CZECH REPUBLIC

ANNUAL REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS

IN 2005

SUMMARY

ISBN 80–210–

CONTENTS

I. THE PUBLIC DEFENDER OF RIGHTS AND HIS OFFICE

1. The Starting Point

The Defender presents this Annual Report on his activities in 2005 in compliance with Section 23 of Act No. 349/1999 Coll., on the Public Defender of Rights, as later amended (hereinafter "Public Defender of Rights Act") continuing on from the Annual Report on the Public Defender of Rights' work in the previous calendar year.

The Defender presented the 2004 Annual Report to the key constitutional officeholders in person (seen by the Chairman of the Czech Chamber of Deputies and the President on March 22, 2005, by the President of the Senate on March 29, 2005, and he presented the Report to the Prime Minister on March 30, 2005). In accordance with Section 23, par. 1 of the Public Defender of Rights Act, the Report was also sent to ministries and other administrative authorities with national competence and displayed in electronic form at the www.ochrance.cz website for the general public.

On May 12, 2005, the Chamber of Deputies of Parliament discussed the 2004 Annual Report as parliamentary protocol No. 935 at its 44th meeting and acknowledged it. The Senate of the Czech Parliament discussed the report at its plenary session on May 4, 2005, as senate protocol No. 50.

The Annual Report on the Public Defender of Rights' activities in 2005 has been compiled in a similar manner to previous reports. The Report presents general and statistical data on the activities of the Public Defender of Rights and of his Office within the period under scrutiny in brief introductory texts. A substantial part of the Report comprises of practical findings from the activities of the Public Defender of Rights in the period, along with examples of specific cases the Defender dealt with. Besides the breadth of the present agenda, the Report shows the intensifying need for a comprehensive overview in individual agendas of fields and areas of law it pertains to, and a certain shift in perception of his work's outputs by the majority of state bodies and a number of self-governing bodies. The third part of the Defender's Report describes progress in dealing with observations made in previous reports, and chiefly summarises the most pressing issues rooted in an analysis of complaints processed in 2005. Along with this account, the Defender presents his recommendations for solving the given issues.

The rather complex legislative process to accept the government draft amending the Public Defender of Rights Act pertaining to the Defender's position ended in the period under scrutiny (having started in 2003). Having been discussed in second reading in committees, the amendment underwent general discussion on May 5, 2005, (parliamentary protocol No. 751) to be accepted in a third reading including committees' and individual MPs' amendments on May 17. The Senate returned the draft to the Chamber of Deputies on May 17, 2005, which passed it on August 19, 2005, as amended by the Senate. The legislative process was completed with the presidential signature on September 9, 2005, published in the Collection of Laws under sequence No. 381 and it came into effect on January 1, 2006.

As of January 1, 2006, this amendment entrusted the Public Defender of Rights with a task ensuing from the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which stipulates that the signatory states establish an independent body that would set up a precautionary system of regular visits to detention facilities to boost protection of *de jure* or *de facto* detained persons. This is a very specific duty, unlike the present competence, as well as the Defender's duty to supervise the undertaking of a number of facilities and locations, regardless of whether such facilities were founded by the state, a regional self-governing unit or a private entity. The amendment also changed several provisions in the Public Defender of Rights Act that had caused interpretation disputes, removed a gap in dealing with the potential interregnum between the end of one Defender's term and new one's taking the oath and broadened the Defender's competence to Public Prosecutor's Office administration, thus balancing the Defender's auditing competence towards the judicial administration and administration of the Public Prosecutor's Office.

Thus, at the end of 2005 the Defender faced a duty to prepare, to a short deadline, for the execution of this new competence. The Mandate Department of the Office of Public Defender of Rights was boosted by the addition of another specialised team. In December 2005 the head of the team took a brief professional attachment in Geneva with the Association

Preventing Torture (APT), a leading NGO with long-term involvement in the worldwide promotion, documentation and monitoring of compliance with the fundamental rights of detained persons, to gain experience in this area. To ensure faultless transfer of the Office administration to the Defender's broadened agenda, requested alterations to the software for documents' reception, processing, registration and archiving were set up and installed.

The legislative process setting the Defender up as an independent institution to be approached by persons suffering discriminatory conduct as of July 1, 2006, continued in 2005. The government's draft act on equal treatment and on legal instruments of protection against discrimination (the Anti-Discrimination Act, parliamentary protocol No. 866) and the draft of an accompanying act amending laws in association with the passing of the Anti-Discrimination Act (parliamentary protocol No. 867) were passed in their third reading on December 7, 2005, by the Chamber of Deputies. As the Senate returned the Act to the Chamber with comments, the legislative process had not concluded when this report was compiled.

2. Office of the Public Defender of Rights, Material and Staff Facilities

2.1 Budget and Spending in 2005

In 2005 the Office of the Public Defender of Rights functioned with a **CZK 80,823 thousand** budget. The State Budget Act, budget chapter No. 309 – Office of the Public Defender of Rights, approved a budget of **CZK 92,055 thousand** for 2005, this figure containing an increase of CZK 11,232 thousand to cover potential costs pertaining to broadening the mandate of the Public Defender of Rights. However none of these legislative intentions were implemented in 2005 and thus the sum of CZK 11,232 thousand was not used.

CZK 61,417 thousand was used from the budget in 2005, i.e. **76%** of the CZK 80,823 thousand. The sum of CZK 19,406 thousand was saved, particularly courtesy to savings of CZK 12,702 thousand in drawing on the current funds, mainly in operational costs, salaries of employees and other payments for work carried out. Investment costs were also reduced: here CZK 6,704 thousand was saved.

2.2 Personnel Situation in 2005

The 2005 state budget of CZK 80,823 thousand gave an **obligatory limit to the number of employees** of the Office of the Public Defender of Rights of **86**. The actual average recalculated number of staff recorded was **85.9** in 2005, and thus the limit set by the state budget was observed.

With respect to the physical number of employees as of December 31, 2005, some 91 people were employed in the Office, excluding the Public Defender of Rights and his Deputy. This number partially took account of personnel for the execution of the new mandate starting on January 1, 2006. 59 employees were directly involved in settling complaints (of which 46 were lawyers and 13 administrative and documentation department staff). This number corresponds to specialist and administrative needs in settling complaints, generalising gained findings along with extensive collection information pertinent to the inquiry, reception of legal and other expert opinions that set up conditions for comprehensive assessment and settlement of individual cases by the Defender and consequent definition of potential measures to remedy found shortcomings, possibly with suggestions of amendments to the legislation and other measures where systemic errors in the administration of public affairs were found.

In 2005 **co-operation with external experts** continued, mainly from the Law Faculty of Masaryk University in Brno, the Law Faculty of Charles University in Prague and in several cases from the Institute of Forensic Engineering in Brno. This mostly took the form of individual consultations and requested opinions on the most legally complex cases and the presence of renowned experts at regular consultative meetings of the expert staff, chiefly lawyers of the Mandate Department of the Office of the Public Defender of Rights.

Internal audits of the management of funds from the state budget are carried out in compliance with Act No. 320/2001 Coll., on Financial Supervision, as later amended, and with internal regulations of the Office of the Public Defender of Rights. In 2005, one combined audit of the system and compliance focused on management of budgetary funds, cashier service and public procurement was carried out in accordance with the Internal Audit Department work plan. No external audit was performed in 2005. The office presented the

report on the 2005 financial audits in accordance with Section 22 par. 2 of Act No. 320/2001 Coll., on Financial Supervision, as later amended, to the Ministry of Finance.

3. The Provision of Information Under Act No. 106/1999 Coll., on Free Access to Information

The Office of the Public Defender of Rights received five requests for information under Act No. 106/1999 Coll. on Free Access to Information, in 2005, of which three were delivered by electronic mail. Information on the Office's financial management, particularly the amount, structure and drawing on the annual budget, were requested in all cases. The information was provided to the requested extent, in full and on time. No applicant appealed.

Sect. 18 par. 1 letter a)	Number of written requests for information filed	5
Sect. 18 par. 1 letter a)	Of which, number of requests by e-mail	3
Sect. 18 par. 1 letter b)	Number of judicial remedies filed	0
Sect. 18 par. 1 letter c)	Copy of substantial parts of each judicial verdict	0
Sect. 18 par. 1 letter d)	Results of proceedings on penalty for violating Act No. 106/1999 Coll.	0
Sect. 18 par. 1 letter e)	Other information pertaining to exercise of the law	0

4. Public Awareness of the Work of the Defender

The Public Defender of Rights informed the public in 2005 by continuous liaison with all media, which showed considerable interest in his work this year, as well as using other presentation tools.

4.1 Media Presentation of the Public Defender of Rights

As in the past, in 2005 the Public Defender of Rights held regular monthly press conferences on his work and gave reports on topical issues. For instance, the press conference held in February 2005 focused on the issue of distraint proceedings and the position of debtors, while at other conferences the Defender informed journalists of inquiries into the settlement of plots under roads owned by the state and regions in terms of property rights, on an inquiry by the state bodies in judicial administration pertaining to judicial delays after he sent an extensive report to the Minister of Justice summarising his findings and attempting to assess the causes of delays at individual courts, on the issue of disturbances by noise and emissions of harmful substances caused by the increasing effects of road traffic that had not been dealt with, and others. The full wording of all press releases is displayed at www.ochrance.cz.

'A Case for the Ombudsman', a thirteen-part series broadcast on Czech TV's second channel from September, was a new and accessible way of acquainting the public with the Defender's work. Using concrete cases, the series introduced the public to the human dimensions of complaints and the fates of those addressing the Defender, as well as the scope of the Defender's mandate, how he works, the work of his experts and the responses of representatives of pertinent authorities, all contributing to a comprehensive picture of his activities. According to Czech TV's ratings, the series was followed by an average 360 thousand viewers and was labelled the best-watched series from the Brno Television Studio. Czech Television is currently negotiating with the Defender on a selection of cases to be scripted for another series.

In 2005, other media demonstrated a growing interest in the Public Defender of Rights' work and results. According to the press monitor available to the Defender, the Czech News Agency mentioned his work in 329 cases in 2005, and Czech TV 209 times in news and coverage. The Defender's opinion on topical issues and medically interesting cases were voiced also on TV Nova and TV Prima. Czech Radio 1-Radiožurnál, Czech Radio 6, Frekvence 1, as well as the Czech BBC, gave information on the Defender's work.

4.2 Other Informative Activities of the Defender

In 2005, the Defender registered a high number of **personal visits of complainants in his Office** to file oral complaints, often first to obtain information on the Defender's mandate or his options for helping with a specific issue or to obtain fundamental advice on how to solve an unfavourable situation. **1,702 people** visited the Public Defender within the period.

In 2005 the Defender operated the Defender's information hotline (tel. No. 542 542 888) used by citizens in office hours on working days, which has come into its own. The Office lawyers logged **5,394 calls**, mostly requests for legal advice, some inquiring into the Defenders mandate and developments in the handling of a complaint previously filed.

In the first quarter of 2005 the Defender created a new look for his **website** (www.ochrance.cz), with an electronic registry (for more detail see Section II). In rebuilding the website, the Defender emphasised functionality and accessibility of the contents according to recommendations contained in Best Practice – Rules for Building an Accessible Website, issued by the Ministry of Informatics and WCAG 1.0. Adjustments to the Defender's web presentation were applied in the months that followed in accordance with the third level rules of accessibility of the Methodology for a Blind-Friendly Web 2.3V. The Public Defender of Rights website has been incorporated in the Catalogue of Blind-Friendly Web Pages as of September 30, 2005, and may use the Blind-Friendly Web logo.

176,548 people visited the Defender's website in the monitored period. **158 people** used the option to address the Defender via the web form for informal messages, queries and comments.

5. Special Powers and Obligations of the Public Defender of Rights

The third part of the Public Defender of Rights Act affords special powers to the Defender. These involve special obligations towards the Czech Parliament to which he is not subordinated though he is responsible to the lower chamber for the performance of his role, as well as his right to present the government and administrative authorities with recommendations of changes to legal and other regulations if he finds grounds for these. He may also propose to the Constitutional Court the annulling of legal regulations and take part in such proceedings if initiated by another party under the provisions of Section 64 of Act No. 182/1993 Coll., on the Constitutional Court.

5.1 Relations with Parliament

In the Defender's work 2005 might be described as a period of his increasing **personal presence at hearings** of committees and the Chamber of Deputies' plenum and hearings of the senate's committees and plenum. Besides his regular presence at the hearing of the Annual Report for the previous year and discussions on the regular quarterly information presented under Section 24 par. 1 letter a) of the Public Defender of Rights Act, frequent visits arose chiefly through the continuing legislative process of passing laws that would significantly change the framework of his undertaking.

On May 11, 2005, the Defender was present at the hearing on the 2004 Annual Report on the Activities of the Public Defender of Rights, recorded as parliamentary protocol No. 935 at the 44th meeting of the Chamber of Deputies that had been previously debated by the Petition Committee as mentioned above. In association with Annual Report hearing the Defender was also present at the Constitutional and Legal Committee meeting and the Committee for Education, Science, Culture, Human Rights and Petitions and a plenary senate meeting where the report was discussed as senate protocol No. 50, on May 4, 2005.

At a time of drafting laws that significantly involve the Public Defender of Rights' activities, the Defender emphasises co-operation with the authors of draft laws as well as personal contact with legislators in the legislative process. Therefore, he was present without fail in both chambers of Parliament when the process of discussing the government's draft Public Defender of Rights Act (parliamentary protocol No. 751) climaxed in 2005. He personally attended almost all meetings of the pertinent committees and plenary hearings of the legislature discussing the Equal Treatment Act and Act on Legal Instruments of Protection Against Discrimination (Anti-Discrimination Act), (parliamentary protocols Nos. 866 and 867).

Along with the head of the Office of the Public Defender of Rights, the Defender was present at the Petition Committee's hearings on the 2004 draft state final budget, chapter No. 309 – Office of the Public Defender of Rights on May 11, 2005 (41st meeting), and the hearing of the government's draft 2006 State Budget Act on November 8, 2005 (48th meeting).

To comply with the responsibility imposed by the provisions of Section 24 par. 1 letter a) of the Public Defender of Rights Act, the Defender presented Parliament with **regular quarterly briefings on his activities** and discussed these in person at the Petition Committee

hearings as the Chairman of the Deputies Chamber decided, accompanying the briefings with specific information at committee members' request. The unabridged text of each interim briefing is available at www.ochrance.cz.

On February 16, 2005, the Defender used his special privilege under the provisions of Section 24 par. 1 letter a) of the Public Defender of Rights Act and approached the Chamber of Deputies with a **report on a single matter**. He had used all the powers under his mandate and repeatedly called on the pertinent state bodies (the Ministry of Transport and Communications and the government) to remedy the long-unsolved situation of plots of land under roads owned by the state and regions in terms of property rights (highways and class I, II and III roads), and yet the settlement of the issue had been endlessly put off without taking clear steps manifesting the state's will to conclude the problem. When presenting this report the Defender pleaded for respect to be paid to the inviolability of ownership as an immanent feature of the concept of a legal state in accordance with Article 11 of the Charter of Fundamental Rights and Freedoms as well as Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, in the interest of owners' protection. These documents oblige state bodies to honour and respect the ownership rights of everyone without exception and impose a duty to ensure undisturbed usage. In the report the Defender maintained that the state bodies' conduct hitherto was in conflict with these principles.

The Chamber of Deputies took cognisance of the Defender's report and passed a resolution binding the Czech government to propose a definite solution to the issue by June 30, 2005. According to information from the Prime Minister, a paper on the matter was put on the government's agenda on June 23, 2005. On August 24, 2005, the government passed resolution No. 1 059 endorsing a programme for implementing settlement in terms of property rights to plots of land under motorways and class I, II and III roads and consequently authorised the Prime Minister to inform the Chamber of Deputies of the resolution.

Pertaining to the ongoing legislative process of amending the Public Defender of Rights Act, members of the Constitutional and Legal Committee of the Senate and President of the Senate Přemysl Sobotka accompanied by the chairmen of the Constitutional and Legal Committee, senators Jaroslav Kubera and Jiří Stodůlka, members of the Committee, were acquainted with the Defender's work at his Office in February 2005. They visited the Public Defender of Rights on September 22, 2005, to become acquainted with several problem areas and agreed to intensify contacts between the Defender and the upper chamber of Parliament, though the Public Defender of Rights Act only treats direct connections with the Chamber of Deputies.

5.2 Material Presented by the Public Defender of Rights to the Government

Under the provisions of Section 22 of Public Defender of Rights Act, the Defender may address the government if findings obtained settling individual complaints lead him to conclude that the issuing, amendment or abolition of a government order or law is essential to remedy the situation. The law prescribes presenting material to the government as the supreme executive body in the provisions of Section 20 if an authority fails to remedy shortcomings discovered by the Defender, declines to accept measures proposed by the Defender and there is no superior body to ensure the remedy requested by the Defender.

In 2005, the changed government rules of procedure from 2004 became fully evident in the process of presenting material to the government. According to this change the Public Defender of Rights himself conducts amendment proceedings pertaining to often very specific materials that he addresses the government with and presents the materials to the government in person having resolved the comments. The Defender adjusted materials presented but not yet discussed prior to the rules of procedure alteration in compliance with the alterations. The Defender decided not to present some materials again because he had used different tools for their settlement in the interim. In the main, he opted for active participation in inter-departmental amendment proceedings on draft laws treating the issue in question. Therefore, parts II and III update cases presented to the government in the past while being handled.

The Defender closed a case in 2005 that had been presented to the government after the change in rules of procedure on July 20, 2004. It primarily involved a sanction imposed against the Ministry of Finance that refused to make good in the matter of illegal **tax distraint whereby recurring state income support is curtailed by means of claim payment orders in place of deductions**. Following complicated proceedings, the Ministry remedied the

situation. As comprehensive treatment of distraints to the mentioned support in the regime of the Civil Procedure Code was essential, the government ordered the Minister of Labour and Social Affairs to draft and present to the government a draft act on state income support, and the Minister of Justice to draft and present to the government a draft Civil Procedure Code in Resolution dated October 20, 2004 (No. 1 001), both by December 2005. The Senate returned the draft act amending the State Social Support Act, Civil Procedure Code and other laws (parliamentary protocol No. 1 049) on January 27, 2006, to the Chamber of Deputies with amendments. The effective date of the amendment stipulating that recurring income support could only be curtailed by deductions from earnings henceforth is targeted for April 1, 2006. Unless the draft text changes, the amendment will not apply to distraints effective prior to the amendment's effectiveness.

Investigating a complaint, the Public Defender of Rights found that in proceedings on **application for a permanent residence permit**, bodies of the Foreign and Border Police of the Czech Police employed procedures he believed illegal. The Defender decided to inform the government under Section 20, par. 2 letter a) of the Public Defender of Rights Act because the bodies concerned did not accept the Defender's opinion on the legality of such conduct, failed to take any remedial steps the Defender had proposed having completed the inquiry, and in fact suggested general application of the very conduct challenged by the Defender. The Defender proposed the government invite the Minister of the Interior to adopt remedial measures that would ensure administrative proceedings in the matter of a foreigner's application for a permanent residence permit in the Czech Republic not be discontinued due to the initiation of criminal proceedings against such a foreigner. In compliance with the Government's rules of procedure the Defender sent material to amendment proceedings on March 17, 2005, but chose not to present the material with fundamental discord to the government due to the proceeding's results and acceded to other instruments.

On February 16, 2005, the Defender presented a recommendation to the government to amend laws in the matter of **stating of personal numbers on petitions**, in compliance with Section 22 par. 1 of Act No. 349/1999 Coll., on the Public Defender of Rights. The reason for the recommendation was to point out the varying perception of the personal number by central state administration bodies as a personal identifier and to prompt the government to take up a uniform position on the issue of protecting personal numbers against disclosure. The Defender proposed amending Act No. 424/1991 Coll., on Association in Political Parties and Political Movements, as later amended, to abolish the duty to give one's personal number on a petition supporting the founding of a political party or movement as set out under Section 6 par. 2 letter a), or to replace it with a duty to give only the birth date because opinion on the need to protect the personal number had changed considerably since adoption of the Act. The personal number must be stated not only on a petition supporting the founding of a political party or movement but also on a petition supporting an independent candidate for senator, for registration of a church or a religious society on the signature sheet as well as on a registered church's and religious society's proposal to authorise the execution of special rights. Therefore the defender decided to approach the government with a recommendation to amend the pertinent laws to change the duty to state the personal number to a duty to state only the date of birth. The material was sent to amending proceedings in accordance with the government's rules of procedure. While the Ministry of the Interior adopted a positive position, the Ministry of Culture representative classified the requested change as unacceptable. As a result the material was presented to the government 'with discord'.

The Government acknowledged the Public Defender of Rights' recommendations to amend Act No. 247/1995 Coll., on Elections to the Parliament of the Czech Republic and amending and supplementing some other laws, as later amended, and Act No. 3/2002 Coll., on Freedom of Religious Confession and the Position of Churches and Religious Societies and amending some other laws, as later amended, on March 30, 2005, in Resolution No. 365. At the same time, the Government acknowledged that the Minister of the Interior would present a draft amendment to the Act on Elections to Parliament incorporating the Defender's recommendations to the government in May 2005. The government decided not to accept the Defender's recommendation to amend the Act on Freedom of Religious Confession and the Position of Churches and Religious Societies. It endorsed the draft amendment to the Act on Elections to Parliament on July 20, 2005, and presented it to the Chamber of Deputies on July 29, 2005 (parliamentary protocol No. 1 075). At the time of producing this Report, the draft act was undergoing its first reading by the Chamber of Deputies.

5.3 Relations with the Constitutional Court

The provisions of Section 64 of Act No. 182/1993 Coll., on the Constitutional Court, as later amended (hereinafter the Constitutional Court Act), stipulate the Defender's right to petition the Constitutional Court for the annulment or amending of legal regulations. The Defender did not exercise this right in 2005. The provision of Section 69 par. 2 of the Constitutional Court Act imposes a duty on the Court to send a petition to initiate proceedings to the Public Defender of Rights under Article 87 par.1 letter b) of the Constitution without delay while the Defender may notify the Constitutional Court that he is intervening in the proceedings. By doing so he acquires the position of a secondary party. In 2005, the Public Defender of Rights received **20 petitions** to intervene in proceedings. These mostly involved petitions to annul generally binding decrees of towns and municipalities or some of their provisions as well as of other sub-law legislation. The Defender intervened in none.

In 2005, the Constitutional Court conducted proceedings on a petition by a group of MPs to annul Sections 3 and 16 of the government's order No. 364/2004 Coll., **on setting some conditions for implementing a measure of joint organisation in sugar industry markets**, which he had joined as a secondary party in 2004. These were the third proceedings in a virtually identical matter (previous proceedings were conducted with the Defender's secondary presence in 2002 and 2003). Just as in the previous cases the Public Defender of Rights joined the petition with respect to findings from inquiries on individual complaints that led him to conclude that the application of the legislation in force violated the principle of equal treatment and a request for an objective manner of calculating sugar quotas, and thus generating inequality between individual sugar producers.

Given that the Constitutional Court's resolution allowed a change of petition by petitioners, the proceedings had not ended before compilation of the Report.

6. International and Domestic Relations of the Public Defender of Rights

6.1 The Defender's International Contacts

In 2005, the Defender cultivated previous international contacts ensuing from membership in international ombudsmen's organisations and contacts from bilateral co-operation with partner ombudsmen as well as other institutions and personages. To mention just a few:

- On January 17, 2005, the Defender was visited by **Ambassadress of the United Kingdom of Great Britain and Northern Ireland in the Czech Republic**, Mrs. Linda Duffield, to be acquainted with the legal restrictions and forms of Czech Public Defender of Rights' work and monitor the potential option of his help for foreign nationals, particularly British citizens, if they would feel harmed by Czech state administrative bodies' conduct.
- At the invitation of the **Austrian Ombudsman's Office** (Volksanwaltschaft) the Defender and his Deputy visited the Ombudsman in Austria on February 7 to 9, 2005. They met their counterparts Peter Kostelka and Rosemary Bauer, were seen by federal president Heinz Fischer, National Council Chairman Andreas Khol and also visited the Supreme Administrative Court and its Chairman Clemens Jabloner.
- The Defender attended the **Ninth Round Table Meeting of European Ombudsmen** in Copenhagen at the end of March and beginning of April 2005. The meeting was organised by the office of the Commissioner of the Council of Europe for Human Rights along with the Danish National Ombudsman. Besides nearly all European national and regional ombudsmen, Alvaro Gil-Robles the European Council Human Rights Commissioner, European Ombudsman Nikiforos Diamandouros, representatives of the supreme parliamentary and judicial bodies of the organising country and a number of experts from the Council of Europe were present. Settling complaints from the prison system and protection of the individual's privacy were on the agenda.
- The **Political and Economic Councillor of the US Embassy** Michael Dodman visited the Defender on April 7, 2005. He was primarily interested in the settling of complaints over the involuntary sterilisation of women.
- On April 22, 2005, **Head of the Serbian Presidential Office** Dragan Djilas, authorised to settle complaints of citizens against state administration, visited the Defender. The purpose

of the meeting was to share experience with an institution that is to become the Serbian Ombudsman's Office.

- Along with the chairman of the Czech Constitutional Court, the Public Defender of Rights met the **presiding judge of the Constitutional Court of Russian Federation** Valery Dimitriyevich Zorkin, on June 3, 2005. Zorkin inquired particularly into the division of the Ombudsman's and the Constitutional Court's competences in protecting Czech citizens' rights, to promote comparable European standards in Russia.
- At the end of June 2005 the Defender was present at a regular meeting of **ombudsmen from Hungary, Slovakia, Poland and the Czech Republic** in Budapest. The discussions focused on potential for co-operation and exchange of information on social conditions for the work of ombudsmen in the individual countries of the "Visegrad Four".
- On June 27, 2005, **Slovak Deputy Prime Minister** Pál Csáky visited the Public Defender of Rights as part of his official visit to the Czech Republic. He is responsible for setting up the legal environment and conditions for the maintenance of human rights in Slovakia. The vice-premier was interested in the state of institutional human rights protection and the legislative process progress in passing the Anti-Discrimination Act in the Czech Republic, as well as the long-unsettled issue of so-called Slovak pensions.
- Between July 20 and 22, 2005, the Defender visited Roel Fernhout, **the National Ombudsman of the Dutch Kingdom** in Hague, and discussed changes in the activities of both institutions as a result of amending Czech and Dutch laws broadening the duties put on both national ombudsmen. They also appraised the co-operation project of the Czech and Dutch ombudsmen that started in May 2004 and concluded in August 2005 and was conducted through exchange visits of experts.
- Michel Hunault, a **French MP in the Council of Europe's Parliamentary Assembly** visited the Public Defender of Rights on November 30, 2005. Among other things, he was interested in the Public Defender's new mandate and his experience in dealing with problems in the prison system.
- **French Ombudsman** Jean-Paul Delevoy visited the Public Defender of Rights at the beginning of December 2005. He was particularly interested in the Defender's experience in co-operation with public administration bodies, and met the president of the Supreme Administrative Court and the dean of the Law Faculty of Masaryk University in Brno, where he gave a lecture for French-speaking students, with a discussion, on the Role of the Ombudsman in a Democratic Society.
- On December 6, 2005, the Defender met with **Slovak Public Defender the Rights** Pavel Kandráč, who visited with numerous senior personnel from his office. The talks concerned the most advantageous organisational set up, the organisation of work, procedures when inquiring into specific cases and the Office of the Public Defender of Rights' experience with software for the electronic recording of documents and for archiving services.

6.2 Domestic Activities and Contacts of the Defender

The Public Defender of Rights holds working and scientific conferences to exchange opinions. He organised a scientific **conference on Modern Public Administration and the Ombudsman** in June 2005. It was conceived as interdepartmental because the Ombudsman typically assesses problems in context, unlike state administration, which is organised and managed by different departments. The conference's central document was the European Code of Good Administrative Behaviour initiated by the European Ombudsman and passed by the European Parliament as a resolution in 2001. A number of leading experts from different fields; scientific, administrative and judicial, were invited by the Defender and took an active part in the conference. A collection of proceedings was compiled from the papers and critical speeches in discussions, and is displayed at the www.ochrance.cz/Média a vnější vztahy website.

In 2005 the Defender continued developing liaison with **regions and regional authorities' representatives**. The framework of systematic co-operation was agreed at a meeting of regional authorities' directors in May 2005 in Zlín, and the Defender personally negotiated settling several key cases with representatives of individual regional authorities, such as the Karlovarský Regional Authority, Zlín Regional Authority and Vysočina Regional Authority, in the course of the year.

In November 2005 the Defender organised a **working meeting of all representatives of departments** affected by the execution of his new obligations in the area of detention as of January 1, 2006, at the Czech Chamber of Deputies. He acquainted the representatives of central state administration authorities present with his intentions concerning the execution of

his new mandate, as well as specific conduct for its application, and asked them to appoint contact persons in order to establish links in this sphere.

The Defender joined the **panel of regional authority directors** with similar objectives on November 23, 2005, and a meeting of **heads of regional and higher public prosecutors** held by the Supreme Public Prosecutor on November 29, 2005, in Litomyšl.

The Defender's 2005 activities included as always discussions with **representatives of central state authorities and institutions** on handling issues concerning the execution of the Defender's investigative powers, particularly interdepartmental issues and inconsistent practices. The advantage of personal meetings with representatives of authorities affected by inquiries is that it creates a space for clarification of opinions and seeking consensus to remedy shortcomings ascertained. The main such discussions were:

- The Defender met the new **Government Commissioner for Human Rights**, to resume the tried and tested forms of co-operation with the Government of the Czech Republic's Council for Human Rights;
- A working meeting with **Chairman of the Czech Office for Surveying, Mapping and Cadastre** focused on the process of removing errors in the cadastral records;
- The Defender's findings from complaints about the execution of decisions on minors were discussed at a working meeting with representatives from the **Ministry of Labour and Social Affairs, Ministry of Justice, Ministry of the Interior, Police Presidium, Prison Service of the Czech Republic and Czech Chamber of Insolvency Practitioners**;
- A working meeting of the Defender with the **Deputy Minister for Regional Development and Deputy Minister of Health and Chief Public Health Officer of the Czech Republic** focused on interdepartmental issues of essential co-operation of planning authorities and public health protection authorities, mainly in the observance of noise limits, the issue of so-called "bare flats" and flats that are health hazards;
- The Defender discussed complaints over fees for assigning a number, and about permits to operate radio stations on so-called yellow lines on the web, with the chairman of the **Czech Telecommunications Authority**;
- the Defender met representatives of the **Czech Office for Surveying, Mapping and Cadastre and of the Office of the Government Representation in Property Affairs** at a working meeting, seeking a solution to the problems of land without a known owner;
- The Defender discussed complaints of delays in judicial proceedings and unethical behaviour of judges with representatives of the **Ministry of Justice**;
- The Defender searched for solutions on how to provide a company catering allowance for those put on a special diet by a doctor for health reasons, with representatives of the **Ministry of Finance**;
- The Defender's meeting with the chairman of the **Office for Personal Data Protection** concerned liaison between the two institutions in dealing with problems where their mandates overlap;
- The Defender met the General Director of the **General Directorate of Customs** to discuss the ban on selling tobacco products and spirits in market places;
- Meeting leading representatives of the **Czech Foreigners Police** the Defender discussed possible solutions to the intolerable situation at Olšanská Street in Prague.

The results of these and similar discussions with representatives of the Ministry of Culture, Ministry of the Interior and Ministry of Finance are described in the subsequent section of the Report with the context of the cases satisfactorily completed due to such meetings.

II. THE MANDATE OF THE PUBLIC DEFENDER OF RIGHTS IN 2005

1. General Information on the Mandate of the Defender in 2005

1.1 Complaints Addressed to the Defender in 2005

The Public Defender of Rights **received 4,939 complaints** in 2005, an increase of 524 on the 4,415 complaints registered in 2004. The Defender ascribes this development to society having become more aware of the institution of the Public Defender of Rights. The fact that the number of complaints received rose in the last months of the year can be put down to the public's interest in the Public Defender of Rights' activities, due to increased exposure in the media and disclosure of the results of several cases followed by the media.

In 2005 the Defender also used his significant legal power to act without petition and opened **investigations on his own initiative in 38 cases**. These generally involved cases where he learned of a problem he deemed necessary to investigate from different sources or as secondary information while investigating common complaints.

In **11 cases** the Defender set up a "file of particular significance" dealing with generally recurring or otherwise important problems with a potential general impact on a non-specific group of individuals. These generally involve an inquiry on a higher level led by the Defender to remove a general or systemic error. The Report concentrates on the results of such cases in section II and above all section III.

Numbers of Inquiries Opened on Own Initiative

Year	Inquiries opened on own initiative
2001	8
2002	36
2003	44
2004	49
2005	38

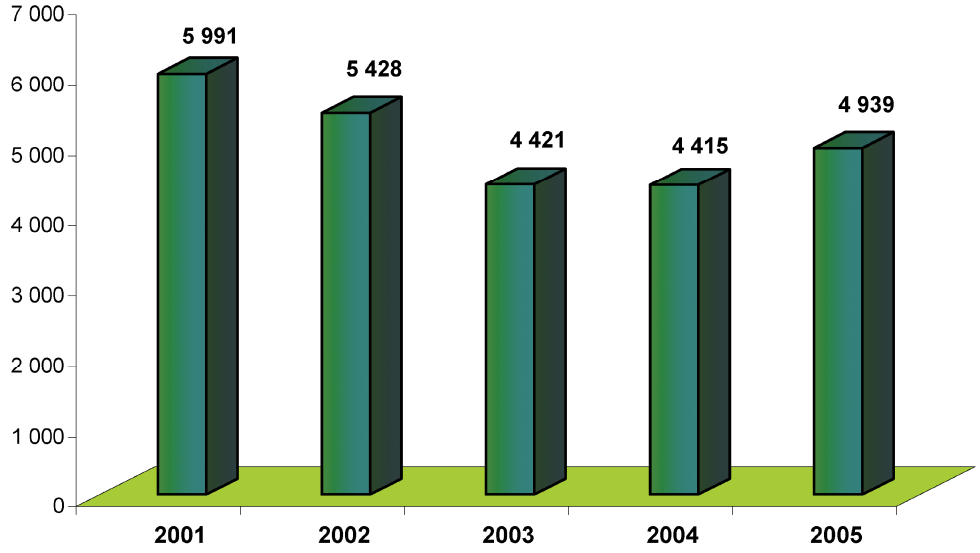
The following table shows another rise in **electronically filed complaints** in 2005, using the electronic registry with its form for submission placed on the Defender's website or delivered by standard electronic mail. The number of other documents delivered by electronic mail grew notably too. Analysis shows the positive influence of this communication on the progressive levelling up of the differences in the number of submissions from different regions, a further shift in the age structure in favour of younger complainants and an increasing proportion of complaints from legal entities. The Defender did not register complaints provided with an electronic signature in 2005, though he himself uses an electronic signature.

