

# The Ombudsman

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## **ABSTRAKT**

Tato bakalářská práce se zabývá tématem Ombudsman jako osobností veřejné správy, jejíž úkolem je chránit práva a svobody občanů dle Listy základních práv a svobod. V teoretické části se zabývám vývojem veřejné správy v České republice, dále pak ústavním pořádkem v České republice a poté samotnou funkcí ombudsmana. Praktická část obsahuje tři podrobně řešené případy z praxe ombudsmana, které řeší tak, aby ochránil lidská práva a svobody.

Klíčová slova: veřejná správa, veřejný ochránce práv, působnost, lidská práva a svobody

## **ABSTRACT**

This bachelor thesis is dealing with the topic The Ombudsman as the personality of public administration. The function of the ombudsman is to protect civil law and freedom according to the Charter of Fundamentals Rights and Freedoms. In theoretical part I am dealing with the development of public administration in the Czech Republic, furthermore the constitutional order of the Czech Republic and then the function of the ombudsman on itself. The analysis includes three solved cases from the ombudsman's office. The cases had been solved in the way to protect human rights and freedoms.

Keywords: public administration, the ombudsman, sphere of authority, human rights and freedoms

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I would like to thank to Ing. Jiří Macháček for his advice and patience.

I would you thank to my family which supported me and also Ms Lenka Fojtíková for her advice.

**DECLARATION OF ORIGINALITY**

I hereby declare that the work presented in this thesis is my own and certify that any secondary material used has been acknowledged in the text and listed in the bibliography.

March 15, 2010

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## INTRODUCTION

I have chosen this theme because I am interested in facts and law. The theme “the ombudsman” seemed the most interesting to me. On the one side this thesis is based on facts and on the other hand the ombudsman is someone who is trying to help people who have problems with authorities. He is someone who is educated in matters of law and can represent people who are laics.

I would like to conceive this thesis from the theoretical point of view and analysis. The theoretical part should be rather based on history and development of public administration in the Czech Republic than the history about the ombudsman institution and ombudsman’s force and work.

The analysis is based on three investigated cases which the ombudsman had to solve. The cases will be written as the casuistry.

The bibliography I decided to use is Public Administration written by Ministry of Interior, the book which had been written by Mrs Anna Šabatová who worked as the assistant of the present Czech ombudsman Mr Otakar Motejl. I have chosen also the internet source “[www.ochrance.cz](http://www.ochrance.cz)” which is the official website of the Czech ombudsman.

## **I. THEORY**

# 1 THE DEVELOPMENT OF PUBLIC ADMINISTRATION AFTER 1989

## 1.1 System Transformation of the Public Administration of the Czech

The year 1989 has meant the beginning of transformation of Public administration system. Until this year the Czech Republic was a part of Czechoslovakian federation. The structure of legislative, executive and judicial authorities could not be complex from the point of state competencies. Nevertheless all of the highest state authorities were established in this hectic time. This structure was created by the Czech National Council as the legislative authority, the Government of the Czech Republic as the highest executive authority and the highest authority of the judicial power was represented by Supreme Court of the Czech Republic.

At first the leading Communist Party of the Czech Republic had been abolished and the constitutional competencies of the central state authorities became real. The first free parliamentary elections were based on the system of proportional representation. They took place in 1990.

Most of all the structure of central state administration authorities was changed. On the other hand no less significant changes were put into effect within the structure of the state authorities in connection with implementation of the criteria of a democratic and legal state on performance of the public administration. The state administration went through reduction especially in culture sphere – e.g. the political regulation.<sup>1</sup>

The Czech Republic became a sovereign state in January 1, 1993 thanks to separation of the Czech and Slovak Federative Republic. A new structure consisted of the central state authorities with cohesive legislation, the only citizenship, as well as the Parliament, the Government and the Supreme Court. The internal segmentation had been further considered as the territorial-administrative arrangement. This arrangement was reflected in the new Constitution of the Czech Republic.<sup>2</sup>

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<sup>1</sup> See Ministry of interior of the Czech Republic, *Public Administration*, (Prague: tiskárna ministerstva vnitra, 2004), 8.

<sup>2</sup> See Ministry of interior of the Czech Republic, *Public Administration*, 9.

“Constitution of the Czech Republic December 16, 1992.

Amended by Act No. 347/1997 Coll.,

Amended by Act No. 300/2000 Coll.,

Amended by Act No. 448/2001 Coll.,

Amended by Act No. 395/2001 Coll.,

Amended by Act No. 515/2002 Coll.

The Czech National Council passed the following Constitutional Act:

#### PREAMBLE

We, the citizens of the Czech Republic in Bohemia, Moravia and Silesia, at this time of the reconstitution of an independent Czech State, true to all the sound traditions of the ancient statehood of the Lands of the Crown of Bohemia as well as of Czechoslovak statehood, resolute to build, protect and develop the Czech Republic in the spirit of the inalienable values of human dignity and freedom as the home of and free citizens who are aware of their obligations towards others and of their responsibility to the community, as a free and democratic State founded on respect for human rights and on principles of civil society, as a member of the family of European and World democracies, resolute to protect and develop their natural, cultural, material and spiritual heritage, resolute to take heed to all the well-proven tenets of law-abiding state, have adopted this Constitution of the Czech Republic through our freely elected representatives.”<sup>3</sup>

The development was more dynamic in the sphere of the territorial administration than in the sphere of the central state authorities. Until the year 1990 territorial public authorities were the so-called National Committees – they practically operated as the State bodies. Self-government did not exist yet itself so it was not possible to make decision against the Communist Party. National Committees were replaced by a new arrangement of the territorial state administration in 1990.

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<sup>3</sup> HRAD.CZ, Constitution of Czech Republic [online]. 2010 [cit. 2010-03-16]. Dostupný z WWW: <<http://www.hrad.cz/en/czech-republic/constitution-of-the-cr.shtml>>.



District Offices replaced District National Committees and they had the character of state administration. The existence of District Offices was established by the Act No. 425/1990 Coll., on the other hand the regional National Committees were abolished and their competencies were transferred partly to the central administrative bodies and partly to the newly established District Offices. The newly established system should not have been a long-term situation. One of the main goals was to set up certain elements into public administration which should keep the stability at the time of lack experience. However long-term continuation of the system which was established as a provisional one brought of some problems. This situation became less and less acceptable regarding to an effectivity of public administration. The only possibility was found in re-establishment of the regional arrangement.<sup>4</sup>

The history of Czechoslovak Republic and later Czech Republic could have been called as left-field; someone could observe that the history is awful. We had been under the influence of the Austria-Hungary or the Soviet Union based on motto everything for everybody and finally the reality nothing for anyone, for many and many years. Finally the year 1989 has meant the cheering up of Czech nation because the citizens of Czech Republic started to fight for their future, which definitely should not have been connected longer with the eastern bloc and be trailing of western countries. It is true that the present government is not ideal especially because of their high set goals and their unfulfilled promises but on the other hand it is the democratic government which we had wanted. Even though the government would be different it will never be ideal for everybody. None of us can imagine to live without freedom of speech, without a possibility to travel or study whatever and wherever. Even my parents had fought for this never ideal government to ensure freedom of decision for their children. They were sure that this country has needed a change in economic sphere, business, export and import and even the government or administration.

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<sup>4</sup> See Ministry of interior of the Czech Republic, *Public Administration*, 9-10.

## 2 CONSTITUTIONAL ORDER OF THE CZECH REPUBLIC

### 2.1 Fundamentals of the Constitutional Order

According to the Constitution of the Czech Republic, the Czech Republic is sovereign, unitary and democratic, law-abiding State. It had been based on the respect for rights and freedoms of a man and citizen. The Constitution is in force from the year 1993 according to Act No. 1/1993.

The first nine Articles have formulated basic principles of the constitutional arrangement. “Relation between the citizen and the State is based on the possibility of exercise of state power only in cases, limits and ways given by the Act.”<sup>5</sup>

According to the Constitution everybody can do everything what is not prohibited by the law.

Fundamental rights and freedoms are specified in the Charter of Fundamental rights and Freedoms. “This Charter entirely reflects the International Pact on Civil and Political Rights and the International Pact on Economic, Social and Cultural Rights. The Charter of Fundamental Rights and Freedoms is a part of the Constitutional Order of the Czech Republic, it has the same status in legal order as the Constitution itself.”<sup>6</sup>

### 2.2 The Legislative power

The Chamber of Deputies and the Senate perform legislative power in comply with the Constitution of the Czech Republic. The Chamber of Deputies consists of 200 Deputies, elected for four years term. Number of 81 Senators create the Senate they are elected for six years term but one third of Senators are elected every second year.

The position of both chambers in legislative process is different. Firstly a bill has to pass the Chamber of Deputies. If the bill is approved by Deputies it further goes to the Senate. A senator has few possibilities – the first one is to approve the bill in the same version as Deputies had done, the second one is to negotiate the bill or to express the volition not to deal with the bill anymore.

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<sup>5</sup> Ministry of interior of the Czech Republic, *Public Administration*, (Prague: tiskárna ministerstva vnitra, 2004), 13.

