

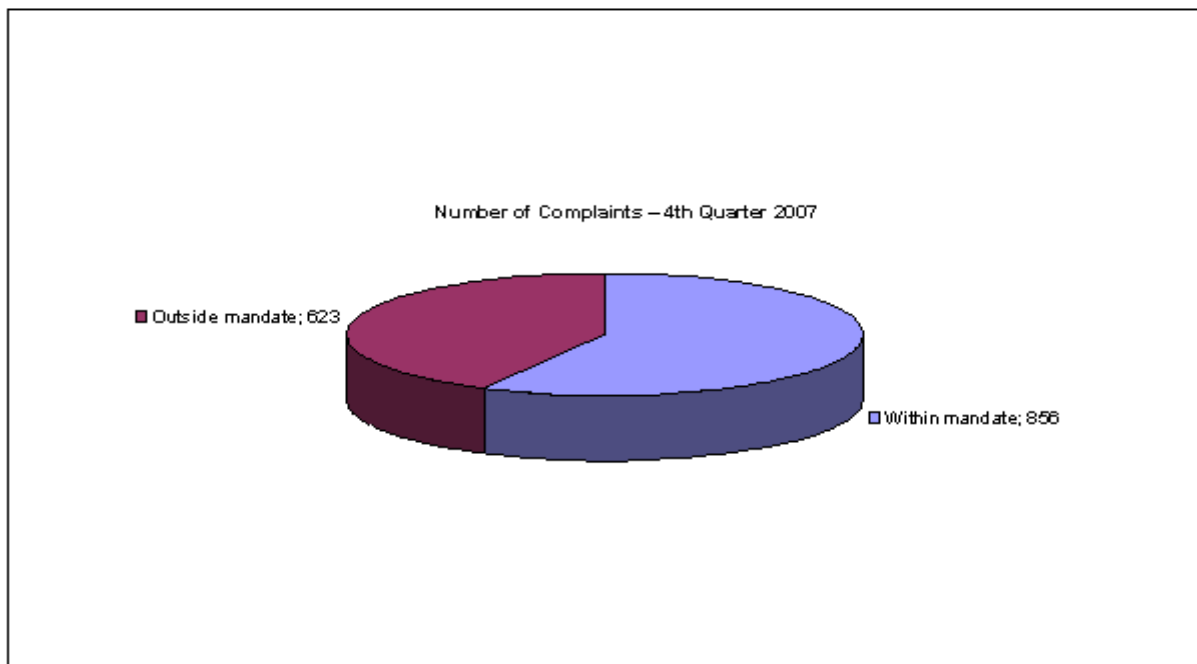
## Report for the Fourth Quarter of 2007

### Information on the activities of the Public Defender of Rights submitted by him 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 October 1 to December 31, 2007

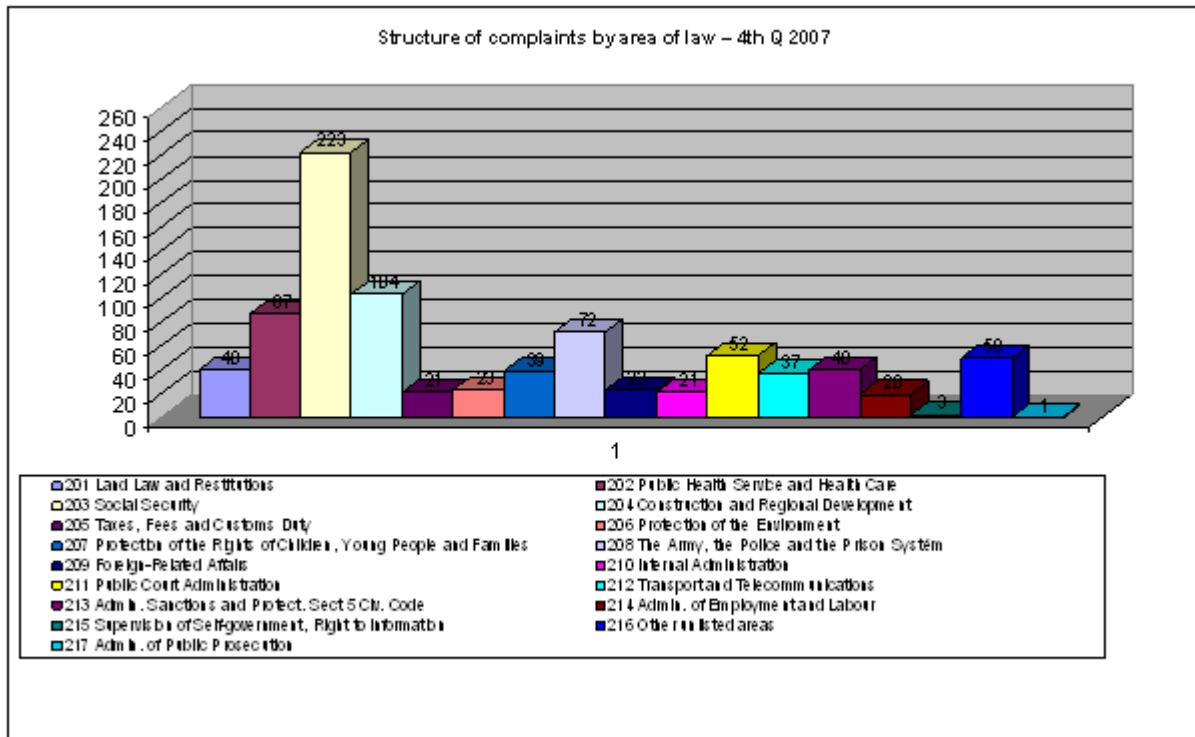
The Public Defender of Rights (hereinafter the “Defender”) submits information on his work and activities during the period under scrutiny to the Chamber of Deputies of Parliament and he simultaneously informs the Deputies of the current state of public administration as reflected in the complaints dealt with. The contents of this report are a continuation of the information on activities for the third quarter of 2007, discussed with the participation of the Defender at the Committee on Petitions of the Chamber of Deputies on January 15, 2008.

