

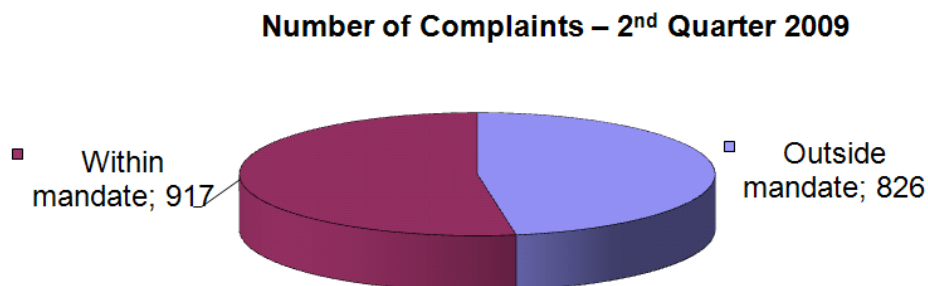
Report for the Second Quarter of 2009

Information on his 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 April 1 to June 30, 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 the 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 for the first quarter of 2009.

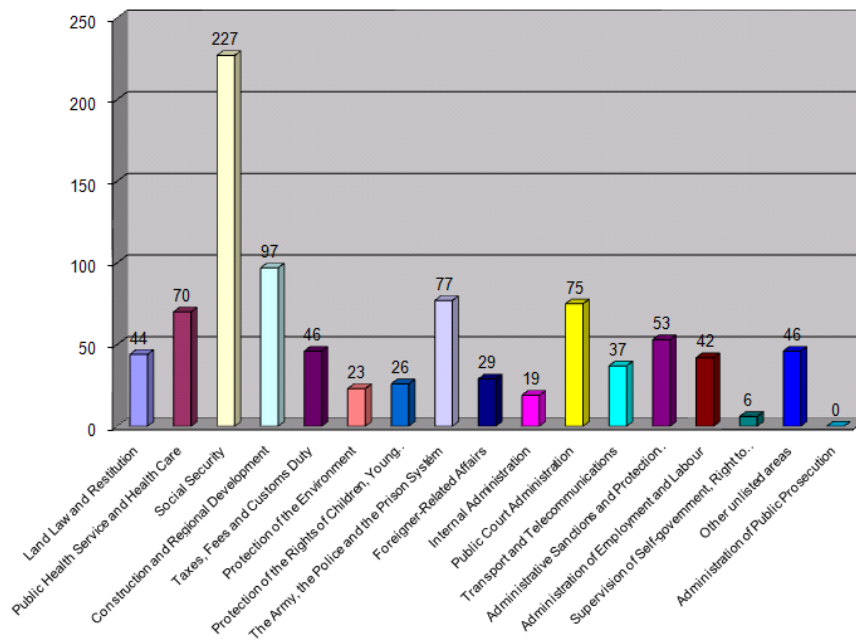
A. General Information on the Activities of the Defender

Number of complaints received and handled



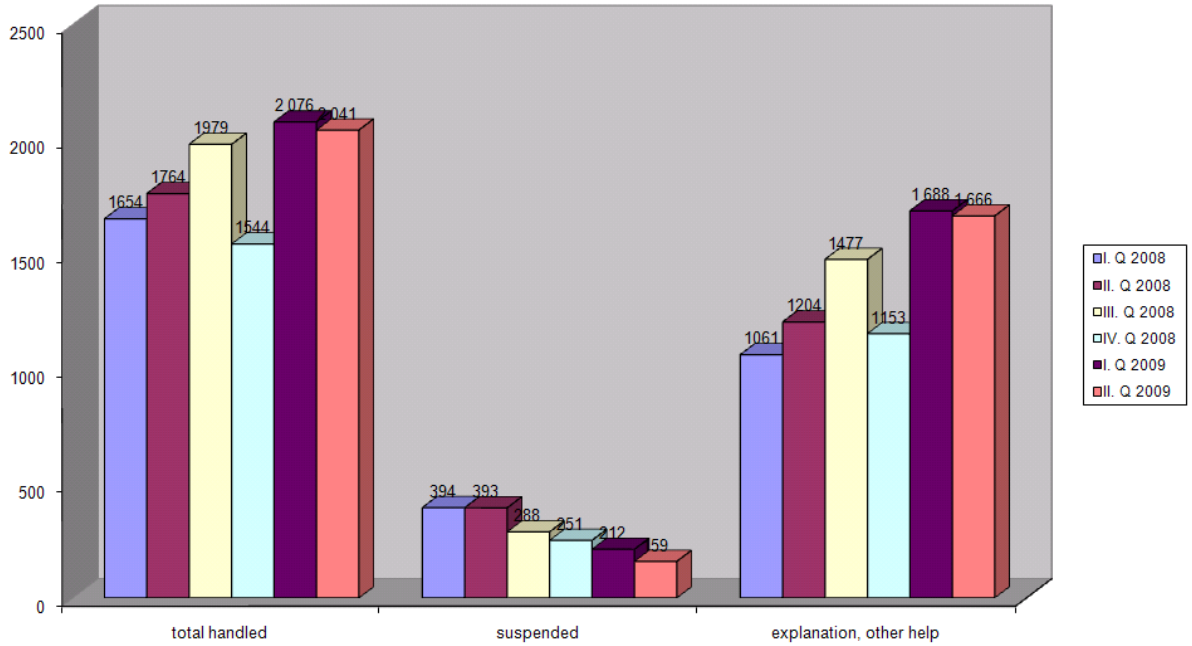
The Defender received 18 more complaints in the second quarter of 2009 than in the same period of the previous year. In total the Defender received 1,743 complaints, of which 917 (52%) were within the Defender’s mandate as defined by the law and 826 (48%) were outside.

