; available at <http://eso.ochrance.cz/Nalezene/Edit/2478>. Judgement of the Constitutional Court (full court) of 7 September 2011, File No. Pl. ÚS 56/10; available at <http://nalus.usoud.cz>.

<sup>10</sup> Statement for the Constitutional Court of 20 July 2014, File No. 16/2014/SZD/BK; available at <http://eso.ochrance.cz/Nalezene/Edit/858>.

<sup>11</sup> Section 66 (3) of Act No. 150/2002 Coll., the Code of Administrative Justice, as amended.

Actions to protect public interest do not serve merely to protect the rights of the parties to specific administrative proceedings. The aim of the actions is primarily to provide judicial protection to public interest in cases where there is no one to protect the public interest in the relevant proceedings. The contents of the term „public interest” are rather indeterminate and the actual scope of the term depends on the subject of the relevant administrative proceedings and the public interest protected therein (e.g. the interest to protect the environment, cultural monuments, public health or the consumer). According to law, the Public Defender of Rights may lodge an action only in cases where (s)he demonstrates the existence of a material public interest. This authorisation only comes into question on an exceptional basis in cases where an administrative decision issued in a specific matter has a very serious negative impact on public interest or where public interest in judicial review of the relevant matter significantly exceeds the individual interests of the parties (e.g. incorrect administrative practice). For example, we may refer to actions lodged to protect the environment and construction discipline.<sup>12</sup>

#### **4. The Defender as a Disciplinary Petitioner**

Vis-à-vis the courts, the Public Defender of Rights enjoys the special power to lodge „disciplinary actions”. The Defender may lodge a petition to initiate disciplinary proceedings against any chairman or vice-chairman of a court for a culpable breach of the duties of a chairman or vice-chairman of a court within the framework of State administration of courts. This concerns e.g. cases where a chairman or vice-chairman of a court repeatedly fails to ensure that cases are heard without delays. However, chairmen and vice-chairmen of courts may not influence the decision-making of courts in specific cases and, therefore, the Defender may not lodge disciplinary actions in this respect. The petition must be lodged within three years of the relevant disciplinary offence at the latest. In disciplinary proceedings, a decision is made by the Supreme Administrative Court and a court official may be penalised, depending on the severity of the offence, by reprimand, withdrawal of an increased salary coefficient, reduction in salary and, in the most serious cases, by removal from the office of chairman (vice-chairman) of the court. The power of the Defender to lodge disciplinary actions is a special (extraordinary) power that is used by the Defender only exceptionally in situations where the Defender finds, within his (her) activities, shortcomings (clear faults) on the part of court officials. The same power with respect to court officials is also vested in the Minister of Justice, chairmen of courts of higher instances (and chairmen of courts with respect to their vice-chairmen). The President of the Czech Republic may lodge disciplinary actions against officials of regional and higher courts.

For more information, see section „Problems and their solution” at [www.ochrance.cz](http://www.ochrance.cz) and in particular the leaflets „*The Constitutional Court – how to contact the Constitutional Court*”, „*Judicial protection against the decision of administrative authorities*”, and „*Public Defender of Rights and courts*”.

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<sup>12</sup> Action to protect public interest of 23 July 2012, File No. 11/2012/SZD/JG, available at <http://eso.ochrance.cz/Nalezene/Edit/1668>.