Report for the Fourth 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)

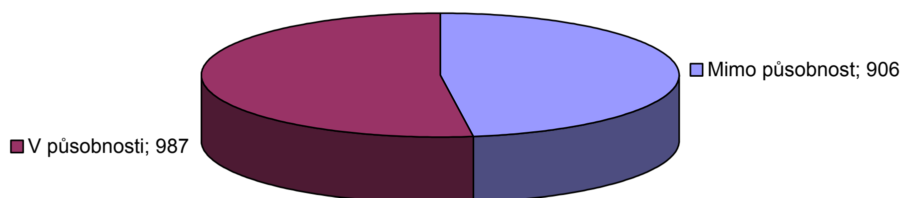
for the period from October 1 to December 31, 2009

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 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 third quarter of 2009.

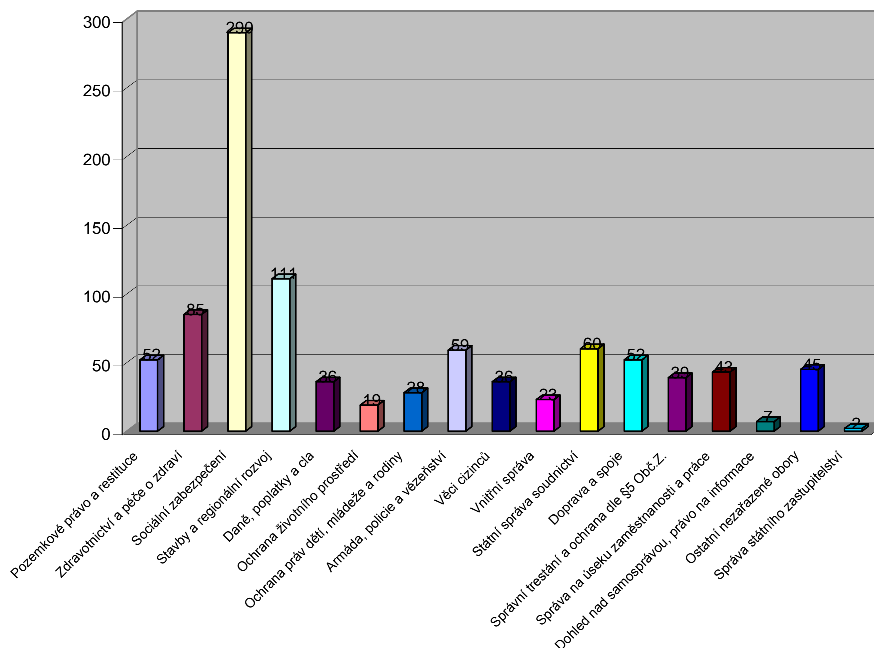
A. General Information on the Activities of the Public Defender of Rights

Number of complaints received and handled

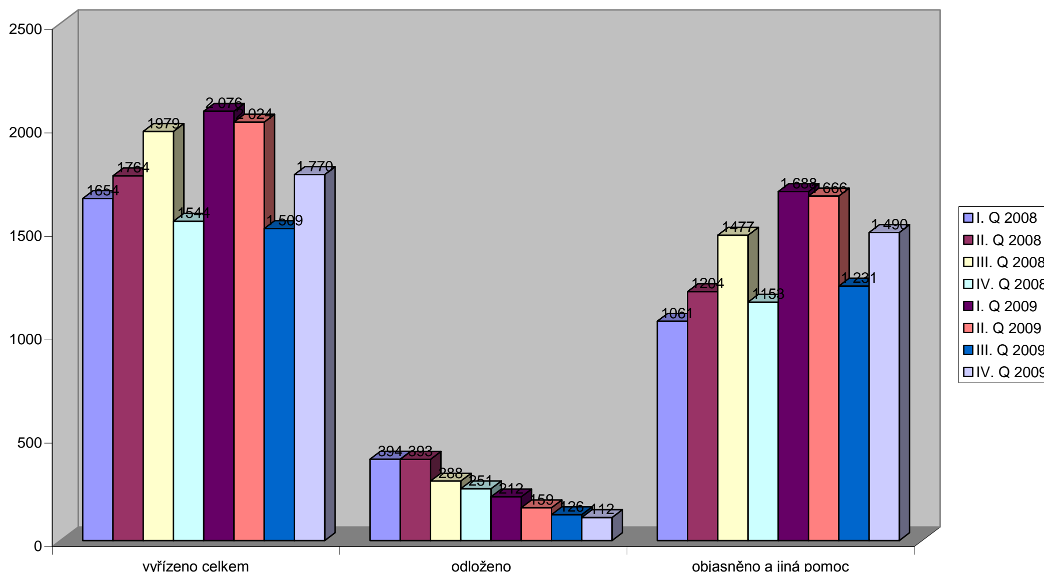
Počty podnětů - IV.Q 2009

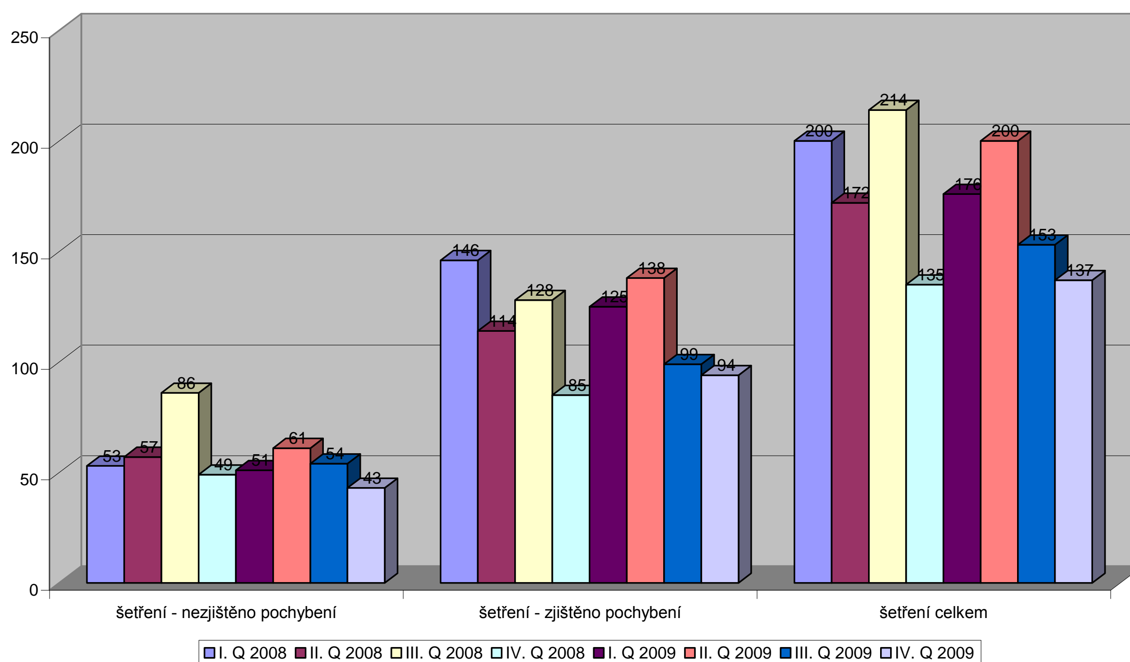


In the fourth quarter of 2009 the Defender received 1,893 complaints, of which 987 (52%) were within the Defender's mandate as defined by law and 906 (48%) were outside.

