

Report for the Fourth 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)

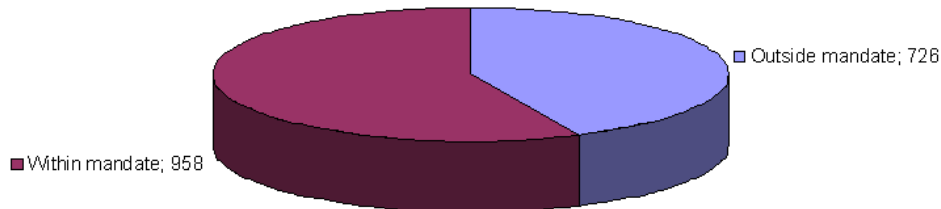
for the period from October 1 to December 31, 2008

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 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 2008.

A. General Information on the Activities of the Defender

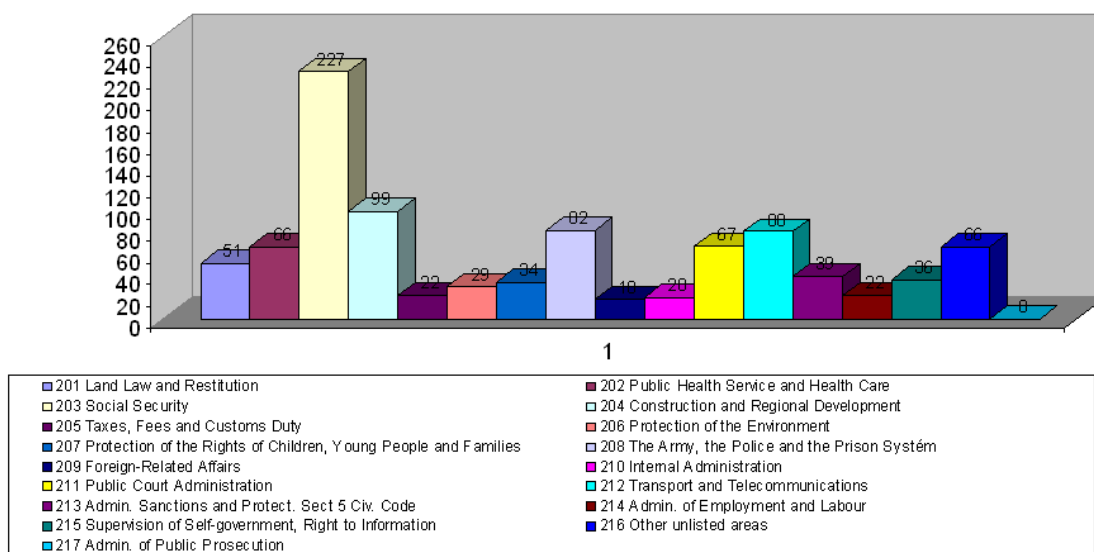
Number of complaints received and handled

Number of Complaints – 4th Quarter 2008



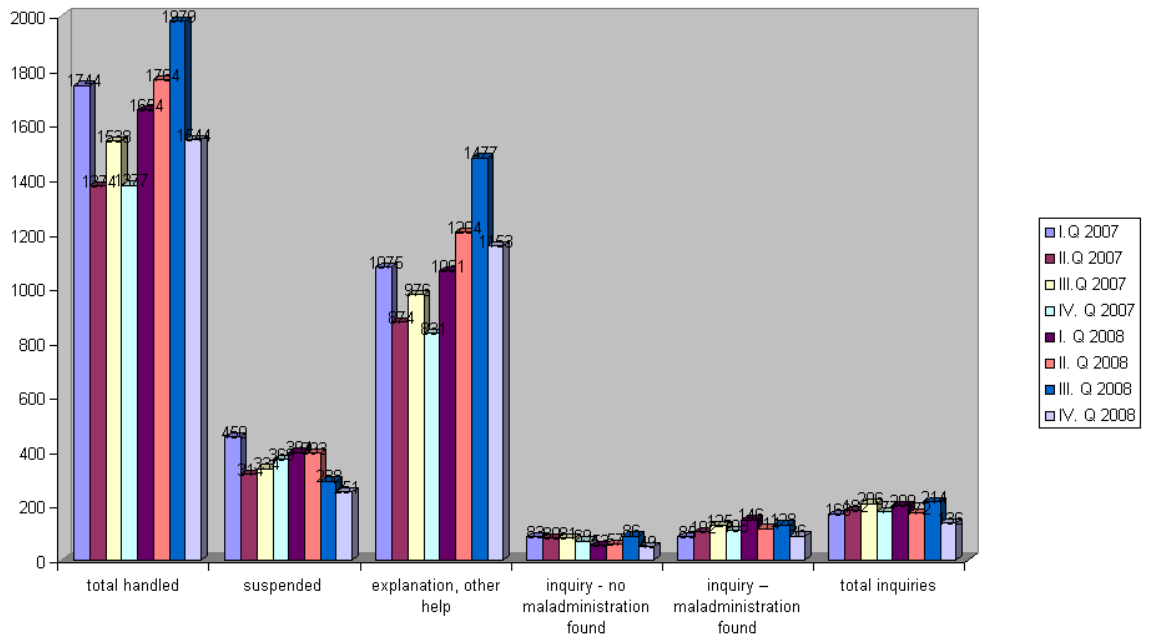
In the fourth quarter of 2008, the Defender received 14% more complaints than in the same period of the previous year. There were **1,684 complaints**, of which **958 (57%)** were within the Defender’s mandate defined by law and **726 (43%)** were outside his mandate.

