THE OMBUDSWOMAN'S GUIDE TO THE GALAXY OF PUBLIC AUTHORITIES

Overview of the legal competences of the Public Defender of Rights in Slovakia

THE COMPETENCE OF THE PUBLIC DEFENDER OF RIGHTS EXTENDS:

- Legal persons and individuals who, under special legislation, decide on the rights and obligations of individuals and legal persons in public administration – e.g. the Social Insurance Agency and health insurance companies
- Local government authorities – e.g. municipal councils, mayors
- Government authorities – e.g. ministries, district offices

SITUATIONS WHERE THE PUBLIC DEFENDER OF RIGHTS CAN HELP YOU:

- **Inaction by public authorities – i.e. unnecessary delays in proceedings**
- **Decision-making by public authorities**
- **Maladministration by public authorities**

For example, processing of requests for information access according to the Act No. 211/2000 Coll. on free access to information (Information Act) as well as petitions and complaints in the public interest.

THE COMPETENCE OF THE PUBLIC DEFENDER OF RIGHTS DOES NOT EXTEND TO:

- The National Council of the Slovak Republic (Slovak parliament)
- Courts (except for delays in court proceedings, court management and administration bodies and reasons implying a judge's disciplinary offence)
- The President of the Slovak Republic
- The Government of the Slovak Republic
- Matters of operational nature and related to mobilisation
- Prosecutor's offices (except for reasons implying a prosecutor's disciplinary offence)
- The decision-making powers of Police investigators
- The Commissioner for Children and the Commissioner for Disabled Persons
- Intelligence services
- The Supreme Audit Office of the Slovak Republic
- The Constitutional Court of the Slovak Republic

SITUATIONS WHERE THE PUBLIC DEFENDER OF RIGHTS CANNOT HELP YOU:

- Compensation claims for damage caused by maladministration or an unlawful decision
- Administration of state property in the context of civil law relations
- Disputes arising from civil law relations – e.g. neighbourly disputes, contractual relations, inheritance procedures, loans
- Discrimination in hiring procedures
- Other labour law relations – e.g. dismissal from work, working conditions, relations between employers and employees, including in public offices
- Cases that are being or have been reviewed by a court or prosecutor's office
- Legal assistance or legal advice requests
- Decisions or inaction of authorities of other states

COURTS

(district courts, regional courts, the Supreme Administrative Court of the Slovak Republic, the Specialised Criminal Court, the Constitutional Court of the Slovak Republic, the Supreme Court of the Slovak Republic)

- Delays in court proceedings
- Court management and administration bodies and reasons implying a judge's disciplinary offence
- Review of court decisions and procedural acts (the public defender of rights is not empowered to change or revoke court decisions)

EXAMPLE:
Court proceedings began in 2004. The complainant contacted the public defender of rights in 2006 and in 2009 to complain about unnecessary delays; in both cases, a violation of the right to have one's case heard without unnecessary delays was established. Therefore, the public defender of rights requested that the president of the court take appropriate measures to remedy this situation. Subsequently, in 2011, the complainant submitted a constitutional complaint and the Constitutional Court's ruling confirmed continued unnecessary delays in the proceedings. In 2014, the complainant contacted the public defender of rights again. After establishing that the notices and measures that had been taken did not remedy the situation and the court was repeatedly found to be inactive in the proceedings, the public defender of rights made use of her powers and initiated disciplinary proceedings against the competent judge.

POLICE

- Restriction of personal liberty (e.g. placement of persons in the so-called ‘designated areas’)
- Adequacy of the application of coercive means by police officers
- Unnecessary delays in police action (e.g. a criminal complaint has been filed and the investigator is inactive)
- Procedures and decision-making in other administrative proceedings (e.g. proceedings to grant temporary or permanent residence, asylum procedures, minor offence proceedings and others)

The competence of the Public Defender of Rights does not extend to

- The decision-making powers of Police investigators (i.e. the public defender may not review how and why a decision was made by an investigator)

EXAMPLE:
The public defender of rights received a complaint from a parent that police officers had used coercive means disproportionately against her son when restricting his personal liberty by placing him in the so-called “designated area” (which is not a police detention cell, but, for example, a room equipped only with a wooden bench) and beat him at the police station. By investigating this complaint, the public defender of rights established, on the basis of medical records of the complainant’s son, that coercive means had been used disproportionately by police officers against the detained person. Since the police were unable to demonstrate how the complainant’s son was injured, the public defender of rights found that the son’s fundamental rights and freedoms had been violated by police officers. The public defender of rights notified the police of her findings along with measures proposed to be taken by the police and presented an extraordinary report on the “designated areas” at the National Council of the Slovak Republic.

