Veřejný ochránce práv
OMBUDSMAN

File No.: 107/2013/DIS/EN
File No.: 121/2013/DIS/EN
File No.: 128/2013/DIS/EN
File No.: 130/2013/DIS/EN
File No.: 131/2013/DIS/EN
File No.: 132/2013/DIS/EN
File No.: 172/2014/VOP/EN

Brno, 15 April 2015

Headnote

I. While integration of the Roma is generally not a highly popular topic among the politicians, as it encounters prejudices and stereotypical views of this ethnic group in some parts of the majority population, this cannot justify that certain flats of lower quality are effectively reserved for Roma applicants. The only admissible form of different treatment based on ethnic origin can be a measure taken to ensure appropriate development of certain disfavoured ethnic groups or individuals within the meaning of Section 7 (2) of the Anti-Discrimination Act; however, a special measure aimed to ensure equal opportunities can never consist in providing a lower standard than general.

II. If a city moves a part of its tenants to the suburbs only because of their Roma origin, this represents territorial segregation based on an ethnic formula, which meets the characteristics of direct discrimination on the grounds of ethnic origin under Section 2 (3) of the Anti-Discrimination Act.

III. It is inadmissible for a local government to give instructions for the performance of social work, which are moreover at direct variance with its mission. The mutual relationship between autonomous competences of a local or regional government, on the one hand, and delegated competences, on the other hand, should be one of partners in the field of social work, respecting the purpose of such work and aimed to seek people endangered by social exclusion, provide them with support and renew their skills. A requirement that social workers supervise their clients and report any breach of duties on their part to the city is in conflict with their mission towards the clients and the ethical principles of social work.

IV. If the city will only enter into short-term agreements with Roma tenants, while not taking this approach towards any, or basically any, other applicants for flats, this constitutes direct discrimination on the grounds of ethnic origin (Section 2 (3) of the Anti-Discrimination Act).

V. An allegation and proof or unequal treatment consisting in the fact that a lease agreement has not been concluded with any applicant of the Roma origin for any municipal flat other than in a building located in a suburban industrial zone, which is intended primarily to provide for social housing, although the applicant has honoured his/her obligations under the lease in the long term, will suffice to shift the burden of proof in possible litigation.

VI. If the city's authorities stop assigning flats to certain applicants solely because they have exercised their rights following from the Anti-Discrimination Act (e.g. because they have turned to the Defender with a complaint about discrimination), they commit discrimination in the form of retaliation (Section 4 (3) of the Anti-Discrimination Act).

Note: The headnote is not necessarily included in the Defender's opinion.

Veřejný ochránce práv
OMBUDSMAN

File No.: 107/2013/DIS/EN
File No.: 121/2013/DIS/EN
File No.: 128/2013/DIS/EN
File No.: 130/2013/DIS/EN
File No.: 131/2013/DIS/EN
File No.: 132/2013/DIS/EN
File No.: 172/2014/VOP/EN

Report on Inquiry
regarding discrimination against the Roma in access to municipal housing

The case under scrutiny concerns discrimination against Roma tenants who currently live in a building at XXX, owned by the Statutory City of A (hereinafter also the "City"). Before its refurbishment, the building at XXX served to secure housing for people not paying their obligations under lease agreements. It is situated in city suburbs and the flats used to be basically unfurnished – so-called "holobyty" in Czech (unfurnished flats for notorious debtors). Using a subsidy from the EU funds, the City repaired the building in 2013 and then moved Roma tenants living at XXX to this refurbished building.

Municipal planning documents denote Y and X streets as socially excluded area ABC. The tenants who addressed the Defender with their complaint objected that the small flats were absolutely unsuitable, among other things in view of the size of some families and the specific needs related to disability of some of the tenants. They further stated that the City had been refusing to provide them with more suitable flats, although they had been paying rent and fees for services on a regular basis. They therefore considered that the reason for their effective exclusion from selection procedures regarding higher-quality municipal flats lay in their Roma origin.

A Subject of the inquiry

The Defender was first addressed by Ms A. B., and complaints with similar contents were later also filed by Ms D. K., Ms P. Č., Ms J. G., Ms M. G., Ms M. V. and Ms I. K. They all, except for Ms J. G., currently live at XXX (hereinafter the "Complainants"). All the Complainants moved to the building at XXX together with their families from a building on Y street, which is also located in a socially excluded area. During the inquiry, the City assigned to Ms J. G. a different municipal flat on Z street.

The inquiry focused on the alleged **discriminatory procedure taken by the City and Správa nemovitostí města A., a. s. (the Property Management Company of the City of A, joint-stock company; hereinafter "SN a.s.") in the assignment of municipal flats** (SN, a.s. is owned by the City as its sole shareholder and the City plays an important role in the company in the assignment of municipal flats). The inquiry was also aimed to investigate the perceived **degrading and intimidating action against the Complainants taken by the aforesaid entities and territorial segregation of the Roma, i.e. the creation of a "ghetto".**

With effect from February 2014, I committed to resolve the complaint with final effect and I thus hereby present to the Complainants, the Mayor of the City of A and the Director of SN, a.s. this Report on Inquiry, as a result of my engagement in the matter based on the tasks imposed on the Defender by Section 1 (5) and Section 21b (a) of the Public Defender of Rights Act.1

[1] Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

B Findings

B.1 Areas Y – X

A number of various documents were created within the project titled "Establishment and Support of Local Partnerships for Socially Excluded Area of YYY", financed from the European Social Fund through the Operational Programme "Human Resources and Employment" and from the State budget of the Czech Republic, with the aim to create a comprehensive strategy and plan of services for the inhabitants of the given areas for a period of five years, following the City's strategy of social inclusion. The project was entrusted to and implemented by the civic association Sdružení Podané ruce, o. s., along with three main partners: the Charitable Organisation of the City of A, the Člověk v tísni, o. p. s. *(People in Need)* association and the City of A.The members of the Local Partnership (managing group composed of the relevant institutions pertaining to the areas of Y – X) drew up, within their organisational structure, the Action Plan of the Local Partnership for Y – X for the 2013-2017 Period, aimed to propose supporting measures to reduce the degree of social exclusion.

The Action Plan encourages the City, among other things, to adopt a housing policy that would prevent territorial segregation.[2] The situation analysis, based on which the Action Plan was drawn up, states the following in respect of moving the inhabitants to the given area: *"They find themselves in the given locality due to a mechanism that seeks socially disadvantaged people throughout the city and then gathers them in one place, while clearly using ethnic criteria to this end".*[3]

B.1.1 Complainants' original address – building on Y street

Before the refurbishment of the building on X street and moving the Complainants to this building, the situation analysis already stated the following in respect of their previous place of residence: *"Y street is known as a trap which one enters and never leaves. In both residential buildings, housing is often considered a necessary evil (and quite justifiably in the case of unfurnished flats on X street) which has no reasonable alternative in terms of finding some other, better housing".*[4]

The City formerly used the building on Y street as a lodging house for soldiers and then for pardoned prisoners and other inhabitants of the City; this is why the numbers of Roma and non-Roma population allegedly used to be more balanced there.

But the situation gradually changed and the numbers of Roma tenants markedly increased. The situation analysis states in this respect: *"Many tenants moved to the area based on an application for a flat – they were offered Y street and had no other option. The applicants were under pressure to choose the mentioned address because such an offer 'would not be made again'. One applicant was allegedly told that if she did not accept the housing, her children could be taken away from her.*

[2] The Action Plan of the Local Partnership for Y – X for the 2013-2017 Period. City of A: 2012, p. 20

[3] SocioFactor, s. r. o., in co-operation with Sdružení Podané ruce, o. s. *Situační analýza sociálně vyloučené lokality Y - X (Situation Analysis of Socially Excluded Area of Y – X)* 2011, pp. 59 to 60. Available at: http:// …

[4] SocioFactor, s. r. o., in co-operation with Sdružení Podané ruce, o. s. *Situační analýza sociálně vyloučené lokality Y - X (Situation Analysis of Socially Excluded Area of Y - X)* 2011, p. 26. Available at: http:// …

The system of assignment of housing operates in practice in that it concentrates in the given area people selected on the basis of ethnic criteria and those who are socially disadvantaged. It is clear that this has already become a rule in the case of new inhabitants."[5]

Future fate of the building on Y street was unknown at the time when the Action Plan was developed.[6] The City then resolved to reconstruct the building and create barrier-free flats for elderly people. In September 2013, the City's Municipal Assembly approved the transfer of the building on Y street into the ownership of SN, a.s., which was responsible for the refurbishment. This measure was to resolve the *"long-term issue associated with the part of A – the ABC area, specifically the building at YYY"*.[7] SN, a.s. currently offers flats in the refurbished building for lease to elderly citizens, while promising potential tenants that they would live in a quiet part of the City of A.[8]

B.1.2 Moving to the building on X street

It follows from the Complainants' petition that as of 1 October 2013, the City moved them to a building on X street, just like a number of other Roma families. **The City offered a lease almost exclusively to Roma families that had no debts** (only the family of Ms K. did not comply with the condition of non-existence of debts towards the City). Before moving to X street, the Complainants had a lease from the City for a fixed term and the same was true of other tenants of the building on Y street. The leases ended on 30 September 2013; the Complainants stated that in fear that they and their families might end up on the street, they had no other option than to accept the offer of unsuitable housing on X street. Some of them mentioned pressure exerted on them to conclude lease agreements for flats on X street, and also a promise that this would only be a temporary solution on the part of SN, a.s. The City executed the first lease agreements for flats in the building on X street for a term of three months, i.e. until 31 December 2013, and then renewed the Claimants' lease for further fixed periods; this has continued to date. The family of Ms J. G. is an exception as they were assigned a flat on Z street in view of the very severe disability of her son.

