

**The Public Defender of Rights'  
Annual Report on Activities During  
the Year of 2001**

**summary**

**© Masaryk University, Brno, 2002**  
**ISBN 80-210-2952-8**

On 8 December 1999 the Parliament of the Czech Republic passed the Act on the Public Defender of Rights. This legislation was fulfilled on 20 December 2000, when I was sworn in as the Public Defender of Rights for its first period of existence, a period that is set by law at six years.

On 22 March 2002 I presented the Chamber of Deputies of the Parliament of the Czech Republic with a written report summarising my activities over the course of the previous year. This report was debated by the Chamber of Deputies and taken into consideration in May 2002. This publication includes only the most fundamental parts of the report.

Because of the fact that this publication is primarily designed to serve as an informative guide for my colleagues abroad, I consider it suitable to emphasise that my deputy, Anna Šabatová, and I are based in Brno. This second largest city of the Czech Republic used to be, and nowadays continues to be the seat of all the highest judicial organs, including the Constitutional and Supreme Courts; consequently to this tradition, the Parliament has decreed Brno to be also the seat of the Public Defender of Rights.

JUDr. Otakar Motejl  
The Public Defender of Rights

The full version of the report in English and French can be found at [www.ochrance.cz](http://www.ochrance.cz).



# **I. ESTABLISHMENT OF INSTITUTION, DEVELOPMENT OF MATERIAL AND PERSONAL BACKGROUND AND ACTIVITIES OUT OF SUBJECT-MATTER COMPETENCE EXERCISE**

## **1. Establishing of the Public Defender of Rights' institution**

By the enactment of the Law No. 349/1999 Coll., on the Public Defender of Rights (hereinafter referred to as the Law on the Public Defender of Rights), a completely new institution became a part of the Czech legal order and system of state authorities. The Public Defender of Rights can be considered as a Czech analogy to the world widespread institution – in conformity with its Scandinavian archetypes – the most common designation being Ombudsman. From present knowledge, the Ombudsman can be characterised as an independent and impartial person elected by Parliament, who on the basis of complaints or on his/her own initiative relatively informally investigates pleaded illegality (unlawfulness) or other deviation (i.e. action in conformity with legal regulations, however, otherwise improper, inadequate, etc.) in activity (including possible inactivity) of public administration. The Ombudsman starts to deal with the case usually when there is no other effective (protective) legal measure, and by his/her recommendations, which are not directly enforceable, (s)he initiates the remedy.

After an unsuccessful attempt to appoint the Public Defender of Rights and his/her Deputy, which had been carried out from May to July 2000, on 12 December 2000 JUDr. Otakar Motejl was elected by the Chamber of Deputies the Public Defender of Rights, on the basis of proposals of the President of the Republic and the Senate of the Parliament of the Czech Republic. He assumed his duties by being sworn in on 18 December 2000.

On 25 January 2001 Mgr. Anna Šabatová was elected by the Chamber of Deputies to be the Deputy Defender of Rights on the basis of a proposal by the President of the Republic, being sworn in on 31 January 2001.

## 2. Development of material and personal background of the institution

Initially the Department was temporary situated in the building in Jezuitská Street No. 1, conferred by Metropolitan Authority of Brno. As of 1 January 2001 there were nine employees at a technical-operating level working on operations tasks; only one lawyer and two other lawyers worked on the basis of an agreement to complete jobs.

Under these circumstances at the beginning of 2001 it was necessary to gain a sufficient number of co-operators – lawyers able to deal with the scope of duties concerning the subject-matter competence of the Public Defender of Rights. From the more than 160 applications, 10 lawyers were chosen after qualified consideration based on psychological tests, personal interviews and other tests, and the contracts were signed by these persons (with the date of the commencement of employment at the end of January and in February). On the list, recent graduates were preferred, suitably supplemented by employees with longer-term knowledge in the state administration sphere. Simultaneously the agreements to complete a job with five students of the 5<sup>th</sup> grade at the Faculty of Law of Masaryk University were concluded. Therefore, as of 31 March 2001 33 employees (11 lawyers, 4 administrative workers and 18 employees securing the economic and administrative scope of duties) worked in the Department. The process of increasing the number of Department employees continued also in the following term: on 30 June 2001 there were 47 employees in total, including 17 lawyers in the section of subject-matter competence, on 30 September there were 74 employees, including 33 lawyers in the section of the subject-matter competence.

As of 31 December 2001 there was a total of 86 workers employed in the Department, of whom 54 directly dealt with disposing of the motions of citizens (36 in the section of the subject-matter competence and 14 in the section of administrative and filing services).

With time, the external co-operation with lecturers of some legal disciplines (constitutional law, administrative law, law of social security, environmental law and land law) at some Faculties of Law in Brno and Prague was gradually secured by the agreements.

Moreover, on 9 July 2001 the agreement with the Faculty of Law at Masaryk University in Brno on the provision of professional training as part of a master's degree program of legal studies was concluded.

On this basis there will be permanently ten 5<sup>th</sup> grade students carrying out this training.

An application for the occupancy permit procedure for the new head office proceeded from 26 July until 6 August 2001, and the Department moved out between 30 July and 4 August 2001. During the following weeks after the occupancy permit procedure some completion work and work on the removal of some small defects was undertaken and at the same time internal facilities were supplied. The majority of office furniture was purchased from the workshops of the Prison Service of the Czech Republic in the prison in Mírov.

### 3. Relations with the Chamber of Deputies of the Parliament of the Czech Republic

In accordance with the provision of § 24 para. 1 a) of the Law on the Public Defender of Rights, the Public Defender of Rights handed to the Speaker of the Chamber of Deputies of the Parliament of the Czech Republic in 2001 four information reports about his activity, from these the reports for the first three quarterly periods were discussed by the Petition Committee in the presence of the Public Defender of Rights. In the meantime, the Public Defender of Rights may not use his right according to the § 24 para. 1 b) (filing the report on each case in which adequate rectification of the matter has not been achieved), not according to the § 24 para. 1 c) (announcement of proposed recommendations on issuing the legal regulation) of the Law. Such needs did not ensue from the proceedings.

The Public Defender of Rights attended a consideration of the Bill on reception and disposing of complaints with the Petition Committee of the Chamber of Deputies (the Chamber of Deputies 2000, edition 574).

The Public Defender of Rights was also in attendance at the Petition Committee in the consideration of government State Budget Bill for the year of 2002.

### 4. Informational activity

The Public Defender of Rights and his Deputy paid increased attention to information about the substance, competence and forms of activity of the Defender during the whole year. Each month the Public Defender of Rights organised a balancing press conference and irregular ad-hoc press conferences. Both the Public Defender of Rights and his Deputy granted dozens of interviews to the daily press,

magazines and also specialised periodicals. Further on both representatives of the institution provided several television interviews (on both public and commercial stations) and they regularly appeared on Czech Radio or on other radio stations (e.g. the interview for the Czech BBC service). Czech Television is preparing a serial about the activity of the Public Defender of Rights.

The Department has issued an information leaflet, which is being gradually distributed both to the public, whether in contact with the Department or not, and also to those institutions with which the Department is in contact. From 28 February 2001 the institution has created a web site ([www.ochrance.cz](http://www.ochrance.cz)), where relevant information about the competence and data about the activity of the Public Defender of Rights are available. As of the end of 2001 these pages had been visited by 58 929 interested parties. During the initial period a large number of oral, written and, especially, telephone questions were posed, however those very often sought not only information about the institution but also for advice in particular cases.

As of 20 June 2001 the Department also organised a seminar entitled Search for the ways to co-operate with non-governmental organisations and the Department of the Public Defender of Rights. Representatives of 35 non-governmental organisations dealing with the question of the protection of human and civil rights took part in this seminar. The interpretation of the fundamental questions of legislation in force was presented; all organisations introduced themselves following which measures of communication and mutual support were indicated or defined during the discussion.

