

# Report for the First Quarter of 2009

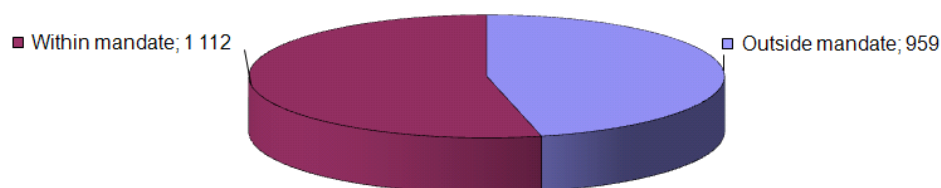
Information on Work Provided by the Public Defender of Rights  
pursuant to Section 24 (1) (a) of Act No. 349/1999 Coll. on the Public Defender  
of Rights as amended (hereinafter the Public Defender of Rights Act)  
for the Period from January 1 to March 31, 2009

The Public Defender of Rights (hereinafter the “Defender”) submits information on his work and activities in the period under scrutiny to the Chamber of Deputies of Parliament of the Czech Republic and simultaneously informs the Deputies of the current state of public administration as reflected in the complaints dealt with. The contents of this report are a continuation of the information on his work in the fourth quarter of 2008.

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

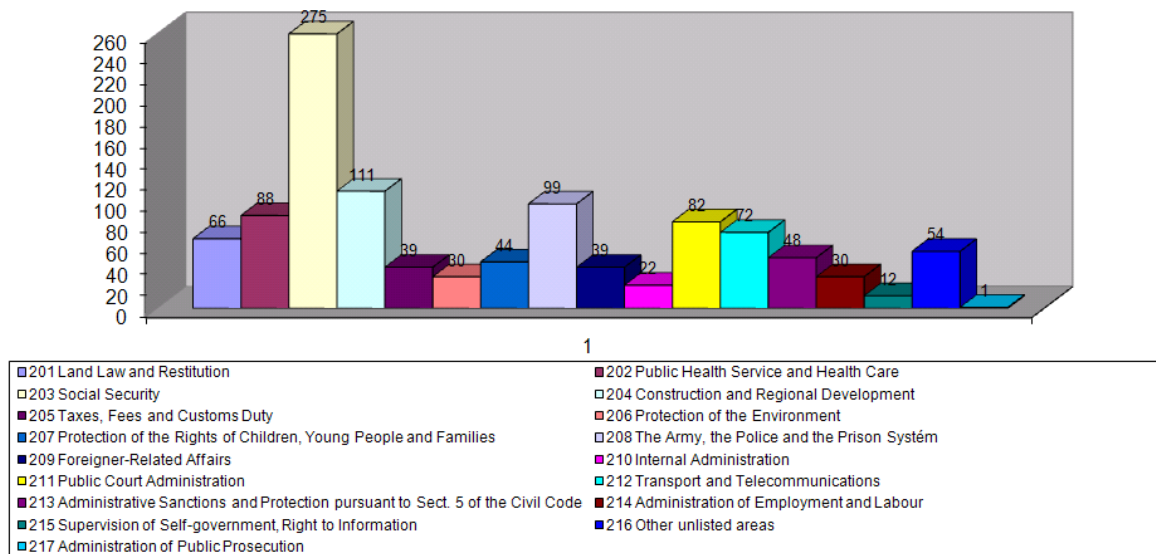
### **Number of complaints received and handled**

