CZECH REPUBLIC

ANNUAL REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS

IN 2003

SUMMARY

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I. THE PUBLIC DEFENDER OF RIGHTS AND HIS OFFICE IN 2003

1. The Starting Point

The Public Defender of Rights submitted a Annual Report on his work in 2002 to the Chamber of Deputies of Parliament (parliamentary protocol No. 273). After hearing the report at a regular assembly, Parliament acknowledged it on 28/5/2003 through a resolution. The Report contained an account and review of the work of the Defender and that of the Office of the Public Defender of Rights in their second year. A significant part of the Report presented specific cases dealt with by the Public Defender of Rights, while at the same time it contained general points he considered it necessary to bring attention to. These general observations related in particular to problem areas within the legal order and was primarily based upon day-by-day analysis of complaints addressed by individuals to the Defender.

The Senate also took up the Annual Report for 2002 on its own initiative and took cognisance thereof on 22/5/2003 through a resolution (senate protocol No. 79).

This Report covers the operation of the institution in its third year. It is exceptional among public institutions both in its aim and mission, and in part due to its specific activities. It does not have a long-term tradition in the Czech Republic or an equivalent. Last year, on 18 December 2003, the Public Defender of Rights reached the midpoint of his term in office, allowing a more comprehensive appraisal, which this report endeavours to accomplish.

There has been no significant legislation in the past year on the role of the Public Defender of Rights in protecting individuals against proceedings of authorities and institutions, as laid down in the specific provisions of Act No. 349/1999 Coll. on the Public Defender of Rights (Public Defender of Rights Act). However a further process has been undertaken, based upon chapter No. 309 of Act No. 490/2001 Coll. on the state budget for 2003, passed by the Chamber of Deputies, whereby further stabilisation of the institution has been accomplished and additional specialist staff have been recruited.

A part amendment of the Public Defender of Rights Act, enforced by Act No. 320/2002 Coll. on the Amendment and Annulment of Certain Laws in Conjunction with the Termination of District Authorities, took effect as of 1/1/2003. Within the second part of public administration reform, the amendment specified a list of authorities to which the mandate of the Defender applies. The wording of the original specification of the Defender's mandate refers to "district authorities, towns that have adopted the competences of district authorities and municipalities" and has been replaced by "authorities of higher regional self-governing units".

In 2003, preliminary legislative activities commenced almost simultaneously, a prerequisite of which was a fundamental change in the mandate of the Defender as defined by law.

The government submitted to the Chamber of Deputies an extensive draft amendment of Act No. 141/1961 Coll. on the Criminal Code which anticipates that where the law is breached to the detriment of the defendant, the right to file a complaint for the breach of law would pass to the Public Defender of Rights in place of the Justice Minister.

In the previous year the government approved a draft amendment to the Public Defender of Rights Act, not only anticipating a broadening of his mandate but also introducing a new element to his operation. According to this modification the Defender should carry out systematic precautionary inspection of those areas where individuals' freedom is restricted, whether *de jure* or *de facto*. This would enable the concurrent fulfilment of the obligation of the Czech Republic in the case of the adoption of the Optional Protocol to The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Among others, the Optional Protocol presumes that the signatories shall assume the obligation to provide a domestic independent control mechanism. The amendment to the Public Defender of Rights Act currently under preparation includes further changes to the arrangement regarding the cooperation of authorities and institutions with the Defender in the execution of his mandate. The

updated reading of this amendment to the Act is ready for consideration by legislative governmental bodies.

Finally, in 2003, work began on preparation of an "Anti-discrimination Act". In the process of approval of the draft, the government has for the time being approved an alternative solution to the question of which authority or institution is to be charged with fulfilment of tasks related to the prevention and monitoring of discriminatory behaviour. One of the institutions under consideration for this purpose is the Public Defender of Rights.

Bearing in mind these possibilities, two versions of the budget of the Office of the Public Defender of Rights were drawn up and considered as part of the 2004 budget for the Czech Republic.

2. Material and Personnel Background of the Office

Last year the Office of the Public Defender of Rights successfully completed the construction phase of the technical, spatial and material background of the Office. Together with the operation of a local document archive, stabilisation of the program safeguard system for electronic documentation comprising of individual files and submissions has been accomplished.

As of 31/12/2003, 89 staff were employed at the Office, 57 dealing directly with complaints (42 were lawyers in the Material Competence Department, two were lawyers in the Defender's and his Deputy's Secretariat and 13 were employees of the Department of Administration and Filing Services).

In 2003 cooperation with specialists from the law faculties of both Masaryk and Charles Universities continued. This sometimes takes the form of individual consultations, but chiefly however involves their participation in regular seminars involving all specialist workers. The agreement with Masaryk University Faculty of Law on the organisation of specialist traineeships in the Office of the Public Defender of Rights for master's students with a major in Law and Legal Theory has continued to operate.

Following the evaluation of experience from 2001 and 2002, it was decided that as of 1/1/2003 a new classification of individual complaints and suggestions into groups and subgroups defined in greater detail would be adopted to permit more precise and sensitive categorisation. Together with the concurrent strengthening of the Analytical Department, a system of specialist guarantors for individual groups was adopted and this was in turn followed up with a system of cooperation of Material Competence Department staff. The established system supported by a running computer program fully provides for the running of the Office as determined by the present mandate. Conceivable alterations in the mandate would necessitate modification of the system in both personnel and technical aspects.

3. Relations with Parliament

During 2003, the Public Defender of Rights submitted, in accordance with section 24, paragraph one, letter a) of the Public Defender of Rights Act, four briefings to the Chairperson of the Chamber of Deputies. These were taken up in his presence by the Petitions Committee. These briefings are available on the homepage of the Defender (www.ochrance.cz).

The Defender participated in the reading, passing and amendment of legislation in the Chamber of Deputies, which if passed would affect the future operation and functioning of the institution. The Defender and the Office Director also took part in the Petition Committee's reading of the Government bill on the State Budget for 2004, chapter No. 309 – The Office of the Public Defender of Rights. The Defender, his deputy and relevant employees of the Office participated in certain specialist seminars organised by both the Chamber of Deputies and the Senate.

On 14 May 2003, the Public Defender of Rights exercised his right under section 24, paragraph three, of the Act, and appeared before the Chamber of Deputies in connection with the Government bill on the Amendment to the Act on Asylum (protocol No. 214). This appearance was approved in a parliamentary vote despite the right to appear on the basis of the cited provision not being subject to a vote. The recommendation of the Defender to refrain from passing the amendment from the

Committee for Defence and Security was not accepted and the amendment was passed (for more see section III).

4. Promoting Public Awareness

Throughout 2003, the Public Defender of Rights regularly publicised his activities. He held twelve regular and four extraordinary press conferences. At monthly review conferences he brought up problems with provisions governing the detention of foreigners, the position of the injured party in disciplinary proceedings, developments in the area of housing, problems related to the construction of the D8 motorway in the Protected Landscape Area of the Bohemian Central Mountain Region, the mandate towards the agencies for the social and legal protection of children and so on. At an extraordinary conference he described the monitoring of children in children's homes and reformatories with cameras and listening devices. The ombudsmen of Poland and Romania participated as foreign guests at two press conferences, where they compared their position work with that of the Czech Public Defender of Rights. Some 201 members of the press attended press conferences in 2003, an average of about 13 per conference.

The Public Defender of Rights was mentioned in 2,624 media broadcasts, in which he himself, his deputy or other employees of the Office were referred to. As an example, The Czech News Agency *ČTK* made 341 broadcasts, Czech Television 140, the Czech radio broadcasting station *ČRo 1 – Radiožurnál* 87, another broadcasting station *ČRo 6* made 56 broadcasts and so on. These are just appearances at press conferences but commentaries touching on various problems of society. Both high representatives participated in a number of debates. The Defender appears frequently in the *Radiofórum* debate of the *Český rozhlas 1* radio station, on BBC radio, on the *Frekvence 1* radio station and has on a number of occasions participated in the production of documentaries for Czech Television. The Deputy Public Defender of Rights participated in broadcasting of the *Český rozhlas* radio station aimed at national minorities. She has appeared in *Na hraně* (On the Edge), *Čaj pro třetího* (Tea for three) and other television programmes. Comments in the news media on currents issues were also made by the press spokesperson and the lawyers of the Office. The Defender is at present discussing the production of a television documentary on his mandate.

In 2003 alone, some 28,000 people visited the homepage of the Defender (www.ochrance.cz), which provides basic information. There were once again many oral, written and above all telephone enquiries. These were naturally often requests for advice in specific matters as well for information about the institution itself. For these and other purposes a telephone information line was established in 2002 (tel. 542 542 888), where specialists work continuously to provide general information as well as answering particular queries. In 2003 some 3,052 queries were answered. These were chiefly concerned with specific legal advice, queries with respect to the legal boundaries of the mandate of the Defender or queries seeking information on the state of progress of matters already filed with the Defender. The most frequent queries were in the areas of civil law, planning permission proceedings, court administration and social security.

On 5 June 2003, an international conference "The Work of the Ombudsman in a Democratic Society" was held at the Office in Brno. Twenty expert papers, reports and discussion contributions from the field of legal theory and legal practice were presented. The fundamental papers and contributions to discussion were published (ISBN 80-210-3202-2). The conference focused on the evaluation and discussion of application problems of the Office of the Public Defender of Rights.

5. Visits and Other Domestic and International Relations

In 2003, the Public Defender of Rights received a number of distinguished guests from both home and abroad.

In March 2003, Alvaro Gil-Robles, the Commissioner for Human Rights for the Council of Europe visited the Office, while in June Andrzej Zoll, the Rzecznik praw obywatelskich (Polish ombudsman) was a guest here. In August 2003, the ombudsman of the Kyrgyz Republic Tursunbai Bakir Uulu visited the Office. In October 2003 the Avocatul Poporului (Romanian ombudsman) Ioan Muraru was guest here together with his deputy Gheorghe Iancu. The chief topic of all these meetings was the exchange of

experience and information on activities. In certain cases cooperation on concrete cases was accomplished.

Between 11-14 March 2003, the Public Defender of Rights visited the Human Rights Commissioner of the Russian Federation Oleg Mironov in Moscow.

Between 3-5 November 2003, the Public Defender of Rights participated in The Eighth Round Table of European Ombudsmen, held in Oslo; a meeting of nearly all of European ombudsmen or their deputies active at present. The conference was primarily devoted to the legal standing of prisoners and minorities, to access to official documents and to the mutual relationship of the ombudsman and the law courts.

On 12 and 13 November 2003, the Deputy Public Defender of Rights visited several Austrian foster-parenting facilities in cooperation with the office of the Austrian ombudsman. The aim of this work-related journey was to compare work with children and adolescents there with common practice in the Czech Republic, where such children and adolescents would in principle be placed in institutions. The Defender has the option to monitor this area regularly in accordance with the Public Defender of Rights Act and as a part of the fulfilment of his tasks.

In the past year, delegated employees of the Office participated in the following international conferences (chiefly at the invitation of the Council of Europe):

- "The Ombudsman and the Law of the European Union" held in May 2003 in Warsaw,
- "The Ombudsman in Old and New Democracies" held in June 2003 in Innsbruck,
- The conference of the Association of Francophone Ombudsmen held in October 2003 in Tunisia,
- "The Annual Gathering of Members of the European Network of Ombudsmen for Children (ENOC)" held in October 2003 in Stockholm, which dealt with the issues of communication with children, administration of law regarding adolescents and the application of the European Social Charter,
- The "Fundamental Rights in a Pluralistic Society" conference held by the Netherlands Ministry of the Interior and Kingdom Relations (NIWI) in November 2003 in the Hague,
- The conference on Roma issues prior to the accession of the Czech Republic to the EU, held in December 2003 in Brussels,
- The meeting of liaison officers from individual ombudsman institutions in Europe (liaison meeting), held in Strasburg in December 2003.

On 11 November 2003, the President, Václav Klaus, visited the Office of the Public Defender of Rights. During his visit he met with the Defender and his Deputy, with the Office management and with lawyers of the Department of Material Competence. The chief topic of this meeting was familiarisation of the President of the Republic with the work of the Defender and his Office in the process of fulfilment of the mandate as laid down by law.

On 28 November 2003, the Public Defender of Rights took part on his own initiative in the meeting of the Council of the Association of Regions in Zlín, which saw the participation of the presidents of each of the regions and of regional authority directors. The meeting presented the work and mandate of the Defender in relation to regional authorities acting in the area of decision-making and review activities, in the area of the methodological municipality management and the preparation of legislation. A further topic was a proposal to establish a system of communication on the basis of contact people. This was followed up with a concrete presentation of the problems of regions at the meeting of the Council of the Association in January 2004 in Brno.

6. The Budget and Spending

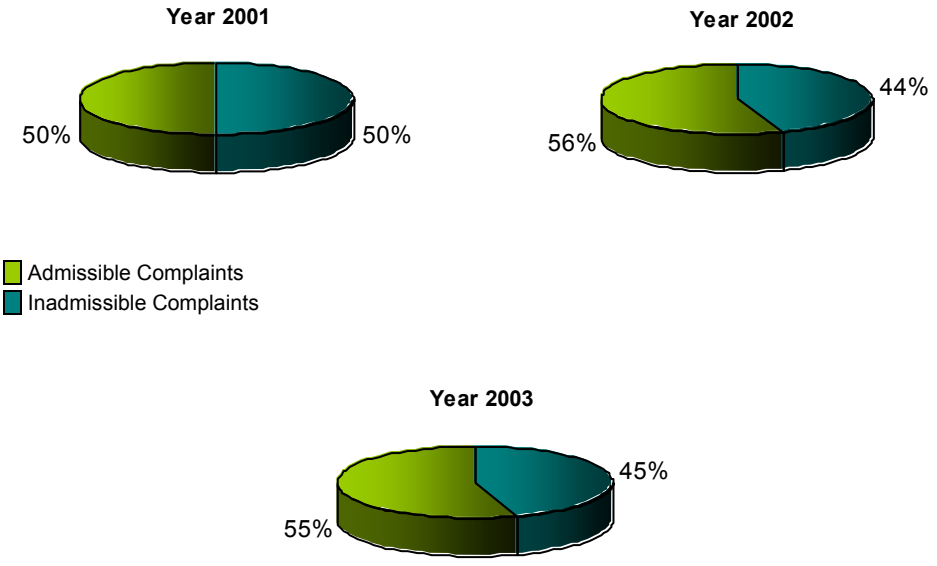
The approved budget for 2003 anticipated total expenditure of 78,639,000 crowns. In reality, 78.44% of this sum was spent and savings of 16,954,020 crowns were returned. This was due to savings in the purchase of basic resources and services. As regards savings on wage costs, these were significantly influenced by the majority of specialist workers of the Office being, due to their age, ranked in the lower salary scales. In accordance with Act No. 320/2001 Coll. on Financial Control, a performance audit was carried out in compliance with the work plan of the Department for Internal Audit.

II. SPECIAL PART

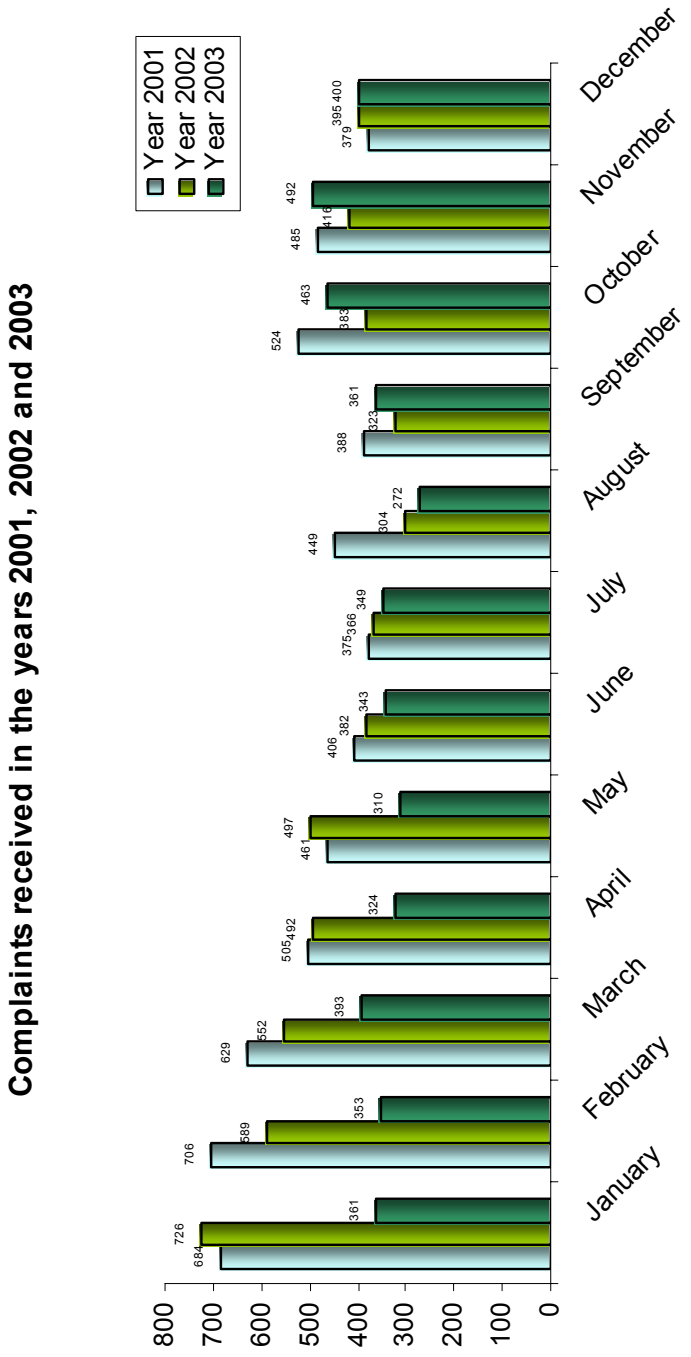
1. General Information on the Mandate in 2003

In 2003 the Public Defender of Rights received **4,421** complaints. During the same period the Defender opened own-initiative inquiries in **44** cases. Generally speaking, in comparison with 2002 there was a moderate reduction in the number of complaints received in the first two quarters, whilst in the last quarter of 2003 the number of complaints received exceeded comparable numbers from previous years.

As in the previous year, more than half (55%) of all complaints concerned work pertaining to the mandate established in section one, Act No. 349/1999 Coll. on the Public Defender of Rights. As in the previous report, it is necessary to emphasize that this number is to be judged as positive. It is comparable or perhaps better than that experienced by other ombudsmen institutions in Europe. Furthermore, it is necessary to point out that the mandate of the Defender is relatively narrow, especially in relation to the judiciary and directly rules out any competence in relation to the independent competence of regional self-governing units (municipalities and regions). It is perhaps for this reason that the execution and processing of matters outside the legally-defined mandate of the Defender demand a great deal of work, owing firstly to the meticulous, convincing and frequently repetitive explanations required with respect to the delimitation of the Defender's mandate and secondly, due to the need for a responsible recommendation to the complainant of how to proceed further (for further information see section II, paragraph 2.2).



The data in these pie charts show the development in the number of complaints received that lie outside or within the mandate of the Public Defender of Rights.


Complaints received in the years 2001, 2002 and 2003
Year 2001
Year 2002
Year 2003
800
700
600
500
400
300
200
100
0
January
February
March
April
May
June
July
August
September
October
November
December
684
726
361
706
589
353
629
552
393
505
492
324
461
497
310
406
382
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272
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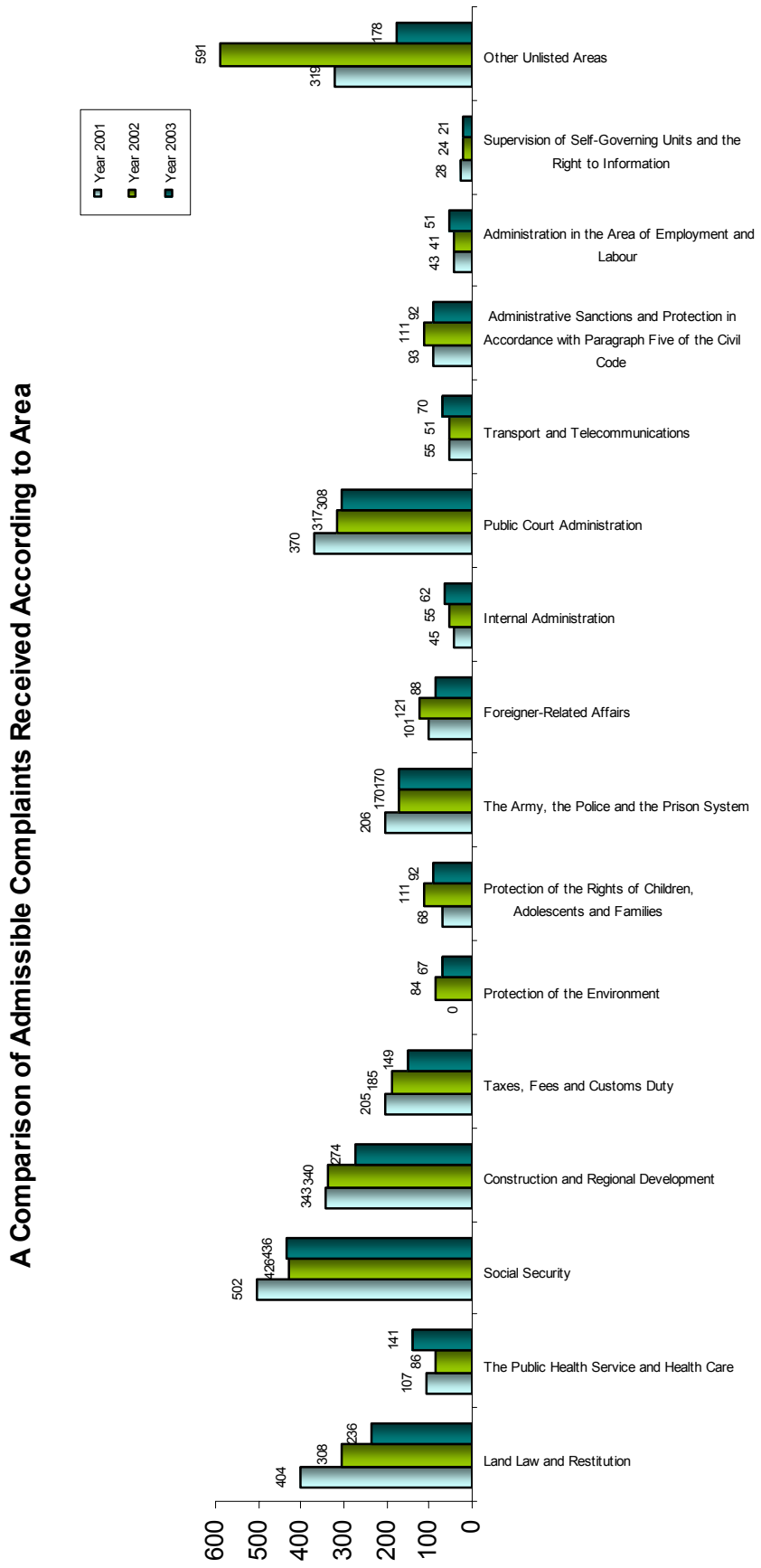
323
361
524
463
383
485
416
492
379
395
400


A Comparison of Admissible Complaints Received According to Area
Year 2001
Year 2002
Year 2003
Other Unlisted Areas
Supervision of Self-Governing Units and the Right to Information
Administration in the Area of Employment and Labour
Administrative Sanctions and Protection in Accordance with Paragraph Five of the Civil Code
Transport and Telecommunications
Public Court Administration
Internal Administration
Foreigner-Related Affairs
The Army, the Police and the Prison System
Protection of the Rights of Children, Adolescents and Families
Protection of the Environment
Taxes, Fees and Customs Duty
Construction and Regional Development
Social Security
The Public Health Service and Health Care
Land Law and Restitution
0
100
200
300
400
500
600

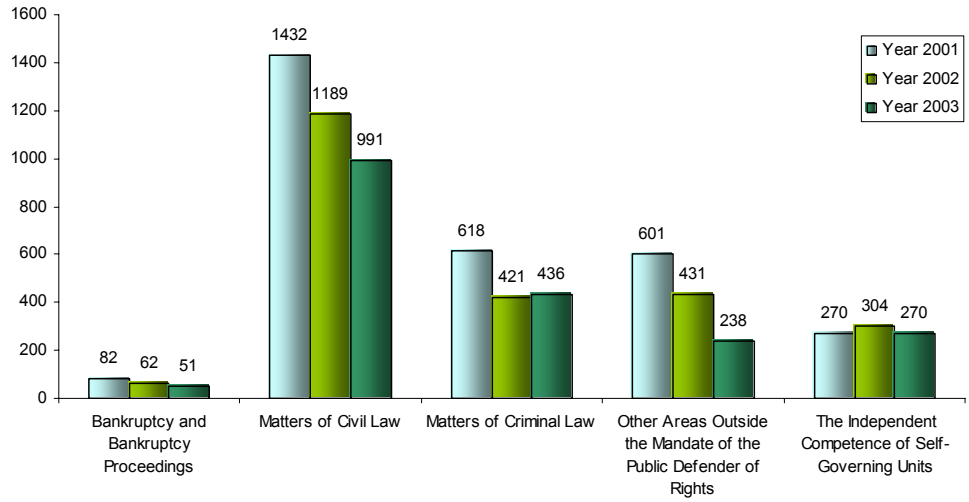
Number of Complaints Received in 2003 – by Area

Complaints by Area	Total	Share in %
Land Law and Restitution	236	5.3
The Public Health Service and Health Care	141	3.2
Social Security	436	9.9
Construction and Regional Development	274	6.2
Taxes, Fees and Customs Duty	149	3.4
Protection of the Environment	67	1.5
Protection of the Rights of Children, Adolescents and the Family	92	2.1
The Army, the Police and the Prison System	170	3.8
Foreigner-Related Affairs	88	2.0
Internal Administration	62	1.4
Public Court Administration	308	7.0
Transport and Telecommunications	70	1.6
Administrative Sanctions and Protection in Accordance with Section five of the Civil Code	92	2.1
Administration in the Area of Employment and Labour	51	1.2
Supervision of Self-Governing Units, the Right to Information	21	0.5
Other Unlisted Areas	178	4.0
Total of Admissible Complaints	**2 435**	**55.1**
Bankruptcy and Bankruptcy Proceedings	51	1.2
Matters of Civil Law	991	22.4
Matters of Criminal Law	436	9.9
Other Areas Outside the Mandate of the Defender	238	5.4
Independent Competence of Self-governing Units	270	6.1
Total of Inadmissible Complaints	**1 986**	**44.9**
TOTAL	**4 421**	**100.0**

As concerns the internal classification and evaluation of agenda both within and outside of the mandate of the Defender, it is clear that against previous years there has been a shift, evident above all in the distinct drop in matters of restitution. An opposing trend is apparent in health care and social security, and furthermore in the number of complaints about transport and telecommunications. The number of complaints concerning the police and the prison system remains steady.

The fluctuation in the number of complaints under "Other Unlisted Areas", especially the drop in 2003, was due to a new system of classification of individual complaints introduced in 2003, allowing more precise categorisation.

A comparison of Inadmissible Complaints Received According to Area



In 2003 the gradual evening-out of the number of complaints from individual regions continued. At first there was an obvious prevalence of complaints from Brno and South Moravia, but it is now evident that differences among regions are diminishing.

Since the option to file a complaint and communicate with the Office of the Public Defender of Rights by email first arose, the number of complaints submitted electronically has been rising. At the same time, the number of complaints filed by legal entities is also increasing.

A detailed form introduced at the beginning of 2003 for written and email submissions brought about a decrease in the number of those cases where it was necessary to request that the complainant complete the relevant details and information or submit copies of the relevant documents.

In 2003 the backlog of complaints was resolved. This arose in the first year of operation from complaints received prior to the Office being fully established and equipped with sufficient specialist staff. Completion of the workplace is now making it possible to extend the depth and reach of individual inquiries. A relatively high frequency of on-the-spot inquiries has been maintained, focusing both on up-to-date file documentation and the study of the situation in the field. This is true especially in matters relating to construction and protection of the environment, as well as enforcement of the protection of the rights of children and adolescents, and in the prison system.

A total of **4,763** complaints were processed in 2003. The matter in question was suspended in **2,247** cases, the reason in most cases being that the Defender was unable to deal with the matter at hand due to lacking mandate or for other reasons given by law (for example failure to complete required documents and so on). In the majority of such cases, however, the complainant was provided with the necessary explanation, which, wherever possible, was supplemented with elementary legal advice.

In **1,864** cases the Defender aided the complainant by providing extensive legal advice, clarifying the procedure whereby the complainant him/herself may exercise his/her rights or claims, or provided help in some other manner (the Defender acted as mediator between complainant and authority, terminated the inactivity of authorities by taking up the matter himself, and so on) although otherwise unable to act in several of these cases due to lack of mandate.

In **133** cases, the Defender either failed to find maladministration or did not find any inconsistency with the principles of good administration, or ascertained that maladministration had indeed occurred, but could not have affected the subsequent decision (a minor formal shortcoming for instance).

In 2003, of the inquiries that led to the establishment of maladministration:

- in **244 cases**, grave maladministration was remedied in the course of the inquiry by the authority itself or with the participation of the Defender, who subsequently found the measures sufficient,
- in **43 cases**, following inquiries the Defender suggested, to those authorities that had failed to remove a failing themselves, specific measures in order to remedy the ascertained shortcomings, the authority took these measures and the Defender accepted them,
- following inquiries in a further **8 cases**, the Defender ascertained grave maladministration or an inconsistency of legal regulations that had been reflected in decision-making. Given that the authority itself had failed to remedy the maladministration or the remedy of maladministration would have required an amendment to legal regulations, the Defender exercised the authority granted him under section 20, paragraph two, and section 22 of the Public Defender of Rights Act and put the matter forward for a final ruling by the government (see below for particular cases).

In this respect it is necessary to point out that the Public Defender of Rights Act does not grant the Defender the right to impose standard sanctions for the enforcement of redress on those authorities who, following an inquiry, have been found guilty of maladministration in their proceedings and who are unwilling to take their own measures or those proposed by the Defender. The Act does, however, put at his disposal instruments reflecting his institution's supervisory and early-warning character. It is namely not his task (nor in his power) to remedy maladministration with his own

decisions. He is, however, entitled to demand redress of the authority. Should the authority fail to do so, the law requires that the Defender demand redress of the superior authority, and where no such authority exists, he can seek redress from the government. It remains the decision of the Defender whether, in place of this procedure (or concurrently with it), he chooses to inform the public of any particular maladministration.

1. In 2003 the government concluded the hearing of a case put forward by the Defender in the previous year. The Defender established that the Ministry of Health had misinterpreted Act No. 20/1966 Coll. on Public Healthcare, whereby relatives of the deceased had been obstructed in protecting of the good name of the deceased. They were not permitted to acquaint themselves with the circumstances and cause of death of the close relative, with the medical records kept with respect to his person or with other records relating to the condition of his health and to the causes of death. Based on notification and recommendation by the Defender, the government passed a resolution on 13/1/2003, charging the Minister of Health with submission of a draft amendment to the Act on Public Healthcare that would ensure the right of close relatives of the deceased access to all information held in medical records with the exception of cases where the deceased had, while alive, expressed his dissent. (Ref.: 4848/2001/VOP)

2. An issue of similar character remains open. Originally forwarded to the government on 30/10/2002, it concerns the cooperation of the Ministry of Health in a matter of access to medical records in connection with the death of a patient in a health facility. Based upon this notification, the government passed a resolution on 1/10/2003, charging the Ministry to enable the Defender to proceed with the initiated inquiry by providing him with the required stance and bill of complaint. The ministry, however, continues to refuse to cooperate fully in this matter (Ref.: 2873/2001/VOP).