## 5. Visits and other national and international relations

A number of constitutional officials and other important representatives of state bodies visited the Public Defender of Rights. We can mention for example the visits of the President of the Republic Václav Havel, President of the Senate of the Parliament of the CR Petr Pithart, President of the Constitutional Court Zdenek Kessler, judge of the European Court of Human Rights Karel Jungwiert and members of the Constitutional and Legal Committee of the Chamber of Deputies of the Parliament of the Czech Republic.

The first international contacts were made as early as the outset of the institution, because its establishment aroused considerable interest in international institutions and other subjects. In 2001 the Chief of the European Union mission, the Ambassador of Canada, Chief of the UNHCR mission in the Czech Republic, Ambassador



Extraordinary for Human Rights of the United States of Mexico, members of the Constitutional and Legal Committee of the Slovakian National Council and Deputy of the Commission for Racial Equality of the Great Britain visited the Public Defender of Rights.

The Public Defender of Rights completed a short-term study stay in Great Britain and his Deputy attended a similar course in Poland. In the scope of preparation of the Act on Slovakian Public Defender of Rights had repeated intensive contact with representatives of the Slovak Republic. This culminated with the speech by the Public Defender of Rights on the international conference entitled The Establishment of the institute of Ombudsman and his/her position in the legal system of the Slovak Republic in May 2001.

The Public Defender of Rights received a number of repeated invitations, mostly to events arranged by the Council of Europe (hereinafter CE) and consultations organised for the European Union (EU) applicant countries. Representatives of the Department participated within the last year in the following events:

- Seminar: "Ombudsmen and European Union Law", Bucharest, 22.-24. April 2001 (EU),
- Seminar on the project: "National independent institutions protecting human rights, including the institution of ombudsman", Strasbourg, 16.-17. May 2001 (CE),
- Conference: "Position of the ombudsman in the field of environmental protection", Athens, 18.-19. May 2001 (EU),
- Conference: "Relations between the ombudsman and judicial systems" Ljubljana, 12.-13. November 2001 (CE),
- Seminar: "Co-operation between the ombudsman and Roma communities in Central and Eastern Europe", Strasbourg, 19 November 2001 (CE),
- Seminar on the European Convention on the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, Strasbourg, 20 November 2001 (CE),
- 7th Round Table of European Ombudsmen, Zurich, 21.-23. November 2001 (CE).

## II. SUBJECT-MATTER COMPETENCE EXERCISE

### 1. General part

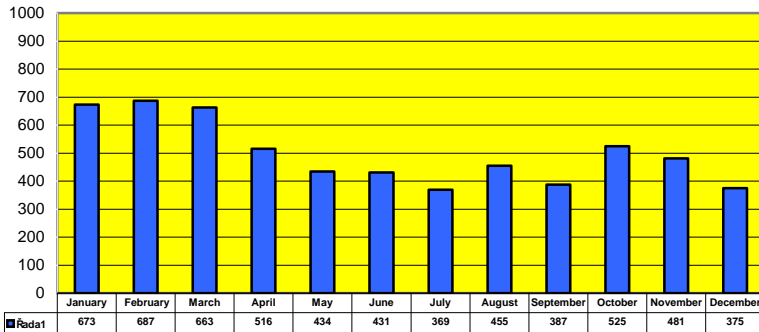
When examining the activity of the Public Defender of Rights, it is necessary to focus our attention to the year 2000. It turned out that in the course of the second half of 2000, when the Law on the Public Defender of Rights had already been in force, but not fulfilled, the preparatory Department received a considerable number of complaints and motions, which had finally begun to be registered (276 complaints were registered in December 2000). This fact shows that from the very beginning many citizens relied upon the formation of the Public Defender of Rights as an institution upon which they placed their hopes for remedy in a particular case.

The reality of the months that followed into 2001 corresponds to the aforementioned atmosphere, when during the first quarter the Department received nearly 2000 motions. Besides those written pleadings, from the very beginning the number of personal visits to the Department by persons wishing to enter a motion in the protocol became very frequent.

#### 1.1 Structure of motions by appellants

Altogether, in 2001 5996 motions were received or accepted in the form of protocol.

Motions received in 2001



The majority of motions is lodged by natural persons; less than 1% is lodged by legal persons (business organisations and citizens' associations).

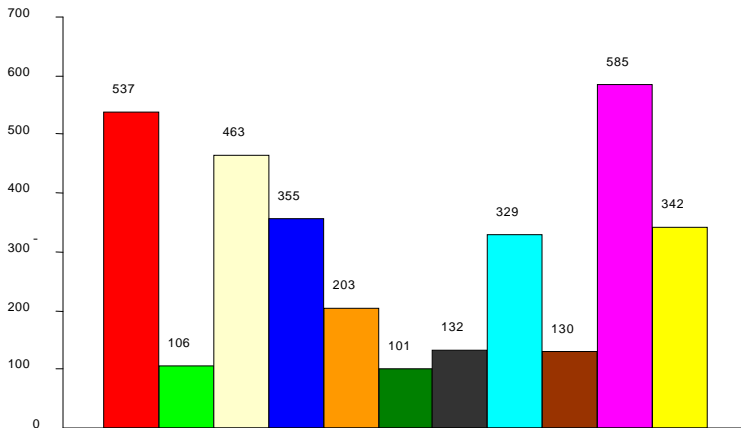
It is possible to claim for certain that a decisive majority of persons lodging the motions are people from the middle and elderly generations.

An absolute majority is also constituted by citizens of the Czech Republic; motions from foreigners are for the most part lodged concerning applications for asylum, problems connected with the processing of documents, application for the granting of citizenship, or when criminal proceedings are conducted against such persons.

### *1.2 Structure of motions by object*

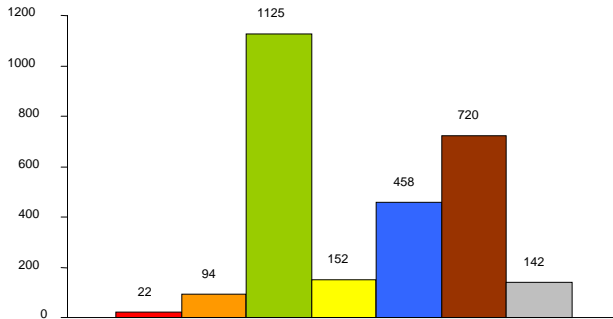
A determination of competence of the Public Defender of Rights, as defined in § 1 of the Law on the Public Defender of Rights, did not allow the classification of these motions according to their content and the creation of such structure of categories and spheres into which they are processed without wide practical experience. Nonetheless, by estimation in March 2001 the system of seventeen fields (of which six of these are defined as spheres out of the competence of the Law on the Public Defender of Rights) has been outlined.

