

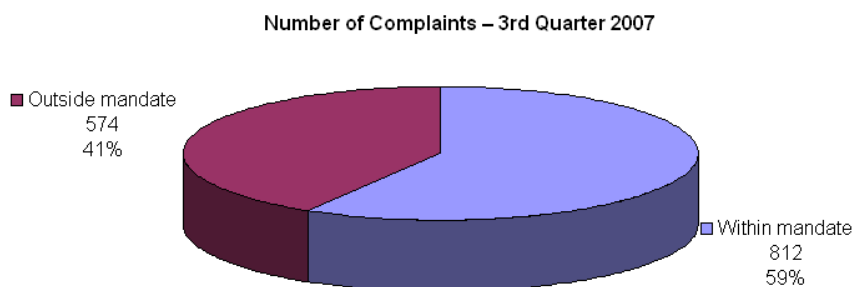
Report for the Third Quarter of 2007

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 July 1 to September 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 second quarter of 2007, discussed with the participation of the Defender at the Committee on Petitions of the Chamber of Deputies on October 2, 2007.

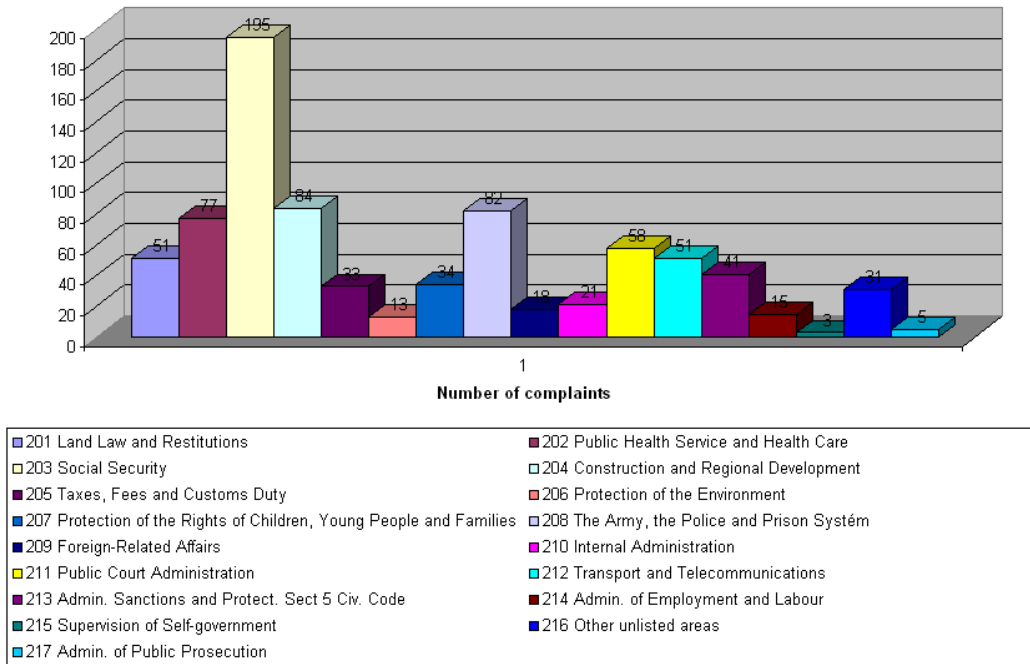
A. General Information on the Activities of the Defender

Number of complaints received and handled



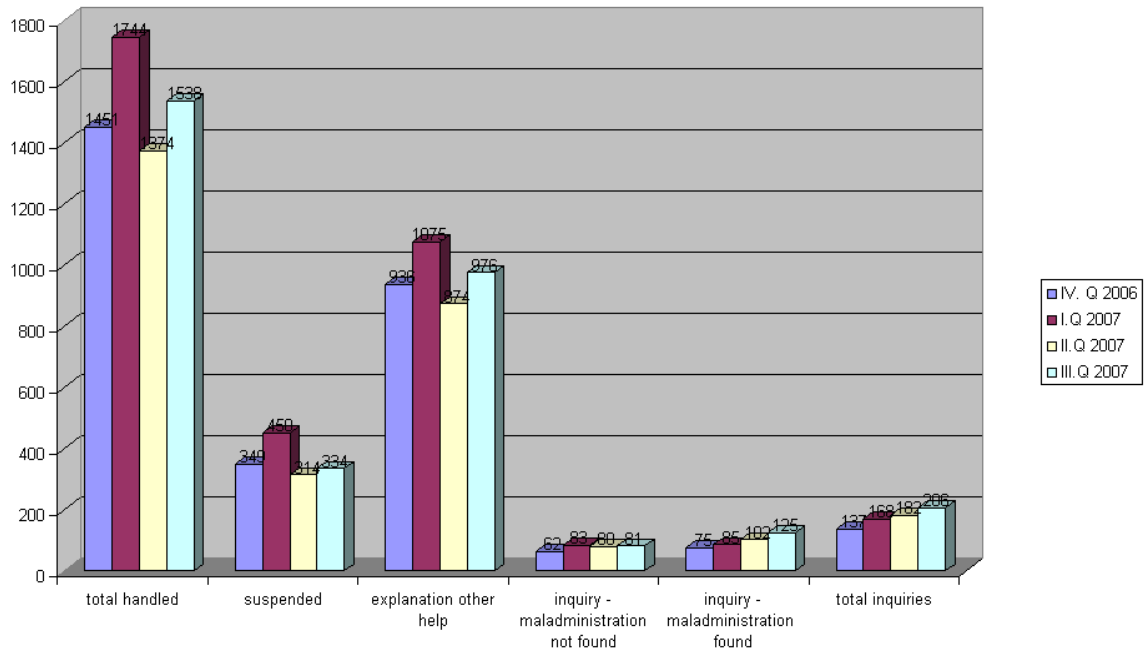
The Defender received **1,386 complaints** in the third quarter of 2007, of which **812 (59%)** were within the Defender’s mandate and **574 (41%)** were outside.

