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THE OMBUDSMAN IN THE CZECH REPUBLIC

Inde datae leges, ne fimir omnia posset

(Laws exists for prevention of powerful man not to do everything)
Ovidius

The ombudsman in the Czech Republic is a new legal institution This article is dedicated to that phenomenon. Here it is explained the basic characteristics of legal status and the legal definition of the ombudman's activity. The word is also about it's competences and about the characterstics of ombudsman's measures.

Key words: *Ombudsman, Czech republic, Characterstics, legal status, measures*

Preface

If we try to characterize in general position of the ombudsman, than we realize that it is an independent and impartial person elected by the parliament and that informally investigates complaints of citizens about maladministration, not acting or wrongdoing of public administration.

The activity of public administration without doubt needs precise legal framework which guarantees legal realization its tasks and objectives. Public administration is executive activity which is legally bound. Honestly said, without bound by law would not be legal certainty!^{1[1]}

Institution of the ombudsman and its activity was established by Public Right Protector Act number 349/1999² This legal act came to

¹ Compare e.g. Knapp, V.: *Teorie práva*, Praha, C.H.Beck, 1995, p.212 or Průcha, P.: *Správní právo. Obecná část*, Masarykova univerzita Brno, 2001, p.191

² in Czech its name is zákon č. 349/1999 Sb., o Veřejném ochránci práv.

force on 28th February 2000. Ombudsman exists also in other European countries.

The Basic Characterization of Legal Status of the Czech Ombudsman

The Czech Ombudsman protects persons against unlawful, antidemocratic, not-acting or *maladministrative* activities of institutions and other public organs mentioned in the act number 349/1999.

Legal Definition of the Ombudsman's Activity

Who is concerned within the scope of the Ombudsman?

Positive definition of the scope of the Ombudsman

- a) ministries and another administrative authorities operating in the whole state,
- b) authorities liable to bodies mentioned in sub a),
- c) the Czech National Bank (in Czech Česká národní banka in matters dealing in administrative affairs,
- d) the Committee for Radio and TV Broadcasting (in Czech Rada pro rozhlasové a televizní vysílání),
- e) Municipal autonomous bodies in matters dealing in administrative state affairs.

Furthermore is within the scope of ombudsman if it is not defined another way

- a) the Police of the Czech Republic (in Czech Policie České republiky),
- b) the Army of the Czech Republic (in Czech Armáda České republiky),
- c) the Castle Guard (in Czech Hradní stráž),
- d) the Prison Service of the Czech Republic (Vězeňská služba České republiky),
- e) the institutions where is held custody, imprisonment or ordered treatment,
- f) the public health insurance companies.

Negative limitations within the scope of ombudsman (where is no ombudsman's competence)

- a) the Parliament,
- b) the President,
- c) the Government,
- d) the Supreme Audit Office (in Czech Nejvyšší kontrolní úřad),
- e) the intelligence services of Czech Republic,
- f) the institutions involved in criminal proceedings,
- g) the institutions of public prosecutor,
- h) the courts except court administrative institutions.

From the precise lists mentioned above is implied that Ombudsman's competence covers the whole public (state) administration. For better comprehension and prevention of the misunderstanding are in the act number 349/1999 written specific institutions (e.g. Czech National Bank), which could be doubted if are or are not part of the public administration.

Personal Aspect

What are the legal conditions to become the Czech Ombudsman? According to the law it can be elected anyone, who is eligible to become a senator. This implies use of the article 19 the part 2 of the Czech Constitution (number 1/1993): Every citizen of the Czech Republic who has the right to vote and who has attained the age of forty years may be elected to the Senate.

According to the act number 349/1999 the ombudsman's function is incompatible with presidential function, being a member of parliament, judge or with any activity in the public administration. The Ombudsman's activity is also incompatible with profit-making activity except administration own property and scientific, pedagogic, journalistic, literary or artistic activity, if it is not disturbing performance and dignity of the office and if it is not menacing trust in independence and impartiality of the office.