**Number of Complaints – 1<sup>st</sup> Quarter 2009**



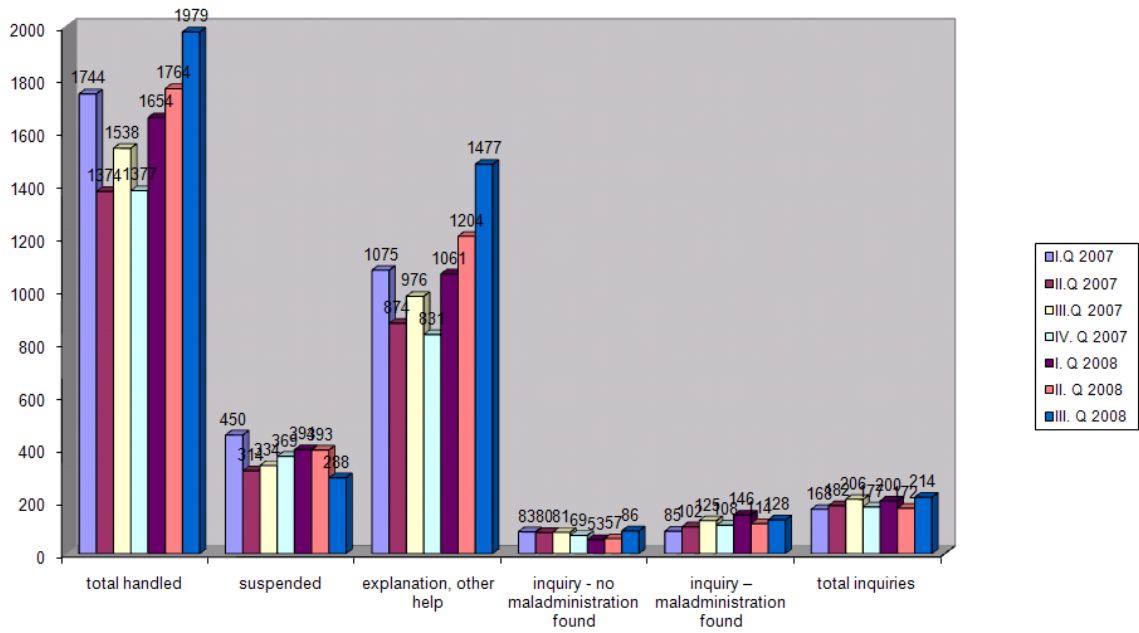
The Defender received some 17% more complaints in the first quarter of 2009 than in the same period of the previous year. The Defender received **2,071 complaints**, of which **1,112 (54%)** were within the Defender’s mandate as defined by the law and **959 (46%)** were outside.

## Structure of complaints by area of law – 1<sup>st</sup> Q 2009



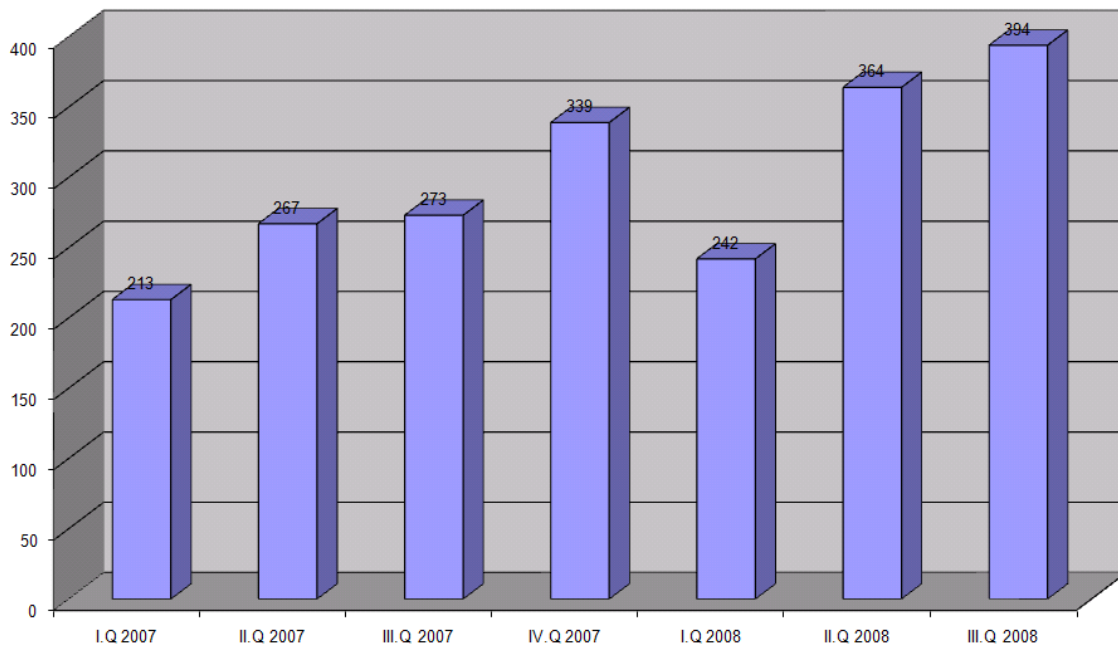
The structure of the complaints received by legal area has changed only slightly over time. **Social security** is consistently the area with the highest rate of complaints (275), particularly concerning pensions and the provision of social benefits. The second most numerous group of complaints in the first quarter of 2009 were those in the area of **construction and regional development** (111), 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 (99). 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 performance of **distraint** and the issue of **rented housing**).

