

I. PUBLIC DEFENDER OF RIGHTS AND HIS DEPARTMENT IN 2002

1. BASE SITUATION

The summary annual report of the Public Defender of Rights' (hereinafter referred to as the Defender) activities for the year 2001 (Parliament Press 1288), discussed and acknowledged by the Chamber of Deputies of the Parliament of the Czech Republic in the course of its meeting 49, comprised description and balance of construction of the Department of the Public Defender of Rights (hereinafter referred to as the Department) in the course of the first year of its existence.

The Report submitted hereby covers the report of activities of the second year of existence of the institution, the target and mission of which is quite unique in the system of institutions developing their activity in the public life, having neither any tradition nor any comparable form.

From this point of view the year 2002 was the period of continuing construction and creation. Within the framework fixed on the one side by provisions of the Act No. 349/1999 Coll. on the Public Defender of Rights, as amended, and on the other side by the approved section No. 309 of the Act No. 409/2001 Coll. on the state budget of the Czech Republic for the year 2002, the number of specialists of the Department was completed and the computer programs of dossier/file processing were specified more precisely, particularly in view of their break down by the content and the method of settlement so that the improved system of processing and filing might be applied since 01.01. 2003.

2. STAFF

As many as 88 specialists were employed as to 31.12. 2002, of which 56 are focused directly on settlement of the motions (of which 38 lawyers in the field of material competence and 14 employees in the field of administrative and file service). Experience of the preceding year confirmed the necessity to extend the number of the specialized staff. Should the intention of the law be met, a number of motions and claims seem to require a relatively extensive and varied form of collection of relevant information (study of files, information interviews, local investigation, participation in consultations and meetings), representing the inevitable precondition for the most objective evaluation of individual cases. While resolving individual complaints, we were, are and will be anxious not only to establish the pointed out negative phenomenon, but also to investigate, whether it was a rare and non-standard situation or whether the situation is of general nature, prevailing in the practice.

In the course of 2002 cooperation with external specialists of the Faculties of Law of the Masaryk and Charles Universities went on. The cooperation is realized on the one hand by individual consultations and on the other hand by participation of the specialists in regular seminar meetings of all specialized organized monthly.

The agreement made with the Faculty of Law of the Masaryk University concerning the specialized practice of the students of the master study schedule was fulfilled even in the course of 2002.

3. INFORMATION ACTIVITIES

The annual report of the Defender's activities for the year 2001 published on the Internet met with a relatively great response of the professional public, even from abroad.

The international one-day scientific conference "Position, Standing and Role of the Defender in the Democratic Society", organized on 14 May 2002 and based on the annual report, heard a number of specialized papers and discussions. Proceedings of the conference, its course and results, were published as well. Organization of a similar conference is assumed in the course of 2003.

The Defender organizes monthly balance press-conferences. The Defender, his deputy and a number of other specialists of the Department, spoke, 36 times in total, in mass media, the "public-service" ones as a rule.

The information leaflet describing the Defender's competence and scope of activities has been redesigned, the new design also comprises the form for raising the motion. Detailed information and data describing the Defender's activities are available on the web sides (www.ochrance.cz). The web sites were visited by ca 40 000 persons in the course of 2002.

The information telephone line, where the Department specialists, being on continuous duty, not only grant general information, but also answer partial questions, has been implemented and stabilized since 01.01. 2002. The line is very busy and as many as 3250 answered questions were registered in the course of 2002.

The system of acceptance and settlement of the filings by the electronic mail, incl. the electronic signature, has been introduced since 01.20. 2002.

The extraordinary information telephone line serving for the needs of the injured people was established in the course of the floods in summer 2002. The line was active from 19 August till 16 September 2002. It was utilized by 437 callers who were granted the topical information and answered the questions in the sectors of social security/welfare, labor law, insurance and building procedure in most cases.

4. COMMUNICATION WITH THE CHAMBER OF DEPUTIES OF THE PARLIAMENT OF THE CZECH REPUBLIC

Regular quarterly activity reports discussed by the Petition Committee were submitted pursuant to provisions of § 24, item 1a) of the Defender Act. The Petition Committee of the Chamber of Deputies discussed the report for the third quarter 2002 in the course of the way-out meeting organized on 30 October 2002 in the Defender's headquarters. The draft budget for the year 2003 was also discussed by the Petition Committee.

The Defender and/or some employees of his Department have participated in several seminars or public hearings organized both by the Chamber of Deputies and by the Senate of the Parliament of the Czech Republic.

5. BUDGET AND ITS DRAWDOWN

The budget approved for the year 2002 (the budget section 309) anticipated the expenses and costs at the total level of CZK 80 872 000. 82,42 % of the sum above were drawn down and the saved balance at the level of CZK 14 215 181 was returned. The shown saving was reached particularly on the side of liquid assets, i.e. staff salaries and other personal expenses in most cases. The obtained saving follows from the age structure of specialists and other staff members of the Department - the majority of employees are assigned lower salary brackets - and from the number of employees lower than the set limits.

6. INTERNATIONAL CONTACTS

In the course of 2002 the Department continued developing international contacts, both bilateral and multilateral ones.

The Defender was visited by the Vice-Premier of the Slovak Republic for Human and Minority Rights, by the newly elected Ombudsman of the Slovak Republic, representatives of the Supreme and Constitutional Court from Japan, representatives of the Constitutional Court from Hungary, representatives of the Supreme Court from Poland. The Deputy Ombudsman from the Committee for Local Administration in Great Britain, Peter MacMahon, Representative for Human Rights of the Russian Federation, Oleg O. Mironov, Ombudsman of the Slovenian Republic, Matjaž Hanžek and Ombudsman of the Netherlands, Roel Fernhout, spent several days of their work stay in the Department.

The Defender accepted the invitations and realized work visits of the Romanian Ombudsman, Baltic Ombudsmen in Lithuania, Latvia and Estonia. The Defender took part in the conference "Role of Ombudsmen in Protection of Human Rights", organized by the Council of Europe in Lithuania.

The Deputy Defender took part in the 6th European Conference of Ombudsmen in Poland and in the annual meeting of the members of the International Ombudsman Institute in Slovenia.

Head of the Section of Subject - Matter Competence and Head of the Section of Administrative and File Service visited the office of the Polish Ombudsman to familiarize themselves with the technology of processing and statistic filing of motions.

Representatives of the Department took part in the seminar "Appeals and Opportunities for Promotion and Protection of the Children's Rights in the Central and Eastern Europe" organized by UNICEF in Poland.

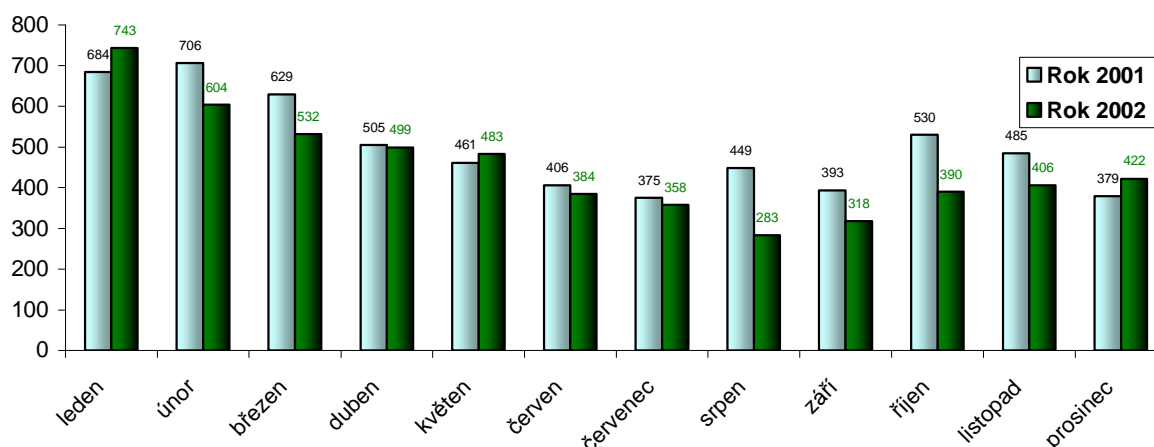
We can assume that the international contacts will be developed at the comparable level as a minimum in the course of 2003, we can even await their moderate extension, particularly in connection with the Department bidding for membership in two international organizations associating institutions of similar nature (International Ombudsman Institute a European Ombudsman Institute).

II. SUBJECT - MATTER COMPETENCE EXERCISE

1. GENERAL PART

In the course of the second year of existence of the Department the motions and complaints addressed by the citizens also covered all sectors and fields regulated by the legislation as well as other social relations, which the natural and legal entities participate in directly or which concern or affect them both for subjective or objective reasons. The Defender commenced examination on his own initiative in 36 cases, particularly where the established facts were serious to such an extent - though the appellant did not ask for protection - that the Defender considered them urgent for investigating. In the course of 2002 the Defender gathered adequate volume of information and data to be able to generalize the established knowledge more thoroughly. These issues are accommodated in the separate part III of the Report.

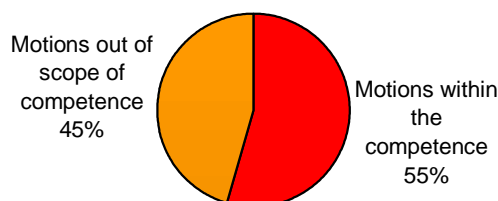
Motions accepted in the course of 2001 and 2002



	Jan.	Feb	March	April	May	June	July	August	Sept.	Oct.	Nov.	Dec.	TOTAL
Year 2001	684	706	629	505	461	406	375	449	393	530	485	379	6002
Year 2002	743	604	532	499	483	384	358	283	318	390	406	422	5422

The basic break-down and classification of submitted complaints is done pursuant to provisions of § 1. The relatively favorable environment that over 50% of complaints fell under the Defender's competence survived also the year 2002. (This figure is in most cases identical with the experience of comparable Defender Institutions in Europe or even better.)

Comparison of the Number of Accepted Motions from the Side of Defender's Competence

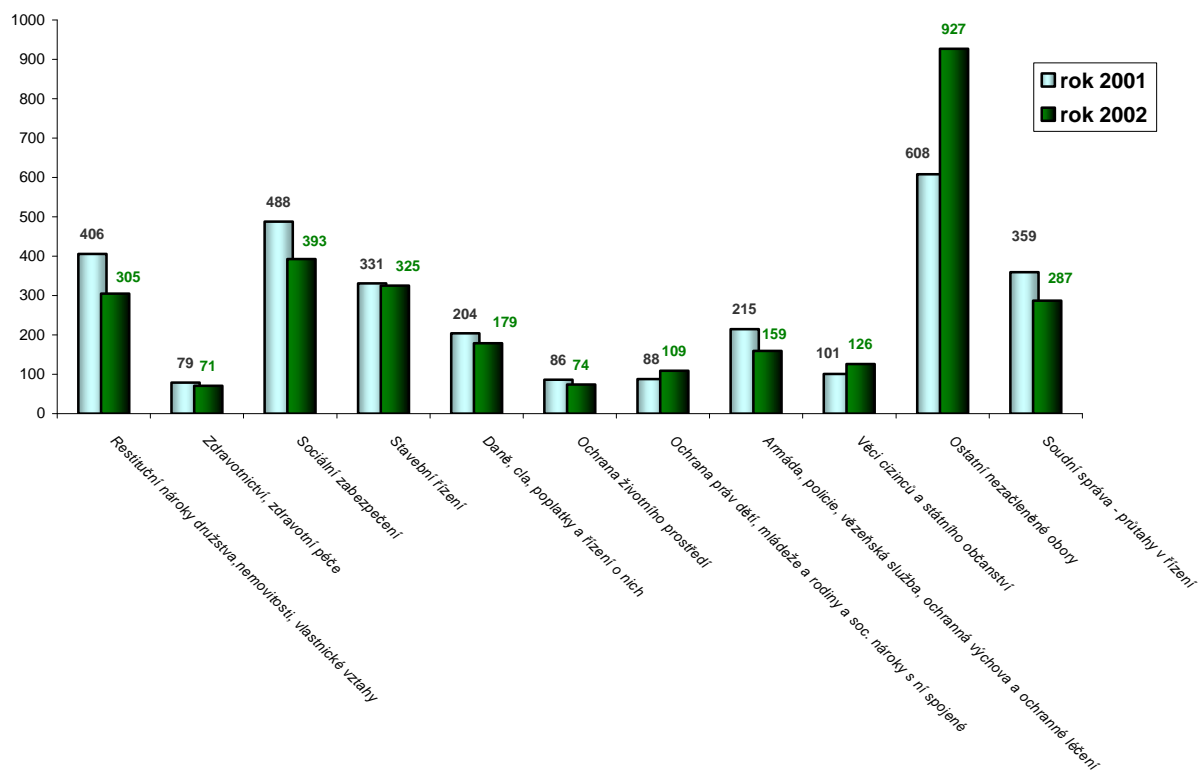


By the end of 2002 the experience gathered hitherto were subject to evaluation and assessment with statistic classification and break-down of the cases by their material nature; a new system of statistically monitored sectors, reflecting the general structure better, has been implemented and is effective since 01.01. 2003. In the first quarter of 2003 the files closed in 2001 and 2002 were classified in line with the new system, thanks to which the structure of motions in individual years will be comparable.

