VEŘEJNÝ OCHRÁNCE PRÁV

Report on the Third Quarter of 2010

Information provided by the Public Defender of Rights

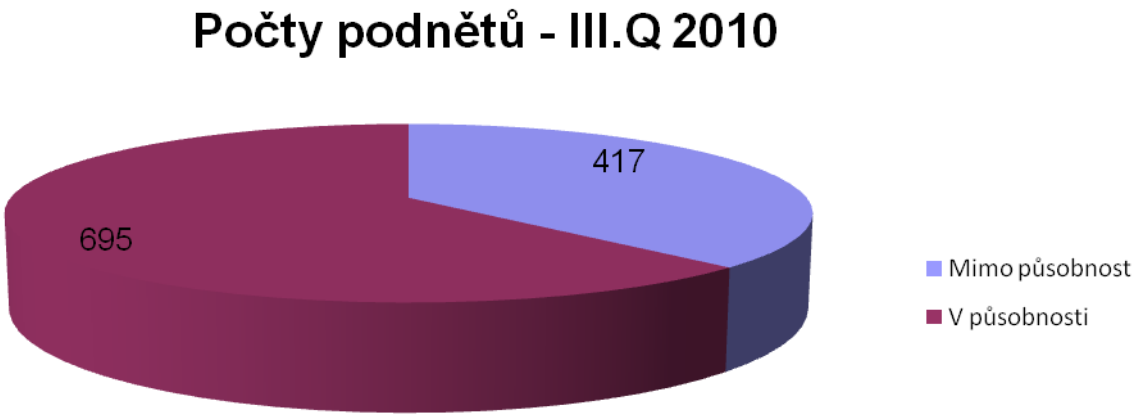
in accordance with the provisions of § 24 Paragraph 1 a) of Law No. 349/1999 Coll., on the Public Defender of Rights, as subsequently amended (hereafter simply Public Defender of Rights Act)

for the period of 1 July to 30 September 2010

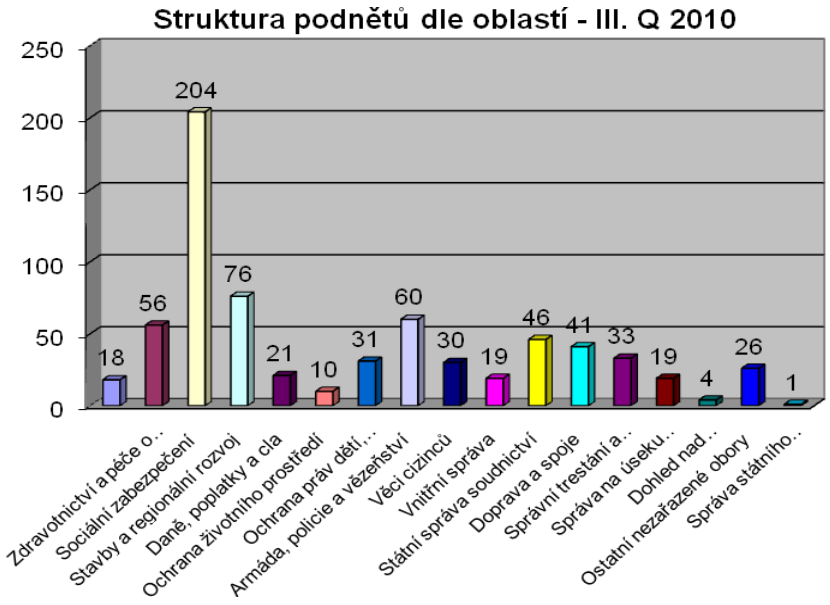
Public Defender of Rights (hereafter simply "*the Defender*") hereby provides the Chamber of Deputies of the Parliament of the Czech Republic with information regarding his work and activities during the period in question and also informs the members about the current state of public administration based on experience acquired in resolving cases. In terms of its content, this report follows on from the information about the Defender's activities during the second quarter of 2010.