Structure of complaints by area of law – 3rd Q 2007



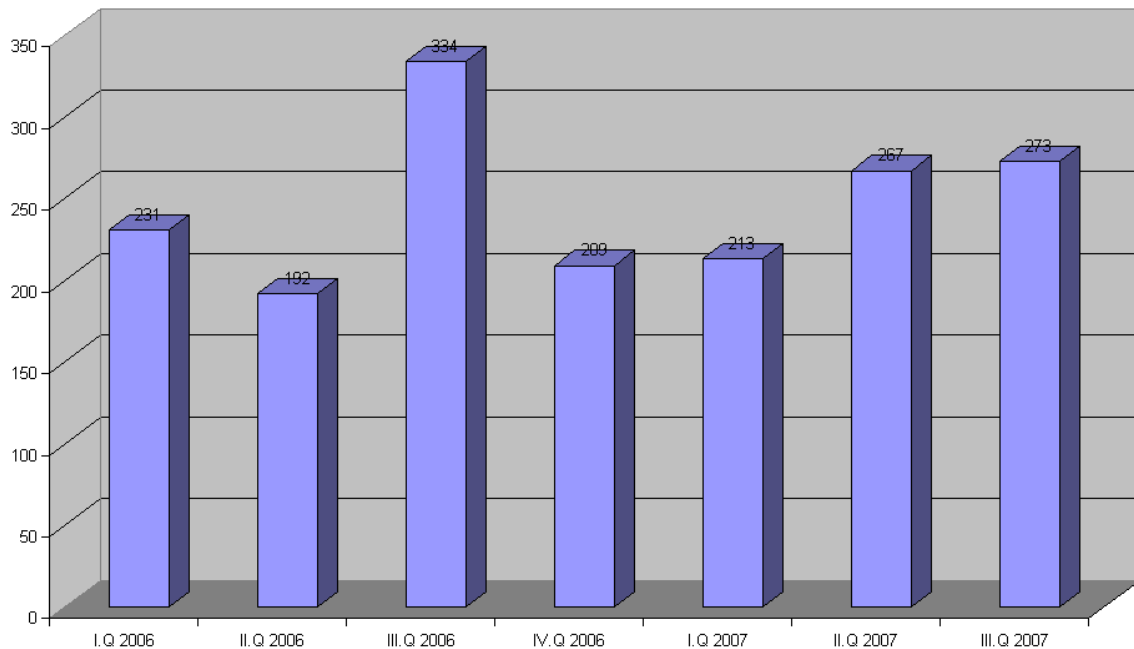
The structure of the complaints by legal area has changed only slightly over time. **Social security** is consistently the area with the highest rate of complaints (195), particularly concerning pensions and the provision of social benefits. The second most numerous group of complaints in the third quarter of 2007 were those in the area of **construction and regional development** (84), a majority of which related to zoning proceedings, planning permission and approval proceedings. Complaints in the area of the **Police and the prison system** (82) ranked third. Most complaints outside the Defender’s mandate fall under the areas of **criminal law** (conduct of criminal prosecution authorities) and **civic law** (for instance the execution of **distrains** and the issue of **leased housing**).

Number of complaints handled, number of inquiries



The Defender handled 1,538 complaints during the third quarter of 2007. Compared to the previous quarters, the **number of inquiries performed** (206), which more and more frequently find that the administrative authority has erred, increased.

Development in the Number of Complaints Made in Person since 2007



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 complainants who visited the Office in person. In the third quarter of 2007, **273**

complainants visited the Defender's office 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 application of the special powers bestowed on 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 had approached the Government in the matter of **delays** in the work of the **Ministry for Regional Development** repeatedly in the second quarter of 2007 already, (*review proceedings under the Building Code*) and the **Ministry of Labour and Social Affairs** (*appellate proceedings in the instance of excluding jobseekers from the jobseekers register*).

