

## 349/1999 Coll.

### ACT

of 8 December 1999

#### on the Public Defender of Rights

Amended by: [265/2001 Coll.](#)

Amended by: [320/2002 Coll.](#)

Amended by: [626/2004 Coll.](#)

Amended by: [381/2005 Coll.](#)

Amended by: [342/2006 Coll.](#)

Amended by: [314/2008 Coll.](#)

Amended by: [129/2008 Coll.](#)

Amended by: [198/2009 Coll.](#)

Amended by: [227/2009 Coll.](#)

Amended by: [427/2010 Coll.](#)

Amended by: [303/2011 Coll.](#)

Amended by: [396/2012 Coll.](#)

The Parliament has adopted the following Act of the Czech Republic:

### PART ONE

#### GENERAL PROVISIONS

##### Section 1

(1) The Public Defender of Rights (hereinafter the “Defender”) shall work to defend persons against the conduct of authorities and other institutions set forth in this Act where such conduct is at variance with the law or does not comply with the principles of a democratic State governed by the rule of law and good administration, as well as against their inaction, thereby contributing to the defence of fundamental rights and freedoms.

(2) The competence of the Defender pursuant to [paragraph 1](#) applies to ministries and other administrative authorities having competence over the entire territory of the Czech Republic, administrative authorities subject to them, the Czech National Bank when acting as an administrative authority, the Council for Radio and Television Broadcasting, bodies of regional and local government in the exercise of State administration, and unless hereafter stipulated otherwise, the Police of the Czech Republic, Army of the Czech Republic, Castle Guard, Prison Service of the Czech Republic, to facilities serving for remand in custody, imprisonment, protective or institutional education, protective treatment, preventive detention, as well as to public health insurance companies (hereinafter an “authority”).

(3) The Defender shall systematically visit places where persons restricted in their freedom by public authority, or as a result of their dependence on care provided, are or may be confined, with the objective of strengthening the protection of these persons against torture, or cruel, inhuman and degrading treatment, or punishment and other forms of ill-treatment.

(4) The competence of the Defender pursuant to [paragraph 3](#) applies to

a) facilities serving for remand in custody, imprisonment, protective or institutional education, or protective treatment or preventive detention;

b) other places where persons restricted in their freedom by public authority are or may be confined, especially police cells, facilities for the detention of foreigners and asylum facilities;

c) places where persons restricted in their freedom are or may be confined as a result of dependence on the care provided, especially social services facilities and other facilities providing similar care, health-care facilities and facilities providing social and legal protection of children (hereinafter a "facility").

(5) The Defender shall perform his or her competence in matters concerning the right to equal treatment and protection against discrimination<sup>1)</sup>.

(6) The Defender shall monitor detention of foreign nationals and the execution of administrative expulsion, transfer or transit of detained foreign nationals and of the punishment of expulsion imposed on foreign nationals placed in banishment custody or serving prison sentences (hereinafter "expulsion monitoring").

(7) The competence of the Defender does not apply to the Parliament, the President of the Republic and the Government, the Supreme Audit Office, the intelligence services of the Czech Republic, prosecuting bodies, public prosecutors and courts, with the exception of the public prosecutor's administrative bodies and the State administration of courts.

(8) The Defender is authorised to initiate proceedings pursuant to the Act on Proceedings in Matters of Judges and Public Prosecutors<sup>1a)</sup> and participate in the proceedings.

(9) The Defender is not authorised to interfere with the activities and decisions made by authorities and facilities in any manner other than as stipulated in this Act.

## Section 2

(1) The Defender shall be elected by the Chamber of Deputies for a term of office of six years from among candidates of whom two shall be nominated by the President of the Republic and two by the Senate: identical proposals are admissible. The Defender may be elected for a maximum of two consecutive terms.

(2) All those who are eligible for election to the Senate may be elected as the Defender.

(3) The seat of the Defender shall be in Brno.