A. General information regarding the work of the Public Defender of Rights

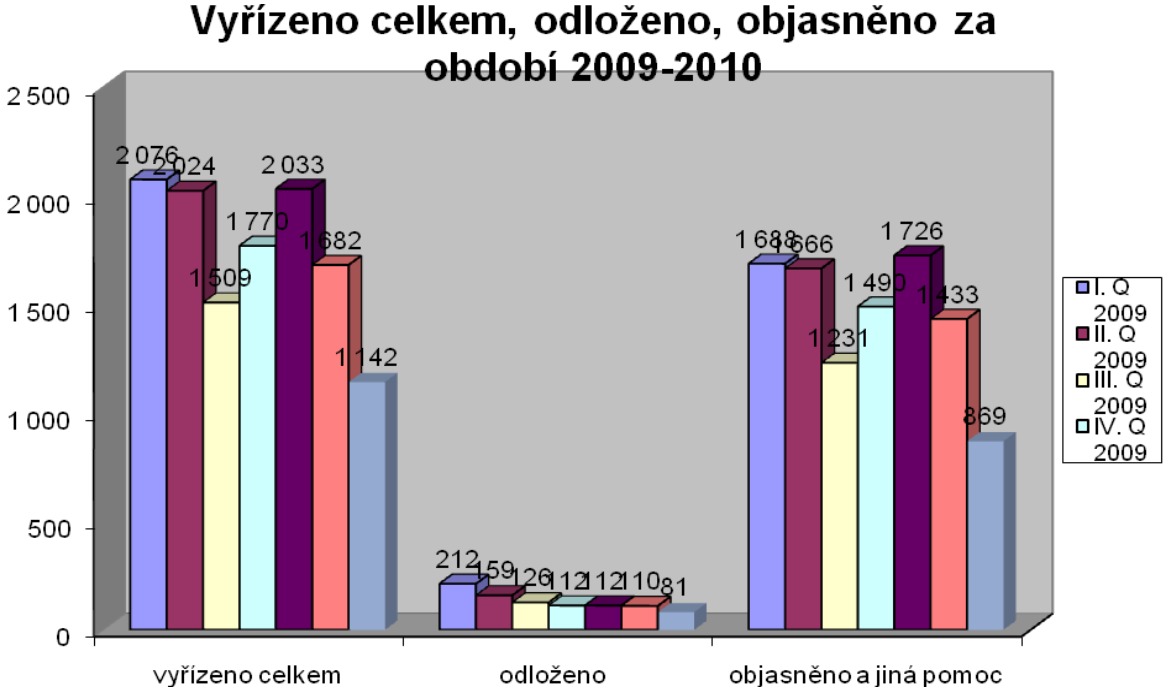
Number of cases received and processed



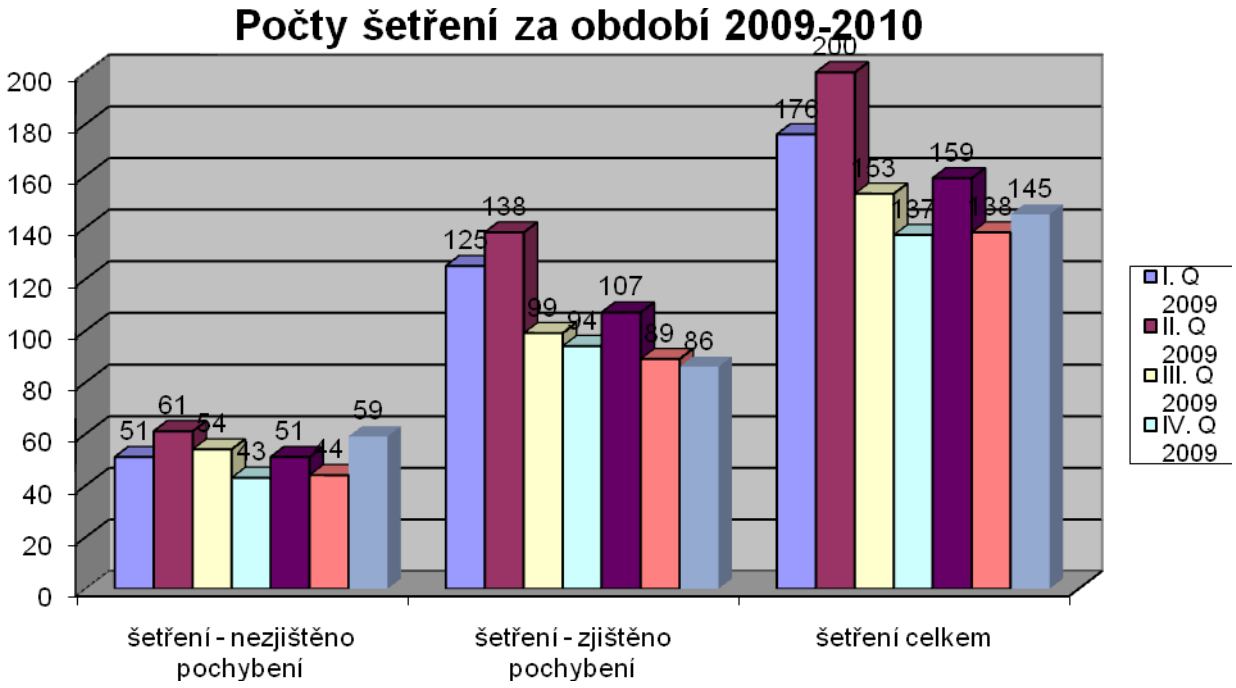
During the third quarter of 2010 the Deputy Defender received a total of 1115 cases, 695 (62 %) of which fell within the legally defined authority of the Public Defender of Rights and 417 (38 %) were outside the scope of that authority. The rise in the number of cases under the Defender's authority corresponds to the rise in the number of investigations carried out.



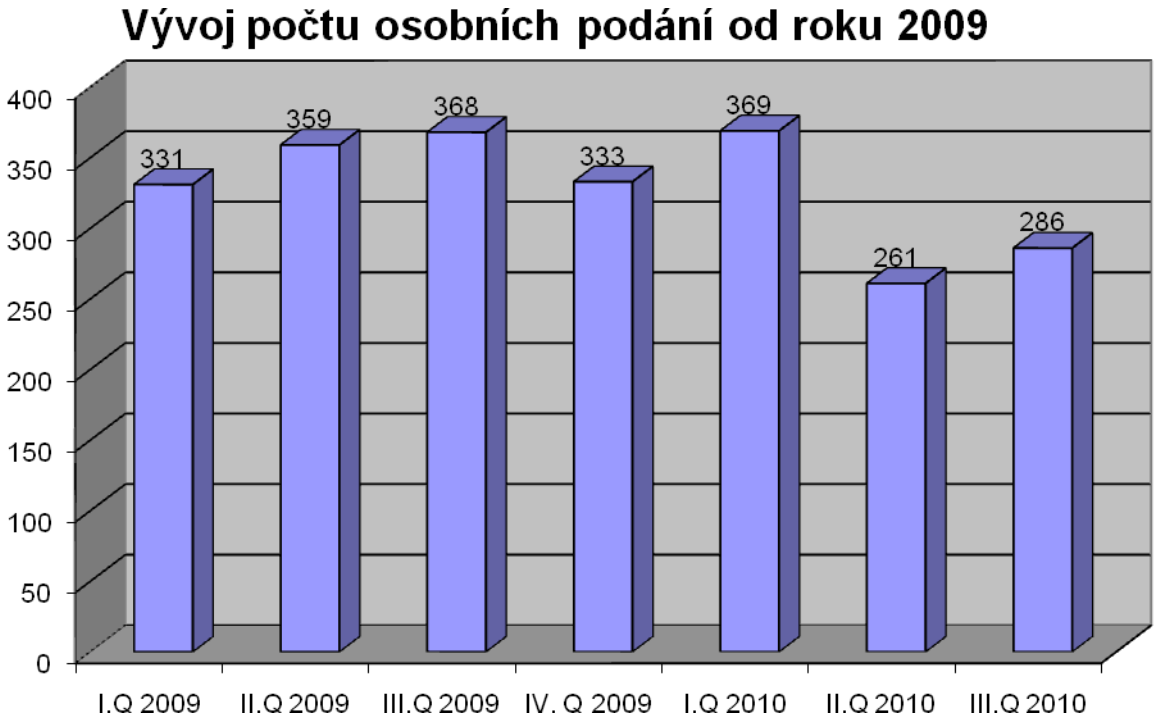
The structure of the cases received changes only slightly during the period in terms of the legal aspects of the cases. The most frequent are long-term cases relating to **social security** (204), particularly in matters of pensions and the provision of social benefits. In the third quarter of 2010 the second most frequent group of cases related to **buildings and regional development** (76), most of which concerned planning inquiries, building permits, and approval proceedings. In third place were cases relating to the **prison service** (60). The most cases from outside the Defender's sphere of authority are criminal cases (proceedings of crime-related bodies) and civil rights (e.g. distraints and issues of rented housing).