Upon the Defender's notice, the Government passed resolutions on July 18, 2007 (Nos. 813 and 814), requiring department ministers (1) to instigate measures ensuring the meeting of deadlines stipulated by the Code of Administrative Procedures and subsequently (2) to report on the results obtained to the Government and the Public Defender of Rights.

The Defender also addressed the Government with a document pertaining to the issue of inactivity of the **Ministry of Education, Youth and Sports** in the matter of fulfilling the requirement for compulsory schooling in a special manner at the Německá škola v Praze, s.r.o. (Deutsche Schule Prag).

The Defender found Ministry shortcomings in reviewing conditions for the issue of permission to fulfil the requirement for compulsory schooling in a special manner pursuant to Section 38 (1) of the School Act that may only be permitted in a school "*established in the territory of the Czech Republic by a legal entity with a registered office outside the territory of the Czech Republic*". However the Defender believes this condition was not met in the given case, as the Německá škola v Praze founder is a legal entity with its registered office in the Czech Republic.

Given that this was a one-off case, and not a general problem that involved primarily the application and interpretation of the School Act, the Defender merely notified the Government of his findings, leaving it up to its members to handle the submitted information.

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

1) 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)

The Defender has already pointed out to the Chamber of Deputies of Parliament that some provisions of amendments of the Residence of Foreigners and Asylum Acts fail to comply with Czech Republic's international obligations or community law in the previous report. In this matter, the Defender attended meetings of the **Security Committee** (September 13, 2007) and **Committee for European Affairs** (October 4, 2007) where he communicated his proposal pertaining primarily to issues of social security and health care of persons with so-called supplementary protection. Part of the Defender's proposals was accepted in the Security Committee, and part in the Committee for European Affairs.

2) Comments on the Amendment of the Act on Pension Insurance

(Act No. 155/1995 Coll., on Pension Insurance)

(Act No. 589/1992 Coll., on Social Security Premiums and Contribution to the State Policy of Employment)

The Defender gave a statement on the amendment to the Act on Pension Insurance (first stage of pension reform) in the amendment proceedings. The Defender's comments concerned primarily these topics: 1) clarifying the **deadline for filling an income and cost statement** from self-employment, 2) **including alternative periods of insurance** for select groups of persons (individuals on maternity and parental leave, soldiers, carers for an incapacitated person), 3) **payments of orphans' pensions** for orphaned children whose deceased parent was not a member of the pension insurance scheme for a sufficient period of time and 4) the **option of retrospective payment of premiums** for the purposes of pension payment. Comments made by the Defender were accepted by the Ministry of Labour and Social Affairs except for the issue of orphans' pensions (the document will be going to the Government with a dispute).

3) Comments on the draft strategy of the constitutional Act on State Citizenship of the Czech Republic and a proposed draft strategy of the Act on State Citizenship of the Czech Republic

The Defender commented in the amendment proceeding primarily on these issues: (1) **acquisition of citizenship by birth** (in a situation when the child does not, for whatever reasons, acquire the state citizenship of either parent), (2) **acquisition of citizenship by declaration** and (3) **criminal penalties** for persons who enter into "*sham marriages*" or make "*sham paternity declarations*". The Ministry of the Interior accepted the Defender's comments.

4) Comments on amendment of the Code of Civil Court Procedure (Hague Convention)

(Act No. 99/1963 Coll., Code of Civil Court Procedure)

(Hague Convention on the Civil Aspects of International Child Abduction; declaration of Ministry of Foreign Affairs 34/1988 Coll.)

Based on the observations collected when inquiring in files pertaining to application and interpretation of the Hague Convention in the matter of the children *Sofie and Lucase Fiordalisi* (known in the media as the "*case of Mrs. Krajníková*"),

the Defender expressed reservations on the draft amendment of the Code of Civil Court Procedure that newly lays down “*proceedings for a child’s return in the case of international child abductions*”. The Defender’s comments pertained to (1) the **nature of the proceedings** (the Defender believes this to be *nolo contendere*), (2) **the constituency of parties to the proceedings** and (3) **proposed mandatory concentration of proceedings**. The Defender partially accepted explanations given on his comments and will attempt to re-open the issue of the proceeding’s nature at the Government’s Legislative Council meeting.

5) Comments on the ‘big’ amendment to the Code of Civil Court Procedure

(Act No. 99/1963 Coll., Code of Civil Court Procedure)

The Defender pointed out to the Ministry of Justice that current legislation does not efficiently settle problems arising from the impossibility of erasing a “**dead company**” from the Companies Register. The Defender proposed enabling the State Prosecutor’s Offices to make a motion to erase such companies pursuant to Section 35 of the Code of Civil Court Procedure. The Ministry accepted the Defender’s proposal.

