



## Report

### on the case of denial of check-in to Roma passengers at the airport

---

In the summer of 2015, the complainant<sup>1</sup> and his younger daughter wanted to visit the complainant's older daughter, who lives in Canada. While waiting for the check-in, three persons asked them for additional information about the purpose of their trip. Subsequently, they told them that they would not be allowed on the plane. The complainant and his daughter unsuccessfully demanded an explanation, and eventually left the airport. The complainant believes that they were discriminated against. They were the only Roma people in the queue for check-in, and the other passengers proceeded to check-in without being disturbed.

Since then, the conditions to enter Canada have been changed. The complainant had got the Electronic Travel Authorization and visited his older daughter in the autumn of 2017. He is now back in the Czech Republic.

The Public Defender of Rights Act stipulates my duty to contribute to promotion of the right to equal treatment of all persons regardless of their race or ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief or worldview. To this end, I provide guidance to victims of discrimination and issue recommendations on discrimination-related matters.<sup>2</sup> I therefore evaluated the complainant's case from the point of view of the right to equal treatment.

#### A. Summary of conclusions

The Anti-Discrimination Act prohibits to treat a person less favourably in accessibility of services in comparison to another person in a similar situation if the reason for the less favourable treatment is ethnicity.<sup>3</sup>

The complainant states that he and his daughter were the only ones not allowed to check in, even though they both had valid travel documents. He believes that it was because they are Roma. Both the airline and its hired security agency's statement stated that they had to comply with the instructions of the Canadian border authority. However, their own internal rules prohibit different treatment of passengers on the grounds of ethnicity.

It cannot be proven with certainty based on the collected underlying documents that the complainant was discriminated against. However, in the conclusion of the present report, I have formulated recommendations aimed to prevent such situations in the future. To the passengers, I recommend how to proceed so that they can check in. To the persons carrying out the prescreening of passengers at the airport, I recommend how to carry out the screening in a transparent manner.

---

1 I did not specify the complainant's name to protect his rights.

2 Section 21b of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

3 Section 2 (3), in conjunction with Section 1 (1)(j) of 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.



## **B. Findings**

### **B.1 Information from the complainant**

In the summer of 2015, the complainant and his younger daughter wanted to visit his older daughter, who has lived in Canada for five years based on an asylum granted in the country. At the time, there was a visa-free regime between Canada and the Czech Republic. They were meant to travel with the airline M. (hereinafter the “airline”).

The complainant stated that after he and his daughter had arrived at Václav Havel Airport in Prague and joined the queue for the check-in, they had been approached by two women speaking Czech. The women did not introduce themselves and were not wearing any name tags. Judging by their clothes, they looked like airport employees. They asked the complainant about the purpose of his trip, where he worked, what exactly his tasks at work were, how much money he made, and how much money he had on him. To prove that he and his daughter had no intention to emigrate, he showed the women their return tickets, his work contract, decision on acceptance of his younger daughter to a secondary school in the Czech Republic, Affidavit of Invitation from his older daughter in Canada, and a financial reserve for the trip. Later, the women were joined by a man speaking Slovak, who said that the Canadian embassy in Vienna would not allow them to board the flight. The three persons prevented the complainant and his daughter from checking in and pointed them to the direction of the airport exit. The complainant and his daughter subsequently left the airport.<sup>4</sup>

The complainant stated that the three unidentified persons chose to only ask him and his daughter about the purpose of their trip. They did not question anyone else in the queue for the check-in. He also believes that he and his daughter were the only Roma people there.

The complainant therefore turned to the Canada Border Services Agency (hereinafter the “CBSA”). It follows from the CBSA’s answer that its Liaison Officers work in certain locations, with the task to ensure integrity of the Canadian immigration programme. The Liaison Officers provide support, guidance and training to the airlines and their contractual partners who are responsible for checking the travel documents. The Liaison Officers provide recommendations to the airlines as to whether or not they should allow the passengers to board the aircraft. The final decision is up to the airline.