While the building on X street serves as social rented housing with a reduced rent, it nonetheless currently is a home to a majority of the former tenants of the building on Y street, who generally pay their rent and associated fees in the long term. According to the Action Plan, the reconstructed building[9] on X street was to *"continue serving as accommodation for socially disadvantaged people who are unable to buy or rent residential space on market terms in view of their difficult social*

[5] SocioFactor, s. r. o., in co-operation with Sdružení Podané ruce, o. s. *Situační analýza sociálně vyloučené lokality Y - X (Situation Analysis of Socially Excluded Area of Y - X)* 2011, p. 26. Available at: http:// …

[6] *"The Council will decide on the plan for the area of Y only in June 2013."*[6] The Action Plan of the Local Partnership for Y – X for the 2013-2017 Period. City of A:
2012, p. 15

[7] Minutes of the meeting of A's Municipal Assembly of 18 September 2013, p. 30, available at: https:// …

[8] sn.cz [online]. YYY, [retrieved on: 11 February 2015]. Available at: http:// …

[9] The City obtained a subsidy for the reconstruction within the Integrated Operational Programme for the 2007-2013 Period and the Integrated City Development Plan – Revitalisation and Regeneration of Housing Estate, as well as for the reconstruction of the building on Y street. Available at: http:// ...

situation".[10] The Action Plan envisaged the introduction of a system of "housing ready", intensive social work with the inhabitants (introduction of the model of assistance from field social workers, non-governmental organisations and SN, a.s.), and the adoption of measures to prevent damaging of the building and non-payment of rent.[11]

In the building, the City established facilities for field social workers employed by the A City Hall.

The flats in the building on X street are small flats, but still house many large families. During the inquiry, the Complainants also pointed out the unsatisfactory structural and technical condition of the building, which is damp and often mouldy. As noted in the Action Plan, the vicinity does not offer sufficient options how children and youth could spend their leisure time. **The building is located in an industrial zone and farming area, it is close to a busy street, isolated and not accessible by any pavement.**[12] **Some of the Complainants asserted that when they had pointed out the unsuitable location of the building, SN, a.s. had told them that *their children should play in the fields.* The building on X street is 1.4 km far from the original Complainants' address, in the direction out of the city.**

During the inquiry, I ran across a graduation thesis titled "*Impact of Vacating the Excluded Area of Y in the City of A on its Inhabitants".* In the conclusion, the author stated, among other things: *"However, if the greatest impact of vacating the area was to be identified, it would be the cessation of attempts to work with the Roma community in the City of A as a whole and gradually reduce its social exclusion. Socially excluded people were merely moved out from Y street to various places or '... from a ghetto to a ghetto ...', and the planned systematic efforts to achieve social inclusion were stopped."*[13]

To illustrate the transfer of certain inhabitants from one excluded area to another, I shall quote the evaluation of the work of SN, a.s. as provided by its Director, Ing. R. Z., in the 2013 Annual Report: *"Thanks to implementation of the aforesaid investment project (refurbishment of the former 'non-furnished flats'), last autumn we managed to completely move (out) all the tenants of the YYY building in the City of A, and thus prepare the building for the – by the local population eagerly awaited – planned reconstruction of this 'Roma ghetto'. Although the building was originally inhabited by 80 families, by merely strictly insisting on compliance with the terms of lease, we thus managed to fundamentally decrease the number of occupied residential units, and the capacity of XXX (mere 26 residential units) was enough to clear out the entire building. We consider it a great success that we managed to undertake this moving project without any substantial difficulties, and*

[10] The Action Plan of the Local Partnership for Y – X for the 2013-2017 Period. City of A: 2012, p. 15
[11] Ibid, p. 16.
[12] Ibid, pp. 9 and 17.
[13] BUKA, J. *Dopad vystěhování vyloučené lokality Y ve městě A. na její obyvatele. Absolventská práce. (Impact of Vacating the Excluded Area of Y in the City of A on its Inhabitants. Graduation Thesis.)* City of A: CARITAS – Vyšší odborná škola sociální město A. *(Higher Social Vocational School in A.)*, 2014, p. 35. Available at: http:// ...

primarily without media attention, as a similar project of moving out inhabitants from an analogous problematic building in Ostrava became the headline of evening news."[14]

B.1.3 Recommendation from the participants of the Local Partnership of 25 November 2014

An employee of the Social Inclusion Department at the Office of the Government of the Czech Republic, Mgr. F. P., advised me that in November 2014, he had presented to the City a draft recommendation, which had later been slightly modified by Mgr. M. M., the head of the Social Affairs Department. This led to the creation of a "compromise" variant of the recommendation, following up on the Action Plan originally drawn up by the Local Partnership, which however, as noted by Mgr. P., *"was never implemented as a whole*".

The concept of the aforesaid document comprises a call for the City to actively deal with the recommendations following from the Action Plan, which A's City Council took into cognisance in 2012, and to discuss a possible conception as well as transparent rules for the assignment of flats. The original version, as presented by Mgr. P., includes an explicit requirement that the rules for the assignment of flats also be *non-discriminatory*. Removal of this notion was one of the minor modifications carried out by Mgr. M. M., according to the presented materials.

The recommendation contains similar requirements on the City's housing policy as the Action Plan, including the prevention of social exclusion and territorial segregation. The members of the Local Partnership will continue to discuss the above.

B.2 Situations of the individual Complainants

B.2.1 Ms A. B.

Ms B. currently lives in a flat of 32.1 square metres in a common household with her grandson J. O., who studies a secondary vocational school in the field of cook-waiter, and daughter A. O., who has a certain multiple handicap. According to a medical report by MUDr. V. T. of a private psychiatric practice at BBB of 5 August 2013, she *suffers from a medium-severe mental retardation with behavioural disorders; in view of her diagnosis, the daughter takes high doses of psychoactive drugs, administered both by injections and orally.* The medical report states that it is vital that the daughter and the mother, Ms. B., have together a separate room. MUDr. T explicitly stated that this was a **very decent family, not causing any problems, and that she would recommend assigning a municipal flat.**

Until recently, Ms. B lived with a partner, who however died in 2014. A granddaughter of Ms. B., who is about to get married, recently moved out of the common household in the flat on X street. Ms. B therefore stated that she would now do with a flat consisting of one bedroom and a kitchen,

[14] sn.cz [online]. SN Annual Reported, [retrieved on: 11 February 2015]. Available at: http:// ...

but at a different location than in the building on X street. Ms. B has lately also complained about having problems with breathing due to recurrence of mould (photographs are included in the file).

Ms. B's family moved to a building on Y street (and then to X street) as a result of sale of real estate in D (part of the City of A) by the former landlord. Ms. B stated that she had had a lease agreement for an indefinite term with the private owner of her previous flat. In order to arrange for a replacement housing for the family, the landlord had donated the amount of CZK 100,000 to the City of A and provided a CZK 10,000 deposit. In her complaint, Ms. B pointed out the inadequacy of the replacement housing, which was a reason why she had **repeatedly applied for a different municipal flat; with her applications, she had always enclosed her daughter's medical report.** She was very disturbed by the fact that the family had been moved to the excluded area of Y – X.

She also stated that although she had been offered two flats by the City, or more specifically by SN, a.s., she had to refuse both. She refused the flat at ZZZ because it was a "*ruin with broken door on the third floor, with no lift"*; indeed, given her handicap, the daughter of Ms. B is unable to climb the stairs to the third floor on her own. The second flat was refused by Ms. B because it had been offered to her by the Deputy Mayor, L. Š., "outside of the housing committee". Ms. B said that she considered this an evasion of the law and insisted on complying with the standard procedure in assigning the flat.

In telephone calls with the authorised employee of the Office of the Public Defender of Rights, Ms. B. repeatedly stated that she had tried to find a rental flat with a private landlord, but "*no one wanted a Roma"*, and her family was therefore dependent on municipal housing.

During the local inquiry made by the authorised employees of the Office of the Public Defender of Rights on 15 October 2013, the representatives of SN, a.s. questioned the locomotive impairment of Ms B's daughter. When the authorised employees arrived at the building on X street, the Director of SN, a.s., Ing. Z., pointed towards the daughter of Ms. B among a group of inhabitants in front of the building and noted: "*Look how well she can walk!"* But she shuffled in her walk and walked clumsily and heavily. In a letter of 24 March 2014, Ing. Z then stated that the flats offered were of standard quality with a lift and that Ms. B had refused them without a serious reason. It was determined in the inquiry that there was no lift at ZZZ (photographs are included in the file). Neither the City nor SN, a.s. proved that Ms. B had been offered any other flat.

B.2.2 Ms D. K.

In her complaint, Ms K. stated that because of her unsuitable accommodation, she too **had repeatedly applied for a different municipal flat**. During the local inquiry made by the authorised employees of the Office of the Public Defender of Rights, the K. family presented letters addressed to SN, a.s., where Mr J. K. had asked for a solution to their pressing need for suitable accommodation. In a letter of September 2013, he mentioned that none of his applications for a municipal flat had been satisfied since 1999. He also noted that Ms K. had owed rent for a flat on E street, which however had been paid by the new tenant of the flat who had acceded to the

obligation. With the next letter of September 2013, Mr K **enclosed medical reports regarding his adult son**, M. K. According to the disability report, the medical condition of M. K. is unfavourable in the long term (3rd degree disability); the son is mentally retarded (IQ 38)[15] and is dependent on care from his family. Mr J. K. also attached to the applications for assignment of a municipal flat **a confirmation issued by the general practitioner concerning a chronic lung disease**.

