



Opinion of the Deputy Public Defender of Rights on the Government's bill on video-sharing platform services

I received a complaint from the Czech Association of Organisations of People with Hearing Impairments (Asociace organizací neslyšících, nedoslýchavých a jejich přátel, z.s.; hereinafter abbreviated as "ASNEP"), whereby I was advised of the adverse impact of the Government's bill on video-sharing platform services (hereinafter the "Government's Bill")¹ on people with disabilities.

Through authorised employees of the Office of the Public Defender of Rights, I discussed with ASNEP its main objections to the Government's Bill. Subsequently, I analysed the Bill in view of the existing national legislation, international and EU commitments of the Czech Republic and the repeated criticism levelled by the UN Committee on the Rights of Persons with Disabilities and organisations promoting the rights of people with disabilities in the area of the accessibility of audiovisual services.² I also took into consideration the resolution of the Government Committee for Persons with Disabilities of 2020.³

I decided to issue the present opinion in the sense of Section 21c (1)(a) of the Public Defender of Rights Act⁴, as I concluded that **further detailed discussions should be held on the form of the Government's Bill with all relevant stakeholders.**

At the present time, I consider the **reopening of the debate on the form of the proposed proportionate measures in audiovisual content services** (typically in television broadcasting) to be **a key measure aimed at supporting the rights of people with disabilities living in the Czech Republic.**

The discussion itself should lead to a consensus on regulation of accessibility of audiovisual content and reworking of selected provisions of the Government's Bill by means of an amendment so as to ensure that legal obligations are clear, enforceable and compliant with the sense and purpose of the Convention on the Rights of Persons with Disabilities.

1 The Government's Bill is filed as Chamber of Deputies document No. 981/0. The Bill should amend, *inter alia*, Act No. 231/2000 Coll., on radio and television broadcasting and on amendment to certain laws, as amended (hereinafter also the "Broadcasting Act"), as well as Act No. 132/2010 Coll., on on-demand audiovisual media services and on amendment to certain laws, as amended (hereinafter also the "On-Demand Media Services Act"). As of the date of issue of this opinion, the Government's Bill is put on the agenda of the 104th meeting of the Chamber of Deputies (starting from 25 May 2021).

2 See below.

3 Office of the Government of the Czech Republic – Department of the Secretariat of the Government Committee for Persons with Disabilities. *Minutes of the meeting of the Government Committee for Persons with Disabilities (VVOZP) of 17 September 2020.* [online] Prague, 2020. Available (in Czech) at: <https://www.vlada.cz/assets/ppov/vvozp/zasedani-vyboru/zapis-VVOZP-17-09-2020.pdf>.

4 Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.



A. Summary of basic information on the Government's Bill (in terms of the right to accessibility)

The Government's Bill was presented to the members of the Chamber of Deputies on 26 August 2020. The Bill includes several parts and comprises the Government's response to the obligation of the Czech Republic to transpose the amended EU Audiovisual Media Services Directive (hereinafter also the "EU Directive").⁵ Although the transposition deadline had already expired on 19 September 2020, the Government's Bill was still in its first reading at the time when this opinion was issued.

For the Czech Republic, the EU Directive **sets five basic legal obligations** concerning accessibility of audiovisual content to people with disabilities:

- (1) ensure the accessibility of services by means of proportionate measures⁶;
- (2) impose a duty on the providers of audiovisual media services (hereinafter the "providers") to provide information to national regulatory authorities on the implementation of proportionate measures⁷;
- (3) introduce the State's duty to encourage media service providers to develop accessibility action plans;
- (4) designate a single and publicly available online point of contact for providing information and receiving complaints regarding any accessibility issues;
- (5) ensure that emergency information is also accessible to persons with disabilities.

After performing a comparative analysis of the EU Directive and the Government's Bill, I reached the conclusion that there are no issues as far as the transposition of the second, fourth and fifth obligation under the EU Directive is concerned. The problem lies in the manner in which the Government proposes to implement the **first and the third obligation**. I comment on this below.

