

# ***Final Statement in the Matter of the Eviction of Romany Inhabitants from the Gallery House in Vsetin's Smetanova Street No. 1336***

## **A Initiation of Inquiry**

I initiated an inquiry on my own initiative on January 9, 2007, pursuant to Act No. 349/1999 Coll. on the Public Defender of Rights as amended, in the matter of the eviction of Romany inhabitants from the gallery house in Vsetin's Smetanova street No. 1336. I also received a complaint from the Czech Republic's Senate committee on training, science, culture, human rights and petitions with a request for an inquiry into the circumstances of the eviction.

As Public Defender of Rights, I work to defend people from the actions of authorities and other institutions, should these be inconsistent with the law, or contravene the principles of a democratic legal state and good administration, and also in the event of inaction by these authorities, thereby contributing to the defence of fundamental rights and basic freedoms.

I concentrated on reviewing the system of social benefits paid to the inhabitants of gallery house No. 1336 in Vsetin's Smetanova street, the manner in which these are granted, and, in particular, paid, with an emphasis on the use (or non-use) of the institute of the special recipient of benefit and the exercise of the social and legal protection of children. I paid special attention to the situation of the Romany families resettled to the areas around Jesenik, Prostějov and Uherske Hradiste. The inquiry also reviewed the procedure of construction and use of new houses at Vsetin's Poschla site, in particular the procedure of the planning authority and the bodies of public health protection. I simultaneously inquired into the use of instruments pursuant to the building code, such as the ordering of maintenance and necessary alterations from the viewpoint of the structural and technical condition of gallery house No. 1336 in Vsetin's Smetanova street and proceedings concerning permission to remove it. Last but not least, I evaluated the situation of the inhabitants resettled to the areas around Jesenik, Prostějov and Uherske Hradiste and the structural and technical condition of the premises to which they had been moved, in terms of the building code and public health protection.

I also dealt with an assessment of the Romany families' eviction from the perspective of the protection of fundamental rights and basic freedoms.

Given the intersecting and interdependent nature of the independent and delegated competences of the municipalities, I could not avoid the context of social work with the Romany minority and the housing policy of municipalities, both of which are primarily an exercise of self-government.

I gathered file records on the zoning, planning and approval proceedings for premises Nos. 2082 and 2083 in Vsetin's Poschla site including photographic documentation and the photographic documentation of premises No. 138 in the Cechy pod Kosirem municipality, No. 4 in Vlčice, No. 131 in Vidnava, No. 90 in Stara Cervena Voda and No. 90 in Mistrice.

The Vsetin municipal authority provided me with information on the social situation of the Romany inhabitants resettled to premises in Vsetin's Poschla site and to the

areas around Jeseník, Prostějov and Uherské Hradiště. I was furthermore provided with documents concerning permission to remove gallery house No. 1336 in Vsetín's Smetanova street and the results of an inspection in Vsetín's Poschla site on March 15, 2007, by the Zlín region's health authority on the basis of a motion of February 21, 2007, which requested inspection in residential houses Nos. 2082 and 2083 in Vsetín's Poschla due to mould.

I also requested cooperation from the zoning and building code department of Zlín's regional authority.<sup>1</sup>

In describing the circumstances and process of the eviction, I utilised information obtained from the Life Together and Roma Vidnava civic associations and information from the Zlín and Olomouc regional authorities' Romany coordinators, the legal representatives of the evicted Romany families and, last but not least, the Czech Republic's Senate committee on training, science, culture, human rights and petitions.

Meetings and inquiry on site:

- A meeting of the Public Defender with senators Josef Pavlata and Milan Bures, representing the Senate's committee on training, science, culture, human rights and petitions, was held in the Office of the Public Defender of Rights on January 17, 2007. The deputy governor of Olomouc region Jitka Chalanková and coordinator of Romany aides of the Olomouc region Renata Kottnerová were also present at the meeting. The latter informed me about the current situation in the Olomouc region municipalities where the Romany families had been resettled and the procedure of the Olomouc regional authority. The senators informed me of their findings from the visit to the Vsetín and the Jeseník area on December 7 to 8, 2006.
- A meeting at the Ministry of Health between the Public Defender of Rights and the Chief Public Health Officer of the Czech Republic was held on January 19, 2007. The meeting was concerned with Vsetín's Poschla site from the viewpoint of potential health hazards and exercise of the competence of public health protection bodies.
- An inquiry on site took place in Vsetín on February 26, 2007. Within the inquiry on site, the authorised personnel of the Office of the Public Defender of Rights met the Vsetín municipality representatives, mayor Kvetoslava Othová, secretary of the Vsetín municipal authority Milan Pucek, heads of the social affairs department and the zoning, building code and transport department and the housing fund administrator. The inquiry on site was concerned in particular with obtaining information for the exercise of public administration regarding social benefits, the social and legal protection of children and the building code. The authorised personnel of the Office of the Public Defender of Rights carried out a random inspection of the file records on social benefits and the social and legal protection of children kept by the social affairs department of the Vsetín municipal authority.

I closed my inquiry on April 5, 2007, in accordance with Section 18 (1) of Act No. 349/1999 Coll. on the Public Defender of Rights as amended, stating maladministration by the Vsetín municipal authority. I subsequently sent a report on

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<sup>1</sup> Note. To retain clarity of style and content, each of the numerous decisions and documents within the file records are identified merely by the date of issue, without quoting the relevant reference numbers.

the inquiry in the matter of eviction of the Romany inhabitants from the gallery house in Vsetin's Smetanova street No. 1336 of April 5, 2007, file ref. 339/2007/VOP/KV ("the inquiry report"), to Vsetin's mayor Kvetoslava Othova and head of the Zlin region's health authority Olga Groschlova to comment on the factual and legal findings contained in the report including my conclusions and recommendations to date, not later than within 30 days of the report's delivery. I received a statement from Vsetin's mayor and a statement from the head of the Zlin region's health authority on May 15, and May 31, 2007, respectively.

I subsequently called upon Vsetin's mayor to complement the materials entitled "Conception of Field Social Workers' Work", "Procedure towards Defaulters and Inadaptible Citizens" and "Exercise of the Low Tolerance Programme". I received these on July 8, 2007.

I summarised my conclusions and remedial measures in the following final statement.

## **B Ascertained Facts**

### ***1. Eviction***

The inhabitants of gallery house No. 1336 in Smetanova street in Vsetin, most of them Roma, began to move to two new houses, Nos. 2082 and 2083 comprising of residential containers in the Poschla site on the edge of Vsetin on October 11, 2006. 36 families, i.e. approximately 230 people, moved there.

Given the large number of people moved by the Vsetin municipality to the Poschla site premises, I decided to check legal title to the vacation of the flats in gallery house No. 1336 in Smetanova street only for two randomly selected families. I ascertained that the vacation took place on the basis of a decision by the Vsetin district court.<sup>2</sup> In both cases the decisions had been issued before moving the Romany families to the Poschla site premises. A petition for vacation of the flats was filed by the Vsetin municipality due to the termination of fixed-term lease agreements. One of the leases had been repeatedly extended on a year-to-year basis until 2005, while the other one had terminated upon expiry of a one-year term of lease in 2005. Neither of the families had filed an appeal against the decision of the district court in Vsetin and the court had not granted a substitute flat. The vacation deadline was two months after the decision's legal force. The eviction occurred after expiry of the deadline for vacation.

199 people had permanent residence in Vsetin's premises Nos. 2082 and 2083 at the date of drawing up the inquiry report on April 5, 2007. 99 people continue to have permanent residence in gallery house No. 1336 in Vsetin's Smetanova street in spite of the fact that the house was pulled down in October 2006.

The Vsetin municipality has provided substitute flats (outside the Poschla site) from Vsetin's existing housing fund to seven families originally inhabiting gallery house No. 1336 in Vsetin's Smetanova street.

Some Romany families were evicted to places outside the Vsetin municipality on October 13, 2006 - to the Supikovice, Vlčice, Vidnava and Stara Cervena Voda

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<sup>2</sup> Annex No. 1 List of decisions on vacation

municipalities. A family moved to the Mistrice municipality on October 9, 2006, and a family moved to the Usobrnno municipality on October 15, 2006. This was a total of six families comprising of 68 people.<sup>3</sup> The Vsetin municipality sent out a bus with people accompanied by a field social worker of the Vsetin municipal authority and an estate agent. Trucks were loaded with the families' possessions on October 13, 2006, in the morning and the bus left for the aforementioned municipalities shortly after. Children had already been withdrawn from the Vsetin school. According to an announcement of the Vsetin special school, the children attending were withdrawn by their family members.

The resettlement to the areas around Jeseník, Prostějov and Uherské Hradiště took place with reference to the decision on vacation by the Vsetin district court.<sup>4</sup> All the decisions on vacation had been issued before the eviction of the inhabitants of gallery house No. 1336 in Vsetin's Smetanova street. It follows from the substantiation of the decision that all the families had been paying properly for using the gallery house flats. Three families defaulting on rent in the previous lease had been repaying their debts. It is indicated in the substantiation of the decision on vacation that the remaining three families had had no debts. The motion for vacation had been filed due to termination of the families' fixed-term lease agreements that had been repeatedly extended (mostly on a year-to-year basis) until 2006 (until 2002 in case of the K. family that was later resettled to the Vidnava municipality and until 2005 in case of the S. family later resettled to the Dřevnovice municipality). The court had granted substitute flats in neither of these cases. Only one appeal had been filed against the decision on vacation by the district court in Vsetin and the regional court in Ostrava had confirmed the vacation decision. The vacation deadline had in most cases been set as one month from the decision's legal force. In one case the deadline for vacation of the flat was three months (the K. family, later resettled to Vidnava). A 15-day vacation deadline had applied only to the T. family (Čechy pod Kosířem) and only the T. family had been evicted before expiry of the vacation deadline.

The T. family was deposited at premises No. 90 in Mistrice, the Z. family at No. 4 in Vlčice, the K. family at No. 131 in Vidnava, and the K. family at No. 90 in Stará Červená Voda. The families arrived in the municipalities at night (around midnight in Stará Červená Voda). The mayors of the municipalities had not been informed.<sup>5</sup> The families complained they did not know where they were going (the premises and municipality). According to a statement by Vsetin mayor Kvetoslava Othová on the inquiry report, the families had had an opportunity to see the premises they would move to at meetings at the Vsetin municipal authority where they had been presented with photographs of the premises and notified of the place of residence. I must note on the aforementioned statement that the informative value of the photographs was obviously not entirely sufficient. It has been impartially ascertained

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<sup>3</sup> Annex No. 2 List of families resettled to the areas around Jeseník, Prostějov and Uherské Hradiště

<sup>4</sup> Annex No. 1 List of decisions on vacation

<sup>5</sup> News monitoring: *"Rychnov nad Knežnou was first to have a go at us and succeed. Vsetin is next. The worst thing is that we are completely helpless against this, because we do not want to behave like the Rychnov nad Knežnou or Vsetin halls. Unlike them, we deal with the Romany issue instead of throwing it off onto others,"* said the Vidnava mayor Milošlav Haderka (October 18, 2006, regional version of daily MF Dnes, Roma Brought in Darkly in the Night).

The Vsetin mayor Cuneš has shown how the Romany issue should not be dealt with. He got rid of problematic people to the detriment of the poor Jeseník area where he has added to the worries of the mayors of several municipalities. If the Jeseník area's mayors behaved like their Vsetin colleague, these people could move along several times a year (October 18, 2006, regional version of daily MF Dnes, Not the Way to Deal with the Romany Issue).

that the premises were not suitable housing for at least two of the families informed as described above.

According to findings of the Zlin and Olomouc regions' Romany coordinators and the mayors of the resettled families' target municipalities, the families were unaware as to where to find authorities competent to pay social benefits, schools their children should attend, places to register new permanent residence, etc. The families claimed they had been threatened with child removal and that they would end up on the street.<sup>6</sup> The Vsetin municipality justified its procedure by referring to them as inadapted citizens and defaulters. It stressed that it had offered a helping hand to the families by providing an interest-free loan to them.

The S. family returned from Supikovice to Vsetin as the premises had been found uninhabitable on the spot. The T. family returned to Vsetin from Usobrnno for the same reasons on October 15, 2007.

The T. family was resettled from Vsetin to Cechy pod Kosirem in the Prostejov area in the evening of October 26, 2006, and the S. family to premises No. 41 in Drevnovice, also in the Prostejov area.<sup>7</sup>

The resettlement from Vsetin to the Jesenik, Prostejov and Uherske Hradiste areas on October 13 (and October 26, 2006 respectively) was preceded by the conclusion of loan agreements between Vsetinska spravni a investicni allowance organisation as creditor and the Romany families as debtors. Some Romany families also agreed in the agreement to encumber certain real estate they would acquire in the future (the K. family in Stara Cervena Voda and the T. family in Cechy pod Kosirem) with mortgage rights.

The loan agreements are interest-free, with monthly instalments of about CZK 2,000. The default interest for delayed instalments equals 10% of the due amount per annum. Simultaneously, the due amount becomes immediately payable.

The loan agreements available to me were entered into on October 4, 2006 (the K. family in Stara Cervena Voda), and on October 26, 2006 (the T. family – Cechy pod Kosirem).<sup>8</sup>

Following the conclusion of the agreements, purchase agreements were entered into between the Romany families as buyers and various natural persons as sellers. One of the sellers was simultaneously an executive of the IMBEX, s.r.o. real estate agency. The Romany families empowered the employees of the real estate agency to receive financial amounts such as the loan from Vsetinska spravni a investicni allowance organisation for the real estate purchase. The Romany families were in some cases represented by an employee of the real estate agency also in the

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<sup>6</sup> News monitoring: *"We had to sign contracts of purchase or else we would have ended up in the street. I wanted to see what we were supposed to pay almost half a million crowns for but they told us local people would complain."* Mrs. K. gives an account of Vsetin town hall's odd practices. Vsetin chose a dilapidated house in Stara Cervena Voda for her family of fifteen people. *"The bus dropped us off at midnight and quickly left,"* the woman says. Water leaks in through the roof and water in the well is undrinkable. The new inhabitants do not have purchase agreements yet and they therefore cannot apply for social benefits. They have not been registered at the job centre and say they have no resources at all. (October 19, 2006, the daily Olomoucky denik, Roma Moving to Jesenik Areas in the Dark).

<sup>7</sup> Annex No. 2 List of families resettled to the Jesenik, Prostejov and Uherske Hradiste areas

<sup>8</sup> In reality the T. family had concluded two loan agreements. In the first one of October 4, 2006, the parties secure the creditor's receivable from Usobrnno municipality family house No. 56 by virtue of mortgage right, the second of October 26, 2006, is concerned with mortgage right to house No. 138 in Cechy pod Kosirem.

conclusion of the purchase agreements. The same person accompanied them in the relocation from Vsetin and participated in the organisation thereof.

Some of the sellers had become owners shortly before the subsequent sale to the Romany families. As an example, one of them acquired ownership title on October 20, 2006, for a purchase price of CZK 320,000 and entered into a purchase agreement with the T. family (Cechy pod Kosirem) on October 26, 2006, for a purchase price of CZK 460,000. The prices differ significantly. Such valuation of the real estate as shown in the aforementioned purchase prices is indefensible.

The purchase agreements were entered into: on October 6, 2006 (the T. family – Mistrice), legal effects of entry of title as of October 9, 2006; on October 13, 2006 (the K. family – Stara Cervena Voda), legal effects of entry of title as of October 13, 2006; on October 17, 2006 (the K. family – Vidnava), legal effects of entry of title as of October 17, 2006; on October 17, 2006 (the Z. family - Vlčice), legal effects of entry of title as of October 17, 2006; on October 19, 2006 (the S. family – Drevnovice), legal effects of entry of title as of October 20, 2006. The T. family (Cechy pod Kosirem) entered into a preliminary purchase agreement on October 26, 2006. The T. family (Cechy pod Kosirem), although it has not acquired ownership of premises No. 138 in the Cechy pod Kosirem municipality to date, is repaying a loan provided by Vsetinska spravni a investicni allowance organisation, which has already been paid to the seller as the purchase price.

According to the information provided by the T. family's lawyer, Alena Vranova, the transfer of ownership title to premises No. 138 in Cechy pod Kosirem had not taken place by March 13, 2007, as the Prostejov branch of the Olomouc region's land registry office suspended the proceedings on entry due to shortcomings in the purchase agreements, the petition for entry and the power of attorney granted for receipt of the purchase price from Vsetinska spravni a investicni allowance organisation. The petition is most likely to be dismissed for these reasons.

Shortly after the Romany families acquired ownership of the premises, distraint through sale of the real estate was ordered with respect to some of the premises due to Vsetin municipality's receivables that had arisen mostly before the families moved to gallery house No. 1336 in Vsetin's Smetanova street: on November 29, 2006, with respect to the premises owned by the K. family (Vidnava), on November 23, 2006 with respect to the premises owned by the K. family (Stara Cervena Voda) and on November 22, 2006 with respect to the premises owned by the T. family (Mistrice). Distraint has been ordered against the premises owned by the S. family (Drevnovice) according to an extract from the land registry, although a distraint order for sale of the real estate has not been issued to date.

Vsetin's district court decided to delay distraint until November 1, 2007, for the K. family (Stara Cervena Voda) by virtue of resolution ref. No. 5Nc 3960/2006-7, substantiating its decision with the dependence of the liable parties' income exclusively on social benefits and the recentness of the premises' transfer. The debt is to be repaid by November 1, 2007. The Vsetin municipality appealed against the decision to delay on January 15, 2007, at the district court in Vsetin.

As of the date of drawing up the inquiry report, the Z. (Vlčice), K. (Vidnava) and T. (Mistrice) families had permanent residence in premises in the Jesenik, Prostejov and Uherske Hradiste areas where they were resettled on October 13, 2006.

The other families, i.e. T. (Cechy pod Kosirem), S. (Drevnovice) and K. (Stara Cervena Voda) continue to have permanent residence in gallery house No. 1336 in Vsetin's Smetanova street, which was pulled down in October 2006.

## **2. Social benefits**

I inquired into the decisions on social welfare benefits provided on the grounds of social need pursuant to Act No. 482/1991 Coll., on Social Need as amended ("Social Need Act") by the Vsetin municipal authority's social affairs department. I also randomly inspected the file records of the evicted inhabitants of gallery house No. 1336 in Vsetin's Smetanova street and interviewed the personnel of the Vsetin municipal authority's social affairs department ("social affairs department").

I concentrated on ascertaining what social welfare benefits had been paid by the social affairs department, the degree of assistance and advice provided to socially deprived residents, and whether it provided social care and utilised all the options offered by law to deal with the situation of those in social need. I was particularly interested to learn whether the social affairs department utilised all the tools to prevent indebtedness of the inhabitants of gallery house No. 1336 in Vsetin's Smetanova street. I therefore assessed the decision-making of the administrative authority on benefits from the viewpoint of the legislation effective till December 31, 2006, i.e. Act No. 482/1991 Coll. on Social Need as amended and the legislation effective from January 1, 2007, i.e. Act No. 111/2006 Coll. on Assistance in Material Need. As already mentioned in section A of the present report, I paid special attention to the inhabitants resettled to the areas around Jesenik, Prostejov and Uherske Hradiste.