3. On 11/4/2003, the Defender recommended to the government an amendment to valid legislation governing deportation custody and the execution of deportation sentences, as he found the valid legislation of section 350b and following of Act No. 141/1961 Coll. on the Criminal Code lacking. Appropriate and above all clear legislation was drafted on deportation custody or rather on the proceedings governing deportation custody within the Criminal Code, and of such legislation governing the execution of deportation custody within the Act on the Execution of Custody, as would reflect the purpose of this restriction on the freedom of the individual. This same issue was presented in section III of the Annual Report on the Work of the Office of the Public Defender of Rights for 2001. In response to a recommendation of the Defender, the government passed resolution No. 646 of 30/6/2003, which resulted in the full acceptance of the draft amendment to valid legislation governing the execution of deportation custody. In this respect, new provisions of the Act on the Execution of Custody were passed on the separate confinement of persons in detention pending deportation and their placement in low security prison wards. In 2002 and 2003, several opinions were expressed by the Penal Council of the Supreme Court based on the initiative of the Public Defender of Rights, due to which the greatest difficulties in the interpretation of valid legislation governing deportation custody and the execution of deportation sentences were overcome. (Ref.: SZD 3/2003)

4. On 18/4/2003 the Defender presented to the government an issue concerning the Nové Mlýny hydroelectric dam on the River Dyje, concerning the procedure of administrative authorities, the Czech Inspectorate of the Environment and the Ministry of the Environment, with respect to safeguarding adherence to decisions of authorities governing environmental protection while altering the water-level in the Věstonice Reservoir (Věstonická nádrž) nature reserve, that is in the central basin of the Nové Mlýny hydroelectric dam. The approved control regulations for the central basin of the Nové Mlýny hydroelectric dam do not reflect the fact that the area is specially protected. The Ministry of Agriculture has so far failed to respect the requirement to bring the valid decision on the approval of control regulation revisions into conformity with the interests of nature and landscape conservation. The Ministry of Agriculture has thus failed to fulfil its obligations with respect to water-rights supervision. This case involves a competence dispute between the Ministry of Agriculture and the Ministry of the Environment. The government has not as yet discussed this matter. The

Defender has submitted a motion in the matter to the chief public prosecutor for the filing of a grievance in the public interest against the decision of the administrative authority in accordance with section 66, paragraph two of Act No. 150/2002 Coll. of the Code of Judicial Administrative Procedure, which has not as yet been considered. (Ref.: SZD 16/2003)

5. Based upon a number of complaints, the Defender initiated inquiries into matters of legal property rights settlements of land situated beneath thoroughfares owned by the state and regions. As a result of the inquiry he obtained information that the Transport Ministry had on 21/5/2002 submitted to the government a proposal for securing of financial resources over a ten years commencing in 2003. According to the Transport Minister the government has not as yet arrived at a unified stance on the submitted material, nor has it passed the draft resolution. The Defender addressed the Prime Minister with a request for cooperation, asking that the government take the issue up once more. (Ref.: SZD 30/2003)

6. The Public Defender of Rights addressed the government with a proposal to annul the age limit contained within government directive No. 97/2002 Coll. on the utilization of the State Housing Development Fund resources. An alteration of the valid legislation was recommended to the government given that the condition given within this decree enabling only those younger than 36 to receive loans deviates from the disposition set down in Act No. 211/2000 Coll. on the State Housing Development Fund. The government has not as yet passed a decision on this recommendation. The current Housing Minister advised the Defender of the preparation of new legislation currently under way in accordance with the governmental legislative plan governing the area of loans for housing and not containing age limits (Ref.: 2288/2002/VOP).

7. The Defender addressed the government in 2002 concerning the remission of gift tax in connection with charge-free transfers of ownership titles to housing units of members of a housing co-operative, the basis of which was an appeal in accordance with section 24 of Act No. 42/1992 Coll. on the Modification of Property Relationships and the Settlement of Property Claims in Co-operatives. The Defender deems the breach of legal regulations to lie in the failure to observe section 20, paragraph four of Act No. 357/1992 Coll. on Inheritance Tax, Gift Tax and Real Estate Transfer Tax, as later amended by Act No. 18/1993 Coll., effective therefore as of the date of transfer of the Real Estate in question (4/1/1993). In accordance with this act, inheritance tax, gift tax and real estate transfer tax are not levied on those transfers that are connected with the surrender of property in accordance with special provisions. This matter has not as yet been discussed by the government (Ref.: 4038/2001/VOP).

8. In connection with an inquiry led by the Defender, the Minister of the Interior refused to provide documents (the stance of the police and of the intelligence service, which had served as grounds for the decision of the Ministry of the Interior) in proceedings on a request for granting of Czech citizenship. The Defender called for the government to charge the Minister of the Interior with the adoption measures making possible pursuit of the initiated inquiry and ensuring that the Defender has in future the chance to perform his work effectively in cases of similar character. The draft resolution charging the Minister of the Interior with granting the Defender the necessary cooperation was not passed by the cabinet. The Defender does not consider the matter closed (Ref.: 2642/2001/VOP).

2. Selected Cases with Commentary

2.1 Complaints within the Mandate of the Public Defender of Rights

2.1.1 Land Law, Property Relationships Relating to Real Estate, Restitution, Housing Cooperatives

In 2003, 236 complaints dealing with these issues were received.

Property Relationships Relating to Real Estate and its Entry into the Land Register

In 2003, 67 complaints dealing with this issue were received.

Out of the complaints concerning property relationships relating to real estate and its entry into the land register, the most frequent were those based upon dissatisfaction with the process or outcome of proceedings on the correction of errors in land register documentation and complaints on the proceedings of specially-qualified staff who are, according to the law on land surveys, entitled to carry out land surveying. On the other hand, the number of complaints of a failure in adherence to deadlines during proceedings on the entry of rights into the land register has dropped significantly. This is evidence that the poor situation of the previous year is now gradually improving; this also applies to the most overloaded of the land registry offices – that of Prague.

In inquiries by the Public Defender of Rights on the proceedings of land registry offices, it was ascertained that authorities do not proceed uniformly when redressing errors made in land register documentation, as they lack a methodological unification of the given procedure and a determination of the nature of those errors made by land registry offices in land register documentation which may or may not be remedied within the institute of redress of errors. The experience of the Defender indicates that the institute of redress of errors is frequently abused for the purposes of performing additional entries into the land register, such as should, by their nature, be the subject of records or registration. A further common type of maladministration by land registry offices during proceedings on the redress of errors relates both to their failure to adhere to deadlines when issuing a decision on redress and to their obligation to determine correctly the correct parties to administrative proceedings and the obligation to inform them, by virtue of their participation and in due form, of the initiation of the administrative proceedings. As concerns the clear definition of the problem of errors recurring in the land register and the unification of the procedure of land registry offices in proceedings on redress of errors, the Defender has opened an inquiry, on his own initiative, the objective of which is the adoption of appropriate methodological instructions.

Those entitled to perform land surveys are private entrepreneurs working on the basis of a trade license. Neither the institutions of land survey nor those of land registry offices are in a superior position to these entrepreneurial subjects, who are classed as contractors of land survey work. On the contrary, the activities of these subjects have nothing in common with the competence of land survey institutions. A connection exists between land survey and land registry inspectorates and those persons granted the official authorisation to carry out verification of the results of land survey activities contracted by specially qualified individuals. Inspectorates carry out supervision of the assessment of selected land survey activities utilized by the land register and within national mapping documentation in accordance with the Act on Land Survey and Land Registry Bodies. In the case of a breach of order in the sector of land surveys and land registers, the inspectorates may, in the form of administrative proceedings, administer a fine or put forward a proposal for the verifiers to be divested of their authority to verify the results of land survey activities.

Complaint Ref.: 2642/2003/VOP/ŠSB

The Defender clarified to the complainant the substance and cause of the emergence of duplicate entries in the land register (LR) and declared that the land registry office (LRO) had not, in this case, erred. Once again the conclusion drawn by the

Defender in several of his previous inquiries was confirmed. Valid legislation governing the transfer of property rights to privatised property allows the transfer to take place in the form of a mere entry rather than as part of registration proceedings. A prompt entry of rights into land registry documentation is thus made possible. However, in its consequences this practice leads to the conservation of old problems and errors or to the emergence of new errors within the LR, which the LROs, in the majority of cases and to the dismay of the public, lack authority to deal with. If an agreement is not concluded between two duplicated owners on the rectification of contestable rights, the LRO may rectify the situation only on the basis of a legally-effective court ruling in a dispute on the determination of ownership.

Complaints Ref.: 4413/2002/VOP/ŠSB and 4545/2002/VOP/ŠSB

In connection with the investigation of a complaint, the Defender ascertained a case of maladministration by both the Land Registry Offices (LRO) and the Land Settlement Office (LSO). The LSO had based its decision on rendering a piece of real estate up for restitution on an out-of-date entry in the land register. Consequently, a decision was made, when the real estate in question had, according to the entry in the land register, long since ceased to exist. Although the case was resolved to the satisfaction of the complainant, the Defender asked the Head of the Central LSO to consider the possibility of establishing permanent access to information held within the land register for all LSOs via the internet in order to prevent such maladministration recurring.

At the same time, the Defender opened an own initiative inquiry with the objective of, amongst other things, determining the manner in which the Land Survey and Registry Office (LSRO) safeguards the system of supervision of subordinate LROs, in whose performance the LSRO itself ascertained shortcomings following own inquiries or following the inquiry of the Defender.

Complaint Ref.: 4909/2002/VOP/ŠSB

The Defender established that the Land Registry Office (LRO) proceeded correctly in 2002 when it subjoined the entry of a lien from 1949 into the land register documentation. Since the existence of the objective lien up till 1973 has been documented successfully according to verifiable records within forms of real estate registration in existence at that time, the LRO may not remove it from land register documentation 28 years later, not even with reference to the fact that the real estate encumbered by lien was handed over to the complainant in proceedings in accordance with the Act on the Mitigation of Consequences of Certain Property Injuries. The deletion of the lien entry from the land register necessitates the submission of a document proving that the lien was extinguished in the 28 years on such grounds as allowed for the extinguishing of a legal relationship under legislation in force at that time. At the same time the Defender found certain procedures to be inconsistent with the principles of good administration, this in part representing the reasons that had led the complainant to question the objectivity of the LRO.

Restitution Claims and the Work and Practice of Land Settlement Offices

In 2003, 135 complaints dealing with this issue were received.

Complaints to the Defender dealing with restitution frequently include a request for the return of repossessed property or the awarding of compensation for this property outside the framework of the Acts passed on restitution. These Acts do not compensate for all past injustice; they merely mitigate certain injuries suffered to property. This means that citizens are requesting that the Defender reopen proceedings in which claims asserted by them in previous years and most frequently at the beginning of the nineties, were rejected. A number of complaints directed at the decisions of Land Settlement Offices (LSOs) must therefore be suspended, as those decisions by Land Settlement Offices that have been legally effective for more than three years may no longer be subject to change by any legal remedy. In relation to LSOs, the Defender seeks to accomplish a state where undue delays in those administrative proceedings that are governed by the Act on Land and have not as yet been concluded, would be avoided. The intention is to prevent LSOs blocking proceedings by undue delays, that is to ensure that a decision in the matter is reached in the shortest time possible and that, in the case of

his/her disapproval, the citizen is thus given the option to exercise means of legal remedy for a review of the decision.

Complaints from the owners of land used by cooperative farms and by companies created from these cooperatives are also common. According to the findings of the Defender, these subjects (the cooperatives), abuse the position granted them to a certain extent by the Act on Land. In particular they fail to pay owners rent and do so under circumstances that do not allow for contractual freedom to negotiate the level of rent. The law states that the rent is 10% of the price of a plot of agricultural land. In the case of failure to pay rent, however, land owners lack any effective means of protecting their interests, such as termination of a lease contract, with the exception of taking legal action for the recovery of outstanding rent. In most cases the land is inaccessible and has been incorporated within vast stretches of land in consequence of land consolidation. The contract of lease ensuing from law may be withdrawn from in accordance with Act No. 229/1991 Coll. only following execution of landscaping activities in the relevant area. The LSO is obliged to initiate landscaping activities only when the owners of an absolute majority of agricultural land acreage in the land register area request it. In addition, the performance of landscaping activities is significantly limited by the allotted financial means, by regional development priorities, and so on. In practice it is evident that in individual cases, the detachment and rendering accessible of one's own plot of land by means of simple landscaping is seldom achieved.

Complaint Ref.: 4516/2002/VOP/PL

After an inquiry led by the Defender the inactivity of the Land Settlement Office (LSO) was rectified. This inactivity together with its actions during the decision-making procedure on the restitution claim gave rise to longstanding legal insecurity of the complainant.

Complaints Ref.: 4733/2002/VOP/BK and 3161/2003/VOP/BK

In connection with an inquiry by the Defender, the Ministry of Finance admitted to maladministration consisting of the misjudgement of the punctuality of claims exercised for financial compensation in accordance with the Act on Out-of-Court Rehabilitation. Based upon argumentation by the Defender, the Ministry took steps to satisfy the complainant.

Claims on Property Shares within Cooperatives

In 2003, 34 complaints dealing with this issue were received.

There has been a rise in the number of complaints where citizens request advice or help when a bankruptcy is ordered on the cooperative farm and they are obliged to settle their property shares as laid down by the registered inventory.

This reflects the inevitable development of problems long left unresolved and adverted to by the Defender in the two previous reports. From the phase in which cooperatives as debtors at first failed to fulfil the legal obligation to settle entitled persons (restituents) and instead deliberately transferred the property of the cooperative to other persons with the elimination of legal succession, to the phase that prevails at present where cooperatives void of any property and in the process of liquidation are declared bankrupt. The prerequisite for citizens receiving at least some fulfilment is that they file their claim with the court in connection with the bankruptcy proceedings. However, in the case that they do not learn of the bankruptcy of the co-operative and fail to file their claim with the court in time, they lose the possibility of any compensation for the property that was confiscated from them in the past, on the very substance of which the cooperative was able to build its existence. In addition to this, the possibility of timely notification of the entitled persons is in a number of cases complicated since a transfer of rights by inheritance has taken place in the interim, frequently to several heirs, the consequence of which is that the registered office of the co-operative in bankruptcy is often situated a long way from their place of residency.

Under such conditions, the Defender verifies at least whether revision proceedings of filed claims have yet taken place and if not, he informs the citizens of this and recommends that they utilize the last opportunity to file their claims with the court. On the other hand cooperatives and especially new legal entities created on the basis of the

property of these cooperatives (very often with identical personnel) advert to the threats to their position in connection with accession to the EU and the redistribution of subsidies, without first having settled the long-unsettled rightful claims of restituents harmed by collectivisation.

Claims Ref.: 3800/2003/VOP/PL and 4232/2003/VOP/PL

Although the cooperative farm had as early as 1994 concluded an agreement with the entitled person on the settlement of his/her property share, it never proceeded to fulfil this obligation and is now bankrupt. It is therefore impossible to assume that the claim of the entitled person shall be settled in full (see the reference in section III).

2.1.2 The Public Health Service and Health Care

In 2003, 141 complaints dealing with this issue were received.

The Work of Health Insurance Companies and Health Insurance Premiums

In 2003, 43 complaints dealing with this issue were received.

A great number of complaints were once again directed at health insurance companies. They were above all concerned with a demand for the revision of steps taken by health insurance companies during administrative proceedings on controversial cases of the assessment and exaction of health insurance premiums and penalties. In the investigation of these, it is necessary that the Defender not only judges whether a health insurance company observed the correct procedure in accordance with the legal provisions in force, but also whether or not the principles of good administration and those of a democratic state in respect of the rule of law had been adhered to.

According to conclusions drawn from reviewed complaints, people tend to get into difficult situations as a result of the health insurance company having failed, especially in the first years of its existence, to sufficiently fulfil its obligation to exact outstanding arrears. In many cases it had not even notified the insured party of the existence and amount of outstanding arrears, let alone exacted them. It had relied upon the five-year limitation period. Subsequently, some debtors were unwilling and above all incapable of settling the outstanding amount increased in addition by penalties.

The Defender had rebuked the health insurance companies in question for this maladministration on various occasions and been assured on their part of an improvement in the notification of the insured. It is evident that health insurance companies are aware of this problem. They do not, however, have the option of remitting the outstanding premium. Generally, where the insured party is interested in repaying the sum in instalments, a repayment plan is at least concluded. Where penalties are concerned, there is the option to request that they be reduced or remitted in connection with the institute of abatement of the harshness of law. The amendment from 2002, however, tightened the conditions of request submission. It may now be submitted at the latest before the decision comes into force; exceptionally within three years of the coming into force of the decision laying down the penalties.

With respect to the frequently changing and not wholly transparent legal set-up, it is often found that the legal awareness of citizens who address the Defender is generally low. Frequently, they have no knowledge of their obligation to give notice to their health insurance company, which if not observed results in sanctions. Sanctions are also applicable in cases where the obligation to give notice is not met by the employer. They also harbour the false assumption that the health insurance company itself determines the penalty. In many cases, people quite needlessly allow the ineffectual lapse of all terms, such as the term for raising objections or the term for appeal, in spite of being made aware of these options during administrative proceedings. Frequently they pay for their false belief that in failing to answer a summons and in failing to accept registered mail sent by the health insurance company, they shall be exempt from the exaction of arrears. The truth is quite otherwise.

Shortcomings in communication between health insurance companies and the insured parties are the gravest problem in this sector. Health insurance companies themselves often do not react in an appropriate manner to correspondence. They fail to explain to the insured parties any false notions they may have with respect to current

legal provisions and to persuade them of the necessity to pay health insurance premiums, although it is without doubt possible to include understanding, helpfulness and readiness to inform or to explain obscure points within the term good administration.

Claim Ref.: 3403/2003/VOP/PM

The Defender established no age discrimination in connection with the setting of an age limit of 40 for reimbursement by the health insurance company for costs of health treatment for women in connection with artificial insemination. The setting of this limit was based upon an expert assessment of the effectiveness of this method of assisted reproduction, a significant decrease in which tends to occur after reaching 40.

Claim Ref.: 400/2003/VOP/EH

Following review of a complaint about the procedure of the General Health Insurance Company in connection with imposing and exacting penalties and outstanding arrears on a health insurance premium, the Defender established that the health insurance company was not guilty of any steps inconsistent with the law. However, with respect to the circumstances of the case and the social standing of the debtor, the Defender agreed with the health insurance company in question that, in place of execution by means of the sale of movables, the complainant would be given the possibility to conclude a commensurate repayment plan.

The Work of Public Health Protection Authorities

In 2003, 22 complaints dealing with this issue were received.

There have been frequent complaints directed at public health protection authorities, pointing out incorrect procedures by them in connection with the prevention of infectious diseases and concerning the hearing of complaints about noise and vibration. Complainants objected particularly to the inappropriate prior notification by the regional health authorities of monitoring given to the operator of the noise and vibration source. They also objected to inactivity by the authorities. Close interconnection with other branches of law such as construction law is typical in the issue of protection of public health against noise and vibration. During his inquiries, the Defender repeatedly met with a lack of cooperation between regional health and planning authorities. By ensuring cooperation between them, he often contributed to a solution of the complainant's problem. In the experience of the Defender, it proved advantageous to verify in an inquiry all the administrative proceedings related to the matter, in order to reveal the causes of the disagreeable state of affairs contested by the complainant and to find a solution leading to the elimination of these.

Complaint Ref.: 2322/2002/VOP/KČ

The results of an inquiry by the Defender illustrated that a former regional health officer had permitted the operation of a source of noise exceeding the limits given by law (a heating plant in city D) without having adequately investigated all the facts essential for the issue of such a decision. On grounds of the conclusions drawn by the Defender, the Ministry of Health annulled the decision of the district health officer as well as the decision of the regional health officer and did so outside of an appeal procedure. The entire matter was returned for a new hearing.

Complaint Ref.: 958/2003/VOP/MH

The Defender found a public health protection authority, the regional health authority, to be guilty of maladministration consisting of inactivity during the investigation of complaints made repeatedly by Mrs. A. L. of inconvenience due to excessive noise and odours caused by operation of a restaurant on a housing estate. Following the inquiry, the regional health authority admitted to maladministration and proceeded to take its own remedial measures in accordance with the Act on Public Health Protection.

The Provision of Health Care and Further Activities of the Ministry of Health

In 2003, 63 complaints dealing with this issue were received.

In 2003, there were more of complaints concerning the investigation and handling of complaints of health care afforded, complaints of failure to provide the patient with information held in his medical records and the investigation of the causes of a patient's death. This is probably related to the publication of certain cases dealt with by the Defender in the media, in consequence of which both patients and relatives of the deceased have begun to better comprehend their right to information.

Some of the complaints were not, however, directed against authorities but at doctors, against whom the Defender is, in accordance with the Public Defender of Rights Act, powerless to administer any direct action. Although complaints dealing with the public health service are often unique in their content, the complainants were in these cases at least informed in detail of further possible action to take to ensure a fair review of the actions of a doctor or a health facility. Dealing with this issue, the Defender often established that citizens were unaware of all the possibilities of seeking advice in situations where they were dissatisfied with health care. For this reason, when handling a claim, the Defender informed the claimant of all options granted him/her by the Act on Public Health Insurance, which lists all the authorities and institutions that may be addressed by each and every citizen. A motion for the review of health care given may be addressed to the head of a health facility or to its founder, to the Czech Medical Chamber in the case that shortcomings are related to the professional or ethical procedure of a doctor, to the relevant public administrative body that carried out the registration of the health facility, to the health insurance company where a health worker refuses to perform medical treatment covered by reimbursed health care. Should the claimant continue to question the handling of his suggestion or complaint by the competent body, the Defender offers the option to investigate the procedure of authorities pertaining to his mandate and to demand redress in the case of maladministration.

Complaint Ref.: 1251/2003/VOP/FG

The Defender ascertained a breach of the principle of good administration on the part of the General Health Insurance Company and the Ministry of Health. A request filed for reimbursement of a pulmonary ventilation device for the daughter of the complainant was answered after a gap of more than three years. There existed no legal claim to a favourable answer to the request nor was there sufficient methodological and institutional support of the process of handling such a claim. The aforementioned authorities failed to provide the complainant with adequate information on the development of the situation, which directly concerned the extent of medical care for her daughter.

Claim Ref.: 3678/2003/VOP/KČ

The Defender, though unable to aid the complainant directly at the time the complaint was submitted, as he had not yet addressed any of the competent authorities, explained in detail to the complainant the means of protecting his rights in the case of dissatisfaction with the content of a medical assessment.

Complaint Ref.: 4380/2002/VOP/EH

The Defender acted to the benefit of the complainant who had appealed against the medical assessment of an industrial disease clinic. This clinic had failed to issue a new medical assessment and the matter was duly settled to the satisfaction of the complainant only following the performance of an inquiry.

Compulsory Treatment, Psychiatric Hospitals

In 2003, 13 complaints dealing with this issue were received.

The most frequent complaints dealt with by the Defender in the area of psychiatric care and compulsory treatment are complaints about conditions and care in psychiatric facilities, the behaviour and approach of specialist staff towards patients, institutionalised

treatment in wards where the compulsory treatment takes place, as well as complaints about the procedure of admittance to and detention within a psychiatric facility without the written consent of the patient. To simplify, complaints dealt with by the Defender may be divided into four chief areas:

- *Living conditions and the approach of staff towards patients in gerontological wards.*
- *Complaints of treatment procedure and the routine in wards where compulsory treatment takes place.*
- *Complex complaints of conditions in psychiatric hospitals, the treatment procedure, the approach of staff and so on.*
- *Care for children with behavioural disorders in psychiatric hospitals.*

The Defender dealt with the extent to which a distinction is made between those patients who are hospitalised voluntarily and those who are not; with the adherence of the facility to the obligation to notify the court within 24 hours of having admitted a patient to the health facility against his will; with whether the patients are on arrival made familiar with the course of treatment; whether with every major therapy measure (e.g. shock therapy) an informed signature is given by them and whether such therapies are recorded in medical records; with the manner in which the employment of restriction is recorded and whether or not this is employed for precautionary reasons. Furthermore, the Defender focused upon the appropriateness of the use of mesh beds, beds with strap belts or cage beds.

The Defender also inquired into the content of internal facility regulations and their accessibility to patients; into the locking of rooms during the day for reasons of alleged disturbance of the sleep regime and the potential disturbance of other patients at night; into overcrowding; into limited access to sufficient fluids or to sanitary facilities; into the compulsory wearing of institutional gowns; and into the non-existence of specialised facilities for children with behavioural disorders. He also ascertained whether members of specialist staff undergo training in the area of patients' rights and whether patients are informed of their rights.

Compulsory treatment, one of the protective measures laid down in chapter six of the Act on Criminal Procedure, is specific in that it is in most cases carried out in health care facilities. As in the case of punishment, its purpose and objective is to protect society and at the same time serve as a precautionary measure. We distinguish the following types of compulsory treatment: sexual therapy, alcohol detoxification, rehabilitation of drug addicts and psychotherapy. The majority of complainants that address the Defender are those obliged to undergo compulsory sexual therapy. Inquiries conducted by the Defender imply that the gravest cases of malpractice include the reading out loud of expert medical assessments in psychotherapy groups; a demotivating points-based system that lays excessive emphasis on tidiness, as a result of which patients may well acquire the impression that rather than being treated, they are being bullied; and a lack of skilled personnel.

Complaints Ref.: 1485/2001/VOP/ZB and 1728/2001/VOP/ZB

The Defender established malpractice in compulsory sexual therapy that was demotivating, encroached upon the rights of patients, created room for bullying and did not serve its purpose. Following recommendation by the Defender, measures were adopted to produce a positive working environment in the ward making room for communication, this being the fundamental prerequisite of effective therapy.

2.1.3 Social Security

In 2003, 436 complaints dealing with this issue were received.

State Income Support and Social Welfare Benefits

In 2003, 126 complaints dealing with this issue were received.

In the area of social welfare and state income support, the Defender constantly dealt with complaints that concerned requests for an inquiry into the procedure of the relevant authorities in determining benefits. The Defender established cases of maladministration consisting of inactivity of authorities, failure to investigate the actual state of affairs and failure instruct benefit claimants. Incorrect judgements of claims for

benefit and of their duration are no exception. The Defender met to a larger extent than in previous years with varying interpretations of legal provisions and with diametrically differing outputs by authorities when, in the administrative judgment of conditions that were factually or actually identical, the administrative authority would draw entirely contradictory conclusions. In several cases dealing with this issue the Defender also established a breach of the principles of good administration.

Complaint Ref.: 1881/2003/VOP/JH

The Defender established that state income support authorities had acted in a differing manner due to their non-uniform interpretation of section five, paragraph two, of the Act on State Income Support governing deduction of wrongfully accepted remittance of state income support from the determinate income. On the initiative of the Defender, the Ministry of Labour and Social Affairs passed a unified expository opinion and distributed it to the regional authorities providing municipalities with methodological guidance in the performance of delegated competence. However, the Defender disagrees with this opinion (for more detail turn to section III).

Complaint Ref.: 1398/2002/VOP/HV

The Defender established maladministration by the authority, which had failed to inform the claimant of the possibility of obtaining social need benefits in exceptional cases. Only when the Defender assisted him was he able to resolve his difficult social circumstances.

Complaint Ref.: 5688/2001/VOP/ZG and Ref.: 113/2003/VOP/TŠ

The Defender dealt with complaints from self-supporting mothers providing for minors whose birth certificates do not stipulate the father. The authorities judged this to be a voluntary surrender of the claim to maintenance. The result of the inquiry was a recalculation of the level of income determinate for the granting of social welfare benefit and the return of benefit that had been wrongfully curtailed due to a surrender of the claim for maintenance on behalf of the fathers of the minors.

Claim Ref.: 2915/2003/VOP/PM

The claimant whose had given birth to a stillborn child at the time of her registration with the Labour Office as a jobseeker, demanded in vain of various authorities that she be afforded maternity grants. Maternity grants are not a social benefit but pertain to health insurance, which may be confusing to certain addressees and authorities, in particular due to the accumulation of several specific factors in the standing of the claimant. Following instruction by the Defender of which authority was competent for the payment, the claimant was paid out the pecuniary benefit in full.

Complaint Ref.: 1630/2003/VOP/ZV

The Defender established that the authority had in the judgement of social welfare benefit acted in breach of the current legal provisions. As a result of this incorrect procedure, the claimant lost a total of 8,444 crowns in benefit. Following the conclusion of the inquiry, the claimant was repaid the benefit.

Medical Assessments by Doctors for Social Security Purposes

In 2003, 21 complaints dealing with this issue were received.

Complaints requesting a review of medical assessments by doctors for social welfare purposes are very common, especially in connection with disability pensions. Although these do come under the mandate of the Public Defender of Rights, the Defender is unable to grant the request of complainants for a review of individual medical assessments made by doctors of the Social Security Administration Authorities. The Defender merely reviews the administrative procedure of the relevant Social Security Administration Office and of the Czech Social Security Administration Authority in granting disability pensions. The nature of the matter does not, however, permit him to review individual medical assessments by doctors. Where no breach of legal regulations or other maladministration is ascertained by the Defender on the part of the stated

authorities, such as a breach of the legal provisions of section eight, paragraph 10, of Act No. 582/1991 Coll. on the Organisation and Dispensation of Social Security as later amended, which states that doctors of district Social Security Administration Offices must base the evaluation of full and partial disablement on medical assessments on the state of health of the citizen, the Defender explains in many such cases to the complainant further possible legal action (especially the question of possible legal remedy and so on).

Complaint Ref.: 1621/2003/VOP/EH

The Defender investigated the procedure of the authority on the grounds of a complaint by a complainant who draws a partial disability pension and who contested the decision of the Czech Social Security Administration Authority (CSSAA) to reject her request for a full disability pension. Since he did not establish any failing in the procedure of the CSSAA and since, by law, it is not for him to judge medical assessments, he proceeded at least to explain the conditions for the assessment of disablement in accordance with the legal provisions in force. At the same time he made a recommendation to the complainant to consider other steps as could lead to the improvement of her difficult circumstances.

Pensions and Proceedings Governing Them, Pensions with Foreign Constituents and Other Agenda Pertaining to Social Security Authorities

In 2003, 289 complaints dealing with this issue were received.

Among complaints dealing with pensions, the Defender often encounters requests to investigate the procedure of the Czech Social Security Administration Authority, its bodies and of the Ministry of Labour and Social Affairs. Frequently, the situation arises where the Defender ascertains on inquiry that a procedural failing by the authority in question has occurred, whether a breach of current legal provisions on the dispensing of social security or a breach of the principles of good administration. Exceptionally, the fundamental principles of administrative proceedings are violated. Following the coming into force of the Code of Judicial Administrative Procedure at the beginning of 2003, legally ineffective administrative decisions repeatedly displayed shortcomings in the advice section, which lacked information on the possibilities of judicial review. The most frequently abused were those principles concerning the failure to safeguard sufficient legal security of the complainant, difficulties in ensuring a prompt and satisfactory reply to his submission and so on. However cooperation between the Defender and CSSAA is good insofar as measures to remedy maladministration are often taken in the very course of the inquiry.