Numbers of Complaints Submitted Electronically

Year	Complaints	Supplements
2003	352	546
2004	453	867
2005	793	1 032

According to the statistics of the filing and archiving service software **25,464 files** have been filed in total, including cases delivered in 2000, even before the Defender was appointed. The bar graph below documents long-term developments in the number of complaints received. It shows that the number of complaints received levelled out at around 4,700 a year after the initial relatively high number in 2001 when the Defender took up his post.

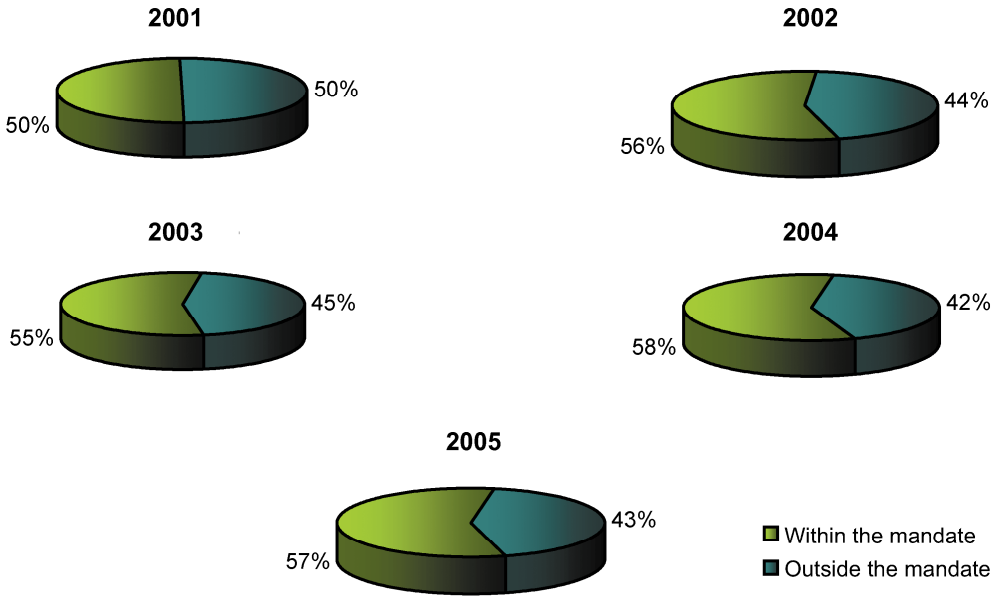
Complaints Received in Individual Years



The **structure of complaints delivered in terms of the Defender's mandate** defined by the Public Defender of Rights Act, are close to previous years' figures. Admissible complaints – **2,816,** i.e. **57%** of the overall figure, again prevailed.

It is necessary to point out that dealing with the 43% of complaints that fail the Defender's mandate is no less laborious, and it would be wrong to omit them from the Defender's performance. Settling and processing matters outside the defined mandate of the Defender has always been quite complex, because the response mostly contains an explanation of what the Defender's mandate covers as well as a recommendation as to whether and how the complainant can proceed in protecting his rights and interests (for more see Section II).

Ratio of Complaints Within and Outside of the Mandate in Different Years



To follow the development of complaints the Public Defender of Rights deals with, he records delivered complaints not only in terms of his legal mandate, but chiefly sorts them in a simplified way into statistical areas according to the state administration fields or law they largely pertain to, for registration and analytical purposes. This classification into areas is also

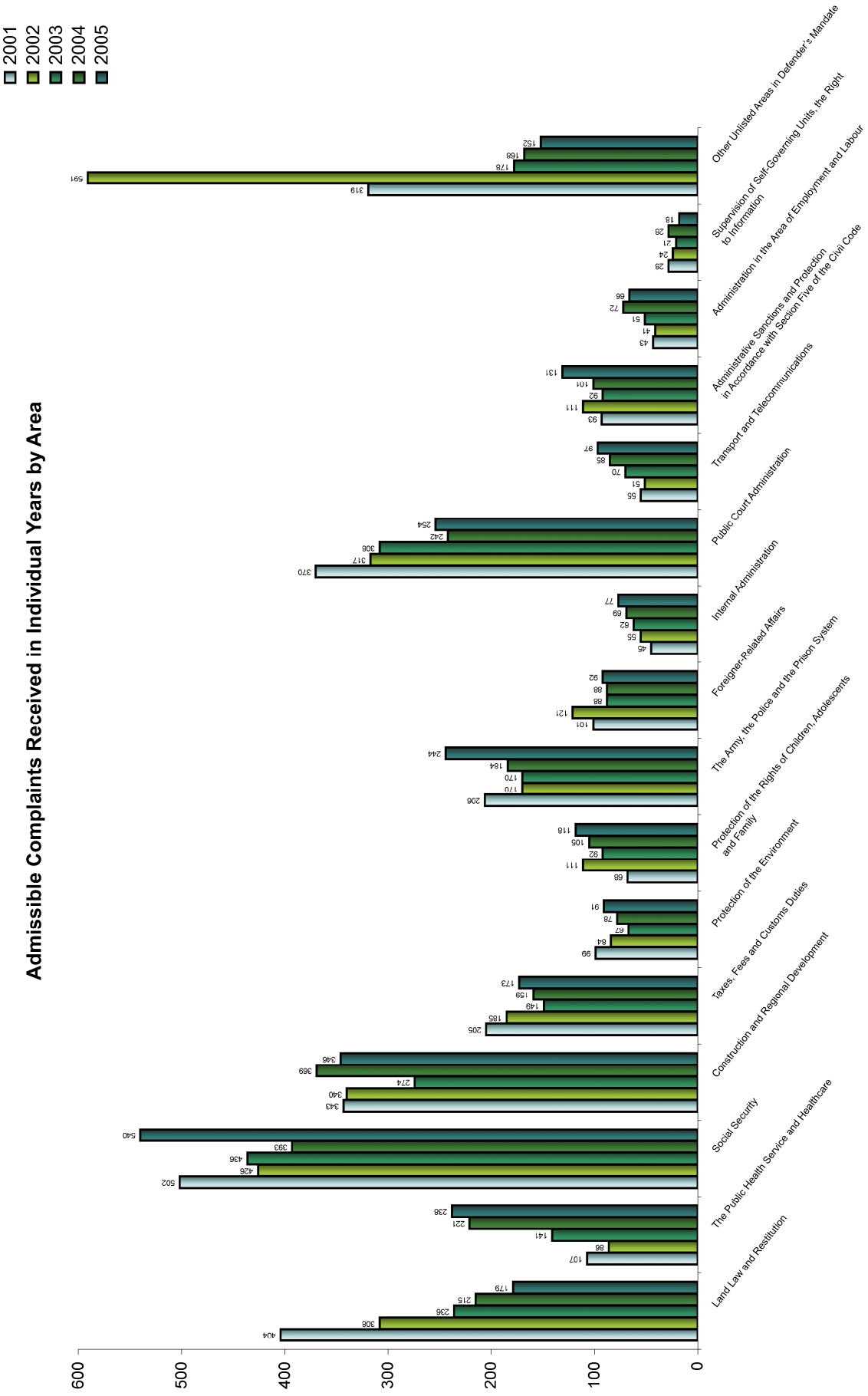
essential for assigning data for processing to a team of officers with the pertinent specialisation. Developments throughout society, or respectively, using necessary generalisations - developments of legal relations perceived by society as problematic and which society is not content with, can be traced with a certain statistical accuracy from the number of complaints delivered in specific areas.

The table below shows that neither the **structural composition of complaints** nor its trends have changed much compared to the previous year. The greatest number of admissible complaints received still concern social security, while complaints in this field show the biggest increase compared to 2004, along with healthcare and the prison system. The number of land law complaints continued to drop, in particularly due to a significant fall in the restitution area. Though complaints about problems in construction and regional development are the second most frequent, their number shows a slight fall compared to 2004. Trends in other areas have virtually stabilised, and judging by the above criteria, relations perceived by society as problematic have evolved stably. More detailed information on the state and development of individual areas in 2004 can be found in commentaries in the following section of this Annual Report along with examples of complaints handled by the Public Defender of Rights in the period under scrutiny. It also contains data on numbers of complaints broken down in detail into different statistical areas according to associated legal relations.

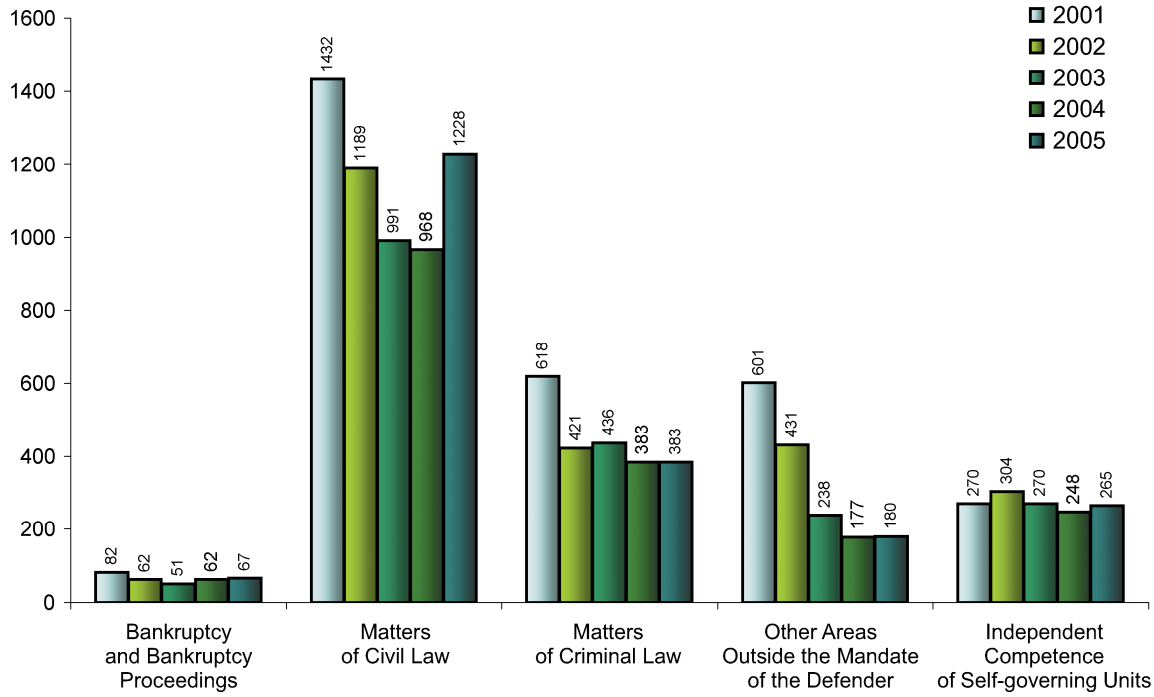
Number of Complaints Received in 2005 by Area

Complaints by area	Total	Share in %
Land Law and Restitution	179	3.6%
The Public Health Service and Healthcare	238	4.8%
Social Security	540	10.9%
Construction and Regional Development	346	7.0%
Taxes, Fees and Custom Duty	173	3.5%
Protection of the Environment	91	1.8%
Protection of the Rights of Children, Adolescents and Family	118	2.4%
The Army, the Police and the Prison System	244	4.9%
Foreigner-Related Affairs	92	1.9%
Internal Administration	77	1.5%
Public Court Administration	254	5.1%
Transport and Telecommunications	97	2.0%
Administrative Sanctions and Protection in Accordance with Section Five of the Civil Code	131	2.6%
Administration in the Area of Employment and Labour	66	1.3%
Supervision of Self-Governing Units, the Right to Information	18	0.4%
Other Unlisted Areas in Defender's Mandate	152	3.0%
Total Admissible Complaints	**2 816**	**57.0%**
Bankruptcy and Bankruptcy Proceedings	67	1.3%
Matters of Civil Law	1 228	24.9%
Matters of Criminal Law	383	7.7%
Other Areas Outside the Mandate of the Defender	180	3.6%
Independent Competence of Self-governing Units	265	5.4%
Total Inadmissible Complaints	**2 123**	**43.0%**
TOTAL	**4 939**	**100.0%**

As mentioned above the Defender uses records of complaints broken down into areas to acquire information to assess his activities. Comparing development of the number of complaints by individual area over a longer time sequence for the entire duration of the Defender's work has greater significance.


Admissible Complaints Received in Individual Years by Area
2001
2002
2003
2004
2005
0
100
200
300
400
500
600
Land Law and Restitution
404
308
236
215
179
The Public Health Service and Healthcare
107
88
141
221
238
Social Security
502
426
436
393
540
Construction and Regional Development
343
340
274
369
346
Taxes, Fees and Customs Duties
205
185
149
159
173
Protection of the Environment
99
84
67
78
91
Protection of the Rights of Children, Adolescents and Family
68
111
92
105
118
The Army, the Police and the Prison System
206
170
170
184
244
Foreigner-Related Affairs
101
121
88
88
92
Internal Administration
45
55
62
69
77
Public Court Administration
370
317
308
242
254
Transport and Telecommunications
55
51
70
85
97
Administrative Sanctions and Protection in Accordance with Section Five of the Civil Code
43
41
51
72
66
Administration in the Area of Employment and Labour
28
24
21
28
18
Supervision of Self-Governing Units, the Right to Information
319
178
168
152
591
Other Unlisted Areas in Defender's Mandate
93
111
92
101
131

Inadmissible Complaints Received in Individual Years by Area



1.2 The Handling of Complaints in 2005

In 2005 the Defender **processed 4,762 complaints** and compiled and signed approximately 19,500 documents. At the date of this Report, **938 files** were open at various degrees of completion. The number of files closed does not entirely match the figure of complaints received; in 2005 the Defender put much greater emphasis on extending the reach of individual inquiries and on pressure to remedy more general causes of adverse situations ascertained by inquiring into individual complaints. The number of files closed includes **21 so-called "files of particular significance"**, set up in 2005 and before, as outlined previously in terms of their purpose and importance.

In 2005 the Public Defender of Rights and his colleagues carried out **274 on-the-spot inquiries** (against 248 in 2004) focused not only on the up-to-date files of the pertinent authority or authorities but most of all on personal authentication of the situation *in situ*. This applies primarily in cases from planning permission and approval proceedings, protection of the environment as well as issues of the protection of the rights of children and adolescents and the prison system.

It is essential to repeat here that from the very beginning, the Public Defender of Rights **delegated a part of his mandate to his deputy** in accordance with provisions of Section 2 par. 4 of Public Defender of Rights Act, primarily in the agenda concerning the public health service and healthcare, social security, the protection of the rights of children, adolescents, and families, foreigner-related affairs, citizenship, and certain other agenda that lie outside his mandate. In these areas, the Defender's deputy exercises in full the mandate of the Defender in the sense of the cited Act. In order to secure the groundwork for inquiring into complaints *in situ*, the Defender also delegated his powers to specialist Office staff in a number of cases under Section 25 par. 3 of the above Act.

Of the complaints processed in 2005 the Public Defender of Rights:

- Suspended **1,490** cases although usually with at least simple advice on how the complainant might proceed in protecting his rights. The suspension was largely due to the lack of a mandate, and rarely for other reasons given by law, or due to the complainant's failure to submit the required documents;
- Processed **2,585** complaints by giving extensive legal advice and clarification of the procedure whereby the complainant him/herself may exercise his/her rights or claims, or he provided help otherwise, for instance acting as a mediator between the complainant and

the authority, or by terminating the inactivity of the authority by taking up the matter, although otherwise unable to act in several of these cases due to a lack of mandate;

- In **241** cases, inquiries by the Public Defender of Rights either failed to establish maladministration by the authorities or did not find any inconsistency with the principles of good administration, or found that maladministration had indeed occurred, but could not have affected the subsequent decision (a minor formal shortcoming for instance);
- In **425** cases the Defender found gross maladministration by the concerned authority or simultaneously several concerned authorities.

Of this number:

- In **346** cases, shortcomings were remedied by the authority itself in the course of the inquiry or with the aid of the Defender, who found the measures taken sufficient;
- In **60** cases the Defender suggested remedies, on concluding inquiries, to those authorities that had failed to remove ascertained shortcomings themselves, the authority adopted these measures and the Defender accepted this;
- In inquiries in a further **17** cases, grave maladministration was established on the part of the authority, which failed to rectify it and to adopt measures suggested by the Defender. The Public Defender of Rights was forced to impose sanctions due to the negative response of the authority; and
- In **two** cases the Defender exercised the special powers afforded to him by law.

2. Complaints Within the Mandate of the Defender – Commentary and Examples

In this Annual Report, the Public Defender of Rights presents generalised findings, observations and experience recorded in 2005, along with typical examples, in order to acquaint the reader with range of his activities. These are broken down into groups by the legal area the complaint pertains to, for clarity. Examples of complaints are introduced by brief résumé for easy orientation and each of legal areas has an opening commentary on the Public Defender of Rights' specific findings.

In order to safeguard the obligation of secrecy imposed by the provisions of section 7, paragraph two, of the Public Defender of Rights Act, details identifying complainants are not disclosed.

2.1 Land Law, Property Relations Relating to real Estate and Restitution

Property Relations in Real Estate and the Work of the Land Registry Office

In 2005, 68 complaints were received.

In 2005 the Defender completed the effort to unify the procedures of cadastral offices that proceeded in a different ways in **correcting an error in the cadastral records**. Meeting the central body of surveying, mapping and cadastre – the Czech Office for Surveying, Mapping and Cadastre turned out to be productive as well as the ensuing discussion. Both parties agreed that proceedings on correcting an error under Section 8 of Act No. 344/1992 Coll., on the Cadastre of Real Estate of the Czech Republic (Cadastral Law) should primarily remove the shortcomings caused by an error in the responsible officer's work in the restoration and keeping of the land register. The Defender and the Czech Office for Surveying, Mapping and Cadastre concurred that besides cases the law treats explicitly, the data pertaining to legal relations founded by registration proceedings can be intervened in under certain circumstances. The Defender believes that intervention into data on legal relations cannot be carried out using the institution of correction of an error but by completion of the initial incorrectly executed registration proceedings (by an additional insert). Whether correcting an evident error or "inserting", the intervention must be carried out against the pertinent deed that was presented to the Office before but incorrectly recorded. Such a procedure corresponds to the principle that legal relations cannot be affected by a revision of data in the land registry, correcting an error in the cadastral records nor restoration of the cadastral records, unless the change is backed up by a deed.

The Defender repeatedly handled complaints of **dissatisfaction with the length of proceedings on registration and entry proceedings** in the land registry at the Land

Registry Office for the Capital City of Prague, Subordinated Land Registry Office Prague. The decisions are still not being issued within the deadlines stipulated by the Code of Administrative Procedure. The Defender admits that no systematic and overall remedy of delays can be expected at this office without increasing funding.

This year, the Defender dealt with **delays in proceedings on review of a decision outside appellate proceedings** with the Czech Office for Surveying, Mapping and Cadastre as well as with other central bodies of state administration. Based on the Defender's inquiry results, the central body for surveying, mapping and cadastre accepted a measure of general applicability. This should ensure that filings to review a contested decision outside appellate proceedings will be processed by the concerned department to avoid delays in their assessment, regardless of how technically or legally specific the matter is that they contain.

Complaint Ref. No.: 3834/2005/VOP/ŠSB

The Land Registry Office must issue a decision on entry of ownership rights in the land registry and execute the entry within 90 days of the filing of a proposal for entry. Delays in proceedings seriously affect the legal safeguarding of parties to the proceedings. Parties to the proceedings cannot in any way affect the legal and economic consequences that may be linked with the delays in proceedings.

Mr. P. P. approached the Defender in mid-October 2005. He was unhappy with the length of proceedings on entering a right in the land registry at the Land Registry Office for P., P. Subordinated Land Registry Office. The proposal for entry from May 2005 was not settled, not even after a reminder and another complaint to the Land Registry Office director.

According to the Public Defender of Rights' findings, the average period for an entry with this pertinent Office is currently 4.8 months. The Defender does not deem this acceptable. According to the Code of Administrative Procedure (Act No. 71/1967 Coll. effective until 31/12/2005) a land registry office is obliged to issue a decision to permit entry of an ownership right in the land register within 60 days of the moment of filing a proposal for entry at the latest and subsequently execute the entry within 30 days at the latest (technical record in the cadastral records).

The Czech Office for Surveying, Mapping and Cadastre, P. office, staff continuously update the Defender on changes and progress. The Public Defender of Rights monitors compliance of previously accepted measures, chiefly respecting the rule that the sequence of entries is subject to the time the proposals of entry were received by the pertinent Land Registry Office. In order to make individual proceedings transparent and give the public a chance to check, the central body set up a service for looking into the land register at the websites of individual land registry offices (see http://nahlizenidokn. cuzk.cz). Surveying and cadastral inspectorates also monitor progress.

Mr. P. P.'s entry proceedings terminated in mid-November 2005.

The Settlement of Restitution Claims and the Work of the Land Settlement Offices

In 2005, 89 complaints dealing with this issue were received.

As in previous years, the Public Defender of Rights mostly settled complaints of **Land Settlement Office delays in proceedings on restitution claims**. The Land Settlement Office usually removed delays, issued a decision or started taking steps towards issuing a decision, as a result of the Defender's inquiries.

In the second half of 2005 the Public Defender of Rights registered an increased number of complaints from citizens asking for help, or at least advice, concerning the announced **termination of the restitution process on 31/12/2005 – the so-called restitution 'full stop'**. The Defender received a number of complaints from those who did not exercise their restitution claim within the stipulated foreclosure period. He was also addressed by individuals whose claim had been lawfully rejected by Land Settlement Office or by a court. Citizens deriving their information from the media felt that the announced date was their last chance to claim property withheld from them, or respectively that they could apply for re-opening of previous lawfully completed proceedings until 31/12/2005. The information on the meaning of the restitution 'full stop', and to whom it applied, was clearly ill-defined. Therefore the Defender endeavoured to clarify the issue. He informed citizens in his replies that the restitution 'full stop' concerned time-limited transfers of compensatory plots of land, dedicated one of his press

conferences to this issue to raise legal awareness of the interested public via the media, and last but not least published an explanatory text on his website. For more detail on the Land Fund see Section III.

Complaint Ref. No.: 1314/05/VOP/PL

Uncertainty as to which authority can conclude contracts on rendering compensation to a beneficiary linked to the abolition of district authorities on 31/12/2002, were consolidated as follows: in response to a promptly lodged summons to award compensation, the Office of the Government Representation in Property Affairs, having considered the claim's legal and material aspects and appraised the amount of compensation through an expert opinion, will compile a contract on providing compensation. It will pass the contract to the Land Fund to execute.

Mr. K. S. approached the Defender with a complaint demanding that obscurities in competence to conclude contracts on providing compensation to a beneficiary under provisions of Section 16 of Act No. 229/1991 Coll., on Arranging Ownership Relations to Land and Other Agricultural Property, as later amended (hereinafter the "Land Act"), in association with abolishing district authorities on 31/12/2002, be clarified. The Office of the Government Representation in Property Affairs (hereinafter the "Office"), whose competence was most often referred to in the transfer of rights, told him the Office believes this duty did not pass onto the Office from a defunct district authority.

As other citizens had addressed the Defender with similar queries, this was not a one-off problem. As part of the inquiry in this matter the Defender decided to address the Office with a request to find a uniform statement, as well as the Ministry of Agriculture, Ministry of the Interior and Ministry of Finance. He ascertained that the state authorities concerned have already found a solution and their procedure had been consolidated. On the basis of a promptly lodged summons to render compensation filed by the beneficiary, the Office shall compile a contract on providing compensation to the beneficiary. The conclusion of the contract is preceded by a review of the lodged claim's legal and material aspects, including assessing of the amount of compensation by an expert. The Office shall pass the thus concluded contract to the Land Fund (hereinafter "LF") that carries out the actual performance in accordance with provisions of Section 18a of the Land Act.

The Defender closed the inquiry stating its objective had been attained, as beneficiaries should not in future be referred to non-competent entities (for instance regional authorities) in matters pertaining to providing compensation, if a defunct district authority was the liable party, as had happened in the past.

Given his mandate and specific position, the Defender is not authorised to review, assess or actually change a potential negative response of the Office or LF to a request to conclude a contract, if these bodies ascertained that the district authority was not the liable entity. In this particular case the Defender referred Mr. K. S. to the provisions of Section 16, par. 8 of the Land Act, stipulating that should no agreement be reached on the manner of compensation, the court shall decide. Given his case's circumstances, the potential holders of the property prior its cessation were the Ministry of Defence and Ministry of the Interior in terms of the army's activity of state border defence, subsequently the district authority that purchased the property and eventually also the municipality to whose benefit the ownership right was to be registered, and the Defender recommended considering the option of simultaneously suing several entities for greater efficiency. The LF must also be directly a defendant in order to make any potential ruling executable against the LF too. It is vital to realise that the complainant lost a lot of time as a result of unclear competence between the concerned authorities and that the right to compensation lapses after three years.

2.2 The Public Health Service and Healthcare

Health Insurance Premiums and the Work of Health Insurance Companies

In 2005, 60 complaints dealing with this issue were received.

A considerable number of individuals complained to the Public Defender of Rights in 2005 about the procedures of health insurance companies. These complaints most often concerned **assessing and recovery of premium arrears** on health insurance and penalties. In several cases, citizens criticised health insurance companies' conduct when processing requests for

treatment reimbursement that were rejected by review doctors. Inquiries ascertained shortcomings in processing requests on abating the harshness of the law, particularly when these are assessed and estimated in relation to previously settled similar cases. Shortcomings of health insurance companies, consisting of missing or insufficient justification for rejecting reimbursement of treatment proposed by a doctor, were ascertained. The health insurance companies concerned accepted the remedial measures.

In cases where the Defender found no shortcomings on the part of health insurance companies, the complainant was at least acquainted with the legislation in force and instructed on potential settlement of the situation, for instance by filing for judicial remedy, raising an objection of limitation, filing a request for waiver or reduction of penalty or at least filing a request for agreeing on a schedule of payments.

The complaints received by the Public Defender of Rights show that **shortcomings in communication between health insurance company staff and policyholders continue;** primarily the inability or unwillingness to comprehensively and clearly explain his/her situation with respect to the legislation in force to the policyholder. The Defender has pointed this out a number of times in his reports because he deems such conduct a typical example of a procedure violating the principles of good administration.

In 2005, the Defender came to the conclusion that legislation **does not make provision for the actual needs of diabetics** who vitally need regular measuring of sugar levels. This legislation allowed health insurance companies to pay for only 400 diagnostic strips for ascertaining glucose level a year. The diabetics' situation was settled by repeated filing of applications to increase the number of diagnostic strips, often needlessly administratively lumbering doctors as well as the health insurance company. The Public Defender of Rights therefore asked for help on an expert level – the Czech Diabetic Society, the Czech Medical Association of J. E. Purkyně - and together they repeatedly addressed the Ministry of Health and endeavoured to have the legislation amended. The amendment to the Public Health Insurance Act came into effect on March 30, 2005. Its annex – a list of technical healthcare products paid for from public health insurance in providing outpatient care, point number 128, stipulates payment for diagnostic strips used to establish glucose level up to CZK 14,000 (max. 1,000 a year) against a prescription of a doctor with specialising in diabetes and approved by a review doctor if the review doctor approved a glucometer for the policyholder, too.

The Public Defender of Rights also received several complaints in the matter of **Visudyne treatment reimbursement out of public health insurance funds**. Having ascertained the urgent situation of patients in need of this treatment, he repeatedly urged the Ministry of Health to make provision for this matter when amending the *list of medical treatments with point values*. A medical treatment called "application of a diode laser", i.e. execution of photodynamic therapy using a laser to activate a healing substance called "verteporfinum" (a Visudyne health-care product) was included in the *list of medical treatments with point values* with effect as of 1/1/2006. The Visudyne health-care product will be paid for from the public health insurance funds for this treatment.

Complaint Ref. No.: 427/2005/VOP/JŠL

A policyholder who has duly completed university studies should be deemed a dependant child even after studies are completed until s/he becomes a student of the same or other university, if the further course immediately follows the said studies' completion, for up to three calendar months. If the policyholder is simultaneously also self-employed, the provisions of Section 3a, par. 3 of Act No. 592/1992 Coll., on Public Health Insurance Premiums, must be applied when assessing the obligation to pay premiums.

Mr. L. P. duly completed his university course in May 2004, and in October 2004 started doctoral studies at the university. He was self-employed between May and October 2004, and therefore the health insurance company charged public health insurance premiums for the May-September 2004 period in the amount of minimum premiums of a self-employed person. Mr. L. P. believed the premium was assessed illegally, given that he was under 26 and the fact he had been continuously preparing for a future occupation by studying, he believed he should be deemed a policyholder whose premiums are paid by the state. Thus, he addressed the Public Defender of Rights.

The Defender opened an inquiry in the matter and concluded that the health insurance company had erred when interpreting the provisions of Section 14, par. 2, letter c) of Act No. 117/1995 Coll., on State Social Support, which incorporates the time from completion of

university studies until the day the child becomes a student of the same or a different university, if such studies immediately ensue from the studies completion, three calendar months from the calendar month in which the child completed university studies at the latest, into continuous preparation for a future occupation. The health insurance company believed that given the length of the interruption between completion and commencement of studies, the complainant was not a dependent child in May to September 2004.

In the Defender's legal opinion the complainant was a student deemed to be dependent child, i.e. a policyholder whose insurance premiums are paid by the state, in the months of May, June, July and August 2004. The payment of premiums in May to July 2004 was subject to the provisions of Section 3a, par. 3, of Act No. 592/1992 Coll., on Public Health Insurance Premiums, in the wording valid to 31/7/2004. The Defender believes that if he had been self-employed person whose insurance premiums are paid for by the state, his assessment base in 2004 was 40% of the sum that exceeds twelve times the sum that is the assessment base of a person for whom the state pays the insurance premiums after deduction of costs of income attainment, ensuring and maintaining, if such specifics lasted simultaneously for the entire deciding period (a calendar year), or its proportionate part corresponding to the number of months in which the conditions were met. Therefore, the provision on minimum assessment base did not apply to the complainant.

In August 2004, the complainant was supposed to pay premiums from the actual amount of his income from self-employment under Act No. 438/2004 Coll. Because, given he was a dependent child, the minimum assessment basis did not apply to him (Section 3a, par. 3 of the Act on Public Health Insurance Premiums). The complainant was not a dependent child in September 2004, and was therefore compelled to pay premiums like a self-employed person from an assessment base equal to 40% of his business income (having deducted costs for its attaining, ensuring and maintaining), but at least from the minimum assessment base that is the minimum wage (Section 3a, pars. 1 and 2, Section 3b of the Public Health Insurance Premiums Act). Therefore, the health insurance company violated the legislation in force, and remedied its conduct in response to the Defender's action.

The Work of Public Health Protection Authorities

In 2005, 39 complaints dealing with this issue were received.

The Public Defender of Rights pointed out the number of complaints pertaining to noise from service establishments: restaurants, discos and bars, public music performances and playgrounds, in 2004. Citizens objected to the **breaching of noise limits**, **disruption of agreeable living conditions**, inactivity of regional health authorities and their insufficient co-operation with the pertinent planning authorities. Complaints against structures permitted to carry out construction or processing of materials and the running of which was perceived as disturbing, contained identical objections. Citizens primarily pointed out the unsuitable location of such structures in zones defined for housing or their immediate vicinity. The composition of such complaints remained unchanged in 2005.

As part of inquiry on his own initiative, the Defender discussed these issues with the Deputy Minister of Health for Public Health Protection – the Chief Public Health Officer – and with the Deputy Minister of Regional Development. All present at the meeting agreed in principal with the Defender's legal assessment. Regional health authorities cannot deny their own competence in complaints of noise from service establishments (restaurants, discos, bars, bowling alleys and similar) with generalised reference to the fact that these are vocal manifestations of people or animals. If the so-called "gardens" or "front gardens" are part of the establishment in accordance with the Building Act, the regulations on noise protection apply. On the other hand, if such "gardens" are on a concourse, the Public Health Protection Act's competence is ruled out. Playgrounds represent a similar problem: it is necessary to first ascertain if a playground is or is not a structure in accordance with the Building Act (such as a skateboarding ground). The procedure of immediately objecting to a regional health authority's as well as a planning authority's competence for a public concourse must be condemned. Public music performances must not be viewed as unique 'noise events', thus narrowing down the extent of the law by legal regulation. The Defender stated again that in cases of excessive noise levels, the role of the public health protection authority – the regional health authority, and the planning authority are vital. Representatives of both Ministries promised to ensure such co-operation.

A similar problem of conflicting competencies of public health protection bodies and the planning office, involves **flats that are health hazards**, above all through the presence of

mildew. Dealing with these complaints, the Defender came across a regional health authority refusing to accept its competence and referring the citizen to the planning authority. This authority declined to take any remedial steps, maintaining that it is necessary to first obtain the statement of the regional heath authority. The Defender accepted the regional health authority's argument that humidity in a flat and the ensuing mildew are usually caused either by a technical defect in the building or by inappropriate use. Assessment of the causes falls primarily into the planning authority's competence. At the same time, the Defender again pointed out that clarification of competencies and co-operation are primarily a matter of an active approach of administrative bodies, and inconveniencing the complainant or a party to the proceedings with potential conflicts is undesirable.