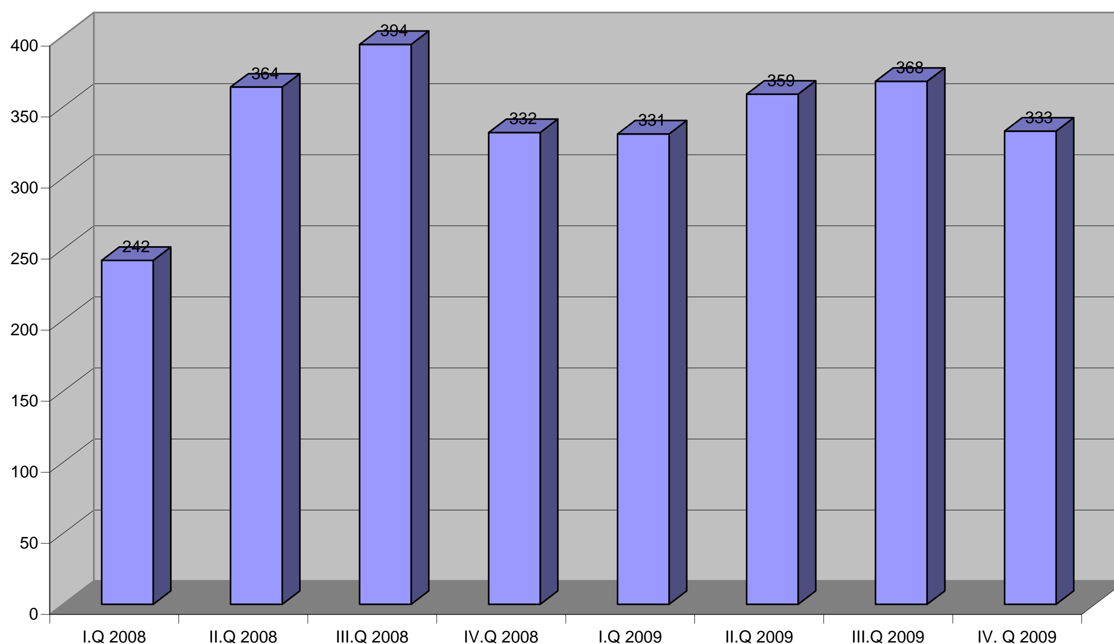


The structure of complaints received by legal area has changed only slightly over time. **Social security** is consistently the area with the highest rate of complaints (290), particularly concerning pensions and the provision of social benefits. The second biggest group of complaints in the fourth quarter 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 **healthcare and care for health** ranked third (85). 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 distrainment and the issue of rented housing).





The Defender handled 1,770 complaints during the fourth quarter of 2009. In his inquiries he found maladministration by the authority in 94 cases (69%).



In the period under scrutiny, the Defender, his deputy and the authorised lawyers of the Office of the Public Defender of Rights continued to receive complainants who visited the Office in person. In the fourth quarter of 2009, 333 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. Defender's report to the Chamber of Deputies pursuant to Section 24 (1) (c) of the Public Defender of Rights Act on each case in which adequate remedial measures have not been achieved

1) After performing a systematic visit to a facility where persons restricted in their freedom by public authority, or as a result of their dependence on care provided, are or may be confined (defined in Section 1 (3) and (4) of the Public Defender of Rights Act), the Defender is to draw up a report on his findings, which may include recommendations or proposals for remedial measures. The Defender is to request the facility to provide a statement on the Defender's report, recommendations or proposals for remedial measures within the time set by the Defender. While the below-specified facilities have not sent their statements on the Defender's report in spite of several reminders, there exists no institution with the position of superior body in relation to the type of facility visited and the government lacks a direct competence for ensuring remedy, and so the Defender decided to inform the Chamber of Deputies of the Czech Republic.

Systematic visits to non-state facilities for elderly people in the sense of Section 1 (3) and (4) (c) of the Public Defender of Rights Act were performed on November 19, 2008, and January 4 and 5, 2009. The aforementioned facilities included the Lada Home for Elderly People, **Lužická 591/4, Ostrava, and** Prácheňské sanatorium o.p.s. **(hereinafter also** "Loucký mlýn"**), Radčice 58, Vodňany.**

A natural person not registered in the Commercial Register – Mrs Nataša Laskovská – is the founder of the former facility. The facility commenced operation in 2003. Prácheňské sanatorium o.p.s. is the founder of the second facility visited and provider of a social service registered as a home with a special regime; the service in the "Loucký mlýn" home has been provided since 1998. Both facilities describe themselves as facilities concerned with care for persons with dementia (Alzheimer's Disease); about one half of the clients of the former facility were persons with psychiatric diagnoses.

The visit to the **Lada Home for Elderly People** took place on November 19, 2008. A report from the visit with recommendations and proposals for remedial measures was sent to this facility in late January 2009. The Defender set a period of 30 days for the head of the facility to provide her statement. The head of the facility was requested by the Defender again on March 30, 2009, to provide a statement on his report within 14 days. In May 2009, given the continuing inactivity, the head of the facility was already advised of the possibility of publication of the Defender's findings. In spite of this the Defender provided her with an additional period of 14 days to provide a statement. However, the head of the facility did not use this opportunity.

The report from the visit to the Lada Home for Elderly People contained the following <u>most important shortcomings:</u>

The Lada Home for Elderly People did not have in place a system of individual planning and a system of key personnel as required by the Social Services Act and, particularly, by the standards of quality of social services. Shortcomings were also ascertained in the area of client privacy. The clients could not lock their rooms and there was no lockable space available to the clients in the rooms. The sanitary facilities in the home were not lockable or at least identified with vacant/occupied signs. Screens were not in place for performing hygiene operations in the clients' rooms, and the rooms with clients tied to their beds were constantly fully open in the daytime. The Lada Home for Elderly People lacked sufficient personnel to accompany clients outside the Home (for excursions within the premises of the Home and to the city). A decree attached to the Social Services Act lays down a ceiling with respect to payments for accommodation and daily meals (approximately CZK 10 thousand per month). The Lada Home for Elderly People exceeded these financial limits as it charged the clients approximately CZK 12,000 per month plus 9% VAT. In addition, the Lada Home for Elderly People did not leave the clients 15% of their income; instead it withheld their income in full. Furthermore, the Lada Home for Elderly People breached the Social Services Act by failing to comply with the standards of quality of social services. Standards in the required form, i.e. in writing, had not been created (e.g. complaint rules, rules for treating persons interested in a service, or rules for the conclusion of a social service contract).

The visit to the **Loucký mlýn** facility took place on January 5 to 6, 2009. The report from the visit to the facility was drawn up as late as April 2009 given the failure to provide cooperation on the part of the facility - namely failure to deliver internal regulations (even after repeated requests), which are required by the quality standards. Before this, at the beginning of February 2009, the Defender received objections of the facility to the administrative and substantive aspects of the manner in which the personnel of the Office had conducted the visit. Since the chairwoman of the board of directors of the beneficiary society, Jaroslava Hrůzová, did not respond to the Defender's recommendations within the set period of 30 days, she was asked to provide a statement again in June 2009. The Defender has not received the statement on his report to date.