Of those cases that have continued to emerge throughout 2003, the prompt and satisfactory remedy of which is frequently neglected by the relevant authority, it is possible to mention no-claim decisions on the application of extraordinary treatment of individual matters of social security in the form of the abatement of the harshness of the law. The procedure of the issue of these decisions has steadied with time and the decision form, which used to display traits of a legal act performed voluntarily on the part of the decision-making authority, has now drawn nearer to an administrative decision with all the due particulars.

In spite of intensive activity in 2003 by the Defender on the issue of pension insurance with foreign elements, he was unable to find a solution to the unsatisfactory situation where repercussions of the Agreement on Social Security between the Czech Republic and the Republic of Slovakia, and thereby the consequences of the dividing of Czechoslovakia, are borne by Czech citizens (for more on this issue turn to section III). The application of treaties with other states or requests for the satisfaction of claims where such a treaty is missing is more of marginal concern.

The filing of claims based on indemnification regulations is an agenda of a specific nature within the social security sector. This agenda has been bestowed upon social security authorities.

The high number of unresolved cases of requests for compensation in accordance with Act No. 261/2001 Coll. as later amended is perceived to be a problem by the Defender. The reasons for this are both problems in interpretation as well as the incomparably higher number of complaints than in the case of other indemnification laws. According to section one, paragraph three of this Act, compensation is afforded to those

citizens who were, between 15 March 1939 and 8 May 1945, and for reasons of their race or religion, placed in military labour camps on the territory of Czechoslovakia in its boundaries as of 29 September 1938, or those citizens who were for the same reasons in hiding on this territory.

In such cases the Defender is in dispute with the relevant institution, the Czech Social Security Administration Authority, over whether or not these citizens must submit, together with their request, a certificate issued by the Defence Ministry in accordance with Act No. 255/1946 Coll. Although the law does not oblige them to, the Czech Social Security Administration Authority nevertheless insists on submission of the certificate, resulting in an unprecedented delay by the Defence Ministry in the handling of requests and in the issue of certification, as it is not for practical reasons within its power to settle the 6,000 requests addressed by citizens to the Ministry in this connection. The Defender believes this to be deliberate on the part of the Authority, as these persons were not yet issued certification at the time the Act was adopted and as such could not yet have been afforded compensation in accordance with Act 217/1994 Coll. as later amended.

The other sphere of complaints arising from Act No. 261/2001 Coll. is related to section two of the Act, that is to the compensation of citizens imprisoned between 25 February 1948 and 1 January 1990, whose sentence to imprisonment was partly or entirely revoked in accordance with Act No. 119/1990 Coll. or Act No. 198/1993 Coll. The Defender has received complaints from those who were, frequently for a period of several months, held in custody for reasons stipulated in Act No. 119/1990 Col., but were however, for various reasons, never sentenced. No revoking judgement was therefore ever delivered in accordance with Act No. 119/1990 Coll. as later amended and these citizens are not considered to be entitled persons in accordance to Act No. 261/2001 Coll.

Complaint Ref.: 3171/2003/VOP/PK

Following a recommendation by the Public Defender of Rights, the Czech Social Security Administration Authority (CSSAA) remedied its decision, which had led to the incorrect determination of the amount to be paid as a partial disability pension. The pension was recalculated and the complainant was repaid outstanding arrears amounting to 48,956 crowns.

Complaint Ref.: 2480/2003/VOP/TŠ

Following an inquiry, the Defender established that the CSSAA had in its procedure encroached upon the legal security of the complainant. It had breached the fundamental principle governing administrative proceedings, which is the obligation to treat the matter in a conscientious and responsible manner and to settle it punctually and without undue delay. In response to the submission of the complainant dating from December 2002 it did not issue a decision until the end of August 2003. Following an assessment of the matter by the Defender, the CSSAA took measures to prevent such a situation from recurring.

2.1.4 Construction and Regional Development

In 2003, 274 complaints dealing with this issue were received.

Area Planning Proceedings and Area Planning Documentation

In 2003, 70 complaints dealing with this issue were received.

During area planning proceedings by planning authorities, the Defender repeatedly found consideration of the complainant's plan by authorities to be in contradiction to area planning documentation and proceeded to effect redress. In the case of complaints by citizens directed against approved municipal area plans, he was again forced to declare a lack of mandate, as these matters concern self-governing units, unaffected as such by the Defender's mandate.

Complaint Ref.: 290/2003/VOP/MH

The Defender was addressed by a complainant with a submission in which she expressed her disapproval of procedure by the municipality during the approval of alterations to the area plan. The municipality had not granted her request in that it had

not entered her plot of land in the area plan as construction ground. The Defender was forced to defer the complaint as approval of the area plan and of alterations thereto is subject to the independent competence of municipalities, where the mandate of the Defender does not run.

Inactivity within Proceedings by Planning Authorities

In 2003, 71 complaints dealing with this issue were received.

Inactivity by the relevant authorities during both administrative proceedings and the handling of complaints by citizens, appears to be one of the most frequent problems in the sphere of public construction law. According to experience acquired during the handling of complaints, inactivity established in the case of so-called charged municipal authorities and authorities with extended authority in the Construction Code sphere, the cause of such a state of affairs is seldom the overburdening of the authority in question. The most frequent cases were those where the planning authority had incorrectly or insufficiently dealt with a certain matter, in consequence of which it insufficiently settled the question of whether or not there exists a legal cause to conduct certain proceedings in accordance with the Construction Law and based upon the official obligation by the authority to do so.

In 2003, inactivity was also registered in the case of administrative proceedings conducted by regional authorities. This was perhaps influenced to a degree by the abolition of regional authorities as of 31/12/2002. Regional authorities assumed on 1/1/2003 the task of resolving appeals and complaints by citizens that had not been concluded by district authorities. As came to light in many cases, the situation was not uncommon, where long durations of inactivity (six months and longer) had preceded on the part of the district authority, which (in view of the termination of operation) had made no effort to settle complicated cases. In several cases it was furthermore established that regional authorities had not taken over certain unsettled matters at all. The location and conclusion of these was carried out either on grounds of complaints by citizens or in connection with the settling of other issues.

Delays in planning permission proceedings are not always a result of inactivity by the administrative authority. It is necessary to mention the superfluous and often unsubstantiated requirements for the submission of opinions and statements by various bodies of public administration and by the administrators of structural engineering communications. Unsubstantiated burdening of the owners of property under construction leads to delays in submissions by them and to the suspension of proceedings by the planning authority in order to enable the owner to obtain all the required statements within the term stipulated by it. In appeal procedures or during investigations by the Defender, it is subsequently ascertained that the planning authority had required certain statements without a legal basis and needlessly.

The execution of decisions issued by planning authorities remains a great problem, especially with respect to decrees on the removal of a construction or decrees on maintenance work. Planning authorities have to deal with an increasing lack of discipline by property owners, who refuse to abide by valid decrees obliging them to, for example, remove a construction or to carry out maintenance on the construction as ordered by the authority. The Defender registered cases where planning authorities fined the owner of a construction for failure to abide by a valid decision, but failed however to execute the decision. At the same time it is necessary to emphasise that the obligation of a planning authority to execute a decision ensues from the Construction Code and inactivity of this type is grave malpractice in the performance of public administration.

The reluctance to commence the forced fulfilment of a decision often lies in the necessity to bear the costs of a substitute execution of the decision on behalf of undisciplined property owners. Planning authorities are under strong pressure from self-governing bodies in this matter, who refuse to grant financial means for distraint (especially where settlement of costs for sanction demolitions and maintenance work on private buildings is concerned) under such circumstances, where it is wholly unclear whether the money will ever be recovered from the construction owner. Inactivity of planning authorities with regard to distraint should be the subject of a serious debate on the alteration of the present system, where costs of the execution of decisions are borne by the budgets of municipalities. The present practice, where the removal of illegal

constructions is rare, is unsustainable in the long run and must receive extra attention in the forthcoming re-codification of the Construction Law. Resignation from the execution of a decision by planning authorities seriously encroaches upon the principle of a state which respects the rule of law.

Complaint Ref.: 4342/2002/VOP/SN

The Defender was addressed by complainants requiring that he take action against the inactivity of the planning authority in proceedings on their request for permission to conduct minor fencing construction on their land. The case, which at first appeared to be straightforward, had remained unresolved since 1997. An inquiry by the Defender led to the discovery that this was the consequence of inactivity by another administrative authority, competent to decide upon proposals for expropriation of the stated land, put forward by the municipality also in 1997. The planning authority assessed the object of proceedings on expropriation to be a preliminary question for the actual decision in the planning permission proceedings. Following intervention by the Defender, a decision was issued on the dismissal of both proposals for expropriation. Thus, planning permission proceedings conducted by the planning authority could also be concluded in accordance with the law.

Complaint Ref.: 376/2003/VOP/MH

The Defender dealt with a complaint on inactivity by the planning authority in the performance of a decision issued by it. The planning authority would not effect the decision on the order to carry out maintenance work, pleading poverty. Following negotiation by the Defender with the secretary of the office, the planning authority initiated distraint and carried out the ordered work at its own expense.

The Utilization of Constructions

In 2003, 73 complaints dealing with this issue were received.

The Defender continued to deal repeatedly with the inactivity of planning authorities with regard to assessment of the soundness and safety of constructions. In such cases he instigated the use of instruments, the implementation of which by planning authorities should take place ex officio. Frequently, there were cases of bypassing approval procedures and long-term abuse of the trial period in a way that enabled the owners of buildings to use an unapproved construction without having fulfilled the requirements of the relevant public administration authority (with regard for example to adopting noise reduction measures). In certain cases, planning authorities permitted the trial operation of a construction without any time limit, thus enabling the owner to use an as yet unapproved construction over a period of time determined by him/herself alone. Essentially, this means utilisation till construction approval is carried out, the initiation of which rests purely with the owner.

Complaint Ref.: 1065/2003/VOP/SN

While investigating a complaint by the tenant of a flat situated within a building threatened by the ongoing driving of galleries for the construction of tunnels, the Defender established inactivity of the relevant planning authority. The authority had failed to order clearing of the building, in spite of a real threat to the lives and property of the tenants. Redress was effected by it only following notice by the Defender.

Complaint Ref.: 499/2003/VOP/KČ

The Defender established a number of cases of grave maladministration by a planning authority, in consequence of which the trial period was abused for nine years for the utilisation of an abattoir for the slaughter of animals and for meat processing. Although the original decision on the interim utilisation of the building was limited to six months, no due approval laying down limiting conditions of the operation of the abattoir, situated on a housing estate, had been issued up until an investigation by the Defender. Following the conclusion of the inquiry, the planning authority initiated approval proceedings, which shall lead to the regulation of operation. Slaughter has been terminated by the entrepreneur and the Defender shall further follow the case.

Complaint Ref.: 5201/2002/MH

During an inquiry into a complaint made of noise pollution from the operation of thoroughfare, the Defender established maladministration by the planning authority with respect to the repeated prolongation of the premature utilisation of a building without a time limit and without the favourable opinion of a public health protection authority. The regional authority effected redress following inquiry by the Defender.

Access to Information by Individuals other than Parties to Planning Permission Proceedings

In 2003, 18 complaints dealing with this issue were received.

The Defender repeatedly encountered cases where planning authorities had refused to provide information and to permit access to planning documentation to individuals with no participation in planning permission proceedings. Furthermore, planning authorities had failed to advise them of the option of demanding access by means of section 133 of the Construction Law. In cases where the request for access to documentation is denied by it, these provisions constitute the obligation of the planning authority that archives planning documentation to conduct administrative proceedings and to issue an administrative decision. Furthermore, individuals who substantiate their request are entitled to view documentation and to obtain extracts from it.

Complaint Ref.: 4375/2002/VOP/MH

In an inquiry, the Defender established maladministration by the planning authority with regard to the provision of information and access to planning documentation by individuals with no participation in proceedings, as it had failed to decide upon the request for access to planning documentation within administrative proceedings.

Further Competence in the Construction Sector and Further Competence of the Ministry of Regional Development

In 2003, 42 complaints dealing with this issue were received.

The Defender was repeatedly addressed by citizens who felt discriminated against by the housing policy of the Ministry for Regional Development. In one such case the Defender exercised his special entitlement and addressed the government with a recommendation for an amendment to the Act on Available Residential Housing. The Defender also encountered misinterpretations of certain institutes of Burial and Sepulchral Law and effected redress with the relevant authority.

Complaint Ref.: SZD 22/2003/VOP/MH

Based on information regarding the operation of facilities in an inconsiderate manner, thus disturbing the reverence of cemetery surroundings, the Defender opened an own initiative inquiry in the matter of establishing protected zones on the circumference of cemeteries in compliance with the Act on Burial. According to this law, the positioning of constructions disturbing the dignity of public cemeteries and the remembrance of the deceased can be prevented by establishing a 100-metre protective zone around the cemetery. In the inquiry, the Defender was involved in a dispute with the Ministry for Regional Development. The dispute was resolved after an expert opinion was provided by the Faculty of Law of the Masaryk University in Brno, substantiating the opinion of the Defender. The measures proposed by the Defender were accepted.

Complaint Ref.: 2288/2002/VOP/TL/FG

The Defender exercised his special entitlement to address the government and recommended that it present an amendment to Act No. 211/2000 Coll. on the State Housing Development Fund. The amendment would stipulate the fundamental prerequisites for entitlement to fund resources and it would above all stipulate exactly who is entitled, at present laid down by the relevant government directive (including age limits). The Defender requested that the entire issue be governed by the Act itself.

2.1.5 Taxes, Fees and Customs Duty

In 2003, 149 complaints dealing with this issue were received.

Taxes, Fees and Related Proceedings

In 2003, 125 complaints dealing with this issue were received.

As in the previous year, complainants contested a whole spectrum of possible conduct and decision-making by the Tax Office (procedure during tax inspection, decisions in expostulatory proceedings, tax assessments, refusal to verify the invalidity of a decision, refusal of requests for reopening of proceedings, refusal of requests for permission of tax deferments or payment in instalments, refusal of tax appurtenance waivers, establishment of lien, appeals for payment of tax arrears by guarantor, exacting tax arrears, refusal of requests for waivers of tax arrears, delays in proceedings and so on). The Defender further dealt with several cases concerning obligation to return misused funds to the state budget. As far as local fees are concerned, the majority of complaints was directed at the legislation itself (in particular against the local fee for operation of the system of gathering, collecting, transportation, sorting, utilisation and removal of local refuse), not against the actual conduct and decision-making of the local fee administrator. Furthermore, an attack on one of the series D directives of the Ministry of Finance and a number of complaints requesting a change in valid legislation or intervention in the actual legislative process, are not without interest.

In general, it can be said that the Tax Office is not guilty of maladministration in simple cases where the valid legislation is clear. Problems usually arise in cases of greater theoretical complexity, where it is necessary to interpret legislation in a more demanding way. There follows a simplified outline of some of the cases.

Complaint Ref.: 3878/2002/VOP/JSV

The Defender accomplished the repeal of a decision charging the complainant with the obligation to repay budget resources, allegedly put to unlawful use, into the state budget. This concerned a contribution granted for the conservation and reconstruction of a cultural monument amounting to 383,000 crowns.

Complaint Ref.: 384/2003/VOP/BK and others

The Defender considers unlawful the tax distraint, whereby recurrent state income support payments are curtailed by a claim payment order in place of deductions. The Tax Office failed to carry out proposed measures (in spite of repeated correspondence), therefore, following the exhaustion of all possible procedure by him with respect to regional financial authorities and the Ministry of Finance, the Defender brought the case before the government at the beginning of 2004.

Complaint Ref.: 3362/2003/VOP/BK, 3412/2003/VOP/BK

In income deduction distraints led by it, the Tax Office issued distraint orders for claim payment orders to be imposed on the funds of tax debtors held in bank accounts. Thus, essentially the same "claim" (income instalment) was effected by both a deduction and, following remittance of the income instalment balance to the debtor's bank account, also by a claim payment order to this account.

Customs Duty and Related Proceedings

In 2003, 24 complaints dealing with this issue were received.

As in the previous year, complaints in the area of customs duty and customs proceedings were not numerous. The Defender dealt with tariff ranking of goods, post-inspection following the release of goods and the subsequent assessment of outstanding customs duty, the inspection activities of the Ministry of Finance - General Customs Directorate (GCD), refunds and waivers of customs duty, the review of decisions outside of the appeals procedure (the interpretation of the "res iudicata" and "ne bis in idem" principles within the procedure of the GCD), valid legislation on the exemption from import duty of goods released into the free circulation customs regime, etc. At the beginning of March 2003, the Defender summarised and evaluated his findings related to

the lengthy case of "drivers" – involving fuel imports from a petrochemical plant in Slovakia to the Czech Republic in 1994-5. He acquainted the Finance Minister with the case.

In the customs and customs proceedings sector, the initiation of own initiative inquiries by the Defender is not uncommon – 2003 may in this case be termed the year of global guarantees. In May, an inquiry was concluded on decisions by customs offices on the permission of funding customs debt with global guarantees for transactions other than those of the transit regime. The Defender informed the Supreme State Prosecutor of his conclusions. At the end of 2003, the Defender initiated an inquiry in the matter of the verification of documentation submitted by the guarantor, necessary for the delivery of a decision by customs offices on permission for a global guarantee. The inquiry has not as yet been concluded.

Complaint Ref.: 13/2003/SZD/PJ

At the beginning of March 2003, the Defender gave the Minister of Finance his final opinion, acquainting him with his findings from the inquiry held into procedures of the customs administration in the case of "drivers" – fuel imports from a petrochemical plant in Slovakia to the Czech Republic in 1994-5. Within his final opinion, the Defender put forward a suggestion to adopt a solution on the level of an extraordinary institute – the waiver of customs duty, tax and fees on imports in the sense of section 289, paragraphs one and two, of Act No. 13/1993 Coll., the Customs Code. In accordance with a response by the Minister of Finance in April 2003, individual cases shall be investigated by the Ministry of Finance – GCD on grounds of waiver requests. The complainants were informed of this conclusion by the Defender.

Complaint Ref.: 5142/2002/VOP/PJ

Based on an appeal by the Public Defender of Rights, the P. Customs Office returned to the account of the complainant the required amount due in customs surcharge, inclusive of interest. During the investigation of this case, not only the issue of customs surcharge refunds was dealt with but also the adoption of measures by the P. Customs Authority to prevent the recurrence of similar situations.

Complaint Ref.: 5113/2002/VOP/PJ

The Defender opened an own initiative inquiry into decisions issued by customs offices on the permission of funding customs debt with global guarantees for transactions other than those of the transit regime. Following the inquiry, the Defender concluded that first-degree customs authorities – customs offices – though lacking the material competence of administrative authorities to do so, had issued a decision in the given matter. He established a violation of legal provisions in the procedure of the customs offices, specifically of section eight, paragraph one, letter b) and related provisions of Act No. 13/1993 Coll., the Customs Code, and furthermore expressed his dissatisfaction with the methodological activities of the Ministry of Finance – GCD. On grounds of the results of an inquiry by the Defender and of the measures proposed for redress, an amendment to the relevant provisions of the Customs Code was prepared (and incorporated in section three of Act No. 322/2003 Coll.).

2.1.6 Protection of the Environment

In 2003, 67 complaints dealing with this issue were received.

The conclusions of the Defender show that as a rule the mechanisms of the protection of the environment, or rather of its individual constituents, function. However, problems arise when a controversial plan is to be negotiated, where the interests of a significant entity are at stake. We may speak of the phenomenon of an "influential" investor or of an investment "significant to society". It brings with it non-standard procedures, an inconsistent application of all legal instruments available to the public administration, and even the evasion of the law. The related "unequal" handling of individual clients of the public administration is entirely disagreeable. Whilst some are treated with strict bureaucracy by the public administration, others receive a peculiar degree of benevolence. Within his inquiries, the Defender points out this practice, he informs supervisory authorities and the public of them, and seeks to eliminate them.

The Defender investigated a number of complaints relating to the issue of aluminium foundries. In connection with this, there is a trend of relocating these plants in the Czech Republic. The Defender was concerned amongst other things with what brings these plants to the Czech Republic, with regard to their unfriendliness as concerns the preservation of pleasant living conditions and environmental protection. The Defender noted that the number of people employed by them is relatively low. Although the requested opinion of expert authorities in this area did not imply that these plants fail to meet valid standards of environmental protection or of the protection of public health, it became evident that in certain cases the inappropriate positioning of these plants is a problem, above all with respect to the proximity of housing estates.

Nature and Landscape Protection, Protection of the Atmosphere

In 2003, 24 complaints dealing with this issue were received.

Complaint Ref.: 2791/2001/VOP/JC

The Defender pointed out shortcomings that occurred during negotiation of construction of a shopping centre. He stressed that the consequences thereof lead to the underestimation of the impact of its operation on the neighbouring housing estate. Subsequently, he insisted that the negative effects of the operation of the shopping centre be reduced to an acceptable level by both consistent supervision and execution of befitting measures. The case has implied a certain helplessness of the public administration in regulating the operation of large commercial complexes and has repeatedly adverted to the insufficient protection of owners of real estate effected by the solution laid down in approved area planning documentation.

Complaint Ref.: 1616/2002/VOP/JC

On the grounds of a complaint by a civic society, the Defender dealt with the procedure of administrative authorities during realisation of a plan for construction of a golf course in municipality H. The investigation by the Defender confirmed grave maladministration. The authority had failed to respect the legal requirement for a comprehensive discussion of the entire plan within area planning proceedings following the accumulation of all necessary underlying decisions and opinions of relevant public administration authorities, including the fulfilment of the obligation to notify those civic societies that had requested it, of the initiation of proceedings. On grounds of his findings, the Defender initiated mechanisms aimed at redress.

Complaint Ref.: 2145/2002/VOP/MH

The Defender received a complaint on the operation of an aluminium foundry situated on a housing estate in L. town centre. The Planning Authority had taken a measure confirming that the structural and technical layout of the construction was in compliance with its stated purpose. The Defender acted in cooperation with other involved parties in order to resolve the issue. The operation of the foundry in town L. was terminated in October 2003 and the technological facility was relocated to a new site within an industrial zone in the nearby town of H.

Complaint Ref.: 16/2003/ SZD/JC

The Defender investigated the procedure of the public administration in connection with disputes over the water level in the central basin of the Nové Mlýny hydroelectric dam and proposed measures for redress based on the established shortcomings. In view of the failure to adhere to these and the continuing discrepancies in the procedure of the public administration, he addressed the government in this matter.

Refuse, Water Protection and the Remediation of Contaminated Localities

In 2003, 31 complaints dealing with this issue were received.

In 2003, the Defender dealt with several complaints on the inactivity of authorities in the issue of illegal landfills. On grounds of his experience, he decided to initiate a broadly conceived investigation focused on the shortcomings of valid legislation governing the removal of illegal landfills. The Defender dealt in previous years with the

related problem of remediation of contaminated localities that endanger surface and groundwater. Progress accomplished in this area is explained in section III. The removal of illegal landfills varies, however, from the remediation of contaminated localities endangering water in the following respect.

These varying problems overlap only partly. Not every illegal landfill represents a threat to water. It may, however, endanger another component of the environment (such as agricultural land) or spoil the appearance of the landscape. On the other hand, contaminated localities dangerous to water do not necessarily have to be landfills. For example, these may be areas affected by chemical leakage or places where landfills have been removed in the past, but where contamination remains.

The remediation of contaminated localities that endanger water is dealt with exclusively in Act No. 254/2001 Coll. on Water and on the Amendment of Further Acts (The Water Act). On the other hand, depending on circumstances, the removal of illegal landfills may either be carried out in accordance with one of the so-called sector provisions (the Act on Woodland, the Water Act, the Act on the Protection of Nature and Landscape, the Act on the Atmosphere) or in accordance with Act No. 185/2001 Coll. on Refuse and the Amendment of Further Acts, the general provision for refuse management.

As concerns the remediation of contaminated localities representing a danger to water, the Defender had in general no objections to the fundamental mechanisms laid down by legislation. He merely pointed out the insufficiency of means designated for these purposes by the Water Act. The removal of illegal landfills is, however, a cross-disciplinary problem that involves several laws on the protection of the environment, the links of which are not well-resolved by valid legislation. Many illegal landfills cannot be removed as there is no specification as to how to finance for such action.

With respect to the removal of illegal landfills, the Defender repeatedly encountered the problem of failure of the current Act on Refuse, in contrast to the previous Act, to deal with this issue comprehensively. The Act merely contains provisions stating that "should there be a threat to human health or to the environment or should such damage have already occurred, the municipal authorities of municipalities with extended authority may safeguard the protection of human health and the environment at the expense of the responsible individual" (section 79, paragraph one, letter e) of the cited Act).

The term "responsible individual", however, is not defined by law and it is not possible to construe that this term could possibly be understood to mean anyone but the creator of the illegal landfill. Should the creator not be ascertained (the case of old landfills in particular) or if the landfill does not directly endanger human health or the environment, it is possible to consider exercising the power ensuing from sector provisions (the Act on Woodland, the Water Act and so on). In the majority of cases, these provisions again make it possible to order the removal of an illegal landfill by its creator only (should he be known).

Quite exceptionally (the Act on the Protection of Agricultural Land Resources, the Act on Municipalities), the option is given to charge the owner or occupant of land, which the landfill is situated upon, with the obligation to remove a landfill, as once made possible by the previous legislation of the Act on Refuse. The option to remove a landfill at the expense of the state generally exists only on grounds of administrative consideration, therefore only at the discretion of the relevant authority. This is also the case of those landfills created for example under the former political regime or those posing a direct threat to the environment. This problem is further complicated by in that the relevant authority may vary according to which law is applied. The situation may thus arise, where each authority expects another to take steps in the matter of the illegal landfill in accordance with "its own" law, which appears to be more befitting and therefore each authority remains inactive.

For this reason the Defender addressed the Ministry of the Environment, requesting an explanation of the present legislation and a summary of all steps taken so far by the Ministry, or those it intends to take in the immediate future, towards the strengthening of the potential of public administration with respect to the removal of illegal landfills. On the initiative of the Defender, the Interpretation Committee of the Ministry of the Environment passed a legal commentary on section 79, paragraph one, letter e) of the Act on Refuse. This new reading should enable municipal authorities of

municipalities with extended authority to remove illegal landfills posing a danger to human health or to the environment even when the creator is unknown. Removal costs incurred shall be reimbursed by the state by virtue of delegated authority. This reading was passed and published in section 11 of the Bulletin of the Ministry of the Environment for 2003.

Complaint Ref.: 3741/2002/VOP/KČ

The Defender instigated activity by state authorities in the matter of an illegal landfill in orchards near municipality P., spread across both municipal and private land. The result was the successful removal of the refuse.

Complaint Ref.: 1130/2001/VOP/PL

An investigation by the Defender proved that the procedure by authorities in the environment protection sector had, since 1992, not led to the effective prevention of the spread of harmful substance contamination into the countryside. In a situation where a state of emergency had been confirmed, the execution of urgent measures was not undertaken until 2003. A significant factor inhibiting redress was the lack of money and the question of searching for relevant resources. The necessity of remediation in the case of very seriously contaminated localities and the handling of states of emergency both demand a comprehensive solution. For further details on this issue turn to section III.

Administration in Gamekeeping

In 2003, 12 complaints dealing with this issue were received.

In connection with the performance of public administration of gamekeeping, the Defender registered two types of complaint. The first group of cases are those from dissatisfied owners or leaseholders of land that was, on the basis of a decision by the relevant municipal authority of a municipality with extended authority, declared hunting land and as such was included within recognised hunting grounds. The occupants of such land protest against the unlawful encroachment on their ownership rights in that these are significantly limited as a result of the necessity to tolerate the exercise of gamekeeping rights on their land. The other group of complaints include complaints by owners and leaseholders of hunting grounds or those of further third persons, who point out that in consequence of an owner leasing out recognised hunting grounds to the gamekeeping association, he loses the option of participating in its utilisation, that is he is unable to exercise gamekeeping rights as he is refused membership in the gamekeeping association.

The position of the Defender in handling both complaint types is complicated in that he is unable to exercise his mandate in each and every case or phase. The Defender may intervene actively only in cases of the performance of public administration (such as in proceedings on the recognition of hunting ground), not in those cases, however, where the substance of the problem is related to the internal functioning of a hunting union or gamekeeping association or to the participation thereof in legal relations.

Complaint Ref.: 2545/2003/VOP/KV

On grounds of a complaint by a hunting union, the Defender established a case of maladministration, consisting in the long-term inactivity by the authority for public administration of gamekeeping. Twelve months after proposals had been submitted to the authority by the union, no decision had been delivered. The authority had merely issued a decision on the suspension of proceedings, subsequently repealed by the regional authority due to its unlawfulness. Both the proposal to bring the stated hunting ground into harmony with the Act on Gamekeeping, as well as a request for the recognition of a new hunting ground were received by the former district authority. On the basis of intervention by the Defender, the inactivity was terminated; the authority called upon the hunting association to supplement the proposal, conducted negotiations and subsequently delivered an administrative decision.

2.1.7 Protection of the Rights of Children, Adolescents and Families

In 2003, 92 complaints dealing with this issue were received.

The Work of the Authorities for the Social and Legal Protection of Children

In 2003, 58 complaints dealing with this issue were received.

The most frequent complaints dealt with concerning protection of the rights of children, adolescents and families are complaints on the work of authorities for the social and legal protection of children. The gravest and most common problem is the obstruction of contact of parents or a parent with their child, with whom they do not share a common household. Problems within the family often culminate in manipulation of the child lead to rejected-parent syndrome. This is a long-term problem often underestimated on the part of social workers, authorities and the public. No less significant is the group of cases where substitute family care is preferred to that of problematic biological parents.

The Defender repeatedly ascertained a violation of the rights of citizens to access information collected on them by authorities for the social and legal protection of children. He believes this violation lies in a misinterpretation of section 55 of Act No. 359/1999 Coll. on the Social and Legal Protection of Children, governing the option of parents to access file documentation kept with offices. Based on a strict interpretation by offices, parents are prevented from making any record of file contents.

Complaint Ref.: 4464/2002/VOP/TL/JH

The Defender established maladministration by an authority for the social and legal protection of children (ASLPC) and by a children's home. Due to the conduct of social workers, whose intent it was to place the child in the care of a foster family, the minor A. Š. spent eight months in a children's home without any legal cause. The social workers were not in favour of the child's return to the family, in spite of the parents' interest in the daughter. The employees of the children's home denied the parents personal contact with their daughter; they merely showed her to them behind glass. On grounds of an initiative of the Defender, the child was returned to the family, the family was provided with the necessary social assistance and the director of the children's home altered the regime governing visits.

Complaint Ref.: 1563/2002/VOP/ZG

The Defender was addressed by a married couple with a complaint on the procedure of an ASLPC. Following an investigation, the Defender established that the procedure of both the social worker dealing with the case and the head of the Department for Child Care were based upon efforts to prove the complainant's presumed non-paternity, instead of focusing on the protection of the child's best interests as laid down above all in the Convention on the Rights of the Child and the Act on the Social and Legal Protection of Children.

Complaint Ref.: 2641/2002/VOP/HV

The Defender established malpractice by an ASLPC, as complained of by the father of the child. The ASLPC had not overseen fulfilment of the agreement on contact with the child. It had prevented the father from acquiring extracts from the child's file and from reading the file documentation aloud for fear that he might be recording his reading onto a dictaphone. This was the consequence of a misinterpretation by the Ministry of Labour and Social Affairs of section 55, paragraph five, of the Act on the Social and Legal Protection of Children, which concerns the refusal of parents' requests to access their child's file documentation. Based on intervention by the Defender, the inactivity of the ASLPC ended and its procedure with respect to providing entries from file documentation altered.