I also dealt with the link between the provision of social benefits and the permanent residence of benefit recipients (and persons under joint assessment) after the moving of the gallery house No. 1336 inhabitants in Vsetin's Smetanova street to the Poschla site premises and to the Jesenik, Prostejov and Uherske Hradiste areas, because the territorial competence of the authority deciding on social benefits is linked to the permanent residence of the benefit claimant and recipient.

## **3. Social and legal protection of children**

I also concentrated on the correctness of the exercise of social and legal protection of the children from the families resettled to the areas around Jesenik, Prostejov and Uherske Hradiste by the social affairs department, in particular as regards prevention and intensity of social work in the families. The cases concerned involve families previously referred to by the very Vsetin municipality as large and needing social work. According to the information from the head of the social affairs department, they were 13 "nuclear" families with 44 children (six large families moved to six premises).<sup>9</sup>

I ascertained by randomly inspecting the file records referred to as "Om", kept by the body of social and legal protection of children and on the basis of information from the file records regarding the provision of social benefits that all the families had been socially deprived and due to receive increased attention and continuous work from the authority from the viewpoint of social and legal protection, in particular where significant problems occur in them.

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<sup>9</sup> Annex No. 2 List of families resettled to the areas around Jesenik, Prostejov and Uherske Hradiste

I also assessed the correctness and completeness of the “Om” file records gathering personal and sensitive data. The findings contained in them have fundamental relevance for assessment of the families’ situation. Proper record keeping is therefore required. The file records should contain each family’s history, summarise the problems that needed to be dealt with in the family in the past and today, give an account of developments in the family’s situation, the parent’s capabilities, etc. Given that the file records will be gradually delivered to the territorially competent authorities (the territorial competence of an authority is governed by the permanent residence of the children) whose workers do not know the children, they need sufficient information to work with the families from the very beginning as needed with regard to their current situation and as they are tasked by the applicable legislation.

I ascertained that the body of social and legal protection of children (hereinafter also the “BSLPC”) had paid attention only to a small number of families, namely those where the criminal prosecution authorities had been conducting or had just closed preparatory criminal proceedings as a result of a suspected crime committed by a child from the family. In such cases the BSLPC had carried out an inquiry in the family, interviewed the family members, requested a report from school on the child’s demeanour, cooperated with the criminal prosecution authorities, responded to calls from courts and the Police and drawn up a family history and reports at the latter’s request.

On the contrary, the BSLPC had paid very little attention to families showing a problematic history where continued work with the family would be desirable. Thus for example school notices about signs of behavioural problems (including truancy or behavioural disturbances) met with no response. No records about the BSLPC’s social work with the family had been included in the inspected files for prolonged periods (of up to a year). The submitted file records revealed that in terms of prevention of behavioural problems and follow-up prevention (i.e. that the family must be worked with after the problem occurs in order to reveal and eliminate the reason and prevent reoccurrence), the BSLPC had been nearly inactive.

In terms of keeping the file records, it was ascertained in the first place that some of the files wholly lacked records or protocols about preventive social work with the families. Unsorted loose sheets with the file-relevant records or court judgments had been inserted in the files. The BSLPC defended itself by claiming that the social worker had spoken with the family members several times without recording her work in the relevant file records. It also pointed out that social work in the families had been carried out by field social workers. I ascertained in this context that 7 workers are in charge of the social and legal protection of children at the Vsetin municipal authority, dealing with 1,321 “live” files, which represents approx. 187 files per worker.

#### ***4. Building code and public health protection***

##### Structural and technical condition of gallery house No. 1336 in Vsetin’s Smetanova street

The documents presented at the planning authority suggest that the premises were approved on January 4, 1940, for the Vsetin plant of the joint stock company Zbrojovka Brno as the developer, to serve as a residential house for the plant’s workers. The sanitary and police permission for dwelling and use of the house concerned was issued by the mayor of Vsetin on July 1, 1941, and house No. 1336 was assigned. The house passed into the ownership of the Vsetin municipality in

1992 (on the basis of Act No. 172/1991 Coll., on the Passage of Certain Items from the Property of the Czech Republic to the Ownership of Municipalities as amended). The house had one sublevel and four floors and comprised of 64 residential units, 16 flats with kitchen plus two rooms on each floor. The average area per unit was 31 sq. m. Most of the flats lacked a bathroom; instead the residents shared showers on each floor.

The house had not been refurbished since construction according to the data gathered; only partial structural alterations and routine maintenance had taken place. Complaints about the unsuitable condition of the flats, in particular mould, had been raised since the 1960s. Several flats had been removed from the housing fund for their unsanitary condition (flats Nos. 57, 60, 61 and 62). The structural and technical condition of the building was demonstrably poor already in the 1980s at the least; complaints of (non-Romany) inhabitants about the unsanitary condition of the flats continued.<sup>10</sup> The planning authority issued a decision on May 27, 1991, ordering the Vsetin housing enterprise to perform necessary alterations in flat No. 51 in Smetanova street house No. 1336, including the removal of mould. In 1998, the Vsetin municipality requested a change for non-residential premises – flats Nos. 60 and 61 (removed from the housing fund in the 1960s) – to be again used as flats. The planning authority dismissed this in a communication dated July 30, 1998, due to the persisting unsanitary condition of the flats.

By virtue of a decision dated October 8, 1998, the planning authority ordered securing work to be performed without delay at house No. 1336 by enclosing the no-entry court of premises No. 1336 (about two m from the edge of the access galleries). The planning authority specified in the substantiation that house No. 1336 put people's lives and health at risk by its structural and technical condition. The planning authority stated in the conclusion of the substantiation that it would separately decide on additional measures to restore the structure's proper structural and technical condition. No such decision was issued according to the available information.

In spite of the above, the planning authority issued a final building approval on March 27, 2000, where it permits the use of the "re-approved non-residential premises in house No. 1336/30, 46 Vsetin, Smetanova street, as flats". The district health authority provided a positive statement on January 19, 2000, in the proceedings.

The house administrator ordered an expert report in 2001 for the structural and technical condition of the house, in particular the access galleries. The report stated that the galleries' structure showed deterioration, including a distinct breaking away of the structure's surface. It concluded that considerable deterioration had been proven in the premises' load-bearing structure. A long-lasting failure to perform maintenance work was identified as the cause of the defects consisting in the distinct breaking away of the access galleries' surface. The condition of the premises was characterised as disrepair and restoration without delay a necessity. The recently introduced ban on entry below the structure of the access galleries was found to be an insufficient measure. The report simultaneously proposed how the restoration should be performed. The house administrator informed the Vsetin municipality of the

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<sup>10</sup> Note. According to the applicable legislation at the time, a flat was unsanitary provided that it was found unfit for housing by the planning authority after negotiation with the district health officer due to technical defects having harmful effects on health (Section 64 of Act No. 41/1964 Coll. on the Management of Flats effective till December 31, 1991).

house's condition and requested a decision whether and when to provide for restoration of house No. 1336. However, no instruction was given.

Minor maintenance work was carried out from time to time by the Vsetin municipality as the owner of the premises in addition to the aforementioned decisions of the planning authority, according to the information from the head of the zoning, building code and transport department. No other ordered maintenance work or necessary structural alterations have been documented. A design for a fifth floor extension was even drawn up in 2003 for house No. 1336 to be completed together with the overall refurbishment and zoning permission was issued for the extension in August 2003.

The Vsetin municipality ordered an expert report on the structural defects of apartment house No. 1336 in Vsetin's Smetanova street in the first half of 2006. The report was drawn up as of August 3, 2006, by J. F., an authorised engineer for building structures and authorised expert for civil engineering specialised in residential buildings. According to the report, the premises showed obvious structural defects (cracked reinforced concrete slabs of the individual access galleries, cracked supporting joists in floor slabs on the individual floors, indoor vertical pipes and sanitary installations in a state of disrepair, power installations in a state of disrepair, partly damaged saddle roof frame) as assessed by the authorised person for building structures. In conclusion the report states *"an examination of the existing premises of Vsetin's residential house No. 1336 ascertained that the aforementioned defects are disrepair directly putting at risk the health and lives of both its inhabitants and citizens present in the vicinity of the premises."*

The authorised person recommended the following solution:

- Immediately move all the inhabitants of the premises, erect fencing around the premises with a ban on entry into the immediate vicinity.
- Consider the possibility of overall refurbishment of the premises and their further use or pulling them down and using the vacated lot for another purpose (to extend the background premises of the existing outpatient clinic and hospital located in the close vicinity).

The second alternative, i.e. pulling the premises down, was a better cost-benefit option given the existing structural and technical condition of the premises, according to the expert report.

#### Proceedings concerning permission to remove gallery house No. 1336 in Vsetin's Smetanova street

On the basis of the aforementioned matters, the Vsetin municipality filed an application for permission to remove the structure concerned on August 15, 2006, and the planning authority opened proceedings by virtue of a provision of August 23, 2006, in the sense of Section 88 (4) of the Building Act, i.e. proceedings concerning permission to remove the structure.

A fire broke out in the house during the proceedings, although I am not familiar with the cause.

The decision permitting removal of the structure was issued on September 13, 2006. The structure was removed in the second half of October and the construction and zoning department issued confirmation of its elimination on December 13, 2006.

The premises were removed more than 65 years after erection.

### Construction of Vsetin's Poschla residential complex

The Vsetin municipality declared it had constructed Vsetin's Poschla residential complex as part of its effort to find a suitable location for social housing. Towards this aim, Vsetin's municipal assembly approved ordering a 22<sup>nd</sup> amendment of the zoning plan (resolution No. Z/17/36) at its session on April 6, 2004, choosing the Poschla site located on the outskirts of Vsetin near road I/57 adjacent to the municipal wastewater treatment plant (WWTP), previously used for the disposal of undefined waste (waste disposal ended around the 1980s).

The site is defined as a combined zone used for industry, manufacturing services and warehouses in the applicable zoning plan's regulatory provisions. A change was proposed within the 22<sup>nd</sup> amendment of the zoning plan to usage for residential houses with civil amenities (and the associated change to a housing zone). Before drawing up a draft specification of the zoning plan amendment, the Vsetin municipality had an expert report drawn up by AQ-test Ostrava, a company specialised in hydrogeology and environmental protection, aimed at evaluating the environmental aspects of the new housing development. The report was drawn up in May 2004. In terms of the possibility of using the Poschla site, it referred to health hazards generated by the dumping site as well as the vicinity of the WWTP and the I/57 road. The aforementioned factors were evaluated as adverse in the report, eliminable at the expense of considerably higher project costs. AQ-test drew up a complementary survey during the process of hearing the zoning plan amendment, directed at verifying the conclusions of the original expert report concerning soil contamination at the former dump site and waste dump gas emission. It confirmed the conclusions in the original report, stating an inadmissible degree of hazard at the site and confirming the necessity of remedial measures (decontamination). The complementary survey found the existing situation, where people lived permanently in the vicinity of a contaminated site, unacceptable.

The public administration bodies concerned provided their statements on the draft specification where Zlin's regional health authority and the Transport Ministry found the site unsuitable for housing development.

*The Ministry of Transport* stated that the proposed area partly overlapped the protective zone of the I/57. Using it for housing development was therefore found unsuitable given the noise from traffic.

*The Regional Health Authority* raised a number of reservations and imposed conditions applicable to the implementation of the plan already at this early stage (i.e. the draft specification). In the first place it stated in its statement ref. No. 5246-215/2005 of February 17, 2005, that with respect to public health protection, the site was unsuitable for residential houses for three major reasons. These included the adverse impact of the waste dump (soil contamination, waste dump gas generation, and emissions of harmful substances from the dump body) and those due to the vicinity of the WWTP operation (particularly odour) and I/57 (noise). It consented to housing development in the potentially hazardous area, although subject to fulfilment of a number of conditions for admissibility of housing development at the site.<sup>11</sup>

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<sup>11</sup> Conditions imposed by the regional health authority: odour pollution from the municipal WWTP operation will be identified using olfactometric measurement of odorous substances and an evaluation of the measurement will be submitted to the regional health authority within the hearing of the draft zoning plan amendment (i.e. the stage to follow); the proposed housing areas will be separated from the municipal WWTP area; proper sanitation of the waste dump will be carried out prior to construction. The sanitation measures will be reviewed for their sufficiency using appropriate laboratory analyses performed by an entity authorised to assess health hazards, taking into

The other public administration bodies concerned did not have reservations about the site as such and their conditions were directed primarily to the structural and technical design of the structures.

Certain other entities, namely transport and technical infrastructure administrators, commented on the draft specification, among them the Brno site of the *Czech Road and Motorway Directorate*, which did not recommend the change in the area's usage in the site concerned given the planned extension of the I/57 and the highly problematic protection of the premises against the adverse impact of traffic (noise).

The procurer of the draft accepted the comments and particularly the conditions of the bodies concerned (primarily those of the regional health authority) and incorporated them in the draft as compensatory measures. The draft zoning plan amendment was subsequently heard and approved by the Vsetin municipal assembly and announced by virtue of a generally binding decree of the Vsetin municipality No. 5/2005 on June 21, 2005 (under resolution No. Z/25/10).

Vsetin commenced construction shortly after the approval of the zoning plan amendment and on March 7, 2006, represented by the Vsetinska spravni a investicni allowance organisation, based at Svarov 1080, the Vsetin municipality applied for zoning permission for the project "Poschla, Vsetin residential complex on property lot Nos. 4479/1, 4480, 4482, 4483, 4484, 4485, 4486, 4487, 4489/1, 4499 and 4500 in the cadastral area of Vsetin". The complex was to comprise of three basementless three-floor residential houses assembled of residential and sanitary container-like modules and the relevant infrastructure, i.e. sewerage and water pipes, outdoor lighting, walkways and consolidated surfaces for the containers, communications and consolidated surfaces including a parking place and oil interceptor, plus playground, ground shaping and landscaping. Electric radiator panels were designed for heating.

To issue a statement for the zoning proceedings, the regional health authority requested supplementing of the application for health hazard assessment. It subsequently issued a statement of April 19, 2006, extending the requirements for public health protection raised earlier in the zoning process.

These included requirements for the following:

- safety of the material used to cover the old waste dump;
- submission of a monitoring schedule for waste dump gas generation and a monitoring schedule for the contamination of the upper layers of soil with major hazardous contaminants (polycyclic aromatic hydrocarbons - PAHs) within the design documents for the subsequent planning permission proceedings;
- submission of a monitoring scheme for traffic noise in protected outdoor spaces, also to be attached to the design documents in the planning permission proceedings.

Also a party to the proceedings, the Zlin administration of the road and motorway directorate raised a requirement (statement ref. No. 242/Po/2006-VM of April 3, 2006) for safeguarding the residential zone site so as to meet noise limits with respect to traffic on the I/57. The requirement was incorporated in the verdict.

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account all the potential adverse impacts and accumulation thereof. The health hazard assessment will be submitted to the regional health authority for examination.

Zoning permission for the location of the construction project was issued on May 18, 2006, and it came into legal force on June 8, 2006.

The developer applied for planning permission on June 6, 2006. It was issued on July 19, 2006, and came into legal force on August 8, 2006. The project was designed as a configuration of three basementless three-floor residential houses, according to the comprehensive technical report. It was designed as an assembly of residential sanitary containers with outer dimensions 6,055 × 2,435/3,000 × 2,850 mm and 7,500 × 2,435/3,000 × 2,850 mm. Each residential house was to comprise of an assembly of 51 containers on three floors. The design provided for 6 flats of one room plus kitchen and bathroom, 12 flats of two rooms plus kitchen and bathroom, of which two were flats for individuals with movement and orientation difficulties. These were situated on the ground floor due to the lack of a lift. The house was to be accessible via a ramp. The layout of the first and second floors was identical, with four flats of two rooms plus kitchen and bathroom and two flats of one room plus kitchen and bathroom on each floor. A total of 54 flats were designed in the three residential houses. Each house was designed for 42 residents, giving in total 126 residents in the three houses.<sup>12</sup>

Peripheral walls: interior surface of white laminated chipboard panels, exterior surface of galvanised lightly corrugated sheet treated with two-pack PUR coating. A ventilated roof is provided for in the design. Natural window ventilation is designed according to the comprehensive technical report.

The regional health authority's statement ref. No. VS 1118/215/2006-7 of June 15, 2006, was reflected in the conditions of the planning permission, including the following:

- submission of such documents and declarations upon approval proceedings as to confirm that windows providing category three insulation dB from sound and weighted sound reduction index (Rw) between 35 and 39 dB have been used for the window apertures on the road-facing façade of the residential house on property lot No. 4485 (structure 02 01),
- monitoring for waste dump gas generation, soil contamination monitoring and noise pollution monitoring according to the expert statement drawn up on June 7, 2006, by the UNIGEO company of Ostrava will be performed within the health and safety proceedings underway due to the old waste dump and noise pollution.

#### The use of Vsetin's Poschla residential complex

The developer filed a motion for the initiation of approval proceedings for the "Poschla, Vsetin residential complex" project on September 27, 2006. It is obvious from the notice of initiation of the proceedings that only two residential houses had been built, each comprising of 18 residential units.

Accredited noise measurement was carried out within the approval proceedings (on October 5 and 6, 2006) in the protected outdoor space of residential house SO 02 01, which confirmed exceeded safe noise limits applicable to noise from traffic on

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<sup>12</sup> Note: The area of a flat of one room plus kitchen and bathroom is 28 sq. m. The area of residential rooms in a flat of one room plus kitchen and bathroom is 18 sq. m. The area of a flat of two rooms plus kitchen and bathroom is 44 sq. m. The area of residential rooms in a flat of two rooms plus kitchen and bathroom is 34 sq. m. The shared communication area of the house is 144 sq. m.

main roads (50/60 dB at night- and daytime) as stipulated in Section 11 (4) in conjunction with annex No. 3 of government order No. 148/2006 Coll. on the protection of health against the adverse effects of noise and vibrations. As a result, the final building approval tasked the developer on the basis of the binding regional health authority's statement with implementing a corresponding noise control measure by October 31, 2007, so as to ensure adherence to the limits. Another obligation imposed in accordance with the statement is to carry out subsequent monitoring of surface soil layers' contamination with hazardous pollutants (non-polar extractable substances – NESs and PAHs). The results of the monitoring will be submitted to the regional health authority once a year.

The final building approval was issued on October 10, 2006, and came into legal force on the following day. Moving of the tenants from gallery house No. 1336 in Vsetin's Smetanova street to the new premises in Poschla began on the same day. J. W., a natural person, filed a motion on January 17, 2007, to Zlin's regional authority for review of the planning permission proceedings pursuant to Section 94 et seq. of Act No. 500/2004 Coll., the Code of Administrative Procedure as amended. The motion reprehended the project for a failure to comply with the standard thermal parameters of structures and health regulations. The regional authority suspended the motion as unfounded on March 23, 2007, stating that the design documents reviewed by the planning authority had met both legal and standard requirements and that the regional health authority had issued a positive statement in the proceedings.