<sup>6</sup> Ministry of interior of the Czech Republic, *Public Administration*, 13.

In all of these cases there stands that even the bill is approved by the Chamber of Deputies the Senate can return the bill with some comments or completely reject. The Chamber of Deputies has to negotiate and vote for approving the bill.

The approved bill is further signed by the President of Czech Republic. If the President does not agree with the bill he applies his presidential veto. The presidential veto takes the bill back to the Chamber of Deputies for additional discussion. Senators do not participate of the bill endorsement.

“The Chamber of Deputies can be dissolved by the President of Czech Republic in cases explicitly specified by the Constitution of the Czech Republic.”<sup>7</sup> Under this situation the Senate adopts legal measures. These measures cannot replace the Constitutional Acts, the State budget, the electoral law and international treaties.

The ratification of the bill ends by its publication in the Collection of Laws of the Czech Republic. The Act comes into force on the fifteenth day after its publication.<sup>8</sup>

### **2.3 The Electoral system**

“At present the electoral system is regulated by special Act for single types of elections, it means for parliamentary elections (Act No. 62/2003 Coll.)”<sup>9</sup>

The Electoral system in Czech Republic is based on the principle of proportional representation. The electoral districts, bar election to the Senate, are divided into more mandates. These mandates are divided among political parties proportionally in accordance with a number of votes gained by their lists of candidates. A closing clause is being applied for the participation on apportionment of mandates. This means that on the apportionment can participate only the political party which gained at least 5% of cast valid votes in the whole State elections.

Political parties and political movements can be candidates similarly in parliamentary election and in elections to Regional Councils. The List of candidates can be changed by the preferences of the voters. One voter can use preference to vote the most four candidates. The closing clause is not applied in elections to the Municipal Councils except

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<sup>7</sup> Ministry of interior of the Czech Republic, *Public Administration*, 14.

<sup>8</sup> See Ministry of interior of the Czech Republic, *Public Administration*, 14.

<sup>9</sup> Ministry of interior of the Czech Republic, *Public Administration*, 15.

political parties and movements there can be found also a candidacy of independent candidates associations.<sup>10</sup>

“The Senate is elected according to the system of absolute majority. In electoral districts with one mandate is elected such a candidate who gained the absolute majority of cast valid votes. In case that no candidate fulfilled this requirement there shall be established the second round of elections to which progress two candidates with the highest number of votes.”<sup>11</sup>

## 2.4 The Head of State

According to the Constitution of the Czech Republic the Head of State is the President – contemporary Mr. Vaclav Klaus. “The President of the Republic is elected by both Chambers of the Parliament at their joint meeting.”<sup>12</sup> The election on itself is held in three rounds.

1. In the first round the absolute majority of Deputies and Senators are necessary.
2. In the second round the simple majority gained in both Chambers is sufficient.
3. “In the third round is sufficient simple majority of the Deputies and Senators altogether.”<sup>13</sup>

The Czech Republic is parliamentary republic and therefore the competencies of the president can be divided into two groups. The first group include the competencies that are performed individually – the president does not need any other approval e.g. from the Prime Minister. The example of this competence is the appointment or recalls members of the Government convene session or dissolve the Chamber of Deputies, appoint judges of the Supreme Court and at last pardon and mitigate penalties imposed by a court.

In Acts related to representation of the State countersign is required e.g. negotiations and ratifications of internal treaties, to performance of the supreme commander duty of the armed forces, grant amnesty and appoint generals.

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<sup>10</sup> See Ministry of interior of the Czech Republic, *Public Administration*, 15.

<sup>11</sup> Ministry of interior of the Czech Republic, *Public Administration*, 15.

<sup>12</sup> Ministry of interior of the Czech Republic, *Public Administration*, 15.

<sup>13</sup> Ministry of interior of the Czech Republic, *Public Administration*, 15.

The President can use his right of presidential immunity with the exception of criminal prosecution, responsibility of treason – in this case the presidential immunity might be lost and also his possibility to regain it.<sup>14</sup>

## 2.5 The Executive Power

Government acts as the supreme body of the executive power and as the highest authority of the executive power. The executive power consists of:

1. Prime Minister
2. Deputy Prime ministers
3. Ministers

Regarding to its activities the Government of Czech Republic is responsible to the Chamber of Deputies therefore the Government has to gain confidence of the Chamber of Deputies for the whole term of its duration. At the beginning the Government asks for a vote of confidence, but the Chamber of Deputies has the right to cancel the confidence during the whole term of the Government force.

“The Government makes its decisions as a body in accordance with the principle of the absolute majority. The Prime Minister organizes the work of the Government, presides its meetings, acts in its name and pursues other activities entrusted to him by the Constitution or other law.”<sup>15</sup>

One of the Government competences is to control activities of Ministries and other central administrative authorities. The Government is also responsible for the draft bill and Government regulations. The head of the Ministry is Minister as the member of the Government and a Constitutional agent. The Ministries as the same as other central administrative authorities exercise their competencies in individual areas of state administration. The Ministries with other central administrative authorities control state administration performance in the relevant area.

“Activities of the Government, Ministries and other central administrative authorities in legislative process are regulated by the Legislative Rules of the Government.”<sup>16</sup>

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<sup>14</sup> See Ministry of interior of the Czech Republic, *Public Administration*, 15.

<sup>15</sup> Ministry of interior of the Czech Republic, *Public Administration*, 16.

<sup>16</sup> Ministry of interior of the Czech Republic, *Public Administration*, 16.

## 2.6 The Judicial Power

In the Czech Republic the judicial power is exercised by the independent courts. The member of the court cannot be the President of the Republic or another member of the Parliament because both mentioned authorities are bounded by law at their offices and their function is not incompatible with any other function in public administration.

A court alone can decide about the guilt and penalty for criminal offences. The courts should provide in a manner defined by law and protection of rights.

A judge is appointed by the President of the Republic for life. Any citizen who graduated in faculty of law, has full integrity and is more than thirty years old can be appointed as a judge. Only a disciplinary senate which consists of judges again, can dismiss the function of the judge.

Judiciary can be divided into:

1. General judiciary – it concerns by criminal and civil affairs
2. Administrative judiciary – Regional courts and Supreme Administrative Court – they perform decisions or acts of public administration in comply with the law
3. Constitutional judiciary – These Courts decide on conformity of laws with the Constitution of Czech Republic and with other components of the Constitutional Order and on conformity of by-law legal regulations with laws.<sup>17</sup>

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<sup>17</sup> See Ministry of interior of the Czech Republic, *Public Administration*, 17.

### 3 HUMAN RIGHTS – REQUIREMENT ON GENERALITY VALIDITY AND CULTURE DIFFERENCES

„Everybody fights for its right very passionately. People found them as the fundamental of universal political culture, which can be seen in every nation or culture. The other considers them to be a specific product of western thinking. Human rights exist throughout the whole world as the claim and requirement but they can be represented in different ways. Sometimes there is a threat they could lost their universality among many ethnical and cultural differences.”<sup>18</sup>

The privileges, rights and freedoms have existed for individuals and groups in older societies but they had been enforced as a system and part of the Constitutions during the recent time. Human rights have four main features.

- I. Human rights are universal for all people. A law is based on human nature therefore dividing people on leaders or ruled, free or none free is prohibited.
- II. Human rights are individual. Human rights belong to an individual person even it is just only unnamed member of a society.
- III. Human rights have originated long before the state came into existence. “The State can concede human rights but it cannot borrow or create them. The Constitution declares them but not creates.”<sup>19</sup> The human being is being born with human rights and they are natural. Any state who would suppress human rights has not longer duration. Human rights are “building supplies” of every society.
- IV. Human rights create the requirement on the state – e.g. they demand respect in the sphere of human freedoms.<sup>20</sup>

“A change in history of human rights in 1776 and 1789 could be seen as the synthesis of movement development. Until those mentioned years this movement had not been divided.

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<sup>18</sup> HANUŠ, Jiří. *Lidská práva – nárok na obecnou platnost a kulturní diference*. (Brno: CDK – Centrum pro studium demokracie a kultury, 2001.) ISBN 80-85959-86-0, 7. My translation

<sup>19</sup> HANUŠ, Jiří. *Lidská práva – nárok na obecnou platnost a kulturní diference*, 8-9. My translation.

<sup>20</sup> See HANUŠ, Jiří. *Lidská práva – nárok na obecnou platnost a kulturní diference*, 8-9. My translation.



The requirement of human being, the individuality, the existence of human rights and limit state power had been unified to the system of “a new law”<sup>21</sup>

The terror of the World War II brought important facts to the modern society. The thoughts about human rights, freedom and humanity formulated in American and Great French Revolution became fundamental. After Fascism and Nazism came has appeared the ideals of humanity died out.<sup>22</sup>

Mankind paid terrible price for recognition that human rights and freedoms are not matter of course. To protect the human rights there were found the courts and institutions. “The international associations started never ending process of the protection of human rights and freedoms.”<sup>23</sup>

Among these processes belongs also foundation of ombudsman institutions, which has been founded during half of the 20 century. They were based on the old Swedish model. These institutions are indispensable in the sphere of human rights today. From the beginning these institutions were not directly connected with the protection of human rights but afterwards the opinion that the ombudsman should contribute in the protection of human rights has been enforced.<sup>24</sup>

### 3.1 European Convention for the Protection of Human Rights and

To protect human rights and freedoms special documents has been created special documents. These documents can ensure the force throughout the whole world. The example of a document can be e.g. Regional Arrangement which ensures the specific facts of individual continents. Among the most important document we can consider are African Chart on Human and Peoples’ rights and Rights or American Convention on Human Rights which were signed from 1969.

