# Czech Republic
# NATIONAL PREVENTIVE MECHANISM
# (Art. 17 – 23 of the OPCAT)

## The Ombudsman's responsibilities ensuing from the amended Public Defender of Rights Act, in effect as of January 1, 2006

The amendment to law No. 349/1999 Coll. on the Public Defender of Rights was published in the Collection of Laws on September 30, 2005, under No. 381/2005 Coll. This concluded a legislative process taking more than two years, commencing in 2003 with the intent on the part of government, passing through discussions and partial alteration by both chambers of Parliament, and completed with endorsement by the President of the Republic on September 9, 2005. The ombudsman and the affected institutions will be obliged to respect the new wording of the law from January 1, 2006.

### Key Aim of the Amendment

The ombudsman's current responsibilities have been expanded to include the task of systematically visiting all places (facilities), where persons restricted in their freedom are or may be (Section 1, pars. 3 and 4, Section 21a). It is insignificant whether the persons are restricted in their freedom through a ruling or order of a public authority, or as a result of the factual state they are in. On his visits the Defender will ascertain how these persons are treated, endeavour to ensure their fundamental rights are respected and boost their protection against mistreatment.

Strictly speaking the Czech legal system recognizes the restriction of an individual's freedom chiefly in association with the criminal law. The restriction of freedom is generally considered any serving of custody or imprisonment, protective therapy or protective care or securing by the police, but not a situation when persons are placed in various facilities *de jure* more or less voluntarily, yet given their personal situation (age, state of health, physical or mental handicap) or given the regime, their freedom is restricted *de facto*.

### Justification for entrusting this agenda to the ombudsman

Up until now there was no authority that would carry out systematic preventive external inspection of places where persons restricted in their freedom, in the Czech Republic. The Public Defender of Rights is an institution that has its independence sufficiently functionally and institutionally protected by law. The activity of the Defender to date suggests that he will focus not only on formal observance of legality (as does for instance the State Prosecutor's Office) while visiting and evaluating systematic visits, but also on cases where the conduct of responsible persons or the state in the facilities has failed to comply with the principles of a democratic legal state and of good administration.

### International legal commitments of the Czech Republic

The legal regulation passed complies with international treaties binding on the Czech Republic. These are the International Covenant on Civil and Political Rights (declared under No. 120/1976 Coll.), the Convention on the Protection of Human Rights and

Fundamental Freedoms (declared under No. 209/1992 Coll.) and in particular the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (declared under No. 143/1988 Coll.) Endorsing the **Optional Protocol** to the Convention (OPCAT) on December 18, 2002, instituted international and national preventive mechanisms. OPCAT creates a two-component system for the prevention of torture and other cruel, inhuman or demeaning treatment or punishment. The first - establishing the international mechanisms – the Subcommittee for Prevention, to perform inspection visits in places where persons restricted in their freedom are held. Moreover OPCAT compels contractual states to institute one or more similar mechanisms on a national level too. **The ombudsman, furnished with his new mandate, meets all the criteria set out by OPCAT for so-called National Preventive Mechanism.**

## Types of facilities where the Ombudsman performs systematic preventive visits

The Defender makes inspection visits to all facilities where persons restricted in freedom are or may be, whether as a result of a legal warrant or due to their dependence on care rendered, regardless of whether such facilities are state or private. These primarily include:

- **prison facilities,** i.e. prisons, custody prisons, including prisons for local service of sentence, i.e. facilities where a criminal proceedings sentence is served, expatriation and extradition custody, service of sentence, or protective therapy according to the act on the serving of imprisonment and the act on the serving of custody. (Detention institutions for the serving of the protective measure of security detention, the establishment of which is being prepared, should also be taken into consideration.)
- **police cells** serve to hold arrestees (Section 69, Code of Criminal Procedure), detainees (Section 75 and 76 of the Code of Criminal Procedure), those summoned (Section 13, par. 5 of the Czech Police Act) or those otherwise secured (Sections 14 and 15 of the Czech Police Act),
- **facilities for securing of foreigners** (Section 130 of Act on the Residence of Foreigners) serve to secure foreigners for the purposes of administrative extradition (for up to 180 days under Section 124 of Act on the Residence of Foreigners), or for the purposes of their surrender in line with international treaties (for an indispensable period under Section 129 of the Act on the Residence of Foreigners),
- **military facilities** (with reservations ensuing from the professionalisation of the Czech Army), i.e. military prisons for the serving of the disciplinary punishment of imprisonment under Section 39 of the Act on the Course of National Military Service or Alternative Service and Military Manoeuvres, and cells of preliminary custody installed in military prisons for holding secured person, detainees or summoned soldiers under Section 14 of the Military Police Act,
- **facilities for the execution of protective or institutional education** in accordance with the act on the execution of institutional and protective education, i.e. diagnostic institutions, orphanages with a school and reform schools and educational care centres,