Concerning the use of the flats, considerable humidity problems occurred during the 2006/2007 heating season (extremely mild in terms of winter temperatures and the need for heating). Not only were the walls damp, but condensed vapour running down them created pools of water on the floor. Mould was allegedly generated due to the humidity. The structure also had the added drawback of considerable energy consumption. The planning authority carried out an inspection on March 15, 2007, in response to the complaints about humidity and mould and based on an impulse from Zlin's regional health authority, stating that neither of the inspected residential units showed structural defects/poor technical condition. The increased humidity ascertained in the residential units was due to improper use thereof.

As the authorised personnel of the Office of the Public Defender of Rights ascertained in an inquiry on site at Vsetin's municipal authority, the housing fund administrator had stated that humidity meters had been installed in two of the flats at the Poschla residential complex to measure humidity inside. Humidity exceeding 90% and a room temperature in excess of 30 degrees Celsius had been ascertained in the rooms subject to the measurement, the administrator reported. The measurement was still underway during the inquiry on site carried out by the authorised personnel of my office at Vsetin's municipal authority on February 26, 2007. Linen drying in flats and insufficient use of fans in the bathrooms and kitchenettes were identified as the reasons for the humidity. Roofed outdoor linen drying facilities are available in the Poschla residential complex.

#### Subsidy for the construction of Vsetin's Poschla residential complex

The Vsetin municipality had applied for a subsidy from the State Housing Development Fund for the construction of rental housing for low-income earners already during the process of approving the zoning plan amendment (pursuant to government order No. 146/2003 Coll.). The application was filed on January 20,

2005, at the stage of hearing the draft zoning plan amendment. The subsidy was originally applied for to construct sixty rental flats, which roughly corresponds to the originally planned number of flats in Poschla (which again roughly corresponds to the number of flats in gallery house No. 1336 in Smetanova street; had the construction taken place in the aforementioned extent, it is likely that all the gallery house inhabitants could have been moved to Poschla). The application for a subsidy was later updated, or in other words reduced to 36 residential units in two three-floor premises. The subsidy was granted in an amount of CZK 19,800,000. It was granted in accordance with the legal regulations according to a press release of the Regional Development Ministry of November 10, 2006<sup>13</sup>.

#### Premises in the areas around Jeseník, Prostějov and Uherské Hradiště

Some of the families<sup>14</sup> originally inhabiting gallery house No. 1336 in Smetanova street were resettled to the Vlčice, Stará Červená Voda, Vidnava, Dřevnovice, Čechy pod Kosířem and Místřice municipalities, to old premises chosen by the town. A visit of Czech Senate representatives in the Jeseník area, and in particular the expert reports drawn up on some of the premises by member of the Czech Chamber of Authorised Engineers and Technicians A. S., reveal that most of the premises are in poor structural and technical condition and costly refurbishment would be required for proper use.

Thus for example premises No. 90 in Stará Červená Voda in the Jeseník district have damaged roof timbers, a flooded basement, wholly unsuitable power installations, a presumed unsuitable source of drinking water and cannot be heated. Premises No. 4 in Vlčice, the Jeseník district, have sewerage in a state of disrepair, severely rotted roof timbers and irreparable damage to power and water installations. The condition of premises No. 138 in Čechy pod Kosířem, the Prostějov district, was evaluated as the most serious. The premises are about 90 years old, the adobe bricks show irreparable diagonal cracks, the roof timbers have suffered extensive damage and, more importantly, deflection, and piping and installations are completely unfit for use.

## **C Legal Evaluation**

### **1. Social benefits**

#### **a) Provision of social welfare benefits on the grounds of social need pursuant to the legislation effective till December 31, 2006**

##### Social need

According to Act No. 482/1991 Coll., on Social Need as amended, a citizen is regarded as in social need if his/her income is below the minimum living standard as stipulated by the Minimum Living Standard Act and s/he cannot increase it on his/her own initiative due to age, health condition or other serious reasons. Minimum living standard amounts, actual justified costs of safeguarding subsistence and other basic needs and essential costs of the citizen subject to assessment (persons under joint assessment) and the amount of their income and property are taken into account in deciding on the amount of a one-off or monthly recurring allowance in cash or in kind.

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<sup>13</sup> For a full text of the press release please refer to <http://www.mmr.cz/index.php?show=001021544>

<sup>14</sup> Annex No. 2 List of families resettled to the areas around Jeseník, Prostějov and Uherské Hradiště

A large quantity of information is always required for an impartial assessment of a citizen's social need, sometimes obtained in a mediated manner by the relevant administrative bodies, mostly based on information from the claimants concerned or on the basis of an inquiry. Although such information is not expressly indicated in its entirety in the wording of the Social Need Act and the Minimum Living Standard Act as a qualification for granting the status of citizen in social need, its availability influences the final decision whether a citizen may be regarded as in social need.

It is obvious then that social need assessment is a very complex process, which depends on the client's willingness to provide, on the one hand, as much impartial and true information about his/her difficult social situation as possible and, on the other hand, the ability of the social worker concerned to use such information for an impartial assessment and decision on assistance possibilities.

In terms of household costs, these involve payments related to the use of a flat. When specifying the amount of the benefit to be provided, costs documented by the claimant are taken into account, i.e. proven, actual and justified costs actually paid by the benefit claimant, such as can be regarded as reasonable given the quality and size of the flat, the number of household members, location, appliances used, etc. The purpose of the benefit is to cover essential, existing and actual needs. "Typical" payments associated with the use of a flat such as rent, water rates and sewerage rates, gas, electricity, waste disposal, repair fund, etc. shall be regarded as living costs. Within its administrative discretion, the administrative body making the decision is furthermore obliged to assess and take into account certain other costs incurred by citizens – clients of social assistance in connection with housing. Rather than by category or by common practice in reimbursing certain types of costs to citizens, these costs must be assessed from the purpose they have.

It was ascertained that until December 31, 2006, the Vsetin municipal authority's social affairs department had been continuously including the families' actually incurred housing costs in their social welfare benefits as long as they qualified as being in social need.

#### Special recipient institute

The conditions for appointing a special recipient are stipulated in Section 102 of Act No. 100/1988 Coll. on Social Security as amended. Section 102 (3) of the aforementioned Act stipulates: *"The relevant public body shall appoint a special recipient with the latter's consent in cases where it is likely that the payment of the benefit to the existing recipient would fail to achieve the purpose to be served by the benefit or if the interests of any persons the beneficiary is obliged to maintain would be thereby prejudiced or if the beneficiary or, as the case may be, his or her legal guardian, cannot receive the payment. Consent of the beneficiary or, as the case may be, his/her legal guardian to the appointment of the special recipient is required only in case that the beneficiary or, as the case may be, his/her legal guardian cannot receive the payment."*

Thus provided that the purpose of the provided benefit would not be achieved by payment of the benefit to the beneficiary, the administrative authority has the obligation (rather than the discretionary power) to appoint a special recipient. It should be added for the sake of completeness that cooperation with the relevant labour office is required (given the possibility of granting a housing allowance). An

identical mechanism is stipulated for state income support benefits in Section 59 (2) of Act No. 117/1995 Coll. on State Income Support as amended.<sup>15</sup>

Information from the head of the Vsetin municipal authority's social affairs department suggests that the social affairs department had been using the special recipient institute in accordance with legislation, 2002 policy guidelines of the Ministry of Labour and Social Affairs and the principles of social work in the provision of benefits.

The families had debts for rent, lease-related services and power, in spite of the use of the special recipient institute by the administrative body. The head of the social affairs department stated during the inquiry on site by the authorised personnel of the Office of the Public Defender of Rights that the families had incurred the debts on rent for example when the administrative body used the special recipient institute to pay for children's catering in schools, which had been considered a matter of priority; in other cases the family had failed to receive social welfare benefits on the grounds of social need due to residing abroad.

#### One-off social welfare benefits

Pursuant to Section 23 of Ministry of Labour and Social Affairs decree No. 182/1991 Coll. implementing the Social Security Act and the Act of the Czech National Council on Organisation in Social Security as amended, the administrative body provides one-off benefits in cash and in kind for the payment of one-off extraordinary expenses. The one-off benefits in cash may be provided up to CZK 15,000, the benefits in kind up to CZK 8,000, and in exceptional cases up to CZK 15,000.

It should be stated that the Vsetin municipal authority's social affairs department provided one-off social welfare benefits to the Romany families concerned in accordance with the legislation and using administrative discretion to cover extraordinary events in the family (such as school items for children, to buy coal or a sewage pump). For example, by virtue of a decision of October 23, 2006, the social affairs department granted social welfare benefit to Mrs. K. by providing a one-off cash allowance of CZK 5,045 for extraordinary events in the family. The administrative body took into account the family's extra expenses for resettlement to Stara Cervena Voda, where they bought material for painting walls and paid for fuel and fares.<sup>16</sup>

#### **b) Provision of assistance in material need benefits effective from January 1, 2007**

With Act No. 111/2006 Coll., on Assistance in Material Need as amended (hereinafter the "Material Need Act") and Act No. 110/2006 Coll. on Minimum Living Standard and Subsistence Level as amended (the "Minimum Living Standard and Subsistence Level Act") coming into effect, a new system of social benefits provision was stipulated in the Czech Republic's legislation – called assistance in material need benefits, which replaced the social welfare benefits system provided to socially deprived citizens.

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<sup>15</sup> Section 59 (4) of the Act on State Income Support: *"Where housing allowance is concerned, the special recipient is entitled to use the benefit without consent of the beneficiary to pay arrears on rent and to pay for the performance provided with the use of the flat."*

<sup>16</sup> Annex No. 3 List of provided social benefits

### Procedural decision-making by the body of assistance in material need

Where a social welfare benefit was finally granted before the effective date of the Material Need Act and entitlement to it continues as of the effective date, the relevant body of assistance in material need to which the competence passed pursuant to the Act on Assistance in Material Need shall assess the entitlement to the subsistence allowance and its amount not later than by April 30, 2007.

Entitlement to the payment of a social welfare benefit shall not expire during the aforementioned period provided that the conditions stipulated pursuant to the legal regulations effective as of December 31, 2006, continue. If it is ascertained that there is no entitlement to the subsistence allowance, the social welfare benefit shall be removed by virtue of a decision from the day following the period for which it has already been paid.

If it is ascertained that there is entitlement to a subsistence allowance in an amount exceeding by CZK 100 or more the social welfare benefit provided to date, the subsistence allowance shall be granted by virtue of a decision retrospectively from January 1, 2007, and the difference between the already paid social welfare benefit and the subsistence allowance shall be supplemented. If it is ascertained that there is entitlement to a subsistence allowance in an amount lower by CZK 100 or more than the social welfare benefit paid to date, the social welfare benefit shall be removed by virtue of a decision from the day following the period for which it has already been paid and a subsistence allowance shall be granted by virtue of a decision as of the same date.

If it is ascertained that there would be entitlement to a subsistence allowance in an amount identical to the social welfare benefit paid to date or that the difference between them would be lower than CZK 100, the payment of the existing social welfare benefit shall continue unchanged until the next ascertained change in the decisive matters. The body of assistance in material need shall only issue a notice of benefit concerning such ascertainment.

Pursuant to Section 76 of the Material Need Act, if a body of assistance in material need decides on a benefit in cases where a decision is not issued,<sup>17</sup> it shall be obliged to deliver written notice of benefit and the amount thereof to the claimant. The written notice of benefit shall not be sent as a registered letter to be received only by the specified recipient. Objections may be raised against such procedure within 15 days of the first benefit instalment following its granting or 15 days of the payment of the benefit following its granting. Objections are filed in writing to the relevant body of assistance in material need having granted the benefit. The body of assistance in material need shall issue a decision on the benefit within 30 days of the date the objections are delivered to it.

As for the provision of assistance in material need benefits, it was ascertained that the Vsetin municipal authority's social affairs department had initially been issuing

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<sup>17</sup> Section 75 of the Act on Assistance in Material Need: "A decision is issued only where

- a) the benefit has not been granted,
- b) the benefit has been removed,
- c) the benefit has been reduced,
- d) payment of the benefit has been abated,
- e) overpayment in the benefit has occurred,
- f) a decision pursuant to Section 16 (assessment of unjustified loading of the system) is concerned,
- g) a decision pursuant to Section 76 (3) (decision on benefit after raising an objection) is concerned,
- h) a decision on appointment of a special recipient is concerned."

decisions on the removal of social welfare benefit pursuant to the Social Need Act in the aforementioned transitional period, but it had simultaneously invited the clients to file applications for granting the subsistence allowance, and the clients had been advised of the application's requisites. The social affairs department then issued a notice of material need benefit based on the filed application as tasked by the law. However, the body of assistance in material need failed in the substantiation of the notice to state what basic documents the administrative body has based its deciding on, and in what manner it had calculated the amount of the benefit concerned. The benefit recipient will not learn from the notice about the consideration leading the administrative body to grant the benefit and determine its amount, i.e. what matters it has and has not taken into account. It is a question whether the clients should have been provided with more detailed information about the reasons for the amount of the subsistence allowance and whether they had been sufficiently informed and advised about the possibility of filing an objection against the notice, in the spirit of the principle of providing basic advice on benefit provision.

If a benefit recipient files objections against a notice of benefit, the Vsetin municipal authority's social affairs department is obliged to issue a decision on benefit against which remedy pursuant to the Material Need Act may be used.<sup>18</sup>

#### Contribution for housing

As for contribution for housing, it was ascertained through an interview with the Vsetin municipal authority's department of social affairs that when information is provided to some of the benefit claimants, the client is informed after a preliminary evaluation of the social situation that s/he is not entitled to a contribution for housing and that filing a written application would be useless as the proceedings would result in its dismissal.

The legislation requires that claimants for a contribution for housing lodge a written application. The claimants have the right to appeal in the event of its dismissal, which the above-described procedure prevents.

The head of the department admitted during the interview with the personnel of the Office of the Public Defender of Rights that respecting the right of an individual to apply for a benefit and to be party to an administrative procedure including the right to use remedies is the only legal procedure.

Contribution for housing is a benefit in material need that addresses a situation where there is a lack of income to cover justified housing costs. Entitlement to the benefit is made conditional on being a flat tenant or owner and qualifying for subsistence allowance and housing allowance from the state income support system.

A housing contribution may be provided if the person concerned uses a flat in the municipality where s/he is registered for permanent residence. The Act stipulates exceptions from the aforementioned condition.

The Act also makes it possible to provide a contribution for housing in exceptional cases where the claimant is not entitled to the subsistence allowance or housing allowance pursuant to the State Income Support Act as well as to a claimant using

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<sup>18</sup> Pursuant to Section 77 of the Material Need Act, decisions issued in administrative proceedings

a) by the delegated municipal authorities,

b) by municipal authorities of municipalities with extended competence are reviewed by the regional authority in appellate proceedings.

An appeal against a decision issued pursuant to the aforementioned Act shall not have a suspending effect.

other than leased housing (sublease, dormitory). These include cases worth special consideration such as situations after divorce, post-domestic violence situations, or provision of housing to persons at risk of social exclusion. In these cases, it is not taken into account under the law (Section 33 (5) *in fine* of the Material Need Act) whether the person has permanent residence in the municipality where s/he actually lives (i.e. whether the person receives a housing allowance from the state income support system s/he could not receive in any other form of housing than ownership housing or tenancy).<sup>19</sup> The express wording of the Act using the collocation “forms of housing other than tenancy” does not exclude ownership of housing from its scope, because a contribution for housing is intended especially for owners and tenants. The delegated municipal authority at the place where the claimant actually stays long-term is competent to decide on the aforementioned benefit in accordance with the sense of the quoted provision.

The amount of the contribution for housing is determined in such a way as to ensure that the person or family is left with an amount for subsistence after paying justified housing costs. It should be added that rent paid by the person after deduction of the rent for the use of the flat up to the amount of the target rent, regular payments for services directly associated with the use of the flat, and payments for demonstrably essential consumption of energy are included in the justified costs of housing. However, similar costs associated with cooperative and ownership forms of housing can also be included in the justified costs of housing, for example payments into the repair fund for cooperative flats or privately owned flats. If a person is in material need and s/he simultaneously is (or becomes) owner of a private house (in whatever condition), the costs of restoring such real estate cannot be acknowledged as justified costs of housing.

#### Permanent residence and the provision of social benefits

The effect of permanent residence on the assessment of entitlement to being granted assistance in material need should also be evaluated in the eviction case concerning the inhabitants of gallery house No. 1336 in Vsetin’s Smetanova street.

The territorial competence of the body deciding on the provision of benefits is governed by the permanent residence of the claimant and benefit recipient.

It was ascertained at the Vsetin municipal authority’s social affairs department that 24 families from the Poschla site currently receive social benefits (still pursuant to the Social Need Act or, in a majority of cases, pursuant to the Material Need Act). One person receives a subsistence allowance as one of several persons under joint assessment.<sup>20</sup> The remaining families are secured by a sufficient income from employment, old age or disability pensions or they fail to qualify for social need or material need.

The families resettled to the areas around Jeseník, Prostějov and Uherské Hradiště having permanent residence in Vsetin currently receive subsistence allowance pursuant to the Assistance in Material Need Act; one family receives social welfare benefit under the Act on Social Need.<sup>21</sup>

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<sup>19</sup> The Ministry of Labour and Social Affairs guidance issued on Act No. 111/2006 Coll. on Assistance in Material Need states this in an identical manner – page 22, and similarly Annex No. 2 to policy guidance 2/2006.

<sup>20</sup> Annex No. 3 List of provided social benefits

<sup>21</sup> Annex No. 3 List of provided social benefits

Entitlement to a contribution for housing (apart from the below-mentioned exception) is bound to permanent residence in the place of “actual residence” (i.e. the flat used by the claimant), according to the legislation effective from January 1, 2007.

As for the inhabitants of gallery house No. 1336 in Vsetin’s Smetanova street resettled to the Poschla site premises, formally still permanently residing in the already removed gallery house or in the Poschla site premises, Vsetin municipal authority’s social affairs department is competent to decide on the assistance in material need benefits.

For the families resettled to the areas around Jeseník, Prostějov and Uherské Hradiště already registered for permanent residence in the place of their “actual residence”, the local delegated municipal authority and the municipal authority of the municipality with extended competence in the place of such residence are the authorities competent to decide on assistance in material need benefits.<sup>22</sup>

For the families resettled to the areas around Jeseník, Prostějov and Uherské Hradiště whose permanent residence has not changed, i.e. they are still registered for permanent residence in Vsetin in spite of actually living outside Vsetin, Vsetin municipal authority’s social affairs department is the territorially competent body of material need assistance. The latter cannot provide a contribution for housing to these families as they fail to qualify for the aforementioned condition of “actual residence” in the place of permanent residence.

However, in cases worth special consideration as described above, the delegated municipal authority<sup>23</sup> may also grant a contribution for housing to a person who actually dwells in the authority’s district without having permanent residence there. This is a matter of administrative discretion where the delegated municipal authority in whose district of administration the resettled families actually reside, may grant contribution for housing. The aforementioned procedure in dealing with the social situation of the families resettled outside Vsetin’s territory is the only option the legislation offers to the bodies of assistance in material need. This highlights the fateful consequences and imperfection of the solution of resettlement of a municipality’s inhabitants outside the municipal district.

