

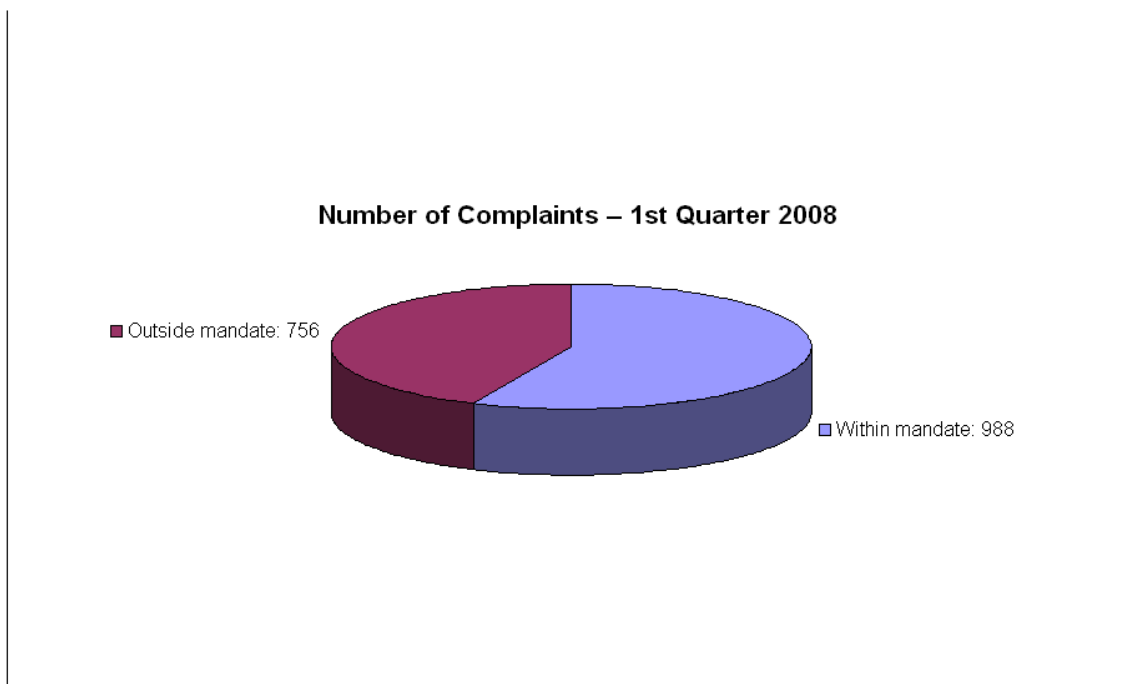
Report for the First Quarter of 2008

Information on Work Provided by the Public Defender of Rights 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 January 1 to March 31, 2008

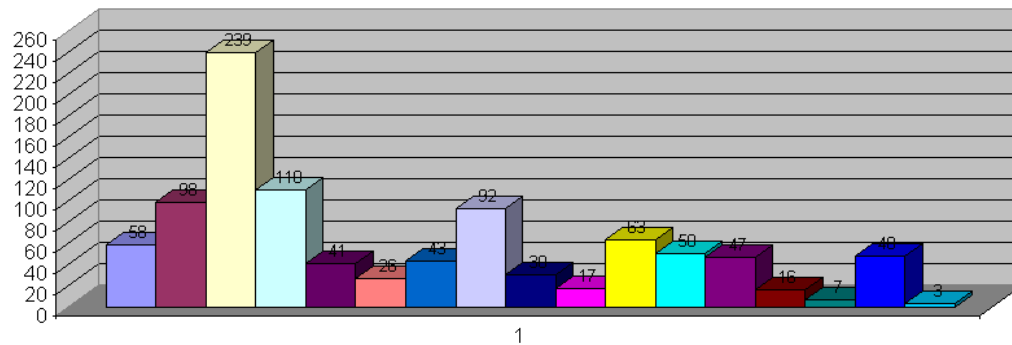
The Public Defender of Rights (hereinafter the “Defender”) submits information on his work and activities in the period under scrutiny to the Chamber of Deputies of Parliament of the Czech Republic and simultaneously informs the Deputies of the current state of public administration as reflected in the complaints dealt with. The contents of this report are a continuation of the information on work for the fourth quarter of 2007.

