



## **Report on cases in which remedy was not achieved even using the procedure under Section 20 of the Public Defender of Rights Act**

In accordance with Section 24 (1)(b) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended, I provide information to the Chamber of Deputies of the Parliament of the Czech Republic on cases where adequate remedial measures were not ensured even by means of notifying the superior authority or the Government or by informing the public of the findings made by inquiries under Section 20 of the Public Defender of Rights Act.

### **A. Failure to pay a subsidy (in full) (File No. 10/2018/SZD)**

I was contacted by the Ústí nad Labem Regional Authority, complaining about the procedure of the Ministry for Regional Development (hereinafter also the “Ministry”). The case involved failure to pay a subsidy (in full) under Section 14e of the Budget Rules within the project called CZ.1.06/.2.1.00/08.07230 – Development of e-Government Services in the Ústí nad Labem Region I, II, III, IV and VI.

In my inquiry, I found multiple errors in the Ministry’s procedure. The most serious one consisted in delegating the decision-making to the Centre for Regional Development.

Since it is not possible to delegate decision-making to another entity other than on the basis of a law, I recommended that the Ministry declare the decision in the given case null and void under the Code of Administrative Procedure. The Ministry refused to do so, stating that decision-making could also be shifted on the basis of the General Regulation (EU law). It also informed me that it no longer delegated the decision-making to the Centre for Regional Development; however, this does not provide a safeguard for the future, in my opinion. Furthermore, there are justified concerns that the mistaken opinion of the Ministry, if persistent, could serve as an example for other subsidy providers.

Therefore, I informed the Government that the Ministry for Regional Development had failed to adopt sufficient measures to remedy the failure to pay the subsidy.

**Since remedy could not be achieved, not even by imposing a penalty, I am hereby informing the Chamber of Deputies of the Parliament of the Czech Republic of this matter.**

### **B. (Non)cancellation of a water source protection zone (File No. 2121/2017/VOP)**

The complainant was unsuccessful with her application lodged with the Municipal Authority of Vimperk (hereinafter the “water-law authority”) requesting that a protection zone preventing her from managing her land be cancelled. The protection zone had been established to protect a well. However, the well was remote from the complainant’s land and was only being used to collect polluted water. The complainant correctly pointed out that protection zones were only established for drinking water sources. Nonetheless, her objections were ignored.

The water-law authority repeatedly stated that the well was on the complainant’s land. However, my Deputy found in his enquiry that the water-law authority had failed to make an on-site inspection, basing its decision solely on archived documents, which were



approximately 10 years old. Had the authority performed an on-site inspection, it would have to agree with the complainant that the well was not on her land. After my Deputy issued a report on the inquiry, the authority mapped the position of the well and had its correct co-ordinates included in the spatial plan, together with the correct position of the protection zone.

My Deputy considered this inadequate and therefore issued a final statement. He stated that the inclusion in the spatial plan was of no consequence for the existence of the protection zone of the well. The protection zone could only be changed or cancelled by a general measure under the Water Act. Moreover, the water-law authority was still dealing only with the position of the protection zone. My Deputy therefore asked the authority to ascertain whether a well with polluted water required special protection in the form of a protection zone.

The authority then moved the degree I protection zone from the complainant's land using the statutory procedure, as degree I protective zones can only exist in the immediate surroundings of wells. Nonetheless, it also stated that it would leave the location of the degree II protection zone as it was, as its existence was still justified. My Deputy considered this statement of the authority unfounded. The authority presented no expert certificate (opinion, statement) to prove that the well met the requisites for a protection zone. The aim of protection zones is to protect the output, quality and health safety of water sources that are or can be used to collect drinking water (Section 30 (1) of the Water Act). Since the authority failed to obtain any documentation (such as a water quality test) in this respect, my Deputy notified the superior authority, the South Bohemia Regional Authority and closed his inquiry. However, the Regional Authority, too, failed to remedy the incorrect procedure of the water-law authority.

**Since remedy could not be achieved, not even by imposing a penalty, I am hereby informing the Chamber of Deputies of the Parliament of the Czech Republic of this matter.**

In Brno, on 30 July 2018

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Public Defender of Rights