

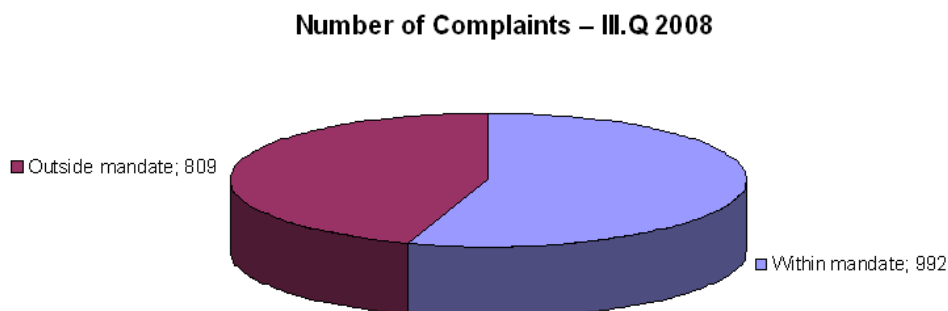
## Report for the Third Quarter of 2008

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 July 1 to September 30, 2008

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 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 second quarter of 2008.

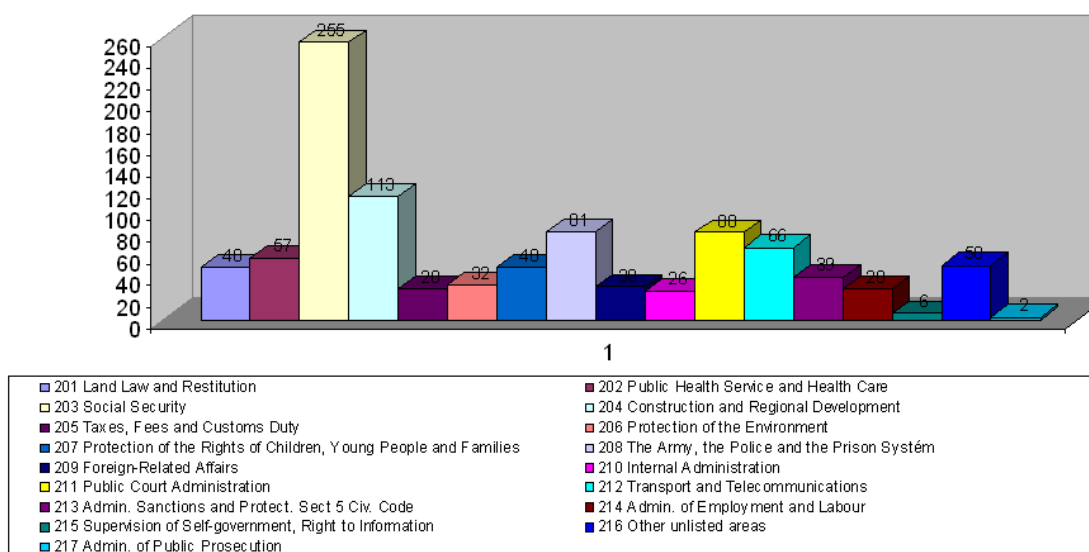
### ***A. General Information on the Activities of the Defender***

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



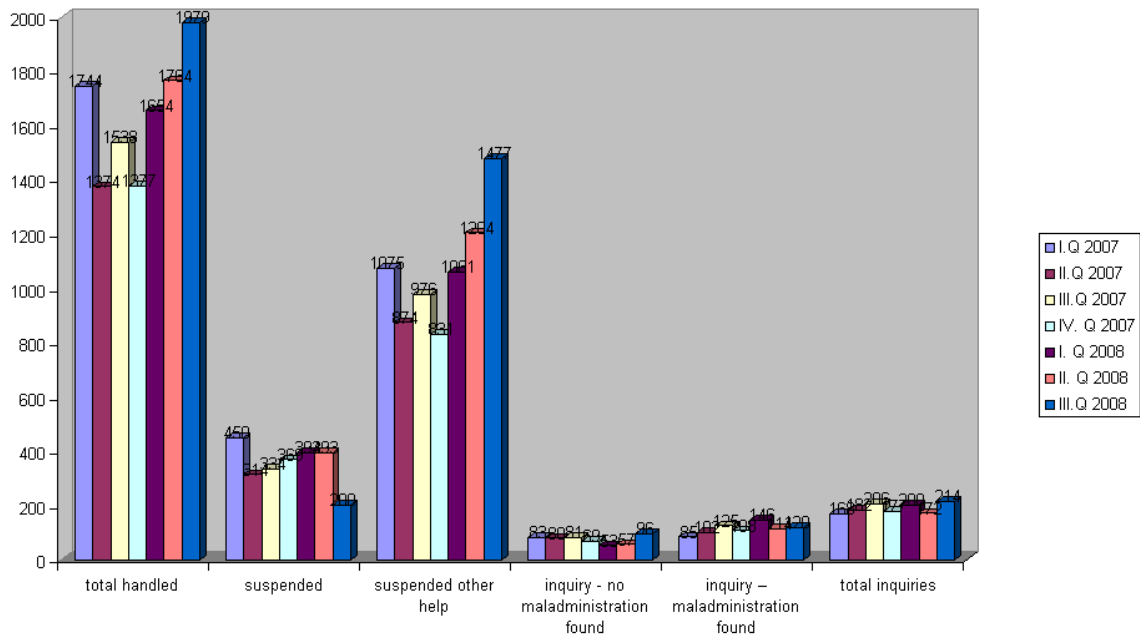
In the third quarter of 2008 the Defender received 20% more complaints than in the same period of the previous year. The Defender received **1,801 complaints**, of which **992** (55%) were within the Defender’s mandate, and **809** (45%) were outside.