Since 1998, the K. family lived in a "non-furnished flat" of 40 square metres on X street; the lease with the City was for an indefinite term. The City assigned the flat to them as replacement housing due to their debts. Ms K. stated that given the reconstruction of the building, she subsequently entered into a fixed-term lease for a flat on Y street, with an area of 43 square metres, while being promised orally by SN, a.s. that the family would have a chance to obtain a flat in a better part of the City if they moved out of the building on X street. This did not materialise and the five-member family was forced to accept an offer of newly-built social housing and conclude a fixed-term lease (3 months) for a flat on X street with an area of 27.7 square metres.

B.2.3 Ms P. Č.

Similar to Ms K., Ms Č. lived in a flat on X street before the reconstruction (she had previously lived in building F for 10 years[16] and later at another place with her acquaintance, while waiting the entire time for assignment of a municipal flat). She stated in her complaint that before the refurbishment of the "non-furnished flats", she had lived mostly among notorious debtors, although she had never had any problems with paying rent and accessions. Ms Č. further stated that she and her family *"were later moved to Y street, while being told that they would later be dealt with and would have a chance to get a normal flat"*. After the refurbishment, she had no other option than to return to X street, into an unsuitable flat with the floor area of 45 square metres. According to Ms Č., her six-member family found itself again in the building on X street although **she had never owed anything to the City and she had been applying for a flat since 1991, with the hope that she could get a "normal" flat within five years.**

Ms Č. also enclosed **medical reports** with the applications for a flat because her four daughters (V. – born in 2000, S. – born in 2006, K. – born in 2007 and G. – born in 2011) have hearing problems. Moreover, S. has a severe eye defect and V. has been diagnosed with epilepsy and is in the care of a neurologist. In a report of 20 June 2013, the general practitioner for children and youth, MUDr. D. P., explicitly stated that a one-room flat was unsatisfactory. Along with the mentioned medical report, Ms Č. also enclosed with her applications for a municipal flat a medical report concerning her daughter K., where the latter was described as hyperactive and suffering from sleep disorders

[15] The diagnosis follows from the presented disability report issued by the District Social Security Administration of the City of A on 14 August 2012, File No. xyz.

[16] Under the *Rules for Provision of Housing in Rental Flats Owned by the Statutory City of A*, the F building is owned by SN, a.s.; decisions on accommodation are made by SN, a.s. based on recommendations from the housing committee of A's City Council and the housing department of SN, a.s.; under said rules, accommodation agreements are made for a term of 6 months – if there are no problems, they can be prolonged by further 6-month periods, but for no longer than 5 years.

with occasional incontinence[17], and a statement from the class teacher of daughter V., PaedDr. Y. K., of 14 June 2013, where it was stated, apart from the fact that *the mother meticulously cared for her children: "I believe that a larger flat, where the children would have sufficient space and privacy when preparing for school would be a great benefit for the development and future prospects, not only of V.".*

B.2.4 Ms J. G.

Ms J. G., too, **repeatedly applied to the City for a more suitable flat because, after the reconstruction of the building on X street, she had been living with her husband and three disabled children[18] in a flat of 33.3 square metres.** In her complaint, Ms G. stated that in response to an application for a specific flat on G. street, which she had really wanted, Ing. Z. had told her that *"she would ruin it the same way as the flat on Y street, and that a Roma family will not move into that flat*". Ms G. objected that her family had never destroyed any flat and that she had always paid rent properly and had no debts. The real estate agents allegedly directly stated that *"Roma are not wanted*".

The City eventually assigned to Ms G. a flat on Z street. However, I determined within the inquiry that this was mainly a result of efforts made by field social workers. According to information from field social worker Bc. I. F. A., who is still active in the building on X street, this was accomplished in view of the acute need for arranging suitable housing for the youngest son, M. (born in 2013), who had undergone a heart surgery. In spite of that, Ing. Z. did not want to deal with the pressing housing needs of the family, and the family allegedly obtained the flat only with an entreaty from Mgr. E. M., a Deputy Mayor in office at that time.

Ing. Z.'s attitude towards assigning a flat on Z street was also clearly stated in his telephone call with the authorised employee of the Office of the Public Defender of Rights of 11 February 2014. He noted that he now regretted the assignment of that flat because everything that G. stated had been, in his words, lies and threats – neither the social department nor the hospital had allegedly confirmed the claimed facts to him. I would like to note that, under Section 51 (1) of Act No. 372/2011 Coll., on health care services and the conditions for their provision (Health Services Act), as amended, a hospital (or more specifically, healthcare workers) as a health services provider is obliged to maintain confidentiality of all facts learned in relation to the provision of health care services. The duty to maintain confidentiality is also laid down in Section 100 of Act No. 108/2006 Coll., on social services, as amended.

[17] Medical report from MUDr. M. H. of the Children Psychiatry Department at the Hospital of the City of A of 22 July 2013.

[18] Based on information from the parents, daughter M. has a heart defect and, according to a report on health condition issued by the District Social Administration of the City of A, of 18 July 2012, File No. abc, son A. suffers from a combined handicap (reduced mental capacity – minor mental retardation – IQ 48, hyperactivity, emptying disorder); he has a 3rd degree dependence on assistance from another person (high dependence); based on a report on medical examination issued by MUDr. J. N. of the Pediatrics Department at the Hospital of the City of B. of 12 June 2013, the youngest son, M., suffers from a severe heart defect, due to which he underwent an emergency surgery.

B.2.5 Ms M. G.

The eight-member family of Ms M. G. currently lives in a flat of 45 square metres in a building on X street. Ms G. stated in her complaint that after her family had been unable to find any private rental flat, she obtained a lease from the City, first for a flat on Y street and then on X street. She stated that **she had never had any problems with paying rent and that she had always co-operated with field social workers; nonetheless, the City had not satisfied her applications for a larger flat.** According to her statement, the City had given preference to an indebted family belonging to the majority population.

B.2.6 Ms M. V.

Ms V. has been living with her husband and four children (four to eleven years old) in a flat with an area of 35.1 square metres. She described the execution of the lease for the given flat as an act made under coercion from SN, a.s. **She has repeatedly unsuccessfully applied for a larger municipal flat.** Ms V. further stated in her complaint: *"SN, a.s. does not treat the Roma community as humans; they constantly laugh at us, insult us and refuse to communicate with us. A technician by the name of J. even told me that my children were being raised by a charity and if we were unable to find better housing ourselves, we should not have had children. When we told the Deputy Mayor, L.Š., at a meeting with the management of SN, a.s., at which he was present, that we did not want to move into such small flats, we were told that we would either accept the flat or go live on the street as homeless."*

Mr V.'s husband, Mr E. V. receives partial disability pension because of a heart attack and severe diabetes.[19] In her complaint, Ms V. further stated that her son, A., suffered from a speech disorder and attended a special school, and that son P. regularly visited a psychiatric practice[20] and would disturb other siblings by his behaviour and hyperactivity during the night. Son P. was taking sedatives. Ms V. stated that the drugs would have the required effect only if the son was in a calm environment. **She expressed her fear that the son would be placed in a psychiatric ward unless conditions were ensured for his proper development, including suitable housing**.

B.2.7 Ms I. K.

Ms K. has been living in a flat with an area of 33.3 square metres in a building on X street together with her daughter and husband. She stated in her complaint that they had originally lived in her father-in-law's house, which was however in a state of disrepair, and that they had later got themselves caught in a "*conundrum of finding a suitable flat, where **SN a.s. kept and still keeps refusing them***". She further stated that she had learned from social worker Mgr. I. P. that Ms S., who had formerly worked at SN, a.s., *"threw her applications for a flat directly into the waste bin*

[19] Medical report from the general practitioner, MUDr. A. B., of 4 July 2013.

[20] According to the presented medical report issued by MUDr. M. H. of the Children Psychiatry Department at the Hospital of the City of A of 13 July 2013, son P. has been in the care of the psychiatry department since January 2012 due to manifestations of a hyperkinetic disorder, signs of an intellectual disability, fluctuating concentration, etc.

and they were thus never discussed at the housing committee". The K. family therefore had no other option than to move to the excluded area of Y - X.

During the local inquiry on 15 October 2013, Ms K. stated that her family was unable to find accommodation themselves as they, being Roma, were constantly rejected by the real estate agencies.

B.3 Position of social workers in the building on X street

Three social workers are currently active in the building on X street; two of them have a fixed-term agreement to perform work and one a full-time employment contract with A's City Hall.

During the inquiry, some of the complainants asserted that the chief field social worker for the building on X street, Mgr. I. P. (currently on maternity leave), did not protect their interests, quite the contrary. Some of the tenants therefore drew up a petition[21], in which **they requested that Mgr. P resign as the adviser for national minorities**. Mgr. P's failure to co-operate with the Roma minority and her acts in favour of SN, a.s. were also mentioned by the tenants of the building in a complaint of 14 October 2013, addressed to the head of the Social Affairs Department, Mgr. Bc. M. M. Mgr. E. M., as a Deputy Mayor at that time, responded to that complaint by a letter where she concluded that the accusations against Mgr. P. were unfounded.[22] In her letter to the tenants, she stated that Mgr. P.'s job was to provide for strategic, co-ordination and supervisory activity, i.e. to manage and methodically direct the field workers providing social services, rather than engage in direct work with the clients. She also stated that Mgr. P. could not affect the transfer of inhabitants from Y to X, nor the assignment of flats outside X street – while she did participate in the meetings of the housing committee, she only did so in an advisory capacity (without the right to vote).

Ms. B. repeatedly stated that **in addition to doing nothing for the tenants, Mgr. P. showed a prejudicial attitude towards them and often insulted them by uttering racist slurs.** These objections were raised by several Complainants.

