

# State of the Rule of Law in Europe in 2022



Reports from National  
Human Rights Institutions

Czech Republic



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# Czech Republic

## *Public Defender of Rights of the Czech Republic*

### **Independence and effectiveness of the NHRI**

#### **International accreditation status and SCA recommendations**

The Public Defender of Rights is a non-accredited associate member of ENNHRI. As such, under the ENNHRI Statute, it commits to take active steps towards compliance with the UN Paris Principles and A-status accreditation.

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, monitor of forced returns (under the EU Return Directive), and body promoting equal treatment and supporting workers in the European Union and their family members (under the Directive 2014/54/EU).

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 Commissioner for Human Rights promised to present a legislative proposal concerning the NHRI in a reasonable future.

The Public Defender was not active in the matter of the establishment of an NHRI in the Czech Republic in 2021. There were several reasons for this. First, the Parliamentary elections (Chamber of Deputies) took place in autumn 2021, making it reasonable for the Public Defender to wait for a new Government to take a stand in this matter. Second, the COVID-19 pandemic has had a great influence on the priorities of the Czech Government and of the Chamber of Deputies. Third, the Government's Commissioner for Human Rights expressed a positive approach to this issue in the past and, to the knowledge of the Public Defender, her office has been working on a draft law/amendment to the Act on the Public Defender of Rights to that effect. Therefore, the Public Defender decided not get actively involved at the moment but is following the developments closely.

## Regulatory framework

There were no significant changes in this field compared to 2021.

The Public Defender continues to work without a constitutional basis and with the same mandate, which includes complaint handling, the possibility to file *amicus curiae* before the Constitutional Court and the action in public interest before the administrative courts, initiation of proceedings pursuant to the Act on Proceedings in Matters of Judges and Public Prosecutors, the provision of advice and recommendations to the Government and to the Chamber of Deputies, including in the context of the legislative process, and awareness raising. The Public Defender cannot engage in strategic litigation before courts nor it can provide legal assistance to individuals.

## Enabling space

Relevant state authorities have good awareness of the Public Defender's mandate, independence and role and the Public Defender has adequate access to information and to policy makers in all stages of legislation and policy making in matters where it has competence.

Addressees of the Public Defender's recommendations are legally obliged to provide a timely and reasoned reply. While the Public Defender is not aware of any state measures or practices to ensure timely and reasoned response to such recommendations, authorities do abide to this obligation in the vast majority of cases.

Measures are in place to protect and support the Public Defender of Rights and his/her Deputy against threats, harassment and intimidation. In particular, pursuant to Section 7 (1) of the Act on the Public Defender of Rights, the Defender may not be criminally prosecuted without the consent of the Chamber of Deputies, and if the Chamber of Deputies denies consent, criminal prosecution of the Defender shall be impossible during the term of exercise of the Defender's competence. The same applies to the Deputy Public Defender of Rights.

## References

- Act 349/1999 Coll. of 8th December 1999 on the Public Defender of Rights, Section 7 (available on: <https://www.ochrance.cz/en/o-nas/predpisy/>)

## NHRI's recommendations to national and regional authorities

The Public Defender recommends to the Government to propose to the Chamber of Deputies the establishment of the NHRI in the Czech Republic, either through strengthening the legal mandate of the Public Defender of Rights, or through the establishment of a new institution.

## Checks and balances

The Public Defender of Rights regularly takes part in the comment procedure. The Defender may also submit a petition to the Constitutional Court of the Czech Republic pursuant to Section 64 (2f) of the Constitutional Court Act (182/1993 Coll.) and propose the annulment of other enactment than statute, or individual provisions thereof. The Defender may also take part in the proceedings before the Constitutional Court as the *amicus curiae*.

In 2021, the Defender proposed the annulment of Section 9 (5) of the Regulation on Lawyer's Tariff to the Constitutional Court and his petition was successful.

The Defender may also recommend to the Government and to the Chamber of Deputies to issue, amend or cancel a legal or internal regulation.