Structure of complaints by area – 4th Q 2008



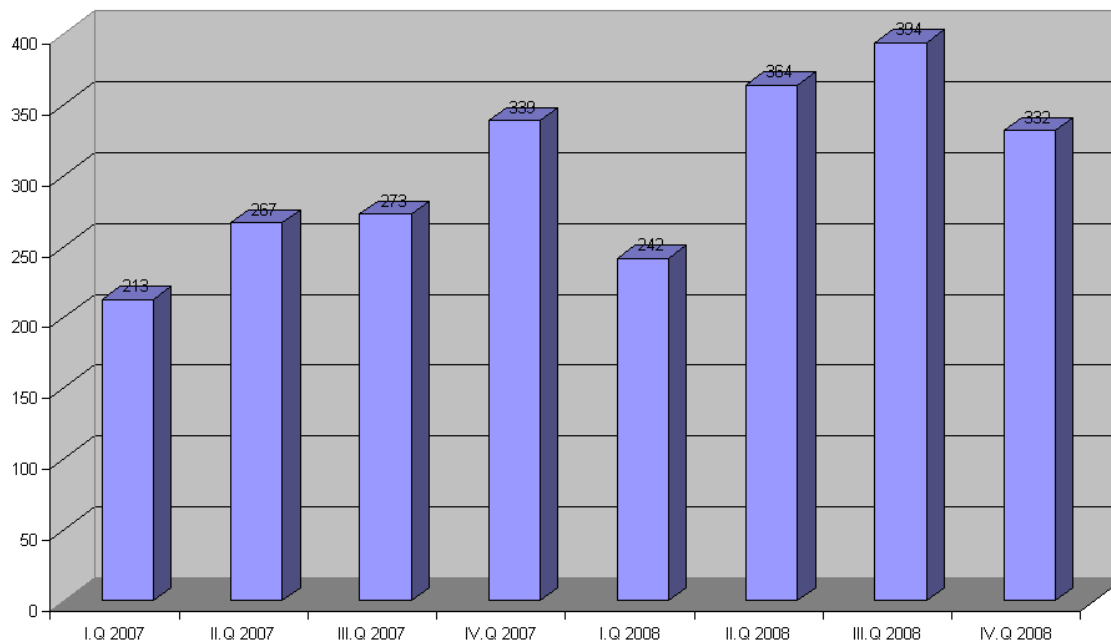
The structure of the complaints received by legal area has changed only slightly over time. **Social security** is consistently the area with the highest rate of complaints (227), particularly concerning pensions and the provision of social benefits. The second most numerous group of complaints in the fourth quarter of 2008 were those in the area of **construction and regional development** (99), a majority of which related to zoning proceedings, planning permission and approval proceedings. Complaints in the area of the **prison system, police and army** ranked third (82). 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** 1,544 complaints during the fourth quarter of 2008 and **closed** 134 inquiries, where maladministration by the authority concerned was found in 85 (63%) 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 fourth quarter of 2008, **332 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 amendment to the Act on Free Access to Information

related: Act No. 106/1999 Coll. on Free Access to Information

The Defender notably rejected the proposal that all information on administrative proceedings be excluded from the provision of information. An overwhelming majority of activities of public administration, which is the most important liable party, takes place in the form of administrative proceedings. Thus,

exclusion of such information from the obligation to provide information would in fact mean depletion of the right to information and extinction of the possibility of public oversight over the procedures of public administration. The Defender also opined negatively on the proposal that as one of the requisites of a request for information, it would have to be stated in it that the applicant claims provision of the information pursuant to the aforementioned law. This, in the Defender's opinion, is excessive formalism, which is again at variance with the objective and sense of the Act on Free Access to Information. It has the clear objective of creating a possibility for the liable parties to ignore requests for information only because they fail to expressly quote the Act on Free Access to Information.

2) Comments on the amendment to the Act on Public Health Protection

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

The Defender proposed taking into consideration the adoption of legislation which would allow for the solving of situations where there are several sources of noise in a location that in themselves do not exceed the (emission) limits for protected spaces, but the exceeding occurs when they act concurrently (i.e. the emissions to the protected spaces do exceed the limits). It would be expedient, according to the Defender, if the legislation were to stipulate the possibility for the bodies of public health protection to impose measures upon the operators of noise sources aimed at noise reduction. The measures would be essentially based on the principle of shared responsibility where it would be necessary to evaluate the contribution of the individual noise sources to the generated emissions and set the measures proportionally.

3) Statement of the Defender on the amendment to the Cadastral Act

related: Act No. 344/1992 Coll., on the Land Registry of the Czech Republic

The Defender took an unfavourable view of the proposed fundamental changes in access to the collection of deeds of the land registry, which brings with it a significant limitation of citizens' rights without legitimate grounds. According to the amendment to the Cadastral Act, studying files will be possible only on acceptance of a paid copy of the relevant document. In addition, the applicant will be obliged to prove his identity and specify the reason for which he/she wishes to "study" the document in the aforementioned manner.

The Defender also pointed out that the simple studying of documents – in the actual sense of the word – cannot be cancelled in the aforementioned manner, because in a number of cases, without studying them, the applicant cannot identify the specific documents which he/she could request copies of. The Defender finds the new provisions of the amendment to the Cadastral Act to be an artificially created obstacle to access to information, which is also at variance with the fundamental strategic principles of combating corruption and creates room for potential abuse.

According to the Cadastral Act applicable to date, any person may study the collection of deeds without limitation and make copies, extracts or sketches from the collection. According to the amendment, studying shall take place through the provision of a copy for an administrative fee of CZK 20 for an A4 page and CZK 50 for an authenticated copy.

The Czech Office for Surveying, Mapping and Cadastre justifies the amendment to the law with the decline in the number of employees and, simultaneously, an increasing number of citizens' requests for studying the land registry. However, the Defender finds the aforementioned reasons to be unacceptable. It is inadmissible that such a significant limitation of the fundamental and traditional principle of the public nature of the records of real estate is based on technical or personnel-related problems.