The mentioned behaviour of Mgr. P. was also confirmed, along with the Complainants, by field social worker Bc. I. F. A., who stated that Mgr. P. had threatened her as well as other **social workers active in the building on X street that *"they should not take the Roma tenants' side so much, or they would be dismissed".*** At the same time, they instructed them to guard the building on X street and protect it against damage caused by the tenants; they were supposed to report any damage to SN, a.s.

Moreover, speculations appeared during the inquiry that the fixed-term employment contract of social worker Bc. D. T. P. had not been renewed by A's City Hall because she had been too helpful to the Roma, among other things in connection with the assignment of a flat to Ms . J. G. and her family. The social worker, Bc. T. P., confirmed this fact, including the threats made by Mgr. P., during

[21] The petition was delivered to the City on 17 January 2014.
[22] Letter of 28 January 2014, Ref. No. def.

a telephone call with the authorised employee of the Office of the Public Defender of Rights on 3 March 2015.

The social workers were not willing to provide any further information for the purposes of this Report.

B.4 Assignment of municipal flats in the City of A

I obtained information regarding the assignment of flats in general, and also specifically in respect of the Complainants, from documents provided by the City of A and SN, a.s., and also from oral explanations provided by representatives of the City and SN, a.s. during two local inquiries made by the authorised employees of the Office of the Public Defender of Rights, which took place on 15 October 2013 and on 4 March 2014.

B.4.1 Rules for assignment of flats

The *Rules for Provision of Housing in Rental Flats Owned by the Statutory City of A* (hereinafter the "Rules") are displayed on the official website of SN, a.s.[23]

Shortly after some of the inhabitants (including the Complainants) were moved out from excluded area Y into the reconstructed building on X street, A's City Council changed the Rules.[24] The change consisted in omitting former Section XIX. titled *Occupying vacated flats in building YYY and XXX in the City of A* (these special rules concerned the two buildings prior to reconstruction). According to the mentioned section, the *flats at XXX served primarily as replacement housing for tenants who had failed to perform their obligations following from contractual relationships at their original place of residence. The City entered into agreements on the provision of accommodation and shelter on proposal of the legal department of SN, a.s., via the statutory representative of SN, a.s. If the obligations following from the lease were performed for a period of at least two years, the housing department of SN, a.s. could provide the tenant with a flat at YYY. The conclusion of the lease agreement was approved by A's City Council on recommendation from the housing committee.*

The conclusion of lease agreements for flats in the building on Y street constituted an exemption from the general system of leasing out municipal flats; in these cases, the criteria specified below thus did not apply. A potential tenant (including the spouse) primarily had to meet the conditions of not having any debts towards the City, not owning a flat or house and not having an indefinite-term lease for any flat. Auxiliary criteria lay in the period of time that elapsed from filing of the application for a municipal flat, employment in the City of A, the number of persons and permanent residence in the City of A. Where the conclusion of a lease was made conditional on payment of a debt of the previous tenant, the relevant amount had to be paid in cash. The Rules also explicitly stated that the "*lease agreement for these flats is concluded for a term not exceeding 6 months, or three months, as appropriate, with possible renewal".* Similar to other municipal flats, the housing

[23] Available at: http:// …

[24] A's City Council approved the change to the Rules on 5 November 2013.

department of SN, a.s. did not accept applications in those cases where the applicant had previously voluntarily left a rented municipal flat or his/her lease had not been renewed (failure to pay rent, violation of good morals).

The currently applicable Rules comprise the following criteria for evaluating applications for a municipal flat:

A. *Permanent residence in the City of A for a period exceeding 5 years. (5 points)*

B. *Place of work*

a) *the applicant (or his/her spouse) has been employed or operated a business for more than 1 year (10 points)*

b) *persons without employment who (10 points)*

- *have been found fully disabled according to a statement of the Czech Social Security Administration;*
- *live in a common household with a child that is severely disabled and requires extraordinary care;*
- *are a single parent on a parental leave or a single parent who is the recipient of a parental allowance;*

c) *the applicant is the holder of an extraordinary benefits card (Section 86 of Act No. 100/1988 Coll., Decree of the Ministry of Labour and Social Affairs No. 182/1991 Coll.)*

1st degree of disability – TP card (2 points)

2nd degree of disability – ZTP card (5 points)

3rd degree of disability – ZTP/P card (10 points)

In the case of a full disability pension, the points given under subparagraph (c) above are disregarded.

C. *Period elapsed since the application was filed (3 points per year, but no more than 15 points)*

D. *The income of the applicant's household according to the following table:*

Household category	*Household members*	*Income as multiples of the minimum subsistence level*	*Points*

1	*individual*	*< 1.0*	*2*
2	*childless spouses*	*< 1.0*	*4*
3	*parents with children*	*< 1.0*	*8*
		1.0 < 2.4	*4*

E. Point deduction for refusing an offered municipal flat without serious reasons and following approval by the housing committee (penalisation) (- 5 points)

As regards municipal flats encumbered by high debts caused by the former tenant, it is a basic precondition for executing a lease agreement that an **agreement on accession to the debt** is executed and the debt paid in cash.

The housing department of SN, a.s. accepts applications for assigning a flat, where it *de facto* makes decisions on not accepting certain applications,[25] and further proposes to the housing committee that it decide on (non-)accepting an application that does not meet the requirements set out in Section II of the Rules[26], keeps and administers a list of applicants for a flat (notifies the applicants of entering them in the records, etc.), and publishes a list of free flats for lease on proposal of the housing committee. The City enters into lease agreements via SN, a.s. The City also enters into lease agreements between the City and an applicant for an exchange of a flat via the statutory representative of SN, a.s., based on recommendation from the housing committee and with consent granted by A's City Council. The Director of SN, a.s. is the secretary of the housing committee, but does not have the right to vote.

[25] According to Section II (5) of the Rules, the housing department of SN, a.s. will not accept an application "*if the applicant has been a tenant of a municipal flat in the past and left the flat voluntarily either directly or by exchanging the flat for some other housing (fictitious exchange and subsequent sale of the flat...) or if his/her lease was not renewed (non-payment of rent, violation of good morals).*" Application will also not be accepted from those applicants who, as tenants, have previously purchased a municipal flat from the City of A.

[26] According to paragraph 2 of the mentioned Section of the Rules, the applicant: *(a) must not own a flat or house nor have a lease for an indefinite term for any flat (also applies to the applicant's spouse); (b) must have any debts towards the City of A (also applies to the applicant's spouse); (c) shall pay an advance of CZK 1,000 on the deposit upon acceptance of the application; (d) may have terminated a lease for a flat with the court's consent provided that he has no opportunity of finding a substitute flat in his/her ownership or owned by some other natural or legal person. The application has been filed for the benefit of a third party, i.e. the one who has obtained a final consent to terminate a lease. The third person is then subject to evaluation. The applicant need not meet the conditions set out in subparagraph (a), but the person on whose behalf the application was filed must meet them; (e) is a divorced spouse and the court has issued a final decision or the divorced spouses have agreed on cancellation of joint lease, and the applicant has no opportunity of finding a substitute flat in his/her ownership or owned by some other natural or legal person; (f) does not meet the conditions under subparagraph (a) and partly under subparagraph (b), but is being divorced. Until a final decision on the divorce of marriage and final court's decision on cancellation of joint lease of a flat or agreement of the divorced spouses, the application for a flat will be suspended – the only criterion that continues to be applicable is the period of time elapsed since it was filed.*

Within my inquiry, I ascertained that the Rules for the assignment of flats stay practically unused, or are used only subsidiarily. This fact was also confirmed by the Commercial Law Deputy Director of SN, a.s., JUDr. D. T. She also stated that, along with the currently filed applications, an individual offer of a specific flat may also made on the basis of a "waiting list". SN, a.s., does not notify unsuccessful applicants for a flat, as this (according to JUDr. T. and Ing. Z.) would unreasonably increase the costs of postal services and administration.

It followed from negotiations between SN, a.s. and the City, on the one hand, and the authorised employees of the Office of the Public Defender of Rights, on the other hand, held on 15 October 2013 that the City owns a certain housing fund, comprising approximately 1,800 flats, of which half are special-purpose flats (20 years ago, the City owned 16 thousand flats). On average, SN a.s. offers 10 flats a month, where 20 to 30 applicants apply for each flat.

B.4.2 Statement of representatives of the City and SN, a. s., on moving the Roma to the building on X street.

The negotiations with the authorised employees of the Office of the Public Defender of Rights held on 15 October 2013 were attended on behalf of the City by former Deputy Mayor Mgr. E. M., responsible for social affairs including the community plan, Deputy Mayor L. Š., who is responsible for the City's housing policy, and JUDr. H. P., deputy head of the Social Affairs Department. The Director of SN, a.s., Ing. R. Z., and Commercial Law Deputy Director of SN, a.s., JUDr. D. T. also took part in the meeting.