Regarding compensation for the expired air tickets, the complainant communicated with travel agency N., which had arranged them. The agency refunded him for the airport charges (CZK 1,500). However, they were not able to refund the full price of the tickets.<sup>5</sup>

The complainant also turned to the airline. In reaction to his complaint, the airline allegedly told him, orally, that he had not been allowed to board because he had not arrived for check-in in time. It is apparent from the terms and conditions of the airline that a passenger can be excluded from the flight if he/she does not have the necessary documents. At the same

---

4 The complainant submitted a ticket from Brno to Prague and from Prague to Václav Havel Airport, and photos of him and his daughter at the airport.

5 The statements of the CBSA and travel agency N. addressed to the complainant form a part of the file.



time, the terms and conditions state that entering a country can be prohibited even when the passenger has all the documents in order.<sup>6</sup> If the passenger does not fulfil the requirements for entering the country, the airline is obliged to arrange for his/her transport back to the country of departure. At the same time, the airline can be fined up to the amount of CAD 3,200 (approx. CZK 55,000).<sup>7</sup> In the airline's point of view, if a passenger fails to prove that the purpose of his/her trip is tourism, his/her travel documents are not in order, as the passenger would need a visa for any purpose of the trip other than tourism.<sup>8</sup>

## B.2 Statement of the airline

The airline provided a statement on the contested practice.<sup>9</sup> It stated that the ownership of a valid passport never guaranteed the possibility of entering the country. It always depends on the discretion of the immigration officer after the passenger arrives in the country. Each foreigner who arrives in Canada and asks for an asylum stays there until a court decides on his/her application. That can typically take several years and cost the Canadian tax payers thousands of dollars for social security and the costs of the proceedings. In the past twenty years, the vast majority of asylum seekers were not true refugees. They were economic migrants who were eventually deported.

The airline further stated that in the summer of 2015, dozens of passengers departing from Prague and Budapest were travelling with the intention to unlawfully migrate. These were cases of misuse of the visa-free regime. The Canadian border control workers therefore had to take special measures. The measures consisted in proactive screening of the passengers prior to boarding. The screening was supposedly carried out by CBSA Liaison Officers who are completely beyond control of the airline. At the same time, the airline and its contractual partners must follow the instructions of the Liaison Officers. The airline checks the travel

---

6 M. General Sales Terms and Conditions of M. Inc. [retrieved on 6 December 2017]. Available at: xxx: "It is your responsibility to contact the nearest foreign government office of the country you plan to visit. **Failure to provide the required documents may result in denied boarding privileges by the carrier or the relevant authorities, without recourse or refund. Your entry may also be refused even if your documentation is complete.** A previous criminal record could result in denied entry into the U.S. or in other countries. No trip refund or replacement will be given for inadequate, lost or stolen documents or for any denied entry. M. cannot be held liable for any damages resulting from failure to obtain travel documents, to comply with applicable laws, for delay in document delivery, or for any aid or information given by third parties."

7 Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities, National Human Rights Institution. General Comment No. 1 of the Deputy-Commissioner for Minority Rights of Hungary on issues related to the pre-boarding screening of international passengers at the airport. 15 July 2016 [retrieved on 6 December 2017]. Available at: <http://nemzetisegijogok.hu/documents/2657648/2659468/General+Comment+No.1.+on+issues+related+to+the+pre-boarding+screening+of+international+passengers+at+the+airport+DCFR.pdf/d1eddf03-d696-fdeb-96de-d9b3d8b982df?version=1.0>.

8 M. Incorrect story by CBC on passengers denied boarding. 6 October 2015 [retrieved on 6 December 2017]. Available at: xxx: „By stating (without proof) that people denied boarding were travelling with valid travel documents, and by leading the public to understand that said people were arbitrarily taken out of the waiting line based solely on ethnic grounds, the reporter omits a very material portion of the story, which is that if and **when travellers fail to demonstrate that they are travelling for leisure purposes, they need a visa**. In other words, the heart of the story is that people were found by officials not to be travelling for tourism purposes and consequently were found not to have valid travel documents."

9 Letter from A., president of M. Inc. of 18 November 2016.



documents at the Prague airport via the security agency O. The airline forbade its contractual partners to carry out the screenings based on any discriminatory factors.