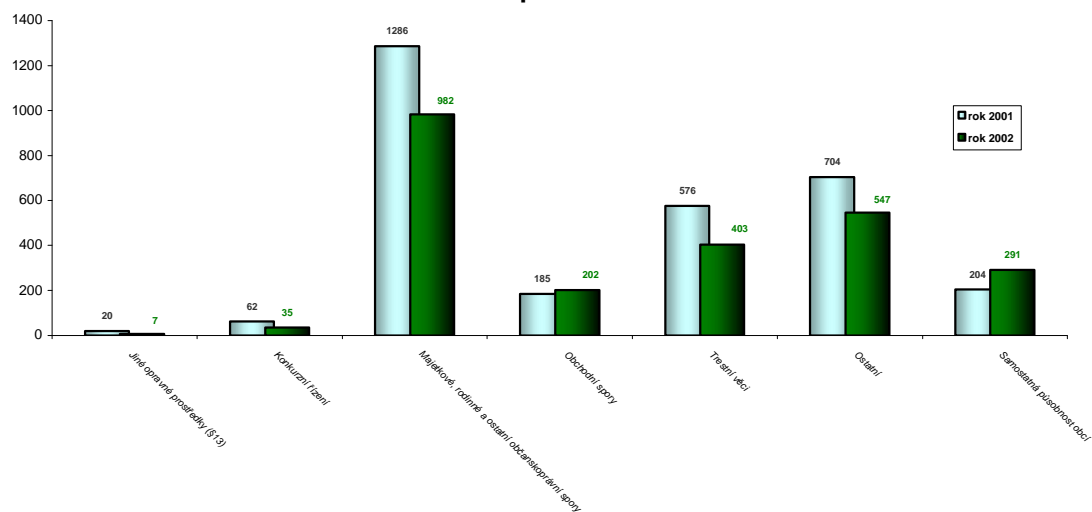
The Defender has delegated certain part of his competence to his Deputy pursuant to § 2, item 4 of the Act. We are speaking about the motions belonging to the sectors of health service and medical care, social security and welfare, protection of rights of children, youth and family and related social claims, issues of aliens, citizenship and naturalization, property, family and other civil law disputes and the motions concerning separate competence of municipalities.

This part of the submitted summary Report is focused, the preceding year alike, on examples of typical specific cases resolved by the Defender in the course of 2002 as well as on the examples selected for other reasons, based on the positive response. To adhere to the obligation of confidentiality imposed by provisions of § 7, item 2, of the Defender Act, the identification data concerning the appellants and designation of affected authorities or bodies (where possible) are clouded. For better orientation and clearness the special part of the summary Report is broken down by the specified statistic groups.

Comparison of accepted motions by sectors - within the scope of competence



Comparison of accepted motions by sectors - out of scope of competence



Legend - Diagram on the top:

Comparison of accepted motions by sectors - within the scope of competence:

State Administration of Judicial Authorities – Delays in Proceedings
Other unclassified sectors
Cases of Foreigners and Citizenship/Naturalization
Army, Police, Prison Service, Protective Rehabilitation, Social Retraining, Protective Medical Treatment
Protection of rights of children, youth and family and related social claims
Environmental protection
Taxes, customs duties, charges and related proceedings
Building permit procedure
Social security and welfare
Health service, medical care
Restitution claims, cooperatives, real estates, ownership relations

Comparison of accepted motions by sectors - out of scope of competence:

Separate competence/powers of municipalities
Others
Criminal cases
Business disputes
Property, family and other civil law disputes
Bankrupt proceeding
Other remedial measures (remedies) (§ 13)

2. SPECIAL PART - SELECTED CASES WITH COMMENTARY

2.1. Motions Within the Scope of Defender's Competence

2.1.1 Restitution Claims, Cooperatives, Real Estates, Ownership Relations

In the course of 2002 as many as 305 motions were registered in this field.

Restitution Claims

Motions of the citizens approaching the Defender with the application to assist in raising the restitution claims and payment of compensation, have a common denominator in most cases, namely incorrectly raised restitution claims in the 90th, either pursuant to irrelevant restitution act or to incompetent organization, authority, body, and expired deadlines for laying the claim which claims were construed lapsed in most cases. The Defender is also approached by the people not incorporated among beneficiaries, because they failed to meet the requirements fixed by the law or because no restitution laws covered their specific situation. The investigating competence of the Defender is thus focused particularly on reveal and subsequent elimination of unclear or dual interpretation inside the restitution and related regulations by the competent authorities in order to examine the rights of beneficiaries.

The motion, file No. 464/01/VOP/PL

The county land registry collecting arrears of the assigned price proceeded against the law, because it tried to collect the arrears without any proceeding only upon its own decision, namely in the form of deductions from F.Š. pension. The decision is of the character of a mere notice and therefore cannot be considered the direct execution instrument. Taking in view the six-year period which had already expired, the authority in question had no other possibility, but to express its apology to Mr. F.Š. The authority now proceeds in conformity with relevant legal regulations and methodical instructions of the Ministry of Agriculture.

The motion, file No.: 5542/2001/VOP/BK

The Defender has stated deviation of the Ministry of Finance interpreting provisions of § 11 of the Act No. 87/1991 Coll. on the out-of-court rehabilitation in connection with settlement of the complaint concerning rejected claim for return of the purchase price. The Ministry has not acknowledged its lapse, but Mr. K.Č claim has been satisfied, based on the Defender's intervention.

Claims arisen from transformation of agricultural and other cooperatives

This sector is affected by the real current situation connected with settlement of the ownership interest in the cooperatives, because mass liquidation of the obliged entities and subsequent declaration bankrupt exclude

practically any possibility to payment of the adequate value of the ownership interest without relevant change of the valid legislation.

The motion, file No.: 4403/2002/VOP/PL

The claim of the beneficiary for settlement of the ownership interest in the agricultural cooperative arisen from the restitution act is in fact uncollectible due to purposeful practice of the cooperative and the existing legal regulation.

The motion, file No.: 4183/2002/VOP/PL

Settlement of the ownership interest in the agricultural cooperative cannot be done, because the cooperative pointed out the necessary seven-year period after expiration of which the interest can be settled, but before expiration of the period above the cooperative declared itself bankrupt. The beneficiary waiting for seven years was informed about the bankrupt after the expiration of the seven-year period, i.e. the receivable has not been applied for in due time.

Ownership relations/Titles to real estates and their incorporation into the real estate register

The Defender meets inactivity in proceeding and non-uniform approach of different land registries or of the staff of the same authority in the field of decision-taking. A great part of motions is represented by complaints about procedure of land registries pursuant to § 8 of the cadastral act, i.e. correction of a mistake in the land register, resulting in change of the area of the owner's land and/or in change of the land boundaries. A fair number of complaints attacks survey of boundaries by private geodesic companies and subsequent incorporation of the measured data into the land register; neither the land registries nor the superior authorities are entitled to "review" such measurements, which is often the wrong opinion of the people.

Motions, file Nos.: 1838/2002/VOP/ŠS, 5528/2002/VOP/ŠS and others

The Defender has decided - at the same time with examination of Mr. P.Ž complains about delays in proceedings in the Land registry P-city - to examine repeated complaints about procedure and delays in proceedings in the Land registry P-city, particularly non-adherence to provisions of § 49 of the administrative code, determination of deadlines for settlement of the case. Examination resulted in removal of management of the authority by the superior body. The next contact with the new management of the authority (settlement of motions) has established certain improvement compared with the former difficult situation, particularly reduction of the average term for settlement of the proposal for incorporation by one month, awareness of the public about the situation in the authority, incl. the statistic data confirming the rising number of filings and the current term of proceedings, on the web sites of the authority.

The motion, file No.: 1343/2002/VOP/ŠS

The Defender has established non-uniform interpretation of provisions of the administrative code by the Land Registry P-east, connected with specific features of the procedure for incorporation of the rights pursuant to relevant regulations. The adopted corrective actions guarantee that the non-uniform procedure in question, creating doubt about objective decision-taking and corruption environment, will not repeat. As no affected owner of the real estate, who had obtained the ownership right and title due to incorrectly issued decision, approached the Defender, the specific consequence of the lapse of the authority on their rights cannot be assessed for the time being.

Activity of Land Registries

The motions towards the land registries comprised mainly the complaints about the course of land consolidation/re-allotment and/or about lack of activities. Realization of land re-allotment depends for the time being on the funds earmarked for this purpose. The owner of the land does not have the real chance to realize of land consolidation, despite fulfillment of the conditions and terms for commencement of the complex land consolidation. In this case the land office is obliged to start the land re-allotment, but it is not realized due to lack of funds as a rule. The legislation admits the possibility of realization of the re-allotment at the applicant's cost, but this solution is unacceptable for the majority of applicants. Unexecuted land re-allotment leads to subsequent exacerbation of relations between the owners of adjacent lands.

Motions, file Nos.: 1857/2002/VOP/PL, 2892/02/VOP/PL and others

The person who the land was returned to in the 90th, has not reached its set-out yet contrary to many years' reminders raised to the land register. In view of the existing legal regulation the Defender was unable to help.

2.1.2 Health Service, Health Care

In the course of 2002 as many as 71 motions were registered in this field.

The motions relating to the field of health service are often unique by their content, but nevertheless we can point out two most typical groups of them. The first group is represented by the motions applying to the rights and duties of the insured persons towards the health insurance companies and procedure of the health insurance companies towards the policy holders in questionable cases of settlement of the insurance premium and penalty. While examining these motions, the Defender reviews particularly practice of the health insurance companies in the administrative proceeding, particularly whether the health insurance company in question adhered to valid legal regulations and principles of the democratic constitutional state and good management.

The second most frequent groups of motions covers the rights and duties of persons and state administration bodies arising from the public health insurance and connected with granting the health care, most frequently defective

examination of complaints relating to the granted health care, incl. examination of the patient's death, complaints about unrevealed information from the documentation to the patient, etc.

While examining one of the motions, the Ministry of Health, adhering to the mandatory non-disclosure pursuant to the Act on Health Care, refused the assistance. The Defender had repeatedly approached the Minister with the application to express the written standpoint to the factual and legal issues of the matter in question and to mail the dossier. Because the application was declined, the Defender has applied the procedure pursuant to § 20 of the Act, disclosed the case and addressed the Government in this sense.

Relations of health insurance and procedures of health insurance companies towards insured persons

The motion, file No.: 2150/2002/VOP/EH

The doctor-specialist has addressed the Defender with the application to intervene in the matter of application of the Regulation of the Ministry of Health No. 458/2001 Coll., which the level of health care settled from the public health insurance is determined by, incl. the regulation limits for the first six months of 2002. The system of regulations and bonuses, fixed by the Regulation, pushed the health care providers to proceed non lege artis with all consequences arising from it. The General Health Insurance Company had accepted the Defender's conclusions and informed him that the health insurance companies have agreed with representatives of health care providers that regulations and bonuses for prescribed drugs and for the asked for care will not be applied.