In 2005, the Public defender of Rights also encountered the issue of so-called **"bare flats"** (in Czech **"holobyt"**), **category 4 flats**, **small-sized welfare housing**, etc., by which cities and municipalities to deal with failure to pay rent in city or municipal flats. The Defender criticised the fact that though current legislation does not know any of the above terms, planning authorities permit such constructions and subsequently approve them, while the documents for a decision incorporate a positive opinion of a health protection authority. These structures rather meet the requirements pertaining to dormitories for temporary housing, yet they are more or less used as flats. Such use tends to go hand in hand with mildew, humidity, inadequate ventilation of the rooms and inappropriate social facilities. The Defender believes it essential to define the object of the approval proceedings for such constructions accurately so that the public health protection authority knows precisely for which building, with what parameters and to what intended purpose the authority is giving an opinion, so that the building cannot be used in an inappropriate way. For more detail see Section III.

A separate and persistent problem, repeatedly pointed out by the Defender, is **increasing traffic noise**. Previous annual reports frequently paid attention to this issue.

Complaint Ref. No.: 251/2004/VOP/EHL

The planning authority and regional health authority must investigate whether the provisions of the Building Act or the Public Health Protection Act are being infringed by noise from public music production in the garden of a hostelry.

Mr. and Mrs. B approached the Public Defender of Rights complaining about a pub in the neighbouring building. The regional health authority was influenced by the previous opinion of the Ministry of Health, which assessed the noise from a public music production organized in the garden of a hostelry as a unique "noise event", but changed its position having received a legal assessment from the Defender and started taking steps in the matter. In association with these complaints against the irregular organising of music productions in that facility, the health authority sent a request to execute state building supervision to the pertinent planning authority in the matter of building use. Planning authority issued a notice of execution of state building supervision and appealed to the parties to the proceedings and pertinent state administration bodies to take part in its execution in an on-the-spot investigation.

The purpose of the building – running an innkeeper's trade – was stipulated with respect to the existing structural and technical layout because the documentation of the building was not extant. Yet the building had not been inspected in terms of potential use to organise public music performances under the Public Health Protection Act and the government order on health protection against adverse effects of noise and vibrations. Under such circumstances, the organisation of public music performances must be prohibited.

The planning authority warned the organiser that the use of the building must change if there is an intention to organise music performances. Such a change can only be take place if the respecting of noise limits under the Public Health Protection Act is documented against a noise study and subsequent measuring of noise in the course of test operation. Simultaneously, the regional health authority pointed out that under the provisions of the Public Health Protection Act, compliance with this obligation would be ensured by the person providing the service: the organiser in the case of a public music performance, and if the organiser cannot be ascertained, the person providing the building, premises or land for such a purpose.

The Public Defender of Rights was reassured by the change in the conduct of the planning authority and regional health authority and did not continue the inquiry.

Healthcare, Mental Homes and Other Competences of the Ministry of Health

In 2005, 140 complaints dealing with this issue were received.

The most frequent complaints about healthcare that the Public Defender of Rights dealt with pertained to dissatisfaction with the regional authorities' and Ministry of Health's conduct **in investigating and settling complaints against the level of healthcare provided**. The inquiry ascertained that authorities again erred in handling complaints, failed to meet set deadlines, delayed investigating complaints, failed to take into consideration the content of the complaint, or incompletely informed complainant of findings and remedial measures. On his own initiative he inquired into the regional authorities' conduct in situations where the Defender finds the case related to the complaint against healthcare provided is also being investigated by criminal prosecution authorities. The conduct of the authority, i.e. suspension of the inquiry, was found to be incorrect. A possible shortcoming by medical staff in providing healthcare does not have to be a crime in order to establish liability other than criminal, most often civil.

However, medical assessment of healthcare quality as well as the liability consequences of *non lege artis* care fall outside the Defender's legal mandate. While the Public Defender of Rights could not investigate the complaint any further as a result, he imposed a duty on the relevant institutions to deal with the matter in his conclusions and instructed the complainant on possible future procedure that could lead to verification of the healthcare provided pertaining to entities listed in the Public Health Insurance Act, or the option to file another complaint if the complaint was not settled in due and timely fashion.

In some cases, complaints were not directed against authorities but directly against medical staff or health care facilities. These included complaints over the quality of healthcare provided or the conduct of medical staff. A special group of complaints were those of women who pointed to the fact that they had **undergone sterilisation without giving informed and free consent**. The Public Defender passed these onto the Ministry of Health to investigate. Simultaneously with monitoring and subsequent assessment of the Ministry's progress in the inquiry, the Defender performed his own investigation acts and a number of other activities. For more detail see Section III.

Though the Defender had already handled this issue several times in several widely publicised cases, in 2005 he still encountered complaints of doctors **refusing to provide information contained in medical records**. For more detail see Section III.

In 2005, the number of complaints about mental homes increased. These most often involved the circumstances of **enrolling a patient in a mental home against her/his will**, the use of restrictive tools, healthcare provided, behaviour and approach of the medical staff, rejection of patients' requests to view their medical records, the regime in departments and the handling of complaints by the management of healthcare facilities. Making on-the-spot inquiries in different mental homes, the Defender found that some shortcomings are relatively widespread. These involve particularly **insufficient informing of patients on the character of the illness, treatment and its effects**, on their rights and obligations, and possibly on options to complain. Failure to distinguish between regimes in different departments (with respect to movement restrictions) for the voluntarily and involuntarily hospitalised, were a frequent shortcoming. Problematic communication between the medical staff and the patient or his next-of-kin was ascertained in some cases. Several healthcare facilities incorporated generalised consent to treatment in a form for voluntary entry of the healthcare facility, or had no separate forms for consent to treatment for persons fully legally capable and for custodians of persons with restricted legal capacity or legally-incapacitated persons. Rules for handling complaints were not precisely stipulated in majority of the healthcare facilities investigated.

Complaint Ref. No.: 3513/2004/VOP/EH

If a regional authority as the founder of a healthcare facility receives a complaint against this healthcare facility, it has to settle it duly and promptly. The authority must investigate all points of the complaint.

Mrs. M. K. asked the attending physician of her late mother for information on the healthcare provided to her prior to her death. The physician did not comply and simultaneously rejected a request to view the deceased's medical records. She vainly asked the director of the hospital for the same. Hence she approached the Ministry of Health (hereinafter "MH") in June 2004 with a request for help in obtaining them. The MH informed the complainant that she ought to expect the information from the regional authority's health department (hereinafter "RA"), to which the request was passed. Instead of the promised information from the RA, the

MH sent her another letter a further two months later stating that legislation does not specify the bereaved's right to view medical records and that if she has doubts of the level of medical care given to her mother in the hospital, she can file a complaint against the treatment to the RA's health department. Therefore, the complainant approached the Defender for help.

The Public Defender of Rights opened an inquiry against the MH and RA. It was clear the MH did not respect the Czech government's opinion expressed in its resolution No. 61 from January 2003 in the Stojkovič case concerning informing the bereaved. Based on the Public Defender of Rights' recommendation, the government required the Minister of Health to present a draft amendment to the People's Healthcare Act by June 30, 2003. The government simultaneously charged the then Minister with ensuring the informing of the deceased's parents of the cause of death and to proceed likewise in similar cases, even before amending this law. The government stipulated in the conclusion: "Though the law lacks a positive guidance pertaining to handling medical data in case of death of the treated person, this gap could be bridged by application of the more general legislation contained in the Civil Code, particularly in relation to the right to protection of life and health, in compliance with the European Convention on Human Rights. If the request for information were satisfied, no legal regulation would be violated, and on the contrary a legal standard of a higher legal force would be observed."

The inquiry revealed that the MH had proceeded correctly in procedural terms when passing the above request to the RA to be settled, but erred in material terms when the MF supported the RA's opinion that the applicant cannot be allowed to obtain information from the medical records of her deceased mother, though it was, or should have been, aware that the issue can be settled under current legislation. The RA was also guilty of maladministration when it failed to process the received complaint, although it was the founder of the pertinent healthcare facility. The authority remedied its shortcoming in the course of the inquiry when Mrs. M. K. was informed of the option of case review by an expert commission.

MH management took measures to remedy the ascertained shortcomings in complaint settlement. The Ministry produced a draft amendment to the Act on Public Healthcare to eliminate different legal opinions on the option of viewing medical records by bereaved next-of-kin.

2.3 Social Security

State Income Support and Social Welfare Benefits

In 2005, 143 complaints dealing with this issue were received.

Complaints primarily concerned **repeated and one-off** social welfare benefits, state income support benefits and allowances for handicapped individuals. The Defender found shortcomings of administrative authorities deciding on benefits primarily in insufficient inspection of the actual state of affairs and incorrect assessment of property relations of the claimants for social welfare benefit due to social need (ownership of property, a car, or savings). Inquiring into individual complaints the Defender encountered a dubious interpretation of some legal institutes. Therefore, the Defender concentrated on the methodological instruction by superior authorities that should ensure consistent interpretation.

In his work the Defender repeatedly encountered procedure where an authority pre-conditions a decision on a benefit for **social need with termination of a contract on a pension scheme or a building savings scheme** because it deemed the thus funds collected to be savings deposits that could be used to boost income. The Defender believes however, that these funds cannot be considered income or assets the claimant could use for his/her livelihood under the Act on Social Need. The above-listed forms of financial deposits assist in solving future social needs involving increased financial demand, and are supported by a direct state subsidy for their purpose. It is therefore unfair to demand the claimant cancels such deposits at time when s/he has got into a difficult social situation, because premature termination of the contract involves a duty to return any state allowances gained. This increases the risk of the claimant's immediate social load, besides closing the door to securing the person against future adverse events (old age, need of housing) on his own initiative, entirely against the purposes of social care system. Authorities often act in conflict with the interest of minors, forcing parents to cancel their building savings scheme for the minor.

The Defender repeatedly encountered cases where parents (mothers most frequently) had to return **surplus payments of the parental allowance**. This obligation originates

because the mother receives an allowance for the elder of her children, although she does not meet the criteria, for instance because of sending the child to a nursery school for more than 5 days a month, while caring for a younger child the whole day. The decision on surplus payments is in compliance with the law, yet the Defender appealed to the authorities to meet their duty to instruct in this direction, to always recommend parental allowance receivers to transfer the allowance to the younger child when applying for a birth grant from a state income support authority. The Defender welcomed the promise of the Minister of Labour and Social Affairs that state income support authorities will transfer the claim for parental allowance automatically without the parents having to apply, when there is another child in the family providing the right for a parental allowance.

Complaint Ref. No.: 2004/2004/VOP/ZG

A claimant for social welfare benefit due to social need cannot be fairly required to increase her income by her own doing in the form of selling of property, its other use, or by taking legal action on annulment and settlement of joint ownership, when it is clear the sum that she would obtain after deduction of the costs incurred is negligible and would not solve her social situation in the long term.

Mrs J. S. asked the Defender to investigate the conduct of a municipal authority social department, which had asked her to boost her income by selling inherited properties. Mrs. J. S. shares a home with a dependant daughter, has been registered as person in social need and has been receiving social welfare benefits since 1994. In 2000 the complainant inherited a proportionate part of land, along with other heirs, in the value of CZK 25,358 (general price of the inheritance). When social need is ascertained, attention is paid to whether the assessed person can increase income on their own initiative if s/he does not attain the subsistence minimum level, and for that reason the administrative authority asked the claimant to increase her income on her initiative, i.e. to sell or rent the obtained land, in accordance with Section 1 of Act No. 482/1991 Coll. on Social Need, as later amended. The administrative body recommended she approach the co-owners with an offer to sell her share of inherited land, and if that failed, to file an action to annul and settle the joint ownership by requiring compensation. She was also instructed that as a person in social need she would be exempt from court fees and can use the free services of a court-appointed attorney to file the action. In June 2004, the complainant received part of the proceeds from selling 260m^2 of the named land in the amount of CZK 1,960. The sum of CZK 5,023, the surplus in the statement of deposits for heating and services associated with the use of a flat, was added to the proceeds of the sale. With respect to the higher income, Mrs. J. S.'s social welfare benefit was confiscated for the month of June 2004. The complainant presented two expert opinions to the authority, which, in the part pertaining to the saleability of the acquired property, asserted that the chance to sell the land and forest vegetation is negligible and other forest land could be sold under certain circumstances (co-owners' consent) but currently only for a fraction of the official price.

Following some exchange of correspondence, the authority finally accepted the Defender's opinion. Mrs. J. S. currently does not receive the benefit (she is not in social need), but in the case of a potential assessment of social need in the future the administrative authority will not take account of her unmarketable land.

Pension Insurance Payments and Proceedings Governing Them

In 2005, 344 complaints dealing with this issue were received.

Complaints pertaining to pension insurance have been some of the most frequent for a long time. They concern a whole range of problems. Nevertheless, in general complainants most often object to **failure to grant pension insurance benefits**, **and to the amount in case of granted retirement pensions**, primarily due to failure to include all generated terms of insurance.

Complaints demanding a review of **failure to grant full or partial disability by review doctor** are very frequent. However the Public Defender of Rights is not competent to review the opinions of doctors in expert terms.

Some complaints pertain to settling **applications to abate the harshness of the law**. With respect to the fact there is no legal right to a positive settlement of an application to abate the harshness of the law, and such decisions are not subject to legal review, the Defender's options are restricted in this sphere.

The Public Defender of Rights also constantly receives complaints ensuing from the legislation on **survivors' and orphans' pensions**, which can only be resolved by amending the current legislation. The Defender has already included details on this issue in the previous annual reports on his activities. For more detail on orphans' pensions see Section III.

With respect to inquiring into complaints, the Defender would like to comment favourably on the excellent liaison with the Czech Social Security Administration, which takes remedial steps when the Defender ascertains shortcomings or very often already in course of the inquiry. When the Defender ascertains no shortcoming by social security bodies he explains the relevant legislation to the complainant in detail, or suggests ways of settling the issue.

Complaint Ref. No.: 2883/2005/VOP/JŠL

If the policyholder asks for a backdated disability pension, believing he was already fully disabled, the review doctor must reassess his state of health and either conclude the institution of full disability had been dated correctly, or set a new date.

Mr. T. V. asked the Public Defender of Rights to investigate the Czech Social Security Administration (hereinafter "CSSA") procedure in deciding on his application for to grant retroactively a full disability pension as of 4/10/1995, dismissed based on a District Social Security Administration's (hereinafter "DSSA") opinion dated 28/5/1997. The opinion asserts Mr. T. V. had been fully disabled since 17/3/1997 under Section 39 par. 1 letter a) of Act No. 155/1995 Coll., on Pension Insurance, as later amended, and the full disability pension had been granted to the complainant as of this date.

The Defender approached the CSSA because it was clear from the very decision dismissing the application for a change in pension that the Administration had not proceeded in the pension change proceedings correctly. It had decided on the basis of the original DSSA opinion and Mr. T. V.'s state of health was not re-assessed. The Defender was aware that the time of beginning of the disability and the ensuing retroactive granting of a full disability pension is crucial for Mr. T. V.'s case. If he was acknowledged as fully disabled as of 4/10/1995, he could claim a full disability pension under then valid Act No. 100/1988 Coll., on Social Security, in the wording valid until 31/12/1995. A disability pension of a citizen whose claim to the pension would began prior to attaining 28 years of age, which was Mr. T.'s case, would be calculated from fictional earnings, then the monthly minimum wage, unless the actual average monthly earnings were more advantageous.

Based on an internal inquiry carried out on the Defender's request, the CSSA acknowledged its shortcoming; the complainant was ordered to attend an extraordinary medical inspection that granted full disability to Mr. T. V. as of 4/10/1995. The newly established full disability pension grew considerably after indexation against the initial one. Therefore, the claimant was also paid a supplementary payment of about CZK 114,000 for the three years prior to the date of filing the application.

Pensions with a Foreign Element, "Slovak Pensions"

In 2005, 54 complaints dealing with this issue were received.

The Public Defender of Rights has handled so-called **"Slovak pensions"** and the difficult social situation of individuals who collect pension benefits on the edge or in fact under the subsistence minimum based on an agreement between the Czech and Slovak Republics on social security (published under No. 228/1993 Coll.), in previous annual reports. The situation has not improved with time, but rather deteriorated. Regardless of the option of judicial proceedings, with the relatively consistent judicature of the Constitutional Court (recently for instance ruling IV. ÚS 158/04 dated April 4, 2005) that clearly declared several times that the fact the Czech Republic concluded an agreement on implementing social security with Slovakia cannot be to the detriment of Czech citizens in terms of the amount of the pension claim because the purpose of such an international agreement cannot be to limit pension claims to citizens that are entitled to a higher pension, notwithstanding any such agreement, under national regulations while decisions based on this Agreement might be discriminatory, the aggrieved individuals' options to remedy the situation are fairly limited.

The institute of abating the harshness of the law stipulated in Article 26 of the Agreement represented probably the most acceptable approach, and was often used, though the criteria became stricter with time and the range of applicants whose applications were granted dropped as a result. After both countries acceded to the European Union, the Slovak side declared that with respect to the non-existence of the mentioned institute in EC law (despite previous

assurances that nothing would change on the status quo by not including Art. 26 to Annex III of Council regulation /EEC/ 1408/71), they will no longer apply Art. 26. As a result, the Ministry of Labour and Social Affairs believes this Article of the Agreement cannot be unilaterally applied and therefore both countries have to proceed identically. All applications for abating the harshness of the law from pensioners whose claim originated after May 1, 2004, presently receive a blanket refusal, including those that would have previously been positively settled.

It is, in human terms, very difficult to explain to pensioners who approach the Defender with complaints concerning so-called "Slovak pensions" at a rate of about 30 to 40 complaints a year, why they are subject to the Agreement and their old-age pension is several thousand crowns lower than the average old-age pension in the Czech Republic. It is impossible to explain to a pensioner that the applications of his co-workers whose pension claim was also influenced by the Agreement, given the employer's registered office location on the day of Czechoslovak Federative Republic split (Art. 20 of the Agreement), were granted and the pension was levelled up, while his was not, only because his claim to an old-age pension originated after the country's accession to the EU.

The Public Defender of Rights proposed to the Minister of Labour and Social Affairs to abate the harshness of the law when conditions stipulated prior to Czech and Slovak accession to the EU are met, not based on the Agreement, but empowered by the Act on Organisation and Administration of Social Security (provisions of Section 4 par. 3 of Act No. 582/1991 Coll., as later amended). Unlike the Minister, the Defender believes that individuals are being discriminated against due to their age (because only the date of attaining retirement age, and therefore the date of origin of the claim to an old-age pension, decides whether the pension will be levelled up for the person or not), and there is therefore reason for the Czech Republic, albeit unilaterally, to level up pensions influenced by the Agreement in justified cases. The state budget would not be disproportionately burdened because most of the individuals fall into the safety net of persons in social need as a result of the amount of old-age pension granted, i.e. the state gives them money, but in a form that is far less acceptable for many of them. The Minister of Labour and Social Affairs has not accepted the Defender's opinion so far.

Complaints Ref. Nos.: 3291/2005/VOP/PK, 3321/2005/VOP/PK and others

Under Art. 20 of the Agreement between Czech and Slovak Republics on social security, the periods of insurance gained in former Czechoslovakia are assessed according to the legislation of the state where the policyholder's employer had a registered office as of 31/12/1992 or prior to this date at the latest. This principle may lead to harshness that the Defender believes can be abated under the Act on the Organisation and Administration of Social Security.

The complainants addressed the Defender with a request for help because they had been granted a partial Slovak old-age pension under the Agreement between the Czech and Slovak Republics on social security, while the claim originated after May 1, 2004. They worked for Czechoslovak State Railways all their working lives and for Czech Railways after January 1, 1992. However, the organisational unit of Czechoslovak State Railways they were in had a registered office in Slovakia between 1990 and 1992, and therefore the period of insurance gained before 31/12/1992 is deemed an old-age pension of the Slovak Republic.

As pensions granted to Slovak bearers of pension insurance are lower by several thousand crowns than they would be under Czech legislation, the complainants asked for abating of the harshness of the law. Their applications were dismissed for the above reasons. The complainants did not agree with this conclusion because all their co-workers from their organisational unit with an old-age pension claim originating prior to 1/5/2004 had the harshness abated and the pension increased under Czech regulations on their application.

The Public Defender of Rights still continues an open inquiry against the Ministry of Labour and Social Affairs.

2.4 Construction and Regional Development

Zoning

In 2005, 24 complaints dealing with this issue were received.

Again in 2005, shortcomings in legislation on **zoning** were reflected in complaints addressed to the Public Defender of Rights. The legislation fails to provide sufficient and effective legal protection to owners of land and constructions affected by a zoning plan. In this context the Public Defender of Rights stressed that it is the duty of state bodies to ensure that property owners have effective legal instruments in zoning to protect their ownership rights.

In last year's Annual Report, the Defender pointed out underestimation by cities and municipalities of the role that zoning planning plays in the implementation of development plans. Those addressing the Defender frequently complained about a failure to thoroughly examine all the impacts of transport structures, large-scale markets and warehousing sites insensitively set in the landscape, which disrupt the urban and architectonic face of the given environment. The Defender finds it necessary to once again stress that zoning is a key institute in a region's development, and the effects of failing to cope with its role by the zoning body impact not only the appearance of the environment and functioning of its elements, but most importantly are evidenced in psychological housing comfort in the region. As an example documenting this situation, wilful and uncoordinated changes in zoning plans ordered by investors in large-scale markets and shopping centres are increasingly expanding from large urban settlements to smaller towns. Existing experience suggests that municipalities and cities are unable to sufficiently regulate trends in this area. This is accompanied by an insufficient use of the range of mechanisms for examining the impact of construction through the relevant assessment procedures (environmental impact assessment or EIA). Frequent changes in zoning documentation do not contribute to legal security.

The consequences of maladministration and failing to cope with the process of zoning become obvious only after a time, but they negatively impact on the area for a very long period, and given the time needed for the zoning process, there is no way to promptly implement remedial measures.

The obtaining of zoning documentation is an exercise of delegated competence by a municipality or region, which falls within the Defender's mandate. However the final shape of zoning documentation, including any changes, is decided upon by the municipal or regional authority with independent competence. Therefore there is no way the Defender can influence the decisions of these authorities regarding a zoning plan or changes to it.

In spite of this the Defender finds it necessary to point out again in the 2005 Annual Report the fundamental importance of zoning and the unsatisfactory situation in that area, and to support the strengthening of owner protection through enactment of the opportunity to have a decision dismissing one's objections examined by a court, as is proposed in the new building act now being drafted.

Complaint Ref. No.: 1983/2005/VOP/SN

Upon approval of zoning documentation, the municipality is legally bound to publish the binding portion of the documentation through a generally binding decree regardless of the extent to which the actual process of obtaining the zoning documentation or changes in it can be regarded as legal. The decree that publishes the binding part of the zoning plan does not in itself confirm the correctness of the previous process of obtaining the zoning documentation. The obtaining of the documentation falls within the delegated competence of the municipality, which is supervised by the Regional Authority and the Ministry for Regional Development.

V. N., M. V., M. Š. and P. Š. addressed the Public Defender of Rights with a joint complaint about the conduct of the Regional Authority, the Ministry for Regional Development and in particular the Ministry of the Interior with respect to the generally binding decree of the municipality of S. publishing the binding part of the first amendment of the S. municipality zoning plan. The core of the reservations to the change in the zoning plan was the scope of the change, which according to the complainants anticipated an increase in population of the municipality from 750 to 4,250. The change revised the entire original 1997 zoning plan, including changes in the delimitation of the area in question and changes in the existing urban design (including for example residential areas with private houses, apartment houses, residential areas in small settlements) accompanied by new infrastructure for the area (in

particular as far as water and waste management and traffic are concerned), etc. The complainants reproached the Regional Authority as the superior body in zoning for issuing a positive position on the proposed zoning plan during the process of obtaining the zoning documentation and the Ministry for Regional Development for failing to annul the said position of the Regional Authority by the time of filing the complaint. Most importantly however the complaint was directed against the conduct of the Ministry of the Interior that had failed to suspend the effectiveness of the said generally binding decree even though it had originally initiated proceedings in the matter.

The Defender agreed with the Ministry of the Interior that for stating maladministration and subsequently applying a supervision measure – suspension of the decree's effectiveness – it is not sufficient that maladministration has occurred already in the actual process of obtaining the zoning documentation. Nevertheless the Defender stated that the administrative bodies concerned had acted confusedly, being themselves unaware of the exact measures available for remedy and how to distinguish the process of obtaining the zoning documentation and the process of passing it and subsequently publishing the binding part of the zoning plan through a generally binding decree. The Defender closed the inquiry without further investigation because the relevant administrative bodies had begun to use their supervisory powers properly.

Zoning Proceedings, Planning Permission and Approval Proceedings

In 2005, 246 complaints dealing with this issue were received.

In 2005 the Defender repeatedly encountered the wilful division of plots of land in **zoning proceedings** through a measure taken by a planning authority without there being fulfilment of the qualifications as laid down in the Building Act. The division of plots of land outside administrative proceedings had resulted in situations where neither the owners of neighbouring plots of land and structures nor the state administration bodies concerned were given an opportunity to provide their statements, which had effectively resulted in changes in the area that affected both the owners of structures and plots of land and the interests protected by the state administration bodies without there being an opportunity to use remedies under the Code of Administrative Procedure. The Public Defender of Rights condemns such practice, because it negatively affects both private and public rights.

Upon examination of complaints regarding **planning permission and approval proceedings**, the Public Defender mostly encountered complaints concerning incorrect determination of parties to the proceedings, refusal to allow making copies of administrative procedure files, and drawing out proceedings by repeatedly hearing an identical matter following repeated annulments of decisions by the body of appeal.

On the **making of copies of administrative procedure files**, the Defender repeatedly criticised the practice of administrative bodies that refused to allow copying of administrative procedure files by parties to proceedings and persons having proven that their requirement to acquaint themselves with the content was justified. The Defender stressed that in dealing with requests by the public for information, administrative bodies should first look for arguments as to why the information should be provided, rather than the opposite. The new Code of Administrative Procedure effective from January 1, 2006, explicitly states that the right to study files is accompanied by the right to make notes and the right to obtain copies of the file or its parts from the administrative body. In terms of building drawings or construction project documentation, the Defender believes that such documentation can be undoubtedly regarded as a part of the administrative procedure file. In the said context, the Defender believes that objections raised by the planning authorities regarding building documentation copyright are not viable.

At the same time the Defender noted objections to the conduct of designers or maladministration by authorised persons in the **drawing up of construction project documentation**. In such cases the Defender lacks a mandate, but he has advised the complainants of the opportunity to initiate disciplinary proceedings at the Czech Chamber of Authorized Engineers and Technicians Involved in Construction, including the right to claim compensation for damage arising through the wrong building design before the competent court.

In terms of **approval proceedings**, the Defender pointed out the duty of planning authorities to properly ensure that construction projects are completed to the approved and reviewed building designs and that the construction owner has observed all the conditions laid down in the planning permission. On the other hand in a number of cases the Defender had to

reject objections of complainants demanding legal property aspects of an already completed construction project be dealt with; the Defender referred to the fact that solely building and technical issues can be dealt with in approval proceedings, and specifically in the context of adherence to the planning permission conditions.

The Defender finds it necessary to emphatically draw attention to repeated complaints by individuals concerning the issue of a **declaration of prohibition of construction** as a restricting measure that significantly affects the ownership rights of persons to structures and plots of land. The varying legal status of the institute of prohibition of construction that may be declared through an administrative decision by a planning authority in the form of a zoning permission prohibiting construction or through a legal regulation of a regional self-governing body in the form of an order by the municipal council, negatively affects notably those persons who are affected by the prohibition of construction in the form of an order by the municipal council. The reason is that remedies cannot be applied here in administrative proceedings, but instead the only defence available is to file a proposal for annulment of a decision with the Constitutional Court, which is the sole body authorized to annul a municipal legal regulation. The same situation applies to the granting of exemptions from the prohibition of construction where an exemption from zoning permission can be granted, although in the case of a prohibition of construction the exemption can be granted solely by the self-governing body, i.e. the municipal council and not the relevant planning authority. The Constitutional Court has already pointed out this negative phenomenon in its award published under No. 90/2005 Coll., stating that if a prohibition of construction has the form of a legal regulation, the persons whose ownership or other rights to plots of land or structures on such plots of land could be directly affected by the prohibition of construction have a significantly reduced opportunity to defend themselves against such an intervention in their rights. The Public Defender of Rights joins this criticism of the way the institute of prohibition of construction is legally treated.

Complaint Ref. No.: 268/2005/VOP/MH

The planning authority, environment and landscape protection authority and the water-rights authority are obliged, in the case of extensive earthworks in the river floodplain, in the close vicinity of a stream, in an area previously hit by floods, to defend consistently and in a co-ordinated way interests protected by the Water Act and the Act on Nature and Landscape Protection.

A defect in a valid zoning permission represented by non-inclusion of earthworks cannot be eliminated by the planning authority merely correcting an error in its drafting.

A citizens' association addressed the Public Defender of Rights with objections regarding the conduct of the Planning Authority in K. (hereinafter "the Planning Authority") and the Regional Authority of the Central Bohemian Region (hereinafter "the Regional Authority") in connection with administrative proceedings on earthworks and construction of private houses in a river floodplain which is a development area under the municipality's development plan. The association endeavours to stop development activities in the area concerned as it fears the potential consequences of new floods similar to those in 2002. The association believed the Planning Authority had been wrong in amending the zoning permission by correcting an obvious error in connection with the planning permission proceedings. At the same time the association reproached the Regional Authority for failing to properly respond to the said maladministration by the time the complaint was filed.

The Defender established through his inquiry into the matter that the Planning Authority had issued planning permission for the earthworks in 2002. However the local Czech Environmental Inspectorate had commented negatively on the earthworks. In the Inspectorate's opinion the earthworks would fundamentally change the outflow characteristics in the area concerned. The earthworks' design does not treat drainage of the area under normal flow as well as during a flood and thereafter. The Regional Authority had annulled the planning permission and returned the matter to the Planning Authority for rehearing and a decision, the main reason being that the valid zoning permission had not taken into account the earthworks permitted by the Planning Authority. The Planning Authority had dealt with the situation thus arising by correcting a drafting error in the 2002 zoning permission, thus adding the earthworks to the zoning permission, and announced new planning proceedings for earthworks. Through its decision of November 8, 2004, the Planning Authority had permitted the earthworks. On November 9, 2004, the Regional Authority had established and delimited a new active inundation zone in the area concerned. The association had contested the planning

permission for the earthworks through an appeal filed with the Regional Authority that had confirmed the issued planning permission.

The Defender stated that the floodplain is protected directly by the Act on Nature and Landscape Protection as a significant landmark that can only be used in a way that does not disrupt its recovery and that does not threaten or weaken its stabilising purpose. The Act on Nature and Landscape Protection further constitutes protection of landscape character by which the natural, cultural and historical characteristics of a specific location or area are understood, against activities degrading its aesthetic and natural worth. Interventions in landscape character may be carried out only when taking into consideration the preservation of significant landmarks, and in particular protected areas, cultural landscape landmarks and landscape links. As an equally important fact, the area had been significantly affected by the 2002 flood and was situated in an active inundation zone established through a Regional Authority provision. Under Section 67 of the Water Act, structures must not be situated, permitted or erected in active inundation zones with the exception of waterworks that regulate streams, divert flood flows, implement measures protecting against floods or are otherwise connected with the stream or improve outflow characteristics, as well as with the exception of structures for water collection, wastewater and storm water removal and the essential transport and service infrastructure structures.

The above facts should have beyond any doubt led the administrative bodies to extraordinary attention and careful designing of structures when permitting any building activity, among other things due to the potential risk of future floods. With regard to the said facts, the Defender closed the inquiry by concluding that in this case the authorities concerned had acted in contravention of the legal regulations in the area of the Building Code, protection of the environment and landscape and water management. Given, however, that most of the decisions issued (zoning permissions, consents by the environment and landscape protection body) cannot be reviewed now, they can no longer be remedied. On the initiative of the citizens association, the planning permission for earthworks will be reviewed by the Ministry for Regional Development as well as the court with which an administrative action concerning the administrative procedure in the matter has been filed. The report on the results of the Defender's inquiry is being presented in the said proceedings as documentary evidence.

Proceedings on the Removal of Constructions

In 2005, 44 complaints dealing with this issue were received.

In 2005, as in the preceding years, the Public Defender of Rights criticised the lack of enforcement of **decisions by planning authorities ordering removal of constructions** as well as the carrying out of maintenance works and necessary adjustments. The planning authorities again pointed to a lack of funds and unwillingness of self-governing bodies to provide the necessary financial backing for decision enforcement. The fact that upon failure to respect a planning authority decision ordering removal of unauthorised constructions all the related costs are borne by the municipality/city which must then claim them from the construction owner, results in a situation where decisions are not enforced, which in the opinion of the Public Defender of Rights reduces citizens' faith in the authority of administrative bodies and the principles of the rule of law. The Defender did not note any progress in the solving of these serious issues even in the new Public Construction Law that is being drafted. Therefore the Defender urges that the issue of enforcement of planning authorities' decisions be an area of concern particularly when drawing up the new building code.

In 2005 the Public Defender of Rights received several complaints concerning the building and operation of **motocross parks** or organising motocross races. All the cases had several traits in common. The complainants addressed the Defender because of feeling vexed (in particular by noise and dust) or harmed (interventions in plots of land) by the operation of the parks. In most cases they also claimed that the parks were built or alternatively operated without the relevant authorisations.

The Defender stated that motocross parks and their subsequent operation usually represent a significant intervention in the landscape that is among other things subject to fact-finding procedure under the Act on Environmental Impact Assessment, over which not just one but several administrative bodies have competence. In particular planning authorities are involved. Building a motocross track usually involves earthworks of a significant scope and erection of several minor service structures (toilets, kiosks, sometimes support facilities for racers). Such earthworks require zoning permission and planning permission. In the permission

procedures, the positions of a number of state administration bodies concerned must be obtained (such as consents by environment protection bodies and regional health authorities).

The Defender pointed out that if the planning authority identifies a park constructed without the appropriate permissions, it has a duty to immediately commence proceedings aimed at its removal. At the same time a duty arises for the planning authority to conduct a penalty procedure. As the above shows, in the case of motocross racing parks, the competences of a number of state administration bodies overlap, and not only as the park originates, but also while it exists and is operated in contravention of the law, i.e. when there is an endeavour to remedy a detrimental situation. The Public Defender of Rights finds it necessary that notably in such situations all the state administration bodies concerned proceed in coordination, inform one another of their steps and, most importantly, consistently employ all the instruments entrusted to them by the legal order for protecting the public interest. It is further necessary that they immediately clarify between themselves their competences and possibilities. The Defender repeatedly criticises the situation where, due to various arguments over competence, an unlawful condition is prolonged and motocross parks are repeatedly used without permission.