The competence of the Public Defender of Rights

PRISONS

(remand centres and facilities for sentenced inmates)

- Treatment (e.g. physical violence by members of the Judiciary Guards and Prison Wardens Corps against accused/convicted persons)
- Healthcare (reviewing of access to healthcare and provision of healthcare to accused/convicted persons)
- Food (e.g. the type, quality and quantity of food)
- Conditions in remand centres and prisons (e.g. the size of and facilities in cells)
- Assignment to work
- Issues of a medical nature (e.g. misdiagnosis by the prison's physician, administration of incorrect treatment, etc.)
- Physical violence among accused/convicted persons (in these cases, the public defender of rights reviews the procedures taken by prisons to deal with incidents or transfers of accused/convicted persons to a cell where there is no risk of a conflict)
- Plea bargains (e.g. the type or length of sentence, prison category, the type of custody and others)

EXAMPLE:
A complainant contacted the public defender of rights objecting to the disproportionate use of physical force by members of the Judiciary Guards and Prison Wardens Corps in a facility for sentenced prisoners when transferred from the prison yard to the cell causing multiple injuries to the complainant. Having reviewed this complaint, the public defender of rights found that the complainant's rights had been violated and that the use of physical force by members of the Judiciary Guards and Prison Wardens Corps had been disproportionate. The public defender of rights reported her conclusions along with the proposed measures to the facility, which accepted them.

DISTRICT OFFICES

- Registration of property rights in the real estate cadastre
- Environmental impact assessment
- Issuing of vehicle registration certificates
- Return of property rights in restitution proceedings
- Land use planning and permitting process
- Issuing of trade licences
- Conservation of the environment

EXAMPLE:
The complainant complained that he had not been entered in the renewed land register as the owner of some of the multiple land plots he actually owned. By examining the complaint, the public defender of rights found that the notarial records on the basis of which the complainant became the owner of the land plots in question were entered into the register incorrectly. With a view to the findings of the public defender of rights, the cadastral department took measures to correct the entries, after which the complainant was registered in the renewed land register as the owner.

The competence of the Public Defender of Rights

The competence of the Public Defender of Rights does not extend to

LABOUR, SOCIAL AFFAIRS AND FAMILY OFFICES

- Assistance in material need
- The job-seeker register
- Family allowances
- Social and legal protection of children and youth (e.g. actions of children's guardians)
- Allowances to compensate for severe disability (e.g. a car purchase allowance, transport allowance, nursing allowance and others)

EXAMPLES:

1 The complainant objected to the withdrawal of the protection allowance, which is provided in addition to the benefit in material need. The labour, social affairs and family office failed to instruct the complainant appropriately as to the need to present a medical opinion on the duration of the adverse condition before the expiry of the three-month time limit. According to the findings of the public defender of rights, the office made an error and should not have withdrawn the benefit.

2 Another complainant objected to the non-award of the severe disability allowance for the complainant's child with autism. The public defender of rights found fundamental unjustified differences between medical opinions, on the basis of which the public defender requested the office to process evidence properly and provide grounds for its decisions. The office subsequently revised its decisions and awarded the allowances.

MUNICIPALITIES/SELF-GOVERNING REGIONS

- Provision of social services (e.g. nursing services, personal assistance and others)
- Registry offices and population records (e.g. permanent/temporary residence, change of name/surname)
- Construction-related paperwork (e.g. issuing of building permits)
- Environmental protection (e.g. illegal landfills)
- Leasing/purchase/sale of municipal properties

EXAMPLE:
The public defender of rights was contacted by a complainant who complained about posters put up on a noise barrier wall. In the meantime, the owner of the noise barrier applied for additional authorisation of the noise barrier wall itself. By examining this complaint, the public defender of rights found that the structure authorised as a noise barrier wall had also been used as an advertising structure. Despite being aware of the fact that the use of the structure (as an advertising structure) was incompatible with the building permit, the construction authority did not act on the matter. The public defender of rights considered this to be misadministration by the municipality and violation of an obligation laid down by law. The municipality was notified of this fact in writing and called upon to adopt concrete measures and take immediate action to address the matter. Based on the initiative of the public defender of rights, the municipality conducted an official inspection and ordered that the advertising structure be removed.

