CZECH REPUBLIC

ANNUAL REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS

IN 2004

SUMMARY

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I. THE PUBLIC DEFENDER OF RIGHTS AND HIS OFFICE IN 2004

1. The Starting Point

This Annual Report on Activities in 2004 is a report on the fourth year in the existence of this institution, specific among other institutions of public life both in its mission and form of activity.

Past reports sent out a clear message of the emphasis the Defender lays on informing the public of his role in society and of the powers afforded to him by Act. No 349/1999 Coll. on the Public Defender of Rights (hereinafter "Public Defender of Rights Act"). He submitted the Report on Activities in 2003 on December 18, 2003, having passed the midpoint of his term in office, thus allowing for a more comprehensive and complex appraisal. The Defender was, for instance, able to note that the personnel and technical background of the Office was now complete and the institute of Czech ombudsman had in principle established a place for itself in society.

The Defender submitted the Annual Report on Activities in 2003 to the Chamber of Deputies of Parliament (parliamentary protocol No. 614). After hearing the Report at a regular assembly, Parliament acknowledged it on 6/5/2004 through resolution No. 1127. The Report was discussed during an own initiative hearing in the Senate (senate protocol No. 338) and acknowledged through resolution No. 460 of 3/6/2004.

This Report on Activities in 2004 traditionally contains first a brief description and assessment of work by the Defender and his Office in the period under review. A substantial portion of the Report then comprises case commentaries and the presentation of cases dealt with. Finally, the Report contains both information on progress made in dealing with observations reflected upon by the Defender in previous reports and a generalization of the most significant observations made on unresolved issues based on an analysis of complaints dealt with in 2004.

From a legislative perspective, the position of the Defender remained unchanged throughout 2004. However, legislative work begun in 2003 continued, in anticipation of a change in the present mandate of the Defender as defined by law. In the Report for 2003, the Defender referred to a possible broadening of his mandate in connection with an extensive draft amendment of Act No. 141/1961 Coll. on the Criminal Code, which anticipated that in cases where the law is breached to the detriment of the defendant, the right to file a complaint for such a breach of law would pass to the Public Defender of Rights in place of the Justice Minister. During the legislative process the notion of such an arrangement was abandoned.

The broadening of the Defender's mandate by way of a direct amendment to the Public Defender of Rights Act remains a current issue. Such an amendment would at the same time introduce a new element to his work. According to the draft amendment, the Defender should carry out a systematic precautionary inspection of places, where persons are detained, whether by decision or due to circumstances leading to their dependence on provided care. This would at the same time facilitate the fulfilment of the Czech Republic's obligations that may arise from the possible adoption of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Among other things, the Optional Protocol presumes that the signatories shall safeguard the functioning of an independent domestic control mechanism. The draft amendment of the Public Defender of Rights Act also includes certain other changes regarding the cooperation of authorities and institutions with the Defender in the execution of his mandate. *Note: The government bill implementing changes to the Public Defender of Rights Act was submitted to Parliament and heard in the first reading at the 41st assembly of the Chamber of Deputies on 10/2/2005 (parliamentary protocol No. 751) and was released into the second reading.*

The authority of the Public Defender of Rights could be significantly broadened by the "Anti-discrimination Act", the legislative preparation of which was also begun in 2003. In the process of approval of the draft, the Government originally approved an alternative solution to the question of which authority or institution is to be charged with the task of prevention in safeguarding fair treatment and the monitoring of discriminatory behaviour. One of the institutions under consideration for this purpose may be the Defender. Although both the government Legislative Council and the Defender consider such a solution inappropriate due to

its unmethodical nature, the Government inclined towards this scenario during the final hearing of the bill.

2. The Office of the Public Defender of Rights, the Material and Personnel Background

2.1 The Budget and Spending

In 2004 the Office of the Public Defender of Rights managed a budget of **78,920,000 crowns**.

Although the amount approved for the Office of the Public Defender of Rights for 2004 by the Act on the State Budget, budget chapter No. 309, totals 90,388,000 crowns, this sum includes a budget increase of 11,468,000 crowns for the coverage of any expenditure linked with the broadening of the mandate of the Defender. None of the above mentioned legislative plans were carried out in 2004; therefore the sum of 11,468,000 crowns was not used.

In total the sum spent by the Office in 2004 came to **59,716,000 crowns** of budgetary resources; that is **75.7%** of 78,920,000 crowns. A further 9,500,000 crowns were transferred to a reserve fund due to the anticipated broadening of the mandate in 2005 by activities ensuing from the Anti-discrimination bill under consideration. The budget approved for 2005 does not take into account any expenditure coverage for these activities.

Savings amounting to 4,576,000 crowns in budget spending in 2004 were primarily accomplished in expenditure on basic resources, especially on operating costs, and in part on employee salaries and other payments for work done. Savings amounting to 4,628,000 crowns were also achieved in investment expenditure.

2.2 Personnel

The state budget for 2004 set a binding limit of **88** employees for the Office. The real employee average calculated for 2004 is **86.8** employees; thereby the limit set by the state budget has been observed and savings of 1.2 employees have been attained.

On 31/12/2004, the number of employees totalled **86**, not including the Defender and his Deputy. Of these, 54 employees dealt directly with complaints (41 were lawyers and 13 were employees of the Department of Administration and Filing Services). This number corresponds to the high degree of professional and administrative difficulty of complaint handling, which involves extensive collection of relevant information for the inquiry and the adoption of legal and other expert opinions that combine to form the prerequisites for the complex appraisal and handling of each case by the Defender.

For this same purpose cooperation continued in 2004 with external experts, especially from the Faculty of Law of Masaryk University in Brno, the Faculty of Law of Charles University in Prague, and in several cases, with experts from the Institute of Forensic Engineering in Brno. Cooperation takes both the form of individual consultations on complex legal cases and of participation by renowned experts in regular consultative seminars held by specialist Office staff.

2.3 The Provision of Information in Accordance with Act No. 106/1999 Coll. on Free Access to Information

The Office of the Public Defender of Rights received 6 requests in total in 2004 for the provision of information in accordance with Act No. 106/1999 Coll. on Free Access to Information, all delivered electronically. In each of these cases information was requested on the management of the Office, especially with regard to the amount, structure and spending of the annual budget of the Office of the Public Defender of Rights.

The information requested was provided to the requested extent, in full and in due time, that is, within the limit set down by Act No. 106/1999 Coll. on Free Access to Information. The right of appeal was not exercised by any of the applicants.

3. Public Awareness of the Work of the Defender

3.1 Media Activities of the Public Defender of Rights

In 2004, the Defender systematically informed the public of the results of his work in the sense of the provisions of section 23, paragraph two, of the Public Defender of Rights Act. He held 12 regular and two extraordinary press conferences. At press conferences he reflected, for instance, upon demands by municipalities for the payment of so-called sponsors' donations on the part of those requesting placement in rest homes for the aged, of unsettled legitimate claims ensuing from the transformation of cooperative farms, of foreigner and asylum-related issues, and on timber felling outside of woods. He informed the public of problems related to the removal of illegal structures, of fees for municipal refuse collection, of problems related to holding 'techno' parties, and of his observations in the area of health care, taxes and customs issues. An entire press conference was devoted to work by the Defender following the accession of the Czech Republic to the EU.

Most often, the Defender provides information on his work via the media. According to a monitoring service at the disposal of the Defender, work by him, his deputy and other professional Office staff were mentioned in a total of 2,256 media broadcasts. The Czech News Agency registered 270 broadcasts, Czech Television registered 126, and the Czech radio broadcasting station ČRo registered more than 70. In 2004 he also appeared in a number of broadcasts by regional ČRo studios – he appears regularly in the Radiofórum debate of ČRo 1 – Radiožurnál radio station and has been guest on ČRo 2 – Praha radio station on a number of occasions in its Káva o čtvrté (Coffee at Four) programme. In spite of extraordinary public interest in each appearance by the Public Defender of Rights, it has not yet been possible to negotiate regular appearances.

Specific forms of promotion include expert lectures at universities, secondary schools and in the private sector given by the Public Defender of Rights, his deputy and delegated professional Office staff members. Lectures and seminars consist of both the presentation of basic information on the position and role of the Defender in protecting rights in a democratic society, and of topically-focused lectures.

In December 2004, a survey was carried out by the Centre for Public Opinion Research at the Institute of Sociology of the Academy of Sciences with the objective of establishing how the institute of the Public Defender of Rights is perceived by the public after four years of its existence. In addition to other interesting information, the results showed that less than a fifth of Czech citizens have sufficient information on the work of the ombudsman.

The www.ochrance.cz website of the Public Defender of Rights, which offers basic up-to-date information on his work, was visited by a total of 27,893 people in 2004. The website is used both as a source of information and for electronic submissions (for more details see section II.1.). Towards the end of the year, steps were taken towards the adoption of a new and clearer appearance of the website, in order to meet requirements for a fully user-friendly website including access for the handicapped.

3.2 Other Informative and Advisory Activities by the Public Defender of Rights

To aid a better understanding by citizens of the problem areas where the law enables the Defender to intervene on behalf of complainants, and in order to provide them with elementary legal counselling and facilitate an operative means of acquiring new or further information on developments in the handling of those complaints already submitted, a permanent telephone information hotline has been set up (+420 542 542 888), which constantly receives a high number of requests for information.

During 2004, a total of **4,388** complainants used the hotline to address the Defender. The lawyers who operate the hotline responded for the most part to requests for information and elementary operative legal advice (2,245 calls). The remainder were queries on the scope of the Defender's mandate (920 calls) and on developments in the handling of claims submitted in the past and calls to provide additional information on such cases (1,223 cases).