### B.3 Statement of the security agency

I also asked the security agency O. (hereinafter the “Security Agency”) for its statement. It stated that its employees had to follow the instructions of the CBSA. The decision as to who will or will not be allowed to board a plane is not up to its employees. They only assist with communication with the passengers who do not speak English to ensure secure and problem-free process of passenger check-in. The security agency has its internal rules for detecting persons and luggage that could represent danger. The rules are in no way set to be discriminatory. The passengers’ race is not a criterion for passenger evaluation. The security agency employees are marked with an airport ID card which includes photographs.

### B.4 Statement of the airport

I have also turned to Václav Havel Airport in Prague (hereinafter the “Airport”). The airport officials stated that they do not carry out prescreening of passengers. However, external agencies can do so on the basis of a contractual relationship with individual airlines that use the airport facilities.<sup>10</sup> In reply to my questions, the airport stated that it has no influence on designation of the contractual partners, as the screenings are carried out in the public area of the airport. Prescreening may be carried out in cases where passengers travel to countries with strict rules of entry (such as the USA, Canada, Israel).

### B.5 Statement of Roma and pro-Roma associations

At the beginning of 2017, I approached Roma and pro-Roma associations and asked them whether they had come across a case of Roma people being denied at airports. Only one out of twelve organisations had encountered such a practice, and that was the case of the complainant. On the one hand, that may mean that if the events occurred as described by the complainant, this might just be a rare excess or a practice that is not widely used. On the other hand, it might be a manifestation of a phenomenon called underreporting, where the victims do not report discriminatory conduct because of fear or a lack of confidence.<sup>11</sup>

### B.6 Change in conditions

In the meantime, the conditions for entry to Canada changed in November 2016. All foreigners to whom the visa requirement does not apply have to apply for the Electronic Travel Authorization – eTA prior to their trip. The complainant obtained the eTA in August of 2017 and visited his older daughter in the autumn.

---

10 Letter by Ing. Jiří Kraus, Chairman of the Board of Directors of Letiště Praha a. s., of 22 November 2016, file No. RSM/2934/2016.

11 For more details, see The Office of the Public Defender of Rights. Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice [pdf document]. Brno: Office of the Public Defender of Rights, 2015 [retrieved on: 6 December 2017], p. 43 *et seq.* Available at: [https://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Vyzkum/diskriminace\\_CZ\\_fin.pdf](https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/diskriminace_CZ_fin.pdf).



## B.7 Findings of the Hungarian Ombudsman

The Hungarian Ombudsman for the Rights of National Minorities, too, has dealt with cases concerning refusal of Roma people at the airport.<sup>12</sup> According to the information available to her, this practice allegedly affected at least eighty Hungarian citizens (in particular Roma families). The refusal of Czech and Hungarian Roma people allegedly occurred at several European airports (Prague, Budapest, Vienna, Brussels, Warsaw, London, Paris).

## C. Legal analysis

The Anti-Discrimination Act prohibits to treat a person less favourably in accessibility of goods and services in comparison to another person in a similar situation if the reason for the less favourable treatment is ethnicity.<sup>13, 14</sup> At the same time, the Anti-Discrimination Act does not admit any exceptions from this rule.<sup>15</sup> That is because ethnicity and race are considered especially inadmissible grounds for differentiating among people.<sup>16</sup>

The complainant believes that he and his daughter were not allowed to proceed to check-in because they are Roma. The airline and the security agency stated that they had to follow the instructions of the CBSA, and that their internal rules forbade discrimination based on race or ethnicity.

When reviewing the facts of the case, it could not be proven what exactly happened at the airport (who addressed the complainant and his daughter, and how they prevented them

---

12 For more details, see Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities, National Human Rights Institution. General Comment No. 1 of the Deputy-Commissioner for Minority Rights of Hungary on issues related to the pre-boarding screening of international passengers at the airport. 15 July 2016 [retrieved on 6 December 2017]. Available at <http://nemzetisegijogok.hu/documents/2657648/2659468/General+Comment+No.1.+on+issues+related+to+the+pre-boarding+screening+of+international+passengers+at+the+airport+DCFR.pdf/d1eddf03-d696-fdeb-96de-d9b3d8b982df?version=1.0>.