(4) The Deputy Defender shall represent the Defender in full during periods of the Defender's absence. The Defender may delegate part of his or her competence to the Deputy. Unless stipulated otherwise in this Act, the provisions of this Act concerning the Defender apply analogously to the election, loss of office, removal from office and the legal status of the Deputy Defender.

## Section 3

(1) The office of Defender is incompatible with the office of the President of the Republic, member of the Chamber of Deputies or the Senate, and judge, as well as with any role in public administration.

(2) The discharge of the office of Defender is incompatible with other profit-making activities, with the exception of management of the Defender's private property and activities of a scientific, educational, columnist, literary or artistic nature, so long as this is not to the detriment of the discharge of the Defender's office and its dignity, and does not jeopardise the trust in the independence and impartiality in the discharge thereof.

(3) The Defender may not be a member of any political party or political movement.

(4) If subject to compulsory military conscription, the Defender shall not be called up for active service or the active service will be suspended during the term of his or her office; military exercise periods thus missed shall be waived.

#### Section 4

(1) The Defender shall assume the office by taking an oath before the Speaker of the Chamber of Deputies, but not before the date following the date of expiry of the term in office of the previous Defender; the former Defender shall exercise the competence of the Defender until the new Defender takes the oath.

(2) The Defender's oath shall have the following wording: "I promise on my honour and conscience that I will discharge my office independently and impartially, in accordance with the Constitution and other laws, and that I will protect the inviolability of rights."

(3) If the Defender fails to take the oath within 10 days of election or if the Defender takes the oath with a reservation, he or she shall be deemed not to have been elected.

#### Section 5

(1) The Defender shall discharge his or her office independently and impartially.

(2) The Defender is accountable to the Chamber of Deputies.

#### Section 6

(1) The Defender's office terminates as of the date following the date when

- a) his or her term in office expired;
- b) a court judgment came into legal force whereby the Defender was convicted of a criminal offence;
- c) the Defender ceased to be eligible for election to the Senate;
- d) the Defender assumed an office set forth in [Section 3 \(1\)](#) or a role in public administration; or
- e) the Defender's written declaration of resignation from the office was delivered to the Speaker of the Chamber of Deputies.

(2) The loss of the office on the grounds set forth in [paragraph 1](#) above shall be announced by the Speaker of the Chamber of Deputies, who shall inform the person who has lost the office of Defender of this fact in writing.

(3) If the Defender carries out an activity which, pursuant to [Section 3 \(2\)](#), is incompatible with the discharge of the office, or if the Defender is a member of a political party or political movement, the Chamber of Deputies shall remove him or her from the office of Defender and inform the Defender in writing accordingly; the removal shall take effect as of the date of delivery of the written notification.

(4) The Speaker of the Chamber of Deputies shall inform the Senate, the President of the Republic and the public of the removal from office; the Speaker of the Chamber of Deputies shall also inform the Chamber of Deputies of the loss of office.

(5) The election of the Defender shall take place within a period commencing on the sixtieth day before expiry of the Defender's term in office and ending on the date of expiry.

(6) If the Defender's office becomes vacant before termination of his or her term in office, the election of the Defender shall take place within 60 days.

(7) If the Defender is not elected within the period pursuant to [paragraph 5](#) or [6](#) above, a new election shall take place within 60 days.

#### Section 7

(1) The Defender may not be criminally prosecuted without the consent of the Chamber of

Deputies. 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.

(2) The Defender shall maintain confidentiality of facts that he or she learns during the discharge of the office, also after the termination of the office, unless the law stipulates otherwise; the same duty shall also be borne by employees of the Office of the Public Defender of Rights (hereinafter the "Office") ([Section 25](#)).

(3) The Speaker of the Chamber of Deputies may release the Defender or the employees of the Office from the duty to maintain confidentiality under [paragraph 2](#) above for serious reasons.

(4) Governmental bodies, including the prosecuting bodies, may inspect the Defender's files or remove such files only on the basis of a law and with the consent of the Defender or, if the Defender denies consent, with the consent of the Speaker of the Chamber of Deputies.