As far as content is concerned, in the long-term, queries on matters of civil law prevail (1,227 queries) and matters concerning planning permission proceedings and zoning

(511 queries), social security (341 queries), and undue delays in court proceedings (226 queries) are also very common.

As in previous years, the Defender's Office offers on each working day from 8 a.m. till 4:30 p.m. advice from lawyers at the so-called point of first contact to all those who wish to submit a complaint on a protocol in person. Individuals often choose to pay personal visits to the Office in order to obtain information on the mandate, on the Defender's power to intervene in their specific situation or on complaint requirements. Often such visits serve the purpose of an operative consultation, afforded to individuals by the Office's lawyers in the extent of "legal first aid" only.

During 2004, the point of first contact at the Defender's Office was visited by a total of **1,495** complainants (881 men and 609 women), of which **26** were foreign nationals. In just **5** cases the Office of the Public Defender of Rights was visited by representatives of legal entities for the purposes of filing complaints or the provision of information.

The Public Defender of Rights and his deputy also conduct frequent face-to-face meetings with complainants; these are, however, not included in the aforesaid figures.

4. Relations with Parliament

During 2004, the Public Defender of Rights submitted, in accordance with section 24, paragraph one, letter a) of the Public Defender of Rights Act, four briefings to the Chairperson of the Chamber of Deputies on his work for each of the relevant quarters. These were taken up in his presence by the Petitions Committee. The full wording of each interim briefing on the work of the Defender is available on his homepage www.ochrance.cz.

As in previous years, the Defender exercised the special power afforded to him under section 24, paragraph three, of the Public Defender of Rights Act, and appeared before the Chamber of Deputies on June 22, 2004, in connection with the new government Education Bill (parliamentary protocol No. 602). The aim of this appearance was to achieve a change in the Education Bill that would permit access by all students with complete secondary vocational school education concluded by a vocational certificate (two or three year program) to post-secondary education. The reason for this was to achieve a greater throughput of the educational system. The proposal put forward by the Defender was, however, not passed.

During 2004, the Defender participated on several occasions in sessions of the Petitions Committee that dealt with individual reports and other documents submitted by him. The Defender and the Office Director also took part in the Petition Committee's discussion of state budget spending, chapter No. 309 – The Office of the Public Defender of Rights, for 2003 (29th session) and in the discussion of the government bill on the state budget for 2005 (32nd session).

5. Special Powers of the Public Defender of Rights

One of the significant special powers of the Defender is his right to present material to the Government, afforded to him by the law in two circumstances. According to the provisions of section 20 of the Public Defender of Rights Act, he may address the Government as the supreme executive power. However, in accordance with the provisions of section 22 of the Public Defender of Rights Act, the Government is also the addressee of this special power in cases where the generalization of information drawn from the handling of individual complaints leads to the conclusion by the Defender that remedy demands a recommendation by him for the issue, amendment or nullification of a certain regulation, government resolution or law. Cases presented to the Government in the past at various stages of their processing procedure are dealt with by the Report in section III.

During 2004, significant progress was achieved in procedural proceedings that govern the submission of material to the Government by the Defender. The government Rules of Procedure previously in force had been adopted at a time when the institute of the Public Defender of Rights was not yet incorporated within the legal order. As such, they were not able to respond to this entitlement, neither did they enable the Defender to lead amendment proceedings and hearings of comments on matters of an often very specific nature put forward to the Government by him or enable him to submit such material to the Government directly. In connection with preparations for an amendment to the government Rules of Procedure, the Defender initiated a change in procedural proceedings and in the position of the Defender as far

as submitting material to the Government is concerned. An amendment to the Rules of Procedure that observes these changes was passed and came into force as of 1/6/2004.

During 2004, the Defender exercised his right to present material to the Government in a total of seven cases. Since changes to the Rules of Procedure took effect in the course of the year, those cases already submitted, however not yet dealt with that could not be closed in the interim by any other means, were adapted in the sense of the changes and the Defender has now begun to gradually submit them anew.

Following changes in the rules of procedure, material dealing with the execution of decisions to curtail state social support payments was submitted to the Government on July 20, 2004. The Defender considers unlawful the tax distraint, whereby recurring state social support payments are curtailed by means of claim payment orders in place of deductions. Following consideration by a working group set up by the Government for the purpose of drafting a comprehensive solution, the Ministry of Finance issued instructions to halt all tax distraints characterized above. In order to adopt a conceptual solution, the working group agreed on the necessity to change legislation to ensure that recurring state social support payments are subject to the execution of decisions by means of deductions from earnings only. Consequently, the government resolution of October 20, 2004 (No. 1001) entrusted the Minister of Labour and Social Affairs with drafting and submitting an amendment to the Act on State Social Support and entrusted the Justice Minister with a draft amendment of the Code on Civil Court Procedure with a deadline of January 31, 2005, in both cases.

6. Domestic and International Relations

The Public Defender of Rights, his deputy and competent Office staff members developed the following domestic and international relations in 2004:

The most significant progress made in the area of domestic relations was the intensification of cooperation with chief regional representatives. On January 9, 2004, a meeting of the Defender, his deputy and the Office lawyers with all regional authority directors was held at the Office. A continuation of this meeting took place on June 3, 2004, when the Defender attended a regular meeting by the panel of regional authority directors in České Budějovice. Furthermore, negotiations took place, for instance, with the representatives of nearly all ministries, with the management of both the Czech Chamber of Executors, and that of the General Directorate of Customs.

The Defender maintains steady close relations with the Government Council for Human Rights and cooperates with its work committees and commissions on an ad hoc basis.

On August 31, 2004, the Public Defender of Rights met with Stanislav Gross, the new Prime Minister. The discussion was primarily about cooperation between the Defender and the Czech Government.

An account of domestic relations in 2004 cannot omit the meeting of the Defender with representatives of legislative power. On October 27, 2004, the Defender was visited by Lubomír Zaorálek, Chairman of the Chamber of Deputies of the Parliament and his accompanying staff. Furthermore, during 2004, the Defender welcomed at his Office in Brno members of several parliamentary committees of the Chamber of Deputies and the Senate.

As far as international relations are concerned, the visit by Nikiforos Diamandouros, the European Ombudsman, from March 22 to 24, 2004, may be considered the most significant. The purpose of his visit was to inform the Czech public of his work, of the protection of their rights following accession of the CR to the European Union, and last but not least, to strengthen relations with the Public Defender of Rights of the CR.

On April 15, 2004, an international conference entitled "The Position of the Ombudsman in a Democratic State and the Rule of Law" organized by the Slovak Public Defender of Rights, took place in Bratislava. The Defender attended together with a number of lawyers of the Office. Contributions to the programme by Czech representatives focused primarily on current issues involving implementation of the Public Defender of Rights Act and on the comparison of Czech and Slovak legislation governing the position and powers of the ombudsman.

Continuous activities are in progress in a project of cooperation between the National Ombudsman of the Netherlands and the Czech Public Defender of Rights. The project entitled "Strengthening the Potential of the Ombudsman Institute", is financed by the Matra organization and comprises five blocks, each of which deals with a particular problem area. It has been running since May 2004 and will be concluded in March 2005. The project objective is

to share experience and to draw a comparison of the methods of complaint handling in both the institutions. The working language is English.

The Deputy Public Defender of Rights attended an international conference in Vienna on June 22 and 23, 2004, organized by the Office of the Austrian Ombudsman on the topic of "The Work of the Ombudsman in Relation to the Media".

From October 4 to 6, 2004, the Defender met with his Austrian counterparts, Dr. Peter Kostelka and Mrs Rosemarie Bauer. The Austrian representatives of the people and their institution (the Volksanwalt) expressed their interest in practices employed by the Defender and in his legal anchorage within the Czech legal system. During their visit to the Czech Republic, they also met with the chairmen of the Constitutional Court, the Supreme Administrative Court, and the Chamber of Deputies of Parliament.

On October 20 and 21, 2004, the Defender participated in a meeting of the ombudsmen of Poland, Hungary, Slovakia and the Czech Republic in the High Tatras. The subject of negotiations was primarily the effort to intensify mutual cooperation between ombudsman institutions and a discussion of general issues related to the handling of complaints of the citizens of these countries.

On October 5, 2004, the Defender received in Brno a delegation from the General Prosecutor of Hungary.

On October 15, 2004, the Defender met with a delegation of the Petitions Committee of the German Bundestag. This body carries out similar activities in Germany to the ombudsman institute in other countries of the European Union. In December, the regional ombudswoman of the Swiss canton Vaud visited the Defender to share interesting experience from the work of the ombudsman on a regional scale.

On October 29, 2004, the Defender received a large delegation of the ombudsman of the Korean Republic who was seeking experience at a number of European ombudsman institutions. Similar intentions lead to a visit by a delegation of the chairman and members of the Mongolian Parliament on January 22, 2004 and a visit by a delegation of members of the Vietnamese Parliament on September 6, 2004. In both cases, the members of parliament sought experience and information on the legal anchorage and the specific nature of the work of an established ombudsman institution, which they hoped to incorporate into the legal orders of their own countries.

II. THE MANDATE OF THE DEFENDER IN 2004

1. General Information on the Mandate of the Defender in 2004

1.1 Complaints Addressed to the Defender in 2004

The Public Defender of Rights registered a total of **4,415 new complaints** in 2004. Based on a comparison with the previous year, when 4,421 complaints were received by the Public Defender of Rights, it is possible to say that the number of new complaints has levelled out.