The report from the visit to the Loucký mlýn facility contained the following most important shortcomings:

The care provided in the Loucký mlýn facility was not based on users' needs and wishes ascertained on an individual basis. All of them had to stay in communal rooms all day on account of activity and therapy. The Loucký mlýn facility did not attend to, and failed to keep records of, the users' habits and wishes. The clients were treated as subjects of care with no regard to their individual wishes and all of them were summarily offered the same activity without taking into consideration the individual stages of Alzheimer's Disease and whether or not the clients could benefit from specific activities, which is at variance with the modern concept of social services and the demands for care corresponding to the needs of clients stricken with dementia.[1]

[1] Care for people stricken with dementia – Strategy of the Czech Alzheimer's Society – P – PA – IA. Newsletter of the Association of Social Service Providers 2/2008, p. 7 and 3/2008, pp. 12-14.

The social service contract showed a number of shortcomings as it did not specify the type of social service and the place of provision of the service. The amount of payment for the social service and the manner of its payment were not stipulated in the contract. The actual amount of payment did not respect the maximum amount given by Section 16 of Decree No. 505/2006 Coll., according to which the maximum amount of payment for accommodation and meals shall be CZK 330 per day. In contrast, the Loucký mlýn facility charged CZK 400 per day without specifying the amount for meals and that for accommodation. In addition, the client had to pay so-called optional costs that, in reality, were activities that should be included under the basic activities and hence paid within the allowance for care. It should be noted that the users transferred the full amount of the granted allowance to the Loucký mlýn facility. The "one year in advance" manner of payment (CZK 141,000 per year) did not provide for refunding a part of the payment in case of early termination of the stay. If "payment" means recurring performance, the non-refundable "payment for life" equal to CZK 510,000, which was applied in the Loucký mlýn facility, is not possible. The contracts were often not signed by the user but instead for example by a family member, but without power of attorney.

Social records and records on meetings with persons interested in the service were not kept directly in the Loucký mlýn facility in spite of the fact that these documents are fundamental for planning and the quality of provision of the service. No internal regulations (e.g. standards) were available in this respect.

It is certainly possible given the time elapsed since the visits that certain changes have occurred in the above facilities in the meantime. Nevertheless, this does not seem likely to the Defender considering the unshakeable confidence of the management of both facilities in the highest quality of their services. The Defender will also refer his findings to the competent body authorised to perform inspections of the provision of social services.

2) In 2006 to 2009, the Defender performed two key inquiries into selected model cases of failure to provide information on inspections and administrative offences of entrepreneurs. Both involved administrative bodies falling within the competence of the Ministry of Industry and Trade. It also followed from the inquiry that these cases were not unique, but rather systematic failure to provide this type of information. According to the Defender, there are no legal and substantive grounds for such an information embargo.

Specifically, one of the cases involved **failure to provide information by the Czech Trade Inspection Authority on the inspection and fining of specific petrol stations** and the other **failure to provide information to a punished entrepreneur who demanded information from a trade licensing office (the Tábor Municipal Authority) on an inspection and the penalty, if any, imposed also on his competitor** in an attempt to ascertain whether the authority had proceeded identically in both cases.

The provision of information is regulated by Act No. 106/1999 Coll., on free access to information, which expressly tasks the liable party, in Section 11 (3), with providing "information produced through its activities" in the fulfilment of tasks within inspection, supervision, oversight or similar activities. The content of inspection protocols created by the personnel of authorities in performing inspections, as well as

information on fines, represents information produced directly through official activities and it should be provided at anyone's request.

The provision of the aforementioned information is also not prevented by the confidentiality obligation of officials imposed by a number of laws. While confidentiality applies to individual workers rather than an administrative authority as a whole, the obligation to provide information is related to the authority as such. Should confidentiality apply to the entire authority, the constitutional right to information could not be exercised and the Act on Free Access to Information would entirely lack sense. Section 19 of the Act on Free Access to Information therefore expressly stipulates that the provision of information pursuant to the Act does not constitute a breach of the confidentiality obligation.

The provision of this information is also not precluded by the non-public nature of administrative proceedings, which is often erroneously interpreted too broadly in practice. No general principle of non-publicity is stipulated in the existing and previous Code of Administrative Procedure. Only oral negotiations are designated as non-public by law (in contrast to public court hearings). The Act on Free Access to Information also excludes the provision of information from ongoing proceedings. Thus, it is impossible to deduce a general and permanent non-public nature of information produced in "proceedings of a non-public nature" if the latter are interpreted in the aforementioned correct manner. The principle of non-publicity has no further effect after the administrative proceedings are closed. A contrary interpretation would again lead to complete depletion of the Act on Free Access to Information, since an overwhelming part of the exercise of state administration takes place within administrative proceedings. Administrative courts also rejected the attempts of a number of authorities not to provide information with a reference to the fact that only parties to the proceedings are allowed to inspect files. The provision of a required piece of information that is entirely specific does not constitute inspecting the file and the Code of Administrative Procedure does not exclude application of the Act on Free Access to Information (e.g. judgment of the Supreme Administrative Court 8 As 24/2005 of March 28, 2006).

Finally, contesting alleged conflict with personal data protection under the special law does not represent an argument in favour of denying information on entrepreneurs' offences. Personal data protection is entirely out of the question with respect to legal entities operating a business. For natural persons, personal data is protected by law, but information on an offence related to the operation of a business cannot be considered to be personal data since it does not represent infringement of private and personal life. The Defender shares the aforementioned view with the Office for Personal Data Protection, relying, among other things, on the award of the Constitutional Court promulgated under No. 299/2004 Coll., according to which information on the business activities of natural persons is not protected under the Personal Data Protection Act.

The Ministry of Industry and Trade has lately defended the incorrect procedure of the trade licensing offices by referring to the alleged special nature of Section 60 of the Trade Licensing Act in relation to the general stipulation of free access to information. The Trade Register newly contains an overview of all fines imposed on an entrepreneur by different authorities. In contrast to the rest of the Register, the aforementioned overview is not published on the Internet and, thus, it is not part of a public list. However, the Defender considers that only the database of fines as a whole is protected against disclosure rather than each individual piece of information

contained in it. Complainants usually do not require an overview of fines imposed on another person; instead they are interested in a specific punishment of specific conduct. They are usually motivated by an attempt to compare equality of treatment by the authority after they are punished for an offence of the same type. No objections can be made against such a control of public administration.

However, **the trade licensing authorities, the Czech Trade Inspection Authority and the body superior to them, i.e. the Ministry of Industry and Trade,** insist on their negative standpoint with respect to rejected requests for information, thereby undermining the transparency of public administration. The Defender has already exploited the options for achieving remedy stipulated with respect to him by law, and he therefore submits the matter to the Chamber of Deputies.

II. 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 decree implementing the Social Security Act

The Defender expressed reservations on the proposed decrease in the allowance for motor vehicle use with respect to citizens with a level II disability by 50%, as he considers this to be a substantial infringement of their rights, which is not proportionate to the adopted savings measures. Neither of the savings measures included a decrease in benefits (whether from insurance or non-insurance systems) by a comparable amount. The Defender considers that the disabled should not bear the adverse consequences of the fact that benefits for the disabled are stipulated in a decree and, thus, decreasing them is legislatively "easier" (it is not necessary to seek approval by Parliament). Their entitlements following from social security should not be diminished to an extent substantially greater than those of other recipients of social security benefits.

2) Comments on the draft law on clean air protection

The Defender considers the new regulation of the issuing of standpoints and permissions for the operation of air pollution sources to be of fundamental importance, since according to the proposed law, the situation should no longer occur where new pollution sources, that are no longer subject to permission in proceedings under special regulations (the Building Act), are not subject to permission by the body of clean air protection. The Defender supported adoption of the new regulation as a whole and clearly welcomed the simplification it brings.