### Number of complaints handled, number of inquiries



The Defender **handled** 2,079 complaints during the first quarter of 2009, **closed** 177 inquiries, with maladministration by the authority concerned found in 111 (62%) cases.

### Development in the Number of Complaints Made in Person since 2008



In the period under scrutiny, the Defender, his deputy and the authorised lawyers of the Office of the Public Defender of Rights continued to receive complainants who visited the Office in person. In the first quarter of 2009, **394 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 draft new Waste Act**

The Defender primarily pointed out that the draft has been submitted somewhat hastily and without first submitting a draft strategy. Furthermore, the Defender noted that the amendment fails to deal with one of the most fundamental issues, i.e. the liquidation of unauthorised dumps and other illegal waste repositories (given that there are hundreds of illegal dumps, the law should deal with the question as to who should pay for their removal). The Defender also proposed to introduce into the law solidary liability for torts of the statutory bodies of a legal person consisting in breaches of the Waste Act resulting in serious danger to or disturbance of the environment. Similarly, the Insolvency Act (and, consequently, the Commercial Code) should be amended so that it expressly stipulates the obligation of the insolvency trustee to inform the court of the manner of settlement of the liabilities of a company in liquidation which are related to the handling of waste or hazardous waste by that company. The settlement of these liabilities should be prioritised.

#### **2) Comments on the amendment to the Water Act**

*related: Act No. 254/2001 Coll. on Water*

The Defender pointed out that there are cases where the planning permission for waterworks is terminated and yet there is valid permission for the handling of water for the waterworks concerned. According to the Defender, the mutual relation of the two decisions should exist not only in their origins, but also in case of expiry of one of them (or in the expiry/termination of the planning permission). The Defender simultaneously pointed out that although permission for the handling of water contain the quantity of water the authorised party is allowed to withdraw within a specific period of time, they do not contain the obligation to equip the off-take equipment with meters so as to enable checking in practice whether the conditions set in the permission are complied with. The Defender therefore proposed that the law expressly stipulate for these cases that the authorised party is obliged to equip the off-take equipment with the relevant meter.

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

### **1) Proposal of the Ministry of the Interior for annulment of parts of generally binding decree of the Chrastava municipality No. 4/2007, stipulating the conditions for the combustion of dry plant materials in open campfires, garden fireplaces or in open barbecues**

*related: Act No. 128/2000 Coll. on Municipalities, Act No. 86/2002 Coll. on Clean Air Protection*

As with the proposal for annulment of generally binding decree of the Budyně nad Ohří Municipality No. 2/2005, stipulating the conditions for the combustion of solid fuels, the Defender expressed disagreement with the proposal, on the one hand because the municipality has statutory authorisation to issue the relevant decree (Section 3 (5) and Section 50 (3) of the Clean Air Protection Act) and, on the other hand, because the decree (in the sense of rulings of the Constitutional Court File Ref. Pl. ÚS 45/06, Pl. ÚS 30/06, Pl. ÚS 6/08) stood up to the “*test of four steps*”. Thus, there was the power to issue the decree, the municipality did not act “*ultra vires*”, did not misuse the power and competence bestowed on it by the law and, in addition, the obligations imposed by the decree were reasonable. The Defender therefore proposed rejection of the proposal of the Ministry of the Interior.

### **2) Proposal of the Regional Authority of the Central Bohemian Region for annulment of Regulation of the Mnichovice Municipality No. 2/2006 on the Prohibition of Construction**

*related: Act No. 128/2000 Coll. on Municipalities, Act No. 50/1976 Coll., the Building Act, as amended, Act No. 150/2002 Coll., the Court Procedural Code, as amended*