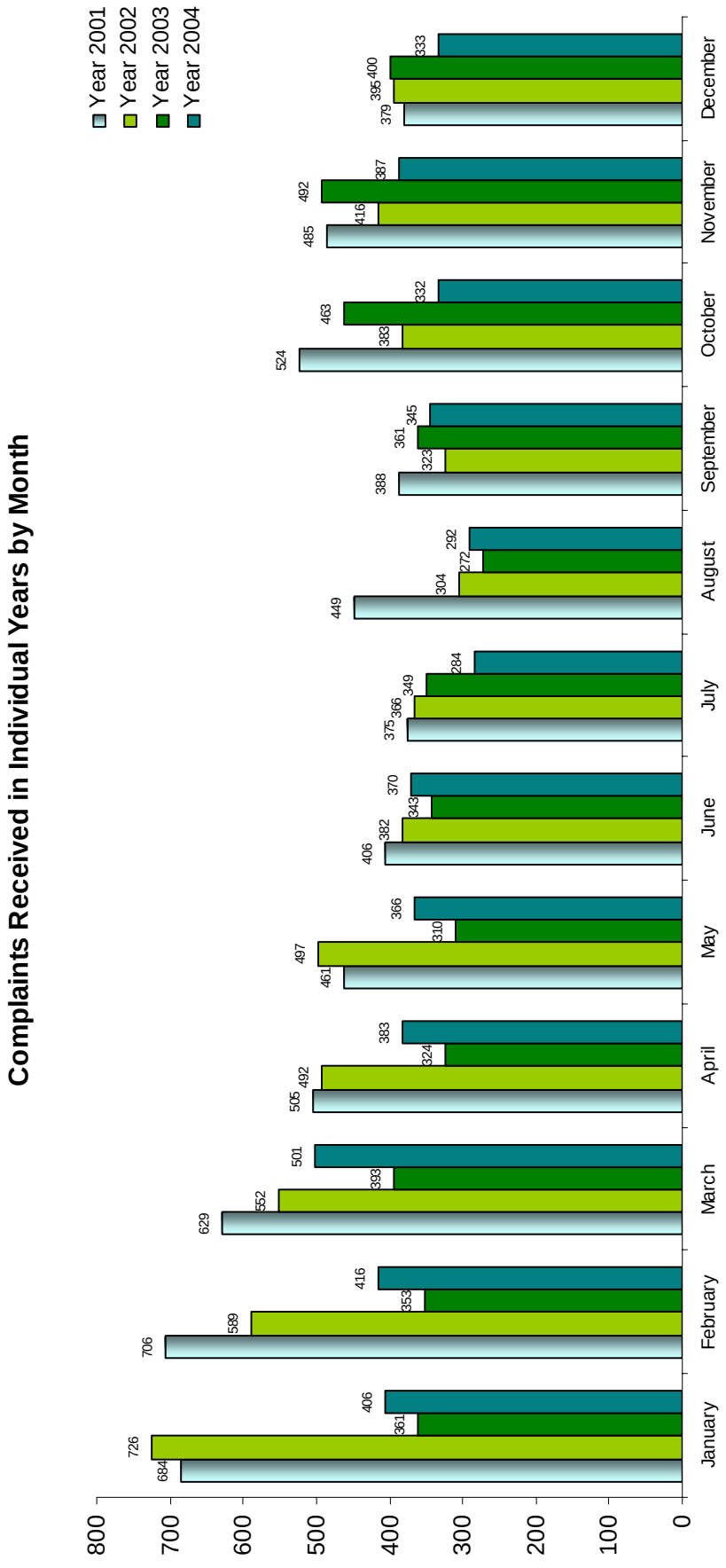
In **49 cases**, the Defender initiated an inquiry on his own initiative. In such cases, the Defender learns of a problem, from various sources, whether from the media or as a secondary unrelated or general piece of information acquired in the course of regular inquiries, which he considers it necessary to investigate. This legal power to act without a motion is significant and almost unique within our legal order, although typical of institutions of the ombudsman type, the rules for which should be as informal as possible.

The Number of Inquiries Opened on Own Initiative

Year	Inquiries Opened on Own Initiative
2001	8
2002	36
2003	44
2004	49

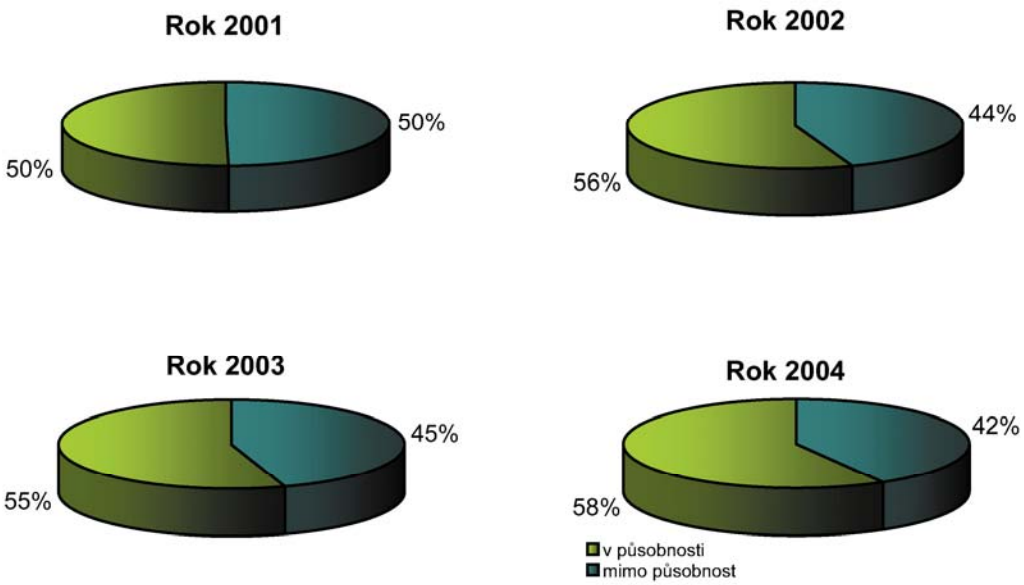
Files opened in 2004 on own initiative include 18 so-called "files of particular significance", for the initiation of which the Defender employed this very power. As for other activities by the Defender aimed at a general remedy exceeding the scope of inquiries into particular cases, each of which has certain specific circumstances, it is more practical to generalise from such particulars. In the case of the remedy of generally recurring problems or of problems of any other particular significance, the Defender opens so-called "files of particular significance". These are generally inquiries lead on a higher level, induced by information obtained in the course of investigating concrete complaints, whether those already concluded in relation to the complainant or ones lead simultaneously. The decisive factor that determines whether a file of particular significance is opened is the existence of a potential general impact on a non-specific group of individuals and especially efforts by the Public Defender of Rights to eliminate general shortcomings and failings of the system. The results of such activities by the Defender are dealt with in detail in section III, which traditionally presents a generalization of observations made.

As for the number of complaints received in the individual months of 2004, it is possible to say that the fourth year in office by the first Czech Public Defender of Rights has seen the distribution of complaints received throughout the year level out. Slight variations in individual months are of no real consequence with respect to the large number of factors that influence the behaviour of individuals in actively seeking out the help of the Defender (presentation of particular problems by the Defender in the media or opinions expressed publicly by politicians, the passing of new or the amendment of existing legislation, as well as the distribution of public holidays and hence the timing of private activities by individuals).


Complaints Received in Individual Years by Month
Year 2001
Year 2002
Year 2003
Year 2004
800
700
600
500
400
300
200
100
0
January
February
March
April
May
June
July
August
September
October
November
December
684
726
361
406
706
589
353
416
629
552
393
501
505
492
324
383
461
497
310
366
406
382
343
370
375
366
349
284
449
304
272
292
388
323
361
345
524
383
463
332
485
416
492
387
379
395
400
333

As far as assessments of the structure of complaints received according to the mandate of the Public Defender of Rights are concerned, the trend of previous years continues with further gradual increases in the agenda that falls under the mandate of the Defender, as defined by the provisions of the Public Defender of Rights Act. On 31 December, 2004, the number of admissible complaints came to **2,577,** representing **58%** of the total number of complaints received. If we take into consideration the fact that in comparison with other long-established European institutions of the ombudsman type, the delimitation of the mandate of the Public Defender of Rights by Czech law is relatively narrow, this ongoing growing trend warrants a very positive evaluation. The majority of the mentioned foreign institutions do not by far attain such high percentages of admissible complaints.

The Ratio of Admissible and Inadmissible Complaints by Year



The gradually decreasing number of complaints addressed to the Defender by complainants in matters beyond the mandate does not, however, signify that the handling of such complaints has become any less time consuming. From the very beginning, the Defender has applied a principle, by which those complainants who address the Defender in such matters will be informed of the scope of the mandate as defined by law and shall be, whenever possible, afforded at least some elementary advice. For this reason, dealing with complaints and handling matters that lie beyond the scope of the Defender's mandate as defined by law remains relatively time consuming. As such, it demands meticulous, convincing and often repetitive explanations of the scope of the Defender's mandate, and often involves a responsible recommendation to the complainant of whether to take further steps in the matter to protect his/her rights and interests, and if so, how. (This issue is dealt with more closely in section II).

