

Report for the Second Quarter of 2007

Information on the activities of the Public Defender of Rights submitted pursuant to Section 24 (1) (a) of Act No. 349/1999 Coll. on the Public Defender of Rights as amended (hereinafter the Public Defender of Rights Act)

for the period from April 1 to June 30, 2007

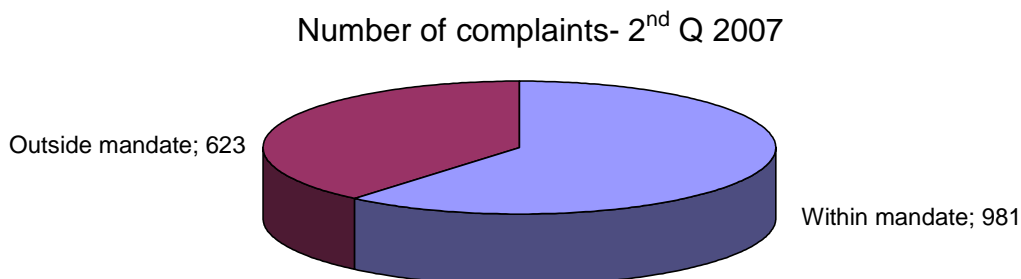
The Public Defender of Rights (hereinafter the “Defender”) submits information on his work and activities during the period under scrutiny to the Chamber of Deputies of Parliament of the Czech Republic. He hereby informs the Deputies of the current state of public administration as reflected in the complaints dealt with. The contents of this report are a continuation of the information on activities for the first quarter of 2007, submitted to the Chamber of Deputies of Parliament on April 17, 2007 and discussed with participation of the Defender at the Committee on Petitions of the Chamber of Deputies on May 15, 2007.

A. General Information on the Activities of the Defender

Annual Report on Activities in 2006

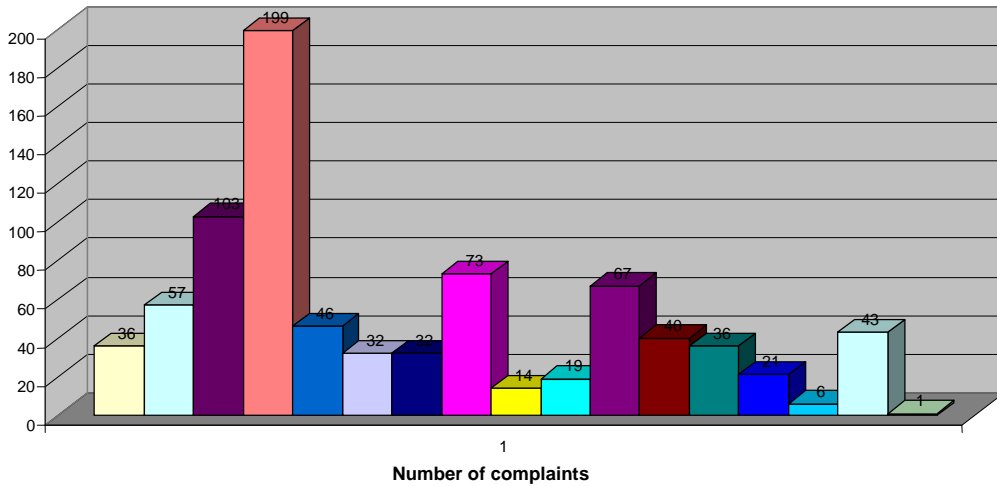
The Annual Report on Activities in 2006 was submitted to the Chamber of Deputies of Parliament pursuant to Section 23 of the Public Defender of Rights Act on March 19, 2007. The Plenum of the Chamber of Deputies heard the Annual Report at its 15th session on June 20, 2007. In a **resolution**, it requested that the **Government** deal with the legislative suggestions provided in the conclusion of the Annual Report and submit a report to the Chamber of Deputies on the handling of the aforementioned suggestions by the end of 2007.

Number of complaints received and handled



The Defender received **1,448 complaints** in the second quarter of 2007, of which **981 (57%)** fell within the mandate of the Defender as defined by law and **623 (43%)** were outside the mandate. **1,541** complaints were received during the same period in 2006, of which **822 (53%)** were within the Defender’s mandate.

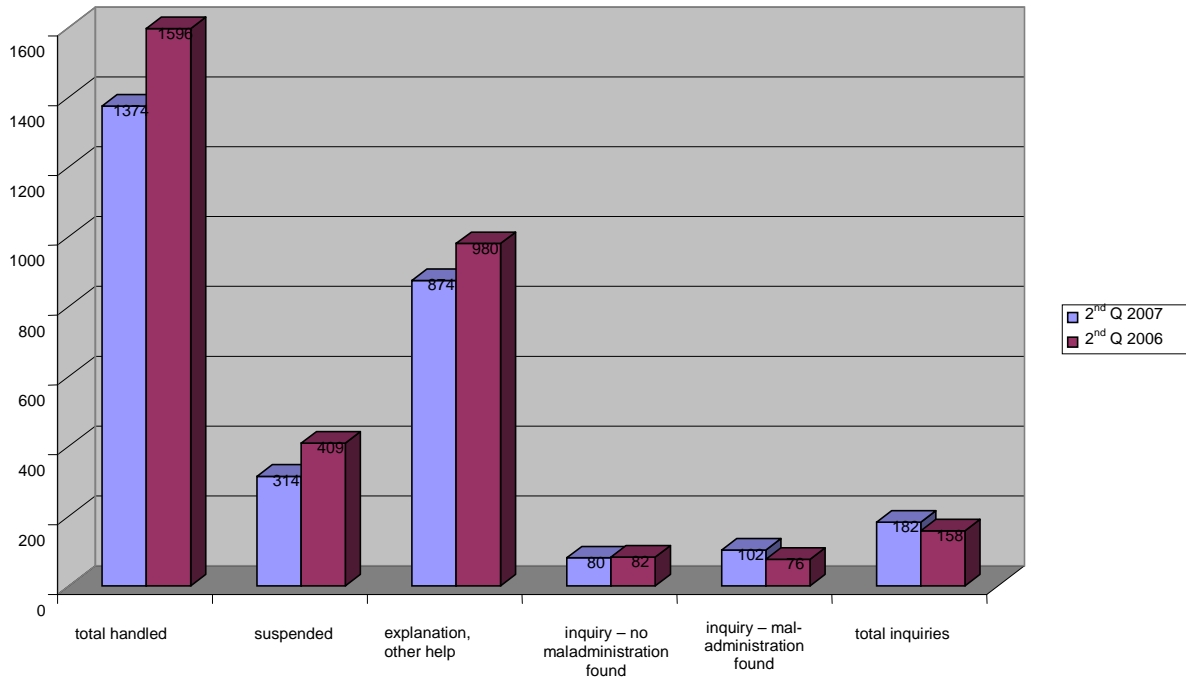
Structure of Complaints by Area of Law – 2nd Q 2007