It was stated at that meeting that City A was paying proper attention to the inclusion of the Roma. As regards the moving out of the inhabitants of the building on Y street, the participants had not come across any negative media attention. Any support for the Roma usually meets disagreement of the majority society, who feel discriminated against in this way. There are nursing homes located across the street from the excluded building on Y street and constant conflicts allegedly arose between the pensioners and the Roma; it followed from the meeting that the **majority population therefore welcomed the fact that the Roma were moved to the more distant location on X street. The participants stated that the integration plan was being gradually implemented and that the families living in the reconstructed building on X street would also be included in the future.**

In response to questions regarding offensive statements made by the employees of SN, a.s., pointing out the Complainants' ethnicity, **Ing. Z stated that *"he has been doing this work for twenty years, and has been threatened by the Gypsies several times in the sense that they would shoot his entire family, which is why he has the family guarded by the Police".*** The technician, J.J., confirmed that he had told the Complainants that "*their children are being raised by a charity", etc.*

When the authorised employees of the Office of the Public Defender of Rights entered the building on X street, Ing. Z. stated that direct electrical heaters were used in the individual flats because they could be easily dismounted if the tenants failed to pay for utilities. He also pointed out that the tenants were destroying the newly reconstructed building and pointed towards the walls along

staircases which were dirty from children's hands and the broken railing on a staircase, which – in his words – the "*Gypsies have managed to destroy in a few days*". He parted ways with the authorised employees of the Office of the Public Defender of Rights with the statement: *"And now into the hornet's nest!"*

According to some of the Complainants, the railing in the building on X street was fixed with short screws and thus fell off immediately. The fact that the walls were dirty from children's hands was logical in their opinion as there were many children living in the building who lacked sufficient space in the flats and vicinity (industrial zone) and had thus nowhere to play.

During a subsequent telephone call with the authorised employee of the Office of the Public Defender of Rights on 11 February 2014, Ing. Z. stated in respect of the Complainants' case that it would perhaps be better if the City had no flats and no rules for their assignment, and was surprised by the mention about the exclusion of the Roma. **Although it was confirmed at the meeting that the Complainants had been paying rent and accessions properly, Ing. Z subsequently pointed out that these were "*problematic families, all with a thick file on them*". In his words, *"they are problematic because they do not work and live only from allowances; a decent person works, and 'they' do nothing but lie to everyone".***

B.4.3 Rejection of the Complainants' applications

Sixteen tenants of the building on H street signed an **affirmation that four former tenants of the excluded building on Y street had been assigned by the City with flats in another area of the City of A (other than the building on X street), although they originally received flats on Y street as replacement housing due to debts associated with another municipal flat. According to the affirmation, the tenants were not of Roma origin.** Within the inquiry, I learned that this occurred in December 2014 in respect of another tenant of the building on X street who is not a Roma.

The documents from the housing committee and A's City Council that were provided contain only scarce information as to whom the City eventually assigned the flats sought by the Complainants. Given that the Complainants generally applied, for many years, for municipal flats other than in the building on Y street, and subsequently on X street, I shall provide only a few examples for illustration.

In respect of the flat applied for by the B. family, the City entered into a lease agreement with *an employed applicant with a regular income who lived with her husband and son in a flat owned by a private owner, where the lease was about to end. The applicant applied for the flat several times.*[27]

The families of Ms I. K., Ms J. G. and Ms M. G. applied simultaneously for a flat which A's City Council subsequently assigned, based on recommendation from the housing committee, *to an employed*

[27] A list of applicants for the municipal flat for lease, with non-fixed rent of CZK 84 per square metre and month of 8 January 2013; resolution of the 73rd meeting of A's City Council, held on 15 January 2013.

applicant who lived with her husband and two children in a leased flat, where however she was forced to pay excessive rent.[28]

Before the assignment of the municipal flat on Z street, the City gave preference over the family of Ms J. G. to *a family with two children who were interested in a flat with a balcony (their original flat was too small); to a disabled pensioner who was concerned about her safety in a ground-floor flat because her employed husband was often out and homeless people gathered around the house (she applied for a smaller flat)*[29]*; to an employed applicant who needed to move out from her mother in view of her son's health condition (autism)*[30]*; to a self-employed applicant who had to leave a flat rented from a private owner who wanted to use it for his own needs*[31]*, etc.*

The flat sought by the Č. family was assigned by A's City Council to *an applicant living in a flat unsuitable in terms of health (mould, the owner did not heat the flat in the winter) rented from a private owner, together with his partner and her son.*[32]

The Complainants filed the applications listed above before they moved into the reconstructed building on X street. They continued to file applications even during the inquiry. However, the authorised employee of the Office of the Public Defender of Rights learned from Ms B. that they were now pointless as Ing. Z had stated that "*he will not assign any flats to Roma until he knows the Ombudsman's statement".* In a letter addressed to Ms J. G. of 8 November 2013, a member of the housing committee, PaedDr. M. S., stated the following: *"The housing committee dealt with your letter on 31 October 2013. It is recommended that the committee await the conclusions of the Ombudsman's inquiry. After the inquiry is completed and the committee familiarises itself with the conclusions, it will deal with the situation."* On 11 February 2014, Ing. Z confirmed this information during a telephone call, where he stated that "***the housing committee approved a 'stop state' until the Defender resolved the situation"***. **The sole exception was the assignment of a flat to Ms J. G.** The authorised employee of the Office of the Public Defender of Rights pleaded to no effect that the City accept the Complainants' applications and discuss them on the basis of non-discriminatory criteria.

[28] A list of applicants for the municipal flat for lease, with non-fixed rent of CZK 84 per square metre and month of 2 April 2013; resolution of the 80th meeting of A's City Council, held on 9 April 2013.
[29] A list of applicants for the municipal flat for lease, with non-fixed rent of CZK 84 per square metre and month of 9 May 2013; resolution of the 82nd meeting of A's City Council, held on 14 May 2013.
[30] A list of applicants for the municipal flat for lease, with non-fixed rent of CZK 84 per square metre and month of 6 June 2013; resolution of the 85th meeting of A's City Council, held on 11 June 2013.
[31] A list of applicants for the municipal flat for lease, with non-fixed rent of CZK 84 per square metre and month of 3 October 2013; resolution of the 99th meeting of A's City Council, held on 9 October 2013.
[32] A list of applicants for the municipal flat for lease, with non-fixed rent of CZK 84 per square metre and month of 18 July 2013; resolution of the 92nd meeting of A's City Council, held on 23 July 2013.

C The Defender's assessment of the case

C.1. Right to equal treatment

The prohibition of different treatment of people on the grounds of their race or ethnic origin follows from a number of international commitments of the Czech Republic. In terms of national law, this prohibition is reflected in the constitutional guarantees enshrined in Art. 3 (1) of the Charter of Fundamental Rights and Freedoms (hereinafter the "Charter").[33] The right not to be discriminated against is further specified especially in the Anti-Discrimination Act.[34]

Under Section 2 (3) of the Anti-Discrimination Act, **direct discrimination** means an act or failure to take action, where one person is treated less favourably than another in a comparable situation. Such less favourable treatment must occur on grounds explicitly listed in the Anti-Discrimination Act (race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief and worldview. These "prohibited grounds" thus also include **ethnic origin, which was historically one of the first grounds to be prohibited within anti-discrimination law**[35] **and which is generally considered the "strongest" ground, i.e. the law perceives it as an especially inadmissible ground for differentiation.** Indeed, the very causes of differentiation on the grounds of ethnicity are inadmissible: prejudice, stereotype, social exclusion or even ethnic intolerance.[36] Different treatment on the grounds of race or ethnic origin is strictly prohibited by the national laws and international instruments as there practically cannot be any legitimate objective that would justify such discrimination. Legally permitted differentiation on the grounds of race and ethnic origin is only conceivable in absolutely exceptional cases.[37]

For hallmarks of discrimination to be present within the meaning of the Anti-Discrimination Act, such unfavourable treatment must involve an area substantively covered by the Anti-Discrimination Act. In the case of the Complainants, this means access to housing, or rather its provision, where the law conceives the provision of housing as a specific type of service. Discrimination in the area of access to housing is prohibited where housing is offered to the public.[38] What is concerned in the given case is access of the inhabitants of a certain municipality to municipal flats; the condition that this type of rental housing must be offered to the public is thus met.

---

[33] Resolution of the Presidium of the Czech National Council No. 2/1993 Coll., promulgating the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic.

[34] Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination and on amendment to certain laws (the Anti-Discrimination Act), as amended.

[35] It is generally considered that the first ever ground of discrimination to be prohibited by law (at least in Europe) was gender.

[36] BOUČKOVÁ, P., HAVELKOVÁ, B., KOLDINSKÁ, K., KÜHN, Z., KÜHNOVÁ, E., WHELANOVÁ M. Antidiskriminační zákon. Komentář. *(Anti-Discrimination Act. Commentary.)* 1st edition Prague: C. H. Beck, 2010, ISBN 978-80-7400-315-8, p. 47

[37] Differentiation on the grounds of race or ethnic origin is only justifiable if inadmissible causes of differentiation are excluded; as an example, one could mention casting for a certain specific role in a theatre play or film and similar situations.

[38] Section 1 (1)(j) of the Anti-Discrimination Act.

In addition to direct discrimination, the Act also defines **indirect discrimination**, which pursuant to Section 3 (1) of the Anti-Discrimination Act means an action or conduct that relies on certain provisions, criteria or practices that may appear neutral on the surface, but ultimately put the person identified by the relevant grounds of discrimination at a disadvantage compared to other persons. A seemingly neutral provision, criterion or practice is not considered indirectly discriminatory if it can be justified by a legitimate aim and the means of achieving it are reasonable and necessary. At this point, I would consider it suitable to point out that within the meaning of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the "Racial Origin Directive"), indirect discrimination is taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.[39] It could be inferred from the wording of the Directive, which was clearly transposed to Czech law in a narrower sense, that **indirect discrimination could also be established where there is a potential danger of unfavourable treatment, rather than only actual impact in the legal sphere of a specific person.**

Given that some of the Complainants also pleaded that disability of their children and other members of the household had been disregarded in the assignment of municipal flats, I consider it necessary to mention that persons with disabilities are also protected by Section 3 (2) of the Anti-Discrimination Act concerning indirect discrimination, **prohibiting refusal or failure to adopt reasonable measures for disabled persons as regards their access, *inter alia*, to services intended for the public, including housing.** The aforesaid provision is based on the social model of disability, i.e. the concept where the nature of the existing social system creates barriers for a full exercise of the rights of persons with disabilities. This approach is based on the idea that barriers hindering *inter alia* equal access to housing do not result from inability of the disabled person to adjust, but rather inability of others to adjust to such persons.