3) Comments on the amendment to the Act on Liability for Damage Caused during the Performance of Public Authority by a Decision or Incorrect Official Procedure

The Defender stated that the amendment certainly addresses individual problems, but substantial defects persist. In the Defender's opinion, it would be logical to return to the originally proposed concepts where two-phase proceedings were to be designed as in entitlements following from liability for defects (Sections 598 and 626 of the Civil Code) and in liability for damage to things brought in or

deposited (Section 436 of the Civil Code). The initial phase is represented by preliminary lodging of a claim with an administrative body within the prescription period, where a limitation period is running from the date of lodging the claim. In other words, the injured party would be obliged, within a specific period (e.g. 1 or 2 years), to exercise the right with an administrative body (the commencement of the aforementioned period would most likely be set objectively), and the right would expire *ex lege* if the party failed to exercise it. If the injured party exercises the right but is not satisfied in full, a general limitation period shall run from the time of exercising the right, and the injured party should exercise its claim by means of an action with the court within the limitation period.

4) Comments on the fourth and fifth Periodic Report on Measures adopted for fulfilment of the obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the period from 2001 to 2009

The Defender pointed out that school facilities where protective or institutional education is exercised do not consist solely of homes with a school and reformatories, but also children's homes and diagnostic institutions. The Defender has been authorised to inspect the exercise of institutional and protective education in these facilities from the very beginning.

5) Comments on the 8th and 9th Periodic Report on fulfilment of obligations following from the International Convention on the Elimination of All Forms of Race Discrimination

The Defender expressed his belief that preparatory classes for socially disadvantaged pupils may appear a positive measure at first sight (in the sense of the categories of the right to equal treatment); nevertheless, in practice they are established particularly at practical elementary schools *(schools for children with a mental disability)* and tend to play the role of a preparatory grade for practical elementary schools and those class(es) in mainstream elementary schools intended specially for children with a slight mental disability (i.e. a disability in the sense of the Schools Act terminology. In the Defender's opinion, it would be more suitable to concentrate on increasing the attractiveness of kindergartens particularly for Romani children, if there is such a programme.

The Defender also considers that the Periodic Report should mention that since January 1, 2010, the Defender as the Equality Body will become a member of Equinet, a European network of anti-discrimination bodies. The Report should also indicate that since December 1, 2009, anyone who feels discriminated against may turn directly to the Defender; the latter will assess his/her complaint, offer a solution to the situation and assist the victim of discrimination in further steps.

6) Comments on the draft strategy for the law on the defender of children

In the Defender's opinion, the draft strategy for the law suffers from a fundamental shortcoming, since the individual categories of children's ombudspersons in Europe have not been studied sufficiently for making a political

decision and choosing one of the available models. The Defender therefore proposed that the draft strategy be supplemented with a detailed analysis of the competences of children’s ombudspersons in European countries so that the Final Report evaluating the impact of regulation (Regulatory Impact Analysis, RIA) includes all available solutions. Another general comment by the Defender was the absence of an analysis of the financial costs of the individual variants. The Defender does not consider that it would be expedient for the children's ombudsman to have the same powers as the Public Defender of Rights, particularly to perform inquiries into individual complaints. On the contrary, it seems more meaningful for the defender of children’s rights to have the powers that are contained in the so-called Paris criteria. Thus, the children’s ombudsman should play a monitoring and initiating role and act as an advisory institution rather than a body performing individual inquiries.

The Defender is not keen to promote himself for the role of a specialised children’s ombudsman. He considers his activities in this area so far to be sufficient, all the more so as he is concerned with the protection of children’s rights not only in the area of the social and legal protection of children, but also within the inquiries into complaints about delays in court proceedings. The Defender also takes a number of steps within his detention agenda (including special visits to facilities where institutional and protective education is exercised and ongoing visits to facilities for persons with disabilities).

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

Proposal for annulment of part of generally binding Decree of the Jeseník Municipality No. 1/2008, on the prohibition of consumption of alcoholic beverages in public areas

In his arguments the Defender pointed out the previous awards of the Constitutional Court, for example award File Ref. Pl. ÚS 45/06 of December 11, 2007 (20/2008 Coll.), where the Constitutional Court concluded that regulating the consumption of alcohol in some public areas is possible under the law insofar as it is a phenomenon, given the specific local conditions, that is capable of interfering with public order, good morals or safety, health and property within the municipality. The Defender considers in this particular case that the Jeseník Municipality did not act unlawfully and did not misuse its powers (for example by prohibiting alcohol consumption at a place within the municipality in a manner restricting competition or in a manner which would ultimately directly impact the so-called accessory equality in any of the fundamental rights and freedoms).

Although the wording of the challenged provisions may create certain doubts at first sight, it can be stated if the issue is considered more thoroughly that the terms *“presence with an open bottle or some other vessel with an alcoholic beverage”* and *“serving an open bottle or some other vessel with an alcoholic beverage”* is nothing but specifying the term *“consumption of alcoholic beverages”* in more detail. In this manner, in the Defender’s opinion, the municipality clearly wishes to deal also with situations where the addressee of a legal obligation defends him/herself by claiming that he/she is not consuming alcohol because he/she is not drinking it at the given time. The Defender considers that the wording used in this case may respond to the “inventive” legal argument of those who in fact interfere with the public order in the

municipality by consuming alcoholic beverages. The Defender therefore proposed that the Constitutional Court reject the proposal of the Ministry of the Interior.

Proposal for annulment of Article 3 (1), generally binding Decree of the Břeclav Municipality No. 5/2008, for ensuring local public order matters in operating the innkeeper's trade in the residential areas of the municipality

The Defender again expressed disagreement with the proposal of the Ministry of the Interior. As a legal person governed by public law, a municipality must have the possibility of regulating, in its territory and in favour of its citizens, phenomena that the citizens of the municipality consider, through their elected representatives, to be negative (or interfering with public order in the municipality). If the municipality adopts a legal regulation that attempts to eliminate the negative phenomenon in an appropriate (reasonable) manner, no objections can be made to this approach. The Defender did not accept the view of the Ministry of the Interior that had found conflict between Art. 3 (1) of the contested Decree, which stipulates binding limitations on opening hours, and Art. 26 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter the *"Charter"*), stipulating the right to engage in commercial and economic activity. The right to engage in economic activity (operate a business) is an economic right and its exercise falls under the law pursuant to Art. 41 (1) of the Charter. As regards the constitutional limits of the aforementioned right, it should be proceeded analogously to a number of fundamental and political rights in spite of the fact that the Charter itself does not stipulate any express limits. Thus, a limitation of the right comes into question if this is essential in a democratic society for (1) protecting the life or health of individuals, (2) for protecting the rights and freedoms of others, or for (3) averting a serious threat to public security and order (see also Art. 12 (3), Art. 14 (3), Art. 16 (3), Art. 17 (4) of the Charter). In this respect, the Defender wishes to stress the possibility of limiting the right to engage in commercial and economic activity not only with a view to protecting public order, which directly corresponds to the hypothesis in Section 10 (a) of the Municipalities Act, but also limitation for the protection of the rights of other parties. It is simultaneously obvious that both legitimate objectives will be convergent in a number of cases, i.e. measures adopted for the protection of public interest at the same time act to protect certain persons. If the opening hours of restaurants are limited in a specific case, this protects not only the public interest, but also the *"right to quiet housing and sleep"* as part of the right to private/family life in a broader sense (Art. 10 (2) of the Charter).