Structure of complaints by area of law – 2nd Q 2009

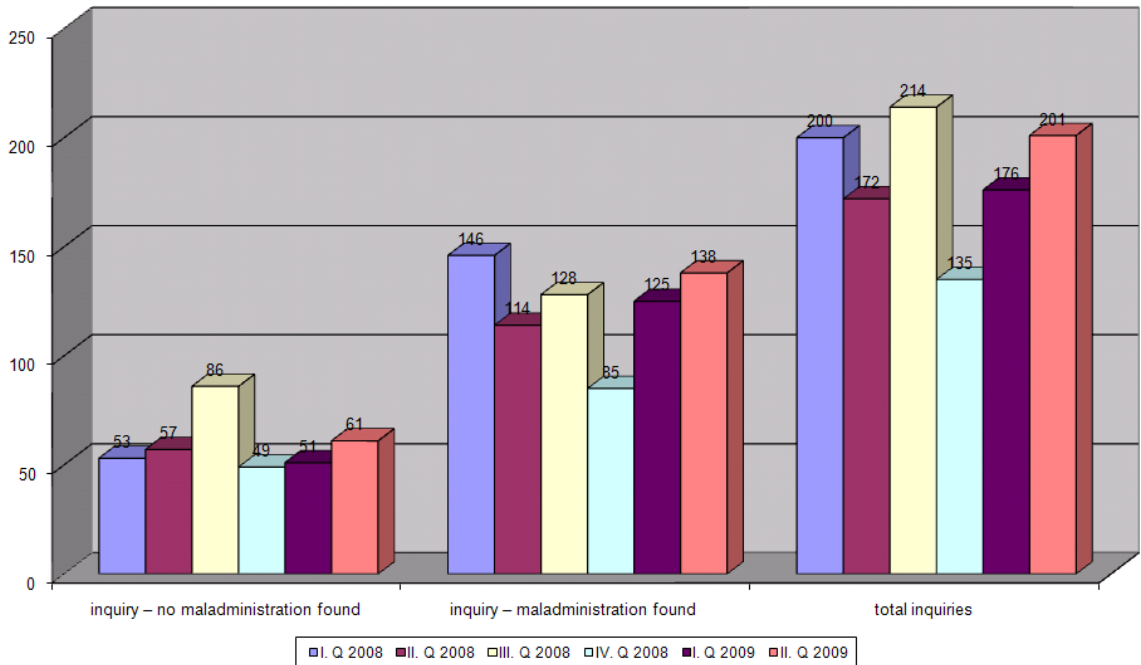


The structure of complaints received by legal area has changed only slightly over time. Social security is consistently the area with the highest rate of complaints (227), particularly concerning pensions and the provision of social benefits. The second most numerous group of complaints in the second quarter of 2009 were those in the area of construction and regional development (97), 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 (77). 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 distraintment and the issue of rented housing).

**Number of complaints handled, suspended, explanation provided
in 2008 - 2009**

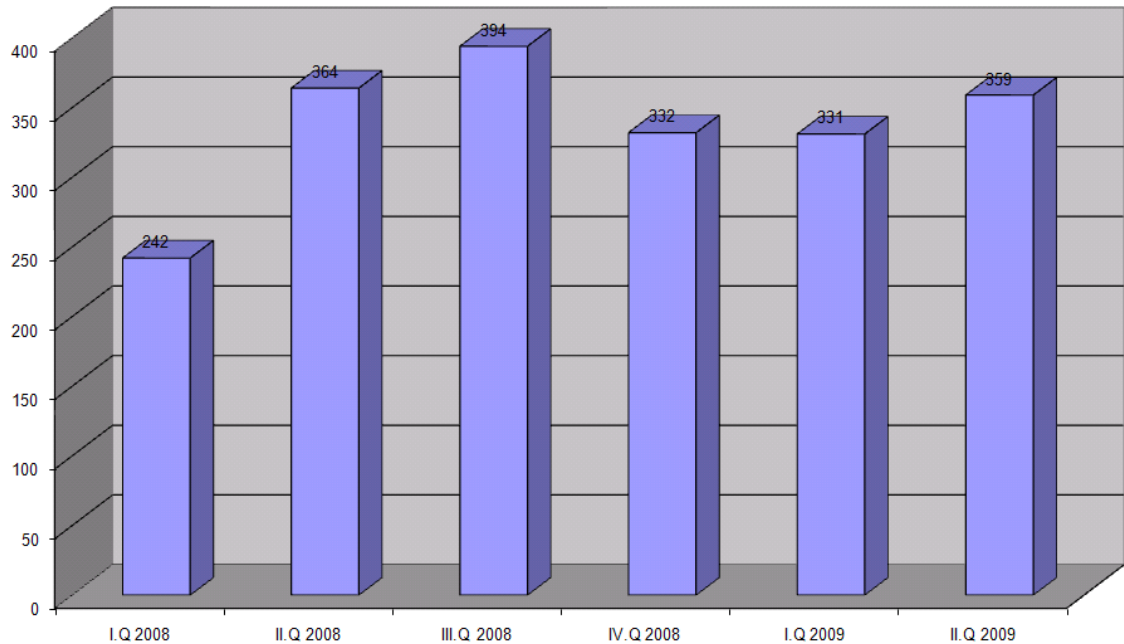


Number of inquiries in 2008 - 2009



The Defender handled 2,041 complaints during the second quarter of 2009. In his inquiries he found maladministration by the authority in 138 cases (68%).

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 second quarter of 2009, 359 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 use of the special powers bestowed on him by the Public Defender of Rights Act.

I. The Defender's authorisation to make recommendations on legal regulations pursuant to Section 24 (1) (c) of the Public Defender of Rights Act

1) Comments on the draft law on consumer credit

The Defender welcomed adoption of new legislation which transposes Directive 2008/48/EC of the European Parliament and of the Council of April 23, 2008. Although he agreed with the basic objectives, he pointed out several shortcomings in the draft law. The Defender considers fragmentation of the supervisory powers between several administrative authorities to be problematic. Furthermore, the Defender proposed that the offering of consumer loans means of advertising always contain a representative example that would make it possible for the consumer to acquaint himself with the conditions of the loan in a more thorough and comprehensible manner. As a fundamental comment (which, however, was not

accepted by the submitter), the Defender required that arbitration clauses be expressly ruled out in consumer agreements. Arbitration clauses substantially worsen the position of the consumer since a dispute following from such an agreement is usually resolved by an arbitrator determined by the entrepreneur beforehand. This comment was not accepted by the submitter.