The Defender also cannot agree with the formal aspect where, by adoption of the amendment, the Deputies and Senators in fact "sanctified" and legalised the hitherto illegal conduct of the Czech Office for Surveying, Mapping and Cadastre which had begun to make the studying of the collection of deeds conditional on the acceptance of a copy of each document based on payment of the administrative fee already in early 2008, at variance with the applicable law.

4) Comments on the concept of future legislation resulting in unification of the legal treatment of procedures in the exercise of the individual administrative agendas with minimum deviations and exemptions

The Defender commented, in particular, on the administrative agendas encountered by him most often in the exercise of his work.

In relation to the Building Act, the Defender recommended, *inter alia*, a general stipulation of the possibility for the planning authority to decide, in case of doubt, whether construction, advertising installation or terrain treatment is concerned. From the procedural point of view, a declaratory decision pursuant to Section 142 of the Code of Administrative Procedure appears to be suitable. Furthermore, the Defender stated that if the problematic concept is preserved of zoning approval (*územní souhlas*), approval of building notice (*souhlas s ohlášením stavby*) and building approval (*kolaudační souhlas*), which are not decisions pursuant to the Code of Administrative Procedure, the deadlines for the review of such approvals should be specifically stipulated in the Building Act. The Defender recommends deletion without replacement of the second sentence of Section 168 (2) of the Building Act, according to which the planning authority shall provide a copy of the documentation of a construction if the applicant submits the consent of the party which has procured the documentation or, as the case may be, the owner of the construction to which the documentation applies. This, according to the Defender, is a superfluous deviation from the Code of Administrative Procedure and an absurd attempt at withholding the right to obtain copies of documents from a file from a person to whom the right to study the same file is granted. The right to copies is part of the right to study files pursuant to Section 38 of the Code of Administrative Procedure. The aforementioned provision of the Code of Administrative Procedure is entirely properly based on acknowledgment of the fact that if a person is granted the right to study a file, he/she can hardly be physically prevented from making notes, extracts or even tracing entire parts of the file documents or to make photographs using his/her own digital camera (the latter was confirmed by judgment of the Supreme Administrative Court File Ref. 7 Azs 3/2008-64 of March 26, 2008).

In relation to the Act on Public Health Protection, the Defender recommended deletion without replacement of the part of Section 94 (2) of the aforementioned law, according to which only the applicant is a party to proceedings on the granting of temporary permission to operate a source of noise or vibrations where safe limits

cannot be observed on reasonable grounds. This, according to the Defender, is an unjustified deviation from the general stipulation of participation contained in the Code of Administrative Procedure. The errors encountered by the Defender in proceedings on the granting of permission could be partly reduced if the parties to be affected by the continued operation of the noise source (persons exposed to noise above limits) could participate in the proceedings. Thus, the steps of the bodies of public health protection would be subject to critical oversight by those whose health is directly concerned. In order to achieve this, it would be sufficient to consistently apply the Code of Administrative Procedure on the issue of participation in these proceedings.

In relation to the Act on Asylum, the Defender maintains that it is impossible to agree with the assertion of the Ministry of the Interior that the stipulation of Section 23a of the Act on Asylum corresponds to practice in surrounding countries. Rather the opposite, at least the failure to provide copies of records of interviews to asylum seekers or their representatives appears to be at variance with Art. 14 (2) of Council Directive 2005/85/EC of December 1, 2005. No similar legislation is present in the legal order of the surrounding countries (e.g. Slovakia, Hungary, Poland and some other countries). The practice in the individual countries differs only in terms of whether information on origin in its entirety is included in the file.

5) Comments on the consultation queries of the Ministry of Industry and Trade on the transposition of Directive 2008/48/EC on credit agreements for consumers

The Defender requires, in particular, consistent and well-considered implementation of Art. 15 (1) of the Directive, consisting of stipulation of automatic expiry of a credit agreement *ex lege* in case of withdrawal from the purchase agreement or a contract for the supply of goods or services. Thus, according to the findings of the Defender, mass misuse of disoriented consumers occurs in the Czech Republic as they are able to withdraw from a purchase agreement, including within relatively short legal deadlines, but they continue to be bound by the credit agreement given the lack of interrelatedness between credit agreements and purchase contracts (including interest and the potentially threatening sanctions), in spite of the fact that they often do not succeed in obtaining the purchase price back from the seller. For the aforementioned reason, the Defender even finds it suitable to stipulate the rules of shared responsibility of the seller and the credit company for the seller's liabilities as mentioned in Art. 15 (3) of the Directive. Furthermore, the Defender proposed that a significant broadening of the powers of the financial arbitrator in disputes resulting from consumer credits be considered.

II. Proceedings before the Constitutional Court pursuant to Section 64 (2) (f) of the Constitutional Court Act

Proposal of the Public Defender of Rights for annulment of Decree No. 23/2008 Coll. on Technical Conditions of Fire Protection of Constructions

related: Act No. 133/1985 Coll. on Fire Protection; Act No. 309/1999 Coll. on the Collection of Laws and Collection of International Agreements; the Constitution of the Czech Republic; Charter of Fundamental Rights and Basic Freedoms

The Decree generally stipulates the technical conditions of fire protection for the design, implementation and use of a construction, stipulates the numbers of portable extinguishers, the obligation of the owners of selected constructions to furnish the construction with the equipment for autonomous detection and signalling, with details contained in the annexes to the Decree. However, an overwhelming majority of the annexes refer to Czech technical standards which are not commonly available to the public, and more importantly, are not available free of charge.

By their nature, legal standards (that is, including technical standards acknowledged by the law) must be available publicly and free of charge already due to the fact that access to their content must not be dependent on the income and social status of an individual. Otherwise one of the fundamental principles of the democratic state of rule of law, i.e. the principle of “*equality before the law*” (Art. 1 of the Constitution, and Art. 1 of the Charter of Fundamental Rights and Basic Freedoms) would be breached.