201 Land Law and Restitution	202 Public Health Service and Health Care	203 Social Security
204 Construction and Regional Development	205 Taxes, Fees and Customs Duty	206 Protection of the Environment
207 Protection of the Rights of Children, Young People and Family	208 The Army, the Police and Prison System	209 Foreign-related Affairs
210 Internal Administration	211 Public Court Administration	212 Transport and Telecommunications
213 Admin. Sanctions and Protect. Sect. 5 Civ. Code	214 Admin. of Employment and Labour	215 Supervision of Self-government, Right to information
216 Other Unlisted Areas	217 Admin. of Public Prosecution	

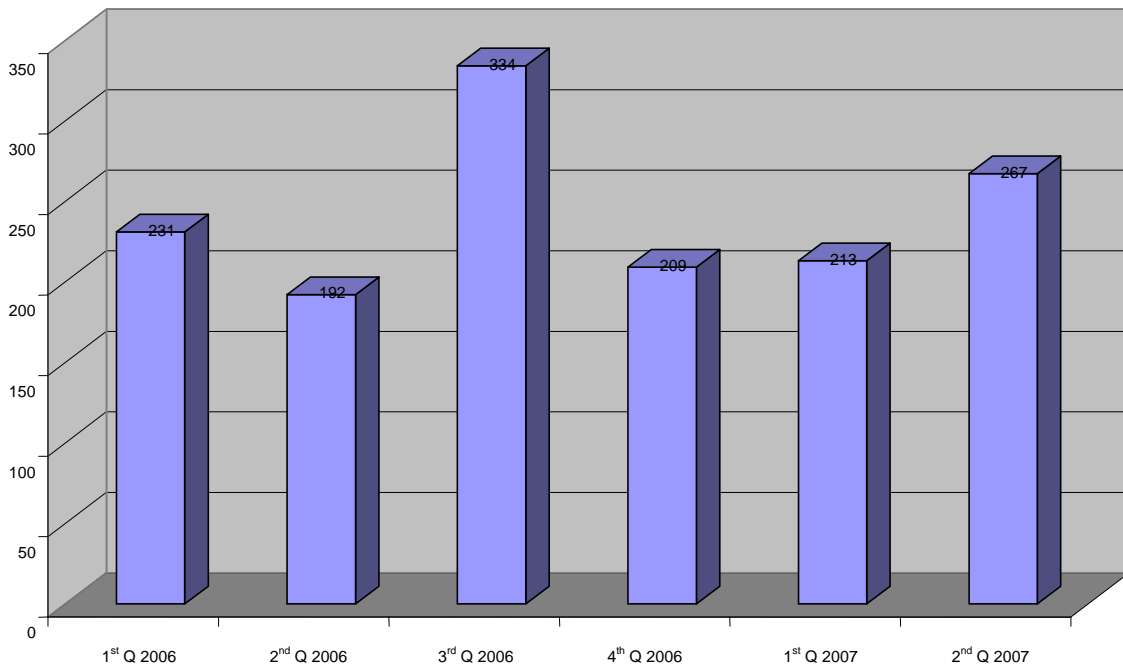
The structure of the received complaints by legal areas changes just slightly over time. **Social security** is consistently the area with the highest rate of complaints (199), particularly concerning pension matters and the provision of social benefits. The second most numerous group of complaints in the second quarter of 2007 were those in the area of **construction and regional development** (103), a majority of which related to zoning proceedings, planning permission and approval proceedings. Complaints in the area of the **Police and the prison system** (73) ranked third.

Number of complaints handled, number of inquiries



The Defender handled **1,374** complaints during the second quarter of 2007, i.e. 222 fewer than during the same period in 2006 in which he resolved 1,596 complaints. However, the number of files pending is compensated for by **an increase in the number of inquiries performed** compared with 2006.

Development in the Number of Complaints Made in Person since 2006



In the period under scrutiny, the Defender, his deputy and the authorised lawyers of the Office of the Public Defender of Rights continued to receive the complainants who visited the Office in person. In the second quarter of 2006, **267 complainants**

(192 complainants in the second quarter of 2006) visited the Defender's seat in person either to **compile their complaints in a protocol** or to obtain information and simple legal advice.