The Convention for the Protection of Human Rights and Fundamental Freedoms from 1950 is the most important for Europe. This Convention was signed on the ground of Council of Europe. According to this Convention the European Court of Human Rights was founded. The Seat of the European Court of Human Rights is in Strasbourg. Every

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<sup>21</sup> HANUŠ, Jiří. *Lidská práva – nárok na obecnou platnost a kulturní diference*, 13. My translation.

<sup>22</sup> See HANUŠ, Jiří. *Lidská práva – nárok na obecnou platnost a kulturní diference*, 13. My translation.

<sup>23</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*. 13. My translation.

country which belongs to the judiciary of Council of Europe from 1998 is allowed to present its complaint to this European Court of Human Rights.<sup>25</sup>

## **3.2 Development of protection of human rights in the Czech Republic**

### **3.2.1 Ideological Source – Austrian Code and the the Czechoslovakian Republic in**

The bill No. 121/1920 Coll. creates the Constitution of Czechoslovakian Republic. It is an interesting system of law, duties and freedoms which are included in Chapter five, the last one. “The Constitution from 1920 does not include any statements which would enforce the human rights and freedoms or statements which would limit the state power.”<sup>26</sup>

### **3.2.2 The situation after World War II.**

After World War II the Czechoslovakian Republic participated at the process of making human rights internationally. On the other hand it is only the copying of international development. Among first states the Czechoslovakian Republic signed the Chart of United Nations in 1945. Council of Europe became a key institution in sphere in of protection of human rights in 1950. Unfortunately the Czechoslovakian Republic was accepted into Council of Europe up to the Velvet Revolution in 1989.

Council of Europe respects the protection of human rights therefore the country which would like become a member of Council of Europe has to fulfill the basic principles of the legally consistent state and protect human rights and freedoms.<sup>27</sup>

### **3.2.3 1948 – 1977**

“If we talk about the human rights we cannot omit the specifics of social and legal developments during the year 1948 to 1989 not only at the Czechoslovakian Republic but throughout the whole eastern bloc. The power of state was controlled by the Communist Party of Czechoslovakian Republic.”<sup>28</sup>

Despite the existence of the state institutions, government and National Assembly, human rights and freedoms were included in the Constitution but thanks to the Communist

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<sup>24</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*. 13. My translation.

<sup>25</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*. 19-20. My translation

<sup>26</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 26. My translation.

<sup>27</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 26-27. My translation

Party the Constitution was completely in chaos there was complete chaos. Human rights were considered as the formality only. The real course was completely different.

Unfortunately it was not still the end of terror because the main terror came in the half of the 20 century. The Communist party has thousands innocent people on its conscience. A bit of liberality appeared in 60ties – people waited to see freedom of speech and congregation. This pleasure did not take long time because it came the time of normalization and restoration of the order came. The era of 70ties and 80ties is connected with police and judicial depression and also discrimination in the sphere of employment. The method of terrorization slowly stopped at the half of 80ties.<sup>29</sup>

### 3.2.4 The protection of human rights after 1989

The Velvet Revolution and the coming of 90ties have meant the development of better future. According to the model of western countries the modern state had been created. Further there was a development of institutions which should protect human rights and freedoms.

One of the significant steps was creation and acceptance of the Charter of Fundamental rights and Freedoms. The Czechoslovakian Republic accepted the full catalogue of human rights. The Czechoslovakian Republic has been accepted as a new member of Council of Europe and received the European Convention.

Throughout the next years the Czechoslovakian accepted other important agreements as The Convention of Human Rights and Biomedecine or the Convention on the Rights of Child or Optional Protocol to the Convention against Torture.

“The key divide to protect human rights and freedoms was the acceptance of the bill about the Constitutional courts of Czechoslovakian federation. After the split of the Czechoslovakian Republic in 1993 came into force the bill No. 182/1993 Coll. about the Constitutional court.”<sup>30</sup>

The Supreme Court came into force in 2003. This helped to the ten years shortage was removed as well as the contradiction with the Article No.6 of European Convention. The

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<sup>28</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 27. My translation

<sup>29</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 26-27. My translation

<sup>30</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 37. My translation.

institutions as The Office for the Protection of Personal Data or The Office for the Protection of Competition came into force.

The ten years of effort was fulfilled by the year 1999 because the bill about The Ombudsman had been accepted. JUDr. Otakar Motejl was elected as the first Ombudsman in the Czech Republic one year later.<sup>31</sup>

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<sup>31</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 38. My translation

## 4 THE OMBUDSMAN

The Public Defender of the rights or the Ombudsman distinctly participates on the process of the public administration. One of his main competences is the protection of people who are dealing with authorities or institutions made by law. “The ombudsman is dealing with the situations where the rights, democracy of the state and principles of good management are broken.”<sup>32</sup>

According to the bill about The Ombudsman the ombudsman is the institution which cares about the protection of inhabitants before the action of authorities. The action of authorities could be in contradiction with the law and could be also in contradiction with the standards of the democratic state. If this situation happened the ombudsman should help people to protect their rights and freedoms.

### 4.1 The history of the ombudsman institution

“The origin of the word ombudman could be found in the medieval expressions like “umbup” which means power or authority or “ombud” which means the person who is the proxy.”<sup>33</sup>

If someone omits the function of roman tribune or medieval kings, the real function was created by the Swedish sovereign Carl XII. in 18 century. Above all the function of this ombudsman was checking the behaviour of king’s accountants. The Swedish constitution confirmed the bill about the ombudsman in 1809. The definition of this ombudsman was “the one who superintend if the king’s judged and governmental accountants respect the rules and bills”. Carl XII. replenished the bill about the ombudsman with the instruction where ombudsman’s force and competence were clearly specified.

“The name of this institution is clearly different in foreign countries e.g. in Spain – defensor del pueblo, in France - médiateur, in Austria - Volksanwaltschaft, in Poland – Rzecznik praw obywatelskich, in Romania – Avocatul Popolurui and in the Czech Republic – veřejný ochránce práv.”<sup>34</sup>

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<sup>32</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 57. My translation

<sup>33</sup> OCHRANCE.CZ, *Veřejný ochránce práv*. [online]. 2010 [cit. 2010-03-16]. Dostupný z WWW: <<http://www.ochrance.cz/verejny-ochrance-prav/historie/>>. My translation

<sup>34</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 59-60. My translation

The Danish Ombudsman Mr Stephen Hurwitz played the main role in the attempt to get this institution into people subconscious. He visited many democratic countries and supported the enforcement of the ombudsman institution as the unexpendable part of every democratic state. After the creation of the ombudsman institution in New Zealand in 1962 the wave of “ombudsmania” raised when this institution was created in many lands all over the world.<sup>35</sup>

## 4.2 The ombudsman institution

The ombudsman institution reached its greatest expansion in 20 century. After World War II this institution started to develop almost in 100 countries. “The ombudsman institution was created by the bill about the Ombudsman No. 349/1999 Coll. The group of official and nonofficial initiatives has preceded its regulations.”<sup>36</sup>

It is possible to can divide the ombudsman institution into several categories:

1. The parliamentary ombudsman – he is elected by the legislative board and he is directly responsible to it in most of the countries.
2. The ombudsman in executive power – this tye of the ombudsman is elected by the Government and he is also directly responsible to the Government.
3. The ombudsman of mixed type
4. The universal ombudsman x the special ombudsman

“The czech ombudsman belongs to the group of universal parliamentary ombudsmen who force centric. This type of the ombudsman forces appears in every country of the European Union. Some of them can have some modification.”<sup>37</sup>

The situation in public administration was uncomfortable because they had to deal with errand of complaints but it helped to create the ombudsman institution. The main aim was to find the impartial and qualified person to deal with the complaints. In contrary with

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<sup>35</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 57. My translation

<sup>36</sup> SLÁDEČEK, Vladimír. *Obecné správní právo*. (Praha: ASPI – Wolters Kluwer, 2009) ISBN 987-80-7357-382-9, 375. My translation

<sup>37</sup> SLÁDEČEK, Vladimír. *Obecné správní právo*. 375. My translation.

judiciary the ombudsman institution has a range of advantages as simplicity, speed and it is free of charge. The main advantage is the access to ordinary people. In contrary with administration judiciary the ombudsman can solve a problem in case when the state authority can not.<sup>38</sup>

One of the disadvantages is that the ombudsman does not issue the decision but only the recommendation how to solve the problem. Usually this recommendation is respected in the Czech Republic.