III. Request of the Minister of Industry and Trade for co-operation concerning out-of-court settlement of consumer disputes

The Minister of Industry and Trade addressed the Defender with a request for comments on the draft system of out-of-court settlements of consumer disputes. In this respect, the Defender expressed an opinion that though he is in favour of more efficient enforceability of consumer rights, this does not apply to the form presented in the Ministry document. This method assumes the establishment of independent arbitrators and mediation bodies with the Czech Chamber of Commerce to settle consumer disputes on the basis of arbitration/mediation clauses. Most of all, the Defender criticised the fact such a system will not be **independent** (due to close links with the Chamber of Commerce). Moreover, the Defender pointed out the lack of any state control over the proposed system and that the newly stipulated procedural obligations will be hard to enforce. The Defender believes entrusting the decision in consumer relations to the Czech Business Inspectorate that decided on them under the Code of Administrative Procedure would be a conceptually better solution, and the Inspectorate’s decisions would be subject to review pursuant to Part V of the Code of Civil Court Procedures.

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. In his proposal, the Defender ranged himself with the city and proposed that the Constitutional Court reject the Ministry's proposal for inadmissibility.

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 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 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.

On July 12, 2007 the Constitutional Court **rejected** the proposal by the Minister of the Interior (resolution ref. Pl. ÚS 37/06). Thus, the Constitutional Court ruled fully in accordance with Defender's proposal and commented thus: *"The Constitutional Court points out the statement of the Public Defender of Rights in emphasizing the non-existence of authenticated factual justifications in the proposal made by the Ministry of Interior and points out the principle of efficient regulation of social relations under the conditions of familiarity with the reality of (local) specific social relations. Failing that, as the Defender correctly maintains, ordering area rodent control only at a time of increased/high occurrence of pests would lead to somewhat absurd formalist procedures by the local government, i.e. for instance annual approval of a generally applicable decree with virtually identical content (wording)"*.

C. Presentation in the Media and Communication with the Public

In the third quarter, the media published or broadcast almost 700 news items, coverage and interviews pertaining to the activities of the Public Defender of Rights.

- Three **press conferences** were organised during the period under scrutiny. The July conference acquainted journalists primarily with the Defender's findings pertaining to children travelling into EU countries on the basis of a record in the parent's identity card and to amendment of the Act on Pension Insurance in the issue of pensions for persons caring long-term for a relative. The Defender has repeatedly handled complaints pertaining to this area in the last few years and pointed to the need for legislative change. Information on the current situation of the burnt out house at Přízová in Brno was also given at the press conference. The August conference acquainted journalists with detailed findings from visits to homes for elderly people. The deputy informed journalists at the September press conference of the results of an inquiry into matters pertaining to the land register. She also informed them of the opening of an inquiry into the fixing of the prices of some pharmaceuticals.
- 13 **press releases** were issued on, besides the topics presented at press conferences, merging schools, protection of a quiet state of affairs and the issue of informed consent to treatment. The interest of the media was equally aroused by information on fines for offences in traffic accidents where the culprits are the sole victims. The Defender's deputy called for a ban on the food colorant E128 in July.

- A number of **individual** interviews for media and appearance in television and broadcast debates contributed to increasing public awareness of the work of the Public Defender of Rights. The Defender and his deputy gave interviews and appeared in discussions in Czech Television current affairs programmes, Czech broadcast stations (Radiožurnál, ČRo2, ČRo6, ČRo foreign broadcasting and others), responding not only to questions from presenters but from listeners too. The Defender's deputy also attended an online discussion at the ceskenoviny.cz server. The most frequently discussed topics were pension insurance, the issue of dual citizenship and the Asylum Act, international abductions of children, human rights in general, matters pertaining the land register as well as the so-called "Slovak" pensions.
- Following the reruns of the second series of "**Cases for the Ombudsman**" Czech Television (ČT2) started broadcasting the newly filmed third series of these "*people's little stories*".

1,050 calls were received by the Defender's **information hotlines**. These were mostly requests for simple legal advice, queries regarding the Defender's mandate and progress in the handling of a complaint.

114,516 people logged on to the **Defender's website** at www.ochrance.cz in the period under scrutiny.

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

Visit of a Thai delegation

A Thai delegation visited the Office of the Public Defender of Rights on August 23, 2007, interested in complaints the Defender handles as well as the legislative provision for his activities. The Defender asserted with interest that the Czech and Thai ombudsman institutions are alike in terms of the year of their establishment (1999) and their work.

Visit of delegation of Bosnia and Herzegovina, Montenegro, Kosovo and Serbia deputies

A delegation of 20 deputies from the former Yugoslav republics visited the Office of the Public Defender of Rights on September 26, 2007. The agenda included Czech experience with the application of the lustration law and the role of the ombudsman in the democratisation and transformation processes in post-communist countries.