B. Special Powers, General Observations

In this section of the quarterly Report, the Defender informs legislators of his observations with general impact and the exercise of the special powers entrusted to him by the Public Defender of Rights Act.

I. Exercise of the power to address the Government pursuant to Section 20 (2) (b) of the Public Defender of Rights Act

The Defender repeatedly encounters **delays** in the work of the **Ministry for Regional Development** and the **Ministry of Labour and Social Affairs**. These include delays in the review (formerly non-appeal) proceedings under the Building Code where the Ministry for Regional Development is concerned.¹ With regard to the Ministry of Labour and Social Affairs, the delays include appellate proceedings concerning jobseekers excluded from the jobseekers register.² The delays in the relevant areas of public administration have not been eliminated despite repeated negotiations with previous and existing ministers (note – an inquiry in the matter concerned was commenced as early as 2005). The Defender therefore decided to **submit the matter to the Government** in order to task the ministers with ensuring a remedy. A statement on the delays at both ministries was submitted to the Office of the Government on June 12, 2007.

The Defender is currently waiting for the material to be included in the Government's agenda.

II. Defender's power to provide recommendations in legal regulations pursuant to Section 24 (1) (c) of the Public Defender of Rights Act

1) Statement on an amendment of the Distraint Code

(Act No. 120/2001 Coll. on Court Executors and Distraints)

¹ According to information from the Minister for Regional Development of May 2007, the relevant unit of the Ministry for Regional Development received 2,793 files in 2006. It handled 82 of 141 appeals by the end of the year. It handled only 77 of 305 motions for review proceedings by the end of the year and 22 of 41 applications for indemnification.

² According to information from the Minister of Labour and Social Affairs of May 16, 2007, 3,831 appeals were filed in 2006 and an additional 801 files during the first three months of 2007. The Ministry of Labour and Social Affairs registered 1,858 pending cases as of April 1, 2007. The labour offices forwarded 1,765 appeals in the period from October 1, 2006 to March 31, 2007, and there were 2,377 unresolved files forwarded prior to October 1, 2006.

On June 15, 2007, the Defender provided the members of the Constitution and Law Committee of the Chamber of Deputies of Parliament with a written statement on the amendment of the Act on Court Executors and Distributions (the Distributions Code).

The Defender concentrated in particular on the reimbursement of the **costs of distraint**, reimbursement of the executor's remuneration, procedural effects of appeals against a distraint order addressing the executor directly and **deadlines for commencement of disciplinary proceedings against an executor**.

The Defender intends to appear in person at the Constitution and Law Committee this autumn during the hearing of the parliamentary draft.

2) Statement on an amendment of the Residence of Foreigners Act and the Asylum Act

(Act No. 326/1999 Coll. on the Residence of Foreigners in the Territory of the Czech Republic)

(Act No. 325/1999 Coll. on Asylum)

On May 22 and June 25 2007 respectively, the Defender provided the members of the Committee on Petitions and the Committee for Safety of the Chamber of Deputies of Parliament with a written statement on amendments of the Residence of Foreigners Act and the Asylum Act.

In the statement the Defender expressed disagreement with the provisions intended to weaken the procedural rights of applicants for visas and the narrowing of the range of persons entitled to file applications for a permanent residence permit after the asylum proceedings have taken place.

The Defender also pointed out that the proposed mode of so-called **airport proceedings** fails to meet (in terms of the deadlines for issuing decisions) the requirements of the European Convention on Human Rights and Fundamental Freedoms. In relation to the restriction on personal freedom, the Convention requires that everyone whose freedom has been restricted has the option to file a motion for the initiation of proceedings by which the lawfulness of his detention would be speedily decided by a court.

In an additional statement, the Defender pointed out the **discrepancy** between the current legal situation and the obligations imposed on the Czech Republic by **Council Directive 2004/83/EC** that should have been transposed to the Czech legal order no later than October 10, 2006.

The Directive concerns so-called **supplementary protection** (an alternative to the grant of asylum). It requires that domestic law guarantee **problem-free and claimable access to social benefits and health insurance** to such individuals, which is not the case under current Czech law. The existing situation undermines the entire system of supplementary protection.

III. Request of the Minister of the Interior for co-operation concerning an analysis of the effect of the Act on Free Access to Information

(Act No. 106/1999 Coll. on Free Access to Information)

The Defender was addressed by the Minister of the Interior this April concerning **co-operation** in an analysis of the effect of the **Act on Free Access to Information**.

The Defender pointed out in the relevant material that if the application for the provision of information concerns management of public funds, the liable entities often **deny access to the information** by unfairly claiming **trade secret protection** or **copyright protection**. The Defender also stated that the **making of copies of administrative files** continues to be an issue concerning access to information.

In relation to potential legislative amendments, the Defender opined in favour of a proposal that would extend the range of liable entities to those who are **controlled entities as defined by the Commercial Code**. The Defender proposed detailing of the situations in which the liable entity is to issue **decisions on denial of information**. He also proposed deletion of the provision stipulating that the liable entity must provide information to the applicant despite the **information** being **posted on the Internet**.

IV. Beginning proceedings at the Constitutional Court pursuant to Section 69 (2) of the Constitutional Court Act

(decree of the statutory city of Karlovy Vary No. 12/1991 on the Means of Combating Infectious Diseases and Harmful Rodents)

In accordance with Section 69 (2) of the Constitutional Court Act, the Defender as a secondary party began proceedings at the Constitutional Court on the proposal of the Minister of the Interior to annul a generally applicable decree of the statutory city of Karlovy Vary on the means of combating infectious diseases and harmful rodents.