### ***A. General Information on the Activities of the Defender***

#### **Number of complaints received and handled**

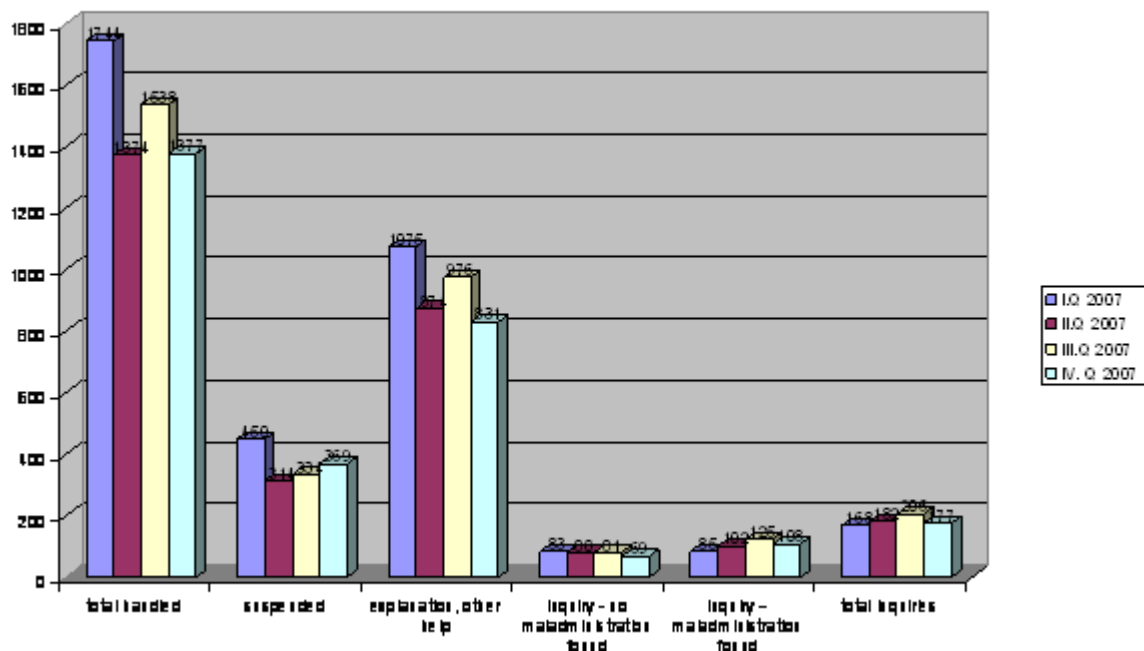


The Defender received **1,479 complaints** in the fourth quarter of 2007, of which **856 (58%)** were within the Defender’s mandate defined by law and **623 (42%)** were outside his mandate.