2) Comments on the amendment to the Building Act

The Defender stated on the proposed amendment to the Building Act that it entirely exceeds the general scope of an individual amendment to a legal regulation since, given its extent, the amendment essentially represents an entirely new law. This is obvious from the fact that every fundamental part of the Building Act is covered by the amendment. The Defender therefore pointed out that the proposed amendment to the Building Act is at variance with the basic principles of legislative work. Furthermore, the Defender pointed out that in its content, the proposed amendment to the Building Act fails to correspond to the institutes stipulated by the Code of Administrative Procedure (decision versus statement, attesting, communication) and in some provisions (particularly as regards definition of the parties to the proceedings) contradicts the case-law of the Constitutional Court and the Supreme Administrative Court.

3) Comments on the draft strategy for the Act on Provision of Legal Aid

The Defender proposed that in cases where free legal aid is provided also to legal persons that have not been founded for the purpose of the operation of a business, there exist clearly set property and income criteria for the provision of basic and, in particular, extended legal aid. The Defender also expressed his opinion that attorneys-at-law, NGOs and universities providing education in master's study programme law and legal science should have the possibility of providing free legal aid. The Defender also proposed that the draft strategy for the law be extended with the possibility of assessing in justified cases the actual income and availability of means for individual persons also outside the principle of income of jointly assessed persons.

4) Comments on the draft law on state citizenship

The Defender proposed that the provisions making the granting of state citizenship conditional on independence of public funds be omitted from the draft since the administrative body should be able to assess within its administrative discretion whether or not the applicant for granting state citizenship is an unjustified burden on the national social system. The Defender also stated that exclusion of Slovak nationals from the possibility of acquiring Czech state citizenship through declaration is unjustified, unsystematic and the proposed legislation could also be at variance with the laws of the European Union. Furthermore, the Defender proposed shortening of the deadlines for drawing up a standpoint of the Police and for decisions of the Ministry of the Interior on an application for granting Czech state citizenship.

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

Proposal of the Ministry of the Interior for annulment of 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

As with the proposal for annulment of parts of generally binding decree of the Budyně nad Ohří Municipality No. 2/2005, on stipulation of 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*”. 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.

The Constitutional Court made a decision entirely in line with the Defender’s proposal and dismissed the proposal of the Ministry of the Interior through a ruling of May 26, 2009, file Ref. Pl. ÚS 41/08.

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

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

The Defender stated in this respect that the Decree on Technical Conditions of Fire Protection of Buildings is at variance both with Arts. 1 and 2 of the Constitution, Arts. 1, 2 and 4 of the Charter of Fundamental Rights and Basic Freedoms and the Act on the Collection of Laws, stipulating the publishing 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 Constitutional Court dismissed the Defender’s proposal. The Constitutional Court deduced the following on the issue of using references to Czech technical standards:

“The existence of technical standards and reference to them in legal regulations are essential for ensuring that the legal regulations of the Czech Republic are not ineffectively burdened with a quantity of detailed legal requirements. A legal regulation cannot enter into the details (the manners of calculating various values, etc.) specified in many pages in the standards. A legal regulation stipulates only the basic conditions and refers to the relevant Czech technical standards, whereby it informs the persons competent to design buildings and deal with the technical conditions of fire protection of buildings (authorised engineer and authorised technician) where they can find a detailed stipulation of the given subject.

The following can be stated on the objections of the proponent regarding the absence of public and free access to Czech technical standards: Technical standards may be perused on business days at fire rescue services of regions (regional directorates, regional departments) or for a fee in technical libraries of regional cities.

Czech technical standards can also be purchased at the Czech Office for Standards, Metrology and Testing, which can also be addressed by citizens with a request for the provision of basic information. Czech technical standards can also be purchased at the contact points of Chambers of Commerce throughout the Czech Republic. The price of the printed form of technical standards was reduced to one half in 2009. The average price of Czech technical standards is (and was also before the reduction in the price) lower than the EU average.

There is also access to all the applicable technical standards in electronic form via the Internet where these standards can be downloaded for a fee (the service costs CZK 1,000 for 12 months for one user, with the possibility of a printed copy for an extra fee).

It should also be noted that technical standards are not primarily intended for the ordinary consumer, although protection of the latter is one of the tasks of technical standards, but rather for experts. Primarily authorized technicians and engineers assessing the technical conditions of fire protection (who use them in their work) are equipped with technical standards in the area of fire safety, which represents an additional possibility of access and perusing the standards. The subject of designing buildings may be dealt with only by persons competent to do so as follows from Section 158 of Act No. 183/2006 Coll. on Zoning Proceedings and the Building Code (the Building Act), as amended. These persons must obtain authorization for their work pursuant to Act No. 360/1992 Coll. on Performance of Occupation by Authorized Architects and on Performance of Occupation by Authorized Engineers and Technicians Active in Construction, as amended. They may carry out the designing of buildings as entrepreneurial entities; accordingly, they must expend certain costs associated with these activities for carrying them out. The acquisition of technical standards may be included in the aforementioned costs.

It can therefore be stated that access to the Czech technical standards set forth in Annex No. 1 to Decree No. 23/2008 Coll. is public and free of charge. The principle of public and free accessibility of the Czech technical standards set forth in Decree No. 23/2008 Coll. is not breached as the condition of public and free accessibility of technical standards for the citizen is provided for at state institutions, i.e. the fire rescue services of regions. Thus, a fundamental principle of the democratic state, i.e. equality before the law (Art. 1 of the Constitution, Art. 1 of the Charter), is not violated as a result of the existence of references to technical standards contained in the relevant Decree.”