Complaint Ref. No.: 2611/2003/VOP/KČ

If a body of state supervision over construction or a planning authority establishes an illegal construction or earthworks, it has a duty to immediately commence proceedings aimed at elimination of the detrimental situation. If the planning authority subsequently issues a decision on removal of the construction, it has a duty to monitor whether the decision has been complied with or even enforce the decision itself.

Complainants addressed the Public Defender of Rights because they were vexed by a motocross park built and operated without permission. They mentioned that the existence and operation of the park were possible due to inactivity of the relevant authorities, and specifically the planning authority and the Environment Department of the Municipal Authority in B.

The Defender identified that the motocross park had been built without building permission/notice. The park had been in operation probably since mid-2002, primarily for regular motocross practice. Apart from this, motocross races had taken place in the park at least four times, on one occasion even with a positive statement from the above Environment Department. The Municipal Authority in B. had first learned about the illegal motocross park in June 2002, but it had only responded with a call for restoration of the land to its prior condition. The park's entrepreneur had failed to observe the call. A final decision on removal of the illegal construction was issued as late as December 2004 during the inquiry opened by the Defender, i.e. nearly two years after the illegal earthworks and construction were identified.

The Defender concluded that the Planning Authority should have commenced construction removal proceedings immediately after applying state supervision over the construction in the motocross park. In terms of the call by the state supervision over construction, this had been a redundant act. According to the Building Act, such a call serves solely for the purpose of removing defects in a construction that already exists or has been permitted. The Planning Authority had further failed to penalise a number of offences by the construction owner, from minor construction and earthworks without notice/permission to continued utilisation of minor constructions erected without notice. The Environment Department had erred according to the Defender when issuing a positive statement on motocross races taking place in the park concerned although being aware that the park was illegal from the perspective of building regulations. The Environment Department had also erred by failing to commence the penalty procedure and failing to penalise for example the illegal change in the landscape character due to the motocross park being further extended. The Defender closed the inquiry only after the illegal earthworks and constructions were removed in 2005.

Preservation of Historical Monuments and Other Competences in the Construction Sector

In 2005, 32 complaints dealing with this issue were received.

The Defender encountered the following issues in state preservation of heritage in 2005.

The Defender believes that it is important **when declaring an object a cultural monument** that the subject of heritage protection is precisely defined (when property is

concerned, plot numbers should be included and the object should ideally be marked in a photograph of the cadastral map) so that the heritage protection can be marked in the land register. This is important not only for those who acquire the monument but also for the administration bodies performing public administration in relation to the specific property. Reliable information on heritage protection is also important for example when plots of land are divided, merged or otherwise changed. There are also cases where the cultural monument is not sufficiently and specifically defined or even that the National Office for Cultural Heritage as a specialised heritage preservation organisation has failed to fulfil one of its duties, specifically reporting objects declared historical monuments for entering in the land register.

Some of the complaints were about **declaring protected cultural zones**. Protected zones are declared by the Ministry of Culture after consulting the regional authority, and the Ministry also determines the conditions applicable to their protection. In practice this takes place through a decree, i.e. a legal regulation. Declaring a protected cultural zone has an effect on owners of all the property situated in the area concerned for whom a duty arises effective from the moment of declaration to obtain a prior binding position of the municipal authority of the municipality with extended competence on planned construction, construction alteration or maintenance works. In the binding position, the state heritage preservation body states whether the plan of the owner is admissible from the perspective of state heritage preservation interests, and if it is, under what conditions. The conditions may represent for example restrictions on the use of certain sorts of roofing, materials to fill window and door openings and their design, admissibility and ways of illuminating loft conversions, etc. However, unlike owners of cultural monuments, owners of such property are not legally entitled to an allowance for the preservation of the cultural and historical value of the property and it can therefore be concluded that the restrictions imposed on them are not compensated by law (any subsidies depend on the goodwill of the regional self-governing units, but are not the rule and funds for this group of applicants are minute in comparison with those for owners of cultural monuments).

The process of declaring protected cultural zones is questionable from the perspective of the persons concerned because there are no remedies for contesting it. The conditions applicable to declaring protected cultural zones are defined so generally that state heritage preservation bodies assess applications arbitrarily. The lack of specificity of protection conditions means that the difference between demands placed on the protection of premises (and hence restrictions on owners) in aggregately protected heritage areas (protected cultural zones and reservations) and the protection of cultural monuments themselves becomes vague in practice.

Last but not least in the area of heritage preservation, the Public Defender of Rights encounters **shortcomings in the conduct of state heritage preservation bodies** by violating the principles of good administration, in particular through inactivity as different offences against the Act on State Care of Monuments are overlooked, which often results in liability for illegal conduct lapsing. Being part of state administration, the performance of state heritage preservation is a service to the public; delays in administrative proceedings along with inconsistencies in the area of sanctions are compromising public confidence in public administration and they may, and the Defender's experience is that they indeed do, result in failure to respect valid legislation and hence compromise the Act on State Care of Monuments.

Complaint Ref. No.: 2457/2005/VOP/MH

Being part of public administration, the performance of state heritage preservation is a service to the public. The inactivity by which different offences against the Act on State Care of Monuments are overlooked and inconsistency of the heritage preservation body in promoting heritage preservation interests represent a violation of the principle of predictability of decisions and the duty of equal treatment of parties to proceedings.

Mr R. Š. addressed the Defender in a matter concerning the position of a state heritage preservation body on the replacement of roofing on a private house situated in a protected cultural city zone declared in 1992. He objected to being forced by the state heritage preservation bodies to install expensive roofing after they rejected replacement of the existing asbestos-cement roofing with Canadian shingle, and pointed to the fact that a number of structures in the historical centre of the city had historically unoriginal roofing.

The Defender carried out a local inquiry in the historical part of the city and at the authorities and identified that the Municipal Authority in O. (hereinafter "the Municipal

Authority") had issued a binding position in the matter according to which replacement of the existing roofing on the structure with Canadian shingle was inadmissible; the regional authority had dismissed an appeal, referring identically with the Municipal Authority to the fact that the proposed roofing was historically unoriginal, did not respect the methodology material "Care of Historical Buildings' Roofs" published by the State Office of Cultural Heritage, and therefore inadmissible. Through an inquiry in the protected cultural zone in the historical centre of the city of O. the Defender established that miscellaneous roofing types were used on structures within the protected cultural zone. It can therefore be concluded that the protected cultural zone is not homogenous in terms of colour and material used.

At the regional authority the Defender checked the possibility mentioned by the heritage preservation body of receiving an allowance in cash to cover the increased expense of purchasing the roofing required by the authority, but was informed that given the amount of funds allocated and the number of applications filed, the chances for obtaining the allowance were negligible. Given this and that the current roofing in the area was significantly impacted by interventions contravening the requirements placed on the complainant, the Defender advised the Municipal Authority as the competent body of state heritage preservation of the results of his inquiry, in order to consider whether it would further insist on the earlier placed requirements for the material and colour of the roofing. At the same time the Defender called for an effort to find a compromise for the replacement of the roofing on the house concerned and to adopt impartial rules for a unified approach toward all parties to future proceedings.

An interest in preserving and respecting criteria that will result in and contribute to an improved appearance and quality of structures in a protected cultural zone, including requirements for roofing, must be accompanied by an obvious ensuing duty of applying penalties on those who violate these principles. However the Defender's findings suggest that the heritage preservation body was not always consistent in applying heritage preservation criteria, which necessarily must be criticised and labelled not only a breach of the law, but also a serious violation of the principles of good administration, in particular the principle of predictability of decisions and equal treatment of parties to proceedings.

2.5 Taxes, Fees, Customs Duties and Administration Thereof

Taxes, Tax Proceedings and Tax Administration

In 2005, 139 complaints dealing with this issue were received.

The objections made in complaints contesting the **conduct**, **decision-making and even inactivity of tax authorities** were as varied in 2005 as in the preceding years. Thus the Defender was asked to evaluate a contested back-taxing, notified of defective approaches in expostulatory proceedings or tax inspections, asked to assist in the claiming of tax arrears, et cetera. Complaints contesting the legislation itself were no exception.

Following changes in the legislation treating **property tax**, the Defender increasingly encountered filings by the taxpayers concerned, many of whom contested in particular the duty of co-owners to pay the tax jointly and severally.

The Defender was further surprised by a case in which the tax authority responded to the desire of a taxable person **to study his or her own tax file** by asking the person to file a written request for studying the file, and after the taxable person did so, the authority even required him or her to exactly specify, once again in writing, what documents he or she wanted to refer to and to specify the reason for the requirement. In the Defender's opinion such requirements are not supported by legislation. Specifying the reason for studying a file may perhaps be required in relation to the so-called 'closed-to-the-public' portion of the file. The existence of the right of guarantors (persons liable to pay tax arrears for tax debtors – most frequently on the real estate transfer tax) to study the tax debtor's tax file is an interesting issue. For the time being the Defender inclines to the opinion that there is a right in favour of the guarantor to sufficient information regarding the tax liability, the payment of which he or she guarantees. They are therefore entitled to study the portion of the tax debtor's file that directly relates to the said payment liability and to request information from tax records in order to learn the actual amount of the tax arrears.

In particular the second half of the year once again marked an increase in filings by persons in the position of the so-called **guarantors by law** invited by the tax authority to pay tax arrears on the real estate transfer tax.

Complaint Ref. No.: 3475/2005/VOP/BK, 2956/2005/VOP/BK and others

The transferor (seller) pays the real estate transfer tax, while the acquirer (purchaser) guarantees payment of the tax under the law. The guarantee duty may be "activated" through a call by the tax authority for payment of tax arrears by the guarantor, but the right to claim payment from the guarantor is subject to limitation upon expiration of the period for tax assessment, which is three years from the end of the calendar year in which the duty to file a tax return arose. The limitation objection must be claimed in an appeal against the call, pointing to the fact that the guarantee has been applied in a scope exceeding the scope defined by law.

In his complaint, Mr J. K. contested the requirement of a tax office (tax authority) to pay as the guarantor the real estate transfer tax on behalf of the seller. Mr J. K. had bought the property already in 2001; it had been expressly agreed upon in the contract that the real estate transfer tax would be paid by the seller and Mr J. K. had not been informed of the duty to guarantee. The tax authority had allowed the transferor to pay the tax in instalments, but the transferor had died before paying the tax in full. The complaint was served to the Defender pending the period for filing the appeal against the tax authority call; the complainant was uncertain of his chances of success and asked the Defender for advice.

Given the state of the proceedings, the Defender informed Mr J. K. of the necessity to take a separate approach of filing an appeal, but provided him a basic insight into the issue. He explained to him that the duty to guarantee payment of the real estate transfer tax is imposed on purchasers directly by law (by Section 8, par. 1, letter a) of Act No. 357/1992 Coll. on Inheritance Tax, Gift Tax and Real Estate Transfer Tax as amended) and it is therefore not relevant that he had not himself undertaken to guarantee and had not been informed of the guarantee being in place. Since however the house had been sold already in 2001, the Defender pointed out the period in which the tax authority may effectively call on the guarantor to pay tax arrears, i.e. what may be called the duty to activate the guarantee. According to the latest Supreme Administrative Court practice (decision Ref. No. 2 Afs 51/2004 of April 28, 2005) the duty to guarantee must be activated within the tax assessment period. The tax cannot be assessed or back-taxed after three years from the end of the calendar year in which the duty to file a tax return arose. Thus, if in the case of Mr J. K. the duty to file a tax return had arisen for the seller already in 2001 and the call for payment of the arrears by the guarantor served in the autumn of 2005 had been the first action of the tax authority towards him, the period had elapsed. It should be claimed in the appeal against the call that the guarantee has been applied in a scope exceeding the scope defined by law, referring to the elapsed period for tax assessment.

For completeness' sake the Defender called the attention of Mr J. K. to the fact that should he pay the tax arrears in the position of a guarantee, he would be entitled to claim compensation for the provided performance from the seller. Given the seller's death the Defender pointed out that the heirs are liable for reasonable costs accompanying the deceased's funeral and debts passing on to them upon his decease, up to the worth of the inheritance obtained. In this respect he referred to the possibility to familiarise himself with the results of the inheritance proceedings at the district court in the jurisdiction of which the seller (the deceased) had had his last permanent address.

The Defender was later informed that the financial directorate dismissed the appeal without sufficiently dealing with the existing court practice of the Supreme Administrative court. Mr J. K. then used the opportunity to contest the decision through a legal action in administrative justice.

Customs and Customs Proceedings

In 2005, 16 complaints dealing with this issue were received.

Once again in 2005, apart from dealing with complaints from citizens or legal persons, the Public Defender of Rights dealt with certain problems in the area of customs administration on his own initiative. The inquiry continued regarding **the procedure of customs authorities when inspecting observance of the ban on the sale of tobacco products and spirits** – the interpretation of Sections 132 (defining the terms kiosk, market place, market hall) and 133 (imposing the ban) of Act No. 353/2003 Coll. on Excise Duties, as amended. The inquiry, during which several meetings with representatives of the General Directorate of Customs took place, is still pending (a decision of the Supreme Administrative Court is expected to which cassation complaints were directed in the matter concerned).

In early 2005 the Defender dealt intensively with the rectification of the unsystematically **differing positions of tax authorities** – local financial authorities and customs authorities concerning tax appurtenance waivers. Although the customs authorities also act as tax authorities (customs authorities are value added tax authorities in certain cases and excise tax authorities in full from January 1, 2004), unlike the revenue offices (which are authorised to waive tax appurtenances through Directive of the Ministry of Finance No. 299/1993 Coll. under Section 55a of Act No. 337/1992 Coll., on the Administration of Taxes and Fees as amended) they are not allowed to waive tax appurtenances. In this particular case, after an exchange of legal opinions on the applicable legislation, the Minister of Finance complied with the Defender's proposal to issue a directive by which the Ministry of Finance would authorise customs authorities similarly as the regional revenue authorities to waive tax appurtenances in defined cases and up to defined amounts. The decree will be an interim provision until new tax rules are adopted; it will serve to rectify the above-mentioned varying positions of tax authorities.

Complaint Ref. No.: 2089/2003/VOP/PJ

The system of functioning and organisation of customs administration established before the accession of the Czech Republic to the European Union, that is before May 1, 2004, set in the Defender's opinion unequal conditions for enterprises specialising in international postal services.

The complainant, as a provider of international postal services (delivery of international parcels to the territory of the Czech Republic) expected the same approach from the customs authorities, which they pursued in the cases of customs processing of international parcels delivered by the Czech Post, State Enterprise (hereinafter "the Post"). However, the customs authorities approached the complainant differently than they did the Post, without having a legislative reason for such unequal handling.

The international parcels delivered by the complainant were accompanied by a declaration of contents, and in the Defender's opinion they met all the criteria necessary for the application of a supposition of a submitted customs declaration in accordance with the Czech legal regulation valid before May 1, 2004. In spite of this, the Complainant had to provide either an oral customs declaration of the contents of the parcel, which made him a participant in a potential offensive action (e.g. if it was discovered that the parcel contained a weapon instead of old clothes), or acted as a direct representative in the customs proceedings (in this case the complainant had to have the power of attorney available for the purpose of representation in customs action), and therefore was not a participant in a potential offensive action. The complainant did not know the contents of the parcel submitted to the customs officer, and without the permission of the sender or the recipient of the parcel, he was not authorised to know. The Defender found that the Post, unlike the complainant, did not have to provide a customs declaration or submit the power of attorney necessary for the customs proceedings. The inspecting customs officers were fully satisfied with receiving the declaration of contents, which accompanied the parcel. Under these circumstances, the Defender had to state that such a practice of the customs authorities led to an unequal assertion of the relevant provisions of customs and postal regulations. In relation to the complainant, the interpretation of the customs and postal regulations by the customs authorities before May 1, 2004, was illegitimately different from the one applied towards the Post.

The Ministry of Informatics agreed with the Defender's opinion, but the customs authorities did not, and therefore did not accept the remedial measures proposed by the Defender. However, from the day of the accession of the Czech Republic to the European Union, that is from May 1, 2004, the customs authorities radically changed their approach towards the complainant. They explained their change of approach with the change of the legal regulation. From the stated date and in accordance with Article No 237 of the Commission Regulation (EEC) No. 2454/93, which implements the Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, the customs authorities view the Complainant as a postal administration, and therefore do not require the submission of a power of attorney or oral customs declaration, which means they handle the complainant in the same way they handle the Post.

The change in approach of the customs authorities towards the complainant was obviously viewed positively by the Defender. In his opinion, this change should not have been substantiated by the change of legal regulation only. The previous (valid until May 1, 2004) and the recent legal regulations (valid from May 1, 2004, including communitarian regulations) are identical, apart from some small details of no consequence, in relation to international postal services. As a conclusion, it can be stated that the recent practice of the customs authorities

towards the complainant confirms their previous incorrect interpretation of the relevant legal regulations.

Local Fees, Administration and Proceedings on Local Fees and Fines

In 2005, 18 complaints dealing with this issue were received.

In 2005 the Defender paid considerable attention to the issue of recovery of arrears on fines or local fees by municipal authorities via court executors. The Defender has been dealing for a long time with the issue of enforcement of public-law execution (fines, local fees, etc.) to municipal budgets and has pointed out through the media and in his recommendations to municipal (city) authorities that some municipalities were failing to exercise their options for recovery of payments of public-law nature under the Act on the Administration of Taxes and Fees, failing to properly consider the efficiency, economy and correctness of such conduct. Instead they addressed court executors, thus often negating the mentioned principles. A question gradually emerged from a discussion with municipalities in connection with the inquiries into the cases about the options municipalities have in obtaining information on debtors if they conduct enforcement under the Act on the Administration of Taxes and Fees. In this context, the relationship with health insurance companies can be termed problematic. For more details on this see section III.

Complaint Ref. No.: 1551/2005/VOP/TČ

If a municipal authority in the position of a tax authority takes steps to recover a fine imposed in offence proceedings via a court executor without giving consideration to the reasonableness of its procedure, it may thus encroach upon the principle of equity of tax proceedings enacted in the Act on the Administration of Taxes and Fees.

Mr M. L. addressed the Defender with a complaint about the approach of the city of O. that had proceeded to recover an outstanding fine for an offence without further enquiry. He had learned about the distraint being levied only from the court executor charged to enforce the decision who had visited him at home. The executor had demanded from him not only payment of the due amount, a fine of CZK 300, but also CZK 500 for the costs of the offence proceedings and the executor's costs totalling CZK 8,068 (CZK 3,000 being the executor's remuneration and CZK 5,068 other distraint costs). Mr M. L. immediately paid the required amount of CZK 8,868 but at the same time he addressed the Public Defender of Rights, asking him to investigate the city's conduct. In his filing he also mentioned his supposition that the fine had been imposed on him illegitimately.

Before commencing an inquiry into the issue, the Defender explained to Mr M. L. that he found no maladministration in the offence proceedings. In the inquiry itself the Defender established that no call for voluntary payment of the debt had been sent to Mr M. L. before enforcement of the decision, because the city had previously not sent such calls to debtors. This incorrect approach had been corrected already in October 2004 as the municipal authority secretary issued an order setting out the duty to send calls for payment of arrears to debtors.

In his inquiry the Defender encountered an issue generally faced by cities regarding the possibility of obtaining details on debtors during tax distraints in connection with the amendment of Section 23 of Act No. 592/1992 Coll. on General Health Insurance Premiums. The said provision enacts the duty of health insurance company employees to maintain the confidentiality of any matters they learn during inspections of insurance payments or in connection therewith. Therefore the City Council decided to change the approach to recovery. Since 2003, with the exception of a few cases in which the city knows the income payer (such as the Czech Social Security Administration) or the debtor's account, it has been using a court executor with whom a contract was signed effective from October 1, 2003.

Given the above, the inquiry was closed stating that the city had violated one of the principles of tax proceedings when recovering its receivable, and specifically the principle of equity (economy), but since the erroneous approach by the city had already been remedied, the Defender required no additional measures to be adopted.

2.6 Protection of the Environment

Complaints in the area of environmental protection are characterised by overlapping of their individual elements as well as with other branches of law. The experience of the Public Defender of Rights in 2005 once again confirmed that legal relations in the area of the protection of the environment are complicated by coming under the **competence of several departments and special authorities**. Absence of co-operation between them would render the smooth development of these relations impossible. It can only be reiterated that a phenomenon which can be labelled as the authorities' "departmentalism" is displayed in the approach of the institutions that fall under the Defender's concern in connection with complaints relating to the protection of the environment. This results in a narrowly branch-focused approach of the authority to the issue being dealt with, an inability to take a broader view, as well as unwillingness to co-operate with another authorities.

Ignorance of the context and legislation other than the narrowly departmental one stemming from the mentioned "departmentalism" of the authorities is therefore frequently criticised by the Defender who also finds it suitable to call attention here to the still questionable approach of Czech public administration to the implementation of the sustainable development principle. Although the Czech Republic has in many documents endorsed practical fulfilment of the said principle from the perspective of its further development, its implementation in the routine operation of every individual authority remains wanting. Examples to be mentioned are the continuing ignorance of the need to develop bicycle infrastructure in large cities (Prague, Brno) or the non-conceptual approach to the permitting of construction projects near streams (including the often questionable restoration of stream beds damaged by floods to the original condition that has proven unfit). The Defender observes with disapproval the approach of the individual authorities, and especially the central ones, that regard implementation of the sustainable development principle as a matter for the environment department, while in fact it is a basic principle that must be adopted by any authority regardless of the department and respected by the authority in its everyday practice.

In the case of major **projects, in particular linear infrastructure projects**, the Defender continues to encounter shortcomings represented by a lack of conceptual evaluation, inconsistent assessment, a failure to compare more scenarios, etc. It should be the task for an independent state administration to uncover, using *inter alia* environmental impact assessments (EIA), every aspect relating to the specific project, and to ensure an unbiased evaluation of the relevant scenarios. Repeated attempts at evading the applicable permission procedures by declaring a construction a public interest project by law should be viewed critically. Evaluating whether there is a public interest, including its comparison with other protected interests, is within the competence of state administration and the results of such evaluation must not be pre-empted. In this context the Defender again points out (see the Annual Report for the previous year) that the questionable legal provisions concerning exemptions from bans in specially protected areas under Section 43 of Act No. 114/1992 Coll. still persist (the agenda of granting exemptions is run, wholly unsystematically, by the government).

Protection of the Environment and Landscape, Water and Atmosphere, EIA, Waste, Mining Administration

In 2005, 72 complaints dealing with this issue were received.

Complaint Ref. No.: 3735/2004/VOP/JC

There is no legal entitlement to using a specific amount of water for power generation or to obtaining the relevant permission for handling water in the meaning of the Water Act.

The company U. addressed the Public Defender of Rights with criticism of the authorities' procedure in proceedings concerning the operation of two small hydroelectric power stations (hereinafter "SHPS") on the B. stream. The company complained about delays in the conducted water-rights proceedings and expressed doubts about adherence to the legal requirement for the most effective possible use of renewable resources in the particular case. In principle the matter involved the company's requirement for a higher use of the power-generating potential of water in the B. stream for the SHPS owned by the company, at the expense of a permission for handling water issued for another SHPS situated on the parallel bypass channel.

Following his findings the Defender first of all stated that delays had occurred in the individual proceedings. During the Defender's inquiry the inactivity was eliminated. In terms of how to approach the Water Act's requirement for "non-depreciation of the power-generating potential of water" and how this should be expressed in the authorities' decision-making in the matter, the Defender pointed to the position of the Ministry of Agriculture Interpretation Commission that had already commented on the issue. By doing so he emphasised that his findings suggested practical problems brought by the approach to the issue of "distribution of the power-generating potential of water". The Defender stated that it remained questionable as to how much the "priority" of previously issued water handling permissions, i.e. an approach that tended to suit the position of the Ministry of Agriculture Interpretation Commission, should be preferred to attempts at a more effective use of the power-generating potential of water. The Defender called on the Ministry of Agriculture as the central water-rights authority to pay increased attention to the whole issue, in particular under its methodological and supervisory activities.

Public Administration of Gamekeeping and Other Activities of the Ministry of the Environment and the Ministry of Agriculture of the Czech Republic

In 2005, 19 complaints dealing with this issue were received.

Among the complaints concerning public administration in the area of the environment and at the same time the competence of the Ministry of the Environment and the Ministry of Agriculture, the public administration of gamekeeping is the most frequent area. In it, the Defender experienced in 2005 a decline in complaints relating to the transformation of hunting grounds and hunting associations aimed at compliance with the requirements of Act No. 449/2001 Coll. on Gamekeeping.

The Defender further dealt with the issue of **hunting grounds newly established** after the original ones had undergone a transformation process. New hunting associations had been established and some members of the original hunting associations had shown interest in establishing an association's hunting ground from their own hunting plots through detachment from the original hunting ground. The newly established grounds would then be owned by the newly registered hunting association comprising, among others, the said members. In his inquiry during which he addressed all the Regional Authorities in the Czech Republic and the Ministry of Agriculture, the Defender concluded that the valid Act on Gamekeeping makes it possible to deal with any change in the territorial arrangement of a hunting ground after the transformation of a hunting association.

In 2005 the Defender also dealt with the issue of **participation of an original hunting association** (holder of an original hunting ground that has so far not been made compliant with the Act on Gamekeeping) in proceedings on the registration of new hunting associations (established in the said process of transforming the original hunting ground). Although the Defender was at one with the Ministry of Agriculture that the original hunting association should be a party to the proceedings on the registration of a newly arising hunting association, this was not successfully asserted towards the relevant bodies of public gamekeeping administration (the Municipal Authority in Blansko and the Regional Authority of the South Moravian Region). The Defender therefore advised the central body of public gamekeeping administration – the Ministry of Agriculture, of his findings, in the expectation that the latter would as part of its methodological activities suitably clarify or unify the interpretation of the concept of participation in the proceedings on the registration of a hunting association.

Complaint Ref. No.: 3489/2004/VOP/ŠSB, connected with Ref. No. 1553/2003/VOP/KČ and others

After transforming a hunting association and making the hunting ground compliant with the Act on Gamekeeping, the territorial arrangement of the hunting ground may be changed solely with the consent of the hunting association. The Defender contributed to a unified interpretation of the Act on Gamekeeping and the elimination of discrepancy in the decision-making of administrative bodies that was in practice resulting in violations of the principle of predictability of decisions.

The preparatory committee of the hunting association L. – V. addressed the Defender with a problem encountered while attempting to put through the establishment of a hunting association recognised as a justified holder of the corresponding association hunting ground. The questionable issue that arose was whether the requirement of owners of the hunting plots

incorporated in the recognised hunting ground for detachment from such a group and establishment of a new hunting association of their own could be complied with.

The Act on Gamekeeping does not explicitly treat instances where a new hunting ground is established through detachment from an existing one that has been recognised earlier. If the owners are unable to obtain the required majority upon voting at the General Meeting of the original hunting association in order to pass division of the original hunting ground into new hunting grounds, their hunting plots remain incorporated in the original recognised hunting ground. They remain incorporated even if the owners secede from the original hunting association and try to establish a new hunting association. In further proceedings the said owners face a situation where their plots which they count on for the new hunting ground are still part of the original hunting ground and the relevant administrative body denies registration of the new hunting association and recognition of the new hunting ground referring specifically to the fact that it is inadmissible for the new hunting ground to incorporate hunting plots that are already part of a legitimately recognised hunting ground.

The Public Defender of Rights encountered a dual approach of public administration of gamekeeping (i.e. municipal authorities with extended competence) whose differing decisions were subsequently confirmed by the bodies of appeal – the regional authorities. While one body of public administration of gamekeeping accepted the "detachment", another denied it. It was obvious that the state administration bodies were taking different approaches. To solve this interpretation issue that had resulted in a lack of unification in decision-making and often helplessness of the administrative bodies in the application practice and that had doubtlessly been one of the reasons for delays in proceedings, legal insecurity and unpredictability of decisions for the parties to the proceedings, the Defender made a full use of co-ordination between the Regional Authorities. He then advised of his findings the central body of the public administration of gamekeeping, i.e. the Ministry of Agriculture, in the expectation that the latter would as part of its methodological activities suitably clarify or unify the interpretation in the application practice of all the state administration bodies in the area concerned.

By evaluating the conclusions reached during the inquiry, the Defender established that the Ministry of Agriculture was taking a constant position on the issue of new hunting grounds arising after the transformation of the original ones, and specifically that such "detachment" was impossible. Such a procedure was possible solely under the very transformation – i.e. when making hunting grounds recognised under the earlier legal regulations compliant with the existing Act on Gamekeeping. The Act on Gamekeeping and the general principles of hunting grounds establishment rule out that an owner of a single hunting plot be a member of two hunting associations and that the hunting plot be part of two hunting grounds. The Ministry passes this opinion to other bodies of public administration of gamekeeping at lower levels. The Defender also established that in spite of minor differences the regional authorities take a similar approach in such cases and the approach of a regional authority that had accepted detachment had been unique.

2.7 Protection of the Rights of Children, Adolescents and Families

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

In 2005, 89 complaints dealing with this issue were received.

In 2005 the Public Defender of Rights observed **the practice of authorities for the social and legal protection of children (hereinafter "ASLPC") in dealing with individual cases of manipulation of a child** by the person to whom the child's custody has been awarded by a court, whether the latter is one of the parents, a grandparent or a third person (other relatives, foster parents). The situation improves wherever state institutions have changed their approach to the phenomenon, i.e. they provide advice to the parents or any other persons to whom the child has been awarded as soon as problems arise, emphatically drawing their attention to any illegal conduct and its potential consequences and carrying out intense social work with the family. Problems persist in neglected and unsolved cases. It is necessary that all state bodies deal with the phenomenon in a unified manner, making sure that in the first place the child is protected and the right of the parents or as the case may be of the second of the parents to contact with the child is respected.

The Defender continued to encounter cases in which entitled persons **were obstructed in proper and undisturbed studying of the file documentation** kept by the authority for the social and legal protection of children. In the course of the year the Defender repeatedly met with the Ministry of Labour and Social Affairs, which has adopted new methodological

instructions and recently brought out a draft act on the social and legal protection of children, which deals with the issue as well. If this is adopted, doubts regarding interpretation of the provisions should no longer arise.

Complaint Ref. No.: 1298/2004/VOP/ZV

The only legal reason for denying a parent's request to study file documentation kept by the authority for the social and legal protection of children is if this contravenes the interests of a minor. Denying repeated studying, limiting the time available, determining a day and hour for studying the documentation on top of the limitations given by office hours, or making the studying of files conditional on the presence of a security service lacks legal justification.

Mr J. J., the father of minors awarded to the mother's custody, addressed the Defender with a complaint directed against the personnel of an authority for the social and legal protection (hereinafter "ASLPC"). He mentioned that the social workers had exerted pressure on him with a view to preventing his repeated studying of the file documentation. The father stated that the social workers had initially denied him the repeated studying of the file documentation and after allowing him to study it, they would limit the time available for studying the file in spite of previously defining a day and hour for this purpose. During the inquiry the Defender familiarised himself with the reasons for which the family was kept in the ASLPC records and right on the spot ascertained the circumstances of the authority's conduct with respect to the father's studying of the file.

The Defender found maladministration by the authority in that the ASLPC had not allowed the father to study the file documentation in spite of the fact that there is only one legal reason for denying a parent's request for studying the file, and specifically if such an act were to contravene the interests of a minor. In such a case the authority's decision would have to be explained clearly and the reason would have to be comparable to those specified in the Act on the Social and Legal Protection of Children. However, there was no such reason in the case concerned, because the father had studied the file documentation several days before filing a new request for studying the same file documentation, and the authority had found nothing to contravene the children's interests. Thus the authority had breached the valid legislation treating these issues. In addition the authority had violated the principles of good administration by limiting the father's time available for studying the file documentation, because this may be limited solely by the office hours of the authority concerned. If the time exceeds such scope, the authority should allow the father to continue studying on the following working day.

Shortly after this Mr J. J. addressed the Defender again, informing him that the authority was constantly trying to deter him from studying the file documentation and obstructing the act of studying it. In spite of his protests a security service employee was present at the studying. This conduct was also evaluated as maladministration, because a member of the security service is not an employee of the authority and in addition the security service should serve different purposes.

Institutional Care and Other Agenda of the Protection of the Rights of Children, Adolescents and Families

In 2005, 29 complaints dealing with this issue were received.

Again in 2005, the Public Defender of Rights inquired into the **conditions of institutional education**, both following complaints from children placed in the facilities, parents and other persons responsible for their upbringing, and on his own initiative. Generalising the findings from individual inquiries, it can be stated that a practice can be still encountered in institutional facilities where children are punished for misbehaviour by being forbidden to make a short visit to their parents. The law does not allow such conduct. As an extreme case, children are motivated to better school results by being or not being granted leave to visit parents.

The issue of **children being forbidden to briefly visit their parents** is closely connected with the established practice of points systems introduced especially in children's homes with school and reformatories, which many a time represent a whole section in the internal rules of such facilities. Behaviour rating is often designed as a deterrent for wards where minor misbehaviour (crude language, failing to greet, wilfully leaving the reformatory group within a building or premises or even being careless about clothing) may be

"appreciated" by the warden in accordance with the points system with a much higher number of points than there would be positive points available for being perfectly compliant (including any activity on top of normal duties) for a whole week. Thus the wards often find themselves in a situation where in spite of all their efforts, as a result of a major debit balance, they can expect that the nearest leave or a mere walk outside the facility in afternoon hours to be granted to them perhaps in several weeks, the awareness of which frequently motivates them to violate the internal rules even more seriously, typically by breaking out of the facility. The Public Defender of Rights generally regards such educational methods applied to wards as undesirable and intends to systematically deal with this phenomenon.

The Defender continues to encounter a situation in institutional facilities (and reformatories in particular) where the wards have very **limited telephone contact** with their relatives. Thus for example they are allowed to call only on a single day of the week at a specified time from the institution's telephone. Although an extraordinary telephone call is permitted in urgent cases, in practice it is up to the director of the facility, his deputy or warden to determine what is urgent, and this often takes more consideration of the financial impact of the children's calls on the facility's budget than their justified, perhaps purely private needs. The Defender sees a better solution in the one taken by some directors of children's homes who have installed card telephones, using which the children can call home virtually without limitation.