**Total amount of motions received in the sphere of competence**



- Restitution of cooperative associations, real estates, possessory relations
- Health service and health care
- Social security
- Building permit procedure
- Taxes, customs, fees and related proceedings
- Environmental protection
- Protection of children, juvenile and family rights and social claims in connection
- Army, Police, Prison Service, child protection and young offenders and protective in-patient
- Matters of foreigners and citizenship
- Other non-classified spheres
- Judicial administration – protraction of the proceedings

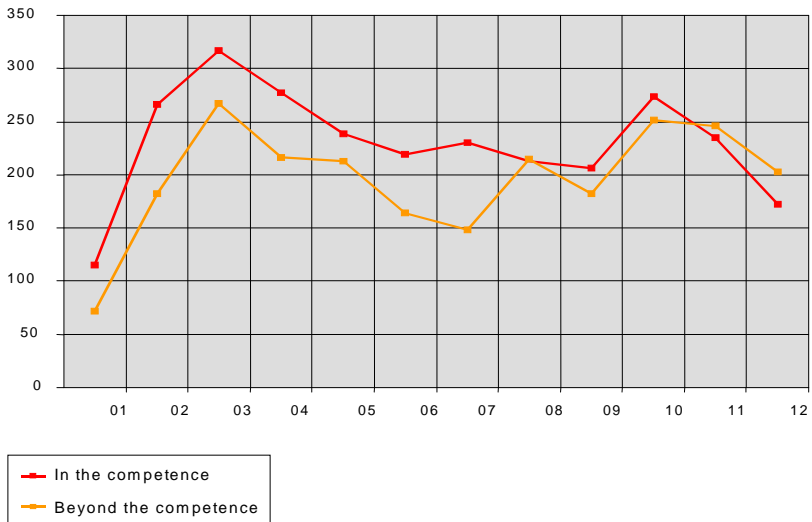
**Total amount of motions received in the sphere beyond the competence**



- Other remedial measures (§13)
- Bankruptcy proceedings
- Proprietary, family and other civil litigations
- Commercial litigations
- Criminal matters
- Other
- Separate competences of communities

**In spite of the relatively intensive informational activities realized mostly via public radio and television stations there were and still there are many motions directed at the spheres that lie beyond the competence of the Public Defender of Rights. In a comparison between the development of the institution of the Public Defender of Rights and similar foreign institutions one can note that although in most European countries the competence of the ombudsman is relatively closely connected with the scope of state administration such as in the Czech Republic, a relatively high percent of cases lying beyond the competence defined by Law still predominates. In this comparison, the reality is that relatively soon, i.e. in the first year of its existence, a prevailing number of motions directed at the spheres of the competence of the Public Defender of Rights can be considered to be a success.**

## Motions according to the competence by months



### 1.3 Methods of motion processing

Work with individual motions is different for those entering in the protocol and those for written motions.

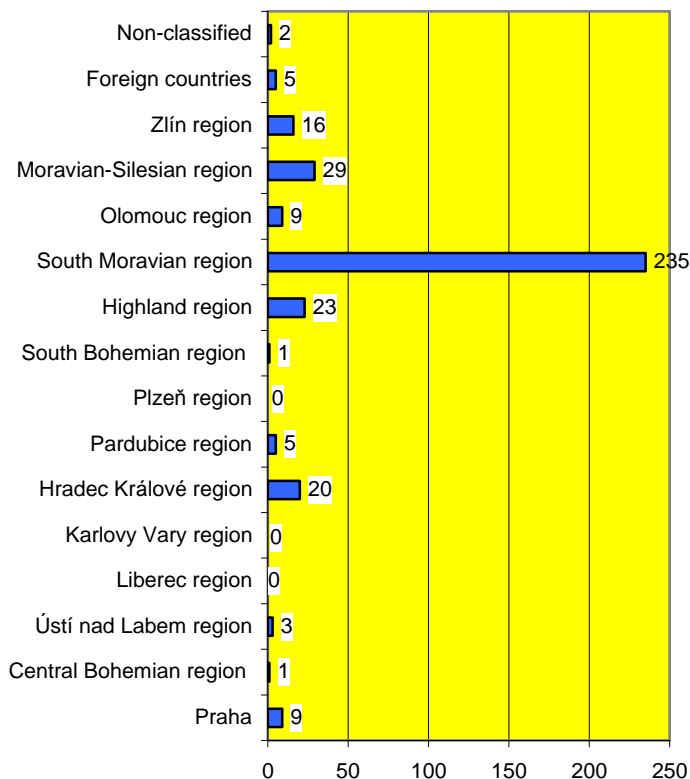
In order to enter pleadings into the protocol a permanent staff rota has been established, which has to be organised so that it can be strengthened on the usual, so called official days (Monday and Wednesday).

Personal contact in such cases is very time- and work-consuming, on the other hand it allows the elimination of applications that are beyond the scope of the Public Defender of Rights' direct field of competence, and at the same time allows the gaining of a maximum amount of relevant information about the facts and the legal problems surrounding the case in question.

Personal contacts with appellants have become on the one hand a practical form of putting forward the motions to the Public Defender of Rights, as set in § 10 para. 1 of the Law on the Public Defender of Rights, but on the other hand it has led to the establishment of what is often a specific way of operative dealing with the motions, mostly of those which are, for various reasons, beyond the scope of competence

of the Public Defender of Rights. Direct personal hearing of an appellant's problem that is being put forward to the Public Defender of Rights, and in particular premises established for the clarification of the options available whilst offering "first legal aid" in the form of the explanation of the legal situation to the citizen, his/her position within the problem and outlining the possibilities of other approaches have been used by a surprisingly large number of appellants from the outset. From 1 September 2001, when precise records of activity were first kept, 358 appellants applied personally to the Public Defender of Rights and his Deputy. Their cases were handled in the form of personal hearings so written motions were not lodged in the protocol.

### Personal contacts according to regions



Written motions are much more complicated to process. These very often consist of voluminous hand-written texts, involving increased resources for the reading and understanding of the writer's intention. Without regard to graphical form, only a few motions meet both the formal and material conditions that fall within § 11 of the Law on the Public Defender of Rights. The appellants' interpretation of the facts of a case is very brief and subjective and motions are on the most part unsubstantiated by any documents. If they are, only those documents that are in favour of the appellant, or those that correspond to the appellants' conception of reality, are put forward.

From June 2001 the system of letter of acceptance has been employed, by which the Department confirms the receipt of the pleading and informs the appellant of their file number.

In March 2001 permanent staff were employed to preliminarily examine motions as per § 13 of the Law on the Public Defender of Rights, in order that there is a minimum of delay in certain individual cases to direct an appellant if by putting forward a motion (s)he has erroneously superseded a legal remedy against the decision of the state administration, or even a court. The task of this advance service was and still is to classify each motion in special categories (sphere) and to forward the case for further processing.

All specialist staff at the Department participate equally in the processing of individual motions, making preliminary examinations of the questions to the Public Defender of Rights relating to the subject matter.

In cases where the motions are outside the sphere of competence of the Public Defender of Rights, the practice of attempting to explain on good authority the situation to the appellant has been introduced i.e. the lack of competence is explained to the appellant or general information is provided to him/her about his/her legal situation, and in particular about the possibilities as to where and how they can assert their claims. At the same time together with such information the appellant receives data about civic consultative bodies, their addresses, possibilities of free of charge consultations with the Czech Bar Association and their organisation, and also about the possibility to appoint a legal representative in the proceedings under the civil procedure code and about their right for exemption from court fees.

In the cases where the competence of the Public Defender of Rights is probably established, it is necessary to apply for the provision of



additional relevant information, or for the loan of copies of official documents, including the decisions taken.

A specific feature of this initial phase of the competence of the Public Defender of Rights is the knowledge that a not insignificant number of motions are reopened or attempts are made to open different proceedings or even matters that are still undergoing proceedings and which happened in the remote past. Into this area there have been extreme cases of events from the period not only before 1968, but also before 1939. Both because of fundamental reasons, and also because it is not possible in the first year of activity of the Department to cover the strict application of provision of § 12 para. 2 c) of the Law on the Public Defender of Rights, a relatively similar amount of attention was given to those cases, even though it usually proved necessary to explain an to an appellant that remedy cannot be ensured due to both material and legal reasons.

In a situation where it is obvious that the case is within the sphere of competence according to § 1 of the Law on the Public Defender of Rights and a solution can be considered, the directly relevant administrative authority or other institution (hereinafter the "authority") are notified in writing by the Public Defender of Rights about the motion with a recapitulation of the problem and a request to express their opinion. Depending on the circumstances of the case this first contact is substituted by a local investigation, carried out by an authorised employee of the Department. This local investigation is carried out usually either at the relevant authority or, especially in the case of planning permission matters, an inspection of the building in question is also carried out.