The motion, file No.: 3308/01/VOP/EH

After intervention of the Defender the health insurance company has accepted the principle that the health certificate will be issued to the insured as soon as possible in case of transfer of the insured person from another insurance company. If it is not evident who is the insurance premium payer on behalf of these insured persons, the health insurance company shall exert every effort to establish the necessary data about its insured within the shortest possible time period.

Rendering of Health Care and Activity of Public Health Protection Bodies

The motion, file No.: 4848/2001/VOP/TL – no anonymity, because revealed

The Government was of the same opinion as the Defender and delegated the Minister of Health to submit the Government draft change of the Act of Health Care of the Population in line with the Defender's standpoint concerning disclosure of the information from the health history to the relatives about causes of death of the deceased person. The Government has also charged the Minister of Justice with the obligation to inform František Stojkovič' parents about the causes of his death and to proceed in the same way in similar cases.

The motion, file No.: 5586/2001/VOP/MV

While examining the complaint about high noise level on the site, the Defender established negative competence conflict between the public health protection bodies and building authorities as well as bad communication between individual stages of public health protection bodies. After his intervention the administrative authorities have agreed on mutual assistance in solution of the issue of high noise level on the site, both at the stage of assessment of the project for purpose of issue of the planning permit, and in the course of state supervision over the projects in progress. The agreed procedure should prevent re-occurrence of this situation in the future.

The motion, file No.: 5287/2001/VOP/EH

The process procedure of the Ministry of Health, settling the complaint about the procedure of the health facility providing the health service, was breached and at the same time showed the symptoms of not good management. Insufficient appellant awareness about carried out control and inspection actions and particularly absence of understandable definition of specific conclusions has raised a justified appellant's doubt about quality of carried out inspection. Because it was quite evident that the appellant, being the layman, has interpreted certain terms or events incorrectly, the ministerial staff failed to clarify this misunderstanding to the appellant, at least briefly, and therefore the appellant had addressed them repeatedly. The Minister of Health has accepted the Defender's conclusions and adopted the measures which should prevent re-occurrence of such complaints in the future.

2.1.3 Social Welfare

In the course of 2002 as many as 393 motions were registered in this field.

In the field of social welfare the Defender deals with miscellaneous and complex issues. We can say that the following groups of cases belong to the principal ones:

- in the field of social security benefit and social care the motions concern particularly non-fulfillment of a certain requirements, fixed by the law, for award and payment of the benefit, particularly if the applicant is not entitled to the benefit by the law and it is solely up to the competent authority whether the benefit will be awarded and at what level;*
- the field of medical advisers in the field of social security is not so numerous as the preceding field. The Defender rather meets the complaints concerning full or partial invalidity disallowed by the doctor; this field (invalidity) is out of scope of Defender's competence;*
- in the field of pension insurance the complaints most frequently address disapproval with assessed pension caused mainly by unincorporated period employment or the period of alternative employment. A great part of motions concerns disapproval with rejected application to allow full or partial invalidity, as mentioned above. This field also covers*

dissatisfaction with calculated pensions after the relevant legislation was amended, which is particularly the case of widow's pensions or cancellation of the institute of social pension or wife's pension;

- in the field of pension insurance with foreign element we can particularly speak about application of the Social Security Agreement made between the Czech Republic and Slovak Republic. Application of similar agreements with other countries or applications for allotment of the claims where a similar agreement is unavailable are rather a side issue;*

The Defender establishes deviations in the field of social security both by applying legal regulations (incl. their construction) and mainly by adhering to the principle of good management.

Claims arising from pension insurance and relevant proceedings

The motion, file No.: 429/2002/VOP/TŠ

The Defender has established deviation of the Czech Social Security Department in Praha (hereinafter referred to as ČSSZ). The Department decided to reject Mr H.J. application for allotment of a supplement to the pension for the time period corresponding to the whole term of custody and imprisonment of the person above, thus breaching provisions of § 25 item 7 of the act No. 119/1990 Coll. on judicial rehabilitation. Based on the Defender's finding, the internal complex reviewing was initiated by ČSSZ which covered all decisions issued in connection with the act on judicial rehabilitation.

The motion, file No.: 2355/02/VOP/PK

The Defender has established deviation of the Czech Social Security Department (hereinafter referred to as ČSSZ) concerning its approach to acceptance of general power of attorneys. According to the Department the general power of attorney for representation in the matter of determination of the basis for assessment of social security insurance is insufficient. According to the Defender's opinion this approach contradicts the valid legislation, because the citizen was charged by the obligation unknown by the relevant act. The Defender's interpretation of law has been accepted by the competent territorial branch of the Department fully and the corrective measures have been adopted with immediately effect.

The motion, file No.: 4440/02/VOP/PK

The Defender has established deviation of the Czech Social Security Department (hereinafter referred to as ČSSZ) that rejected issue of the decision concerning the application submitted by the appellant pursuant to the Act No. 261/2001 Coll. with the substantiation that according to its legal opinion the administrative proceeding has not been initiated at all and therefore the meritorious decision cannot be issued in the matter in question. Upon the Defender's intervention the Department has accepted his legal opinion and continued proceeding in line with the legislation.

The motion, file No.: 1823/2002/VOP/EH

The Defender has resolved the complaint of a deaf citizen whose rights seemed to be harmed by proceedings of the members of the expert board of the Ministry of Labor and Social Affairs. Though the legislation was not breached the method of action contradicted the principles of good management. The Defender's intervention has improved adherence to the Ethic Code of the employees of the Ministry in question and the Ethic Code of the public administration staff at all.

Social Security Benefits of those in Need

The motion, file No.: 3820/2001/VOP/ZV

The Defender has established deviation of the department of social affairs of the municipality of the city part, deciding allotment of the social welfare benefit. The welfare workers have conditioned allotment of the social security benefit for Ms. I.K. by execution of the agreement with the subject matter of return of one part of the awarded social welfare benefit, namely upon court determination of the sum of alimony for her child. The Defender has considered this condition illegal and imposed the corrective measure to the office in question.

The motion, file No.: 1816/2002/VOP/ZV

The Defender has established deviation of the department of social affairs of the municipality of the city part that fixed conditions for allotment of the benefit for those in need (Mr. K.H.) in contradiction with legal regulations. The authority in question has acknowledged conclusion of Defender's findings, re-evaluated the conditions and paid off the benefit to Mr. J.H. retroactively. At the same time both the authority and the superior body have adopted the measures preventing re-occurrence of similar cases in the future.

Issues of Nursing Homes

The motions, file No.: 944/2001/VOP/ZG, file No.: 2986/2001/VOP/ZG

The Defender has reached enforcement of the drafted corrective measure in the matter of change of the Regulation No. 82/1993 Coll. on settlement for stay in the nursing homes. The Legislative Department of the Ministry of Labor and Social Affairs of the Czech Republic has asked the Defender to notify the comments to the legislative drafts of amendments of the Regulation. The Ministry has incorporated all Defender's comments concerning settlement for the basic care and services granted to inhabitants of old people's homes /boarding houses and compensation for non-taken meals, just as proposed by the Defender based on investigation of certain motions in 2001.

2.1.4 Building Permit Procedure

In the course of 2002 as many as 325 motions were registered in this field.

The motions addressing actions of the authorities in the field of construction legislation can be broken down into five groups: territorial planning, planning permit, building permit and final approval procedure, removal of structures, care for real estates - monuments and others. The effective conclusion of examination in the field of land/territorial planning becomes complicated by the dual existing mode, i.e. preparation of the planning permit documentation comes under the Defender's competence, whilst the approval procedure itself (exercise of the independent competence of relevant authority), excludes the Defender's intervention. Within the scope of the second group the Defender is focused on check of fulfillment of procedural conditions as well as material and legal conditions applicable to all parts of the building procedure pursuant to the public construction act as well as in line with general principles of the administrative proceeding. Making the matter good is often complicated by the time delay after which the people turned to the Defender. In some cases the terms within which the issued administrative decisions can be reviewed had already expired. Nevertheless the Defender considers desirable to affect the building authority practice at least for the future. Examination of the procedures concerning removal of structures supports the problematic existing legislation which - from the historical point of view - opens a wide large space for legalization of "black construction works" which does not contribute to the necessary discipline of the constructors and leads to distrust of other participants of the proceeding towards the building authorities, guarantors of legality in the field of public building law. The building authorities do not utilize the possibility of initiation of the hearing of an administrative infraction for breach of the building law.

It is in general possible to state successful elimination of inactivity after the Defender's intervention and on the other side continuance of illegally interrupted procedure, e.g. due to incorrectly assessed preliminary issue.

The motion, file No.: 1258/2002/VOP/MH

The Defender has established deviation of the building authority that did not issue the administrative decision concerning rejected consulting of the work documentation, thus denying the appellant's right to appeal in violation of the relevant act. Based on the Defender's intervention the building authority in question has acknowledged its lapse and promised to contact the appellant with the proposal to submit a new written application which will be re-decided. The Defender was also assured that similar cases will be executed correctly, i.e. the administrative decision will be issued which can be appealed against by the applicants claiming consulting of the work documentation.

The motion, file No.: 3501/2002/VOP/MH

The Defender was addressed by Mr. J.S. with the application to help, namely in connection with worsened conditions of living arisen from operated air conditioning unit in the grocery placed in the multifunctional house. The appellant objected that installation of the AC unit contradicts the building and legal regulations and that operation of the unit impairs comfort of living. Examination of the Defender resulted in eliminated inactivity of the building authority.

The motion, file No.: 3813/2002/VOP/MH

The Defender dealt with the motion in which the appellant (a number of other appellants alike) asked the Defender's intervention, because her disapproval with non-incorporation of her land into the municipal plan as the building land was fruitless and vain. Compared with the application, the land in question was included among the public greenery which the appellant considered as damage and limitation of her ownership rights. The municipal plan is worked out as the delegated authority, the municipal plan is approved - within the scope of the independent competence - by the municipality which is not the state administration body and therefore the Defender is unable to assist the claimant at this stage of proceeding. Decision of the local council on the final municipal plan and relocation of the land among the lands subject to development is therefore out of scope of Defender's authorization, taking in view the competence vested to him and limited by the law.

The motion, file No.: 3753/2002/VOP/JS

The building procedure interrupted without justification based on the presumed preliminary issue can be resolved by submission of the motion for reviewing legality of such decision in the proceeding (out of the appellate proceeding). The court decision of the case issued without undue delay can become the effective defense leading to minimization of consequence of the appealed interruption.

The motion, file No.: 4794/2001/VOP/MH

Mr. F.B. turned to the Defender with the application to investigate practice of the Regional Department in Z., the Department of Culture, in connection with determination of the protective zone of the premises of the former monastery pursuant to the Act for Preservation of Monuments. Due to inadequate link of two stages of institutionalization of the monuments of culture and due to their incorrect incorporation into the list of names pursuant to the Act No. 22/1958 Coll. it is impossible to carry out precise and clear territorial identification of this cultural monument. This result was notified by the Defender to the minister of Culture.

2.1.5 Taxes, Customs, Duties and Relevant Proceedings

In the course of 2002 as many as 179 motions were registered in this field.

Taxes and Taxation Procedure

In the field of taxes the Defender was addressed by the cases covering nearly all possible actions, proceedings and decisions of the tax administrator. The people do not attack (retrospective) tax assessment itself but also complain about the tax administrator's procedure while tax auditing or local examining, about rejection to prove invalidity of the decision, they attack decision on imposition of penalty, negative decisions concerning the application for extension of tax payment or its payment in installments, remission of taxes, remission of

arrears of taxes, tax securing, establishment of the right of lien, decision on use of tax overpaid for settlement of arrears of another tax, rail against execution orders, decisions with rejected application for permitted renewal of the proceeding, object to inefficiency of delivery of the decision and/or complain about inactivity of the tax administrator - non-issue of the decision of the raised remedy. A number of motions comes from the mandatory guarantors asked by the tax administrator to pay the due tax on account of their guarantee. One part of the motions comprises the application for advise and/or even legal representation in the case. Motions for legislative changes are also not exceptional.