The competence of the Public Defender of Rights

The competence of the Public Defender of Rights does not extend to

SOCIAL INSURANCE AGENCY

- Social security benefits (retirement, sickness, accident, unemployment and guarantee insurance benefits)
- Contributions, penalty payments, fines
- Commencement, termination and duration of social insurance
- Complaints against employees of the Social Insurance Agency
- Questions of a purely medical nature

EXAMPLE:
The complainant contested the amount of his old-age pension. He argued that when calculating it, the Social Insurance Agency did not include the period of his study. After examining the complaint, the public defender of rights found that the Social Insurance Agency did not proceed correctly. The public defender notified the agency of her conclusions and proposed that the complainant's entitlement to old-age pension be reviewed. The Social Insurance Agency accepted the proposed measures, increased the complainant's pension and paid the difference for the preceding period.

HEALTH INSURANCE COMPANIES

- Payment of health insurance premiums
- Commencement and termination of public health insurance (applications, cancellations)
- Reimbursement of healthcare provided in Slovakia and abroad (both in EU Member States and in third countries)
- Recovery of health insurance arrears by enforcement
- Questions of a purely medical nature

EXAMPLE:
The complainant objected to the rejection of a spa treatment recommendation for his particular diagnosis (indication group). By examining the complaint, the public defender of rights found that systematic treatment had not been reported for the diagnosis, which meant that in fact the conditions were not met. However, the public defender also found that the spa treatment could be approved for complainant´s another diagnosis as the requirements for that diagnosis had been satisfied. On the basis of the above facts, the complainant was able to receive the treatment.

The competence of the Public Defender of Rights

The competence of the Public Defender of Rights does not extend to

SCHOOLS

- Decision-making on legal relations in education (e.g. non-admission of a pupil/student to a school, exclusion from school, etc.)
- Methods and procedures used by schools to resolve conflicts in terms of fundamental rights
- Segregation of minority pupils and pupils from socially disadvantaged backgrounds
- Relations between teachers and pupils/students (e.g. the choice of particular teaching methods)
- Relations among pupils within the classroom (e.g. bullying)

EXAMPLE:
The complainant objected to incorrect procedure taken by the school in resolving an incident that occurred during a break between two pupils and had serious consequences. The complainant first brought his complaint to the headmaster of the primary school then to the school inspection centre and finally to the municipality's education and youth department. He argued that these authorities had not paid proper attention to the matter and that their investigation had been superficial. The school had not informed the pupils' parents about the incident. Neither the headmaster nor the school inspection centre found any deficiencies in the procedure taken by the school or teachers. However, according to the findings of the public defender of rights, the school did not proceed correctly when resolving the conflict between the pupils. The authoritarian action against the pupil and double punishment for the same act could not be considered to be correct educational action as assessed by the school. The public defender of rights found that the school's procedure to resolve the conflict between the pupils violated the minor's rights under the Convention on the Rights of the Child. It was proposed that the primary school organise training for its teaching staff on the skills needed for constructive conflict resolution. Nevertheless, the headmaster failed to notify the public defender of rights of the measures taken, therefore, the public defender contacted the authority administering the school with a request to adopt the measures and consider dismissal of the headmaster. The authority administering the school reported that the teaching staff attended training on conflict prevention and management and that the headmaster would attend training on human rights.

OTHER POWERS OF THE PUBLIC DEFENDER OF RIGHTS

- Filing of complaints with the Constitutional Court for non-compliance of laws with the Constitution
- Filing of disciplinary actions against judges or prosecutors
- Constitutional complaints of individuals and legal persons (the public defender of rights is not entitled to file constitutional complaints on behalf of a particular person or provide legal representation or advice in this regard).

EXAMPLE:
A person serving an imprisonment sentence for a particularly serious offence filed a complaint with the public defender of rights. He objected to legislative provisions according to which imprisonment imposed for a particularly serious offence constituted an obstacle to the right to vote. The convict objected that the local election committee had prevented him from voting in the previous two elections (presidential elections and elections to the European Parliament). The public defender of rights requested the election documentation from the prison where the convict was incarcerated. Having examined the complaint, the public defender of rights reached the conclusion that the electoral law was inconsistent with the right to vote and initiated proceedings before the Constitutional Court. The Constitutional Court accepted the complaint for further proceedings and upheld it in March 2017 annulling the relevant provisions of the act on the conditions for the exercise of the right to vote.

The competence of the Public Defender of Rights

The competence of the Public Defender of Rights does not extend to

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