A. General Information on the Activities of the Defender

Number of complaints received and handled



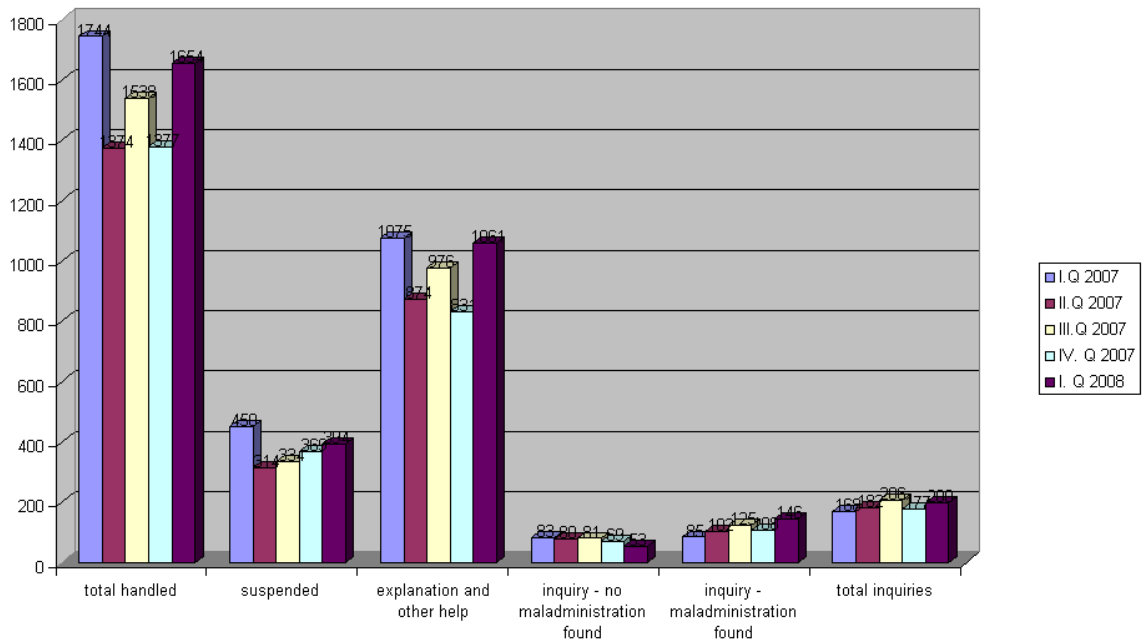
The Defender received **1,754 complaints** in the first quarter of 2008, of which **988 (56%)** were within the Defender’s mandate as defined by the law and **756 (44%)** were outside.



Law and Restitution	202 Public Health Service and Health Care
Social Security	204 Construction and Regional Development
Taxes, Fees and Customs Duty	206 Protection of the Environment
Protection of the Rights of Children, Young People and Families	208 The Army, the Police and the Prison System
Foreign-Related Affairs	210 Internal Administration
Public Court Administration	212 Transport and Telecommunications
Admin. Sanctions and Protect. Sect 5 Civ. Code	214 Admin. of Employment and Labour
Supervision of Self-government, Right to Information	216 Other unlisted areas
Admin. of Public Prosecution	