Motions, file No.: 129, 954, 1375/2002/VOP/BK, and a number of others

A number of motions were addressed to the Defender by the persons - the guarantors - asked by the tax administrator to pay arrears of the real estate transfer tax. The obligation of guarantee arises from the law on the inheritance tax, gift tax and real estate transfer tax. The obligatory guarantee overtakes the tax subjects as a rule and therefore they do not utilize the possibilities (due to being unfamiliar with them) how the guarantee obligation could be prevented or considered it in advance. The Defender can only contribute to improvement of legal consciousness of the subjects.

Customs Duties and Customs Procedures

The motions in the field of customs duties are not very numerous, nevertheless their processing is rather exacting and demanding, namely due to complexity of individual cases and frequency of deviations of competent state administration authorities, starting by the first instance bodies and ending by the central and superior ones. Many complains concern the cases with completed or pending criminal proceedings. Cooperation with the Prosecuting Attorney's Departments is developed at the non-criminal level (action in serious public interest in the administrative justice) as well as at the criminal level (the first case below). It is quite typical for these sector that deviation of the state administration bodies affects a certain group of population of businessmen. Owners of "duty free shops" (the last case below) and the so called drivers - clearance agents (still pending case) belong to the groups in question. Examination of the procedure of customs bodies is also specific, because subsidiary application of several procedural regulations - the act on administrative proceeding, the act on administrative infractions and the act on customs duties and fees - can be taken into account and considered for individual proceedings.

The motion, file No.: 3398/2002/VOP/PJ

The Defender has revealed breach of the customs act in the matter of issued permission not to secure the liability to customs duty - incorrect procedure of the Ministry of Finance, the Customs Directorate General. The Defender considered the procedure illegal, contradicting section 2, par. 3 of the Constitution of the Czech Republic, and section 2, par. 2 of the Charter of Fundamental Rights and Basic Freedoms. Established actions in excess of the powers was notified by the Defender to the metropolitan Prosecuting Attorney's Department in Praha. The report of the committed crime was referred to the high Prosecuting Attorney's Department in Praha, the Department of Serious Economic and Financial Crimes.

The motion, file No.: 2931/2002/VOP/PJ

Based on the Defender's motion the notice board of the branch customs office in R. was cleared of the misleading notice for the clearance agents published by this office. The examination initiated on the Defender's own initiative was focused on clarification of incorrect interpretation of the amendment to the customs act (Act No. 1/2002 Coll., section II par. 2), contained in the notice in question, and resulted in reprimand to the customs office paying inadequate attention to awareness of the public and in prevention of misleading information flows and justified fears of the clearance agents and other persons who the information are rendered to through the customs office.

The motion, file No.: 5270/2001/VOP/PJ

The Defender has initiated review of the tariff allotment of the goods by the Ministry of Finance, the Customs Directorate General, within the scope of bilateral communication with the competent authority of relevant foreign customs office, based on the result of examined motion raised by Mr. J.G. in the matter of the additionally assessed customs duty.

The motion, file No.: 1565/2002/VOP/PJ

The Defender has revealed, inter alia, drawbacks in the legal regulation concerning the customs body procedure in connection with decision of the Ministry of Finance of the Czech Republic to withdraw the permission to sell the goods free from taxes or in case of expired validity of the permission by the law. The Defender has revealed the relevant provision affecting the case in question neither in the customs act not in other legal regulations. Therefore the Defender's report has also highlighted inadequate legal regulation which cannot be replaced by internal normative rules due to the constitutionally demanded legality of state body proceeding, though the rules regulate procedures and proceedings of the customs offices in great details. As sale for the prices free from taxes in the DUTY/TAX FREE shops, placed close to the road frontier crossings, ends on 31.12 of this year by the act, possible legislation proposals are unreal.

Charges and Relevant Procedures

Motions in this sector of the Defender's activity attack mainly the method of determination of local charges and fees and their subsequent collection and recovery. Administrators of these charges are represented by municipalities in most cases. Examination of actions of the charge administrators is complicated particularly by the fact that whilst determination and collection of the local charge exercises the transferred municipality competence, thus falling to the Defender's powers fully, the original legal regulation of the charged activity itself is vested to the independent competence of the municipality where the Defender cannot intervene. Even in the regions where both functions of the municipality as above are not unified, determination of local charges and their collection is affected to a certain degree by the self-governing policy of the municipality, e.g. the municipality owning the local roads, etc.

The motion, file No.:1590/2002/VOP/BK

The appellant's motion attacks the rate of the charge applied by the administrator. The Defender has not revealed any deviation in this sense, but established certain interpretation issues connected with application of the general mandatory regulation on the basis of which the charge and its level are determined. Very serious procedural deviations committed both by the local charge administrator (municipality) and by the regional office were established, based on the available documents. The procedure and approach affected the level of the total appellant's duty to a certain degree and in a certain way.

2.1.6 Environmental Protection

In the course of 2002 as many as 74 motions were registered in this field.

The Defender meets underestimated procedural and formal aspect of the cases resolved by the relevant authorities in the environmental sector. Correction of the deviations is hardly realizable, because reinstatement is in fact impossible, taking in view infringement of the rights acquired bona fide. The authorities are not always able to assess the case complexly from the point of the of all aspects of the environmental protection and are repeatedly unable to cooperate mutually. This certainly results in inadequate justification of individual decisions and impairs trust of the population in the authorities.

The motion, file No.: 1234/2002/VOP/JC

The Defender has investigated the procedure of the Ministry of Environment connected with issue of the approval to exempt the land from the agricultural stock of land for construction of the industrial zone in the region M. and considered it in contradiction to the legislation.

The motion, file No. : 439/2002/VOP/JC

The Defender has examined procedure of the city council in R. in the matter of tree-felling. He has highlighted conflict of interests in the course of the proceeding and in this connection also the missing legal institute to express bias/unfair prejudice of the administrative body as a whole.

2.1.7 Protection of Rights of Children, Youth and Families and Relevant Social Claims

In the course of 2002 as many as 109 motions were registered in this field.

The most frequent motions, dealt with by the Defender in the sector of protection of rights of children, youth and family, are the complaints regarding activity of the bodies of social and legal protection of children. The cases of the children taken from their parents without adequate assessment of the case or for the reasons not supported by the legislation correspondingly represent the most serious and at the same time relatively frequent deviation. Prejudice of the staff of the authorities of social and legal protection of children towards any party of the case is another deviation. The prejudice can affect assistance in provision of the

contact of the legitimate person with the child, negative standpoint presented before the court, where the authority of social and legal protection of children is established the guardian, etc.

Breach of the rights in the facilities for children and youth, i.e. in the approved schools, youth custody centers and children's homes is not less important group of cases. In the course of examinations the Defender establishes serious breach of children's rights by non adherence to the legal regulations or principles fixed by international agreements which the Czech Republic is bound by. The Defender faces most frequently breach of the Charter of Fundamental Rights and Basic Freedoms and the Charter of Children's Rights, particularly their sections 3, 9, 12, 16, 18, 19 and 20. Non-adherence to the legal regulations also concerns the central state administrative authorities, interpreting them or issuing their own bylaws and internal rules.

Actions of the Bodies of Social and Legal Protection of Children

The motion, file No.: 2747/2002/VOP/ZG

The Defender's examination has established that the regional authority, the body for social and legal protection of children (Authority), made a mistake by not taking pains to cancel the custody upbringing and return the children to their father. The Authority considered placing of the children in the children's home and/or in the substitute family, adequate. The Defender's intervention was successful, the children were kept in the children's home only until their father created suitable conditions for living.

The motion, file No.: 2650/2002/VOP/ZG

The Defender has stated deviation of the staff of the district authority, the body for social and legal protection of children, that had acted purposefully, not in the primary interest of the child, in favor of the future foster parents, thus disadvantaging the child's parents materially.

The motion, file No.: 2354/2002/VOP/TL

Mrs. B.F. has turned to the Defender with the motion in the matter of forced placing of her daughter, named Midnight Storm by herself, in the nursery unit. The Defender, examining the case, has reviewed, why the district authority had raised the proposal for preliminary ruling, on the basis of which the baby was placed in the nursery unit, and considered the reasons for such intervention absolutely inadequate and insufficient. Taking in view urgency of the situation, the Defender proposed the district authority to raise the petition to the court for cancellation of the preliminary ruling without undue delay. The regional court cancelled the preliminary ruling soon afterwards.

The motion, file No.: 157/2002/ZVOP/ZV

The Defender has established deviation of the body for social and legal protection of children which had rejected the parent's application for consulting the documentation dossier, deviation of the municipality in conducting the administrative proceeding for imposition of the formative

measure pursuant to the family act and deviation in the proceeding for imposition of the parents' obligation to utilize the specialized pedagogic facility pursuant to the act on social and legal protection of children.

Activities of Approved Schools/Youth Custody Centers

The motion, file No.: 3210/2002/VOP/HV

The Defender, examining the youth custody center on his own initiative, has established serious drawbacks in exercise of the state administration by its director, relevant department of the Ministry of Education, Youth and Physical Culture of the Czech Republic and inspector of the Czech School Inspections, The drawback concerns particularly breach of the right to privacy, because the approved school had installed the camera and tapping system without any legal base for such measure. The Defender has also established breach of the child's right to contact with the parents. After the Defender's intervention the situation in the facility has been improved materially. The case is still pending.

The motion, file No.: 825/2002/ZVOP/TL

The Defender has initiated examination of the procedure of the youth custody center, exercising the custody upbringing of the underage girl in connection with her pregnancy and its termination, on his own initiative. The Defender has stated that the facility has not fulfilled its mandatory obligation to inform the statutory representative of the pregnant girl about her pregnancy. In addition to it, staff of the facility tried to influence the underage girl's decision on termination of her pregnancy. The Defender's investigation resulted in adoption of the measures by the facility in question, which might prevent reoccurrence of a similar situation in the future. The Defender also proposed the Ministry of Education, Youth and Physical Culture of the Czech Republic to adopt the measures which might prevent reoccurrence of similar situations in general.

**2.1.8 Army, Police, Prison Service, Protective Rehabilitation, Social Retraining
Protective Medical Treatment**

In the course of 2002 as many as 159 motions were registered in this field.

Conditions in Prison Service Facilities

In the field of prison service the Defender faces most frequently the applications of the prisoners for relocation into another prison. The convicted persons do not agree in their motions with the fact that the prison management has not satisfied their application or has not responded it at all.

Complaints about conditions in prisons and in the houses of detention represent another large group. The issue of breach of internal normative instructions issued by the Prison Service Directorate General of the Czech republic by directors of individual prisons can be highlighted in this connection.

The motion, file No. 2428/2002/VOP/DU

The Prison Service of the Czech Republic has acknowledged its deviation consisting in non-adherence to the re-socialization principle, when assigning the convicted to the outlet department. The Defender has stated that the principle of merits cannot be applied, when assigning the convicted to the outlet department, because the principle is not supported by the legislation.

The motion, file No.: 5785/2001/VOP/TL

Director of the prison lapsed, because he has responded neither the application of the convicted concerning permission of the visit of a sworn forensic expert who should have examined him professionally, nor the application for interruption of the service of sentence for purpose of a neurological intervention in the civil hospital. According to the Defender's opinion from the principles of good management it follows that the prisoner should have been responded and the negative response should have been substantiated and justified duly.

The motion, file No.: 4269/2002/VOP/TL

The Prison Service Directorate General of the Czech Republic has re-assessed its decision, based on the Defender's intervention and directors of the prisons were instructed they may allow visitors of the convicted to buy foodstuffs and personal consumption goods in the prison shops and hand them over to the convicted in the course of the visit. Unlike the original practice, the Directorate General has specified conditions of purchase more precisely to prevent misuse of the procedure in the future.

Procedures and Actions of the Police of the Czech Republic

A great group of motions in the field of actions of the Police of the Czech Republic concerns dissatisfaction with behavior of the policemen in the course of an intervention and/or with incorrect procedure of police officers or incorrect decision making caused by ignorance of legal regulations.