Proposal for annulment of a part of generally binding Decree of the statutory city of Hradec Králové No. 8/2003 on the Local Fee for the Operation of the System of Gathering, Collection, Transport, Sorting, Use and Disposal of Municipal Waste

In this case, the Defender agreed with the proponent and opined that the municipality acted *ultra vires* when it stipulated issues in the Decree that fall under the area of stipulation of the procedure of assessment of a local fee. It clearly follows from Section 14 (2) of the Local Fees Act (Act No. 565/1990 Coll. as amended) that a municipality can stipulate only the substantive criteria for the collection of local fees but it is not authorized to intervene in procedural issues, which are governed by the Local Fees Act and, at a subsidiary level, by the Act on the Administration of Taxes and Fees (Act No. 337/1992 Coll. as amended). Thus, a municipality is not authorized to choose a form of assessment of a local fee different from that permitted by the law (it is not admissible that the municipality stipulate that the assessment shall take place by means of the so-called summary assessment list or an additional payment assessment). As regards assessment in the form of additional payment assessment, this form is in principal inconceivable according to the Defender, *inter alia* because local fees are paid without filing a tax return. The assessment takes place only on the initiative of the administrator of the fee if the payer fails to pay the local fee in time or in the appropriate amount. Thus, assessment of a local fee should always be preceded by ascertaining of the appropriate amount of the payment duty. Thus, the Defender cannot envisage the existence of any other cause for discrepancy between the amount of the assessed fee and the fee which was to be properly assessed than maladministration by the administrator of the fee or, as the case may be, facts justifying renewal of the proceedings. In these cases, with regard to the principles of assessment of local fees in general, extraordinary remedial proceedings rather than additional assessment of the fee should be used.

The Defender therefore proposed to the Constitutional Court annulment of the words of the contested article of the generally binding Decree “*or through an additional payment assessment or a summary assessment list*”.

C. Presentation in the Media and Communication with the Public

The Defender used all types of media in the 2nd quarter of 2009 to inform the public of his activities, continued to meet complainants in person and partake in discussions with the public.

- Three press conferences took place during the period under scrutiny. The theme of the April conference was the presentation of the 2008 Annual Report and a detailed acquaintance of journalists with the Defender’s work during the year. Special attention was paid to the Defender’s recommendations to the Chamber of Deputies particularly where the government should be authorized to deal with particularly serious problems. The May conference dealt with the issue of access to information in the area of healthcare, specifically the provision of information on the author of the medical review in case of a complaint concerning care and the issue of providing information from administrative files to parties to proceedings. The main theme of the June

conferences consisted in social housing. The Defender informed of the publication Recommendation for Municipalities and Cities for Preventing the Arising and Extension of Socially Excluded Sites, with Emphasis on Securing Housing, prepared and published by the Defender together with the Ministry of the Interior of the Czech Republic as guidance for municipalities and cities which is available not only in printed form, but also on the website of the Defender and the Ministry of the Interior.

- In addition to the press releases on the issues presented at press conferences, some other reports were also released during the second quarter with information, for example, on the Defender's participation in proceedings before the Constitutional Court on annulment of three generally binding decrees of municipalities. The report on the results of the inquiry into the steps 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 led to intense media coverage.
- Individual interviews and appearances in the media were an important part of the Defender's presentation. The Defender and his deputy gave interviews, presented their standpoints and answered questions on Czech Radio stations (Radiožurnál, Čro2, Čro6, Česko, regional studios), Frekvence 1, Czech Television, TV Prima and Nova, and they appeared as guests in a number of radio and television programmes – e.g. Studio 24, Události a komentáře (or News and Commentaries), Reportéři ČT1 (or ČT1 Reporters), 168 hodin (or 168 hours) and others. The deputy of the Defender partook in a debate with the audience of the Káva o čtvrté (Coffee at Four) programme of Čro2 Radio on access to information and the Defender gave extensive interviews to Hospodářské noviny daily and Profit weekly and Z1 TV in the Interview by Barbory Tachecí programme. In addition, statements of the Defender and his deputy appeared every day in national and regional media and on Internet servers. The Antidiscrimination Act, the Annual Report of the Defender, the inquiry into the issue of the National Library, the distraintment of social benefits and the Defender's standpoint on the Fire Protection Decree were the areas the media most frequently showed interest in. The Defender also gave an interview to French Inter radio where he talked about his work and developments in Czech society since 1989.
- The filming of what is already the fifth series of "A Case for the Ombudsman" programme began in the 2nd quarter at Czech Television.

1,294 calls were received by the Defender's information hotline. These were mostly requests for simple legal advice, or both general and specific queries regarding the Defender's mandate or progress in the handling of a complaint.

171,972 visits were logged on the Defender's website at www.ochrance.cz in the period under scrutiny.

D. International Relations, Conferences, Workshops

Meetings with foreign delegations and participation in international conferences

- Participation in the 7th annual conference of national ombudspersons of the member states of the EU and candidate countries organised by the European Ombudsman (April 5 to 7, 2009, Paphos, Cyprus)
- Meeting with 20 representatives of Ukrainian courts concerning the Defender's mandate and his relationship with the courts of the Czech Republic (May 5, 2009, Brno)
- Visit of European Ombudsman P. Nikiforos Diamandouros to the Czech Republic (May 17 to 20, 2009)
- Participation in the 9th world conference of the IOI (the International Ombudsman Institute) and celebration of the 200th anniversary of the Swedish parliamentary ombudsman (June 11 to 13, 2009, Stockholm, Sweden)

Conferences and workshops organised

- Conference on noise burden (April 28, 2009, Brno)
- Round table meeting on co-operation of the Public Defender of Rights with regional authorities – social agenda (May 21, 2009, Brno)
- Conference on the detention of foreigners (June 12, 2009, Brno)
- Round table meeting on hazardous waste (June 16, 2009, Brno)
- International conference on administrative punishment (June 25 to 26, 2009, Kroměříž)

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) Inspection work by the Prague City Hall concerning the exercise of social and legal protection of children by the individual municipal districts

The Defender opened an inquiry on his own initiative based on his long-term negative experience with the work of Prague City Hall in the area of social and legal protection of children. The objective of the inquiry is to generally deal with the issue of handling complaints in the given area of public administration (the existing findings suggest that the complaint agenda suffers from both formal and substantive defects). The Defender requested a written standpoint from the City Hall on the system of handling complaints (including specific proposals for remedial measures). Another area of concern is the publishing of personal data of children on the Internet by the Fund for Children in Need (an organisation to which the Prague City Hall grants authorisation to exercise social and legal protection of children and Prague City Hall should therefore exercise inspection of its compliance with the law). The inquiry is in the phase of gathering basic documents and statements.