During the third quarter of 2010 the Defender dealt with 1142 cases. His investigations found that in 86 cases (59 %) an office was at fault.



In the period in question the Defender, the Deputy Defender and appointed lawyers of the Office of the Public Defender of Rights also personally registered cases brought in by claimants who visited the Office of the Public Defender of Rights. During the third quarter of 2010 the Defender's office was visited by a total of 280 claimants in person to complete claims forms or to acquire information or basic legal advice.



B. Generalised findings

In this part of the quarterly report the Deputy Defender would like to inform the legislators about her findings in general and about the enforcement of the special powers granted by the Public Defender of Rights Act.

I. Right of the Defender to submit recommendations on legislation in accordance with the provisions of § 24 Paragraph 1 c) of the Public Defender of Rights Act

1) Comments on the amendment to the law on juvenile liability for unlawful actions and on the judiciary in juvenile-related cases and on the amendment to certain laws

The Deputy Defender proposed that in cases where protective treatment is imposed upon a child under the age of fifteen, the review period should be changed to every six months instead of once a year. The reason for this is primarily the fact that physically and mentally children develop faster than adults and that the imposition of protective treatment infringes on the basic right to personal freedom (Article 8 of the Charter of Fundamental Rights and Basic Freedoms). In view of these facts the review period should be shortened.

The Deputy Defender also pointed out that the imposition of protective treatment may give rise to the problem of where such measures should be carried out. It is not known whether there is currently a specialised medical facility providing protective treatment for children. Psychiatric clinics have wards for children, although they are hospitalised there for completely different reasons. It could therefore happen that the same ward would contain children that are there for protective treatment as the result of having committed a serious crime and at the same time children who, for example, have attempted suicide, or children housed there as a kind of "*neutral*" environment due to their parents' disagreement of parental responsibility/care or due to problematic relations with a parent that the child does not live with.

2) Comments on the amendment to the tax regulations

The Deputy Defender pointed out that with regard to the legally assumed facts affecting the tax assessment period (in the sense of the interruption and adjustment of this period), extending the "*basic*" three-year period to five years postpones the tax administrator's first possible contact with the tax subject for the purposes of later securing (verifying) and determining the correct amount of tax. The Deputy Defender emphasised that in addition to taxpayers' obligations and responsibilities, it is also necessary for tax administrators to take an active approach.

As regards the option to assess local taxes through a collective list of regulations covering certain local taxes the Deputy Defender expressed fears concerning the practical impact of this means of assessing local taxes on the tax system, which no longer obliges local tax administrators to request that a person with tax arrears (if there is no risk of wasted distraint) pay these tax arrears on a voluntary basis or to inform them of the consequences of non-payment, such as tax distraint or a proposal to order the enforcement of a ruling or distraint.

3) Comments on amendments to laws which amend certain laws relating to savings measures within the competence of the Ministry of Employment and Social Affairs

The Defender does not agree with the intention to not provide unemployment benefits when a job applicant can cover his or her needs from severance pay or retirement benefits. The legislator should consider whether the proposed amendment does not contradict the sense and purpose of retirement benefits. First and foremost, this provides a certain degree of compensation for the difficulties (and sometimes even trauma) experienced when a person loses their job (a similar reasoning can be found in the explanatory report on the amendment to the Employment Act No. 167/1999 Coll., which states that "*severance pay is a lump-sum payment which does not constitute a wage or any substitute for a wage*").

If, despite this fact, such an amendment were to be adopted, the Defender believes that this change should be reflected in the pension insurance system. The duration for which job applicants are registered at a time when an applicant is not entitled to unemployment benefits due to having received severance pay or retirement benefits should definitely be counted as compensatory time for pension insurance beyond the scope of 1 year (3 years for persons over the age of 55), just like duration for which job applicants are registered when the applicant is receiving unemployment benefits or requalification support.

The Defender also did not agree with the reduction in unemployment benefits in cases where the job applicant terminated his or her previous employment either alone or with the agreement of the employer without having a serious reason for doing so. After all, the Employment Office cannot sanction all the reasons which could lead to a person terminating their employment contract. In such cases, reducing unemployment benefits would result in new expenses in the form of compensation paid out of the state budget, such as the payment of assistance in material need benefits or state social benefits. In terms of the legal certainty of job applicants and the principles of a democratic legal state it is unacceptable that decisions on the level of unemployment benefits coupled with the assessment of the severity of reasons causing someone to terminate their previous employment should rest on one particular member of staff at the Employment Office.

4) Comments on the amendments to the law which amends the law on the registration of ownership rights and other material rights to property

The Defender expressed his support for the amendment to the Registration Act (Law No. 265/1992 Coll., as subsequently amended), which is in response to certain inadequacies in how the real estate register operates. This particularly applies to disputable notes (the entry of such a note does not lead to the annulment of the proceedings to have the property entered in the register; the proposed change is in response to so-called harassment lawsuits, the sole purpose of which is to obstruct the transfer of tenure to a property).

The Defender also agreed with the amendment to the old rights of lien entered in the real estate register which were taken from the land ledger kept until 1964. The proposed provisions allow these old rights of lien to be erased, as to all extents and purposes they are defunct and it can be difficult to have them erased.

The Defender also supports the new amendment preventing further duplicate entries, where after decades old deeds appear which nobody knew existed but which are eligible for entry into the real estate register.

II. Constitutional Court proceedings in accordance with the provisions of § 69 Paragraph 2 of the Constitutional Court Act

Proposal of the Ministry of the Interior to annul the provisions of § 2 Paragraph 2, in the section which reads "*or being in a public place with an open or other vessel containing alcoholic drink*" and the provisions of § 2 Paragraph 3, in the section which reads "*or the distribution of open bottles or other vessels containing alcoholic drink"*, of the generally binding regulation of the Municipal Authority of Jeseník No. 1/2008, on the ban on the consumption of alcohol in public places

The Ministry of the Interior filed a proposal with the Constitutional Court that it annul selected provisions of the generally binding regulation of the Municipal Authority of Jeseník No. 1/2008, on the ban on the consumption of alcohol in public places. The provisions in question were those of § 2 Paragraph 2, in the section which reads "*or being in a public place with an open or other vessel containing alcoholic drink*" and the provisions of § 2 Paragraph 3, in the section which reads "*or the distribution of open bottles or other vessels containing alcoholic drink*".