The motion, file No. 2877/2001/VOP/DU

The Defender has established deviation consisting in incorrect procedure of the Police of the Czech Republic (PCR), being the body investigating the notified administrative infraction pursuant to the relevant act. The lapse lies in the fact that PCR, the body non-competent for deciding the administrative infraction disturbing coexistence of citizens, found the persons younger than 15 years guilty of the administrative infraction. The Defender has stated the lapse which was acknowledged by PCR after the period of unwillingness. As it was the case from 1999, the Defender has not proposed correction in the specific case but requested adoption of the measures, on the basis of which possible similar lapses could be prevented in the future.

The motion, file No.: 5141/2002/VOP/DU

The Department of Inspections and Complaints of the Police Presidium of the Czech Republic rejected granting the information to the Defender requested in compliance with provisions of § 15, item 2a) of the Act No. 349/1999 coll. on the Defender, as amended, in two quite independent cases. The Defender has initiated investigation on his own initiative.

2.1.9 Cases of Foreigners and Citizenship/Naturalization

In the course of 2002 as many as 126 motions were registered in this field.

Residence of Foreigners

Taking in view the scope and content of motions addressed to the Defender, we can state persisting low level of handling the foreigners by the aliens' registration offices and frontier police. Though this issue was highlighted by the Council of the Government for Human Rights in its report specifying the level of human rights in 2000 and though the Council addressed the Ministry of the Interior in December 2000 with the motion to adopt the measures for correction of the status, the Defender's knowledge testifies that the situation in this sector has not turned better. In the decision-making actions the aliens' registration offices assess consequences for the private and family life of the foreigners inadequately and have very often only formal approach to justification of their decisions.

The cases below cannot be considered typical for exercise of the state administration in the sector of residence of foreigners, but they illustrate the scope of problems which the Defender must face.

The motion, file No.: 3883/2002/VOP/TL

The foreign and frontier police authority has decided administrative banishment and detention of a foreigner. The Defender has established that these decisions are not based on any legal regulation. By limiting personal freedom the basic rights guaranteed by the Charter of Fundamental Rights and Basic freedoms were breached. The administrative authority has also lapsed, because the foreigner (released from the detention facility) was imposed the duty to leave the territory of the Czech Republic, though the foreigner appealed rejection of its application for asylum by the administrative action. As the Directorate of the authority in question of the Police Presidium was of the same opinion as the Defender, it has accounted for the actions and adopted adequate corrective actions,

The motion, file No.: 5584/2001/VOP/VK

When examining the complaint about procedure and actions of the aliens' registration office in the region J., the Defender has established that the methodical instructions of the Directorate of the foreign and frontier police service of the Police Presidium requires the written approval of the house owner proving provided accommodation as the necessary precondition accompanying the application for the resident alien permit (permanent residence permit). The internal bylaws exceed the limits fixed by the law on

residence of foreigners. Based on the Defender's notice, relevant changes have been made in the methodical instruction.

The motion, file No.: 5611/2001/VOP/VK

Upon the Defender's intervention the competent Department of the Ministry of Foreign Affairs corrected the lapse consisting in inadequate examination of the matter. Ms. M.P., the citizen of Ukraine, was issued the certificate of affiliation to the Czech compatriots in Ukraine, serving as the necessary document for decision making concerning issue of the permanent residence permit in the territory of the Czech Republic and as the document proving the so called foreign policy interest of the Czech Republic in permission of the permanent residence.

Asylum Procedure

Failure to act and unnecessary delays of the asylum procedure is often revealed on the side of the Ministry of the Interior and the Minister of the Interior, the competent administrative authorities; term of the asylum procedure cannot be considered adequate in many cases. The term of the asylum procedure seems to be mainly the issue of additional staff engagement for the relevant department of the Ministry of the Interior (Department of Asylum and Migration Policy). In many cases the term is affected negatively by the complexity of obtaining necessary information from the country of birth/origin; the Department of Asylum and Migration Policy of the Ministry of the Interior does not always exert every effort to settle the matter in due time by trying to obtain and complete the evidentiary facts of the case in question.

Decisions concerning financial subsidies pursuant to provisions of § 43 of the Act No. 325/1999 Coll. on asylum and on change of the Act No. 283/1991 Coll. on the Police of the Czech Republic, as amended (the "Asylum Act") were practically stopped in autumn of 2001. The several month lasting inactivity of the Department of Asylum and Migration Policy of the Ministry of the Interior can be clarified by awaited change of the basic principles of granting the financial subsidy. As soon as the amendment to the Asylum Act (Act No. 2/2002 Coll.) became effective, the procedures concerning financial subsidies pursuant to § 43 of the Asylum Act were terminated due to expiration of the total time period of three months. Should the Ministry of the Interior proceed, when deciding award of the financial subsidy in line with § 43 of the Asylum Act, in line with relevant provisions of the Administrative Code (i.e. should the Ministry issue one decision for the indefinite time period and/or should the Ministry respect the deadlines of the Administrative Code, when issuing repeated decisions for the definite time period), certain cases could have been prevented, e.g. certain applicants were notified after expiration of the six-month period of waiting that the financial subsidy, representing the very basis for their existence, would not be paid to them. At the beginning of 2002, immediately after the amendment to the Asylum Act in question became effective, a relatively high number of applicants for asylum found themselves in a tight spot, which situation might be resolved by rash reactions or even by criminal actions.

The motion, file No.: 86/2002/VOP/VK

Upon the Defender's intervention the Department of Asylum and Migration Policy of the Ministry of the Interior (the former Department for Fugitives and Integration of Aliens of the Ministry of the interior) has changed the negative standpoint and awarded asylum to Ms. R.F., the citizen of Afghanistan, and to their underage daughters for humanitarian reasons.

Citizenship/Naturalization

From the Defender's knowledge in this sector it follows that both the Ministry of the Interior and the Minister of the Interior, the administrative authorities, fail to adhere to the deadlines, often fixed by the law, in the procedures of naturalization. Decisions of Ministry of the Interior and/or the Minister of the Interior, rejecting the application for naturalization, sometimes show a very low quality of substantiation.

A major part of motions addressing the issues of naturalization, did not complain about action/inaction of authorities, but criticized the existing legal regulation. The effort for dual citizenship, the common denominator of the motions, is not permitted by the legislation in the cases in question. The Defender's standpoint can be found in part III of the Report.

The motion, file No.: 86/2002/VOP/VK

The Defender has reproached the Ministry of the Interior and the Minister of the Interior for inadequate substantiation of the administrative decision rejecting the application for naturalization and/or for rejected appeal. The new appellant's application was satisfied by the Ministry of the Interior.

The motion, file No.: 988/2002/VOP/MV

The existing legal regulation does not resolve the situations when the person considered the Czechoslovak and the Czech citizen by the authorities (by mistake), exercising the rights of duties of the citizen bona fide, has in fact never been the Czech/Czechoslovak citizen, which fact has been revealed much more later. The aliens' registration offices can thus face quite absurd situations. Upon the Defender's intervention the appellant was permitted permanent residence facilitating naturalization. Draft of the legislative solution is contained in Part III of the Report.

2.1.10 Other Unclassified Sectors

In the course of 2002 as many as 926 motions were registered in this field. This field, broken down newly since 1 January 2003, is specified in great details.

The Defender's competence has been defined within a relatively wide framework and therefore has to be considered as protection of population and other entities from illegal, unfair or otherwise incorrect action of any subject that opposes and affects interests of these entities on account of the power status vested by the Government. It is therefore quite natural that the Defender handles the motions from the most different sectors of public administration; their frequency changes with the changing situation in the society. The following selection of cases illustrates the most typical spheres of issues dealt with by the Defender in the course of 2002.

State Supervision over Financial Institutions

In this sector the field of the Private Law (Business Law) mingles with the Public Law (supervision, audit, inspection). Therefore the persons addressing the Defender are sometimes unable to differentiate the scope of Defender's competence and encourage him to protect their ownership rights and title in miscellaneous forms. On the one side the business community prevents more intensive intervention of the state into their market space and, on the other side, they ask the state for protection in case of lack of success. Transparency, immediate supervision and suitability of adopted measures in view of the protected interests of affected entities are the most frequently monitored features of supervision over the financial institutions by the Defender.

The motion, file No.: 2125/2002/VOP/DV and others

The Defender has not supported allegation of the appellants that the Czech National Bank extended the receivership in the IP bank a.s. (the former Investment and Post Bank) groundlessly after sale of the institution to the Czechoslovak Business Bank and inclined to assertion of the Czech National Bank that the causes for the receivership did exist. The Defender has also not confirmed the appellants' allegation that the receivership had breached their rights, guaranteed by section 11, par. 4 of the Charter of Fundamental Rights and Basic Freedoms. His finding was based on the legal opinion of the European Court for Human Rights.

The motion, file No.: 5236/2001/VOP/DV and others

The Defender has not revealed any lapse in the procedure of the trustees of Rodinná záložna (the Family Savings Bank) applied by them, when assessing standing of the so called passive members. The Defender has come to the conclusion that the trustees did proceed fully in conformity with interests of a majority of its clients. Moreover, the trustees proceeded so on their own initiative, without which the majority of clients of the savings bank in question were not entitled to payment of the compensation from the Reinsurance Fund of Cooperative Savings Banks.

Actions of Labor Exchanges/Job Centers

The number of motions addressing labor exchanges is of ascending character. This experience of 2002 pushed the Defender to more intensive activity in resolving the issues in the field of exercise of the right to employment. Procedures of labor exchanges are often of formal character and show rigidity; this fact can be supported by the first case below as well as by a number of other cases. Repeatedly established inconsistency of inspected adherence to labor law and wage regulations is a frequent drawback contributing to a generally low level of legal consciousness of both the employers and employees in this sector.

The motion, file No.: 5561/01/VOP/DL

The labor exchange has lapsed and proceeded against the principles of good administration and management, because the office decided to exclude the applicant from the list of applicants for employment due to alleged purposeful obstructing the cooperation with the labor exchange

trying to mediate the employment, because the applicant failed to appear in the labor exchange without an excuse. The Defender has established a mere misunderstanding and not purposeful obstructing the cooperation with the authority and contributed to correction of the situation. Decision of the labor exchange was cancelled and the applicant was not excluded from the list of applicants for employment).

The motion, file No.: 4580/2001/VOP/DL

The labor exchange failed to proceed in conformity with the principles of good management, when issuing the decision on non-awarded material subsistence to the applicants for employment. The decision was substantiated and justified incorrectly and the office did not cope with all material circumstances of the case in question which resulted in the doubt about correctness and fairness of the decision.

The motion, file No.: 2783/2002/VOP/DL

Mr. J.F., the applicant for employment held in the list of applicants of the labor exchange, addressed the Defender, because he felt himself harmed by the labor exchange. Though, he has passed the re-training course of the business minimum, the labor exchange rejected his application for subsidy specified for creation of a new job. The Defender has not revealed any lapse in the procedure of the labor exchange in question.

Administrative Duties of Departments of Transport

This sector suffers from drawbacks caused by liquidation of inspection offices and by transfer of their business and duties to district authorities/municipalities having lack of staff and technical facilities for the time being. At the same time it has to be stressed that the change in question proved to be positive finally, particularly in view of separation of decision-making activities of district authorities from the "investigating" activities applied by the Police of the Czech Republic. Based on examined motions, the Defender establishes formally incorrect administrative decisions in many cases, substantiation of the decisions often leads to the doubt about adequately established body of the case in question. A greater attention has to be paid to this sector, namely at the level of methodological activities on the side of the Ministry of Transport.

The motion, file No.: 4579/2001/VOP/MV

The Defender has started examination on his own initiative with the objective to push the Ministry of Transport and Communications to introduce the uniform practice of the authorities issuing duplicates of the driving licenses. The Ministry has accepted the Defender's opinion and issued a new methodological instruction according to which the duplicates shall be issued without undue delay and not only after expiration of the 30-day term.

The motion, file No.: 1338/2002/VOP/DU

The Defender has established lapse of the first instance authority deciding the traffic offence. Upon the Defender's intervention the administrative

authority deciding review off the appeal proceeding returned the case to the first instance authority to decide newly.