The Defender holds in this respect that Decree No. 23/2008 Coll. on Technical Conditions of Fire Protection of Constructions is at variance both with Art. 1 and 2 of the Constitution, Art. 1, 2 and 4 of the Charter of Fundamental Rights and Basic Freedoms and the Act on the Collection of Laws, stipulating the publication of legal regulations. Any provision of a legal regulation, which is of an enacting nature, must be available publicly and free of charge. If the state refers to a technical standard in a legal regulation, it has the obligation to ensure the public and free availability of the standard. Otherwise the legal obligation concerned is not stipulated in a manner conforming to the Constitution.

Given that the contested decree refers to Czech technical standards in an overwhelming majority of its provisions and it can be said that without them its separate existence is meaningless, the Defender submitted a proposal to the Constitutional Court for its complete annulment. The Defender is convinced that the decree is so strongly interrelated with the technical standards that annulment of only individual provisions thereof is meaningless.

III. Statement of the Public Defender of Rights on the proposal of the Supreme Administrative Court for annulment of Section § 124 (1) (c) of Act No. 326/1999 Coll. on the Residence of Foreigners on the Territory of the Czech Republic and on Amendment to Certain Laws as amended (hereinafter the “Foreigners Residence Act”)

With reference to Section 48 (2) of the Act on Constitutional Court, the Constitutional Court addressed the Defender with a request for assistance in obtaining basic documents for the Court’s decision-making on the proposal submitted by the Supreme Administrative Court. The Defender expressed support for the proposal of the Supreme Administrative Court for annulment of the aforementioned provision of the Foreigners Residence Act, which entitles the Police to detain a foreigner over the age of 15 on the basis of limited clearly-defined reasons. According to the Defender, detention represents a serious interference with the right of free movement and hence limitation of one of the most fundamental human rights. Section 168 of the Foreigners Residence Act excludes the proceedings pursuant to Section 124 from the application of part two and three of the Code of Administrative Procedure, notwithstanding that Art. 5 (1) (f) of the Convention for the Protection of

Human Rights and Fundamental Freedoms (hereinafter the “Convention”) as amended by later protocols simultaneously applies in full to proceedings pursuant to Section 124 (1) of the Foreigners Residence Act. The Defender pointed out in his statement that the right to liberty and security of person contained in the aforementioned Art. 5 is, after the right to life, the second most important right contained in the catalogue of rights stipulated in the Convention.

The fact that a decision on administrative deportation (i.e. an exclusive and necessary background for detention, for interference with the right of free movement of a foreigner) may not be made, even provisionally, during the entire period of detention of up to 180 days, is regarded as most serious by the Defender. Although the Foreigners Residence Act imposes an obligation on the Police to make a decision on administrative deportation within 7 days from commencement of the proceedings, the aforementioned deadline may not be definitive. In the case that the Police are unable to make a decision within the seven-day period, the law permits it to prolong it and only notify the detained foreigner thereof with specification of the reasons. Thus, the Foreigners Residence Act allows for a forcible interference with the right of free movement without deciding, at least on an interim basis, whether the foreigner has at all engaged in conduct constituting grounds for administrative deportation or, as the case may be, detention (the Defender has already encountered cases where the administrative body of first instance did not make a decision on administrative deportation during the entire maximum period of detention of 180 (or 90, where minors are concerned) days).

C. Presentation in the Media and Communication with the Public

The Defender used all communication tools in the 4th quarter of 2008 to inform the public of his activities and findings and continued to partake in discussions with the public and maintain contact in person with complainants.

- **Four press conferences** were organised during the period under scrutiny – three regular and one extraordinary. At the press conference in October, the Defender acquainted journalists and the public with the results of systematic visits to mental homes. The November conference was dedicated to noise, with a special focus on traffic noise. The December conference was concerned with the Defender’s findings on the work of planning authorities and the sensitive issue of expropriation. In November, on the occasion of the Social Housing conference, the Defender organised an extraordinary press conference on the subject with participation of the deputy Minister of the Interior.
- In addition to **press releases** on the issues presented at the press conferences, other reports on certain contemporary cases and events were released during the fourth quarter. The most important ones included information on the conclusions of the inquiry into the general payment of material need benefits in Litvínov.
- **Individual interviews for the media** and appearances in television reports and discussions were an important part of the Defender’s presentation. The cases dealt with by the Defender were included in coverage broadcast. Thus, the Defender and his deputy presented their statements, explained some cases

and answered questions at Czech Radio stations, Czech Television, TV Prima and Nova, appeared as guests in a number of radio and television programmes – e.g. 168 hodin (or *168 hours*), Černé ovce (or *Black Sheep*), Radioforum and others. Czech Television also broadcast the Defender's profile, Vzkaz Otakara Motejla (or *Otakar Motejl's Message*).

- The Defender's findings in mental homes, payment of material need benefits by vouchers, the Anti-discrimination Act, the right of assembly, stipulation of the access of the public to the collection of deeds of the land registry and the fact that in its judgment against the Czech Republic, the European Court of Human Rights directly quotes parts of the Defender's report, identifies with the Defender's legal opinion and refers to other cases inquired into by him, were the areas the media most frequently showed interest in.
- Czech Television broadcast 12 new episodes of the fourth series of A Case for the Ombudsman during the fourth quarter of 2008.

1,272 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.