In the proposal the Minister of the Interior expressed the opinion that the provisions in question are in contravention of constitutional order, specifically Article 2 Paragraph 3, Paragraph 4 of the Constitution and Article 2 Paragraph 2, Article 4 Paragraph 1 of the Charter of Fundamental Rights and Basic Freedoms, based on the rationale that the Municipal Authority of Jeseník had exceeded its independent sphere of authority as in the provisions in question it also dealt with matters which cross the boundaries of "*public order*" and which are governed exclusively by the law.

The Defender was involved in the proceedings are a secondary party. In relation to the offending provisions of the regulation he referred to the legal conclusions contained in the Constitutional Court ruling dated 12 August 2008, File Ref. Pl. ÚS 33/05, and stated that in essence both cases were very similar, as there are no grounds for considering the authority's power to issue a generally binding regulation which bans the consumption of alcohol in certain public areas. In the light of the above ruling the Defender stated that the Municipal Authority of Jeseník had not acted "*ultra vires*" and had not abused its authority by issuing the regulation. Also, with regard to the criterion of common sense, the Defender concluded that the wording of the controversial provisions was nothing more than an elaboration of the term "*consumption of alcoholic drinks*", and "*ban on the distribution of open bottles*" or "*possessing an open bottle*" with the aim of better reacting to the artifice of the legal arguments posed by those who actually disturb public order through the consumption of alcoholic drinks. The Defender therefore suggested that the Ministry of the Interior's proposal be rejected.

In its verdict of 7th September 2010, File Ref. Pl. ÚS 11/09, the Constitutional Court rejected the Ministry of the Interior's proposal. It ruled that the provisions of the generally binding regulation in question stood up to the Four Steps Test, and stated that "*regulation of the consumption of alcohol in certain public municipal areas is permissible by law, provided that with respect to the specific local conditions this is a phenomenon which is capable of disturbing public order, good manners or the health and safety of people and property in the municipality*". Regarding the distribution of open bottles containing alcoholic drink, the Constitutional Court concluded that the municipal authority may ban preparation to consume alcohol in such a manner in the same way as activities which enable the prohibited consumption of alcohol in public.

C. Media presentations and communication with the public

- Three **press conferences** were held in the third quarter of 2010. The topic of the July conference was the status of foreigners in the Czech Republic from the viewpoint of the Anti-discrimination Act. Although problems persist with the visa process and access to health insurance and education, a matter to which the Defender has repeatedly drawn attention in the past, the Deputy Defender stated that different approaches taken in such cases do not constitute discrimination. The August press conference was devoted to the Defender's recommendations on access for guide and assistance dogs into public areas. At the press conference in September the newly-elected Public Defender of Rights, JUDr. Varvařovský, introduced himself and outlined his ideas about what the office of ombudsman in the Czech Republic should focus on.
- Besides **press releases** on the issued presented at the press conferences, during the quarter other information was published on the Defender's findings, such as information on the change to the law on civil registration, which allows citizen to request information on the permanent residency of relatives and friends. The public also showed interest in the Deputy Defender's opinion regarding the Czech Trade Inspectorate's obligation to deal with the unfair practice employed by second-hand car lots of turning back the tachometers of the vehicles they sell. During the course of August and September in particular, however, the greatest media attention was focused on the election of the new Public Defender of Rights.
- Important aspects of the media presentations also included **individual interviews and media appearances.** The Deputy Defender expressed her opinion on the activities of authorised inspectors on the show Reportéři ČT, and described the competence of the Czech Trade Inspectorate in sanctioning unfair practices in the main news slots on Czech Television and TV Prima. In an Interview on ČT24 the Deputy Defender gave an assessment of the election of the new Public Defender of Rights. The new Defender, JUDr. Pavel Varvařovský, was a guest on the programme Událostí a komentářů ČT and gave interviews to all the television stations and also to nationwide radio stations.
- The sixth serial of the show Případ pro ombudsmana began in September.
- The Public Defender of Rights' public information telephone line was used by a total of 1131 people. These were mostly calls for basic legal advice (particularly regarding social security, building regulations and civil matters), as

well as general and specific questions about the Defender's work or progress with claims.
- The Defender's website at www.ochrance.cz had 105 079 visitors during the period in question.

D. International relations, conferences, seminars

Conferences and seminars

- Conference entitled *Inspection in Public Administration* (23 – 24th September 2010, Brno)

E. Selected cases dealt with by the Defender during the period in question

In this report the Public Defender of Rights summarises the information about interesting or otherwise significant cases which may help to illustrate the legal spheres and diversity of cases he handled during the period in question:

I. Investigations instigated on the Defender's own initiative

1) Payment of sickness insurance benefits

The Deputy Defender issued a conclusive statement on the delayed payment of sickness insurance benefits by the Prague Social Security Office (hereafter simply "PSSO") and the Czech Social Security Office ("CSSO").

The Deputy Defender began an overall investigation on her own initiative into a situation where a number of people had complained about the non-payment or late payment of benefits intended as a substitute for a regular income. The investigation discovered that there were delays primarily in the payment of benefits and also discrepancies in the file documentation (of 29 randomly selected files, 21 of them were missing documentation). Claims submission dates had also been altered. The causes of this unlawful action were mostly organisational and technical shortcomings.

The Deputy Defender welcomed the measures proposed by the Central Director of CSSO, although she felt obliged to state that delays would still persist in spite of these steps The Deputy Defender also warned of another potential cause for delays resulting from procedural changes to the system of sickness insurance benefits.

In her statement the Deputy Defender proposed two remedial measures: 1) issue a press release to publish the apology made by the Central Director of CSSO to those policy holders affected by the late payment of sickness insurance benefits since January 1st 2009; 2) to acquaint the Defender with the system used to keep file documentation and sickness insurance records.

This statement was sent to the Director of PSSO, the Central Director of CSSO, and to the Ministry of Employment and Social Affairs. The Minister of Employment and Social Affairs then stated that he expected the statement of the Central Director of CSSO to fully respect the proposed remedial measures.