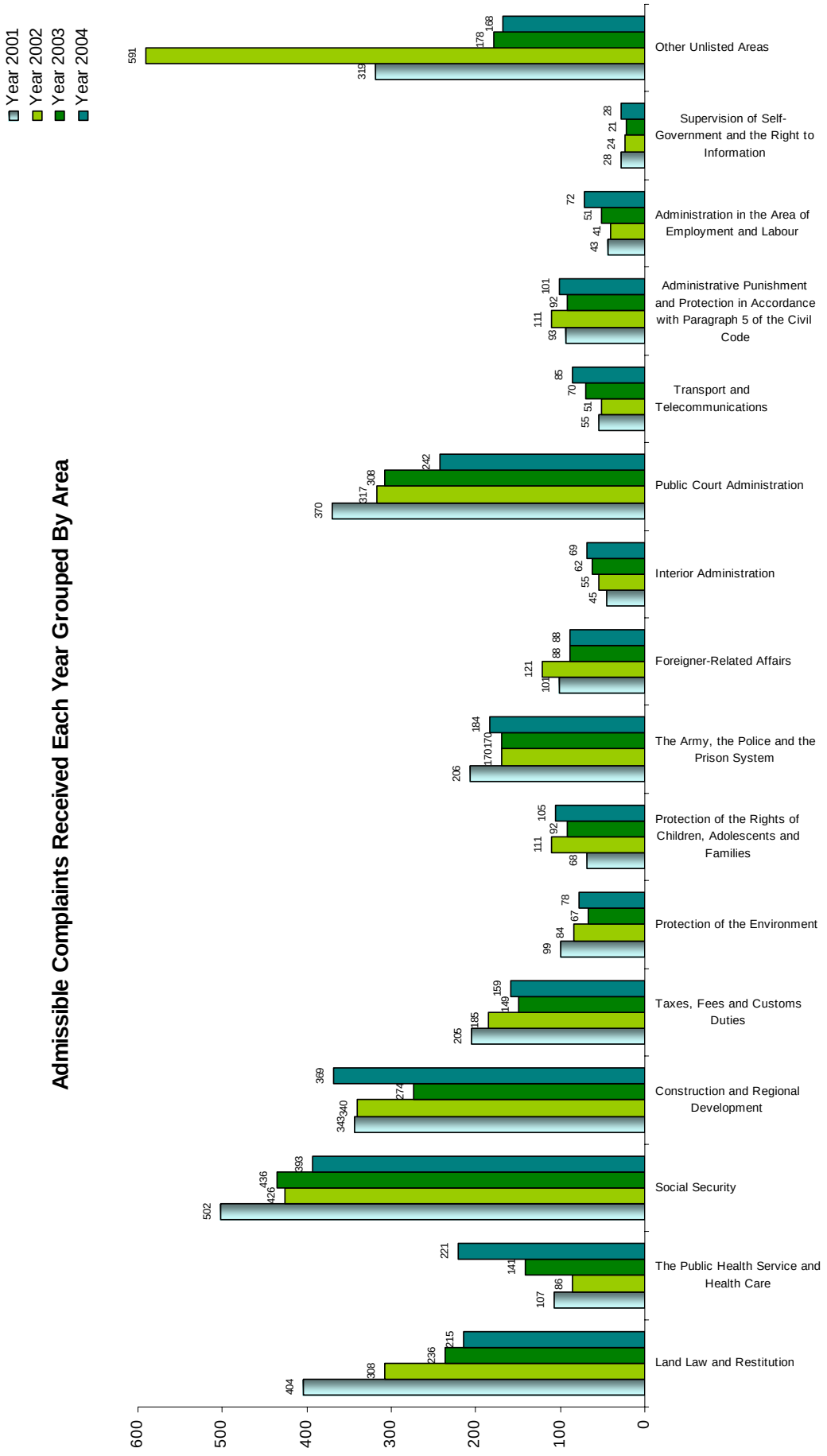
In order to evaluate developments in the structure of complaints received, complaints are grouped into statistical categories according to the individual areas of public administration or law, which they chiefly concern. Based on the number of complaints delivered from each area, it is possible to trace, with a certain statistical precision, trends concerning problematic legal liaisons within the whole of society. To put it simply, it is possible to trace the roots of dissatisfaction and burdens felt by individuals and other members of society.

Number of Complaints Received in 2004 by Area

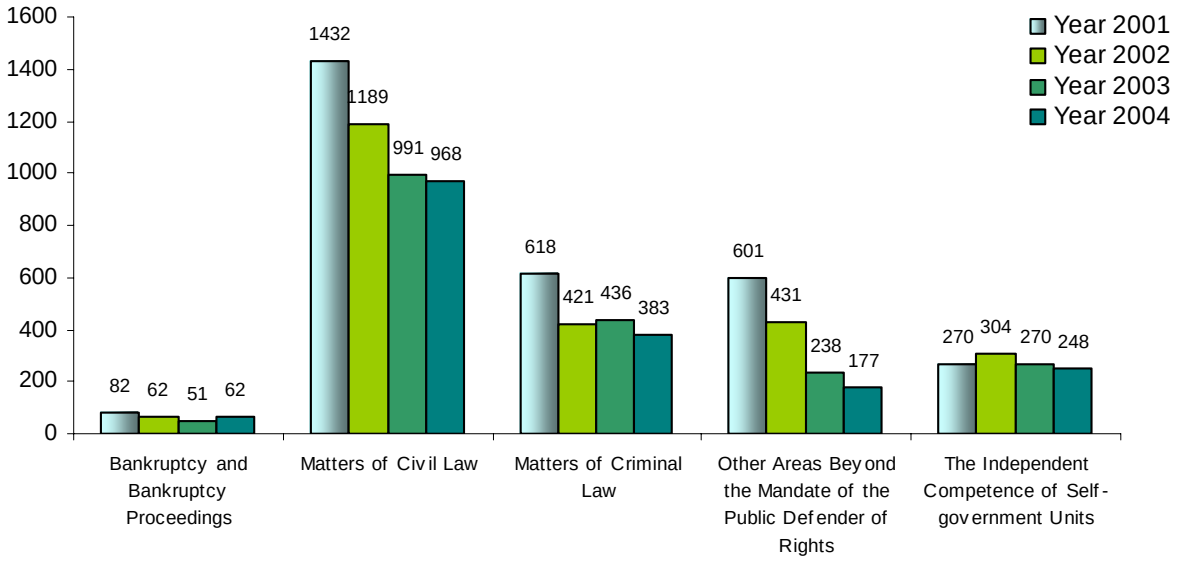
Complaints by Area	Total	Share in %
Land Law and Restitution	215	4.9%
The Public Health Service and Health Care	221	5.0%
Social Security	393	8.9%
Construction and Regional Development	369	8.4%
Taxes, Fees and Customs Duty	159	3.6%
Protection of the Environment	78	1.8%
Protection of the Rights of Children, Adolescents and the Family	105	2.4%
The Army, the Police and the Prison System	184	4.2%
Foreigner-Related Affairs	88	2.0%
Internal Administration	69	1.6%
Public Court Administration	242	5.5%
Transport and Telecommunications	85	1.9%
Administrative Sanctions and Protection in Accordance with Section Five of the Civil Code	101	2.3%
Administration in the Area of Employment and Labour	72	1.6%
Supervision of Self-Governing Units, the Right to Information	28	0.6%
Other Unlisted Areas	168	3.8%
Total of Admissible Complaints	**2 577**	**58.4%**
Bankruptcy and Bankruptcy Proceedings	62	1.4%
Matters of Civil Law	968	21.9%
Matters of Criminal Law	383	8.7%
Other Areas Outside the Mandate of the Defender	177	4.0%
Independent Competence of Self-governing Units	248	5.6%
Total of Inadmissible Complaints	**1,838**	**41.6%**
TOTAL	**4,415**	**100.0%**

The highest numbers of admissible complaints are traditionally in the area of social security, construction and regional development, followed by public court administration, especially with regard to undue delays in court proceedings, complaints on the public health service and health care, and complaints from the area of land law. Of complaints that lie beyond the scope of the Public Defender of Rights, the most common are generally those complaining of problems pertaining to civil law.

If we compare the development in the number of complaints received in 2004 by area with those received in each of these areas in previous years, a steady decline is apparent in the number of complaints on matters of land law, owing especially to a sharp fall in complaints in the area of restitution, although within this area a rise has been noted by the Defender in the number of complaints on the settlement of ownership claims connected to the transformation of cooperatives. The number of complaints on public court administration and social security fell significantly, whilst the number of complaints related to foreigners stagnated. A sharp increase on the other hand was characteristic of complaints, the subject matter of which dealt with problems in the area of construction and regional development. Further details on the situation and trends in each area in 2004 may be found in commentaries presented in the following section of this Annual Report in connection with examples of complaints dealt with by the Defender in the period under scrutiny.


Admissible Complaints Received Each Year Grouped By Area
Year 2001
Year 2002
Year 2003
Year 2004
Other Unlisted Areas
Supervision of Self-Government and the Right to Information
Administration in the Area of Employment and Labour
Administrative Punishment and Protection in Accordance with Paragraph 5 of the Civil Code
Transport and Telecommunications
Public Court Administration
Interior Administration
Foreigner-Related Affairs
The Army, the Police and the Prison System
Protection of the Rights of Children, Adolescents and Families
Protection of the Environment
Taxes, Fees and Customs Duties
Construction and Regional Development
Social Security
The Public Health Service and Health Care
Land Law and Restitution
0
100
200
300
400
500
600

Inadmissible Complaints Received Each Year Grouped By Area



The data in the bar charts display a comparison by area for the last four years. As in the previous Report, it is necessary to note that the sudden fall apparent in the number of complaints classed as "Other Unlisted Areas" in 2003 was ascribable to a new system of classification of individual complaints. This system introduced at the beginning of 2003 following an evaluation of experience allows a far more detailed grouping and categorisation of complaints and greater precision of statistical classification.

A gradual levelling-out of variations in the number of complaints received from each region mentioned in the previous Report by the Defender continued more intensively in 2004. This trend is ascribable above all to the rising number of complaints submitted electronically, though not one such complaint was provided with an electronic signature in 2004, despite the fact that the Defender responds to electronically submitted complaints in this way. Due to electronic communication with the Office of the Public Defender of Rights, the age structure of complainants is changing in favour of younger complainants and at the same time the number of complaints submitted by legal entities is also on the rise. Furthermore, the Defender considers the implementation of the option to submit complaints via a form available on the Defender's website to be of great advantage as it encourages those submitting complaints to fill in all the particulars of the submission, thereby avoiding the loss of time incurred by appeals to the complainant to provide relevant data and the necessary information and documents.