The Defender holds the view that in reality there is an **objective need for regular special preventive rodent control** in a number of cities and municipalities due to the regular spreading of the target populations (rodents, rats, etc.) beyond control, with the resulting damage to people's property and health. The Defender therefore finds the opinion contained in the proposal of the Ministry ("*the municipality should proceed to order a widespread special rodent control only at the moment of an increased occurrence of pests instead of ordering it as a preventive measure*") to be somewhat absurd, although in strictly formal legal terms it may correspond to the relevant provisions of the Public Health Protection Act.

The Defender proposes that the proposal of the Ministry of the Interior be rejected as inadmissible. If it is evaluated as admissible, the Defender proposes that it be dismissed and **the contested decree left in force**.

C. Presentation in the Media and Communication with the Public

The Public Defender of Rights used all the available means of communication to inform the public of his work in the 2nd quarter of 2007 and continued to maintain contacts in person with the complainants and partake in discussions with the public.

- Four **press conferences** were organised during the period under scrutiny. Apart from the 2006 Annual Report, the April conference dealt with the current situation of the residents of a burned down house in Přízová street in Brno. The May conference was dedicated to the pensions of the persons caring long-term for a relative, the current issues of taking water from wells and the discharge of waste water. The Public Defender of Rights also exercised his right to inform journalists and the public of inactivity of a public body, in this particular case the Ministry of Education in connection with the facilities of institutional and protective education. The main topic of the June press conference was the final statement on the eviction of the Romani families in Vsetín. The journalists were also informed of the Defender's request to the government to deal with the delays in the work of the Ministry of Labour and Social Affairs and the Ministry for Regional Development. An extraordinary meeting with journalists was held in May where the results of visits to homes for elderly people were presented.
- Apart from **press releases** on the issues presented at the press conferences, reports were issued during the second quarter to inform on opened inquiries. These dealt with the unauthorised disposal of hazardous waste in Libčany near Hradec Králové as well as the ascertained erroneous and unethical conduct of homes for elderly people in concluding contracts with clients. The Defender acquainted the media and the public with other activities and attitudes to the current events by means of brief updates. All the aforementioned information is permanently available on the Internet.
- **Individual interviews for the media** and appearances in television discussions were an important part of the presentation. The Public Defender of Rights and his deputy gave interviews, presented their statements and answered questions at Czech Broadcast stations (Radiožurnál, Čro2, Čro6, Česko, regional studios), Frekvence 1, Czech Television, TV Prima and Nova, appeared as guests in a number of broadcast and television programmes – e.g. Pressklub Frekvence 1; Radioforum at Radiožurnál; Reportéři; Události a komentáře; Otázky Václava Moravce. The deputy of the Public Defender of Rights also appeared as a guest of the ČT2 programme entitled Krásný ztráty. The statements of the Public Defender of Rights and his deputy appeared on a daily basis in both national and regional printed media and news servers on the Internet. The Defender gave an interview in April to a British journalist preparing a document on sterilisations in the Czech Republic, in June he answered the questions of an editor of the Czech section of the Australian public service radio SBS Sydney. Romani issues, the Anti-discrimination Act, pension insurance, sterilisation of women, social and legal protection of children, taking DNA samples and contracts in facilities for elderly people were the areas the media most frequently showed interest in.
- In the 2nd quarter, the Defender communicated with the public not only via the media, but also in an on-line discussion on the ihned.cz news server, by participating in an extensive public discussion on Romani issues organised by the editorial team of the MF Dnes daily in Ostrava and by answering a number of e-mail queries and reactions of citizens to the cases he was inquiring into or on topical events covered by the media.
- Preparation for the third series of the “*people's little stories*” entitled The Case for the Ombudsman was also completed in the 2nd quarter. Czech Television

began to film six episodes due to be broadcast on the ČT2 programme from September.

1,161 calls were received by the Defender's **information hotline**. These were mostly requests for simple legal advice, queries regarding the Defender's mandate and progress in the handling of a complaint.

123,932 visits logged in the **Defender's website** at www.ochrance.cz in the period under scrutiny (against 106,750 visits in the second quarter of 2006).

D. International Relations and Major Meetings within the Exercise of the Mandate

Meeting of European Ombudspersons in Athens

On April 11 to 14, 2007, the Defender participated in a regular meeting of the European ombudspersons and national institutions for the protection of human rights and fundamental freedoms in Athens. The meeting was concerned with **co-operation between ombudspersons and the Council of Europe Commissioner for Human Rights** regarding the implementation of judgments of the European Court of Human Rights in Strasbourg.

Visit of a Turkish delegation

A Turkish delegation visited the Office of the Public Defender of Rights on May 14 to 16, 2007, interested in the complaints the Defender deals with as well as the **legislative provision for his activities**.

Visit by judges of the Constitutional Court of the Slovenian Republic

Judges of the Constitutional Court of the Slovenian Republic visited the Office of the Public Defender of Rights on May 29, 2007, interested in particular in the **relations between the Public Defender of Rights and the Constitutional Court**.

International Workshop “*New Code of Administrative Procedure and Local Self-Government II*”

On June 18 and 19, 2007, the Defender together with the Law Faculty of Masaryk University in Brno organised an international workshop in Kroměříž entitled “*The New Code of Administrative Procedure and Local Self-Government II*”. The participants at the workshop included doc. JUDr. Pavel Kandráč, CSc., the Public Defender of Rights of the Slovak Republic, JUDr. Josef Baxa, the presiding judge of the Supreme Administrative Court, representatives of the academic community, the administrative courts, the central bodies of public administration and the regional authorities. The objective of the workshop was to provide for a **meeting of the representatives of both Czech and foreign administrative practice, administrative justice and the administrative science theorists** on the new legislation.