C. Presentation in the Media and Communication with the Public

The Public Defender of Rights used media in the fourth quarter of 2009 to inform the public of his activities, continued to partake in discussions with the public and to meet complainants in person.

- **Three regular press conferences and one extraordinary briefing** took place during the period under scrutiny. At the October press conference the Defender acquainted journalists and the public with the results of systematic visits to facilities for persons with mental disabilities. The November press conference was concerned with personal data protection. The theme of the December conference consisted in commencement of the Defender's mandate in the area of equal treatment and protection against discrimination. In November, on the occasion of the international conference Transparency of Public Administration, the Defender organised an extraordinary press briefing with the participation of the Slovak ombudsman and the President of the Office for Personal Data Protection.
- In addition to the **press releases** on the issues presented at the press conferences, some other reports were also released during the fourth quarter with information on some current cases and events. The most important of these included information on the conclusions of the inquiry into the activities of the bodies of state administration in the matter of the culturally protected buildings of Kyselka spa. The Defender also pointed out the risks involved in contests targetting children in children's homes. In December the Defender issued a joint recommendation with the Ministry of Labour and Social Affairs on sheltered housing.
- **Individual interviews for the media** and appearances in TV reports and debates were an important part of the Defender's presentation. The cases dealt with by the Defender became the themes of reports. Thus, the Defender and his deputy presented their standpoints, explained some cases and answered questions on Czech Radio stations, Czech Television, TV Prima and Nova. The Defender was guest of the Otázky Václava Moravce *(Václav Moravec Asks)* programme on ČT1 and Noc s Andělem on ČT2; he gave extensive interviews to Respekt magazine and the Hospodářské noviny daily. The Defender and his deputy appeared in a number of radio and television programmes. The Defender took part in an online discussion with the students of the Faculty of Social Studies of Masaryk University through the aktuálně.cz news server. The deputy of the Defender appeared at a joint press conference organised by the Czech National Disability Council. The Defender participated in a press conference of the Government of the Czech Republic on the sterilisation of Romani women.
- In the fourth quarter, Czech Television broadcast 12 new episodes of the fifth series of "A Case for the Ombudsman" programme.
- 1,386 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.

- 191,337 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

- Based on a request of the OSCE Mission to Macedonia, the Defender became, based on his experience, mentor of the project of the implementation of the National Preventive Mechanism under the OPCAT in Macedonia; the role of the National Preventive Mechanism will be newly held by the Macedonian ombudsman. In a series of conferences and workshops, the Defender, provided lectures and trainings in Skopje for the personnel of the office of the Macedonian ombudsman.
- At request of the OSCE mission in Serbia, the Defender hosted in his seat a three-day training for the personnel of the office of the Serbian ombudsman who should in the future assume the role of the National Preventive Mechanism under the OPCAT.
- Meeting with Belarusian human rights activists (October 5, 2009).
- Participation of the deputy of the Defender in the international human rights conference "Making Rights a Reality for All" organised by the European Union Agency for Fundamental Rights (FRA) and the Swedish Presidency of the EU on December 9 to 11 in Stockholm (Sweden).
- The President of the Republic of Poland awarded JUDr. Motejl the Polish Gold Cross state award for his contribution to the protection of human and civil rights and freedoms (November 27, 2009).

Conferences and workshops organised

- International conference on the theme of Transparency of Public Administration (November 26 – 27, 2009, Brno)
- Conference on the theme of Local fees in the Practice of Municipalities and Cities (December 7, 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 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) Exercise of social and legal protection of sexually abused children

Based on news in the media, the Defender opened an inquiry into the procedure of the children’s home in Uherský Ostroh and the Brno-north municipal office. The objective of the inquiry is to ascertain whether both institutions could have prevented the abuse of a boy from a children’s home who, as the winner of a contest for *“a child’s stay with a V.I.P.”,* was sent to stay with the organiser of the contest without checking the situation there, after which the organiser of the contest sexually abused the child. The Defender concluded, based on the inquiry undertaken, that the head of the children’s home had not proceeded in accordance with the Act on the Exercise of Institutional Education and Protective Education and the Act on Social and Legal Protection of Children in permitting the stay since she enabled, without written consent of the body of social and legal protection of children (BSLPC), the boy to stay with Mr H. (now convicted) who sexually abused him. In the Defender’s opinion, she should bear responsibility for breaching her statutory obligation, sending the child to the stay without properly checking the situation, and without consent from the BSLPC, thereby enabling Mr H. to abuse the child. The Defender sent a report containing his conclusions to the authorities concerned. Since the Defender did not find the statements of the authorities obtained by him to be sufficient, he issued a final statement where he also formulated proposals for remedial measures. Given the nature of one of the proposed measures (labour-law punishment of the head of the home established by the Region), the Defender addressed the Regional President of the Zlín Region with a request that the case be presented at the meeting of the Council of the Zlín Region. The Defender was advised that it had been discussed with the heads of the children’s homes established by the Zlín Region how to proceed in similar situations and personal extra pay was withdrawn in full from the head of the Children’s Home in Uherské Hradiště and the matter was again discussed with her. Since the proposed measures were fulfilled, the Defender closed the case.

2) Joint recommendations of the Ministry of Labour and Social Affairs and the Public Defender of Rights on Sheltered Housing

In connection with the amendment to the Social Services Act effective since August 1, 2009, the Defender together with the Ministry of Labour and Social Affairs issued recommendations concerning sheltered housing. One of the changes brought by the amendment was that the users of the sheltered housing service are no longer subject to the guaranteed minimum balance of income after the payment of meals

and accommodation, equal to 15% of income. Simultaneously, the Assistance in Material Need Act was amended, enabling a user of sheltered housing who lacks funds to provide for his basic living conditions to use the possibility of social protection within the system of assistance in material need. It is obvious from the Defender's findings that the providers of the sheltered housing service feared before the date of effect of the aforementioned amendment and still fear that clients are left with no funds after payment of accommodation and meals or, if the payments are decreased so as to avoid the aforementioned situation, this will mean an increased financial burden which may be impossible to cover. There is also some lack of clarity related to the conditions for use of assistance from the system of assistance in material need. Thus, it is necessary in the light of the foregoing that the provider set an amount of payments for each user of sheltered housing that will provide for his/her accommodation and meals, but also satisfy other basic personal needs where the person concerned will be able to participate in society and live in a manner which is considered to be normal by society. The Defender together with the Ministry of Labour and Social Affairs explained in detail in the recommendation what the procedure of the providers of sheltered housing and their clients should be after August 1, 2009. The statement was accompanied by comprehensible examples of the possibilities of drawing the subsistence allowance and contribution for housing based on reasons deserving special attention.

3) Heritage preservation in Kyselka Spa

In October 2009 the Public Defender of Rights issued a report on an inquiry in relation to the disrepair of a cultural monument – the premises of the former spa and Mattoni factory in Kyselka. The Defender stated in the report on the inquiry that the case of the Kyselka spa is proof that the state was unable to provide for protection of the culturally protected buildings and it is therefore a question as to what extent there exists the state's public interest in heritage preservation of the premises that are in such a pitiful condition *"under state supervision"*. The Defender finds a critical moment in relation to the premises of the Mattoni factory in the permission for the new bottle-filling plant which, through its dimensions and design, entirely degrades the cultural heritage registered by the state. It seems that in permitting the construction of the new bottle-filling plant, the administrative bodies did not think at all about the possibility that existing culturally protected buildings could be further used (even partly) for production operations. They entirely neglected the necessity of incorporating the new production building into the premises of the cultural heritage in a manner favourable for the culturally protected buildings of the Mattoni factory. Unfortunately, the condition of the culturally protected buildings in Kyselka is sad proof of how culturally protected buildings may end up if the owner's inactivity is accompanied by inactivity of the state and its bodies, including the non-functioning institute of alternative enforcement of a decision. Now, following reminders, the Defender awaits a statement from the Ministry of Culture, which will be essential for further proceedings in the matter.