In cases where the written investigation has begun, both the appellant and the relevant authority is informed. The authority is given a reasonable time period (10, 15 or 30 days) to respond with its opinion. In a majority of cases the authorities react on these notifications mostly materially and within the prescribed period.

After becoming acquainted with the allegations and statements from both parties concerned, it is then necessary to prepare a further analysis of the case. The conclusion that the complaint may not be justified is also considered, and in such cases the appellant is notified about the conclusion of the Public Defender of Rights and the processing of the motion is ended. A relatively more common phenomenon in the cases so far processed are those cases which can be defined as partially justified. The authorities react on the conclusions of the Public Defender of Rights for the most part

positively, i.e. they admit inadequate performance (very often being protraction and inactivity or other formal divergences) and they simultaneously declare a remedy for the situation that has been incurred.

A specific category is formed by relatively common cases, whereby a complaint is partially justified, but after investigation is carried out, claims by the authority against the appellant are also found to be justified, because (s)he may have hindered or otherwise obstructed individual acts by his/her behaviour (usually by not examining written documents or by his/her non-attendance or regularly excusing themselves from proceedings). In these cases the work is completed in the form of a written document, giving both positions with a recommendation for further steps or action, with an emphasis on the qualified interests of the appellant or any other participants in the proceedings.

If the investigation by Public Defender of Rights indicates a more serious defect in the procedure or decision-making activity of the authority, the authority is notified about this breach according to § 18 para. 1 of the Law on the Public Defender of Rights and at the same time it is challenged to express its opinion on the findings within the statutory period of 30 days. From experience it follows that in more than 83% of cases the statement of the authority can be treated as satisfactory, both from the view of the Public Defender of Rights and obviously also from the view of the appellant, because it de facto contains concrete data on the remedy for the situation.

If the statement of the authority continues to be in disagreement with the opinion of the appellant, and is the same opinion adopted by the Public Defender of Rights, a process according to § 19 of the Law on the Public Defender of Rights is applied. In such cases the Public Defender of Rights formulates his ideas according to the measures by which the defective state could be eliminated or rectified in conformity with the appropriate legislation and principles of good administration.

The practical application of the legal provisions regulating the procedures of the Public Defender of Rights when dealing with the motions has so far required a process that is not only materially difficult, but is also particularly time-consuming, which runs against the generally-held supposition that the processing of a case by the Public Defender of Rights will show itself to be effective by its promptness.

The structure of the settled motions only occasionally allows the application of a less formal approach based on the direct personal (or more often by telephone) intervention at the concerned authority, where personal contact with the competent employee or his/her superior helps to clarify the substance of a contentious issue and consequently to accept a proposed settlement and to procure all immediate information for the appellant. This is true mainly in cases where issues are closely connected with the former competence of the Public Defender of Rights or his Deputy, and it is possible to assume that this non-formal intervention will not be treated as the intervention into the merits of the case. Meanwhile, all other cases are and will in future have to be settled by a method of arbitration based on the exchange of written documents processed in the procedural system and, in some cases, even within statutory periods.

The quantitative results of the Department activity in 2001, being the first year of operation, must be interpreted by taking into consideration non-standard situations following from the fact that from the very beginning of the establishment of the Public Defender of Rights a large number of complaints were received covering not only the entirety of state (or public) administration activity, but the whole area of the operation of the state in addition. This all occurred mainly during the first half of the year when it was not possible to equip the Department either with specialist personnel or with administrative technology, which would have allowed the continuous and immediate processing of all motions. This leads to a backlog of a large number of unsettled motions. Another characteristic feature not only for this early period was the discovery that the settling of motions is more time-consuming and laborious than first expected, regardless of whether each case is/are in or beyond the competence of the Public Defender of Rights. Therefore during the first year of the activity of the Public Defender of Rights a relatively small number of cases that had been fully developed were settled definitely (detailed investigation, repeated opposition from the authority in question), and it is for this reason that it was not until the final quarter that more cases were settled than new ones were received.

Altogether a total of 5996 motions were received in 2001. Of these 3283 were within the competence of the Public Defender of Rights and 2713 were beyond his competence. Of the cases within the competence of the Public Defender of Rights, 1433 were settled and of the cases beyond the competence 1706 were settled. As of 31 December 2001 there were 1850 unfinished cases in the competence of the Public Defender of Rights and 1007 cases beyond

his competence. Substantial doubt was found in 32 cases, and remedial measures consisting of the clarification and recommendation of alternative procedures were given in another 419 cases. Similarly, in 437 cases that were beyond his competence, detailed explanation or recommendation was given to individual appellants.

An important proportion of the work of the Public Defender of Rights, the Deputy and individual lawyers is dealing with inquiries and requests for opinions on certain problems received on the telephone or by e-mail. The time needed for dealing with these inquiries which burdened the staff inadequately was eliminated by establishing an information line as of 2 January 2002 which concentrates this agenda and forms better conditions for their satisfaction as well as better working conditions for the expert staff.

The processing of individual cases is continuously assigned to lawyers in the so-called subject-matter department. During the transitional period in 2001, these employees used their expertise that was based either on previous practical experience from their previous workplaces or on spontaneously expressed interest. In order to ensure coordination and harmony of the processing methods, there are meetings for all the employees in the subject-matter department at least once a week, one day in the month is devoted to a seminar conference on particular general topics in which are attended by external consultants, who are university associated professors. Above all, continuous consultation on more difficult individual or non-typical cases proceed in specialised groups followed by consultations with the Public Defender of Rights or his Deputy, who personally sign all documents made by the Department.

It is expected that during the first six months of 2002, after evaluation of all the experience that has so far been gained, a new structure of four specialised committees will be established, defined so that besides this expertise, equal use of all the employees will be ensured.

The processing of questions made via telephone or email and requests for a specialist review or expert opinion on certain problems is an important part of the Public Defender of Rights, his Deputy or individual lawyers' activity. The time-consuming nature of these requests, which have burdened the aforementioned employees unequally and disproportionately, has been eliminated from 2 January 2002 by the establishment of an information line, which concentrates on this agenda and creates better conditions for their settlement and also better working conditions for other specialist staff.

## 2. Special part – selected cases with commentaries

From the very outset of the first year of activity of the Public Defender of Rights, when the option to apply to the Public Defender of Rights was established, the motions referred to all spheres of society regulated by law, be they directly involved legal entities or natural persons, or those which cause problems to or influence these spheres whether subjectively or objectively.

In order to categorise the received pleadings it was necessary, as mentioned above, to divide them into two basic categories – those that are within the competence of the Public Defender of Rights according to § 1 of the Law on the Public Defender of Rights those that are not, according to the aforementioned regulation. Within these two categories the need arose to further divide these motions according to sector of society. However, it is necessary to add that in the process of categorisation this position must be simplified to a certain extent, for clear competence can be claimed in only a small number of motions. As in life, individual cases can encompass several spheres, and in several instances can merge into one another, and in some cases there is even fluctuation among phases, in which issues of fact may occur that at one time may be within the competence of the Public Defender of Rights and at other times they are not. Pleadings containing such issues of fact are divided into categories according to the prevailing elements, and the Public Defender of Rights deals with them only at a certain stage of their development.

This section of the report will contain simplified case studies, solved by the Public Defender of Rights during 2001, that are either typical or have been selected for other reasons. Due to confidential obligations, according to § 7 para. 2 of the Law on the Public Defender of Rights, identification of the appellants and, where possible, identification of concerned organs and authorities, is hidden. The second part of this recapitulative report deals with in-depth analysis and generalised knowledge ensuing from the activity of the Public Defender of Rights over the evaluation period (including the cases given below).