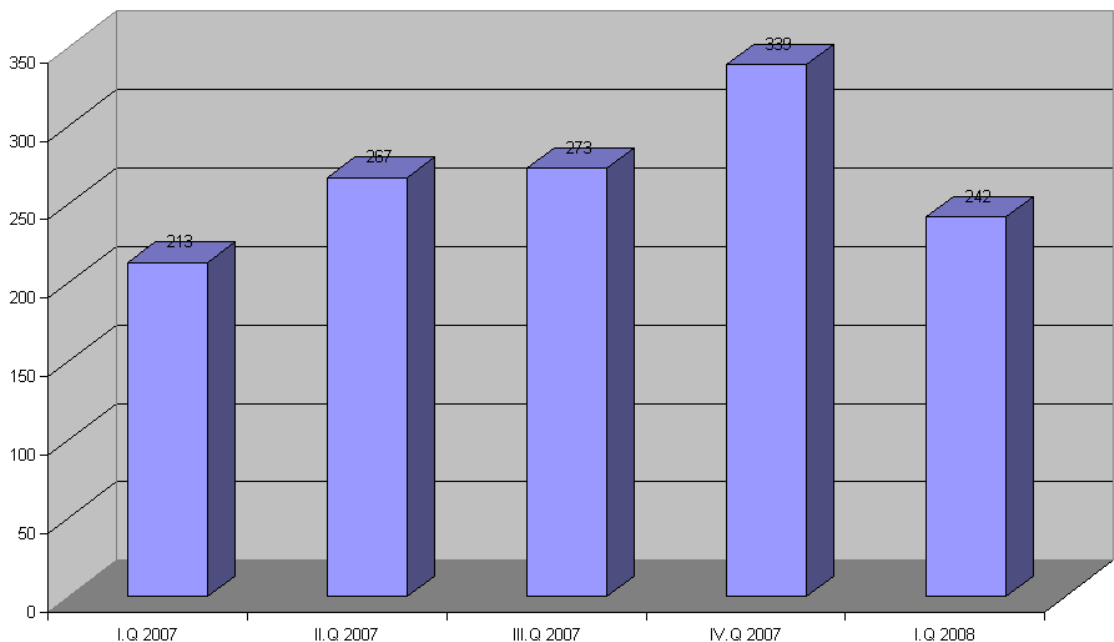
The structure of the received complaints by legal area has changed only slightly over time. **Social security** is consistently the area with the highest rate of complaints (239), particularly concerning pensions and the provision of social benefits. The second most numerous group of complaints in the first quarter of 2008 were those in the area of **construction and regional development** (110), a majority of which related to zoning proceedings, planning permission and approval proceedings. Complaints in the area of **healthcare** ranked third (98). 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** 1,654 complaints during the first quarter of 2008, and **closed** 200 inquiries, where which maladministration by an authority was found in 146 (73%) cases.

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 first quarter of 2008, **242 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 authorisation to make recommendations on legal regulations pursuant to Section 24 (1) (c) of the Public Defender of Rights Act

1) Comments on the draft amendment to the Employment Act

concerning: Act No. 435/2004 Coll. on Employment

The Defender's comments were primarily related to the relationship between the Employment Act and the draft Anti-Discrimination Act. Furthermore, the Defender concentrated on issues associated with the registration of jobseekers (detailing of their obligations vis-à-vis labour offices, defining the circumstances under which a jobseeker may be excluded from the register, etc.) The Defender also paid attention to the issue of the so-called 'green card' for foreigners.

2) Comments on the draft Act on Environmental Impact Assessment

concerning: Act No. 100/2001 Coll. on Environmental Impact Assessment

In the material, the Defender opined on the issue of assessment of the effect of the surface treatment of metals on the environment pursuant to Act No. 100/2001 Coll. The Defender proposed an adjustment of the assessment criteria based on the volume of the vessels used for the surface treatment of metals (the Defender proposes to leave it based on the treated surface only with respect to varnishing plants).

3) Comments on the draft Distraint Code

concerning: Act No. 120/2001 Coll. on Court Executors and Distraints (Distraint Code)

The Defender emphatically rejected attempts at curtailing a property that may be in the exclusive ownership of other than the liable person. The Defender also pointed out the inappropriateness of the difference in the scope of the curtailed property in the case of enforcement of a decision by a court and in the case of distraint. He simultaneously opposed the attempts of the draft's authors to curtail the account of the liable person's spouse without further considerations. In relation to the inspection work of executors, the Defender expressed disagreement with the fact that the draft makes initiation of criminal prosecution of a court executor conditional on the consent of the Minister of Justice.

4) Comments on the draft Act on Waste

concerning: Act No. 185/2001 Coll. on Waste

The Defender pointed out that the key thing from the perspective of prevention of illegal waste management is to stipulate the monitoring of the movement of waste and its management in real time (i.e. in particular to interlink the waste management records and the records on the operated facilities with those in the transport of hazardous waste, as well as continuous comparison and evaluation of the data from the aforementioned records).