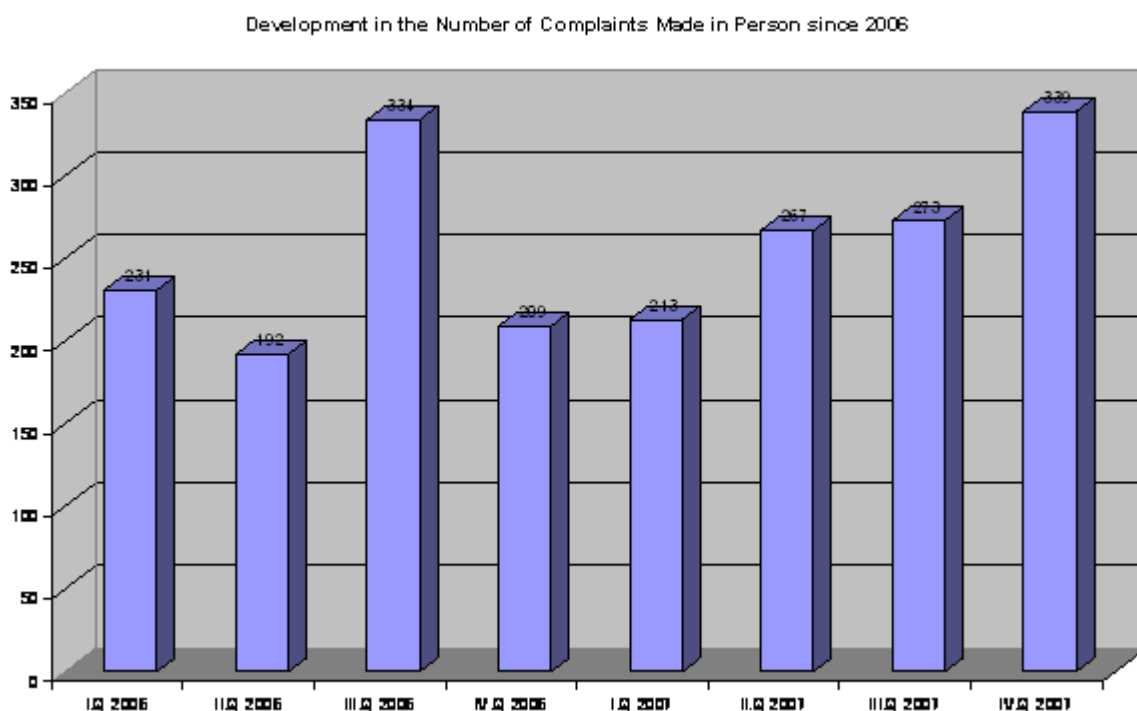


The structure of the complaints received by legal area has changed only slightly over time. **Social security** is consistently the area with the highest rate of complaints (223), particularly concerning pensions and the provision of social benefits. The second most numerous group of complaints in the fourth quarter of 2007 were those in the area of **construction and regional development** (104), a majority of which related to zoning proceedings, planning permission and approval proceedings. Complaints in the area of **health care** (87) ranked third. Most complaints outside the Defender's mandate fall under the areas of **criminal law** (conduct of criminal prosecution authorities) and **civil law** (for instance the execution of **distrains** and the issue of **rented housing**).

Number of complaints handled, number of inquiries



The Defender **handled** 1,377 complaints during the fourth quarter of 2007 and **closed** 177 complaints, of which maladministration by the authority concerned was found in 100 (57%) cases.



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 fourth quarter of 2007, **339 complainants** visited the Defender's office in person either to **compile a complaint 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. The Defender's power to make recommendations on legal regulations pursuant to Section 24 (1) (c) of the Public Defender of Rights Act**

#### **1) Comments on the complaint of the Government of the Czech Republic's Council for Human Rights on the use of movement restricting measures in the provision of social services**

*related: Act No. 108/2006 Coll. on Social Services*

*Act No. 99/1963 Coll. the Code of Civil Court Procedure*

The Defender expressed his disagreement with the proposed judicial review of the use of measures restricting the freedom of movement of persons in social services facilities (in particular homes for elderly people). In the Defender's opinion

judicial review of matters concerning the everyday life of people in social services facilities does not represent an efficient instrument of protection, in particular with regard to the complexity and expense of proceedings in general courts as well as the general overloading of the courts. Although the complaint by the Government Council for Human Rights has been approved by the Government, the Defender continues to hold the view that protection against the unauthorised use of measures restricting the freedom of movement should be performed by the Social Services Inspectorate rather than the general courts.

## **2) Comments on the Report on the Use of the Public Defender of Rights' Recommendations for Amendments to Legislation indicated in the 2006 Annual Report on the Activities of the Public Defender of Rights**

The Defender expressed his comments on the Government report on the implementation of the recommendations the Defender addressed to the Chamber of Deputies in his 2006 Annual Report. The Defender continues to have reservations in particular about the enactment of the performing of sterilisations, the insufficient protection of the ownership rights of persons whose real estate is affected by mining and the endangering of the ownership right of persons in cases where municipalities declare the passage of their property on the basis of Act No. 172/1991 Coll. on the Passage of Certain Items from the Property of the Czech Republic to the Ownership of Municipalities. The Report on the Use of the Public Defender of Rights' Recommendations was also on the agenda of a session of the Petitions Committee of the Chamber of Deputies of the Czech Parliament on January 15, 2008, where the Defender reiterated his reservations about the shortcomings of the legislation and outlined how they could be dealt with.

## **3) Comments on the proposed draft strategy for the Act on the Remedy of Some Property Wrongs Caused to Churches and Religious Societies**

The Defender pointed out in his comments that the draft contained a regulation anticipating that natural and legal persons having acquired church property within privatisation in the 1990s would be included among the liable parties. The Defender stated in this context that if the state had decided to include the property in privatisation in spite of the fact that the transfer was blocked by the above-mentioned special regulations, then it is fully liable for carrying out a transfer contravening legal regulations. The Defender therefore proposed that the legislation under preparation respect to the maximum extent the existing ownership relations acquired in good faith. Should property of a third party acquired by it in good faith still be surrendered on the basis of the prepared legislation, the proposed legislation should award entitlement to indemnity to the party concerned and clearly specify the body at which the indemnity could be sought. The Ministry of Culture changed the concept of liable parties and entirely dropped natural/legal persons from the liable party category.

#### **4) Comments on the draft Act amending the Act on Municipalities, the Act on Regions and the Act on the Capital City of Prague**

*related: Act No. 128/2000 Coll. on Municipalities*

*Act No. 129/2000 Coll. on Regions*

*Act No. 131/2000 Coll. on the Capital City of Prague*

The Defender welcomed the presented amendment of the regulations on municipal/regional self-governments as the Ministry responds to a number of shortcomings accompanying existing practice in the amendment. The Defender's comments were recommendatory and concerned primarily the issues of (1) the provision of copies of documents of municipal self-government (budget of the municipal assembly, minutes of meetings of the municipal assembly), (2) the disposal of municipal property (who should decide on the publishing of plans concerning the disposal of real estate; the issue of the exclusion of a prejudiced member of the municipal assembly from voting), and (3) the obligation of the municipality to post important information on the Internet. The Ministry of the Interior partly accepted the Defender's comments.