For transparency and better orientation the recapitulative report is divided according to the following categories:

### Motions in the competence of the Public Defender of Rights:

- Restitution claims, cooperative associations, possessory relations

- Health service and health care
- Social security
- Building permit procedure
- Taxes, customs, fees and proceedings to them
- Environmental protection
- Protection of children, juvenile and family rights and related social claims
  - Army, Police, Prison Service, child protection, young offenders and patients in custody
- Matters of foreigners and citizenship
- Other non-classified spheres
- Judicial administration – protraction of the proceedings

Motions beyond the competence of the Public Defender of Rights:

- Remedial measures
- Bankruptcy proceedings
- Proprietary, family and other civil litigation
- Commercial litigation
- Criminal matters
- Other
- Separate powers of communities

## *2.1 Motions in the competence of the public defender of rights*

Restitution claims, cooperative associations, possessory relations

537 motions

### *Motions regarding restitution claims*

A District Land Office corrected its mismanagement, based on the fact that prior to intervention by the Public Defender of Rights it made it impossible for an appellant to apply his right to claim against an administrative body using the prescribed procedure and the right to refer to the courts in order to review the legality of a decision taken by the said public administration body.

Qualified legal advice was provided to an appellant seeking the aid of the Public Defender of Rights, by means of which a neighbour's dispute caused by an oversight by the Land Office in rendering real estate in restitution proceedings was solved.

Due to fault on the part of the Land fund off the Czech Republic an appellant was subjected to a number of pointless negotiations and unpleasant experiences but, more seriously, had also lost nearly six years during which she could have had greater options to select suitable compensatory property in order to satisfy her duly adjudicated restitution claims. The Public Defender of Rights could help by direct intervention, because the Land Registry, against which the complaint had been made, had not failed in its duty and the Land Office, even though it deals with state real estate in bulk, is not a state administration body. Therefore its procedures are not revisable by the Public Defender of Rights (more about this problem in another part of this report). Qualified legal advice about possible further steps was granted to the appellant.

*Motions, the subject of which concern the satisfaction of claims ensuing from transformation of agricultural cooperative associations and the return of co-operative shares*

An appellant was unsuccessful in applying for the imposition of a penalty by the District Office according to law, because due to the inactivity of this administrative body the application lapsed after a period of one year. The Office justified its inactivity by stating that the duly lodged petition had been lost. After the Public Defender of Rights had dealt with this case, the Office continued its administrative proceeding to impose the obligation to provide a security deposit, which would ensure the fulfilment of duties by an obligated person.

The Public Defender of Rights could not be of any assistance to an appellant, who sought help when settling and adjusting the property interest of winding up an agricultural cooperative association. The settling of property interests of cooperative association members and satisfaction of claims from distribution shares in the case when the membership of cooperative association is terminated, have been completely retained in conditions of cooperative and commercial legal relations, where the Public Defender of Rights is not entitled to use his powers. Primarily, the restitution feature of acts, dealing with the transformation of agricultural cooperative associations and remedy of property violations in the sphere of land property relations and other agricultural property is not sufficiently and effectively addressed in the legal scope at the present time (more about this problem in another part of this report).

*Motions the subject of which concern legal rights to the possession of real property and their entry in the Land Register*

An appellant recovered with the help of the Public Defender of Rights the remedy of divergence of the Land Registry, which acted beyond its powers by illegal intervention into formerly recorded legal relationships on the basis of new determination of deed (sales contract), which had been the ground for making records in the past. Whether the Land Registry received those instructions from its superior authority, then such instruction is contrary to the law. Mainly the procedure of data digitalisation in the Land Register is considered.

Health service and health care

160 motions

*Motions the subject of which concern relations of citizens and medical institutions when health care is provided*

The Public Defender of Rights promotes the solution in the case of an appellant, who in vain demanded the consistent investigation of medical institution's approach when carrying out health care. According to the appellant and experts' reports health care of "non lege artis" was concerned. By the Public Defender of Rights' investigation the inactivity and series of divergences of state administration in the field of health service has been found, which did not deal or dealt sluggishly with the complaints and consequently with by experts proved facts of Mr. B. Not before the intervention of the Public Defender of Rights they accede to examination and expert's qualification of circumstances concerning the death of Mrs. B., they imposed sanctions and adopted measures, which should prevent similar cases in the future.

Appellants – patients of medical institution, in which a protective in-patient medical treatment is carried out, appealed to the Public Defender of Rights with a request for protection against diminishing their dignity in the course of medical treatment, because these patients were psychologically abused and bullied. After the Public Defender of Rights' intervention the measures for eliminating of found violating elements of medical process have been adopted by the medical institution in co-operation with the state health administration body, in the field of realisation of therapeutic procedures in regime treatment, so that in the sphere of personnel.



*Motions the subject of which concern relations with health insurance companies*

Upon a motion by Mr. E. the Public Defender of Rights found through investigation an incorrect procedure in a tender held under the law on public health insurance. Mr E was disqualified by the district office, health service section, and the proceeding of the health insurance and he was rejected an agreement on the provision and remuneration of health services. The Public Defender of Rights made the district office adopt corrective measures so that such mismanagement could not be repeated.

**Social Security**

463 motions

*Motions the subject of which concern social welfare relations*

An old people's home removed its mismanagement in a case where the management did not inform the residents on compensation for not consumed food in the event that the resident spends a calendar day outside the establishment and did not provide this compensation. Upon an intervention of the Public Defender of Rights the management issued an internal regulation stipulating the provision of compensation in kind for not consumed food and familiarised both the residents and their family members with this regulation. At the same time, this case pointed to a deficiency in the legislation on compensation for social welfare services.

The Public Defender of Rights looked into doubts concerning the activities of regulatory bodies in that, on the basis of § 73 of decree No. 182/1993 Coll., inhabitants of old people's homes are obliged to pay for services that they do not need and do not use. A commentary by the Ministry of Labour and Social Affairs, which does not constitute a legal ruling, states that the providers and organisers of social services comply with the setting of reimbursements for housing and basic care in old people's homes and consider it to be binding, and local authorities apply this commentary fully in practice.

The Public Defender of Rights stated in this case that the regulatory body in question (the department of social affairs at the local authority) acted in accordance with the law and correctly requested the repayment of a proportion of a grant for the purchase of a motorised vehicle. At the same time, however, on the basis of this and other types of related cases, he entered into talks with the

Ministry of Labour and Social Affairs on possible legislative changes, for the legal regulations concerning the conditions for the repayment of a proportion of a grant are, in the opinion of Public Defender of Rights, in conflict with the principles of proper legislation.

Following intervention by the Public Defender of Rights the statutory city municipality remedied its incorrect approach to the exchange of special concession passes, which was not in conflict with the law, but was in contradiction to the principles of good administration.

The Public Defender of Rights aided a plaintiff to attain the abolition of an illegal decision made by a first and second level social care organ. This decision set the obligation to return a social care grant.

#### *Motions concerning pensions*

The Czech Social Security Administration (CSSA) amended an incorrect decision following intervention by the Public Defender of Rights, by which a plaintiff was refused an application for a widow's pension. The pension was granted to the plaintiff in the sum of CZK 16,658. The Public Defender of Rights thereby reached a solution that had previously been unsuccessfully argued in court.

The Public Defender of Rights advised a plaintiff as to the correct procedure to gain amendments to his adverse social situation caused by the application of the Agreement between the Czech and Slovak Republics on social security benefits. At the same time the Public Defender of Rights as a result of this motion came to the conclusion that it was necessary to completely review the problem of „Slovak pensioners“ and to find a solution as part of the special regulations according to the third part of the law on the Public Defender of Rights (this will be discussed further below).

#### **Building procedure**

355 motions

On the basis of a meeting the Public Defender of Rights arrived at the remedy of an objection in that an organ of state building supervision was not able to ensure that an owner removed building defects.

Intervention by the Public Defender of Rights made possible a solution to the unfavourable social situation of the inhabitants of buildings, the bad technical condition of which in many cases threatened the health and safety of the aforementioned. The organs of state administration and local government were unable to effectively react to this condition, but after intervention by the Public Defender of Rights essential demolition work was carried out, and alternative housing was allocated to those whose flats proved impossible to repair.