5) Comments on the draft amendment to the Act on the Organisation and Administration of Social Security

concerning: Act No. 582/1991 Coll. on the Organisation and Administration of Social Security

In his comments, the Defender pointed out the mutual links between the review work of the Czech Social Security Administration and the Code of Administrative Procedure. In this respect, he also concentrated on the issue of the court review of the decisions of the body of social security in pension insurance matters.

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

Proposal of the Ministry of the Interior for annulment of some provisions of the Ostrov municipality Order No. 1/2005, the Market Rules, as amended by Order No. 3/2005

concerning: Act No. 128/2000 Coll. on Municipalities (Local Government System), Act No. 455/1991 Coll. on Trade Licensing (Trade Licensing Act), Constitution of the Czech Republic, Charter of Fundamental Rights and Freedoms

The Defender entered proceedings on a proposal of the Ministry of the Interior for annulment of an order by the Ostrov municipality. In his statement, he supported the proposal of the Ministry in the section concerning the regulation of the sale of goods by means of individual consents of the municipal council. Like the Ministry, the Defender holds the view that the places for the sale of goods/provision of services outside a place of business must be defined directly in an order (or, as the case may be, an annex thereto) instead of in the form of *ad hoc* consents granted by the municipal council. The Defender therefore proposed annulment of the relevant provisions of the contested order.

Proposal of the Ministry of the Interior for annulment of some provisions of the generally binding decree of the Plchov municipality No. 1/2005 on Local Fees

concerning: Act No. 128/2000 Coll. on Municipalities (Local Government System), Act No. 565/1990 Coll. on Local Fees, Act No. 13/1997 Coll. on Surface Communications, Constitution of the Czech Republic, Charter of Fundamental Rights and Freedoms

The Defender entered proceedings at the Constitutional Court also in this case and in his statement he supported the proposal of the Ministry of the Interior for annulment of the relevant parts of the contested generally binding decree (annulment of those property lot numbers that inherently cannot be regarded as a concourse as they are publicly accessible plots of land). However, as opposed to the proposal of the Ministry, the Defender stated that the owners of the plots of land designated as a concourse in generally binding decrees of municipalities should not be payers of the fee for the special use of a concourse, since in such cases the exercise of their ownership title is *de facto* made subject to a fee. The owner of a plot of land designated as a concourse is limited already by having to suffer the so-called common use of the concourse. Making a concourse subject to a fee for so-called special use (e.g. in the placement of an advertising installation or creation of a parking place) may then in a number of cases result in making the exercise of ownership title subject to a fee, which is not in accordance with the constitutional protection of ownership. The Defender simultaneously expressed his opinion that the accessibility of such plots of land should be primarily achieved using the institutes of the building law, the Act on Surface Communications or by means of the Trade Licensing Act (market regulations).

Proposal of the Ministry of the Interior for annulment of the generally binding decree of the Budyně nad Ohří municipality No. 2/2005 on the Setting of Conditions for Burning Solid Fuels

concerning: Act No. 128/2000 Coll. on Municipalities (Local Government System) as amended, Act No. 86/2002 Coll. on Clean Air Protection as amended, Constitution of the Czech Republic, Charter of Fundamental Rights and Basic Freedoms

In these proceedings, the Defender disagreed with the Ministry of the Interior, which holds the view that generally binding decrees must not overlap with the regulation stipulated in laws. Given that in the case concerned, the obligations concerning the burning of waste are stipulated in the Act on Clean Air Protection, the Ministry of the Interior presumes that the obligations stipulated in the contested decree (e.g. the prohibition of the burning of fuels in boilers not designed for such fuels, prohibition of the burning of waste in open fires, etc.) are imposed at variance with the constitutional order.

The Defender holds the view that municipalities are best aware of the local situation and that there is no more suitable and apposite method of legal regulation of a local situation than the stipulation of rights and obligations by means of legal regulations issued by local self-governments. As opposed to the Ministry of the Interior, the Defender does not share the opinion that the regulations of regional self-governments absolutely must not overlap with the legislation. In the case concerned, municipalities may also adopt generally binding decrees for environmental protection (Section 10 (c) of the Act on Municipalities). The Defender therefore proposed dismissal of the proposal of the Ministry of the Interior.