Membership of the Management Board of the European Union Agency for Fundamental Rights

Following a request from the Government Minister MUDr. Džamila Stehlíková, the deputy of the Defender was nominated as a member of the **Management Board** of the newly established **European Union Agency for Fundamental Rights**.³ Each member state of the European Union was invited to nominate a representative (and an alternate member) for the Management Board of the Agency. The Public Defender of Rights was addressed on the matter at the instigation of the minister Mrs Stehlíková. The Defender proposed that RNDr. Jitka Seitlová become a member of the Management Board of the Agency. Mgr. Filip Glotzmann, a lawyer at the Office of the Public Defender of Rights was nominated as the alternate member.

Subject matter of meetings:

- **disposal of hazardous substances and the risk of the leaking of ammonia** from the refrigeration systems of indoor arenas (with the deputy of the Minister of the Environment Ing. Rut Bízková on April 4, 2007)

- **amendment of the Asylum and Foreigner Act** (with the representatives of the Ministry of the Interior on May 9, 2007 with the members of the Security Committee of the Chamber of Deputies of Parliament of the Czech Republic on May 23, 2007)

- **benefits** in material need, the issue of including **child maintenance** in the income decisive for the **state income support benefits, pension insurance** of individuals caring long-term for a relative, **Slovak pensions** (with the deputy of the Minister of Labour and Social Affairs Mgr. Marián Hošek, on May 11, 2007)

- **provision of social services in homes for elderly people** (with the representatives of regional authorities, the Ministry of Labour and Social Affairs, the Council of the Elderly and the *“Association of Providers of Social Services of the Czech Republic”*, on May 21, 2007)

- **exercise of institutional and protective education** (with the Minister of Education Mgr. Dana Kuchtová, on May 22, 2007)

- **noise from a concourse, noise from communications** and the preparation of a **decree on the general technical requirements for construction** (with the authorised personnel of the Chief Public Health Officer on the issues of noise from a concourse, on May 30, 2007)

- **personal numbers and the Citizens Register** (with the head of the Department of Administrative Activities of the Ministry of the Interior JUDr. Zdeněk Němec, on May 31, 2007)

- **social and legal protection of children** (with the representatives of regional authorities, on June 25, 2007)

³ The Agency with its seat in Vienna was established on the basis of Council Regulation (EC) No. 168/2007 of February 15, 2007.

- **utilisation of measures restricting movement in social care facilities** (with the representatives of the “*Association of Guides in the Issue of Risky Behaviour*” and the Ministry of Labour and Social Affairs, on June 27, 2007)

- **supervision of insurance companies** (with the representatives of the Czech National Bank, on June 21, 2007)

E. Selected Cases from the Defender’s Work in the Period under Scrutiny

In this Report, the Defender regularly incorporates brief information on interesting or otherwise important complaints that help to document, in more detail, which areas of law are most frequently dealt with and the diversity of the cases handled in the period under scrutiny:

I. Inquiries opened on the initiative of Deputies and Senators

1) Eviction of Romani families from Vsetín

The inquiry in the case of the eviction of the Romani residents from the balcony house in Smetanova street in Vsetín was closed, stating maladministration by the Municipal Authority in Vsetín.

The Defender holds the view that the export of socially excluded families or families threatened with social exclusion from municipalities and towns where they have lived for a long time cannot be accepted as a conceptual and effective solution. Co-operation between the bodies of aid in material need, the social and legal protection of children, field social workers, non-governmental organisations, Romani families and the self-governing bodies of the town is the key to dealing with **social exclusion**.

The Defender ascertained shortcomings in the system of **paying social benefits**. The **body of social and legal protection of children** had been entirely inactive in respect of working with the families as required by law with the aim of ensuring the rights of the children to favourable development and proper upbringing. Shortcomings were also identified in the procedure of the **planning authority**, which had remained inactive for a number of years in spite of the ascertained poor structural and technical condition of the house in Smetanova street.

The only authority having shown a procedure to be followed in the case, the Regional Health Authority of the Zlín Region, had exercised all its powers to ensure public health protection.

The Defender also dealt in detail with the fate of the six families (68 persons) evicted by the Vsetín council to the Olomouc and Jeseník districts. In the first place the Defender ascertained that the “*media myth*” of the alleged bad payers was untrue. All the families concerned had been paying for the use of the apartments in the balcony house in Smetanova street. Three families had been in debt on rent from the previous lease, but they had been repaying it. The remaining three **families had been free of any debts**. The families had been moved to houses in a very poor structural and technical condition, and the planning authority had to order the demolition of the building in Čechy pod Kosířem in June 2007. If the eviction of the

persons from the balcony house in Smetanova street had been determined by the adverse condition of the house and concerns about the residents' health, moving them to other inconvenient premises in the Jeseník, Prostějov and Uherské Hradiště districts had not resolved the issue.

In general, the forced eviction of the Romani families outside the territory of the Vsetín municipality is the most problematic aspect of the issue and it is reasonable to conclude that **fundamental human rights and freedoms** were actually **violated** by the aforementioned intervention (the freedom of movement and residence, the right to respect for private and family life).

The Defender has already issued his final statement in the case of the eviction of the Romani families from Vsetín and he is waiting to discover whether the Municipal Authority in Vsetín adopts the remedial measures proposed by him.

2) Unauthorised disposal of hazardous waste in Libčany

Following a complaint filed together with Senator Karel Barták, the mayor of Hradec Králové Otakar Divíšek, the Deputy of Parliament David Kafka and the mayor of the Libčany municipality Jiří Polák, the deputy of the Defender opened an inquiry into the unauthorised disposal of hazardous waste in Libčany near Hradec Králové and in Hradec Králové.