### Structure of complaints by area – 3rd Q 2008



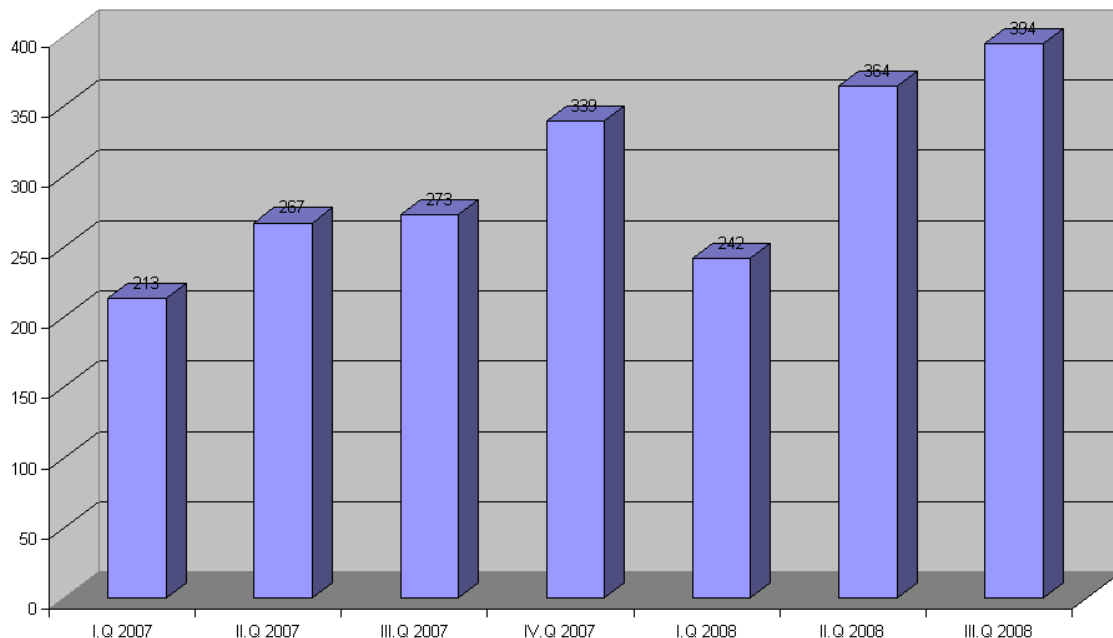
The structure of complaints by legal area has changed only slightly over time. **Social security** is consistently the area with the highest rate of complaints (255), particularly concerning pensions and the provision of social benefits. The second most numerous group of complaints in the third quarter of 2008 were those in the area of **construction and regional development** (113), a majority of which related to zoning proceedings, planning permission and approval proceedings. Complaints in the area of **public court administration** ranked third (83). Most complaints outside the Defender's mandate fall under the areas of **criminal law** (the 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** 1,979 complaints during the third quarter of 2008, and **closed** 214 inquiries, ascertaining shortcomings on the part of the authority in 128 cases (60%).

### 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 2008, **394**

**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. 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 Amendment to the Act on Social Services**

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

The Defender commented, in particular, on the absence of a requirement for direct contact between the person subject to assessment and the doctor (in effect, the aforementioned handicap of the legislation results in a decrease in the informative value of medical opinions in the given area). The Defender simultaneously pointed out the risks of (1) the decrease in the allowance for care in case of so-called shared care (2) exclusion of the doctor from the process of the application of provisions limiting the freedom of movement.

#### **2) Comments on the Amendment to the Decree on Copyright Fees**

*related: Decree No. 488/2006 Coll., stipulating the types of devices for the making of copies, types of unrecorded carriers of recordings and amount of lump-sum fees*

The Defender generally pointed out, in particular, the fact that the difference between paper and data carriers is diminishing in our information society. While the copyright act makes both "traditional copy machines" and "CD burners" subject to a fee, for the actual carriers of records/recordings it distinguishes between paper (not subject to a fee) and digital carriers (subject to a fee as unrecorded carriers). Yet the difference between the volume of data currently stored in one manner and the other has diminished to a considerable degree in the PC and Internet era.

The Defender pointed out some ungrounded disproportions in relation to the charge on the data carriers; he pointed out in particular that some data carriers are made subject to a fee depending on the data capacity, while in other cases the unrecorded carrier is made subject to a fee as such (notwithstanding its data capacity).