153,536 visits were logged on 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

Meetings with foreign delegations and participation in international conferences

- **meeting with Turkmen human rights activists from the branch of the Helsinki Committee established by citizens of Turkmenistan in Bulgaria** (October 6, 2008)
- **meeting with the representatives of the European Roma Centre** (concerning the sterilisation of Romani women, November 13, 2008)
- **participation of the Defender's deputy at the international human rights conference "Human rights – The promised land of law, but also fairness"** organised by the Bulgarian and Dutch ombudsmen on November 17 and 18, 2008 in Sofia (Bulgaria)
- **meeting with the vice chairmen and members of the Petitions Committee of the National Assembly of the Socialist Republic of Vietnam** (concerning the Defender's work and position, November 19, 2008)
- **meeting of the deputy of the Defender with the members of the Committee for Human Rights and Freedoms of the Parliament of Montenegro** (November 24, 2008)

- **Defender's participation at the international conference on the 60th anniversary of the Declaration of Human Rights**, organised under the patronage of the President of Poland and the President of the European Commission on December 4, 2008 in Oświęcim (Poland)
- **participation of the deputy of the Defender at the international conference on human rights and freedom of expression, "Freedom of expression, cornerstone of democracy - Listening and communicating in a diverse Europe"** organised by the European Union Agency for Fundamental Rights (FRA) on December 8 and 9, 2008, in Paris (France)

Conferences and workshops organised

- **round table meeting on Checking Observance of Employee Rights** (specialised workshop with the representatives of labour inspectorates, labour offices and NGOs, October 7, 2008)
- **conference on social housing** (the objective of the conference was to present practical and usable instructions for municipalities to help them prevent the extension and arising of socially excluded sites, with emphasis on the need to create housing, November 24 and 25, 2008).

Domestic meetings

- **on the exercise of public administration in the area of granting visas with emphasis on informing the public on the visa process via a website** (with representatives of the Ministry of Foreign Affairs, the Ministry of the Interior, the Foreign Police of the Czech Republic, October 3, 2008)
- **on participation of the public in court hearings** (with the presiding judges and deputy presiding judges of Prague district courts and the management of the Municipal Court in Prague, October 6, 2008)
- **on noise from gas 'starling' guns** (with the chairman of the Board of Directors of the Union of Vintners of the Czech Republic, October 8, 2008)
- **on the settlement of comments on the draft amendment to the Act on Public Health Protection** (with representatives of the Ministry of Health, October 13, 2008)
- **on the protection of personal data in the exercise of the postal service** (with Vice President of the Office for Personal Data Protection, October 20, 2008)
- **on discrimination** (with the representatives of the European Commission against Racism and Intolerance, October 21, 2008)
- **on the protection of the personal data of children in the mediation of foster care** (with the representatives of the Office for Personal Data Protection and the Committee on the Right of Children, November 10, 2008)
- **on the work of the Public Defender of Rights as a national preventive mechanism** (within the conference of the Organization for Security and Co-operation in Europe, Prague, November 25, 2008)

- **on the amendment to the Cadastral Act** (with the President of the Czech Office for Surveying, Mapping and Cadastre, December 8, 2008)
- **on mutual co-operation between the Ministry of the Interior and the Public Defender of Rights in the introduction of the so-called “Good Administration” series** (with the chief of the Public Administration Section of the Ministry of the Interior, December 11, 2008)
- **on remediation of old burdens on the environment** (with the Deputy Minister of the Interior, December 11, 2008)
- **on the rules of procedure of the municipal assemblies in the capital city of Prague** (with the director of the Prague City Hall, December 18, 2008)

Meetings in the Chamber of Deputies

- **on the draft budget of the Public Defender of Rights for the year 2009** (in the Petitions Committee, November 4, 2008)

Meetings in the Senate

- **on the amendment to the Cadastral Act** (in the Committee on Regional Development, Public Administration and the Environment and the Committee on Economy, Agriculture and Transport, December 10, 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.

In a report on the inquiry, the deputy pointed out that although the competent administrative authorities performed a number of inspections, the latter were, unfortunately, insufficient. The deputy stated that the situation could have been prevented at least partly had there been a higher degree of cooperation of the administrative authorities and a consistent use of their powers (such as the possibility of entering other premises used for illegal activities). Another finding consisted in the fact 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.

After the deputy obtained statements on the report from the authorities concerned, she began to draw up a final statement, which is now in the finalisation stage. Specific remedial measures will be proposed in the final statement.

II. Inquiries opened on the Defender's own initiative

1) Manner of handling used railroad ties

On her own initiative, the deputy of the Defender decided to inquire into the manner of handling used railroad ties. She had learned from several complaints that although contaminated by a number of hazardous substances, the ties were sold to private individuals for reuse. Within the inquiry, the deputy requested statements from the Czech Environmental Inspectorate and the Ministry of the Environment on the nature of the material and the results of inspection findings.

The deputy released a report on the inquiry after receipt of the statements of both authorities. The report states that it is obvious from the provided materials that the ties are hazardous waste and she requests the Czech Environmental Inspectorate to perform an inspection of the handling of the waste at the originator of the waste (Railway Infrastructure Administration, state organisation). She simultaneously requested the Chief Public Health Officer that he publish a notice on the hazardous characteristics of the ties. The deputy of the Defender has already

received the statements of both authorities on the report and drawn up the final statement with the remedial measures.

2) Entrusting children to the care of their wider family

The Defender opened an inquiry on his own initiative into the matter of minor children whose mother had been detained in April 2008 and taken into custody. The authority for the social and legal protection of children (hereinafter the “ASLPC”) had lodged a proposal for ordering preliminary injunctions, because care of the minor children had to be ensured after the mother was detained by the Police. The Defender found maladministration in the procedure of the ASLPC as it had failed to sufficiently ascertain, directly in connection with the lodging of the proposal for ordering preliminary injunctions, whether a member of the wider family would be able to ensure care of the children (the Defender found no documents in this respect in the file – an official record of an interview with the mother after her detention was also missing).