The district office (as a special building office) remedied its mistake whereby it made an incorrect adjudication on the stoppage of work on the removal of buildings and failing to impose fines for using unpermitted buildings. This mistake was the cause of the existence of an illegal construction, which was legally contested by the plaintiff.

The building office in M was in the wrong when in breach of the building law it tolerated the continuing existence of a building without planning permission and did not act upon a decree to remove this building. Following intervention by the Public Defender of Rights the inaction was rectified.

## Taxes, customs, duties and their management

203 motions

### *Motions based on tax matters*

In this case the Public Defender of Rights explained to plaintiffs the problem of interpreting a particular income tax law, and persuaded them that their conviction of the legality of their interpretation and their evaluation of the proceedings of the financial organs was incorrect. This case is an illustration of how the relatively unclear formulation of the law can unfavourably influence practice and can lead to unnecessary complications. The positive effect for plaintiffs in such cases can be the prevention of a further growth in taxes owed for non-payment of debts.

In this instance the Public Defender of Rights came to the conclusion that there was a grave error on the part of the inland financial organ, for it assesses taxes on persons who, in the opinion of the Public Defender of Rights, should not be assessed. The relevant inland financial organs however, did not share the legal opinion of the Public Defender of Rights. Measures for the remedy of this situation were proposed by the Public Defender of Rights, which were based on

the ceasing of the enforcement of legislation and providing exemption from tax. As of the date of the writing of this report the relevant offices had not yet responded to the Public Defender of Rights.

*Motions the subject of which concern customs and customs management*

Drivers of goods vehicles, although employees of a transport contractor, unwittingly acted as customhouse agents without being aware of the consequences, which for them could mean a status as interpreted by the customs regulations. The Public Defender of Rights stated that the relevant administrative office were not erroneous in their methods. This case is an example of the problematic practises carried out by several employers, who had provided the drivers of the goods vehicles with incorrect information and had therefore imposed a risk.

*Motions the subject of which concern problems of local charges*

The Public Defender of Rights found deviation of the administrative authority when settling the appeal against payment assessments for local charges, because it did not proceed according to instructions defined in the Act No. 337/1992 Coll., on administration of taxes and charges, as amended. An investigation of appellant's motions was determined by a considerable unwillingness of concerned administrative authority to co-operate. In addition in this case, it is possible to demonstrate negative consequences of absence of the legal regulation of procedural time-limits for decision on appeal in the Act No. 337/1992 Coll., on administration of taxes and charges, as amended.

## The environmental protection

### 101 motions

The Public Defender of Rights verified in the scope of his investigation that from the part of administrative authorities there were made sufficient measures to remedy of previous long-term adverse situation in liquidation of waste water and dealing with water pollutants. At the same time he reprimanded the administrative authority its divergence, which consisted in the fact that it did not keep also a punitive proceeding. The Public Defender of Rights did not propose remedial measures when subjective term for imposing of sanction already expired.

The Public Defender of Rights explained to an appellant the legal regulation according to the new Waters Act and recommended him a procedure of how to apply to competent authorities, if he had an impression that issuing a traffic permission for private motorboats on some watercourses should be prevented.

The Public Defender of Rights required competent administrative authorities to adopt suitable measures leading to prevention of heavy truck traffic passage through the town of N.

The Public Defender of Rights noted a lack in observance of principle of good administration based on the fact that the Ministry of Environment did not immediately referred the case, in which the administrative proceeding took place, on the basis of court judgement to a competent authority of state administration and he reproached this mistake. At the same time he pointed out that as a consequence of ambiguous result of conflict over the competence between the Ministries of Agriculture and Environment in some specific cases (such as in following case of Mr. F.) it can come again to a query of administrative authority competence to decide on the merits, with respect to the transitional provisions of Waters Act.

Protection of children, juvenile and family rights and social claims in connection

132 motions

The Public Defender of Rights arrived at the conclusion, that from the part of metropolitan district authority it came to the defective process which influenced a court's judgement so that the court placed a minor to an infant institute before issuing of expert's report and not in the custody of his/her grandmother. The body of social-legal protection of children chose that process without looking for other forms of solution as they are offered by the Act on social-legal protection of children. Although the administrative authority did not fully accept the conclusions of the Public Defender of Rights, it made the steps which led to remedy of situation. Herein the Public Defender of Rights emphasised his possibility to procure an informal regulation of relations between a bearer of state administration and an addressee of acting.

*Motions the subject of which concern the performance of duty to enlist for military service*

The Public Defender of Rights found a divergence of military administration which return a statement on denial of compulsory military service performance back to a petitioner claiming that it is not possible to realise it because of laps of time. On the basis of report on result of investigation and legal interpretation of the Public Defender of Rights contained in the report, the statement of petitioner was referred to the competent District Office to positive settling. At the same time the documentation of this case was sent to the supervision bodies of the Ministry of Defense for unifying of interpretative rules when settling similar cases by other territorial military authorities.

*Motions the subject of which concern conditions of punishment execution*

A big number of motions pointing against the Prison Service of the Czech Republic represent complaints about a dismissal of a request for a transfer to another prison. The following case can serve as an example. Here, the Public Defender did not find out any divergence made by relevant administrative authorities. He regards as necessary to point out that the Prison Service of the Czech Republic usually cannot, comply with such requests, mostly because of limited capacity reason, even when these are qualified by social reasons or by possible better corrective effect of the punishment.

The Public Defender of Rights found a divergence in action of the Prison Service of the Czech Republic authorities. The Prison Service did not let the condemned know the reasons why they were, though temporarily, transferred to another prison, which could have raised pointless negative emotions in them. On the basis of the Public Defender of Rights' recommendation, the Directorate General of the Prison Service in the Czech Republic (DG PS) adopted remedial measures.

The Public Defender of Rights investigated a complaint made by an accused person of Muslim religion against catering in the house of detention. The Public Defender of Rights did not find any divergence in acting of the house of detention's management. But after a mutual agreement there were adopted such provisions to better precede of complications between the bodies of the Prison Service of the Czech Republic and accused or condemned Muslims.

## Matters related to citizens and citizenship

140 motions

### *Motions related to foreigners*

The Public Defender of Rights stated that the Police of the Czech Republic had been in error in the matter of the ban on stay in the territory of the Czech Republic. However, due to the stage and nature of the case, it was no longer possible to take measures to rectify the situation. Thus, the appellant was only informed of the possibilities of alleviating the impact of the adverse situation via a request for the elimination of severity.

The Public Defender of Rights stated that in the case of Mrs. A., the registry office breached the principles of sound administration, as the administrative consideration had been misapplied. The registry office did not make use of the possibility of waiving the furnishing of documents for entering into marriage and by doing so it brought the appellant into an objectively inextricable situation. The registry office accepted this conclusion made by the Public Defender of Rights and subsequently accommodated the request for entering into marriage.

On the basis of the investigation of this case, the Public Defender of Rights drew attention to the general need for a conceptual solution to the question of a compensation of damage caused by legitimate administrative proceedings under the body of laws of the Czech Republic. This is because the valid legal stipulation does not comply with recommendations made by the Board of Directors of the Council of Europe No. 84(15) from the year 1984.

### *Motions related to the problems of citizenship*

Acting upon the conduct of the Public Defender of Rights, the Ministry of Internal Affairs of the Czech Republic rectified inactivity in the appellate procedure. The appellant was also informed by the Public Defender of Rights about her rights under the law on stay of foreigners in the territory of the Czech Republic.

Following the intervention of the Public Defender of Rights, the Ministry of Internal Affairs of the Czech Republic rectified its error consisting in a failure to attend to an appellant's request or waiving the duty to prove the loss of his existing citizenship as part of the proceedings leading to granting the citizenship of the Czech Republic.