4) Manner of provision of information by the Ministry of Health

During the international conference Transparency of Public Administration on November 26–27, 2009, in the Office of the Public Defender of Rights, the participants pointed out the manner of provision of information by the Ministry of

Health. The Ministry invites citizens on its website that they request information "in the usual manner" rather than under Act No. 106/1999 Coll., on free access to information, as amended. According to the information on the website, this "usual manner" of provision is more convenient as it is simpler for citizens as well as for the authority, while handling the provision of information using the procedure under Act No. 106/1999 Coll. "commits to a rather demanding procedure". The deputy of the Public Defender of Rights decided to open an inquiry on her own initiative in the matter. She therefore addressed the Ministry of Health with a request concerning the relationship between the "usual" provision of information and the Act on Free Access to Information, i.e. the general legal regulation stipulating access to information on the activities of public administration.

5) Proceedings on removing an illegal building

The Defender decided to open an inquiry on his own initiative in the matter of unauthorised buildings in the Moravany municipality in the České středohoří Protected Landscape Area. According to media reports, the building owner implemented construction without the required planning permission, consent of the Administration of the České středohoří Protected Landscape Area (hereinafter the "Protected Area Administration") and at variance with the zoning plan of the Moravany municipality. It follows from the collected press reports that a decision in the matter was originally to be made by the competent Municipal Authority in Trmice, but the case was subsequently taken over by the Regional Authority of the Ústí nad Labem Region (hereinafter the "Regional Authority"). According to the reports, the building owner built heavy supporting walls, a swimming pool and other constructions without planning permission and without the awareness of the Protected Area Administration, whereby he introduced purely urban elements into preserved village architecture; in addition to this, he also performed construction beyond the municipal territory intended for development. The Trmice planning authority opened proceedings on removal of the buildings, but the Regional Authority took over the matter before the planning authority made a decision in the matter. The Regional Authority did so, according to its resolution, based on concerns that the Trmice Authority would make an unlawful decision. However, according to a statement of the secretary of the Trmice Municipal Authority, the Regional Authority did this at a time when it did not even have the file, which was still at the Trmice Municipal Authority.

Standpoints on the matter were requested from the Trmice planning authority, the Ústí nad Labem Municipal Office, the Regional Authority of the Ústí nad Labem Region and the Administration of the České středohoří Protected Landscape Area.

II. Inquiries opened on the complainants' initiative

1) Imposition of disciplinary punishments

The Defender dealt with the complaint of a convict serving a prison sentence in Jiřice Prison who complained that the personnel of the Prison Service of the Czech Republic had imposed on him several disciplinary punishments for a single misdemeanour. A banknote had been found with the complainant at the end of a regular visit. As a result, an unconditional disciplinary punishment had been imposed

on him, consisting in all-day placement in an enclosed department for 20 days and, simultaneously, a disciplinary punishment of forfeiture of a thing; in addition, an extramural event outside the prison, approved earlier as disciplinary reward, had been cancelled with respect to the relevant convict. Furthermore, the convict had been transferred to group III within the internal prison differentiation and placed on the list of those whose regular visits are to be performed with the use of a transparent partition. The Defender stated that the removal of a disciplinary reward approved earlier has the nature of a separate disciplinary punishment which cannot be, except for the punishment of forfeiture of a thing, combined with any other separate punishment (placement in an enclosed department). A contrary solution is illegal. The Defender closed the inquiry by stating maladministration of the personnel of the Jiřice Prison in disciplinary punishment of the convict.

2) Payment of benefits of assistance in material need by vouchers

A complaint concerned the procedure of the City District Authority in Ostrava-Poruba which had introduced general payment of a part of benefits of assistance in material need – a subsistence allowance in the form of a benefit in kind. The deputy of the Defender ascertained by inquiring into the complaint that instead of the individual assessment of whether recipients use the benefit of assistance in material need for the stipulated purpose as contemplated by law, the authority generally changed the manner of payment of the benefit for a pre-defined general group of recipients. The payment of benefits by vouchers was applied to all clients registered as long-term jobseekers, repeatedly removed from jobseekers' records and persons without shelter. The deputy of the Defender proposed in her final statement that the authority concerned perform an individual assessment of whether there were grounds for changing the manner of payment of the benefits in such a manner that the findings by which the grounds for changing the manner of payment are supported are indicated in the file, and to suspend payment of the benefit in the form of vouchers to all persons with respect to whom it is ascertained that they do not use the benefits for the intended purpose.

3) Amount of old-age pension

A complainant requested the Defender to help with a complaint about her very low pension, which however had been calculated correctly based on the provided materials. In the 1980s the complainant had legally worked for several years as a nurse in Libya – a so-called expert abroad, and had a confirmation thereof. Her earnings from the aforementioned period were not subject to valorisation, which significantly disadvantaged her in terms of the amount of her pension since she was not considered to be an expert abroad in the relevant years (falling under the decisive period based on which the earnings for the calculation of pension are ascertained). Put simply, for the purposes of the pension scheme, the average monthly earnings of an expert abroad in the last year before his/her sending abroad are considered to be the gross monthly earnings during the time spent abroad. The complainant attained reasonable earnings in the relevant year and a relatively high ratio of increase in earnings is set for the additional relevant years that she spent in Libya. After the Defender advised the Czech Social Security Administration (hereinafter the "CSSA") of valorisation of the above-specified fictitious additionally included earnings, the complainant's old-age pension substantially increased, by

approximately 70%. The CSSA had not erred in this matter as it previously had no information on the complainant's activities in the relevant period, including confirmation of acting as an expert abroad which was available only to the complainant.

4) Rejection of a carer for spa treatment

The deputy of the Public Defender of Rights inquired into a complaint concerning the procedure of the General Health Insurance Company (hereinafter "VZP CR"). The attending physician had issued a Proposal for Spa Treatment, stating that a carer was necessary with regard to the complainant's health condition. The review doctor of VZP CR subsequently confirmed the Proposal, but without a carer, without substantiating the change in the Proposal in any manner whatsoever. The deputy of the Defender reprimanded the health insurance company for failing to substantiate the change in the issued Proposal, stating that the decision of a review doctor should be properly substantiated, particularly where a change in a Proposal issued by the attending physician is concerned. Since the complainant had not been satisfactorily informed by VZP CR of all the aspects of the rejection of the carer and non-admission to the spa facility, the deputy of the Defender drafted the following remedial measures within her final statement. It was proposed to VZP CR to notify the complainant in writing and properly explain to her the circumstances of the changes in the Proposal, as well as to inform her of other specific rehabilitation options, using which the complainant could improve her difficult health condition. Furthermore, the Regional Office of VZP CR in Vyškov is to be notified of the general necessity to substantiate changes in a Proposal with a view to ensure awareness of the attending physician, as well as to improve communication with the insured party in unusual or complicated cases.