Institutional Care

In 2003, 34 complaints dealing with this issue were received.

In 2003, the Defender dealt with the conditions governing institutional care in nurseries, children's homes with schools and reformatories. The most frequent violation of children's rights was in reformatories.

In children's homes for children up to the age of three, under the Ministry of Health, children were shown to their parents through glass barriers and were not allowed personal contact. Visits were organised in such a way that there was a danger of the child's alienation from its parents. The Defender was concerned that this regime, which breaches the rights of both children and parents, may be widespread in other establishments and, for this reason, decided to carry out an own initiative inquiry in homes for infants. In three of these, the inquiry has been concluded and no malpractice has been established. Shortcomings were ascertained in the practice of a fourth establishment and the Defender is at present seeking redress.

Several local investigations, whether based on a complaint or own initiative, were carried out by the Defender in children's homes, where the Defender focused amongst other things on the surveillance of children via camera systems. A total of 14 inquiries were carried out in reformatories, of which three were comprehensive investigations of the performance of public administration. A violation of the rights of individuals placed within these establishments was ascertained. In one such reformatory, an investigation, which focused on bullying, was carried out at the end of the year. For this reason the situation has not yet been evaluated. In February 2003, a report was issued on the results of an investigation in an isolated reformatory where the rights of inmates were grossly infringed. Based on this report, the Minister of Education visited this establishment and decided on its immediate closure. In this year a case has been concluded concerning another reformatory, which did not proceed correctly in the matter of the artificial termination of a ward's pregnancy. The Minister of Education enforced redress by issuing a binding directive on how to deal with pregnancy of female wards.

Complaint Ref.: 4661/2002/VOP/HV

In his investigation of an independent youth establishment determined for young people with physical handicaps, the Defender established a state of affairs in contravention of Article nine, paragraph three of the Convention on the Rights of the Child, Article nine of the International Covenant on Civil and Political Rights and with Article eight, paragraph two of the Charter of Fundamental Rights and Freedoms. The Heightened Care Ward (HCW) of the establishment was set up as an experiment by the Ministry of Education, Youth and Sports (MEYS). The regime within this establishment was in many respects stricter than that of prison. The supervisory activity of the Czech School Inspectorate and that of the Department of Special and Institutional Education of the MEYS had failed. Having received the report of the Defender, the Minister of Education visited the PRW and decided on its immediate closure.

Complaint Ref.: 24/2003/SZD/HV

Based upon an own initiative inquiry in 2003 and subsequent legal analysis, the Defender established that Act No. 109/2002 Coll. had omitted children with imposed protective education, who at present are not permitted to leave the establishment for short-term stays with their parents (weekends, holidays), despite experts considering contact with the family to be a positive element in the child's re-education. The Defender decided to exercise his right to initiate an amendment of two laws, ensuring that children in reformatories are not subjected to a regime stricter than that imposed on people in prison.

2.1.8 The Police, the Prison System, the Army and Alternative Civil Service Service

In 2003, 170 complaints dealing with this issue were received.

The Activities of the Police

In 2003, 62 complaints dealing with this issue were received.

A relatively sizable agenda dealt with by the Defender is related to police procedure. The Defender established faults in the ascertaining of facts, caused in particular by faulty procedures in the investigation of concrete illegal conduct, as well as legal errors both in material and procedural law.

During investigations, the Defender most often deals with the complaints-supervisory bodies of the police. Their perspective on the situation under investigation often differed from that of the Defender, especially in those cases where no direct violation of the law occurred, but where however, with respect to the time, place, individual and the situation to which it was applied, the procedure of the police was not in accordance with the principles of good administration.

Complaint Ref.: 3705/2002/VOP/DU

The police in a district department gave preferential treatment to one parent participating in divorce proceedings without due cause, allowed him/her to remove a child from the care of the other parent. The police procedure was in part defended by complaints departments of the police on the district and regional levels. Therefore, the Defender also investigated these complaints departments and established malpractice consisting in their faulty approach to investigating complaints. The complaints departments in question admitted malpractice and adopted remedial measures.

Complaint Ref.: 2608/2002/VOP/DU

The Defender dealt with the case of a woman whose handbag containing personal belongings had been stolen. The handbag was found by an unknown person who turned it over to the police. The handbag contained the complainant's identity card and other belongings. The policemen surrendered the handbag into the hands of a person to whom it did not belong. The identity card and flat keys were returned to the victim only by coincidence. The complaints department failed to determine the policemen responsible. The complainant received no apology on behalf of the police. Following intervention by the Defender, a new inquiry was held. Malpractice by the policeman who had to a certain degree made possible a faulty procedure by other policemen was ascertained. Disciplinary action was taken against him for his conduct. The complainant received an apology on behalf of the Police.

The Activities of the Prison Service, Conditions Governing the Execution of Prison Sentences and Punishment

In 2003, 85 complaints dealing with this issue were received.

The number of complaints dealing with this issue is, compared to previous years, essentially the same, and the composition thereof is also similar. Those sentenced or charged complain most frequently, their relatives significantly less and their legal representatives seldom. 35 complaints were about dismissal of a request for transfer to another prison. In the investigation, the Defender established, or rather confirmed a fact familiar to him from previous years – the most frequent reason for the dismissal of a transfer request is the prison capacity of the prison which the complainant desires to be relocated to. The majority of those sentenced desired to be transferred to Moravia, where the accommodation capacity of prisons is lower, and so requests cannot be met for objective reasons.

However, the Defender deems the present system of handling complaints to be in breach of the principles of good administration. Prisons consider transfer requests at the rime of their submission only and do not return to them later. Should such a request by an inmate be dismissed, then in the case that it is possible to satisfy it later, it is not

considered again. Instead, only the current requests of other inmates are considered. This practice was criticised by the Defender for example in his comments on the "Report on the Fulfilment of Systemic Measures within the Prison System and Criminal Policy Sectors with respect to Prison System Reform (as on 30/6/2003)" presented to the government by the Ministry of Justice.

There were nine complaints directed against the provision of medical care to inmates in 2003. During his inquiries into these complaints, the Defender met with a negative approach from prison service doctors to the request by the Defender for access to medical records, even with the consent of the inmate. The Defender therefore stated that the prison service had failed to provide cooperation.

Other complaints dealt with by the Defender were those submitted by inmates complaining about remuneration for work performed in the course of a prison sentence and of payment of both the costs of serving a sentence and of the inmate's liabilities outside prison. The Defender has initiated a complex own initiative inquiry in this sector which has not as yet been concluded.

Other complaints concerned the organisation of visits in prisons, catering and treatment by employees of the prison service. Of the total number of complaints in this sector, eleven have been submitted by persons awaiting trial in custody. The charged individuals complained in particular of treatment on the part of the prison service.

An initiative was undertaken by the Defender in the case of prison sentences served by pregnant women and the mothers of newborns. The Defender sought above all to prevent the unjustified separation of mother from newborn child. He addressed both chambers of Parliament with a request for the settling of this problem, which they dealt with in Act No.52/2004 Coll. In future, a child should not be taken away against the will of those women in custody who have recently given birth or against the will of nursing mothers who wish to care for their child, if it is in the interests of the child.

Complaint Ref.: 815/2003/VOP/JK, 1608/2003/VOP/JK and 1609/2003/ /VOP/JK

The Defender established maladministration by the prison, which had acted against its obligation to help with their rehabilitation and preparation for release. The prison had failed to maintain order in the inmates' workplace, to participate in the organisation of work by inmates and had failed to conclude an agreement with a private company for the remuneration of inmates for work in accordance with legal provisions.

The Army and Alternative Civil Service Service

In 2003, 23 complaints dealing with this issue were received.

In 2003, as in previous years, the number of complaints dealing with this issue was relatively low. Complaints were submitted by conscripts, alternative civil service applicants and professional soldiers. Professional soldiers addressed the Defender in the matter of unequal conditions with regard to obtaining housing benefit. An inquiry in this matter is currently under way; the Defence Minister has been requested to give his statement on the issue.

Complaints by conscripts were directed against regional military administrative bodies and against medical assessment committees. The Public Defender supported the opinion of a complainant who, represented by his lawyer, had pointed out that the regional military administration had not taken into consideration his refusal of alternative civil service, as he had done so outside the legal period of notice. It was his belief that it is possible to request the restoration of the term of notice for submitting a declaration of military service refusal.

As far as alternative civil service is concerned, the Defender initiated an inquiry on the basis of a complaint directed against the Ministry of Labour and Social Affairs, the objective of which was to point out outdated legislation governing alternative civil service (Act No. 18/1992 Coll.). The inquiry commenced in a situation where the date of the planned full professionalisation of the army was speculated to be the end of 2006. Those persons who would in between have the obligation to perform community service would be required to perform it. Subsequently, the date of final professionalisation was set for 31 December 2004 and this date was presented also as the date of the termination of

alternative civil service. With respect to this fact, the Ministry of Labour and Social Affairs is no longer considering the implementation of an amendment to the Act on Alternative Civil Service Service.

Complaint Ref.: 4871/2002/VOP/MON

The Defender established maladministration by the former district authority, the Office for Social Affairs and Public Health Care, in that it had drafted the complainant for the performance of community service 12 years after he had refused to perform compulsory military service, that is at the age of 31. The request to be excused from military service had been dismissed. The complainant submitted a complaint to the Defender only when he had been drafted for community service.

2.1.9 Foreigner-Related Affairs

In 2003, 88 complaints dealing with this issue were received.

Residence of Foreigners

In 2003, 48 complaints dealing with this issue were received.

The Defender encounters a relatively broad spectrum of problems in public administration concerning the residency of foreigners. The majority of complaints in 2003 dealt with permanent residence in the Czech Republic. Foreigners had in most cases complained of the procedure of the relevant Foreigners' Police department during the handling of requests for the issue of a permanent residence permit.

A significant number of complaints dealt with deportation, both judicial (punishment administered by a court) and administrative (an administrative measure by the police). Furthermore, the Defender encountered complaints with respect to the police and embassies in connection with refusal to issue a visa for residence in the Czech Republic (such as a visa for permission to remain, a visa for stays up to 90 days, a visa for stays over 90 days). Complaints by foreigners requesting the Defender for legal aid in the form of providing advice or information were no exception, as the relevant Foreigners' Police department had not provided them with all necessary information or had provided contradictory or confused information. This is related to the standard of dealing with foreigners at the Foreigners' Police offices, repeatedly criticized by the Defender. In this year also it was possible to note in many complaints traumatic experiences, consisting above all in the insufficient provision of information and in the complacent and arrogant conduct of certain policemen. In this respect, it is surely not without interest that this concerned, repeatedly and independently of one another, the Prague Foreigners' Police Department and the West Prague Foreigners' Police Department, the branch offices of the Area Head Office of the Foreign and Border Police Service in Prague.

Complaint Ref.: 761/2003/VOP/JK, 800/2003/VOP/JK and others

The Defender established maladministration by the Foreigners' Police and the Ministry of the Interior, in the issue of decisions denying the requests of complainants for extension of their visas for residency in the CR for stays over 90 days, which were in contravention of the law and the principles of good administration. From a procedural viewpoint, the authorities had not acted uniformly with respect to different complainants, although these had reproached them for identical unlawful conduct. Furthermore, they were guilty of maladministration for issuing many complainants with identical, insufficiently substantiated decisions, which were not based on a reliably ascertained state of affairs; for not all facts potentially influencing the decision had been taken into consideration, nor was there any specification of concrete unlawful conduct by the relevant complainant.

Complaint Ref.: 4256/2002/VOP/VBG

An applicant for a residence permit for the Czech Republic was denied a decision in the matter after he was found to be liable for criminal proceedings. The Defender evaluated such procedure by the Foreigners' Police as a breach of legal regulations and above all a breach of the principle of the presumption of innocence.

Proceedings on Asylum and the Integration of Foreigners

In 2003, 16 complaints dealing with this issue were received.

Complaints dealing with this issue were mostly directed against the procedure of the relevant part of the Ministry of the Interior (the Department of Asylum and Migration Policy) and concerned decisions denying asylum and undue delays in asylum proceedings. The Defender chose not to deal with complaints contesting a denial by the Ministry of the Interior of a request for the granting of asylum. Each complainant had, namely, the option to resist such an administrative decree, which they had utilised in filing an action with the relevant regional court. The contested decrees of the Ministry of the Interior had become the object of legal proceedings and it was not for the Defender to in any way intervene in the independent decision-making process of the courts.

Undue delays in proceedings on granting asylum before the Ministry of the Interior and the Interior Minister were in the previous year the subject of several inquiries by the Defender. It is necessary to once again express concern with respect to the length of proceedings on asylum, which in many cases cannot be regarded as commensurate. The large number of requests for granting asylum and the overloading of the respective part of the Ministry of the Interior cannot be recognised as sufficient justification for the length of proceedings. It is possible to tolerate undue delays of a structural nature only where a sudden influx of new cases could not reasonably be foreseen and under the further condition that the aforesaid authority takes all possible steps to remedy the situation. Measures that can be legitimately expected in such a situation are for example an increase in the number of administrative workers, an increase in the quality of technical and material support, the handling of cases according to degree of urgency and so on. Besides the aforementioned issues, the Defender dealt with complaints in the previous year concerning those individuals granted asylum in the Czech Republic, so-called asylum grantees. The object of their complaints was the fulfilment of the state integration programme in the housing sector. The state integration programme is a programme focused on aiding asylum grantees in their integration into the community. A constituent thereof is in particular the laying of groundwork for acquiring knowledge of the Czech language and for obtaining housing.

Complaint Ref.: 5267/2002/VOP/VK

The Defender contributed to the remedy thereof; the complainant who had been granted asylum in the Czech Republic accomplished his intent in that his family was able to join him.

Complaint Ref.: 3381/2002/VOP/VK

Following intervention by the Public Defender of Rights, the Ministry of Culture modified its stance and, as part of its grant programme for integration support of foreigners living in the Czech Republic, it paid Mr. S. S. a no-investment grant amounting to 100,000 crowns for publication of a multilingual dictionary (Czech-Pashto-Dari/Persian and Pashto-Dari/Persian-Czech).

Obtaining State Citizenship

In 2003, 24 complaints dealing with this issue were received.

In the report on the activities of the Defender in 2002, mention was made of the poor way in which certain decisions leading to the denial of requests for State Citizenship are substantiated. In the last year, efforts on the part of the Ministry of the Interior could be observed whereby it sought to substantiate these decisions in a more comprehensive manner. Another shortcoming endures. The Defender has repeatedly encountered considerable transgression of deadlines laid down by law.

Complaint Ref.: 2642/2001/VOP/VK

A former citizen of Afghanistan has, since 1993, repeatedly requested that he be granted Czech citizenship. His requests have never been granted. On grounds of a complaint by him, the Defender initiated an inquiry and acquainted himself with the details whereupon the decision was based. However, the Interior Minister refused to

inform the Defender of the stance of the police and the intelligence services, which the Ministry of the Interior had requested for consideration of the request in accordance with the law. Therefore, the Defender addressed the government. The resolution submitted to the government, which would have obliged the Interior Minister to provide the Defender with the necessary cooperation, was not approved by the cabinet.

Complaint Ref.: 1264/2003/VOP/MV

The Defender established maladministration by the Ministry of the Interior and by the Interior Minister, consisting in long-term inactivity with regard to the consideration of the complainant's exposition and the lack of substantiation of negative decisions on requests for the granting of Czech citizenship and to the complainant's expositions issued in the past. The decision on the appeal against a negative decision by the Ministry of the Interior, dating from May 2001, was decided upon favourably in May 2003.

Complaint Ref.: 2801/2003/VOP/MV

During an inquiry initiated on the grounds of a complaint, the Defender established long-term inactivity by the Ministry of the Interior, which following a change in valid legislation as of 1/1/2003 was unsure of its capacity for taking decisions on appeals in state-civilian matters against the decisions of city district offices in Brno, Ostrava and Plzeň. Following intervention by the Defender, the ministry assigned the appeal of the complainant in question to the regional authority.

2.1.10 Authorities Active in the Area of Internal Administration

In 2003, 62 complaints dealing with this issue were received.

The Work of Registry Offices

In 2003, 30 complaints dealing with this issue were received.

Complaints dealing with registry offices are rather isolated. The following text is therefore not only a report on the activities of the Defender in this area for 2003 but also a brief review since the institution of the Defender began to function.

Several complaints were received on the failure to enter the name of the father of the child into the Register of Births. The Defender explained to the complainants the succession of so-called paternity determination presumptions governed by the Family Act. As a rule, the first presumption in these cases indicates the paternity of the mother's husband with respect to the child. Real fathers, who demand the entry of their paternity into the Register prior to invalidation of the first presumption of paternity determination within legal proceedings on the disavowal of paternity, do so unlawfully.

Several individuals addressed the Defender with respect to dismissal of their request for an alteration to their name or surname. These complaints too were judged to be unsubstantiated. There was no significant reason for an alteration in the given cases. They concerned for example an alteration of a surname due to an alleged association with the Roma minority. Decisions on the alteration of names and surnames are in the majority of cases subject to administrative consideration. However the public sometimes entertains the false notion that each citizen possesses the legal right to alter his/her name or surname.

Implications ensuing from several cases dealt with by the Defender indicate the difficulty of applying in practice the Registry Act, according to which an administrative decree is issued only in the case of those requests that are granted in their entirety. The Registry Office generally provides the claimant with an explanation as to why it is unable to satisfy the request; however it does not instruct him/her of the fact that in the case of his/her objection to the explanation the request must be rejected by an administrative decree, which may be appealed against by the complainant. In the case of later complaints, Office employees argue that the complainant failed to express his/her objections to the explanation. In the case that a request is denied, both authorities and complainants should follow the recommendation to draw up a brief protocol listing both reasons for the dismissal of the request and the complainant's viewpoint.

A considerable number of complaints were submitted by women dissatisfied with the transmutation of their surnames in registry documents. The content of these complaints is evidence of the degree of sensitivity with which this issue is viewed. Such cases do not concern maladministration by authorities but criticism of legislation.

Complaint Ref.: 2598/2003/VOP/MV, 2829/2003/VOP/MV and others

Female surnames are recorded in register entries and registry documents in compliance with the rules of Czech grammar, namely with the Czech suffix -ová. The Defender was addressed by those women dissatisfied with valid legislation, in accordance to which the surnames of female citizens of the Czech Republic can be used in a form contradictory to the rules of Czech grammar only if the woman in question applies for foreign nationality. The Defender made a recommendation to these women to request the Registry Office that a note be made in the marriage certificate explaining the -ová form to be the feminine form of the surname, created in compliance with the rules of Czech grammar.

Complaint Ref.: 3831/2002/VOP/MV

The Registry Office of city P. had recorded the place of birth of an adopted child born outside of a maternity hospital by stating the municipality, municipality area and house number within the birth certificate. It is the opinion of the Defender that in doing so, the Registry Office violated the European Treaty on the Adoption of Children, as a birth certificate issued in this way indirectly enables the disclosure of adoption and the ascertainment of the identity of the former parents. In the opinion of the Office, the regulations governing the Register contravene the Treaty and it is not for local authorities to resolve such a contradiction. The Office eventually accepted the opinion of the Defender and issued the adoptive parents with a birth certificate in the desired form.

Identity Cards, Travel Documents and the Citizens Register

In 2003, 32 complaints dealing with this issue were received.

The majority of submissions in this sector were related to the Citizens Register, especially to proceedings on the nullification of the entry on the place of permanent residence. The Defender was addressed by both those citizens whose entry had been nullified and those who sought to achieve the nullification of the entry on the place of permanent residence of another registered individual.

The Act on the Citizens Register is contradictory in its content. On one hand it declares that the registration of a citizen for permanent residence does not constitute any right with respect to the owner of the real estate, on the other hand it enables the individual with the right of disposal to the property to submit a proposal for nullification of the entry on the place of permanent residence of a registered individual. Frequently, complaints show that administrative proceedings on the nullification of permanent residence are misunderstood to be a decision-making process on usufruct of the dwelling. The expiry of usufruct and the actual non-use of the dwelling are, however, legal prerequisites of the nullification of the entry on permanent residence. Many administrative proceedings on the nullification of the entry on the place of permanent residence are thus suspended due to preliminary hearings, as it is unclear, whether the usufruct has expired. The expiry of usufruct can only be decided upon by a court.

Fewer submissions related to travel documents. Nonetheless, it is possible to generalise and say that in practice administrative authorities do not always adhere to legal provisions governing travel documents and the suspension of proceedings. The Defender dealt with several cases concerning Czech citizens living abroad long-term, who in accordance with Act No. 193/1999 Coll. had reverted to Czech citizenship and had requested the issue of a Czech passport. Complications arose for reasons of the absence of these citizens from the Czech Citizens Register or due to alterations in name and surname that had taken place abroad. In certain cases, slow communication between administrative authorities in the Czech Republic and embassies abroad was at fault. Another negative role was clearly played by these citizens not having been advised sufficiently in connection with receiving a declaration of acquired Czech citizenship. The fewest complaints were directed against the procedure of authorities when issuing identity cards.

Complaint Ref.: 107/2003/VOP/MV

Based upon a complaint by a Czech citizen living in the USA, the Defender initiated an inquiry into procedure by the City District Office in P. (CDO) with respect to issuing a passport. The CDO required that the complainant present, together with a request for the issue of a passport, his marriage certificate. The law does not, however, require proof of marital status and, as a rule, it is necessary to present a marriage certificate only as evidence of a change in surname. Furthermore, the administrative authority had proceeded incorrectly from a procedural point of view. The matter in question was redressed by a superior authority. The Ministry of the Interior applied conclusions drawn from this case in its methodological activities and acquainted employees of administrative authorities with them at its consultation days.

Complaint Ref.: 975/2003/VOP/MV

The complainant refused to collect the newly-issued identity card form the authority pertaining to the place of his permanent residence. The authority, however, had proceeded in compliance with the law. The Defender redirected the complainant's dissatisfaction with the procedure of the authorities in a different direction. The complaint made evident that the complainant was misinformed on the possibility of registering for residency in the place of his actual abode.

2.1.11 Public Court Administration

In 2003, 308 complaints dealing with this issue were received.

Complaints addressed to the Defender dealing with the judiciary continue to be very common, although it is necessary to distinguish between complaints directed at the issue of decision-making jurisdiction, explicitly exempt from the mandate of the Defender by the Public Defender of Rights Act, and complaints seeking protection from maladministration by the public court administration, which the mandate covers. The Defender dealt with investigations into undue delays, the inactivity of courts, the administration of court fees, the improper conduct of court officials and maladministration by the court bureau administration. He exercised his legal mandate with respect to public court administration authorities, these being above all the chair and vice chair of courts at all levels and the Ministry of Justice .

Delays and the Inactivity of Courts

In 2003, 245 complaints dealing with this issue were received.

The most frequent complaints concerned undue delays in civil proceedings, concerning courts of both instances. The Defender is encountering more frequent requests of citizens for information on how to address the European Court of Human Rights and advice on their prospects of succeeding in proceedings that would decide their complaint on the breach of article six, paragraph one, of the European Convention on Human Rights and Fundamental Freedoms (infringement of the right to settle a matter in a commensurate term). In the opinion of the Defender, this tendency is to be attributed to the rising legal awareness of the public.

Although the Public Defender Rights endeavours to obtain information from public court administration authorities necessary for the judgment of the foundation of complaints lodged by citizens, presiding judges seldom provide all the relevant information for the assessment of the matter straight away. The Defender deems it necessary that the presiding judge always consider, in the investigation of complaints, whether or not the acting judge himself had, due to incorrect organisation of work for example, to a certain degree caused the ascertained delays, or whether or not delays may have been a result of ineffective work by the court administration bureaus.

The presiding judge should therefore make a responsible judgement of whether the time span within which the judge conducted each step in the matter was commensurate. Doing so, he should in each case take into consideration objective circumstances, such as the number of cases entrusted to the judge and their age, the duration of the judge's work in the relevant senate, the influx of cases and, in comparison, the average number of cases settled, or the circumstance, for example, where the given judge is absent through sickness for a longer period of time or absent due to a short-term attachment. In

such cases, however, he should promptly react to the given situation in such a manner as shall ensure that proceedings do not suffer any delay.

In his conclusions, the Defender does not merely establish whether or not undue delay had occurred in proceedings; he also deals with the question of whether public court administration authorities had assumed the investigation of complaints by citizens on the delay of proceedings responsibly; whether in accordance with valid legislation they had taken up the issue of assessing the nature and causes of delay; whether they had advised the complainant of measures of redress taken after finding his/her complaint to be well-founded, that is, whether they had, on the grounds of determined complaint investigation results, drawn due and adequate measures of redress (including the initiation of disciplinary proceedings with the judge). The central public court administration authority, the Ministry of Justice, declared the number of judges to be largely satisfactory, stating that this number will rise only gradually. The majority of presiding judges continue, however, to complain in their responses of a shortage of court personnel and draw attention to the necessity of processing a large backlog from previous years, while at the same time dealing with an influx of new cases.

Complaint Ref.: 887/2001/VOP/HV

The Defender established an infringement of the right to settle a matter in a commensurate term and without undue delay on the part of the District Court, where long-running judicial delays occurred. The Defender stated that appropriate duration of legal proceedings represents one of the essential prerequisites for preserving the credibility of judicial power. If the duration of proceedings considerably exceeds the term generally acknowledged as satisfactory for a decision in the matter, the confidence of citizens in the efficiency of the judicial system wanes. Delays at the District Court were, in part, caused by shortcomings in public administration performed by the presiding judge. However, in the opinion of the Defender, the situation had to a great degree been brought about by shortcomings in the dispensation of judge posts at the said District Court, which must be ascribed to the Ministry of Justice. As a consequence of the investigation by the Defender, a significant increase in the number of judges was accomplished and hundreds of cases were delegated to other district courts.

Complaint Ref.: 2990/2003/VOP/DM

In the investigation, the Defender established that undue delays had occurred in a criminal case. The administration of the court in question has responded to the dissatisfactory state of affairs within its criminal senate and has adopted measures that will lead to a significant improvement. The judge was found guilty of a disciplinary offence in accordance with section 87 of Act No. 6/2002 Coll. on Courts and Judges and a disciplinary measure consisting in a 10% cut in salary for a period of eight months was administered. The Defender settled for these measures and concluded his investigation. He will, however, continue to monitor the situation in the criminal sector at the District Court by means of other complaints lodged by citizens or, if need be, on his own initiative.

Complaint Ref.: 676/2003/VOP/DM

In spite of the District Court in P. having delivered its verdict on 6/12/1994 in a matter based on a complaint dating from June 1990, the dispute is not yet legitimately concluded. The reason for this is the long-term inactivity of the court, which lost the appeal of the complainant against this verdict and so termed the verdict legally in force and filed the judicial records with the registry.

Complaint Ref.: 431/2003/VOP/DM

The Defender dealt with delays in the delivery of a written copy of the verdict as he established that the party to the action had received the verdict of the court in February 2003, despite the verdict having been given on 30/5/2002, whereby the term stipulated by law for the delivery of a written copy of the verdict had been breached.

Improper Conduct of Court Officials and Administration of Court Fees

In 2003, 63 complaints dealing with this issue were received.

The Defender dealt with a number of complaints in which the parties to an action sought protection against alleged improper conduct by court officials. In general, it is possible to say that complaints directed against improper conduct by court officials are always exceptionally difficult to investigate for the reason that, in the majority of cases, contradictory statements of individuals alluded to within these complaints confront one another. Furthermore, the degree to which something is or is not perceived to be non-permissible conduct varies.

The parties to an action often react in a very sensitive and emotional manner to events during proceedings. They react above all the approach and stance of the judge during proceedings with regard to themselves and the opposing party, with regard to legal representatives or witnesses and the conduct and nonverbal communication prior to and after the proceedings.

Improper conduct of a judge or of other court officials is sometimes confused or associated with suspicion of prejudice. Frequently, complainants object to improper conduct depending on both the degree of their success in the dispute and on the decision-making manner of the judge during procedural decisions taken in proceedings (for such reasons as the failure to permit evidence, failure to prompt someone to speak, for reasons of the statutory instruction of the parties to action and so on). It is outside the mandate of the Defender to intervene against such manifestations, as in these cases the parties to an action have at their disposal procedural means of protection.

Complaints dealing with court fee administration addressed to the Defender in 2003 were, for the most part, outside of his mandate as they were directed at procedural practice. Complainants were in most cases not fully aware of their obligation to settle the court fee for the motion to institute proceedings (action) and for further acts by the court. For this reason, they either refused to pay the court fee entirely or objected to the amount.

The consequence of failure to meet the afore-stated obligation is the suspension of proceedings for failure to settle court fees. The complainants objected to this and requested of the court an annulment or reversal of this ruling. In other cases they sought advice in connection with the payment of civil or criminal proceedings costs that also include a court fee.

Cases within the mandate of the Defender usually concerned the inactivity of the court with regard to the refunding of an overpayment paid on court fees and with regard to failure by the court to meet the obligation to refund court fees to a party to an action in accordance with a valid ruling.

Complaint Ref.: 90/2003/VOP/DL

The Public Defender of Rights, having investigated undue delays in distraint proceedings conducted by the District Court in L., established a fundamental error by the Clerk to the Court, who had failed to authenticate the distraint title and had ordered the execution of the decision against a person who should never have been the object thereof.

Complaint Ref.: 1001/2003/VOP/DM

On conducting an investigation, the Defender ascertained that the District Court in H. was guilty of procedural maladministration in the activities of its high court official, whose neglect had led to delayed repayment of paid court fees to the complainant, even though it was this same court that had decided thus in a valid ruling. Following the initiation of an investigation by the Defender, the matter was redressed immediately.

2.1.12 Transport and Telecommunications

In 2003, 70 complaints dealing with this issue were received.

Administration in the Surface Communications Sector

In 2003, 44 complaints dealing with this issue were received.

The number of complaints dealing with the wilful positioning of fencing, posts and other obstacles on local and purpose-built roads has risen. These obstacles usually inhibit general usage of roads to which public access should be guaranteed by law. The reasons why citizens place these solid obstacles on roads lie in unresolved ownership issues in connection with the land beneath them. Exceptionally, the reason lies in the traffic increase on roads, such as the transit of heavy construction technology, which the owners of neighbouring properties perceive to be disturbing or damaging to their real estate. The Defender is thus addressed by both those whose access to the real estate has been barred due to the placing of obstacles on the roads, and by those who placed the illegal obstacle on the surface road and in doing so usually believed they were in the right (for example the owners of the roads, of land beneath the roads or of land bordering the roads).

The capacity to protect public access to roads lies above all with municipal authorities acting as highway administration authorities for local and purpose-built roads. The Defender repeatedly established the inactivity of relevant authorities following wilful inhibition of public access to roads. In certain cases the authority was wholly unaware of its capacity as a highway administration authority. Another problem is the lack of awareness of the possibilities of regulating traffic on roads by means of traffic signs stipulating local limitations on traffic at a municipal level. In this manner situations can be resolved where the excessive use of roads endangers the structure of neighbouring buildings or disturbs the locality with noise and dust.

Another sphere of problems addressed by citizens to the Defender was the arrangement governing parking in municipalities. These concerned the establishment of reserved parking spaces in congested localities of large cities and the introduction of parking fees in municipalities. According to the Act on Surface communications, municipalities may charge fees for the use of local roads situated in the municipality area for parking. The charging of fees is administered by means of a directive, issued within the delegated authority of municipalities, therefore as part of the execution of public administration by them. In accordance with the Act, these charges must serve the purpose of traffic organisation in the municipality. By no means do they serve the purpose of a solution to the municipality's financial situation, which many municipalities fail to realise.