Compensation of Individuals and Groups of Citizens

The citizens address the Defender relatively frequently. They approach the Defender either in their personal matter or ask him to adopt the measures leading to legislative changes, e.g. extension of the group of authorized persons/beneficiaries, reduction of the minimum time period of 3 months of imprisonment or cancellation of the necessary conditions for naturalization. The complaints about excessively long time period of settlement of the applications, see the second case below, prevail in the first group of motions.

The legislative changes in the desired direction, e.g. in case of the Act No. 261/2001 Coll., on granting the flat financial sum to participants of the national struggle for liberation, political prisoners and persons for race or religious reasons concentrated in military camps, are usually improper, with the single exception - conditions of naturalization/citizenship. Several persons, not being citizens of the Czech Republic and thus not entitled to compensation pursuant to the Act in question, have approached the Defender. They were harmed as citizens of the Czech Republic like other beneficiaries, but after the service of a sentence they have left the former Czechoslovakia for different reasons and were deprived of the citizenship. The point is, whether the Act is not discriminative towards these persons, taking in view other rehabilitation or compensation legal regulations which the condition of citizenship is unknown for (e.g. the Act No. 119/1990 Coll., on court rehabilitation, Government Decree No. 102/2002 Coll. on payment of the lump sum of financial compensation to moderate the injustice caused by the communist regime to the persons assigned for military camps of forced/penal labor or the Government Decree No. 165/1997 Coll. on payment of the lump sum of compensation to moderate certain injustice caused by the communist regime).

The motion, file No.: 4526/2001/VOP/DM

The Ministry of Justice of the Czech Republic has satisfied application of Mr. J.L. additionally; the person above was awarded financial compensation for damage to health caused to him in the course of custody from 08.04. 1948 till 20.09. 1949.

The motion, file No.: 5009/2002/VOP/ZS

The certificate issued by the Ministry of Defense is the necessary document for the decisions taken by the Czech Social Security Department concerning payment of the compensation. Due to the fact that the Ministry of Defense fails to issue the certificates within the reasonably term, thus endangering the applicants' rights for compensation, the Defender has asked the Czech Social Security Department to coordinate the activities with the Ministry of Defense not to harm the applicants' rights caused by delayed settlement.

Free Access to Information

By raising the applications for bringing the information, the people often resolve the problems which failed to be removed and settled in any "material/factual" proceeding. The judicial decisions concerning assessment of the

scope of revealed information, which the examination can be based on, are nowadays available. It is most probably not always easy for the authorities to appreciate whether the relevant petition or filing (in some cases of vague and all-embracing nature) is just the application for granting the information, and possible lack of information not revealed due to inactivity of the authority is understood the action of denied awareness which can be remedied by the law. The Defender calls upon individual authorities to pay adequate care to assessment of input filings of the citizens, not to underestimate action of registries in their institutions and to exert every effort to provide close cooperation of individual departments.

The motion, file No.. 317/2002/VOP/ZS

The Defender has established that the Ministry of Education, Youth and Physical Culture of the Czech Republic breached the act on free access to the information, when revealing the information based on the written application and subsequent applicant's appeal, and at the same time breached the Government Decree comprising the Methodical Instruction focused on unification of proceedings and procedures of public administration bodies in the field of the rights of natural and legal entities to reveal of the information pursuant to the act on free access to the information which asks the obligated persons to utilize the institute of accompanying information. The Ministry has acknowledged its deviation and accepted the corrective actions proposed by the Defender.

Supervision over Exercise of Self-government

Exercise of self-government of municipalities and regions may be intervened within certain limits only, which also concerns the supervision. The latest public administration reform was focused on bringing the authorities nearer to the population, but we may state that actions of the lowest instance authorities are considered deviating by the Defender, particularly formal claims arising from the relevant law are realizable with problems on their side. Permanent methodical assistance to the municipalities and continuous supervision is considered inevitable by the Defender, taking in view the content of motions attacking this sector. Because of the size of counties of regional authorities and the number of municipalities compared with the regions, certain impairment of supervision cannot be excluded.

The motions, file No.: 5322/2001/VOP/ZS and file No.: 144/2002/VOP/ZS

Mrs. H.V. has approached the Defender with the motion attaching the regional authority in B, supervising exercise of the self-government in H., in line with the act on municipalities and on the appellant's own initiative. Minutes of meetings of the local council were not put down, agenda of the meetings was not published and Mrs. H.V. suspected the council of not holding the meetings at all and, if so, in the way preventing access to the information and making participation in the self-government unavailable. The Defender has initiated repeated supervision over the local council by the regional authority, because his competence does not cover supervision over local councils. The methodical supervision has confirmed justness of Mrs. H.V. doubts. The Defender has not revealed any lapse in supervision activity of the regional authority.

Activities of Trade Licensing Departments

The two cases below reflect different approach of the authorities not only to the Defender, but also to application of the trade act in the matter of granting the trade license. The examples document clearly that the trade licensing offices proceed formally and do not establish the real facts thoroughly.

Inspection and audit activities of trade licensing offices are also worth mentioning. The citizens approach the Defender in the cases of taxicab service inspections or advertising and its management in connection with market rules.

The motion, file No.: 2401/2002/VOP/BK

The Defender has established deviation on the side of the trade licensing office committed by issue of the trade license without demanding all the requisites of the application conforming with provisions of § 45 and § 46 of the trade act; the office also remained inactive, though this fact was pointed out by Mr. and Mrs. K (the appellants). The inactivity has harmed the appellants directly and endangered interests of all persons acting and trusting incorporation into the Companies' Register (as well as the Companies' House itself, because without the trade license the competent court would not incorporate the company into the Companies' Register).

The motion, file No.: 2140/2002/VOP/EH

The trade licensing office has issued the trade license, thus permitting the trade business to the person who had not presented all necessary documents - more explicitly without approval of the co-owner of ideal 2/3 of the family house where the pub/restaurant was situated. Upon the Defender's intervention the authority has asked the entrepreneur to submit the approval in question.

Protection of Peaceful / Law-abiding Conditions (§ 5 of the Civil Code)

The Defender is asked for help mainly by the citizens whose proposals for protection from evident intervention into the law-abiding and peaceful status have not been decided at all or decided negatively by the authorities. Many appellants do not understand the purpose and objective of § 5 of the Civil Code. The decision issued in line with § 5 of the Civil Code cannot not resolve judicial issues. The decision should have been issued without undue delay after receipt of the proposal. Should proof of the conditions for granting protection require more complex examination, the authority must reject the proposal. He who asked the protection can also address the court.

Utilization of protection of law-abiding and peaceful conditions pursuant to § 5 of the Civil Code ma be useful for resolution of certain critical situations between the landlords and the tenants. The affected people are in many cases not acquainted with this possibility.

Despite its material and judicial base in the Civil Code, the proceeding on protection from evident intervention into the law-abiding and peaceful status is considered the administrative proceeding pursuant to the administrative code. The proceeding is initiated upon proposal of the person who asks for protection through

the administrative authority. The authorized municipality (local/city council) is the competent administrative authority deciding by delegated competence. The proposal is sometimes submitted to the local council that is not the authorized body. Delayed settlement is in such case caused by late transfer of the proposal to the competent authority. Protection from evident intervention is effective only if granted as soon as possible.

Negative competence conflicts often take place in competent administrative authorities, where the functional competence to proceedings pursuant to § 5 of the Civil Code has not been determined clearly. In one case dealt with by the Defender the files even failed to be found by the regional authority due to badly defined functional competence for reviewing the appeal against the decisions issued pursuant to § 5 of the Civil Code. The Defender recommends the competent authorities deciding in the first and second instance to bear in mind necessary determination of the functional competence to the proceedings pursuant to § 5 of the Civil code in their organization bylaws.

The motion, file No.: 4002/2002/VOP/MV

The city council in P. has decided the appellant's proposal for granting protection pursuant to § 5 of the Civil Code only upon the Defender's intervention.

The motion, file No.: 3196/2001/VOP/MV

The appellant has approached the Defender in the matter of procedure of competent authorities concerning protection of law-abiding and peaceful conditions. According to the appellant's opinion the evident intervention into his law-abiding and peaceful conditions was that his neighbor failed to thin out the apple tree in the period of vegetative rest 1999-2000, which tree shadows the vegetable plot in the appellant's garden inadequately. The initial lapse of the authorities was reproached and corrected by the regional authority. The Defender has put the complaint aside as unsupported and unsubstantiated.

Hearing Administrative Infractions

The Defender is contacted more frequently by the people harmed by the procedure anyhow and less frequently by the people committing the administrative infraction. It is very important to establish in these cases whether the liability for the infraction is still valid. Should the preclusive one-year time period from the moment of committed infraction already expire, the real correction is impossible. In spite of it, the examination is initiated in certain cases pursuant to the Defender Act; the result of examination should have preventive effect on the administrative authorities hearing the infractions to prevent similar established lapses in the future. Such Defender's finding can be important for the harmed person as a certain moral satisfaction.

The established deviations are usually as follows: the injured person is not handled as the participant to the proceeding. The procedure of the administrative authority that put the case aside without having initiated the administrative proceeding, though the matter was very complex from both material and legal

points of view, was considered contradicting the principles of good management by the Defender. The police authority considers transfer of the case to the administrative authority for hearing the infraction pursuant to § 159a, item 1a) of the Criminal Code, sometimes simpler than its putting aside. The discontinued matter can be cancelled by the Prosecuting Attorney. If the case is transferred by the police authority to and discontinued by the administrative authority afterwards, the injured person has in principle no possibility to defend himself against such procedure effectively. The measures adopted by the police authority can be reviewed by the Prosecuting Attorney within the framework of the general supervisory competence and the case discontinued incorrectly by the competent authority can be corrected by the procedure pursuant to the municipality act within the scope of correction of incorrect measures issued in the delegated competence, but such procedures are rather complex in the practice and realizable only exceptionally.

The administrative bodies, hearing the infractions argue sometimes incorrectly that the legal qualification of the infraction was determined in line with legal qualification made by the police body that had heard the notified infraction. Legal assessment of the case by the Police of the Czech Republic is not binding for the administrative infraction body. The administrative body is obliged to establish the complex factual basis by itself and support its findings by the proofs which can and shall be assessed and qualified by itself. The argumentation of the administrative body that the case was discontinued, because the received notice of the Police of the Czech Republic had been processed in the way not supporting initiation of the proceeding, is also not acceptable. The administrative body shall correct inadequate hearing of the case by the Police of the Czech Republic, e.g. can ask the police body for additional examination.

The motion, file No.: 4046/2002/VOP/MV

The person claiming harmed reputation should be warned of the possibility to raise the proposal for hearing the infraction, incl. all procedural consequences. Absence of the warning/instruction was assessed by the Defender as the procedure of the authority non-conforming with the principles of good management.

Other State Administration Sectors

The Defender's competence covers tens central administrative bodies exercising the state administration in miscellaneous, very specific sectors. The Defender, fulfilling his duties, establishes that the issued administrative decisions fail to have the all requisites determined by the administrative code, thus breaching procedural rights of the participants to the proceeding. One of the motions below concerning the state administration in the sector of telecommunications can serve as the example, but similar drawbacks were established by the Defender also in the sector of conferring the degrees. Penetration or link of decisions taken by territorial self-governing units in the separate competence with decision-taking of other subjects of administrative and legal nature is a specific issue, supported by an example from the burial service sector. In these cases the Defender, revealing frequent lapses, must cope with the meritorious solution of the matter as well as with the stages where the

Defender is competent to intervene and the stages where his competence is excluded. This issue - see part 2.2.6 of the Report.

The motion, file No.: 3499/2002/VOP/AŽ

Based on results of examination carried out by the Defender, the Czech Telecommunication Department (Department) has adopted the corrective action connected with issue of the permission to operate the radio transmitters of the amateur radio-communication service (Permission). The Permissions issued by the Department in the administrative procedure now do contain the requisites determined by the administrative code. Within the scope of re-opened administrative proceedings the Department will supersede the faulty decisions by the new ones.