#### **3) Comments on the Amendment to the Act on Personal Identity Cards**

*related: Act No. 328/1999 Coll. on Personal Identity Cards*

First of all, the Defender proposed omission of the place of birth as mandatory data registered in the personal identity card. He simultaneously pointed out that the omission of permanent residence data from the new personal identity card would result in a rise in the number of requirements for issuing a certificate from the citizens

register. The aforementioned data will be requested from citizens for example by banks, as the latter are not bodies of public administration and the citizen will not be able to attach his/her identity card with a chip to a scanner in order for them to read additional data from registries.

#### **4) Comments on the Parliamentary Draft Amendment to the Act on Nature and Landscape Protection**

*related: Act No. 114/1992 Coll. on Nature and Landscape Protection*

The Defender disagreed on a matter of principle with the parliamentary draft. He pointed out that the control of public administration by the public and participation of the public in the decision-making processes are important qualitative indicators of a democratic society, notwithstanding that participation of the public is also stipulated by the *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (the *Aarhus Convention*). For the aforementioned reasons, the Defender finds deviation from international obligations and the principles of the democratic state of rule of law in the attempt to reduce participation of civic associations in planning permission proceedings.

#### **5) Comments on the Draft Act on Public Health Protection**

*related: Act No. 258/2000 Coll. on Public Health Protection*

The Defender rejected the effort of the Ministry of Health to cancel state supervision over hygienic requirements concerning children's playgrounds and sandpits. In this context, the Defender pointed out the public nature of such areas and that they serve children (hence there is a public interest in the preventive control of observance of hygienic requirements).

Furthermore, the Defender focused his attention on (1) definition of a protected outdoor space and (2) the effort of the draft's author to ensure that the health authority may for some roads issue permanent authorization for their operation despite legal hygienic limits having been exceeded. The Defender simultaneously pointed out that it is unacceptable (given Community Law) in air traffic that noise limits in indoor areas be assessed in relation to the so-called "*characteristic flight day*".

#### **6) Comments on the Draft Act on the Basic Citizens Register**

The Defender pointed out the practical problems that could arise in the case of preserving the definition of the "*place of permanent residence*" while simultaneously using new data, the so-called "address point" (the new address point may consist of a houseboat or trailer). He simultaneously argued that the definition of address point fails to include individual apartments in a structure. Furthermore, the Defender proposed that new legislation enable individuals in justified cases to ascertain data on the date and place of death of a deceased person (which is important for example for additional inheritance proceedings).

## **7) Comments on the Amendment to the Distraint Code**

*related: Act No. 120/2001 Coll. on Court Executors and Distraints (Distraint Code) and on Amendment to Certain Other Laws*

The Defender pointed out the need to deal with the issue of curtailment of a receivable from the bank account to which funds are commonly credited that are otherwise not subject to the exercise of the decision (wages, social benefits). The aforementioned condition results in a situation where a number of people temporarily find themselves entirely without funds. In this respect, the Defender sent a draft amendment to the Ministry of Justice that deals with the aforementioned issue in a comprehensive manner.

## **8) Comments on the Amendment to the Decree on the Rational Exploitation of Reserve Deposits**

*related: Decree No. 104/1988 Coll. on Rational Exploitation of Reserve Deposits, on Permitting and Notification of Mining and Notification of Activities Carried out by Mining*

In his comments, the Defender concentrated on the newly proposed definition of the terms “*endangered premises*”, “*affected premises*” and “*affected interest*”. The proposed changes substantially influence the position of the owners of real estate affected by mining. In this context, the Defender stated that empowerment to set the aforementioned definitions does not result for the Czech Mining Office from the empowerment provisions of the Mining Act and the Act on Mining Activities. Thus, the submitted draft amendment exceeds the framework of the empowerment provisions.

## **9) Comments on the Amendment to the Act on Public Health Insurance**

*related: Act No. 48/1997 Coll. on Public Health Insurance*

In addition to several technical recommendations, the Defender proposed removal of applicants for the granting of international protection from the obligation to pay regulation fees for the provision of health care. He repeatedly referred to the legally limited sources of income of the aforementioned group, which results in a situation where these persons do not have (and legally cannot have) sufficient means for paying regulation fees in the healthcare system.

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

### **Proposal of the Ministry of the Interior for annulment of the generally binding decree of the Budyně nad Ohří municipality No. 1/2005 on local fees**

*related: Act No. 128/2000 Coll. on Municipalities (Local Government System), Act No. 86/2002 Coll. on Clean Air Protection; 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 ownership title as it prohibits acquisition. The acquisition in itself may not put the public interest of clean air protection or the 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.

In its ruling of August 5, 2008, File Ref. Pl. ÚS 6/08, the Constitutional Court dismissed the proposal of the Ministry and left the contested decree in force with the exception of the clause which prohibited the acquisition of boilers. For the latter case, the Constitutional Court stated that *“the very acquisition of an objectionable boiler does not cause deterioration of air in the municipality, and therefore stipulating the prohibition of its acquisition deviates from the legal framework”*. To summarise, the decision of the Constitutional Court corresponded with the Defender’s view.