2) Municipal Council Rules of Procedure

The Deputy Defender checked the conditions under which citizens of the municipal districts of the capital city of Prague were able to apply their right to express their opinions at meetings of the municipal council. She founds that the rules of procedure of the councils of several municipal districts contravene the provisions of § 8 d) of the Act on the Capital City of Prague (Law No. 131/2000 Coll., as subsequently amended), Article 17 of the Charter of Fundamental Rights and Basic Freedoms, and with the stipulations of Article 4 Paragraph 4 of the Charter of Fundamental Rights and Basic Freedoms. Specifically these are rules of procedure

which only allow citizens to express themselves in writing or which enable citizens to express their opinions only with the explicit consent of the municipal council.

The Deputy Defender found that this situation had persisted for at least two years; the Municipal Council of the capital city of Prague has been informed of the fact, yet does not comply with its inspection and supervisory obligations as imposed by the Act on the Capital City of Prague. Therefore the Deputy Defender began an investigation into the activity of the Municipal Council of the capital city of Prague with regard to supervision of the issue and content of the rules of procedure of the councils of the councils of the municipal districts of the capital city of Prague and checks upon the performance of the autonomous authority of the appointed bodies of these municipal districts.

3) Conditions covering protective treatment at Bohnice Psychiatric Clinic

Based on information from related patients who referred to the conditions covering protective treatment and the provision of medical care, the Office of the Deputy Defender carried out an investigation on its own initiative into the Psychiatric Clinic at Prague – Bohnice. The subject of this investigation was the ban on outside visits, or free movement, the ban on visitors, and the means by which medication was administered to patients undergoing protective treatment.

Upon completing this investigation the Deputy Defender came to the conclusion that the restriction on the right to free movement lasted for as long as was necessary given the patients' condition and that the application of this right was gradually extended. The ban of visits by specific people was justified in protecting the health of the other patients. The means by which medication was administered complied with the purpose of protective treatment, while the reasons for using such a method to administer medication were always explained and clarified. The Psychiatric Clinic at Prague – Bohnice was not found to be at fault.

4) Prices in prison canteens

At the Defender's request the pricing policy department of the Ministry of Finance (through the Finance Directorates) checked the prices in four remand prisons and seven prisons.

The investigations confirmed the fact that the prices for goods on sale in prisons do not always correspond to those in the place where the prison is located (thus failing to comply with the provisions of § 31 Paragraph 2 of Regulation No. 345/1999 Coll., on the basis of which the rules of imprisonment are issued). In this respect it is necessary to take account of the fact that, on the one hand, a shop in a prison, which only has a limited number of potential buyers, cannot compete with the nearby supermarket in terms of pricing, while on the other hand, this does not justify the excessively exaggerated prices in prison shops. This could be the result of the exclusive right to sell goods in prison (as there is virtually no competition).

Based on a systematic series of visits the Defender was of the opinion that prison authorities should monitor the prices in nearby stores on a quarterly basis. In the year 2000 prison governors also became obliged to supplement existing leasing contracts with the operators of prison shops with the addition of provisions obliging retailers to respect the average price of the same sort of goods in a particular locality when setting their own prices.

The Defender requested that the General Director of the Prison Service issue a statement on how the system of inspecting retailers is set up (whether monitoring is actually carried out everywhere, etc.)

II. Investigation instigated on the basis of cases filed by claimants

1) The placement of antennas by apartment tenants

Claimants contacted the Defender regarding a dispute on the placement of a satellite antenna to receive television broadcasts. They stated that they were tenants of a flat in a special-purpose building with a care service, owned (let) by the Municipal Authority of Milevsko. The lessor provides residential services which include equipping flats with a cable connection for the reception of television broadcasts.

The claimants applied to the Municipal Authority of Milevsko for a permit to install a satellite receiver on the balcony of their flat. As the Municipal Authority of Milevsko did not respond to their application, they considered it to have been approved (particularly as other tenants of the same building had already installed several satellite antennas) and placed an antenna on the facade of the building.

The claimants then received a letter from the Municipal Council which refused to grant consent to the installation of a satellite receiver. The claimants then contacted the appropriate building authority requesting that it resolve the dispute on the placement of the satellite antenna on the building, referring to § 104 Paragraph 15 a) of the Electronic Communications Act (Law No. 127/2005 Coll., as subsequently amended), according to which the owner of the building must tolerate the restriction of his ownership rights for this purpose.

The building authority did not initiate proceedings, despite being obliged to by the aforementioned law, and merely referred to the cable television connection that was already in place, despite the fact that it was unclear whether this connection enabled the reception of primary broadcasts. According to the Czech Television Authority ("CTA"), enabling the reception of cable television does not constitute fulfilment of the building owner's obligation to enable the reception of radio and television broadcasts as stipulated by the Radio and Television Broadcasting Act (Law No. 231/2001 Coll., as subsequently amended). In its statement CTA also clearly states that if cable television is installed in the building, the owner of the building is obliged to enable tenants to install equipment to allow them to watch the programmes they want at their own expense (e.g. an individual antenna). Disputes between the owner of the building and the tenant are to be decided upon at the proposal of the relevant building authority in collaboration with CTA.

In her report on the investigation the Deputy Defender reprimanded the building authority, stating that it had not initiated administrative proceedings at the request of the claimants and had not carried out a proper assessment of the situation. The building authority then initiated the proceedings; a ruling on the placement of the antenna is expected to be issued by October 31st 2010.

As this case is not unique, the Deputy Defender again requested that the Minister for Regional Development work with CTA to issue joint methodical guidelines as to how building authorities should proceed as regards the placement of satellite antennas. The Minister has not as yet complied with this request.

2) Noise from public musical performances

CV RELAX, a. s. runs the new BANDA recreation complex at Kamencové jezero in Chomutov, originally designated as a sports complex to cater to the sporting and recreational needs of residents. In the later stages of the construction work it was decided to extend this to also make it a cultural venue with a stage and dance floor for evenings of music, including live bands.

The regional public health authority (hereafter simply “RPHA”) as the public health protection body requested that the site be operated on a trial basis for 1 month; however, the building authority issued a 3-month trial permit (for the whole of the summer season), despite dozens of previous complaints about the noise from people living on the nearby housing estate.

In a binding statement on putting the site into permanent operation RPHA explicitly insisted that the site in question would not be used as a music venue (live music, recorded music, electro-acoustic amplified music and speeches). In its approval ruling which granted permission to use the building, however, the building authority of the Municipal Authority of Chomutov only took account of part of the RPHA’s binding statement, i.e. the general “condition” that noise hygiene limits were not exceeded when the site was in use. No other conditions were set (e.g. the RPHA statement regarding music productions).