The motion, file No.: 879/2001/VOP/MH

The Defender has reviewed procedure of the Cemetery Board of the capital Praha and procedure of the Department for Preservation of Historical Monument of the city council in the matter of issue of the mandatory standpoint pursuant to the relevant act (for preservation of historical monuments) concerning renewal of greenery in the eastern part of the Olšany Cemetery, because the appellant asked removal of the tree damaging the grave equipment on the leased grave. The Minister of Culture confirmed the Defender's opinion and the mandatory standpoint was cancelled, after being reviewed in the procedure off the appeal one, and the Minister has issued the following instruction: determination of the participants to the proceeding concerning issue of the mandatory standpoint pursuant to the act on preservation of historical monuments should be notified, taking in view of the Defender's findings, to the regional authorities and municipalities with extended competence.

2.1.11 State Administration of Judicial Authorities – Delays in Proceedings

In the course of 2002 as many as 287 motions were registered in this field.

Complaints of the citizens about the judicial authorities attack mainly delays in judicial proceedings. The Defender asks the appellants to raise their complaints about delays in the proceeding to the chairman of the competent court at first. The Defender, examining the case, addresses then the chairmen of the courts and checks whether they pay due attention to smooth judicial proceeding, while exercising the state court administration. The chairmen of the courts, most probably trying not to intervene into the decision-taking activities of the court, fail to carry out in certain case adequate analysis of the causes of delay in the proceedings and their conclusions seem to be shallow, without any conclusive evidence.

Inadequate capacity of the court, compared with the number of filings, is relatively frequently considered the main and sole cause. The delays are also conditioned by bad technical facilities of the courts and lack of rooms. The causes

above are of objective nature and the delays resulting from them are usually evaluated and assessed as ungrounded. Such evaluation needs thorough prior assessment whether the chairman of the court in question had really exerted every manager's effort to eliminate them. Inspiration for corrective actions can be found inter alia in judicial decisions of the European Court for Human Rights in Strasbourg, where the requirement to consider the subject of dispute in view of the specific participant and his/her situation of living, has been raised. In other works, the cases the resolution of which affect existence of the participant to the proceeding should be prioritized. We are speaking about the cases which are of "great personal importance and interest" for the appellant, because their resolution is linked materially with his physical or legal existence. The examples are as follows: labor law disputes, social security scheme disputes, disputes concerning mental appellant's health and/or his/her legal capacity. A great attention has also to be paid to the criminal cases when the accused person is held in custody. Extraordinary quick proceeding is inevitable in the cases when the children were taken away from the parents and in the proceedings regulating mutual contact between the parents and children.

The Defender has established repeatedly that protracted court proceedings were also caused by the so called subjective causes, ineffective cooperation between the judges and their offices, between individual offices and between the judges and court management being the explicit examples of the subjective causes. This is why the written documents are delivered to the participants of the proceeding with delay, why the file is mailed to the higher instance court with delay due to the applied for remedial measure. Any file handling is considered risky from the point of the court administration, both internal (inside the court) and external (between the court and other institutions). Release of the files to the sworn experts, whose expertise cannot be accelerated despite repeated reminders of the court, is considered the most acute issue.. Resolving such situation by crossing the expert's name off the list of experts - case by case - is worth mentioning. Study visits of individual judges, sick leave, maternity leave and/or the chairman's inability to respond such facts quickly and to organize activity of the court as a complex whole, thus guaranteeing smooth proceedings. It is also possible to stress certain rigidity of the procedures and/or unwillingness to make a copy of the whole file or a certain part of it for the needs of another proceeding or for hearing of the complaints which also results in delays of the proceeding in some cases.

The motion, file No.:1469/2001/VOP/PJ

The Defender has established ungrounded delays in the execution proceeding held by the County Court in P. The delays in the proceeding "might" affect the appellant negatively, because the assets of the obligated person were declared bankrupt in the course of the execution proceeding, thus minimizing the real chances to satisfaction of the appellant's receivables from the obligated person. Upon intervention of the Defender and the Ministry of Justice, the Department of Compensation, the damage in question was prevented.

The motion, file No.:2267/2002/VOP/DM

based on the carried out examination, the Defender has established delays in the proceeding held by the County Court in Ch., thus breaching mainly the section 38, item 2 of the Charter of Fundamental Rights and Basic Freedoms, according to which everybody is entitled to settlement of the case without undue delays, and section 6 of the Convention on Protection of Human Rights and Basic Freedoms. The delays in question affected the legal uncertainty and grinding social situation of the appellant materially. The Defender considered procedure of complaint reviewing adopted by the Chairman of the Court, the court administration body, adequate and was of the same opinion with the accepted corrective actions.

The motion, file No.: 2253/2002/VOP/DM

When assessing execution of state administration by the regional court, the Defender has established drawbacks of court office activities and actions resulting in discontinuance of the proceeding as the consequence of bad court management. Upon the Defender's intervention the Chairman of the Court has made the situation good.

The motion, file No.: 3651/2002/VOP/DL

The Defender has established ungrounded delays in delivery of the court resolution (11 months) in the court proceeding for payment of the sum of CZK 500 000.- with ancillary rights, held by the District Court in P. The term of the proceeding is considered inadequate by the Defender, taking in view the character of the thing, being the subject matter of the proceeding, and the fact that the proceeding decided the procedural issue only - i.e. declaration of lack of local jurisdiction and transfer of the case to another court - and not the matter itself.

2.2. Motions where Defender's Competence is not Fixed

2.2.1 Remedial Measures (Remedies)

In the course of 2002 as many as 7 motions were registered in this field.

We are speaking about the cases when the Defender is approached by the natural or legal entity with the motion representing the remedy against judicial or another decision. Such cases shall be notified to the appellant immediately; the appellant shall be instructed of the correct procedure not to miss the deadline. In order to meet this obligation requiring immediate reaction, the Defender had to assess all delivered motions immediately.

It has to be stated that in a number of cases the Defender is handed over the motions which are not considered classic remedies, though designated as such by the appellants (these cases are not included in this sector, but transferred to the relevant branch of law). In a majority of cases it is the application for protection or intervention, which the Defender is not competent for pursuant to provisions of § 1 of the Defender Act, particularly applications of the citizens for reviewing judicial decisions in the position of the pseudo-appellate body for the so called " unjust conviction", applications for intervention, petitions or even authorization to represent the applicant before the court, complaints about holding

the dispute and assessment of the proofs by the judge (alleged inadequate, shallow or otherwise incorrect procedure, failure to admit the proofs, etc.). The method of executions is also attacked frequently. The Defender is asked to assess position or “chances” of the participants to the dispute or to notify how to proceed (the so called legal opinion of the case). Requested punishment of a certain judge or transfer of the case to another court due to mistrust in the judge is also not exceptional. In these cases, where the motion is out of scope of the Defender’s competence fixed by the law, the Defender does not deal with the motion any more and, should adequate information and data be available, can advise in the general plane, e.g. whether the procedural conditions for application of the ordinary or extraordinary remedy are created in the specific case, etc.

2.2.2 Bankruptcy Proceedings

In the course of 2002 as many as 35 motions were registered in this field.

The motions about procedure of the trustee in bankruptcy or another issue of the bankruptcy proceedings, incl. their duration represent the typical group of motions which are out of scope of the Defender’s competence. If the motion contains adequate data, information and documents for expression of the general standpoint to the presented bankruptcy proceeding, the Defender, putting the motion aside, clarifies its basic principles for the appellant and outlines general possibilities of how to proceed. The appellant has to be instructed frequently about limited procedural court possibilities to affect duration of the bankruptcy proceeding and about limited possibilities of the Defender’s intervention in case of unfounded delays in this kind of proceeding as well. If the appellant attacks delays in the bankruptcy proceeding, the Defender’s experience of such motions can be found in a separate part of this report describing State Administration of Judicial Authorities – Delays in Proceedings.

2.2.3 Property, Family and Other Civil Disputes

In the course of 2002 as many as 982 motions were registered in this field.

Typical motions of the civil law sector are as follows: disposal of movable and immovable property between citizens, succession and related property relations. Though the Defender’s competence is not declared, the latter shall try to clarify, at least partially, the issue to the appellants and to outline how to proceed in these cases, provided that the scope of information contained in the motion is adequate. The Defender often faces applications of the citizens for assistance in collecting the receivables awarded by the court. In this situation the appellants can collect receivables either by enforcement of the court decision or by execution pursuant to the Act No. 120/2001 Coll. on proving executors and execution activities (the Execution Act) and on change of further acts, as amended. A number of complaints also attacks procedure of the executors, enforcing the court decision.

Complaints against procedure of the Czech Post, when raising the claims relating undelivered parcels/letters, represent another civil law sector addressed by the citizens.

Some persons have approached the Defender with the complaints about the funeral service. Though this is the sector which is out of scope of the Defender's competence by the law, because we are speaking predominantly about the cases concerning civil law relations and independent competence of the municipalities issuing the cemetery orders, the Defender tries to assist the people at least by advice or by clarification of the principles which the funeral and burial legislation is based on. The fillings contained inter alia damage of grave equipment (tombstones, sepulchres, etc.), high rent for use of the graves and high sum for the related services or the situation of the deceased person without any relatives. In order to highlight certain unclear points of the legal regulation and issues occurring in the field of funeral and burial service, the Defender has asked the local/city councils and the Ministry for Local Development, being the central state administration body in the field of funeral services pursuant to the competence law, for assistance.

The disputes arising from landlord-tenant relations, particularly disputable level of rental, the notice to suit, apartment clearing, represent further typical motions in the civil law sector, where the Defender's competence is not declared.

The applications to help in the cases of individual labor law disputes - mainly if the appellants feel harmed by the employer's approach who pays the unfair wage or does not pay the wage at all - belong to frequent motions addressed to the Defender who is not competent to resolve them. The complaints about non-fulfillment of employer's duties on account of compensation and indemnity due to occupational injuries and diseases are not exceptional.

A number of motions attacking the Czech and German Fund of Future in the matter of indemnification of the victims of Nazi injustice and lawlessness in the course of the World War II, belonged among the civil law relations where the Defender's competence is not declared. In the course of 2002 as many as 50 appellants approached the Defender with the application for advice and assistance in the proceeding for indemnification from the Fund in question. The Fund is out of the Defender's competence, because it is neither the administrative authority nor the institution executing the state administration duties. It is the partner organization of the German Foundation „Reminder, Liability and Future“, established by the German legislation. Both subjects cooperate (based on the executed partner agreement) in accepting and checking the applications, reviewing the decisions and transmitting compensation to the authorized applicants.

2.2.4 Trade Disputes

In the course of 2002 as many as 202 motions were registered in this field.

The number of motions arising from the commercial law relations was of ascending character, despite a relatively complex information campaign specifying the scope of Defender's competence. The Defender can intervene in appellants' (businessmen) favor only if they develop their activities in the sectors where they can be affected by actions of state administration bodies, which sectors are covered by the Defender's competence and/or if they ask for

protection, being the participants of the proceeding, from delays of the courts or other institutions. The private law relations, covering business law relations in general, are out of scope of the Defender's competence who can assist by a general advice only. The most important motions of this sector included complaints about unfavorable legal and economic environment which the business is running in. They turn to the Defender with the requirement to make certain situations good, particularly the situations of great difficulties or even the bankrupt spiral (initiated in a number of cases by the secondary insolvency and problematic enforcement of the legislation).

2.2.5 Criminal Cases

In the course of 2002 as many as 403 motions were registered in this field.

The Defender is competent to intervene neither in criminal proceedings nor in activities of the bodies in charge of criminal proceedings, the cases of civil law relations alike. Yet is he approached frequently by the appellants who consider conviction or criminal prosecution unfair and unjust. In some cases the appellants have even requested the Defender's presence in proceedings of criminal court panels of any instance or even sent the power of attorney for representation. A great number of appellants have asked for assessment of their chances in the appellate procedure or for advice and comments relating standing of the injured person and protection of witnesses. The Defender has put such motions aside and acquainted the appellant briefly with relevant principles of the criminal proceeding, outlined the procedural instruments of protection in general and/or informed about the scope of the injured person's rights.