Based on his knowledge of the activities of municipal authorities in the sector of local and purpose-built surface communications, the Defender decided to initiate a broadly defined investigation on his own initiative, and in cooperation with the presidents and directors of each of the regions, to seek to improve the performance and quality of public administration in this area. This investigation is of a long-term nature. Its objective is the continuous clarification of interpretation problems arising in practice within the sector of surface communications.

Claims Ref.: 4943/2002/VOP/KČ and Ref.: 1449/2003/VOP/KČ

The Defender has concluded that the city district office had broken the law when handling requests by citizens for the establishment of a reserved parking area, and remedied the matter.

Complaint Ref.: 3757/2003/VOP/VBG

The Defender aided the complainant in the assertion of his rights. The Defender concluded that it is the obligation of the owner of surface thoroughfare to maintain the carriageway in such a structural and technical state as prevents damage to surrounding real estate. In the opposite case, the owner of thoroughfare is liable for damages incurred as a result of the structural or technical state of the carriageway in accordance with general legal provisions.

Complaint Ref.: 5011/2002/VOP/KČ

The Defender arrived at the conclusion that certain provisions of the city's directive on the parking of vehicles within it are in contradiction of the Act on Surface Communications and of the principles of good administration. On the recommendation of the Defender, the city altered the directive.

Complaint Ref.: 1852/2003/VOP/KV and several others

On grounds of a complaint, the Defender investigated the procedure of administrative authorities in the matter of the access road to the house of the complainants in municipality H. B. The road leading to this real estate lies along approximately 100m of its length on the private land of the neighbours, who positioned solid obstacles upon it and dug trenches. The municipal authority repeatedly advised the complainants that the plot of land is in private ownership and therefore it would not deal with the matter. The Defender established that the access road to the complainants' house is a purpose-built road accessible to the public. He therefore advised the authority of its capacity as a highway administration authority that, as such, should itself pass judgement on the category of thoroughfare and is, as such, obliged to safeguard public access to it. The wilful placing of obstacles on a publicly accessible purpose-built road is an offence. Such conduct may also be classed as an infringement of a 'quiet state of affairs'.

Transport Administration Agenda

In 2003, 11 complaints dealing with this issue were received.

In handling complaints that deal with this issue, the Defender often encounters complaints against the procedure of the Ministry of Transport with respect to the certification of a vehicle's technical roadworthiness or to the assessment of a request for the exchange of an existing driving instructor certificate for a certificate of profession, issued in compliance with section 21 of Act No. 247/2000 Coll. on Obtaining and Improving the Qualification to Drive Motor Vehicles. The Defender recently focused on the procedure of transport authorities (regional authorities) with respect to the fulfilment of the legal obligation to safeguard basic transport operation within a region. The inquiries underway are focused on establishing the degree to which transport authorities make effective use of the possibility to conclude contracts on public obligations in accordance with the Act on Road Transport.

Complaint Ref.: 3656/2002/VOP/VB

If the law does not oblige an administrative authority to verify the authenticity of authorisation to perform a transaction presented to it, it is neither possible to demand such procedure of the administrative authority nor to "sanction" it for such inactivity. The employees of the transport department are not authorities bestowed with the power to verify authorisation on presentation.

Complaint Ref.: 176/2003/VOP/VBG

The investigation of the complaint did not lead the Defender to ascertain any maladministration by the transport administration authority. It is only possible to issue a person with an international driving licence if he/she shall become the holder of it. It is not possible to carry out this procedure in the name of another person, on the basis of a power of attorney for example, as a necessary part is the signing of one's name before the clerk, who then proceeds to issue the driving licence.

Administration in the Telecommunications Sector

In 2003, 15 complaints dealing with this issue were received.

In the public administration domain within the sector of telecommunications, the Defender dealt with complaints that may be divided into several areas – the procedure of the Czech Telecommunications Authority in determining the charge for the establishment and operation of radio broadcasting stations, the handling of claims regarding telecommunications services provided and the question of frequency range monitoring.

In matters regarding complaints of the procedure of the Czech Telecommunications Authority in determining the charge for the establishment and operation of radio broadcasting stations, the Defender initiated several inquiries. In his final reports, the Defender established maladministration subsequently denied by the Czech Telecommunications Authority. The inquiry is currently still underway and the matter is not closed.

In the first quarter of 2003, a number of complainants addressed the Defender with a complaint regarding the settlement of a claim made with respect to the billing of provided telecommunications services, where the amount due had been influenced by connection to the internet via so-called "yellow lines". The Defender initiated an inquiry, in which the Czech Telecommunications Authority and the Ministry of Trade and Industry were called upon to provide information and details, and the Czech Association for Consumer Protection was addressed concurrently. The inquiry has not as yet been concluded. The purpose of it is to review whether a possible breach of legal obligation on the part of the telecommunications service provider violated provisions of the law safeguarding consumer protection. The Defender outlined in brief to the complainants the legal nature of the problem; he mentioned the possibility of securing one's computer against undesirable switching to so-called "yellow lines" and for further details referred them to the homepage address of the Czech Telecommunications Authority and that of the Czech Association for Consumer Protection. All complainants addressing the Defender with complaints on the billing of telecommunications services, regardless of whether or not the amount payable by them was influenced by connection via so-called "yellow lines", were advised of the option to lodge objections with regard to the settlement of claims with the Czech Telecommunications Authority.

The Defender also dealt with frequency range monitoring. The impulse for an own-initiative inquiry into this matter was a submission by a citizen, who amongst other things objected to the monitoring and recording of a telephone conversation, performed via an unapproved device, within the protocol of inspection; this being contrary to valid legislation. Following an inquiry, the Defender came to the conclusion that the Act on Telecommunications fails to provide citizens with adequate information on those circumstances and conditions that entitle Czech Telecommunications Authority employees to encroach upon the right to the protection of secrecy of messages related via telephone, telegraph or any other similar device. At the beginning of 2004, the Defender addressed the Minister of Information Technology in this matter, to whom he recommended that these findings be taken into consideration within the Act on Electronic Communications currently in preparation.

Complaint Ref.: 960/2003/VOP/MON

The Defender received a complaint referring to the billing of telecommunications services provided. He was dissatisfied with the settlement of his claim and requested a review of procedure by the provider of telecommunications services. He had, namely, been advised by the provider that the amount payable was a result of connecting to the internet via so-called "yellow lines". Several other complainants addressed the Defender on the same matter.

2.1.13 Administrative Sanctions and Proceedings in Accordance with Section Five of the Civil Code

In 2003, 92 complaints dealing with this issue were received.

Administrative Sanctions

In 2003, 77 complaints dealing with this issue were received.

The Defender most frequently deals with the activities of administrative authorities in the following sectors: driving offences, offences against public order, offences against civil cohabitation and against property. At the level of first-degree authorities, the stated administrative (offence) agenda is most often decided upon by offence committees or by the workers of the relevant municipal authority departments. The activity of the abolished district authorities, in the sense of second-degree authorities at appeal level, was recently replaced by the activity of regional authorities, in force as of 1/1/2003.

A significant imbalance in the standard of individual administrative authorities, especially with respect to first-degree authorities, had been established. In many cases the Defender has ascertained maladministration both in factual circumstances (such as the incomplete and imprecise determination of the actual state of affairs) as well as legal malpractice consisting in both material malpractice and procedural law malpractice (such as the faulty delivery of a decision on an offence, which, due to its fault, fails to evoke the presumption of delivery). Furthermore, maladministration in the management of documentation records is very common. A further grave maladministration by administrative authorities is their inactivity, or such activity as is purely formal, performed with no intention of the due execution of proceedings but for the mere satisfaction of the law, with the knowledge, however, that the act itself remains unexecuted. During investigation of the reasons, the Defender often establishes a lack of professional knowledge on the part of those executing administrative proceedings. On the other hand, however, he is often told by first-degree authorities that they lack methodological guidance on both the part of the Ministry of the Interior and on the part of regional authorities and that they are considerably overloaded with the influx of cases. The police authorities are also engaged in many cases; especially those relating to driving offences.

The police deal with offences from the position of a first-degree authority in the case of two offence types only ("failure to present proof of insurance against liability for damage caused by operation of a vehicle during operation of the vehicle" and "an offence in the field of protection against alcoholism and other substance addictions"). As concerns other offence types listed in the Act on Offences, the police are authorised to impose on-the-spot fines (as are municipal police officers in specific cases, against the procedure of whom complaints are also received, but to a smaller degree however). In the case of on-the-spot fines imposed by members of the police, the Defender established a lack of uniformity in the procedure of police officers in the filling-out of fine receipts. He therefore proceeded to address the Chief of Police and requested redress. The Chief of Police responded with a new binding directive that removed the failing.

In other cases the police authorities act as entities that, in stipulated cases, determine the persons suspected of having committed an offence on behalf of administrative authorities and carry out necessary investigations to gain the evidence essential for the subsequent substantiation of evidence before the administrative authorities. In certain cases the Defender established malpractice by police authorities (for example the inadequate securing of evidence at the crime scene); in other cases he explained to the complainant that the police were not guilty of the presumed malpractice.

Complaint Ref.: 3705/2002/VOP/DU

The Defender established maladministration in procedure by the committee dealing with offences of city T. The ascertained shortcomings were in particular those pertaining to administrativelaw and to the management of documentation records. In the careless approach of the relevant administrative authority, the Defender addressed the regional authority director who ensured redress.

Complaint Ref.: 2228/2003/VOP/PJ

Following an inquiry, the Defender concluded that the decision issued by the committee of city Č. L. on an offence had not yet entered into force. The decision on the offence had not been delivered in due form and as such could not have any legal effect with respect to the complainant. Measures taken in the form of suspending the offence were considered satisfactory by the Defender.

Complaint Ref.: 1900/2003/VOP/VBG

The Defender concluded that the authority had acted in breach of the principles of good administration as it had failed to ensure the due and punctual instruction of the complainant of the obligation to supplement the submitted appeal electronically. Consequently, the complainant submitted the due appeal late. Nevertheless maladministration by the authority did not excuse failing to meet the deadline.

Administrative Procedure on Protection Against Infringement of a 'Quiet State of Affairs'

In 2003, 15 complaints dealing with this issue were received.

In 2003 the Defender was addressed by citizens whose proposal for asserting protection against obvious infringement of a 'quiet state of affairs' in accordance with section five of the Civil Code has not been decided by the authorities or whose proposal was dismissed by the authorities. However, the Defender has encountered cases of misunderstanding of the above legal tool of protection not only in case of individual complainants but also when dealing with individual offices and authorities.

Apart from inactivity on the part of the relevant authority represented by the authorised local authority, the other common negative aspect of the issue is that within the administrative procedure on asserting protection against obvious infringement of a 'quiet state of affairs' the relevant authorities also attempt to deal with the related legal issues and not only with the subject of the procedure, even though the subject of the procedure is exclusively represented by an evaluation of the factual state and evaluation of its obvious and quiet nature. The application of the quoted provision of Civil Code is often made more difficult by the complainant approaching the Defender's Office too late, at a time when the unlawful state of affairs occurring through obvious infringement of a 'quiet state of affairs' has already become the new 'quiet state of affairs', protected by section five of the Civil Code.

Application of section five of the Civil Code in connection with the applicable Administrative Procedural Code causes problems for offices of state administration. The offices assert protection within Administrative Procedures in accordance with the outdated Administrative Procedural Code. Should the administrative body accept that it is to assert protection to a factual and not to legal state of affairs, the relevant body faces the problem of the application of the decision being limited by outdated legal provisions from 1967. With reference to the above an opinion of the Constitutional Court expresses doubts about the acceptability of the concept of section five of the Civil Code that grants the administrative body the decision-making power in civil law matters. This opinion was expressed by the Plenum of the Constitutional Court on 13 May 2003.

Complaint Ref.: 1016/03/VOP/ZS

In administrative procedure on preliminary protection asserted by the body of state administration in accordance with section five of the Civil Code the City Authority was guilty of maladministration by refusing to assert protection to the last factual peaceful state of affairs stating that such a state represented an unlawful state of affairs. Such body, however, is obliged to protect the previous 'quiet state of affairs' regardless of whether such a state is lawful or not. The procedure in question does not entitle the administrative body to evaluate the question of lawful or unlawful nature of the 'quiet state of affairs' that has been infringed.

Complaint Ref.: 4329/2002/VOP/VBG

The Defender stated that while evaluating the proposals for asserting protection in accordance with section five of the Civil Code it is necessary to accept that a 'quiet state of affairs' is defined as the factual state; the given, permanent state of affairs. Such a state of affairs does not necessarily represent a 'quiet state of affairs' in terms of a calm and undisturbed state of affairs.

2.1.14 Report in the Area of Realisation of the Right to Employment, Activities of Labour Offices

In 2003, 21 complaints dealing with this issue were received.

The Defender inquired into complaints concerning the realisation of the right to employment. An increasing number of citizens address the Defender requesting inquiries into various types of decision of labour offices; mainly on exclusion from the jobseekers' register, on refusal of applications for unemployment benefit, but also inquiries into decisions on asserting preliminary consent to termination of employment in accordance with section 50 of the Labour Code affecting persons with limited ability to work. While conducting inquiries the Defender has often discovered that the procedures applied by

the offices are often formal; the decisions often lack sufficient justification, not containing an evaluation of the substance of the issue or convincing legal arguments. This often results in participants in such procedures expressing doubt with respect to the appropriate nature and justice of such decisions and often even in unnecessary application of other means of redress.

In 2003, the Defender also conducted inquiries into the complaints concerning inspection-related activities of labour offices. The offices are to undertake expert supervision over compliance with labour law and wage related regulations. The Defender repeatedly discovered inaccuracies and inefficiencies in procedures of such supervision conducted by labour offices. The Defender also conducted inquiries into issues of registration of the members of statutory bodies of companies and cooperatives, since he received a number of complaints related to this area. There was an increasing number of cases related to jobseekers who de iure are an executive of a company registered in the register of companies sometimes only because the company is at the time in bankruptcy proceedings and registered company executives cannot apply for deletion from the register of companies. Such persons, however, do not de facto carry out activities related to the status of company executive or at least the status does not provide them with means of earning a living.

In the Annual Reports for 2001 and 2002 the Defender pointed out a certain inconsistency and lack of comprehensiveness in the related legal provisions. That results in problems with application and inconsistencies in subsequent procedural practice applied by labour offices in the course of realization of legal issues of the citizens' right to employment. Such inconsistencies make the public doubt whether the principles of good administration are being respected. The Defender noted that the provisions governing the right to employment and related legal relations is affected by a number of amendments and requires comprehensive re-codification. More comments related to this issue are contained in Part III.

Complaint Ref.: 4651/2002/VOP/DL

The Defender investigated procedure applied by a labour office that retroactively terminated the registration of Mr. J. A. in the jobseekers register, since the very same person was in the register of companies as an Executive of a Limited Liability Company. At the same time the office requested the person to return the surplus unemployment benefit payments. In this particular case the Defender did not discover any violation of law, yet he noted that the office had violated the principles of good administration and the Defender proposed measures to be implemented to improve the situation, that would in compliance with new legal provisions of the Employment Law prevent cases of such maladministration in future.

2.1.15 Supervision over Self-Governing Units and the Right to Information

In 2003, 21 complaints dealing with this issue were received.

State Supervision over Regional Self-Governing Units

In 2003, 8 complaints dealing with this issue were received.

Supervision over the use of independent authority of the municipalities is carried out by regional offices through their delegated authority as well as by the Ministry of Interior. At the moment the final form of the appropriate legal provisions governing the area of such supervision is being sought. The Ministry is preparing the Draft Amendments of the Act on Municipalities that should leave supervision over the application of independent authority exclusively to the Ministry, while supervision over the delegated authority would be carried out by regional offices.

The greater part of the complaints brought evidence that the supervisory bodies carry out their supervisory activities in accordance with the valid legal provisions. However, inconsistencies were discovered in the activities of some regional offices when supervising directives of the municipalities. The regional offices often do not use the original versions of these directives and consider the letter of opinion issued by the mayor to be satisfactory without any further verification. In October 2003, the Department for Local Administration of the Ministry of Interior issued methodological guidelines governing the performance of supervision over the independent as well as the

delegated scope of authority. The guidelines govern the relations of the supervisory activities between the Ministry and the regional offices and stipulate that originals or officially verified copies of above-mentioned documentation are to be requested.

Complainants often address supervisory bodies through a document referred to as a complaint. Only in the course of procedure and mostly after they have been instructed by an officer dealing with complaint procedures do they address the relevant body with a request to undertake supervision. Current evidence based on inquiries proves that the transformation of the complaint procedure into the procedure of supervision does not always comply with valid legal provisions. The complaint file should always indicate when the complaint procedure was concluded and the remedial measures taken; that is when supervision commenced. The Defender encountered cases when the supervisory bodies, going beyond their remit, asserted methodological guidelines and advice to the municipalities, e.g. in the area of civil law issues the municipalities have had problems dealing with within their own resources. Such activities with an emphasis on methodological assistance can be welcome, provided the assistance provided is in accordance with valid legal provisions.

It should be said that the means of supervision over the scope of self-governing unit authority may lead to cancellation of a directive issued by municipality should the Act on Municipalities be violated, but should for example a contract be closed on the basis of such a cancelled directive issued by the municipality, this contract may not be proclaimed invalid. A solution may be provided by the power of the state prosecutor to issue a proposal to commence civil court procedure on invalidity of a contract on property transfer in cases where the contract was closed in non-compliance with provisions limiting the freedom of its participants (section 42 of Act No. 283/1993 on State Prosecution). Such a provision is for example represented by the Act on Municipalities stating the obligation on the side of the municipality to publicly announce the intention to sell immovable property at least 15 days prior to the decision of the relevant municipal authority by placing a public notice on the official notice board of the municipal office. The authority of the state prosecutor may be applied to, to protect the rights of the affected persons on the basis of a proposal of the supervisory body or the body providing methodological assistance to the municipalities operating outside their independent authority.

Complaint Ref.: 4569/2002/VOP/ZS

A district office was guilty of maladministration in the course of complaint procedure against the procedural practice a municipality applied when selling plots of land. Instances of maladministration were discovered both in the manner in which the inquiry into the complaint was conducted as well as in supervision over the municipality's independent scope of authority. When district offices ceased to function the matter was transferred to the regional office. The regional office also committed maladministration but later remedied this. The Defender found no maladministration in the conduct of the ministry.

Right to Information

In 2003, 13 complaints dealing with this issue were received.

Issues related to the citizens' right to access to information held by government bodies is intertwined with all areas of public law. It affects Construction Law, Finance Law, Environmental Law, areas of Administrative Punishment, Employment Law and many others. For that reason the valid legal provisions governing access to information are included in a number of laws while its general principles are contained in Act No. 106/1999 Coll. on Free Access to Information. Even though the Act on Free Access to Information has been in force for more than four years, practical application has been very difficult. The main problem is represented by the relation of the Act on Free Access to Information as a general regulation on granting information to other legal regulations. Officers of the bodies of state administration erroneously presume that should a certain law positively stipulate a right to information (for example the right to access to information contained in an administrative procedure file granted to the participants of the administrative procedure or to citizens associations is broadened) such stipulation means that right of any other persons to information contained in the mentioned file is absolutely excluded. Such an interpretation is erroneous.

In fact the right of the citizens to information in accordance with the Act on Free Access to Information is only limited should provisions of another law be stipulated in a negative manner (for example that certain procedure is not a public one or that a certain strictly defined area of information should not be granted). In all other cases the right to information is only broadened to a certain group of people and if other persons request information the information is to be granted. The only exceptions are stipulated by the Act on Free Access to Information itself (typically for example trade secrets or confidential matters). Concern that such an interpretation of the law may endanger the objective nature of administrative procedure is unfounded. Access to newly-arising information resulting from pending administrative procedures may in accordance with the Act on Free Access to Information be refused.

Complaint Ref.: 4682/2002/VOP/JC

The Complainant has on long-term basis been unable to apply her right to information in possession of an office in accordance with Act No. 123/1998 Coll. on Right to Information on the Environment. The inquiry conducted by the Defender proved maladministration. After the intervention of the Defender the requested information was provided and the office adopted measures to remedy the situation.

Complaint Ref.: 373/2003/VOP/KČ

The Public Defender conducted an inquiry into the practice of a regional office refusing to give the office's decision to the complainant on the grounds that the complainant was not a participant in the administrative procedure and therefore could not have access to the file. The Ministry of Culture confirmed the refusal. The case is related to the interpretation of provision section 23 of the Code of Administrative Procedures with regard to the group of persons who may be given information contained in an administrative file. The Defender did not agree with the practice of both institutions in question and issued critical remarks related to such practice. The Defender also sent his letter of opinion to the complainant who decided to take legal action concerning the administrative procedure.

Complaint Ref.: 2741/2003/VOP/PJ

The Defender opened an inquiry on his own initiative dealing with the frequent issue of provisions section 23 paragraph one of the Code of Administrative Procedures related to copying documentation contained in administrative files. The case was related to performance of state administration in telecommunications. On basis of agreement with the Defender the Chairman of the Czech Telecommunications Office decided to unify the practice of all of the related departments in the above matter.

2.1.16 Other Areas of State Administration and Areas of Activity

In 2003, 178 complaints dealing with this issue were received.

Protection of Economic Competition

In 2003, 8 complaints dealing with this issue were received.

Complaints concerned with economic competition were not received in large numbers in 2003, as in 2001 and 2002. Protection of economic competition in the Czech Republic is institutionally provided by the Office for the Protection of Economic Competition. The office is in charge of creating conditions supporting and protecting economic competition, carrying out supervision of the organising of public tenders as well as carrying out other areas governed by special laws.

There was only one complaint addressed to the Defender concerned with the supervision of the office over public tenders. The others were related to the protection of economic competition; mainly to the issue of misuse of dominant position by competitors in the area of press distribution.

Complaint Ref.: 2236/2003/VOP/AŽ

The complainant sent the Defender a complaint about insufficient investigation of his complaint related to possible infringement of economic competition through closure of

a prohibited agreement. After the opinion of Chairman of the Office for Protection of Economic Competition was submitted and the relevant file was received by the Defender and evaluated, the Defender noted that the Office had not violated valid legal regulations when conducting an inquiry into the complaint. On the basis of a proposal of the Defender an official of the Office carried out a further investigation of the complaint in September and October, 2003, and re-opened the inquiry.

Administration in the Area of Schooling

In 2003, 34 complaints dealing with this issue were received.

Experience of the Defender confirms that the current state of legislation governing schooling is not a very positive. The relevant legal provisions are scattered in a number of regulations of various legal force and very often those regulations are not even interconnected. Often the relevant regulation consists of provisions issued in the 1970s an 1980s. Therefore the provisions do not correspond with the current needs of society and with modern educational trends. The Defender would consider it beneficial if legal provisions governing schooling were organised within one legal system that would eliminate current problems of application and interpretation. As an example of inconsistency of current legal provisions the area of school catering can be mentioned. School catering is governed by the Act on Schools (effective since 1984), by the Act on State Administration (effective since 1990), by the Directive on Schooling Institutions (effective since 1978), by the Directive on Financial and Material Security of Secondary Specialized Vocational School Students, Students of Specialized Vocational Schools, Vocational Schools and Apprenticeship Schools (effective since 1991) and by the Directive on School Catering (effective since 1993).

Parents repeatedly complained to the Defender that the teachers do not make sufficient allowances for specific learning disabilities of students. The Defender sees as insufficient the current legal provisions governing the education and schooling of students with specific educational needs (students with a sense-related or mental disability, a speech disability, combined disabilities, autistic students, those with specific learning or behavioural dysfunctions and children with a health impediment due to long-term or chronic illness). Integrating these children, including the related financial security is an issue governed only by an internal regulation (directive) of the Ministry of Education, Youth and Sports. The area of right to education with regard to the above group of children should be governed by a law. The most suitable solution seems to be incorporation of the issue of the integration of disabled children into the draft Act on Schools currently in preparation.

The Defender was also repeatedly addressed by parents of pupils attending schools that were closed due to optimisation of the school network. It is obvious that optimisation is unavoidable with respect to declining student numbers. Currently there is no legal regulation governing the process of optimisation except for provisions of the Act on State Administration. Yet the Act on State Administration and Self Government grants the Ministry of Education, Youth and Sports the authority to govern the process of school cancellation by a directive. The process of cancellation of schools itself is with respect to the above-mentioned fact solely controlled by the institutions establishing the schools (mostly municipal and regional offices) and criteria to be applied to the practice of optimisation and in what way the public (parents of pupils respectively) are to participate in the optimisation process, are not defined.

The Defender was also addressed by several complaints through which citizens pointed out that the complaints related to school directors failed to initiate action on the side of the institutions establishing the schools (mostly municipalities). In this respect the Defender having conducted an inquiry addressed the institution of the Czech Schools Inspectorate and pointed out that this institution passes the above-mentioned complaints on to the school establishing institutions without considering such complaints to constitute a fact initiating inspection procedures.

Complaint Ref.: 2166/2003/VOP/JH

The Defender discovered that a secondary specialized school violated an internal regulation of the Ministry of Education, Youth and Sports, governing the integration of students with specific developmental learning disabilities into schools and schooling

institutions. The above regulation requires the persisting symptoms of the above-defined disabilities to be taken into consideration even when providing the affected student with secondary school education.

By means of a state inspection carried out by the Czech Schools Inspectorate the Defender discovered that there were no individual curriculum programs available for students with specific developmental learning disabilities. Existence of such special curriculum programs is requested by the Ministry of Education and represents an inseparable part of the process of integration of children with specific learning disabilities. Due to the above the headmaster of the relevant school ensured an individual curriculum programme was prepared, apologised to the complainant and offered her son the opportunity to re-sit the year.

Complaint Ref.: 310/2003/VOP/PKK

The Defender discovered that the Czech Schools Inspectorate applied unlawful procedure by passing the complaints related to the activities of directors of schools in the area of the educational process addressed to the above institution onto the institutions establishing the schools. The Czech Schools Inspectorate passed the complaints on without initiating an inspection on their basis in accordance with the Directive on the Czech Schools Inspectorate. Official schools inspectors and subsequently the Minister of Education, Youth and Sports accepted the opinion of the Defender and issued an instruction stipulating a new procedure to be followed when dealing with the above-mentioned complaints.

Supervision of the State over Financial Institutions, Price Control and Other Activities of the Ministry of Finance

In 2003, 58 complaints dealing with this issue were received.

Here the Defender encountered a number of complaints related mainly to the issue of state supervision conducted by the Ministry of Finance or by the Czech National Bank over Financial Institutions (mostly banks and pension funds). This area is characterised by the close interconnectivity of civil law and public law elements. The Defender can within his mandate deal exclusively with state supervisory bodies and not with the activity of the actual financial institutions (e.g. granting loans, bank transfers etc.).

In 2003 the Defender was addressed by many citizens complaining about state supervision over pension funds. With regard to this particular area the Defender opened an inquiry to find out the manner, the extent and the results of state supervision conducted by the Ministry of Finance over pension funds. The inquiry in the course of which both the Ministry of Finance as well as the Czech Securities Commission were requested to provide information and documentation, has not been concluded.

Undertaking further activities in this area the Defender also dealt with bank supervision conducted by the Czech National Bank in accordance with the Act on Banks. The Defender dealt with issues of reimbursement paid for the bankrupt bond traders that was to be provided by the Guarantee Fund of Securities Traders.

In 2003 the Defender was again addressed by citizens' complaints related to rent control, mostly with respect to the measures that the Defender had previously taken in this particular area (a proposal to the Constitutional Court to abolish the form of control imposed by part of the Rent Assessment issued by the Ministry of Finance without having the relevant legal framework, which the Constitutional Court ruled unconstitutional).

Even though at present the issue of rent is outside the mandate of the Public Defender of Rights, related complaints were responded to appropriately.

Complaint Ref.: 2322/2003/VOP/TČ

The Public Defender did not agree with the opinion expressed by the complainants that the Czech National Bank (CNB) conducted supervision over UNION bank in an insufficient manner. UNION bank a.s. closed its branches in February 2003 and subsequently its banking licence was cancelled. The Defender noted that with regard to the inspections carried out in UNION bank CNB adopted extensive measures and monitored the situation in the bank continuously. The Defender instructed the complainants on the purpose of bank supervision and informed them that he is not

authorised to ensure 100% reimbursement of their deposits by the Deposit Insurance Fund.

Complaint Ref.: 2082/2003/VOP/TČ

The Defender explained to the complainant that currently the control of rent is not governed by any special regulation. With respect to the change in the level of rent paid the general provisions of Act No. 526/1990 Coll. on Prices are applicable. In accordance with the above law the rent, including the relevant change in the amount of rent paid, is to be negotiated through agreement. The lessor may propose a change in the amount of rent by the lessee but consent of the lessee to such a change and subsequent agreement is required. Should the parties fail to reach agreement the matter may only be decided by a court.

Complaint Ref.: 5180/2002/VOP/TČ and a number of others

The Defender pointed out to Mrs. H. H. that only the previous form of such control was considered unconstitutional and that rent control as such is not considered unconstitutional. Rent control represents a significant interference with the position of both the flat owners and lessees and therefore requires broader public consensus and needs to be governed by a law and not by a directive or even by price control assessment.

Complaint Ref.: 345/2003/VOP/TČ

The Defender did not agree with the opinion of Mrs. K. L. who owns and leases residential property that rent control represents a violation of her basic human rights.

Other Areas of State Administration

In 2003, 78 complaints dealing with this issue were received.

A broad and varied spectrum of offices and institutions lies within the mandate of the Public Defender of Rights. We would like to mention areas that have not been mentioned so far but where the Defender dealt with related issues on the basis of the complaints received in the previous year. These include: procedures of registration of churches, public presentation of files of the former State Security Service, entrepreneurial licensing procedures for travel agencies, consular agendas of Czech embassies and representation offices abroad, etc. The Defender would like to present two cases to illustrate the nature of the above complaints. Both cases are in different ways related to the Ministry of Foreign Affairs. Most of the cases mentioned above are still pending and subject to investigation and inquiry.

Complaint Ref.: 3616/2002/VOP/TL/FG

The Defender found the Ministry of Foreign Affairs guilty of maladministration by violating regulations governing the area of confidential and secret matters. The Defender inquired into part of Government Directive No. 246/1998 Coll. stipulating lists of secret and confidential matters and found that part of the Directive violated Act No. 148/1998 Coll. on the Protection of Secret and Confidential Matters. The Defender is convinced that part of the directive violates the constitution of the Czech Republic. For this reason the Defender proposed that the Constitutional Court abolish this part of the Government Directive

Complaint Ref.: 28/2003/SZD/MV

An inquiry based on a complaint at the Diplomatic Representation Office in P. Subsequent higher verification of a marriage certificate proved that maladministration was not committed by the officers but was related to the wording of an internal regulation – a Circular of the Consular Department of the Ministry of Foreign Affairs (MFA) on Verification and Notarial Agenda. In accordance with section 22 of Public Defender of Rights Act the Defender recommended amendment of the relevant regulation. The MFA accepted the recommendation of the Defender.

