

Ref. No. 23231/2020

Protecting human rights during and after the COVID-19 in the Czech Republic

A. Impact on human rights

A.1 Response to the pandemic by the State

1. Due to the COVID-19 pandemic, the Czech Government took a number of actions to tackle its consequences and to flatten the curve of the daily infected persons in order to protect the health of people living in the Czech Republic. On the one hand, the measures introduced were aimed to protect human rights, such as the right to life or right to health, on the other hand they were interfering into other human rights, such as freedom of movement or freedom of assembly.

2. To illustrate, from March 14th, a prohibition to travel to high-risk areas for Czech citizens and foreigners with permanent or temporary residence for more than 90 days was announced. On March 16th a complete travel ban was announced (besides persons who were granted an exemption). The travel ban was cancelled by Government resolution, which became effective from 27 April 2020. This measure clearly resulted in restriction of free movement and any sort of traveling abroad.

3. Other such measures were the following:

- Resolution of the Government of the Czech Republic from March 15th 2020 No. 215 which prohibited free movement of persons in the Czech Republic¹
- Resolution of the Government of the Czech Republic from March 14th 2020 No. 211 which prohibited certain retail sales and services²
- Resolution of the Government of the Czech Republic from March 30th 2020 No. 334 which introduced a mandatory 14-day quarantine for all who entered the territory of the Czech Republic³

¹ Available at: <https://www.vlada.cz/assets/media-centrum/aktualne/Omezeni-pohybu-osob.pdf>.

² Available at: <https://apps.odok.cz/attachment/-/down/IHOABMPBJNVK>.

³ Available at: <https://apps.odok.cz/attachment/-/down/IHOABN7SBPR6>.

- Resolution of the Government of the Czech Republic from April 6th 2020 No. 387 which ordered all cross-border workers who stayed abroad for more than 14 days obligatory quarantine⁴

4. During the state of emergency, the measures were introduced by Government resolutions or extraordinary measures of the Ministry of Health.⁵ As they had different legal bases and legality of this approach was challenged, the Municipal Court in Prague held that during the state of emergency such measures need to be issued by Government resolutions (also see section Accountability and Justice of this report). After the state of emergency was terminated, the measures were being introduced by the Ministry of Health.

A.2 The impacts of the State response on human rights

5. First, it is important to mention that the Public Defender of Rights (hereinafter referred also as the „Ombudsman“) is not the national human rights institution (NHRI) in the Czech Republic. Therefore, the institution does not have the mandate to monitor and analyse the human rights situation in the Czech Republic in its whole complexity. The Ombudsman can provide especially information from the cases he dealt with in connection with the COVID-19 pandemic crisis.

6. As to general observations we made in connection with the groups most affected by the pandemic crisis, a notable portion of professions strongly affected by the pandemic were represented by the predominance of women, e.g. personal services, restaurants, hotels etc.⁶ This is emphasized by the fact that women were much more likely to stay at home with their children after schools and kindergartens were closed. The same applies to the impact on self-employed, since areas like tourism, gastronomy or salons, which are mostly occupied by women, were suddenly shut down by the Government. Furthermore, the return to the labour market is being challenging for them - a decrease of number customers can be expected, as well as termination of rents or increase of debts. The impact of the situation on single mothers is to be emphasized.

7. It is also worthy to mention that the COVID-19 measures were changing relatively quickly. Sometimes, the flaws and other problematic issues which resulted from the restrictive measures had changed or had been repealed before the Ombudsman managed to process the official action.

8. As to concrete cases and situations the Ombudsman dealt with during or after the COVID-19 crisis, we would like to mention the following issues.

⁴ Available at: <https://apps.odok.cz/attachment/-/down/RCIABNFABVQ3>.

⁵ Available at: <https://www.vlada.cz/cz/epidemie-koronaviru/dulezite-informace/mimoradna-opatreni-co-aktualne-plati-180234/>;
<https://www.vlada.cz/en/media-centrum/aktualne/measures-adopted-by-the-czech-government-against-coronavirus-180545/>.

⁶ Available at: <https://www.soc.cas.cz/aktualita/dopady-opatreni-proti-pandemii-na-zeny-muze-na-trhu-prace>.