The Deputy Defender considers this to constitute the wilful circumvention of the provisions of § 4 Paragraph 2 of the Building Act (Law No. 183/2006 Coll., as subsequently amended), as well as the provisions of § 77 on the Public Health Protection Act (Law No. 258/2000 Coll., as subsequently amended). The approval ruling of the building authority must therefore be considered unlawful, meaning that the organisation of music productions without adherence to the appropriate anti-noise measures is also unlawful. In accordance with the provisions of § 149 Paragraph 1 of the Administrative Procedure (Law No. 500/2004 Coll., as subsequently amended) the propositional part of the administrative body’s ruling is also bound by the entire wording of the binding statement (the building authority was at fault if it only took account of part of the RPHA’s statement).

As the Municipal authority of Chomutov did not agree with the Deputy Defender’s opinion, she proposed that the Regional Authority of the Ústí Region annul the approval ruling as unlawful.

3) Illegal operation of a biogas station

The Deputy Defender issued a report on her investigation into the operation of a biogas station in Velký Karlov, in which she reprimanded the authorities in question for acting improperly by permitting the operation of this station, as well as in their subsequent efforts to rectify the situation.

The Defender was contacted by a civil association of citizens of Velký Karlov, which drew attention to the unbearable situation caused by the excessive odour and

leakage of harmful substances from the station into the surrounding environment. The association also objected to the fact that inadequately processed digestate, blood and animal remains are dumped on nearby farm land.

When issuing the permit for the biogas station, as part of the environmental impact assessment it was stipulated that the station was forbidden from burning secondary animal products. Planning permission was subsequently issued on the basis of planning documentation which did not take the processing of animal products into account.

The operator then applied to the South Moravian Regional Veterinary Authority for a binding review of the operation of biogas station which would also cover the processing of animal products. The veterinary authority issued the review in the same manner as a permit to operate a veterinary sanitation enterprise (i.e. a facility for the removal or further processing of animal products). The operator later approached the building authority to apply for an approval ruling, presenting the reworked planning documentation, and the building authority issued the approval. This was in contravention of the Building Act, which does not allow approval proceedings to grant approval to any other operation than that permitted by the planning permission without discussing the matter further. Moreover, this procedure excluded the parties to the proceedings from the possibility of issuing a statement on an operation which intended to process animal products. The building authority also failed to respect the conclusions of the environmental impact assessment, despite being aware of them.

The operator of the biogas station breached a wide range of regulations. It had never had a permit to handle waste and had been fined several times for leaks of harmful substances into underground and surface waters. The residual product was passed on to a contractual operator which had also been repeatedly fined for dumping blood and other banned substances in the surrounding fields. The operation of the biogas station also contravenes the law on the integrated prevention of pollution (Law No. 76/2002 Coll., as subsequently amended), as it is classified as an operation which requires an integrated permit.

For its violation of the law on integrated prevention the Czech Environmental Inspectorate ordered the operator to pay a fine of several million crowns, which is currently being recovered through a distraint process. The Czech Environmental Inspectorate also issued a ruling banning the further processing of animal products. This ruling is also currently being enforced, although progress is hampered by the lack of cooperation on the part of the South Moravian Regional Veterinary Authority, which is failing to respect the ban on the processing of animal products.

This is a paradox in that the biogas station was set up with a good deal of support from European structural funds, despite the fact that for several years it had breached a number of regulations based on European law.

The Deputy Defender requested the authorities in question (the building authority and the regional veterinary authority) to give a statement on these conclusions.

4) Sending cigarettes with non-Czech stamps into prison

The Defender expressed reservations with regard to the practice of prisons which inadequately defined conditions for the issue of tobacco products with a non-Czech stamp, thus violating the internal regulation of the Prison Service of the Czech

Republic. In practice this ruled out the possibility of importing several packets of cigarettes from abroad and passing them on to prisoners during visits or sending them in a package. This practice is in contravention of the principle covering the free movement of goods within the European Union.

In this case the Defender contacted the General Director of the General Directorate of Customs, who, together with the General Director of the Prison Service of the Czech Republic, called upon the Ministry of Finance to issue a statement on the meaning of the term "*import for personal consumption*" to determine whether legally imported tobacco products can be distributed amongst friends and relatives.

The Ministry of Finance inclined towards a broad interpretation of this term and stated that legally imported tobacco products may be for personal consumption or may be provided to friends and relatives. In its statement the Ministry of Finance also recommended that the internal regulation of the prison service be amended to take account of the Defender's reservations.

5) Material assistance benefits

A claimant filed a case concerning the decision-making process adopted by the Municipal Authority of Planá and the Plzeň Regional Authority (the appeal body) regarding her application for a living allowance. She did not agree to the reduction in these benefits, which the authority justified by saying that she had not enforced her right to maintenance for her son (as jointly assessed) from his "registered" father. She stated that this was in conflict with the child's interests, as her ex-husband is aggressive (domestic violence towards her and her child) and, moreover, is not the biological father (the plea to refute his fatherhood was unsuccessful as it was filed after the expiry of the deadline).

The Deputy Defender reprimanded the authorities in question, stating that they had not checked to see whether the claimant's failure to enforce her right to maintenance was justified. The Municipal Authority of Planá, for example, did not cooperate with the body providing social and legal protection for the child, which would have explained the reasons why she was not claiming maintenance.

Considering the fact that the authorities did not agree with the Deputy Defender's conclusions, even after she had issued her concluding statement, the case was passed on to the Ministry of Employment and Social Affairs as the superior body. The Ministry subsequently annulled the ruling of the Municipal Authority of Planá and reopened the case for discussion, at which point the authority acknowledged the reasons why the claimant was not claiming maintenance. It reassessed its earlier rulings and paid the claimant 40 000 CZK in arrears. It has also agreed to increase the claimant's living allowance by 2 000 CZK in the future.

6) The use of shackles

In her concluding report the Deputy Defender did not concur with the legal use of extra-legal coercive equipment (shackles), which, moreover, are forbidden by the European laws on prisons.

According to the Deputy Defender, shackles are difficult to put on (there is the risk of injury) and standard handcuffs with a binding strap serve the same purpose.

The General Director of the Prison Service did not concur with the Deputy Defender's opinion. He believes that this is exceptional coercive equipment designed to shackle dangerous prisoners. It is also not possible to consider replacing shackles with jaw fetters as there are insufficient funds to do so.

The Deputy Defender challenged this, saying that if shackles are used only in exceptional and truly justified cases, it would not be prohibitively expensive to purchase a limited number of handcuffs with straps.