2.2 Complaints outside the Mandate of the Public Defender of Rights

In 2003 the Defender received 1 982 complaints outside his mandate as defined by provisions section one and subsequent of Act No. 349/1999 Coll. on the Public Defender of Rights. The number of the complaints related to matters within the mandate of the Defender increases every year due to a wide information campaign and media coverage of certain results of the activities of the Public Defender of Rights. Complaints outside the mandate of the Defender therefore represent 44.8% of the total. The still relatively high number of complaints outside the mandate of the Defender receive equal attention to complaints within the Defender's mandate. That is due to alterations of the scope of the Defender's mandate over time. Another reason why the Defender responds to complaints outside his mandate is that the general principle applies that the Defender should contribute to and broaden the legal awareness of citizens who very often, due to a lack of awareness, do not apply all available tools to protect their rights as guaranteed by law.

For the reasons mentioned above, having received a complaint, the Defender investigates the stage of the matter reached by the complaint at the time in question since the extent and nature of the Defender's response depends closely on the stage of the development of the issue due the possible change or interconnectivity of the subject matter in the course of time. In such cases the Defender not only has to evaluate the substance and subject matter but also to foresee future legal developments. The Defender evaluates cases in which his mandate enables him to intervene, those where his intervention is legally not allowed, and those where in certain cases the subject matter after certain development might fall within his mandate.

Here we are mainly referring to complaints requesting the Defender to intervene in decisions of regional self-governing units resulting from their scope of authority. Such decisions, however, are outside the Defender's mandate.

With respect to his mandate, the Defender is not authorized to conduct an inquiry nor apply other legal tools; however, in the most serious cases he attempts to point out the errors committed to representatives or officers of the self-governing bodies and institutions and he attempts to recommend the right procedure.

The Defender also usually points out to the citizens the opportunity of supervision over the self-governing body by a superior body of public administration. The activities of such a superior body of public administration are within the mandate of the Defender.

Should supervisory activities fail as such or fail to meet the expectations of the citizens, they are entitled to once again address the Defender and in such cases the Defender is authorised to intervene.

The above-described activities of the Defender are important even if the decision resulting from delegated authority is directly followed by a decision resulting from independent scope of authority.

For example the preparation of the area plan is conducted under delegated scope of authority, while the approval of the area plan is conducted under independent scope of authority. The subsequent area planning and building procedures represent administrative procedures with decision-making conducted under delegated authority but all of these are closely intertwined.

In some cases the Defender trying to provide assistance in matters that are outside his mandate agreed to act as a mediator. One of the cases when the Defender intervened by granting recommendations and acting as a mediator related to regional self-governing unit was the case of reimbursement of the amount represented by the property transfer tax return paid by the purchaser to the municipality due to the transfer of flat ownership from the ownership of municipality to the ownership of the purchaser. Another similar case was a case when the municipality was in the position of an entity injured in the course of a criminal act.

In 2003 there were cases where the Defender was addressed by citizens or even by lawyers with complaints de facto representing a means of redress against a court or other type of decision.

In such cases the Defender is obliged to immediately inform the complainant and instruct them on the correct procedure to be followed so that the due term does not expire. To ensure the Defender is able to fully fulfil this obligation, organisational

measures had to be taken to immediately assess all of the complaints received by the Defender.

In 2003 there was a significant increase in the number of complaints received where citizens themselves admitted they were aware that the legal provisions did not provide the Defender with a mandate to intervene in the subject matter of the complaint. Still those citizens chose to address the Defender as their so-called "last hope" and request advice, not knowing how and where otherwise to protect their rights.

Mostly they appeal to the Defender's experience and professional expertise. Even though the Defender notes that the subject matter in question does not lie within his mandate and he does not open an inquiry, the actual interest in the cause expressed by the Defender leads to the complainant being able to gain a better insight into the matter and often being able to adopt a different approach.

In this part of the Annual Report the Defender submits several typical and especially interesting complaints that illustrate the points made above, even though at the time the complaints were received, the subject matter or the institutions affected by the complaints were outside the mandate of the Defender.

2.2.1 Civil Law Matters

In 2003, 991 complaints dealing with this issue were received.

The most common complaints related to the civil law matters were those of citizens, citizens' association, entrepreneurs, and in certain cases even municipalities and other institutions, requesting the Defender to provide assistance or direct intervention in situations in which the citizens themselves were unable to take appropriate steps, when they disagreed with a decision of court or other institution, or they complained about the nature of distraints and about the conduct of bailiffs and requested that the Defender takes action to remedy the situation.

In some cases the complaints are an attempt to solve disputes between relatives, inheritance disputes and disputes resulting from deeds of gift.

Property and other Civil Law Issues and Resulting Law Suits

In 2003, 695 complaints dealing with this issue were received.

In most such cases the citizens request investigation of court decisions and they see the position of the Defender as the last instance of assistance, a so called "pseudo-appeal" body they appeal to against an "unjust decision". The complaints often contain a request to intervene, or request or even grant the Defender the power to represent the complainant in court. They also contain complaints about the manner in which a lawsuit was conducted or in which the evidence was evaluated by a judge. Citizens complain about allegedly insufficient or insufficiently thorough or in some other way erroneous procedure, including the exclusion of evidence, etc.

The Defender is often requested to evaluate the position or "the chance" of the participant in a dispute. He is also requested to provide advice or comments on further steps to be taken (a so-called legal opinion). Some complaints even contain a request to punish or take disciplinary action against certain judges, or a request to transfer the matter to another judge due to lack of trust of the judge in charge. The complaints often protest against action taken by bailiffs, the manner in which distraints are conducted and the extent of property subject to distraint.

In cases where the complaint lies outside mandate of the Defender, and where the Defender has at his disposal sufficient information, he provides general advice:

For example where a relevant complaint can be submitted, if it is still possible in the case in question, what other procedural conditions are stipulated for regular or extraordinary means of redress to be applied, etc.

Complaint Ref.: 4171/2003/VOP/TČ

The Defender was asked to provide advice to a complainant who encountered complications when attempting to withdraw from an agreement closed between the complainant as owner of a property and a real-estate agent in order to sell the relevant

property. Even after the property broker received the withdrawal from an agreement he continued to act as mediator and in spite of the absence of consent from the property owner continued to offer the property in question for sale. The Defender was not in a position to intervene but provided the complainant with advice as to what steps can be taken in order to protect his rights.

Complaint Ref.: 898/2003/VOP/DM

The Defender closed the complaint as inadmissible with respect to his legal authority but still advised the complainant what steps to take to protect her rights in the course of procedure on restricting the complainant's capacity to undertake legal acts with respect to the specific nature of such procedure in accordance with the Code of Civil Court Procedure.

Complaint Ref.: 529/2003/VOP/DM

Even though the Defender had to instruct the complainant that her complaint related to a dispute with a financial institution outside his mandate, she was advised to contact the newly-established institution of the financial arbiter.

Family Law Matters

In 2003, 71 complaints dealing with this issue were received.

In the area of family law the Defender mostly encountered the following issues: divorce procedure and settlement of joint property of spouses, disputes on the extent of alimony, failure to pay alimony and the subsequent oppressive financial situation.

Complaint Ref.: 3270/2003/VOP/AŽ

Mrs. D. N. complained to the Defender about allegedly bad laws resulting in bad and unjust court decisions, since she is unable to take up employment as she cares for a sick child. She complained of the oppressive social situation affecting her child as well as herself. The father of the child avoids payment of child maintenance; as an entrepreneur he claimed to be making a loss, and the maintenance payments were paid in irregularly.

Complaint Ref.: 2371/2003/VOP/PR

Mrs. D. complained to the Defender requesting assistance. She stated that she had entered into marriage with an Italian who had left her in March 2000 and is currently living in Italy. Mrs. D. is disabled and receives a disability pension in the amount of 3,317 crowns. She also receives housing allowance of 870 crowns. The overall amount she receives is insufficient to provide for housing, food, medicine, etc. She therefore filed a suit with the District Court in T. in the matter of imposition of maintenance paid to a separated wife. The procedure was suspended due to the lack of authority of the Czech Court. She also requested assistance from the Italian Embassy but failed to achieve any results.

Labour Law Matters

In 2003, 93 complaints dealing with this issue were received.

The Defender was in 2003 addressed by citizens who were very often in an oppressive social and human situation. Citizens in their complaints requested protection against the conduct of employers. The complaints covered mainly the following areas:

- *repeated conclusion of temporary employment contracts (so called chain employment),*
- *labour relationships not based on an employment contract, so called "black employees", or various forms of outsourcing,*
- *failure to pay the total wages in a legally acceptable manner (officially only the minimal wage is paid and the rest of the amount is paid unofficially, including failure to pay social security contributions,*
- *and failure to fulfil obligations related to the liability of the employer for industrial injuries, industrial illness and mainly failure to pay relevant damages.*

Even though very often citizens encounter such a situation due to their lack of legal knowledge and mainly due to their inactivity or failure to act or under pressure resulting from their fear of loss of employment, it is definitely the task of the state to create such an environment as to make possible enforcement of the law. Lack of supervision and inspection of law abidance leads to a loss of respect for the law. Generally law that cannot be enforced becomes ignored. In accordance with section eight of Act No. 9/1991 Coll. on Employment and on Authority of bodies in the Area of Employment, state expert supervision over compliance with labour law and wage law regulations is to be conducted by labour offices.

Labour offices therefore represent bodies of state administration in the area of employment and as mentioned before they are also bodies of state control. Their activity in the area of supervision is therefore within the mandate of the Defender and his experience in the above area is described in the previous chapter of this report.

Complaint Ref.: 5821/2001/VOP/DH

Due to a lack of mandate in the area of labour law matters the Defender failed to remedy dismissal from work considered unfair by the complainant. Since at the time of submission of the complaint the three months period in which to challenge the validity of the notice on termination of employment had expired, there was no action to be taken by the complainant himself. The Defender invited the complainant to initiate inspection at the relevant labour office and instructed the complainant on action to be taken in future to enable the complainant to protect his rights against indecent procedures applied by employers.

Complaint Ref.: 930/2003/VOP/DH

The Defender received a complaint of a systemic nature. The conduct of the employer represented by one of the organisational branches of state was felt to be as discriminatory by the complainant. The Defender dismissed the complaint as inadmissible but explained to the complainant that there were differences in cogent legal regulations governing the reimbursement of employees in non-entrepreneurial areas and much less restrictive legal provisions governing the reimbursement of employees in entrepreneurial area of activities. Such provisions represented a step of core importance on the side of legislator in 1992 as part of the transformation process leading to a free market economy. In such an environment it is every citizen's free choice to consider with whom and if at all they enter into a labour contract. Entering into labour contract on the basis of free will suggests the citizen's acceptance of the given manner of reimbursement for work.

Complaint Ref.: 2413/2003/VOP/PK and a number of others

The Defender is often addressed by citizens requesting his assistance or advice with regard to the payment of reimbursement for lost wages after return from sick leave. The question presented in the above complaints is related to whether the insurance company or the employer is entitled to apply the minimum wage when calculating the amount for persons listed in the register of jobseekers. The complaints related to the above matter do not lie within the mandate of the Defender since they represent private law issues and can only be decided by a court. The serious nature of the issue as well as the complicated social situation of the complainants and last but not least the high number of such complaints prompted the Defender to emphasize these cases in this report. There is more on this issue in Part III.

Complaint Ref.: 4844/2002/VOP/DU

The Defender was addressed by a complainant requesting further inquiry into procedures applied by his superiors in the Prison Service. The complaint was about the contents of an evaluation report containing allegedly untrue information entered into the form by the complainant's superior, which could harm the complainant during professional evaluation. The complainant did not file a complaint directly with Prison Service out of concern that this would do him even more harm. He requested an investigation since he considers the above procedure to represent a violation of his right to appeal and right to evaluation of his case by an impartial supervisory body.

2.2.2 Housing and Related Legal Issues

In 2003, 243 complaints dealing with this issue were received.

Yet again in 2003 there were complaints related to issues of housing, mainly concerning rented flats. The complainants included both municipalities and owners of property in the role of lessors, as well as lessees. Complaint mainly covered the area of legal relationships and disputes arising from mutual obligations stipulated by law or resulting from contractual provisions or the actual state of affairs. There were many complaints dealing with the subject of notice of termination of leases, eviction, replacement housing, etc. In relation to the speedy privatisation of available housing many complaints received in 2003 covered the subject of associations of residential unit owners and disputes with housing cooperatives.

Housing Policy of Municipalities

In 2003, 157 complaints dealing with this issue were received.

Complaints related to the area of housing arise from the limited housing available and from the different attitudes adopted by municipalities and city authorities towards housing related issues. The securing of housing is at the same time and mainly in cases of socially disadvantaged citizens closely related to the ability to hold ones head up within society and avoid dependence on welfare payments. Municipalities therefore have to respond to a complex and difficult situation where the limited housing available does not suffice and they cannot satisfy the demand for council housing. A number of municipalities attempt to solve the situation and amend the procedure of council housing allocation by adopting so called principles or regulations. In practice unfortunately cases arise when such regulations include discriminatory measures or are of discriminatory nature. This applies either to the conclusion of a lease agreement (e.g. a lease agreement shall not be concluded with person who has in the past shared housing with non-payer of rent, even if at the time the person was a minor) or to the actual acceptance of an application for council housing.

The complexity of this issue becomes even worse since the housing available to municipalities is being reduced through ever more housing being privatised. Municipalities therefore own an increasingly smaller proportion of flats.

The Public Defender of Rights, drawing on his experience, has repeatedly noted that the satisfaction of the housing needs of socially disadvantaged citizens is to a large extent affected by the non-existence of a concept of welfare housing. This issue by its serious nature goes beyond the housing policy of municipalities and should therefore be resolved at the level of state housing policy, mainly through a clear definition of relevant concept and its legislative framework. More on this issue is mentioned in Part III.

Complaint Ref.: 2373/2003/VOP/MKZ

Mrs. M. M. requested assistance in the matter of failure to receive a council flat from the city. Since the matter itself lies within the authority of the city the Defender was unable to assist the complainant other than by providing advice. Working with the mayor the, Defender helped to remove the legal maladministration in the procedure of the city.

Housing Cooperatives and Associations of Residential Unit Owners

In 2003, 50 complaints dealing with this issue were received.

In 2003 the Defender received a number of complaints from tenants of flats in housing cooperatives and by owners of residential units requesting assistance when solving issues related to membership of a housing cooperative or membership of an association of residential unit owners. Even though the area in question does not fall within the Defender's mandate, he provided an explanation and general description of legal provisions governing the relevant area.

Members of housing cooperatives most often disagree with the approval procedure for repairs and investment, and often pointed out failure of the association to fulfil obligations. Owners of residential units repeatedly inveighed against the interpretation of the term "common areas of the building" in accordance with the Act on Flat Ownership

and protested against the means of participating in building repairs. With respect to the above the Defender decided to approach the Ministry for Regional Development in its role in supervision over the Act on Flat Ownership, and the Ministry of Finance.

The Defender found out that amendments to the Act on Flat Ownership, supported as by the Ministry of Finance had been in preparation but further work on these had been suspended.

Amendments were supposed to include amendments of provisions section 15 of the Act on Flat Ownership within which the Ministry of Finance proposed including further alternatives for participation of owners of residential units in covering costs related to building maintenance. The Defender is repeatedly addressed with respect to interpretation and practical application of contentious provisions of the Act on Flat Ownership. He therefore requested the Minister for Regional Development to provide a report on whether the Ministry will solve the issue on the level of legislation in such a way that the obtained information might contribute to a solution of the matter.

Complaint Ref.: 5106/2002/VOP/TČ

The complainants addressed the Defender since they presumed that they were illegally expelled from a housing cooperative. Even though the complaint was outside the mandate of the Defender, the complainants were instructed on possible defence applicable in cases of expulsion from a housing cooperative.

Complaint Ref.: 880/2003/VOP/PR

The Defender was unable to resolve due to lack of mandate the dispute between Mr. J. D. and the association of owners of which Mr. J. D. is a member. The subject of dispute was the extent of individual members' share of costs for the maintenance of a common building. The Defender explained to Mr. J. D. the valid legal provisions and mainly the possibility available to all owners to reach such an agreement as will in a just way enable them to account for the specific nature of individual property within joint ownership.

Calculation of Power and Water Supply Split Costs Among Final Consumers

In 2003, 36 complaints dealing with this issue were received.

The Defender encountered many complaints about the calculation of heating and hot water supply split cost among the final consumers. Having evaluated the authority of the State Power Inspectorate, the Defender found that no official body existed entitled to investigate the appropriate nature of split cost calculation or impose sanctions on a those violating legal provisions. The injured parties therefore have to seek fulfilment of their claims resulting from violation of regulations by bringing legal action. The complainants were mostly against:

- *inaccuracy in cost settlement when in their opinion the split cost calculation did not comply with regulations governed by legal provisions,*
- *insufficient settlement (settlement lacked information that such settlement is required to include in accordance with governing legal provisions; therefore an informal "check" could not be carried out) and*
- *delays in cost settlement (should a review of cost settlement be required such a delay also often results in expiration of the due date for claiming repayment of a potential overcharge).*

Some the complaints dealt with the governing legal provisions themselves with respect to the regulations applicable for cost splitting. Those with extremely low consumption frequently disagree with the application of (higher) basic element of costs that in their case might account for a significant part of their service cost for the service in question. With respect to the nature of relationships among the lessees and lessors (owners of buildings, or persons authorised to carry out the calculation of split cost) the complainants were informed of the Defender's lack of a mandate in the relevant area and advised to take legal action since only a court is authorised to hear and decide disputes resulting from such civil law relationships.

The Defender had to resolve the issue of whether the State Power Inspectorate is authorised to conduct supervision over compliance with the directive. The above

institution is authorised to inspect among other related matters compliance with the Act on Power (Directive No. 372/2001 Coll.) and the Act on Prices (price provisions in power).

With respect to the above the Defender stated that the directive may not be considered to represent price provisions (it does not control the price in terms of its stipulation or direct regulation of price, it only amends the procedure in which the cost within one accounting unit is to be split among individual consumers). Although the Directive was issued to enable execution of the relevant provisions of the Act on Power it cannot be stated that the wording of the Act on Power directly affects the relationships of consumers and individual final consumers when splitting the cost among final consumers. The Defender found that the State Power Inspectorate, when requested to review split cost calculation responded by explaining its lack of power to do so. However, it provided the complainant with letter of opinion stating its standpoint, if being granted the needed to deal with the case. The Ministry for Regional Development follows the same procedure.

Complaints Ref.: 1425, 1524, 1649, 4098/2003/VOP/BK and others

The complainants requested that the Defender "verify the validity of continuous increases in hot water cost". The Complainant also requested action be taken against State Power Inspectorate and its Financial Headquarters due to its inactivity. The Defender failed to find maladministration in procedures applied by this institution when dealing with the complainant. The Defender instructed the complainant on valid legal provisions governing the area of split cost calculation among final consumers and clarified the reason for the extremely high cost of hot water.

2.2.3 Criminal Proceedings and Activities of Bodies Active in Criminal Proceedings

In 2003, 436 complaints dealing with this issue were received.

As in 2002, the Defender was often addressed with complaints about criminal proceedings or directly about a specific body active in criminal proceedings. The above the complaints relate to pending proceedings, as well as to proceedings with existing valid decisions and often even to cases where the decision is being or has been executed. The content of the complaints varies from requests to review past events to requests to ensure justice in future proceedings. The Defender is asked to be present at the proceedings or to represent persons at proceedings. The Defender is addressed by persons of various positions within proceedings and often even by persons who are not participants in proceedings. Even though the Defender treats such the complaints as inadmissible he briefly instructs the complainants with regard to their obligations and rights, the authority of the institutions complained about, and procedural means of redress.

Complaint Ref.: 78/2003/VOP/DU

The Defender was addressed by the complainant with a request for assistance. Her husband had been delivered by police to serve his prison sentence, even though in her opinion there were no reasons for such a course of action. Police presented her husband with a legal warrant issued by the Chairperson of the Senate of the District Court. The Complainant complained about the court warrant stating that within the period of time she had know her husband he had not committed any criminal act. She therefore presumed that her husband was imprisoned illegally.

Complaint Ref.: 2724/2003/VOP/VK

The Defender initiated a review of imprisonment conditions of Mr. P. P. serving his prison sentence in the Russian Federation. The review was conducted by the commissioner for human rights who at the same time inspected the procedure of relevant bodies related to the transfer of a sentenced person to serve his prison sentence in the Czech Republic.

Complaint Ref.: 4312/2003/VOP/MON

The Defender was addressed with a complaint about procedure applied by a judge who designated counsel for the complainant's daughter accused of a criminal act since

she was a juvenile. As a juvenile she fulfilled the conditions of compulsory defence (section 36, Paragraph 1, letter c) of the Criminal Code. The Complainant objected and stated that his daughter's right to defence was violated.

2.2.4 Independent Authority of Regional Self-Governing Units

In 2003, 113 complaints dealing with this issue were received.

The area of the independent authority of regional self-governing units lies outside the mandate of the Public Defender of Rights. In 2003 a number of people complained to the Defender about procedure applied by regional self-governing units, mostly concerning municipalities. The complaints contained requests for assistance or advice in the area of housing policy of municipalities. Given the significance of the housing policy of municipalities and related issues, it has an independent chapter in this part of the report.

Many complaints were received concerning the introduction of fees for communal waste management. This area lies only partially within the mandate of the Defender. Local legal provisions that stipulate the fee are adopted as a generally binding directive while the fee-related procedure lies within the independent authority of the municipality. Most municipalities have introduced a local fee covering communal waste management. Some complaints clearly indicating failure to understand the legal provisions governing the area of communal waste management incorporated in the Act on Waste. There were also complaints through which citizens claimed relief from obligations resulting from the generally binding directive. In some complaints, however, the complainants informed the Defender about unlawful procedure followed by municipalities.

Independent Authority of Municipalities and Cities – in General

Complaint Ref.: 1854/2003/VOP/ZS

A representative on the city authority objected to unlawful refusal to provide information by the mayor and the city council. The Defender had no means of direct interference due to lack of his mandate in this issue but he provided the complainant with his opinion on the general provisions of position and scope of the activities of the city council and city authority and the members of the city authority.

Complaint Ref.: 2072/2003/VOP/MH

The Defender was unable to intervene due to lack of his mandate in the area of procedures applied by bodies with independent scope of authority. The complainant requested exhumation of her brother-in-law, buried in their family tomb by the complainant's sister, even though she did not have valid agreement on renting of the tomb premises. The Defender provided the complainant with assistance since on the basis of his intervention the municipality itself oversaw remedy of the situation.

Complaint Ref.: 3455/2003/VOP/KČ

The Complainant pointed out differences in prices of season tickets applied by the Transport Company of city P. The prices varied depending on whether the citizen supplied his personal data and consented to processing such data or not. The Defender indicated possible ways to handle the matter. The Defender also instructed the complainant on the authority of the Office for the Protection of Personal Data and Office for the Protection of Economic Competition.

Fees Charged for Removal and Disposal of Communal Waste

Complaint Ref.: 2833/2003/VOP/ZS

The owners of a recreational cottage addressed the Defender requesting his interference against a municipality that was applying unjust and discriminatory procedures to owners of recreational cottages. The residents of the municipality were charged a stable fee of 100 crowns per year and the owners of recreational cottages were requested to pay an increased fee of 300 crowns per a year. The Defender provided the complainants with an explanation of generally valid provisions governing the area of communal waste management fees and advised them what action to take to ensure protection of their rights.

Complaint Ref.: 2133/2003/VOP/ZS

The Defender was addressed by resident of a municipality that requested its residents to pay not only fees covering local waste management but also fees covering management of so called excessive waste. The Defender expressed his opinion that such action might represent avoidance of provisions resulting from the Act on Regional Fees stipulating the maximum annual fee to be paid.

2.2.5 Bankruptcy Proceedings

In 2003, 51 complaints dealing with this issue were received.

The Defender is constantly addressed by citizens expressing their disagreement with the length of bankruptcy proceedings as well as with the activities of the administrator of bankruptcy assets. The Defender attempts to clarify to the complainants the basic principles of bankruptcy proceedings and provide general advice on possible further action to be taken.

Complaint Ref.: 3699/2003/VOP/TČ

The Defender received a complaint requesting review of bankruptcy proceedings of a bankrupt pension fund. At the beginning of 2001 the pension fund in question was declared bankrupt and at the same time an administrator of bankruptcy assets was appointed. At the end of 2003 there was no information available as to when the relevant bankruptcy proceedings would be concluded and if the complainant's pending claim would be settled.

2.2.6 Other Areas Outside the Mandate of the Public Defender of Rights

In 2003, 238 complaints dealing with this issue were received.

Stewardship of State Property

In 2003, 48 complaints dealing with this issue were received.

Complaints received by the Defender last year requesting his assistance also included those related to state property. The Defender was often requested to provide advice to people interested in acquisition of farming land available for sale in accordance with Act No. 95/1999 Coll. on Conditions of Transfer of State-Owned Farming and Forest Plots of Land into Ownership of Other Persons (hereinafter "the Act on Sale of Land"). Persons holding current long-term lease agreements pointed out their disadvantaged position resulting from the Act on Sale of Land. The above provisions guaranteed preferential treatment of so-called entitled persons (those with a valid restitution claim) over the lessees of land.

In 2003 the Defender was again addressed by restitution claim holders whose restitution claims resulting from Act No. 229/1991 Coll. on Ownership of Land and Other Farming Property (hereinafter "the Act on Land") had not yet been settled. The complainants objected that should they be interested in acquisition of a specific substitute plot of land offered for sale by the Land Fund in accordance with the Act on Sale of Land they are still obliged to participate in bidding proceedings including quotation of the price offered. In accordance with the Act on Land the owners of restitution claims are entitled to preferential treatment, however, they complained about the obligation to participate in the bidding procedure that is stipulated by the relevant law.

Another area of the complaints is related to Sport's Associations and Clubs requesting settlement of their lawful claim for free transfer of land or at least lease of land owned by the state. The land in question has been used for sports activities since the forties of the last century. The organisations in question often do not possess the relevant documentation (e.g. agreement on establishment of right of permanent usage) and therefore cannot provide relevant evidence to support their claims. The above the complaints were against procedures applied by the Czech Republic through its Office of the Government Representation in Property Affairs.

Complaint Ref.: 3845/2003/VOP/MKZ

The Defender was addressed by A. F. complaining about failure to settle an application for purchase of land owned by the Czech Republic. The land in question was under the administration of the Land Fund and was directly adjacent to plots of land in the ownership of A. F. A. F. was obliged to participate in public bidding proceedings. Another person interested in acquisition of the land in question and in possession of an unsettled restitution claim related directly to the land register area in question or to an adjacent land register area participated in the bidding and the application of A. F. was unsuccessful.

Claim Ref.: 3895/2003/VOP/ZS

There was a complaint against procedures applied by the Land Fund and requested assistance with solution of the of payment of a delay interest charge arising from delayed payment of the purchase price for a house purchased by the complainant from the state. The Defender recommended that the complainant file an application with the Land Fund for discharge from debt.

Complaint Ref.: 3717/2003/VOP/MKZ

The Defender received a complaint from an executive of Sport's Association related to ownership rights to plots of land on which a football ground, including changing rooms, stands, and where a dance floor is located. The land has been used by the association since 1933. Office for Representation of the State in Matters of Property did not settle the application for free transfer of land filed by the association since the right of stewardship over the land in question was in possession of a state cooperative farm that was at the relevant time undergoing bankruptcy proceedings.

Professional Associations, Other Associations and Activities of Other Institutions Outside the Mandate of the Public Defender of Rights

In 2003, 190 complaints dealing with this issue were received.

In 2003 the Defender of Rights encountered complaints against subjects and institutions that in many cases and in a significant way influence the development of the legal certainties of citizens and in some cases even issue decisions on claims or interests of persons. The institutions in question often by nature do not qualify as administrative institutions or when undertaking certain actions do not represent an administrative institution even though otherwise they are administrative institutions, or they do not perform the activities of state administration. In most cases this is immediately obvious and in some legal analysis needed to decide the matters. The above-described subjects lie outside the mandate of the Defender in accordance with the Public Defender of Rights Act, however, as mentioned below, informal or mediation activities of the Defender often have a beneficial impact.

Complaint Ref.: 971/2003/VOP/EH

The Complainant addressed the Defender complaining about inactivity of the Czech Medical Chamber. The Defender decided the complaint was inadmissible but at the same time recommended to the complainant possible further action to be taken to protect his interests.

Complaint Ref.: 506/2003/VOP/EH

The Defender was addressed by a complainant who is a member of the Czech Association of Breeders of Carrier Pigeons, complaining against procedures applied by the above Association. The complaint was inadmissible due to the lack of mandate of the Defender, but the complainant was instructed on possible means of redress.

Complaint Ref.: 3430/2003/VOP/DM

The Defender was addressed with a complaint against the conduct of a solicitor. The complainant expressed dissatisfaction with the services of the solicitor. Other complainants were dissatisfied with charges for the services of solicitors. Complainants also directly or indirectly accused their solicitor of cooperation with the opposing party.

Complaint Ref.: 5372/2002/VOP/DH

A Local Trade Union Organisation addressed the Defender complaining about two representatives of two other trade union organisations active at the same employer. They also complained about the management of the State Trade Union Association. They expressed their opinion that the above institutions violated in a fundamental way the right to free assembly guaranteed by the Protocol of Fundamental Human Rights. One of the arguments listed by the complainants referred to their newly-established trade union organisation not being accepted. They also filed a complaint at the relevant ministerial department acting as the institution supervising the employer in question. The department refused to resolve the problem by dismissing the management of the above employer. They requested that the Defender remedy the situation. The Defender assessed the complaint and due to lack of mandate did not intervene with the relationships within the trade union organisations or with the conduct of the relevant department since the issue was unrelated to the activities of state administration.

Complaint Ref.: 2431/2003/VOP/ZS

The Complainant requested that the Defender evaluate the claim for damages from the Czech-German Fund for the Future which failed to settle her claim respect to her participation in a forced labour scheme in her residential area. She complained that other applicants to whom the same conditions were applicable received their damages. The appeal committee confirmed the rejection of the claim reasoning that German law was not violated. The Defender advised the complainant on further action to be taken and the complainant's claim was settled.

III. GENERAL OBSERVATIONS

A general overview of important issues acquired by the Public Defender of Rights through his activities and familiarizing Parliament with the results of the activities of the Defender is one of the most important tasks of the Defender incorporated in the Annual Report on the Defender's activities. Pointing out shortcomings in legal regulations, lack of their interconnectivity or uncertainties affecting their application or interpretation provides feedback to the legislature and the executive. In the commentary related to the Law on the Public Defender of Rights the Defender is referred to as the Parliament's "extended arm". He represents a specific body of parliamentary control and has an irreplaceable role in monitoring of societal climate, mainly in areas of public dissatisfaction. The roles of the Defender include continuous identification of such areas but also definition of the main causes of negative factors and submission of proposals for remedy. The Role of the Defender and its results could for a legislator willing and able to listen represent a source of information beneficial to the voting public.

This part of the report presents the causes of problems which the Defender himself is unable to remedy. This is also done in order to fulfil duties representing the main difference between the Defender and other institutions providing citizens with advice related to protection of their rights.

In the introductory chapters of this part the Public Defender of Rights provides information on developments in resolving problems pointed out in annual reports from previous years. Some have in the meantime been successfully resolved, while others have to be focused on as areas in which progress is very slow. There have also been cases in which the relevant bodies failed to respond to the Defender's comments.

1. Observations based on the 2001 Annual Report – Developments

The Chamber of Deputies of Parliament accepted the Annual Report on the Activities of the Public Defender of Rights by resolution No. 2291 of May 3rd, 2002, and recommended that the Government discuss the report and consider application of its proposals.