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

- The media published or broadcast 600 news items, coverage and interviews pertaining to the work of the Public Defender of Rights in the third quarter.
- Three press conferences took place in the period under scrutiny. In July, journalists were informed on the issue of **public roads** and obstacles on them. The Defender pointed out the most frequent and constantly repeating problems people address him with in this respect. The press conference in August was dedicated to **foreigner-related issues**. The Defender criticised the situation at the Foreign Police Inspectorate in Prague and gave information on the results of an inquiry into the activities of Czech consulates abroad. The Defender pointed out the insufficient and inconsistent provision of information to foreigners applying for a visa to the Czech Republic and the issue of the “*call centres*” introduced by some consulates. At a press conference in September, the Defender informed journalists of his new mandate in the area of **disciplinary proceedings** against presiding judges and deputy presiding judges. He simultaneously acquainted journalists with the results of inspections of the safety of use of ammonia in winter arenas.
- Furthermore, **the fourteen press releases issued** gave information for example of (1) the fines unlawfully claimed by mobile phone operators from heirs for early terminated agreements in cases where the client dies, (2) the necessity of a change in copyright fees for flash disks and portable hard disks, and (3) the right of citizens to express themselves during meetings of municipal assemblies. The Defender’s conclusions in the case of the extension and modernisation of the ski resort on Ještěd mountain generated interest among the media. The results of the inquiry into the steps of the authorities in the closure of a regional railway line from Děčín to Oldřichov u Duchcova also drew the attention of the media.
- A number of individual **media interviews** on television and radio debates also contributed to raised awareness of the Defender’s activities. The Defender and his deputy gave interviews and appeared in discussions in current affairs programmes of Czech Television, Czech Radio stations (Radiožurnál, ČRo2, ČRo6, the foreign service of Czech Radio and others.)
- After a pause during the holidays, Czech Television began to broadcast new episodes of the most recent series of the ***A Case for the Ombudsman***.

**1,378 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.

129,890 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***

### **Meetings with foreign delegations and participation in international conferences**

- **Meeting of “Visegrád Four” ombudspersons** (Bratislava, September 16 to 18, 2008)

### **Conferences and workshops organised**

- **round table meeting on Checking Observance of Employee Rights** (specialised workshop with the representatives of labour inspectorates, labour offices and non-governmental organisations, October 7, 2008)

### **Domestic meetings**

- **on draft healthcare laws, police registries, loss of medical records** (with the chairman of the Office for Personal Data Protection, July 29, 2008)
- **on the settlement of comments on the draft adjustment of the National Health Information System** (with representatives of the Office for Personal Data Protection and the Ministry of Health, August 18, 2008)
- **concerning prison issues** (with deputy General Director of the Prison Service, on August 19, 2008)
- **with respect to disciplinary action against presiding judges** (with the director of the Justice Department of the Ministry of Justice, August 28, 2008)
- **on settlement of comments on the draft amendment to the Act on Identity Cards** (with representatives of the Ministry of the Interior, September 25, 2008)
- **on studying medical records** (with the Minister of Health, on September 30, 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**

#### **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 failed to prevent such extensive, 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).

A report on the inquiry was recently drawn up, in which the deputy points out that although the relevant administrative authorities performed a number of inspections, the latter were, unfortunately, insufficient as they were aimed at ascertaining *"whether the company does correctly what it has been permitted to do, instead of ascertaining whether it is doing something that it has not been permitted to do"*.

The deputy also points out that the situation could at least have been partly prevented had there been a higher degree of cooperation of the administrative authorities and a consequent use of their powers (such as the possibility of entering other premises used for illegal activities).

Furthermore, it is obvious from the report on the inquiry that the legal record-keeping in the area of waste management and the manner in which it was used failed to fulfil its role as a tool enabling detection of discrepancies in the flow of waste.

Given the extraordinary seriousness of the case, the deputy recommends adoption of a number of specific remedial measures that will take two forms: On the one hand, there are application measures that may be implemented immediately and on the other hand, measures that require a change in the legislation.

The deputy has recently obtained statements from all the authorities addressed and is considering further steps.

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

### **1) Ammonia refrigeration in indoor arenas**

The Defender convened a meeting in December 2007, which resulted in an agreement on joint inspections by the Czech Environmental Inspectorate and inspectors of the State Labour Inspection Authority at indoor arenas that fail to meet safety standards regarding the potential leakage of ammonia.

The most frequently ascertained shortcomings included those in the area of work safety. In particular, arena operators fail to perform inspections of gas distribution facilities, keep records of inspections of overload valves and pressure gauges for functioning, set procedures for operators' tasks, appoint employees responsible for operation of pressure vessels, etc. Furthermore, tests of the tightness of the tanks intended for the storage of hazardous substances were not documented. The inspections also discovered that the arenas were not provided with safety signs for escape and evacuation of persons and written documentation for environments where there is a risk of explosion was missing.