The Number of Complaints Submitted Electronically in 2003 and 2004

	Year 2003		Year 2004	
Electronic Registry	**Complaints**	**Supplements**	**Complaints**	**Supplements**
Electronic Submissions	352	546	453	867

1.2 The Handling of Complaints in 2004

In 2004, the Defender processed a total of **4,469** complaints. Furthermore, he concluded inquiries into **11** files of particular significance, the purpose and significance of which are explained above by the Defender. This figure clearly shows that the number of closed files slightly exceeds the number of complaints received. At the time this Report was drawn up, the internal electronic file records showed that the Public Defender of Rights was handling a total of 867 open complaints. Some of the received complaints are dealt with relatively quickly; some are in fact concluded immediately upon receipt. On the other hand, there are a number of cases in the work of the Defender, the conclusion of which demands much time. This is especially true of cases that require the complainant to complete files with further input data, cases where the relevant authority obstructs the work of the Defendant who is then forced to repeatedly press for its cooperation and its stance or when the remedy and elimination of incorrect administrative practices calls for the successive application of all special powers invested in the Defender. In such cases, the files in question may comprise as many as 200 documents.

In 2004, the Defender was successful in deepening the scope of individual inquiries and in broadening the sphere of interest with a focus on removing the general causes of an unfavourable state of affairs discovered during inquiries into complaints. In the year under assessment, a significant rise was noted in the number of inquiries that were executed on-the-spot, with a focus both on up-to-date file documentation of the relevant authority or several relevant authorities, and above all on personal scrutiny of the situation in the field. This is especially true of matters concerning planning permission and approval proceedings, the protection of the environment, as well as matters concerning the protection of the rights of children and adolescents, and the prison system. In 2004, the Public Defender of Rights and his colleagues carried out a total of **248** on-the-spot inquiries.

In this respect, it is necessary to mention that in accordance with the provisions of section two, paragraph four, of the Public Defender of Rights Act, the Defender delegated a part of his mandate to his deputy, especially the agenda concerning the public health service and health care, social security, the protection of the rights of children, adolescents, and families, foreigner-related affairs, citizenship, and certain other agenda that lie beyond his mandate. In these agenda, the Defender's deputy exercises in full the mandate of the Defender in the sense of the cited Act.

In order to secure the groundwork for inquiries into complaints at the place in question, and under the provisions of section 25, paragraph 3, of the Public Defender of Rights Act, the Defender also delegated power to specialist Office staff members in several cases.

Of the **4,469** complaints processed in 2004, the Defender suspended **1,649** of them, largely due to lack of mandate, and in certain isolated cases for other reasons given by law (for example due to the complainant's failure to submit the required documents).

In **2,330** cases, the Defender assisted the complainant by providing extensive legal advice, by clarifying the procedure whereby the complainant him/herself may exercise his/her rights or claims, or he provided help in some other manner (the Defender acted as mediator between complainant and authorities, terminated the inactivity of authorities by taking up the matter himself, and so on), although otherwise unable to act in several of these cases due to lack of mandate.

In **164** cases, inquiries by the Public Defender of Rights either failed to establish maladministration by the authorities or did not find any inconsistency with the principles of good administration, or found that maladministration had indeed occurred, but could not have affected the subsequent decision (a minor formal shortcoming for instance).

Of the total **315** cases in 2004, where inquiries by the Public Defender of Rights led to the establishment of grave maladministration by the authority in question or simultaneous maladministration by a number of relevant authorities:

- In **256** cases, failings were remedied in the course of the inquiry by the authority itself or with the aid of the Defender, who found the measures sufficient.
- In **46** cases, the Defender suggested, on concluding inquiries, to those authorities that had failed to remove failings themselves, specific measures to remedy the established grave shortcomings; the authority adopted these measures and the Defender accepted this.
- In inquiries in a further **six** cases, grave maladministration was established on the part of the authority, which failed to rectify it and to adopt measures suggested by the Defender;

the Public Defender of Rights was forced to impose sanctions for the negative approach of the authority.

– In **seven** cases in 2004, the Defender exercised the special powers afforded to him by law.

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

The practice, whereby the Public Defender of Rights provides additional information on the legal areas dealt with in the annual report for the previous year to facilitate a better grasp of the general information on his work, has become a tradition that raises a very positive response. It is, however, necessary to note that the grouping of complaints by area requires a certain degree of generalization as the majority of complaints cannot be attributed to one single branch of law, as is the case of every real legal relation, but usually touch upon a number of them. Each branch of law is provided with a general commentary by the Defender to begin with; for greater clarity, examples of complaints are introduced with a certain form of "legal clause" as is customary in court practice.

In order to safeguard the obligation of secrecy imposed by the provisions of section seven, paragraph two, of the Public Defender of Rights Act, details on the identification of complainants and, whenever possible, the names of the bodies and authorities in question are left undisclosed.

2.1 Land Law, Property Relationships Relating to Real Estate, and Restitution

Property Relationships Relating to Real Estate and the Work of Land Registry Offices

In 2004, 73 complaints dealing with these issues were received.

In land register management, the Defender met repeatedly with complaints in 2004 about the procedure of land registry offices during proceedings on the correction of errors. The issue of the correction of errors in the land register has for some time now been at the focus of his attention. For this reason, the Defender repeatedly addressed the central land surveying and land register body – the Czech Office for Surveying, Mapping and Cadastre – with reference to the limited competence of land registry offices to deal with error correction. The Defender supports the view that under the provisions of section eight of the Cadastral Law, corrections of entries that refer to rights should not be carried out as disputes over rights (as well as over records thereof) are in essence discovery proceedings, which may be carried out exclusively by courts (more on the correction of errors in section III).

As in the past, the Defender encountered several complaints in 2004 about inactivity by the Land Registry Office in Prague. This office is one of the most overburdened offices nationwide. This fact is the cause of long delays in registration and entry proceedings. The extent of measures that may be adopted by the land registry office superior in the hierarchy to improve the situation is limited by financial resources. The Defender noted that the relevant land registry office had focused on improving the communication of staff with the public and is training employees for this very reason. The Defender also values efforts by the office to rid itself of the backlog of old entry documents that have not yet been entered into the land register. The objective of these measures is to achieve a reduction in the present average entry time at the office in question from the average time of four to six months to an anticipated 30 days. The Defender did not encounter any significant delays in proceedings by any other offices.

Complaint Ref.: 1683/2004/VOP/ŠSB

Although proceedings on the entry of rights into the land register are not governed by the Code of Administrative Procedure, it is necessary to proceed in compliance with the general principles applicable to administrative proceedings. For this reason, it is necessary to consistently apply the principle of promptness and efficiency of proceedings so that it is possible to carry out the entry of rights as quickly as possible without unnecessarily burdening the applicant with successive requests from the office for additional information pertaining to the request for entry.

The Defender opened an inquiry into the procedure of the former Land Registry Office in Prague (hereinafter "land registry office") on the basis of a complaint by V. Š. who had tried in vain since 2001 to accomplish the entry of his property right in his favour. Findings by the Defender show that the entry had not been performed since 2001 for the reason that documents submitted by the complainant were incomplete and additional related requisites and documents had to be provided. However, the Defender indicated that doubts by the complainant of the due execution of public administration by the land registry office in question were legitimate. Requirements on the completion and specification of the request for the entry of rights and its attachment were formulated vaguely and the request had to be completed with additional information several times. Fuelled by misapprehensions on the part of the complainant, attempts to achieve the entry subsequently split into two, and then three, entry proceedings.

Thanks to inquiries by the Defender and the attention aroused due to the handling of the complaint by the superior Czech Office for Surveying, Mapping and Cadastre, the complainant eventually succeeded in the entry of property rights in his favour. In addition, the inquiry led to the adoption of the following beneficial measure. In an effort to speed up the process of entry into the land register at the land registry office in question, the management of the superior land registry office adopted a change in procedure, whereby requests for entry are completed prior to the entry itself. In the case that documents submitted for entry are not perfect or they require additional information, the party to the action is sent those documents that require completion only. The remaining documents are kept with the land registry office in order to avoid unnecessary confusion on their return and subsequent reclamation. Thanks to this, situations no longer occur whereby documents are mailed to and fro a number of times, passing each other in the post, thereby impeding the final completion of documentation for entry purposes.

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

In 2004, 106 complaints dealing with this issue were received.

The mandate of the Public Defender of Rights in matters of restitution applies particularly to the work of land settlement offices, which decide on land ownership in accordance with the Act on Land. Statistical data imply that from a nationwide perspective, land settlement offices have more or less closed restitution issues. At present, land settlement offices, especially those in large cities (chiefly Brno and Prague), are now left with some 1,500 cases. In his work, the Defender has most often encountered undue delays in restitution proceedings. In such cases, the Defender was usually successful in that a decision in the matter was quickly issued. In 2004, however, the Defender again encountered cases on several occasions where the land settlement office had issued a decision on a plot of land that had, in breach of the Act on Land, been transferred to a third party by the liable individual. In such cases, the land settlement office has no choice but to decide in favour of the restituent. However, the decision issued by the land settlement office has a fundamental impact on the property rights of the third party, who had acquired the land in question in good faith (information on restitution proceedings in progress are not, in contrast to ownership disputes, entered into the land register).