In facilities where many children with disciplinary problems or even children with behavioural disorders are concentrated, the Defender continues to identify the major **problem of bullying**. It should be stressed that the responsibility for systematic activities in the area of socially pathological phenomena lies with the director of the institutional facility. It is therefore particularly their responsibility to obtain professional education for the wardens including specialised training sessions.

The inquiries conducted by the Defender suggest the marked passivity of the facilities' directors in terms of **informing parents and other persons into whose custody the children have been awarded**. Parents are frequently unaware of the environment in which their child is subject to institutional education, their rights and obligations as well as the rights and obligations of their children towards the institutional facilities, the internal rules followed by the given institution or home in relation to telephone contact with parents, as well as of how visits to children in the facility, their short stays outside the facility and similar things are organised. The Defender is considering opening negotiations with the Ministry of Education, Youth and Sports that would result in a methodology for the issue.

Complaint Ref. No.: 2696/2004/VOP/JD

The right of a child placed in a school establishment for institutional and protective education to contact with parents should be regarded as a right that is guaranteed by the constitutional order and international agreements on human rights and which may be restricted solely under the conditions defined by law. Poor discipline, let alone unsatisfactory school results, do not represent legal grounds for disallowing or restricting the duration of the child's short-term stay with his or her parents.

Mrs J. K. asked the Public Defender of Rights to investigate the conditions in the Children's Home with School in M. (hereinafter "the CHS"). Her complaint was directed to events in early December 2004 when the CHS management expressed their intention to disallow her son R. K. his holiday at home during Christmas due to unsatisfactory school results, failing to comply with school duties and poor discipline. In response the boy had broken out of the facility.

The Defender opened an inquiry into the exercise of institutional education against the CHS in the conduct in which he found shortcomings. Upon local inquiry in the CHS the director denied that the management of the institution had intended to leave the boy in the facility during Christmas and stated that they had communicated this to the mother, because on holidays such as Christmas and Easter they would allow all wards to go home or to the children's homes they had come from, regardless of the discipline rating or school results. Aside from a conviction that children should be with their families during major holidays at the very least, they were led by practical reasons also, because even a single child present in the facility required the appropriate human resources. Nevertheless, while the other children had been meant to stay with their parents until the end of the winter holidays, the son of Mrs K. had his stay with the family restricted to the period from December 23 to December 27, which was

called "shortened leave". The CHS director explained the restriction that had been planned by referring to a practice where wards failing in a subject were placed in a so-called "learning group" before the end of every semester, and if they did not show an effort to improve their marks, their stay at home was shortened as explained above. By introducing the learning groups practice the CHS meant to ensure that the boys and girls grow up to be educated to the extent their intellectual ability allows and start adult life as full-valued members of society.

Should the CHS director disallow the stay of the son of Mrs K. with his parents or allow it for a shorter time than would be provided to other wards of the facility solely for his poor school marks and poor discipline, she would be pursuing conduct explicitly forbidden by Act No. 109/2002 Coll. on the Execution of Institutional Education or Protective Education in School Facilities and on Preventive Educational Care in School Facilities and on Amendment to Further Acts, and hence a conduct contravening Article 2 par. 3 of the Constitution as well as Article 2 par. 2 of the Charter of Fundamental Rights and Freedoms. In addition to this, the Defender declared the said practice of motivating wards by the CHS to be extremely non-pedagogical, which in the end had been confirmed in the reaction of R. K. who preferred breaking out of the facility to trying to improve.

With regard to the above facts the Defender concluded that by introducing the "learning group" whereby the CHS teaching council decided on the duration of the children's stays with their parents during Christmas or on holidays based on the children's school results and discipline, the institutional facility had contravened the law. The Defender recommended that the facility further refrain from making permission for the children's stays with their parents conditional on school results and compliance with the required discipline. The Defender does not doubt that the education of children for whom institutional education has been ordered or on whom protective education has been imposed places increased demands on the teaching personnel's ability to motivate, but school facilities must opt for means of raising the children's interest in the curriculum and attaining at least the minimum required knowledge that do not contravene legal regulations and the international covenants by which the Czech Republic is bound.

The director of the CHS responded to the Defender's report on the results of his inquiry by admitting shortcoming and adopting the measures proposed by the Defender, by which she ensured remedy.

2.8 Police, the Prison System, and the Army

The Work of the Police of the Czech Republic

In 2005, 62 complaints dealing with this issue were received.

The competence of the Police of the Czech Republic (hereinafter "the Police") is set very broadly, being covered by several areas of the Defender's mandate as well as areas to which the Defender's mandate does not relate. Therefore complaints about the Police are very varied. They often deal with administrative penalties, foreigner-related affairs and the administrative agenda in the weapons and ammunition sector.

In 2005 the Defender opened several inquiries towards the Police on his own initiative, among other things regarding the procedure of the Police against the CzechTek 2005 participants, the regime in police cells in Brno, complaint proceedings performed by Police bodies in charge of complaints and supervision and general issues regarding domestic violence.

The Defender examined the **procedure of the Police against the participants of CzechTek 2005** held in the Mlýnec nad Přimdou cadastral area between July 29 and 30. The Defender opened inquiry on his own initiative on August 5, 2005, with the aim of assessing the competence, authority and reasonableness of the Police procedure. During the inquiry the Defender received a number of filings. In late November 2005 the Defender issued a report on the inquiry under Section 18 par. 1 of the Public Defender of Rights Act and sent it to the Minister of the Interior, the Chief of Police, the directors of the District Police Directorate in Tachov, director of the West Bohemian Police in Plzeň and a representative of the CzechTek 2005 'technoparty' participants, requesting them to comment on his findings within 30 days. All the addressees commented on the report by the set deadline.

On January 25, 2006, i.e. shortly after the end of the period evaluated by the Defender in this Annual Report, the Defender issued a final position. In the position the Defender summarised the identified shortcomings in the procedure of the Police. It includes a proposal for remedial measures that should eliminate repetition of the identified shortcomings. The

Defender published the final position. In August 2005 the Defender used his findings and experience from the inquiry into the CzechTek 2005 'technoparty' as well as from the previous inquiry into the CzechTek 2003 'technoparty' in amendment proceedings to the draft act on conditions for holding certain gatherings (the so-called Lex CzechTek), produced by the Ministry of the Interior. The Defender questioned the need for special legislation as the legislation already contains all the instruments of legal regulation. The problem is that the legislation is scattered and there is no clear methodology in terms of its application.

The increasing number of complaints relating to the **issue of domestic violence** led the Defender to commence systematic monitoring of the approach of different administrative bodies to this issue that has so far been neglected both socially and legally. The Defender received initial findings from the Minister of the Interior, the Minister of Labour and Social Affairs and the Chief of Police and focused his attention in particular on the procedure of the Police in combating domestic violence. In this respect the Defender familiarised himself among other things with the activities of a working group specialised in the detection and investigation of domestic violence cases operating under the Metropolitan Directorate of the Police in Brno.

The Defender further dealt with complaints about the Police entering homes to enforce prison sentences for convicted persons, possessions damaged by the Police after being presented as important evidence in criminal proceedings, the Police entering flats due to a justified concern over people's lives or health being threatened, procedure of the Police in searching for missing persons, and complaints about a failure to provide information on an investigation carried out regarding a reported offence. As is now traditional, many of the complaints were about the procedure of the Police in investigating traffic accidents.

Complaint Ref. No.: 2433/2005/VOP/DU

In official interventions and actions, police must pay heed to people's honour, self-esteem and dignity. The schedule of duties at the Prison and Escort Department of the Police should be modified so that actions of the Police or procedures associated therewith that infringe or might infringe upon women's intimate sphere be conducted by policewomen.

In June 2005 a woman addressed the Defender anonymously, claiming to feel humiliated by the conduct of the Police in B. She supported this proposition by stating that while placed in a police cell where she had spent a night and almost an entire day, she had been unable to speak about her intimate needs with a policewoman, as only policemen had been present. Subsequently, while being escorted to the court, the complainant wanted to use the toilet in the court premises. The police responded to her request by informing her that she would have to leave the door open when using the toilet.

The Defender exploited his right to open an inquiry on his own initiative to investigate the anonymously provided information. From the information provided by the writer of the complaint the Defender deduced that it referred to the Prison and Escort Department of the J. Region Police (hereinafter "the Prison and Escort Department"). Through his inquiry (in July 2005) the Defender established that about 73 police were serving at the Prison and Escort Department, of which three were policewomen, and one of them was on a long-term sick leave at the time of the inquiry. There had been five policewomen until June 2005, but two had retired on grounds of age. Several prescribed posts were unoccupied at the time of the inquiry; given their number, the policewomen served solely dayshifts on workdays only, from 7.00 a.m. to 3.30 p.m.

Article 27 of Order of the Ministry of the Interior No. 32/1994 (in the wording of amendment No. 52/1995) regulating the procedure of Police officials in escorting persons prescribes special conditions applicable to the escorting of women. According to the mentioned article one of the escorting personnel must be a policewoman. This is not required in extra urgent cases provided that the policewoman's participation cannot be obtained. In the Defender's opinion the said exception applies merely to exceptional rather than regular situations in Police offices, in fact only to overcome temporary absences of policewomen on duty. In the case of the Prison and Escort Department under inquiry however, the exception had become the rule outside workdays and on workdays after 3.30 p.m. The Defender established through his inquiry that women were placed in the Prison and Escort Department concerned approximately ten times less frequently than men.

Having considered the findings, the Defender concluded that the existing system organising the Prison and Escort Department did not fulfil the said requirements. The Prison and Escort Department system should be set up in such a way as to ensure that Police actions

or procedures associated therewith that infringe or might infringe upon women's intimate sphere be taken by policewomen. The policemen/policewomen ratio at the department under inquiry must be correspond to this; the number of policewomen was insufficient even during the above daytime duty hours. If a policewoman on duty was currently escorting or became sick for example, there was nobody at the department to substitute for her.

The Director of the J. Region Police identified with the Defender's findings and opinion and took remedial measures. The existing policewomen of the Prison and Escort Department were placed on shift duties. In addition two prescribed posts were advertised. Subsequently the number of policewomen at the Prison and Escort Department was to increase so as to ensure that two policewomen were on duty in every shift in a four-shift round-the-clock operation.

The Work of the Prison Service of the Czech Republic

In 2005, 161 complaints dealing with this issue were received.

The number of complaints in this area increased significantly in comparison with 2004 (in 2004 the Defender received 109 complaints in this area and 85 complaints in 2003); however, the complaints were structured similarly to preceding years.

The most frequent were requests for **transfer to another prison** or objections to dismissal of a request for transfer. As before, most complainants were requesting to be transferred to Moravia, because given the distribution of prisons in the territory of the Czech Republic a substantial number of inmates from Moravia are placed in Bohemian prisons. The Prison Service still lacked a comprehensive system for evaluating requests for transfer that would respond to the current changes in the numbers of inmates in individual prisons and transfer inmates more effectively for example by exchanging inmates between prisons. In this respect the Defender is ready to negotiate with the Prison Service on the existing findings, with a view to making the entire system more effective. In this respect it should be welcomed that a new Moravian prison was established in Rapotice, to be fully operational by January 1, 2007 (for about 600 inmates).

Again in 2005, complaints regarding **healthcare provided to prisoners and persons in custody** were a major group. Inmates complained especially about a failure to carry out special medical examinations requested by them or a failure to provide the needed medication. The Prison Service continued to persist in a restrictive interpretation of the legal provisions treating the issue of access to medical files in connection with inquiries into complaints. No agreement was reached between the Defender and the Prison Service on the issue of to what extent the files could be studied, copies of them made, etc. On the other hand the Defender's entitlement to obtain at least oral information from the files, based on the consent of the imprisoned person, was not questioned in practice. Since January 1, 2006, the issue of the Defender's entitlement has been resolved as the Defender has obtained an express right to access files in connection with an amendment of the Act on Public Healthcare. However, the Prison Service persists in its negative approach. It is not ready to offer this option, let alone the making of copies, to patients themselves.

Other complaints dealt with by the Defender related to various **problems connected with life in prisons**. Thus it is reasonable to mention for example problems of bullying by fellow prisoners and Prison Service officers, failing to provide a suitable diet, lack of work for inmates, work and remuneration issues, reimbursement of the costs of serving a sentence and insufficient educational and therapeutic work with inmates. However, the actual conditions under which the Prison Service operates should also be mentioned. The Prison Service too is included in a scheme aimed at reducing the numbers of public administration personnel. In a situation where the prison capacity is exhausted and the number of prisoners keeps rising, increased demands are placed on every Prison Service employee in terms of surveillance as well as the work of specialised staff – psychologists, tutors, etc. Already now, the insufficient numbers of these personnel preclude effective educational and therapeutic work with inmates in many a prison. The Defender believes that attention should be paid to a general state criminal policy that would result in a decrease in the number of inmates and that the number of specialised personnel should increase.

Complaint Ref. No.: 3002/2004/VOP/PM

While serving their sentence, inmates are obliged to accept the limitation of some of their rights and freedoms, but their right to the protection of health guaranteed by the Charter of Fundamental Rights and Freedoms must not be limited.

The provision of healthcare to prisoners is governed by the general legal regulations in the area of healthcare with exceptions ensuing from the People's Healthcare Act, the Act on Imprisonment and the implementing decree to the latter. These include in particular the right to freely choose a doctor, a clinical psychologist and medical facility. Specifically with regard to this fact the Defender finds the complaints about healthcare to be serious.

Based on repeated complaints about healthcare in Pardubice Prison, the Public Defender of Rights opened an inquiry on his own initiative. During the inquiry it was established that in late 2004 and early 2005, permanently unemployable inmates were systematically placed in Pardubice Prison. 80% of these inmates had serious health complaints (they were physically disabled individuals, individuals awarded a disability pension, mentally ill individuals, etc.), and 85% of the inmates were on regular medication. The changed inmate structure had no effect on the personnel or facilities used to provide healthcare.

The Defender carried out a survey by questionnaire in the prison that yielded findings on several problematic areas in the provision of healthcare. These included in particular an insufficient number of medical personnel, an insufficient number of ambulances and wheelchairs, no glucometer readily available for diabetics, impossibility of buying certain over-the-counter medicaments (such as vitamins), the administering of placebos, etc.

Given the Prison's approach to the Defender's inquiry where the Defender's effort to improve the quality of care was regarded as a criticism of their work, a meeting directly with the General Director was initiated. As a result, the number of the Prison's health centre personnel gradually increased by 2 primary healthcare doctors and 2 general nurses, a psychiatric office for at least 5 hours per week was organised, on workdays the medical attendance for inmates was available until 7.00 p.m., the inmates were allowed to purchase over-the-counter medicaments in the prison canteen, an additional 2 wheelchairs were obtained and refrigerators with lockable containers should be obtained in 2006 to store insulin and insulin application instruments, on a "one patient one container" basis.

2.9 Foreigners

Residence of Foreigners

In 2005, 59 complaints dealing with this issue were received.

The structure of complaints in this area was essentially identical in 2005 to the previous years and can be divided into three basic parts – foreigners' entry to the Czech Republic, their residence here and leaving the territory of the Czech Republic.

In terms of entry to the territory of the Czech Republic, the complaints were particularly about the procedure of the relevant bodies, i.e. embassies and Foreign Police departments, in processing applications for visas. After dealing with some of these complaints the Public Defender of Rights generalised some of his findings regarding visa application processing and dealt more thoroughly especially with the issue of failing to communicate reasons for denying a visa as well as the issue of being allowed to supplement documents supporting an application for a visa while the application is being considered.

In terms of residence in the territory of the Czech Republic, the activities of the Public Defender of Right mostly dealt with the **granting of permanent and temporary residence permits** or visas for permission to remain, and the extending and cancelling thereof. The Defender repeatedly dealt with problems related to the place of registered residence of foreigners in the territory of the Czech Republic ensuing from the valid legal provisions; the law does not impose a duty on foreigners – originally Slovak Republic citizens and nowadays all EU citizens – to present a document proving guaranteed accommodation (the quartermaster's consent, lease agreement, etc.) to obtain temporary or permanent residence in the Czech Republic. As a result, the foreigners concerned can report essentially any property kept in the Land Register among dwelling premises as their place of residence in the Czech Republic without the owner of the premises even being aware of this and agreeing to it. The Chamber of Deputies of Parliament has already read an amendment to the law that should overcome this poor situation (parliamentary draft No. 1,107). It is also worth mentioning that issues related to the institute of invitation were dealt with. In some cases in the past the inviting person had to demonstrate, due to inappropriate formalities of the relevant official forms, unreasonably high available resources to cover the stay of the invited foreigner in the territory of the Czech Republic (it was impossible to specify in the forms for how many days the foreigner is being invited to the Czech Republic; instead, only an approximate period of the stay was given). In

addition, the forms were only in Czech. It was impossible to file applications for authentication of invitations at other than the Foreign Police departments in the district of the inviting person's permanent residence. As a result of the Defender's initiative a step towards a better arrangement was taken by producing more precise forms. These forms make it possible to specify the number of days the foreigner will stay in the Czech Republic. They were created in three language versions and Czech citizens can now apply for authentication of the invitation even outside their permanent residence.

Another shortcoming in the system dealt with by the Public Defender of Rights was **health insurance of the children of foreigners with a long-term stay in the Czech Republic** (for more details see section III).

In the last area of the agenda concerned, i.e. **leaving the territory of the Czech Republic**, the Defender dealt mainly with complaints concerning administrative deportation and its potential cancelling under abatement of the harshness of law; in this respect the Defender pointed out some recurring problems in the application practice, such as the fact that the validity periods of decisions on administrative deportation of foreigners are very frequently set mechanically and in many cases, applying an unreasonable harshness, at the maximum legal limit (i.e. 3, 5 and 10 years).

Along with the criticism of the very poor level of conduct at the Foreign Police offices repeatedly presented in the 2002 and 2003 Annual Reports and supported by many specific complaints, it is worth mentioning that in 2005 the Public Defender opened an inquiry concerning the **conditions and standard of conduct at the Olšanská Street Foreign Police office in Prague**, with a view to improving the existing practice, and not only at the office concerned but at the Foreign Police as a whole. It is often a humiliating and undignified practice, the continuing of which is unjustifiable; it places the Foreign Police in the position of being one of the worst authorities in the Czech Republic.

Complaints Ref. Nos.: 4025/2005/VOP/VK, 1158/2005/VOP/VK and many others

The approach to foreigners and dealing with them at Foreign Police offices is generally a serious systemic problem. In this context the Defender proposes transferring of the foreigner agenda under the civil unit of the Ministry of the Interior and establishing of an immigration (and naturalisation) authority.

In the Annual Reports on his activities in 2002 and 2003, the Defender repeatedly pointed out the generally low standard of conduct at Foreign Police offices and the traumatic experiences of foreigners that evidence a restrictive and selective approach to foreigners as well as insufficient provision of information, misuse of official positions and complacent and arrogant conduct of some police. This is a systemic problem, and the Defender therefore opened an inquiry based on a specific complaint and his existing findings on the conditions and standard of conduct at the Foreign Police office in Olšanská Street in Prague where the situation seems have persistently been alarming. The goal of the inquiry is to improve existing practice, and not only at the office concerned but at the Foreign Police as a whole.

In the light of the investigation so far, which included an inquiry on the spot and repeated negotiations with representatives of the Foreign and Border Police Directorate, the following can be stated.

In comparison with the situation that existed at the Foreign Police office in Prague's Olšanská Street before, a moderate improvement can be observed, in particular as a result of extended office hours and transfer of a part of the agenda to available premises in Sdružení Street. Establishing an information hotline also somewhat relieved the office. Some additional measures have been adopted that should further improve the situation, including the fact that foreigners are now informed of the possibility of sending applications for a residence permit and extension thereof by mail and that a system has been introduced for informing foreigners of the progress of processing their applications (via the Internet at www.mvcr.cz). However many faults persist as typical displays of a bureaucratic system.

According to a statement of the Foreign and Border Police Directorate representatives, moving to more suitable premises might contribute to an overall improvement. Such premises would be structurally and technically arranged and organised (like a post office or a bank) in a way that would certainly contribute to the fulfilment of elementary good administration principles such as transparency, impartiality, timeliness, accountability, openness, responsiveness, etc. The Defender supports the moving to other, suitably arranged premises, although with a certain reservation, because some of the problems observable at Olšanská

Street are not directly associated with its placement as such and could be addressed now, especially through better organisation of work, including the adoption of certain measures that have a broader utility and can be summarised as follows:

- *Improving the labelling of individual offices (including in foreign languages) as well as better and permanent compartmentalisation by agendas so as to make clear where the matter concerned is dealt with (stay extension, registering, reporting changes, etc.);*
- *Informing foreigners where and how they can exercise their right to refer to files, including the associated right to make copies;*
- *Making laws posted on the Internet clearer and up-to-date, including an extension to the associated laws;*
- *Obtaining foreign language versions of the current text of the Act on the Residence of Foreigners as well as any other associated laws, including information for foreigners (particularly in English and Russian);*
- *Operating the information hotline not only in Czech, but also in other languages (especially in Russian and English);*
- *Improving police knowledge in particular of associated legal regulations (the Code of Administrative Procedure, Act on Asylum, Employment Act, Trades Licensing Act, etc.);*
- *Making clear whom the foreigner is to deal with, who is the manager and his or her deputy at the relevant Foreign Police department;*
- *Improving communication with foreigners not only by ensuring that the police have basic language skills, but also by providing for example psychological training in communication.*

The Defender is aware that even adoption of these measures and their consistent application will not eliminate all the flaws that can be encountered in the existing Foreign Police practice, but is convinced that they would contribute to improvement and a higher standard of dealing with foreigners at the Foreign Police office in Prague's Olšanská Street at least until it is sooner or later actually moved to other premises. Indeed, the fact that around 75,000 foreigners are registered for residency in Prague and the present conditions at the Foreign Police department in Olšanská Street, which registers by far the highest number of foreigners, speaks for moving the department to other premises.

Proceedings on Asylum and Integration of Asylum Grantees

In 2005, 19 complaints dealing with this issue were received.

When dealing with complaints in the area of proceedings on asylum and integration of asylum grantees, the Public Defender of Rights concentrated more on the associated, one could say operation-related problems, than on the actual proceedings on asylum conducted by the Ministry of the Interior, which can be reviewed by courts. In this respect it is worth mentioning for example the issue of justifying denied consent to a change in the registered place of residence of asylum seekers, a case where the Foreign Police made a note in a foreigner's passport that he had applied for asylum in the Czech Republic as well as a situation where the Foreign Police refused to arrange a further stay in the Czech Republic in such a way as to avoid division of a family as a result of unsynchronised proceedings on asylum. At the same time an inquiry on the Defender's own initiative should be mentioned at the reception centre in the premises of Prague-Ruzyně airport where the Defender dealt with the living conditions of foreigners placed in the said facility as well as their asylum proceedings.

Nevertheless in 2005 the asylum proceedings as such once again became an area of concern for the Public Defender of Rights and it was also thanks to his initiative in the legislative process in Parliament that the admissibility of cassation complaints in asylum matters was not summarily excluded as was originally intended in the Government draft amendment of the Act on Asylum (parliamentary draft No. 882). Instead a new institute of the so-called inadmissibility of cassation complaints was introduced as a certain solution aimed at relieving the Supreme Administrative Court while preserving cassation complaints in asylum matters. The introduction of the institute of inadmissibility of cassation complaint in asylum matters (the new Section 104a of the Court Procedural Code) that was taken as a certain compromise can be labelled as a breakthrough in the existing administrative court system. Whether its results are positive or negative will be clear only from the application practice of the Supreme Administrative Court, and especially given the very restrictively set admissibility criterion – the cassation complaint must in its significance substantially exceed the complainant's own interests – as well as the fact that a decision on inadmissibility of a cassation complaint may go without justification.

Complaint Ref. No.: 2135/2005/VOP/VK and others

If a family member is persecuted in the country of origin or has a justified concern over persecution in the country of origin, this fact doubtlessly affects the entire family and the family should be entitled to protection as a whole. Therefore, in accordance with the principle of the integrity of the family, it is always necessary to await termination of asylum proceedings for all family members rather than first forcing those family members whose asylum proceedings have already terminated by application dismissal to leave.

Mrs Z. Z. with her minor daughter V., both Belarusian nationals, addressed the Public Defender of Rights, informing him that through a resolution of the Supreme Administrative Court their cassation complaint regarding asylum had been declined and as a result the České Budějovice Foreign Police Department (hereinafter "the České Budějovice FPD") had issued them an order to leave. However, the asylum proceedings of Mr S. Z., the husband of Mrs Z. Z. and father of minor V. were still in progress, and they had therefore addressed the České Budějovice FPD applying for visas for permission to remain in the Czech Republic. The České Budějovice FPD had dismissed the application due to finding no reasons for granting the visas.

The Defender decided to open an inquiry into the matter and concluded that the České Budějovice FPD had erred when dismissing the application of the individual and her minor daughter for visas for permission to remain and refusing to settle their further stay in the Czech Republic in such a way as to avoid dividing the family as a result of unsynchronised asylum proceedings and thereby harming the child's interests. During the Defender's inquiry the České Budějovice FPD remedied the shortcoming and granted the relevant visas to the individuals concerned for a further stay in the Czech Republic.

Given that cassation complaints are dealt with separately and there have been more actions against decisions of the Ministry of the Interior in asylum matters in the past, the case of the family may recur (and the Defender has already encountered such cases), and so the Foreign and Border Police Directorate has taken measures following the Defender's notice that should prevent the recurrence of such cases.

Acquisition of Citizenship by Foreigners

In 2005, 14 complaints dealing with this issue were received.

In dealing with complaints regarding proceedings on the acquisition of Czech citizenship the Public Defender of Rights continued to focus in particular on the quality and completeness of justifications of dismissals by the Ministry of the Interior. At the same time the Defender repeatedly dealt with another relatively frequent issue connected with citizenship proceedings, and specifically the power of the Ministry of the Interior to waive certain qualifications for being granted citizenship, especially the document evidencing the loss of the existing citizenship.

Complaint Ref. No.: 1650/2004/VOP/VK

If applicants for citizenship of the Czech Republic demonstrate that they are unable to present a document evidencing the loss of their existing citizenship, the Ministry of the Interior is to examine the inability to present the document with consideration to the circumstances of the case, consider a waiver and decide in the matter.

Mr D. J. had applied for the granting of citizenship of the Czech Republic in 2002. The Ministry of the Interior had issued a decision suspending the proceedings, requesting that the applicant present a document evidencing the loss of his existing citizenship. The decision concerned had served as a covenant of a future granting of citizenship of the Czech Republic. In spite of all efforts Mr D. J. had failed to obtain the document evidencing the loss of the existing citizenship, but the Ministry of the Interior had insisted on supervision and repeatedly extended the deadline for presenting the document. Mr D. J. therefore addressed a request for assistance to the Public Defender of Rights.

The Defender opened an inquiry during which he expressed his conviction that continuing the administrative proceedings would not provide any other results; instead it would only prolong the abovementioned individual's legal insecurity in a matter as important as his personal status. In addition the authority had exposed him to such insecurity in a situation where he had been fully integrated into Czech society and his stay in the Czech Republic had been based on a "direct bond" or "genuine link" derivable in particular from his occupational,

family and social integration. It was therefore reasonable to close the administrative proceedings, which actually happened, and more than three years from commencement of the proceedings the Ministry of the Interior issued a deed of acquisition of Czech citizenship.

2.10 Internal Administration

The Work of Registry Offices

In 2005, 14 complaints dealing with this issue were received.

The number of complaints concerning registry offices has gradually dropped since 2003. The issues addressed by individuals to the Defender in this area are so varied that none of them stands out as major. The issues in 2005 included the entitlement to request an excerpt from the registry collection of deeds, procedure of the registry office towards marriage contracted with a foreigner (waiver of the certificate of legal capacity to contract marriage) and the possibility of using a second surname. About a half of the complaints criticised rather the legal provisions than the conduct of specific registry offices. For example the Defender explained why under existing legal provisions Czech authorities could not issue a certificate of legal capacity to a Czech citizen for contracting marriage with a person of the same sex in Spain. Also a letter was addressed to the Defender by a woman who had adopted the husband's surname upon marriage. The woman was unhappy with the fact that legal provisions did not allow her to resume her maiden name while the marriage continued, even though her husband had agreed to that step.

Complaint Ref. No.: 4149/2004/VOP/MV

The provisions of the Act on the Family, according to which a spouse who has adopted the other spouse's surname may within one month from the divorce judgment coming into legal force notify the registry office of readopting his or her earlier surname, is applicable even if a divorce judgment of a foreign court is subsequently recognised by the Supreme Court of the Czech Republic.

Mrs J. B. addressed the Defender with a complaint about the inactivity of a regional office that had failed to decide on her appeal regarding payment of an administrative fee for a permitted change of surname within one month from the divorce judgment coming into legal force. After her marriage had been ended by divorce by a German court, she had asked the Supreme Court to issue a recognition decision under the Act on International Private and Procedural Law. The judgment of the Supreme Court had come into legal force on April 16, 2004, and on April 26, 2004 the woman had asked the relevant registry office to change her surname after the divorce. The authority had made satisfaction of her request conditional on payment of an administrative fee. After the fee had been paid, the authority provided the decision with a legal force clause. Mrs J. B. had filed an appeal to the regional authority against the payment of the administrative fee.

In practice registry offices and their superior bodies were mostly of the opinion that the provision of the Act on the Family that makes it possible to readopt the original surname within one month from the divorce judgment coming into legal force by merely notifying the registry office was not applicable to a case where recognition proceedings before the Supreme Court were required. A change of surname performed in the manner described in bold above was exempt from the administrative fee. The registry offices were satisfying requests for surname changes, but they were doing so in a general regime of administrative proceedings on surname change. Given the relatively low fee for permitting the change of surname through returning to the previous one (amounting to CZK 100 as opposed to CZK 1,000 in other cases than those set by the law), there were usually no disputes between the authority and the citizen.

The Defender opened an inquiry and established that the regional authority had requested the position of the Ministry of the Interior, which had further addressed the Ministry of Justice. Even after receiving the position of the Ministry of the Interior, which had been positive for Mrs J. B., the regional authority remained inactive. It was only after the Defender's intervention that it terminated its inactivity and made sure that the collected administrative fee was returned to Mrs J. B. The Defender recommended to the Ministry of the Interior to familiarise all registry offices in the Czech Republic with its position in the matter as it was addressed to the Regional Authority.

Citizens Register, Identity Cards, Passports, Etc.

In 2005, 51 complaints dealing with this issue were received.

The majority of complaints in this area were related to proceedings on **the nullification of the entry of the place of permanent residence**. The practice reveals that the declared registration nature of the data on the place of permanent residence is not real. Motions for nullification of entries of the place of permanent residence are filed in particular due to concern over executors. The debtors who do not dwell at the place of their permanent residence and whose data on the place of permanent residence is to be nullified are most often adult children or former spouses of those filing the motions. The Defender usually has no reason to open an inquiry on the basis of complaints received from claimants in these matters and lays them aside as ill-founded. As an exception, some authorities suspend proceedings and refer the claimants to the court even if it is obvious that a right to use a flat has ceased through the user moving away. In such cases the administrative body should itself pass judgement on the cessation of the right of use.

The issue of delivery of official correspondence is connected with the nullification of the entry of the place of permanent residence and the subsequent registration of the place of permanent residence at the registration office address. If the registration office does not accept mail for citizens with their permanent residence registered at the address concerned because they do not stay there, the office cannot be reprehended for this. It is in the interest of the citizens concerned to specify another delivery address. The Defender draws attention to this issue in connection with the new treatment of mail delivery in the new Code of Administrative Procedure effective as of January 1, 2006.

Complaints in the area of **identity cards and passports** were something of an exception in 2005. Following individual filings by citizens, the Defender opened two inquiries on his own initiative about the Ministry of the Interior. The goal of the first inquiry was to draw attention to the lacking legal definition of authorities' conduct with respect to the validity of passports after a change of surname based on marriage. Another issue the Defender pointed out involved citizens having lost their identity card or whose identity card has been stolen; the Defender proposed that an identity card could be applied for and issued promptly without the machine-readable zone. Both proposals were responded to positively. They were accepted and incorporated in an amendment of the Act on Travel Documents and the Act on Identity Cards (parliamentary draft No. 1,068). On the other hand the Ministry of the Interior has so far not accepted the proposal that following the citizen's application his or her place of birth could be recorded in the identity card by the regional division at the time of the citizen's birth as a non-mandatory entry.

Complaint Ref. No.: 2828/2004/VOP/MV

Nobody may be forced to do what the law does not command. Under the Act on Identity Cards the citizen is obliged to present the birth certificate or the birth and baptism certificate with their application for the issue of a new identity card, and where applicable, such additional documents as may be required to eliminate any identified discrepancy solely if the citizen cannot present the existing identity card.

Mrs J. L., a pensioned clerk born in 1921 in the former Sub-Carpathian Ruthenia had requested the issuing of a new identity card at the registry office in the place of her residence already in 2004 (i.e. before an exception was granted through an amendment to the Act on Identity Cards to all citizens born before January 1, 1936, from the mandatory replacement of identity cards). She had presented her valid identity card from 1974 with the application plus a birth certificate in Czech and Slovak issued in the former Sub-Carpathian Ruthenia at the time the said territory was part of Czechoslovakia. It should be noted here that under the regulations in 1974, citizens born abroad were not required to present a registry office document issued by a special registry office in Brno with their applications for identity cards. The authority with extended competence competent to issue the identity card to which the application had been referred had required that Mrs J. L. present with her application a birth certificate from the special registry office in Brno. Later, at the request of the Defender, the authority justified this procedure by the fact that the place of birth in the database of the information system had been the USSR and from the birth certificate presented by the applicant the state of birth in today's arrangement had not been obvious.

The Act on Identity Cards narrows the duty to present documents required to eliminate identified discrepancies solely to cases in which the citizen is unable to present his or her

existing identity card. The law generally imposes a duty on citizens to present an excerpt from the special registry office in Brno if they present a document issued by a foreign authority to evidence the data recorded in the identity card, but it can be assumed that the duty does not arise for the citizen if he or she presents the existing identity card for the identity card to be issued.