In the case concerned, the Regional Authority of the Central Bohemian Region proposed to the Constitutional Court annulment of a regulation on the prohibition of construction. However, the Defender held the view that such a regulation of a municipality is a measure of general nature, which is to be reviewed by the Supreme Administrative Court rather than the Constitutional Court. He therefore proposed rejection on the grounds of a lack of competence. In this context, however, the Defender concentrated on the issue of the justification of administrative acts. He stated that if the bodies of local administration issue municipal regulations on the prohibition of construction, they must indicate directly in the regulation the clear reasons that led them to the prohibition and, simultaneously, specify the time for which the prohibition of construction will last. The Defender stated with respect to the regulation of the Mnichovice municipality that it did not contain any justification which would make it possible to ascertain whether the conditions for declaring prohibition of construction were met. The Defender therefore expressed his opinion that the regulation of the Mnichovice municipality was not in accordance with the law and the general requirements for the work of the bodies of public administration. The Defender therefore recommended that, if the Constitutional Court decides to address the proposal of the Regional Authority of the Central Bohemian Region, it should accept it and annul the regulation of the Mnichovice municipality.

The Constitutional Court agreed with the conclusions of the Defender regarding the power to make decisions in the given matter and rejected the proposal with the explanation that the regulation of a municipality on prohibition of construction is a measure of general nature, which is to be reviewed by the Supreme Administrative Court.

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

The Defender used all types of media in the 1<sup>st</sup> quarter of 2009 to inform the public of his activities and continued to meet complainants in person.

- **Three press conferences** were organised during the period under scrutiny. The press conference in January was not only an opportunity for the first evaluation of the year 2008, but it also concentrated on the system of social benefits. At the press conference in February, the Defender acquainted journalists and the public with findings from inquiries into cases concerning remediation of environmental burdens. This was related to the provision of up-to-date information to the public regarding the handling of contaminated railroad ties. The March conference was concerned with access of foreigners residing in the Czech Republic on the basis of a long-term residence permit to public health insurance.
- In addition to **press releases** on the issues presented at the press conferences, other reports on certain current cases and events were released during the first quarter. The most important ones included information on the denying of information on the results of administrative proceedings by the Czech Business Inspectorate, the Defender's opinion on the distraintment of benefits in material need, the Defender's proposal that the Constitutional Court annul the fire protection decree and information on the complaints of citizens born in municipalities that no longer exist.
- **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 on Czech Radio stations, Czech Television, TV Prima and Nova. They appeared as guests in a number of radio and television programmes, e.g. Otázky Václava Moravce (Václav Moravec's Questions), Občanské judo (Civic Judo), Studio 6, Káva o čtvrté (Coffee at Four) and others. The Defender also gave an interview to BBC television on the mandate of the ombudsman in the Czech Republic, the sterilisation of Romani women and some recent cases.
- The Defender's opinion on the distraintment of material need benefits, his standpoint on the fire protection decree and the reasons for proposing its annulment to the Constitutional Court, were the areas the media most frequently showed interest in, but journalists were also interested in the Defender's opinion on the condition of Czech justice and specific cases such as the repositioning of high voltage lines in Prague 9, operations on the Modrý most (Blue Bridge) across the Malše River in České Budějovice,

implementation of noise-prevention measures in Brno-Bosonohy and the comprehensive issue of disputes between neighbours.

- Preparation for the filming of new episodes of Czech Television's series A Case for the Ombudsman started during the 1<sup>st</sup> quarter of 2009.

In co-operation with the Ministry of the Interior and other central bodies of public administration, the Defender also issued a ***“Recommendation for Municipalities and Cities for Preventing the Arising and Extension of Socially Excluded Sites, with an Emphasis on Securing Housing”***. Its objective is to draw up a practical handbook for municipalities and cities and it summarises the existing tools available to public administration and local government that may serve to prevent the creation of new ghettos. The Defender is simultaneously endeavouring to present those examples of good practice where the issue of social exclusion was successfully resolved in specific municipalities.

**1,453 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.

**212,058 visits** were logged on the Defender's **website** at [www.ochrance.cz](http://www.ochrance.cz) in the period under scrutiny.