#### **5) Comments on the Government material “Agency for the Elimination of Social Exclusion and its Prevention in Socially Excluded Roma Communities”**

The Defender pointed out in his comments that the Agency is to target only a specific group threatened with social exclusion – the Roma, although his current findings suggest that not only the Roma but a number of members of the majority population are threatened with social exclusion. The Defender challenged the proposed concept by stating that it is unclear as to whether the target group to be aided by the Agency is to be defined on a purely territorial basis (i.e. all those in the area concerned) or on appurtenance to the Roma. If the latter is the case, the Defender required that the draft's author define the manner of determining appurtenance to the Roma. The Defender was assured by the author of the material that the Agency for the Elimination of Social Exclusion would deal with social exclusion regardless of the ethnic or racial origin of the persons threatened with social exclusion. The Defender accepted the explanation.

#### **6) Comments on the new draft Act on the Police of the Czech Republic and Police Inspectorate**

The Defender provided a number of comments on the new draft Act on the Police and Police Inspectorate, primarily in areas related to his competence of supervision of places where people are held in detention. The Defender's comments focused on (1) defining the term 'inhuman and cruel treatment' in cases of restricted personal freedom, (2) the issue of the possibility of providing for the option of defence for people restricted in their personal freedom, (3) the issue of providing for medical care for people restricted in their personal freedom, (4) the issue of using coercive measures (handcuffing), and (5) the issue of performing personal searches by persons of the opposite sex. Although the Defender designed his comments as recommendatory, he is prepared to check the development of the draft Act in the Chamber of Deputies and the Senate.

## **7) Comments on draft strategies for medical laws**

The Defender commented on a series of strategies for the new medical laws submitted by the Ministry of Health in December 2007. In his comments the Defender focused on the issues of (1) vicarious consent to treatment, (2) making copies of medical records, (3) provision of healthcare services without the patient's consent, (4) the handling of complaints about healthcare, (5) the performing of sterilisations, and (6) ensuring availability of healthcare. The Defender once again made recommendatory comments, although he is prepared to actively supervise as to how they will be reflected in the actual provisions of the laws concerned.

## **II. Proceedings at the Constitutional Court pursuant to Section 69 (2) of the Constitutional Court Act**

*related: Act No. 326/1999 Coll. on the Residence of Foreigners on the Territory of the Czech Republic*

*Act No. 588/1992 Coll. on Value Added Tax*

*Act No. 235/2004 Coll. on Value Added Tax*

*Act No. 337/1992 Coll. on the Administration of Taxes and Fees*

The Defender was repeatedly addressed by the Constitutional Court in November and December 2007 with requests for a statement on selected proceedings on the reviewing of the constitutionality of laws. The first case was concerned with a call by the Chairman of the Constitutional Court JUDr. Pavel Rychetský concerning a proposal of the Supreme Administrative Court for annulment of Section 171 (1) (c) of the Act on the Residence of Foreigners on the Territory of the Czech Republic, the second with a call by Judge Rapporteur JUDr. Dagmar Lastovecká concerning a proposal of the Supreme Administrative Court for the annulment of provisions that favour the state over other creditors in bankruptcy proceedings. Although the Constitutional Court Act allows the Defender to be actively involved only in proceedings on the reviewing of lesser legislation, the Defender made non-binding comments on the basis of the aforementioned calls and supported both.

Concerning the proposal for the annulment of Section 171 (1) (c) of the Act on the Residence of Foreigners on the Territory of the Czech Republic, which excludes decisions on administrative deportation from judicial review, the Defender opined that the absence of judicial review is incompliant with the human rights obligations on the Czech Republic from the European Convention for the Protection of Human Rights and Fundamental Freedoms. As for the proposal for annulment of the relevant provisions of tax regulations, the Defender opined that there were not any material or legal grounds for favouring the state over other creditors in bankruptcy proceedings. He simultaneously informed the Constitutional Court that primarily for Section 105 of the applicable Act on Value Added Tax, it may be concluded that the provision is not in accordance with the requirements of predictability and inherent lack of contradictions of the legal order resulting from Art. 1 of the Constitution of the Czech Republic.

## **C. Presentation in the Media and Communication with the Public**

The media published or broadcast more than 600 news items, coverage and interviews pertaining to the activities of the Public Defender of Rights in the fourth quarter.

- Three **press conferences** took place in the period under scrutiny. The October press conference covered evaluation of the effect of the new Building Act from the perspective of the Defender's mandate. The Defender also informed journalists of the illegal conduct of the Czech Social Security Administration concerning so-called "**Slovak Pensions**" at the press conference. Journalists were acquainted with the Defender's findings in the area of healthcare and social care at a November press conference. The conference was concerned primarily with the issue of **delays in handling applications for allowances for care**. The press conference in December acquainted journalists with the Defender's inquiries and other activities in the area of the social and legal protection of children. The Defender pointed to cases where children's contact with their parents had been restricted without a court decision as well as the inadmissibility of the **removal of children from parents for housing or social reasons**. The Czech Republic is also criticised by the European Court of Human Rights for the aforementioned approach. The second issue of the *Stanoviska – Rodina a dítě* (or *Standpoints – Family and Child*) anthology was presented at the conference. It should serve as a methodological instrument for bodies of social and legal protection of children to improve their work.
- 14 **press releases** were issued on, aside from the topics presented at press conferences, the results of inquiries into the work of labour inspectorates, evaluation of the imposed remedial measures six months after closing the case of the evicted Romani inhabitants in Vsetín, the long-unsettled lease relations concerning agricultural land, and the Defender also pointed out the need to amend the Act on Administrative Fees in connection with the effect of the new Building Act.
- The Public Defender of Rights and his deputy gave interviews and appeared in news and current affairs programmes on Czech Television, Nova TV and Prima TV and Czech radio stations. The appearances were concerned with the issues of the Code of Administrative Procedure, payment of social benefits, the court system, protection of the rights of children, etc. The Defender acquainted the public with his views concerning the demolition of a historic villa and permission to construct new premises in a heritage zone of the Prague district of Barrandov, the use of camera systems in educational facilities and the conclusions of an inquiry into a blocked local road in the current affairs programmes *Černé ovce* (or *Black sheep*) and *Ta naše povaha česká* (or *Our Czech Character*).
- Czech Television (second channel) broadcast the third series of the *A Case for the Ombudsman* and began to prepare the filming of additional episodes.