Mrs J. L. more than complied with her duties as an applicant for the issue of a new identity card when presenting through the registry office a document that had always been sufficient for her to have an identity card issued. The authority with extended competence had a chance to relatively easily establish from the presented document that it had been issued in the former Sub-Carpathian Ruthenia. The said territory was part of Czechoslovakia in 1921; later it belonged to the Soviet Union and is part of the Ukraine today, which facts are generally known in the Czech Republic and do not need to be evidenced.

2.11 Public Court Administration

Delays in Proceedings, Inactivity of Courts, Improper Conduct of Court Officials

In 2005, 254 complaints dealing with this issue were received.

Based on complaints in the area of public court administration, the Defender **inquired into delays in proceedings**, administration of court fees, improper conduct of court officials and maladministration by the court bureau administration.

Although Article 38 of the Charter of Fundamental Rights and Freedoms, which is part of the constitutional order of the Czech Republic, stipulates the right of everyone to have their case dealt with without undue delays, in practice this Article of the Charter is not always successfully fulfilled. Similarly the Convention on Human Rights and Fundamental Freedoms, also signed by the Czech Republic, refers to the right to a fair hearing that includes the right of everyone to have their matter heard fairly, publicly and within a reasonable time, by an independent and impartial tribunal established by law.

Complaints about delays in court proceedings that represent the most frequent group among complaints falling within the area of public court administration arise in particular with such courts as have been consistently overloaded. Courts usually have difficulty in overcoming the backlog as unfinished cases (files of older series) that arose in particular in the 1990s significantly complicate the courts' efforts to work without delays. Thus it happens that even though the number of judges at a specific court already corresponds with the average influx of cases, the judges do not avoid delays because they must prefer the processing of older cases. New cases wait their turn (files are principally dealt with in the sequence of the corresponding actions delivered to the court), as a result of which new delays arise. The Defender was explicitly asked to help increase the number of judges by the Presiding Judge of the District Court in Břeclav and the Presiding Judge of the District Court in Ústí nad Labem.

In its awards the Constitutional Court has repeatedly set out that delays in proceedings cannot be justified even by the generally known overloading of the courts, because it is a matter for the state to organise its court system in such a way as to ensure that the judiciary principles stipulated in the Charter of Fundamental Rights and Freedoms and the Convention on Human Rights and Fundamental Freedoms are respected. Any shortcomings in this respect must not burden citizens who rightly expect the court to protect their rights within a reasonable time. It is therefore a matter for the Ministry of Justice, which is the central body of the public court administration tasked with creating conditions for courts in terms of personnel, organisation, economy, funding and tutorship and to suitably supervise proper fulfilment of tasks entrusted to judges within the limits of the Act on Courts and Judges, to adopt adequate measures responding to the specific situation at the court concerned. In 2005 the Public Defender of Rights several times addressed the Ministry of Justice pointing out identified shortcomings, whether in general or specifically at certain courts. He also requested information from some courts during his inquiry as to whether they had discussed their personnel-related problems with their superior court or alternatively the Ministry of Justice or if they had at least signalled the problems to them.

In November 2005 a meeting was held under a special inquiry on the Defender's own initiative between the Defender and representatives of the Ministry of Justice responsible primarily for dealing with complaints and the human resources policy of the Ministry. The reason for the inquiry was the lack of unification in dealing with complaints under the Act on

Courts and Judges identified by the Defender as well as the formal approach, the schematic responses of the Ministry and lack of co-ordination of work between departments (overlapping competences and unwillingness to deal with certain issues). The findings and partial conclusions from the meeting will be used in the further work of the Public Defender of Rights in 2006.

When detecting the reasons for delays, it is often identified, apart from the (still) most frequent objective reasons, that the delays are due to inactivity of an authorised expert who has either failed to ask the court to extend the deadline for the expert opinion and has supplied the opinion only after being urged (sometimes even repeatedly) or the expert has failed to co-operate with the court in another respect (has failed to appear at a court hearing, failed to receive court summons, etc.). The approach of presiding judges to such undesirable errors has been rather benevolent and the Defender therefore notified some presiding judges of the need to demand adherence to deadlines set for expert opinions and compliance with other duties of an expert, and that an expert who (repeatedly or seriously) breaches duties can be advised of the legal option of removing him from the case, or he can be removed straight away or his remuneration cut. The Defender is convinced that the presiding judges of regional courts should be informed of "problem" experts (because it is a matter for them to dismiss experts). He therefore proposed that the presiding judges of district courts forward this information to the presiding judges of regional courts. The Ministry responded positively to this finding of the Defender.

More often than in the past the Defender encountered complaints about **so-called improper conduct of court officials**. A majority of these were about judges. If the complainant raises objections that can be qualified as objections to the judge's prejudice, he or she is advised of the need to put forward the prejudice objection under the Civil Procedure Code, i.e. in a lawsuit. During his inquiry into such complaints the Defender concluded that the somewhat archaic approach of the public court administration bodies in dealing with these complaints should change. The Defender pointed out at the meeting with the Ministry representatives the somewhat unilateral approach of public court administration bodies in dealing with these complaints whereby only one of the parties is given room for comments, and specifically the court party, without feedback to the complainant. The Defender is of the opinion that hearing the matter with both parties present would preclude later objections on the findings made by the party that was not involved. The Ministry found the Defender's approach to be correct and undertook to apply it and recommend it to courts when dealing with complaints of this nature.

Complaint Ref. No.: 4177/2005/VOP/PJ

Lending a court file to another criminal court does not provide grounds for the court's inactivity in deciding what portion of alternative sentence should be served after partly paying up a pecuniary penalty.

Mr S. P., serving a prison sentence at the O. Prison, addressed a request for assistance to the Defender. He was convinced that having paid the proportional portion of his pecuniary penalty, he was serving the prison sentence illegitimately by the time of filing the complaint to the Defender.

The Defender decided to open an immediate inquiry into the matter presented to him and given the urgency of the case he chose to contact the court by telephone. The reason for the court's inactivity (and specifically that of the head of the criminal bureau) identified by the Defender was that the file had been lent to another court in another criminal case involving the complainant. The court administration director (the deputy presiding judge for criminal cases was not present at the time) promised an immediate remedy.

On the very day of the Defender's telephone call (December 5, 2005) the complainant was released from prison. The next day the Defender was informed by a fax from the deputy presiding judge of the court that, among other things, the maladministration caused by the head of the criminal bureau registry would be discussed at a conference of senior court staff. The deputy presiding judge informed him that the complainant should have been released from prison already on October 21, 2005.

Later the Defender received additional advice from the deputy presiding judge according to which it had been decided at the conference of senior court staff to replace the head of the criminal bureau. The matter was discussed with the heads of criminal bureau registries with the conclusion that in similar cases the file must be immediately submitted to the relevant presiding judge for a decision. Given the measures taken the Defender closed the inquiry and advised the complainant of the possibility of putting forward a claim for indemnification under

Act No. 82/1998 Coll. on Responsibility for Damage Caused in the Course of Executing Public Administration by a Decision or Incorrect Administration Procedure.

2.12 Transport and Telecommunications

Administration in the Surface Communications Sector, Transport Administration Agenda

In 2005, 82 complaints dealing with this issue were received.

As in previous years, individuals addressed the Defender with complaints in this area with a request for assistance primarily in cases where **obstacles impeding or aggravating further use were placed on a thoroughfare that had been used until then**. However complaints also concerned the viewing a specific surface communication's character, and primarily the difference between a "local communication" and a "publicly accessible purpose-built communication", which is important for defining the scope of the highway administrative authority's powers.

In dealing with complaints the Public Defender of Rights established that being often unaware of their powers ensuing from Act No. 13/1997 Coll. on Surface Communications, smaller municipalities do not act towards owners of plots of land in their territory from the position of a **highway administrative authority**. Planning authorities also err when granting permission for the erection of fencing or various gates and bars without awareness of the local conditions and without requesting the position from the highway administrative authorities as to whether a publicly accessible surface communication is situated on plots of land affected by the minor structure concerned. As a result of these incorrect procedures by authorities, citizens find themselves in a situation where there is the construction owner on one hand, who has fenced his plot of land and perhaps carried out the associated garden adaptations, etc. in good faith (based on consent from the planning authority), and the person on the other hand who is thereby prevented from using a traditional access road to his or her property.

In 2005 the Public Defender of Rights closed an inquiry commenced in 2003 on his own initiative aimed at **clarifying controversial interpretation issues regarding the Act on Surface Communications** with the Ministry of Transport. The interpretation differences between the Defender and the Ministry have been eliminated regarding the very notion of surface communication, criteria of determining as to whether a communication is local or purpose-built in a specific case, the role of the highways administrative authority in planning proceedings, the permitting of restrictive road marking and signs on purpose-built communications plus several additional controversial issues. As a remarkable step based on the Defender's proposal, the Ministry provided policy guidance for controversial interpretation issues regarding the Act on Surface Communications to regional authorities. On the other hand the Ministry did not entirely meet the Defender's expectations regarding the implementation of his findings in the drafted amendment of the Act on Surface Communications.

In 2005 the Defender also dealt very particularly with **the procedure of public administration bodies in removing vehicles**. The frequency of complaints with respect to the removal of vehicles obstructing traffic on surface communications or in connection with the so-called block cleaning decided upon by the relevant highway administration authorities under the Act on Surface Communications reassured the Defender in his opinion that the present legislation and practice of the administrative bodies and other entities involved in the vehicle removal procedure cause practical problems of no small concern. Therefore the Defender opened an inquiry on his own initiative in 2005. The Defender addressed mayors of statutory cities to get an insight into the administrative practice in each city, evaluated the findings made and attempted to unify the existing non-uniform approach through his conclusions.

Complaints in the area of **transport administration agenda** were affected in 2005 by the accession of the Czech Republic to the European Union. They continued to apply to problems connected with the registration of vehicles and their import into the Czech Republic as well as the obtaining of a driving license or a professional certificate. Therefore a need arose during the examination of the individual complaints by the Defender to take into consideration communitarian law and the amount of its transposition into domestic law.

File Ref. No.: 3387/2004/VOP/VBG connected with a number of others

The procedural step by which a policeman or officer decides to remove a vehicle obstructing traffic on a surface communication under the Act on Surface Communications Traffic, is subject to court review.

A vehicle not respecting a temporary waiting prohibited sign, for example when communications are being cleaned, may be removed by the owner of the communications. The costs associated with the removal are not paid by the owner of the removed vehicle solely if he or she demonstrates serious reasons to the owner of the communications that prevented him or her from the timely removing of the vehicle himself/herself.

The Defender opened an aggregate inquiry on his own initiative after noticing during inquiries into a number of individual complaints regarding the removal of vehicles that the existing legislation and practice of the administrative bodies and other entities involved in the dealing with such situations in everyday life cause difficulties.

A vehicle may be removed if the vehicle obstructs traffic on surface communications under the Act on Surface Communications Traffic as well as in connection with the so-called block cleaning decided upon by the relevant highway administration authorities under the Act on Surface Communications Traffic.

Upon opening the inquiry the Defender addressed the mayors of all statutory cities and the mayor of Prague with a request regarding the existing practice in their cities. The findings so obtained confirmed a lack of application uniformity and differing procedures in different statutory cities, which is indisputably incompatible at least with the requirements for the general principles of good administration. The Defender's inquiry resulted in a recommendation for a uniform procedure. The addressed representatives of statutory cities effectively expressed their consent to the recommendation and willingness to implement it.

2.13 Administrative Sanctions, Proceedings on Protection of a "Quiet State of Affairs"

Offences and Other Administrative Infringements

In 2005, 118 complaints dealing with this issue were received.

As in the preceding period the complaints in this area most often targeted the procedure of administrative bodies in their dealing with offences against public order, civil cohabitation, property, and against safety and smooth flow of road traffic.

Compared with the preceding years, the Defender paid increased attention also to **the procedure of Police bodies in connection with their work before reporting an offence** to an administrative body. Trying to make the procedure of administrative bodies in their dealing with reported offences more efficient, the Defender advised the Chief of Police of his findings regarding the shortcomings of Police bodies that were present in multiple complaints inquired into by the Defender and could therefore not be regarded as uncommon failures. The Defender's reservations related to cases of identified inactivity of Police bodies after they had learned about an offence, the redundancy of certain investigations, and findings regarding the insufficient utilisation of the institute of arresting persons suspected of having perpetrated an offence and complicating the actions concerned by failing to appear upon summons, by being absent at the place kept as their permanent residence, etc. Prompt investigation by the Police bodies and forwarding the matter to an administrative body is further complicated by the investigation performed by the Police bodies with the aim of eliminating doubts regarding the qualification of the deed expected to be an offence, notably regarding the examination as to whether "only" an offence or a crime is suspected. In this respect the Defender reached a unity of opinion with the Chief of Police that the slightest hint that a matter could pose suspicion of a perpetrated crime should lead the Police body concerned to open criminal proceedings. During actions in criminal proceedings, a one-year period for hearing an offence is available, which increases hopes for hearing the offence in administrative proceedings.

In connection with the findings ensuing from the inquiry into individual complaints, the Defender negotiated on **the content of fine receipts** (imposed on the spot) with the Ministry of Finance, which is authorised by law to issue them.

On-the-spot proceedings are shortened offence proceedings whereby the offence is dealt with by the relevant body on the spot by filling in a fine receipt. This is a prompt and efficient institute for dealing with less serious offences. In principle, two sorts of fine receipts exist – a receipt for fines not paid on the spot and a receipt for fines paid on the spot. Every fine receipt consists of part A kept by the administrative body and part B given to the offender. On one hand, the fine receipt serves accounting and inspection purposes (regarding the sums collected by the relevant body) as well as a confirmation (part B) evidencing payment of the fine (if the fine is paid on the spot). On the other hand it is an administrative decision *sui generis*. The Defender identified inconsistency between the contents of fine receipts and the requirements set by the Act on Offences and the Code of Administrative Procedure. The Defender identified shortcomings primarily in the incorrect text printed in the fine receipts and their inappropriate graphic layout (virtually precluding due completion of the receipt).

The Defender's reservations were more serious where the content of part B of fine receipts (given to the offender) was concerned. These failed to contain the essential decision requisites as set by law. The Defender pointed out that a fine receipt has the characteristics of an administrative decision and the offender should receive a fine receipt from the relevant body that contains the relevant requisites of the decision, i.e. on whom, when and for what offence the fine has been imposed. The Defender further pointed out an issue that arises if a fine is imposed at a nominal value other than that printed in the fine receipt (for a fine paid on the spot). In practice this is dealt with by giving out several fine receipts (at a total "value" equal to the imposed fine); given what is mentioned above, this means the relevant body issues several decisions on a single offence. Such a procedure is not only incorrect in formal terms, but in the future, particularly in connection with Act No. 361/2000 Coll. on Surface Communications Traffic, in the wording of amendment No. 411/2005 introducing a points system as of July 1, 2006 for violations of the duties set by the Act on Surface Communications Traffic, a situation may potentially arise where several offences instead of one are recorded as a result of an administrative shortcoming. After discussing the comments with the Minister of Finance some of the above shortcomings in fine receipts were eliminated through a reissue of receipts in late 2005. As for the remaining comments, a mere modification or extension of the existing fine receipt form would not ensure remedy. Remedy can be expected only when entirely new fine receipt forms are introduced, as the Defender requires. This should not be precluded even by the alleged fact that the change in format is prevented by the dimensions of staff handbags contained in the Police officers' outfit. The Ministry of Finance has already taken steps towards issuing new fine receipts.

Complaint Ref. No.: 1625/2005/VOP/DU

The fact that a motor vehicle is driven by a driving school student does not mean that the person concerned cannot be guilty of unlawful conduct when driving the motor vehicle during a training session. The level of the student's guilt must be examined with regard to the knowledge and abilities connected with the operation of vehicles on surface communications attained by the person so far.

Mr V. H. had been involved in a traffic accident in Prague as a driver of a passenger car. The other party involved in the accident had been a driving school vehicle driven by a student under an instructor's surveillance. The Police body as the body acting in criminal proceedings had forwarded the matter to the Prague Municipal Office (hereinafter "the Municipal Office") for hearing of the offence. Upon the complainant's objection the supervising Public Prosecutor had examined the procedure of the police body and found it correct. The Public Prosecutor had concluded that the driving school student could by no means be found liable for the traffic accident and that there had been no way the driving school instructor could prevent the accident. The Municipal Office had laid the traffic accident case aside before opening offence proceedings; its approach had been influenced by the said opinion of the Public Prosecutor. Upon the complainant's request the Municipal Office had forwarded the case to the Ministry of Transport for examination. The statement of the Ministry of Transport had concluded that offence proceedings should have been opened towards the driving school instructor and/or student. The Municipal Office had not accepted the opinion of the Ministry.

The Defender found two fundamental acts of maladministration by the Municipal Office; firstly in that it had laid aside the traffic accident case before opening offence proceedings. The file had contained sufficient information on the basis of which the offence proceedings could and should have been opened towards the driver of the vehicle (a former driving school student) and most importantly towards the driving school instructor. The second maladministration was that the administrative body had not changed its view of the offence

proceedings even after receiving a communication from the Ministry of Transport on the basis of which the administrative body should have reviewed its approach and opened proceedings on the offence.

The Defender reached a partial conclusion during his inquiry that guilt for a traffic accident could not be precluded a priori, neither for a driving school instructor nor for a student. The level of guilt of the driving school student should be examined with regard to the knowledge and abilities connected with the operation of a vehicle on surface communications attained so far. This will be different at the beginning of the driving school lessons than shortly before the end of the lessons as well as if the student already is holder of a certain driving license category. The level of guilt should also be examined with regard to the driving school instructor who should monitor the driving of the student entrusted to him or her and influence it positively while taking consideration of the current road traffic conditions.

After studying the Defender's conclusions, the Municipal Office proposed and took several remedial measures, including the opening of offence proceedings towards the driving school instructor. The proceedings were opened, although at a time by which due to the Municipal Office's previous inactivity a prevalent part of the deadline had elapsed upon the expiration of which the liability for an offence ceases. Shortly after opening, the proceedings were abated for the said reason.

Proceedings on Asserted Protection of a "Quiet State of Affairs"

In 2005, 13 complaints dealing with this issue were received.

In 2005, the Public Defender of Rights was addressed by citizens primarily with complaints about the **inactivity of administrative bodies in dealing with their applications for protection** or an incorrect examination of their cases. Upon dealing with the complaints the Defender noted continuing problems with the application of Section 5 of the Civil Code by authorities. The problems mentioned by the Defender in his 2004 Annual Report continue to recur, specifically in that the administrative authorities also carry out a legal examination of cases outside the scope of the legal provisions, even though lacking the power to do so. Their task is solely to ascertain as to whether the quiet state of affairs existed in the particular case (and even a state that appears to be unlawful may be a quiet state of affairs); if it has been arbitrarily infringed, they shall assert protection for the applicant.

Another problematic aspect of asserting the protection of a quiet state of affairs is that administrative bodies suspend proceedings due to reference to a preliminary ruling represented either by court proceedings conducted on the legal aspect of the case (which, as mentioned above, is not relevant for asserting protection under Section 5 of Civil Code) or court proceedings on a preliminary injunction. However, such procedure is incorrect because court proceedings on preliminary injunction and administrative proceedings may take place in parallel until a final adjudication is made.

Complaint Ref. No.: 1070/2005/VOP/MB

In proceedings on protection under Section 5 of the Civil Code the administrative body should not deal with the question as to "who is at fault under law", since this is irrelevant for asserting the protection of a quiet state of affairs. It is further irrelevant whether court proceedings on the same matter are in progress in parallel with the administrative proceedings, because the court examines legal issues an administrative body should not deal with. Thus the administrative body cannot suspend administrative proceedings on these grounds.

Mr J. S. asked the Defender to hold an inquiry into the conduct of a municipal authority and a regional authority in proceedings on protection. The complainant had filed an application for the protection of a quiet state of affairs under Section 5 of Civil Code in 2003, claiming that the quiet state of affairs had been infringed already in 2001. Since 2002, the complainant had been involved in court proceedings on the same matter on determination of ownership rights and had in parallel filed an action with a court for the handing over of a tangible asset against his former spouse. The authority had failed to assert protection and suspended the proceedings with the explanation that court proceedings were being held based on reference for a preliminary ruling.

The Defender stated based on his inquiry that the assertion of protection under Section 5 of the Civil Code is governed by the substantive provisions contained in the Civil Code as well as procedural law standards within the Code of Administrative Procedure. Under Section 5 of

Civil Code, if a quiet state of affairs has been obviously infringed, protection may be claimed from the relevant state administration body. The body may preliminary forbid the infringement or impose restoration of the previous condition. According to the Public Defender of Rights, before protection is asserted for the applicant, the following facts must be ascertained and demonstrated to have existed before the obvious infringement of the quiet state of affairs:

- *The fact that a quiet state of affairs had existed. "Quiet" shall be understood to be such a state as had continued undisturbed for such a long time that it can be regarded as quiet given the circumstances. At the same time the notion of "quietness" cannot be interpreted just in a strictly linguistic manner in that it must be an entirely quiet state fully agreed upon by all the parties concerned. Quietness apparent on the outside, i.e. the above steadiness over time, is crucial.*
- *The fact that the quiet state of affairs had been infringed. It should be added in this respect that the infringement must be arbitrary rather than for example infringement following a decision of a competent body or directly on the basis of law (such as distraint on property ordered by a court, placing a crime's perpetrator under arrest, etc.).*
- *The fact that an obvious infringement is concerned, by which an infringement identifiable without complicated ascertaining should be understood. Should complicated substantiation of evidence be required to demonstrate existence of the infringement, the legal requisite for asserting protection under Section 5 of the Civil Code would not be satisfied and the administrative body would have to dismiss the application.*
- *The fact that the state of affairs introduced by the infringement of the original quiet state of affairs has not become a quiet state of affairs to date. The persons concerned must claim protection against the infringement promptly. Since administrative bodies do not protect legality but instead the actual state of affairs (the latest quiet state of affairs) in these special proceedings, their duty in the administrative proceedings is to deal with the question as to whether a new quiet state of affairs has already arisen given the circumstances of the case.*

2.14 Administration in the Sector of Exercising the Right to Employment and Work

Administration and Inspection in the Sector of Employment and Work

In 2005, 60 complaints dealing with this issue were received.

The complaints received by the Public Defender of Rights in 2005 in this area are directly connected with the legislative changes brought by the year 2004, the most important of which seems to be the **adoption of a new Employment Act** effective from October 1, 2004. Following extension of the application of the rules of administrative proceedings to the until then determined–on-the-spot actions of labour offices (inclusion in the jobseekers register, registration termination) and abandoning the "ascertained wilful obstruction in co-operation with the labour office" criterion, a significant increase in complaints ensued concerning unfair exclusion from the jobseekers register. As in 2004, a considerable proportion of the complaints received contested the text of Section 25 of the said Act, which does not allow regular students over 26 to be kept in jobseekers registers.

Connected with the new legal provisions in the employment sector are numerous and increasing complaints about **inactivity of the Ministry of Labour and Social Affairs** as the body of appeal deciding in administrative proceedings against decisions of labour offices in matters regarding the registration of jobseekers (exclusion from the jobseekers register, granting or non-granting of unemployment benefits).

In 2005 the Public Defender of Rights also exhaustively dealt with **the procedures of inspection in the employment sector** and observance of labour law and wage regulations. In several cases the Defender found maladministration in the recording of inspection protocols, but he primarily encountered an incorrect inspection procedure as a result of which the rights and protected interests of the person initiating the inspection (most often an employee or a former employee) were infringed, or the inspection examination was carried out in a way that harmed the rights and protected interests of the persons subject to the inspection. The Defender also inquired into the reasonability of penalties with regard to the seriousness of the established violation of labour law regulations. The drop in the number of complaints compared with 2004 was probably due to the establishment of new inspection bodies – area labour inspectorates through Act No. 251/2005 Coll. on Labour Inspection to which a substantial part

of inspection power was transferred from the labour offices. Given the very short period of their work, the citizens so far did not react to the work of the inspectorates in their complaints. In the future however, it is reasonable to expect a gradual shift from complaints regarding the inspection activity of labour offices to complaints regarding the newly established area labour inspectorates as well as the State Labour Inspection Authority.

Complaint Ref. No.: 1327/2005/VOP/JB

A decision on exclusion from the jobseekers register, although based on reasons foreseen by law, must not at the same time contradict the purpose of the law, and specifically the exercise of the right to employment.

Mrs A. K. addressed a complaint to the Defender regarding the procedure of the Labour Office in T. (hereinafter "the Labour Office") in its decision-making regarding exclusion from the jobseekers register, which the complainant regarded as unfair. As a jobseeker she had wished not to rely solely on the Labour Office negotiating a job for her; she had therefore been trying to find a new position on her own. Attracted by an advertisement offering the position of a sales department assistant posted on a notice board directly in the Labour Office premises, she had applied for the vacancy. On Thursday, March 10, 2005, after going through the first round of selection, she was informed around 5.30 p.m. that the next round of interviews would be the next morning. Being aware of her duty to appear for a meeting at the Labour Office arranged for Friday at 9.15 a.m., she asked her Mum to excuse her by telephone and to explain that her daughter would appear immediately after the interview. Since the office hours of the Labour Office finish at 1.00 p.m. on Friday, she was unable to visit the Labour Office on the same day. She appeared at the Labour Office on the very next working day, i.e. on Monday, March 14, at 8.00 a.m., with a confirmation of her participation in the selection procedure. On the following day the Labour Office excluded her from the jobseekers register for lack of co-operation.

Through an inquiry using the documentation requested by him the Defender verified that the information given by the complainant in her complaint was true. Although she had excused her absence at the arranged meeting at the Labour Office in advance via her mother by telephone, appeared on the very next working day and presented a document evidencing her participation in the selection procedure, the Labour Office had not found the reason for her absence at the meeting to be a serious reason pursuant to Section 5, letter c) of the Employment Act and excluded Mrs A. K. from the jobseekers register for obstruction in co-operation with the labour office. The complainant had appealed against the decision at the Ministry of Labour and Social Affairs. The notion of serious reasons that may prevent a jobseeker from co-operation with the labour office is defined by Section 5, letter c) of the Act, which definition clearly gives a demonstrative listing. Thus the jobseeker's conduct could be placed under "other reasons" not directly specified by the Act. On the Labour Office's objection that participation in a selection procedure cannot be taken as a serious reason for failing to appear at a meeting with the Labour Office, because this is a purely private activity of the jobseeker, it must be argued that there could hardly be a more serious reason for a jobseeker's absence than one that exercises the purpose of the Act and that such activity is desirable for the Labour Office by, one might say, relieving a burden from the Office. Admittedly, the conduct of another jobseeker whose participation in a selection procedure would be planned, who would not provide an excuse and show no attempt to appear once the obstruction ceases, may represent obstruction in co-operation with the labour office. Given that the Act provides extensive administrative discretion, jobseekers should be approached on an individual basis, taking consideration of their personality factors, the existing situation, and personal and family circumstances. The shortcomings identified through the inquiry by the Public Defender of Rights were remedied already during the inquiry through annulment of the contested decision by the body of appeal.

2.15 State Supervision over Self-Governing Units and the Right to Information

State Supervision over Self-Governing Units and Their Protection

In 2005, 10 complaints dealing with this issue were received.

Again in 2005, the Defender was addressed by citizens discontented with the exercise of supervision over municipal self-governing units. Under the legal provisions effective in 2005, supervision over the exercise of municipal self-governing units was carried out by regional authorities and the Ministry of the Interior. Citizens addressed the supervisory bodies with

requests for reviewing the municipal bodies' work from the perspective of compliance with the Act on Municipalities and in many cases they requested intervention by the supervisory bodies in an activity that could not be subject to supervision, because in the cases concerned the municipalities acted as parties to private law relations.

Complaints Ref. Nos.: 1827/2005/VOP/ZS, 1828/2005/VOP/ZS and others

The resident's right to request hearing of a matter by the municipal authority corresponds with the municipal authority's obligation to deal with the matter, i.e. to include it on the agenda of a municipal authority meeting or refuse to include it.

Mr and Mrs Ž. addressed the Defender with complaints regarding violation of their residents' rights under the Act on Municipalities through inactivity and unlawful procedure of the M. H. municipality (hereinafter "the Municipality"), which had failed to satisfy their requests for inclusion of certain specific matters on the agenda of a municipal authority meeting and failed to discuss the proposals as the complainants had expected. The complaint included the procedure of the Ministry of the Interior in supervising the Municipality's self-government.

A resident of a municipality has the right to participate in the administration of the municipality among other things by utilising the rights contained in Section 16 of the Act on Municipalities. Under Section 16, par. 2, letter f) of the Act on Municipalities, residents are entitled to request a hearing by the municipal authority of a matter falling under self-government. The municipal authority has a duty to deal with the matter, i.e. to include the matter on the agenda of a municipal authority meeting or to refuse to include it on the agenda provided that the municipal authority members must be sufficiently familiarised with the resident's proposal. Thus the resident's right does not have the characteristics of an entitlement to having his or her proposals included in municipal authority meetings and satisfied by the municipal authority.

The Defender did not identify with the complainants' opinion and agreed with the conclusions of the Ministry of the Interior that the complainants had not been denied their right to participate in the administration of the municipality. Thus the Defender found no maladministration in the work of the Ministry of the Interior in supervision over the exercise of municipal self-government that would justify the adoption of remedial measures.

Right to Information

In 2005, 8 complaints dealing with this issue were received.

This year the Defender primarily endeavoured to **eliminate certain shortcomings in the Act on Free Access to Information** by participating in the legislative process. Virtually all the defects in the Act of which the Defender is aware that complicated access of citizens to information should be eliminated by an amendment passed by the Chamber of Deputies of Parliament in late 2005. The amendment primarily deals in a suitable way with issues such as providing access to court decisions, reimbursement of the costs of retrieving information, relation to the Act on Personal Data Protection and the provision of information obtained from third persons but generated using public funds.

However, maladministration still exists in the work of authorities when the right to information is asserted. First of all, authorities still tend to examine whether the applicant is entitled to the information, what he or she intends to use it for, etc. Yet the Act on Free Access to Information is based on the principle that the applicant needs not specify the reason for his or her application. The liable entity should simply provide all the information applied for except for those the provision of which is directly forbidden by law. There are very obvious attempts of authorities to force the applicant to demonstrate a legal interest in obtaining information where completed administrative proceedings are concerned. If the proceedings are finally closed and the applicant is not interested in directly studying the file but solely in obtaining certain information, the authority has a duty to provide to him or her information on the proceedings (obviously after excluding personal data of the parties involved, classified matters, etc.). In the actual administrative proceedings so far, authorities have often denied parties to the proceedings the right to copies of documents from the file; instead they only allowed them to make notes and comments. The Defender successfully managed to tackle this practice in individual cases. However, it was only the new Code of Administrative Procedure that brought about a systematic solution.

Another serious misdemeanour of authorities is deterring applicants by requesting high fees as **reimbursement of the costs of retrieving information**. It should be taken into

consideration that the provision of information is a common part of serving the public rather than an "extra". Reimbursement of the costs is therefore an institute that should be utilised by the authorities in exceptional cases if the amount of retrieving significantly exceeds the normal exercise of state administration, and only to an extent ensuring that the costs do not effectively bar citizens' access to information.

Complaint Ref. No.: 373/2003/VOP/KČ

Everyone is entitled to information from a final administrative decision within the scope of the Act on Free Access to Information, even if the person concerned was not a party to the closed administrative proceedings.

Mr A. D. had been denied information he had requested under the Act on Free Access to Information. The information had related to the content of a final administrative decision by which the city of V. M. had been permitted to carry out construction work in a graveyard subject to heritage preservation. Mr A. D. had been denied the information on the content of the decision within the scope requested by him by the Regional Authority Heritage Department and following an appeal the decision had been confirmed by the Ministry of Culture. Both authorities had claimed that Mr A. D. had failed to demonstrate a justified interest in obtaining the requested information under the Code of Administrative Procedure. According to the said authorities, the Act on Free Access to Information was not applicable at all in the case concerned.

Mr A. D. addressed the Public Defender of Rights and decided to file an administrative suit against the decision of the Ministry of Culture based on partial results of the inquiry. Nevertheless, the Defender had already expressed his legal opinion on the matter and he therefore decided to complete the inquiry. In a final position the Defender stated that the Code of Administrative Procedure sets extended rights to refer to files solely for parties to proceedings and persons demonstrating a justified interest. This however does not preclude applicability of the Act on Free Access to Information. Other persons too are entitled to information from completed administrative proceedings if they apply for it, although in their case personal data, information on the property of individuals as well as other information defined by the Act on Free Access to Information must be excluded from the information provided. However, the regional authority and the Ministry of Culture went far beyond this legal limitation of the right to free access to information. The Defender therefore proposed that the Ministry review its decision by which it had dismissed the appeal.

The Ministry of Culture did not accept the Defender's final position. Given the court proceedings on the administrative suit that were in progress, the Defender did not proceed to sanctions against the Ministry under Section 20 of the Public Defender of Rights Act. In June 2005 the Defender received news from Mr A. D. on an adjudication of the Municipal Court in Prague through which the court had satisfied the filed administrative suit and essentially accepted the Defender's legal arguments. The decision in the matter is not final, because the Ministry of Culture filed a cassation complaint to be adjudicated upon by the Supreme Administrative Court. The Defender must not intervene in adjudication of the substance of the matter and he therefore closed his inquiry. However, the Defender remains in contact with Mr A. D. and monitors the developments in this groundbreaking case.

2.16 Selected Areas from Other Fields in the Defender's Mandate

In 2005, 152 complaints dealing with other areas in the Defender's mandate were received.

Classified Matters, Work of the National Security Agency

Complaints regarding the protection of classified matters (newly classified information) and security clearance directed against the procedure of the National Security Agency are not frequent in the practice of the Public Defender of Rights, among other things due to the fact that the person concerned has a chance to use the procedural rules defined by law that are based on general rules of administrative proceedings. The last instance decision is made by a court. If however the Defender receives such a complaint, he usually deals with the substance of the matter.

Complaint Ref. No.: 4265/2005/VOP/VK

In proceedings regarding the issue of a security clearance certificate it is essential that the National Security Agency properly assesses the information obtained (from the relevant intelligence service) and judges reasonably between the actual risks ensuing from such information and the consequences of a potential dismissal decision in the matter (loss of employment).