No agreement has yet been reached regarding the use of shackles.

7) Fees for copies of archive materials in the National Archive

After more than two years the Defender concluded his investigation into the question of fees for services provided by public archives.

In the case of a particular researcher the Defender managed to achieve a refund of an excess payment for fees. At the general level the Ministry of the Interior issued a statement on the nature of fees levied by public archives for their services (copying archive materials, research work, etc.). These payments are de facto administrative fees, despite not being covered by the Administrative Fees Act (Law No. 634/2004 Coll., as subsequently amended) but rather by the Archival Science and Records Service Act (Law No. 499/2004 Coll., as subsequently amended) and the Tax and Fees Administration Act (Law No. 337/1992 Coll., as subsequently amended). Therefore if a researcher disputes the sum paid for services listed in the service tariffs, the public archive must proceed in accordance with the provisions of § 64 of the Tax and Fees Administration Act and refund any excess payment.

The new Deputy Minister of the Interior, JUDr. František Vavera Ph.D., promised the Deputy Defender that public archives will be informed accordingly as part of the methodical management by the Department of Archive Administration of the Ministry of the Interior.

Nevertheless, the Defender has come across other fees whose legal regimen is somewhat unclear (e.g. fees for the provision of information levied by the Land Registry Office of the Czech Republic or the fee for the collection, processing, usage and removal of vehicle wrecks). The Defender will look into the fragmented nature of the laws covering payments for services provided by state administrative bodies in an investigation begun on his own initiative.

8) Supervision of the chairmanship of the Personal Data Protection Office over the length of state audits and relations between the chair and inspectors of the Personal Data Protection Office

The Deputy Defender found that there were delays in the audit work performed by the Personal Data Protection Office. The length of time for which a camera system was used in an apartment building (16 months) was unreasonable with regard to the subject of the audit and the authority thus violated the principle of uninterrupted proceedings as governed by the provisions of § 6 Paragraph 1 of the Administrative Procedure (Law No. 500/2004 Coll., as subsequently amended).

Despite the fact that the length of the audit was due to the fact that the inspector was indisposed for reasons of poor health and also due to the rising

number of requests for audits, in the context of the case in question the Deputy Defender was unable to accept these facts as being objective grounds for delay.

The Deputy Defender stated that supervision of the steps taken by the inspector during the course of state audits is the responsibility of the chairman of the Personal Data Protection Office, who is also obliged to eliminate any delays. However, the chairman of the office first refused to comply with this obligation, referring to the provisions of § 33 Paragraph 3 of the Personal Data Protection Act (Law No. 101/2000 Coll., as subsequently amended) and § 12 Paragraph 1 of the State Inspection Act (Law No. 552/1991 Coll., as subsequently amended). Eventually, however, he admitted that the supervision was his responsibility yet referred to the difficulty in enforcing the so-called principles of good administration with the inspectors. These are appointed by the president at the proposal of the Senate of the Parliament of the Czech Republic for a 10-year term of office and their position is similar to that of the members of the Supreme Audit Office. The traditional labour-law motivational tools are not applicable in these specific cases.

Nevertheless, in response to the Deputy Defender's findings the chairman of the office began preparing a new internal regulation covering the length of state audits, this being a matter which is currently not treated by the law. The adoption of the internal regulation and ensuring compliance with the regulation in the course of the Office's audit work may prevent the occurrence of similar cases in the future.

9) Procedure adopted by the Foreign Police in the case of an administrative tribunal on unlawful detention

In January and February this year the Defender was contacted by two foreigners detained by the Regional Directorate of the Foreign Police Service of Plzeň ("RDFPS") for transfer in accordance with an international treaty. In both cases the ruling on their detention was lawfully annulled by an administrative tribunal. Despite this, the foreigners were not released from detention and a new ruling on their detention was not issued until after a significant delay (in one case 7 days, in the other as long as 13 days after the tribunal ruling entered into force). Both claimants considered the restriction on their freedom from the time the tribunal ruling entered into force until the delivery of the new detention ruling as unlawful.

In this case the dispute was the result of the interpretation of § 127 Paragraph 1 b) of the law on the Residence of Foreign Nationals (Law No. 326/1999 Coll., as subsequently amended), which obliges the administrative body to end the detention *"without undue delay",* if an administrative tribunal issues a ruling to annul a previous ruling on the detention of foreigners.

After studying the case the Deputy Defender came to the conclusion that the procedure adopted by RDFPS Plzeň was unlawful and the complaints filed by both claimants were justified. The vague legal term *"without undue delay"* does not clearly define the maximum length of time for which foreigners may be detained. In legal practice this term is interpreted in such a way that compliance with the obligation is conditional upon the objective potential of the subject in question to comply with its duties. This means that the detention of foreigners as defined by § 127 of the law on the Residence of Foreign Nationals need not necessarily be terminated immediately

after the issue of a court ruling, but may be ended after a certain (reasonable) delay required to take the necessary steps towards releasing foreigners from detention facilities.

RDFPS Plzeň admitted that it had been at fault in both cases and also accepted the legal interpretation of the length of the term specified in the provisions of § 127 Paragraph 1 of the law on the Residence of Foreign Nationals. However, it did not agree with the opinion that the term only relates to the steps taken by the administrative body towards terminating the detention of foreigners and not to the steps taken in proceedings concerning the detention of foreigners in accordance with § 129 of the law on the Residence of Foreign Nationals. In practice RDFPS Plzeň will tolerate a maximum period of 3 days for the issue of a new ruling.

Despite persistent doubts about the legitimacy of the interpretation of RDFPS Plzeň (its compliance with the requirements on the termination of restrictions on free movement as stipulated by the European Court of Human Rights), the Deputy Defender came to the conclusion that the remedial measures adopted by the administrative body may be considered adequate and therefore closed both investigations, taking account of the fact that RDFPS Plzeň considers this to be the maximum length of time while standard cases should be resolved earlier, and also of the fact that the upcoming amendment to the provisions of § 127 of the law on the Residence of Foreign Nationals, due to enter into force on 1 January 2011, should define clear rules for foreign police bodies in similar cases.