However, the Defender simultaneously criticised a provision of the contested generally binding decree, which prohibits “*the acquisition of boilers for burning solid fuels without a certificate of environmentally-friendly burning of the heat source*”. The Defender holds the view in this case that by virtue of the aforementioned provision, the municipality encroaches upon the ownership title as it prohibits an acquisition.

The acquisition in itself may not put the public interest of clean air protection or a private interest of persons at risk. For the aforementioned reasons, the relevant provision of the generally binding decree unreasonably encroaches upon the constitutional protection of ownership title. The Defender therefore proposed annulment of the relevant article of the generally binding decree.

C. Presentation in the Media and Communication with the Public

The media published or broadcast 1,052 news items, coverage and interviews pertaining to the work of the Public Defender of Rights in the first quarter. National television channels attended to the work of the Public Defender of Rights in 69 pieces of coverage and news items; radio stations paid approximately the same attention to the Defender.

- three **press conferences** and two **extraordinary briefings** took place in the period under scrutiny.
 - The press conference in January was dedicated to heritage preservation. Journalists were acquainted at a press conference in February with the Defender's conclusions in the inquiry into the mass taking of DNA samples in prisons. At the same press conference, the Defender gave information on the steps of the Minister of Transport who promised to initiate review proceedings with respect to the erroneous fining of citizens who caused a traffic accident in which only they were injured. The theme of the press conference in February was permanent residence.
 - Both extraordinary briefings were related to the issue of social and legal protection of children. The February briefing took place on the occasion of the Family and Child conference. At the briefing in March, the Defender presented his position on the publicity devoted in the media to cases involving children and also the issue of failure to respect court decisions in the area of family law.
- The Defender provided 13 **press releases**, including on the failure to observe the working conditions of the Polish labourers employed in Škoda Auto, the conclusions of the inquiry into the procedure of the Minister of Culture in not declaring the Tesco department store in Liberec to be cultural heritage and opined also on the issue of misleading advertising or registration on the Internet.
- The Public Defender of Rights and his deputy appeared in news and current affairs programmes of Czech Television, TV Nova and TV Prima and Czech Radio stations. The Defender acquainted the public with his positions on the determination of a purpose-built communication, inactivity of authorities concerning the unauthorised operation of a noisy café, etc. in the current affairs programmes **Černé ovce** (or *Black sheep*), **Nedej se** (or *Don't Give Up*) and **Ta naše povaha česká** (or *Our Czech Character*). The Defender's opinions in matters concerning the residence of foreigners in the Czech Republic were also presented in the Czech Radio programme in English and a programme on the Defender's work was broadcast by the Austrian ORF Television in the *Heimat fremde Heimat* (or *Home Strange Home*) programme.

- In March, Czech Television began to broadcast a new, already the fourth, series of **A Case for the Ombudsman**.

1,463 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.

180,725 visits were logged in 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

Meeting with foreign delegations

- **with the justices of the Constitutional Court of the Lithuanian Republic** (the relationship between the Constitutional Court and the Public Defender of Rights; on February 27, 2008)
- **with the Kyrgyz ombudsman** (legal framework of the ombudspersons in both countries, method of handling complaints, etc.; on March 10, 2008)

Conferences and workshops organised

- ***"The Public Defender of Rights and Distraints"*** (the issue of supervision over distraints, erroneous procedures of executors, proposals for legislative amendments; on January 29, 2008)
- ***"Family and Child"*** (rights of the child, removal of children, activities of the bodies of social and legal protection of children; on February 25, 2008)

Domestic meetings

- **in the matter of the so-called privatised restitutions** (with the Deputy Minister of Finance, on January 3, 2008)
- **in the matter of the record-keeping of waste** (with the representatives of the Ministry of the Environment, on January 10, 2008)
- **on the issues of the administration of employment** (with representatives of the Ministry of Labour and Social Affairs, on January 22, 2008)
- **on noise pollution** (with the Chief Public Health Officer, on January 31, 2008)
- **on public supervision over the work of experts and interpreters** (with the representatives of the Chamber of Experts and Interpreters, on January 25, 2008)
- **in the matter of the taking of DNA samples** (with the head of the Office for Personal Data Protection, on March 11, 2008)
- **on the issues of the exercise of public court administration** (with the presiding judges of regional courts, on March 25, 2008)
- **on the issue of the prison system** (with the General Director of the Prison Service, on March 26, 2008)