13 [1] Section 1 (1)(j) of the Anti-Discrimination Act: "This Act... stipulates more closely the right to equal treatment and prohibition of discrimination in the matter of ... in access to and provision of goods and services, including housing, where provided to the public."

Section 2 (3) of the Anti-Discrimination Act: "Direct discrimination shall mean an act, including omission, where one person is treated less favourably than another person is, has been or would be treated in a comparable situation, on grounds of race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief or opinions."

14 Despite a foreign legal person being a part of the dispute (the Canadian airline), I believe that the Czech legislation should apply to the legal evaluation. I base this on the rule that infringement of rights relating to personality is governed by the laws of the country in which the infringement occurred. Section 101 of Act No. 91/2012 Coll., on private international law, as amended: "Non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation, shall be governed by the law of the country in which the violation occurred. Nevertheless, the affected person may choose the law of the country in which (a) the affected person has habitual residence or seat; (b) the originator of the violation has habitual residence or seat; or (c) the result of the violating conduct occurred, provided that the originator of the violation could have predicted it."

15 Different treatment that would otherwise be considered discrimination is, under certain conditions, only admissible on the grounds of sex, sexual orientation, age, disability, religion, belief or opinions (see Section 7 (1) of the Anti-Discrimination Act).

16 For more details, see BOUČKOVÁ, Pavla, Barbara HAVELKOVÁ, Kristina KOLDINSKÁ, Eva KÜHNOVÁ, Zdeněk KÜHN, and Markéta WHELANOVÁ. *Antidiskriminační zákon: komentář (Anti-Discrimination Act: Commentary)*. Second edition. In Prague: C. H. Beck, 2016. ISBN 978-80-7400-618-0, p. 47–48.



from checking in). It is also not clear whether the criterion for choosing the complainant and his daughter for prescreening truly was their ethnicity. **For that reason, I concluded that it could not be proven with certainty on the basis of the collected underlying documents that the airline or the security agency had discriminated against the complainant and his daughter.**

However, I consider the complainant's allegations so serious that I will outline the legal evaluation on hypothetical situations that may have occurred at the airport. My intention is to warn against similar conduct in the future.

### C.1 The airline

**If the employees of the airline chose the passengers for prescreening on the basis of their ethnicity, they committed direct discrimination. That would also be the case if they were given the instruction to discriminate by an authorised Canadian officer or were incited to discriminate by the CBSA Liaison Officers.**

In its activities, the airline must comply with the Canadian laws. They forbid it from bringing to Canada persons who do not have the required documents or whom an official authorised by the Canadian Minister of Citizenship and Immigration orders the airline not to transport.<sup>17</sup> The CBSA may inform the airline that the person it is about to carry does not fulfil the conditions stipulated by law or that the person does not have the necessary documents.<sup>18</sup>

At the same time, when providing its services in the Czech Republic, the airline must honour its obligations arising from the Anti-Discrimination Act. Apart from direct discrimination, the Anti-Discrimination Act also prohibits instruction or incitement to discriminate. Instruction to discriminate means such conduct where a person abuses the subordinate position of another person to discriminate against a third party.<sup>19</sup> Inciting to discriminate means the encouragement to discrimination without the persons being a superior and a subordinate.<sup>20</sup>

If the airline employees chose only Roma passengers for prescreening in the queue for check-in, on the ground of their ethnicity, they committed direct discrimination and breach the Anti-Discrimination Act. That would be true even if the purpose of the trip pursued by Roma passengers differed from the one declared more often than in the case of non-Roma

---

17 Article 148 (1)(a) of the Immigration and Refugee Protection Act, S.C. 2001, c. 27, available at <http://laws.justice.gc.ca/eng/acts/i-2.5/>: "A person who owns or operates a vehicle or a transportation facility, and an agent for such a person, must, in accordance with the regulations, (a) not carry to Canada a person who is prescribed or does not hold a prescribed document, or who an officer directs not be carried ..."

18 Article 271 (1) of the Immigration and Refugee Protection Regulations, SOR/2002-227, available at <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-227/index.html>: "The Canada Border Services Agency may notify a commercial transporter that a person whom it expects to carry to Canada may be a person who is prescribed under section 258.1 or may be a person who does not hold the necessary documents prescribed under section 259."