The inquiry aims to review the procedure of the administrative authorities that had not effectively **prevented the unauthorised and hazardous conduct**. Last but not least, the deputy of the Defender is investigating how the safety of citizens, people's health and the protection of the environment were and are ensured. The inquiry is also aimed at ascertaining as to whether future prevention of similar situations has been ensured.

II. Inquiries opened on the Defender's own initiative

1) Dealing with the situation of the residents of a burned down house in Přízová street in Brno

The deputy of the Defender decided to open an inquiry in April 2007 into the matter of providing housing to the residents of a burned down house in Přízova street in Brno. The inquiry concerns the **granting of social aid** to the residents who have found themselves in an extraordinary situation, including the granting of benefits of aid in material need, provision of the social and legal protection of children and the procedure of the planning authority.

An interim report on the inquiry was issued, which found maladministration by the Municipal Authority of the Brno-Centre Area in exercising the **social and legal protection of children**, the Brno Municipal Office in deciding on the **benefits of aid in material need** and the Brno-Centre **Planning Authority**, which was inactive in the matter. The findings during the inquiry proved among other things that the efficiency of aid to the families affected by the fire of the house at Přízová No. 16 in Brno had been considerably reduced by the impossibility of providing temporary housing to the families that had found themselves in adverse circumstances after the fire.

The deputy currently awaits the response of the municipal area to her findings.

2) Action of the Police of the Czech Republic against Kateřina Jacques

The Defender carried out an inquiry into the procedure of the Police of the Czech Republic in the action taken against Kateřina Jacques at a May Day protest. The Head of the Ministry of Interior's Inspection and the Head of the Internal Inspection Department of the Police Presidium were addressed during the inquiry with a request for statements. The information sent by the Police Presidium and the Minister of the Interior's Inspection suggests that **maladministration** was identified in an inquiry into the case by the central bodies of the Police and punishments were imposed on the culprits including the officers commanding the action. The first lieutenant Tomáš Čermák was released from the Police service and disciplinary penalties were imposed on three other policemen (senior officers). A disciplinary penalty for breaching the fundamental policeman's obligations was imposed on the policeman who had hindered filming of the incident. The facts ascertained in connection with the May Day action in 2006 have also led to the issuing of instruction No. 8/2006 by the Head of the Internal Inspection Department of the Police Presidium, stipulating the use of inspection departments and inspection groups during police measures.

Although the Defender found maladministration in the very action of the Police against the supporters of the Green Party and others protesting against a neo-Nazi rally, simultaneously he had to state that the inspection mechanisms of the Police had registered the maladministration, inquired into the matter and drawn conclusions from the results of the inquiry that can be regarded as sufficient remedial measures. The Defender therefore closed the inquiry without proposing remedial measures.

3) Inquiry in the area of labour inspection

a) Inspection of work safety and illegal employment

Based on information from previous complaints, the deputy of the Defender opened an inquiry on the Defender's own initiative regarding the inspection work of the Area Labour Inspectorate for Prague. The Area Inspectorate had performed an inspection on the basis of a complaint from a complainant whose husband had worked for a company without any contract and suffered an occupational injury. However, the Area Inspectorate had failed to ascertain that the husband of the complainant had not been employed with the company concerned at all and found just minor maladministration in the area of work safety.

The deputy found the Area Inspectorate responsible for **failing to sufficiently exercise its powers** in the inspection (asking employees questions, co-operating with the labour office) and stated that the inspection showed a significant defect in failing to ascertain that the husband had not had an employment contract.

An interim report on the inquiry was issued in the matter and the deputy awaits the response of the Area Inspectorate to her findings.

b) observance of labour-law terms of Polish labourers

On the basis of a request from Rzecznik Praw Obywatelskich (i.e. the Polish Ombudsman), the Defender opened an inquiry on his own initiative into the issue of the labour and accommodation situation of the **Polish labourers** employed by the Zetka auto, s. r. o. agency in the Škoda auto, a. s. enterprise.

The inquiry was aimed at ascertaining as to whether the complaints of some Polish labourers had been properly inquired into by the Labour Inspection bodies.

The Defender was also interested to find out whether the buildings in which the Polish labourers were accommodated met the structural, technical and safety regulations.

It was ascertained by the inquiry that the relevant Area Labour Inspectorate had **failed to sufficiently ascertain the actual state of affairs** in the inspection and was satisfied by the employer's measures, however unsatisfactory these were (in particular the wage entitlements of the agency employees in comparison with the core employees of Škoda auto, a. s.).

The Defender currently awaits a statement of the Area Labour Inspectorate on his findings and the maladministration of the relevant inspection personnel.

c) general inquiry concerning inspection of labour-law and wage regulations

Given that the Defender repeatedly encounters maladministration by the Labour Inspectorates, he decided to open an inquiry on his own initiative that would **comprehensively** focus on the area of public administration concerned.

A general report was issued during the inquiry that mentions the most frequent maladministration ascertained in the inspection practice of selected inspectorates. The report was forwarded for statement to the State Labour Inspection Authority. In particular the following shortcomings were commented upon:

- **inconsistence** of inspection inquiries (Area Labour Inspectorates failing to consistently enforce fulfilment of remedial measures)
- **sporadic imposition of fines** for breaching labour-law regulations
- reduced availability and frequency of **advisory services** compared with the situation where labour offices provided advisory services in all districts
- failing to exercise the institute of **disciplinary fines**
- **insufficient personnel** to carry out inspections.

