



**Report pursuant to Section 24 (1) (c)
of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended
(hereinafter also the “Public Defender of Rights Act”)
on individual recommendations pursuant to Section 22 hereof as regards legal
regulations.**

In this Report, I inform the Chamber of Deputies of the Parliament of the Czech Republic of my recommendations to adopt, amend or repeal legal regulations I have addressed to a government or authority whose competence is concerned.

**Recommendation for the Ministry of Education, Youth and Sports to issue an
implementing legal regulation that would stipulate binding conditions and
organisation of enrolment in compulsory education (82/2015/DIS/BN).**

On 13 January 2016, pursuant to Section 21b (c) of the Public Defender of Rights Act, I issued a recommendation which contains **guidance for decision-making on applications for accepting a child to primary education.**

The recommendation¹ was made in response to a large number of instigations and queries directed to me in the course of 2015 by parents, non-profit organisations and members of self-governments and it evaluates the criteria most commonly applied by headteachers in accepting children for primary education. As an integral part of the recommendation, we provide a closer look at the procedure applied by headteachers in the actual process of accepting or refusing a child.

I received basic documents for developing the recommendation from my own activities (inquiries into individual complaints) as well as through cooperation with the Czech Schools Inspectorate which carried out inspections² at my instigation in eleven primary schools and three school counselling facilities in 2015. During its inspections, the Czech Schools Inspectorate focused primarily on enrolment in the first grade of primary schools.

The objective of my recommendation is, in particular, to **assess criteria in terms of compliance with the Schools Act and the Anti-Discrimination Act** and their application to various groups of children, especially from and outside the “catchment area”. The recommendation also contains **instructions for assessing individual criteria and for pursuing administrative proceedings on (non)acceptance to primary education.**

¹ http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Doporuceni/Doporuceni-zapisy-do-ZS_82-15-DIS-BN.pdf.

² The employees of the Office of the Public Defender of Rights were involved in the inspections as “invited persons” under Section 174 (8) of the Schools Act.

The recommendation is intended primarily for headteachers in primary schools founded by municipalities/associations of municipalities³, Regional Authorities (they assess appeals against decisions not to accept a child), the Czech Schools Inspectorate and the general public (especially parents of future first-graders).

Given that **I find it necessary to unify the procedure of headteachers** in order to ensure **equal access of children to education without any discrimination**, where the **ministerial recommendation** concerning the organisation of enrolment in compulsory education of 10 July 2014 (Ref. No. MSMT-10670/2014) **is not sufficient for the existing practice, I decided to also recommend that the Ministry of Education, Youth and Sports issue an implementing legal regulation that would stipulate binding conditions and organisation of enrolment in compulsory education.**⁴

The Ministry **complied** with my recommendation through an amendment to Decree No. 48/2005 Coll. which newly lays down the organisation and process of enrolment **effective from 1 September 2016.**

Recommendation for the Ministry of Education, Youth and Sports to amend Decree No. 14/2005 Coll., on preschool education, as amended (5/2016/SZD/LO).

In 2014 and 2015, I was approached by two⁵ complainants, both pointing out the unsatisfactory legal regulation laying down the possibility of free education in the last year of preschool education. In their opinion, under the currently effective schools regulations, only some children can receive free education in the last year before entering primary school. They argued that their children had begun to receive education in a kindergarten **at a younger age and had started compulsory schooling earlier**, as a result of which they could not receive free education.⁶ In other words, if someone enrolls a two-year old child in a kindergarten, that person loses entitlement to a free year before commencing compulsory schooling because only children who have reached six years of age are permitted to receive education in the third grade of a kindergarten. I decided to inquire into the matter.

I concluded in my inquiry report that under Section 34 (1) of the Schools Act, preschool education is usually organised for children **from three to six years of age**. Thus,

³ Some of the application aspects (especially the criteria relating to the catchment area) are inherently irrelevant for schools founded by regions, the State, churches and private individuals. Nevertheless, all schools, irrespective of the founder, have the duty not to discriminate against children in their access to primary education.

⁴ Pursuant to Section 56 of the Schools Act, which reads as follows: *In an implementing legal regulation, the Ministry shall lay down the basic contents of education and the conditions applicable to education in preparatory classes, the rules of organisation and process of enrolment in compulsory education and details of organisation and process of primary education and evaluation of the results of education of students and its requisites, rules of organisation, process and completion of education in courses for obtaining primary education and the rules for ensuring availability of courses for obtaining primary education through distance learning*".

⁵ I subsequently learned through my communication with the Ministry that this was not an isolated problem.

⁶ Education in kindergartens is provided free of charge for a maximum of one school year, specifically in the year when the child for the first time receives education in the last year of a kindergarten.

the law also provides for the possibility of accepting a younger child. Such a child, if accepted for education through a decision of the headteacher, has the same rights and duties as older children⁷. Consequently, it is at variance with the above provision when children, or indeed their parents, are disadvantaged for wanting to receive education before the child reaches three years of age. In the same way, they must not be disadvantaged for wishing to register the child earlier for the primary school, for example if the child is intellectually ready to go to school. **Education fees undoubtedly represent such a disadvantage.** Especially in cases where the headteacher fails to waive the fee in accordance with Section 123 (4) of the Schools Act, this would give rise to the unjustified duty to pay for education in the last year before commencement of schooling.

The regulation contained in Section 1a (2) of the Decree seems to be motivated by the objective of joint education for children of comparable age as it stipulates that children aged four and less may receive education in the **first** grade, children who have reached the age of five years in the **second** grade, and children who reached the age of six in the **third** grade. Even such an objective is not the most appropriate *per se*.

Based on the inquiry performed, I concluded that Section 1a (2) of Decree No. 14/2005 Coll., regulating organisation of preschool education based on children's age, **is not in accordance with the law**, namely Section 34 (1) in conjunction with Section 123 (2) of the Schools Act, because it has implications which are not anticipated by the legal regulation. In addition, it is also **at variance** with Section 1 (1)(i) in conjunction with Section 2 (3) of the **Anti-Discrimination Act** because it unjustifiably disadvantages certain children in their access to education on the grounds of age.

In view of the above, I **recommended**, in accordance with Section 22 (1) of the Public Defender of Rights Act, that the Ministry of Education, Youth and Sports **amend or repeal the relevant provision of the Decree**. Considering that the recommendation was released only recently, I am yet to receive a reply from the Ministry with information as to whether it will comply with my recommendation.

Brno, 28 April 2016

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⁷ Katzová, Pavla. Školský zákon (*Schools Act*). In: ASPI for Windows 8.0 [legal information system]. Wolters Kluwer ČR [retrieved on 19 January 2016].