The acceptance of the bill No. 150/2002 Coll. changed the situation because there were contradictory opinions about the further existence of this institution. The authorities said that the existence of this institution is not relevant after the new acceptance of judiciary. There was a question of parallel force of the administration judiciary and the ombudsman institution because the statistics from 2003 have noticed the number of complaints. Unfortunately next years have noticed their growth.<sup>39</sup>

The ombudsman institution is considered to be the unexpendable part of every modern country. The ombudsman is trying to protect everyone who is dealing with state authorities or public administration. The ombudsman is welcomed negotiator in contrast with developed bureaucracy which considers a man only as the object of their activity.<sup>40</sup>

“According to the article about The Ombudsman - the ombudsman is doing its function independently and impartially. His immunity, term of office, standards how he can loose its position and his corresponding salary can help to strengthen his impartial position. He cannot be a member of any political party.”<sup>41</sup>

### **4.3 The change of the ombudsman institution in international context**

In origin the ombudsman institution should have been understand as the certain control of the action of public administration. Its force was far from the protection of human rights. Also the civil service and the civil law were not considered as the part of the law connected with human rights. As everything other in the world even this institution had to come

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<sup>38</sup> See SLÁDEČEK, Vladimír. *Obecné správní právo*. 375-376. My translation

<sup>39</sup> See SLÁDEČEK, Vladimír. *Obecné správní právo*, 380. My translation

<sup>40</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 59. My translation



through the certain development. Mainly everyone has to understand that part of every democratic state is the protection of human rights and their adherence. The negotiations were held similarly as it was mentioned above in UNO or Council of Europe.

Definition of basic requirements in the sphere of the administration:

1. the aspect of every legal regulation is public
2. the person who has problem with public administration has the minimal guarantee
3. everyone has the right of the fair direction of administrative conduct
4. the bills has no discriminational aspect
5. judicial case checking
6. the rights of the individual and the executive power equal

Council of Europe has played magnificent role in the ombudsman's position. It supported the spread of the ombudsman institution to each European country. The significant activity of Council of Europe was in the development of the respect of human rights during the public administration activity.<sup>42</sup>

#### **4.4 The Ombudsman and its summary report for the Chamber of**

The ombudsman forces mainly in civil offices but it can cooperate with other institutions as the Army of the Czech Republic or Prison Service of the Czech Republic or the Police of the Czech Republic.

The ombudsman's competence does not refer to the Parliament of the Czech Republic, to the President and Government, to the Supreme Control Office, to the state's attorney and to the courts.

“The Ombudsman can deal on the basis of the incentives from the initiative of individual or the corporation or from the own initiative. The incentives can be proposed also from the

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<sup>41</sup> SLÁDEČEK, Vladimír. *Obecné správní právo*, 381. My translation

<sup>42</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 60. My translation

Deputy, Senators or any other Parliament's Chamber of the Czech Republic. The ombudsman has to create a summary report for the Chamber of Deputies."<sup>43</sup>

The summary report should include the whole balance of the ombudsman's activity for a certain year. The summary report should be organized this way:

1. The ombudsman and his office – providing with information, personal questions, international and national contacts etc.
2. Objective competence of the ombudsman in the certain year
3. The generalization of information from the ombudsman's activity – recommendation from the Chamber of Deputies and Parliament of the Czech Republic
4. Conclusion

The statistical data about the number of accomplished inspection or suggestions to cancel or changing the law can be found in the summary report. The second part of the report used to be the most interesting because there are the most difficult and special cases. They can also be some cases which have never been solved to the end completely but usually it is not the ombudsman's fault.

The activity of the Chamber of Deputies towards the summary report refers to the dealing during the ombudsman's presence. The ombudsman has the right to participate in the Chamber of Deputies if the Deputies are dealing with the cases related to ombudsman's force.<sup>44</sup>

#### **4.5 How it is the ombudsman elected**

The ombudsman's term of office is six years. He is elected by the Chamber of Deputies according to the suggestion of the President and the Senate. The Chamber of Deputies chooses from four candidates, the Senate from two and the President also from two candidates. The final responsibility for the ombudsman's election belongs to the Chamber of Deputies.

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<sup>43</sup> SLÁDEČEK, Vladimír. *Obecné správní právo*, 381. My translation

<sup>44</sup> See SLÁDEČEK, Vladimír. *Obecné správní právo*, 381-382. My translation

The term of office is six years. Everyone who can be elected to the Senate can become the ombudsman. The eastern countries as Israel or Azerbaijan dispense the ombudsman's term for seven years.

In most of the countries there is required that the ombudsman has to have the university law education. The requirements in the Czech Republic are the possibility to be elected to the Senate, it means that it has to be the person who can vote and it is over 40 years old.

JUDr. Otakar Motejl became the first ombudsman in the Czech Republic in 2000. He is the lawyer and attorney, he is not a member of any political party, he forced as the chairman in Supreme Court and the minister of justice. Every other successor will be assessed according to Mr. Motejl's qualities.

The centre of the Czech judiciary is Brno not Prague.<sup>45</sup>

“The ombudsman can lose the function at these points – when the term of office expires, when he commits of a crime then he lose the possibility to be elected to Senate or resignation.”<sup>46</sup>

#### **4.6 The incompatibility of the function**

The activity, force and the whole function of the ombudsman is not in comply with any other function in public administration as the president, judge, senator or deputie. Some other profit making activity is also not allowed but the bill about the ombudsman counts with scientific, publishing or artistic activity. These secondary activities cannot decrease the people's confidence and dignity of the ombudsman. In the contrary to the president or judge the ombudsman must be impartial.

Why such measures? It believes that the ombudsman will be fully available and will perform the highest dispensation. This is an effort how to show the citizens that the ombudsman is independent and impartial and his activity does not interrupt his respect and authority.<sup>47</sup>

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<sup>45</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 110. My translation

<sup>46</sup> SLÁDEČEK, Vladimír. *Obecné správní právo*, 382. My translation

<sup>47</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 112. My translation

#### 4.7 The ombudsman's promise

The ombudsman makes a promise to the Chairman of the Chamber of Deputies. By this promise he covenants to execute the function mainly impartially and in comply with the Constitution of the Czech Republic and other bills. He promises that he will protect human rights and freedoms. He should measure all cases with the Charter of human rights and freedoms. The Charter of human rights and freedoms is also a document on which he can rely on.<sup>48</sup>

#### 4.8 The ombudsman's independence

As it was mentioned before, according to the bill about the ombudsman he has to be impartial and be independent. On the one hand it is the human's will to be independent and on the other hand it is related to the ombudsman's promise. The other important feature is the responsibility to the Chamber of Deputies which is the legislative not executive party. This is the way how to prove his independence on the executive power.<sup>49</sup>

#### 4.9 Expiration of appointment

The establishment and expiration of the ombudsman's function is described by the law. The possibilities are from expiring of the term of office; give up the function, over the commit a crime to choosing another function. The ombudsman's function can be removed only by the Chamber of Deputies if he does not respect to be independent and impartial whether he does some profitable activity.<sup>50</sup>

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<sup>48</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 112. My translation

<sup>49</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 113. My translation

<sup>50</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 113. My translation

## 5 THE OTHER INSTITUTIONS WITH THE SIMILAR FEATURES AS THE OMBUDSMAN INSTITUTION

1. **Government Commissioner for Human Rights** – it is possible to find some similar features with the ombudsman institution. This authority was appointed by the Government (of the Czech Republic) on 9.9. 1998. “The main goal of this institution is to fulfil the function of the government authority in the sphere of human rights.”<sup>51</sup>
2. **Office for the Protection of Human Rights** – this is an independent authority which has the features of the special ombudsman.
3. **Inspectors** – they are appointed by President who chooses them according to Senate suggestions for the term from 5 to 10 years.
4. **Financial Arbiter** – this is another institution which can be considered as the type of the ombudsman institution. The arbiter substitutes a position of a referee between the people who are trying to carry out transfer of money resources. It is better to consider the arbiter to be the independent civil account.<sup>52</sup>

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<sup>51</sup> SLÁDEČEK, Vladimír. *Obecné správní právo*, 391. My translation

<sup>52</sup> See SLÁDEČEK, Vladimír. *Obecné správní právo*, 392. My translation

## **II. ANALYSIS**

## 6 THE OMBUDSMAN'S FUNCTION

### 6.1 The ombudsman's principles for doing a good governance

The ombudsman defined his own principles of doing good governance:

1. compliance with the law
2. impartiality
3. timeliness
4. predictability
5. persuasiveness
6. adequacy
7. effectivity
8. responsibility
9. openness
10. helpfulness<sup>53</sup>

### 6.2 The scope of the ombudsman's force

“The ombudsman is dealing with the problems which it is not possible to go over in the civil courts e.g. the incorrect attitude from bureaucracy, disunited interpretation of the regulations or discrimination. In comparison with the courts decisions the ombudsman decisions could go further in solving. The ombudsman is not bound by the rigid rules, he can work more creatively than the judge. The scope of the ombudsman's force can lead further than the scope of the courts.”<sup>54</sup>

In short the ombudsman should deal with assessment of mistakes from the different point of view than from the law perspective. Sometimes it can happen that decisions are right formally but they are inappropriate, useless, strict or inadequate.