Subject matter of meetings

- **eviction of Romany families from Vsetín** (in Committee on Education, Science, Culture, Human Rights and Petitions of the Senate of the Parliament of the Czech Republic on July 10, 2007)
- **protection against noise** (with the Chief Public Health Officer, on July 19, 2007)
- **welfare housing** (with representatives of the Ministry for Regional Development and of Labour and Social Affairs, on July 25, 2007)

- personal data **protection when collecting DNA samples in prisons** (with representatives of the Office for Personal Data Protection, on August 15, 2007)
- **mental homes** (with the head of **Bohnice Psychiatric Hospital**, on August 28, 2007)
- **public court administration** (with the presiding judge of the Supreme Court, deputy presiding judge of the Supreme Administrative Court, presiding judges of regional courts and representatives of the Ministry of Justice, on September 11, 2007)
- **reformatories** (with the Minister of Education, on September 11, 2007)
- **amendments to the Asylum Act and the Residence of Foreigners Act** (in the Security Committee of the Chamber of Deputies of the Parliament of the Czech Republic, on September 13, 2007)
- **disposal of hazardous substances and the risk of the leaking ammonia** from the refrigeration systems of indoor arenas (with representatives of the Ministries of Interior, Labour and Social Affairs, Environment, Industry and Trade, on September 18, 2007)
- **land register** (with the chairman of the Czech Office for Surveying, Mapping and Cadastre, on August 2 and September 18, 2007)
- **agricultural restitution and shares in cooperative farms** (with the vice-president of the Senate of the Parliament of the Czech Republic and an advisor to the Minister of Agriculture, on September 24, 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 cases handled in the period under scrutiny:

I. Inquiries opened on the initiative of Deputies and Senators

1) The Eviction of Romany families from Vsetín

The inquiry into the case of the eviction of the Romany residents of 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, Romany 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 Defender also dealt in detail with the fate of the six families (68 persons) evicted by Vsetín council to the Olomouc and Jeseník districts. He asserted in this respect that the forced eviction of the Romany families from the town **violated fundamental human rights and freedoms** (freedom of movement and residence, and the right to respect for private and family life).

The Defender has issued his final statement in the case of the eviction of the Romany families from Vsetín, addressing it to the Municipal Authority in Vsetín, Zlín Regional Authority and the Ministry of Labour and Social Affairs.

The Vsetín municipality has already taken the following partial remedial measure after the Defender's statement:

The town has started to identify families with difficulties in paying rent on time, to apply the so-called special recipient institute and establish individual plans to eliminate the debt. *With respect to the social and legal protection of children*, the town has boosted the number of social workers, appointed a member of staff to inspect the file documentation and assure social and legal protection of Roma with a permanent address in Vsetín.

The Defender recommended to the regional authority to carry out *review proceedings against the planning permission and final building approval* for the Poschla premises. **The regional authority** did open the review proceedings and stated the decisions were issued in contravention of the law as the file records fail to incorporate any compliance with general technical requirements for construction, but subsequently terminated the proceedings, justifying this on the basis of the need to preserve the builder's good faith since abolition of the pertinent decision would cause the builder unjustified damage. The Defender cannot accept this reasoning and the matter will be subject to further discussions with the regional authority.

The Minister of Labour and Social Affairs fully agreed with the conclusions of the final statement. He informed the Defender at the same time that the Council of the Government of the Czech Republic for the Roma Community in liaison with the Ministry of Labour and Social Affairs are planning to set up an *Agency for the Elimination of Social Exclusion* that ought to help preventing similar situations.

The Defender will continue monitoring the **situation of all families evicted from Vsetín**. In this respect, the Defender welcomed partial measures by the Vsetín municipality, which decided to pay out benefits for co-financing a water service pipe for one of the exposed families. The Defender still finds the situation of one of the families evicted to Čechy pod Kosířem to be especially serious. The local house was in such poor technical state that the Kostelec na Hané municipal authority was forced to order removal of the construction that had started to be a threat to life and health (proceedings on removal are not complete yet). Finding replacement accommodation for the affected family is therefore imperative at present. The Čechy pod Kosířem municipality is not capable of finding housing for the family and thus asked the

Defender to mediate co-operation with the Vsetín municipality because the matter still pertains to Vsetín citizens.

In respect with the housing of persons threatened with social exclusion, the Defender is attending working meetings of departmental representatives in the matter of the material intent of the Act on **Welfare Housing**. The Defender's objective is primarily to contribute to refining the definitions of welfare housing, defining welfare housing support and expanding municipal financial support in the sphere of welfare housing.

In October the Defender will evaluate remedial measures adopted and communicate the inquiry results to the authorities and the public.

2) The unauthorized disposal of hazardous waste in Libčany

Following a complaint filed together by Senator Karel Barták, mayor of Hradec Králové Otakar Divíšek, Deputy of Parliament David Kafka and 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 administrative authorities that had not prevented unauthorised and hazardous conduct in time. 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 whether future prevention of similar situations has been ensured.

