

Czech Republic

Public Defender of Rights

International accreditation status and SCA recommendations

The Public Defender of Rights of the Czech Republic is a non-accredited associate member of ENNHRI. The Defender can handle complaints, write legislative recommendations and conduct independent inquiries. Moreover, the Public Defender of Rights has received the mandate of Equality Body, National Monitoring Mechanism (NMM) under the UN CRPD, the National Preventive Mechanism (NPM) under the UN CAT, and monitor of forced returns (under the EU Return Directive).

ENNHRI has supported the steps taken by the Public Defender of Rights to strengthen its mandate in compliance with the UN Paris Principles and stands ready to assist the institution in applying for international accreditation.

A roundtable on NHRI accreditation took place in 2020 proving that there are many stakeholders who are prepared to support the establishment of the NHRI. The Government's Representative for Human Rights promised to present a legislative proposal concerning the NHRI in a reasonable future.

Impact of 2020 rule of law reporting

The Public Defender of Rights is not aware of follow-up actions or initiatives by state authorities, nor has taken any specific follow-up initiative based on the 2020 ENNHRI Rule of Law Report.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

The regulatory framework applicable to the Public Defender of Rights has not changed since the last report.

Enabling space

The Public Defender of Rights' Annual Reports

The Annual Report 2019 has not yet been discussed by the Chamber of Deputies. Therefore, the legislative recommendations addressed to the Chamber of Deputies by the Defender have not been heard so far.

The Annual Report 2018 has been discussed in the Chamber of Deputies and the Chamber of Deputies asked the Government to express its opinion on the recommendations stated in it. However, the Government has not responded yet.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The Public Defender of Rights took part in the round table concerning the NHRI in the Czech Republic organised by the Government's Representative for Human Rights. In the discussions, the importance of the NHRI in the national context was acknowledged and concrete steps and options leading to the establishment of an NHRI in compliance with the Paris Principles in the Czech Republic were discussed. All stakeholders taking part in the meeting agreed on the importance of the NHRI's work in the national political environment.

Human rights defenders and civil society space

The Public Defender of Rights has good relations and cooperation with NGOs and the CRPD Department cooperates with the civil society on a regular basis, especially through the Advisory Body. The Public Defender of Rights does not however do general monitoring when it comes to the protection of HRDs and observation of their rights, unless it is a case that falls under its legal mandate.

Checks and balances

Limitations of participation of rightsholders

Participation rights in environmental matters

Public participation rights in environmental matters are set out especially in the Construction Code, and in the Act on the Protection of the Nature and the Countryside. However, there is a draft of the new Construction Code currently being discussed in the Chamber of Deputies which attempts to significantly restrict the above-mentioned participation rights. The Public Defender of

Rights took part in the stakeholders' consultation prior the presentation of the draft legislation to the Chamber of Deputies and criticized this deficiency several times.

Moreover, the Constitutional Court of the Czech Republic announced a decision in the case Pl. ÚS 22/17 concerning public participation rights in environmental matters on 2nd February 2021. The constitutional complaint was filed by a group of Senators in 2017 seeking the abolishment of several provisions of the Construction Code and of the Act on the Protection of the Nature and the Countryside. According to their view, legal provisions in question undermined the public participation rights in environmental matters by excluding environmental associations from the participation in many important types of proceedings according to the Construction Code. The Public Defender of Rights intervened in the proceedings in support of the applicants.

The Constitutional Court decided that the provisions in question are not unconstitutional, and therefore remain in force. It argued that the participation rights of environmental associations have been narrowed, but not entirely erased from the Construction Code. It concluded that the restriction of participation rights was legitimate, rational, and not contrary to the international obligations of the Czech Republic (namely the Aarhus Convention). It is also important to mention that seven judges of the Plenary (consisting of 15 judges) presented their dissenting opinions in the case. The Public Defender of Rights considers the Constitutional Court's decision as a "step back" in relation to participation rights in environmental matters.

References

- <https://www.ochrance.cz/aktualne/tiskove-zpravy-2021/ani-po-nalezu-ustavniho-soudu-nejsou-spolky-ucastniky-rizeni-podle-stavebniho-zakona/>
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Functioning of justice systems

The only problematic issue the Public Defender of Rights is aware of in this regard are delays in court proceedings. This problem is of a long-term nature and it is mainly a result of the long-term overload of the courts.

More specifically, there are also long-term problems with delays in court proceedings in relation to the work of expert witnesses. The causes of delays are mainly twofold: either there are not enough experts in the field who could prepare the expert opinion, or the experts have delays with submitting their expert opinions. In both cases, it has a negative influence on the length of the court proceedings.