Clerks on themselves should not forget that their work should fulfill the function as the service for the public. They should not consider the citizens as the object of their work but as people who need their help.

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<sup>53</sup> See SLÁDEČEK, Vladimír. *Obecné správní právo*, 381. My translation

<sup>54</sup> SLÁDEČEK, Vladimír. *Obecné správní právo*, 376. My translation



In the ombudsman competence there are specific institutions as the Army of the Czech Republic or Prison Service. His force does not influence the highest authorities as the Parliament, the Government, Supreme Control Office and the President.

It is important to understand that the ombudsman institution should be perceived as the additional institution next to the institutions which already exist to protect human rights and freedoms.<sup>55</sup>

### 6.3 The incentive and investigation from the ombudsman's own

To investigate a problem the ombudsman needs the incentive from the individual or the corporation or from the members of the Parliament. The incentive is presented two ways – in writing or orally in a protocol. The incentive is free of charge but it has to be in complying with certain principles.

The basic information has to be in complying with the requirements:

1. the basis for investigation
2. personal data of the complainant
3. description of the circumstances
4. office sign
5. identity of the person who the complaint relates nebo who is involved in the complaint

These data has to be available for the ombudsman. They lead to speed up the process which is in the complainant's interest.<sup>56</sup>

The whole process starts with the analysis of the incentive. The ombudsman has to find out if the process is in his competence or whether it is in the competence of the court. If the incentive is not in the ombudsman's competence he put it away.

The ombudsman has the certain permission to think about the incentive and start the investigation. There can be some reasons which could block the investigation e.g.the whole

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<sup>55</sup> See SLÁDEČEK, Vladimír. *Obecné správní právo*, 382. My translation

<sup>56</sup> See SLÁDEČEK, Vladimír. *Obecné správní právo*, 383. My translation

incentive is in the investigation at court and the incentive does not include the requirements.

“Obviously unreasonable incentive is such an incentive where it is clear that the incentive is not racional and it is not well-founded.”<sup>57</sup>

If the ombudsman finds out that the incentive is right and fulfils all requirements he starts the investigation. He superintends on the office’s activity and disposes his investigatory permission.<sup>58</sup>

### **6.3.1 The situation when the incentive is postponed**

It can happen that the incentive is not in the ombudsman’s competence. The ombudsman’s obligation is to inform the complainant. The incentive can be out of the ombudsman’s competence and he has to refuse the incentive. If this case happens the ombudsman has to explain why he can not investigate but he can give an advice how to solve the problem e.g. which institution should the complainant visit.<sup>59</sup>

### **6.3.2 If the ombudsman will not find out a misconduct**

If the ombudsman will not find out a mistake e.g. breaking a law he has to inform the office and also the complaintant. The investigation is over. It is important to inform the complaintant about the progress of investigation. The complaintant has to know that the ombudsman really devoted to the investigation and his method was right. The ombudsman should also point out the bills according to which he made the decision.<sup>60</sup>

### **6.3.3 If the ombudsman will find out a misconduct**

In case of finding out the misconduct made by the office the ombudsman has to write a report about what he discovered. He exhorts the office to make a rectification until 30 days. In most of the cases the office will accomplish certain proceeding to make a rectification. Sometimes it can happen that the office does not make a rectification or the ombudsman does not find out the steps appropriate steps. In this case the ombudsman sends his final standpoint to the office and to the complaintant again.<sup>61</sup>

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<sup>57</sup> SLÁDEČEK, Vladimír. *Obecné správní právo*, 384. My translation

<sup>58</sup> See SLÁDEČEK, Vladimír. *Obecné správní právo*, 384. My translation

<sup>59</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 120. My translation

<sup>60</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 125. My translation

<sup>61</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 125. My translation

“The ombudsman can not influence the action of the office directly. His proposal is not the order; it is just the attempt to protect human rights against the office activity. The ombudsman’s activity consists of a friendly advice and non authoritarian behaviour. The advice and recommendation from the ombudsman’s institution commanded significant authority in most of the European countries. The ombudsman decisions are usually accepted without objections.”<sup>62</sup>

#### **6.3.4 Sanctions**

One of the forms of sanctions is to announce the problem to the superior office. If there is no such an office the ombudsman turns to the Government but it takes a lot of time till the Government will find some time for it among plenty of other complaints. There is also another option but the ombudsman does not like it. He can give the whole case to the media.

This option could be seen as ideal because it put blame on the office. The media study the office activity very closely. It is better for the office to make a rectification. It can also happen that the office is obdurate and even the media does not help.<sup>63</sup>

#### **6.3.5 The negotiation on the ombudsman’s own initiative**

One of the ombudsman’s permission is to submit his decision, standpoints or suggestions on the incentive. If the ombudsman’s activity is not supported by the previous suggestion, it is made from his own interest. This activity consists of the plans which were prepared before.

The ombudsman focuses on the inspection doing in the offices of public administration. These inspections are not announced and they are irregular.<sup>64</sup>

### **6.4 Who can apply the ombudsman for an advice?**

According to the bill anyone can contact the ombudsman – an individual or corporate body, the foreigner or a person who lives in the area of the Czech Republic just temporary. The incentives are accepted also in a foreign language. According to the status criterion nobody

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<sup>62</sup> SLÁDEČEK, Vladimír. *Obecné správní právo*, 386. My translation

<sup>63</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 127. My translation

<sup>64</sup> See SLÁDEČEK, Vladimír. *Obecné správní právo*, 386. My translation

should be refused. The whole incentive is free of charge and can be presented in writing or orally.<sup>65</sup>

## 6.5 Information about the ombudsman's activity

The summary reports from 2001-2007 serve as the basic resource of the documents about the ombudsman's activity. These documents are available online as well as in printed version. People can find them on the official website of the Czech ombudsman "www.ochrance.cz". It is also possible to borrow the collection of the ombudsman's standpoints related to certain sphere of problems.

The number of incentives was steadied to 6000 incentives per year with the exception in 2003 and 2004. The similar numbers can be found in the incentives which are marked as solved. The ombudsman's activity and his investigation from his own initiative can be found in around 40 cases.<sup>66</sup>

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<sup>65</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 119. My translation

<sup>66</sup> OCHRANCE.CZ, *Veřejný ochránce práv*. [online]. 2010 [cit. 2010-03-16]. Dostupný z WWW: <<http://www.ochrance.cz/zpravy-pro-poslaneckou-snemovnu/>>. My translation

## 7 THE ACT ON THE OMBUDSMAN

The act No. 349/1999 Coll. was signed on 8<sup>th</sup> of December 1999.

This act underwent through some adjustments since the time it had been signed.

The act consists of 28 articles and it is divided into 4 parts as general provision, the ombudsman's activity, specific permission and the ombudsman's privileges and duties of the ombudsman and final provision. The act came into force after 60 days from its declaration.

The act was signed by Václav Havel - the previous president of the Czech Republic, Václav Klaus and Miloš Zeman.<sup>67</sup>

### 7.1 General provision

General provision consists of 8 articles and describes the institution of the ombudsman. It describes who the ombudsman is, where his seat is situated, it describes his force, why this institution was founded, how he can loose his function etc. This information was described above. The article 4 paragraph 2 contains the ombudsman's promise.

"I swear on my honour and conscience that I shall carry out my duties independently and impartially, in compliance with the Constitution and other Acts, and that I shall protect the inviolability of rights."<sup>68</sup>

### 7.2 The ombudsman's activity

The ombudsman's activity has been described into detail above. The bill clarifies who can contact the ombudsman office, what the incentive has to fulfil, when the incentive is put away, how the ombudsman acts deals the investigation and his cooperation with police.<sup>69</sup>

### 7.3 Specific privileges and duties of the ombudsman

This part of the bill concerns with the cooperation with authorities during the incentive investigation and it has to be in complying with law which the ombudsman has to follow.

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<sup>67</sup> OCHRANCE.CZ, *Veřejný ochránce práv*. [online]. 2010 [cit. 2010-03-16]. Dostupný z WWW: <<http://www.ochrance.cz/verejny-ochrance-prav/zakon-o-verejnem-ochranci-prav/>>. My translation

<sup>68</sup> OCHRANCE.CZ, *Veřejný ochránce práv*. [online]. 2010 [cit. 2010-03-16]. Dostupný z WWW: <<http://www.ochrance.cz/en/public-defender-of-rights/law-on-the-public-defender-of-rights/>>.