#### Section 8

(1) The office of the Defender is a public office.

(2) The Defender is entitled to a salary, severance pay, reimbursement of expenses and benefits in kind equal to that of the President of the Supreme Audit Office. The Deputy Defender is entitled to a salary, severance pay, reimbursement of expenses and benefits in kind equal to that of the Vice-President of the Supreme Audit Office.

## PART TWO

### ACTIVITIES OF THE DEFENDER

#### Section 9

The Defender shall act

a) on the basis of a complaint lodged by a natural or legal person (hereinafter a "complaint") addressed to him or her;

b) on the basis of a complaint addressed to a member of the Chamber of Deputies or the Senate, who has passed the said complaint on to the Defender;

c) on the basis of a complaint addressed either to the Chamber of Deputies or the Senate, which has been passed to the Defender; or

d) on his or her own initiative.

#### Section 10

(1) Everyone has the right to address the Defender with a written complaint in matters that fall under the Defender's competence (pursuant to [Section 1 \(1\)](#) and [\(2\)](#)); such a complaint may also be made orally into a record.

(2) A complaint may not be subject to official inspection.

(3) A complaint is not subject to a fee.

#### Section 11

(1) A complaint must contain

a) a description of the material facts of the case ([Section 10 \(1\)](#)), including information as to whether the case has also been submitted to some other governmental body and, if relevant, the outcome;

b) the designation of the authority and, where appropriate, the name and surname or other information as to the identity of the person to whom the complaint pertains;

c) a proof that the authority to which the complaint pertains has been unsuccessfully invited to ensure remedy;

d) the name, surname and domicile (or, for a legal person, the name, seat/registered office and persons authorised to act on its behalf) of the party lodging the complaint (hereinafter the “complainant”).

(2) Where a complaint concerns a decision, the complainant shall submit a copy of the decision.

## Section 12

(1) The Defender shall set the complaint aside if the case in question does not fall within the Defender’s competence or does not concern the party lodging the complaint.

(2) The Defender may set a complaint aside if

a) the requisites under [Section 11](#) have not been supplemented within the set deadline;

b) it is obviously unfounded;

c) on the date of delivery of the complaint, more than one year has elapsed from the legal force of the decision or from the measure or event to which the complaint pertains;

d) the case to which the complaint pertains is subject to pending court proceedings or has already been decided by a court; or

e) if the complaint is filed in a case that has already been inquired into by the Defender ([Sections 17](#) and [18](#)) and the new complaint does not reveal any new facts.

(3) The Defender shall advise the complainant in writing that the complaint has been set aside and state the reasons.

## Section 13

Where, in view of its content, a complaint represents a remedy pursuant to regulations on proceedings in administrative or judicial matters, a lawsuit or remedy in administrative justice, or a constitutional complaint, the Defender shall inform the complainant accordingly without delay and provide instructions to the complainant as to the correct procedure.

## Section 14

If the Defender does not set the complaint aside ([Section 12](#)) or does not proceed according to [Section 13](#), the Defender shall initiate an inquiry and the complainant shall be informed in writing accordingly.

## Section 15

(1) The Defender is authorised, with the knowledge of the heads of the authorities concerned, to enter all the authorities’ premises even without prior notice in order to carry out an inquiry involving

a) inspection of files;

b) interviewing the authorities’ employees;

c) interviewing persons placed in the facilities, also without the presence of other parties.

(2) At the Defender's request, the authorities shall carry out the following within the deadline set by the Defender:

- a) provide information and explanations;
- b) submit files and other written materials;
- c) provide their statement in writing as to the facts of the case and legal issues;
- d) take evidence adduced by the Defender;
- e) perform such supervisory actions to which they are authorised by law and which the Defender suggests.

(3) The Defender is authorised to be present at oral hearings and during the process of taking of evidence by the authorities and to give questions to the persons present.