The Defender once again addressed the Minister of the Environment and the General Director of the State Labour Inspection with a request for information as to how the ascertained shortcomings would be dealt with and how the results of the performed inspections would be further handled. The Defender, in particular, holds the view that single circuit systems of direct cooling that require a large quantity of ammonia should no longer be permitted for newly constructed or restored arenas; instead, more up-to-date and safer technologies should be used.

### **2) Work of the Land Fund**

The deputy of the Defender inquired into the supervision work of the Ministry of Agriculture in the matter of reviewing the management by the Land Fund of the Czech Republic. Specifically, plots of land were concerned that were used by third parties without corresponding title to the real estate (e.g. a lease agreement). It followed from the advice of the Minister of Agriculture that a themed inspection concentrating on the condition of non-leased plots of land had been performed by the Inspection Department of the Land Fund at 13 regional sites. The following measures were taken on the basis of the conclusions of the aforementioned inspection: 1) the system of public offering of the lease of plots of land was modified, 2) an interactive software tool was created, which enables the location of plots of land and their comparison with the so-called land blocks. According to the Land Fund, the individual regional sites have performed inquiries into the non-leased plots of land.

It followed from the advice of the chairman of the Executive Committee of the Land Fund that a considerable amount of state land was still used without the appropriate contractual title (lease agreements). The existing situation is also not satisfactory, because the area of the non-leased plots of land decreased only by 18% during the first half of 2008.

The deputy of the Defender finds the aforementioned condition to be alarming and documenting uneconomic management of state property. There is simultaneously a serious risk that the absence of the appropriate contractual titles will have an effect on the provision of agricultural subsidies from the European Union (the

EU rules require that the applicant always has conclusive right of use with respect to an agricultural plot of land).

### **3) Payment of social benefits by voucher in Litvínov**

The deputy of the Defender opened an inquiry on her own initiative in the matter of the combined payment of social benefits (70% vouchers for goods, 30% cash). It was ascertained within the inquiry that the Municipal Authority in Litvínov had begun to pay benefits by means of vouchers generally to all the recipients of benefits who had been registered as job seekers for over 6 months and were not receiving unemployment benefit. The authority had taken the aforementioned criteria from the project Minimisation of Misuse of Social Benefits that was approved by the municipal council.

The deputy reprehended the Municipal Authority for the following maladministration: 1) general payment without individual social work and monitoring of the jobseeker's specific needs, 2) failure to issue a decision (notification) on the change in the manner of payment. The Ministry of Labour and Social Affairs was simultaneously addressed with respect to the legality of the general use of vouchers, and the Office for the Protection of Competition in order to assess the selection of the "*meal voucher company*" from the perspective of the Act on Public Procurement.

On the basis of the report of the deputy, the Ministry performed its own inquiry and stated that benefits must be generally paid only in cash. The Ministry simultaneously pointed out that a municipal authority may pay social benefits in kind in cases where it is obvious from social inquiry that the recipient would not use the benefit for the intended purpose. The Ministry supports the combined form of provision of social benefits, but only in justified cases (in this respect, the Ministry issued Methodological Instruction No. 5/2008 where it excludes the possibility of general payment of benefits using vouchers).

Given that the Municipal Authority disagreed with the conclusions of the deputy and did not adopt any remedial measures, the deputy drew up a final statement, in which she proposes measures to be implemented by the Municipal Authority (ceasing to pay benefits in the form of vouchers, carrying out an individual assessment of each applicant, etc.)

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

The deputy of the Defender opened an inquiry on her own initiative into the procedure of the 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 recommended to the complainants in her report on the inquiry that they use the opportunity to obtain a part of the financial means from European funds. In this respect, she 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 (or, as the case may be, persons who subsequently acquire

property surrendered in the aforementioned manner on the basis of a purchase agreement). Based on the initiative of the deputy, a *“Risk Analysis of the Contaminated Territory”* was subsequently drawn up using the funds of the regional self-government, which should enable those concerned to lodge an application for co-funding of remediation on their plots of land using EU funds.

## **5) Sale of railroad ties harmful to the environment**

The deputy of the Defender opened an inquiry into the sale and further use of contaminated railroad ties. The objective of the inquiry is to urge the relevant institutions (in particular the Czech Environmental Inspectorate) to properly verify the safety of handling contaminated railroad ties. The relevant measures should be simultaneously taken, including the imposition of sanctions for unauthorised sale of the ties or complete prohibition of the sale of ties harmful to the environment should be achieved.

## **6) Charging for the *“studying”* of the collection of deeds of the land register**

The Defender opened an inquiry into the amendment to the decree on the provision of data from the land register (Decree No. 62/2001 Coll. as amended). The aforementioned amendment (effective from March 1, 2008) stipulates that the collection of deeds is no longer studied in the true sense of the word and *“studying”* should take place through the provision of a copy of the deed for a fee (CZK 20 for one A4 page). Taking into consideration the possibility of using his special powers, the Defender requested the Czech Office for Surveying, Mapping and Cadastre for a statement on the legal issues (scope of authorisation, relationship of the contested provision to the Cadastral Act, manner of determination of the amount of payment) as well as the practical consequences of application of the new legislation.