In terms of the case at hand, it is also appropriate to provide explication of some of the other forms of discrimination regulated by the Anti-Discrimination Act.

The Anti-Discrimination Act also protects natural persons from **harassment** if it relates to one of the discrimination grounds, i.e. for example ethnicity or disability. Under Section 4 (1)(a) of the Anti-Discrimination Act, harassment means improper conduct related to one of the discrimination grounds that is aimed at or results in diminishing the dignity of a person and creating an intimidating, hostile, humiliating or offensive environment. Harassment is also characterised by its temporal scope. Protection against discrimination aims against harassing conduct that occurs in the long term or repeatedly; only exceptionally can harassment also consist in a single act with major intensity.[40]

[39] Article 2 (2)(b) of the Directive.
[40] BOUČKOVÁ, P., HAVELKOVÁ, B., KOLDINSKÁ, K., KÜHN, Z., KÜHNOVÁ, E., WHELANOVÁ M.

According to Section 4 (3) of the Anti-Discrimination Act, **retaliation** is also prohibited, meaning unfavourable treatment, punishment or placing at a disadvantage in consequence of exercise of rights under the Anti-Discrimination Act. This provides protection against any vengeful acts consisting in adopting measures to take revenge against a person who exercised his or her rights under the Anti-Discrimination Act.[41]

C.2 Municipality in the position of landlord

The position of a municipality as a public-law corporation with capacity under property law, which is established on the constitutional level by the Constitution of the Czech Republic (Art. 101 (3)) and at the level of ordinary laws by Section 2 (1) of Act No. 128/2000 Coll., on municipalities (the Municipal Order), as amended, was already dealt with in respect of housing by JUDr. Otakar Motejl in the Recommendation of the Public Defender of Rights on the implementation of the right to equal treatment of applicants for lease of a municipal flat (hereinafter the "Recommendation") of 9 March 2010.[42] In the Recommendation, Mr Motejl formulated a "decalogue" of equal treatment in access to housing. It could be generally underlined within the decalogue that **a municipality is not in an entirely comparable position with a usual landlord, i.e. a natural or legal person, as it is vested by law, as a public-law corporation, with special duties not only towards "its" inhabitants (citizens), but also towards other persons.** It is not decisive in the given case that the municipality (the City of A) delegated the administration of municipal flats to SN, a.s., which it owns as the sole shareholder; it must fulfil its mission in conformity with the laws as any other municipality.

The duties of municipalities in independent competence, as laid down by the Municipalities Act, include the task to create, in view of the local circumstances, conditions for the development of social care and satisfying the needs of its citizens. According to the explicit wording of the Municipalities Act (Section 35 (2)), the above includes primarily the **satisfaction of the housing needs**; protection and development of health, transport and communications; need for information and education; the overall cultural development; and protection of public policy. By performing this task, it actually fulfils in a certain specific way its public-law mission as it follows from Section 2 (2) of the Act, which reads: *"The municipality cares for universal development of the relevant area and for the needs of its residents; when performing its tasks, it also protects the public interest."*

Section 38 of the Municipalities Act also requires a municipality to provide for the maintenance and development of its property, which the municipality has a duty to protect. This is undoubtedly also true of managing the municipal flats, as the latter (as well as further real estate) are what forms the core property of every town and city (a municipality).

It must be admitted that municipalities are faced with an uneasy task of properly managing their property, on the one hand, and fulfilling their mission to care for the housing needs of their citizens

---

Antidiskriminační zákon. Komentář. *(Anti-Discrimination Act. Commentary.)* 1st edition Prague: C. H. Beck, 2010, ISBN 978-80-7400-315-8, p. 180

[41] Ibid, p. 190.

[42] Available at: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Doporuceni/Obecni_byty.pdf.

while respecting the applicable laws, including the Anti-Discrimination Act, on the other hand. There is no doubt that **even under those conditions, the municipalities must deal with such phenomena as social exclusion, having respect to obligations following from the legislation and also to people who find themselves in such a life situation so as not to impair their dignity. These are vital obligations since housing is not a commodity or service *sui generis*, but rather constitutes one of the basic necessities of life from the citizens' viewpoint,** as JUDr. Otakar Motejl already stated in his Recommendation of 2010.

C.3 Evaluation of the moving of Roma tenants into the reconstructed building on X street

Although the City has adopted a strategy for Roma integration in the past, I found within my inquiry that **a substantial part of the specific steps proposed in the Action Plan has in fact never been taken.** This is evidenced by the current use of the building on X street, which has formally changed its status and now serves for the purposes of social rented housing with reduced rent; nonetheless, the City merely moved into this building the tenants of the house on Y street, who – quite to the contrary – had no problems with honouring their obligations ensuing from the lease agreements (this fact follows, *inter alia*, from the statements made by the Director of SN, a.s., Ing. Z., in the 2013 Annual Report). Nonetheless, SN, a.s. continues to distrust these tenants, which is clearly indicated by the fact that it repeatedly enters into lease agreements with these tenants only for a fixed term (3 to 6 months) and has installed in the building direct heating appliances which can be easily disconnected should the tenants fail to pay for utilities. The City has not implemented the "housing ready" system, either.

The Complainants complied with their obligations throughout the term of the inquiry and paid the rent together with accessions; it was not proven within the inquiry that this was not so in the past. I ascertained that they would have sufficient income to cover the costs of another municipal flat not provided within social rented housing, and to pay market rent.

Several of the Complainants pleaded that their efforts to obtain a private lease had been unsuccessful because *no one wanted a Roma.* The Report on the Situation of the Roma Minority in the Czech Republic for 2013[43] mentions the results of a survey[44] carried out in 2013 by the CERGE-EI academic institution, where the latter analysed, among other things, to what degree a name implying association with a national minority affected the success rate among applicants seeking private rental housing. The results of the survey clearly showed persisting discrimination against potential tenants of Roma origin. While an applicant with a typical Czech-sounding name was invited to a tour of a potential rental flat in 78% cases, the success rate among applicants with a Roma-sounding name was only 43%. It follows from the above that applicants with a Roma-sounding name have to respond, on average, to twice as many advertisements to actually be invited to a tour of a flat, without the flat owner having any further information on the given applicant. **The**

[43] The full wording of the report is available here: http://www.romea.cz/dokumenty/Zprava-o-stavu-romske-mensiny-2013.pdf.
[44] BARTOŠ, V., BAUER, M., CHYTILOVÁ, J., MATĚJKA, F. Attention Discrimination: Theory and Field Experiments. Plzeň: CERGE-EI, 2013.

survey is a proof that the market with private flats is basically closed to Roma, with ensuing greater responsibility of municipalities for providing municipal housing. I note on the margin that discrimination against the Roma by landlords and real estate agencies is inadmissible; the Anti-Discrimination Act clearly prohibits discrimination from the moment when the owner offers housing to the public. I established discriminatory conduct of certain real estate agencies aimed against the Roma within an inquiry in another case.[45]

Although the City repaired the house on X street, it gave up on dealing with the territorial segregation of Roma tenants, which was already obvious at the previous place of Complainants' residence on Y street. **While the concept of integrating the Roma is generally not a highly popular topic among the politicians, as it encounters prejudices and stereotypical views of this ethnic group in some parts of the majority population, this cannot justify that certain flats of lower quality are effectively reserved for Roma applicants.** The only admissible form of different treatment based on ethnic origin can be a measure taken to ensure appropriate development of certain ethnic groups or individuals;[46] however, according to the European Court of Human Rights,[47] a **special measure aimed to ensure equal opportunities can never consist in providing a lower standard than general**. I also cannot disregard that the Complainants perceive the approach taken by the City, through SN, a.s., as forced movement of their families to a more distant suburban industrial zone of the City of A. SN, a.s. gave no choice to the tenants of the building on Y street who were duly paying their obligations. At that time, fearing that they would become homeless, they had no other option than to accept lease of social flats. Some of the Complainants stated independently of each other than the employees of SN, a.s. had assured them that if they co-operated, they would have a better chance of obtaining a municipal flat in a better location; SN, a.s. had later failed to keep the promise. Given that these statements were not seldom, I consider them credible.

The procedure where the City moved Roma families properly paying their debts into social flats instead of people endangered by social exclusion also warrants the question of how it dealt with

[45] I reached the following conclusion, *inter alia*: If a published offer for lease of specific real estate, even if owned by a private person, excludes members of an ethnic group, the party making the offer (the owner or agent) is guilty of direct discrimination against such persons in access to housing on grounds of ethnicity (Section 2 (3) of the Anti-Discrimination Act). The real estate agent as the arranging party is by no means exonerated by following a requirement of the owner of the real estate. If the owner of a real estate offered to the public (Section 1 (1)(j) of the Anti-Discrimination Act) informs the agent that (s)he does not wish that the tenant be a person of a certain ethnicity, the owner is guilty of discrimination in the form of abetting (Section 4 (5) of the Anti-Discrimination Act). Public Defender of Rights' Report on Inquiry of 10 June 2014, File No. 112/2012/DIS/VP, available at: http://eso.ochrance.cz/Nalezene/Edit/2000.