(4) For the purposes of inquiry pursuant to the previous paragraphs, a person authorised to this effect pursuant to a special law shall release individual employees of an authority, at the Defender's request, from the duty to maintain confidentiality that has been imposed on them by a special law. Where no special law identifies the person authorised to release the above from the duty to maintain confidentiality, for the purposes hereof the head of the relevant authority shall be deemed to be such a person with respect to any employee of that authority, the head of the superior authority, or if there is no such authority, the Prime Minister, shall be deemed such with respect to the head of a subordinate authority. For the purposes of an inquiry under this Act, the Defender cannot be required to comply with a confidentiality obligation based on a contract.

## Section 16

All governmental bodies and persons exercising public administration are obliged, within the scope of their competence, to provide any assistance requested by the Defender in the performance of the Defender's inquiry.

## Section 16a

(1) For the performance of the Defender's duties pursuant to this Act, the Ministry of the Interior or the Police of the Czech Republic shall provide the Defender with the following:

- a) reference data from the basic population register;
- b) data from the agenda information system for the population records;
- c) data from the agenda information system for foreign nationals;
- d) data from the register of birth identification numbers of persons who were assigned a birth identification number but do not have a record in any of the information systems listed under subparagraphs b) and c).

(2) The data provided pursuant to [paragraph 1 \(a\)](#) shall include:

- a) surname;
- b) name(s);
- c) residence address;
- d) date, place and district of birth, or date, place and country of birth for data subjects born abroad;
- e) date, place and district of death, or date of death, place and country where the data subject died if the latter died outside the Czech Republic; in case of a court decision on declaring a person dead, the

date given in the decision as the date of death or the date which the data subject who is being declared dead did not survive, and the date of legal force of this decision;

f) citizenship(s).

(3) The data provided pursuant to [paragraph 1 \(b\)](#) shall include:

a) name(s), surname and, where applicable, a change thereof, and surname at birth;

b) date of birth;

c) place and district of birth, or place and country of birth in case of citizens born abroad;

d) birth identification number;

e) citizenship;

f) address of the permanent residence, including all previous addresses of permanent residence;

g) the date of commencement of permanent residence, or the date of cancellation of the record on the place of permanent residence or the date of termination of permanent residence in the Czech Republic;

h) incapacitation or limitation of legal capacity;

i) marital status, date and place of marriage;

j) date, place and district of death, and, if the person died outside the territory of the Czech Republic, the country in which the death occurred, and the date of death, where applicable;

k) date which was specified as the date of death in a court decision on declaring the person dead or the date which the citizen who is declared dead did not survive.

(4) The data provided pursuant to [paragraph 1 \(c\)](#) shall include:

a) name(s), surname, a change thereof, and surname at birth;

b) date of birth;

c) place and country of birth;

d) birth identification number;

e) citizenship;

f) type and address of residence;

g) number and date of expiry of the residence permit;

h) date of commencement of residence, or the date of termination of residence;

i) incapacitation or limitation of legal capacity;

j) marital status, date and place of marriage;

k) administrative or court-ordered expulsion and the period of time for which the given person is banned from entering the Czech Republic;

l) date, place and district of death; if the person died outside the territory of the Czech Republic, the country in which the death occurred, and the date of death, where applicable;

m) date which was specified as the date of death in a court decision on declaring the person dead or the date which the foreign national who is declared dead did not survive.

(5) The data provided pursuant to [paragraph 1 \(d\)](#) shall include:

- a) the name(s), surname and, if applicable, the surname at birth;
- b) birth identification number;
- c) original birth identification number if the birth identification number has changed;
- d) day, month and year of birth;
- e) place and district of birth, or in case of a natural person born abroad, the country in which he or she was born.

(6) Data kept as reference data in the basic population register shall be taken from the agenda information system for population records or the agenda information system of foreign nationals only if they are in a form preceding the current state.

(7) In each specific case, only the data necessary for carrying out a given task may be taken from the accessible records.