## **7) The work of consulates and the granting of visas**

### ***“Call centres”***

One of the proposals the Defender earlier submitted to the Ministry of Foreign Affairs and the Ministry of the Interior in connection with complaints about the *“organisation”* of queues before Czech consulates, long waiting times, bribes, etc., consisted in the possibility of arranging the date and time of the interview or lodging an application for a visa using the Internet or by telephone. Partly due to criticism in the media, some consulates have introduced call centres that must be used by the applicant to book in advance.

Although the Defender welcomed the aforementioned step, the subsequent information about the functioning of the newly introduced call centres suggested that the measures were not fully sufficient. As the Defender ascertained, the activities of the private agencies operating the service for Czech consulates is not always transparent. There are no publicly available details on the companies. It also seems that there is no methodology for the selection of an external operator, the implementation of the service differs at the individual consulates and the amount of the fee for the service differs significantly (e.g. CZK 310 at the consulate in Lviv and about CZK 43 at the consulate in Hanoi). With such a lack of transparency, it cannot be ruled out that the waiting lists set up and controlled by such a company are

manipulated in favour of certain applicants. Another problem is the fee for registration by telephone, a prerequisite for lodging a visa application. Although there are certain costs of the operation of a call centre, in the case concerned the fee is in fact collected for access to the administrative authority, which lacks support in any law.

The process of receiving applications and granting visas should be primarily ensured by the state and the above-mentioned solution (external subcontractors) should be introduced only in extraordinary situations where the earlier solution is impossible for objective reasons, although only provided that the entire process is entirely transparent. This is the only way to prevent corruption.

The Defender sees one of the potential solutions of the present situation in automated booking via the Internet, which has been introduced in some foreign countries and has brought positive results also in the Czech Republic (e.g. in the processing of personal identity cards and driving licences).

### ***Interviews in the visa process***

In the visa process, the Defender finds the mechanism of carrying out personal interviews with the applicants for visas and, in particular, the drawing up of records of such meetings to be considerably problematic. The interview is administered by a consulate officer and an opinion on the granting/denial of the visa is issued on the basis of the interview (decisions on visas for a stay of up to 90 days are made directly by the consulate, while decisions on visas for stays in excess of 90 days are made by the relevant foreign police inspectorate on the basis of the opinion of the consulate). Thus, the interview plays an absolutely crucial role in the decision-making on the granting/denial of a visa.

It is unclear, according to the complainants who addressed the Defender, what rules the interviews follow. Although there is a methodology for interviews regarding applications for a visa for a stay in excess of 90 days, the record drawn up on each interview and subsequently sent to the foreign police as part of the file (in these cases the decision is up to the individual Foreign Police Inspectorates) is not authorised by the applicant's signature. No record on the interview is drawn up in case of applications for a short-term visa up to 90 days, except for the family members of an EU national (yet in the latter case, the record is again not signed by the applicant). Thus, there is no control mechanism that would enable retrospective verification of authenticity of the record of the interview. The applicant for a visa may easily question the contents of the interview, and there is no instrument for refuting such an allegation. The aforementioned deficit is particularly significant among family members of EU nationals who have the right to entry and stay in the territories of EU member states subject to fulfilment of the conditions stipulated by the law and an entitlement to the granting of a short-term visa.

The Defender proposes to the Ministry of Foreign Affairs to adopt measures that would unify the process of drawing up the protocol and simultaneously ensure that the applicant is able to authorise the contents of the protocol.

### ***Granting of visas***

Given that an overwhelming majority of the applicants for a visa do not speak Czech, are unaware of the Czech legal environment and the lodging of the application is demanding for them in terms of time and expense, it is necessary that they have the possibility of obtaining the needed information on the visa process free

of charge before they appear at the consulate in person. For the aforementioned reasons (supported by a number of specific complaints), the Defender concentrated on the most widely used manner of provision of information – via the Internet. In this respect, the Defender had to state the following shortcomings.

In spite of the fact that the Internet makes it possible to easily inform an unlimited number of people in different language versions, the Defender ascertained that the websites of some consulates were not available at all or there were outages. Sometimes the website worked but the relevant links to visa issues did not contain any information or the information was incomplete or obsolete. Nor do the consulates' websites always provide the basic information entirely clearly, such as in what cases and to whom the visa obligation applies, the amount of the administrative fees and definition of the groups exempted from needing visas. The applicant for a visa will not learn how the process of obtaining a visa takes place and there is no information on the potential grounds for rejection of their application and advice on the rules for lodging complaints against rejection of the application.

The Defender also ascertained that the consulates do not proceed consistently in the visa process. They differ for example in the manner of lodging a visa application. In most states any option other than lodging the application in person is inadmissible, but the Defender ascertained that in some cases the application can be sent to the consulate by post or lodged via a travel agency (for short-term visas). The Defender also ascertained cases where it was possible to act through a third-party proxy on the basis of a power of attorney. Neither of these varying methods was substantiated.