The Defender also cooperates with many international partners such as ENNHRI, IOI, European Ombudsman, Commission, OSCE-ODIHR, Council of Europe, United Nations, etc. This cooperation usually includes sharing the Defender's experiences and findings (shadow reports, questionnaires, analysis, ect.) and thereby contributing to the monitoring and reporting process on the international level.

The Defender also dealt with the accessibility of the information line "1221", which is meant to provide up-to-date information about COVID-19 for people with hearing impairments who prefer communication in written form. The Ministry for Health started providing this service since September 2020, but only in March 2021 the bidirectional simultaneous transcription of information was launched. The Defender criticized the delay (6 months) in implementing such service effectively, complaining that the Ministry failed to take into account the needs of this specific group of people from the outset. Following the Defender's recommendations, the Ministry made the line "1221" accessible also for sign language users.

### References

- (1) [https://www.ochrance.cz/aktualne/ustavni\\_soud\\_vyhovel\\_navrhu\\_ombudsmanazrusi\\_l\\_protiustavni\\_zastropovani\\_odmen\\_pro\\_advokaty\\_ustanovene\\_jako\\_opatrovniky/](https://www.ochrance.cz/aktualne/ustavni_soud_vyhovel_navrhu_ombudsmanazrusi_l_protiustavni_zastropovani_odmen_pro_advokaty_ustanovene_jako_opatrovniky/)
- (2) Recommendation of the Defender: Case 50/2020/OZP (available on: <https://eso.ochrance.cz/Nalezene/Edit/9220>)

## Functioning of the justice system

### Length of proceedings

In general, the Defender detected a longer duration of court proceedings in matters related to childcare.

### Access to a court in relation to calls of tax offices to withdraw the application for the compensation bonus

The Public Defender detected the practice of several tax offices who advised the applicants for the compensation bonus to withdraw their application because according to the authority's opinion the applicants were not entitled to it. In such case, the applicant did not receive a decision with the reasoning why he/she was not awarded by the compensation bonus. As a result of this, the applicant could not appeal against it or file an action to the court. This inquiry has not been concluded yet; so far, the Defender informed the media and held a meeting with the General Financial Directorate (the Directorate partially changed the above-mentioned practice).

### Mandatory publication of court decisions

For several years, the Defender has been struggling for the enactment of the obligation of courts to make their decisions public (in an anonymized version) which currently does not exist in the Czech legal order. Currently, there is the parliamentary legislative proposal to implement the mandatory publication of court decisions.

### Justice in antidiscrimination matters

There are long-term systemic efforts the Defender has been pursuing for several years as regards justice in antidiscrimination matters – the following issues, also raised in 2021, remain of concern:

- Sharing of burden of proof in antidiscrimination matters: under the current legislation, sharing of burden of proof in antidiscrimination matters does not cover all situations where discrimination is prohibited by the Anti-Discrimination Act. While the burden of proof is always shared in cases of discrimination on grounds of race and ethnicity, with respect to other protected characteristics, it applies only in the area of labour law (with the exception of "sex and gender", where the burden of proof is also shared in the area of access to goods and services). Victims discriminated on the basis of their age or disability thus have a worse procedural standing if they defend themselves against discrimination in access to education, healthcare, but also housing, goods and services.

- Reducing the judicial fee for appealing against a court decision relating to antidiscrimination actions: to file the antidiscrimination action, there is a flat fee of CZK 1,000. To file an appeal, the fee amounts to CZK 2,000 or 1% of the amount of compensation for intangible damage claimed if it exceeds CZK 200,000. The Defender recommends that the uniform flat fee of CZK 1,000 would be set also for an appeal in antidiscrimination matters.
- Actio popularis in antidiscrimination matters: the Anti-Discrimination Act does not include the procedural institute known as “action in public interest” (actio popularis), which could be used by organisations advocating the rights of discrimination victims (typically NGOs). The Defender recommends enacting this procedural institute into the Czech legal order.

### Justice in asylum and migration cases

- Access to classified information: in cases when a foreign national is not granted by a visa because it would jeopardize the security of a state and the decision is based on a classified information, the foreign national cannot access the classified file so he/she could effectively defend himself/herself before a court.
- Stateless persons: according to the Act on the Residence of Foreign Nationals, stateless persons cannot file an appeal against the decision which does not grant them the status of a stateless person; therefore, they do not have access to justice in such cases.