#### Section 17

If the Defender does not ascertain any breach of legal regulations or any other maladministration ([Section 1 \(1\)](#)) in the course of his or her inquiry, the Defender shall inform the complainant and the authority in writing accordingly.

#### Section 18

(1) If the Defender ascertains a violation of legal regulations or any other maladministration ([Section 1 \(1\)](#)) in the course of his or her inquiry, he or she shall request the authority to provide a statement on the Defender's findings within 30 days.

(2) If the authority states at the request pursuant to [paragraph 1](#) above that it has implemented or is in the process of implementing remedial measures, and the Defender finds these measures to be sufficient, the Defender shall inform the complainant and the authority accordingly. Otherwise, following receipt of the statement or expiry of the deadline to no effect, the Defender shall inform the complainant and the authority in writing of the Defender's final statement; the latter shall include a suggested remedy.

#### Section 19

The Defender may suggest mainly the following remedial measures:

- a) initiating proceedings on review of a decision, act or procedure of the authority if it is possible to initiate such proceedings *ex officio*;
- b) performing acts to eliminate inactivity;
- c) initiating disciplinary or similar proceedings;
- d) initiating prosecution for a criminal offence, infraction or some other administrative offence;
- e) provision of indemnification or filing a claim for indemnification.

## Section 20

(1) The authority shall inform the Defender within 30 days of receipt of the final statement of the remedies that have been implemented.

(2) If the authority fails to comply with the duty under [paragraph 1](#) above, or if the remedial measures are insufficient in the Defender's opinion, the Defender

a) shall inform the superior authority, or if there is no such authority, the Government;

b) may inform the public of his or her findings, including disclosure of the names and surnames of persons authorised to act on behalf of the authority.

(3) The Defender may also proceed in the manner set forth in [paragraph 2](#) above if the authority fails to comply with a duty arising from [Sections 15](#) and [16](#).

## Section 21

If the Defender acts on his or her own initiative, [Sections 15 to 20](#) apply analogously.

### Section 21a

(1) [Sections 15](#) and [16](#) apply analogously to visits to facilities and expulsion monitoring.

(2) For the purposes of monitoring the execution of the punishment of expulsion of a foreign national who has been taken into banishment custody or who is serving imprisonment, the Police of the Czech Republic shall inform the Defender of the execution of the punishment sufficiently in advance.

(3) After visiting a facility, after any mutually associated visits to several facilities, or following expulsion monitoring, the Defender shall draw up a report on his or her findings. The report may include recommendations and/or suggestions for remedial measures.

(4) The Defender shall request the facility to respond to the Defender's report, recommendations or suggestions for remedial measures within the deadline set by the Defender. The Defender may also request that the founder of the facility or the competent authorities issue a statement. If the Defender finds their statement satisfactory, the Defender will inform the facility or its founder, or the competent authorities accordingly. Otherwise, following receipt of the statement or expiry of the deadline to no effect, the Defender may proceed pursuant to [Section 20 \(2\)](#) analogously.

(5) In case of failure to comply with the co-operation duty pursuant to [Sections 15](#) and [16](#), the Defender may proceed pursuant to [Section 20 \(2\)](#).

### Section 21b

The Defender shall contribute to promotion of the right to equal treatment of all persons regardless of their race or ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief or world view, and to this end, the Defender shall

a) provide methodological assistance to victims of discrimination in lodging their applications to initiate proceedings concerning discrimination;

b) perform research;

c) publish reports and issue recommendations on discrimination-related issues;

d) provide for exchange of the available information with the relevant European entities.

## PART THREE

### SPECIAL POWERS AND DUTIES OF THE DEFENDER

#### Section 22

(1) The Defender is authorised to recommend that a legal or internal regulation be issued, amended or cancelled. The Defender shall submit the recommendation to the authority whose competence is concerned and, if the matter concerns a Government regulation or resolution or a law, with the Government.