A.3 Travel agencies⁷

9. It was reported that many travel agencies requested their clients to pay the rest of the tours' prices they booked before the state of emergency although the tours will not take place. Travel agencies offered the clients vouchers of the same amount for the next year as a compensation. For many clients paying the rest of the price is very challenging, even unaffordable under the current circumstances (the incomes of many families decreased due to the COVID-19 measures). The Public Defender of Rights wrote a letter to the Minister of Regional Development and asked her for information whether the Ministry will take steps to protect not only the interests of the travel agencies (there are several measures intended to help the businesses which face difficulties due to the COVID-19 measures) but also the interests of their clients. In this regard, the Defender proposed that the clients would not be asked to pay the rest of the tours' prices with the departure between May and July/August and would receive the vouchers only for the deposit payments they already made.

10. On 11 June, the meeting with the Ministry of Regional Development, the Ombudsman, and other relevant stakeholders (for example with the Association of Travel Agencies of the Czech Republic, the Ministry of Industry and Business, representatives of the travel agencies etc.) took place in order to discuss implications of the Act on Certain Measures to Mitigate the Effects of the Coronavirus Epidemic on Tourism. The participants of the meeting also discussed concrete actions of travel agencies towards their clients in practice.

A.4 The presence of fathers during the childbirth⁸

11. The Ombudsman dealt with the complaints concerning the prohibition of the presence of fathers (or other close relatives) during the childbirth introduced by the Ministry of Health in the form of an extraordinary measure. According to the opinion of the Ministry, the ban was justified because it was imposed in order to protect the health of the hospitals' personnel. The complainants however considered the ban disproportionate and claimed that their rights were unlawfully violated.

12. In the letter from 9 April addressed to the Minister of Health, the Defender asked for more information about the restriction and whether the Ministry plans to change the restriction in the light of the developments of the situation. The ban was repealed on 16 April and replaced by an amended measure (there is no clear indication that it happened as a consequence of the Defenders action, the ban itself was subject to a very lively public

⁷ Available at:

<https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/ombudsman-kdo-ochrani-klienty-cestovnich-kancelari/>;

<https://mmr.cz/cs/ministerstvo/vsechna-opatreni-a-pomoc-mmr-pri-pandemii-covid-19/cestovani-v-dobe-koronaviru/nechci-absolvovat-zajezd,-ktery-se-ma-konat-po-opa.>

⁸ Available at:

<https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/dopis-ombudsmana-ministrovi-zdravotnictvi/>;

http://www.mzcr.cz/dokumenty/mimoradne-opatreni-zakaz-navstev-pacientu-ve-zdravotnickych-zarizenich-a-zariz_19016_4135_1.html;

https://www.mzcr.cz/dokumenty/ministerstvo-zdravotnictvi-opet-povoli-pritomnost-druheho-rodice-u-porodu_19018_1.html.

debate and criticism of certain human rights defenders and a part of the public). Under the amended extraordinary measure, the presence of a father (or other person living in the same household as the mother) during the childbirth was possible only if the childbirth took place in a separate room, the third person had a mask and his/her temperature was not higher than 37°C.

A.5 Cross-border workers and other related issues⁹

13. The Ombudsman dealt with the situation of persons who had to cross the state borders on the everyday basis due to their work, family relations etc. As the state borders were closed due to the COVID-19 restrictions, the cross-border workers found themselves in a very difficult situation. The Defender was monitoring the situation and prepared a letter addressed to the Government requesting several measures to be repealed. In the meantime, many measures in question were repealed by the Government. As a result of that, in some cases there was no other action needed on the part of the Ombudsman.

14. In order to address the situation, the Ombudsman communicated with the ministries responsible for the situation (Ministry of Interior, Ministry of Health), trying to solve the problems.

A.6 Education

15. A challenging situation was in the educational system. As all of the schools switched over to distant learning, this required some material resources at all households, at least having computer and stable internet access. This appeared as an issue mostly at less developed areas and socially disadvantaged groups. Nonetheless, we could still observe some positive initiatives in this regard, e.g. when school provided socially disadvantaged families a free internet access and tablets, teaching assistants ensured handover of tasks in person, cooperation with local volunteers and NGOs, or establishment of biblioboxes so that parents would not have to print all homework by their own resources.