19 Section 4 (4) of the Anti-Discrimination Act: "Instruction to discriminate means the conduct of a person who abuses the subordinate position of another person to discriminate against a third party."

20 Section 4 (5) of the Anti-Discrimination Act: "Inciting to discrimination means the conduct of a person that aims at persuading, reassuring or inciting another person to discriminate against a third party."





passengers. As I stated above, there are no exceptions regarding direct discrimination on the grounds of ethnicity in the provision of services.

On the other hand, discrimination would not occur if the airline chose to prescreen passengers who have a one-way ticket rather than a return ticket or passengers who have previously travelled to Canada with a different purpose than the one declared, or if the airline chose passengers for prescreening randomly.

If a passenger who has been refused on the grounds of ethnicity filed an anti-discrimination action in court, the burden of proof would be shifted.<sup>21</sup> The passenger would have to prove a less favourable treatment (not being allowed to check in) before the court, and the suspicious circumstances suggesting a discriminatory motive pursued by the airline (for example that the prescreening was only carried out for Roma passengers and not for others). Subsequently, the airline would have to prove that such treatment occurred on different grounds than on the ground of the passenger's ethnicity.<sup>22</sup> If it failed to prove different grounds, the action would be successful.

I believe that an airline is responsible for discrimination even when it does not allow a passenger to check in because an authorised Canadian officer orders it not to, or if this is recommended by the CBSA. The condition is that the officer or the CBSA proceed in a discriminatory way themselves, and the airline knows about this. For example, that would be the case if the airline was instructed to exclude all Roma people from the transport. The authorised Canadian officer or the CBSA would thus commit an act of instruction or inciting to discrimination.

For the sake of completeness, I add that discrimination would not occur if there were objective reasons for preventing the passenger from check in, unrelated to his/her ethnicity.

## C.2 Security agency

**The employees of the security agency likewise committed direct discrimination if they chose the passengers for prescreening on the basis of their ethnicity.**

In certain legal relationships, a natural person is entitled to equal treatment and not to be discriminated against.<sup>23</sup> Such legal relationships are relationships arising upon access to services and their provision. The prohibition of discrimination therefore does not apply to

---

21 Section 133a of Act No. 99/1963 Coll., the Code of Civil Procedure, as amended "If the plaintiff's testimony in court implies that the defendant is guilty of direct or indirect discrimination ... (b) on the grounds of race or ethnic origin when providing health and social work services, in access to education and professional training, access to contracts, access to housing, membership in associations and other interest groups, and with sales of goods in a shop or provision of services, ... the defendant is obliged to prove that the principle of equal treatment was not breached."

22 Judgment of the Constitutional Court of 26 April 2006, file No. Pl. ÚS 37/04 (N 92/41, SbNU 173; 419/2006 Coll.) and Judgment of the Constitutional Court of 8 October 2015, file No. III. ÚS 880/15 (N 182/79, SbNU 59); available at <http://nalus.usoud.cz>.

23 Section 1 (3) of the Anti-Discrimination Act: "In the legal relationships subject to this Act or a directly applicable regulation of the European Union concerning the free movement of workers, a natural person shall have the right to equal treatment and not to be discriminated against."



the service provider itself (in this case, the airline), but also to other entities participating in the provision of the services.<sup>24</sup>

The security agency checks the travel documents of the passengers on the basis of a contractual relationship with the airline. It thus helps the airline to provide its services. If the security agency chose passengers for prescreening on the basis of their ethnicity, it would commit direct discrimination. It would also be liable for discrimination even if the airline, the authorised Canadian officer or the CBSA instructed or incited it to discrimination on the grounds of ethnicity.