Meetings at the Chamber of Deputies of Parliament

- **on the issue of the denial of contact with a child placed in an institutional facility** (at the Committee on the Rights of the Child on January 21, 2008)
- **on the draft so-called Antidiscrimination Act** (at the Constitutional and Legal Committee, on January 16, in the plenum of the Chamber of Deputies, on February 5, 2008)
- **on the draft amendment to the Act on Courts and Judges** (with the representatives of the Constitutional and Legal Committee, on February 28, 2008)
- **on the out-of-court settlement of consumer disputes** (at the Subcommittee on Consumer Protection, on March 26, 2008)

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

Although it seemed initially that the Vsetín municipality had implemented most of the Defender's recommendations, its approach to the evicted families, particularly the Tulej family evicted to Čechy pod Kosířem, remains unsatisfactory. The house concerned is in such a poor technical condition that the municipal authority in Kostelec na Hané had to order elimination of the defects putting peoples' lives and health at risk. As a result, substitute housing or, as the case may be, funds required for the maintenance and redevelopment work on the premises must now be found for the affected family. The alarming aspect of the situation of the Tulej family is that it was evicted from Vsetín notwithstanding the fact that its members had no debts with respect to the municipality.

The Defender organised a meeting with the mayor of Vsetín and the mayor of Čechy pod Kosířem where a compromise was reached according to which the Vsetín municipality (as the present owner of the premises) would provide funds for the restoration of the damaged house.

2) Unauthorised disposal of waste in Libčany near Hradec Králové

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 steps of administrative authorities that did not prevent unauthorised and hazardous conduct in time. Last but not least, the inquiry is 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 output from such records. (In this respect, the deputy commented on the draft amendment to the Act on Waste – see section B of this Report).

A report on the inquiry was recently drawn up, in which the deputy reproached the authorities for inconsistent inspection and insufficient co-operation in inspection work, both of which helped enable the unauthorised disposal of waste.

II. Inquiries opened on the Defender's own initiative

Fixing the price of Visudyne

Based on the inquiry into an individual complaint pertaining to the amount of patients' supplementary payment for the Visudyne medicinal product, 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 product of Novartis was supplied to the Czech Republic for a higher price than to other EU member states (except Slovakia).

Although the price control assessments of the Ministry of Finance were applied in a formally correct manner, questions remain concerning the fact that the administrative body had failed to obtain all the relevant underlying documents for the decision from the foreign supplier of the medicine (in particular information on the actual production costs). Thus the maximum price (there being no comparable product) of the medicine was based only on the price fixed by the supplier in the order price list. However, the price changed in subsequent years depending on the development of inflation, customs tariffs and the rates in the exchange market, i.e. independently of the changes in production costs. The deputy expressed her conviction in this respect that there was a relevant risk due to the lack of price calculation, consisting of the possible unreasonableness of the maximum price based only on the price specified in the order price list.

Given that the issue of price fixing and payments for medicines has been dealt with in an entirely new manner since January 1, 2008 (in the competence of the State Institute for Drug Control and the Ministry of Health), the deputy decided to close the inquiry against the Ministry of Finance, being aware that the new system contains the possibility of reviewing price fixing in the administrative proceedings regime and it simultaneously complies with the requirements of the so-called "*transparency directive*" (Council Directive No. 89/105/EEC relating to the transparency of measures regulating the pricing of medicinal products for human use).

Fees for medical care in asylum centres

Since January 1, 2008, when the amendment to the Act on Public Health Insurance came into force, the Defender has noted problems concerning the accessibility of medical care for foreigners applying for international protection. Medical facilities are obliged to collect regulation fees, under threat of a CZK 50,000 fine, from all not exempt under the law, i.e. including asylum seekers. However, the latter are not allowed to work legally until the expiry of one year from the commencement of the proceedings on the granting of asylum and depend on pocket money paid by the state in an amount of CZK 16 per day. Asylum seekers living in private facilities instead of an asylum centre may receive an allowance of 1.3 to 1.6 times the minimum living standard depending on the number of family members, although only for a maximum of three months. Afterwards, they find themselves entirely without the possibility of a legal income.