## ***D. International Relations, Conferences, Workshops***

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

- **Participation in an international conference on freedom of speech, “Freedom of Expression: Striking the Difficult Balances for the Ombudsman” organised by the Georgian ombudsman** (January 11 to 12, 2009, Tbilisi, Georgia)
- **Participation in an international conference on access to information “Access to Information: What can the Ombudsman Do” organised by the Albanian and Greek ombudsmen** (October 9 to 10, 2009, Tirana, Albania)
- **Participation in a workshop on equal treatment organised by EQUINET – the European Network of Equality Bodies** (March 18, 2009, Brussels, Belgium)
- **Meeting with the representatives of the Canadian Council for Immigration and Refugees on Roma issues** (March 24, 2009, Brno)

**Conferences and workshops organised**

- **conference on Current Problems in the Area of the Building Code** (January 28, 2009, Brno)
- **round table meeting on Social Services, Standards of Social Services** (January 29, 2009, Brno)

- **round table meeting on Foster Care and Alternating Custody** (March 19, 2009, Brno)

## ***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 Defender's own initiative**

#### **1) Manner of handling used railroad ties**

The deputy of the Defender decided to inquire on her own initiative 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 statements from both authorities. The report states that it is obvious from the provided materials that the ties are hazardous waste. The deputy requests the Czech Environmental Inspectorate in the report 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 publish a notice on the hazardous characteristics of the ties.

The Czech Environmental Inspectorate stated in response to the conclusions of the inquiry that although it had recently dealt with several cases of handling railroad ties, the issue is not perceived as a priority task for the Inspectorate, in particular taking into account the constantly growing extent of the tasks to be fulfilled by the Inspectorate. As for the inspection at the originator of the waste, the Inspection stated that it had addressed the largest originator (Railway Infrastructure Administration, state organisation) with the objective of reviewing the transfers of material from the originator to end recipients and was planning several verification inspections at some other parties which were due to take place during the year 2009.

In her final statement, the deputy continues to request the performing of an inspection at the originators of contaminated railroad ties as soon as possible and subsequent action to be taken on the basis of the results of the inspection. In this respect, she awaits a response from the Czech Environmental Inspectorate.

#### **2) Heritage preservation in Kyselka Spa**

The Defender opened an inquiry against the Municipal Authority of the Karlovy Vary Municipality and the Ministry of Culture in relation to the disrepair of an immovable cultural monument. Kyselka Spa is a characteristic spa complex, which is closely related to the architecture of 19<sup>th</sup> century historicism. The premises of Kyselka

spa are in a state of disrepair – with disrupted structural characteristics and damaged roofs and outside plaster. The condition of the real estate is steadily deteriorating and, according to the statement of the National Institute of Cultural Monuments published at [www.npu.cz](http://www.npu.cz), it is necessary to act quickly.

Within the inquiry, the Defender is concentrating on the consistency of the inspection of heritage preservation, including whether or not the competent bodies could have prevented the occurrence of the state of disrepair of the structures subject to preservation.

### **3) Delays in the handling of applications for an allowance for care**

Given that there are still delays in the handling of applications for an allowance for care in the system of benefits for the disabled (the problem of disproportionate length of proceedings has transferred from review doctors to appellate proceedings, i.e. the review commissions of the Ministry of Labour and Social Affairs), the deputy of the Defender repeatedly addressed the Ministry of Labour and Social Affairs and requested adoption of measures which would effectively eliminate the delays. Although the Ministry has increased the number of review doctors, introduced new methods of work of the Review Commission of the Ministry and the total number of pending reviews decreased for the first time ever in the last quarter of 2008, the deputy of the Defender still finds the situation to be unbearable for applicants for an allowance for care. They are strongly affected and thrown into considerable social difficulties by the many months of waiting for the payment of the benefit. As the deputy of the Defender ascertained, the delays are sometimes so long that there are even cases where the applicant for an allowance dies before the decision is issued. The deputy requires the adoption of systemic measures that would resolve this untenable situation.

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

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

The Defender closed an inquiry into the procedure and decision-making of the Office for the Protection of Competition with respect to the architectonic competition for the design of a new building of the National Library. According to the Defender's findings, the Office dealt three times with the case. It initially concluded that it was not substantively competent to review acts of the National Library (the contracting authority) within the design competition and discontinued the proceedings initiated by HŠH architekti, s.r.o. It stated that a public contract, i.e. acts of a contracting authority taken in a tender procedure, was not concerned. Two months later HŠH architekti, s. r. o. advised the Office of the risk of awarding the public contract on the basis of the results of the relevant design competition. The Office responded to this by stating that it had found no reasons for commencing administrative proceedings since the procedure of the National Library was subject to an exemption from the application of the Public Procurement Act as a result of applying the rules of international organisations. Although both the National Library and the winner of the competition had pointed to application of the exemption from the application of the Public Procurement Act already in the first procedure, the Office had not dealt with this matter at that time. The Office began to act in the matter for the last time on the basis of a query from the Ministry of Culture, which requested the Office provide a