**1,174 calls** were received by the Defender's **information hotline**. These were mostly requests for simple legal advice, or queries regarding the Defender's mandate and progress in the handling of a complaint.

136,028 visits were logged in the **Defender's website** at [www.ochrance.cz](http://www.ochrance.cz) in the period under scrutiny.

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

### **Meeting of European Ombudspersons in Strasbourg**

The Defender participated in a regular meeting of European Ombudspersons taking place under the patronage of the French *Médiateur de la République* in Strasbourg on October 14 to 16, 2007. The meeting covered the exchange of experience with good administrative practises in the member states of the European Union and discussion of the draft "*Declaration of the Network of European Ombudspersons*" (*Déclaration du Réseau européen des médiateurs*), defining the basic principles and content of ombudspersons' work.

### **Meeting of ombudspersons and judges of constitutional courts in Yerevan**

The deputy of the Public Defender of Rights participated in an international conference on human rights entitled "*International Experience of Cooperation of Constitutional Courts and Ombudsmen in Providing Protection of Human Rights*" on October 4 to 6 in Yerevan. In her contribution to the conference, the deputy acquainted the audience with experience in the protection of human rights in the Czech Republic.

### **Meetings in the Chamber of Deputies of Parliament**

- **on the Anti-discrimination Act** (in the Standing Committee for Equal Opportunities on October 18, 2007, in the Committee for European Affairs on October 24, 2007, in the Petitions Committee on October 25, 2007, in the Constitution and Law Committee on November 14, 2007);

- **on amendment to the Foreigner's Act and Act on the Residence of Foreigners** (in the Committee for European Affairs on October 4 and 18, 2007)

### **Meetings with foreign delegations**

- **visit of a delegation of Bulgarian Deputies** (on November 30, 2007)
- **visit of judges of the Constitutional Court of the Russian Federation** (on December 4, 2007)

### **Subject matter of other important meetings**

- **visits to social care institutions** (at the Social Affairs Department of the Hradec Králové Regional Authority on October 3, 2007)
- **issuing of certificates of citizenship for children abroad** (with the representatives of the Ministry of the Interior on October 11, 2007)

- **fixing the maximum price of pharmaceuticals** (with the representatives of the Ministry of Finance on October 17, 2007)
- **incomplete restitutions and leasing of agricultural land** (with the Minister of Agriculture on October 24, 2007)
- **detention visits to mental homes** (with the head of the Brno-Černovice Mental Home on October 31, 2007)
- **methodology of the social and legal protection of children** (with the representatives of the Municipal Office of the Capital City of Prague on November 6, 2007)
- **recommendations of the Public Defender of Rights addressed to the Chamber of Deputies** (with the representatives of the Office of the Government and the individual sectors on November 13, 2007)
- **supervision of municipal self-government** (with the representatives of the Ministry of the Interior on November 13, 2007)
- **procedure of the Council for Radio and Television Broadcasting in imposing sanctions** (with the representatives of the Council for Radio and Television Broadcasting on November 15, 2007)
- **disposal of hazardous substances and the risk ammonia leaks from the refrigeration systems of indoor arenas** (with the representatives of the Ministries of the Interior, Labour and Social Affairs, the Environment, and Industry and Trade, on December 11, 2007)
- **fixing a determinate income for the purpose of state income support benefits** (with the representatives of the Ministry of Labour and Social Affairs on December 11, 2007)
- **reparations for Romani women affected by illegitimate sterilisations** (with the representatives of the Government Council for Human Rights on December 13, 2007)
- **Government concept of social housing** (with the representatives of the Ministry for Regional Development on December 18, 2007)

### **Participation in conferences**

- “When a Parent Abducts Their Own Child”* (October 15 to 16, 2007)
- “Sustainable Development of Regions, Towns and Rural Settlements – proREGIO”* (November 13, 2007)
- “Protection of the Rights of Children”* (November 15, 2007)
- “Reform of Justice”* (November 19, 2007)
- “Limits to Public Interest”* (November 28, 2007)
- “Children and Antisocial Conduct”* (November 29, 2007)
- “Looking for an Optimum Model of Public Court Administration”* (December 4, 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 Defender continues to observe the **situation of the families evicted from Vsetín**, and in particular the Tulej family deported to Čechy pod Kosářem. The house was in such a poor technical condition that the Kostelec na Hané municipal authority had to order removal of the building, which began to put people's lives and health at risk (the removal proceedings have not been completed). It is therefore necessary now to look for alternative accommodation for the affected family or funds necessary to provide for maintenance and improvement work on the premises.