In the inquiry the deputy has collected all the requested documents and will issue a report on the inquiry in the course of November. Apart from reviews and analysis of administrative authorities' procedures, the report on the inquiry should include findings on whether the future prevention of such situations has been ensured.

3) Protection of staff of Institute of Social Care

Following a complaint filed by Senator Jan Hajda, a file was opened on the Area Labour Inspectorate for the South Moravia and Zlín regions on the Defender's initiative in the matter of reviewing a complaint of **violation of labour regulations** by the head of the Institute of Social Care "*Srdce v domě*" in Klentnice. The territorial inspectorate was asked, as part of the inquiry, to open an inspection inquiry into the Institute of Social Care and communicate its result (the inspection inquiry of the Inspectorate was not complete on the day of the report's completion).

II. Inquiries opened on the Defender's own initiative

1) The collection of DNA samples in prisons

At the end of June and the beginning of July this year, the Defender received a number of complaints from convicts and those on remand casting doubt on the **legality of biological sample collection** (buccal swabs from the inside of the cheek) to obtain genetic information. The Defender reviewed police and prison service conduct, completing the inquiry with a statement that the convicts and remandees were erroneously instructed on the option of physical coercion should they not submit to sample collection voluntarily. In the Defender's view, the police are not authorized to use violence to overpower resistance from those for who such action represents

interference with their physical integrity. The mouth swab (so called buccal swab) is interference with a person's physical integrity and should as such only be carried out with the person's consent. The Defender is discussing this issue with the Chief of Police and the general director of the prison service.

2) 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.

Given that the authorities concerned did not agree with the deputy's findings, a final statement was issued where the deputy proposed in the general recommendations drafting an **emergency plan** including coordination of activities and a schedule of steps to be taken in such a situation. The deputy also suggested drafting a brief and comprehensible manual containing basic information on where and how help is rendered and what circumstances ought to be given heightened attention for those affected by an extraordinary event. Other remedial measures pertain to the work of administrative authorities in different fields.

Unfortunately, the authorities did not respond positively to the final statement either and did not accept the remedial measures. Setting up a follow-up meeting with the statutory city of Brno representatives and Municipal Authority Brno-Centre area where the Defender and his deputy will attempt to stress the need for an emergency plan that would ascertain how individual public administration parts will proceed in such cases and how those affected will be given help, appears to be the last option for a solution prior to potentially publicising the case in the media.

3) Ministry of Finance conduct when stipulating ceiling price for Visudyne drug treatment

In association with inquiring into an individual complaint pertaining to the amount of patients supplementary payment for the Visudyne drug treatment, the Defender's deputy was informed that the Visudyne drug treatment is supplied by Novartis to the Czech Republic for a higher price than in other EU member countries (except Slovakia). Given these facts, the deputy decided to open an inquiry on her own initiative to ascertain whether the **pricing decision** of the Ministry of Finance in the case of the Visudyne treatment was issued in accordance with valid legislation.

4) Inquiry in the land register section

The Defender's deputy repeatedly encounters problems occurring on rectification of erroneous records made in the land register. This pertains primarily to the issue of restoration of cadaster records by transformation into a so-called "*digital cadaster map*", the issue of so-called "*old deeds*" recorded in the land register, and the issue of conflicts between restitution proceedings and privatisation.

The **digitalisation** method of restoring cadaster records from time to time causes considerable reductions to the areas of land and actual changes to the boundaries. The shifts were so extensive that some property owners found their buildings suddenly falling into another person's plot. The Defender's deputy appealed

to the Czech Office for Surveying, Mapping and Cadastre to ensure remedying factual errors and clarifying the procedure of the land registry offices when restoring the cadaster records. She also commissioned an expert opinion that would analyse the digitalisation process and suggest a potential solution to the above problems.

In association with the land register, the deputy also ascertained that owners recorded in the land registry may suddenly find another person claiming ownership and supporting their claim with a **years-old contract** the current owner or the land register had no knowledge of. The current owners who acquired the property upon the basis of a “*due*” contract thus often find themselves on the breadline and are factually deprived of their ownership. The Defender’s deputy believes that legislative specification of a deadline for submitting proposals for registration in the land register would deal with the issue. She presented this proposal to the chairman of the Czech Office for Surveying, Mapping and Cadastre as part of the inquiry, and met with agreement.

The last fundamental problem the deputy encountered in the land register is a conflict between **privatisation processes** from the 90s and ongoing **restitution proceedings**. Restitution claim was staked against a privatised property in some cases and the land registry office recorded the restituted as the new owners. Yet, this is a property the current owners obtained whether through privatisation or when the property was transferred to them over the years, and they lost ownership as the last owners in the line. Such owners rightfully object they did not cause the ensuing situation, acquired the property in good faith and now often cannot claim the reimbursement of purchase price from the conveyor.

The Defender’s deputy asked the Czech Office for Surveying, Mapping and Cadastre for information on the total number of such cases. Subsequently, the deputy intends to approach the Government with a request to deal with the situation and make sure no new grievances arise.