[46] Positive measures may not result in maintaining different rights for different, ethnically defined groups and may not remain valid after the goals for which they were adopted are attained. [46] BOUČKOVÁ, P., HAVELKOVÁ, B., KOLDINSKÁ, K., KÜHN, Z., KÜHNOVÁ, E., WHELANOVÁ M. Antidiskriminační zákon. Komentář. *(Anti-Discrimination Act. Commentary.)* 1st edition Prague: C. H. Beck, 2010, ISBN 978-80-7400-315-8, p. 49

[47] Judgement of the Grand Chamber of the European Court of Human Rights in Case of D.H. and Others v. the Czech Republic of 13 December 2007, No. 57325/00.

"notorious debtors", for whom a part of the social flats in the building on X street was explicitly intended based on the Action Plan.

I also cannot disregard the fact that **the floor areas of the individual flats, considering the number of persons living in them, came sometimes close to the minimum area designated for one prisoner serving imprisonment, which is 4 square metres.**[48]

Given that the Complainants honour their obligations under the lease agreements in the long term and neither the City nor SN, a.s. stated any admissible grounds for moving them into the building on X street, **I reached the conclusion that they were moved there precisely in view of their Roma origin and were subjected to a segregation policy, which corresponds to the features of direct discrimination within the meaning of Section 2 (3) of the Anti-Discrimination Act.** In relation to certain former inhabitants of the building on Y street (including the Complainants), the City then continued applying a discriminatory policy, following from the community planning documents. **Such discrimination is inadmissible and must be immediately removed.**

C.3.1 Evaluation of the approach by the City and SN, a.s. towards social workers operating in the building on X street

During the entire inquiry, there was an apparent strong conflict of interests on the part of certain field social workers – while they strived to help their clients, they simultaneously feared losing their jobs should they act at variance with the interests of certain officials of the City and SN, a.s.

The scope of social work is based on the legal regulations,[49] but is always also determined by the mission of social work (support for and assistance to people endangered by social exclusion or people in an unfavourable social situation; recovering social competences of these people) and by ethical principles which must be followed at all times by a social worker. Along with the above, the pivotal point of social work is the protection of dignity and rights of the clients. This task vested in social workers encounters bias of society towards their clients, which makes their work even harder. Not only do they have to defend their work among lay public, it is clear that this principle of social work is not even respected by their employers. It is at variance with the mission of social work and its ethical principles if a social worker is asked to supervise and control his/her clients with a view to protecting property of the city and to punish the clients, if needed. Administration of the city's property, including its protection, is certainly not an activity that should be pursued by the social departments in general, or specifically the social workers or officers.

[48] Section 17 (6) of Decree No. 345/1999 Coll., promulgating the imprisonment rules, as amended.
[49] Act No. 108/2006 Coll., on social services, as amended; Act No. 111/2006 Coll., on assistance in material need, as amended.

Moreover, it should be noted that social work falls within delegated competence of municipalities[50] and it is therefore inadmissible for the local government to give instructions for the performance of social work, which are moreover at direct variance with its mission. The mutual relationship between autonomous competences of a local or regional government, on the one hand, and delegated competences, on the other hand, should be one of partners in the field of social work, respecting the purpose of such work and aimed to seek people endangered by social exclusion, provide them with support and renew their skills. In no case should this relationship be based on repression, which often follows from prejudice towards the social workers' clients. It is also absolutely inadmissible to punish a social worker for refusing to obey instructions that are at direct variance with the subject of his/her work (or what is supposed to be the subject of his/her work).

In connection with the instructions of local government addressed to workers performing delegated competence, I would like to note that, in my opinion, these are *"other measures of a body of the municipality acting in independent competence*", and the Ministry of the Interior is authorised to review their compliance with the legal regulations, including the Anti-Discrimination Act, in the set manner (Section 124 of the Municipalities Act).

Based on information obtained from the social workers active in the building on X street, I came to the conclusion that the City, or SN, a.s., acting through Mgr. P., inadmissibly interfered with the performance of social work. **The requirements that social workers supervise their clients and report any breach of duties on their part to the city is in conflict with their mission towards the clients and the ethical principles of social work.**

C.4. Evaluation of assignment of municipal flats in the City of A in terms of the prohibition of discrimination

C.4.1 Criteria for assessing applications for assigning a municipal flat

I have several reservations towards the criteria that form a part of the Rules for the provision of housing, as published on the official website of SN, a.s.

If an applicant is not employed, (s)he can obtain the same number of points as an employed applicant, *inter alia* provided that (s)he has been recognised as fully disabled. Where an applicant has been recognised as partially disabled, the number of points awarded based on the criteria depends on the degree of disability. As I already stated above, the Anti-Discrimination Act is based on the "social model" of disability, rather than the "medical model". The condition of recognised disability of the applicant corresponds, in actual fact, to the condition of granted benefit guaranteed by the State. I would like to repeat an earlier Defender's conclusion in this respect: *While the degree of self-sufficiency of a person applying for a flat undoubtedly plays an important role in assessing his/her application, a link to a specific granted benefit, which should operate as a condition for assigning a flat, cannot be inferred either from the Anti-Discrimination Act or from the Social Services*

[50] With the only exception applicable in those cases where the position of social workers is determined by local government in terms of performing tasks of the municipality under the Municipalities Act. However, the ethical principles of social work will apply even in this case.

Act. Whether a person is disabled or not is not bound to the granting of any benefit. The statutory conditions for granting a benefit are relatively strict and it cannot be ruled out that a person who is actually in need will not "reach" a benefit although (s)he actually has health problems and is really disabled. The degree of self-sufficiency of an individual applicant can also be assessed with sufficient reliability by his/her examining doctor. Similarly, the examining doctor can assess the individual needs of a patient in terms of housing and assistance required from a third party in everyday life.[51]

Although it is not entirely excluded under the Rules that an applicant could be provided with a flat even if (s)he is not employed and simultaneously not the beneficiary of disability pension, they imply that this fact can often be reflected in the number of points assigned. I would therefore like to advise the City and SN, a.s. that a similar conclusion could be made in the case at hand as one previously reached by the Defender, specifically that **if the landlord renting a municipal flat insists in presentation of a certificate of receipt of social security benefits and will not be satisfied with other documents proving the existence of disability (e.g. statement of the examining doctor), this could constitute discrimination against a person with disability.**

Beyond the scope of the case under scrutiny, I would also like to point out the problematic condition consisting in accession to an obligation and payment of debt made by the previous tenant. I have already reached the conclusion in one of earlier cases that **if a municipality makes the assignment of a municipal flat to a new tenant conditional on the duty to pay previous tenant's debt, such a requirement can be considered unreasonable and at variance with Section 35 (2) of the Municipalities Act.** I perceive an approach taken by a municipality which links the execution of a lease agreement to the duty to effectively pay the previous tenant's debt as a transfer of the statutory duty to protect the municipal property to a third party. Moreover, if the latter is a citizen of the municipality, (s)he is in a weaker position and his/her welfare should be cared for by the municipality as the primary motive. The municipality itself is obliged to ensure that rent under individual leases is paid properly and in due time. Similarly, it is a duty of the municipality alone to collect any potential outstanding rent, whether out of court or in courts. If a municipality, in the position it has, is unable to enforce its receivable from a debtor, the chances of the new tenant, who is forced to accede to someone else's obligation, are negligible in this respect.[52]

C.4.2 Practice in assignment of municipal flats

The conditions for access to municipal housing must be transparent and information on the rules for assignment of flats must be freely accessible to the public.[53] While SN, a.s. displayed the

[51] Public Defender of Rights' Report on Inquiry of 7 November 2013, File No. 5/2013/DIS/EN, available at: http://eso.ochrance.cz/Nalezene/Edit/2252.

[52] Public Defender of Rights' Report on Inquiry of 8 June 2014, File No. 155/2014/VOP/IJ, available at: http://eso.ochrance.cz/Nalezene/Edit/1864.

[53] *"In view of the competence of the municipal council following from Section 102 (2)(m) of the Municipalities Act, the rules for the assignment of flats should be adopted by the municipal council in the form of a resolution (and should form an integral part of the resolution). Under the same Act, the adopted resolutions should be available ex lege (Section 16 (2)(e) of the cited Act)."* Public Defender of Rights' Report on Inquiry of 17 May 2013, File No. 73/2012/DIS/ZO, available at: http://eso.ochrance.cz/Nalezene/Edit/1280.

aforesaid Rules on its website, I ascertained during my inquiry that the City did not use the Rules for the assignment of flats, or used them only on a subsidiary basis. I have therefore reached the conclusion that the **assignment of municipal flats in the City of A was not transparent and was at variance with the principles of good governance, especially the principles of openness and helpfulness.**[54]

It is clear from the practice in assignment of flats by the City of A that the City and SN, a.s. prefer employed applicants. I am aware that a municipality must strive to ensure the maintenance and development of its property; nonetheless, in the case of the Complainants, it should not be decisive whether they have obtained the necessary funds from the social security system or from a dependent activity. **The City and SN, a.s. should base the assessment of their applications on the need to provide appropriate housing and the fact that they have been honouring their obligations following from the lease agreements in the long term.**

In the case of Ms B's family, I am aware that she has previously refused two offered flats, but she claims that she had serious reasons for doing so. Given that Ms B's priority in the long term is to get out of the "ghetto", it is unclear why she would refuse another suitable flat without a reason, as asserted by the representatives of SN, a.s. Moreover, I found that the **Director of SN, a.s. stated incorrectly – and quite obviously did so intentionally –** that there was a lift in the building at ZZZ, in the City of A. Neither the City nor SN, a.s. documented a second offer in any way and I therefore disregard it.

As concerns the K. family, I determined that in spite of a debt that arose more than seventeen years ago (the debt was paid by the new tenant of the original flat where the K. family lived; K. currently owes default charges), she has been fulfilling her obligations following from the lease in the long term. An affirmation submitted by sixteen tenants of the building on X street indicates that the City did assign flats to other applicants even though they, too, failed to meet the criterion of no debts. In view of these facts, I do not consider the condition of non-existence of debts towards the City decisive in the case of the K. family.