The ASLPC had not contacted the wider family in order to ascertain the possibility of entrusting the children to the care of family members even after the issue of the preliminary injunctions, in spite of the fact that the ASLPC should do so on its own initiative. The ASLPC personnel had begun to act only after they were repeatedly requested to do so by the children’s grandfather and uncle (they advised the grandfather of the possibility to lodge a proposal for entrusting the children to his care only during his second visit to the ASLPC). Nevertheless, after initial inactivity, the ASLPC began to deal with the children’s situation in a relatively intense manner. Now the ASLPC at least supports intensive contacts of the children with the family, their stays in the family on weekends and beyond and the entrusting of the youngest children into the care of the mother while the latter is serving her prison sentence. The Defender therefore closed the inquiry.

3) Inactivity of a planning authority

The Defender dealt with the steps of the planning authority of the Brno-Žabovřesky municipal office in relation to the disconnection of a complainant’s flat from electricity. He pointed out in the report on the inquiry that the case had both private-law and public-law aspects and mentioned the possibility for the planning authority to deal with the matter in public-law terms (maintenance work and necessary alterations). The planning authority still refuses to admit its competence, asserting that private-law is concerned. The Defender therefore called on the authority to perform an inspection and verify the current condition of power installations in the flats and, if an unchanged condition is ascertained, issue a call to perform maintenance of the building and, in case of a failure to obey the call, perform administrative proceedings for ordering remedy. The authority can deal with the issue of failure to comply with obligations by the flat tenants (failure to provide co-operation) pursuant to Section 139 (1) of the Building Act only after the potential ordering of building maintenance. The Defender issued a final statement in the matter where he proposed specific remedial measures to be implemented by the planning authority.

4) Payment of social benefits by vouchers 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 adopted the aforementioned criteria based on the Minimisation of Misuse of Social Benefits project, which had been 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, and 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 of Labour and Social Affairs performed its own inquiry and stated that benefits must generally be 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 Litvínov municipal authority and the other authorities concerned failed to ensure remedy of the incorrect material-law and procedural-law approach in making decisions on the material need benefits by means of vouchers, a final statement was issued with the following proposed measures: stop payment of material need benefits by means of vouchers, individually assess the reasons for the change in the manner of payment and, in justified cases, make a decision on the change through notification, and inform the Defender of the social work to date in the Litvínov-Janov socially-excluded area. Since the Litvínov municipal authority stated that it no longer paid benefits based on the original notifications, it was invited to send new notifications. The Office for the Protection of Competition imposed a fine on the authority for failing to hold a public tender for the selection of the supplier of the vouchers.

5) Procedure in the exercise of public administration in the area of assembly

On the basis of news reported in the media, the Defender opened an inquiry on his own initiative into the procedure of the Litvínov municipal authority in the exercise of public administration in the area of assembly. The Defender visited the Litvínov municipality in person in early December 2008 and met with the mayor of the city, the chief of the police operation from the Police Administration of the North Bohemian Region and the chief of the District Directorate of Police in Most. In his meetings with the aforementioned representatives, the Defender concentrated on the issue of the ban on and dispersion of the assembly held on November 17, 2008. Statements of the bodies concerned are currently being gathered.

6) Handling complaints and performing inspections of the provision of social services by the Ministry of Labour and Social Affairs

The Defender opened an inquiry on his own initiative into the procedure of the Ministry of Labour and Social Affairs in the handling of complaints about the quality of social services. Minor shortcomings ascertained by the Defender were eliminated already during the inquiry. Regarding the performance of inspections of the provision of social services, the Defender's assumption was confirmed, i.e. a lack of personnel for effective performance of the aforementioned obligation of the Ministry. The original wording of the Act on Social Services anticipated that all inspections would be performed by the regional authorities. A change occurred only during the legislative process – inspections in facilities established by regions are to be performed by the Ministry in order to ensure independent inspection. As a result of the aforementioned step, the logical need to add the required number of personnel to the relevant department of the Ministry was not taken into account in the justification report and subsequently in practice. A meeting in person between the Defender and the responsible personnel of the Ministry took place in the matter of increasing the number of personnel and ensuring effective inspection activities, which is one of the safeguards for the avoidance of maltreatment. The Defender intends to support the Ministry in its effort to deal with the lack of personnel for inspections of the performance of services; the Defender is aware based on his work that the Ministry also lacks personnel in other areas.

III. Inquiries opened on the complainants' initiative

1) Prevented access to proceedings on the granting of international protection at Prague-Ruzyně airport

After issuing a report on an inquiry in February 2008, the Defender was informed by the administrative authorities concerned (Head Office of the Foreign and Border Police, the Department of Asylum and Migration Policy of the Ministry of the Interior, Department of Care of the Family, Children and Youth of the Prague 6 Area, the Ministry of Labour and Social Affairs) of a wide range of steps and measures that had occurred in the meantime (several meetings of the authorities concerned, a change in the mechanism in the placement of unaccompanied minor foreigners, including children under the age of 15, in the so-called "Blue School", training of police officers in the recognition of vulnerable groups of people, and mapping of the situation in the transit area of the Prague-Ruzyně airport). The Defender concluded on the basis of the above-mentioned facts that the resolving of the entire highly complex issue of the social and legal protection of unaccompanied minors at the Prague-Ruzyně airport had taken the right direction and that there had been a significant shift toward strengthening protection. From the perspective of the conclusions contained in the report on the inquiry, the Defender attributes a fundamental importance to the information that the Department of Care of the Family, Children and Youth of the Prague 6 Area is advised irrespective of whether or not the minor in need of social and legal protection has shown interest in applying for international protection. The Defender closed the inquiry with regard to the adopted measures.