5) Inquiry in the area of labour inspection

As the Defender’s deputy encounters maladministration by the labour inspectorate repeatedly, she decided to open an inquiry on her initiative focused on the given section of public administration comprehensively. A general report was issued on the inquiry listing the most frequent shortcomings identified in the inspection practice of selected inspectorates.

In this quarter, the deputy received a statement from the State Labour Inspection Office on her findings where the State Labour Inspection Office agrees with the major part of the reservations against the inspection authority conduct and promised to take the deputy’s recommendations into consideration in its inspection and methodological activity. The Office should increase attention on **increasing the number of inspection staff** as well as observing **measures to eliminate shortcomings**. The inquiry conclusions were sent, along with the State Labour Inspection Office statement, to the Ministry of Labour and Social Affairs to enable the Ministry take them into account in organisation, personnel and conceptual work towards the labour inspection system.

III. Inquiries opened on the complainant's initiative

1) Filing an income and cost statement by self-employed persons performing additional self-employed activities

The Defender's deputy opened an inquiry into the procedure of District Social Security Administration. The motive for the complainant's filing was the fact he had omitted to attach a **confirmation of income from employment** to the statement and was therefore automatically deemed a self-employed person performing main self-employed activities pursuant to the Act on Pension Insurance. He was required to pay premiums in the pertinent amount as a result (he would not have paid any if he had attached the confirmation). Paradoxically, a considerable amount of time remained for the filing (the complainant filed the statement at the end of March while the mandatory period for its filing is stipulated as April 30).

Given that a number of complainants have addressed the Defender with similar problems the deputy requested a statement from the Minister of Labour and Social Affairs as to what extent the Code of Administrative Procedure applies to filing a an income and cost statement. If the Code of Administrative Procedure applies, it would be possible to deduce the obligation of pertinent social security administration staff to warn the complainant of the missing attachment and ask him submit it (within the time remaining till the expiry of the mandatory period for filing the income and cost statement). However, the Ministry's statement on the proposed solution was negative and the deputy is currently considering further steps.

Hand in hand with the effort to change the interpretation, the Defender is striving to **change legislation** that would stipulate a self-employed person's option to file confirmation, not along with the statement, but within a set mandatory deadline (i.e. by April 30). The Ministry of Labour and Social Affairs accepted the Defender's comments.

2) Demolition of the Tesco Liberec department store

The complainant's filing is grounded on disagreement with the Tesco department store building not being recorded by the Ministry of Culture as a **cultural monument**. The complainant points out that the National Heritage Institute as well as the expert heritage committee joined the proposal to declare the building a cultural monument.

The Defender made a preliminary request for the views of the Minister of Culture and Liberec's mayor in the matter of the demolition of the Liberec Tesco department store building. He is presently awaiting their statement.

3) Application of the Treaty between the Czech Republic and the Ukraine on Social Security

The complainant asked the Defender to review decision made by the Czech Social Security Administration (CSSA) rejecting her request for an **old-age pension** pursuant to Article 40 of the Treaty between the Czech Republic and the Ukraine on Social Security (No. 29/2003 Coll.)

The Defender stated in the report on the inquiry that the CSSA decision failed to comply with the Treaty. In its decision, the CSSA should have granted an old-age pension to the complainant in a partial amount proportionate to the years spent in the Czech Republic.

Upon the Defender's findings, the CSSA re-assessed the pension claim of the complainant and issued a decision in July 2007 granting an old-age pension in the correct amount as of April 1, 2003, and sent her a postal order for the back pay of pension for previous terms.

4) Double municipal waste payment

Complainants contested the Hranice municipal authority procedure in exacting a local municipal waste fee, arguing that they had purchased the pertinent duty stamp for a dustbin in time and that therefore the amount outstanding was exacted in contravention of the law.

The Defender opened an inquiry against the authority having ascertained **discrepancies in recording payments**. Firstly it turned out the Ekoltes, a. s., company doing business in waste management where the sole shareholder is the Hranice municipality, was not authorised to sell the pertinent stamp for the period of 2003 at all as a consequence of a new generally binding decree. Moreover, a stamp with an identical number was sold to two different payers. Currently, the Defender is drafting a report on the inquiry to be sent to the authority for a statement.

5) Illegitimate dumping of waste on private plots

The Defender's deputy reviewed a complaint by an owner of a plot against a planning authority's conduct in the matter of a illegal dumping of building waste on plots obtained by his legal predecessor through restitution.

The Defender's deputy pointed out a number of shortcomings to the planning authority. She proposed in her final statement, that the Ministry for Regional Development review the regional authority's decision rejecting the complainant's petitions to reopen the proceedings and review erroneous decisions. She also requested the matter be assigned to a different planning authority because the head of the planning authority, who had dealt with the matter in person up to now, declared himself to be prejudiced.