The Public Defender of Rights detected an error made by an administrative authority consisting in inactivity. A municipal district office failed to decide on a declaration of an appellant on the obtaining of citizenship within a time-limit stipulated under § 49 of Act No. 71/1967 Coll., on administrative proceedings. On the initiative of the Public Defender of Rights, the administrative authority took a decision on this matter and took measures of organisational nature that should in the future prevent from the reoccurrence of similar cases.

Other field in the competence that have not been classified in above

585 motions

This group concentrates motions from various areas of state administration. It covers such areas of the activities of the state administration bodies that relate to a limited number of motions limited by their substance or a specific situation. The following selection of cases illustrates the most typical spheres of relations that the Public Defender of Rights dealt with in the course of 2001.

*Insufficient securing of deposits in savings associations*

In the course of 2001, the Public Defender of Rights was approached by many unsatisfied clients of bankrupt savings and credit associations with a request for the intervention and assistance in protecting of their rights. Due to the fact that this matter did not fall directly within the competence of the Public Defender of Rights under the law and by taking into consideration the fact that the Parliament of the Czech Republic passed an amendment to Act No. 87/1995 Coll., on savings and credit associations reflecting the legitimate claims of aggrieved members of the associations, the Public Defender of Rights restricted his conduct to mediation of legal council to the appellants and to an explanation of the method of proceeding in order to satisfy the claims.

*Mediation of work by employment offices and their inspection activities*

An employment office erred and proceeded contrary to the principles of sound administration (correctness and adequacy) as it decided to exclude the appellant from the list of applicants for jobs since the employer proposed to her refused to engage her because she



asked for a change in the working hours in order to manage extramural studies.

Following the intervention of the Public Defender of Rights, the employment office in D. rectified its error. The employment office in D. made a material mistake and acted in breach of law since it instituted administrative proceedings concerning the obstructing of the cooperation of the applicant for job with the office, but failed to proceed in the initiated proceedings and failed to complete the proceedings in a fashion stipulated by law (granting of a decision). The office also erred in removing the applicant from the registration on the basis of his alleged application without having such a conclusive application at its disposal. The employment office did not keep proper and complete register of the applicant concerned. The illegitimate procedure of the employment office led to many problems on the part of the appellant, including a debt related to health insurance payment.

In this case, the Public Defender of Rights identified shortcomings in the exercise of the inspection activity of the employment by employers. After the shortcomings in the activity of the employment office had been identified, the employment office made good the shortcomings and took such measures that should ensure future proper exercise of duties of this administrative body.

#### *Proceeding of offences*

The Public Defender of Rights identified an error made by the nature and landscape conservation authority levying a fine in the ticket procedure for the breach of Act No. 114/1992 Coll., on the protection of the nature and landscape, due to insufficiently identified facts. After being advised of this shortcoming, the exacting of the fine was waived.

The Public Defender of Rights identified an error made by an administrative body consisting in the fact that it had failed to refer a motion filed by an appellant announcing a commitment of an offence to the relevant body. The municipal district office issued its statement concerning its incompetence to attend to the matter without its body relevant to attend to offences (being the offence commission) looking into the conducts presented in the motion and appraising it pursuant to Act No. 200/1990 Coll., on offences, and by doing so it acted contrary to § 19 Clause 2 of the Administrative Code, as it failed to investigate the motion according to its contents. Upon the intervention of the Public Defender of Rights, the administrative body took

measures to rectify the situation that should prevent from future reoccurrence of a similar situation.

### *State administration in the field of transport*

As part of investigating these motions, the Public Defender of Rights identified a non-uniform procedure taken by the district offices when enforcing Act No. 361/2000 Coll., on the operation of communications over land. This lack of uniformity is to a certain extent caused by an ambiguous wording of the law; nevertheless, it would suffice if the Ministry of Transport and Communications of the Czech Republic being the superior authority unified the interpretation of the questionable provisions. The Ministry was advised of this fact; however, for the time being it has not expressed its opinion on the finding of the Public Defender of Rights.

The Public Defender of Rights identified an error made by the Ministry of Transport and Communications of the Czech Republic that failed to take a decision in administrative proceedings during a disciplinary time-limit stipulated by law and failed to extend the time-limit for taking the decision and by doing so it breached the provisions of § 49 of Act No. 71/1967 Coll., on administrative proceedings (Administrative Code). Following the intervention of the Public Defender of Rights, the Ministry started dealing with this case and promptly terminated the administrative proceedings.

### Judicial administration – delay in proceedings

#### 342 motions

The Public Defender of Rights in this case did not identify any delay in the judicial proceeding and did not use his right to propose remedial measures. However, this case serves to illustrate the causes leading to the fact that courts cannot fully implement Art. 38 para. 2 of the List of Fundamental Rights and Freedoms for objective reasons and deal with matters without undue delay.

This case is an illustration of negative side effects of delays in judicial proceeding with or without a cause. The fact that the proposal of the appellant for declaring the death was settled after almost three years, she lost the title to part of her orphan's annuity. Her infant siblings found themselves in the same situation. The Public Defender of Rights was forced to state that even though there was no legal mismanagement, the cause of the lost title to part of the annuity was

the length of the proceeding for declaration of death. At the same time, the appellant was informed about a possible proceeding under Act No. 82/1998 Coll., on liability for damages caused by public administration or incorrect official procedure.

The Public Defender of Rights identified undue delay in the execution proceeding by Municipal Court in B. He proposed remedial measures in the matter which were accepted by the president of the court and judges responsible for mismanagement were subject to disciplinary proceeding.

## *2.2 Motions where the competence of the public defender of rights is not determined*

In this part where the report deals with the issue of settling motions whose subject or greater or smaller part of it is not in the competence of the Public Defender of Rights under the provision of § 1 or § 12 of the Law on the Public Defender of Rights, we have to mention the principal issue of the practical application of the law's diction. From the very beginning of the Law the Public Defender of Rights, as mentioned in this report in relation to the description of personal contacts with appellants, aspired for an accommodating approach ("unofficial") and the provision of the "first aid" to everyone who approached him with a request for protection or with a motion. This approach has been broadly applied also, we could even say especially, on dealing with motions outside of the competence of the Public Defender of Rights. The response of the Public Defender of Rights to the appellant whose problem he was not competent to resolve, besides the notice of rejection, contained a number of important legal information, namely an explanation of the legal situation of the appellant so that he became aware of the problem and was suggested options for proceeding further.

### Independent competence of municipalities

#### 142 motions

This group of motions is typical of the above-mentioned inoculation of various characters of individual stages of legal relations in a continuous development facts of the cases. We can say that this area shows, among other things, the consequences of mixing the competencies of self-government and administration bodies under the Act No. 128/2000 Coll., on municipalities (municipal law). The stolidities both in the theoretical and practical life are currently

deepened by the reconstruction of public administration and the fumbling in the beginnings of the work of higher territorial self-government units in executing state administration.

These problems appear in the practice of the Public Defender of Rights especially in motions related to the execution of independent competencies of municipalities in managing municipal property. To illustrate this let us introduce two examples:

Another extensive group of motions in this are complaints about issuing, not issuing or the contents of regulations ensuring local matters of public order.

## Legal remedies

### 22 motions

Besides suspension and investigation, the Law on the Public Defender of Rights in provision of § 13 defines a third method by which the Public Defender of Rights is obliged to deal with a motion under certain conditions. Every time the Public Defender of Rights comes to the conclusion that the motion in its content is a legal remedy under the regulations on proceedings in administrative or judicial matters, an indictment or a legal remedy in administrative judiciary, or a constitutional complaint, he is obliged to inform the appellant of this fact and explain the proper procedure.