The Ombudsman must not be a member of any political party. This condition strengthens the principle of independence and impartiality, which is the most important constituent of this office. But we must be aware of the Ombudsman's responsibility to The Chamber of Deputies of The Czech Republic (in Czech Poslanecká sněmovna ČR).

The Ombudsman's independence is straightened with the fact, that the Ombudsman can not be prosecuted till the end of the term of his office without agreement of The Chamber of Deputies.

The Ombudsman is obliged to keep in secret all facts, which he learns during his work in the office.

The Ombudsman is elected with The Chamber of Deputies of The Czech Republic from candidates who are proposed by the President of Republic and The Senate. Both of them (the President and The Senate) can propose no more than two persons. It is also possible that both institutions can propose the same candidates. This system of this “double proposing” helps for better and colorful choice.

The Ombudsman can be elected only for six-year term and not more than twice in succession.

The seat of the Ombudsman is according the provision 2 part 3 of the Act number 349/1999 is the city Brno (which is the second Czech biggest city and it is not a capital city).

The Ombudsman is monocratic office. That means that responsible person of the office is only one man like e.g. the President of Republic. But it exist the vice-ombudsman who has the ombudsman’s competence during his absence. The vice-ombudsman can be granted by the ombudsman to do part of ombudsman’s scope. This legal possibility helps the Ombudsman to work more effectively. Nowadays is the vice-ombudsman entitled with competence to solve e.g. medical service or problems with citizenship.

Technical and organizational task of the office are operated by the Ombudsman’s Office, which is financed directly from the state budget.

According to the provision 8 of the Act number 349/1999 is ombudsman’s salary and reimbursement his expenditures the same like for the president of The Supreme Audit Office. For the vice-president are the same conditions like for the vice-president of The Supreme Audit Office.

The Ombudsman’s concrete activity

The Legal Reasons of the Ombudsman’s Activity

The Ombudsman starts his case:

- a) when he is directly asked by natural person or by corporate body,
- b) when is a case sent to the member of parliament and this member sends this case to the ombudsman,
- c) when is a case sent to any chamber of parliament and this case was than set to the ombudsman,
- d) when the ombudsman start solving the case by his own initiative.

According to conditions mentioned above is correctly implied that everybody has right to ask the ombudsman with written initiative if it is

in ombudsman's scope. It is also possible to make oral initiative written like a protocol in his office. This is the less formal way and it opens gate for all citizens. The informal character of the proceeding is supported by the fact that it is not necessary to be represented by barrister or solicitor and that you do not have to pay any fees.

Legal Conditions for the Initiative

Legal initiative has to according to provision 11 of the Act number 349/1999 fulfill these points:

- a) description of essential facts of the case and information whether has been the case already solved with another state authority and its result,
- b) identification of an authority and (if possible) name and surname of the concerned person
- c) evidence about the fact that the authority was unsuccessfully asked to restore its wrong act
- d) name, surname and address of residence (if it is natural person), or name, address of seat, name of person entitled to act on behalf of corporate body; it means necessity to identify the initiator (complainer)

The Ombudsman is entitled to refuse the initiative if it is:

- a) missing essential points (mentioned above), were not refilled in set term,
- b) obviously invalid,
- c) from gaining the legal validity of the decision or act of the authority or event, which concerns the initiative, to submitting it to ombudsman's office longer than one year,
- d) the concerned matter is proceeded in court or has been decided by court,
- e) the concerned matter which had been solved with the Ombudsman and repeated initiative does not reveal any new fact.

The Ombudsman has to inform in written way the complainer about the refusal of initiative and its reasons.

According to initiative character which is not under the Ombudsman's competence:

- a) a legal remedy which is bound by regulations about administrative or judicial matters,
- b) a legal action or remedy under administrative jurisdiction,

- c) a constitutional complaint,

The Ombudsman informs complainer as soon as possible about it and instructs him about right way how to act.

If the Ombudsman does not refuse the initiative, then he starts the inquiry and informs about it the complainer.