### C.3 The CBSA Liaison Officers

**If the CBSA Liaison Officers committed the contested conduct, I believe they thus breached the constitutional order of the Czech Republic and obligations under international law. At the same time, they exceeded their powers and their official procedure was extremely unreasonable.**

In relation to the CBSA Liaison Officers, we cannot talk about discrimination under the Anti-Discrimination Act as these persons do not provide a service at the Prague airport to which its provisions would apply.<sup>25</sup> Providing a service typically means providing a characteristic performance in the form of performance provided to an indefinite circle of entities, usually in return for money. We can conclude from the European Union law, as a model to the Czech anti-discrimination legislation, that services include, in particular, activities of an industrial nature, business activities, activities of craftsmen, and activities of the professions.<sup>26</sup>

I also believe that it is not possible to perceive the CBSA in a similar way as we perceive a security agency, i.e. as an entity which helps the airline to provide services, and therefore could be responsible for discrimination pursuant to the Anti-Discrimination Act. While the CBSA can inform an airline that a passenger does not have the necessary documents, the purpose of its activities is different from the activities of a contractual security agency. According to the Canadian laws, the CBSA's purpose is to provide border services that will ensure national security and facilitate the movement of the persons at the border.<sup>27</sup> I

---

24 That follows, in particular, from the linguistic interpretation of the material scope of the Anti-Discrimination Act, which defines the prohibition of discrimination **regarding** access to and provision of goods and services in more detail (Section 1 (1)(j) of the Anti-Discrimination Act).

25 However, I do not exclude the option that the CBSA Liaison Officers could commit inciting to discrimination, and therefore breach the Anti-Discrimination Act, should they recommend an airline not to carry a certain passenger based solely on his/her ethnicity.

26 For more details, see KVASNICOVÁ, Jana and Jiří ŠAMÁNEK. *Antidiskriminační zákon: komentář (Anti-Discrimination Act: Commentary)*. Prague: Wolters Kluwer, 2015. Commentaries (Wolters Kluwer ČR). ISBN 978-80-7478-879-6, p. 72–73, and Section 57 of the Treaty on the Functioning of the European Union: "Services shall be considered to be 'services' within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. 'Services' shall include in particular: (a) activities of an industrial character; (b) activities of a commercial character; (c) activities of craftsmen; (d) activities of the professions."

27 Article 5 (1) Canada Border Services Agency Act, S.C. 2005, c. 38, available at <http://laws-lois.justice.gc.ca/eng/acts/c-1.4/>: "The Agency is responsible for providing integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants, that meet all requirements under the program legislation ..."





perceive a significant difference between this legal authorisation and contractual arrangements between a security agency and an airline, which voluntarily delegates a part of its obligations to an external entity by means of a contract.

However, it is possible that the contested conduct of the CBSA Liaison Officers could breach the prohibition of discrimination following from the constitutional order of the Czech Republic. The Charter of Fundamental Rights and Freedoms guarantees the freedom of movement.<sup>28</sup> Everybody is entitled to such freedom, regardless of race, skin colour or one's belonging to an ethnic minority.<sup>29</sup> The freedom of movement can be perceived as a freedom to move within the territory of the Czech Republic, or to leave the Czech Republic and return. On the other hand, the Charter cannot guarantee the freedom of movement outside the Czech Republic. It is up to free discretion of each country whether or not to allow a foreign national in its territory in view of its own national and international interests.<sup>30</sup>

The prohibition of discrimination also follows from obligations under international law, specifically from the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>31</sup> The Convention was ratified by both the Czech Republic and Canada. Based on the Convention, the States Parties are obliged to ensure, regardless of ethnicity, the right to freedom of movement, the right to leave any country and the right of access to any services intended for use by the general public, such as transport.<sup>32</sup>

Similarly, we cannot omit the prohibition of discrimination following from the customary international law referred to in different case by the Appellate Committee of The House of Lords. In 2001, UK immigration officers were making decisions at the Prague airport as to which passengers they would allow to enter the British territory prior to the passengers' boarding. The system was introduced after there was an increase of Czech asylum seekers in the United Kingdom. It has been stated that most of them (if not all) were of Roma

---

28 Article 14 (1) of 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: "Freedom of movement and residence is guaranteed."

29 Art. 3 (1) of the Charter of Fundamental Rights and Freedoms: "Fundamental human rights and freedoms are guaranteed to everybody irrespective of sex, race, colour of skin, language, faith, religion, political or other conviction, ethnic or social origin, membership in a national or ethnic minority, property, birth, or other status."