2) Steps of a body of social and legal protection of children in providing for contact between siblings

Based on information from the head of the Planá children's home, the Defender opened an inquiry into the steps of the body of social and legal protection of children of the Žďár nad Sázavou municipal authority in the matter of two minor siblings placed in institutional education in the Planá children's home and their two younger siblings who had been entrusted into foster care and were kept in the records of the Žďár nad Sázavou municipal authority. The Defender was informed that although the elder siblings placed in the Planá children's home were interested in information on and contact with their younger siblings, this was not allowed. The foster parents were allegedly unwilling to enable the contact and the body of social and legal protection of children of the Žďár nad Sázavou municipal authority which keeps records of the family did not intervene in the matter. The body of social and legal protection of children allegedly shared the view of the foster parents in spite of the fact that there were no grounds for preventing contact between the siblings.

3) Situation at the Boletice nad Labem Reformatory - Kamenický Šenov branch

The Defender opened an inquiry on his own initiative on the basis of a complaint from a former employee of the institution who pointed out the conduct of a former employee of the institution with respect to the wards. The warden allegedly

treated the wards brutally, gambled with their health, called them vulgar names, kept their money and slept while he was on duty. Nine employees had complained to the head of the institution about the conduct of this employee in February 2007. An unannounced local inquiry took place on July 14, 2009, with participation of psychologist PhDr. Klimeš.

4) Steps of the head of a children's home in the relocation of a minor

The Defender opened an inquiry into the steps of the head of the Kralupy nad Vltavou children's home in the relocation of a minor. The Defender was addressed by the father of a friend of a minor who had been relocated from the children's home to a reformatory. The complainant pointed out improper conduct of the head of the children's home who fabricated facts regarding the boy's problems, etc. He also pointed out that the boy would be unable to complete his studies at an apprentice school due to the relocation, although he had only five weeks left until the end of his studies. The boy agreed with the inquiry into the steps of the head.

The Defender performed an unannounced local inquiry in the reformatory, talked with the boy and subsequently called on the reformatory to submit file documents showing the serious problems on the basis of which the head of the children's argued in her request for relocation. The Defender also invited the head of the apprentice school and the head of the diagnostic institution that had made the decision on the boy's relocation to provide their statements.

In the meantime the boy reached legal age and left the reformatory. The Defender is now preparing a report on the results of his inquiry.

5) Delays in the payments of sickness insurance benefits

The deputy of the Defender opened an inquiry into the steps of the bodies of sickness insurance on the basis of news in the media and an increased number of complaints concerning the payment of sickness insurance benefits (sickness benefits, maternity benefits). The objective is to ascertain the causes of delays in the payments of the sickness benefits and also to check the functioning of the entire system of sickness insurance, particularly its organisational and technical background.

A local inquiry at the Prague Social Security Administration and a meeting in person at the Czech Social Security Administration have taken place in the matter to date. The deputy of the Defender has requested the relevant file documents and will summarise her findings in a report on the inquiry after studying them.

6) Steps of the administrative authorities in reducing air pollution in the Ostrava region

The deputy of the Defender opened an inquiry on her own initiative concentrating on the steps of the bodies of public administration in reducing air pollution in the Radvanice and Bartovice municipal districts of Ostrava. Experts in environmental issues are currently being consulted in the matter and basic documents for an inquiry are being gathered.

7) Manner of handling used railroad ties

The deputy of the Defender inquired on her own initiative into the manner of handling contaminated wooden railroad ties. She ascertained through the inquiry that the ties were classified as hazardous waste as they contained waterproofing substances that may be carcinogenic. It is therefore necessary to manage and dispose of them only in the manner stipulated in the Waste Act and cannot be sold to private individuals as a product for reuse. The deputy of the Defender therefore requested the Czech Environmental Inspectorate (CEI) to perform an inspection of the management of the aforementioned waste at its originators.

The CEI stated in response to the inquiry that although it had recently dealt with several cases of handling railroad ties, the issue was 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. Within its inspection activities, Inspectorate 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. Following the findings made, it planned to perform several verification inspections at some other parties which were due to take place during the year 2009.

In her final statement, the deputy insists on the performing of an inspection at the originators of contaminated railroad ties and subsequent action to be taken on the basis of the results of the inspection. She also requests the CEI to provide information on the results of the inquiries to date and the steps the Inspection will further take. On the other hand, she welcomed the measure of the Chief Health Officer of the Czech Republic who will draw up an informative material for the competent bodies, prepare training of the personnel of authorities and ensure public awareness.

8) Exercise of social and legal protection of sexually abused children

Based on news in the media, the Defender has opened an inquiry into the steps of the children's home in Uherský Ostroh and the municipal office of the Brno – north municipal district. The objective of the inquiry is to ascertain whether both institutions could have prevented the abuse of a boy from the children's home who, as the winner of a contest for *“a child's stay with a V.I.P.”*, was sent for a long-term stay with the organiser of the contest without checking the situation, after which the organiser of the contest sexually abused the child.

A local inquiry was performed at the body of social and legal protection of children (BSLPC) and file documents were studied there. The Defender is currently preparing a report on the inquiry that will be sent to the relevant authorities to provide a statement on them.

9) 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 a cultural monument. Kyselka Spa is a characteristic spa complex, which is closely related to the architecture of 19th 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 standpoint of the National Institute of Cultural Heritage published at www.npu.cz, it is necessary to act quickly.

Within the inquiry, the Defender concentrated on the consistency of the heritage preservation inspectorate, including whether or not the competent bodies could have prevented the occurrence of the state of disrepair of the structures subject to preservation. A standpoint on the matter was requested from the Municipal Authority of the Karlovy Vary Municipality, the Kyselka Municipal Authority and the Ministry of Culture. The statement of the Karlovy Vary Municipal Authority proved insufficient and the mayor of the Karlovy Vary municipality was therefore requested in June to provide an additional standpoint. Based on the information obtained in the aforementioned manner, the Defender intends to propose that the inspectorate of the Ministry of Culture perform an inquiry into the steps of the bodies of state heritage preservation in the matter of the premises of the former Kyselka spa.