The ban on transferring land continues to be breached by liquidators and administrators of bankruptcy assets of liable persons who attempt to cash in land under restitution. Such conduct will, however, no doubt become the source of future disputes over property rights. As in previous years, the Defender received a number of complaints where he was unable to help complainants. These cases concerned decisions by land settlement offices issued more than three years before, matters subject to court rulings, and matters where persons sought fulfilment exceeding the extent set down by the provisions governing restitution.

Complaint Ref.: 415/04/VOP/PL

The right of municipalities to preferential and free transfer of land intended for development, exercised before the Czech Land Fund, may in certain cases affect persons entitled in accordance with the Act on Land who possess a primary right to the transfer of land managed by the Fund.

Mr J. N. requested the help of the Defender in a matter of restitution. He was unable to recover land under restitution, which had belonged to his family. After 1948, the parents of Mr J. N. were sentenced and imprisoned, and the plot of land in question was, among other things, seized by the state.

In 1992, the Land Fund in Z. issued a decision on the return of confiscated real estate to Mr N. with the exception of the plot of land that had been assigned to a lawyer from the region as early as 1990 by the then Municipal National Committee. Mr J. N., however, succeeded in having this land transfer annulled by the then Prosecutor's Office, and returned under the ownership of the state and under the management of the Czech Land Fund (hereinafter "LF"). The Land Settlement Office in Z. issued a decision on the restitution claim in 1992. Due to the lapse of time, the Land Settlement Office could not additionally issue a decision that would approve the return of the land to the restituent. A reopening of proceedings was no longer possible.

From 1996, the restituent unsuccessfully sought to exercise his claim to an alternative plot of land with the LF. Subsequently in 1998, the plot was marked out for development in the zoning documentation by the city of Z. In doing so, the city acquired legal entitlement to preferential and free transfer of this land. The Municipal Authority, however, concluded in 2001 that it would not surrender its entitlement to this transfer of land. The Defender addressed a personal letter to the Z. City Mayor, pointing out the injustice inflicted upon the family of Mr J. N. after 1948 and again after 1990, and emphasized his belief that Mr J. N. possessed moral entitlement to the plot instead of the city. The City Mayor subsequently informed the Defender that he agreed, that the matter had been discussed by the Z. Municipal Council, and that it had concluded it would surrender its entitlement to free transfer and at the same time would annul its past contrary decisions in the matter. This proposal was submitted by the City Mayor to the Z. Municipal Authority for approval, which issued a similar decision. Mr J. N. was thus presented with the option to once again exercise his claim to the plot. He has concluded a contract with the LF on its transfer and a proposal has been submitted for registration of property rights in the land register.

Claims on Property Shares within Cooperatives

In 2004, 36 complaints dealing with this issue were received.

The Defender received a number of complaints concerning the settlement of property shares within cooperatives. Given that in such cases administrative authorities play no role, at this phase of legal relations such cases are outside the mandate of the Defender, who is limited to merely providing complainants with elementary information and explanations of the legal state of things (for further information see section II).

In land issues, the Defender met with complaints expressing dissatisfaction with the state (namely the area, type and location) of the land offered. In such cases, however, steps taken by the land settlement office are usually compliant with valid legislation (reasonable limits are adhered to). Considering that the right to property is one of the basic rights of each individual, the Defender would consider it beneficial if the state paid greater (also financial) attention to land issues, especially in cases where agricultural plots of land owned by several persons are inaccessible (they have been incorporated within large land aggregates) and the owners of these plots are unable to manage them independently or to dispose of them freely.

Complaint Ref.: 4285/04/VOP/PL

In many cases, the currently available legal steps for the recovery of debt for the purposes of settling the property shares of individuals in agricultural cooperatives fail to lead to real settlement of such debts by the liable individual.

The Public Defender of Rights was addressed by Mrs B. concerning Agricultural Cooperative F., which was in liquidation (hereinafter "the cooperative") and had failed to settle her property share. Negotiations with the cooperative had been unsuccessful. The cooperative was declared bankrupt. Mrs B. exercised in full the procedure valid under current legislation and filed her claim with the relevant court within the specified deadline. However, the Public Defender of Rights verified by means of an extract from the companies register that as of October 2004, a court ruling was in force annulling bankruptcy proceedings due to insufficient property of the debtor.

Such a situation does not allow for any anticipation of a future settlement by the cooperative on grounds of Mrs B.'s legally filed claim, and as such, not even as part of the subsequent liquidation of this company, void of any property. The likely next step is that the company shall cease to exist through deletion from the companies register.

The matter was clarified to Mrs B. An explanation was given with respect to current legislation, which does not permit any other solution and therefore renders the Public Defender of Rights unable to recommend any steps that would lead to settlement of her claim.

2.2 The Public Health Service and Health Care

Health Insurance Premiums and the Work of Health Insurance Companies

In 2004, 44 complaints dealing with this issue were received.

Last year, individuals continued to address the Public Defender of Rights relatively frequently with requests for inquiries into the procedure of health insurance companies. In such cases, an investigation was subsequently held into their procedure in administrative proceedings initiated in the matter of health insurance premium arrears and penalties. In several cases it was found that the health insurance company had not acted correctly under valid legislation, or had acted in contravention of the principles of a democratic state and the rule of law and of the principles of good administration. In other cases, ignorance of valid legislation was found on the part of complainants. In each such case, the complainant was at least provided with a detailed explanation of the matter; at the same time, a recommendation was made of possible further action in the matter. In one case, the complainant was made aware of the option to object on grounds that the premium arrears and penalties are covered by the statute of limitations. A period of five years had namely lapsed without any efforts by the health insurance company to determine or assess the premium amount. Several individuals were informed of the option to request a decrease or remission of penalties under the institute of abatement of the harshness of the law and of the option to agree an instalment plan with the insurance company in question.

Shortcomings in communication between the employees of health insurance companies and policyholders, reflected upon by the Defender in previous years, still remain. The employees of health insurance companies are not always able or willing to provide policyholders with a clear and adequate explanation of their rights and obligations laid down by current legislation, which is a breach of the principles of good administration. During inquiries in 2004, the Defender repeatedly pointed out that it is necessary to apply the same approach to all policyholders in similar cases, for example, when answering requests for the abatement of the harshness of the law. Frequent failings were found in this area.

Complaint Ref.: 1392/2004/VOP/EH

If, upon returning from abroad and reregistering with the health insurance company, the policyholder fails to submit proof of his/her health insurance for the period for which he/she had deregistered from the public health insurance system in connection with a long-term stay abroad, the policyholder is then obliged to repay the premium arrears, as he/she thus failed to fulfil the conditions defined by the Act on Public Health Insurance.

Mr L. R. addressed the Public defender of Rights to complain of the conduct of the health insurance company in connection with its request for the payment of health insurance premium arrears and penalties for the period of his long-term stay abroad, during which he had deregistered from the public health insurance system.

After reviewing the steps taken by the health insurance company, the Defender concluded that the recovery of arrears for the period of the complainant's stay abroad is compliant with current legislation. The policyholder had indeed stayed abroad in the years 2002–2004 and had declared his intention of a long-term stay abroad prior to his departure. On his return, however, he failed to provide proof of health insurance for the period of this stay. He had indeed chosen not to take out health insurance, considering it unnecessary. By failing to do so, he had failed to meet the obligation defined by law, in spite of having been duly informed prior to his departure. The form supplied by the health insurance company, filled in and signed by the complainant prior to his journey abroad, contained instructions in accordance with current legislation. The health insurance company in question therefore had no alternative but to request repayment of health insurance premium arrears for the period of his absence. Following an explanation of the matter, the complaint was laid aside as clearly ill-founded.

The Work of Public Health Protection Authorities

In 2004, 31 complaints dealing with this issue were received.

*A number of individuals complained to the Defender of **noise** made by service establishments, restaurants, discos and bars, pubic music performances, even playgrounds. Individuals objected to the breach of noise limits, disruption of pleasant living conditions, inaction by regional health authorities, and insufficient cooperation by them with relevant planning authorities. The source of these problems is often a failure to respect the stance previously issued by the relevant regional health authority representative or failure by the planning authority to implement such a stance into the final building approval, reviewing of which is later impossible due to time elapsed*

Certain regional health authorities deny the competence to monitor noise pollution levels at restaurants and similar establishments on grounds that this concerns the vocal expression of individuals, which cannot be measured under the Government Resolution on the Protection of Health against Detrimental Impact of Noise and Vibration. Planning authorities refuse on the other hand to take any action in the matter of reducing noise levels on grounds that instructions to carry out necessary adjustments cannot be given unless a breach of noise levels is ascertained. The Defender also encountered a case where measurements had not been carried out as, according to the regional health authority, the matter concerned a public music performance, a random event. It considered this public music performance, organized yearly, to be a random event. In the opinion of the Defender, however, both the regional health authority and the planning authority possess the power to adopt measures to reduce noise levels.

In the case of playgrounds, regional health authorities deny the competence to deal with these issues on the grounds that this concerns noise emitted by the voices of individuals in a public area, and therefore, although measurements may be carried out, the results thereof cannot lead to any sanctions or other measures under the Act on Public Health Protection. Planning authorities often deny that playgrounds are constructions as defined by Public Construction Law and hence deny having any authority over them.

The Defender is often addressed by individuals complaining of inactivity of administrative authorities who ignore their repeated appeals to look into complaints on the presence of mould in their apartments. Situations occur, whereby the regional health authority refuses to deal with the issue on grounds of insufficient competence and refers the individual to the relevant planning authority, which in turn refers the individual back to the regional health authority.

In the opinion of the Defender, denial of competence and referral to another administrative body, as well as lack of cooperation between individual administrative authorities and little or no effort to actively solve competence disputes, all serve as proof of the inefficiency and poor quality of public administration. Such conduct breaches the principles of good administration, which without doubt include dealing with complaints without undue delay and, should the matter fall under the competence of more than one administrative body, addressing the issue jointly.