10) Disciplinary proceedings against the Vice-chair of the Supreme Court in Prague

In August 2010 the Supreme Administrative Court issued a resolution to annul disciplinary proceedings against the Vice-chair of the Supreme Court in Prague, JUDr. Jaroslav Bureš, initiated at the proposal of the former Public Defender of Rights, JUDr. Otakar Motejl, in February 2010. In its justification for the resolution, the Supreme Administrative Court stated that while there were no doubts about the authority of the Minister of Justice or the President of the Czech Republic to submit proposals to initiate disciplinary proceedings against a judge or the chair or vice-chair of the court, in the case of the Public Defender of Rights the situation should be different. The court referred to the fact that office of the Defender is not governed by the Constitution and that the Defender is not a constitutional official, nor does the Defender have any part in legislative, executive or judicial powers.

The Defender's authority to submit proposals to initiate disciplinary proceedings against any chair or vice-chair of a court raises doubts with the Supreme Administrative Court concerning the compliance of the right to file proposals with the Constitution. The Disciplinary Appeal of the Supreme Administrative Court therefore concluded that the provisions of § 8 Paragraph 3 c) of the law covering proceedings in matters relating to judges, state representatives and judicial executors (Law No. 7/2002 Coll., as subsequently amended) and § 1 Paragraph 7 of the Public Defender of Rights Act (Law No. 349/1999 Coll., as subsequently amended) are in violation of the Constitution. The Supreme Administrative Court informed the Defender that it would file a proposal with the Constitutional Court in accordance with the provisions of § 64 Paragraph 3 of the Constitutional Court Act (Law No. 182/1993 Coll., as subsequently amended) to have the provisions annulled.

F. The Defender's work in relation to the detention agenda

During the third quarter of 2010 the systematic visits to police cells continued, while the Police Commissioner of the Police of the Czech Republic was informed about the findings and requested to make a statement. Visits were made to a total of 126 cells in 34 police stations. The visits were made during the night or early hours of the morning.

In September 2010 the concise findings from the visits to detention facilities for foreigners were presented to representatives of the authorities in question, i.e. the Refugee Facilities Administration, Medical Facilities of the Ministry of the Interior, the Department of Migration and Asylum Policy of the Ministry of the Interior and the Police of the Czech Republic – Foreign Police Services, with the proviso that the Defender intended to discuss the most serious shortcomings at a meeting of all these bodies.

The Defender also completed his series of systematic visits to women's prisons with a visit to Opava Prison. Visits were also made to five homes for the disabled which the Defender visited in 2009.

Information about the process of social services inspections at private facilities for senior citizens

In his report on the 4th quarter of 2009 the Defender informed the Chamber of Deputies about his systematic visits to two private facilities for senior citizens (Domov pro seniory Lada**,** Lužická 591/4, Ostrava; Prácheňské sanatorium o.p.s. **-** Loucký mlýn**,** Radčice 58, Vodňany), made because despite repeated appeals these facilities had not responded to the Defender's report and had not informed him about measures they were supposed to have adopted.

The Defender passed on his findings to the relevant inspection bodies – the regional bodies responsible for inspecting the provision of social services. The Regional Authority of Moravia and Silesia immediately added Domov pro seniory Lada to its inspection plan, and an inspection was carried out in April 2010. In June 2010 the regional authority informed the Defender that in a check on quality standards the provider had only passed on 33 % of the possible points, while 14 of the 17 fundamental criteria were rated very poorly. Of the provider's 10 legal obligations, only 1 was rated as adequate. Therefore, the provider was given a period of 90 days to compile a plan of remedial measures. A further 4 measures were imposed with deadlines and, in the case of several shortcomings, administrative proceedings were initiated concerning administrative offences against the Social Services Act.

The Municipal Council of the capital city of Prague, which is the body responsible for inspecting the provision of social services in Prácheňské sanatorium – Loucký mlýn, informed the Defender that this facility would be included in the inspection plan for the second half of 2010.

G. Activity of the Defender in relation to protection against discrimination

1) Discrimination in the tax laws on the basis of sexual orientation

The Defender was contacted by a claimant objecting to the fact that the tax relief regulations are discriminatory on the basis of sexual orientation: they place registered partners at a disadvantage in comparison with married couples. The claimant also referred to the discriminatory manner in which the tax relief regulations are interpreted in relation to under-age children. In accordance with the provisions of § 35c Paragraph 1 of the Income Tax Act (Law No. 586/1992 Coll., as subsequently amended), taxpayers may claim tax benefits (in the form of a tax bonus or discount) for a dependent child who shares the same household. This discount, however, is not applicable for this child of a registered partner. The Defender informed the claimant that an administrative body does not have the authority to use a broader interpretation in this sense, i.e. to apply the provisions covering either a husband or wife's possibility of claiming tax relief to registered partners. The means by which the law is interpreted in this case cannot be challenged, but the possible discriminatory nature of the law as such can.

However, even in this context this cannot be considered to be discrimination, as it is not possible to judge the relationship between two laws which carry the same legal weight, i.e. to conclude that a specific law contravenes the ban on discrimination as defined by the Anti-discrimination Act. In this case it is only possible to consider the constitutionality of the law in question. As regards the concept of registered partnerships it must be said that the Czech legislators, as well as the European Court of Justice and the European Court of Human Rights consider marriage between two people of the opposite sex and registered partnership between two people of the same sex to be different. By adopting the Registered Partnerships Act (Law No. 115/2006 Coll., as subsequently amended) the legislator did not classify both types of union as being on the same level, as apparent from the explanatory report and the wording of the Registered Partnerships Act itself. Unions between two people of the same sex are therefore not subject to the same regime as traditional marriages in all respects.

2) Recommendations of the Public Defender of Rights concerning access for guide dogs and assistance dogs to public areas

In August the Defender published further recommendations on the issue of discrimination. These recommendations are aimed at authorities, medical facilities, schools, employers, carriers, public service providers and other relevant bodies. Another target group comprises disabled people who use specially-trained dogs to compensate for their disability. If disabled people are not given access to public areas, this would result in their exclusion from the life of majority society and from the labour market. In compliance with the principle of non-discrimination disabled people should be provided with the opportunity to make full use of their abilities. Therefore, it is necessary to eliminate unjustified obstacles which render them passive and which increase the level of exclusion. It is therefore essential that reasonable measures be adopted which allow the disabled to play the same part in the life of society as able-bodied people.

The aim of these recommendations was to draw attention to the discriminatory nature of the restrictions on assistance dogs and guide dogs in public areas and to provide a guide to help disabled people overcome these restrictions.

Brno, 20 October 2010
JUDr. Pavel Varvařovský
Public Defender of Rights