### Special recipient institute

Assistance in Material Need Act expressly takes into consideration the institute of the special recipient of benefit. According to Section 40 of the Assistance in Material Need Act, the body of assistance in material need appoints a special recipient instead of the benefit recipient in cases where the payment of the benefit to the recipient would likely fail to achieve the purpose to be served by the benefit or if the interests of any persons in whose favour the beneficiary is obliged to use the benefit would be thereby prejudiced or if the recipient is unable to receive the benefit.

The problems faced by Czech society today include poverty and social exclusion. Roma living in excluded communities are among the most exposed groups. The institute of the special recipient of benefits is one of the tools for preventing social

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<sup>22</sup> The Uherské Hradiště municipal authority is the relevant delegated municipal authority for the T. family (Mistřice 90) and simultaneously the relevant municipal authority of a municipality with extended competence. The Javorník municipal authority is the delegated municipal authority for the Z. family (Vlčice 4) and the K. family (Vidnava 131) and the Jeseník municipal authority is the municipal authority of a municipality with extended competence.

<sup>23</sup> The relevant delegated municipal authorities are the Náměšť nad Hanou municipal authority for the S. family (Dřevnovice 41), the Javorník municipal authority for the K. family (Stará Červená Voda 90) and the Prostějov municipal authority for the T. family (Komenského 138, Čechy pod Kosířem).

exclusion and mitigating the latter's impact in the area of housing. The institute acts preventively, discouraging a further rise in indebtedness among families already in debt and avoiding extreme measures like withdrawal or failure to extend a lease agreement to a flat.

I trust that Vsetin municipal authority's social affairs department will consistently use the institute of the special recipient of benefits, thereby actively contributing to avoidance of further generation of debts among the Poschla site inhabitants and preventing the absolute social decline of these families.

### Social work

Success of the assistance in material need system is tied to the use of social work. Long-term persistence of persons in the condition of material need and reproduction of poverty cannot be successfully avoided without using the methods and procedures of social work. Persons in material need cannot be motivated towards assuming responsibility for their adverse social situation without cooperation with the social worker. It is therefore necessary to make use of those portions of the law that incorporate motivational elements, use social work methods and set procedures aimed at dealing with the material need condition, particularly for persons persisting in material need long-term. I specifically refer to the use of social advice and drawing up an activation plan, i.e. an individual motivation scheme aimed at avoiding social exclusion. The possibility of using administrative discretion in deciding on the benefits of immediate extraordinary assistance should also not be omitted in situations where the person concerned is at risk of a serious health detriment or has been affected by an extraordinary event without having sufficient financial resources to pay a one-off expense, the costs of acquiring and repairing items of a long-term use, expenses associated with the schooling of a dependent child or a situation where the person is at risk of social exclusion. It is beyond any doubt that the integration and prevention of social exclusion and poverty are the objectives of social work.

The Vsetin municipality representatives involved and the municipal authority personnel identically stated in the inquiry on site that they would submit a municipality "Conception" dealing with the issue to the Defender. The head of the social department subsequently disclaimed the aforementioned information, claiming that there was no such conception. In reality these were merely several resolutions of the Vsetin municipal council concerning the exercise of work by the field workers. The documents have not been provided to me. I ascertained from the website that they likely include a resolution of the Vsetin municipal council of December 10, 2002, made at its fourth regular session, in which it took a note of the "Concept of Field Social Workers' Work" and approved the recommended measures.

Within "Dealing with Romany Issues in Vsetin in the Years 1998 to 2006", the municipality had allocated flats to 22 families in the normal urban housing development, which undoubtedly is an integration element. In the same period, other Romany families were moved together to the Smetanova street house, which had been in an unsuitable condition before the Roma arrived. This is obviously a trend that counters integration. Social work, and in particular field social work developed by the municipality in the recent years should be appreciated – motivation towards learning and implementation of projects concentrating on the employment of Roma (support to the employment of Roma at the Technical Services Vsetin allowance organisation or via the Elim Vsetin supported employment agency), financial support

to the non-profit sector via grant schemes and direct support policy (e.g. the Vsetin branch of the evangelical church diacony), etc.

However, I also ascertained from Vsetin's website that the Vsetin municipal assembly approved a "Procedure towards Defaulters and Inadaptable Citizens" at its 18<sup>th</sup> regular session on September 14, 2004. The municipal assembly took due note of material entitled "Exercise of the Low Tolerance Programme" at its 28<sup>th</sup> regular session on October 25, 2005.

The "Concept of Field Social Workers' Work", "Procedure towards Defaulters and Inadaptable Citizens" and "Exercise of the Low Tolerance Programme" had not been provided to me by the time of drawing up the inquiry report on April 5, 2007. I received them from the Vsetin mayor on June 8, 2007, as complementing her statement on the inquiry report.

The "Concept of Field Social Workers' Work" describes in a very detailed and accurate manner the characteristics and development of Romany housing in the Czech Republic and Vsetin as well as the individual premises occupied by Roma including those in Smetanova street No. 1336. The Concept *inter alia* states on the aforementioned premises on page 11: "17 families, of which 11 are Romany, have contracted leases for an indefinite term. 41 families, of which 35 are Romany, have leases for a fixed term. 28 families, of which 20 are Romany, are indebted on rent. two families' debts are being dealt with before the courts."

The Concept furthermore states on dealing with the situation on page 11: "The issue needs to be dealt with comprehensively – i.e. not only the housing issue but all the primary causes that subsequently result in housing problems. Eviction of defaulters does not handle the problem; it merely transfers it from one place to another. Families leaving their flats move to their relatives not only with all their belongings, but also with all their problems. This results in an accumulation of not only persons but also their problems. A large number of persons in a relatively small, unsuitable flat obviously results in (deliberate or spontaneous) devastation of the flat and worsened living conditions (hygiene, disorder, noise, quarrels, space for children's learning, etc.). The solution should be individualised rather than summary. It should concern the individual citizens and families. Only thus shall we avoid the generally known counterproductive generalisation of the Romany ethnic group. Only ascertainment and description of the actual problems (their causes and consequences) may result in a genuine solution."

The 2002 Concept furthermore states on page 9 on the premises in Smetanova street No. 1336 that gallery houses, occupied predominantly by Roma, have been restored in a rather unfortunate manner from the Romany perspective. As a result, the Roma have been moved together (very few of them have returned to the restored houses) to Smetanova 1336. The Concept warns on page 13 against an escalation of the situation at the moment the house concerned undergoes restoration and approximately 2 × 32 flats will need to be vacated (and housing for the tenants found).

The Concept also refers in a broader perspective to the mutual conditionality between Romany housing and the threat of homelessness and deals with the reasons for indebtedness among Roma. It mentions, apart from dependence on social benefits and loans from extortionists, moving to a substitute flat or housing where the family pays a rent higher than the one the family was unable to pay before

or the allocation of a substitute flat (or housing) with electric heaters (the cheapest option for the investor but the most costly for the flat user).

The 2004 “Procedure towards Defaulters and Inadaptable Citizens” contains substantiation reports on a draft amendment of a resolution on the establishment of a databank of debtors, a proposal for the approval of a procedure against natural and legal persons with pending obligations towards the Vsetin municipality and the low tolerance programme towards defaulters and inadaptable citizens. It is based on the principle that legal and natural persons failing to fulfil their obligations towards the municipality kept in the aforementioned records will not be satisfied in a sum of matters to which there is no legal title and deciding on them is within the municipality’s power. These include the lease of flats, sale of real estate, provision of loans and inclusion in the list of housing candidates. The material further stipulates that a debtor’s application in the aforementioned matters may be satisfied in exceptional cases for the following reasons: a) the debtor would find him/herself in particularly harsh circumstances should the application not be satisfied provided that the debtor properly documents this, b) decision in the matter shall be bound to fulfilment of the obligation towards the Vsetin municipality. The relevant municipal body decides on the granting of an exception. The material furthermore states that the specific procedure towards defaulters and inadaptable citizens shall be dealt with by virtue of an internal regulation of the Vsetin municipal authority.

The 2005 “Exercise of the Low Tolerance Programme” evaluates the above-described adopted procedures. There is a key finding that debts on rent were paid up to the full amount after actions were filed for vacation of the flats in gallery house in Smetanova street No. 1336. Similarly when a unit was vacated in the Poschla accommodation premises, all the remaining occupants paid their debts.

A project of the Ministry of Labour and Social Affairs in liaison with the European Development Fund and the Human Resources Development Operational Programme was published in 2006 – Analysis of Socially Excluded Roma Localities and Communities and the Absorption Capacity of Subjects Operating in the Field (hereinafter also the “Analysis”)<sup>24</sup>. The project included an Interactive Map of Roma Localities Socially Excluded or Threatened by Social Exclusion in the Czech Republic (hereinafter also the “Map”). Gallery house No. 1336 in Vsetin’s Smetanova street was indicated as one of the Romany sites at risk of social exclusion (identified as locality A in the Map).

The Map also specifies in this respect that there was no local Roma integration concept in Vsetin although it should have been drawn up, and there was a Romany aide active in the town although only on a part-time basis. It also mentioned establishment of a workgroup for cooperation with the Roma.

The Map also indicated Poschla as a Romany site at risk of social exclusion (identified as locality C in the Map) prior to the building of the two new residential houses and restoration of the original “bare flats” located there.

I drew attention of the Vsetin municipality to these matters contained in the so-called “Gabal’s Report” already in my inquiry report of October 6, 2006, file ref. 4365/2006/VOP/MH.

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<sup>24</sup> The GAC private limited company, Nova skola non-profit organisation and external researchers were tasked with the field stages of the project. The project was implemented and processed from November 1, 2005, to August 15, 2006. The results, including the Map, are available on the website of the Ministry of Labour and Social Affairs at [www.mpsv.cz](http://www.mpsv.cz) in section Home page/Ministry of Labour and Social Affairs/European Union

## **2. Social and legal protection of children**

Extensive amendment of legislation in the area of social and legal protection of children occurred by virtue of Act No.134/2006 Coll. coming into effect on June 1, 2006. Following discussions between experts, representatives of public administration, self-government and the non-profit sector, the aforementioned amendment brought significant changes in Act No. 359/1999 Coll. on Social and Legal Protection of Children as amended. The aforementioned changes include the legal obligation of protecting the rights and interests of children, including those placed in foster care, children placed in institutional education and children from families where socially pathological phenomena begin to develop. Unlike the previous legislation where the procedure of the body of social and legal protection of children (BSLPC) was in a majority of cases provided for only by a framework stipulation, the amendment stresses social work with the biological family and subsequent prevention by imposing these as an obligation on the authority competent to exercise the social and legal protection of children. These cases involve primarily children placed in institutional education. However, children from families at risk of the potential recurrence of adverse development of children in the family (e.g. younger siblings of minor perpetrators of acts that would otherwise be crimes or minors with behavioural problems) must not be omitted; the act requires subsequent prevention here. Special attention needs to be paid to these children. The amendment has also extended the range of children targeted by social and legal protection.<sup>25</sup>

To achieve the anticipated result, i.e. ensuring that children do not endure any hardships, specific, systematic and persistent social work with the family is necessary, aimed at identifying and eliminating effects potentially capable of compromising the children's prosperous development. This includes for example timely assistance to parents with social or pedagogical inaptitude or protection of the children against trauma resulting from mental or physical domestic violence, children at risk of torture or abuse, etc. Being aware of the importance of and need for systematic and targeted work with the family, the legislature no longer accepts the mere possibility of selecting a method of social work with such a family in the amendment, but it directly imposes an obligation of working with the family on the

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<sup>25</sup> According to Section 6 of Act No. 359/1999 Coll., social and legal protection concentrates notably on children:

- a) whose parents 1. are deceased, 2. fail to fulfil obligations ensuing from parental responsibility, or 3. fail to exercise, or misuse, the rights ensuing from parental responsibility;
- b) placed in a foster of other natural person than the parent if such person fails to fulfil the obligations ensuing from the fosterage;
- c) leading an idle or immoral lifestyle consisting in particular in neglecting schooling, failing to work in spite of lacking a sufficient source of subsistence, abusing alcohol or addictive substances, supporting themselves by prostitution, having committed a criminal act or, where children younger than fifteen years are concerned, having committed an act that would otherwise be a criminal act, repeatedly or systematically offending or otherwise compromising civil cohabitation;
- d) repeatedly running from their parents or other natural or legal persons responsible for the child's upbringing;
- e) on whom a criminal act compromising life, health, their human dignity, moral development or possession has been committed or there is a suspicion of commitment of such crime;
- f) repeatedly placed in facilities providing permanent care for children at the request of their parents or other persons responsible for the child's upbringing or their placement in such facilities has lasted for over 6 months;
- g) at risk of violence between parents or other persons responsible for the child's upbringing or, as the case may be, violence between other natural persons;
- h) being asylum seekers separated from their parents or, as the case may be, other persons responsible for their upbringing;

if such matters adversely affect the children's development or are or may be a cause of the children's adverse development.

municipal authorities with extended competence. The changes have also been incorporated in the Act on Family and the Code of Civil Court Procedure.

The amendment of the aforementioned Act on Social and Legal Protection of Children fulfils the international standard entitled Convention on the Rights of the Child (hereinafter also the "Convention"). According to Article 4 of the Convention, the States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised by the standard. The alterations implemented by the amendment relate in particular to Arts. 3, 12, 13, 18, 19, 20, and 35 of the Convention. I worked in particular with Arts. 3, 18, and 19 in my inquiry.

Art. 3 (3) of the Convention imposes an obligation on the State Parties to ensure that the institutions, services and facilities responsible for the care or protection of children conform to the standards established by the competent authorities. Art. 18 expressly recognises the primary responsibility of parents for the upbringing and development of the child and guarantees assistance of the state in the performance of child-rearing responsibilities. Art. 19 of the Convention imposes an obligation on State Parties to take all appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or exploitation, provided that the protective measures should also include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care for the child, as well as for other forms of prevention.

#### Prevention to avoid the occurrence of problems in families

According to Section one of Act No. 359/1999 Coll. on the Social and Legal Protection of Children as amended, social and legal protection of children shall mean *inter alia* protection of the child's right to favourable development and action directed at restoring the disturbed family functions. The best interests and well-being of child shall be a primary consideration in the social and legal protection of children, pursuant to Section 5 of the Act. The Convention on the Rights of the Child published under No. 104/1991 Coll. stipulates a principle in Art. 3 that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. As mentioned above, the interest of the child should be pursued also in cases where behavioural or other problems are likely, for example if domestic violence occurs in the family or older siblings have had behavioural problems or perpetrated criminal acts. Although problems had occurred in some of the evicted families in the past, the Vsetin municipal authority's BSLPC had failed to attend to them while they resided in Vsetin. The administrative body is obliged to look for children at risk and act towards their parents. It is obvious that rather than meaning the mere finding of such parents, the legislature endeavoured to ensure prevention in these families in order to ensure prosperous development of their children. To achieve this, municipalities with extended competence must be in personal contact with the child and its parents in the care for children at risk.

Although the BSLPC had been aware of the situation in the families subject to eviction and their earlier problems, not a single mention had been made (by virtue of a record or protocol) of any attention dedicated to these families. It is obvious that instead of exercising preventive care before problems in the family occurred, the BSLPC had acted only in families with serious existing problems, and prevailingly by virtue of subsequent work or repression. I cannot accept the argument that "social

and legal protection of children was also exercised by field workers". Field workers' action is an extra standard that should consist in direct social work with the family, assistance in dealing with specific problems, accompanying the family to authorities, child-rearing assistance, advice in the drawing up of various applications, etc. Field workers cannot stand in for the legal obligations of the body of social and legal protection of children.

I also made a finding which is particularly serious from the viewpoint of both international and domestic legislation, that the authority seems to lack enough social workers to properly exercise the social and legal protection of all the children with permanent residence in Vsetin in a full extent within the exercise of delegated competence, i.e. to ensure protection of the children's rights to favourable development, proper upbringing and protection of their justified interests. This would constitute a breach of a fundamental principle of the Act on Social and Legal Protection of Children, i.e. to ensure protection of and care for the child. Vsetin's municipal authority is obliged to ensure the exercise of social and legal protection of children to such an extent as to be able to comply with all the obligations ensuing for the Czech Republic from the international agreements it is bound by and to avoid breach of the intrastate legislation extending the aforementioned agreements.

In terms of the need for social workers, there was a reference ratio of about 90 live cases per social worker prior to the aforementioned amendment of the Act on Social and Legal Protection of Children, according to experts in the field. However, it should be considered in evaluating the need for social workers that the amendment imposes a number of obligations not recognised by the preceding legislation in force till June 1, 2006. Increased demands on personnel and time are placed in particular by Section 29 imposing an obligation on the municipal authority with extended competence to visit a child placed in institutional education once every three months, and the social worker is now also obliged to visit the child's parents. Furthermore, the social worker must continuously monitor the development of children placed in a facility for immediate help by virtue of a court's decision. To this end, the Act stipulates an obligation to visit the placed children as needed in the specific case. The visits are necessary as there is an ensuing legal obligation to assess whether the reasons for the children's stay in such facilities continue.

#### Keeping file records

File records on the protection of juveniles (hereinafter "Om") must be kept in accordance with Sections 54 and 55 of the aforementioned Act. Manipulation of the records must be avoided to ensure trustworthiness of these important records giving an account of the family's circumstances. The individual sheets must therefore be numbered, sorted in order and recorded. Sheets may not be removed casually from a file kept in such a manner. Inserting loose records, letters, decisions or other documents without a reference number and without sorting is inadmissible. File records must give account of all the social work dedicated to the family kept in the BSLPC's records. Records must be kept here on each step taken by the BSLPC in the matter, inquiries performed, whether it negotiated or had an interview and with whom, what measures it has taken to remedy problems, what requirements it has on each family member to remedy the situation in the family, what problem elimination schedule it has adopted and an evaluation of the adopted measures including proposed further procedure to be undertaken.

### Permanent residence and the exercise of social and legal protection of children

The territorial competence of the BSLPC is governed by the child's permanent residence. I ascertained in terms of further work with the file records that in case of the evicted inhabitants of gallery house No. 1336 in Vsetin's Smetanova street, there are three groups of children for whom the Vsetin municipal authority's BSLPC is obliged to ensure the exercise of social and legal protection.

For families that continue to have permanent residence in Vsetin and the social and legal protection of whose children will continue to be exercised by the Vsetin authority, the situation in the families must be updated, help provided in dealing with their problems and preventive social care ensured with the aim of preventing potential future problems.

For families resettled to the areas around Jeseník, Prostějov and Uherské Hradiště that continue to have permanent residence in Vsetin, the BSLPC is obliged to update the file records and continue to properly exercise social and legal protection of children including prevention.

For families resettled to the areas around Jeseník, Prostějov and Uherské Hradiště that have changed their permanent residence to the place of "actual" residence, the BSLPC is obliged to complement and update the file records so that the new territorially competent authority can provide informed help to the families.