### References

- <https://www.ochrance.cz/aktualne/ombudsman-proveri-vyloucení-casti-podnikatelu-z-naroku-na-kompenzacni-bonus-a-praxi-finan/>
- <https://www.ochrance.cz/aktualne/ombudsman-podporuje-poslanecky-navrh-ke-zverejnovani-soudnich-rozhodnuti/>
- [OMBUDSMAN-NF monitor-z-01 EN.pdf \(ochrance.cz\)](#)
- [Decision-making of Czech courts in discrimination disputes 2015–2019.pdf \(ochrance.cz\)](#)

### NHRI’s recommendations to national and regional authorities

The Public Defender recommends national authorities to take measures to ensure that:

- The burden of proof in discrimination cases is shared in all situations where discrimination is prohibited by the Anti-Discrimination Act.

- The possibility to file an “action in public interest” (actio popularis) is foreseen in antidiscrimination matters.
- Stateless persons have effective access to justice in cases when their application for the status of a stateless person was rejected.

## **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**

The state of emergency in 2020/2021 took place from October 2020 to 11<sup>th</sup> of April 2021 and from 26<sup>th</sup> of November to 25<sup>th</sup> of December 2021.

The Public Defender of Rights takes part in the legislative comment procedure. In 2021, the participation in the comment procedure for all institutions and authorities participating in it was in some cases more complicated due to shorter deadlines for submitting the comments (examples: Decree 537/2006 Coll., on the vaccination against infectious diseases, implementing the mandatory vaccination against COVID-19 of people older than 60 years).

The repeated announcement of a state of emergency and other pandemic measures had a negative impact on ordering oral hearings and a general fluency in proceedings concerning administrative offences. The Czech Business Inspection significantly reduced its legal advice services for consumers (protection of its employees).

Measures taken to curb the spread of the pandemic also affected the enjoyment of certain rights.

During the spring wave 2021, family members of Czech citizens not having any form of residence permit in the Czech Republic and coming from countries with a high risk of infection were not allowed to enter the territory of the Czech Republic. Moreover, these persons could not apply for a short-stay visa in the country with a high risk of infection. In August 2021, both issues were remedied after the intervention of the Deputy Public Defender of Rights. (1)

In matters related to the childcare, the Defender received complaints reflecting uncertainties in relation to the contact of children with parents who do not have the children in their care (this concerned also children in foster care and children in facilities for children).

In matters related to healthcare, the Defender dealt with several issues:

- there were problems related to regular testing of children at schools (children had to take a test twice a week without proper reasoning – compared to the employees of schools who had to take a test only once a week). Children with mental impairment or with the autism spectrum disorder who could not take a test due to their health condition were not allowed to be physically present at school. After the Defender’s intervention, the frequency of testing for children at schools decreased and children who could not take a test due to their health condition could be personally present at schools (2);
- in several hospitals, visits of children by their parents were either significantly limited or not possible at all (the same problems were detected in relation to people limited in their personal autonomy and people in the terminal stage of the disease): the Defender discussed these issues with the Minister of Health and was striving for the cooperation (sharing of good practices, etc.);
- recognition of vaccination from third countries: the number of third countries from which the vaccination certificate is or can be recognized is increasing (4);
- vaccination of foreign nationals residing in the Czech Republic (EU citizens and third country nationals): at first, it was not possible for foreign nationals to register for vaccination against COVID-19 in the Czech Republic; after the Defender’s discussion with the Ministry of Health, the vaccination for these persons has been made available in June 2021. (3)

The Public Defender also witnessed how the situation is particularly affecting certain groups.