However, even the pocket money is not paid without exceptions. Thus for example the foreigners applying for asylum in the transit area of the international airport or those placed in the Velké Přílepy Reception Centre are not entitled to pocket money pursuant to the law. Pocket money is also no longer paid to those foreigners who must be hospitalised. The Defender finds it unethical in this situation that those who are unable to obtain means for payment for objective reasons face problems with the payment and claiming of the fees. The most appropriate solution, according to the Defender, is to exempt this group from the fees or transfer the costs of the payment of the fees to the state.

Existence of a publicly accessible purpose-built communication

The Defender opened an inquiry on his own initiative into a dispute about the existence of a purpose-built communication in the Makovice municipality (the Central Bohemian Region). Based on a previous instruction, the complainant addressed the municipal authority with a request for determination of whether a publicly accessible purpose-built communication exists on certain plots of land. It followed from the advice of the municipal authority that there is not any publicly accessible purpose-built communication on the plots of land concerned as no such fact is indicated in the land register. The Defender issued a report on the inquiry, in which he stressed that the existence or non-existence of a publicly accessible purpose-built communication cannot be deduced without further consideration from the information on the type of a plot of land in the land register. The Defender currently awaits a statement on his observations from the authorities concerned.

Ammonia refrigeration in ice hockey stadiums

The Defender has long been dealing with the safety risks associated with the operation of facilities where ammonia is used as refrigerant (this involves in particular indoor arenas, cold stores, etc.). The main reason for the inquiry consisted of doubts concerning the safety of such premises and the fact that the aforementioned facilities are not subject to the safety procedures under the Act on Prevention of Serious Accidents (Act No. 59/2006 Coll. as amended), since the quantity of ammonia involved usually does not reach the limits specified in the annex to the aforementioned Act.

After a detailed analysis of the matter (including the drawing up of an expert opinion), the Defender stated on the question of the safety of indoor arenas that the statements of the addressed administrative authorities indicate serious shortcomings that may arise in the area of prevention of serious breakdowns. Within the inquiry, a working meeting took place in the Office of the Public Defender of Rights in September 2007 with participation of representatives of the Ministry of the Environment, the Ministry for Regional Development, the Ministry of Labour and Social Affairs, the Ministry of the Interior, the Ministry of Industry and Trade and the Chief Health Officer. Agreement was reached at the meeting in that the Ministry of the Environment in co-operation with the other departments would draw up an analysis of the safety situation in indoor arenas in the Czech Republic (the analysis was performed on the basis of the underlying documents provided on the matter by the addressed regional authorities). The departments concerned promised at another working meeting to perform co-ordinated inquiries inspecting the safety of the most risky facilities (joint inspections of the Czech Environmental Inspectorate and the State Labour Inspection Authority are to be carried out in selected premises in the second half of 2008).

III. Inquiries on the complainant's initiative

Claiming of due health insurance premiums

The Defender's deputy reprehended the Metallurgical Employees' Insurance Company because it disproportionately burdened the liable party in claiming due amounts, thus breaching the principle of reasonableness of distraint proceedings. First of all, the insurance company lodged motions for the enforcement of decisions via a law office, which increased the costs of the distraint. In the deputy's opinion, it was reasonable to expect that the same employees who draw up payment assessments would also draw up motions for the enforcement of decisions (distrain). Forwarding the claiming of a debt to a law office can also be considered to be at variance with the principle of economy (as the disposal of funds of the public health insurance is concerned in these cases). Furthermore, the deputy reprehended the insurance company for claiming the due premiums and the due penalties separately. The latter procedure is also not in accordance with the principle of reasonableness as the separate claiming increases the costs of the distraint. Nothing prevented the health insurance company (the law office representing it) from claiming the due penalties and the due premiums by means of a single motion. This would reduce the burden on the liable party as well as that on the funds of the public health insurance. The insurance company did not identify with the legal evaluation of the deputy; as a result, a further inquiry into the matter is in progress, which among other things aims to clarify the steps of the insurance company in other similar cases.