### **3. Building code and public health protection**

In the legal evaluation of the building authority's and the regional health authority's procedures, I referred to the legislation applicable at the time of deciding on gallery house No. 1336 in Vsetin's Smetanova street and the construction of the Poschla residential complex in Vsetin, i.e. Act No. 50/1976 Coll. on Zoning and the Building Code as amended (hereinafter the "Building Act")<sup>26</sup>, including the implementing regulations thereto, and Act No. 258/2000 Coll. on Public Health Protection and Amendment of Certain Related Acts (hereinafter the "Act on Public Health Protection") as amended, again including the implementing regulations.

### Structural and technical condition of gallery house No. 1336 in Vsetin's Smetanova street

The ascertained facts showed that the structural and technical condition of the gallery house was very poor long before it was pulled down, at least from the 1980s. The poor condition, effectively putting people's health and lives at risk, resulted in removal. The question is, who is responsible for such a condition, and whether it could have been prevented. The primary question I ask is what the public administration bodies could have done, and what they have in fact done?

It should be noted in the first place that care for the good structural and technical condition of a structure is primarily the owner's obligation. At the constitutional law level, the aforementioned obligation may be derived from Section 11 (3) of the Charter of Fundamental Rights and Basic Freedoms declared by virtue of resolution of the Czech National Council No. 2/1993 Coll. as part of the constitutional order of the Czech Republic<sup>27</sup>. According to award of the plenum of the Constitutional Court

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<sup>26</sup> Act No. 50/1976 Coll. was replaced by Act No. 183/2006 Coll. on Zoning and Building Code effective from January 1, 2007.

<sup>27</sup> Art. 11 (3) of the Charter of Fundamentals Rights and Basic Freedoms: "Ownership entails obligations. It may not be misused to the detriment of the rights of others or in conflict with legally protected public interests. Property

of the Czech Republic of December 13, 2006, Pl. ÚS 34/03: *“The aforementioned provision of the Charter is atypical in comparison with the other provisions in that rather than subjective constitutionally guaranteed rights, it stipulates obligations. In the first place it articulates the principle that ownership entails obligations. The aforementioned principle expresses the fact that – although ownership title must be regarded as an absolute right that enables protection of the owner against everyone – the entitlements of the owner have their limits that may impinge upon justified interests of others and society as a whole. Thus the absolute nature of ownership as a legal relation is not wholly unlimited and not “absolute” at all points. The issue of the exercise of ownership title must therefore be interpreted in the spirit of the legal/political dictum “the right of the individual ends where the rights of others begin”.*

The obligation to maintain a structure in a good condition was directly imposed on the owner in the Building Act, namely Section 86 (1) thereof<sup>28</sup>. The aforementioned provision may be regarded as an expression of public interest (the interest of the whole in the sense of the above-quoted decision of a case) in good structural and technical condition of structures that will not put at risk people’s health or lives.

The general obligation to prevent damage is stipulated by the Civil Code in Section 420 (1)<sup>29</sup>.

It is obvious that the condition and maintenance of a structure are the owner’s obligations. The planning authority cannot supply this role in full. Its powers result from the Building Act and are adjusted so as to ensure that people’s lives or health or other interests defined by law are not at risk through a potential failure of the owner.

From this viewpoint, the planning authority may order maintenance work from the owner pursuant to Section 86 (2) of the Building Act where the owner fails to perform it properly himself<sup>30</sup>. According to the following Section, 87 (1) of the Building Act, the planning authority shall order necessary modifications from the owner of the structure if this is required by the public interest for sanitary, safety, fire safety, operational, environmental and aesthetic reasons<sup>31</sup>. The planning authority may also intervene in similar situations by ordering urgent securing work pursuant to Section 94 of the Building Act<sup>32</sup> where the structure in its existing condition puts at risk the lives or health of persons or considerable economic or cultural values provided that it needs not be immediately removed. However, both of the latter procedures require defects of a serious extent and nature, i.e. not all neglected maintenance may be dealt with in the aforementioned manner. It is always necessary to properly ascertain the actual state of matters and proceed to an appropriate solution.

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rights may not be exercised so as to harm human health, nature, or the environment beyond the limits laid down by law.”

<sup>28</sup> Section 86 (1) of the Building Act: “The owner of the structure is obliged to maintain the structure in a good structural condition in accordance with the design documentation certified by the planning authority and the decision of the planning authority (planning permit, final building approval) so as to avoid the risk of fire and sanitary defects, degradation or compromised appearance and to prolong its usability to a maximum.”

<sup>29</sup> Section 420 (1) of the Civil Code: Everyone shall be liable for damage caused by violating a legal obligation.

<sup>30</sup> Section 86 (2) of the Building Act: “If the owner fails to perform a proper maintenance of the structure, the planning authority may order him to ensure remedy within a determined term and under set conditions. The users of flats and non-residential premises shall be obliged to facilitate ordered maintenance of the structure.”

<sup>31</sup> Section 87 (1) of the Building Act: “If required by the public interest for sanitary, safety, fire safety, operational, environmental and aesthetic reasons, the planning authority shall order execution of the necessary modifications of the structure from the owner of the structure or of the building plot to the owner of the plot. The owner of the structure or plot of land shall be obliged to perform the ordered modifications at his own expense.”

<sup>32</sup> Section 94 (1) of the Building Act: “If the structure in its condition puts at risk the lives or health or persons or, as the case may be, considerable economic or cultural values and, if the structure needs not be immediately removed, the planning authority shall order execution of urgent securing work from the owner of the structure.”

Decision on vacation of a structure pursuant to Section 96 (1) of the Building Act<sup>33</sup> or, as the case may be, decision on an order to remove structure pursuant to Section 88 (1) (a)<sup>34</sup> represent an extreme way of dealing with a structure in disrepair. Immediate risk to persons' lives or health is a prerequisite for such a procedure.

In terms of gallery house No. 1336 in Smetanova street, the ascertained matters suggest that the owner had failed to deal with the worsening structural and technical condition of the house (also due to ageing). Only partial work in individual cases had been performed and the premises had not been subject to overall or partial refurbishment since erection. As the tenants' complaints and removal of some flats from the housing fund for unsanitary condition suggest, the owner of the house had not fulfilled the obligation imposed on him by the Building Act for over ten years when failing to maintain the structure in a good structural and technical condition. The planning authority had obviously been aware of the situation at least since 1998 as the urgent securing work of enclosing the galleries was ordered due to the risk to people's health and lives. Yet it had not issued any decision in the following years that would impose an obligation on the owner to deal with the condition of the structure, in spite of the fact that it had anticipated issuance of such decision in the substantiation of the decision ordering urgent securing work of October 8, 1998.

Rather the opposite, the planning authority had permitted a change for the non-residential premises (former flats excluded for unsanitary condition according to the preceding legislation effective till December 31, 1991) to be again used as flats at the house owner's request. I find a number of defects in the aforementioned decision of March 27, 2000, on a change in use. It is not obvious at all from the decision whether it involves a mere change in use or whether the change is associated with structural alterations. Given that only the original 1940 planning permission is mentioned in the substantiation, it would be reasonable to expect a mere change in use without structural alterations. However, if this is the case, it lacks an explanation as to how the flats had been put into a condition complying with the legal regulations given they were removed from the housing fund for their unsanitary condition according to the legal regulations at the time (for more please refer to section B hereof), in particular due to mould. Mould usually indicates structural and technical defects of premises and the need for structural and technical measures (elimination of humidity). The planning authority had failed to justify permission to use flats in premises it had evaluated as putting health or even lives at risk. The decision only reveals that the district health authority provided a positive statement on the "re-approval".

I therefore state that the planning authority had been inactive when proceeding to further measures pursuant to the Building Act in spite of an impartially ascertained condition of the house that justified an intervention.

The owner has a primary responsibility for the condition of the house, according to the Building Act. The owner had been wholly inactive for many years. Although taking certain steps towards refurbishment, it had failed to put them into practice. The house had remained in a condition putting people's lives and health at risk all the time while the restoration was considered.

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<sup>33</sup> Section 96 (1) of the Building Act: "If the structure is in a condition as to immediately puts at risk the lives or health of persons, the planning authority shall order the users of the structure to vacate it; an appeal against the decision shall not have a suspending effect."

<sup>34</sup> Section 88 (1) (a) of the Building Act: "The planning authority shall order the owner of the structure or facility to remove the defective structure putting at risk the lives or health of persons unless it can be economically restored."

I must say that this is not the first time I have encountered inactivity of a planning authority in supervising the structural and technical condition of premises. If a planning authority continuously fails to use instruments to detect and eliminate defects, particularly in an old residential development, there is later no other solution than vacating and removing the structure. If the structure is in a condition that puts people's health and lives at risk, the authority is obliged to order vacation and removal of the structure in an official capacity. According to the Building Act, persons using flats in a structure to be removed have the right to be provided with shelter.<sup>35</sup>

My experience to date suggests that in some cases, in particular in case of an order to perform maintenance of a structure, necessary alterations, securing work, or to remove or vacate a structure, the planning authority is often inactive due to the anticipated costs of enforcement of the decision in the case that the owner fails to fulfil the imposed obligation voluntarily. The enforcement of such decisions is costly for municipalities and self-governing bodies refuse to provide enough funds.

#### Proceedings concerning permission to remove gallery house No. 1336 in Vsetin's Smetanova street

Regarding the procedure of the planning authority in the proceedings concerning permission to remove the gallery house, I hereby refer to my inquiry I conducted in the matter under ref. No. 4365/2006/VOP/MH and closed it on October 6, 2006. I stated in the inquiry report<sup>36</sup> that I had not ascertained maladministration in the procedure of the planning authority in the proceedings that would justify adoption of remedial measures in the sense of Section 19 of the Public Defender of Rights Act.

The reasons for removal of the structure were given in the conclusion of the expert report drawn up at the order of the Vsetin municipality. The aforementioned reasons even entitled the planning authority to order removal of the structure in an official capacity pursuant to Section 88 (1) (a) of the Building Act on the grounds of its putting people's lives and health at risk.

#### Construction of Vsetin's Poschla residential complex

To begin with, a brief comment on the issue of zoning as it is related to the selection of the Poschla site for the placement of residential houses with "social flats". Zoning documentation procurement is a process stipulated by the Building Act. It is special in that it combines the exercise of public administration and self-government. The role of the municipality as a regional self-governing unit is to initiate procurement of the zoning documentation or an amendment thereof (it decides on its procurement) and simultaneously to approve – again in independent competence – the key documents in the procurement process (draft specification) and, even more importantly, the final shape of the zoning documentation (the zoning plan). However, the actual procurement process takes place in delegated competence where the municipal authority acts in the role of a zoning body.

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<sup>35</sup> Section 96 (4) of the Building Act effective till December 31, 2006 stipulated: "Where a structure containing flats is concerned, the planning authority shall advise the municipality. Substitute housing shall be provided appropriately pursuant to the special regulation." Section 140 (4) of Act No. 183/2006 Coll. on Zoning and the Building Code effective from January 1, 2007 stipulates: "If vacation of a flat or a room serving as housing is to be ordered, at least a shelter must be provided for the vacating persons 45); municipalities are obliged to provide the required cooperation at the request of the planning authority."

<sup>36</sup> Report on Inquiry of the Public Defender of Rights in the matter of the structural and technical condition of the gallery house in Vsetin, ref. No. 4365/2006/VOP/MH

It is obvious from the above that the decision on the placement of residential houses in the Poschla site was to be made by the Vsetin municipality in independent competence. The public administration bodies acting in the position of bodies concerned could therefore not propose any other locations or compare benefits of Poschla with other locations; their statements were restricted to the proposed site. Two bodies concerned (the Ministry of Transport and the regional health authority) identified Poschla as a site unsuitable for the planned project. Such unsuitability was also confirmed by the expert reports by the AQ – test company of Ostrava, aimed at evaluating the environmental circumstances of the new residential housing ordered by Vsetin before it approved the amended zoning plan.

The regional health authority acted as the body concerned in the area of public health protection in the processes of approving the zoning plan amendment and the zoning, planning and approval proceedings. The position of the regional health authority as the body concerned is established by Section 77 of the Act on Public Health Protection<sup>37</sup>. The protected interest concerned is public health, defined by the quoted Act as the health condition of the population and groups thereof. Health condition is determined by a summary of natural, living and working conditions and lifestyle. Public health at risk means a condition according to the Act where the population or groups thereof are exposed to a risk with an ensuing degree of burden by hazardous factors in natural, living or working conditions that exceed the generally acceptable level and represent a significant risk of harm to health.

Public health being at risk could be the case of the Poschla site, both from individual adverse effects (contamination of soil, gas generation from the former dump, noise from the I/57 and potential odour from the WWTP) and the accumulation thereof. As a result of the conditions imposed by the regional health authority (and the Ministry of Transport and a motion from the road and motorway directorate where noise is concerned), reduction in the adverse effects and risk factors to a level bearable and acceptable from the viewpoint of public health protection was achieved. An obligation to monitor some of the hazardous factors (soil contamination) was imposed for the future.

I therefore evaluate the regional health authority's procedure in the preparation and implementation of the Poschla construction project as exemplary procedure in accordance with the law. The regional health authority utilised the possibilities provided by the Act on Public Health Protection, requested an evaluation of health hazards already at the stage of zoning<sup>38</sup> to comprehensively evaluate the conditions for construction and subsequently referred to them (and the other evaluations, in particular the expert reports by AQ – test and UNIGEO of Ostrava) in determining the conditions for the individual stages of project implementation.

I have not found any maladministration in the procedure of the planning authority as the zoning body. As indicated above, the planning authority was already restricted to the Poschla scenario in procuring the zoning plan amendment. It gathered

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<sup>37</sup> Section 77 of the Act on Public Health Protection: "The body of public health protection is the administrative body concerned in deciding on matters stipulated by special legal regulations concerning interests protected by the public health protection body pursuant hereto and the special legal regulations including health hazard evaluation and control. The body of public health protection issues a statement in the aforementioned matters. The body of public health protection may tie consent to the fulfilment of certain conditions. The statement is not a decision issued in administrative proceedings."

<sup>38</sup> Pursuant to Section 2 (3) of the Act on Public Health Protection, health hazard assessment is assessment of the degree of burden on the population exposed to hazardous factors in living and working conditions and lifestyle.

statements from the bodies concerned within the process of amendment procurement, evaluated them and took the conditions imposed by them into account (e.g. in the form of limits to the zoning plan amendment) at the subsequent stages.

As far as I can assess the placement of residential houses in the Poschla site given the experience gained in my exercise as the Public Defender of Rights, I do not find the site to be an optimum site. The areas reserved for housing place considerable demands on the surroundings from the zoning perspective. Terminologically, housing involves long-term or at least regular repeated dwelling at a place. It therefore places the highest demands on favourable living conditions. The limits with respect to the reserving of areas for housing, placement of structures (e.g. transport structures) and arrangement of the territory concerned are set accordingly by the legal regulations. Areas for housing are reserved primarily in quiet zones with minimal disturbance. Less obtrusive activities (such as services or retail) rather than manufacturing operations, structures involving significant traffic, etc. are introduced into areas adjacent to zones for housing. The complaints of citizens addressing me in the area of zoning reflect this. They usually protest against the intrusion of a disturbing activity near a zone reserved for housing. Nevertheless, the case concerned is rather the opposite, where housing in a sense “broke” into an area strongly affected by the existing disturbing effects. These effects had to be reduced in order to achieve the limits set by the law for the protection of public interests, such as protection from noise or toxic substances. However, there is very little room for the elimination of potential disturbing effects in the future that can never be wholly ruled out (such as the aforementioned extension of the I/57 already today).

The planning authority subsequently conducted zoning, planning and approval proceedings at the developer’s request. Given the complaints about humidity and mould in the flats, I will concentrate on the action of the planning authority in the planning and approval proceedings.

In planning permission proceedings, the planning authority examines whether the documentation presented with the application for planning permission meets the zoning permission conditions, requirements concerning public interest, in particular environmental protection and the protection of health and lives and corresponds to the general technical requirements for construction<sup>39</sup>. The general technical requirements for construction were stipulated by virtue of decree No. 137/1998 Coll. on General Technical Requirements for Construction as amended (hereinafter the “GTR”). One of the general requirements for the protection of health, healthy living conditions and the environment expressly specified by the GTR decree is that the structure must be designed and implemented in such a manner as to avoid putting at risk the lives, health and healthy living conditions of its users as a result of the occurrence of humidity in constructions or on the surface of constructions inside structures.

Apart from the above, the Building Act stipulates in Section 47 that only such products or constructions may be designed for structures the properties of which ensure that with proper implementation and normal maintenance, the structure will be safe, sanitary and with an acceptable energy demand for the entire anticipated life<sup>40</sup>.

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<sup>39</sup> For more please refer to Section 62 of the Building Act.

<sup>40</sup> Section 47 (1) and (2) of the Building Act:

“Only such products and constructions may be designed and used for a structure the properties of which in terms of fitness of the structure for the proposed purpose ensure that the structure meets the requirements for mechanical strength and stability, fire safety, hygiene, protection of health and the environment, safety in use

The residential houses were designed as assembled residential and sanitary containers according to the comprehensive technical report. Partitions of laminated chipboard and outer walls of galvanised sheet were designed within the steel frame. Natural ventilation through windows was designed.

It can be said that residential and sanitary containers are relatively common goods in the market for building materials and other facilities for construction. As such they meet the requirements for conformity of products and cannot be regarded as structures unsuitable for regular habitation. However, I continue to ask whether they can be used for permanent habitation involving activities common in every household such as laundry washing and drying, ironing, cooking, etc. I was confirmed in my doubts regarding such use of the containers by the findings from the Poschla residential houses of damp walls and humidity running down the walls onto the floor. It is obviously possible that the defective situation is due to the method of assembly rather than the containers as such or the materials they are made from. Thermal bridges that could account for the considerable energy demands also cannot be ruled out just like the improper use of the flats stated by the planning authority in the inspection, although the amount of dampness the inhabitants complained about, especially in the winter makes me doubt whether it can be attributed to mere improper use.

A professional assessment is primarily up to the designer, who, as an authorised person, is responsible for correctness and feasibility of the design documents<sup>41</sup>. A part of the responsibility is also with the planning authority, to the extent it is obliged to review the design documents pursuant to Section 62 of the Building Act. I have not ascertained any maladministration in the procedure of the planning authority in the planning and approval proceedings. In my opinion however the suitability of the Poschla site residential complex for permanent housing (including fulfilment of the general technical requirements for construction) should be reviewed by an expert report.

#### Premises in the areas around Jeseník, Prostějov and Uherské Hradiště

According to the ascertained facts described in section B of the present Final Statement, the condition of the premises more or less corresponds to the condition of gallery house No. 1336 in Smetanova street. At the moment the Romany families became owners of the premises pursuant to purchase agreements (except for the T. family in Cechy pod Kosírem), the rights and obligations of owners pursuant to the Building Act passed to them. They are therefore responsible for the structural and technical condition of the premises. The obligation to repay the loan for acquisition is accompanied by the obligation to pay for costly restoration.

As in the gallery house, the relevant planning authority is also obliged to intervene if the owner fails to meet his obligations. The authority shall evaluate the condition of the individual premises and assess whether there is a need to order maintenance work, necessary alterations, urgent securing work or, in an extreme case, removal or vacation of the structure due to health or lives at risk.