<sup>69</sup> OCHRANCE.CZ, *Veřejný ochránce práv*. [online]. 2010 [cit. 2010-03-16]. Dostupný z WWW: <<http://www.ochrance.cz/verejny-ochrance-prav/zakon-o-verejnem-ochranci-prav/>>. My translation

The ombudsman has to send the summary report to the Chamber of Deputies about his activity and cases he investigated.<sup>70</sup>

#### **7.4 Final provision**

This section informs that the ombudsman can demand the assistant for being more effective during the investigation. The assistant has to graduate at university-law subject and fulfil the condition about integrity. The ombudsman office takes finance from state budget.<sup>71</sup>

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<sup>70</sup> OCHRANCE.CZ, *Veřejný ochránce práv*. [online]. 2010 [cit. 2010-03-16]. Dostupný z WWW: <<http://www.ochrance.cz/verejny-ochrance-prav/zakon-o-verejnem-ochranci-prav/>>. My translation

<sup>71</sup> OCHRANCE.CZ, *Veřejný ochránce práv*. [online]. 2010 [cit. 2010-03-16]. Dostupný z WWW: <<http://www.ochrance.cz/verejny-ochrance-prav/zakon-o-verejnem-ochranci-prav/>>. My translation

## 8 PROTECTION OF RIGHTS OF PEOPLE WHO ARE SENTENCED FOR LIFE IMPRISONMENT – LOCATION THE PRISON IN MÍROV

### 8.1 The case study – casuistry, solving the ombudsman’s own initiative

The ombudsman received the incentive to investigate in 2002. The report was from the member of the Committee against Torture and other inhuman, cruel, degrading treatment and punishment. (Further just “the Committee”) The incentive related to inspection of the condition of people who are sentenced for life in the Mírov prison. A member of the Committee found out that the place where the prisoners are located is equipped by windows with plastic screens. The screens could transmit the sunlight but it was not possible to see outside. Further information was dealing with insufficient lighting of the cells. They looked dark and uncomfortably small. The ventilation was also limited what and that could cause extreme heat and oppressive air in summer. Furthermore the place prepared for prisoners where they should walk around was not enough large.<sup>72</sup>

The ombudsman had been forced to put the incentive away because the incentive was not submitted by a certain person who would be concerned by the situation with windows and place. The ombudsman considered the incentive as a serious problem and he decided to act from his own initiative. He wrote a letter to the director of the Mírov prison.

“After I considered all conditions for people sentenced for life in section I. which is in phase of construction I dare to tell that this serving a sentence will reach the level of inhuman and humiliating treating. This treating will lead to psychological oppression of prisoners. In complying with current place I found out this step as the step back.”<sup>73</sup>

With exception of the ombudsman, the director of hygienic station from Olomouc, general director of Prison Service and also the main hygienic of the Czech Republic participated on this investigation. This three mentioned institution should have informed about their

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<sup>72</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 145. My translation

<sup>73</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 145. My translation

decision to new arrangement of the place for life imprisonment. The whole investigation took over year.<sup>74</sup>

## 8.2 Issue of facts

The administration board of Mírov Prison decided to repair the place in 2001. They wanted to use it as the place for prisoners who are sentenced for life. The administration board decided to put the plastic screens on windows and put nets on the iron bars. The windows and cells should have been secured by infrared detection. The hygienist from Olomouc confirmed that the repair can decrease the level of sunlight which will have to be substituted by artificial light. The possibility of artificial light was considered as convenient by the district authorities as the care of historical monuments in April 2004. Even the investigation started the reconstruction had been accepted.

The director of Mírov Prison argued the whole situation with case of Jiří Kájínek. Jiří Kájínek escaped from prison because he could watch the whole events in prison area through windows without the screens. He could watch the movements of guards and staff. He admitted that nobody thought about the impact of screens to prisoners. According to him the whole reconstruction was in hands of specialist. He emphasized that the prisoners are in hands of specialist who should care about their psychical wellbeing. The specialist should work with prisoners more intensively.

The hygienist confirmed that the building is alright from the hygienist point of view. The only exception is that the administration board did not fulfill the requirement of sunlight. He insisted on artificial light in degree of 200 luxes. Finally the main hygienist of the Czech Republic informed that everything connected with artificial light was a mistake and this case with light is not in competence of hygienic station but in competence of construction administration. The expression of the general director of Prison Service was only that the whole reconstruction did not contribute to make the condition of prisoners worse.<sup>75</sup>

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<sup>74</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 146. My translation

<sup>75</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 146-147. My translation



### 8.3 Ombudsman review

The ombudsman directed his review on prisoner's psychical conditions and whether it was possible that the new place could have threatened their psychical and physical health. It will be in consistent with the act against torture.

Further he assessed the three main points:

- If the construction administration followed the directives related to health protection even it submitted the permission where it was aware of the situation about sunlight and ventilation.
- If there is a possibility that the new place could have negative influence on prisoner's health.
- He pointed out if the health is not more significant than security which should be solved by another way than installation of screens.<sup>76</sup>

#### The case assessment according to building regulations

According to the Act No. 137/1998 Coll. it is necessary that the place has to have enough sunlight, ventilation and the possibility to control temperature. The ombudsman accepted statement that the Prison Service acts proportionately as regards the prison attributes. Even he accepted the statement he investigate the proportionality of this application. Finally the technician from Regional Office expressed his opinion.

“According to technician the small windows exclude the demand for sunlight and therefore the demand for sufficient sunlight could not be accomplished and it is necessary to apply the requirements only for artificial light.”<sup>77</sup>

The ombudsman did not support this statement and pointed out again that the protection of prisoner's health is on the first place ever the requirements could not be accomplished. He criticized also the Hygienic station in Olomouc. According to his opinion it broke bounds of its authority when it tried to assess the sunlight and ventilation because these problems were in competence of construction administration.

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<sup>76</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 148. My translation

<sup>77</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 149. My translation

Finally the ombudsman declared that the construction administration of General management of Prison Service applied the technical requirements incorrectly without the general requirements about protection of human rights and freedoms.<sup>78</sup>

The case assessment according to protection of human rights and freedoms of prisoners

The ombudsman did not identify himself with the opinion that the installation of screen did not influence the health of prisoners. He started to study different cases from foreign countries. E.g. In Moldavia the screens had to be removed on the proposition of CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment. The committee initiated “the main claims of prisoners are sunlight and fresh air”.<sup>79</sup>

In New York in USA the jail was closed in 1976 because the cells did not have the sufficient ventilation and the windows were opaque. The prisoners were in jail for 23 hours lighted up by artificial light and out for 1 hour. Finally the district court let the jail closed.<sup>80</sup>

Mr Ernest Moore was the architect who led the research in state prison in Michigan USA. He concentrated on two groups of prisoners. One group had the cell with lookout on woods and the other had the lookout on wall. Mr Moore found out that prisoners with the lookout on wall were more aggressive and visited the psychiatrist 24% more than the prisoners with the lookout on woods.<sup>81</sup>

According to the Article No.3 Treaty of European Court of Human Rights the ombudsman points out that the Article No.3 prohibits torture and inhuman treatment and punishment apart from victim behavior. The previous examples of similar cases showed that in any of them the reconstruction was not allowed. On the other hand the specialist pointed out that the reconstruction could have the negative influence on prisoner's health. The ombudsman closed his review by critique that the measures how to ensure the security will have negative influence on prisoner's health and living conditions and the Mírov prison will become the goal of critique of indoor and foreign authorities.<sup>82</sup>

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<sup>78</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 149. My translation

<sup>79</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 150. My translation

<sup>80</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 150. My translation

<sup>81</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 151. My translation

<sup>82</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 153-154. My translation

#### 8.4 Consequences of solution of the Ombudsman

According to the ombudsman's report the director of Mírov Prison organized the meeting with the prison headquarters. The main point of the meeting was the ombudsman's report and furthers the recommendation from Council of Europe. Finally they met the ombudsman's demands and they found them as relevant. They found another place for life imprisonment and organized different daily program. The screens were removed but the possibility of larger supply of sunlight is in the phase of solution.<sup>83</sup>

The man could say why the ombudsman cared? The Czech Republic is clearly peaceful related to punishments murderers. One murderer got 5 years other murderer 3 years in prison so it means that prisoners who are on life imprisonment had to do something really awful and serious. The life imprisonment is not distributed every day. The ordinary citizens could say "why the ombudsman cared, they are murders and thieves, serve them right!" There is a magic of the whole ombudsman institution because he does not care what the man is, if it is an ordinary man or murderer he will stand up for anybody when he knows that its rights were broken.

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<sup>83</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 154. My translation

## **9 EQUAL TREATING AND PROTECTION AGAINST DISCRIMINATION – STERILIZATION OF ROMA WOMEN BY THE CONTRARY TO LAW**

### **9.1 The incentive**

The ombudsman got the incentive in 2004. The European Roma Rights Centre came with the incentive. According to discussion the members of the centre found out that roma women are exposed to disputable sterilizations. According to the requirements of the incentive this incentive did not follow the requirements and it was not clear if the gipsy women wished to solve the disputably sterilizations. The ombudsman's possibility could be to put this incentive away but he contacted the European Roma Rights Centre to make a list of women who feel themselves aggrieved over sterilization. He needed to have authorization of women afflicted with sterilization.

The ombudsman was contacted by ten roma women who were represented by a lawyer from IQ Roma Service Civic Association. Their incentive was serious and complicated. The women objected that they did not sign the agreement with sterilization at all or they are not aware of that. The ombudsman chose the method of medialization of the case and further he got another 87 incentives with similar complaint.<sup>84</sup>

### **9.2 Issue of fact and process of investigation**

In September 2004 the Minister of Health had been asked to let this case investigate the process of medical staff and set up a commission board. The ombudsman prepared few questions for the commission board:

- He was wondering if the documentation of any patient includes the record about sterilization with patient agreement.
- He tried to find out in what moment the agreement with sterilization was required and how long was the time frame between the agreement and surgery.

