

The Czech Public Defender of Rights was established by Act No. 349/1999 Coll. on the Public Defender of Rights (further only "the Act").

Approval of the Act meant that the Czech legal order was to incorporate a brand new and unusual institution.

At the stage of the preparation of the draft the opportunity to apply extensive experience based on similar overseas and foreign institutions of the ombudsman was limited since the Czech counterpart of such an institution was established in a relatively different legal as well as social environment. → The Act complies with all of the basic principles of the ombudsman even if it might have had to accept a slightly different direction with respect to certain issues. The Act was being drafted at the time of heated discussions in which doubts were repeatedly articulated undermining the very need for such an Act.

→ One of the crucial arguments to support the passage of the Act was, among others, the statement of the Committee of Ministers of the Council of Europe. The Committee of Ministers of the Council of Europe in its Recommendation R/85/13 on Institution of the Ombudsman as well as in its Recommendation R/97/14 on establishment of independent national institutions for the promotion and protection of human rights urged the member states to consider the establishment of the ombudsman institution or an institution of similar nature especially in the countries affected by sudden social and political changes, by economic transformation or by violent events of war-like nature leading to threats to human, industrial, social and cultural rights.

Foreign experience also proves that ombudsman institutions remedy or at least act as means for reduction of the dissatisfaction of citizens with respect to the situation within state administration. Such dissatisfaction might however, be based on both objective and subjective negative experience with the way state administration officials execute the authority of state.

Citizens are sensitive to situations in which, actually or supposedly, they might feel neglected, overlooked or humbled, since citizens often do not know where, how and in what way their rights and interests can be exerted.

The system of courts including administrative courts seems to be complicated, complex and costly as well as time-consuming and often inefficient and subject to a much discussion. Apart from those traditional procedural means of protection what seems to generally appear as insufficient is the mechanism of internal supervision over the execution of state administration applying function-based structure and practicing the principle of purely function-based responsibility for the malpractice or insufficiencies uncovered. Unlike court-type institutions serving to rectify cases in which failure to comply with legal standards is uncovered the Public Defender of Rights can ensure remedy even in cases when the action of a relevant office or an institution complies with the law but might be in other ways incorrect, inadequate or unjust or even in cases when the relevant institution fails to act.

The existence of and institution of the ombudsman can to a large extent remedy the disadvantageous status of citizens with respect to the system of state administration might be significantly compensated for, since the ombudsman acts as an institution that is external, independent, free, relatively co-operative and as informal as possible.

The main role of the ombudsman is to ensure protection of rights and legitimate interests mainly in the areas in which the citizens or other entities and subjects encounter the offices of state administration.

Foreign experience indicates that the very existence of the ombudsman also has extensive preventive impact. The offices and the officials in charge of state administration must be aware that when citizens as a party to the procedure do not feel satisfied with either their performance or with their decision, they may find themselves in a situation in which they will have to provide explanation and justification for the measures taken and the decisions issued.

The Public Defender of Rights has no direct means or mechanisms of enforcement at his/her disposal:

- The ombudsman requests the body of state administration responsible for malpractice or error to remedy the situation.
- The role of the Defender cannot be perceived in changing or replacing the decisions of the relevant body of state administration but in instructing the above bodies to apply their own supervisory and correctional sanction-imposing legitimate authority and power to ensure remedy of the situation.
- The most significant and unexpectedly the most effective means of sanction that the Defender of Rights is entitled to use is the sanction represented by informing the public on the malpractice of relevant institution.

The Defender of Rights is obliged to continually inform the public on the activities and findings of the Office → The Public Defender of Rights regularly on a quarterly basis informs the Chamber of Deputies of the Czech Republic on the activities of the Office.

The Act stipulates that the Public Defender of Rights is not only obliged to contribute towards remedies for malpractice and errors of the individual institutions in their dealings with citizens but is also obliged to evaluate the findings and propose such systemic remedial measures that would remove or alter the actual cause of the situation leading to malpractice in the first instance. → Such activities represent the contribution of the Public Defender of Rights towards the improvement of the quality of the state administration or in other words towards the improvement of the state administration with respect to all persons involved.

Findings based on the activities of the Defender in a given year in their more general form are submitted to the Chamber of Deputies of the Czech Republic in the annual report for the relevant year. The report is to be discussed by the Chamber of Deputies and is also received by the Senate, the President of the Czech Republic, the Government Departments and other administrative bodies with national powers.

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The report contains detailed information on the activities of the Defender. It also attempts to attract attention to issues uncovered by the Public Defender of Rights that could be seen as the cause of the dissatisfaction of the complainants with respect to the legislation of the country and malpractice of state administration. On a more general level such issues could be perceived as the cause of the obstacle standing in the way of citizens attempting to fulfill their rights and legitimate interests or even causing failure of citizens to have such rights recognized. The law-making authorities in question, if willing to listen carefully can be more aware of the inefficiencies that are to be resolved.