According to the Defender, a basic shortcoming also consists in the fact that the websites contain only sporadic mentions of the visa regime applicable to the family members of EU nationals in spite of the fact that the Czech Republic is bound by EU Directive 2004/38/EC to grant such persons every facility to obtain the necessary visas. First of all, a definition of the term "*family member of an EU national*" delimiting the group of the relevant persons is entirely missing on the consulates' websites, and the same holds true for information that such persons are exempted from administrative fees in lodging the visa application and that they can request the Ministry of Foreign Affairs to reassess a rejected application for a short-term visa and the possibility of a court review of a decision within the administrative court system.

The Defender proposes that information on the visa process be provided in a coordinated manner. The provision of information and the very process of applying for a visa should be presented and implemented in such a manner as to enable the foreigner to a maximum possible extent to lodge an application for a visa on his/her own, without an intermediary. According to the Defender, the existing arrangement and unavailability of comprehensive information necessarily results in the use of various intermediaries who cash in on the lodging of visa applications. The entire process generates doubts regarding equal approach to applicants, effectiveness and predictability of the work of administrative authorities.

The Defender acquainted the Minister of the Interior and the Minister of Foreign Affairs with the aforementioned matters. The latter find the Defender's comments to be substantiated and expressed preparedness to participate in the solving of the issue. They simultaneously acquainted the Defender with the measures their offices had taken in the matter concerned to date.

## **8) Administration of complaints in social service facilities**

The Defender opened a comprehensive inquiry aimed at the issue of the administration of complaints in social service facilities. Within the inquiry at the Ministry of Labour and Social Affairs, the Defender ascertained a number of shortcomings in the administration of complaints (for example, the unsystematic sorting of letters into complaints and other filings where the latter are not responded to; in some cases, complaints are not entered in the electronic system; sometimes the authority to which the complaint is forwarded is requested to give information on the conclusions of its inspection and sometimes not, etc.). The Defender's attention in the inquiry continues to concentrate also on the work of the Social Services Inspectorate. The Defender addressed the Minister of Labour and Social Affairs with his conclusions and he currently awaits the Minister's statement on the conclusions drawn.

## **III. Inquiries opened on the complainants' initiative**

### **1) Closure of a railway line in the Děčín area**

The Defender issued a report on an inquiry in the matter of a complaint by the Citizens' Association for Environmentally Friendly Transport in the Děčín Area where he criticised the steps of the administrative authorities in the prepared closure of regional railway line No. 132 from Děčín to Oldřichov u Duchcova and use of the railway plots of land for the placement of a feeder road to motorway D8 in the Děčín-Knínice section. The Defender holds the view that the principles contained in the State Environmental Policy should apply in the given matter and railway No. 132 should therefore be preserved and modernised. The Defender was simultaneously forced to reprehend the Ministry of the Environment for delays in issuing a statement in the EIA process that is to assess the variants of the route of the repositioning of road I/13 Děčín – D 8.

On the basis of the Defender's inquiry, the Ministry of the Environment finally issued an opinion in July 2008 on assessment of the impact of construction of the motorway feeder on the environment, which confirmed the Defender's previous conclusions. The EIA in the matter concerned is affirmative only for a five-kilometre section of the planned route. The remaining 10 kilometres are inadmissible according to the EIA due to fundamental collisions with the requirements for nature protection in valuable territories of the Bohemian Central Mountain Region protected landscape area. In this respect, the Ministry of the Interior offered to the investor of the project (the Road and Motorway Directorate) active cooperation in looking for a generally acceptable approach to the repositioning of the road in the Děčín – Modrá section.

### **2) Complaint about court delays without certified electronic signature**

A complainant contested delays in inheritance proceedings at the District Court in Bruntál. He stated in the complaint that he had not received a reply from the presiding judge to his October 2006 complaint. According to the statement of the presiding judge, no such complaint was registered at the court in 2006. It became clear during the inquiry that the complainant had sent his complaint by e-mail without a certified electronic signature (it was not specified on the court's website that only filings with electronic signature were accepted). In a statement on the report on the

inquiry, the presiding judge promised to expressly specify on the court's website that only filings provided with the certified electronic signature are accepted. He simultaneously apologised to the complainant for the court's maladministration.

### **3) Failure to pay fees of court-appointed attorneys in criminal proceedings**

An attorney-at-law complained about the Municipal Court in Brno due to its failure to pay the fees of court-appointed attorneys within the legal deadline. It was ascertained during the inquiry that a similar problem existed in a number of other courts. The cause lies in the fact that the mandatory expenses of courts have been constantly rising since 1996, but the Ministry of Finance fails to take the rise into account in setting up the state budget (budget chapter for the Ministry of Justice and its organisational units). As followed from advice of the presiding judge of the Regional Court in Brno and the Minister of Justice, the problem can be dealt with systematically only at the budgetary level. Although the Ministry of Justice makes enormous efforts to obtain money for the justice sector, the situation is complicated by the budgetary limitations set by the Ministry of Finance. The Defender therefore closed his inquiry and he hereby advises the Chamber of Deputies of Parliament of a problem that must be solved in the Act on the State Budget.