30 For more details, see Judgement of the Constitutional Court of 26 May 2004, File No. I. ÚS 290/04 (N 34/33 SbNU 539), available at <http://nalus.usoud.cz> and WAGNEROVÁ, Eliška, Tomáš LANGÁŠEK, Vojtěch ŠIMÍČEK and Ivo POSPÍŠIL. *Listina základních práv a svobod. Komentář. (Charter of Fundamental Rights and Freedoms: Commentary)*. Commentary on Article 14. Prague: Wolters Kluwer Česká republika, 2012. Commentaries (Wolters Kluwer ČR). ISBN 978-80-7357-750-6.

31 The International Convention on the Elimination of All Forms of Racial Discrimination, adopted in New York on 21 December 1965, promulgated under No. 95/1974 Coll.

32 Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination: "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (d) Other civil rights, in particular: (i) The right to freedom of movement and residence within the border of the State; (ii) The right to leave any country, including one's own, and to return to one's country; ... (f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks."



ethnicity.<sup>33</sup> The officers treated the Roma passengers less favourably than the other passengers – they questioned them about the purpose of their trip longer and in more detail, asked them more often for documents proving their statement, and more often did not allow them to enter the British territory. The Appellate Committee of The House of Lords concluded that such a conduct was a systematic discrimination which was at variance with the UK laws and the customary international law.<sup>34</sup>

The facts of the UK case and the case of the complainant are different, and therefore the above conclusion cannot be automatically applied to the hypothetical activities of the CBSA Liaison Officers. However, I believe that it correctly points out that even if there are seemingly objective reasons for a difference in treatment (a higher number of applications for asylum submitted by citizens of a certain country), direct discrimination is not justifiable.

I in no way deny the sovereign power of every country to decide who should be allowed to enter its territory. However, I believe that if the CBSA Liaison Officers at the Prague airport prevented Roma passengers from leaving the Czech Republic because of their ethnicity, this would be at variance with the Charter of Fundamental Rights and Freedoms, the International Convention on the Elimination of All Forms of Racial Discrimination, and the customary international law.

Pursuant to the Canadian law, the CBSA is entitled to inform the airlines that certain passengers do not comply with the legal requirements or do not have the necessary documents.<sup>35</sup> It can also recommend to the airline not to transport a specific passenger.

The complainant described the situation as follows: his daughter and he were approached by three unidentified persons who did not introduce themselves, and after several questions, told him that he could not board the flight, without any explanation. They then obstructed their way and referred them to the airport exit.

If such a situation truly occurred and the CBSA Liaison Officers were the originators of it, they exceeded their powers. I would also consider such an official procedure extremely unreasonable, mostly due to its non-transparency. The complainant did not know who he was talking to, whether the persons really could prohibit him from leaving, he did not have any document to the effect that he had failed to come to check in through his own fault and without proper reasoning, nor did he know what information and document he should present next time so that the situation did not happen again.

---

33 House of Lords, *Regina v. Immigration Officer at Prague Airport and Another*, Ex parte European Roma Rights Centre and Others, 9 December 2004, [2004] UKHL 55, available at: [http://www.refworld.org/cases,GBR\\_HL,41c17ebf4.html](http://www.refworld.org/cases,GBR_HL,41c17ebf4.html), paragraph 3.

34 Ibid., paragraphs 97 and 98.

35 I suppose that the Czech Republic and Canada agreed on the activities of the CBSA Liaison Officers beforehand. Therefore, it is possible that the specific competences of the said authority might have been agreed differently for its operation at the Prague airport.



#### **D. Information on further procedure**

The basic purpose of protection against discrimination is that an individual is not treated only as a member of a certain group, a group that might be connected to many stereotypes and prejudices. Indeed, what may seem like the truth about a group might not be true about a particular person in the group. I find it unfair if one has to overcome all sorts of obstacles just because he was born with a certain skin colour, sex, or sexual orientation. We have to protect everybody's dignity. And the dignity of an individual is undoubtedly trampled when we close our eyes and do not want to see the individual characteristics of a person and choose the simple path of stereotyping and prejudice. That is why I appeal that we always try to act humanly and fairly.