standpoint and recommendation for further steps. Within the aforementioned inquiry, the Office obtained an expert report on the nature of the UNESCO rules and the instructions of the International Union of Architects. It followed from the report that the exemption could not be applied, which was subsequently confirmed by the European Union. The Office therefore advised the Ministry of Culture and the National Library of the inapplicability of the exemption from the Public Procurement Act and informed them that *“the winning design was chosen at variance with the procedure envisaged by the law”*. It recommended annulment of the competition. The Office did all this through a mere letter rather than an administrative decision and it simultaneously advised the Ministry and the management of the Library that it did not have the power to directly review the legality of “design competitions”. It also pointed out that *“...this standpoint cannot replace or predetermine the work of the Office in administrative proceedings that may be initiated by the Office..., if the Office obtains findings on illegal steps of the contracting authority in the tender procedure for the design work or some other related contract”*.

After analysing the case, the Defender concluded that the Office had been substantively competent to assess the acts of the National Library as the contracting authority within the design competition and to make a decision regarding their legality. At least in cases where a design competition clearly aims towards actual awarding of a public contract, as was the case with the National Library, the Office must take measures to prevent unlawful conduct. The initial decision of the Office on discontinuation of the proceedings due to an alleged lack of substantive competence is therefore considered to be illegal by the Defender.

The Defender also criticises the Office for changing, not entirely comprehensibly, its opinions over time, conducting further inquiries to an unclear extent and with an unclear result and, in spite of the gathered documentation and statements, reaching conclusions on a lack of correctness of the design competition without providing detailed substantiation, and the Office failed to incorporate these conclusions in a decision which could be properly reviewed. The denial of a proper exercise of supervision over compliance with the Public Procurement Act resulted in a long-term lack of certainty both on the part of the contracting authority, i.e. the National Library, and the participants in the competition including the winner. As for the effect of the Office on the media image of the case, the Defender believes that in some cases the media output of the Office did not correspond to reality. The Defender generally commented critically on the inappropriateness of substantive commentaries regarding correctness of the competition given that the Office was simultaneously denying its substantive competence and refusing to make a decision in the matter.

The Defender has sent his critical conclusions to the Office for the Protection of Competition and currently awaits the position of the management of the Office.

## **2) Exceeded noise limits on the D1 motorway**

A complainant contested the procedure of the Regional Health Authority of the South Moravian Region, which had permitted the Road and Motorway Directorate to operate a source of noise exceeding safe limits (a part of the D1 motorway). The permission had been issued until June 30, 2009, one of the conditions being completion of noise barriers on both sides of the motorway by the end of 2008. Noise measurement was to take place after the completion of the barriers and the results

were to be submitted by the end of validity of the permission at the latest. However, the construction of the barriers did not even commence by the above-specified deadline.

The deputy of the Defender initiated an inquiry in the matter concentrating on the procedure of the Regional Health Authority and found the latter passive (the Health Authority should have actively entered into negotiations with the operator as it had had trustworthy information already in 2008 that the deadline for completion of the noise barriers would not be met). If it intended to act favourably towards the operator, it should have at least commenced informal communication with it to seek a solution to the situation. Otherwise there was the threat that the Health Authority would be forced to conduct sanction proceedings against the Road and Motorway Directorate. The Health Authority essentially agreed with these critical conclusions, but it stated that it would not deal with the matter until expiry of validity of the permission. The deputy contended on the aforementioned position that in case that the operator is unable to explain in a trustworthy manner why it has not commenced building noise barriers to date, the law allows the Health Authority to commence proceedings on removal of the exemption before expiry of the validity of the relevant decision. The head of the Regional Health Authority promised to ensure remedy on the basis of the aforementioned conclusions and initiated proceedings on removal of the relevant exemption. Sanction proceedings due to failure to comply with noise limits should be initiated subsequently.