16. There were also challenges connected with the situation of return of pupils into schools with regards to children with disabilities. Even though regular schools reopened during the month of May, it was announced that schools specialized for children with physical or mental handicaps will not carry on with education this academic year. This prevented their parents from returning to their occupation and also decelerated their educational process which requires specific approaches. The Ombudsperson's Office brought attention at the potential risk of unequal treatment and communicated the case directly to the Government.¹⁰

17. Another issue emerged when the Chamber of Deputies adopted a special act concerning the school year 2020 in which they reacted on the COVID-19 situation.¹¹ The act was adopted in the emergency legislative procedure without the comment procedure.

⁹ Available at: <https://www.mvcr.cz/mvcren/article/cross-border-workers-so-called-pendlers.aspx>.

¹⁰ Available at: <https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/deti-s-postizenim-maji-pravo-chodit-dokoly/>.

¹¹ Available at: <https://www.psp.cz/sqw/historie.sqw?o=8&t=855>.

There were two main measures introduced by this act: 1. only one term for the admission examinations to the high schools; 2. no possibility to appeal against the decision of the school on the admission/non-admission to the school (no remedy).

18. The Ombudsman started receiving complaints concerning this issue. We contacted the Ministry of Education but we received no answer within the given deadline. The MP's proposal amending the act and trying to remedy the above mentioned issues followed. The Ombudsman supported it in the comment procedure. The proposal has not yet been discussed in the Chamber of Deputies. The Ombudsman also issued the press release and statements on this issue.

A.7 Limited visits in prisons and other facilities

19. During the crisis, the visits in prisons and other facilities where people are restricted in their freedom were prohibited or limited. Many social services (for example the services for especially endangered families or persons in a vulnerable position) were closed. This was a great problem especially for families requiring a regular help of the social workers (persons with disabilities, families with a high risk of domestic violence etc.). The Ombudsman collected the examples both of a good and bad practice in this field. An example of a good practice was the skype calls for the prisoners in time when the visits were prohibited.

20. Many problems were solved when the Government decided to gradually repeal the restrictions imposed. The Ombudsman is preparing recommendations to the facilities and other stakeholders for situations of this kind.

B. Protection of various groups at risk

B.1 Older persons

21. As regards the pensioners, the visits at retirement homes were prohibited from March until the end of May as they were classified as a "vulnerable group". Following this measure, prohibition of leaving the premises of the home for the elderly people was implemented.

22. Concerning the 70+ years old elderly people living at home, a general recommendation was not to leave their home at all, with the exception of the provision of urgent medical care.

B.2 Detained and incarcerated persons

23. As regards places where persons are restricted in their freedom, the Ombudsman (as the National Preventive Mechanism in the Czech Republic) monitored the situation during the entire pandemic. Regarding the safety measures introduced, the external visits were suspended, hygienic and medical measures as temperature measuring, disinfection were introduced, symptomatic persons and newcomers were separated, mandatory wearing of masks was introduced etc.

24. Furthermore, the prison facilities also became involved in the production of protective equipment. However, the insufficient amount of protective equipment was still an issue as well as lack of preparedness for health emergencies of this extent in general. The access and

continuity of clinical testing was also problematic. Despite the difficulties mentioned, the adopted measures contributed to the fact that up to May 26th no positive case of COVID-19 among prisoners was reported.

25. The situation was more complicated among the workers and members of the Czech Prison Service, yet only nine positive cases were reported at the beginning of April. The pandemic also reminded on some persisting problems which need to be dealt with in the near future, such as overcrowded prison facilities, inappropriate and outdated prison architecture, insufficient working conditions of prison personnel or the lack of medical practitioners in prison health care.

26. Prisons were not the only facilities which restricted visits of family members. Several cases were reported to the Ombudsman' Office where institutional care providers suspended all visits, without any individual assessment. In facilities in which we found the measures as disproportionate and where we achieved the redress we conducted inquiries on our own-initiative.

27. During the time-period of strict measures, the Ombudsman carried on with systematic visits to facilities where persons are restricted in their freedom. As results of one of the visits in a mental health hospital revealed, during the months of March to April no interrogation of persons realized in connection with decision-making on admission and further detention in the institutional care. We have launched the inquiry in this case with the district court responsible which argued that it did not resign from its legal obligations on deciding on the legality of taking over and holding persons in the institutional care, yet evaluated that due to increased hygiene requirements it is necessary to abandon questioning persons detained. The decision-making in this matter carried on, nevertheless, the judge was deciding on the basis of other evidence available (e.g. telephone communication of the caregiver physician, takeover notice etc.). However, the court stated that since beginning of May the interrogations were renewed.