Remedial measures involving in particular intensified inspection and methodology and personnel-related measures aimed at strengthening the labour inspection system were proposed to the State Labour Inspection Authority in the report.

The Defender is currently awaiting a statement of the Central Labour Inspectorate on his findings and the proposed remedial measures.

4) Requisites of fine receipts

The Defender informed the Minister of Finance of the persisting reservations he has on the existing form of fine receipts. In existing practice, the offender (party to administrative proceedings) does not receive a fine receipt (administrative decision) from the administrative body with contents identical to those of the fine receipt retained by the administrative body. This is a fundamental shortcoming. The Defender proposes considering the **possibility of introducing fine receipts on duplicating paper**.

Although the Ministry of Finance is responsible for the issuing of fine receipts under the law, the Minister of Finance informed the Defender that if he has reservations on fine receipts from the perspective of parties to administrative proceedings, the Minister of the Interior is responsible for these matters. The

Defender rejects such “*departmentalism*” and is considering what further proceedings to take.

5) Legitimacy of official authentication of applicants’ signatures concerning changes to vehicle register data

The Defender disagrees with the requirements of administrative bodies to present **official authentication of the applicant’s signature** in the application for changes to the vehicles register. In the Defender’s opinion, the official authentication of the signature is not necessary, because the Code of Administrative Procedure, pursuant to which the relevant procedure takes place, does not require any official authentication of signatures in a power of attorney and the **administrative body is therefore not responsible for examining the authenticity of the power of attorney**. In case of any doubts regarding the identity of the acting persons, the administrative body may use the possibility of inviting the applicant to present a proof of identity pursuant to the relevant provisions of the Code of Administrative Procedure.

The Defender has already issued a final statement in the matter concerned, in which he criticises the “*bureaucratic*” methods of the bodies for the registration of road motor vehicles and proposes that they abstain from the incorrect practice. The Defender currently awaits the response of the authorities concerned to his conclusions.

6) Validity of identity cards as travel documents for children travelling abroad

In the received complaints, the deputy of the Defender has repeatedly encountered a situation that the Czech Foreign Police bodies refuse to let a Czech child registered on the parent’s identity card into EU countries. This has been confirmed by the varying statements obtained from randomly selected Czech border crossings. An inquiry was therefore opened with the aim of **reviewing the procedure of the Foreign Police bodies in the travelling abroad by children** registered on an identity card. As part of the inquiry, calls were forwarded to the Ministry of the Interior and the Head Office of the Foreign and Border Police.

7) Vague registration in the Land Register and defects in cadastral maps

The deputy of the Defender repeatedly encounters issues arising from the correction of incorrect registrations in the Land Register. As a result of the “*activism*” of some land registry offices that correct **wrong registrations** that are dozens of years old, the **legal certainty** of the existing owners is interfered with. Such procedures, although perhaps a well-meaning attempt to correct incorrect registrations, are inadmissible from the perspective of the democratic legal state.

The deputy also encounters the issue of **restoration of the cadastral records** by virtue of converting the cadastral map into digital format. In practice, old maps are merely “*redrawn*” into the new form without examining the actual boundary lines in the field. The legal security of plot holders is again often interfered with, whether by **reducing land area** or by **shifting boundaries** in the cadastral map.

The deputy of the Defender decided to open a comprehensive inquiry on the basis of the aforementioned facts, including calls sent to the Land Register bodies.

III. Inquiries opened on the complainants’ initiative

1) Obtaining the zoning plan and environmental impact assessment for the planned construction of a heavy-traffic road between Brno and Vienna

The Defender was addressed by the Environmental Law Service citizens association as a complainant and simultaneously a representative of the Dolní Dunajovice municipality, casting doubts on the procedures of the public administration bodies during the **preparatory stages of hearing the planned construction of a heavy-traffic road between Brno and Vienna**.

The Defender has already issued his final statement in the issue where he insists on his conclusions regarding maladministration of the public administration bodies in the matter concerned. The Defender proposed the following measures in the final statement:

- compare the traffic, financial and environmental parameters of the different scenarios of the heavy-traffic road between Brno and Vienna
- make sure that in the future, the Road and Motorway Directorate (as the investor of heavy-traffic roads) deals with all realistic scenarios of the proposed communication in an equal manner
- effectively promote all suitable measures that will mitigate the impact of the Brno-Vienna heavy-traffic road construction on the environment
- design and gradually implement effective measures to eliminate truck traffic.

The Ministry of Transport promised on the basis of the performed inquiry to compare the traffic, financial and environmental parameters of the different scenarios of the heavy-traffic road between Brno and Vienna in co-operation with the Ministry of the Environment.

2) Disruption to residents caused by operation of a company handling accidents on the D1 motorway

The Defender completed an inquiry into the complaint concerning the operation of a company involved in the **handling of traffic accidents** including the towing, parking and repairs of damaged vehicles in the close vicinity of private residential houses in Havlíčkův Brod.

Having inquired into the matter, the Defender concluded that the entire premises should be subject to a repeated approval for use procedure, which did not happen. The Municipal Authority commenced sanction proceedings with the company. According to the mayor, there is a realistic option **of moving the entire premises** of the company to another area outside the residential zone.

Given the anticipated positive development in the matter concerned, the Defender decided to close the inquiry.

3) Protection of ownership title and local fee for the special use of a concourse

The Defender has long had to deal with the issue of **restricted title of ownership** resulting from the owner's obligation to pay a **local fee** for using his own plot of land, which has been declared as a concourse. The Defender holds the view that the owners of such plots of land should generally not be subject to fees as they exercise their title of ownership. Tenants, whose title is derived from that of the owner, are in the same position. If a public interest (e.g. trafficability) is to be compromised by the use of a specific plot of land (most often a road), the matter can

be dealt with using other instruments (planning proceedings, proceedings pursuant to the Act on Surface Transport Communications, etc.) than making the use subject to fees pursuant to the Act on Local Fees.