### **3) Complaint concerned with the “*I, Muslim*” programme**

The deputy of the Defender closed an inquiry against the Council for Radio and Television Broadcasting concerning sanction proceedings against Czech Television due to broadcasting the coverage “*Já, muslim*” (or “*I, Muslim*”) in the Infiltrace (or Infiltration) programme on October 7, 2005, on Czech Television’s second channel.

It was ascertained through inquiry that the Council had discontinued the proceedings on administrative infringement without substantiating its procedure in its decision in any manner whatsoever and without incorporating the reasons at least in the administrative file. The procedure of the Council was therefore assessed as non-transparent and exhibiting the characteristics of arbitrary behaviour of an administrative body.

The Council changed its existing practice on the basis of the inquiry and will properly substantiate decisions also in cases where the proceedings are discontinued. In addition, access of the public to information on the work of the Council should soon be made easier and broader by means of a website.

### **4) Non-granting of a visa for a stay up to 90 days to an Egyptian friend**

Mrs M. S. addressed the Defender in the matter of her Egyptian friend whose application for the granting of a visa for a stay up to 90 days had been twice rejected by the embassy of the Czech Republic in Egypt. The complainant had made acquaintance with her friend in July 2006 and subsequently met him several times during her stays in Egypt. They then together planned that Mr M. M. would visit and acquaint himself with the Czech Republic. However, the Czech embassy repeatedly rejected the application for a visa.

The Defender found several shortcomings on the part of the embassy.

Firstly he stated that it was impossible to establish from the form of the application and the file when precisely the application was rejected. The Defender also stated that although there seemed to exist variance between the actual purpose of the stay (visit to a friend) and the declared purpose (tourism), it was impossible to state given the circumstances of the case that there would be any facts suggesting that Mr M. M. would not leave the territory of the Czech Republic after the end of the stay or that he intended to misuse the visa for some other purpose. The actual reason for the stay followed from the accompanying e-mail communication, which the complainant had maintained with the embassy in Cairo. The Defender opined in this respect that within its duty to instruct and from the perspective of the principles of good administration, the embassy should have instructed Mr M. M. to alter the declared purpose of the journey so as to comply with the actual purpose. The Defender also rejected a practice where the purpose of an application for a visa directed at closer acquaintance with the life and environment in the Czech Republic and closer acquaintance of persons considering marriage is rated as *a priori* risky.

As for the formal requisites of the application for a visa, the Defender reprehended the authority for the fact that neither of the forms included an accurate citation of Section 56 (including the specific subparagraph) of the Foreigners Residence Act (Act No. 326/1999 Coll. as amended), on the basis of which the application was rejected. It is desirable with regard to the legal certainty of applicants for a visa that the specific legal grounds for rejecting the application should be always indicated in the application. In addition, there was no record of an interview for a visa in the sent files concerning the two applications in spite of the fact that the interviews had taken place in both cases and the interview had lasted a whole hour for the second application for a visa.

In relation to the issue of proving a relationship to an EU citizen, the embassy informed the complainant that if she wanted to live together with her friend in the Czech Republic, the only option was to contract marriage in Egypt and subsequently request the issue of a Czech marriage certificate. The Defender rejected the aforementioned conclusion and stated that with regard to Section 52 of the International Private and Procedural Law Act (Act No. 97/1963 Coll. as amended), superlegalization of the Egyptian marriage certificate by the embassy of the Czech Republic in Egypt is sufficient for proving relationship to a citizen of the Czech Republic. In cases where there is agreement on legal assistance between the Czech Republic and the relevant state, the foreign public instrument (except for the translation to the Czech language) can be automatically used as a public instrument in the territory of the Czech Republic, without having to obtain a marriage certificate from the special registry office in Brno. Given that the original negotiations with the embassy and the Ministry of Foreign Affairs were not successful, the Defender proposed systemic changes in his final statement.