The alarming fact about the situation of the Tulej family is that they were evicted from Vsetín in spite of having no debts and were properly repaying all their liabilities. It is also difficult to believe in a democratic legal state that the Vsetín municipality, as the current owner of the real estate, (NB: the Tulej family were the only ones not to have signed premeditated agreements on the transfer of the real estate and they were duly repaying their loan without being owners of the real estate concerned) was able to disconnect a family of ten, including infants, from electricity and remove the metering device, although the Tulej family had deposited an amount for the payment of gas and electricity with the mayor of the Čechy pod Kosářem municipality.

The Defender plans to organise a meeting on the matter between the mayor of the Vsetín municipality, Květoslava Othová, and the mayor of the Čechy pod Kosářem municipality, Zdeněk Mader, aimed at settling the current problems the Tulej family faces as a result of the illegal procedure of the Vsetín municipality.

#### **2) Unauthorised disposal of hazardous waste in Libčany**

Based on 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 did not prevent 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 are ensured. The inquiry is also aimed at ascertaining whether future prevention of similar situations has been ensured.

In the inquiry the deputy participated in a meeting at the Ministry of the Environment where she acquainted herself in detail with the manner of keeping records of waste and the possibilities of detecting illegal waste management using the outputs from such records. The deputy was furthermore acquainted with the activities of an interdepartmental workgroup whose objective is to develop proposals for measures to restrict illegal disposal of waste and chemical substances. An additional illegal deposit in the Prostějov area was detected during the inquiry into the complaint. The new findings will be added to the report from the inquiry, which is to be issued in February 2008.

### **3) Ascertaining the reasons for the death of a child in Great Britain**

An inquiry into the death of a child of a Czech citizen in a hospital in Great Britain was performed on the basis of a complaint from Senator Božena Sekaninová. The child had died in a British hospital in unexplained circumstances and the mother **had not received an autopsy protocol** or other **information regarding the reasons for the death of her daughter**. Although the Defender did not have a direct mandate in the matter (the complainant challenged the procedure of British institutions), the deputy of the Defender provided her with detailed legal advice for dealing with the situation (via the embassy in Great Britain) as well as information on the potential for further intervention of the Defender towards Czech authorities.

## **II. Inquiries opened on the Defender's own initiative**

### **1) Dispute about the existence of a publicly accessible purpose-built road in a municipality**

The Defender opened an inquiry on his own initiative in the matter of a dispute about the existence of a purpose-built road. He ascertained during the inquiry that the highway administrative authority entirely lacks qualified methodological assistance from the regional authority or, as the case may be, the Ministry of Transport. He therefore produced a report on the inquiry with a detailed description of how a road arises, how a publicly accessible purpose-built road differs from a local road and how the highway administrative authority should proceed in cases where access to a road is restricted. The manner in which the highway administrative authority determines the existence or the lack of a road was one of the basic issues dealt with. The Defender stated that in his opinion there may be a procedure pursuant to Section 142 of the Code of Administrative Procedure where the administrative authority issues a **declaratory decision**.

The regional authority and the Ministry of Transport did not agree with the Defender; they promote the certificate of existence of a road pursuant to Part IV of the Code of Administrative Procedure. The Defender therefore now requires that the Ministry of Transport performs its own analysis of the possibilities available to the highway administration authorities, which should determine as to what procedure the authorities should take in settling disputes about the existence and extent of use of a purpose-built road. The Defender also insists that the Ministry issues a **methodology** for settling disputes about the existence of a road on a specific plot of land that will include a description of the practical procedure demonstrated on model examples.

## **2) Procedure of the Ministry of Finance in fixing the maximum price of Visudyne**

In association with inquiring into an individual complaint pertaining to the amount of patients' supplementary payment for Visudyne (a medicine), the Defender's deputy was informed that Visudyne is supplied by Novartis to the Czech Republic for a higher price than in other EU member states (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 Visudyne was issued in accordance with valid legislation.

A meeting was subsequently held at the Ministry of Finance, aimed at answering the question of why the Novartis preparation was supplied to the Czech Republic for a higher price than to other EU member states (except Slovakia). The representatives of the Ministry stated that the manufacturer had applied for the first registration of the pharmaceutical in the Czech Republic and thus there had not been any ordering price lists applicable to other European states at the time of fixing the maximum price. The offered price also seems to have been influenced by the low prevalence of the disease concerned in the Czech Republic and thus the prospect of a lower profit. It was agreed in conclusion of the meeting the Ministry would send to the deputy all the basic documents that had served for fixing the maximum price of Visudyne so that she could judge the procedure of the Ministry in a qualified manner and consider further procedure in the inquiry.

## **3) Provision of vegetarian meals to convicts**

The Defender opened an inquiry against Valdice Prison where some prisoners were unsuccessful in requesting a vegetarian diet based on their beliefs. The Act on Imprisonment stipulates that the requirements of the cultural and **religious traditions of convicts** shall be taken into account in providing food. Since Valdice Prison had long been unwilling to accept proposals for at least a provisional solution, the General Director of the Prison Service was advised of the matter. Currently, after his intervention, the prison allows convicts to substitute meat with non-meat food provided that certain additional conditions are met.