The National Security Agency had not issued a security clearance certificate to Mrs K. A., noting that matters had been identified concerning her suggesting that her conduct and way of life might influence her susceptibility and trustworthiness. Mrs K. A. filed a complaint against the decision to the director of the National Security Agency and at the same time she addressed the Public Defender of Rights.

Under these circumstances the Public Defender of Rights decided in spite of the complaint proceedings in progress to open an inquiry and notified the director of the National Security Agency, requesting all the related file materials for reference. The security capacity file on the complainant included the results of the investigation by the relevant intelligence service on the basis of which the National Security Agency had reached the above conclusion.

Having studied the result, the Defender directly expressed his disapproval of the way in which the National Security Agency had assessed the information obtained, noting that he found the conclusions drawn, given the potential consequences of the decision (loss of employment for Mrs K. A.) to be entirely unreasonable compared with the risks ensuing from the said information. At the same time the Defender decided to respect the complaint proceedings in progress and wait for the decision of the National Security Agency director in the conviction that a subsequent review would lead to issuing the security clearance certificate. This indeed happened after the complainant was satisfied through a decision of the National Security Agency director, with a conclusion that the result of the intelligence service investigation did not suffice to conclude that the complainant showed such conduct or way of life as would affect her trustworthiness and susceptibility.

Administration in the Sector of Business, Trade Licensing Offices and Consumer Protection

In the sector of commercial activities administration, the Defender repeatedly encounters insufficient inspection of the entrepreneurs' duty to **prove ownership or a right to use the premises** in which the registered office or place of business are situated. A number of other public law institutes are connected with the registered office (especially the delivery of correspondence by state bodies). The same applies to distraint issues (when a "fictitious registered office" is the case, the executor may confiscate possessions in a private house or flat of individuals who have nothing in common with the dishonest entrepreneur). The place of business issue is also connected with the assertion of claims under the Act on Consumer Protection as well as consumer contract issues.

The Defender addressed selected statutory cities in this matter, requesting information as to how the trade licensing offices inspect observance of duties under the Trade Licensing Act. Although the inquiry has not been closed as yet, the Defender already perceives the need for a more consistent protection of ownership rights (and the right to respected privacy) as well as for an overall simplification of the way places of business are registered. The existing situation is uselessly bureaucratic in a number of aspects, both for the entrepreneurs and the trade licensing authorities. The latter are often burdened with redundant work and the law is defined in a way that precludes a more effective protection of third persons (owners of property).

In the area of consumer protection, the Defender identified that the excessive specialisation (which can at the same time be labelled "inefficient scattering") of the administrative authorities dealing with consumer protection results in a certain "departmentalism" that effectively weakens consumer protection. The Defender further believes that although there are a number of mechanisms at the level of prevention for inspecting observance of the consumer protection regulations (such as inspections by the Czech Business Inspectorate or by customs authorities at market halls or supermarkets), an inspection mechanism is still lacking when dealing with specific complaints about defective products. Consumer protection is closely connected with advertising regulation. In this respect the Defender dealt with the interpretation of the notion of advertising materials in the meaning of the Act on Advertising Regulation.

Complaint Ref. No.: 3339/2004/VOP/TČ

Even if promotional leaflets contain "ordering information", they still represent advertising that is subject to regulation under the Act on Advertising Regulation. Advertising includes a wide range of activities (announcement, presentation, sale) propagated by communication media and aimed at supporting a business.

The Defender opened an inquiry following a complaint from the company WS (hereinafter "the Complainant") about an incorrect official procedure of a trade licensing authority. The Complainant was of the opinion that the company TV was breaching the Act on Advertising Regulation and deceiving consumers.

The Defender focused on the more general issue as to whether a "leaflet with an order form" (received by a consumer) was mail order trading or advertising aimed at supporting a business. The Defender was of the opinion that this was advertising supporting a business even though the leaflets contained "ordering information"; while on the contrary, the trade licensing authority claimed that this was mail-order trade. Under the Act on Advertising Regulation, advertising is understood to include a wide range of activities (announcement, presentation, sale); these activities are propagated by communication media and are aimed at supporting a business. In the case concerned all these points were satisfied. The Defender did not request adoption of additional remedial measures and closed his inquiry.

Administration in the Schooling Sector

In 2005 as in the preceding years, the Defender dealt with students' complaints about school management and teachers' conduct as well as schools' complaints about the procedure of the Ministry of Education, Youth and Sports when deciding upon specific cases.

A number of complaints related to **the interpretation of the new Schools Act**. Some of these complaints expressed opinions about the institutes introduced by the new Schools Act (such as being able to apply to enrol at just a single secondary school in the first round of the enrolment procedure, and introduction of the "state school-leaving examination" institute). In some cases individuals requested an explanation of the new legal provisions (such as how fees for kindergartens are treated). The Public Defender of Rights will continue to monitor the problems arising in connection with the application of the new Schools Act and refer to them if he identifies any shortcomings in the system.

Complaint Ref. No.: 3484/2004/VOP/JH

The non-observance of internal regulations and basic principles of administrative proceedings in the exercise of administration is regarded by the Defender as a procedure contravening the principles of good administration. If an authority is unable to meet the deadlines set by an internal regulation for objective reasons, it should inform the applicant of the reasons for the delay, explain by how long the deadline would be extended and the anticipated date of issuing a decision.

The Czech Association for Waldorf Pedagogy (hereinafter "CAWP") addressed a complaint to the Defender about persistent delays at the Ministry of Education, Youth and Sports (hereinafter "MEYS") in approving an independent curriculum to be taught at the Waldorf schools. The Association noted that following a decision of MEYS, teaching at the Waldorf schools had been in the experimental testing mode between the years 1996 and 2003. The experiment had been evaluated very positively by experts. In late 2002 CAWP had requested termination of the Waldorf School Curriculum Experimental Testing and its inclusion among standard school curricula. In June 2003 MEYS had decided to abolish the Waldorf School Curriculum Experimental Testing, noting that the Ministry was providing room for utilising the Waldorf pedagogy under the existing curricula (such as the Elementary School Curriculum) through policy guidance for teaching process modifications. The Complainant found the said procedure of MEYS to be unlawful and insulting given the absence of a justification and negation of the Waldorf schools' ten-year effort to gain official recognition. The Complainant was referred to international human rights documents, including the parents' right to obtain an upbringing and education for their children in accordance with their own religious and philosophical beliefs. CAWP appealed to the procedure under the Code of Administrative Procedure towards MEYS and observance of the latter's internal regulation – guidance No. 10 788/96-22.

The Defender opened an inquiry into the matter and reached the following conclusions. Instead of the Code of Administrative Procedure, only the basic principles of administrative

proceedings should be applied to the approval of teaching documents, because this is an administrative process in a broad sense. However, the Defender found the right of the applicants to appeal to the observance of the internal regulation treating approvals of teaching documents to be entirely legitimate. The Defender established that the deadlines set by the internal regulation had been exceeded and MEYS had violated other rules as well. It is reasonable to assume that the MEYS procedure shows a certain element of wilful conduct. Given the unreasonable length of the approval proceedings caused among other things by delays at a commission acting as the Ministry's advisory body, the legislative change represented by the adoption of the new Schools Act had in fact made it impossible to approve the Celostní škola (Holistic School) curriculum under the original regulations.

The Defender further labelled the period of over 10 years for testing the Waldorf school curricula as unreasonably long, just as was the duration of the approval procedure. The state should have clearly signalled to the Waldorf schools via MEYS if and in what form the Waldorf pedagogy could be implemented in the Czech Republic so that each school could take the appropriate steps. The exceptionally long period of assessment and approval was incompliant with the principles of legitimate expectation and legal security. Given that the original approval procedure became irrelevant as the new Schools Act came into effect, the Defender closed the inquiry, finding maladministration by the Ministry. In the current situation Waldorf schools have no other option but gradually to approximate their curricula to the framework curricula.

Administration in the Sector of Supervision over Joint Copyright Administration

In 2005 the Defender dealt with the issue of **state supervision over joint copyright administrators** exercised by the Ministry of Culture. This specifically applied to long-lasting controversies concerning licenses for the exercise of joint administration of camera operators', set designers and costume artists' rights (the so-called fine arts element of audiovisual works). The Ministry of Culture erred frequently in the matter and its procedure has been repeatedly successfully taken before administrative courts. The Defender (together with the highest courts – the Constitutional Court and the Supreme Administrative Court) substantially contributed to remedying the Ministry of Culture's maladministration. In connection with the Defender's conclusions, certain personnel were replaced at the relevant department of the Ministry. Details are contained in the complaints below.

Complaints Ref. Nos.: 7/2004/SZD/PKK, 2196/2003/VOP/PKK and 21/2004/VOP/PKK and others

The fact that persons represented by a joint administrator have left the joint administrator cannot in itself provide grounds for removing authorisation to exercise joint administration.

If authorisations for the exercise of joint administration have not been made compliant, authorisation for the exercise of joint administration cannot be removed, because it is unclear until they are made compliant what rights to what subjects of protection the joint administrator exercises.

The joint administrator O. addressed the Defender with complaints about the procedure of the Ministry of Culture in two proceedings involving the joint administrator (these involved so-called compliance proceedings and proceedings on the removal of a license to exercise joint administration).

The Public Defender of Rights established through an aggregate inquiry that O. as one of the joint copyright administrators had had a license to exercise the audiovisual rights granted to it by the Ministry in July 1997. In March 1998 an internal dispute of two groups of authors had occurred within O., as a result of which some of the authors had left the organisation and the organisation's management had become inoperative. Yet O. had not been dissolved and retained the license. In 1998 changes had occurred in the management of O. and O. had managed to restore operations between 1999 and 2000. In spring 2001, the Ministry of Culture, although obliged to do so by law, had failed to make the old license of O. from 1997 compliant with the new Act on Copyright. In August 2001, at he request of the group of authors who had left O. in 1998, the Ministry had opened proceedings on the removal of the old, 1997, license.

In his reports on the inquiry, the Defender found, apart from procedural maladministration by the Ministry and considerable delays in proceedings, that the removal

proceedings had been opened illegally (i.e. no reasons for removal had existed) and in addition the Ministry had failed to meet its legal duty to make the 1997 license compliant with the new Act on Copyright.

In the part treating joint administration, the Act on Copyright is based on the principle of authors' protection; at the same time however it protects the legal security of joint administrators, for whom the joint administration is a display of exercising the right to perform economic activity. If the will of the represented authors collides with the will of the joint administrator who intends to continue performing joint administration, the rights of the authors who have left cannot be preferred to the joint administrator; instead it is necessary to effectively deal with the issue of the collision of constitutionally guaranteed rights.

The Defender stated that the departure of the represented authors cannot in itself provide grounds for removing the license for the exercise of joint administration (there could be different reasons such as a serious breach of duties or some other ineligibility for exercising joint administration).

It had been equally inadmissible in the Defender's opinion for the Ministry to reprehend the joint administrator for failing to represent foreign authors (the Act on Copyright does not impose such a duty) as well as for the Ministry to independently form an opinion on who is or is not an author under the Act on Copyright. Indeed, in this case the administrative body is bound by the principle of legality of the exercise of state authority and can therefore only do what the law allows it to do. The determination of the copyright status of persons falls within the power and competence of civil courts. The issue of determining the copyright status of a person (group of persons) may then become a matter to be referred for a preliminary ruling by the administrative body, but the body is not entitled to make a judgment on the issue on its own, because the law does not give it the explicit legal power to do so.

As a remedial measure, the Defender requested the Ministry to make the 1997 license of O. compliant with the Act on Copyright and to abate the removal proceedings. The Ministry accepted and implemented the recommended remedial measures. The Defender found these steps to be sufficient for remedy and closed the inquiry.

3. Complaints in Areas Outside the Defender's Mandate and Their Handling

As already mentioned in the summaries in the opening part of this chapter, the Defender received **2,123 complaints** in 2005 that fell outside the Defender's legal mandate in their subject or the institutions they concerned.

Complaints in areas outside the Defender's mandate generally do not represent less work in their handling, but rather the opposite in a number of cases. The reason is the already mentioned fact that a single legal relation or issue may enter the Defender's mandate at a later stage. In addition the Defender follows the principle that even if the matter is outside his mandate, he takes it as his duty to provide the complainant with at least general advice or information. It is obvious that many complainants have difficulty finding their bearings in the tangle of legal regulations. Being unaware of the instruments available to protect their rights, they often fail to use them. If the general principles of good administration include a responsive approach and fulfilment of the duty to advise by the institution concerned, it would be a contradiction if the institution meant to contribute to observance of good administration principles by law did not serve as a role model. However, for specific legal assistance in a matter, the Defender refers to the relevant institution that has a duty to advise; in private law matters the Defender refers to legal consultants as well as free-of-charge civil, family and other counselling centres. It has become a rule in these cases that along with the answer, the Defender sends complainants continuously updated lists of the relevant counselling centres for better orientation in choosing legal assistance.

Answers to complainants including **enclosures with information texts** were already used by the Defender as an efficient instrument of informing and assisting the public in previous years. In addition to the lists of counselling centres, he used these materials to inform of the scope of his mandate and the requisites of complaints addressed to him. In 2005 the Defender considerably extended the range of information prints in which he generally answers the most frequent questions from various legal fields. These "information leaflets" are inserted as enclosures with answers to complainants and are available in a wide range at the Defender's Office in premises for personal contact with complainants and for registering complaints in a protocol in person. The continuously updated lists of counselling centres, other potentially

useful addresses with contact information of institutes and authorities, but most importantly all the information and advisory texts from various fields have been placed by the Defender in the relevant section of his website at www.ochrance.cz. The Defender's 2005 experience allows him to state that these activities are becoming increasingly efficient and citizens seeking information texts in both printed and electronic form ever more frequent.

Section 13 of the Public Defender of Rights Act is a specific case where the Defender's mandate is precluded and the law at the same time directly defines the Defender's duty to advise. These are cases in which the Defender is addressed by citizens or legal persons with complaints that are **remedies in their content** under the regulations on proceedings in administrative or court matters, action or remedy in the administrative court system or a constitutional complaint. In such cases the law imposes a duty on the Defender to immediately inform the complainant and advise him of the correct procedure in such a way as to avoid failure to meet the applicable deadline. In 2005 the Defender received **37 filings** that were remedies in their content. Creating grounds for compliance with the said duty requires a consistent organisation of the receipt of all filings delivered to the Public Defender of Rights. They must be immediately assessed by an expert and if the content of the filing has the nature of a remedy, the correspondence must be immediately returned to the sender with advice, because the delivery and exchange of correspondence with the Defender does not suspend deadlines.

There is now a general awareness of the Ombudsman's mandate and his specific role in society. This is evidenced by the significant increase in 2005 in the number of filings and contacts in person through which individuals, and often even legal entities and councillors, address the Public Defender of Rights admitting awareness that the legal provisions give the Defender no chance to directly intervene in their interest. Still they address the Defender with a request for mere advice, usually appealing to his experience and professional qualities. Even though the Public Defender of Rights confirms that the complaint in question does not fall within his mandate and he therefore does not open an inquiry in the matter, it happens in many cases that merely showing interest in the case helps. In addition to the fact that the complainant gets a better insight into his or her situation in terms of law, procedure and evidencing, the authority concerned changes its approach or accelerates the handling of the issue.

To help create a complete picture of the Defender's work in the period under scrutiny, in this part of the Annual Report the Public Defender of Rights presents at least brief information on his findings from the handling of the complaints that were outside his mandate in their content or because of the institutions to which they directed at the time of being delivered.

3.1 Civil Law Matters

In 2005, 1,228 complaints dealing with this issue were received.

Again in 2005 the Defender received a number of complaints through which complainants addressed him in various areas of private law. In traditional civil law relations these usually represent cases in which complainants have found themselves in trouble due to ill-considered or failed **disposing of property**, donation or purchase contracts, inheritance, inheritance or co-ownership disputes or rights and obligations from easement. If the parties to such legal relations fail to reach agreement, matters can be handled solely by the relevant court, and the Defender draws attention to this fact along with general legal advice.

Discussing property relations outside the Defender's mandate, we should mention the still unclosed cases of **restitution claims**. The exercise of these is participated in by land offices that fall within the Defender's mandate and by the Land Fund, which does not have the position of an administrative body meaning that the Defender is therefore unable to assert his powers towards it.

The Defender also received a number of complaints in 2005 concerning **the settlement of property shares within cooperatives**, although in comparison with the preceding year the number dropped. Given that in such cases administrative authorities play no role, such complaints are outside the mandate of the Defender, who is limited to merely providing complainants with general information and explanations of the legal state of affairs. Under Act No. 42/1992 Coll. claims arose of the entitled persons against existing agricultural companies that in most cases did not have financial means at their disposal to settle the relevant property shares. The Defender can only state that the claims of the entitled persons remain unsettled in spite of attempts at a systematic solution by the legislature. The reason is a lack of funds

among those who have been labelled liable by the law. The Defender repeatedly drew attention to this situation in his previous annual reports.

During 2005 the Defender also experienced an increase in the number of **complaints concerning housing**. These related to the issue of lease relations including the amount and means of rent payment, disputes connected therewith and dissatisfaction with the charging of services associated with flat usage. The public was showing an increased concern in the economy of the services supplied and their invoicing, and not only in leased flats, but also regarding private and cooperative flats. The Defender further noted an increase in the number of complaints regarding legal relations ensuing from the continuing privatisation of housing owned by municipalities and cities. Many conflicts between citizens and municipalities relate to the setting of the purchase prices for flats.

The Defender is often addressed by members of **housing cooperatives** unaware of their actual status. They fail to realise that a housing cooperative is a private legal entity with self-governing elements that decides on its matters independently in a way treated by law and articles of incorporation and is therefore outside the Defender's mandate. To their requests for inquiring into the procedure of the cooperatives or assisting in disputes with cooperatives, the Defender responded by explaining the status of a cooperative and its members and providing the complainants with basic information regarding the legal provisions treating decision-making at membership meetings of housing cooperatives and review thereof by courts.

Similarly the Defender was addressed more frequently by members of **associations of residential units owners** in 2005. These too are often unaware that by buying a private flat they have become co-owners of the entire premises and that apart from rights, relevant duties have arisen for them with co-deciding elements. The Defender was repeatedly requested for help in cases where the members were unable to agree upon the scope and funding of maintenance, repairs or upgrading of a joint property – the house co-owned by them. These associations are private legal persons outside the Defender's mandate. There is no way the Defender could act towards them and carry out inquiries into their procedures.

2005 also marked a significant increase in the number of complaints about **the procedure of executors enforcing court decisions**. Citizens requested advice in various situations that were often very complicated both psychologically and legally. They sought assistance and protection against the procedure chosen by the executor or an employee of a distraint authority, both in purely professional terms and in terms of observance of the elementary rules of decency and ethics. This is once again one of the areas where the possibility of intervention by the Public Defender of Rights may change in different stages of the legal relations depending on the actions taken by the party involved, or where the cases intersect with the Defender's mandate at some point. This was the case when the Defender addressed the government in accordance with his mandate after the Ministry of Finance, with reference to the applicable legal provisions, refused to ensure remedy in tax distraints by which recurring state income support benefits were curtailed by means of claim payment orders instead of deductions, which the Defender found to be illegal (see section I.5). However, the Defender is unable to intervene in the specific procedure of a court executor, adjudication by a court or the conduct of a bank.

In 2005 the Defender also experienced an increase in the number of complaints in the area of **family law**. The Defender is most often addressed in family law matters with requests for advice in paternity disputes, requests for assistance in disputes concerning contact of both parents with the child and in disputes between parents about exercising the contact. However, the Defender is most frequently addressed by one of the parents who has been given children to his or her custody after divorce whereby the liable parent fails to pay child maintenance. The issue of failing to pay child maintenance involves mainly self-supporting mothers who often find themselves in social distress together with their children.

Again in 2005, the Public Defender of Rights was addressed by a number of complainants with requests for assistance and advice in **labour law matters**. Although for lack of mandate the Defender is not entitled to enter individual labour law issues and disputes, if a party thereto addresses a labour office or alternatively an area labour inspectorate with such a matter, the Defender is entitled to carry out an inquiry into the procedure of such state expert supervision bodies in charge of observance of employment, labour law and wage-related regulations. During the period under scrutiny, the Defender most often handled employees' complaints about unilateral termination of employment contracts by employers, queries and requests for advice as to how to assert the invalidity of such terminations and the claims associated therewith; complaints also frequently concerned failure to pay wage or wage compensation by

employers. As in the preceding period, complaints concerning compensation for damage ensuing from the employer's liability for industrial injuries or industrial illness, primarily in connection with the employer's dissolution or transformation, represented an extensive group of complaints.

2005 brought an increase in the number of complaints about **discriminatory conduct** of employers. Under the existing legal provisions (on the prepared change in the Defender's mandate see section I.1), the Defender is not entitled to investigate or judge the conduct of employers. In response to the above complaints, the Public Defender of Rights advised complainants about the possibility of filing an action for the settlement of labour law disputes and the claims ensuing from them before a court. The Defender also informed the complainants about the inspection power of labour offices and, more importantly, the newly established area labour inspectorates as well as the possibility of filing a motion for inspection. Since July 1, 2005, the area labour inspectorates have been providing, in addition to inspections, legal counselling to employees and employers alike with respect to labour law relations and working conditions. The inspecting power of labour offices is currently limited to inspecting observance of employment regulations (such as "black" employment, employing foreigners without a labour permit, etc.) and the Act on the Protection of Employees in the Event of Their Employer's Insolvency. Given that both of the mentioned authorities fall within the mandate of the Public Defender of Rights, the complainants were at the same time advised that they could address the Public Defender of Rights with a new complaint should they not be content with the way their complaint is dealt with by the authority concerned.

When specifying the most frequent areas of issues in labour law relations addressed by citizens to the Defender in the preceding years and in 2005, it is necessary to mention several filings concerning **graveyard and burial law**, in which the complainants referred to violations of the Act on Burial by graveyard owners and operators, i.e. generally municipalities. The most common problems in this area were burial sites rental, in particular failing to respect previous rental contracts entered into orally, disagreement with an increased rent, violating the so-called contracts on the everlasting rental of burial sites, including the ensuring of dignity and piety and approach to abandoned burial sites. Generally, complaints in this area are accompanied by a general helplessness regarding orientation in the rights and duties of the parties involved, because public law aspects are reflected in graveyard and burial law through the legal regulation of the rules conveying the state's interest in a proper burial, while private law aspects are represented by the usage or rental relations and contracts on the basis of which burial sites are rented.

3.2 Bankruptcy and Bankruptcy Proceedings

In 2005, 67 complaints dealing with this issue were received

Complainants also addressed the Defender with bankruptcy issues in 2005. These are often issues concerning the filing of claims for a bankrupt's property, complaints relating to the conduct or inactivity of administrators of bankruptcy assets and other issues, sometimes interconnected in their substance with other complaints within the mandate of the Defender. Complaints in which complainants claim protection against delays in bankruptcy proceedings are described in section II.2.1 dealing with the Defender's work with respect to the public court administration. The Defender was also addressed by employees in 2005 whose employer had been declared bankrupt and owed them wages or other entitlements from labour law relations that were not protected by the Act on the Protection of Employees in the Event of Their Employer's Insolvency.

3.3 Matters of Criminal Law, Bodies Active in Criminal Proceedings

In 2005, 383 complaints dealing with this issue were received.

As in preceding years, the Defender was addressed by a relatively high number of complainants in the area of criminal law. This applies to complaints about courts, public prosecutors and Police bodies insofar as they act as bodies active in criminal proceedings and therefore do not fall within the Defender's mandate as defined by law. On the contrary, the work of the Police that does not represent acting as a body active in criminal proceedings is a different matter, described in section 2.8.

Complaints in this area usually object to the way criminal proceedings are conducted. Complainants either directly contest the approach or "prejudice" of a specific body active in criminal proceedings or request the Defender to intervene against a claimed "injustice" of a

decision on guilt or sentence. The Defender is most frequently requested to ensure re-examination of facts, new substantiation of evidence, influencing the actions or decisions of the body active in criminal proceedings, mitigating a sentence or even gaining an amnesty. The Defender is also asked to be present at criminal proceedings, and in several cases in 2005 the Defender was addressed by aggrieved persons discontented with the extent of their procedural rights in proceedings, in particular about the impossibility of applying a remedy against a guilty verdict and sentence. The Defender lays such complaints aside due to a lack of mandate.

3.4 Independent Competence of State Self-Governing Units

In 2005, 265 complaints dealing with this area were received.

The number of complaints in this area slightly increased in comparison with 2004 (248 complaints). The Defender's experience shows that the mixed model of public administration remains unclear for common citizens, especially in small municipalities where agendas in both independent and delegated competence are often handled in a single office or even by a single officer. However, the Defender's mandate in the matter exists solely if the municipal bodies exercise state administration, i.e. they decide in delegated competence (such as issuing trade certificates and planning permissions, granting social benefits). On the contrary the Defender cannot deal with the activities of a municipality with an independent competence in exercising self-government such as the municipal economy, sale of apartment houses, entering into lease agreements. Similarly, if a person unhappy with the decision of a municipality exercising independent competence makes use of the supervisory power of a regional body and is not content with the latter's interpretation, he or she addresses the Defender with a complaint that already falls within the Defender's mandate. Every complaint received about the exercise of competence by a municipality is therefore examined by the Defender with the aim of establishing whether they fall within his mandate, based on which the further procedure is determined. Where it is obvious that law has been breached or serious maladministration has occurred in the decision-making process of a municipality with independent authority, the Defender usually draws the complainant's attention to the possibility to use supervision over regional self-government as well as the possibility to address the Defender in the case of being unhappy with the result (see section II.2.15).

As in 2004, complaints about regional self-governing units exercising independent competence most often related to **communal waste management and fees for the same**. Most of the complainants requested assistance or advice on how to assert exemption from or remission of fees. Owners of holiday premises claimed that they removed or disposed of the waste produced on weekends on their own. They therefore found it unfair and immoral that they were forced by municipalities to contribute to waste removal and disposal with a sum identical to or even higher than those with permanent residence.

Another large group of individuals addressed the Defender requesting that he assert a remedy, because they were discontent with **the way property was operated by municipalities**. This involved primarily dissatisfied individuals interested in buying land from a municipality or renting municipal land who deemed that the sale and the selection of municipal property tenants were insufficient and non-transparent. In several cases the Defender encountered complaints about the procedure and decision-making of municipal bodies regarding detachment of a part of a municipality.

Several filings received by the Defender were about the **content of local periodicals published by municipalities**. The complainants expressed dissatisfaction that a municipality had refused to publish certain opinions in the printed materials, allegedly due to their being tributary to the present political arrangement, or rather the opposite, while others contested the fact that the local news served to present political views and attitudes.

A specific issue encountered by the Defender in 2005 was complaints about regional self-governing units in connection with **the exercise of the citizens' right to information**. The mayor is responsible for keeping the public informed of the municipality's work and the regional president is responsible for informing the public about the work of the region.

As in preceding years, the Defender encountered a number of complaints in 2005 about **the procedure of municipalities and cities in housing policy**, both regarding the procedure in the filing of citizen's requests for rented flats and the way these were dealt with as well as inactivity or discriminatory conduct which usually lie in the method of setting and evaluating criteria for accepting a request, as well as complaints about their procedure in terminating rental relations and associated subsequent steps. This is a self-government

exercise where it is difficult to apply a supervisory mechanism, because the provisions of the Act on Municipalities preclude supervision among other things upon the breach of civil law regulations, an area where municipalities and towns place all their steps regarding the lease of a municipal flat. However, there are elements in these issues that fall under the Defender's mandate, especially in the area of construction law and the work of public law bodies. The Defender therefore pointed out the unfavourable situation in the municipalities' housing policy already in his previous Annual Report and deals with some of its aspects in section III.

The Defender's experience in dealing with complaints in this area shows that citizens remain insufficiently informed about the status of municipalities as sovereign entities of regional self-government entitled to exercise self-government and a lack of awareness of the operating instruments of self-government democracy. Citizens are not sufficiently aware of the possibility of influencing the work of regional self-governing units by asserting their civil rights, or they are not ready to use such rights, expecting that shortcomings in the exercise of self-government will be eliminated by a superior state body or another institution, in our case the Defender.

3.5 Other Fields Outside the Mandate

In 2005, 180 complaints dealing with these issues were received.

Citizens address the Defender with complaints regarding a number of other areas outside his mandate. This would be a very broad account, because apart from entirely personal filings with which they address the Defender when dissatisfied with their fate or health conditions, there are also complaints through which citizens request remedy from the Defender if dissatisfied with the political situation or the way politicians are presented, with the procedure of political parties or the government, state management of property, price development in relation to real earnings of the population or population groups, international political steps and obligations of the state, etc. There are also complaints about the procedure or decisions of professional and other self-government bodies such as the Czech Bar Association, Chamber of Public Notaries and the already mentioned Chamber of Executors, trade union organisations, the Czech-Moravian Confederation of Trade Unions, the Trade Union of Doctors, etc.

If it was said in section II.1 when commenting on the trends in the number of complaints received in the Defender's mandate that the structure of the complaints addressed to the Defender is considerably influenced by social developments and topical issues, this is twice as true in areas outside the Defender's mandate. This could be documented using complaints through which citizens frequently addressed the Defender on the issue of **radio and television fees** at a time when Czech Television ran a fee enforcement campaign. In these cases too the Defender expressed a lack of mandate, because this is a legal entity of public law nature that provides a public service in the area of television broadcasting. The Defender therefore recommended that complainants angered by the way the notice was designed and presented address the Council for Radio and Television Broadcasting that falls under his mandate. At the same time he decided to request on his own initiative that the Council deal with the issue.

The public had responded similarly, although less extensively, from July 2005, a time when numerous complaints were addressed to the Defender regarding the so-called **"expropriation of minority shareholders"** (or squeeze-out). Given that the Commercial Code was amended shortly after and the relevant legislation has already been contested at the Constitutional Court, the Defender did not consider pointing this issue out and thus motivating a change of the legal provisions. He tried to provide the complainants with at least certain explanations and arguments for potential legal suits.

III. GENERAL OBSERVATIONS – RECOMMENDATIONS TO THE CHAMBER OF DEPUTIES OF PARLIAMENT OF THE CZECH REPUBLIC

All annual reports on the activities of the Public Defender of Rights for the past year have been designed in essentially the same way since the beginning of the Defender's operation, because their structure follows the logic of the Defender's procedures in his work. In the closing part of his annual report, the Defender regularly presents general observations gained in his work during the past year. The Defender signals the serious issues defined in this manner to Parliament and other addresses of his Report. By doing so the Defender fulfils his special powers and at the same time a fundamental duty to which he is bound by Section 23 of the Public Defender of Rights Act and the importance of which is characterised by the justification report to the Act that characterises the Defender's advice on shortcomings in legal regulations, absence of links between regulations or shortcomings in application or interpretation rules as an instrument of feedback between the legislative and executive powers.

Over his five-year term, the Public Defender of Rights has pointed out in his annual reports the need to seek a solution to **32** problems from everyday situations. He usually did not limit himself to merely defining the identified maladministration in public affairs that generated public dissatisfaction; instead the Defender attempted to define their reasons and usually also to propose a remedy. These were generally fundamental issues the Defender was unable to resolve through his own work, because they primarily required a cross-departmental approach, changes in the system or crucial changes in legislation. It can be said that the information from the Public Defender of Rights has helped to a greater or lesser extent serve the purposes for which it is intended. Some of it has served its informative purpose and lost relevance over time, some has been in the substance of the matters involved taken into account when adopting amendments to legal provisions, or gathering arguments in the legislative process.

The Defender, who regards the annual report on his activities as a certain account of his work so far and setting his own goals for the future, further constantly deals with the problems defined in the report and uses the procedural instruments provided to him by the Public Defender of Rights Act to solve them. Thus for example on February 16, 2005, the Defender used his special power under Section 24 par. 1 letter a) of the Public Defender of Rights Act and addressed the Chamber of Deputies with a single issue report to assert a remedy in the long-unsolved legal property settlement with respect to plots of land under surface communications owned by the state and regions (see section I.5.1), which he had pointed out already in his earlier annual reports. The above section of this Report also contains information on materials presented by the Defender to the government with a view to resolving serious issues, as well as the Defender's meetings with the representatives of the central bodies of state administration where solutions to some of the said issues are sought and found with greater or lesser success.

However, certain serious issues which the Defender described in his previous reports and that he has been unable to resolve satisfactorily persist. Therefore in the following part of the 2005 Annual Report the Defender gives an overview of such issues including progress made in dealing with them followed by a generalisation of the most significant observations made based on an analysis of the complaints dealt with in 2005. In the conclusion of each of the defined issues the Defender proposes a procedure or method to ensure remedy of the unfavourable state of affairs.

1. Status and Activities of the Land Fund of the Czech Republic

Already in part III of the 2002 Annual Report and most recently in the 2004 Annual Report, the Defender repeatedly pointed out discrepancies in the settlement of restitution compensation and the absence of effective inspection mechanisms in relation to the Land Fund. Given that the only body having a direct enactive capacity towards the Land Fund is the Chamber of Deputies (which is the sole body that can assert changes in the Land Fund Presidium), it is impossible to disregard the fact that the Chamber of Deputies, and particularly its Agricultural Committee, is co-responsible for the existing state of affairs.

The Defender notes that the non-transparent management of state property by the Fund that was discovered in the autumn of 2005 only confirmed the absence of clear rules for the payment of compensation (such as the absence of effective inspection mechanisms).

The Public Defender of Rights points out that the Land Fund is a transitional transformation institution and that like with the National Property Fund, grounds should be created as soon as possible for terminating the Land Fund's operation after fulfilling its legal tasks. The Defender holds the view that the main mission of the Land Fund is to settle restitution compensation rather than privatising state land (for the privatisation of state land can easily be transferred to a different body such as the Office of the Government Representation in Property Affairs). The Chamber of Deputies should therefore task the Land Fund Presidium with settling all restitution compensation by a specified date. Subsequently the Land Fund should be dissolved, because its main and irreplaceable role in the restitution process will have been fulfilled.