These conclusions led the Defender to open an own initiative inquiry to gather information on the application of the law, clearing up confusion on its interpretation, and unifying the procedure of relevant public administrative authorities.

Complaint Ref.: 287/2003/VOP/SN

In the case of complaints on the breach of noise limits through the utilization of a construction where no discrepancy with the final building approval is deduced, it is possible to deal with the matter under the Building Act, which governs the conditions for ordering so-called necessary construction work, providing that there is a public interest (protected in general by the Act on Public Health Protection) in such a measure. In such cases, cooperation between the planning authority and the relevant health authority is desirable.

The Public Defender of Rights was addressed by an association of residential unit owners from the town of P., represented by Mr K. (hereinafter "the complainant") with objections to the procedure of the department of housing construction (hereinafter "the planning authority") in dealing with complaints and suggestions put forward by the complainant about noise pollution (the breach of permitted noise levels) resulting from music performances. In the

complainant's opinion, the cause of the current state of affairs is the utilization of this building in contravention of the issued building approval.

In an inquiry, the Defender found that the subject matter of the approval in question was not explicit and comprehensible enough to reach a clear conclusion on whether the utilization of the building was in compliance or in contravention of it. This building approval is without doubt vague and, as such, illegitimate. In spite of initial delays, procedural discrepancies, and inadequate cooperation between the planning and health authorities, an effective solution was eventually accomplished through the application of section 87 of the Building Act. Although handling the case demanded quite some time, the owner of the building in question finally respected the decision of the planning authority and compiled project documentation as a basis for subsequent approval by the planning authority according to the cited law.

Health Care and Other Competences of the Ministry of Health

In 2004, 146 complaints dealing with this issue were received.

The Public Defender of Rights again reviewed a number of complaints about the procedure of authorities during inquiries into complaints and the handling of complaints on afforded health care and on the conduct of medical staff. Shortcomings were found in this area chiefly in the handling of complaints, which most often concerned failure to observe deadlines, inadequate or blatantly incomplete information given to complainants, and cases where complaints had been left wholly or partly uninvestigated. Some regional authorities forwarded complaints to the Czech Medical Chamber for investigation or handling, which the Defender also considers to be incorrect. In cases where doubts arise as to the observation of correct procedure in the provision of health care, regional authorities should set up a regional expert committee to investigate such cases.

As for complaints that are not about authorities but about health facilities or individual doctors, the Defender clarified the scope of his mandate and advised of further possible steps. At the same time, complainants were asked to address the Public Defender of Rights again should their complaint to the given authority remain unsettled or be handled incorrectly.

This year also saw several individuals call the attention of the Public Defender of Rights to the fact that they were unable to obtain information contained within their medical documentation or within the medical documentation of a close deceased individual. This issue is not yet explicitly governed by the Act on Public Healthcare, despite the fact that the Ministry of Health has been notified of the absence of legislation by the Defender for the second year running. Although the Government obliged the Minister of Health in a resolution from January 13, 2003, to draw up a draft amendment to the Act on Public Healthcare safeguarding the rights of next-of-kin of the deceased to access to all information collected on him/her in medical documentation, the Ministry has failed to present this amendment to the Government. In certain cases, a particular section of the mentioned government resolution has not been adhered to, as it obliges the Minister of Health to safeguard, prior to the amendment of the Act on Public Healthcare, that next-of-kin of the deceased are duly informed. This right is namely afforded to them on grounds of legislation of a more general nature, incorporated in the Civil Code (the protection of personal rights).

Given that this area is not yet governed by law, the Defender at least provides individuals who encounter this problem with information on the government resolution in question, drafted on the basis of the Defender's legal opinion. The enforcement of this interpretation of law has lately been aided by the support of the Czech Medical Chamber, which has identified with the Defender. It has issued a press release in connection with publicity in the media about the surrender of medical documentation to the wife of the deceased Ivan Hlinka. Following repeated warnings of the lack of legislation governing this issue by the Defender, the Ministry prepared a draft amendment that reflects his requirements. At present, this matter is being discussed in an inter-ministerial amendment procedure. Following the consideration of all suggestions, it will be presented to the Government.

Complaint Ref.: 3414/2003/VOP/PM

In order to safeguard that the guardian of a mentally-handicapped person is able to effectively protect his/her right to health and to exercise related rights, the guardian must be informed in due time by the social care establishment of the client's transfer to hospital and of his hospitalisation. Such a procedure is in the client's

interest and facilitates the execution of necessary medical examinations and the command of the situation in general.

The Public Defender of Rights inquired into a complaint by Mrs J. U. on the conduct of the employees of a social care establishment (hereinafter "the establishment") in providing R. K., her mentally-handicapped son, with care. The establishment failed to inform her, the court-appointed guardian of R. K., of her son's health complaints and his transfer to hospital. During this transfer he was not accompanied by any employee of the establishment. The establishment's medical staff also neglected the care of her son. In hospital, communication with the patient deteriorated significantly. He refused to be examined and was therefore "strapped" to the bed. He was subsequently transported back to the establishment where his condition worsened. The following day, it was necessary to take him to hospital again, where he underwent surgery in the afternoon. It was not until the evening that his mother was informed of the operation. The next day R. K. died of septic-toxic shock.

The Public Defender of Rights concluded that the establishment had erred in failing to inform the guardian of its mentally-handicapped client of his transfer to hospital and in failing to provide the client with accompaniment by an employee of the establishment. In failing to inform the guardian of the hospitalisation of her son, the establishment prevented her from exercising her rights and performing her obligations as a guardian. Her presence would have in all probability also facilitated the execution of the necessary examinations and may have considerably influenced the whole situation. R. K. should have been accompanied to hospital by a member of staff at least, especially since his hospitalisation was expected. The presence of a familiar person may have eased the entire situation. In proceeding in this manner, the establishment also breached an internal regulation, as the obligation to immediately inform the guardian of changes in the client's health condition and to accompany the client to health facilities had been confirmed in writing by the director as early as 2002.

2.3 Social Security

State Social Support and Social Welfare Benefits

In 2004, 131 complaints dealing with this issue were received.

In the area of social welfare benefits and state social support benefits, the Public Defender of Rights continued in 2004 to deal with the work of relevant administrative bodies that issue decisions on benefits. Maladministration by them included especially the inadequate fulfilment of their obligation to inform claimants and benefit recipients of the deciding factors that determine entitlement to benefits, inactivity by the authorities, and failure to observe the principles of good administration. The Defender observed a drop in the number of complaints related to the calculation of household costs for the purposes of determining the amount to be paid in social welfare benefits. This is evidently a reflection of better fulfilment by authorities of their obligation to inform and of better awareness on the part of benefit recipients. In connection with the amendment of the Act on Social Need, the Public Defender of Rights paid heightened attention to complaints related to its application and interpretation.

As far as state social support is concerned, the Defender established maladministration on the part of administrative authorities that based their decisions on granting state social support on grounds of failure by claimants to meet the condition of permanent residence in the Czech Republic. The claimants and recipients under joint assessment for state social support were asylum seekers (only up until 1/1/2004, as of when Act No. 453/2003 Coll. explicitly excludes asylum seekers from the sphere of potential recipients of state social support), where their visas did not follow directly on to one another. The practise by administrative bodies, whereby the permanent residence of an asylum seeker is considered to be a 365 day uninterrupted stay, that is 365 days of visas that follow on to one another consecutively, is considered wrong by the Defender. The Defender referred the matter to the Ministry of Labour and Social Affairs, the author of this interpretation of the law.

Complaint Ref.: 1283/2003/VOP/ZG

In proceedings on the granting of state social support, registration of the place of residence by an asylum seeker is wholly independent of whether he/she possesses a valid visa. For this reason, the period of so-called legitimate stay must not be confused with the period for which a foreigner merely registers his/her place of residence in accordance with the Act on Asylum.

The request by Mrs E. T. for state social support (child benefit) was turned down as the person under joint assessment, the father of the children, was party to an action on the granting of asylum and had failed to meet the prerequisite of permanent residency in the Czech Republic under the provisions of the State Social Support Act. In January 2001, the duration of the visa had been interrupted, as renewal of the visa had not been requested until a day after its expiration. The complainant raised the objection that the father had resided in the Czech Republic continuously for a period of more than three years. Persons entitled to support under the Act on State Social Support are those individuals who de facto reside in the Czech Republic.

Registration of the place of residence by an asylum seeker is entirely independent of whether he/she possesses a valid visa. For this reason, the period of so-called legitimate stay must not be confused with the period for which a foreigner merely registers his/her place of residence in accordance with the Act on Asylum. The authority erred in that it deduced on grounds of a statement by the Foreign Police that the person under joint assessment with the complainant had failed to meet the prerequisite of permanent residence and, in doing so, deprived the complainant of social support. The administrative body had, in this case, failed to comprehend fully the difference between both pieces of legislation governing the residence of foreigners (the Act on the Residence of Foreigners and the Act on Asylum) and judged the whole case incorrectly according to the Act on the Residence of Foreigners, which, however, is not applicable to this case. Since the authority disagrees with the legal opinion of the Defender, the Public Defender of Rights has initiated negotiations at the level of the Ministry of Labour and Social Affairs, with the aim of reconciling the interpretation and application practices on a nationwide scale.

Pension Insurance Payments, Proceedings Governing Them, Pensions with Foreign Elements

In 2004, 208 complaints dealing with these issues were received.