I hope my following recommendations on how to proceed in similar situations in the future will help this matter. <sup>36</sup> Their purpose is to help both people who travel somewhere (regardless of their ethnicity), and airlines, airport security agencies and officials who have the difficult task of ensuring the proper movement of persons at the borders.

#### **Recommendations for the passengers:**

- have a sufficient amount of documents proving that the purpose of the trip is tourism (leisure) or a family/friends visit – for example, a return ticket, detailed itinerary of the trip (where the person is staying, which sites they want to visit), invitation from the family/friends, account statement or other document proving sufficient funds,<sup>37</sup> receipt of booked accommodation, receipt of travel insurance, certificate proving good health;<sup>38</sup> furthermore, documents that show a strong link of the person to his/her home country and which weaken the suspicion that the person, instead of tourism (leisure) or family/friends visits, would have another reason for the trip (a copy of the employment contract, a copy of the lease, certificate of ownership of a flat/house, certificate of study);
- to ask another person to accompany you to the airport, in case you will need a witness of the prescreening of the passengers;
- to make an audio or video recording of the prescreening;<sup>39</sup>

---

36 I provide the recommendations on the basis of Section 21b (c) of the Public Defender of Rights Act.

37 For example, it is recommended to take 75 to 150 Canadian Dollars per day, which is approximately CZK 1 300 to 2 600. For more details, see the Ministry of Foreign Affairs of the Czech Republic. Canada. Visa – Entrance regime [online]. Prague [retrieved on 18 October 2017] Available at: [http://www.mzv.cz/jnp/cz/encyklopedie\\_statu/severni\\_amerika/kanada/cestovani/visa.html](http://www.mzv.cz/jnp/cz/encyklopedie_statu/severni_amerika/kanada/cestovani/visa.html).

38 This can be a document proving that the passenger does not carry any contagious, easily transmitted disease (such as tuberculosis).

39 It is true that the arbitrary recording of third parties without their knowledge is a gross interference with the privacy of these persons. However, the consent to make an audio or video recording is not required if the recording is used to exercise or protect other rights or legally protected interests of others (Section 88 (1) of Act No. 89/2012, the Civil Code, as amended). This protection may also include the protection of the right not to be discriminated against.



- insisting that the persons who carry out the prescreening of the passengers introduce themselves and state their position and employer, and if that fails, to request to talk to their superior;
- to request a written reasoned certificate of refusal to allow to board the plane, and if that fails, to request to talk to the superior;
- to proceed to the check-in counter and check in despite the oral refusal, or request a written reasoned certificate of refusal to allow to board the plane, and if that fails, to request to talk to the superior;

**Recommendations for the entities carrying out the prescreening of passengers:**

- to draw up clear and transparent rules of prescreening and ensure that they are available to the passengers prior to the flight;
- to wear a name tag while carrying out the prescreening, which will also state the employer and the working position;
- to introduce oneself when first addressing the passengers;
- to inform the passengers of the purpose of the interview, why the prescreening is necessary (legal arrangements, contractual arrangements), and of its possible consequences;
- to carry out the prescreening regardless of race, ethnicity, nationality, sex, sexual orientation, age, disability, religion, beliefs or worldview, and to always respect human dignity of all the passengers;
- in case of preventing the passengers from the check-in, to issue a written receipt for the passenger stating who prohibited the check-in, on what grounds, what are the possible defences against such decision, and how to claim compensation for the expired air ticket and other related costs.

I am sending the report to the complainant, the airline M., the security agency O., Václav Havel Airport in Prague, and the Canadian Ambassador in the Czech Republic. If any of the parties wishes to comment on my conclusions, it should do so within 30 days of delivery of the report.

As a Czech equality body, I should make sure via my activities that all the entities in the territory of the Czech Republic respect the right to equal treatment. The present report describes for the very first time in 17 years of its existence a case where the Czech Public Defender of Rights dealt with conduct resembling the despicable racial profiling in several aspects. The case is complicated from the legal point of view, but very simple from the human viewpoint. The report summarises my perception of the matter and shows how I will review similar conduct in the future. However, I sincerely hope that there will be no more of similar cases. It is now up to the entities in question how they manage my recommendations.

Brno, 20 December 2017

Mgr. Anna Šabatová, Ph.D.  
Public Defender of Rights