B.3 Refugees

28. Similar measures were adopted in asylum facilities; in addition, a reception centre with a special regime was set up. Recent applicants for international protection, after submitting an application (which was made orally and recorded by the police according to the Asylum Act), had to undergo a 14 days quarantine in this facility. Subsequently, they were transported to a common reception centre. Only there a standard procedure took place – e.g. providing additional information to the application, interviewing, etc.

29. Ministry of the Interior also adopted a detailed protocol on modified procedures which took into account increased requirements on hygienic standards implemented in all refugee facilities and also during the conduct of the Alien Police and medical facilities under the Ministry of the Interior.

B.4 Provision of services to persons in vulnerable situation

30. We are pleased to report that the functions of social-legal authorities were maintained, with emphasis towards endangered children. Authorities dealt both with

urgent cases and carried on with monitoring and cooperation with families with children at risk. Yet, of course, the performance of social work with families in general was still limited.

31. By the Government resolution from March 18th, an interruption of provision of social activation services, day care centres, low-threshold facilities for children and youth and social therapy workrooms was introduced for the time-period of the state of emergency. With respect to social activation services, the Ombudsman reached out to the Minister of Labour and Social Affairs. We reminded that families in question are among those most affected by the current situation - many of them suffer a loss of income, eventually a housing, too. In addition, due to the interruption of tuition and restriction of the free movement, already problematic relationships among families may escalate and lead to an increase of domestic violence. These families may not be able to find adequate help by reaching out to the authorities on their own. The situation was even more exacerbated by the fact that the social and legal protection authorities had limited their activities to only necessary actions, based on another governmental resolution. Therefore, we recommended a renewal of operation of social activation services at least by a distant form – e.g. telephone calls, e-mails or Skype.

32. By adoption of an act on certain adjustments in social security in connection with emergency measures as a response to the epidemic, parents of children up to the age of 13 or taking care of disabled children were entitled to nursing allowance. The same applied to people who, due to the closure of some social services facilities (e.g. day care centres) had to care of an elderly disabled person living in the same household. However, self-employed persons undergoing an execution were excluded from entitlement for the allowance in question. In this regards, the Ombudsman addressed the Minister of Industry and Trade and called upon a re-evaluation of these conditions.

C. Social Protection

33. The Government resolution No. 267 of March 19th 2020 enabled holders of an employee card or blue card for the duration of the state of emergency to start working under simplified conditions for an employer who carries out crisis measures or assists in their implementation. The same Government resolution enabled foreign nationals to change their employer during the state of emergency without meeting the condition of being employed for six months after receiving their first employee card.

34. The Government resolution No. 495 of April 30th 2020 in Article IV./3 interrupted the time period during which the employee card expires after the termination of the employment. This time period starts to pend when the state of emergency was over. If the employment of the holder of the employment-card is terminated during the state of emergency or in 60 days preceding the declaration of the state of emergency, the employee

card does not expire during the state of emergency and the foreign national will have another 60 days to find a new employment.¹²

D. Accountability and justice

35. The operation of the justice system during the COVID-19 pandemic was not discontinued and it was operational during the whole period of the state of emergency (12 March to 17 May). Nevertheless, a number of measures were introduced in the judiciary mainly in terms of social distancing, hygiene and use of face masks. In addition, extensive use of the possibility of working from home (home office) was introduced.

36. Within the period covered by the state of emergency, the Ombudsman registered an increased amount of complaints in several areas due to the number of measures introduced by the Government to tackle the pandemics. For a general overview on the impact of the pandemic on the enjoyment of human rights, as well as several notable areas of concern, we refer to the part A (Impact on human rights).

37. Regarding the legality of the governmental measures, a judgment of the Municipal Court in Prague of 23 April 2020 is to be noted. At the beginning of the pandemics, the Government was issuing all measures based on the Crisis Act. Such a procedure is provided for in the Constitutional Act on the Security of the Czech Republic. Nevertheless, later in March the Government changed their form and started to issue new measures in form of extraordinary measures of the Ministry of Health based on the Public Health Protection Act. One of the reasons suggested was to avoid the liability of the state for the damages caused by the measures. However, the municipal court repealed four contested measures and decided that such measures need to be issued by the Government through the standard procedure in line with the Crisis Act, which was followed by the Government.