5) Noise from traffic at Prague-Ruzyně airport

The deputy of the Public Defender of Rights dealt with a complaint where the complainant requested an inquiry into the procedure of the Public Health Station of the Capital City of Prague and the Regional Public Health Station of the Central Bohemian Region in assessing noise from traffic at the Ruzyně airport. The information from the complainant was significantly extended through a submission by the Citizens against Noise and Emissions civic association. The complaint aimed to point out non-compliance with a condition of the zoning permission relating to the protective zone of the airport, specifically non-compliance with a nighttime restriction as a result of an inadmissible increase in traffic and insufficient testing of the effects of traffic by means of noise measurement. The deputy of the Defender stated in the report on the inquiry into the complaint that the condition of the relevant zoning permission was set very vaguely and it is very likely that it was violated. Furthermore, the deputy of the Defender ascertained that the Public Health Station of the Capital City of Prague and the Regional Public Health Station of the Central Bohemian Region did not have the current noise measurements from traffic at the Prague-Ruzyně airport as a result of organisational changes in the area of public health service. The deputy of the Defender stated in this respect that the Public Health Station of the Capital City of Prague had endeavoured to ensure that the organisational changes do not threaten the planned measurement but received no support from the Chief Public Health Officer. The deputy of the Defender submitted

the report on the inquiry to the relevant authorities with a request for statement on the findings.

6) Reclaiming of the solid municipal waste landfill in Újezd-Líšnice near Mohelnice

The deputy of the Public Defender of Rights conducted an inquiry in the matter of unauthorised deposition of waste to a landfill intended for reclaiming. She concluded that the Mohelnice municipality continued depositing in spite of a decision prohibiting further deposition of waste to the landfill and the relevant bodies of public administration remained inactive in spite of being aware of the aforementioned activities. The Mohelnice Municipal Authority stated in response to the report that it conducted proceedings on removal of the construction (which should include an order of removal of the deposited waste). Given that the proceedings did not take place within the deadlines under the Code of Administrative Procedure, the deputy of the Defender issued a final statement in the matter. She proposed, as a remedial measure, that the municipal authority complete the proceedings on removal of the unauthorised construction, "Reclamation of the Újezd-Líšnice Solid Municipal Waste Landfill", without further delay and within the deadlines stipulated by law by issuing a decision in the matter.

7) Consular assistance to a Czech national detained in Great Britain

The deputy of the Public Defender of Rights dealt with the difficult circumstances of a Czech national who had been detained in Great Britain based on suspicion of smuggling drugs that were found by the Police in the cargo space of his vehicle. The detained was not conversant in English and had difficulties with the British authorities from the very beginning (interpreting, retention of money, poor conditions in the cell, and an uncooperative attorney). The deputy of the Defender repeatedly addressed in this matter the Embassy of the Czech Republic in London and the representatives of the consular department of the Ministry of Foreign Affairs (hereinafter the "Ministry"). She referred to the "lack of clear standards" regarding the authorisations and duties of embassies in providing consular protection. It was unclear what a Czech citizen can and cannot require of embassies. Since the detained man was not proven guilty of the drugs offence, he was subsequently released from the remand prison and returned to the Czech Republic.

The deputy of the Defender ascertained in inquiring into the complaint that according to the 1963 Vienna Convention on Consular Relations, a state need not always protect its national who has suffered harm abroad. It is a matter of the state's discretion rather than an obligation. In its consular activities, a Czech embassy abroad must not find itself at variance with the laws of the host state; thus, the use of a number of means is subject to the consent of the host state. According to the deputy of the Defender, it is difficult to define the degree of responsibility of the state for resolving all states of emergency that citizens of the Czech Republic may face abroad. However, once the state proceeds to exercise consular protection of its citizen, this protection should be adequate to the circumstances and the objective possibilities of the embassy. As the deputy of the Defender ascertained, the Ministry of Foreign Affairs has drawn up an internal methodology for providing consular protection, but the latter is scattered in several separate older instructions and directives (most of them issued before the Czech Republic's accession to the EU)

and, even more importantly, according to the obtained information, the present methodology does not provide such a high standard of consular protection as that provided to EU nationals in their stays in third countries in the sense of Decision of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations (95/553/EC). It follows from the logic of the matter that the minimum standard to be provided to EU nationals during their stays in third countries should be provided also to Czech nationals during their stays within the EU. The deputy of the Defender concluded in the light of the foregoing that the embassy in London had erred by general inconsistency in the exercise of consular protection. She reprimanded the Ambassador in Great Britain for the specific maladministration and recommended that the embassy provide for translation of the British prison service manual, *Information and Advice for Foreign National Prisoners*, and use it in the exercise of consular protection. The Ambassador accepted the conclusions of the deputy of the Defender and committed to ensure remedy. The deputy of the Defender also requested the deputy Minister for legal and consular matters that the Ministry of Foreign Affairs consider commencement of work on an update of the internal methodology for embassies.

8) Delivery address and data box of a Czech national staying permanently abroad

A Czech national with permanent residence abroad may apply for the establishment of a data box or have the so-called delivery address abroad registered in the Information System of the Citizens Register (hereinafter the “Information System”). State bodies (courts and administrative bodies) will communicate with the citizen exclusively in electronic form in the former case, while in the latter case official consignments will be sent to him/her abroad by standard post under the relevant regulations (Section 50j of the Code of Civil Court Procedure and Section 22 of the Code of Administrative Procedure). The aforementioned conclusion follows from the inquiry of the deputy of the Public Defender of Rights, opened based on a complaint of a Czech national with permanent residence in Sweden. The initial approach of the administrative bodies concerned suggested that the complainant (as well as other citizens staying permanently or temporarily abroad) were not able to use any of the above-specified rights for communicating with Czech state bodies. While the problems encountered by the complainant in establishing data boxes resulted from inaccurate information provided by the information line for support to data boxes (an immediate remedy was ensured by the Ministry of the Interior based on the Defender’s comments through entrusting operation of the line to a private company), the interpretation of the new Section 10b of the Citizens Register Act (delivery address) was a matter of dispute between the Ministry of the Interior and the Ministry of Justice. However, the deputy of the Defender was convinced that the regulations contained no limitation with respect to citizens staying abroad. An obstacle at variance with the pursued objectives of the EU (free movement of persons) could even be concerned with respect to citizens who made use of the free movement of persons in the EU. Both ministries therefore agreed at the instigation of the deputy of the Defender and comments expressed by the public that it is admissible to keep in the Information System an address outside the Czech Republic as a delivery address. Although the interpretation of laws was clarified at the central level, the deputy of the Defender intends to continue monitoring this subject since she has ascertained that

the Ministry of the Interior tackles with considerable delays sending abroad access data to a data box. A box cannot be put into operation without the access data.

9) Complaint about the procedure of the Embassy of the Czech Republic in Kiev in processing long-term visas

The Defender dealt with a complaint on 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 processing visas for stays exceeding 90 days for thirty Ukrainian 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 the inquiry that the sample of 29 files subject to inquiry clearly demonstrated a flagrant failure to comply with methodological instruction of the Ministry of Foreign Affairs 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.” It follows from the submitted files in all the cases subject to inquiry that an interview had been conducted with the applicant; however, the interview is contained in only one file. The Defender ascertained during the inquiry that the interviews are “sent very sporadically” to the foreign police inspectorates (hereinafter also the "inspectorates"). According to the Defender, unification should take place using the good practice applied, as ascertained during the inquiry into the complaint, by the Area Head Office of the Foreign Police in Brno (hereinafter the “Head Office”), which requires that the embassy submit, in proceedings on granting a visa for a stay exceeding 90 days, a protocol of an interview authorised by the applicant; the same should be required of all foreign police inspectorates in the Czech Republic. The individual inspectorates should be led to requiring these documents from the embassy consistently and strictly. Given the importance of the subject and with a view to unify the procedures of all foreign police inspectorates, the subject should be methodologically stipulated by the Head Office of the Foreign Police. In his final statement, the Defender requested that the Ministry of Foreign Affairs again instruct all embassies to consistently comply with the above-specified methodological instruction. Even in cases where the standpoint on granting a visa is affirmative, the standpoint together with the protocol of the performed interview should be attached in the file sent to the competent inspectorate for decision. In accordance with the practice of the Head Office in Brno, all embassies should be consistently led to ensure that the applicants for visas for stays exceeding 90 days always authorise the protocol of the interview with their signature (which the Defender has required for a long time).