- **asylum facilities** of the Ministry of the Interior founded in accordance with Section 79 of the Asylum Act, i.e. reception centres, centres, including reception centres, in the transit area of an international airport, accommodation centres and integration asylum centres,
- **social care facilities** defined in the Act No. 108/2006 Coll., i.e. mostly social care institutions (institutions for physically-handicapped youth, institutions for physically-handicapped youth with an associated mental handicap, institutions for physically-handicapped youth with multiple defects, institutions for mentally-handicapped youth, institutions for physically-handicapped adults, institutions for physically-handicapped adults with an associated mental disorder, institutions for physically-handicapped persons with multiple defects, institutions for sensually-handicapped adults, institutions for mentally-handicapped adults, institutions for chronic alcoholics and drug-addicts, institutions for chronic psychotics and psychopaths, retirement homes, homes-pensions for pensioners – with reservation), homes for mothers with children, child-care services stations, facilities for persons in need of special help, facilities for socially inadaptable persons, asylum type facilities, community care service facilities for old people and seriously medically-handicapped persons,
- **health-care facilities** treated under Section 31 to 42 of the Act on the Health of People, i.e. mainly health care institutions (sanatoria for tuberculosis and respiratory diseases, mental homes, rehabilitation institutions and other medical institutions, sanatoria and night sanatoria) including institutions for long-term patients according to Section 15, par. 1 of Decree No. 242/1991 Coll., on the System of Health Establishments Founded by District Authorities and Municipalities, and so-called special children's facilities, i.e. infant homes, orphanages and crèches caring for the overall development of children up to three, as well as hospitals (particularly wards, their closed departments), and other health care facilities such as alcohol-abuse centres (Section 8 of Act No. 37/1989 Coll., on Protection Against Alcoholism and Other Drug Addictions, as later amended) or hospices,
- **facilities for the social and legal protection of children**, i.e. facilities for children in need of immediate help (Section 46 of the Family Act, Section 42 of the Act on the Social and Legal Protection of Children). Other facilities for social and legal protection of children the current law knows, i.e. for instance facilities for performance of foster care (Section 44 of the Act on the Social and Legal Protection of Children), will not come under the Defender's competence, because children in such facilities are not entrusted into the care of such a facility, but to the care of the foster parent(s) that happens as a part of a private-law relation – between foster parent and child and between foster parent and facility founder, i.e. not a relationship between child and facility.
- **public facilities for the survival of inhabitants in state of crisis** under Act No. 240/2000 Coll., on Crisis Management, as amended, depending on the level of dependence of persons on care (services), that individual facilities will render according to the specific crisis situation.

## What Approach the Ombudsman Applies?

The basic working method is organising and making **visits to facilities** where persons restricted in their freedom are, or may be, located. (Section 1, par. 3 and 4 of the Public Defender of Rights Act). Visits are systematic, carried out according to a pre-prepared **plan** for a specific period. In this sense the visits are regular, with a pre-eminently preventive aim. Qualified staff from the Ombudsman's office always visits a number of specific facilities as part of a scheduled topical focus. The choice of individual facilities is governed for instance by previous intelligence from the ombudsman's experience, references obtained from the public or inmates (positive or negative) or from the results of inspection instruments of the relevant department.

Having carried out the visit the ombudsman produces a **report** on their findings, with recommendations to carry out certain remedial measures (Section 21a of the law) and gradually endeavour to compel the facility to improve. Such reports on findings may, and mostly do, contain **recommendations or proposals for remedial measures**. Given the supposed comprehensiveness of the reports and the ombudsman's so-called 'soft sanction' character, they may set the deadline for a response to visits that have been conducted and evaluated. The ombudsman's present investigative powers as laid out in the Act on the Public Defender of Rights apply to the full in inspection visits to facilities. Given that the facilities are often non-governmental this is a challenge. The ombudsman can also approach facilities' founders or the relevant authorities with an appeal to react.

In the event of disagreement with his conclusions, the ombudsman informs the superior authority of their findings, or **make their view public**. (Section 20, par. 2 of the act).

The ombudsman's endeavours should result in the institution and subsequent promotion of certain **standards for the treatment of persons** that individual types of facility should comply with.

## Budgetary and Human Resources

The Office of the Public Defender of Rights was established in 2001 to fulfill the tasks related to professional, organizational and technical support of the activities of the Public Defender of Rights in accordance with the provisions § 25 Par. 2 Act No. 349/1999 Coll. on the Public Defender of Rights. The Office constitutes a structural component of the state administering a budget stipulated by independent section No. 309 of the state budget. Administration of the budget of the Office is governed by binding regulations, mainly stipulated within the Provisions of Act No. 219/2000 Coll. on the Property of the Czech Republic and its Representation in Legal Relations, Act No. 320/2001 Coll. on Financial Supervision and Ministry of Finance Decree No. 62/2001 Coll. on Administration of Budget of State Structural Components and on State Organisations Administrating the Property of the State. All of the above-mentioned provisions are applicable in their latest wording. Information concerning the budget and expenditure of the Office as well as other relevant information can be obtained at the Office in accordance with Act No. 106/1999 Coll., on Free Access to Information.

The Office has the following departments: Secretarial Department of the Defender and the Deputy Defender, Legal Department, Department of Administrative and Filing Services and Department of Internal Administration.

As a part of Legal Department is established a Monitoring Places of Detention Section with currently 11 permanent employees. Moreover, for every single visit of each type of facility are part-timely hired specialists.

**Apendix**

- Act No. 349/1999 Coll. on the Public defender of Rights (NPM in § 1/3,4)
- Annual Reports 2006 – 2007
- Specific Reports