### **4) Ensuring access to a purpose-built road**

A complainant pointed out the practice of Lesy České republiky, s.p. (Forests of the Czech Republic, state enterprise), which made entry to a purpose-built road (access to a cabin) subject to a fee by charging a fee for administering an exemption from the prohibition of traffic. Lesy ČR argued that the case concerned did not include a publicly accessible purpose-built road, but instead a forest track pursuant to the Act on Woodland.

The Defender concluded that the road was not a forest track and that the limitation of access was inadmissible in the case concerned. The authorities adopted the following remedial measures in response to the report on the inquiry: the Morávka municipal authority called on Lesy ČR in writing to refrain from the established practice of collecting pecuniary amounts for issuing permits for entry to a publicly accessible purpose-built road. The Regional Authority of the Moravian and Silesian Region responded to the report on the inquiry with advice where it identified with the Defender's opinion that a fee cannot be collected for granting an exemption for entry to a publicly accessible purpose-built road.

### **5) Construction of the new National Library**

The Defender opened an inquiry with respect to the Office for the Protection of Competition concerning the planned construction of the new National Library. The Office seems to have "*sanctified*" the procedure of the former management of the National Library, although subsequently it recommended annulment of the competition. The examination will be concerned with the actual extent of assessment of the matter by the Office, competence of the Office in the matter and the general approach of the Office in terms of observance of the principles of good administration.

As for evaluation of legality of the architectural competition, everything seems to suggest so far that regardless of the legal regime applied (competition under the

terms of the Act on Public Procurement versus procedure under the rules of the International Union of Architects), placement of the archive collections on underground floors represented a breach of the original conditions of the competition and the design concerned should therefore be excluded.

The Defender still awaits an opinion and documents from the Office for the Protection of Competition.

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

Within his detention agenda, the Defender reviewed the situation in mental homes in the first half of 2008. Systematic visits to eight mental homes were completed (mental homes in Šternberk, Kosmonosy, Kroměříž, Dobřany, Havlíčkův Brod, Lnáře, Opava, Horní Beřkovice); all the visits were unannounced and they included visits to crisis stabilisation units and crisis stabilisation units with a relaxed regime, interviews with the management, social workers and medical personnel, interviews with randomly selected patients, and checking records and internal regulations of the facility.

The Defender focused, in particular, on the legal aspect of hospitalisation and the potential displays of maltreatment in the area of the right to protection of persons and their privacy. With all due respect for the medical and other personnel who often work in very difficult circumstances in mental homes, the Defender had to point out a number of shortcomings. However, it should be clearly stressed that the Defender did not ascertain treatment that could be labelled as cruel, let alone as torture.

The Defender observed that although the existing concept of psychiatry speaks about the need for humanisation, psychiatry in the Czech Republic has long been a sector that receives inadequate funds. Subsidies are sufficient only for handling emergency situations and by far do not respond to the needs of the century-old premises where the homes are placed. The lack of funds falls particularly hard on patients who suffer from dementia and on those with serious mental disorders. The unique occurrence of barrier-free zones, often-missing lifts, large rambling departments - all these impose a more restrictive approach to patients.

The mental homes also face a lack of money for care and point out that the actual costs are not taken into account by the health insurance companies in the calculation of a day of treatment. Thus, the mental homes lack about CZK 400 per patient per day, which is almost CZK 150,000 per patient per year.

Among his findings, the Defender finds the following problems to be the most fundamental:

- it is common that patients live up to several months in crisis stabilisation units (unrest units) without a single private moment, amidst constant noise and bustle
- in some cases, patients sign consent to all examinations and treatment (such a generally phrased consent does not fulfil the requirements for informed consent) together with consent to hospitalisation
- coercive measures are used at gerontopsychiatric departments in cases where the personnel is unable to ensure a systematic supervision over the ill person

and prevent his/her injury or self-mutilation (in some cases coercive measures were used permanently, i.e. as a long-term measure instead of for dealing with a current threat)

- although an absolute majority of coercive measures must be administered by a doctor and recorded in the medical records, doctors often prescribe coercive measures in general such as a “*prevention of falling*” and nurses can tie the patient to a chair or bed on their own discretion (the Defender pointed out that every decision on limitation is in the exclusive competence of a doctor, and exceptions are possible only when the situation requires an urgent solution)
- the visits showed a poor standard of privacy in the performance of personal hygiene (the worst situation being at the gerontopsychiatric departments where delicate treatment and hygienic acts are routinely performed before other patients)
- relatively large numbers of patients remain in mental homes only because there is no network of extending social services (this applies to patients for whom in-patient care would be sufficient but who have lost their social background and ability to socialise independently due to long illness).

Brno, October 22, 2008

JUDr. Otakar M o t e j l

Public Defender of Rights