Ombudsman's competence

The Ombudsman is entitled enter to all rooms in authorities and do there an enquiry dealing with:

- a) seeing documents,
- b) interviewing employees of offices,
- c) discussion with persons who are in custody, prison or in medical treatment, and this discussion is done without the presence of any other person.

The authorities are obliged when they are asked by the Ombudsman:

- a) provide information and explanations,
- b) show documents,
- c) give a written standpoint about facts of the case or about legal questions,
- d) introduce evidences which the Ombudsman asks,
- e) do an allowed control which was asked by the Ombudsman

The Ombudsman is entitled to assist at oral proceedings and introducing evidences and interviewing participating persons.³

If it is needed for the case, the ombudsman is entitled⁴ to interview employees of the authority even if they are under legal obligation to keep something in secret.

The implication of all obligations mentioned above is the duty of cooperation of authority with the Ombudsman.

Each inquiry has a result which includes an identification of the fact whether was found or was not found any maladministration of controlled authority. In all cases the Ombudsman informs the complainer and authority about the result.

³ Compare „Jurčík, R. Správní řád, pages. 179 až 228 in „Meritum Obce 2006-2007“, ASPI a.s., 2006, 960 s., ISBN: 80-7357-151-X,

⁴ According the provision 15 part 4 of the act number 349/1999

In case when is found any maladministration the Ombudsman asks authority for an explanation within thirty days. After authority answering that it makes measure for remedy and the Ombudsman accepts it than the complainer is informed. Otherwise (when the authority does insufficient measurement or does not answer) the Ombudsman informs the complainer and the authority about his final standpoint and the proposal of measure for a remedy.

Basic Characteristic of the Ombudsman's Measure

The Ombudsman is especially allowed to propose these kinds of measurements for:

- a) initiation of proceeding about decision review, act or approach of the authority, if it is possible to initiate it from legal administrative point of view,
- b) banishing of authority non acting,
- c) starting disciplinary proceedings,
- d) starting prosecution,
- e) providing compensation of damage or setting up a claim to compensation of damage.

The authority has legal duty in thirty days term after delivery final Ombudsman's statement to inform the Ombudsman about measurement which he has made.

If the authority mentioned duty has not fulfilled or has done insufficiently then the Ombudsman has two possibilities:

- a) he can inform superior body of the authority or government in case if any superior body does not exist,
- b) he can publish the result of the case, but he can not publish facts about state secrets, facts identifying complainer or employees of the authority.

Special Ombudsman's Entitlement in Legislature

The Ombudsman has special competence to recommend passing, changing or abolishing a law or another kind of legal regulation. The recommendation is handed over to competent authority or in case of laws to government. The involved authority or government is obliged in sixty days term to announce its statement about the Ombudsman's recommendation.

The Ombudsman has also legal duties. Each year till 31st of March he has to hand over to The Chamber of Deputies a written wrap-up (a report) about his activity in passed year. The wrap-up has to be sent to other institutions: the Senate, the President of the Republic, the Government and its ministries and other administrative authorities and he also publishes it in media.

The Ombudsman has to inform The Chamber of Deputies

- a) at least once per three months about his activity,
- b) with a report about particular cases which were not solved by sufficient measurements,
- c) about recommendations concerning passing, changing or abolishing any legal regulation.

The Chamber of Deputies discusses about these reports and information. The Ombudsman is entitled to attend The Chamber of Deputies proceedings dealing with his scope even if the proceeding was claimed to be hold without public.

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OMBUDSMAN U ČEŠKOJ REPUBLICI

U ovom tekstu autor govori o ombudsmanu u Češkoj Republici. Ombudsman je nova institucija u Češkoj. U članku se govori o pravnoj prirodi ove institucije, o tome ko i pod kojim uslovima postavlja ombudmsna u Češkoj, kakva je njegova nadležnost, te koje mere on može konkretno preduzeti.

Ključne reči: ombudsman, Češka, kompetencije, nadležnost, mere