At the end of 2003 the individual areas of problems contained in 2001 Report and again referred to in the 2002 Report, underwent the following developments:

1.1 Position and Activities of the Land Fund

In the 2001 Annual Report and again in 2002 observations were made on the position and activities of the Land Fund in the framework of realization of the transfer of substitute plots of land to the entitled persons in accordance with Act No. 229/1991 Coll. on Land. Claims arise to entitled persons to free transfer of substitute plots of land in exchange for the plots of land that such persons were unable to receive in restitution. The report noted that existing legal provisions and even more the situation in existing practice do not allow speedy and effective solution of outstanding claims for provision of substitute plots of land to the entitled persons whose restitution claims had been confirmed by a decision of the Land Settlement Office but where the original plots of land have not been transferred to the possession of the above persons.

The Public Defender of Rights supported the notion that existing legal provisions should be amended in order to make clear the mechanism of provision of substitute plots of land. In such a way realization of the prior right of the entitled persons as original owners to receive substitute plots of land should be ensured. In the opinion of the Defender the only just remedy for the unjust treatment by the state of the entitled persons is preferential fulfilment of claims of the entitled persons over fulfilment of claims of other persons interested in acquisition of state agricultural land.

Since submission of the 2002 Annual Report on Activities of the Public Defender of Rights the relevant legal provisions have been amended. Amendment of Act No. 95/1999 Coll. on Sale of Land represented by Act No. 253/2003 Coll., effective since August 6, 2003, defined new wording of section seven, paragraph five amending the right of the preferential treatment of the person interested in acquisition of land – the entitled person

– over other persons. The newly stipulated criteria of preferential treatment of the entitled persons in possession of a claim to a certain area where plots of land are to be sold represents a positive change in the process of settlement of claims of entitled persons. This act amended Act No. 229/1991 Coll. on Land by stipulating a period of two years within which the entitled person has the right to transfer of land owned by the state. Should the claim be raised or the decision of the Land Settlement Office come into force prior to this amendment entering into force, the due term for the transfer of plots of land expires on 31 December, 2005. The objective of the above amendments is to as soon as possible conclude the process of restitution claim settlement. The amendment of the relevant legal provisions complies with the Defender's opinion that restitution claim settlement is to be speeded up. The Defender noted that in 2003 the number of claims requesting assistance with the matter of transfer of substitute plots of land decreased in comparison with previous years.

Activities of the Land Fund remain outside the mandate of the Public Defender of Rights as well as outside the mandate of other inspection mechanisms.

1.2 Procedures of Cooperative Farms Concerning Settlement of Property Shares of the Entitled Persons

As in the Annual Reports for 2001 and 2002, the Public Defender of Rights must state that currently there is no legal regulation governing the settlement of property shares of entitled persons. That means their position with regard to cooperative farms tends to deteriorate with the length of time the issue has been affected by a lack of sufficient legal regulation. The cases mentioned in the Special Part of this report provide clear evidence to this effect.

In accordance with the Act No. 42/1992 Coll. on Amendments of Property Relations and Property Claim Settlement within Cooperative Farms claims arose of the entitled persons against existing agricultural companies represented mostly by cooperative farms that have never had and do not have financial means at their disposal to settle the relevant property shares. In 1992 entitled persons acquired "hope" based on the "right" resulting from a law that, however, cannot be fulfilled. It is confronted with the reality of a lack of means on part of the entity defined by the law as carrying the financial obligation.

The government states in its statement of policy that it will conclude the restitution and transformation process in agriculture. However, the current legal situation does not indicate in any significant way that this is to be realized, unless it is to be interpreted as the necessity for the entitled persons to await results of the bankruptcy proceedings and liquidation cooperative farms are currently undergoing.

The transformation process has therefore not been concluded at all and the will to solve the legitimate claims of the entitled persons on the part of the cooperative farms is minimal. If the legislature decided to grant the entitled persons the right to settlement without having sufficiently ensured the conditions for such a right to be realized, the Public Defender of Rights considers it to be a priority for the legislature to respond speedily to this situation.

1.3 The Safeguarding of the Execution of Deportation and the Legal Institute of Deportation Custody

With regard to the unsatisfactory situation governing deportation custody and the execution of deportation sentences, commented on the reports from 2001 and 2002, the Public Defender of Rights chose to exercise his right to recommend the alteration of legal regulations in the sense of the provisions of section 22, paragraph 1 of Act No. 349/1999 Coll. on the Public Defender of Rights. He addressed the government with a recommendation for an amendment to the Criminal Code and to Act No. 293/1993 Coll. on the Execution of Custody. Befitting and above all explicit legislation was drafted on deportation custody or rather on the proceedings governing deportation custody within the Criminal Code and on legislation governing the execution of deportation custody within the Act on the Execution of Custody, such as would reflect the purpose of this restriction on the freedom of the individual. At the same time, the government was made aware of the need to improve interdepartmental cooperation, as well as to specify

procedures leading to the execution of deportation sentences by way of internal regulations.

It is clear from resolution No. 646 dating from 30 June 2003, adopted by the government in response to a recommendation by Defender, that the draft amendment to valid legislation governing the execution of deportation has been fully accepted. In this respect, new provisions of the Act on the Execution of Custody on the separate confinement of persons under detention for deportation and their placement in low security prison wards have been drafted and passed. The objective provisions were drafted and passed as part of a government bill amending Act No. 169/1999 Coll. on Imprisonment and Amendments to Related Laws (parliamentary protocol No. 353; senate protocol No. 227).

Proposals by the Defender for an amendment to the Criminal Code were acknowledged to be advantageous and, despite the fact that the Public Defender of Rights called for a part amendment to be made of the present Criminal Code in response to his recommendations, the government merely charged the minister of Justice with considering these and with their incorporation into the re-codification of the Criminal Code currently under preparation.

On grounds of conclusions and an initiative of the Public Defender of Rights, the Penal Council of the Supreme Court adopted two unifying opinions in 2003 with regard to the decision-making procedure of courts in matters of deportation custody and the execution of deportation sentences. The first opinion dating from 17 April 2003 (Ref.: Tpjn 310/2001) deals with the collision of asylum proceedings and execution of deportation sentences. The Supreme Court concluded that ongoing asylum proceedings present no obstacle to the execution of deportation sentences. The second opinion dating from 5 November 2003 (Ref.: Tpjn 303/2003) deals with the maximum legal duration of deportation custody and with questioning of the sentenced individual when deciding on his/her placement in deportation custody. The conclusion drawn states that the sentenced individual must be questioned prior to a decision on deportation custody, and that the duration of deportation custody may not be cut by a third in the sense of the provisions of section 71, paragraph nine of the Criminal Code.

1.4 Practical Impact of the Agreement on Social Security concluded between the Czech Republic and the Slovak Republic on so-called "Slovak Pensions"

In spite of the efforts of the Public Defender of Rights to change the situation it must be admitted that no significant progress has been made. The problems described in the two previous reports persist.

The Ministry of Labour and Social Affairs persists in its interpretation of the agreement in connection with Act No. 155/1995 Coll. on Pension Schemes. That is despite the fact that on 3 June 2003 the Constitutional Court, in ruling II. ÚS 405/02, stated that procedure applied by the Czech Social Security Administration Authority in the of case pension-related complaint of a claimant who had to the Constitutional Court against the lawful nature of the application of the above-mentioned Agreement, is not lawful.

The response of the Ministry of Labour and Social Affairs and of the Czech Social Security Administration Authority to this ruling does not allow for a general conclusion on manner of application of provisions governing pension schemes and pensions in future as originally intended by the Constitutional Court ruling. The above response indicates an interest in maintaining the status quo. That also seemed to be the impression communicated to the Defender at a meeting with the representatives of the Ministry of Labour and Social Affairs focusing on the issue of Slovak pensions on 12 May 2003, in Brno.

It should also be noted that the Ministry keeps broadening the scope of its arguments, making it impossible for the Defender to adopt a straightforward and professional standpoint and opinion.

The last request of the Defender for a comprehensive analysis of the issue in question of 17 December 2003 was responded to by the Minister of Labour and Social Affairs who sent him an information brochure issued by the Ministry in 2003 explaining

their attitude towards all of the controversial issues arising from the application of the relevant agreement. The Defender hopes that this document actually represents the final and comprehensive standpoint that will enable the Defender to articulate a final legal evaluation of the situation.

For the time being the Defender sees no reason to amend his original preliminary conclusion expressed in the Annual Reports from 2001 and 2002 that application of valid legal regulations of pension schemes must not result in Czech residents receiving a pension from the relevant Slovak institutions being disadvantaged by the application of the agreement in comparison with a situation not governed by the Agreement.

1.5 Activities of Labour Offices Under Act No. 1/1991 Coll., on Employment

In the Annual Report for 2001 and also for 2003, the Public Defender of Rights pointed out the inconsistencies and lack of interconnectivity of valid legal provisions of the Act on Employment and related regulations. The Defender saw this as one of the reasons for further outstanding issues related to practical application of the act and also for the inconsistencies within procedures applied by the offices in course of realization of the citizens' right to employment. The Defender noted that the repeatedly amended valid provisions in question require complex re-codification. The Defender therefore welcomed the Government proposal of a new Act on Employment and also of another law amending certain laws related to the Act on Employment.

The Public Defender of Rights was asked to comment on the subject matter of the draft of the above act. He issued 18 relevant comments and recommendations, two of which were complex. In the course of the following procedure 15 of the above comments were accepted or resolved in another satisfactory way. Three significant comments remain the application of which seems to the Defender to be crucial. He therefore submitted these to the Legislative Council of the Government.

Generally it might be said that the draft law represents a major change. The Defender requested that new legal provisions clearly define the obligations of the participants and delineate the administrative discretionary authority of the labour offices and other administrative bodies that will follow this law when making administrative decisions. The proposal meets these and contains mainly establishment of some new institutions, is more precise and defines more precisely number of existing terms and institutions in the area in question including the issues the solution of which the Defender pointed out with respect to the observations made as a result of his activities. For example the Defender in the past requested more precise legal interconnectivity of the legal term 'serious reasons due to which the labour seeker is unable to accept a job'. The above issue was solved in line with the Defender's proposal and comments. The comment concerning the status of statutory bodies of companies and cooperatives with respect to the Jobseekers' Register was also resolved in a satisfactory way.

Even though the final form of the law might change in the course of the legislative process, the Defender believes that the new Act on Employment will provide a legal environment for more just and uniform practical application and interpretation.

1.6 The Status of Persons Eligible to Collect an Allowance for Reimbursement of Wages Lost after Termination of a Period of Sick Leave

In the 2001 Report, the Public Defender of Rights recommended a solution to the problems arising from application of existing legal provisions governing the payment of compensation to employees affected by an industrial injury or occupational disease. The need to resolve this situation was again pointed out by the Defender in 2002.

He noted that legal provisions and manner of calculation of compensation are not only complicated, but also conform to outdated principles that do not reflect other significant aspects and risks of the transformed social and economic environment of the society within which labour and employment relations are now conducted.

One such group is employees (mostly ex-employees) affected by occurrence of an industrial injury or occupational disease before 1 January 1993, and where the employer responsible for such injury or disease was affected by transformation or other

organisational change or was pronounced insolvent or bankrupt. The administrator of the bankruptcy assets usually stops paying compensation. In a majority of cases the citizens in question, who are mostly invalids, live in a socially oppressive situation and have to rely on social security welfare benefits. For citizens whose claim to compensation arose before 1 January 1993, the above claims do not transfer to the insurance institution but remain to be settled by the state through the Ministry of Labour and Social Affairs, but only in the case the employer ceases to legally exist, without any further legal representative.

Until the bankruptcy proceedings are completed, and the employer deleted from the companies register, such claims are not settled. In a number of cases the period in question can even be several years, and has a significant social impact.

The Public Defender of Rights noted that the Government tends to shift the burden resulting from bankruptcy proceedings to entities that should be protected such a negative impact by the institute of liability transfer. At the same time unjust treatment occurs of persons to whom the same conditions are applicable (claim for compensation for wages lost due to bankruptcy of the employer) solely on the basis that one group of persons' claim arose before 1993.

These issues represent an area of negative impact that has not yet been resolved. The Public Defender of Rights was invited by The Ministry of Labour and Social Affairs to co-operate on the proposal of new legal provisions of labour law. Work required to comprehensively re-codify the law are being conducted slowly. Currently the new Labour Code is at the stage of interdepartmental and interministerial consultations.

The second of the problems mentioned above is being solved by ad hoc applications for exceptions granted by the Ministry. The need to resolve it therefore continues.

2. Responses to Observations in the 2002 Annual Report

Chamber of Deputies of Parliament accepted the Annual Report on the Activities of the Public Defender of Rights by resolution No. 513 of 28 May 2003, and the Senate by resolution No. 135 of 22 May 2003.

2.1 The Removal of Burdens on the Environment and the Remediation of Contaminated Localities

In 2003, the following development took place in the matter of the remediation of seriously contaminated localities following disagreement by the Ministry of Finance with a programme of the same title conceived by the Ministry of the Environment. There exists a list of priorities for the removal of old burdens on the environment. The Ministry of the Environment may in cooperation with the National Property Fund, bound by this list, make recommendations as to the prioritisation of any particular remediation.

According to information communicated by the Minister of the Environment to the Public Defender of Rights in 2003, the sum of total fund guaranties ensuing from environmental agreements concluded between the fund and owners of contaminated real estate, especially industrial zones, amounts to 144 billion crowns. This figure represents what is to be spent by the fund on removing old environmental burdens on grounds of the aforementioned agreements.

For the purposes of dealing with new emergencies posing a threat to surface and ground water, where it is impossible to determine those responsible, the Ministry of the Environment had in its budget for 2003 a reserve of 50 million crowns left over from abolished district authorities, in accordance with the provisions of section 42, paragraph four, of Act No. 254/2001 Coll. on Water. This figure, determined by law since 1/1/2003 for the entire country, is comparable with the amount determined for a single district authority prior to 1/1/2003 for its own area of administration. With regard to the fact that the budgets of district authorities had not been endowed with these amounts by the Ministry of Finance, a number of irregular solutions were adopted in the past. Following supplementary subsidies by the Ministry of Finance, the total sum for the Ministry of the Environment for 2003 rose to 62.5 million crowns. This state of affairs was untenable from the perspective of safeguarding protection of the environment and the aforementioned amount of 50 million crowns, at the disposal of the Ministry of the

Environment, proved to be insufficient. The Public Defender of Rights called attention to this in his previous Annual Report.

A change came into effect with the amendment of the Act on Water, enforced by Act No. 20/2004 Coll., effective as of 23 January 2004. In place of the Ministry of the Environment, each region itself now creates its own budget reserve, as every region is best informed on the gravity of cases within its authority. In order to cushion the impact of tying up significant amounts within regional budgets as reserves, a cap of 10 million crowns was set on the annual supplementary amount of the special account as an acceptable volume for dealing with unforeseen pollution-causing emergencies where perpetrators remain unknown. The amount thus available in the Czech Republic for dealing with emergencies that pose a threat to surface and ground water has increased by 90 million crowns to a total of 140 million crowns.

2.2 The Right of Patients and Persons Related to the Deceased to be Granted Information Collected within Medical Documentation

In the Annual Report for 2002 the Defender pointed out the serious and often publicised area of information collected within the medical documentation and granting such information to patients and in even in the case of death of patients to the next of kin of the deceased. Act No. 20/1996 Coll. on Public Healthcare stipulates the right of the patient or legal representatives of the patient to access all information collected within the medical file compiled on the patient and information within any other records related to his/her medical condition. Since there is no direct definition of the manner in which such information is to be provided, the practical application of this law varies.

Some healthcare institutions allow patients to access their medical files and even copy the relevant information, while others are only willing to grant information orally and in summary. Any restriction of access to information represents a violation of the law as well as of the Protocol on Human Rights and Biomedicine in accordance with which the patient has the right to access to all information in his medical documentation. It must be pointed out that the obligation of professional confidentiality arises exclusively in the interests of protection of the patient. Similarly diverse is the treatment of the next of kin of the deceased patient. The requests of next of kin of the deceased person should be satisfied on the basis of the European Convention for the Protection of Human Rights and Fundamental Freedoms expressing the Right to Protect Life and Health as well the valid Civil Code. Unfortunately the situation very often differs, in part due to the relevant issue not being clearly defined by any legal provisions.

On the basis of comments of the Public Defender of Rights on violation of personal rights of the next of kin of the deceased in January 2003 the Government requested the Minster of Health to draft amendments to the law to ensure the right of the next of kin to access all information collected in medical documentation and other records related to a patient's medical conditions and circumstances of death, except where the patient previously expressed non-consent to granting access to this information.

The Act on Healthcare drafted by the Ministry covers the above issues with respect to the patient as well as with respect to the next of kin where the patient is deceased.

2.3 Possibility of Reimbursement of Treatment Otherwise Not Covered by Public Health Insurance

In the 2002 Annual Report the Public Defender of Rights noted that the law allows unequal availability of medical care in cases where a patient needs treatment not otherwise covered by health insurance.

In accordance with of provisions section 16 of Act No. 48/1997 Coll. on Public Health Insurance and on the Amendment and Extension of some Existing Laws, the extraordinary cases the health insurance institution covers treatment otherwise not normally covered by healthcare institutions only when such treatment represents the sole possibility of medical treatment. Such treatment, is with the exception of cases where delay might be dangerous, dependent on approval granted by a review doctor (a doctor working for the insurance company).

The Public Defender of Rights opened an inquiry on his own initiative that indicated that a health insurance company's review doctor in charge of medical assessment

rejected without exceptions a majority of applications for reimbursement of treatment in accordance with the above-quoted law submitted by renowned healthcare institutions, while review doctors of the same healthcare insurance company from other regions accepted similar application with regard to the health condition of individual patients.

In the particular case the treatment in question was an expensive one which was subsequently covered by some patients, while others were unable to do so. One may therefore presume that the rejection of these applications by the review doctor was motivated mainly by the economic circumstances of the health insurance company.

Article 31 of the Charter of Fundamental Rights and Freedoms stipulates that everyone has the right to health protection and that on the basis of public health insurance citizens are entitled to free healthcare and to the provision of medical aids in accordance with the conditions stipulated by law. In case of treatment otherwise not covered by medical insurance it seems desirable, in order to ensure objectivity of assessment and the subsequent decision, to have an opportunity to review the decision of a review doctor.

This should eliminate rejection of applications for reasons not anticipated by the law. An application should within a reasonable period be evaluated by an inspection body independent of a particular health insurance company consisting of e.g. representatives of the health insurance company, the Ministry of Health and other relevant institutions that would evaluate the individual case and decide whether the treatment in question is the sole possible treatment leading to improvement or at least maintenance of the existing health condition of the patient.

The lack of any independent supervisory mechanism makes possible the rejection of applications for reimbursement of healthcare otherwise not covered by health insurance for reasons other than those given by law. For example in cases of expensive treatment these might be economic reasons.

Up to the time of preparation of this report the relevant legal regulations had not been amended and so the issue in question remains unsolved.

2.4 Violation of Parental Obligation to Have their Child Vaccinated

In the 2002 Annual Report, the Public Defender of Rights drew attention to the issue of compulsory vaccination. By law, those registered as permanent residents of the Czech Republic and foreigners with long-term residence permits are obliged to undergo at the requested time the stipulated type of vaccination. In the case of persons under 15, the legal representatives of such persons are responsible for fulfilment of their obligation to undergo regular compulsory vaccination. The only persons excused from the obligation to undergo compulsory vaccinations are those with certified immunity against the relevant infection or persons with a medical condition preventing them from reception of vaccination substance – that is those with a permanent contraindication.

Last year the Public Defender of Rights received complaints from parents who refused to have their child vaccinated. The Defender discovered that the most common reason was concern about side effects. The sources of the above concern were varied, including previous experience of the parents themselves or their acquaintances. Lack of professional information from the healthcare institutions or from institutions for protection of public health, and an unwillingness to treat each cases on an individual basis mostly result in increased parental concern and reinforcement of their negative attitude.

The Defender observed that often mere refusal to have a child vaccinated is automatically considered a failure of childcare on the part of the parents. Parents refusing to have their child vaccinated are often, without any further investigation of reasons for their refusal, threatened with fines or even with placement of the child in institutional care. This is unacceptable. It contravenes the interest of the child and thus subsequently the Convention on the Rights of the Child. The Defender is convinced that the individual cases of persons rejecting the vaccination must be dealt with on individual basis and the parents must be informed about the relevant area in a qualified and professional way. Reasons leading parents to rejection of compulsory vaccination must be analysed and in justified cases the possibility of an exception should be considered. Only in cases of obviously unfounded rejection of compulsory vaccination on the part of

the parents, and if all attempts to reach agreement fail, should an appropriate fine be imposed as the sole possible sanction.

At the end of 2002 the Ministry of Health established an advisory body for prevention of infections under the supervision of the Minister which among other activities is to deal with exceptions from the obligation to compulsory vaccination. The first application for an exception should be considered at the beginning of 2004. Since the ministry is preparing amendments to the Act on the Protection of Public Healthcare, an analysis of the current situation may represent a valid argument in favour of inclusion of the above exception within the new law. The Public Defender of Rights is promoting incorporation of the above exception within the new law.

2.5 Interpretation of Legal Provisions Governing the Obligation of Property Owners to Remove Impediments from Public Pavements in Built-up Areas

In the 2002 Annual Report the Defender pointed out inconsistencies in the legal provisions governing obligations that caused interpretation and application problems. The situation remained unchanged.

In 2003 the Defender received further complaints dealing with the issue of the elimination and alleviation of impediments on pavements caused by weather conditions. section 27 of Act No. 13/1997 Coll. on Surface communications stipulates that the owner of property adjacent to a road or local thoroughfare in a built-up area is liable for damage caused by an impediment on the adjacent pavement that has occurred due to pollution, black ice or snow. The above liability is applicable should the person in question fail to prove that clearance, or if appropriate alleviation, of the above impediment and its effects exceeded his ability and/or capacity.

The above legal provisions, unlike the previous legal provisions (Act No. 135/1961 Coll.) does not include an explicit obligation on the owner to maintain the pavement in a usable state since such "forced labour related to another person's property" in the opinion of some lawyers did not comply with the Charter of Fundamental Rights and Freedoms. This omission did not resolve the issue; on the contrary it offered more space for controversy.

In accordance with section 27, paragraph seven of the above law municipalities may stipulate by a directive the extent, manner and the deadlines for removal of impediments from local thoroughfares and through roads. Should someone fail to meet their obligation, the municipality follows section 46, paragraph one, of Act No. 200/1990 Coll. on Offences to sanction the property owner for violation of the directive issued by municipality.

Complainants often object that the municipality does not have the right to stipulate an obligation within an area within which such an obligation is not directly stipulated by the law that is the basis for the above-mentioned directive. This opinion is based on the argument that the Act on Surface Communications includes only specific liability for damage, from which a direct obligation on the property owner cannot be derived. The property owner carries the risk of having to pay compensation should someone be injured on the pavement in question. With reference to Article 11 of the Charter of Fundamental Rights and Freedoms, some advocates of this opinion deduce the existence of an obligation to maintain the pavement by its owner since "ownership is binding", and one may not require a person to carry out work to the benefit of another at the his/her own cost and without appropriate reimbursement for the work undertaken.

Experts in favour of the procedure applied by municipal authorities argue that it is not within their current capacity to secure passage of all pavements within an acceptable period. They consider the obligation to be defined by the provisions stipulating that: "everyone is obliged to act in such a way as to avoid damage to health and property, nature and the environment" (Section 415 of the Civil Code). Certain preference is therefore given to the public interest in passage of pavements and protection of the health of their users over the rights of property owners in built-up areas adjacent to a road or local thoroughfare. Such provisions are acceptable under the Charter of Fundamental Rights and Freedoms, article nine, paragraph two, letter d), as one of the exceptions applicable to forced labour or service when the action in question is to protect the life, health or rights of others.

As pointed out in the previous Annual Report, the Defender considers the current legal provisions in this area have two crucial defects:

- the obligation of property owners adjacent to a road or local thoroughfare to remove impediments affecting pavements is not directly stipulated by the Act on Surface Communications and it therefore must be derived from the relevant provisions of the Civil Code and such interpretation is often questioned,
- the relevant provisions of the Act on Surface Communications govern property adjacent to roads or local thoroughfares but does not relate to publicly accessible through roads.

These facts and inconsistencies have repeatedly been pointed out by the Defender.

2.6 Dual Citizenship

Part of the 2002 Annual Report mentioned complaints related to state citizenship. A common feature of these complaints was criticism of the legal provisions restricting the possibility of dual citizenship. The report pointed out the strict nature of Czech legislation based on the principle of exclusive and sole citizenship.

On 29 October 2003, Act No. 357/2003 Coll. came into effect amending the Act on the Principles for Acquisition and Loss of Citizenship of the Czech Republic. This extensive amendment significantly broadened the possibility of dual citizenship. It makes the acquisition of Czech citizenship possible for a number of people who had in previous years addressed the Defender. These include for instance former citizens of the Czechoslovak Federal Republic and of the Czech Republic who acquired Slovak citizenship in the period from 1/1/1994 to 2/9/1999.

Another problem mentioned in last year's report has already been partially resolved. The law now stipulates in more precisely exceptions to the general rule on loss of Czech citizenship through acquisition of another citizenship at one's own request, in cases of acquisition of another citizenship in connection to marriage to a foreign citizen.

In the 2002 Annual Report the Defender referred to former Czechoslovak citizens who emigrated before 1989 and lost their Czech citizenship for various reasons after 28/3/1990. Recent amendments do not allow this group acquisition of dual citizenship. Some senators have taken up their case and propose amendments to Act No. 193/1999 Coll. on State Citizenship of Some Former Czechoslovak Citizens (senate protocol No. 270). Not even the latest activities of these senators take into account the cases brought up by the Defender last year concerning the close relationship of a former Czechoslovak and Slovak citizen is determined by an existing marriage to a Czech citizen entered into in a foreign country at the time of the existence of the federation. The Defender observed on the basis of a complaint received in 2003, the complexity of the citizenship issue of children whose parents re-acquired Czech citizenship in accordance with Act No. 88/1990 Coll. If the parents had not applied for re-acquisition of Czech citizenship in accordance with the above-mentioned opportunity and had done so rather in accordance with the latter Act No. 193/1999 Coll. the children might have been included within their declaration on the acquisition of Czech citizenship. Act No. 88/1990 Coll. did not allow for such a possibility. The children in question are therefore paradoxically "punished" for their parents having used the first opportunity after 1989 to re-acquire Czech citizenship.

All existing amendments of the Act on Acquisition and Loss of the Citizenship of the Czech Republic only exceptions from the principle of exclusive sole citizenship. From the observations of the Defender it follows that Czech citizenship law should be based on the reverse principle. Continuous extension of the possibility of dual citizenship is definitely a positive phenomenon but it increases the sense of injustice and discrimination of persons closely related to the Czech Republic and yet not covered by any of the amendments mentioned above.

A positive development was the government's No. 186 in February 2003 asking the Deputy Prime Minister and Minister of Interior to undertake a comprehensive analysis of the law governing the acquisition and loss of citizenship and to re-assess issues related to dual citizenship, and to submit the results as well as a proposed new concept for the legal framework of the area of citizenship to the Government by 30/6/2005.

2.7 Presumed Citizenship

The 2002 Report of the Public Defender of Rights mentioned the cases of those erroneously regarded by offices to be Czech citizens. Czech law makes no provision for the resolution of such situations. In correspondence with the Defender related to a specific case, the Ministry of Interior admitted that in some cases of people living in the Czech Republic for a long period of time, believing that they are Czech citizens, a simplified procedure for acquiring Czech citizenship could be considered or a continuity of the Czech citizenship could be accepted on the basis of the demonstration of good will of the persons in question. In accordance with the statement of the Deputy Prime Minister and Minister of the Interior this issue will be part of the analysis in the area of citizenship law prepared by the Ministry with regard to the above-mentioned resolution of the Government No. 186 in February 2003.

2.8 The Status of Foreigners with a Visa for Permission to Remain

In the 2002 Annual Report, the Public Defender of Rights drew attention to the unsatisfactory social situation of those foreigners who have been granted a visa for permission to remain. In connection with, the Defender considered the government's new Act on Employment to be very positive as it enables this category of foreigners to access the Czech employment market, without prior scrutiny of this market.

However, it is again necessary to draw attention to the fact that not every foreigner with a visa for permission to remain is an income earner, and that a claim to state income support can be made only after 365 days of residency in the Czech Republic and that the claim to social welfare benefits is, with exceptions, bound to permanent residence. Therefore, it would be more appropriate to not only enable this group of foreigners access to employment but to provide them with suitable access to the social security and social relief systems.

2.9 The Situation in Facilities for the Detention of Foreigners and the Execution of Administrative Deportation

Although the overall situation in detention facilities where foreigners are placed for purposes of administrative deportation or for extradition in accordance with international treaties cannot be considered satisfactory, it can be said that the entire system is gradually becoming more humane. It is possible to mention the following changes for the better:

- In cases where it is not possible to verify a foreigner's identity, obligatory placement in a strict security ward is no longer possible.
- Detained foreigners are no longer required to wear state-issued clothing. As long as their clothes, underwear and shoes meet conditions of hygienic and aesthetic soundness, they may wear their own.
- The Foreigners' Police has processed information for foreigners in several languages and foreigners are repeatedly advised of their rights; in particular their procedural rights.
- The Foreigners' Police have stopped obstructing the provision of legal aid by NGOs.
- For cost reasons, camera systems within rooms, or rather cells, where detained foreigners are placed, have not yet been dismantled. Camera systems within these rooms are, however, not in use (no recording technology is employed or they are covered). They are in use in corridors and outdoor areas only.
- The meals provided have been modified. The menu is provided by a contractual organisation one week in advance. Following consideration, changes are made with respect who the detained foreigners are, their religious beliefs and customs.
- For cost reasons, outdoor areas have not yet been extended or their quality improved. With respect to the technical and personnel resources of each facility, only an extension of the time allocated for outdoor activity has so far taken effect.

Further improvement is expected in the Amendment to the Act on the Residence of Foreigners, currently being drafted, which is expected to bring further progress in the humanization of facilities for the detention of foreigners. The basis of the draft is to be the transfer of facilities for the detention of foreigners from police administration to administration by the Ministry of the Interior, specifically under the administration of refugee establishments. In this way, it is hoped to "civilise" the entire system and to

improve conditions governing the sojourn of detained foreigners. In future, the police would merely carry out the surveillance of individual facilities.

3. Selected Observations from the Activities of the Public Defender of Rights in 2003

3.1 The Preclusion of the Application of Section 33, Paragraph 2 of the Code of Administrative Procedure to Asylum Proceedings

On 14 May 2003, the Public Defender of Rights, for the first time in his term of office, chose to exercise his right in accordance with section 24, paragraph three, of Act No. 349/1999 Coll. on the Public Defender of Rights, and spoke in the Chamber of Deputies during the second reading of a government bill. This bill amends Act No. 326/1999 Coll. on the Residence of Foreigners on the Territory of the Czech Republic and on the Amendment of Certain Laws; Act No. 359/1999 Coll. on the Social and Legal Protection of Children; Act No. 325/1999 Coll. on Asylum and on the Amendment of Act No. 283/1991 Coll. on the Police of the Czech Republic (the Act on Asylum); and Act No. 48/1997 Coll. on Public Health Insurance and on the Modification and Amendment of Certain Related Laws (parliamentary protocol No. 214).