38. There are also several pending proposals for repeal of regulations at the Constitutional Court of the Czech Republic that relate to the governmental measures. The Ombudsman supported one of them through a third party intervention, in particular the proposal to repeal parts of a regulation that relates to cross-border workers.¹³

E. Questions by the Special Rapporteur on the right to adequate housing

E.1 Refugee facilities

39. In order to prevent the spread of COVID-19 among employees of the Refugee Facilities Administration of the Ministry of the Interior, and other involved bodies, including the Police, as well as detained foreign nationals or applicants for international protection, the Refugee Facilities Administration of the Ministry of the Interior has established a reception

¹² Available at: <https://www.mvcr.cz/clanek/sluzby-pro-verejnost-informace-pro-cizince-aktuality-informace-k-reseni-pobytovych-zalezitosti-cizincu-na-uzemi-cr-po-skonceni-nouzoveho-stavu-od-18-kvetna-2020-do-16-cervence-2020.aspx>.

¹³ Case no. Pl. ÚS 20/20. There are also other motions at the Constitutional Court of the Czech Republic that relate to a price moratorium on rent from flats (Pl. ÚS 22/20) or to the situation of tenants of flats (Pl. ÚS 21/20).

centre with a special regime in Bělá-Jezová. The reception centre was established as a preventive measure by the Ministry of the Interior on 20 March 2020.¹⁴

40. On 20 May 2020 the Ombudsman's Office conducted a systematic visit to the facility in Bělá-Jezová which is currently partially a detention centre and a reception centre for applicants for international protection. A report from the visit will be published on the Ombudsman's website.¹⁵

E.2 Other areas

41. Regarding the protection measures of tenants, a Government resolution was introduced which laid down a price moratorium on rent from flats which was in force during the state of emergency.

42. In addition, the capital of Prague started an initiative within which homeless people were accommodated either in private hostels paid by the city or in a tent town.¹⁶

F. Questions by the Independent Expert on the human rights of older persons

43. In this regard, it is to be noted that suspension of tuition and restriction of free movement led to isolation of families and therefore increase of duress and domestic violence. Activities and function of social-legal authorities for children have been preserved, as regards both urgent cases and continuing monitoring and cooperation with families where children in danger lived. Safety lines for children and adolescents also remained fully operational.

44. With regard to the lives of older persons during the COVID-19 pandemic, a general problem was loneliness resulting from isolation.

45. In addition, the Ombudsman dealt with several individual complaints. One case concerned a so-called Lex Voucher (or also Lex Covid), a newly adopted law designed to help mitigate the effects of the coronavirus on the tourism industry. The law regulates special conditions for tours taking place from 20 February to 31 August 2020, for which the travel agency may use the so-called protection period during which the refunds of payments made by the customer for the trip are postponed. There is an exception for persons older than 65 years who may refuse the voucher. Based on this, even though the claimant was a pensioner, she did not have the right for direct refund. In this case we had to explain that the subject matter was a political decision and cannot be classified as a discrimination.

46. Another case the Ombudsman dealt with concerned a disagreement with a measure establishing reserved shopping hours for seniors. In this event the Ombudsman had to explain that even though during 8-10 AM only persons older than 65 were allowed to enter

¹⁴ Available at: <http://www.suz.cz/zrizeni-docasneho-prijimaciho-strediska-se-zvlastnim-rezimem/>

¹⁵ Available at: <https://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/zarizeni-pro-cizince/>

¹⁶ Available at: https://www.ceskatelevize.cz/porady/1097181328-udalosti/220411000100417/video/762814?_ga=2.211299094.222412589.1592309654-27743611.1592309654.

retail shops, this measure did not fulfil the characteristics of discrimination since it was justified by a legitimate objective and the method chosen was proportionate in relation to the objective pursued.

G. Questions by the Special Rapporteur on the sale and sexual exploitation of children

47. In this regard, it is to be noted that suspension of tuition and restriction of free movement led to isolation of families and therefore increase of duress and domestic violence. Activities and function of social-legal authorities for children have been preserved, as regards both urgent cases and continuing monitoring and cooperation with families where children in danger lived. Safety lines for children and adolescents also remained fully operational.

Brno, 26. 6. 2020

JUDr. Stanislav Křeček
Public Defender of Rights