Problems were registered in relation to the education of Roma children from the socially excluded areas. Schools were closed in the Czech Republic for a very long time so children had to be educated in the online regime. Unfortunately, this form of education was not suitable for all children, especially for those coming from socially excluded areas. There is also a lower vaccination rate among Roma people, especially among those coming from the socially excluded areas. This issue was also discussed on the session of the Inter-ministerial Commission for Roma Community Affairs. (5)

The Defender also detected that many parents had a problem to reconcile work and childcare in the situation of closed schools and online education. Women were especially affected by the pandemic and related measures because there is a higher percentage of women working in the front-line professions and the professions most affected by the pandemic measures. The occurrence of anxieties and depressions among women

significantly increased as well as the occurrence of domestic violence. The pandemic measures also had an extreme impact on lives of single parents.

In order to ease the difficult situation of the hundreds of thousands of people facing execution of their debts towards public authorities, also exacerbated by the economic consequences of the pandemic, the government launched the "Merciful Summer" on 28 October 2021. The purpose of the "Merciful Summer" campaign, coming to an end on 28 January 2022, is to give an opportunity to hundreds of thousands of people in the Czech Republic facing execution to pay their debts without various fines and penalties and by paying only the original amount recovered plus a fee to the executor of CZK 907.50 including VAT. The "Merciful Summer" event concerns only debts where the creditor is a public institution. (6)

### **References**

- (1) <https://eso.ochrance.cz/Nalezene/Edit/9726>
- (2) <https://eso.ochrance.cz/Nalezene/Edit/9954>  
[https://www.ochrance.cz/aktualne/zastupkyne\\_ombudsmana\\_se\\_obratila\\_na\\_ministr\\_a\\_zdravotnictvi\\_ohledne\\_testovani\\_zaku/](https://www.ochrance.cz/aktualne/zastupkyne_ombudsmana_se_obratila_na_ministr_a_zdravotnictvi_ohledne_testovani_zaku/)
- (3) <https://eso.ochrance.cz/Nalezene/Edit/9952>
- (4) <https://koronavirus.mzcr.cz/certifikaty/>
- (5) [https://test.ochrance.cz/dalsi-aktivty/archiv-vzdelavacich-akci/?tx\\_odcalendar%5Buid%5D=374&cHash=a62c84939b2d28c8e7d5db6e69d11f30](https://test.ochrance.cz/dalsi-aktivty/archiv-vzdelavacich-akci/?tx_odcalendar%5Buid%5D=374&cHash=a62c84939b2d28c8e7d5db6e69d11f30)  
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- (6) [https://www.exekuceinfo.cz/novinky/milostive-lety?gclid=CjwKCAiAz--OBhBIEiwAG1rIOrnaMpe61Mxa7CizuRw3vCeMGMMEqzSHzN96IK2XKFgYjdvqUgdYwxoC\\_OwQAvD\\_BwE](https://www.exekuceinfo.cz/novinky/milostive-lety?gclid=CjwKCAiAz--OBhBIEiwAG1rIOrnaMpe61Mxa7CizuRw3vCeMGMMEqzSHzN96IK2XKFgYjdvqUgdYwxoC_OwQAvD_BwE)  
<https://milostiveleto.cz/>

## Role of the NHRI

The Public Defender of Rights repeatedly turned to public authorities (especially to the Ministry of Health) with his questions and recommendations concerning the problematic issues connected with the COVID-19 measures. For example, the Defender appealed on the Ministry of Health several times to achieve the change of conditions under which Czech nationals and foreign nationals could enter the territory of the Czech Republic.

The Defender was actively engaged in many other issues related to COVID-19 measures, for example in the opening of the register for vaccination for foreign nationals or in the issue related to the testing of children with mental disability who could not be tested due to their health condition.

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

The Defender received many complaints related to COVID-19 measures (mandatory vaccination, mandatory wearing of respirators, issues related to testing, positive discrimination of vaccinated people, etc.).

The effectivity of functioning of the institution was not affected by the COVID-19 measures. There were restrictions and measures the Office of the Public Defender of Rights had to implement but it never impacted the effectivity of the institution's work. The Office introduced necessary safety measures (mandatory wearing of respirators, mandatory testing at the workplace, etc.), enabled an extended home working and provided the employees with all necessary equipment. The office hours for the public were restricted but the Office did not have to be closed for the public entirely. The systematic visits took place in 2021.