This case, along with other so-far uncompleted cases, suggests this type of issue is not unique in the Central Bohemia region. The pressure to build in the capital city gives a rise to the need to dispose of the spoil and material from building demolition in the Prague surroundings. Similar **dumps** appear **wild**, without necessary permits and rely on decisions on landscaping that fail to cover the real scope of the ongoing spoil dumping. Assessment of such actions' impact on the character of the landscape as well as of the noise and road traffic stress and other effects on the environment are often absent.

The deputy awaits a response from the relevant authorities on her findings and on remedial measures.

6) Ban on visits of father and other family members to Klokánek

Upon an inquiry into a complaint, the Defender ascertained that an authority of social and legal protection of children (ASLPC) committed maladministration having

repeatedly issued a **decision to ban contact of children** placed in a Klokánek facility with **their father** and **other family members**.

The decision to children's contact with a parent falls exclusively within the mandate of a court. The Defender stated that the fact that this happened upon recommendation from criminal prosecution authorities did not justify the ASLPC's exceeding the mandate. In the Defender's view, the principle of legality - that a state authority must always act on a legal basis - was violated in this instance.

The Defender issued a report on the inquiry pointing out the aforementioned shortcomings to the authority and now awaits the authority's statement on his findings.

7) Procedure of authorities in the evaluation of misleading advertising

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

The deputy requested a statement from the Trade Licensing Department of the Municipal Office of the Capital City of Prague and and the Council for Radio and Television Broadcasting and she also addressed the Ministry of Industry and Trade.

The deputy issued a report on the inquiry stating that both the Trade Licensing Department of the Municipal Office of the Capital City of Prague and and the Council for Radio and Television Broadcasting were guilty of maladministration. In her view, the Municipal Office assessed the matter of **misleading advertising** incorrectly and should have commenced administrative proceedings. The Council neglected this issue in the proceedings in spite of explicit warning of misleading advertising. The deputy currently awaits the response of the authorities to her findings.

8) Protection of a quiet state of affairs

Several inhabitants of Brno houses whose owner had **disconnected water and electricity** approached the Defender in the third quarter. These were tenants with valid contracts duly paying rent and all charges.

Having ascertained the overall state of affairs, the Defender decided the matter was so serious that he had to notify the mayor of Brno. The Defender requested the mayor to liaise with and instruct municipal area authorities that they should in such cases open proceedings on the **protection of a quiet state of affairs** at the request of the affected tenants, pursuant to Section 5 of the of the Civil Code. The Defender is aware that administrative decisions ordering reinstatement of the previous state of affairs (i.e. restoration of water, electricity or heating deliveries) are hard to enforce in practice, but nevertheless believes that it is the role of self-governing and public institutions to strive to do so.

The Defender is currently assessing information obtained from the relevant authorities and considering further steps.

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

Systematic visits to 27 **social service facilities for elderly people** were made between January 1 and June, 2007, to inspect how are clients are treated and whether their rights are being respected. Visits also monitored the procedure and problems with introducing the provisions of Act on Social Services, effective as of January 1, 2007.

On August 13, 2007, the Defender disclosed a general report on visits to social service facilities for elderly people at his website (www.ochrance.cz). A press conference was also held on this issue.

The Defender made several recommendations to facilities, the Ministry of Labour and Social Affairs, the Ministry of Health and the Ministry of Justice in the general report.

Recommendations addressed to the facilities aimed at **improving the standard of housing** (barrier-free housing, maximum 3-bed rooms, at least one lockable piece of furniture) and **better protection of user rights** (respecting the privacy of users, assuring quality social counselling, specialised personnel training, and conformity of internal regulations with legal standards).

The Defender recommended that the Ministry of Labour and Social Affairs, as the central authority responsible for the situation in the area of providing social services, focus on dealing with these issues, in particular:

1) The situation of clients who were not pronounced incapable of entering into legal acts by a court (or restricted in their said capacity), but were not in fact capable due to their health/mental state, to avoid disadvantaging them in entering into contracts on providing a social service;

2) The method of concluding contracts on providing a social service (eradicate a situation where facilities abuse the position of the stronger entity, unify conditions for termination, et cetera);

3) The method for using measures that may cause restriction of movement of persons.

The Defender recommended the Ministry of Health initiate a legislative process so that the use of movement restricting measures in health-care facilities complies with international treaties' requirements applying to the Czech Republic.

Follow-up visits in some facilities visited in 2006 were under way between July and the end of September 2007. In his follow-up visits, the Defender did not focus primarily on system shortcomings from a national perspective but prioritised findings and promised changes ensuing from his first visit to the pertinent facility. New findings where he had to take a stand, were not omitted either. Follow-up visits were carried out in social care institutions, police cells, facilities for the detention of foreigners, in institutes for long-term patients, and in prisons and reformatories. The Defender presented his findings including remedial recommendations to the pertinent authorities.

In Brno on October 22, 2007

JUDr. Otakar M o t e j l

Public Defender of Rights