2) Access road to the Nový hrad cultural monument near Blansko

The Defender was addressed by a representative of the “Czech Union for the Conservation of Nature and the Nový hrad Cultural Heritage” civic association, which owns and is gradually restoring the Nový hrad cultural monument. He requested intervention against the inactivity of the competent authorities in the matter of access to the monument. He stated that the restoration of the castle was taking place on the basis of planning permission issued by the Blansko municipal authority. At present however, its continuation is prevented by the Mendel University of Agriculture and Forestry in Brno – the School Forest Enterprise in Křtiny, which is the owner of the forest land surrounding the castle including the historic access roads to the castle. The Defender opened an inquiry and subsequently issued a report on it. The decision of the Olomučany municipal authority on the non-public nature of the roads was evaluated as maladministration by the Defender – it is impossible to issue such a decision according to the Act on Surface Communications and therefore it must be considered void. The Defender left it up to the Blansko municipal authority to answer whether planning permission gives entitlement to entry to the forest track (according to the Act on Woodland, the prohibition to drive and park motor vehicles in a forest is not applicable to persons who exercise activities permitted by special regulations).

3) Heritage Protection in Barrandov

The Defender closed an inquiry in October 2008 into the procedure of the bodies of state heritage preservation where he was dealing with the differing opinions of the Heritage Preservation Inspection and the executive bodies of state heritage preservation regarding the planned building projects in the area of the Barrandov terraces. The Minister of Culture informed the Defender that in order to avoid future conflicts in the assessment of planned building projects in the Barrandov area, Prague City Hall would instigate the issuing of a Protection Plan for the aforementioned protected cultural zone in the sense of Section 6a of Act No. 20/1987 Coll. on State Care of Monuments. Prague City Hall in co-operation with the Ministry of Culture and the relevant body of zoning of the Prague 5 municipal district will issue a general measure for the protection of the Barrandov protected cultural zone, which will stipulate the method of safeguarding the cultural values of the zone from the viewpoint of state heritage preservation. The Defender received a report from the Ministry of Culture in December 2008 on the progress of work in the preparation of the Protection Plan for the Barrandov Protected Cultural Zone in Prague. The Ministry of Culture has already submitted to the government a draft decree stipulating the requisites and content of the plan of protection of heritage reserves and protected cultural zones. The Prague City Hall in co-operation with the Ministry of Culture, the Prague 5 municipal district and the National Institute of Cultural Heritage will take concrete steps towards issuing a general measure for the protection of the Barrandov protected cultural zone after the aforementioned decree comes into effect.

4) Prague city ring road

The Defender is dealing with a complaint of the Prague-Suchdol municipal office and several other parties concerning the steps of the Building Department of the Prague City Hall in the matter of the zoning proceedings concerning the erection of the “the Prague City Road Ring, project 519 Suchdol – Březiněves” construction

project and simultaneously the proceedings on a noise protection zone for the aforementioned project. Within the proceedings, the Defender requested information from the Minister of Transport and the Minister of the Environment as to whether and how Government Resolution No. 1064 of September 19, 2007, imposing the obligation on both of the aforementioned Ministers to set up a commission that would assess both variants (“Ss” – via Roztoky and “J” – via Suchdol), was fulfilled. The Defender was informed by the Minister of Transport in late 2008 that the commission, comprising ten selected experts, had gathered and the discussion resulted in the recommendation to implement the “J” variant of the route. Eight members of the commission, i.e. including the representatives nominated by the Minister of the Environment, voted in favour of the aforementioned solution. The Minister of the Environment questioned the basic documents which were available to the commission and on the basis of which they voted, stating that he had ordered the drawing up of a statement on the correctness of the basic documents.

Prague City Hall issued a zoning permit in late 2008 in the matter of the zoning proceedings already in progress for a part of the ring road, projects Nos. 518 and 519, Ruzyně – Březiněves; the aforementioned decision was contested through an appeal and the matter will be therefore submitted for assessment to the Ministry for Regional Development, which is the body of appeal.

Based on the fact that the Minister of Transport documented for the Defender fulfilment of the Government Resolution, based on the fact that the Ministry of the Environment had its representatives in the commission and taking into consideration that appellate proceedings are in progress in the matter of the zoning permission, the Defender decided to close the inquiry.

5) Exploration drifting in the Frenštát mine

A complainant together with other parties requested an inquiry into the steps of the mining administration in making decisions on the drifting of exploration works in the Frenštát mine. The complainants requested, in particular, that the Czech Mining Authority take into account the statements and recommendations of the experts it had requested during the proceedings. The deputy of the Defender reprehended maladministration consisting in the fact that the decision of the Czech Mining Authority, relying on unspecified “long-term experience of personnel” cannot be reviewed and, furthermore, that at least a fact-finding procedure should have been performed within the environmental impact assessment before the decision was made. The procedure was also identified as erroneous where, on the one hand, the bodies of the mining administration stress that they are not competent to assess and make decisions on the protection of special interests including the environment and, on the other hand, in the aforementioned decision they question and dispute the contents of the statements of the bodies of public administration concerned (the Ministry of the Environment, and the Administration of the Protected Landscape Area).

6) Non-granting of a short-term visa

The case was concerned with the rejection of an application for the granting of a visa for a stay up to 90 days (a so-called tourist visa) to the complainant’s Egyptian friend. The Defender inquired into the case, found maladministration and requires in

his final statement, in addition to other remedial measures, that the Ministry of Foreign Affairs:

- stipulate, within the methodological guidance of embassies (ideally in the Circular Letter for the Granting of Visas), the obligation to mark in the visa application form or, as the case may be, in some other demonstrable manner in the file, an accurate quotation of the legal provision instead of a mere code of the relevant provision of Section 56 of the Act on the Residence of Foreigners,
- methodologically stipulate (if this has not been done) the keeping of a file also in case of proceedings for the granting of a visa for a stay of up to 90 days so as to be in accordance with Section 17 of the Code of Administrative Procedure or ensure observance of the aforementioned provision in the consulates' practice in some other manner (the aforementioned shortcoming is obvious, in particular, in relation to requests lodged by the family members of the citizens of the EU / the Czech Republic),
- once again review, with respect to the applications for visas for a stay up to 90 days lodged by foreigners from third countries, with regard to the requirements of Section 17 (1) of the Code of Administrative Procedure, the obtaining of records (and their subsequent keeping in the file) of interviews in cases where the interview is performed and used as evidence in the proceedings.