10) Alternative enforcement of a decision

The Public Defender of Rights has long been encountering complaints which point out both the removal of unauthorised buildings through distraintment and substitute performance of the necessary construction or maintenance works ordered by the planning authority. Municipalities in most cases lack funds in their budgets for cases where a decision issued by a planning authority needs to be enforced by the municipality in delegated competence. Although in this respect the Defender has repeatedly appealed to the necessity of providing for financial means in the municipal and regional budgets that would cover the costs associated with distraintment, he holds the view that a change has not yet occurred in this matter. Thus, inactivity of the planning authorities continues to be justified by a lack of funds in spite of the fact that the justification report on the new Building Act expressly mentions provision of the required funds. The Defender opened an inquiry on his own initiative for the above-specified reasons, during which he will meet with the Minister for Regional Development, the Ministry of the Interior and the Ministry of Finance for the purpose of finding a solution to improve the existing situation. The Defender perceives this as a particularly burning issue with respect to buildings subject to heritage preservation.

II. Inquiries opened on the complainants' initiative

1) Complaint about the passage of trucks

Some time ago the deputy of the Defender dealt with the passage of trucks through the Nové Město municipality (Hradec Králové district) and the associated noise and safety risks (the previous inquiry contributed to the replacement of windows and building safer pedestrian crossings). In the new inquiry the deputy concentrated on the question as to whether the performed measures were sufficient or some other measures should be considered and enforced by the bodies of public health protection. In this respect the deputy reprehended the regional health authority for lacking information on whether the current safe noise limit was observed at least in indoor spaces of buildings. She also expressed disagreement with the standpoint of the regional health authority regarding the impossibility of implementing additional noise reduction measures (the standpoint refers to an unofficial and substantively unfounded statement of the Road and Motorway Directorate). In her inquiry the

deputy will be concerned with progress in the definitive resolution of the noise burden.

A report on the inquiry was drawn up within the inquiry and the management of the regional health authority was called on to provide a statement on the ascertained shortcomings.

2) Making entry to customs areas subject to a fee

A complainant addressed the Defender with a complaint expressing dissatisfaction with the conditions existing at some customs authorities. Entry to the customs premises where proceedings are held on the granting of customs-approved treatment or use is subject to a fee at some customs authorities. Thus, companies can take part in the customs proceedings only after paying a fee to the owner of the plot of land (a private company) on which the customs area is located.

It was ascertained through the inquiry that the criticised condition was a result of a lack of agreement between the customs directorate and the owner of the real estate regarding the specific conditions of access to the customs area. Thus, the payment for entry, although it is not collected by the customs authority, can be regarded as an *“administrative fee of its sort”* as it is a precondition for access to the customs area. However, collection of such a fee lacks support in the existing legislation, and is at variance with Art. 11 (5) of the Charter of Fundamental Rights and Basic Freedoms, which stipulates that *“taxes and fees shall be levied only pursuant to law”*. Access to the customs authority is in fact restricted thereby. The Defender stated that the task of the customs authority is to ensure that access to customs proceedings is not restricted by obligations that were not imposed on parties to customs proceedings by the law.

The customs directorate subsequently accepted the conclusions of the inquiry and the Defender was informed that access to the customs area was free effective from July 1, 2009.

3) Denial of social benefits

The Defender opened an inquiry into the steps of the Brno-city labour office in the matter of making decisions on the denial of state income support benefits. The labour office had refused to acknowledge an expert report as a trustworthy document proving the existence of two apartment units (households) in the applicant's house. It had assessed the applicant and her daughter together with the subtenants from the second flat as jointly assessed persons. It had opened administrative proceedings on the overpayment of benefits and removed or reduced the applicant's benefits on which it was making decisions at the time. After the applicant addressed the Defender with a complaint, the authority invited her to a meeting where an official informed her that the benefits would be granted retroactively and, simultaneously, drew up for the applicant on the site a withdrawal of the complaint to the Defender. However, the complainant requested that the Defender continue the inquiry after she received a lower payment of benefits than she believed that she was entitled to.

4) Heritage preservation on the Barrandov terraces

Within an inquiry into the steps of the bodies of state heritage preservation, the Defender dealt with contradictory views of the planned construction projects on the Barrandov terraces. The approaches of the Heritage Preservation Inspectorate and the heritage preservation authorities differed there.

The Defender recommended in the report on the inquiry that the Minister of Culture instigate a meeting of the representatives of the Prague City Hall – the Department of Heritage Preservation, the National Institute of Cultural Heritage the Department of Monument Care of the Ministry of Culture and the Heritage Preservation Inspectorate, including representatives of the Prague 5 city district to discuss the ascertained contradictions and agree on joint steps in dealing with similar planned construction projects.

The Defender found out within the inquiry that the Ministry of Culture had already issued Decree No. 420/2008 Coll., stipulating the requisites and content of protection of heritage reserves and zones. After the aforementioned decree came into effect, Prague City Hall in co-operation with the Ministry of Culture, Prague 5 city district and the National Institute of Cultural Heritage took concrete steps aimed at issuing a measure of general character for the protection of the Barrandov heritage zone.

The Defender recently requested a report on the progress of work aimed at issuing a Plan of Protection of the Barrandov Heritage Zone. He simultaneously queried whether and how the Ministry of Culture has progressed in the work on the guidance document that is to systematically deal with the replacement of windows on buildings that are not cultural heritage but are situated in the territory of heritage city reserves and heritage city zones.

5) Denial of long-term visas by the embassy in Kiev

The Defender dealt with a complaint for the protection of rights in relation to the conduct of the embassies of the Czech Republic in Kiev and Donetsk (the Donetsk General Consulate) in handling visas for stays exceeding 90 days for thirty Ukraine nationals - members of the Eurovest co-operative. The visas were repeatedly not granted to a majority of the members of the co-operative.