Failure to grant indemnity for death in a concentration camp

A complainant was not granted indemnity as an orphan whose mother died in a concentration camp. The reason for denying the indemnity consisted in the fact that the complainant was unable to submit the death certificate. Based on an intervention by the Public Defender of Rights, the complainant contacted the special registry of the Municipal Authority of the Brno-Centre Area where she requested issue of a substitute death certificate. The latter request was successful and the Czech Social

Security Administration subsequently granted an indemnification in an amount of CZK 100,000 to the complainant.

Demolition of a villa in the Barandov heritage zone

The Defender inquired into the steps of the Department of Heritage Preservation of the Prague City Hall in the matter of issuing a positive opinion on the construction of an apartment house in a heritage zone. In the report on the inquiry, the Defender stated that the steps of the bodies of heritage preservation had been non-transparent and untrustworthy due to the contradictory statements of the Heritage Preservation Inspection and the Ministry of Culture. The Defender simultaneously proposed that the binding position of Prague City Hall be reviewed. Given that the administrative bodies concerned refused to implement the proposed remedial measures, the Defender decided to publicise the case at a press conference taking place on January 9, 2008. By taking the latter step, the Defender exhausted all the remedial measures bestowed on him by the law and closed the case.

Registration of title in the land register

A complainant disagreed with the steps of the land registry office for the Moravian and Silesian Region, which had refused to renew the previous condition of a registration of ownership title in the land register notwithstanding the fact that the Supreme Court had annulled the judgment of the District Court in Ostrava and the Regional Court in Ostrava on the determination of ownership. The Defender's deputy addressed the land registry office with a request for explanation, because the steps of the land registry office contravened not only legal principles, but also the internal instructions of the Czech Office for Surveying, Mapping and Cadastre. The land registry office then admitted its shortcoming and stated that it had opened proceedings for correction of the error, as a result of which the ownership title data will be corrected in favour of the original owners.

Fine for unlawful business activity

A complainant requested help with respect to sanction proceedings conducted by the trade licensing office of the Brno Municipal Office. The authority claimed that the complainant was actively conducting a licensed trade of "*registry keeping*" without a trade license, whereby she allegedly performed an unlawful business activity. The activity consists in the keeping of files received earlier, at a time the complainant had a trade license obtained pursuant to the previous legislation. Given that the state subsequently changed the conditions for the conduct of the aforementioned trade and the complainant failed to fulfil the legal conditions, she lacked authorisation for continuing to perform the trade and thus performed an unlawful business activity, in the opinion of the authority.

As opposed to the trade licensing office, the deputy opined that although the complainant's activity involved some elements of a trade, unlawful business activity was not the case, primarily given the specific manner of caring for the files resulting from the obligations in the area of archiving. As a result of the aforementioned obligations (given the periods applicable to the destruction of documents), agreements on the custody of documents must be concluded for long periods of time.

This in itself is an exceptional situation (compared with the activities of other traders) that places considerable demands on the long-term business plan of each trader. Although the rules for conducting business changed in 2005, the reality of entrepreneur relationships had to be respected as there were agreements concluded earlier whose fulfilment had to be ensured with regard to private law. Certain rights and obligations resulting from the agreements on the keeping of documents survive until now (and will continue to survive). This very fact cannot be labelled, without further consideration, as the performance of trade in the sense of the trade licensing law. Given that even the best business plan could not foresee that the “*rules of the game*” would be changed by the state in the course of events, the Deputy concluded that a fair interpretation of the Trade Licensing Act is that the activities performed by the complainant are not a trade in the sense of the Trade Licensing Act at all and, therefore, unlawful business activity cannot be the case. The deputy simultaneously stressed that the complainant has not been receiving new files into custody since 2005 and she only keeps the existing files for the rest of the time until expiry of the destruction deadlines. The deputy currently awaits a statement of the authority on her observations.

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

Systematic visits to mental homes are underway in the first quarter of 2008 and will continue in the second quarter. Systematic themed visits to homes for elderly people are simultaneously underway, specialised in negotiation on agreements on the provision of a social service (in particular for demented clients) and the correct differentiation and charging of the basic and facultative services. Attention is also paid to the issues associated with the regulation fees elderly people must pay to medical facilities.

Brno, April 20, 2008

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