## **4) Inquiry against the embassy in Hanoi**

In an inquiry against the embassy in Hanoi the Defender found the existing practice (where a record is drawn up of an interview with the applicant and subsequently sent to the Foreign Police without authorisation by virtue of the applicant's signature) as insufficient and a deficiency in the visa process. There is not any checking mechanism in the Defender's opinion that would provide for checking the impartiality of the record in relation to the actual contents of the interview. The lack of checks has a fundamental impact on the granting/non-granting of the visa by the Foreign Police. The existing model also leaves room for potential corruption in deciding on applications for visas. The Defender proposes as a remedial measure that the record of the interview with the applicant be signed by the person concerned as an act of consent to the contents and simultaneously as confirmation of authenticity. The Defender acquainted the authorities concerned with his conclusions and expects their response to the ascertained maladministration.

### **III. Inquiries on the complainant's initiative**

#### **1) Removal of old burdens on the environment**

The deputy of the Defender opened an inquiry on her own initiative into the procedure of the relevant authorities in the matter of removal of old burdens on the environment in the Klatovy-Luby agricultural premises that had been surrendered to the complainants through restitution. She stated that the relevant authorities had failed to evaluate in a convincing manner the expert opinions furnished by the complainants, which document that contamination by a former pesticide deposit puts surface water and groundwater at risk. The deputy furthermore recommended to the complainants in her report that they use the opportunity to obtain a part of the money needed from European funds. She simultaneously commenced negotiations with the Ministry of the Environment to ensure that in setting up the operational programme "Environment", the Ministry include cases where an environmental burden involves persons to whom real estate has been surrendered through restitution. The deputy is now awaiting the statement of the relevant authorities and will consider further procedure.

#### **2) The situation of Polish labourers employed in Škoda Auto a.s.**

The Defender received a statement on a follow-up inspection performed by the Area Inspectorate for the Moravian and Silesian Region at the Zetka Auto s.r.o. agency. In the follow-up inspection at the employer performed after the Defender issued a report on an inquiry, the Inspectorate ascertained extensive shortcomings on the part of the agency involving non-observance of the obligation to ensure that the working and salary conditions of a temporary employee are not worse than those of a comparable permanent employee. The employee was tasked with taking a measure to remedy the ascertained shortcomings and administrative proceedings were opened on the imposition of a fine for committing an administrative infringement. The Defender continues to monitor the procedure of the authority.

#### **3) Inquiry in the land register section**

##### ***Deletion of mortgage right from the land register***

The Land Registry Office performed a deletion of mortgage right on the basis of furnished agreements on the assignment of receivables that were intended to result in the merger of rights and obligations with respect to the receivables concerned within a single party. However, the deputy of the Defender ascertained during the inquiry into the procedure of the Land Registry Office that the deeds intended to document the assignment of the receivables secured by virtue of mortgage right had been furnished to the authority merely as copies. In this respect the deputy reproached the land registry office for having been satisfied with mere copies of the agreements that were to document the gradual passage of the secured receivable. The deputy currently awaits the statement of the authority on the ascertained shortcomings.

### ***Correction of an error in the land register***

The deputy of the Defender closed an inquiry into a complaint demanding correction of an error in the land register. In the report on the inquiry, the deputy in particular criticised the unreasonable periods of time it took the relevant Land Registry Office to handle the complainant's applications. The head of the office concerned gave information on the basis of the Defender's call about the measures taken by him to shorten the periods of time required for handling individual applications. Additional personnel were hired for the unit dealing with the correction of errors in the cadastral records, which should shorten the time required for handling individual applications.

### **4) Inquiry into the procedure of the Council for Radio and Television Broadcasting**

The Islamic Foundation addressed the Defender in March 2007 with a complaint about the procedure of the Council for Radio and Television Broadcasting in administrative proceedings directed against Czech Television due to a possible violation of impartiality and balance of television broadcasting (the alleged impartiality violation occurring by broadcasting the coverage "*Já, muslim*" (or "*I, Muslim*") in the *Infiltrace* (or *Infiltration*) programme). The complaint indicated that the Council had halted the administrative proceedings concerned and advised the complainant thereof without any additional explanation. The Council had also refused to provide information on the course of administrative proceedings to the complainants.

The deputy of the Defender concluded after an inquiry that the complainant should have been provided with information about the administrative proceedings as well as a justification of the Council's decision on the basis of the Act on Free Access to Information and the relevant provisions of the Code of Administrative Procedure. The Council has not commented on the ascertained shortcomings to date.

### **5) Removal of children for housing reasons**

The Defender found serious maladministration in the procedure of the body of social and legal protection of children (ASLPC), both in connection with filing a motion for ordering a preliminary injunction and in deciding on the awarding of children to pre-foster care. The Defender's opinion is that in a situation where the mother had advised the ASLPC of her decision to deal with her adverse housing situation by moving to her parents, the motion for preliminary injunction removing the child from the mother should no longer have been filed. The Defender furthermore stated that the ASLPC had exceeded its powers when issuing a "*confirmation*" for the hospital personnel not to release the children into their parents' care without consent from the ASLPC. The medical personnel then illegally refused to surrender the children to their mother and thus prevented her from leaving with the children to their grandparents in Slovakia. The Defender furthermore finds maladministration in awarding the children to pre-foster care as the situation in the family had been so stabilised at the time of issuing the decision that it would have been appropriate to negotiate return of the children to the family. The children's contact with the parents was interrupted in the subsequent pre-foster care. The Defender attributes the situation occurring to poor preparation of the pre-foster care and insufficient guidance

of the foster parents by the ASLPC. The Defender awaits a statement of the authority on the ascertained maladministration and will consider further procedure.