The Public Defender of Rights

The Public Defender of Rights is elected by the Chamber of Deputies of the Czech Republic. Two candidates are proposed by the President and two by the Senate. The term of office of the Public Defender is six years and the Defender can serve only two consequent terms of office.

He/she can be any person eligible for the Senate:

- Czech citizenship
- The right to vote
- Aged 40 or more

Such a person may not be a member of any political party or movement and may not undertake any other posts, offices or any other gainful activities. The Defender assumes his/her powers within the office when being sworn in by the Chairman of the Chamber of Deputies of the Czech Republic and once established in the office he/she reports directly to the Chamber of Deputies.

The Deputy Public Defender of Rights is elected in a procedure identical to the election of the Defender, identical conditions for candidature and identical term of office apply. The Deputy has at his/her disposal the full powers of the Defender when the Defender is not available and additional powers entrusted to the deputy by the Defender.

The Office assisting the Public Defender of Rights in his/her activities is established out of the will of the Defender since the Act contains merely a basic framework for activities of the Office of the Public Defender of Rights. This Office “shall fulfill the tasks related to professional, organizational and technical support“ of the activities of the Public Defender of Rights.

The Powers of the Public Defender of Rights

As stipulated by the Act the Public Defender of Rights in the Czech Republic acts to protect the persons from conduct of offices and other institutions undertaking state administration, should such conduct be contrary to the law or even if not contravening the law then otherwise faulty, erroneous or incorrect.

Acts to protect persons from conduct of offices and other institutions undertaking state administration should such conduct:

- be contrary to the Law or
- not comply with principles of a democratic state respecting the rule of law or be defined as a failure to act.

That means such conduct as does not comply with the principles of a democratic state respecting the rule of law and the principles of good administration or such conduct as can be defined as a failure of the relevant office or institution to act.

In accordance with the Act the Defender is authorized to deal with complaints submitted about the conduct of the following:

- Ministries and other administrative offices with authority over the entire territory of the state and administrative offices subordinate to these,
- The Czech National Bank when acting as an office of state administration,

- The Council for Radio and Television Broadcasting,
- Self-government bodies (local and regional authorities) if the conduct is related to state administration (not conduct related to self-government activities)
- Municipalities when their conduct is related to the activities of state administration but not when the decisions issued by the municipalities within their own authority are concerned,
- Police of the Czech Republic with the exception of investigations within criminal proceedings,
- Army of the Czech Republic and the Castle Guards,
- Prison Service of the Czech Republic,
- Institutions, facilitating custody and prison sentence service, protective and institutional or deterrence care, and institutions providing protective health care,
- public health insurance institutions,
- Bodies of courts when conducting state administration (mainly issues of procedural delays, inactivity of the court and inappropriate conduct of judges).

In accordance with the Act the Defender is awarded extensive authority to conduct independent inquiries into individual issues; however, the Defender is not entitled to substitute for the activities of bodies of state administration nor is entitled to alter or replace their decisions.

Should he uncover maladministration he may request that the relevant office or institution remedy the situation. A significant right of the Public Defender of Rights is his right to decide to open an inquiry on his own initiative.

- The above legal definition of the authority of the Defender does not entitle the Defender to interfere with civil law or private law relations nor disputes (including the disputes between employer and employee even where the employer is an office of state administration.)
- The Defender may not interfere with the decision-making power of courts, does not constitute an instance of appeal against decisions issued by courts and is entitled to interfere with the conduct and activities of specifically stipulated institutions.

The Defender's authority does not include the following institutions:

- Courts of all instances and the nature of their decision-making power,
- Parliament, President and the government,
- Supreme Audit Office,
- Intelligence services of the Czech Republic,
- Bodies active in criminal proceedings,
- The State Prosecutor.

How to Approach the Public Defender of Rights

How to submit a complaint?

Although submission of a complaint is not bound by many formal requirements, the Act stipulates the complaint is to contain several elements. Supplying these when first contacting the office avoids unnecessary correspondence needed to supplement a complaint and will lead to significant reduction of time needed to deal with the matter. Complaints can be submitted

(or supplemented) in writing or even orally at the Office of the Public Defender of Rights, or via electronic mail containing the form with all of the required elements.

The complaint must be submitted by the person requesting protection of their rights. Complaints on behalf of other legally competent persons may not be submitted. → Only complaint filed by a representative of another person, written power of attorney or another document stating the scope of representation authority.

A complaint should always include:

- explanation of relevant circumstances stating whether the matter has or has not been passed onto another body and if so with what result,
- name, surname and address of the complainant (if relevant acceptable power of attorney), in case of corporate entities the name, address and person authorised to act on behalf of the entity,
- Descriptive title of the office or offices the complaint is concerned with, documentation indicating that the institution concerned has been unsuccessfully requested to remedy the situation.
- Should the complaint be concerned with a decision, the complainant is requested to enclose a copy of the decision.