B. Unfavourable impact on people with disabilities

The Government's Bill **completely removes the existing statutory quotas for programmes with closed and open captioning and programmes accessible to people with visual impairments** and replaces them with the general duty of the providers (specifically television broadcasters) to prepare action plans, where the degree in which they ensure and increase accessibility is left **to their discretion**.

5 Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities. The directive was published in the Official Journal of the European Union on 28 November 2018 and entered into effect on 18 December 2018.

6 By proportionate measures, the EU Directive means sign language, subtitling for the deaf and hard of hearing, spoken subtitles, and audio description (see paragraph 23 of the Recitals to the EU Directive).

7 The Member States must subsequently inform the European Commission of the adopted proportionate measures.



This change will **reduce the legal enforceability of accessibility of audiovisual services**. I note that already the current wording of the legislation makes it unclear how the television broadcasters are supposed to comply with said quotas.⁸ Consequently, should the Government's Bill pass into law, this will make it all the more difficult to establish a benchmark for the planned increase in the available content and the adequate pace of the year-by-year increments in accessibility.

Moreover, the Government's Bill again speaks of "programmes" rather than the "total length of the broadcast programmes", which is one of the perennial issues discussed in this regard, which this legislative initiative fails to address.⁹

Consequently, if the Government's Bill passes into law, there is a risk of **fragmentation**¹⁰ and a lack of co-ordination of the **broadcasters' actions**, as well as additional **burden on organisations promoting the rights of people with disabilities**. Indeed, the draft envisages that broadcasters will be required to discuss their action plans with these organisations in advance. While I support the participation of these organisations in increasing accessibility of audiovisual content services, I am concerned that given the vaguely defined duties imposed on the broadcasters, these organisations will only be consulted in a token fashion to meet the formal requirement, which will further deepen their frustration with the continuously unsatisfactory situation in this area.¹¹

Therefore, I am convinced that the Government should take the opportunity presented by the transposition of the EU Directive to primarily **clarify the existing legislation**¹² and only then **supplement it with the obligations following from the EU Directive**. In other words, the specified quotas should have been preserved so that it was possible to subject all providers to the same conditions and, on this basis, increase the accessibility of content. In my opinion, the Government's Bill will not help attain the objective of the EU Directive, i.e. to guarantee the right of people with disabilities to participate, through media services, in social and cultural life as guaranteed by Article 30 of the Convention on the Rights of Persons with Disabilities.¹³ **Paradoxically, the opportunity presented by the transposition of the EU**

8 For details, I refer to the explanatory memorandum on the draft amendment to the Broadcasting Act (as well as on the Czech Television Act and the On-Demand Media Services Act) of 2016. Available (in Czech) at www.psp.cz. This was Chamber of Deputies document No. 234/2016. However, it was not discussed by the end of the electoral term of the previous Chamber of Deputies of the Parliament of the Czech Republic.

9 For more on the application issues of the current legal regulation, see Zvonek, A., Strnadová, V. *Lidé (nejen) se sluchovým postižením a problematika skrytých titulků. K novele zákona č. 231/2001 Sb., o provozování rozhlasového a televizního vysílání (People with hearing impairments (and others) and the issue of closed captioning in relation to draft amendment to Act No. 231/2001 Coll., on operation of radio and television broadcasting)*. The material served as a basis for a meeting of the Government Committee for Persons with Disabilities (Prague, 17 September 2020).

10 Licensed TV broadcasters (i.e., commercial TV stations) already meet identical legal duties in many different and diverse ways.

11 For example, ASNEP has advocated changes in the accessibility of content for almost twenty years and shows that the Czech Republic lags behind other EU countries.

12 The Government should have used the proposed amendment from 2016, which aimed to eliminate most of the application issues related to the accessibility of audio-visual content especially for people with hearing and visual impairments. The key measures ensuring compliance with the quotas were included in the draft Section 54b of the proposed amendment.

13 Article 30 (1) of the Convention on the Rights of Persons with Disabilities as promulgated in the Czech Collection of International Treaties under No. 10/2010, in the wording effective from 28 October 2009, reads as follows: "States



Directive will rather be used to further aggravate the unsatisfactory accessibility situation, which I consider intolerable.