10) Failure to take account of worsening health condition during proceedings on allowance for care

A complainant objected to the fact that his health condition had not been sufficiently assessed by review doctors in spite of the fact that he had repeatedly drawn attention of the Assessment Committee of the Ministry of Labour and Social Affairs (hereinafter the “Ministry”) to his worsening health condition. The deputy of the Defender ascertained during the inquiry that the complainant had lodged an application for the allowance for care in April 2007 and the final decision was issued after almost two years. The complainant’s health substantially deteriorated during the

proceedings on the allowance for care, but the Assessment Committee of the Ministry only reviewed the assessment conclusion of the Labour Office and informed the complainant that the worsening of health must be subject to new assessment proceedings. In the report on the inquiry, the deputy of the Defender stated maladministration by the assessment bodies as they are obliged to take into account also assessment-relevant changes in the health condition of the party to the proceedings subject to assessment that occurred after issuing the contested decision, to the extent they are aware of such changes.

11) Heritage preservation in Opava

In October 2009 the Public Defender of Rights closed an inquiry into a complaint from Opava about the procedure of the bodies of state heritage preservation in the matter of the replacement of windows on an apartment house. In his submission, the complainant criticised the procedure of the administrative bodies of heritage preservation, pointing out that the appearance of the house, which is located in a heritage zone, was devastated as a result of the unsystematic approach of the bodies of heritage preservation. An inquiry into the matter was performed and the Opava Municipal Office, the Regional Authority of the Moravian and Silesian Region and the Minister of culture were requested to provide their standpoints.

The Defender closed the inquiry with the conclusion that the Opava Muncipal Office (hereinafter the “Municipal Office") must respect the legal opinion of its superior body and, in connection with Section 2 (4) of the Code of Administrative Procedure, in cases based on the same or similar facts it should proceed so as to ensure that no unjustified differences occur. Thus, if the complainant further insists on the installation of plastic windows on his flat on the street facade of the house in Mnišská 13, Opava, the Municipal Office as the body of state heritage preservation should, in issuing a binding standpoint, follow the legal opinion of the Regional Authority indicated in the decision on his neighbour’s application. From this point of view, the Municipal Office should no longer oppose the installation of the plastic windows.

The Defender accepted the opinion of the Regional Authority that the mission of heritage zones, given the regulations stipulating their promulgation, should consist primarily in regulation of the style of development – stipulate the height of buildings, control the dimensions of buildings, the degree of development on plots of land and observance of the street line; heritage zones were created mainly to maintain the urban conception of the given territory. The Defender therefore considers a general rejection of plastic windows in the areas concerned without taking account of other circumstances to be wrong, undesirable and at variance with the principles of good administration.

The Defender requested the Minister of Culture in a separate letter to supervise the work on the material concerning the replacement of windows on buildings in heritage reserves and zones so as to avoid pointless delays. The Defender addressed in the same matter the head of the National Institute of Cultural Heritage, requesting her to send him a report on the progress of work on the aforementioned document by the end of January 2010. He also requested the head

of the Regional Authority to submit to the Defender by the end of January 2010 a report on the progress of work on the Plan of Protection of the City Heritage Zone in Opava. The complainant notified the Defender in November 2009 with that he had obtained permission to replace the existing wooden windows with plastic windows.

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

Follow-up visits to mental homes and systematic visits to four remand prisons were completed in the fourth quarter of 2009. As the Defender stated in the report for the third quarter of 2009, the approach of the mental homes to his recommendations varied. The Defender informed the Minister of Health of the most serious persisting shortcomings and in three cases he also addressed the Office for Personal Data Protection in connection with the operation of camera systems. The Office for Personal Data Protection subsequently informed the Defender that his findings had been forwarded to inspectors for initiating inspections. The Defender will meet the Minister of Health in person in January 2010 in the matter of the persisting inactivity of the mental homes and the Ministry of Health in fulfilment of the Defender's recommendations.

It can be preliminarily stated that the material conditions in remand prisons are paradoxically worse than in actual imprisonment. There are also considerably fewer activities available to those held on remand. In this respect, the Defender also inquired about the activities and education, if any, available to juvenile accused persons. The presence of wardens in medical examinations was noted in several cases, and even the presence of a female warden in a gynaecological examination. The Defender had criticised the aforementioned conduct already in the summary report on visits to prisons in 2006. The Defender will summarise his findings from visits to the remand prisons during the first quarter of 2010.

F. The Defender's Activities in the Area of Protection against Discrimination

Since December 1, 2009, the Public Defender of Rights has been exercising a new mandate in the area of protection of persons against discrimination and he thus becomes the body of protection against discrimination (equality body), which is required by EU Directives. Compared to the past, the Defender has begun to be directly active also in the field of private law thanks to his new mandate and powers, insofar as the specific case of a complainant concerns the right to equal treatment. The Defender also has a new power to issue standpoints and recommendations and to carry out research in the matters of discrimination and the right to equal treatment.

During the initial month of his new mandate for handling complaints concerning discrimination matters, the Defender dealt with the assignment of municipal flats, discrimination based on the nationality of citizens of the Member States of the EU (the latter area is subject to the Employment Act and the European legal rules) and

discrimination in the area of access to employment. The Defender drew up two types of information leaflet for complainants assisting them in dealing with difficult circumstances where the right to equal treatment may be prejudiced (the leaflets are available at www.ochrance.cz).

Since discrimination, like any other comprehensive issue, should be dealt with systematically, the Defender has chosen discrimination based on age as one of the main subjects for the year 2010. Discrimination based on age has been identified as the most frequent reason for unequal treatment in labour-law relationships. Within enlightenment and research, the Defender will therefore focus on raising awareness of discrimination and on developing people's ability to identify discriminatory conduct. In this manner, it will be possible to gradually break down prejudice and stereotypes that result in the discrimination on grounds of age. For this purpose, apart from dealing with the individual complainants' cases, the Defender will issue within his activities in 2010 recommendations on general problematic subjects concerning discrimination based on age (e.g. discriminatory advertising on grounds of age, giving priority to people aged 50+ in collective redundancies, etc.).

The Public Defender of Rights also adopted a standpoint on some procedural aspects of the Antidiscrimination Act, particularly the substantive jurisdiction of courts in the matter of actions for protection against discrimination. The Defender therefore dealt with the substantial jurisdiction of courts, the relationship between an action for the protection of personality and actions for discrimination, the courts' duty to provide advice, the shared burden of proof under Section 133a of the Code of Civil Court Procedure and its application in administrative justice.

Last but not least, it should be announced that the Public Defender of Rights became a member of Equinet, a European network of antidiscrimination bodies (www.equinet.org).

In Brno, on January 15, 2010

JUDr. Otakar Motejl

Public Defender of Rights