The Defender ascertained through an inquiry that although interviews had been conducted with all the applicants, a protocol was enclosed with only one application. A written standpoint of the Kiev embassy on the granting/denial of the visa was missing in the file documents of the two applicants to whom the visa was granted. The Defender stated in this respect that the contents of the two applications did not differ from the other applications that had been dismissed and where the applicants had submitted as one of the requisites a decision of a labour office on a work permit.

The Defender stated that the embassy and the general consulate had breached methodological instruction Ref. No. 304173/2007-KO/5, which requires an embassy *“in case of interview ... to enclose a protocol of the performed interview from which follow facts indicating the existence of legal grounds for dismissing the application for the visa.* He expressed a belief that the Brno and Vyškov Foreign Police Inspectorates should have insisted on the provision of the protocol of the

performed interview before issuing a decision on the granting/denial of the visa. Without acquaintance with the information contained in the protocol of the interview, the Foreign Police is unable to reach a full understanding of the applicant and his/her intentions as is necessary for proper decision-making on every application for a visa. In addition, the making of decisions without acquaintance with the aforementioned information constitutes a breach of one of the basic principles of the work of administrative bodies, namely the principle of material truth. Furthermore, without protocols of the interview it is impossible to retroactively review compliance with the principle of legitimate expectation or justified confidence in the steps of the bodies of public administration as there is no fundamental difference between the two applications that were accepted and those dismissed.

In his report the Defender also reiterated his requirement that the protocol of the interview be signed by the applicant.

6) Charging for copies of archive materials at the National Archive

The Defender concluded in his inquiry that the National Archive proceeded and still proceeds at variance with the law as it unjustifiably charged the amount of CZK 50 instead of CZK 9 for obtaining a copy of archive material, namely for every page that is subsequently authenticated pursuant to part A of Annex No. 4 to Decree No. 645/2004 Coll., implementing some provisions of the Act on Archives and the Filing Service and on Amendment to Some Laws.

During the inquiry the Ministry of the Interior changed the interpretation of the relevant provision and admitted that the text of the Decree was to some degree confusing. In response to the Defender's inquiry, the Ministry as the organization responsible for archive administration prepared an amendment to the legal regulation that should very soon eliminate the interpretation vagueness. However, it is unclear from the gathered documents as to whether the Ministry as the directly superior body took any other steps towards the National Archive that would demonstrably eliminate the vagueness of the price list of services (e.g. in the form of a standpoint, recommendation, information act, etc.). Thus, the National Archive continues an illegal practice and charges for copies of archive materials at variance with the decree. As a result, researchers at the National Archive are treated differently to researchers at other archives in the Czech Republic, which the Defender considers to be inadmissible. He therefore invited both administrative bodies (the National Archive and the Ministry) to overcome the problem that has arisen.

The Defender also invited the Ministry to provide a statement on the legal nature of the price list of services and the relationship to the Act on Administrative Fees and the Act on the Administration of Taxes and Fees. It is not obvious from the text of the decree as to whether the paid amount is an administrative fee or a "private-law payment". This generates doubt as to how a complainant should proceed in requesting refunding of an amount he/she has paid for illegally charged copies.

The Defender stated in the conclusion of his report that it is detrimental to the quality of archive administration when the latter fails to show initiative within its own system in an endeavour to find a consensus and tolerates a non-uniform interpretation from the very beginning.

7) Denial of old-age pension

The Defender dealt with a complaint pointing out incorrect steps of the Czech Social Security Administration concerning the old-age pension. After a partial old-age pension was granted to the complainant, he lodged an application for a change in the date of its granting, i.e. for granting the pension retroactively for the past 3 years. Since, according to the Czech Social Security Administration, he had lodged his application only about four months after the notification on the decision on granting a partial old-age pension instead of within the 30-day legal deadline, his application was dismissed. However, the Defender ascertained that the Czech Social Security Administration had erred when it issued a mere statement instead of a decision on the application and it was also unable to prove the date of delivery of the original decision on granting a partial old-age pension.

At the time the obligation to deliver decisions on the granting of a pension by personal delivery was not laid down by the law as yet; the Defender nevertheless deduced subsidiary application of the provision of Section 19 of the Code of Administrative Procedure and the indisputable necessity of proving the delivery of the decision in order to demonstrably determine the dates of commencement of the periods of time for submission of an application for a change in the date of granting a pension or lodging an administrative action.

The Czech Social Security Administration admitted maladministration in that it had issued a mere statement instead of a decision and additionally issued a dismissive decision. On the second maladministration, it was ascertained on the basis of a statement of the Czech Social Security Administration that the complainant had demonstrably received the written materials sent together with the decision on a pension by a certain date and it is therefore very likely that he had also received the relevant decision. Thus, the thirty-day deadline for exercising the right to apply for a change in the date of granting a pension had expired to no effect.

8) Reclaiming of a landfill in the Líšnice municipality

Based on a complaint from the mayor of the Líšnice u Mohelnice municipality, the deputy of the Defender inquired into the steps of the Mohelnice municipal authority as the planning authority which had permitted a change in a construction project – reclaiming of the Újezd-Líšnice solid municipal waste landfill. The complainant stated that the reclaiming of the landfill had originally been ordered to the Mohelnice municipality by the environmental department of the Šumperk District Authority in 1993 due to ascertained pollution of ground water due to defective insulation within the 2nd stage of the landfill. The Šumperk District Authority and the Mohelnice Municipal Authority as the planning authorities had stated in their decisions that no additional waste was to be delivered to the area during the reclaiming. Instead, however, the area had been used since 1997 for storing various types of waste by a company that had had a contractual relationship with the Mohelnice municipality for waste disposal. The complainant therefore perceived the decision of the Mohelnice Municipal Authority as an attempt to retroactively legalise the aforementioned unlawful conduct.

The deputy of the Defender agreed with the complainant after reviewing the requested documents and assessment of the situation on the site. In the report on the inquiry she noted serious maladministration by the bodies of state administration

in the area of waste management and the Building Code. She requested the Mohelnice Municipal Authority, the Czech Environmental Inspectorate and the Regional Authority of the Olomouc Region to provide statements on the conclusions of the inquiry .