2.2.6 Independent Competence and Powers of Local Self-Government Bodies

In the course of 2002 as many as 291 motions were registered in this field.

The Defender, whose competence does not cover the local self-government bodies or higher territorial self-governing units executing the independent competence, received a number of applications for help or for making the things good even in this sector. The complains acquaint the Defender with breach of legal regulations or unsuitable another actions of cities and municipalities executing self-government duties. Taking in view the limited competence, the Defender is not empowered examine such cases and use further instruments pursuant to the Defender Act, nevertheless the latter tries to draw attention of the competent city/local councils or self-government body staff to the most urgent cases, to highlight the mistakes and to recommend the correct procedure.

At the same time the Defender informs the citizens about the possibility to activate the institute of supervision over the self-government executed by the superior public administration body. Should the supervision activity fail to meet the expectations, the citizens approach the Defender repeatedly. The described Defender's activity is important, because his own activity is linked with the decisions in the separate competence - in a number of cases the same legal

relation ranges between the Defender's competence (action) and lack of competence (inaction). This is also the complex case of the territorial plan. The territorial plan is worked out in the delegated competence, its approval falls under the separate competence, subsequent planning and building permits represent administrative proceedings with decision taking in the delegated competence. All sectors above are linked meritoriously.

In certain cases the Defender, trying to assist despite lack of his competence, has accepted the requirement to act as the mediator. Should his recommendations fail to be considered, the Defender is unable to enforce them. The issue of return of the sums corresponding to the real estate transfer tax paid by the buyers to the city for transfer of the flats/apartments owned by the city and "pedagogic" action in the situation when the municipality played the role of the injured party in the criminal proceeding reflect the cases when the Defender entered into activities and actions of the territorial self-governing unit by recommendations and mediatory actions.

III. GENERALIZATION OF KNOWLEDGE OF OMBUDSMAN'S ACTIVITIES

Generalization of gathered knowledge and highlighting the results to the Parliament is one of important Defender's tasks pursuant to provisions of § 23 of the Defender Act, regulating general obligations and duties of the Defender, submitting the summarized annual report for the preceding year. The Defender fulfills an important link between the legislative and executive power in line with the explanatory report to the Act, namely by addressing the drawbacks in the legal regulations, lack of their link or drawbacks in application and/or interpretation rules. In this part of the Report the Defender presents both the destiny of and development in solution of the knowledge arisen from his activity in the course of the first year of existence and generalization of the knowledge or the urgent issues which the Defender cannot make good and therefore highlights the need of their resolving to the Parliament of the Czech Republic and to other competent bodies which the Report is handed over to.

1. RESPONSE TO SELECTED KNOWLEDGE OF THE SYNOPTIC REPORT FOR THE YEAR 2001

The Defender's knowledge gathered in the course of the first year of activities and his reflections de lege ferenda connected with the issue in question are incorporated in Part III of the Defender's annual Activity Report for the year 2001. The House of Deputies of the Parliament of the Czech Republic acknowledged the Report by its resolution No. 2291 of 2 May 2002 and recommended the Government of the Czech Republic to discuss it and assess utilization of the motions contained in it.

The Defender has re-submitted the Part III of the Annual Report in question to the Petition Committee of the House of Deputies as the supporting document for the reported activities presented by him pursuant to § 24, item 1a) of the Defender Act for the third quarter, and stated that except for a few cases shown below he has not registered any significant response to his knowledge by the state authorities till the date when the information was compiled. This situation remains unchanged as to the date of submission hereof.

During the preceding year the Defender has pointed out the following spheres of issues:

1. Standing and Activities of Land Assets of the Czech Republic
2. Procedure of Agricultural Cooperatives Settling Property Interest of Beneficiaries (Qualified Entities).
3. Securing Implementation of the Sentence of Banishment and the Institute of Banishment Custody
4. Issue of the Agreement between CR and SR on Social Security and Welfare - the so called "Slovak Pensions"

5. Implementation of the Right to Employment by Labor Exchanges pursuant to the Act No. 1/1991 Coll. on Employment

6. Surviving Negative Consequences of the Competence Dispute in the Field of Water Management Service

7. Standing of the Persons Qualified for Compensation due to Loss of Earning after Terminated Sick Leave

2. SELECTED KNOWLEDGE OF ACTIVITIES IN THE COURSE OF 2002

In the course of 2002 the Defender encountered certain unsolved issues which are so important according to his opinion that they needed to be published in a special section to attract the increased attention.

We are speaking about:

1. Elimination of Environmental Burden and Rehabilitation of Contaminated Localities

2. Patients' Right to Reveal of the Information Collected in the Health Report and Survivors' Right to Awareness

3. Possible Settlement of Therapy (otherwise not settled) from the Public Health Insurance

4. Breach of the Duty to Take the Vaccination

5. Interpretation of the Legal Regulation Imposing Duties to Owners of Real Estates Concerning Removal of Impassability of Pavements in Developed Areas

6. Change of the Existing Form of Rent Regulation/Control

7. Dual Citizenship

8. Presumed Citizenship

9. Standing of Aliens with Visa - Suffering their Residence

10. Situation in Facilities for Detention of Aliens and Implementation of Administrative Banishment

IV. DRAFT CHANGES OF THE OMBUDSMAN ACT

1. DRAFT PROPOSALS ARISEN FROM THE ANNUAL REPORT OF 2001

Because the Defender Act was prepared and/or discussed in the time period when the legal regulation of the of the regional units within the scope of the public administration reform was only in progress, the Defender's relation towards the region authorities/bodies could not have been regulated in it, though the region bodies execute the state administration (§ 29 et ff.) pursuant to the Act No. 129/2000 Coll. on regions (regional units). It was proposed to replace the words (§ 1, item 1) „*county authorities and cities executing the powers of the county council, municipality*” by the words *”territorial self-governing unit bodies“*. The draft proposal was implemented by approval of the Act No, 320/2002 Coll. on change and cancellation of certain acts in connection with ended activity of county authorities/bodies (Part forty two), effective since 01.01. 2003.

The Defender proposed in his Annual Report for the year 2001 extension of Defender's competence which should also cover the state administration of Prosecuting Attorney's Departments. The Defender Act, § 1, item 3, determines on the one side the sphere of Defender's competence towards the courts by the state administration bodies of the courts, whilst on the other side the Prosecuting Attorney's Departments are excluded fully. As the Act No.283/1993 Coll. on Prosecuting Attorney's Departments, as amended, determines explicitly the state administration of Prosecuting Attorney's Departments (§§ 13 – 13j) and defines newly - the act on courts and judges alike - the possibility to raise the complaints for delays and unsuitable behavior (§ 16b), it would be desirable to extend the Defender's competence and powers also to the state administration of Prosecuting Attorney's Departments. This draft proposal of the Defender has not been incorporated into the legislation yet, though the practice confirms its practicality. It is therefore proposed to:

add the words “of the Prosecuting Attorney’ Departments and” after the words “state administration” in § 1, item 3.

The draft proposal for extension of the Act in connection with the new regulation of the administrative justice and/or with adoption of the Act No. 150/2000 Coll., rules of administrative procedure, authorizing the Defender to raise the motions to the Supreme Prosecuting Attorney which would lead to filing the action for protection of the public interest (§ 66) had not been realized yet. The provision is focused on observation of the specific standing of the Defender, based on the standpoints following from complaints of the citizens. The legislative change would comprise completion of § 21a of the Defender Act as follows:

„§ 21a

1) The Defender is entitled to propose the Supreme Prosecuting Attorney to file the action aimed at protection of public interest.

2) Should the Supreme Prosecuting Attorney fail to satisfy the proposal, he shall notify reasons to the Defender.“

2. DRAFT PROPOSALS BASED ON KNOWLEDGE AND RESULTS OF ACTIVITY IN THE COURSE OF 2002

The experience of the process of application in the course of 2002 has not lead to a more explicit need in principal changes of the Defender Act. Certain less urgent proposals for more precise definition of its provisions are therefore postponed by the Defender to possible complex amendment of the Act.

Overcoming of the obstacle of confidentiality which the Defender faces when examining certain cases is a very sensitive issue. Pursuant to § 15 of the Defender Act, as amended, the Defender may ask to release staff of the relevant authority from the duty of confidentiality, if imposed by the law. The regulation does not cover the situations when the confidentiality is laid down in favor of the persons out of the authority. We are speaking for instance about amendment of the duty of confidentiality pursuant to § 24 of the Act No. 337/1992 Coll. on administration of taxes and charges, as amended, or § 55, item 2d) of the Act No. 20/1966 on care of health of the population, as amended. Reasoning by the existing duty of confidentiality becomes very often the means of purposeful defense of the authorities that try to prevent making the file documentation available arguing that the legislation does not enable to render the information requested by the Defender without the appellant's approval (and/or without release of duty of confidentiality by the appellant).

The authorities often argue by the duty of confidentiality even in the situations when the Defender's requirement is not connected meritoriously with the protected data, e.g. if the Defender asks the information about the term of settlement of the complains or if he requests release of the date when the file was transferred to another authority, etc. The Defender usually faces the situations as above when anticipated serious lapses follow directly from the submitted motion.

The existing legislation is procedurally very complex, the appellant has to be called to release the duty of confidentiality for the needs of the pending examination, which procedure prolongs the term of examination materially. Examination on own Defender's motion is therefore impossible in the matters covered by the duty of confidentiality, because there is not any subject/entity which might release the duty of confidentiality.

The duty of confidentiality regulated by § 29a of the Act No. 13/1993 Coll., the Customs Act, as amended, is a similar example. The duty is argued strictly even towards the Defender.

The complex situation could be changed by replacement of the existing wording of § 15, item 4, by the following text:

„(4) If the staff of the authority are imposed the duty of confidentiality by the legal regulation, based on a special act, the duty cannot be relied on towards the Defender examining the case as specified in the provisions above. Provisions of the preceding phrase are valid irrespectively of in whose favor the duty of confidentiality has been imposed.“

V. CONCLUSION

The submitted Report reflecting Defender's activities in the course of 2002 is the second document which tries to present crucial information and data about activities of the institution having neither any tradition nor any available model/example permitting critical comparison and assessment within its scope. The Report therefore compares the activities and created conditions for them with the state described in the similar report for the year 2001. The Report for the year 2002 should pass the comparison much more favorably. This is true unconditionally as far as material conditions for activity of the Defender Department are concerned; the words above are also valid for staff completeness with certain reservations.

Conclusion of the preceding report contained optimistic prognoses for the next year. The optimism is proved justified within the scope above, but overestimated as far as the concept of stabilization of in-house activities is concerned. Unambiguous theses concerning the forms and scope of activities of the Defender for the year 2003 and for the nearest future still cannot be defined, though over 12 000 complaints and motions were processed.

The data contained in the Report, particularly those in the sectors concerning material competence and suggestions of possible legislative amendments and changes, prove that it is hardly possible to define the methods of work quite clearly after a very short time period.

A new element, characterizing standing of the Defender in the society, did appear in the course of the assessed period, still out of the scope of documentation possibilities. Conclusion of the report for the year 2001 confirmed fair and correct approach of the state administration bodies to the activities, which is not true universally for the year 2002. The number of differing views of individual cases on the side of the Defender and on the side of the relevant state administration body are of ascending character. The cases in question say much, namely that both the manifested interest itself and particularly the methods of examination by the Defender approach step by step the gist of the problem in individual cases and often interfere in the authoritative attitude of the executive officers and their workplaces. On the other side, in a number of cases actions and activities of the Defender have contributed to modified view of the authorities of the existing practice and lead to positive changes in their activity.

The Report shall assist particularly the House of Deputies of the Parliament of the Czech Republic, but also all other bodies, authorities and institutions mentioned in § 22 of the Act. The Report is at the same time considered the balance inwards the Defender Department. If acknowledged by the House of Deputies, it becomes the way out for future activities of the institution, which activities request pondering the option of legislative changes as defined in the preceding part. The changes will then become the very basis for continuous search for methods, means and capacities leading to more thorough and complex examination of highlighted negative phenomena and, if established, to bear records of them.

In Brno, on 17.03. 2003

JUDr. Otakar Motejl
Defender