## Bankruptcy proceeding

The Public Defender of Rights is often approached by natural persons as well as legal entities seeking assistance in collecting receivables in bankruptcy proceedings. Complicated and formal bankruptcy proceedings are rather demanding on the participation of the creditor – the motions to the Public Defender of Rights suggest that mainly employees claiming their receivables arising from industrial relations in bankruptcy proceedings or other groups creditors ignorant of law cannot fully realise their claims not knowing the principles of bankruptcy proceedings regulations. In these cases even though the Public Defender of Rights would be entitled to suspend these motions without further notice, he tries to provide basic information on bankruptcy proceedings to these persons, to explain their rights and obligations and to provide general guidance as to their further steps. This can be illustrated by the following motion 2839/2001/VOP/AZ:

## Penal matters

458 motions

Motions that appellants brought to the Public Defender of Rights in penal matters are typically outside of his competence. Mainly they were complaints against the procedures by bodies responsible for penal proceedings at various stages and, mainly, a number of complaints expressing the feeling of unjust sentence, mostly contesting judgements on guilt and penalty, in some cases the obligation to compensate damages. At the beginning of the year when the Public Defender of Rights assumed his function, in several cases the appellants asked for pardon, probably in relation to his previous position, or complained about breaches of law, in several cases they even authorised the Public Defender of Rights to represent them before courts of all degrees in penal proceedings, even before the Constitutional Court. The method of dealing with these motions is the same or adequate to the one described at the beginning of this chapter. Some cases from this area did not fall within these typical cases thanks to some of their details and for this reason their settlement was a great contribution to the knowledge of the appellant as to further proceedings even though they were beyond the competence of the Public Defender of Rights.

## Property, family, private and other matters

1125 motions

As the provided statistics show, this is the area of legal relations for which the Public Defender of Rights is not competent, these motions are most numerous and we can say that in these motions the above-mentioned inoculation of various types of individual stages of legal relationships appears rarely. The Public Defender of Rights attributes this both to the distorted media picture of the institute of the Public Defender of Rights as the “advocate of the poor” at the time of adopting the law and to the persisting low legal awareness in the public (as well as some attorneys) as to his competence. The statistical data on motions in this sphere show that the continuous broad information and educational activity of the Public Defender of Rights in public media and the establishment of permanent telephone and internet information mentioned at the beginning of this report gradually led to the reduction in the number of motions in this sphere. At the same time, we can say that this it is in this sphere

where the Public Defender of Rights takes full advantage of the process where along with the rejection he tries to explain to the appellant his/her legal position and tries to outline alternative solutions while these motions often link to the above-mentioned information on possible legal remedies, if they still apply at the time of reviewing the motion. In most cases the appellants are recommended to seek legal aid and if they cannot afford it, contact some free civil or legal centres the lists of which the appellant receives in an attachment.

We can say that as to the subject or the content, this sphere concentrates all variants of property, family and other private relations and disputes one can imagine.

### **III. SELECTED KNOWLEDGE OBTAINED BY THE PUBLIC DEFENDER OF RIGHTS ACTIVITIES AND PROPOSALS FOR LEGISLATION CHANGES**

In this part of the Report we therefore present for consideration the generalised knowledge resulting from the activities of the Public Defender of Rights in the first year of his activities. The findings and considerations contain information on certain problematic issues that the Public Defender of Rights cannot resolve and that are considered to be the cause of frequent justified dissatisfaction of persons who turned to him with the condition of legislation and, at a general level, with the administration of public affairs. The Public Defender of Rights presented to the Chamber of Deputies following problems, who should try to resolve them:

- Status and activity of the Land Fund of the Czech Republic,
- procedure of agricultural cooperatives in settlement of property interests of beneficiaries,
- problem of securing the realisation of sentence of banishment and institute of banishment custody,
- problem of consequences of the separation of the Czechoslovak Federation in the area of social security, setting off worked hours according to art. 20 of the treaty between the Czech Republic and Slovak Republic on social security,
- realisation of the right to employment by Employment Offices according to the Act No. 1/1991 Coll., on employment, as amended,
- persisting negative consequences of competence conflict in water management,
- status of beneficiaries receiving reimbursement for loss of earnings after termination of sickness leave.

In the following part of this Report are proposed possible amendments of Law on the Public Defender of Rights, especially in connection with the reform of public administration.

## IV. CONCLUSION

In conclusion of this report it is necessary to note that this is the first report presupposed by the provisions of § 23 para. 1 of the Law on the Public Defender of Rights. It summarises the knowledge obtained in the first year of existence of this institution, that is a year in which it was still in the process of construction in all aspects.

The knowledge and experience collected in this atypical period were difficult to sort and evaluate as a complex and this is also why general conclusions cannot meet the standard of absolute validity, mainly with respect to the future development.

In general, we can say that the application of law does not cause more serious problems in meeting the set goals. The material provision of the work of this institution in conditions defined by law on state budget for 2001 was sufficient.

The definition of the scope of competence of the Public Defender of Rights in § 1 of the Law on the Public Defender of Rights on one hand fully consumed the working capacity of the existing number of staff (provided that individual agendas do not increase significantly). On the other hand, given the knowledge obtained through the activities, including media coverage, it is obvious that the definition of the scope of competence is perceived negatively as it does not extend to socially and economically sensitive areas of self-government bodies in their scopes of responsibilities, namely issues related to the housing policy, municipal property management as well as the work of institutions such as the Land Fund, National Property Fund, Provisory Fund of Trustee Saving Banks and professional self-government bodies.

As regards the efficiency of work in individual cases, we can say that the approach of individual state administration bodies to cooperation and addressing individual cases was mostly accommodating and correct.

The actual work of the Public Defender of Rights proved to be more demanding on time and technical details than expected because the need to identify the actual state of the affairs and the principle of hearing both parties in the conditions of a relatively large number of cases create a rather complex process with a number of activities. A more operative process, i.e. other than written, is likely to require a significant increase in the number of staff and related costs of ensuring interventions on site and on site investigations.



The present state of the affairs (as at 31 December 2001), which is supposed to be transitory to some extent and which was characterised by the need to process agenda gathered in the first months of the year, puts at doubt the efficiency of this institution as far as the promptness and length of process are concerned and partially it limits the possibility to review negative phenomena in deeper relations in individual cases.

Since the Public Defender of Rights believes that a functioning office was successfully built in the past period, there is a reason to believe that in 2002, in relatively stabilised conditions, the deficit in processing the agenda will be successfully compensated and attention will focus not only on the negative phenomena and their remedy but mainly at the causes of these negative phenomena with and even more significant and demanding requirements will be placed for potential system, personal or methodological changes in state administration and its divisions. We have to bear in mind that from this perspective the year 2002 appears to be a period atypical from the point of view of the long-term development as this is the year preceding the implementation of the state administration and administration judiciary reforms.

While we cannot exclude the occurrence of different negative phenomena in new structures and new competencies accompanying the reform of state administration resulting from the novelty of this arrangement and thus an increased number of complaints and motions, as regards the administration judiciary, we cannot expect a significant limitation of the agenda. The means of the Public Defender of Rights in the area of correcting proceedings under way will probably remain more operative and less formal than the means of the administration judiciary in the area of inactivity or delays in proceedings. As regards concluded matters, a revision of a matter as part of a judicial review will not exactly mean an exclusion of the possibility of another intervention and, on the contrary, in the conditions of the Public Defender of Rights authorisation there will be the possibility of a more thorough and complex investigation of the causes for negative phenomena in a broader context.

Brno, 26 March 2002

JUDr. Otakar Motejl  
The Public Defender of Rights

**The Public Defender of Rights' Annual Report  
on Activities During the Year of 2001**

**summary**

**Published by Masaryk University Brno  
for the Department of the Public Defender of Rights, 2002**

**1st edition, 2002 120 copies**

**Printed by Vydavatelství MU, Brno-Krávı Hora**

**55-994A-2002 02/58 20/RMU**

**ISBN 80-210-2952-8**