The expert witnesses' agenda has newly been entrusted to the Ministry of Justice. The Public Defender of Rights cannot predict the further developments in this field and how this change will influence it, but it will further monitor this issue.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

During 2020, we have registered several COVID-19 governmental measures which gave rise to doubts regarding their legality or proportionality, such as:

- General prohibition of visits in facilities of social services (i.e., homes for the elderly, children's houses), prohibition of leaving such facility;
- Prohibition of presence of fathers at childbirths, or prohibition of parental presence at hospitals with their ill or operated children;
- Prohibition of prison visits, then replaced by limitation to only one person (this meant that minor children could not visit their imprisoned parents as they could not be accompanied by an adult);
- Prohibition of access to the country for foreigners, even for purposes of reunion with their family or closest relatives;
- Strict requirements for persons who had to cross state borders on an everyday (or very frequent) basis due to their work, family relations etc. (the prescribed frequency of the regular testing of such persons on COVID-19 was considered particularly problematic);
- Access to education for pupils with disability in the light of the online learning;
- Closing of services for endangered families and children.

The Public Defender of Rights was dealing with all the above-mentioned issues. Most of the problematic measures have been fully or partially repealed (and sometimes replaced by less strict measures).

There have also been issues with involuntary hospitalisation and access to information during the pandemic as the following examples show.

The Public Defender of Rights has registered issues in judicial decision-making in cases of involuntary hospitalisation. Under normal circumstances, judges deciding these cases tend to personally visit the people in facilities. In some cases, this has not happened during the pandemic, and some judges issued decisions without personally seeing the person. Thus, the Public Defender of Rights intervened and discussed the issue with the Ministry of Justice and representatives of the judiciary.

The CRPD team has dealt with the issue of lacking access of people with audial disability to information about COVID-19. Since the beginning of the pandemic, the media outlets offered only limited possibilities of spreading information to people with audial impairment. This also turned out to be problematic in relation to passing information about testing and beginning of vaccination. The Public Defender of Rights has intervened in this regard and the television outlets are about to include the sign language.

It is already possible to estimate certain long-term consequences resulting from the COVID-19 pandemic. The Public Defender of Rights has registered growth and strengthening of domestic violence and general increase of social-pathologic phenomena in families. Families dealing with this type of violence may suffer its consequences for a rather long time.

Another issue is the low accessibility of supportive social services as it may be expected that in these exact areas the state funding might be limited, and the cuts may appear soon. In a larger scale, as a direct result of long-lasting isolation, we might experience general breakdown of personal or family ties, something we are already witnessing concerning imprisoned persons who have not had many possibilities of maintaining contact with their close persons.

Furthermore, the CRPD team has expressed concerns regarding the future employment situation of people with disabilities. The active policy of employment and general support of employment of people with disabilities may face cuts and may not be a priority for many stakeholders in upcoming times. Another of the concerns is the influence of long-distance education of children with disabilities: this type of education may be difficult for many of them, the support of such pupils is not emphasized, and hence, in the future, they may fall behind.

Also, the COVID-19 pandemic has highlighted and deepened the issues that were already present in the Czech society but neglected. The pandemic may increase the number of people falling into poverty, facing executions, losing their housing without any governmental support, or facing removal of children from families. Another challenge will be to maintain the quality and accessibility of the health care system which has been under serious pressure and is significantly underfunded.

The Public Defender of Rights has been vocal regarding the isolation of people in social service facilities and the legality of such measures. The Public Defender of Rights has insisted that visiting and leaving these facilities must be allowed under safe conditions which would combine exercising fundamental rights with complying with hygienic standards. Regarding prisons, the Public Defender of Rights demanded that prisoners may receive more than only one person for a visit, and that the prisons would implement more measures to compensate for the lack of visits (i.e., more phone calls, Skype calls).

Furthermore, the Public Defender of Rights expressed our concern regarding the approach of the education system towards children with disability and the support of their needs especially, during distance learning. Also, the Public Defender of Rights has investigated the issue of barrier-free access to places where testing or vaccination take place. In these mentioned areas, the Public Defender of Rights has initiated a dialogue with relevant stakeholders, organised closed meetings, raised practical recommendations and solutions, and released statements for media.

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Most important challenges due to COVID-19 for the NHRI's functioning

Most significantly, the pandemic has affected the NPM and its possibility to conduct regular visits of facilities where persons are deprived of liberty. During Spring 2020, the monitoring activity was stopped as such and no visits occurred.

Gradually, the monitoring visits were restated, however, under strict conditions. They were not conducted unexpectedly; the facility was usually informed one day in advance in order to prepare the hygienic conditions. To reduce the risk of contagion, the NPM team has used protective suits and it has undertaken antigen and PCR testing regularly.

The pandemic has also influenced the selection of topics of the visits. It became more crucial than ever to focus on the contact with the outside world or conditions of further deprivation of liberty connected to COVID-19 (e.g., locking up patients in quarantine).

The pandemic has also affected on-site investigations. In Spring, on-site investigations were not possible to perform; during the second wave starting in Autumn, on-site investigations have been generally allowed but the Public Defender of Rights has performed them carefully and with full respect to organisational difficulties the public authorities the Defender has decided to visit have had to face. During the visits, all necessary safety measures are implemented.

As to the general functioning of the office, we have been facing the same difficulties as any other institution. The Public Defender of Rights has had to adapt to the home office regime (including finding suitable IT solutions), has also had to reduce the official office hours, and there is also an increased morbidity of the employees. Fortunately, these challenges have not paralyzed the functioning of the office and the Public Defender of Rights continues to perform our duties more or less as before.

References

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