## **6) Poor working conditions**

The Defender received a complaint about the manner in which a health authority administered filings about poor working conditions (due to malfunctioning heating, ventilation and air-conditioning equipment) at an ASKO NÁBYTEK worksite. The health authority repeatedly failed to respond to the complainant's filings. The deputy of the Defender opened an inquiry into the matter and addressed the Chief Public Health Officer who ensured remedy and inquired into the complaints. The inquiry subsequently proved the complaints justified. Given that in the meantime the complainant had to change her job, the deputy insists on the adoption of measures that will rule out reoccurrence of the situation.

## **7) Unauthorised dumping of waste on a private plot of land**

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

The Defender's deputy reproached the planning authority for a number of shortcomings. 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 pointed out that the regional authority refused to assign the matter to a different planning authority in spite of the fact that the head of the planning authority concerned had declared himself prejudiced.

The Ministry requested files from the Regional Authority on the basis of the aforementioned statement in order to review the mentioned decisions. It simultaneously reproached the Regional Authority for its unwillingness to charge another planning authority with the further procedure in the case as this had resulted in unnecessary delays in the matter. The Regional Authority subsequently tasked another planning authority with proceeding in the case. The latter then informed the deputy that it had performed an examination on site in the matter and would continue taking further steps.

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 Prague's 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 is often missing.

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

As already mentioned in the report for the 3<sup>rd</sup> quarter of 2007, follow-up systematic visits in selected types of facilities were under way in the period under scrutiny (involving social care institutions, police cells, facilities for the detention of foreigners, institutes for long-term patients and prisons and reformatories).

### **Social services facilities**

The Defender made follow-up visits to the **Social Care Institution for Physically Handicapped in Hořice v Podkrkonoší** and to the **Home with Special Regime in Bolevec**. The results of the findings in the follow-up visits were very different. While the Defender appreciated good will, gradual implementation of the recommendations and endeavour to meet legal requirements in the Bolevec facility, he had to state that most of his recommendations had not been respected or implemented in the Hořice institution. Given the serious shortcomings, the Defender negotiated with the Regional Authority of the Hradec Králové Region (as the founder) on October 3, 2007, about specific measures that would result in implementation of the recommendations and a gradual fulfilment of quality standards in the facility concerned.

### **Police cells**

Of the nineteen **police cells** visited in 2006, the Defender conducted follow-up visits to five facilities. The visits were all conducted unannounced, two of them in evening hours and in the early morning on a Sunday. The Defender ascertained that his recommendations had been implemented, e.g. (1) an alteration of internal regulations, (2) the possibility to choose a doctor, (3) the provision of meals also during the night, or (4) removal of handcuffing rails. Recommendations concerning two lighting regimes or optical shielding of sanitary facilities from the rest of the cell remain unmet.

### **Facilities for the detention of foreigners**

Visits to two facilities, in **Poštorná** and **Bělá-Jezová** were conducted in the system of follow-up visits. Of the Defender's recommendations, the drawing up of (1) translations of written notifications of the rights and obligations and (2) improvement of the material conditions in the so-called high security regime had been implemented. For example the following recommendations remain unimplemented: (1) foreigners (unlike convicts for example) do not have lockable cabinets, (2) translations of texts acquainting foreigners with the nature of the investigative acts had not been obtained. Negotiations are in progress with the Refugee Establishments Administration of the Ministry of the Interior in this respect.

### **Institutes for long-term patients**

Visits in two **institutes for long-term patients** (ILP) were conducted under the system of follow-up visits, in **Nejdek** and **Moravské Budějovice**. *Inter alia* the

following recommendations had been implemented: (1) the internal regulations and forms had been redesigned, (2) delivery of small purchases to patients had been introduced, (3) internal rules for contact with the court had been adjusted in one institute, (4) both of the visited institutes had taken partial steps to enhance the privacy of patients. Persisting shortcomings include the following: (1) the check-in procedure with the patient is not carried out in privacy, (2) patients are not provided with lockable spaces, and (3) privacy in performing therapeutic interventions has not been ensured.

## **Prisons**

In the period under scrutiny, the Defender conducted follow-up visits in three **high security prisons** (the **Bělušice**, **Plzeň–Bory**, and **Valdice** prisons). The following recommendations had been implemented: (1) rearrangement of the outdoor spaces available to the convicts, (2) extension of the activities offered to the convicts, and (3) higher protection of potential victims of violence. On the other hand, in particular the recommendation in which the Defender pointed out the missing legal regulation for a regime with enhanced technical and structural security remains unimplemented.

## **Facilities for the exercise of institutional and protective education**

Of the four institutions for the exercise of institutional and protective education visited in 2006, a follow-up visit was conducted in the **Polanka nad Odrou reformatory**. The facility had implemented *inter alia* the following recommendations: (1) the institute has employed a psychologist, (2) the boys are allowed to wear their own clothing, (3) boys in institutional education are now allowed to receive visitors and outings are permitted in accordance with the law. However, practical training has not been provided for to date and the material conditions for receiving visitors have not improved.

In Brno on January 20, 2008

JUDr. Otakar M o t e j l  
Public Defender of Rights