In response to his final statement, the Defender received a reply from the Deputy Minister of Foreign Affairs PhDr. Jan Kohout who informed the Defender that he had instructed all embassies using a methodological instruction which leads them to a consistent completion of the relevant sections of the form of the application for a visa (date of submission, processed by, supplementing documents, type of visa, date of denial/granting of the visa with the signature of the relevant officer, etc.). As for the obligation to submit a proof of possession of travel medical insurance, embassies are advised that the aforementioned document cannot be understood as a mandatory

requisite of an application for a visa (it cannot be requested until the visa is marked in the passport). However, it is at the same time left to the applicant himself whether he will submit the aforementioned proof already when submitting the application. The websites of the individual embassies are undergoing the relevant modifications in this respect. The Deputy Minister also informed the Defender of the introduction of a new practice of informing the applicant of the reasons for denial of a visa in writing on a prescribed uniform form, which always indicates the relevant provision of the Foreigners Residence Act and a copy of the aforementioned information is also placed in the file. As for the proving of the status of family member of an EU/Czech Republic citizen, the practice at all embassies was unified as it was expressly stated that a foreign registry document provided with the proper authentication and official translation was a sufficient proof of relationship to a citizen of the EU. However, the Defender continues to disagree with the Ministry as to the opinion on the obtaining of records of interviews conducted by the consular staff.

The Defender decided to close his inquiry given the remedial measures adopted.

### **5) Literal excerpt from the registry office for a natural person**

The deputy of the Defender addressed the Ministry of the Interior with a proposal for amendment to the legal regulation in which natural persons to whom a record in a register pertains or to their family members (husband, wife, parents, children, grandparents, grandchildren and great-grandchildren) and their authorised representatives would be allowed to obtain a literal excerpt in the form of photocopy from the register (the latter contains a number of extra details in comparison with a normal excerpt). The head of the Section of Archiving and General Administration of the Ministry of the Interior, JUDr. Václav Henych responded favourably to the proposal and stated that the Ministry promptly added an amendment to Section 25 (4) of the Registries Act to the draft amendment to the government draft law, which amends some laws in connection with the adoption of the Act on the Basic Register of Persons. Thus, persons who wish to obtain a literal excerpt from the register will now avoid complicated writing out of the relevant data but instead can have the data from the register copied for them.

### **6) The unequal position of foreigners in the Czech Republic in access to public health insurance**

The Defender considers the setup of the existing system of public health insurance to be unbalanced in relation to certain categories of foreigner. According to the Defender, especially foreigners from third countries, who are not family members of EU citizens, and family members of EU citizens from third countries during a temporary residence (i.e. the initial two years) in the territory of the Czech Republic, are unduly placed at a disadvantage.

As for the family members of citizens of the Czech Republic from third countries, the Defender believes that family members of citizens of the Czech Republic are unjustifiably placed at a disadvantage in comparison with the family members of other citizens of the EU residing in the Czech Republic. A typical example is the wife of a Czech citizen who comes from a non-member state and a woman from a non-member state who is the wife of a Slovak citizen residing in the

Czech Republic. While the wife of the Slovak legally residing and working in the Czech Republic is entitled to full healthcare and her insurance premiums are paid by the state, the wife of the Czech citizen does not have access to public health insurance during the two years of temporary residence (only after which she may apply for permanent residence), she must pay all her healthcare or is dependent on commercial health insurance companies. The Defender is convinced that the positions of family members of citizens of the Czech Republic and family members of other EU citizens should be made equal and that there are no compelling grounds for treating these two categories of foreigners differently in the area of access to public health insurance.

Foreigners from third countries who are not family members of EU citizens do not have access to the system of public health insurance during the initial five years of residence in the Czech Republic. They include, in particular, children and other family members of foreigners employed in the Czech Republic. They are able to use only commercial insurance, which, however, covers a significantly smaller extent of healthcare, and which there is no legal entitlement to and insurance companies refuse to conclude agreements with many foreigners (in particular when they are ill or old). The aforementioned condition is at variance with the Updated Strategy of Integration of Foreigners in the Czech Republic and Resolution of the Government No. 256 of March 17, 2008, on the Strategy of Integration of Foreigners, in which it is required to ensure access to the system of public health insurance to the children of foreigners who have legally resided long-term in the territory of the Czech Republic.

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

Since January 1, 2009, within systematic visits, the Defender has been visiting homes for handicapped people, concentrating on the protection of the rights of clients from 0 to 26 years of age. His interest is traditionally centred on observance of the rights of the clients, the conditions in which they live, the use of provisions restricting freedom of movement, but also education of the clients and compulsory school attendance. Given the age of the clients, the Defender is also interested in co-operation of the homes with the bodies of social and legal protection of children. The Defender will continue to visit this type of facility in the second quarter of 2009.

Brno, April 21, 2009

JUDr. Otakar Motejl  
Public Defender of Rights