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(including the use by persons with movement and orientation difficulties), protection against noise and energy savings and heat protection for the anticipated life in correct implementation and normal maintenance.

“The properties of products for a structure decisive for the resulting quality of the structure must be verified pursuant to the special regulations for the aspects specified in paragraph 1.”

<sup>41</sup> please refer to Section 46b of the Building Act

Act No. 183/2006 Coll. on Zoning and the Building Code has been effective from January 1, 2007. According to the aforementioned Act, if a planning authority orders vacation of a flat or a room used for housing, at least shelter must be provided for the persons subject to the vacation. In doing so, municipalities are obliged to provide the necessary cooperation within their competence at the planning authority's request<sup>42</sup>. In the case concerned, the obligation to provide shelter would fall upon the municipalities in which the premises are found rather than the Vsetin municipality, where a number of the evicted inhabitants continue to have permanent residence.

It can be stated in conclusion that had the unsuitable structural and technical condition of the house or, as the case may be, apprehension for the health and lives of the inhabitants been the reason for eviction of the persons from gallery house No. 1336 in Smetanova street, resettling them to the unsuitable premises in the areas around Jeseník, Prostějov and Uherské Hradiště has not settled the issue but rather the opposite - the issue continues to exist. The evicted families have been introduced into similar circumstances by the aforementioned procedure, only outside Vsetin, with the consequences as described elsewhere herein.

The above conclusion, laid down already in my inquiry report, is to a certain extent confirmed by the motion for procedure pursuant to Section 132 of Act No. 183/2006 Coll. by the T. family's legal representative (Cechy pod Kosírem) of May 24, 2007, in which she called upon the planning authority at the Kostelec na Hane municipal authority to order the owner of the real estate in Komenského street 138, Cechy pod Kosírem, to perform the necessary alterations to the structure and maintenance work in the sense of Section 132 (2) (c) and (e) within supervision over the provision of safety of *inter alia* natural persons.

The planning authority will inspect the structure in accordance with the Building Act, according to a statement of the head of the planning authority at the Kostelec na Hane municipal authority of June 11, 2007. It will subsequently decide whether reasons for exercising its powers pursuant to the Building Act exist.

#### **4. Eviction of the Romany families from the viewpoint of fundamental human rights**

##### Legal framework

I hold the view that a legal evaluation of the Romany families' eviction from Vsetin should be based on the human rights standards stipulated at the national law level in the Charter of Fundamental Rights and Basic Freedoms, in particular Art. 1, according to which people are free and equal in dignity and rights, and Art. 10 (2) stipulating and detailing the right to protection from unauthorised intrusion into private and family life. Among international law documents, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 8 – right to respect for private and family life)<sup>43</sup> and the International Covenant on Economic, Social and Cultural Rights should be accentuated, stipulating everyone's right to adequate standard of living, the right to housing and to the continuous improvement of living

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<sup>42</sup> please refer to Section 140 of Act No. 183/2006 Coll. on Zoning and Building Code as amended.

<sup>43</sup> Art. 8 of the Convention (No. 209/1992 Coll.): 1. "Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

conditions in Art. 11 (1).<sup>44</sup> Last but not least, Art. 16 of the European Social Charter, representing the States' obligation to support the provision of housing for families, falls within this framework.<sup>45</sup>

Pursuant to Section one (1) of Act No. 349/1999 Coll. on the Public Defender of Rights as amended, the Defender works to defend fundamental rights and basic freedoms. He is not entitled to authoritatively determine Vsetin municipality's conduct towards the Romany families concerned as inconsistent with the fundamental rights and basic freedoms as the Constitutional Court in our legal system and the European Court of Human Rights in the Council of Europe's system are competent to such authoritative assessment. On the other hand, an assessment of the human rights aspect of the eviction is desirable for the sake of the completeness of the present Report.

Although I am not bound by the decision-making methods of the Constitutional Court of the Czech Republic or the European Court of Human Rights in Strasbourg, the chosen method of assessment draws from the court practice and assessment methods of both of the aforementioned bodies for the protection of fundamental human rights. Concerning the structure of the issue, two basic areas are relevant for my assessment: firstly, legitimacy of the objective of the families' eviction, and secondly, legitimacy of the means and method chosen to achieve it. Proportionality must exist between the achieved objective and the chosen means. In cases like this, intrusion into a fundamental right is always limited by appropriateness to a legitimate objective that is in accordance with the law and in most cases pursues a public interest.

#### The evicted people from the viewpoint of their legal and social situation

The basic social characteristics of the evicted people must be provided for the final statement's purposes. As described earlier in section B hereof, they were Romany families with many children. To describe their social situation in general, they were mostly citizens dependent on the system of social benefits, i.e. earners of a very low income.

The indebtedness factor is an important aspect in their social situation. However, it is not true that all the evicted families were rent defaulters. The evicted persons can be divided into three groups in this respect: wholly debt-free, with debts from a previous lease relation being repaid by them, and rent defaulters.

All the evicted Romany families I inquired into in detail had entered into lease agreements for a fixed term with the Vsetin municipality, subject to an implied extension every year as the Civil Code allowed.<sup>46</sup> The agreements expired in 2005 or

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<sup>44</sup> Art. 11 of the Covenant (No. 120/1976 Coll.): 1. "The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

<sup>45</sup> Art. 16 of the European Social Charter (No. 14/2000 Coll. of international agreements): "With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means."

<sup>46</sup> An amendment of the Civil Code effective from March 31, 2006, annulled the possibility of the so-called implied extension of a lease relation entered into for a fixed term. Prior to March 30, 2006, if the tenant used a flat after termination of the lease and the landlord did not file a motion for vacation of the flat at a court within 30 days, the lease agreement was renewed under conditions identical to those originally agreed. A lease agreed for a term in excess of one year was always renewed for a one-year term, while a lease agreed for a shorter term was

2006 in most of the cases under assessment. Both parties (the Romany families and the Vsetin municipality) had to be aware that housing would need to be provided for in some other manner.

From the viewpoint of the law, as I stated in section B hereof, the lease agreements entered into with the Vsetin municipality for a fixed term had expired for the families resettled to the areas around Jeseník, Prostějov and Uherské Hradiste and the Vsetin district court had decided on vacation following a motion by the Vsetin municipality. The court had granted substitute housing to none of the families. Taking into account the social situation and minor children in the families, the court had extended the legal 15-day period for vacation of the flats to one month and, in one of the cases, 3 months (for more please refer to section B hereof).

For the families resettled to the Poschla site premises, I ascertained an identical legal title to the vacation of the flats in gallery house No. 1336 in Vsetin's Smetanova street from the basic documents available to me. Vsetin's district court again had not granted substitute flats to the families subject to the vacation.

Given the above, I must state that the differentiation criterion presented in the media – that families free of debt had been resettled to the Poschla site and families with debts to the areas around Jeseník, Prostějov and Uherské Hradiste – was not the case. The procedure of the court deciding on an extension of the deadline for eviction with regard to the social situation of the families subject to the vacation suggests that they had actually been families in social distress, with greater difficulties in obtaining housing.

As the facts specified in section B hereof suggest, in terms of assessment of observance of the aforementioned fundamental human rights' protection, the act of eviction cannot be approached without differentiating between the different groups of the evicted citizens. The resettlement location criterion is a fundamental factual difference resulting in a different assessment at the human rights level. I must therefore begin by differentiating between the cases of the citizens resettled to the Poschla leased housing in the cadastral area of Vsetin and those resettled outside Vsetin to ownership housing. Since the latter case is more complicated for the purposes of the present assessment, I will deal exclusively with the issue of fulfilment of the protection of fundamental human rights in the eviction of the Romany families to the areas around Jeseník (Vidnava, Stara Cervena Voda, Vlčice), Prostějov (Čechy pod Kosírem, Drevnovice) and Uherské Hradiste (Mistřice) in the following part of the text.

### Families resettled to ownership housing in the areas around Jeseník, Prostějov and Uherské Hradiste

#### a) Objective of the eviction

The case concerned involves not only the procedure of the house's owner (or landlord), but also the bodies of the regional self-governing unit in the exercise of self-government. In this respect, it was also an intervention by a public authority. The eviction of the Romany families had been undoubtedly prepared for a long period, with the proclaimed objective of providing "substitute housing" to the tenants of flats in gallery house No. 1336 in Vsetin's Smetanova street to be pulled down. This is

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renewed for such a shorter term. The aforementioned rule no longer applies in the case of the lease of flats effective from March 31, 2006. The lease of flat for a fixed term shall not be automatically renewed pursuant to the new regulation. If the tenant continues to live in the flat, he risks an action for vacation filed by the landlord.

undoubtedly an objective in accordance with the law. A court had finally decided on the vacation of the flats. All the decisions available to me had come into legal force by the time of the eviction. However, legitimacy of the eviction depends on whether finding “substitute housing” for the evicted families had been the only actual (i.e. also material) objective or not. It is obvious from the factual context of the resettlement to the areas around Jeseník, Prostějov and Uherske Hradiste (section B hereof) that the aforementioned formal objective had not been the only purpose of the eviction. If the assumption that the Vsetín municipality would “win” had been the actual objective of the Romany families’ eviction to other municipalities, such an objective would not meet the legitimacy requirement, primarily because a municipality is obliged to care for the housing needs of its citizens in accordance with the Act on Municipalities. An implied assumption associated with the aforementioned legal rule is that the municipality will fulfil this obligation using its property as it administers it in the interest of the “local population.”<sup>47</sup>

It is an assumption stemming from the municipality’s role as a local self-governing corporation, although it obviously does not imply an absolute legal obligation for the municipality to do so always and within its territory. It is obvious that resettlement outside the municipality may be justified in particular by an absence of available residential units or a lack of funds for the construction of new residential houses. A question arises in the context of the families’ resettlement to the aforementioned locations whether comparable housing could have been provided for elsewhere near Vsetín<sup>48</sup> or in the Poschla site, because the planning authority had originally approved the placement and permission to construct three premises (please refer to section B hereof). The aforementioned decisions remain in force. The decision to resettle some Romany families outside Vsetín to the areas around Jeseník, Prostějov and Uherske Hradiste may have a significantly deliberate aspect, which is not entirely consistent with the aforementioned formal legal purpose of providing for the Romany families’ housing. The picture of the reasons for the resettlement outside the municipality created by the Vsetín representatives in the media contributes to such an impression.

I must stress here that I am fully aware that Vsetín is not a unique example of a municipality using a similar procedure in handling problems with certain groups. However, there are questions about the legitimacy of transferring a problem with a group of the local population to other regional self-governing units without respecting the bond between a municipality and its citizens. The fact that this is an expanding practice cannot be regarded as a reason for justifying such a procedure. I hold the view that taking into account the actual motives of the eviction, which constitute the meaning and sense of such an act not only at the factual but also at the legal level, is the key to assessment of the public authority’s intervention. Allowable conduct is that not prohibited by the law, which does not mean however that it also enjoys legitimacy stemming from justification of the conduct’s reasons. It should be taken into account that Vsetín as a territorial public corporation must observe not only legal rules of conduct but also take into account the principles on which the relationship of regional self-government to its citizens is based.

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<sup>47</sup> Compare Art. 3 (1) of the European Charter of Local Self-government (published under No. 181/1999 Coll.): Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and **in the interests of the local population.**”

<sup>48</sup> Note: Vsetín real estate agencies offered comparable real estate for a similar purchase price in Vsetín or in the close vicinity of Vsetín at the time of the eviction – in October 2006 (e.g. the “Reality Cejn” agency).

More specifically, it is not by chance that the Act on Municipalities positively lays down the general obligation of municipalities to care for the housing needs of their citizens.<sup>49</sup> The Romany citizens had been citizens of the Vsetin municipality at the time of the eviction as they were Czech Republic nationals with permanent residence in Vsetin. It follows from the above that in the eviction as a legally allowable conduct, the Vsetin municipality as a territorial public corporation had been obliged to take into account the needs of its citizens as the evicted citizens were, and some of them continue to be, Vsetin citizens.<sup>50</sup>

I do not find the location of the provided “substitute housing” outside the cadastral area of the Vsetin municipality as an objective inconsistent with the law as there is no legal standard prohibiting such procedure. However, it is an objective with at least dubious *legitimacy* as far as the eviction of the Romany families to the areas around Jeseník, Prostějov and Uherské Hradiště is concerned. The Vsetin municipality attempted to transfer its declared problem to other municipalities without discussing this with their self-governing bodies and without respecting the justified interests of its population.

It is furthermore worth mentioning that in a legal assessment of a potential breach of the right to respect for private and family life, the European Court of Human Rights also analyses the relation of the person to the place of home (bonds to the surroundings), and the possibility of an individual to adapt his interest to public interest (i.e. the possibility of another solution). The person’s interest must also be weighed against the public interest.<sup>51</sup> Taking into account the factual context and accounts of the evicted families’ members, I hold the view that some of these citizens had wished to stay in Vsetin, and not only in their own interest, but also in the interest of their young children, in particular as their future prospects are concerned (school, hobbies and employment). We should furthermore not omit that some of the families had left relatives in Vsetin. These justified interests of the evicted population had been strongly prejudiced with respect to the families evicted to the areas around Jeseník, Prostějov and Uherské Hradiště, i.e. areas with a high unemployment rate and limited transport infrastructure connecting large settlements with small municipalities. To assess the *appropriateness* of an intrusion, it is important to ask what public interest would legitimise such an intrusion into private and family life in this particular case. There was a declared public interest in health protection and adequate standard of living of the tenants that had no longer been available in the gallery house before. The Vsetin municipality had been aware of this and had decided to deal with the situation by pulling the house down. Given that the gallery house has been pulled down, there is a legitimate objective of providing permanent

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<sup>49</sup> Section 35 (2) of Act No. 128/2000 Coll. on Municipalities as amended: “In particular the matters specified in Sections 84, 85 and 102, with the exception of issuing municipal orders, fall within the independent competence of municipalities. A municipality with independent competence also cares for creating grounds for **the development of social care and satisfaction of the housing need** in its territorial district in accordance with the local possibilities and the local customs. **This involves in particular the satisfaction of the housing need**, protection and development of health, transport and communications, the need for information, education and learning, overall cultural development and protection of public order.”

<sup>50</sup> This includes a part of the families resettled to the areas around Jeseník, Prostějov and Uherské Hradiště that have not registered for permanent residence in the acquired houses, i.e. the T. family (Čechy pod Kosířem), the S. family (Dřevnovice) and the K. family (Stará Červená Voda).

<sup>51</sup> “The Court cannot ignore, however, that in the instant case the interests of the community are to be balanced against the applicant’s right to **respect for her “home”, a right which is pertinent to her and her children’s personal security and well-being. The importance of that right for the applicant and her family must also be taken into account in determining the scope of the margin of appreciation allowed to the respondent State.**” (ECHR judgment of September 25, 1996, *Buckley v. the United Kingdom*)

housing for the Romany families. However, the aforementioned requirement has not been fulfilled by the real estate in the mentioned sites around Jeseník, Prostějov and Uherské Hradiště as the structures concerned are in need of an urgent costly refurbishment the families will very likely not be able to afford, which could have been anticipated already at the time of the eviction.

#### b) Eviction method

The method used in the eviction can again be approached at two levels, formal and material. At the formal level of a sheer legal designation of reality, it can be stated that the eviction was in accordance with the law on the basis of the court's decision on vacation of the flats. However, a better insight into the reality of the eviction reveals that the material level of eviction incorporates many legally dubious aspects that deserve a more detailed legal analysis.

#### *Free will and freedom to choose a place of residence*

The question of the spontaneity of the evicted persons' consent to the chosen solution must be asked in the first place. This obviously does not gain in relevance at the stage of filing an action for vacation of the flat but only at the moment the evicted inhabitants are advised of the place they would go to. The description of facts in the case suggests that the Romany families had not had the impression of a free choice. This means that the Vsetín municipality seems to have exerted an informal pressure on them to adopt the planned solution, including pecuniary obligations for the families resettled to the private houses in the areas around Jeseník, Prostějov and Uherské Hradiště (agreement on loan or credit) for the purchase of the house. A situation civil law labels as "duress" had thus resulted from Vsetín municipality conduct in securing the housing needs of its citizens. The eviction had been carried out authoritatively and in a manner inducing a feeling of danger and fear for the future. Thus the evicted families had acted under pressure rather than freely when they acquired the real estate offered to them by the Vsetín municipality and agreed to repay the debt. This is supported by the fact that these families had not wished to permanently register at the place of their actual residence (for more please refer to section C hereof – "Social Benefits"); only some of the families had done so by the date of drawing up the inquiry report on April 5, 2007. A consideration that they would no longer have even a theoretical chance of obtaining leased municipal housing in Vsetín if they change permanent residence to the actual one, was undoubtedly one of the reasons for such attitudes. The threats of child removal or removal of social benefits mentioned by some of the evicted inhabitants of Vsetín have remained only a case of statement against statement. Be it as it may, I still find the procedure of the Vsetín municipal bodies in the organisation of the eviction inappropriate.

#### *Suitability of the provided substitute housing*

Suitability of the housing provided by the Vsetín municipality to its citizens<sup>52</sup>, the provision of which was the proclaimed objective of the eviction, is another aspect in the analysis of the Romany families' eviction from the viewpoint of human rights

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<sup>52</sup> Although only at a general level, the ECHR dealt with the issue of suitability of provided housing – alternative accommodation – in the judgment in the case of Chapman, Coster, Beard, Lee and Jane Smith v. the United Kingdom [published in RoESLP 2001, 2: 63]. The Court stated in a substantiation of the decision that "... **the more suitable the alternative accommodation is, the less serious is the interference constituted by moving the applicant from his or her existing accommodation.** The evaluation of the suitability of alternative accommodation will involve a consideration of, on the one hand, the particular needs of the person concerned – his or her family requirements and financial resources – and, on the other hand, the rights of the local community to environmental protection."

protection. The important thing is that housing should correspond to the financial resources available to the family. It is obvious that most of the Romany families comprise of persons in temporary or long-term material need dependent on resources provided from the system of social benefits. Private houses in Stara Cervena Voda, Vlcice, Vidnava, Cechy pod Kosirem, Drevnovice and Mistrice had been offered to the evicted families. The aforementioned premises in general are considerably damaged (humidity, damaged plaster, obsolete power installations, etc.) and their prolonged use will demand costly refurbishment. It should be mentioned in this context that the premises in Supikovice in the area around Jesenik and in Usobrnno had been in a condition so poor that the families originally intended to buy them had to return to Vsetin (please refer to section B hereof). I find a fundamental problem in the fact that the housing provided in this manner fails to correspond to the financial standing of the families living in such premises. It should be taken into account that the quality of housing plays a great role in the overall provision of a child-rearing environment for young children and it may even represent grounds for filing motions for removal from the family in the established practice of the bodies of social and legal protection of children. The families would need additional loans to obtain the necessary financial resources. This would worsen their financial situation as they had to incur debts in order to acquire the premises.<sup>53</sup>

On the grounds of the aforementioned reasons, I am not confident about the suitability of the housing provided to the families moved to the above-specified sites. Ownership housing furthermore involves an increased financial burden for these citizens, without any realistic possibility of obtaining resources for restoring the real estate. It is a discrepancy that obviously does not constitute inconsistency with the law, but it undoubtedly increases the intensity of intrusion into the right to respect for private and family life if we take into account the real social situation of the families and that the Vsetin municipality had been aware of it.