A **meeting** with the representatives of the Ministry of Finance, the Ministry of the Interior and the representatives of selected regional authorities and municipal offices took place in connection with the inquiry concerned. However, the institutions concerned did not accept the Defender's opinion. Nevertheless, despite the opposition of both ministries and the regional authorities, the Defender persists in his opinion with reference to the court practice of the Constitutional Court that a local fee must not be assessed to a user of a private plot of land if this contravenes the Charter of Fundamental Rights and Freedoms in the particular case concerned.

Given that title of ownership is protected by the constitutional order, the Defender considers a further procedure that might result as far as a draft amendment of the legislation.

4) Decision-making in matters concerning free access to information

On the basis of information obtained from the Regional President of the South Moravian Region, the deputy of the Defender opened an inquiry concerning the Ministry for Regional Development into the matter of **methodological procedures in the area of free access to information**. The inquiry deals in particular with the following interpretation issues:

- issuing decisions on the denial of access to information in such cases where the liable entity notifies the applicant in writing that it does not have the requested information
- whether the regional president's deputy is a regional body, i.e. an entity obliged to provide information pursuant to the Act on Free Access to Information
- determining the deadline for the provision of information pursuant to the Act on Free Access to Information in such cases where the last day of the deadline for the provision of the information is a Saturday, Sunday or holiday
- possible means of solving the situation where a person "floods" an authority with requests for information.

The Ministry for Regional Development has already provided a statement at the request of the deputy and it is currently in the process of analysing it from the perspective of the Act on Free Access to Information.

5) Procedure of the Prague Municipal Office Trade Licensing Department, in the evaluation of misleading advertising

The deputy of the Defender opened an inquiry on the basis of a complaint by the Consumer Defence Association towards the Trade Licensing Department of the Municipal Office of the Capital City of Prague in the matter of evaluation of a complaint about a company (mobile operator) having allegedly **breached the Act on the Regulation of Advertising and the Act on Consumer Protection**.

The deputy requested a statement of the Trade Licensing Department of the Municipal Office of the Capital City of Prague and the Council for Radio and Television Broadcasting and she also addressed the Ministry of Industry and Trade. The received answers of the authorities concerned are being analysed, although it

can already be reported that the Municipal Office of the Capital City of Prague was inactive in the matter despite receiving an interpretation statement of the Ministry,. This statement unambiguously declared that the company concerned had advertised misleadingly. The deputy of the Defender therefore intends to issue an interim report on the inquiry into the matter, which she will send to the authorities concerned to be commented on.

F. The Defender's Activities in the Area of Detention

Systematic visits to social services facilities, specifically **homes for elderly people** (formerly retirement homes), or homes with special regime, have been under way since January 1. The personnel of the Office of the Public Defender of Rights visited 27 homes of various trustees throughout the Czech Republic in 2007. They concentrated in particular on observance of the rights of the clients of these facilities (right to personal freedom, right to privacy, family life and partnership, right to a high-quality qualified care, etc.) and also the procedure in entering into contracts between the homes and the clients including the contents thereof.

Although the Defender has not yet issued a report containing summary data and an analysis of the systematic visits to the homes for elderly people, the following conclusions can be drawn from the findings made to date:

Visits to the homes for elderly people have revealed repeating shortcomings in observance of the rights of clients and problems in the application of Act No. 108/2006 Coll. on Social Services. **The right to make a free choice** and the related right to a reasonable risk are among those which are most often denied to the clients. This happens because of personnel's concerns about the potential liability for the client's injury or other damage. The Defender is also dismissive about the **home rules** that stipulate that clients may only leave the home upon the personnel's consent. Yet in reality none of the facility's personnel has the right to prohibit them from leaving the home. Repeating shortcomings are also observable in the approach of the homes for elderly people to the client as a partner. The clients' abilities are assessed summarily and in most homes they must conform to a regime (one waking-up time for all, bathing schedule, etc.) and clients are not allowed to choose a daily regime according to their own wishes and needs. Although aware that the possibilities of the homes are somewhat limited by the number of personnel available, the Defender finds much room for improvement specifically in the **individualised approach to care** and communication with the clients.

Given that the social services in homes for elderly people have a contractual nature, the Defender concentrated his inquiry on the **contents of the contracts** between the facility and the client. Although stipulating that the client must retain 15% of his/her pension for personal needs after paying for housing and catering, the Act on Social Services fails to determine as to how the home for elderly people should proceed if the other part of the pension fails to cover the whole sum for the provided services. Some homes have begun to register the variance as a debt and they even demand that the clients confirm the home's right to claim such debt after the client's death during inheritance proceedings. The Defender has also encountered a practice where the client not only contractually binds him/herself to cover such "*debt*" in general, but is also required to confirm the actual amount of the debt each month.

The Defender **disagrees** with the aforementioned practice and he notified the **Ministry of Labour and Social Affairs** as the authority with the mandate for social services. The deputy of the Public Defender of Rights (hereinafter the "*Defender's Deputy*") discussed the issue with the Deputy Minister of Labour and Social Affairs Mgr. Marián Hošek on June 27, 2007. The Deputy Minister promised her that the Ministry would issue clear instructions that the incorrect practice be altered so that the clients of social facilities no longer become incur debts for the provided services.

Brno, July 13, 2007

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Public Defender of Rights