C. Violation of the participation rights of people with disabilities

People with visual or hearing impairments and their advocacy organisations did not directly participate in the preparation of the Government's Bill. The Government's Bill was not even discussed with them in advance. **The procedure in drawing up the Government's Bill is thus at variance with the basic principles of the Convention, specifically Art. 4 (3),** which explicitly defines a general commitment where persons with disabilities, through their representative organisations, participate in the development and implementation of legislation and national policies of States Parties.

I consider the explanation provided by the Ministry of Culture (as the department responsible for preparing the Bill), i.e., that the Government's Bill could not have been duly discussed due to a short transposition period, to be rather unconvincing.¹⁴ The EU Directive was published in the Official Journal of the European Union on 28 November 2018. The transposition deadline was set to 19 September 2020. **During the nearly two years it had available, the Ministry of Culture should have found some time to meet with the organisations to discuss and consult on the Bill,** and to subsequently incorporate their suggestions, if appropriate.

In my experience, co-operation with organisations promoting the rights of people with hearing and visual impairments is usually quite constructive and quick. For the Government department responsible, this step would mean no additional burden or delay in the legislative process.

D. Information on further procedure

The Public Defender of Rights, as a monitoring body within the meaning of Art. 33 (2) of the Convention, must respond appropriately to all material facts set out in this Opinion.

I would like to emphasise the point that the struggle to adopt a more effective legal regulation in the area of accessibility of audiovisual media services to people with disabilities **has been long and so far unsuccessful.** The Defender dealt with the issue of closed captioning in television broadcasting already in 2010¹⁵ and, as part of frequent

Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities: (a) Enjoy access to cultural materials in accessible formats; (b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats; (c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance."

14 Office of the Government of the Czech Republic – Department of the Secretariat of the Government Committee for Persons with Disabilities. Minutes of the meeting of the Government Committee for Persons with Disabilities (VVOZP) of 17 September 2020, pp. 10–12 [online] Prague, 2020. Available (in Czech) at: <https://www.vlada.cz/assets/ppov/vvozp/zasedani-vyboru/zapis-VVOZP-17-09-2020.pdf>.

15 Office of the Public Defender of Rights. *Annual Report on the Activities of the Public Defender of Rights 2010* Public Defender of Rights – Ombudsman [online]. Brno [retrieved on: 2021-05-19], p. 165. Available (in Czech) at: https://www.ochrance.cz/uploads/import/zpravy_pro_poslaneckou_snemovnu/Souhrnna_zprava_VOP_2010.pdf.



communication with the Ministry of Culture and the Council for Radio and Television Broadcasting, the Defender lent support to legislative proposals drawn up by ASNEP.

I would further like to point out that the UN Committee on the Rights of Persons with Disabilities is also interested in measures aimed at improving accessibility of television content. Last year, the Czech Republic informed the UN Committee that accessibility would improve as a result of the adoption of the Government's Bill¹⁶, which is – in the light of my findings – highly unlikely.

Therefore, I am sending this opinion to the Prime Minister, who also presides the Government Committee for Persons with Disabilities, the Government Commissioner for Human Rights, the Minister of Culture and the Vice-Chairman of the Committee on Science, Education and Culture, Youth and Sports of the Chamber of Deputies and the Chairman of the Council for Radio and Television Broadcasting. **I will ask the Prime Minister or the Government Commissioner for Human Rights to convene a multilateral meeting on the issue in order to reach agreement on an amendment to be introduced in the second reading of the Government's bill on video-sharing platform services.**

Pursuant to Section 21c (1)(d) of the Public Defender of Rights Act, I am also sending my opinion to the European Commission.

In Brno, on 3 June 2021

Mgr. Monika Šimůnková, signed
Deputy Public Defender of Rights
(this letter bears electronic signature)

16 Government of the Czech Republic. *Joint second and third periodic report of the Czech Republic on the performance of obligations following from the Convention on the Rights of Persons with Disabilities* (Resolution of the Government No. 841 of 17 August 2020), [online] Prague, 2020. p. 45. Available (in Czech) at: <https://www.mpsv.cz/umluva-osn-o-pravech-osob-se-zdravotnim-postizenim>.