#### *Eviction of the Romany families from the viewpoint of the right to human dignity*

From the viewpoint of the protection of human rights and freedoms, the key is to answer the question whether such procedure of the Vsetin municipal bodies is in accordance with the constitutionally guaranteed right to dignity and equality of people in dignity. The Constitutional Court stated the following on the right to human dignity:<sup>54</sup>

*“The emphasis of the constitutional order of the Czech Republic is on the individual and his rights guaranteed by the constitutional order of the Czech Republic. The individual is the basis of the state. The state and all its bodies are constitutionally bound to protect and save the rights of the individual. The concept of our constitutionality is not limited to the protection of the fundamental rights of individuals (e.g. the right to life, guaranteed legal personality), but, in accordance with the post-war change in the understanding of human rights (which found articulation e.g. in the UN Charter or the Universal Declaration of Human Rights), human dignity which inter alia rules out treating a human being like an object has become the primary basis from which the interpretation of all the fundamental rights ensues. In the aforementioned concept, human dignity issues are conceived as part of a human being’s quality - part of his humanity. Guaranteeing inviolability of human dignity*

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<sup>53</sup> Although there is the theoretical possibility of obtaining extraordinary immediate assistance on the basis of an extensive administrative discretion of the relevant municipal authority – for more please refer to section C – “Social Benefits” hereof.

<sup>54</sup> Award No. IV of the Constitutional Court 412/04 Coll. of awards and resolutions

*enables the human being to fully enjoy his personality. These considerations are confirmed by the preamble to the Constitution of the Czech Republic, which declares human dignity as an inviolable value standing in the foundation of the constitutional order of the Czech Republic. Identically, the Charter of Fundamental Rights and Basic Freedoms guarantees equality of people in dignity (Art. 1) and guarantees entitlement to the preservation of human dignity (Art. 10 (1)).*

*The action of constitutional guarantees is much more intense in vertical relations, i.e. in the state – individual relations. Matters heard by a court in the so-called positive proceedings, i.e. proceedings it may initiate even without a motion, should also be regarded as a vertical relation. In other words, these are matters where the public interest prevails over the interest of an individual. All the fundamental rights assert themselves in these vertical relations as directly applicable rights directly obliging the public authority. As indicated above, their interpretation must be within the boundaries delimited by human dignity.*

In accordance with the aforementioned opinion, I find human dignity as a qualitative category closely interlinked with the characteristic of human being as a party to legal relations rather than an object thereof. As a party, a human being is characterised notably by his free will, using which he may bind himself to certain legal obligations and exercise his rights. The relationship between the Vsetin municipality and the evicted families may be placed in the combined relations category as it involved both the horizontal level (the landlord – tenant relation and the *provision of substitute housing*) and the vertical level (the relation between the territorial self-governing corporation and its citizens in *securing the housing needs*). It is therefore necessary to take thoroughly into account in the aforementioned relation with significant elements of the public administration's action, whether human dignity of citizens had been impaired.

The Romany families were confronted with a solution prepared without their involvement. They therefore had had a minimal possibility of exercising their free will and actually dealing with their difficult social situation. In addition to this, the situation had not been sufficiently explained to them including the possibilities available, in particular other ways of dealing with housing and that they did not have to accept the housing in the areas around Jeseník, Prostějov and Uherské Hradiště, in other words that this was not the only solution available. The chosen ownership housing, given the further generation of debts in the families and the poor technical condition of the chosen real estate, did not correspond to the families' needs. I believe that had the evicted citizens had sufficient opportunity to express their free will, some of them would not have accepted the solution. I therefore hold the view that the right to human dignity was violated by abrogating the fundamental principle of contractual autonomy of parties (a state of duress generated by the public authority's coercion in the administration of municipal property). In addition to this, all the Romany families resettled to the areas around Jeseník, Prostějov and Uherské Hradiště were presented by the media as defaulters and inadapted citizens. By exploiting the unfavourable social situation of the families, their right to decide on their family and private life, but also the place of residence and lifestyle was restricted.

The mayor of Vsetin disagreed with my conclusions in her statement on the inquiry report, stating that the evicted citizens had had a sufficient opportunity to express their free will and decide not to accept the offered solution. In this context she referred to the S. and T. families who had refused to accept the offered premises in Supikovice and Usobrná and returned to Vsetin. I believe that given the

circumstances (please refer to section B hereof), such an explanation of the Romany families' free will is not appropriate. The mayor of Vsetin also argued that the Romany families had had an opportunity to independently find housing corresponding to their needs and lifestyle. All the families had been aware that there was a decision on vacation of the flats without substitute housing. They had been advised by the field workers of the amount of their debts and the consequences of a failure to repay them (distrain, eviction). She mentioned that finding other housing options had been difficult not only for the families but also for the Vsetin municipality. Dormitories are expensive and families would not be able to pay rent in the long-run, emergency shelters are a temporary provision, contracting a sublease (lease) is almost impossible for the families and the rent is very high.

#### Families moved to leased housing in the Poschla site

I hold the view that the above arguments are not applicable to the families moved to the Poschla site leased housing, in particular because leased housing corresponds much better to the actual needs and social situation of the Romany families.

The very act of eviction to Poschla was not a quick transfer to new housing the Roma would not be aware of. I must also take into account that I have already encountered a substantially lower standard of leased housing than that at Poschla. Unlike the families resettled to the areas around Jeseník, Prostějov and Uherské Hradiště, the social situation of these families remained essentially unchanged, except for the energy demand of the radiator panels and the problems with heating the flats described in more detail in point 3), "Building code and public health protection" in the present section (they had not incurred any debts, the income from social benefits had not decreased and given that leased housing is concerned, they face no major investment in the occupied residential premises).

Although these families had been moved to Poschla in a substantially different manner, it is true that the solution, prepared already since 2004, had not been recommended by the Government Commissioner for Human Rights with whom the representatives of the Vsetin municipality had been negotiating at the time, and I had had stated in my inquiry kept under file reference 4365/2006/VOP/MH: "Given the above-described facts and the inquiries performed by me so far in connection with the issue of the housing of mainly Romany communities and the approach of the self-governing bodies to the dealing with the housing of persons in a similar position, I feel the need to call attention to the risks and negatives brought about by the displacement of socially excluded population groups or population groups at risk of social exclusion outside the residential structure of municipalities."

However, the active social work declared by the Vsetin municipality may guarantee avoidance of "ghettoisation" of the Poschla site residential complex. Given the location of the site, I believe that active social work is indispensable to prevent social exclusion.

On the other hand, I warn against a mere exercise of a low tolerance programme, which is shortsighted given the effort to prevent social exclusion. In managing its property and legitimately and consistently monitoring the fulfilment of obligations towards itself, the municipality must also pursue the interests and fulfil the tasks imposed on it by the Act on Municipalities.

Section 35 (2) of Act No. 128/2000 Coll. on Municipalities as amended, stipulates "*a municipality in independent competence furthermore cares for creating grounds to*

*develop social care and to satisfy the needs of its citizens in its territorial district in accordance with local circumstances and local customs. This involves in particular the satisfaction of the needs for housing, health protection and development, transport and communications, the need for information, training and education, overall cultural development and the protection of public order".* Rather than as an isolated provision, this must be interpreted in connection with Section 2 (2) *"The municipality cares for a broad development of its territory and the needs of its citizens; it also protects public interest in the fulfilment of its tasks."* and Section 38 (1) *"The property of the municipality must be used expediently and economically in accordance with its interests and tasks resulting from the competence defined by the law. The municipality is obliged to care for the preservation and development of its property."*

An obligation to ensure dignified housing for persons socially excluded for various reasons is not directly stipulated in the present legislation. The legislation had expressly responded to the varying social circumstances of different groups of persons till December 31, 2006, when stipulating that *"a municipality in independent competence acts to overcome the adverse circumstances of citizens in need of special assistance"* (Section 40 (a) of Act No. 114/1988 Coll. on the Competence of the Bodies of the Czech Republic in Social Security as amended) or that it *"provides assistance within its resources to socially non-adapted citizens with permanent residence in the municipality in overcoming their difficult circumstances, housing or, as the case may be, further care in the social care facilities it administers and social advisory care"* (Section 42 of the same Act). With the effect of Act No. 108/2006 Coll. on Social Services as of January 1, 2007, a reference may be made to Sections 37 and 38 thereof defining social advisory and social care.

Housing fund enabling differentiation depending on the situation of the persons at risk of social exclusion and the requirement for the flexibility of the housing fund (i.e. "emergency housing", housing facilities, "supported housing", other municipal housing fund, market for flats) support active social work with persons at risk of social exclusion. The creation, or as the case may be, monitoring of the creation of a housing fund in the territory is fully within the independent competence of the municipality.

## **D Conclusions and recommended remedial measures**

### **1. Social benefits**

#### *Conclusions*

- 1) The Vsetin municipal authority's social affairs department (in accordance with the legislation effective till December 31, 2006) was continuously including the costs of housing actually incurred by the inhabitants of gallery house No. 1336 in Vsetin's Smetanova street in their social welfare benefits insofar as they qualified as citizens in social need. It was using the institute of the special recipient of benefits to pay rent, services associated with the lease, energy, catering for children in schools and had provided one-off social welfare benefits to cover extraordinary events in the family. Yet the Romany families generated debts on rent.

According to a statement from Vsetin's mayor Kvetoslava Othova on the inquiry report, the Vsetin municipal authority encounters the following problems in using the institute of the special recipient: the current software in use makes it impossible to divide the payment of subsistence allowance and contribution for housing and remit it to two different accounts or to an account and via a postal order. A payment of the housing allowance from the state income support system also cannot be divided into multiple accounts; instead it can only be sent to a single account determined by the recipient. She furthermore stated that the entire housing allowance from state income support is sometimes sent to the landlord's account as payment for rent and the services associated with the lease of the flat, but the amount fails to cover the entire rent and services. The municipal authority's department of social affairs would like to use a part of the contribution for housing from the material need system to pay the remaining rent and services and to pay instalments for electricity or gas supplies. However, this is impossible in the above circumstances.

The mayor of Vsetin furthermore stated on my findings that she had addressed the Olomouc regional authority to request a modification of the material need software from the latter's contractor so as to enable sending the payment of the subsistence allowance and contribution for housing benefits to two or more accounts or to an account and via a postal order. She also stated that Vsetin was monitoring the payment of rent and the services associated with the lease of flats by the tenants of the Poschla flats every month in connection with the extension of the lease agreements. She expressed her confidence that the software would be soon modified so that the Vsetin municipal authority and the labour office are able to pay the contribution for housing and the housing allowance, respectively, directly to the landlords of the flats and the contractors of the services associated with housing.

I hold the view that the very fact of the software's failure to meet the formal and material requirements for the exercise of the institute of the special recipient cannot constitute a restriction satisfactorily accounting for the failure to meet the purpose and objective of the applicable legislation.

- 2) Based on filed applications, Vsetin's social affairs department was issuing notices of assistance in material need benefits where the amount thereof remained unchanged or there was a difference of less than CZK 100 as the law tasked it to do. However, the body of assistance in material need failed to substantiate in the substantiation of the notice as to the basic documents the administrative body had referred to in deciding and how it had calculated the amount of the benefit concerned. The recipient of the benefit did not learn from the notice of benefit what considerations had led the administrative body to grant the benefit and determine its amount, i.e. what matters it had and had not taken into account. It is a question whether the clients should have been provided with more detailed information about the reasons for the amount of the granted subsistence allowance and whether they were sufficiently informed and advised of the possibility to file an objection against the notice, in the spirit of the fundamental principle of providing basic advice on the conditions of the provision of benefits.

I therefore recommended in the inquiry report that in issuing notices of benefits, the Vsetin municipal authority's social affairs department inform the

recipients of the benefits of the basic documents it has and has not taken into account so that the recipient is sufficiently familiar with the reasons that may have influenced the amount of the granted benefit and, where applicable, raise qualified objection.

The mayor of Vsetin indicated in her statement on the inquiry report that the Vsetin municipal authority used the OK system HN/SS nationwide software. She pointed out the considerable problems accompanying the introduction of the system. The software provides space for just one substantiating sentence, both for the decision and the notice. In deciding on entitlement to a benefit and the amount thereof, the benefit in the month in question is automatically evaluated by the application. The evaluation detail contains the ascertained matters and information referring to the month concerned. If the social affairs department wishes to properly substantiate a decision or notice, it must enter a number of data such as the persons under joint assessment, subsistence amounts for all the persons under joint assessment, increases in the subsistence amount due to a prescribed diet, the period for which such an increase is to be ascertained, the decisive period for which income is to be ascertained, income relevant for the amount of the benefit, income relevant for the deduction of reasonable costs of housing, the reasonable costs of housing, costs of energy, etc.

The Vsetin municipality requested via the Zlin regional authority extension of the application software with an automatic menu containing data on the calculation of the benefit. This would be available in generating the substantiation of the decision (notice).

The Vsetin mayor assured me in her statement on the report that until modification of the software, the social affairs department would transfer the matters required for substantiation of notices and decisions manually from two documents – a calculation sheet and a document on the calculation of entitlement and the amount of the benefit. This is a procedure I find correct and in accordance with the legal regulations and the principles of good administration.

- 3) The Vsetin municipal authority's department of social affairs proceeds incorrectly when it orally informs some claimants for assistance in material need benefit (contribution for housing) that they are not entitled to the contribution pursuant to the legislation effective from January 1, 2007 and claims that filing an application would be useless. Where an application has not been filed, administrative proceedings have not been initiated in the matter and the benefit has not been decided on by virtue of an administrative decision. Claimants are thus prevented from becoming parties to administrative proceedings including the right to use remedies. This is conduct contravening one of the basic principles of administrative bodies' action regulated by the Code of Administrative Procedure – the principle of reasonably advising the claimant of his/her rights, and the authority should proceed in a manner appropriate to the nature of the act and the personal circumstances of the person concerned. I note here that the municipal authority's social affairs department is not the only authority I noticed practising such procedure in 2007.

## *Recommendations*

- 1) I recommend that the institute of special recipient of assistance in material need benefits be consistently used to avoid debt generation by the Poschla inhabitants and the families' social decline. I also find it suitable to cooperate with the labour office in Vsetin in determining the institute of the special recipient for the contribution for housing that can be used to redeem debts on rent and services.
- 2) Before the nationwide OK system HN/SS software is modified, I recommend that subsistence allowance and contribution for housing be remitted to two accounts or to an account and via a postal order for families at risk of indebtedness or even indebted, without using the software.

I believe that such families may be chosen in cooperation between the social affairs department's personnel and field social workers.

The software authors and administrators should be tasked with enabling the possibility of retrospective recording of payments made in this manner.

- 3) I also recommend continuous evaluation of the measures taken to prevent debt generation. In particular continuous evaluation of the reasons for debt generation and setting up individual plans to eliminate debt are effective. The key is constant cooperation between the Romany families at Poschla, field social workers, Romany coordinators, NGOs, the administrative bodies concerned and the Vsetin municipality.

It seems appropriate to me to appoint individuals respected by both the Roma and the authorities as contact persons for each house to intermediate information and assistance in dealing with current issues and to promote community housing consisting in the involvement of the local Romany community in the preparation of construction and, more importantly, administration of the house (houses) occupied by Roma. Both suggestions were contained in the "Concept of Field Social Workers' Work" document drawn up by the Vsetin municipality already in 2002.

The issue of debt generation by people at risk of social exclusion – a society-wide problem rather than a local one – has been recently incorporated by the Ministry of the Environment in a document entitled "Debt Generation by Socially Deprived and Excluded Groups of Population as a Crime-inducing and Socially Destabilising Factor".

- 4) I recommend that in preliminarily informing claimants about the conditions for granting the assistance in material need benefit – contribution for housing, the Vsetin municipal authority's social affairs department proceed according to the Code of Administrative Procedure and provide them with appropriate advice about their rights with respect to their personal circumstances, in particular the consequences of a non-filed application.
- 5) I hold the view in terms of the families resettled outside the Vsetin municipality to the premises in the areas around Jeseník, Prostějov and Uherské Hradiště that the relevant bodies of assistance in material need have the possibility to grant a benefit of extraordinary immediate assistance to these families to purchase and repair long-term consumables and basic home items on the basis of the Assistance in Material Need Act.

- 6) The relevant bodies of assistance in material need may use administrative discretion and apply the existing legislation with the objective of adapting the families resettled outside Vsetin in the new environment. In individual cases where a specific urgent problem in the family exists and costs are expended reasonably, they may consider the provision of a benefit of extraordinary immediate assistance for the necessary restoration and maintenance of the houses the families live in. Section 2 (4) of the Assistance in Material Need Act provides a demonstrative list of serious extraordinary events<sup>55</sup> that may be extended given the circumstances of a specific case.
- 7) Last but not least, I recommend to the delegated municipal authorities as the bodies of assistance in material need in whose administrative districts are found the evicted inhabitants of gallery house No. 1336 in Vsetin's Smetanova street still registered for permanent residence in Vsetin, that they use the possibility of administrative discretion and provide the assistance in material need benefit – contribution for housing to these families.

## **2. Social and legal protection of children**

### *Conclusions*

- 1) The Vsetin municipal authority's social affairs department acted in accordance with the applicable international and intrastate legislation in the exercise of the social and legal protection of children in cases where current issues in the family needed to be dealt with, e.g. criminal conduct of children or juveniles, neglect of care, etc.
- 2) On the contrary, the Vsetin municipal authority was not fulfilling its obligations in terms of preventive work with the families where it had previously dealt with behavioural problems or criminal conduct of juveniles, other criminal conduct of minors or domestic violence, i.e. it remained inactive in cases where children should have been preventively protected and the family worked with.

In this context, I recommended to the municipal authority in my report to evaluate and consider whether the number of social workers in the area of social and legal protection was sufficient in order to properly fulfil the obligations transferred to the Vsetin municipal authority and imposed on the authority by the applicable legislation.

The mayor of Vsetin indicated in her statement on the inquiry report that costs were one of the factors to be considered in increasing the number of personnel in charge of the social and legal protection of children. The authority was aware of the lack of the social and legal protection personnel. The head of the Vsetin municipal authority's social affairs department had requested recruitment of two additional workers for the social and legal protection of children in 2006. However, the Vsetin municipality would have to pay the personnel expenses from its own resources and the requirement of the social affairs department could not be accepted due to a lack of available funds. According to the mayor's statement, the Vsetin municipality had attempted to

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<sup>55</sup> A person affected by a serious extraordinary event may also be regarded as a person in material need by the body of assistance in material need if his/her overall social circumstances and property do not allow her to overcome the adverse situation on his/her own; serious extraordinary events are primarily understood to be natural disasters (such as floods, storms and higher degree disasters caused by wind, earthquakes), fire or other destructive event, environmental or industrial disasters.

deal with the situation in spite of the limited funding for the social and legal protection personnel by implementing a field social work project and participation in the project "Activation of Families at Risk of Social Exclusion". The personnel implementing both projects also closely liaise with the department of social and legal protection of children in assistance to ensure prevention of socially pathological phenomena in the families.