The object of his contribution was a draft amendment of the stated bill, passed by the Committee for Defence and Security at its meeting on 12 March 2003, and directed at the preclusion of application of section 33, paragraph two of the Code of Administrative Procedure to asylum proceedings. This is namely a significant limitation of the procedural rights of seekers of asylum in the Czech Republic, who are thus denied the option to express, prior to a decision being issued, their opinion on the basis for it and on the manner in which it was ascertained, and to propose that it be supplemented. In Czech law there exists no such restriction of procedural rights in administrative, legal or any other similar proceedings. The present situation leads in its consequences to the restriction of rights anchored in article 38, paragraph two of the Charter of Fundamental Rights and Freedoms, according to which every individual has the right to express their opinion on all presented evidence (the right to a fair trial).

The recommendation by the Public Defender of Rights to disallow the weakening of the procedural status of asylum seekers and to maintain the applicability of the provisions of section 33, paragraph two, of the Code of Administrative Procedure to asylum proceedings was, however, not accepted, nor was it adhered to in the following legislative process. Three out of five senate committees (the Committee on Legal and Constitutional Affairs, the Committee on European Integration and the Committee on Foreign Affairs, Defence and Security) however approved the Defender's recommendation in their resolutions. Therefore the Defender addressed the senators of these committees, asking them to consider the option of submitting a proposal to the Constitutional Court to annul the particular section of the Act on Asylum which speaks of the inapplicability of section 33, paragraph two, of the Code of Administrative Procedure (section nine of the Act on Asylum) to asylum proceedings. The Defender has as yet received no response from senators, even after the matter was pressed.

3.2 Housing Policy and the Need to Provide Fundamental Living Conditions

In 2003 the Public Defender of Rights was often addressed by citizens requesting assistance with their housing situation. The common factor of all of such complaints was the situation when especially the socially disadvantaged citizens were not able to gain appropriate housing within the existing housing market so as to fulfil a fundamental function of a family – bringing up children. Of particular sensitivity is the issue of the entity or institution responsible for providing effective assistance with respect to the above oppressive housing situation to such citizens at least for the necessary period of time.

The extent to which the society provide a safety mechanism prevent the exclusion of the socially-disadvantaged from standard social relations indirectly influences the number of people who will remain dependent on direct state assistance and how long they will be so. The situation represents a vicious circle since dependency on state support becomes rooted throughout the whole family. The Defender does not intend to

interfere with private legal relationships between landlords and tenants, but issues of social and legal protection of children as well as social security benefits and foster care are within his mandate.

The situations the resolution of which is to a certain extent attempted by the Defender cannot be comprehended without some broader context.

The right to adequate living standard stipulated by the International Treaty on Economic, Social and Cultural Rights as well as by the European Social Charter assumes that the state will respect the requirement of equal rights to housing. Article 11 of the Treaty stipulates the right of everyone to adequate living standard for the person and his/her family inclusive of the sufficient food, clothing, housing and increasing improvement of living standards. Such a right must be applied in the same non-discriminatory way other constitutional rights are applied, as stipulated by article three, paragraph one of the Charter of Fundamental Rights and Freedoms and article two, paragraph two of the Treaty.

It must be noted that the Czech legal system does not independently define the word 'flat'. What is understood by 'flat' is always defined by individual legal regulations and provisions for the specific area of such provisions (Act on Flat Ownership, directive No. 137/1998 Coll., Act No. 151/1997 Coll.). With respect to a lease, a flat is the subject of a civil law relationship but does not represent an independent thing. There is no general definition of the term of "flat" in the Czech legal framework. Neither are there definitions of terms such as "social flat" or "social housing".

The housing available in the Czech Republic rather varied. It includes council flats, flats owned by housing cooperatives and flats owned by individuals. The way in which new housing was created in the past has significantly influenced the current structure of available housing. Council housing of municipalities has been continuously privatised and the flats as housing units or parts of a building are transferred into the ownership of persons unrelated to the municipal authority. The extent and the manner of privatisation is at the discretion of the self-governing body in accordance with the Act on Municipalities since the privatisation of council housing involves stewardship over municipal property. Yet the manner and the quality of assistance provided by the municipality within the area of housing and bestowed upon the municipality by the state depends on the extent of the privatisation, the extent of new construction and building of housing subsidized by the municipality or by the government, and the subsequent market share of the available council housing.

Section 35, paragraph two of the Act on Municipalities requests the municipality to attend to the creation of conditions for social care development and to provide sufficient attention to the development of social care, satisfaction of the need for housing as well as for the protection of health, etc. Such activities of the municipality are to be carried out within its independent authority and within its territorial district in accordance with local customs. In spite of the legal reservation of "compliance with the local conditions", with respect to the above-mentioned facts it must be noted that such conditions are mainly influenced by the municipality itself. Continual disappearance of the available housing without any new building can lead to effective resignation of efforts to fulfil the above task. In any event, the municipality is mostly addressed by citizens applying for council housing when they have no available housing and are threatened by an oppressive social situation. Often the number of such applications exceeds the capacities of the municipality.

The scale of this particular issue is much larger than one might assume. Article 30, paragraph two of the Charter stipulates that "*Everybody who suffers from material need is entitled to such assistance as is essential for securing his or her basic living conditions*." The above article of the Charter is affected by the reservation stipulated by article 41, paragraph one of the Charter when the rights listed thereof may be claimed only within the scope of laws implementing these provisions. The security of housing as a fundamental living condition for someone in material need is a clear objective of every democratic society and not exclusively of a social state. Such an attitude towards the above right represents an effective tool for development of the family and childcare. In this context article 32, paragraph five of the Charter must be quoted: "*Parents who are raising children are entitled to assistance from the state.*" This provision directly stipulates that the details are to be defined by law and therefore it is not subject to the exception in accordance with article 41, paragraph one of the Charter. It is clear that the

above-described legal framework and the above-mentioned system of existing state social benefit as such without existing legal provisions governing the area of social housing and without definition of the term 'social flat' cannot fully ensure basic living conditions for those in need. For instance situations occur where children are taken away from their parents and placed in children's homes due to insufficient housing conditions.

The Public Defender of Rights, with regard to these facts, believes that a comprehensive housing policy, including social housing, needs to be adopted.

3.3 Noise Pollution Caused by Increasing Traffic

While investigating cases dealing with the Construction Code, the protection of public health and surface communications, the Public Defender of Rights repeatedly encounters breaches of the permitted noise pollution levels in built-up areas. In this connection, the Defender repeatedly stresses to administrative authorities that the massive increase in automobile transport and other activities and the increase in noise pollution ensuing are a key point in a modern approach to area planning, inspired by international documents formulated in this sector and the significance of which is, from the point of view of the Czech Republic as the future member of the EU, evidently on the rise.

During inquiries, the Public Defender of Rights appeals to representatives of public administration bodies and those of local self-governing bodies, asking that they adhere to the European Charter for Regional/Spatial Planning as part of the protection of the public from noise pollution. This Charter, named the "Torremolinos Charter" from its place of origin in Spain, was ratified by the ministers of the European Communities member states in 1983. This document indicated one of the greatest problems to be the management of municipal area growth. Furthermore, the Defender drew the attention of the relevant bodies to the fact that the question of transport had been seriously dealt with by the European Commission, having issued a Green Paper on Transport in 1996, entitled The Citizen's Network – Fulfilling the Potential of Public Passenger Transport in Europe, which implied that both the number of and the use of automobiles in Europe has increased sharply since the seventies and it is expected that it will increase by up to 200% over the coming 25 years. The consequences of this transport revolution are generally acknowledged and are manifested in pollution, traffic congestion, threats to health (in part due to breaches of noise pollution limits in housing areas) and the exploitation of non-renewable resources.

The exceeding of acceptable noise levels is a phenomenon plaguing every large housing estate. According to the Defender it is therefore necessary that this becomes a key issue for the drawing up of area and development plans for human residences. It is necessary that in this early phase municipalities and towns keep in mind that the incorporation of industrial zones into such a complicated organism as a town is, in connection with a general increase in traffic, requires them to solve the problem of noise pollution, which constantly rises as traffic intensifies. Towns and municipalities, in the role of area planning authorities, should reflect upon the housing comfort of their residents and search for possible solutions in advance to provide the residents of localities exposed to unacceptable noise levels with the option of alternative housing.

The findings of the Defender during inquiries indicate that traffic noise and the ensuing decrease in housing comfort of residents are still not the centre of attention. The Defender therefore considers it necessary to draw attention to these issues.

3.4 Observations on Social Security and State Social Benefits

With regard to the amendment to Act No. 482/1991 Coll. on Social Needs by Act No. 422/2003 Coll. the Public Defender of Rights considers it necessary to mention several issues related to the application and interpretation of the law encountered through his activities. At the same time some current issues from the area of state social benefits are mentioned.

Amendments to the Act on Social Need emphasize the opportunity of the citizen to increase income by one's own efforts. The condition required to assess a citizen as a person in social need is that such citizen owns no property, the sale or other usage of which could increase his income. There are several related problems:

Building Savings Schemes, Pension Schemes

The Public Defender of Rights repeatedly encountered procedures where the office issued a decision to pay the social needs benefit only under the condition that they terminate a contract on a pension scheme or building savings scheme, since money in such schemes was considered as savings enabling them to increase their income. Such procedure contradicts the existing policy of the Ministry of Labour and Social Affairs that accepts the argument that the above resources cannot be considered to represent an income nor property that can be used by the citizen as a means of living in accordance with the Act on Social Need. However, the Defender often encountered the opinion on the part of the relevant institutions that this policy of the ministry is not binding and therefore not significant.

The Defender agrees with the opinion of the Ministry of Labour and Social Affairs that the above forms of savings are to assist resolution of possible future increased financial need and that is the specific reason why such types of savings are supported by a direct state subsidy. It is therefore impossible to request dissolution of the above savings at the moment when the citizen is in a socially oppressive situation, since premature termination of the contract and subsequent dissolution of those savings leads to the obligation to return all state subsidies. Such a step increases immediate social distress of the citizen and eliminates the opportunity of the citizen to ensure at least a degree of financial security in future (retirement, need of housing) by the citizen's own means without state assistance. Such action contradicts the basic principles of social support. Offices often act contrary to the interest of young children since they force parents to dissolve the building savings account opened to the benefit of the child.

The recently adopted Act No. 422/2003 amended the Act on Social Need does not entitle the authorities to request the citizens applying for income support to surrender such forms of savings that by their very nature are to provide security to the person in potential future situations of social need.

Standard and Above-Standard Household Equipment

The current wording of section one of the Act on Social Need emphasizes the request that applicants applying for social need benefit should attempt to increase their income by sale or other use of their property (section one, paragraph three, letter c). At the same time the above request does not affect property stipulated by a specific regulation, which may not be affected by execution of a decision (section one, paragraph four, letter a). The administrative office is entitled to evaluate whether the request to use the property does not in individual case represent an overly severe application of the law (section one, paragraph four, of the Act on Social Need). Property that cannot be affected by execution of the decision is, in accordance with section 322, paragraph two, letter a) of Act No. 99/1963 Coll. of the Civil Court Procedural Code, mostly standard household equipment. The interpretation of the vague term "standard household equipment" in connection with the act of administrative consideration of the extent of property disposition that can be justifiably requested seems to represent problems in practical application of the above provisions.

The Defender observed that there is no common opinion as to what can be, with regard to the current socio-economic development of society, considered standard household equipment. Citizens are therefore subject to unequal treatment when applying for social security within individual regions or at individual authorized municipal authorities. This results in an atmosphere of legal uncertainty both on the part of citizens and on that of representatives of state administration.

The Public Defender of Rights encountered demonstrative lists of above-standard household equipment within a property affidavit that listed for instance a dishwasher and a computer. The Defender believes that for example a computer cannot be considered to represent above-standard household equipment if it represents a way to active search for employment. Such a search must be proven by the applicant in order to fulfil the requirements of the Act on Social Needs. The law requests the applicants demonstrate efforts to increase income through labour. At the same time the computer may represent a source of income (Internet sales, work from home.)

After the Act on Social Need was passed the Public Defender of Rights repeatedly encountered inquiries from citizens and offices related to assessment of standard and

above-standard household equipment. On the basis of this the Defender suggests the ministry provide offices with the basic criteria of assessment of the above issue.

Jobseeking or Worthwhile Activities

The Act on Social Need as amended by law No. 422/2003 Coll. offers the possibility not to consider a citizen to be in social need should he not be listed in the jobseeker's register and therefore fails to demonstrate effort to increase income through labour (section three, paragraph five). On the basis of this, offices should require those collecting benefit to demonstrate active job seeking. However, it is not clear and various interpretations exist as to how such effort is to be demonstrated and how to eliminate or prevent possible bullying from offices with respect to the person collecting benefit. There is no definition of in what manner and to what extent such a person receiving benefit is to demonstrate contact with employers, active response to advertising, Internet searching, etc. Citizens in social need consider the issue of reimbursement of costs related to job seeking to be crucial, that it postage, Internet fees, travel costs and fees for registration with recruitment agencies, etc. The procedure applied by offices should therefore be unified by the Ministry of Labour and Social Affairs.

Fulfilment of the Obligation of a Legal Representative of a Dependant Child Related to Compulsory School Attendance

In accordance with the last sentence of section three, paragraph two, of the Act on Social Need, a parent is not considered to be in need if he/she who does not fulfil his/her obligation as legal representative of a dependant child as regards compulsory school attendance of the child, if for the purpose of the social need the child represents a jointly-assessed person. The Defender would like to express serious doubt with regard to the sense of such a provision in stipulating conditions for state support granted to those in material need.

Should a person fail to fulfil the obligations resulting from parental responsibility the Defender sees the opportunity to apply Act No. 359/1999 Coll. on the Social and Legal Protection of Children, Act No. 200/1990 Coll. on Offences, and possibly Act No. 140/1961 Coll. on the Criminal Code. It must be emphasized that an offence or a penal offence must be subject to appropriate legal procedure within the procedure applied by law within which the parent has certain rights granted to him/her by the law; mainly the right to a defence. At the same time negligence or intent on the part of the parent must be proven. Whether this issue should also be resolved within the social security benefit procedure is open to doubt.

The Defender considers negligence on the part of the legal representative and material need not to be connected. Therefore the payment of the social need benefits should not depend on fulfilling obligations by the legal representative of a dependent underage child. The only purpose of the Act on Social Need is to provide support to those in need of such support. The purpose of the law is not "education" of parents to fulfil their parental obligations or obligations resulting from the role of legal representative of an underage dependent child. Therefore the conditioning of the payment of social security benefit can be acceptable if the related conditions provide evidence of the person being in social need of such a nature that there is no real opportunity for the applicant to access any income other than support provided by the state.

Another important point is that the issue of truancy does not imply unlawful conduct of the parents. Truancy does not necessarily indicate intent on the part of the parents. Often the child does not attend school on the basis of its own decision, especially if the child is close to the age of maturity.

The correct practise should be the maximum effort on part of the office to uncover the true cause of truancy in close co-operation with the school, pedagogical and psychological consultants, the relevant family, body for the social and legal protection of children, etc. Truants are under the care and supervision of supervisors for children and youth and these attempt to resolve cases of truancy in co-operation with parents and relevant schooling institutions.

The Public Defender of Rights is not in favour of ethnic generalization on social problems, but he cannot fail to mention that the issue of failure to fulfil the obligation of compulsory school attendance is significantly more serious within the Roma community.

It is hard to avoid the impression that the new legal provision in the Act on Social Need was an attempt to "resolve" the issues of this community. A knowledge of the socio-cultural environment of this community enables one to note that the decision to discontinue school attendance of the children is often motivated by the poor social and material security of the family, which does not enable the parents to provide for their children to standards similar to those of their schoolmates. Discontinuation of social security payments therefore worsens the entire situation.

Jointly-Assessed Persons – Common-law Spouses

The Defender repeatedly encountered complaints related to the erroneous assessment of jointly-assessed persons. Offices do not respect declarations of citizens that they are not a common-law marriage or that they have dissolved such a relationship.

When evaluating these cases the following fact is to be taken into consideration: jointly-assessed persons are defined by Act No. 463/1991 Coll. on the Minimum Living Allowance, which represents the basis for the decisions on social security benefit payment to applicants in social need as well as by Act No. 117/1995 Coll. on State Social Benefit:

- criteria of existence of personal relationship and
- criteria of factual existence common for all defined personal relationships and expressed by the law in the definition "should the persons live together on a permanent basis and together cover the costs of their mutual needs".

The two above criteria differ and both of them are to be met simultaneously even though their existence is to be investigated on an independent basis. The common-law relationship is not governed by any legal provision such as a legal institute. The common-law relationship is defined as a man and a woman living together in a certain living community, but who are not husband and wife. This relationship is based on the free will of the individuals who decided to enter into it. With the exception of their explicit declaration of their intent to enter into such a relationship, or their intent to dissolve such a relationship, there is no other way to objectively assess the existence or non-existence of such a relationship.

However, the Defender repeatedly encounters situations where offices, on the basis of findings indicating the existence of the criterion mentioned under b) assume the existence of a common-law relationship. It might actually be a procedure discovering that two people of different gender live together and even to a certain extent cover the mutual cost of living together. However, such facts cannot lead to the conclusion that these people live together in a common-law marriage.

The Defender believes that the office cannot issue a decision contrary to the will of the man and woman in question who explicitly announce that they do not live together in a common-law relationship. This issue is important especially in the current situation where a lack of available housing does not enable people at the beginning of their professional career or in the event of a loss of housing (e.g. due to divorce) to obtain independent housing or a property lease.

Therefore it is common for several people to live in a flat with more bedrooms and share the cost of rent or basic costs of living such as food (e.g. student's flats, flats rented by young university graduates, divorced couples or separated common-law couples having to live in the same flat sometimes for several years, etc.). In such cases of communal living those living together cannot be considered to be jointly-assessed persons since the fulfilment of the criteria mentioned under a) is missing.

Administrative offices must therefore, when assessing these criteria, take into consideration the demonstration of will of the persons to live in a common-law relationship or the existence of a document providing evidence of existence of a marriage. The office cannot consider merely circumstantial evidence indicating that two people live together.

Benefit Overpayments

Many complaints from the area of social security is related to the obligation of complainants to return benefit overpayments or to return amounts wrongly accepted. The common reasons for such overpayments is lack of the information on part of complainants with respect to the conditions for entitlement to benefit.

In a number of cases the benefit overpayment might have been avoided had the office in question provided the applicant with sufficient information on the conditions for entitlement to such benefit. The obligation to return overpayments or unjustifiably paid benefit is based on the legal principle that "ignorance of law does not constitute an excuse". The law governing social security is complex and difficult to interpret for the citizen. Citizens should automatically receive assistance with interpretation of the related regulations and provisions. Such obligatory assistance is defined by section three, paragraph two of the Administrative Code.

Large amounts of overpayments to be refunded should be avoided by offices through regular inspection of circumstances relevant for assessing entitlement to benefit, such as inspection of the children's attendance of a pre-school institution as regards parents entitlement to parental allowance. Such an inspection should be undertaken several times a year. Should the parents not be informed that attendance of their child directly effects their entitlement to collect a parental allowance and should they fail to report such a fact to the relevant authority, the overpayment of benefit amounts to 30,000 crowns and therefore represents an amount financially impossible for a family to return.

The Public Defender of Rights discovered that currently Act No. 117/1995 does not allow the deduction of the overpayment of benefit from the official income of the person in question should the payment of such benefit be made as a lump sum. Grammar-based interpretation of the second sentence of section five, paragraph two, of the quoted law, as well as the opinion of the Ministry of Labour and Social Affairs, is that the amount of the wrongly received benefit can only be deducted from the income of the person should the debt be paid in instalments and be deducted from the payment of social security benefit.

The Defender considers this discriminatory since it offers an advantage to persons paying their debt in instalments and paradoxically discriminates against those paying their debt as a lump sum, which is of course more convenient for the state budget. Unequal status of persons receiving social security benefit occurs when they are to return the overpayments by different means of payment.

On this basis the Public Defender of Rights proposes a change in these provisions to the government.

3.5 Issues of the Purchase of Plots of Land Under Motorways

In 2001 the Public Defender of Rights dealt with issues related to the area of legal property settlement with respect to plots of land under surface communications in the ownership of state and regions. An inquiry into a complaint indicated that the Government was informed on the state of unsettled property law relations by "The Report on Problematic Purchase of Plots of Land under Roads and Motorways in Connection to the Transfer of the Second and Third Category Roads" ref. 26 841/01 of 25/9/2001 prepared by the Ministry of Transport. Subsequently the Subcommittee for Transport and the Industrial Committee of Parliament were informed on the issue by the report "Transfer of Second and Third Category Roads and Transfer of the Maintenance Organisations to the Authority of Individual Regions" ref. 37/2002-120-SS/1 of 20/3/2002.

With respect to these documents the Ministry of Transport prepared a detailed analysis of the unsettled plots of land under the motorway and road network. Such an analysis is currently in the possession of the state or regions. The analysis indicated that the claims of the owners related to the purchase of plots of land under motorways and first, second and third category roads and possibly the claims related to the financial coverage of the lease of plots of land under these thoroughfares amounts in 2002 prices to approximately 7 609 823 thousand crowns.

In order to successfully conclude this issue the Ministry of Transport submitted to the Government proposal ref.: 124/02-410 ROPO of 21/5/2002 entitled "Issues of Financial Coverage of Needs Related to the Legal Property Settlement with regard to the Plots of Land under First, Second and Third Category Motorways and Roads Built before 1993". The document secured financial resources for the period of ten years commencing in 2003. According to the information provided by the Transport Minister the Government failed to reach a conclusion on the above document.

In 2000 Act No. 104/2000 Coll. came into effect on the State Fund of Transport Infrastructure and on amendments of Act No. 171/1991 Coll. on the Authority of the Czech Republic in Matters of Transfer of Property of the State to the Persons and on the Fund of National Property.

In accordance with the above law, as of the budget year 2001, the financial source of the state budget for financing surface communications was excluded from budget chapter 327 of the Ministry of Transport. Since the issue was not resolved at the government level the State Fund of Transport Infrastructure failed to include in the expenses register of its budget the financial amount designated for the settlement of purchase of plots of land under motorways and roads of all categories. The Transport Minister informed the Public Defender of Rights that the Ministry of Transport, in co-operation with regional authorities, Central Land Office and Land Fund are looking for ways to resolve the situation. He also promised to submit a proposed resolution of the existing situation to the government.

On the basis of the above facts the Public Defender of Rights asked the Prime Minister to urge the government to deal again with this issue. At the end of 2003 the Office of the Prime Minister informed the Defender that the Ministry of Transport submitted document ref. 1352/03 to the government. However discussion of this document was interrupted for the time needed to approve the reform of the public finances. The discussion of the above proposal has not been re-opened.

Since the issue represents a current problem which the Public Defender of Rights has for a certain period of time unsuccessfully attempted to resolve, the Defender chose to use this report to address the issue of the necessity of speedy settlement of the property under surface communications in the property of state.

3.6 Delays and Lengthy Court Proceedings

In 2003 there were again many complaints related to lengthy court proceedings due to the inactivity of courts or delays in individual proceedings. The overall number of complaints as well as the nature of individual complaints indicates a slight improvement compared to the previous years but the situation remains unsatisfactory.

Individual inquiries and the exchange of information between the Defender and the Minister of Justice indicate that the current situation related to court proceedings is a result of an overall decrease in performance of the courts in the first half of the nineties that the legislation system of the Czech Republic has found very difficult to deal with. The Ministry of Justice attempts, not always successfully to fill the quota for the number of judges at individual courts, while the quota for individual courts is stipulated with respect to the number of matters addressed to the court at the time. The procedure obviously does not reflect the backlog of past cases occurring due to variations in the level of staffing.

The Public Defender of Rights as well as the Ministry noted the existing unfavourable situation of the staffing of courts, especially in courts in the district of the Regional court in Ústí nad Labem. The Defender also noted some negative aspects in connection with the staffing of courts in the district of the regional courts in Brno and Ostrava.

On the other hand there most certainly are many of courts without any significant problem with respect to speed of proceedings, or at least the activities of such courts are not referred to in complaints received by the Defender.

Since the Ministry can provide a solution of an extraordinary situation such as for example that at the District Court in Chomutov, where certain matters had to be referred to other courts, the opportunity should exist to undertaking the same action in other reasonable cases.

Observations based on a number of inquiries demonstrate that delays occur not only due to shortcomings in the activities of judges, but also problems with the professional and administration system of the courts.

It is therefore necessary to draw the attention of the court administration to the currently relevant issue of ensuring sufficient numbers of qualified staff. In a number of cases delays in court procedure occur due to inconsistency, unreliability and other administrative shortcomings in the activities of court experts. Often such cases occur when the expert's reports have to be rewritten. Therefore the attempts of the Ministry of Justice to introduce a new on experts and interpreters that would stipulate more precise and stricter conditions for the experts, as well as stricter conditions applicable to the conduct and quality of services of such experts within court procedures, are to be welcomed.

Another factor delaying of court proceedings is problems related to the delivery of court correspondence. Delivery of individual documents often represent a necessary condition to be fulfilled for the procedure to be conducted. Should such correspondence fail to be delivered, a number of subsequent delays occur within the lawsuit.

The observations made by the Defender on the basis of the inquiries conducted in 2003 indicate an increased tendency to take disciplinary action in cases of direct fault affecting or causing delays in court proceeding, both on against judges and experts.

3.7 Damages Paid by the Guarantee Fund of Securities traders

The Public Defender of Rights encountered shortcomings in legal provisions governing the area of the payment of compensation claimed by clients of bankrupt securities traders. The Defender discovered serious inadequacies in legal provisions governing payment of compensation by the Guarantee Fund of Securities traders.

Since the Fund is not an administrative office, the Defender is not authorised to undertake any action other than to indicate the existence of such shortcomings.

The Fund was established on the basis of amendments to Act No. 591/1992 Coll. on Securities, the objective of which was to harmonize the Czech legal framework with the EU law, namely Directive 97/9/EC of the European Parliament and Council of 3 March 1997 on investor-compensation schemes.

The Fund was established at the beginning of 2001 and it is mainly financed by contributions from of securities traders. The contributions paid to the Fund are paid by the securities traders in arrears: at the end of March for the preceding calendar year. The first contributions were received by the fund by 31/3/2002. The amount of the contributions, however, is insufficient in comparison with the amount to be paid by the Fund to clients suffering damage. Several months after the establishment of the Fund, at a time when there were virtually no funds at the disposal of the Fund, several securities traders encountered difficulties. The largest security trader affected by bankruptcy at the beginning of 2002 was KTP Quantum, a.s. The number of affected clients of this particular company is 29,000, and the overall amount of the compensation to be paid approximately 3.7 billion crowns.

Since the Fund does not possess sufficient funds to cover the claims of the affected clients, it is to rely on a state loan that is to be granted by the state should the Fund lack sufficient funds to pay compensation in accordance with section 81, paragraph three of the Act on Securities.

The above provisions stipulate the obligation of the state to provide financial assistance in the amount of 50% of the needed funds. The Fund is to gain the remaining 50% of the sum in the financial markets. The state loan was granted to the Fund at the end of 2003. The Fund, however, encountered serious problems attempting to secure the remaining 50% of the sum in the financial markets since financial institutions are willing to grant the Fund the relevant loan but solely under the condition that the state guarantees it. Currently the Fund might be estimated to pay back loan over approximately 300 years since the income of the Fund based on the securities traders' contributions for 2002 amounted to 5.7 million crowns and the amount estimated for 2003 will be similar.

The provisions of section 81, paragraph three of the Act on Securities stipulates that the claims of the clients of securities traders are to be settled within three months

from verification of claims filed and of the claimed amount at the latest up to ten months from when the Securities Commission (or Court) issued written information that the trader is unable (and will remain unable) to meet its obligations towards clients. The ten-month period, especially in the case of KTP Quantum, a.s. is not realistic. Furthermore the Fund cannot commence payment of compensation if claims filed by individual clients are not properly verified.

In accordance with the section 81c, paragraph 12 of the Act on Securities the material required for verification of claims is to be secured by the administrator of bankruptcy assets (possibly the liquidator or the board of the executives of the company). The law does not define such situation (suffers from a lack of any tools of inspection or sanctions) when the administrator of bankruptcy assets for various reasons does not provide materials needed for verification of claims within the required period so that the Fund may commence payment of compensation within the period of ten months stipulated by law.

With respect to the above the Securities Commission would seem to represent the most suitable body of state supervision in accordance to section 82, paragraph one of the Act on Securities and could conduct supervision over the obligation assigned to the administrator of bankruptcy assets (possibly to the liquidator or the board of executives) by the Act on Securities.

The Public Defender of Rights concludes that the system of payment of compensation fails to function for many varied reasons and that implementation of the European directive referred to above was not conducted in an appropriate way.

Legal provisions governing the payment of compensation stipulated by the law on securities (sections 81a to 81e) appear to fail to function (at least currently as is obvious from the procedure applied in the case of the bankrupt securities trader KTP Quantum, a.s.). Since the legal provisions of payment of compensation must respect the requirements stipulated by European law at the earliest possible date, the solution of this unsatisfactory situation should be resolved, including speedy payment of compensation to the affected clients. Otherwise a real threat exists that the Czech Republic may be considered liable for failure to comply with the requirements of this directive.

IV. CONCLUSION

In 2003 the Public Defender of Rights did not encounter any significant events having a crucial influence on the performance of his function and the function of his Office. The conclusion from evaluation of the previous year 2002 was confirmed in that the material and organisational matters related to the smooth running of the Office, including equipment, have been consolidated. There were no extraordinary measures to be taken nor significant organisational, technical, nor legislative changes required. This reflects the results achieved with respect to the number of complaints dealt with by the Office. It should be mentioned that due to its economic operation, the Office again achieved substantial savings when using resources allocated to the Office by the state budget.

As with the improved state of consolidation of the Office, the professional standards of handling issues related to complaints improved significantly when compared to last year. The Defender is supported by the fact that most of those directly in contact with him in course of inquiries related to individual complaints respect the results of the Defender's inquiries and therefore most of the individual complaints are resolved in compliance with legal system and principles of good administration.

In the activities of the Defender related to dealing with individual complaints it may be noted that a slight decrease in the number of new complaints provided space for more general and deeper observations of individual cases accompanied by an emphasis on the quality and scope of the issue in question. The accuracy of analytical activities increased and the conditions were created for the more general observations included in this report.

The Public Defender of Rights functioned as an institution often asked for comments related to the legislative process. He was therefore able to rely on observations from his activities in commenting on legal regulations in preparation.

The increasing number of complaints towards the end of 2003 might be considered a demonstration of continuing trust in the activities of the Public Defender of Rights. This an increase also indicates that the decrease in complaints at the beginning of 2003 had no long-term significance.

The third year of the existence of the Public Defender of Rights brought even deeper acceptance of the institution of the Defender within the system of other institutions and within public life and society. The ratio of complaints received that were within the mandate of the Public Defender of Rights in comparison to complaints outside the mandate showed a positive trend.

The importance and purpose of this report lie mainly in the increased attention paid to Part III. The General Observations should be considered with respect to evaluation of the planned legislation to amend or broaden the scope of the mandate of the Public Defender of Rights that will be submitted to the Parliament of the Czech Republic in the near future in line with the policy of the Government.

In Brno, on 22 March 2004.

JUDr. Otakar Motejl

Public Defender of Rights

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IN 2003

SUMMARY

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