(2) The authority shall provide its statement on the recommendation pursuant to [paragraph 1](#) above within 60 days. [Section 20\(2\)](#) shall apply analogously.

(3) The Defender may nominate lay judges for registration in the list of lay judges in proceedings concerning judicial distrainers pursuant to a special legal regulation.

#### Section 23

(1) By 31 March each year, the Defender shall submit to the Chamber of Deputies a written annual report on the Defender's activities during the past year; the report shall be a parliamentary publication. The Defender shall simultaneously send the report to the Senate, the President of the Republic, the Government, and ministries and other administrative authorities having competence over the entire territory of the State and the Defender shall publish the report in a suitable manner.

(2) The Defender shall systematically inform the public of his or her activities under this Act and of any findings resulting from his or her activities. The Defender shall publish in a suitable manner reports on visits to facilities and reports on monitoring of expulsions, including statements received, and selected reports on completed inquiries in individual matters; [Section 20 \(2\) \(b\)](#) shall apply analogously.

#### Section 24

(1) The Defender shall submit to the Chamber of Deputies

- a) information on his or her activities, at least once every 3 months;
- b) a report on individual cases where adequate remedial measures have not been achieved even after the procedure pursuant to [Section 20](#) hereof;
- c) recommendations pursuant to [Section 22](#) hereof as regards legal regulations.

(2) The Chamber of Deputies shall discuss the reports and information submitted by the Defender.

(3) The Defender is authorised to participate in meetings of the Chamber of Deputies and its bodies pertaining to matters concerning the Defender's competence, even if the meeting or part thereof has been declared closed to the public. The Defender shall be given the floor if he or she so requests.

## PART FOUR

### FINAL PROVISIONS

#### Section 25

(1) Expert, organisational and technical tasks linked to the activities of the Defender shall be carried out by the Office, as an organisational unit of the State.

(2) The details of organisation and the tasks of the Office shall be defined in the Statute to be issued by the Defender.

(3) Assistants may be appointed by the Defender to carry out tasks in the exercise of the Defender's competence.

(4) The employment of an assistant shall arise upon appointment and shall be governed by the Labour Code unless this Act stipulates otherwise. An assistant shall be appointed and removed by the head of the Office on the basis of the Defender's proposal.

(5) A citizen who has no criminal record and who has completed university education in a master's study programme in law and has carried out preparatory practice in the Office for at least 12 months may be appointed as an assistant. The lack of a criminal record prerequisite is not met by a person who has been validly convicted of a crime even if he or she is considered not to have been convicted.

(6) The Defender may authorise assistants and other employees of the Office to perform inquiries in cases pursuant to [Sections 15, 16](#) and [21a \(1\)](#). However, only assistants may act on behalf of the Defender within the relevant court or Constitutional Court proceedings.<sup>4)</sup>

#### Section 26

Costs related to the activities of the Defender and his or her Office will be covered under a separate chapter in the State budget.

#### Section 27

(1) The Defender is subject to the [Labour Code](#), unless this Act stipulates otherwise.

(2) The salaries of employees of the Office shall be governed by the legal regulations concerning salaries of employees of governmental bodies.

#### Section 28

##### Effect

This Act enters into force on the sixtieth day following its publication.

**Klaus, signed**

**Havel, signed**

**Zeman, signed**

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1) Act No. [198/2009 Coll.](#), on equal treatment and legal remedies for protection against discrimination and on amendment to certain laws (the Anti-Discrimination Act).

1a) Act No. [7/2002 Coll.](#), on proceedings in matters of judges and public prosecutors, as amended.

2) Act No. [133/2000 Coll.](#), on population records and birth identification numbers and on amendment to certain laws (the Population Records Act), as amended.

4) [Section 13b of Act No. 133/2000 Coll.](#), as amended by Act No. [53/2004 Coll.](#)

5) Act No. [40/1993 Coll.](#), on acquisition and loss of citizenship of the Czech Republic, as amended.