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<sup>84</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 165. My translation

- “In case that the indication was Caesarean operation please clarify the uniqueness of indication of any Caesarean operation.”<sup>85</sup>
- “If it was indicated the iterative Caesarean operations primarily please explain the question whether the medical record of any patient include the data that the patient had been informed about the indication of sterilization during pregnancy. In case of secondary indication of the iterative Caesarean operation whether it was connected with the moment of sterilization please answer the question whether this process was appropriate from the medical point of view or on the base of the medical data in patient documentation could be possible to consider another process of sterilization.”<sup>86</sup>

After few weeks the Minister of Health decided to rethink her intention and instead of commission board she called for advisory board and she expected the representative of Council of Europe and other laics. She found out that it is more important to assess the permissibility of sterilization or if the sterilization had been executed according to principles of medical science.

According to the results the ombudsman sent the report to the Minister of Health on September 2005. He followed the Article 18 paragraph 1 of the bill about the ombudsman. Besides the general law argumentation the report included serious ascertainment. The ombudsman dealt with 50 incentives and all of them were in contradiction with legal principles mainly in the process preceding the bill about the sterilization. He included to the report the cases about sterilization from 1989 as well as in 90ties. The ombudsman asked the Minister of Health for announcement of implications which she should deduced from the investigation.

### 9.3 Final determination

After receiving the statement from the Minister of Health the ombudsman collected other data and then he published his “final determination of the ombudsman in case of sterilization realized in contradictory with law and the suggestion to rectification.”<sup>87</sup>

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<sup>85</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 166. My translation

<sup>86</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 166-167. My translation

<sup>87</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 168. My translation

Apart general law case review and final recommendation the report included another documents. First of them “Sterilization and Roma community” showed historical initiatives refer to the sterilization of Roma women. The ombudsman assessed the investigation of general procurator of the Czech and Slovak Federative Republic, the Czech Republic and the Slovak Republic and the investigation led by the The Office of Documentation and Investigation of Crimes of Communism.

This determination was further dealing with the investigation in the Slovak Republic where the document “Telo i duša” pointed out about this problem in 2003. This document was compiled by two Civil Associations – the first one was “the Counseling Center for Human Rights” with its seat in Košice and “the Center for Reproductive Rights” with its seat in New York.

Second of them was “Eugenic-oriented social systems”. The ombudsman draws on from the examples of Switzerland and Sweden. He would like to point out that illegal sterilizations in hands of Czeco-Slovakian medical staff are not the extraordinary case.<sup>88</sup>

#### 9.4 The ombudsman’s review

The ombudsman tried to evaluate the investigation without being influenced by the historical or ethnical consequences. He chose this process because he found the radical mistakes in cases from 90ties mainly in the application of informed consent. “The analysis of wrong application of law principles from medical law would have allowed the general conclusions which exceeded the problems of inadmissible sterilizations.”<sup>89</sup>

The Article 7 paragraph 1 of the Charter of Fundamentals Rights and Freedoms defined the untouchableness of human being and it is ensured by law. It means that the encroachment to mental integrity of human being is prohibited. This prohibition is connected as civil as statutory sphere of right. This conception human rights and protection of integrity arises significant consequences for health service. “Any medical surgery to human body has to be understood as the encroachment to human integrity.”<sup>90</sup>

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<sup>88</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 168. My translation

<sup>89</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 169. My translation

<sup>90</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 169. My translation

It is necessary to mention that the relationship between the patient and doctor went through great change in Euroamerican environment. Council of Europe accepted the „Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine“. The Convention defines the general principle of the person agreement in any encroachment in medicine sphere and health. This Convention is in force in the Czech Republic from 2001.<sup>91</sup>

It is assumed that the patient gives by informed consent the agreement with the surgery but it has right to get true and understandable information about its health condition. At whole doctor should act to the patient equally. Doctor is someone who offers its service.

In case of the sterilization which irretrievably affects the ability to reproduce it could be understood as the encroachment to personal integrity. According to the Article 17 of International Covenant on Civil and Political Rights it could be taken as interference to family and private life.

The regularization about the sterilization is adjusted by the paragraph No 27 about the care and human health. According to this paragraph the sterilization can be executed only with the agreement of a person who submitted a request for sterilization. These conditions are further specified in directives from 1971. The sterilization can be understood as a surgery which prevents further impregnation but the genital organs are not damaged. The person who would like to be sterilized has to ask about this surgery in writing and this request has to be sent to chairman of sterilization committee board and it has to be substantiated. According to the directives the person has to sign the declaration of consent sterilization. It has to be clear that the person know everything about this surgery.<sup>92</sup>

Having prepared the review the ombudsman assessed if the request had been written which clearly means free will. He further assessed the process of sterilization committee board and finally of the person gave the agreement even, in this case, she was informed about the consequences of sterilization.

The ombudsman indicated the illegality of surgery executed on Roma women because they were sterilized without the agreement which should be fully free and in civil sense. By

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<sup>91</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 170. My translation

<sup>92</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 170-171. My translation

this report he closed the investigation indiscriminately. The reasons why the agreement of Roma women was not fully free are two:

There exist two reasons why the agreement of Roma women was not fully free:

1. From the law point of view these cases evoke doubts in the process of information of the patient which should ensure the right decision of the patient. The ombudsman investigated the cases where it is always a doctor who suggests the possibility of sterilization not the patient. The doctor should explain to patient that her health condition does not allow getting pregnant. In this case the sterilization is an option how to avoid pregnancy in future. The doctor should explain to the patient the advantages and disadvantages of the sterilization and according to what medical finding he recommends it. The doctor should give to the patient some time to think and decide.<sup>93</sup>
4. During the investigation from 90ties the ombudsman found out that the medical staff tried to persuade the Roma women. Everything happened with silent agreement and support of social workers. The motivational factor should be the social support of 10 000 Czechoslovakian crowns which was quite a lot of money in 90ties. This impact could be assessed as the significant impeachment of free will done by the social workers.<sup>94</sup>

The ombudsman's report included the suggestion of legislative measures according to the Sweden model.

## 9.5 Consequences of solution of the Ombudsman

The Minister of Health informed the ombudsman during the investigation that she would like to arrange the new bill about the health care and about the sterilization. She added further that she would like to revise the directives:

- Support of Planned Parenthood.
- To update the directive about the sterilization connected with Caesarean operation.

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<sup>93</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 172. My translation

<sup>94</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 173. My translation



- To develop the unique form of the sterilization agreement.<sup>95</sup>

## 9.6 The importance of this case in the point of the protection of human

Already in 90ties and early 21 century information about the involuntary sterilization of the Roma women appeared. Thanks to non state institution the information spread to the international institutions.

The ombudsman did not have the permission to lead the investigation directly in the hospital. On the other hand he would like to help the Roma women. He knew that it is in the interest of all citizens to clarify this case in public. He discussed one incentive after another. He appealed the Minister of Health with the incentive about the sterilization and she had to start to deal with the involuntary sterilizations. During the investigation the ombudsman was dealing with information from Switzerland and Sweden. He also studied a report from the Slovak Republic in detail.<sup>96</sup>

This case had been medialized longer before the conclusion was published. The ombudsman knew that medialize this case will cause negative reactions therefore he did not decide to investigate this case through media. He would like to investigate this case with respect to the protection of human rights and freedoms. In the end he pushed the Committee board to compensate the Roma women.<sup>97</sup>

“The sterilizations which are executed in contradiction with law are good examples that the ombudsman and any other authority cannot ignore the human character of this case which could be indicated as administrative.”<sup>98</sup>

In this investigation the ombudsman proved again that he is the person on the right place. He could put away this case but he dealt with in detail until he found out the solution which would be satisfactory. According to my opinion if this case was investigate by authorities maybe not a half of all Roma women would not contact them because they would not trust

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<sup>95</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 174. My translation

<sup>96</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 175. My translation

<sup>97</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 176. My translation

<sup>98</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 176. My translation

them. The ombudsman dealt with all cases apart so other and other incentives appeared. The ombudsman had been trusted by the Roma women.

This case is special on it because there is a question about the Roma women and everybody well knows that the citizens of the Czech Republic always had and always will have problems with Roma community. They do not want to work they live in nomadism they have special culture which is completely different from our culture. The main thing which makes everybody angry is that they have many children and they want to get social benefits. The society would welcome the solution of the sterilization of Roma women but the Roma woman on herself should realize that the situation when she has five kids and she waits for social benefits is clearly unacceptable. It can happen that one from five kids will be talented on sport and its Roma parent would not be able to provide it by sport equipment because they have another four hungry kids. Is not better the possibility to have two children and give them the opportunity to develop their talent and give them maximum of our attention?