I find the aforementioned liaison as favourable, although it should be said that field social work has an entirely different purpose and methodology and it pursues different objectives to the social and legal protection of children. Field social work in itself cannot replace the exercise of the social and legal protection of children.

### *Recommendations*

- 1) The Vsetin municipal authority should soon introduce changes aimed at recruiting more personnel to exercise the social and legal protection of children or alternatively make such changes in the organisation of the social affairs department as to dedicate sufficient attention to preventive work with the families.
- 2) The Vsetin municipal authority's social affairs department should take measures aimed at fully ensuring the exercise of social and legal protection of children with permanent residence in Vsetin, including preliminary prevention (i.e. the protection of children from socially deprived families with a history of behavioural problems, etc.). It should attempt remedying shortcomings, continuously evaluate sources of problems and help with their elimination through visits in the family and insight into the environment.
- 3) Where the municipal authority's social affairs department is unable to ensure exercise of the social and legal protection of children in the families resettled to the areas around Jeseník, Prostějov and Uherské Hradiště, it should be able to ensure exercise of the social and legal protection by, for example, requesting the BSLPC at the place where the children actually reside to do so.
- 3) The municipal authority's social affairs department should ensure immediate updating of the file records kept by the body of social and legal protection of children on children from the families resettled to the areas around Jeseník, Prostějov and Uherské Hradiště with information on interviews with members of their families, information on the social work carried out in the families and the measures adopted to ensure protection of their children. It should do so without delay in particular where the children's permanent residence has already changed and the social affairs department is due to deliver the file records to the relevant BSLPC.
- 4) The municipal authority's social affairs department should provide for updating of record sheets, numbering of all pages in the file and sorting them so as to avoid manipulation of individual sheets of file records; it should also charge the head of the social affairs department with inspection of the file records.

### **3. Social work**

#### *Conclusions*

- 1) The findings concerning social work with Romany families in Vsetin are inherently contradictory. It is documented, on the one hand, that the Vsetin

municipality developed active social work, while, on the other hand, simultaneously implementing what was called a low tolerance plan. I was not able to assess in my inquiry report the degree in which the two chosen methods of dealing with social exclusion were compliant, logically complementing each other or whether they were mutually incompatible, because the materials documenting the contents of both concepts had not been provided to me by the time of drawing up the inquiry report.

I therefore requested the Vsetin municipality in my inquiry report to submit the following on the basis of Section 16 in conjunction with Section 18 (1) of Act No. 349/1999 Coll. on the Public Defender of Rights as amended: resolution of the Vsetin municipal council of December 10, 2002, made at its fourth regular session, in which it took due note of the "Concept of Field Social Workers' Work" and approved recommended measures, resolution of the Vsetin municipal assembly of September 14, 2004, approved at its 18<sup>th</sup> regular session as "Procedure towards Defaulters and Inadaptable Citizens", and resolution of the Vsetin municipal assembly of October 25 taking due note at its 28<sup>th</sup> regular session of the "Exercise of the Low Tolerance Programme".

- 2) In my opinion the materials received by me suggest that the Vsetin municipality had been dealing with the situation of inadaptable citizens and defaulters in the long-run, including the gallery house in Smetanova street No. 1336 where the Romany families had been concentrated. The families had lived in a regime resembling something of an "accommodation facility" - in most cases in lease relations for a fixed term. A number of agreements had been repeatedly extended. I believe this could generate a feeling in the Romany families that this was long-term housing. The Vsetin municipality had simultaneously considered refurbishment of the Smetanova street premises. There had been no clear signals that the Romany families should be looking for other housing. The situation changed without obvious reason in 2004 and 2005 as the Vsetin municipality withdrew from the refurbishment plan and the zoning plan amendment process began in order to commence construction in the Poschla site and prepare vacation of the residential units in the gallery house in Smetanova street on the basis of court decisions. The Vsetin municipality continued not to enforce the issued decisions. As Vsetin's "Exercise of the Low Tolerance Programme" document suggests, actions for vacation had a reformatory effect. The document states on page 3: "In many cases (notably in house No. 1336, Smetanova), the filing of the actions had a reformatory effect. Debtors began to repay their debts extensively; some settled their debts on rent in full." This could generate a justified feeling among the Romany families inhabiting the house that the municipality would not proceed to a "drastic solution" as long as they met their obligations towards it. The "safe" feeling may have been strengthened by the fact that some of the Romany families actually behaved better as they were gradually fulfilling their duties. There is evidence of their trust including the waiver of some of the families of the right to appeal against the vacation judgment (page 3 of the "Exercise of the Low Tolerance Programme". "The respondents have been successfully persuaded to waive their right to appeal against the judgment in four cases. The judgments will come into legal force upon delivery and appeal against them will no longer be possible.") The aforementioned document states among other things that all the debtors from the Poschla dormitory also paid their debts after witnessing a vacation case. Thus the reformatory effect

of a consistent approach by the Vsetin municipality again brought results. Unfortunately, the municipality failed to proceed individually towards the Romany families that had settled their debts as described above.

#### *Recommendations*

- 1) I recommend to follow on from the “Concept of Field Social Workers’ Work” document drawn up by the Vsetin municipality in September and October 2002 and incorporate the described findings and conclusions in the concept prepared by Vsetin, “Integration Concept in the Vsetin Municipality”, which is to become part of the Community Plan of Social Services. I furthermore recommend to the Vsetin municipality to proceed individually in the consistent recovery of obligations and provide for housing from the municipality’s housing fund where the payment discipline of debtors improves or where the obligations towards the Vsetin municipality have been settled.

#### **4. Building code and public health protection**

##### *Conclusions*

- 1) The planning authority failed to sufficiently use all the remedial instruments as regulated by the building code to deal with the poor structural and technical condition or even disrepair of gallery house No. 1336 in Vsetin’s Smetanova street. Remedial measures, in particular ordering maintenance of the structure or the necessary structural alterations, were not taken from time to time in spite of the obvious defects documented by the file records. The Vsetin municipality dealt with the disrepair of the gallery house putting people’s health at risk by proposing removal of the house, which must be regarded as extreme remedial means.

Vsetin’s mayor stated in her statement on the inquiry report that given the existing model of the exercise of public administration (linked with self-government), ordering maintenance work or structural alterations is problematic, mainly as regards implementation and funding. Planning authorities also face a lack of personnel in charge of prevention and supervision over observance of the Building Act and fulfilment of the obligations resulting from the Building Act by the owners of structures.

She furthermore provided an additional explanation that the premises had been intended for comprehensive rebuilding in the municipality’s plans, as a result of which it seemed uneconomic to order individual maintenance work or structural alterations that would undoubtedly be very costly.

- 2) I did not find maladministration by the planning authority in the process of procuring amendment of the zoning plan.
- 3) In terms of the zoning, planning permission and approval proceedings, I did not find any procedural maladministration. However, I expressed doubts whether residential and sanitary containers can be used for people’s permanent housing. I therefore recommended to the Vsetin municipal authority in my inquiry report in accordance with Section 15 (2) (d) in conjunction with Section 19 of Act No. 349/1999 Coll. on the Public Defender of Rights as amended to order an expert report within 60 days of receipt of the inquiry report of April 5, 2007, to examine whether the flats in the Poschla site are suitable for long-term housing.

The Zlin region's health authority requested the Vsetin municipality in a letter of May 24, 2007, to submit a document proving that the residential containers used in the construction of the Poschla site residential houses in Vsetin were suitable for permanent housing (declaration of conformity from the residential containers' manufacturers pursuant to Act No. 22/1997 Coll. on Technical Requirements for Products and on Amendment to Certain Acts as amended, where applicable accompanied by documentation on assessment of their properties). By doing so, the regional health authority responded to complaints of the Vsetin municipality (of March 23, 2007 and April 4, 2007) disputing the motion filed by the Zlin region's health authority for building supervision pursuant to Section 132 et seq. of Act No. 183/2006 Coll. on Zoning and the Building Code and the findings of the qualified personnel of the Zlin region's health authority in the examination of mould in the Poschla residential houses on February 12, 2007. The head of the health authority rejected the aforementioned complaints as unsubstantiated in her statement.

The head of the regional health authority attached to my opinion published in the inquiry report that it would be suitable to have an expert report drawn up to ascertain the suitability of the flats in Vsetin's Poschla site for housing.

On the contrary, the mayor of Vsetin stated in her statement on the inquiry report that after the completion of all the administrative proceedings, having ascertained no procedure inconsistent with the law or maladministration by the planning authority in examining the basic documents and matters concerned, an expert report would be a non-standard measure burdening the municipal budget. The Vsetin municipality finds sufficient evidence in the accompanying comprehensive technical report enclosed with the submitted design documents that sufficiently deals with the suitability of the structures concerned for permanent housing. It therefore maintained that the expert report did not need to be drawn up and sent me copies of the earlier reports together with its statement on the report as an alternative to the expert reports. In its statement, the Vsetin municipality did not doubt my right to propose the provision of evidence to the authority subject to inquiry pursuant to Act No. 349/1999 Coll. on the Public Defender of Rights as amended.

- 4) I do not have any reservations on the work of the Zlin region's health authority; rather the opposite, I regard it as positive.

#### *Recommendations*

- 1) I recommend to the planning authority to use the preventive instruments provided for by the building code to promptly detect and remedy the poor structural and technical condition of structures in a territory, in particular ordering maintenance of the structure by the owner or, as the case may be, ordering the necessary structural alterations. The combined public administration model cannot constitute grounds for a failure to exercise the powers of the planning authority pursuant to the Building Act towards municipalities.
- 2) To avoid any doubts concerning suitability of the Poschla site premises for permanent housing and notably to avoid any doubt regarding fulfilment of the general technical requirements for construction, I decided to file a motion for initiation of review proceedings with the Zlin regional authority against the decision of the Vsetin planning authority, ref. No. MUVS-

S10051/2006OVÚPD-330/Su-20 of July 19, 2006, permitting the construction of the Poschla residential complex and against the subsequent final building approval ref. No. MUVS-S16261/2006OVÚPD-330/Su-6 of October 10, 2006.

## **5. Permanent residence**

### *Conclusions*

- 1) The inquiry proved that the eviction of the Romany inhabitants from gallery house No. 1336 in Vsetin's Smetanova street and the subsequent difference between the families' permanent and actual residences disturbed the logical system of social benefit provision and the exercise of social and legal protection of children.
- 2) 99 people continue to be registered in gallery house No. 1336 in Vsetin's Smetanova street in spite of its demolition in October 2006.
- 3) It is true that the situation cannot be wholly attributed to the Vsetin municipality as the Romany families can remedy it by applying for a change in their permanent residence documented by the lease agreement (the Poschla site residential complex) or an extract from the land registry (the premises in the areas around Jeseník, Prostějov and Uherske Hradiste, except for the T. family from Cechy pod Kosírem). Nevertheless, a share of responsibility on the municipality's part is undeniable given the conclusions described in point 6 of this chapter.

## **6. Fundamental human rights and basic freedoms**

My conclusion regarding the human rights aspect of the Romany families' eviction to the areas around Jeseník, Uherske Hradiste and Prostějov is rather a consideration of all the matters decisive in the case from the viewpoint of the protection of fundamental rights with the necessity to accentuate the problematic aspects of the case.

### *Conclusions*

- 1) I evaluated the eviction of the Romany families to Poschla as a legitimate intrusion into the right to respect for private and family life both in terms of the objective and the chosen means, which met the suitability and proportionality criteria.
- 2) On the contrary, the resettlement of the citizens to the areas around Jeseník, Prostějov and Uherske Hradiste constituted intrusion into the fundamental right to respect for private and family life. The aforementioned intrusion was in accordance with the law to the extent as the vacation of the flats in the gallery house had been decided by a court and the Vsetin municipality provided for housing for the inhabitants.
- 3) The objective of the resettlement to the areas around Jeseník, Prostějov and Uherske Hradiste was legitimate just formally (protection of the tenant's health and ensuring a reasonable standard of housing). There are doubts whether the purpose of the eviction was in accordance with the fundamental principles of operating local self-government and the latter's relation to its citizens.
- 4) In terms of the chosen method of eviction, I find a substantial violation of the right of the inhabitants to human dignity and protection of private and family

life consisting in a restriction of the freedom to choose a place of residence and lifestyle, which resulted in a worsened social situation of the families moved to the houses in the areas around Jeseník, Prostějov and Uherské Hradiště through informal coercion by the self-governing power.

The mayor of Vsetín expressed disagreement with the aforementioned conclusion in her statement. She reiterated that the people concerned had been using the residential units in house No. 1336 in Smetanova street without legal grounds and they had been obliged to move according to the decision. They had not been entitled to any substitute housing. Taking account of their social situation, Vsetín had done the maximum towards ensuring that all of them obtain housing. She denied forced moving by means of “some” coercion. She stressed that the people concerned had had enough time to obtain housing on their own initiative, without assistance from the municipality. The Vsetín municipality is confident that it did not violate any rights of the resettled persons whatsoever and took all steps to deal with their complicated social situation. The mayor of Vsetín noted that should my statement suggest that evicting them directly onto the street would be a more suitable option, she could by no means agree with the statement.

As section C, point 4 of the Final Statement suggests, the Vsetín municipality was in the position of landlord and owner of house No. 1336 in Vsetín’s Smetanova street in relation to the evicted Romany families. However, I hold the view that it must not be forgotten that Vsetín is also a public corporation, a community of citizens with a social role in addition to economic and other functions. The social role is undoubtedly given historically and results from a natural relation between municipality and citizens.

I am positive about the fact that Vsetín attempted to deal with the social situation of the families, but I must entirely reject the chosen method of eviction. Should I, as the Public Defender of Rights, accept the solution chosen by the Vsetín municipality in the case of the Romany families resettled to the areas around Jeseník, Prostějov and Uherské Hradiště as a standard, I would thereby approve of the “export of socially excluded families or families at risk of social exclusion” from villages and towns where they have lived for a long time. It is impossible for me as Public Defender of Rights to accept that social exclusion might miraculously pertain only to the place of residence of people in hardship and that eviction would be all-redeeming for society. I know from my work that problem solving tends not to be black and white, and the same applies to the resettlement of the Romany families from Vsetín to the areas around Jeseník, Prostějov and Uherské Hradiště.

I am bound by my position to draw the attention of municipalities to tasks that are not easy to fulfil, but resigning from them usually means that problems are just transferred elsewhere. Not even a lack of financial resources or material means is a sufficient explanation or justification of such a procedure. In addition, my inquiry has proven in terms of the Romany families’ resettlement to the areas around Jeseník, Prostějov and Uherské Hradiště that there was room for improvement in the work of the administrative bodies involved and that the legal framework and administrative practice as such did not enable sufficient preventive and, more importantly efficient, help to the families concerned in dealing with their difficult social situation.

## *Recommendations*

- 1) I find it suitable to enable the citizens resettled to the areas around Jeseník, Prostějov and Uherske Hradiste full exercise of their rights towards the Vsetin municipality, i.e., in the area of satisfying the housing need, to file an application for the lease of a municipal rental flat and an impartial hearing thereof by the self-governing municipal bodies under the valid rules applicable to the lease of municipal flats.
- 2) Respect should be paid to the fundamental rights of Vsetin citizens in any similar interference with their rights in the future; in particular they should be allowed to actively participate in dealing with their housing situation. Their autonomy of will, freedom to choose a place of residence and other aspects of the right to respect for private and family life should not be restricted by the local self-government.

## **7. General conclusions and recommended remedial measures**

- 1) I recommend that not only Vsetin, but also other municipalities respect the conclusions of expert analyses such as for example the Vsetin municipality 2002 “Concept of Field Social Workers’ Work” in dealing with similar situations and take means appropriate to the actual situation of the individual persons the adopted measures concern. The situation that occurred in Vsetin in the autumn of 2006 documents that a summary solution, although received positively by the majority population, will certainly not resolve the problems of the Romany community nor, from a broader perspective, families at risk of social exclusion, and it does not represent a favourable and efficient concept for society as a whole in the future.
- 2) The inquiry has shown that in fact there is no housing fund to satisfy the housing needs of families at risk of social exclusion. Families in adverse social situations most often turn to municipalities with applications for the lease of a municipal flat, but the latter are unable to satisfy housing needs. I therefore decided to follow on from my recommendations to the Chamber of Deputies of Parliament from 2004 to 2006 contained in the annual reports on the activities of the Public Defender of Rights and will soon draw up a separate document calling the government’s attention to the lack of a systematic and working solution to the need for social housing for people at risk of social exclusion.
- 3) The inquiry into the decision-making practice of the Vsetin municipal authority in the area of social benefits has shown that the software makes it impossible to efficiently use the institute of the special recipient in order to prevent debt generation. It has also shown that the software is unfit for a thorough substantiation where the notice of and decision on a social benefit are concerned. I therefore decided to address the Minister of Labour and Social Affairs with a request to ensure remedy.

The mayor of Vsetin, Mrs Kvetoslava Othova, the head of the Regional Health Authority of the Zlin Region, Mrs Olga Groschlova, the Deputy Prime Minister and Minister of Labour and Social Affairs, Mr Petr Necas, the head of the Regional Authority of the Zlin Region, Mr Vladimir Kutý, the mayor of the Uherske Hradiste municipality, Mr Libor Karasek, the mayor of the Javorník municipality, Mr Jiri Jura, the mayor of the Prostějov municipality, Mr Jan Tesar, the mayor of the Nemčice na

Hane municipality, Mrs Ivana Dvorakova, and the mayor of the Jesenik municipality, Mr Petr Prochazka, will receive this Final Statement.

I request, pursuant to Section 20 (1) of Act No. 349/1999 Coll. on the Public Defender of Rights as amended, that the aforementioned persons inform me within 30 days of receipt of the statement of remedial measures they have taken.

President of the Senate, Premysl Sobotka, and Chairman of the Senate Committee on Training, Science, Culture, Human Rights and Petitions, Karel Bartak, will also receive the Final Statement.

In order to fulfil Section 23 (2) of Act No. 349/1999 Coll. on the Public Defender of Rights as amended, the Final Statement will be published on the website at [www.ochrance.cz](http://www.ochrance.cz) on June 13, 2007. Protection of the Romany families' personal data will be respected in the published text.

Brno 13 June 2007

Otakar M o t e j l  
Public Defender of Rights

## **Table of contents**

page

### **I. Section A**

Initiation of inquiry

### **II. Section B**

Ascertained facts

1. Eviction
2. Social benefits
3. Social and legal protection of children
4. Building code and public health protection

### **III. Section C**

Legal evaluation

1. Social benefits
2. Social and legal protection of children
3. Building code and public health protection
4. Eviction of the Romany families from the viewpoint of fundamental human rights

### **IV. Section D**

Conclusions and recommendations

1. Social benefits
2. Social and legal protection of children
3. Social work
4. Building code and public health protection
5. Permanent residence
6. Fundamental human rights and basic freedoms
7. General conclusions and recommended remedial measures