Furthermore, what I consider problematic in terms of the practice in assigning municipal flats is the very short period of time for which leases are concluded with the Complainants (3 to 6 months). If the City did actually use the flats in the building on X street for the purposes of social rented housing, as envisaged by the Action Plan, such a procedure could indeed be justifiable if it were employed in respect of a specific tenant as a temporary measure, until the tenant "proves himself" (e.g. within a housing ready project). Given that the Complainants fulfil their obligations in the long term, I found no reasonable ground for this procedure during my inquiry. **If the City and SN, a.s. will only enter into short-term agreements with Roma tenants, while not taking this approach towards**

[54] Public Defender of Rights. Principles of Good Governance [online]. Brno: Office of the Public Defender of Rights [retrieved on: 3 March 2015]. Available at: http://www.ochrance.cz/stiznosti-na-urady/pripady-a-stanoviska-ochrance/principy-dobrespravy/.

any, or basically any, other applicants for flats, this constitutes direct discrimination on the grounds of ethnic origin.

Moreover, the City and SN, a.s. need to take account of any disability on the part of the applicants or persons living with them in a common household. As regards the specific cases of the Complainants, in the case of the families of Ms B and Ms K., the City and SN, a.s. should have taken account especially of the health impairments of their adult children, and in the case of the families of Ms K., Ms Č, Ms V and Ms J. G., of the disabilities of their minor children. I ascertained that the Complainants had enclosed medical reports with their applications. I mention the case of Ms J. G. although her application was eventually granted by A's City Council; however, the submitted documents indicate that in spite of an acute need for arranging a suitable housing in view of the disability of her minor children, A's City Council originally preferred a number of employed applicants, although they admittedly, as far as I was able to determine, were not in such a difficult situation.

It follows from the case-law of the Court of Justice of the European Union (hereinafter the "CJ EU") that the prohibition of discrimination need not be limited only to persons identified by a protected characteristic.[55] According to the CJ EU, the notion of disability can also be extended to a person closely related to a disabled person who has been discriminated against on the grounds of that relationship. In a case characterised by similar facts, I have reached the conclusion that *if a person with a disability shares the same household with the applicant before the application for a flat is lodged, or if such persons show the intention to live together in the flat being applied for, the disabled person should be regarded, for these purposes, as a person assessed jointly with the applicant provided that (s)he is the applicant's close person or a family member (typically parents and children). In that case, it is always necessary to ask, in relation to the non-assignment of a flat, whether discrimination by association could have occurred.*[56]

As a result of being moved into small flats and excluded from the circle of possible tenants of flats offered in another part of the City of A, the Complainants who live in a common household with a disabled person or persons for whom they care became victims of multiple discrimination on the grounds of Roma ethnicity (territorial segregation) and on the grounds of disability of their children or other members of their household.

The fact that a lease agreement has not been concluded with any applicant of Roma origin for any flat other than on X street, which is intended primarily to provide for social housing, although the applicant has honoured his/her obligations under the lease in the long term, will suffice to assert unequal treatment in access to housing and to shift the burden of proof in possible litigation.

[55] Judgement of the Court of 17 July 2008, S. Coleman v Attridge Law and Steve Law, C-303/06, ECR I-05603.

[56] Public Defender of Rights' Report on Inquiry of 12 March 2014, File No. 233/2012/DIS/ZO, available at: http://eso.ochrance.cz/Nalezene/Edit/86.

C.4.3 Temporary cessation of assignment of flats to tenants of the building on X street

In spite of an appeal addressed by the authorised employee of the Office of the Public Defender of Rights to the Director of SN, a.s., Ing. Z., that SN, a.s. continue accepting applications from the Complainants and other tenants of the building on X street and assigning flats on the basis of non-discriminatory criteria during the inquiry, I found out that this did not happen. The City, in co-operation with SN, a.s., demonstrably stopped assigning flats to the Claimants, where the sole reason for this step lay in the fact that the Complainants turned to me with a claim of discrimination. **Thus, by taking this approach, the City and SN, a.s. committed discrimination in the form of retaliation,**[57] **as they treated the Complainants less favourably than other applicants for the assignment of a municipal flat as a result of their exercise of rights under the Anti-Discrimination Act.**

C.5 Evaluation of the statements of SN, a.s. referring to Roma ethnicity

The Supreme Court has opined that *"degradation of human dignity also includes 'harassment'"*.[58] As stated above, under the Anti-Discrimination Act, harassment must be viewed as a form of discrimination, in the given case on the grounds of Roma ethnicity. Some of the statements of the Director of SN, a.s., Ing. Z., and the technician, J.J., that came to light during the inquiry (e.g. that *"Gypsies never work, just lie to everyone"* and that *"their children are being raised by a charity*"), are therefore directly at variance with the prohibition of discrimination.

Similarly as in a case concerning inappropriate statements made by the chairman of a housing co-operative in respect of the Roma,[59] I have to emphasise that in a democratic society based on the principle of plurality and respect towards various cultures, the attribution of negative properties to a certain group that is defined exclusively or to a decisive degree by ethnic origin cannot be reasonably justified. Personal experience of Ing. Z with other people of Roma origin will not suffice as there is no legitimate ground for making a generalising and harassing statement towards an ethnically defined group; such an approach taken by the Director of SN, a.s. is also quite unprofessional. **I believe that statements of this kind can impair human dignity of the Complainants and other Roma tenants and I note that they meet the criteria of discrimination on the grounds of ethnic origin in the form of harassment.**

D Conclusions

Based on the findings and considerations described above, I have reached the conclusion that the City of A and SN, a.s. breached the prohibition of discrimination. A direct discrimination can be perceived in the City's segregation policy as the tenants' Roma ethnicity undoubtedly played the

[57] Section 2 (2), in conjunction with Section 4 (3) of the Anti-Discrimination Act.
[58] Judgment of the Supreme Court of 30 June 2005, File No. 30 Cdo 1630/2004, www.nsoud.cz.
[59] Public Defender of Rights' Report on Inquiry of 26 September 2014, File No. 52/2013/DIS/EN, available at: http://eso.ochrance.cz/Nalezene/Edit/2002.

key role in "occupying" the building on X street. The long-term nature of this policy is also clear from the community planning documents.

In the assignment of flats, the City and SN, a.s. failed to take sufficient account of the disability of persons living in a common household with some of the Complainants. I am glad that at least the family of Ms J. G. has been provided with a municipal flat outside X street; however, I determined that this was likely a result of efforts made by certain social workers. I also cannot neglect the suspicion that precisely because of this help she provided, A's City Hall did not renew the fixed-term employment contract of the social worker, Bc. D. T. P.

The fact that the City did not satisfy the applications of the Roma Complainants for the assignment of municipal flats other than in the building on X street, in combination with the fact that they were collectively moved into social flats in the suburbs of the City, even though they have been honouring their obligations ensuing from the lease agreements in the long term, is sufficient to make a conclusion on unequal treatment in access to housing and to shift the burden of proof in possible litigation. The City will have to defend its approach and prove that the decisions not to provide a lease were not based on the Roma origin of the applicants, i.e. their ethnicity as a ground for discrimination prohibited by law in terms of access to building.

I found some of the statements made by the Director of SN, a.s., Ing. Z., and the company's technician, J.J., to be harassing in terms of the Anti-Discrimination Act.

The decision to stop assigning flats to the Complainants has the features of discrimination in the form of retaliation. I would like to point out to the City and SN, a.s. in this respect that **discrimination in the form of retaliation would also exist if Roma tenants in the building on X street, or for that matter, other persons, were treated unequally based on the conclusions comprised in the present Report** (e.g. refusal to prolong fixed-term lease agreements and termination of the social workers' employment).

This Report may serve as a basis for initiation of court proceedings on the grounds of alleged discrimination or for mediation proceedings under Act 202/2012 Coll., on mediation and amending certain laws (the Mediation Act). Pursuant to Section 10 (1) of the Anti-Discrimination Act, the Complainants may claim that the respondent refrains from discrimination, eliminates its consequences and provides reasonable satisfaction. The Complainants could also claim compensation for intangible damage in money if their reputation or dignity was substantial impaired as a result of the discrimination.

In view of the described findings, I also came to the conclusion that the City, as well as SN, a.s., inadmissibly interfered with the performance of social work via Mgr. P. SN, a.s., which is owned by the City as the sole shareholder, imposed on the social workers requirements that are at variance with the ethical principles of social work.

I recommend that the City of A **pursue the declared goal to integrate the inhabitants of the building on X street in society, accept their applications for assignment of a municipal flat and**

assign to them the flats they seek as soon as possible in view of the needs of the individual families and health impairment of some of the members of the household. The City should then use the building on X street for the needs of social rented housing in conformity with the Action Plan, suitably set up a "housing ready" system and, in justified cases, utilise the concept of "special beneficiary" under Act No. 111/2006 Coll., on assistance in material need, as amended, in combination with the Municipalities Act, to pay rent directly from social benefits, as this is a way of effectively preventing the creation of a debt trap and subsequent social exclusion of certain groups of persons endangered by unemployment and poverty. This is not only up to non-governmental organisations that are to assist the State and regional and local governments – this is primarily a task of the municipality.

I am sending the Report on Inquiry to the Mayor of the Statutory City of A, Mgr. A. S., and the Director of SN, a.s., Ing. R. Z., and request that they provide their observations on my findings within 30 days of delivery of the Report.

I shall also inform the Complainants of my findings and conclusions.

Mgr. Anna Šabatová, Ph.D., signed
Public Defender of Rights
(this report bears an electronic signature)