## **10 CAMERA EQUIPMENT IN EDUCATIONAL INSTITUTION**

### **10.1 The incentive**

During the informal conversation with the curator in 2002 the staff from the ombudsman's office found out that the camera equipment and wiretaps are placed in small educational institution for boys. The ombudsman could not believe that information therefore he decided to visit this institution unannounced. If the assertion was right the ombudsman would like to start the investigation from his own initiative.<sup>99</sup>

According to my opinion the ombudsman had the right decision to visit the institution without previous announcement. The headquarters would let the cameras remove and the whole visitation would be useless because the investigation will be based on the assertion of the curator and boys from the institution but no one would have proof it.

### **10.2 Issue of fact**

During the investigation the ombudsman really revealed the camera equipment and wiretaps. The camera equipment was found in the bedrooms of boys, in the hall, in the kitchen and the dinning room and even in the garden. The parts where the camera was not placed were WC, bathroom and place where boys had wardrobes with clothes. The wiretaps were found in the bedroom, in the kitchen and dinning room, in workroom and in clubroom.

The director initiated that the cameras and wiretaps installation is possible according to the direction of deputy of the Ministry of Education No 11 981/1998-24 and informed that thanks to cameras and wiretaps there could be revealed some plans to escape or commission of crime.

The director also pointed out that the equipment is advantageous in sense that the teacher does not need to be directly with boys in the room but he can watch their activity through the equipment. Here someone could raise a hand with the objection and point out the well known picture from american movies where police officers are sitting in front of the monitors are sleeping or doing something else than watching. If the teacher is directly in the room he could help, tell an advice or prevent an injury. The teacher should create the atmosphere of respect and it is hard to create a respect to someone's personality if you are

not present at the room. Moreover boys had to feel weird like being watched by the invisible Big Brother.

The director objected that cameras and wiretaps were approved by Czech School Inspection in 1999. The installation of cameras was consulted in the department of Ministry of Education, Youth and Sport.

After receiving this information the ombudsman spread the area of investigation partly on the Ministry of Education, Youth and Sport and partly on Czech School Inspection. Both institutions initiated “cameras are possible device recording the negative behavior of children.”<sup>100</sup>

The ombudsman scarified not only the camera equipment but also the wiretaps for which the director was responsible. The ombudsman scarified also the attitude of the inspector of Czech School Inspection. Th ombudsman rejected the statement of the inspector about the contribution of the camera equipment. She compared the educational institution and street in the city. The ombudsman rejected this comparison because the institution has no aspect of public character. The ombudsman marked her mistake in founding out the installation of cameras in comply with generally applicable principles.<sup>101</sup>

### 10.3 The ombudsman’s review

The Charter of Fundamentals Rights and Freedoms iniciates in the Article 7 that personal integrity and privacy is guaranteed and it can be limited only in cases assessed by law. Moreover the Article 10 paragraph 2 ensures the right before the illegal encroachment to family and private life. The ombudsman points out that the installation and the use of cameras and wiretaps is the encroachment contradictory to the Charter of Fundamental Rights and Freedoms.

The precautions which the institution accomplished are in contradictory with International Covenant on Civil and Political Rights where it is assessed in the Article 17 that “nobody cannot be exposed to arbitrary interfere into private life and everybody has right to be protected against this interfere.”<sup>102</sup>

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<sup>99</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 178. My translation

<sup>100</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 178-179. My translation

<sup>101</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 179. My translation

<sup>102</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 179. My translation

The precautions were not in complying with the European Convention and their Article 8 where it is written that “everybody has the right on respect of its own private life.”<sup>103</sup>

The ombudsman based on the Convention on the Rights of Child the Article 16 where it is initiated “no child can be exposed to arbitrary interfere to its private life and he or she has the right to be protected against such interferences.”<sup>104</sup>

The ombudsman pointed out the contradiction between the bill about the educational institution and protective education in school institutions. “The basic rights of child to be educated have to be guaranteed in school institutions in sequence with Constitutional principles and International Treaty on Human Rights and Fundamental Freedoms”.<sup>105</sup>

The ombudsman pointed out the fact that state authorities could not interfere to human rights and freedoms neither ignore this fact. He supported the fact that there is not any law the camera equipment and wiretaps are not allowed by law documents. Monitoring of people is serious interference to the private life therefore the ombudsman supposed that these systems could disturb the children’s psyche. The boys were already accepted to the institution with disturb behavior why should the equipment disturb their psyche more? They were accepted to make their behavior better and this equipment does not help to harmonic development of children personality. Moreover boys are out of the common environment.<sup>106</sup>

#### **10.4 The ombudsman’s conflict with the Ministry of Education, Youth**

After receiving the report from the ombudsman about the negative impact of the camera equipment the Ministry of Education, Youth and Sport asked the director of the educational institution to remove the system from bedrooms. The ombudsman found out this measure as insufficient and he insisted on removing all system from the institution. The minister of Education, Youth and Sport asked Department of State and Law Academy of Science of Czech Republic to make special judgment. The members of the Department did not find that the wiretapping of children is in the contradiction with the Constitution. The members

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<sup>103</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 180. My translation

<sup>104</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 180. My translation

<sup>105</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 180. My translation

of Department assessed that the educational institution is not residence therefore between the residences and for example wiretapping the way by subway is not a difference. The members of the Department did not find any difference between watching boys in the bedroom and at the hall.

The minister who was previously trying to be helpful in removing the camera equipment in bedrooms at least completely changed her mind after receiving the decisions from the members of the Department. She informed the ombudsman that the equipment will stay because she will not give the order to remove it.<sup>107</sup>

The ombudsman did not give up and continued the fight for boys. He spoke to the members of Faculty of Law in the Masaryk University in Brno and he lets the members to assess this situation. It is clearly demarcated in determinations of the Faculty of Law that housing in educational institution come under the protection No 7 Article 10 and 12 of the Charter of Fundamental Rights and Freedoms. Moreover this housing has different character than moving in public in station or traveling by subway. Wiretapping at this place could be taken as a protection against thieves and potential brutes.<sup>108</sup>

The ombudsman was interested in opinions of psychologist about the camera equipment as well as in previous case with screens. Their opinion was based on fact that the equipment does not respect the relationship between a pedagogue and a student because of their no feedback. “The pedagogue sitting in front of monitors instead of making a discussion with teenagers does not support their development to become independent but they support a cult of immaturity and irresponsibility.”<sup>109</sup>

The Supreme State Prosecutor, Civil Association for the protection of human rights, Czech Helsinki Committe and League of Human Rights interfered to this case. Their opinions were in complying with the ombudsman’s opinion. They did not support such an intervention to the private life.

Even this case was lengthy and took more than two years some of directors from different educational institutions decided to remove the equipment. The minister rejected

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<sup>106</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 180. My translation

<sup>107</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 181. My translation

<sup>108</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 182. My translation

<sup>109</sup> ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 182. My translation

the ombudsman's requirement and she did not order to remove the equipment from all educational institutions.<sup>110</sup>

### **10.5 The consequences of solution of the ombudsman**

The ombudsman used every possible option he had in his competence. The ombudsman can use the sanction of medialization. This dispute was ended thanks to novelization of the bill about educational institutions. It is possible to use the camera equipment but only out for checking the surrounding of the buildings or indoor rooms where the entry of children is not allowed. The equipment is not allowed in rooms where boys are present.<sup>111</sup>

### **10.6 The importance of this case in the point of the protection of human**

As it was mentioned above the dispute was long and took more than two years. Thanks to medialization the ombudsman discovered the condition in educational institution in public. According to the ombudsman's opinion it is important to check these institutions because they can contravene the children's rights. Children who are accepted to these educational institutions are mainly from incomplete family or their family is nonfunctional.

This case was the first one which the ombudsman investigated in school facility until that time this function had been provided by Czech School Inspection. According to the ombudsman's opinion Czech School Inspection made a mistake as the control body. The ombudsman's investigation is the proof that impartial view is better than inspection. The inspection focuses on details but does not see the breaking rights of children.

This dispute pointed out how quickly technology is developed and how it can be used in contradictory to the law and how it intervenes to the people's privacy.<sup>112</sup>

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<sup>110</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 183. My translation

<sup>111</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 183-184. My translation

<sup>112</sup> See ŠABATOVÁ, Anna. *Ombudsman a lidská práva*, 184-185. My translation

## CONCLUSION

The whole thesis was based on the theme “the ombudsman”. I started with the development of Public Administration in the Czech Republic. I described the situation during the previous regime and the development to the present state.

In the theoretical part I described the ombudsman institution I did not forget to emphasize the ombudsman’s force, how is the ombudsman elected, how should the incentive look and how the ombudsman investigates the cases.

In the analysis I devoted to the three cases which the ombudsman investigated. The cases were hard to solve because it took long time a patient. Even the authorities rejected the measures which the ombudsman suggested he did not give them up. He tried to investigate them till the sufficient end for the clients who submitted the incentive.

The aim of the thesis was to prove that ombudsman is the person who lives for his job. Even if the case is not in his competence, and he just considers it to be important to solve, he emphasizes the importance of the case and tries to solve it on his own, which I finally proved in the practical part by describing ways of solving three different cases.

Even it seemed sometimes that the incentives will be not solved in the best way for the clients the ombudsman tried to help by the all ways he could use. He is the best representative of people who has problems with authorities.



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