In terms of state land privatisation, the Defender finds it redundant for the state to have two institutions (the Land Fund and the Office of the Government Representation in Property Affairs) with essentially similar tasks. The only difference is in the nature of the property administered (while agricultural land is administered exclusively by the Land Fund, other, so-called residual property is administered by the Office of the Government Representation in Property Affairs). Given that the Land Fund is meant to be a transitional institution, the said duplication could be eliminated by dissolving it.

The Public Defender of Rights proposes that the Chamber of Deputies tasks the Land Fund Presidium with settling still unsettled restitution compensation within two years, thus creating grounds for the Fund's dissolution.

2. The Removal of Burdens on the Environment and the Remediation of Contaminated Localities

The Public Defender of Rights pointed out this long-unsolved issue in the 2002 Annual Report and he has paid attention to it since. During 2005 the Public Defender of Rights noted reservations of the Ministry of the Environment (hereinafter "ME") about suspension of the public procurement process for the removal of old burdens on the environment by the National Property Fund. The information posted at www.centralniadresa.cz confirms the objections of the ME, according to which most of the preliminarily announced public procurements after relaunching the procurement process involve remediation and reclamation aimed at remedying the environmental damage caused by black coal mining. The priority projects for removing burdens on the environment, which the state contractually undertook to implement when privatising industrial enterprises, remain a minority. It is further obvious that the prediction of the Ministry of Finance (hereinafter "MF"), communicated to the Defender in August 2005, according to which at least 20 public tenders were to take place by the end of 2005, has not been fulfilled. The documents available to the Public Defender of Rights reveal that the ME and MF take varying approaches when dealing with the issue of old burdens on the environment.

In the opinion of the Public Defender of Rights the state should make sure it prioritises the obligations assumed by it under the so-called environmental agreements entered into when privatising industrial enterprises. Only in this way can disputes between the acquirers of the enterprises and the state be prevented.

The Public Defender of Rights recommends to the Chamber of Deputies to task the government with the preparation and monitoring of a public procurement process for the removal of old burdens on the environment so as to ensure that the state prioritises meeting the obligations assumed under the so-called environmental agreements entered into when privatising industrial enterprises.

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

In the 2004 Annual Report the Defender stated that the Ministry of Health had not taken legislative steps to ensure the right of patients to be granted information from medical documentation and the right of persons related to the deceased to information from medical documentation of their close relatives. In 2005 a draft amendment of the People's Healthcare Act was presented to the government, approved by the government and submitted to the Chamber of Deputies. The draft amendment of the People's Healthcare Act reflects the requirements of the Public Defender of Rights and similar provisions are contained in the draft

Act on Public Healthcare, which is to replace the People's Healthcare Act. Presently the draft Act is in its second reading.

The Defender has been pointing out the issues accompanying the varying, often contradictory interpretations of the right to refer to medical documentation for several years and encounters them constantly during his inquiries.

The Public Defender of Rights recommends to the Chamber of Deputies to adopt legal provisions that will set more precisely the rules for referring to medical documentation as soon as possible.

4. Dual Citizenship and Presumed Citizenship

In his previous reports the Defender pointed out the cases of those erroneously regarded as Czech citizens and the lack of justification for the insistence on the principle of exclusive and sole citizenship on which the existing citizenship legislation of the Czech Republic had been based. In this respect Resolution No. 881 of July 13, 2005, is important, in which the Government of the Czech Republic took due note of an analysis of the law governing the acquisition and loss of citizenship. The analysis essentially proposed abandoning the principle of exclusive and sole citizenship.

In 2005 the Defender continued to exchange correspondence with the Ministry of the Interior on these issues in which he repeatedly pointed out among other things that Czech authorities were unable to reliably establish which Czech citizens have lost Czech citizenship at their own request through acquisition of foreign citizenship, and pointed out that the legal regulations even fail to specify the authority competent to draw such a conclusion.

In terms of the situation of individuals considering themselves Czech citizens in good faith, the Deputy Minister of the Interior promised the Defender that in drawing up a draft strategy for a new act on the acquisition and loss of Czech citizenship, the possibility of setting a retroactive effect of declarations on the acquisition of Czech citizenship in these exceptional cases would be taken into consideration.

The Public Defender of Rights recommends to the Chamber of Deputies to take due note of these findings of the Defender in a future hearing of the legal provisions on the acquisition and loss of Czech citizenship.

5. Provision of Fundamental Living Conditions in Housing

In 2005 the Public Defender of Rights noted an increase in a phenomenon that could be summarily labelled "substandard housing, social exclusion and the rise of ghettos". This situation arises, apart from poor legislation and the municipal policy of some municipalities, from the administrative activity of authorities falling within the mandate of the Public Defender of Rights.

The Czech legal order does not generally define the notion of a flat. What is understood as a flat is always defined separately in the individual legal regulations for the specific area treated by each (such as the Act on Flat Ownership and others). Nevertheless, the parameters set out by the decree of the Ministry of Regional Development on the general technical requirements for the construction of residential units can be taken as the minimum requirements for a flat as a space designed in its structural design and facilities for permanent residence. The said decree sets among other things that at least one toilet and one bathroom must exist with every flat. Sufficient daylight as well as direct ventilation and sufficient heating, including heat control, must be provided in habitable rooms. The smallest floor area of a habitable room is 8 square metres. An apartment comprising a single habitable room must have a floor area of at least 16 square metres. Habitable spaces that do not satisfy these minimum requirements cannot be deemed flats. Using such spaces for permanent housing is regarded as inadmissible by the Public Defender of Rights.

The expenses required to satisfy the requirements placed on flats by construction regulations lead some municipalities to providing housing for the socially deprived in various substandard spaces available at the time. They often construct or rebuild and operate premises that cannot be regarded as full-value apartment houses for permanent housing, even after the rebuilding, and that satisfy neither the requirements of construction regulations nor public health protection regulations, fire safety regulations, etc. In some cases they use premises owned by private individuals for substitute housing. Sanitary facilities are often represented merely by a washbasin and squat toilet jointly for several rooms in a shared corridor. A kitchen

is often not present in the rooms at all. A common practice by which municipalities or private individuals try to avoid any future obligations towards the residents of such premises is to conclude accommodation agreements for a definite period of time (such as a monthly accommodation agreement that is periodically renewed). As a consequence, the individuals concerned cannot obtain housing allowance, which is made conditional on there being a lease agreement.

Such premises do not satisfy structural and health requirements for flats. In practice, municipalities and private individuals circumvent the law by designating the relevant structure an "accommodation facility" instead of an apartment house. There are even cases where a structure is approved for operation as an apartment house although satisfying only the requirements placed by law on accommodation facilities. Planning authorities are not vigorous enough in resisting such attempts to circumvent the law. Yet the notion "accommodation facility" is defined relatively precisely in the above decree and it is reserved only for certain types of structure where temporary accommodation with the associated services is provided to the public, such as a hotel, motel, guest house, tourist dormitories and similar structures. Planning authorities fail to consistently inspect whether the structures are used only for temporary accommodation; they fail to impose fines on owners for using structures in contravention of the final building approval, use a non-uniform terminology for such premises in planning permission and final building approvals, such as "bare flats", "category IV flats", "welfare flats", "dormitories" and similar notions not recognised by the legal order. The Defender attempted to solve the situation in 2005 by co-ordinating the procedures of central state administration bodies in the construction and public health sectors.

In this way the state in fact supports the rise of ghettos and social segregation, because such inferior quality housing is usually concentrated in a single building or several premises at the outskirts of the municipality. The environmental dimension should not be forgotten, because the premises usually have poor thermal insulation and are heated using electric convection heaters or other systems with a high energy consumption, without there being plans to invest in systems economising on energy. Such premises, if used for housing, do not meet the fundamental living conditions standards. A considerable population group lives in conditions that cannot be labelled dignified and that are incompliant with health requirements and the international obligations of the Czech Republic (see for example Art. 11 of the International Treaty on Economic, Social and Cultural Rights).

The Defender recommends to the Chamber of Deputies to task the government with drawing up a strategy of "housing for the socially deprived", i.e. housing in low-cost flats providing at least fundamental living conditions to the residents.

6. Compensation Paid by the Guarantee Fund of Securities Traders

Already in the 2003 and 2004 Annual Reports, the Defender pointed out shortcomings in the law governing the payment of compensation by the Guarantee Fund of Securities Traders as well as that the Fund lacked resources to pay all the compensation for the bankrupt securities trader KTP Quantum, a. s.

As before, the Defender was addressed by clients of the bankrupt securities trader KTP Quantum, a. s. A majority of the complaints were about the activity of the Guarantee Fund of Securities Traders (hereinafter "the Fund") created following an amendment of the Act on Securities (aimed at harmonising Czech legislation with the requirements of European Union law, and specifically European Parliament and Council Directive 97/9/EC of March 3, 1997, on investor-compensation schemes).

Already in the 2003 Annual Report, the Public Defender of Rights drew attention to the fact that the said unsatisfactory situation concerning the compensation payment system should be resolved as soon as possible, including speedy payment of compensation to the affected clients. At the same time the Defender pointed out that otherwise a real threat existed that the Czech Republic might be considered liable for failure to meet the requirements of the said Directive.

The Defender points out that the disputes between the clients of KTP Quantum, a. s. and the Fund indeed resulted in the filing of class action suits and the establishing of various civil citizens associations for the protection of the aggrieved clients. In October 2005 one of the suits was adjudicated by the Supreme Court in Prague, which complied with the suitors and stated that the Fund had been retaining payment of the legal compensation illegitimately for

over two years. The court ordered the Fund to immediately pay the compensation to the clients including the interest accrued.

The Public Defender of Rights finds the compensation payment system not to be functioning and recommends that the Chamber of Deputies task the government with adopting measures to ensure payment of compensation from the Fund.

7. Orphan's Pensions

In the 2004 Annual Report, the Public Defender of Rights pointed out the situation of orphans to whom entitlement to an orphan's pension had not arisen through the deceased failing to qualify for a full disability person or old-age pension. Although the Public Defender of Rights offered several available paths to remedy this to the Chamber of Deputies in his Annual Report, his attempt to resolve the matter has remained without response.

The complaints addressed to the Public Defender of Rights on the said issue were again rather frequent in 2005 and the stories attached very similar. The father has left, paying neither maintenance, nor social security from his business, or even not working at all. The standard of living of mother and children has dropped significantly. After the father's death the children did not qualify for an orphan's pension. This is a consequence of replacement of Act No. 100/1988 Coll. on Social Security, built on the security principle, by Act No. 155/1995 Coll. on Pension Insurance with a clear emphasis on the insurance principle.

People affected by it perceive the non-granting of an orphan's pension and dependence on state income support benefits and social benefits as an injustice, because they have had no chance of influencing the conditions of entitlement to them. They are significantly lower and their granting is influenced by additional factors that often effectively mean non-granting (overall financial status, income, etc.). It is a failure to meet the purpose of the orphan's pension, i.e. partial compensation for the loss of a parent's income for the child dependent on the parent.

The Public Defender of Rights recommends to the Chamber of Deputies to task the government with presenting a draft law that will establish an entirely new benefit to deal with the situation of those orphans who have not become entitled to an orphan's pension due to the deceased failing to qualify for a full disability pension or old-age pension.

8. Health Insurance of Foreigners' Children

Foreigners staying in the Czech Republic long-term find themselves in a complicated situation after a child is born in the territory of the Czech Republic. This is a result of the unresolved issue of such children's health insurance. The foreigners often find it very difficult or even impossible to handle their social situation after the child is born, as they have to cover the costs of healthcare for the child themselves. The insurance company VZP, a. s. is willing to enter into an insurance contract with them no earlier than on the 1st day of the calendar month following a health examination of the child after the child returns from the hospital. The company refuses to contract insurance for children who are expected to suffer health problems. Thus the parents become involved in an insoluble situation, because the costs of healthcare are sums they are able to pay only over several years or are unable to pay at all.

In May 2004, a government draft act on the health insurance of children of foreigners staying in the Czech Republic long-term was rejected. The said act was meant to enable such children to enter the general health insurance system. The Constitutional and Legal Committee recommended considering legislation that would preserve compliance with the Convention on the Rights of the Child and at the same time reduce the financial risks for the general health insurance system, while taking into consideration the social situation of the parents of these children.

The Public Defender of Rights finds it desirable to incorporate the children of foreigners, who not only live in the Czech Republic but also perceive it as their new homeland, into the health insurance system.

The Public Defender of Rights recommends to the Chamber of Deputies to task the government with presenting draft legal provisions introducing dependent health insurance where the policy of the person employed by an employer in the Czech territory (i.e. a general health insurance policy holder) would apply also to his or her relatives (dependent individuals). Another change needed is introducing dependent

health insurance in the commercial insurance system for foreigners living in the Czech Republic long-term but not employed with an employer with its registered office in the Czech Republic. In such a case the insurance policy of the parent staying in the Czech Republic long-term and paying health insurance would apply to the child from the moment of its being born in the Czech Republic, whereby the insurance premium would increase proportionately.

9. The Work of Court Executors and the Possibilities of the Ministry of Justice in the Area of Supervision

The Public Defender of Rights establishes that the extent of supervision by the Ministry of Justice over distraint practice and the way it is implemented is not entirely certain. According to the distraint code, the Ministry of Justice has the power to exercise state supervision over distraint practice and other executor's work as set out by the Distraint Code (such as the drawing up of deeds). Court executors are appointed and dismissed by the Minister of Justice following a proposal of the Chamber of Executors. It is doubtless then that the court executors' practice falls under the supervision of the Ministry. Applying the supervisory authorisations of the Ministry also to the Chamber as the professional self-governing body is relatively questionable.

It is obvious that the work of any self-governing public law institution is a display of decentralisation of state authority and the institution's work therefore derives from the state's central bodies. However, the text of the Distraint Code is brief in this respect and fails to define the Ministry's possibilities towards professional self-government. This issue is entirely typical for the area of professional self-government, whether notaries or lawyers or, under the legal provisions being drafted, insolvency administrators are concerned.

The condition to be aimed for should be a situation where persons have the possibility to effectively defend themselves against inexpert procedure of court executors, but also against improper conduct of court executors and their employees. Such defence should be ensured promptly and it should provide guarantees of a proper process (notably as far as the transparency of the complaint administration procedure is concerned).

The Public Defender of Rights recommends to the Chamber of Deputies to task the government with presenting a draft change of the Distraint Code so that the supervisory power of the Ministry of Justice over distraint practice is defined more precisely towards the Chamber of Executors as the body of professional self-government.

10. State Administration in the Sector of Experts and Interpreters

The Defender has made a number of findings evidencing that the application of the Act on Experts and Interpreters causes not a few problems in practice due to the Act's obsolescence. The primary issue is the absence of procedural rules that is for the time being partly compensated for by the administrative courts' practice. The Defender therefore supports and recommends preparation of a new regulation treating the practice of experts and interpreters.

The Public Defender of Rights recommends to the Chamber of Deputies to task the government with drawing up and presenting to the Chamber of Deputies a new act governing the practice of experts and interpreters.

11. Status of Wholly Disabled Persons without Entitlement to a Pension and the Exercise of Their Right to Employment

In 2005 the Public Defender of Rights received complains from persons recognised as wholly disabled under Section 39, par. 1, letter a) of Act No. 155/1995 Coll. on Pension Insurance, as amended, who had not met the required period of insurance to qualify for a full disability pension and had been excluded from the jobseekers register at the labour office based on Section 25, par. 2, letter f) of Act No. 435/2004 Coll. on Employment, as later amended. Through this measure the individuals concerned fall into poverty, because by not being included in the jobseekers register they do not qualify for social welfare benefits for those in social need under Section 4 of Act No. 482/1991 Coll. on Social Need, as amended, (they can

only be provided an extraordinary benefit beyond the entitlement criteria under Section 8a of the above Act) and as persons without taxable income they have become payers of health insurance premiums.

The Public Defender of Rights welcomed the draft Section 10, par. 3, letter c) of the Act on Material Need that is currently being heard by the Chamber of Deputies. Under the said law, for the purpose of obtaining a subsistence allowance, wholly disabled individuals will not be examined for having attempted to increase their income by work. Upon the Act coming into effect, they will qualify for a social welfare benefit once they find themselves in material need and they will be in the category of policyholders whose health insurance is paid by the state. The said legal provisions will improve their social circumstances without affecting their further employability and earning potential.

The right to employment under the Employment Act is understood to be the right of an individual who wants and is able to work and seeks a job, to be employed in a labour law relation, to employment mediation and the provision of additional services under the conditions set in the said Act. Even wholly disabled individuals who have retained the ability to earn an income, however limited the said ability may be, have a right to employment. In the opinion of the Public Defender of Rights, the state should help such individuals threatened by social exclusion in their social integration and extensively support them in their seeking of a worthwhile place in society.

In supporting these individual the state could for example guarantee them a minimum social standard and leave it up to their discretion as to whether they wish or do not wish to earn an income in spite of the disability.

The Public Defender of Rights recommends to the Chamber of Deputies to take steps towards amendment of Section 25, par. 2, letter f) of Act No. 435/2004 Coll. on Employment, as amended, in such a way that preclusion from the jobseekers register is narrowed down solely to those wholly disabled individuals under Section 39, par. 1, letter a) of Act No. 155/1995 Coll. on Pension Insurance who, based on a medical opinion, are incapable of earning an income, or of meeting jobseekers' duties.

12. Partial Taxation of Pensions

Section 4, par. 1, letter h) of Act No. 586/1992 Coll. on Income Taxes, as amended, enacts a basic limit up to which income in the form of a regularly paid pension is exempt from income tax.

By enacting the limit (Act No. 149/1995 Coll.), the legislature was pursuing partial taxation of such income, although solely for taxpayers residing in the Czech Republic who receive pensions from abroad. The legislator justified this step by "strengthening tax fairness", "strengthening the universal nature of taxation" and "approximating our tax system to European Union law". In reality by taking the said path the legislator circumvented the impossibility of exempting from income tax only pensions coming from the Czech system. Instead of such a clearly discriminatory measure, a provision was adopted that incorporates hidden discrimination. What is no less important, the legislator's intent is not fulfilled in practice, because in spite of repeatedly increasing the limit, even pensions coming from the Czech system remain partly taxed.

The taxation of "Czech" pensions must be regarded as unjustifiable as long as it takes place through an "uneven" tax burden, the reason being that there is a disproportion between the amount of income from work (and hence the amount of contributions to the pension system) and the amount of pension if the income from work is considerable. The present pension system contains mechanisms that considerably reduce the pension if the beneficiary's income was markedly above-average (see among other things the reduction limits enacted through Section 15 of Act No. 155/1995 Coll. on Pension Insurance, as amended). By taxation the pensions are further reduced despite the already substantial reductions in their assessment.

When discussing this issue with the Ministry of Finance, the Defender was aware of nothing to preclude removal of the limit (full exemption of pensions from income tax). The Defender's opinion that there is a need to immediately resolve the situation is being rejected in spite of the negligible impact of the limit removal on tax revenues (about 0.15% of all pension recipients exceed the pension amount limit), with entirely general references to the necessity of a conceptual approach building on pension reform and income tax reform. Without questioning the need for such conceptual changes, the Defender holds the view that their implementation is not a prerequisite for dealing with the outlined issue.

The Defender recommends to the Chamber of Deputies to consider changing Act No. 586/1992 Coll. on Income Taxes as amended by editing out the following text in Section 4, par. 1 , letter h): "... however in the case of income in the form of regularly paid pensions, solely an amount of up to CZK 162,000 per year is exempt from the sum of such income, although without including any pension supplement (allowance) under special legal regulations in the said sum".

13. Property without an Owner Kept in the Land Register

During his work the Public Defender of Rights encounters issues concerning property kept in the Land Register whereby the owner is unknown, has likely deceased or the person kept as the owner is unidentifiable. Persons who want to dispose of such property or have another interest associated with it, whether public or private (co-owners, future purchasers, investors, municipalities), face considerable complications. The issue cannot be regarded merely as an issue concerning individual natural or legal persons. Even the state can fall into the same position, for example when implementing extensive projects such as the building of transport infrastructure. Neither is the financial aspect negligible as the state budget fails to receive taxes for such property.

According to the Czech Office for Surveying, Mapping and Cadastre, there are about 24,000 plots of land with the owner unknown, the total area being about 10,000 hectares. A large proportion of such plots are agricultural land for which the issue of unknown owners is treated. However, non-agricultural land with the owner unknown remains legally untreated. The Ministry of Finance holds the view that the person who demonstrates a legal interest in determining ownership of the land should sue the state to determine ownership. The Public Defender of Rights does not find this procedure efficient. It places considerable demands on both natural and legal persons (in terms of expenses and time) and the existing length of proceedings before Czech courts is also an issue here. In addition, the court too must cope with the lack of background, because it also refers primarily to documents kept in the Land Register, which in such cases are insufficient.

From the sum of plots of land concerned, there is a distinct category of the so-called "nobody's" plots of land, i.e. those that no longer have an owner according to entries in the cartulary. The Public Defender of Rights does not share the view of the Ministry of Finance that the situation is entirely resolved by the change in Section 135 of the Civil Code through Act No. 359/2005 Coll. effective from October 1, 2005. "Whoever finds a lost thing shall return it to the owner. If the owner is unknown, the finder shall hand the thing over to the municipality in the territory of which the find was made. If the owner fails to claim the thing within 6 months from its being found, the thing passes into the ownership of that municipality."

The Public Defender of Rights holds the view that the said interpretation of Section 135 of the Civil Code in relation to property, in particular determination as to when (given that the said amendment cannot apply retroactively) and by whom it was found (established) that the property concerned was abandoned or that its owner was unknown, is questionable, and it therefore does not provide an optimum future solution. The Defender points out especially the fact that both the cartulary and the land register are publicly accessible records and therefore the property "finding" and "reporting" qualification could have been met and ensured already by the said public accessibility even before the Civil Code amendment mentioned by the Ministry came into effect. The Defender holds the view that ownership of most of the plots of land concerned had probably passed to the state already under the General Civil Code.

Property, the owners of which are kept in the Land Register and are probably deceased, account for about 10,000 plots of land, 444 buildings and 95 flats according to the Czech Office for Surveying, Mapping and Cadastre. Property was included in the list, the owners of which were kept in the Land Register and were born as far back as the 19th century. Thus the sum of such property is likely to be even more extensive. If the date of decease of the owner can be traced in the records and the property concerned has not been settled in probate proceedings, it is necessary that inheritance matters be additionally dealt with. If however the person's decease cannot be identified, a motion can be filed under the valid legislation for proceedings on declaring the person extinct. Even if this is the case, additional inheritance proceedings must take place. The Defender has established that the Office of the Government Representation in Property Affairs does not file motions for declaring persons extinct due to the process being lengthy and due to the fact that the property would not always fall to the Czech state as stray in the subsequent inheritance proceedings.

Property, the owners of which are registered as unidentifiable, account for about 3% of the property kept in the Land Register. This represents about 640,000 plots of land, 13,000 buildings and over 100 flats. The owners of such property are only designated with their name and surname in the Land Register and they therefore cannot be reliably identified and hence traced in the citizens register and perhaps declared extinct.

Given the above facts the Defender finds it appropriate to adopt legal provisions that would make settlement of ownership relations to all the above-described groups of property easier, with the resulting elimination of such obscurities from the Land Register.

The Public Defender of Rights recommends to the Chamber of Deputies to task the government with presenting draft legal provisions that will settle relations to property without an owner.

14. The Possibilities of Municipalities in Obtaining Information on Debtors under Tax Distraint

The Public Defender of Rights was notified by municipalities of a shortcoming in the Act on Public Health Insurance Premiums, as amended, that makes it impossible for municipalities to be informed by health insurance companies of debtors' employers (or insurance premium payers) due to the secrecy obligation applicable to health insurance companies. This makes it difficult for municipalities to collect public law receivables - so-called "tax" arrears.

Section 23 of the Act on Public Health Insurance Premiums had set out before July 1, 2001 (at which time its amendment – Act No. 138/2001 Coll. came into effect) that the only exemption from the secrecy obligation available had been the provision of information to the "tax authority". Municipalities become tax authorities when claiming performance of public law nature including local fees, fines, etc. (unlike the claiming of private law nature such as due rent, unpaid purchase price, etc.). By adoption of Act No. 138/2001 Coll. that amends Act No. 592/1992 Coll. on Public Health Insurance Premiums as amended, the exemption was reduced and the secrecy obligation began to apply to the "income tax authority". Through the said change in the Act on Public Health Insurance Premiums, municipalities were excluded from the provision of information by health insurance companies. Thus the provision of the Act on the Administration of Taxes and Fees is not interconnected with the Act on Public Health Insurance Premiums as a special law.

The Defender recommends to the Chamber of Deputies to task the government with presenting an amendment of Act No. 592/1992 Coll. on Public Health Insurance Premiums, as amended, enabling the relevant health insurance company to provide information to the municipality, as the tax authority, on the insurance premium payer for the purposes of claiming tax arrears.

15. Mining Administration

The Public Defender of Rights is sometimes asked to investigate the procedure of mining administration bodies; primarily by owners of land and structures. They complain about mining being extended as well as about the constantly changing conditions for new construction and the rebuilding of existing structures.

However, the Defender's findings suggest that in spite of an amendment to mining legislation in 2005 the legal provisions remain a prisoner of their time of being created. They do not always respect the rights of owners of property affected by mining, and in practice their application results in violation of the Charter of Fundamental Rights and Freedoms, which enacts inviolability of ownership. In the opinion of the Public Defender of Rights, a lasting shift in the status of the owners of land and structures affected by the exploitation and strengthening of their rights will be ensured solely by a comprehensive and systematic change in the legislation. Therefore in the autumn of 2005 the Defender informed the Chamber of Deputies via the Deputy reporting on Parliamentary Draft No. 999 of his findings in the mining administration sector.

Under the Mining Act, with an application for construction approval (such as a private house rebuilding) the applicant must enclose for the planning authority a statement by the relevant mining organisation along with proposed conditions applicable to the protection of the exclusive deposit. Due to the inertia of a private entity – the mining organisation concerned – the construction owner is often unable to obtain the statement. This results in undue delays in the proceedings conducted by the planning authority.

In connection with the approval of building activity in protected natural deposits, it is necessary to point out the missing authorisation for a detailed treatment of the conditions applicable to the protection of natural deposits. The Public Defender of Rights has established that in practice authorities assess whether a construction meets the requirements for protection against mining effects on the basis of an informal document by the Ministry of The Environment "New Conditions of Black Coal Deposit Protection in the Protected Natural Deposit of the Czech Part of the Upper Silesian Basin in the Districts of Karviná, Frýdek-Místek, Nový Jičín, Vsetín, Opava and Southern Parts of the Ostrava-město District", which divides the whole territory into areas A, B, and C with variously set requirements for the securing of constructions against the effects of mining. The Defender does not find this procedure to be legal.

In their complaints, owners of structures and land request assistance from the Public Defender of Rights in connection with the devastation of their property due to mining performed by a mining organisation and complain about the state mining administration bodies (hereinafter "the administrative body") that fail to demand agreements from the mining organisation with all property owners proving settlement of the conflict of interest prior to approving mining. They do this solely for property they label as threatened. Thus they authoritatively decide the parties to be involved in the conflict of interest settlement.

The Public Defender of Rights must point out that the legal regulations fail to set out a uniform way of demonstrating "threat" (state mining administration bodies perceive threat as a qualified form of "being affected"); as a result, the state mining administration body assesses "threat" aggregately, primarily on the basis of the relevant technical standards and expert opinions. In placing an individual property under affected or threatened property, reference is made to technical standard ČSN 73 0039 (structures placed in building land groups I to IV will be threatened, structures in building land group V will be affected, i.e. they do not require structural reinforcement against the effects of undermining). Here the Defender finds it obvious that the procedures of the state mining administration bodies lack legal support. This is supported by the decision of the Supreme Administrative Court of October 27, 2004 Ref. No. 7 A 133/2002-33, which stated that "the conflict of interest settlement relates not only to the land and property on which the mining will take place but also to those that may be threatened or affected by the said activity".

All these property owners have a right to assert a conflict of interest agreement with the mining organisation. The wording of Section 33 par. 4 of the Mining Act leads to the conclusion that if the dealings between the owner of the property concerned and the mining organisation fail to result in an agreement, the situation should be dealt with by filing a motion by the mining organisation for limiting the ownership rights of the property owner whereby in the meaning of Section 33 par. 5, mining should be permitted only after the conflict of interest is settled. Thus theoretically, settlement of the conflict between the interest to use an exclusive mineral deposit and the interest in untroubled exercise of ownership rights is primarily a matter of agreement between the specific owner and the mining company, preserving the owner's right to disagree with the solution proposed by the mining company. In such a case the mining company could but deal with the situation through procedural actions foreseen by law (expropriation proceedings in the meaning of Section 108 et seq. of Building Act No. 50/1976 Coll.), and the mining organisation would be forced by the circumstances to approach even the compensation issue very differently (including compensation adequacy). In practice however the situation is different. The Public Defender of Rights has established that mining organisations for example entirely fail to take into account the logical solution by restitution in kind (i.e. a house-for-house replacement).

The Public Defender of Rights recommends to the Chamber of Deputies to delete the duty to enclose a statement of the mining organisation with an application for a planning permit when amending the Mining Act. Further the Defender recommends to the Chamber of Deputies to task the government with presenting a draft amendment to the Mining Act enacting legal authorisation to treat the conditions applicable to the protection of natural deposits by an implementing regulation. The Defender also recommends to the Chamber of Deputies to task the government with taking measures to unify the procedure of mining administration bodies in deciding the parties to conflict of interest proceedings, taking into account Supreme Administrative Court practice.

16. The Performing of Sterilisations

In 2005 the Public Defender of Rights reviewed the results of an inquiry by the Ministry of Health and its conclusions in the individual cases of persons who had addressed the Defender to complain that they had been sterilised without their consent or on the basis of coerced consent or manipulation. The Defender found a number of serious and less serious shortcomings in these cases, as well as deviations from the conditions for the admissibility of performing sexual sterilisation by the legal order of the Czech Republic.

Through his inquiry the Public Defender of Rights reached the conclusion that in all the cases examined, shortcomings are identifiable in the legal quality of the sterilised persons' consent. The unlawful nature of the sterilisations lies in the fact that consent, without error and fully free in compliance with the Civil Code, was not given to the interventions.

In medical and legal terms it should be pointed out that the cases examined cast doubt on the process of properly informing the patient so as to enable her to make a mature decision. Both crucial requirements for sterilisation admissibility, i.e. application for sterilisation and consent to its being performed, are legal acts that are correct only if the patient is duly informed of the intervention. For a doctor's proposal to perform sterilisation to generate a legally unchallengeable reaction of the patient in the form of an application for sterilisation and consent to the intervention, the patient must be primarily informed that her health condition requires her to avoid future pregnancy, what potential gestation would entail, how she could avoid potential pregnancy, what advantages and disadvantages sterilisation offers, and why the doctor believes sterilisation is the best option.

Medical personnel's questionable conduct that casts doubt on the legal quality of consents to the intervention combines with the social workers' conduct in the case of the sterilisations of Roma women before 1990. The inquiry by the Public Defender of Rights has gathered indicia that under the implementation of the then state assimilation policy, Roma women were also persuaded to reduce the number of their children and thus approximate to the majority population's contemporary perception of a model functioning family. Sterilisation was one of the methods offered and the availability of a relatively high social benefit acted as an incentive for the Roma women's deciding whether to undergo sterilisation. This conduct of the social workers, regardless of how we perceive it historically, means from a legal perspective that the freedom of will of the persons exposed to such conduct was significantly compromised.

The patient must have a chance to duly assess the information given, i.e. primarily she should have sufficient time to decide whether to consent to the intervention. With regard to his findings, the Public Defender of Rights proposed as one of the remedial measures modification of the draft new Act on Public Healthcare, which is concurrently being discussed by the Chamber of Deputies as Parliamentary Draft No. 1,151.

The Defender recommends to the Chamber of Deputies to amend the draft Act on Public Healthcare to include the following sentence in Section 49: "A reasonable period of time must elapse between providing information in accordance with section 48 and expressing consent in accordance with the previous sentence; this period must not be shorter than 7 days." The Defender proposes that Section 48 be amended by including the following sentence: "Before performing sterilisation for health reasons or for other than health reasons, the doctor has a duty to inform the patient of the nature of the intervention, its permanent consequences and potential risks as well as the available alternatives to sterilisation."

The Defender further recommends to the Chamber of Deputies to consider the adoption of reparation provisions for persons who underwent sexual sterilisation between 1973 and 1990, under the conditions the Defender specified in his Final Statement in the Matter of Sterilisations Performed in Contravention of the Law, from December 23, 2005 (for the full text please visit www.ochrance.cz).

IV. CONCLUSION

This Report is an assessment of 2005, the fifth year of my term as Public Defender of Rights. In compiling the report, I could not limit myself to a mere account of the activities in the year concerned; in fact it is to a certain extent an assessment of the whole five-year existence of the Office of the Public Defender of Rights.

A final evaluation of my work and the report on it should be made primarily by the Chamber of Deputies of the Parliament of the Czech Republic. The Report is traditionally divided into three sections, of which sections I and II present information on what has been done, with greater or lesser success. Part III should be seen as particularly important, because it is where I have tried to express relatively specifically the issues that the bodies of both legislative and executive power should deal with in their work, including certain suggested solutions. The suggestions set out and justified in section III of my Report result from long-term and systematic monitoring of the condition of state administration and the shortcomings Czech authorities must deal with, or with difficulty seek to deal with. Neither is this a complete account, although it does reflect the fact that in the said areas citizens' complaints are frequent and often justified.

I therefore not only wish that the Chamber of Deputies takes due note of this Report through a resolution, but also that the Report serves as guidance for further steps primarily by the Deputies as well as all those to whom it is addressed under Section 23 par. 1 of Act No. 349/1999 Coll. on the Public Defender of Rights, as amended.

Brno, March 21, 2006

JUDr. Otakar Motejl,

Public Defender of Rights

CZECH REPUBLIC
ANNUAL REPORT ON THE ACTIVITIES OF
THE PUBLIC DEFENDER OF RIGHTS
IN 2005

SUMMARY

edited by: JUDr. Dana Hrabcová, Ph.D.

Published by the Masaryk University for
the Office of the Public Defender of Rights in 2006

1st edition, 2006 250 copies
Typeset and print by Vydavatelství MU, Brno-Kraví Hora

55–969–2006 02/58 2/RMU

ISBN 80–210–