With regard to the inconsistent practice of embassies, the Defender also requested of the Ministry of Foreign Affairs that the practice of embassies in proving relatedness be unified in accordance with the opinion stated in the report on the inquiry, shared also by the head of the Consular Department of the Ministry of Foreign Affairs and the Ambassador of the Czech Republic in the Arab Republic of Egypt. In order to prove relatedness to a citizen of the Czech Republic and the ensuing entitlement to take advantage of a category of foreigners with a more favourable status (shorter deadlines for handling an application, less documents required, remedies against the dismissal of an application, etc.), legalisation of an Egyptian marriage certificate by the embassy in Cairo or the Ministry of Foreign Affairs is sufficient rather than the issuing of the marriage certificate by a special registry. Accordingly, it will be necessary to change, in a consistent manner, the information on the websites of the individual embassies with respect to the proving of relatedness to a citizen of the Czech Republic.

7) Work of the embassy of the Czech Republic in Hanoi

Within the inquiry into complaints concerning the embassy in Hanoi, a joint meeting took place on October 3, 2008, in the Office of the Public Defender of Rights with the representatives of the Ministry of Foreign Affairs, the Department of Asylum and Migration Policy of the Ministry of the Interior and the Head Office of the Foreign Police. The agenda of the joint meeting included the proposed measures concerning the methodology of carrying out interviews with applicants for visas up to 90 days, obligatory signing of the record of the interview with an applicant for visa and the obligation to draw up such a record. The Defender noted only one positive change at the meeting, namely interviews with the family members of EU citizens where the representatives of the Ministry of Foreign Affairs informed him that a record of the interview is obligatorily drawn up by the embassies with respect to applicants for visas up to 90 days. However, even in these cases the record is not signed by the

visa applicant. The Defender will therefore opine critically on the existing practice of carrying out interviews in his 2008 annual report, which is submitted annually to the Chamber of Deputies. He pointed out the issue earlier at the regular press conference on August 13, 2008. The Defender considers the publicising of the issue of interviews with the applicants for visas to be a penal measure in the sense of Section 20 (2) (b) of Act No. 349/1999 Coll., on the Public Defender of Rights as amended. The Defender will continue to carefully observe this area in the future and attempt remedy within his competencies.

8) Unjustified administrative and financial burden on an applicant

A complainant was called on by the State Environmental Fund of the Czech Republic (hereinafter the "Fund") to enclose with an application for aid for the acquisition of a new heat pump, among other things, the current extract from the land registry proving his ownership of the premises where the heat pump was to be installed. The deputy of the Defender addressed the deputy of the Minister of the Environment, stating that she found it desirable to remove the aforementioned requirement from the relevant directive of the Ministry of the Environment. She pointed out the fundamental principles of the work of administrative authorities contained in the initial provisions of the Code of Administrative Procedure, according to which the administrative authority should proceed so that no party incurs unnecessary costs and the parties concerned are burdened as little as possible. It should be sufficient for the decision-making on an application if the Fund ascertains the required data from the land registry independently by way of electronic access, which is commonly available in public administration today. In this respect, according to the deputy of the Defender, the requirement for submitting the extract from the land registry can be regarded as unnecessary and unjustified administrative and financial burden on applicants. In a subsequent letter, the deputy of the Minister of the Environment advised the deputy of the Defender that she identified with her opinion and that the Fund would obtain the required data on applicants independently within its competence in 2009.

9) Authentication of signatures outside the office of an authority

A complainant's husband was placed in the After-treatment and Rehabilitation Facility of the St. Anne's University Hospital in Brno-Nový Lískovec and needed authentication of his signature. The Brno-Lískovec municipal office refused to carry out authentication of the signature outside its office and referred the applicant to the registry office (the Brno-centre municipal office), but the latter also refused to perform the authentication. The deputy of the Defender opened an inquiry on the basis of the complaint. It was ascertained that the website of the Brno municipal office did not contain information on authentication outside the office; on a telephone query the municipal office gave incorrect information on the local competence of registry offices with respect to authentication. Yet the law allows for the authentication of a signature outside the office of the authority on material grounds. Based on a notification of the deputy of the Defender, the secretary of the municipal office addressed the secretaries of all the municipal offices authorized to perform the authentication agenda (including the Brno-Nový Lískovec municipal office) and asked them to treat applications for the authentication of signatures outside the office helpfully. The website of the Brno municipal office was revised and it currently furnishes an

overview of the authorities which may perform authentication outside the office on material grounds. The measures adopted by the secretary of the Brno municipal council based on the prompt were found sufficient by the deputy of the Defender and the latter closed the inquiry into the complaint.

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

Following complaints concerning the conditions in private social service facilities and on the basis of other findings from his work, the Defender performed systematic visits to several private facilities for the elderly during the fourth quarter of 2008. It follows from a preliminary evaluation of the findings of the personnel of the Office of the Public Defender of Rights that in nearly all of the visited facilities, payments for the services are designed in such a manner that the legal regulations on the maximum payments for a stay are either directly breached or circumvented in that the basic services are in fact charged twice: once in the maximum amount permitted by the legal regulation or in the amount of the granted allowance for care and once as facultative services. The Defender also completed the themed systematic visits to facilities for the elderly, which concentrated on the charging of services, conclusion of agreements with clients, differentiation between the basic and facultative services and provision of so-called "refunds" for stays outside the facility. The Defender's conclusions concerning these visits will be processed during the first quarter of 2009. 16 facilities for the elderly throughout the country were visited within the themed systematic visits.

Brno, January 16, 2009

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