9) Assignment of birth identification number to another person

The complainant addressed the Defender in February 2007 after the Ministry of the Interior of the Czech Republic advised her that the birth identification number used by her to date was not the birth identification number which had been assigned to her but instead belonged to another person. The Prague 14 Municipal Office subsequently invited the complainant pursuant to the Identity Cards Act and the Travel Documents Act to have her documents renewed. The complainant ascertained that the Pension Authority had made a decision on a change in her birth identification number in 1975 without informing anyone.

The deputy of the Defender opened an inquiry in the matter against the Ministry of the Interior of the Czech Republic and simultaneously recommended the complainant lodge administrative action pursuant to Section 82 of the Court Procedural Code – protection against illegal intervention, instruction or coercion by an administrative body. The complainant did so at the Municipal Court in Prague which issued a judgment on September 11, 2007, by which it prohibited the Ministry of the Interior from continuing acts preventing the complainant from using the original birth identification number and by which it also ordered that the Ministry preserve the number originally assigned to the complainant in the central citizens register. The Ministry appealed to the Supreme Administrative Court. The Supreme Administrative Court subsequently dismissed the cassation complaint.

The complainant still continued to provide information on problems with her birth identification number. Her original birth identification number had still not been restored in the information system of the citizens register by April 2009. Thus, the complainant was unable to renew her driving licence and encountered problems at the land registry office, the tax authority, etc. The Ministry of the interior continued its illegal conduct in spite of the decision of the courts.

It is obvious from the replies of the deputies of the Minister of the Interior to the report of the deputy of the Defender on the results of the inquiry that the Administration Activities Department had erred as it failed to provide for a change in the information system of the citizens registry. The change was performed as late as April 8, 2009. The deputy of the Defender proposed to the Minister of the Interior in her final statement that as a remedial measure, the Ministry provide the complainant with appropriate compensation for the incurred non-proprietary damage pursuant to Act No. 82/1998 Coll.

10) Steps of the Foreign Police

Following an earlier inquiry, an extract from a methodological instruction of the Head Office of the Foreign Police was sent to the Defender for information concerning administrative deportation, namely assessment of the appropriateness of an infringement on the private and family life of a foreigner by Foreign Police bodies.

The Defender appreciated that the methodological instruction took into account the Defender's proposal to incorporate in the methodological instruction, in addition to the case law of the national administrative courts, as well as the relevant case law of the European Court of Human Rights (ECHR) and the European Court of Justice (ECJ). Thus, the transparently and comprehensibly phrased criteria for the assessment of the appropriateness of deportation in relation to foreigners from third countries are based on two key decisions of the ECHR – *Boultif v. Switzerland*, application No. 54273/00, and *Üner v. the Netherlands*, application No. 46410/99 (the nature and seriousness of the act committed by a foreigner, length of stay of the foreigner in the territory of the Czech Republic from which he is to be deported, etc.). It is emphasised in the methodological instruction in relation to EU citizens and their family members that the public policy exception is a derogation from the fundamental principle of freedom of movement for persons which must be interpreted strictly. The methodological instruction further details the criteria set up by the key case law of the ECJ (e.g. judgments in *Case 48/75 Royer* of April 8, 1976, *C-459/99* of July 25, 2002 and *C-60/00 Mary Carpenter* of July 11, 2002).

11) Management of personal data in a bank

The deputy of the Defender ascertained maladministration by the Office for Personal Data Protection (the Office) in an inquiry opened on the basis of a complaint from a dissatisfied client of a bank. Although the Office had informed the complainant correctly in formal terms that the applicable law no longer contained the provision that consent to the processing of personal data may be withdrawn at any time, it followed from the general context of the reply that the complainant had no means of defence against the controller of the data, i.e. the bank. The statement was at variance with the mission of the Office which is to follow the law, perform supervision of compliance with the obligations laid down by law in personal data processing and provide information on the handling of investigations and complaints about breaches of the obligations stipulated by law. It follows from the nature of the matter that the information provided by the Office shall be in accordance with the law and correspond to the circumstances of the given case. Reference should also be made in this context to the general duty of the administrative body to provide advice, from which it follows *mutatis mutandis* that the Office should have provided the complainant with reasonable advice on his rights.

Although the Office admitted its maladministration during the inquiry, the deputy of the Defender thought it appropriate to also resolve other matters inseparably connected with the given issue and which have been satisfactorily dealt with to date neither in the professional sphere nor by case law. She therefore also commented in the report on the inquiry on some other problematic aspects of the processing of data in the banking sector. These included the issues of appropriateness of the processed personal data by banks in the submission of an application for credit, design of the so-called scoring criteria, the need for express consent to the processing of personal data in the Bank Register of Client Information (BRCI) and the potential withdrawal of granted consent.

The deputy stated in conclusion of the report on the inquiry that every person should in his/her own interest carefully read all the conditions of personal data processing to which they give their consent as the granting of consent may vary

substantially reduce the application of some of the principles of personal data protection.

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

During the second quarter of 2009 the Defender completed the systematic visits to homes for handicapped people with emphasis on clients up to 26 years of age. 25 such facilities were visited.

It follows from the preliminary findings that the providers of this service must deal more often than, for example, the providers of homes for elderly people, with the management of the clients' aggression including proper training of personnel. However, it was also ascertained that the personnel in a number of facilities had not undergone professional and practical training for the use of safe hold-downs and lacked technical and safety devices for calling for assistance. The providers must cope more often than in other facilities with the correct use and understanding of means that have the potential of limiting the free movement of the user and are used long-term.

Facilities selected for the transformation of social services were also visited (transformation to a "*day-care centre*" or "*sheltered housing*"). In this context the Defender expressed his support for the planned transformation of selected facilities because their current condition (location, structural and technical design, relative independence of some clients, etc.), in spite of all efforts of the personnel, does not correspond to the direction the provision of social services should take.

Brno, July 20, 2009

JUDr. Otakar Motejl
Public Defender of Rights