The Public Defender of Rights is most often addressed by complaints on decisions by the Czech Social Security Administration (hereinafter "CSSA") in Prague on matters of pension payments. Fewer complaints are submitted by individuals complaining of the work of each of the regional social security administrative authorities. The majority of complaints are related to retirement pensions, followed by disability, survivors', and orphans' pensions. Although complaints on matters of retirement pensions are varied, it is possible to generalize by saying that individuals most often contest decisions on the granted pension amount. As far as disability pensions are concerned, decisions on the dismissal of claims are those most often contested. The most frequent reason for dismissal is the failure to meet one of two conditions for entitlement to a disability pension, be it the insufficient duration of insurance or the fact that the health condition of the claimant does not correspond to any of the given categories for a disability pension.

As in the previous Annual Report on Activities, the Defender considers the approach to individual inquiries by the CSSA to be exemplary. Complaints that object to the present legislation governing retirement and disability pensions are but a few. Changes in legislation suggested by complainants are mostly unsubstantiated or not feasible without prior comprehensive reform of the pension system.

Complaints related to survivor's (widow's and widower's) pensions and orphan's pensions are of a directly opposite nature. They chiefly concern changes in valid legislation and only in isolated cases do they concern specific decisions on pension payments. In the case of survivor's pensions, complaints concern the unequal position between women, who were granted a survivor's pension prior to January 1, 1996, governed at that time by Act No. 100/1988 Coll. on Social Security, which included a threshold for the calculation of the maximum possible sum to be paid out as a pension, and those women granted a survivor's pension after this date, under Act No. 155/1995 Coll., which has no such threshold. It should be added that this problem has received repeated attention in the media, to no avail. Its remedy requires the amendment of current legislation. Persons who submit complaints on orphan's pensions most often object to entitlement to an orphan's pension depending on the fulfilment of conditions for entitlement to the retirement pension of the deceased after 1/1/1996. Further details on orphan's pensions may be found in section III.

Traditionally, there have been many complaints on the application of the Agreement on Social Security between the Czech Republic and Slovakia, on decisions by the Minister of Labour and Social Affairs who dismissed requests by them for the abatement of the harshness of the law, and on undue delays in the aforementioned proceedings. The Deputy Public

Defender of Rights lead talks with the Minister of Labour and Social Affairs last year aimed at broadening the circle of individuals whose requests are satisfied. In the Deputy's opinion, the ideal solution would involve a change in the current Agreement, as the search for a threshold for "harshness", which is to be remedied by intervention on the part of the Minister, is a never-ending process owing to the great diversity of cases. As far as undue delays in proceedings on the abatement of the harshness of the law are concerned, under new legislation and as of January 1, 2004, general provisions governing administrative proceedings no longer apply. Since there exists no legal entitlement to the satisfaction of a request and since the Minister's decision is not subject to review by court, the leeway for intervention by the Public Defender of Rights in this area is limited to establishing the state of the request in the procedure and to accelerating the process.

Other complaints pertaining to the issue of pensions with foreign elements are sporadic. They concern both the application of different agreements on social security and situations where entitlement to a retirement pension cannot be granted due to the absence of such an agreement.

Complaint Ref.: 2309/04/VOP/PK

The Czech Social Security Administration issued a new decision to rectify its previous error, which granted the complainant a full disability pension, however, at the wrong, minimum level. The Public Defender of Rights achieved redress of the error in that the study period was rightly included within the insurance period. The complainant was reimbursed the underpayment.

Mr Z. R. complained of the decision by the Czech Social Security Administration (hereinafter "CSSA") in Prague granting him a full disability pension (hereinafter "FDP"). The complainant's FDP was influenced considerably by the exclusion from the insurance period of a three-year study period at a special practical school. He was granted a minimum pension in spite of his entitlement to a pension several times higher.

Proceedings on the granting of pension insurance payments are initiated on the basis of written requests on official forms issued by social security bodies and are drawn up by those organisations and regional social security administrative authorities that receive the request for a pension. Documents that serve as grounds for a decision by the CSSA are managed and presented by regional social security administrative authorities, which also provide individuals with expert advice in social security matters. The CSSA had based its decision on a request that did not include all the relevant facts, and therefore the error had occurred on the part of the regional social security administration, which had failed to proceed in compliance with the above-mentioned provisions of the law.

The CSSA did not request details from the vocational training school on the studies of the abovementioned individual prior to1999 till it was called on to do so by the Defender on 16/7/2004. The fact that Mr Z. R. had attended this school was apparent from the substantiation of a ruling of the Regional Court in Hradec Králové dating from February 3, 2004. Despite this, the CSSA issued a decision on 14/5/2004 granting the complainant a minimum FDP on grounds of failure to meet the conditions for entitlement to a pension on 4/ 6/1997 for reasons of insufficient duration of insurance. The Defender concluded that an error had occurred whereby the provisions of the Code of Administrative Procedure had been breached. The CSSA had not based its decision on an exact and comprehensive evaluation of the real state of affairs and had failed to obtain, for this purpose, the necessary groundwork for its decision.

Other Social Security Agenda

In 2004, 54 complaints dealing with this issue were received.

In 2004, the Defender dealt with the issue of compensation under Act No. 261/2001 Coll. The Public Defender of Rights held talks in November 2004 with officials from the Czech Social Security Administration on procedure in the case of those requesting compensation (persons in hiding for reasons of race or creed) and were not issued a certificate under Act No. 255/1946 Coll. by the Ministry of Defence. These talks were successful in that discrepancies in interpretation were eliminated – the Defender agreed with CSSA officials that if a claimant is refused a certificate, this refusal should not automatically serve as grounds for dismissal of a compensation claim for one-off financial remittance. The CSSA shall treat each such case individually and investigate whether the conditions defined by law have been met.

Complaint Ref.: 2944/03/VOP/PK

The period defined by the Extra-judicial Rehabilitation Act is not a foreclosure period (one that expires). A request for confirmation that employment had been terminated for reasons of political persecution or in a procedure that infringed generally acknowledged human rights and freedoms, may be submitted by an individual whose employment was thus terminated even after the ineffectual lapse of this period.

Mr R. K. addressed the Public Defender of Rights through a Member of Parliament concerning his financial compensation as he had been persecuted by the communist regime. The complaint itself, as well as attached documents, shows that the complainant was dismissed as a teacher in 1958 for political reasons and was forced to work manually. At the same time, he was systematically prevented from enhancing his qualifications and his salary was thus kept at the lowest possible level. He continued to be harmed in this way following his return to teaching from 1968 till1976, when he retired with a pension calculated on the basis of his prior salary.

This particular form of discrimination against the complainant by the communist regime is addressed by the Extra-Judicial Rehabilitation Act. The request for the issue of a certificate confirming that employment had been terminated for reasons of political persecution, or in a procedure that infringed generally acknowledged human rights and freedoms, may be submitted by an individual whose employment was thus terminated up to six months from the date of force of this Act. However, this period is not a foreclosure period and it is therefore possible to submit a request following its ineffectual lapse. If the individual is issued with confirmation by the former employer, whether by the organisation itself, its legal successor or its central body, the termination of employment is rendered invalid, as the act of termination of employment, duties or membership within a cooperative during the respective period for the reasons mentioned above was in itself invalid. Rehabilitation of those persecuted in this way by the communist regime means that for purposes of the state pension scheme (insurance), the period looked upon as the period of employment begins with the date of termination of this employment till the date of entitlement to a retirement, disability or partial disability pension; but however, not beyond the entry into force of this Act.

The complainant was informed in detail of the above. He took action accordingly, obtained a certificate, and his retirement pension was recalculated.

2.4 Construction and Regional Development

Zoning; Zoning, Planning Permission, and Approval Proceedings

In 2004, 260 complaints dealing with these issues were received.

Zoning continued to be a key topic in 2004. Most complaints were about the exclusion of land from development zones or, in contrast, about the inclusion of land in bio-corridor zones, forest parks, etc. Although the mandate of the Defender merely covers the process of obtaining zoning documentation, the majority of complaints opposed its approval or demanded modifications thereof. The approval and modification of zoning documentation comes under the independent competence of self-governing units and is, as such, outside the Defender's mandate.

In his work, the Public Defender of Rights repeatedly encounters underestimation and neglect of the role that zoning plays in influencing the appearance of both human dwellings and the landscape. The Defender is often confronted with cases where municipal zoning plans either have not yet been approved or those approved are disregarded by municipalities or are not actively incorporated in activities by them. In this connection, it is necessary to stress that the municipality approves the zoning plan, thereby assuming the role of "area manager". It is the municipality that shapes the future appearance of the area through zoning documentation, substantially influencing its functioning in terms of the regulation of various interests, subsequently embodied within regulations on the functional utilization of the area. It is necessary to be aware that every human dwelling and its individual relationship to the landscape, its position within it, is a complicated urban organism that develops in time and space with a certain degree of inertia. Every rash step taken without careful consideration may harm this unique organism and its functioning far into the future. Random and ill-considered interference with the landscape permanently scars the urban and architectonic face of cities

and municipalities, and these cannot be healed quickly and frequently demand many years of continuous effort and cooperation between zoning and planning authorities.

Underestimation of the significance of zoning leads to negative displays of "wild urbanism" within the landscape and the development structure. This is a problem that mainly afflicts the vicinities of large cities, especially Prague's suburbs. It should be noted that according to the Defender's observations, zoning does not work in these areas. There are a number of reasons for this, all mentioned above (the absence of zoning plans in rural municipalities, their lack of quality, and disregard for regulations on the functional utilization of the area). The result is a non-conceptual approach to the development of residential housing, the typical display of which is the reconstruction of buildings in existing recreational cottage areas for their subsequent use as permanent housing, bringing with it a number of problems, be it a lack of adequate infrastructure (problematic waste water or refuse disposal), difficult access to these areas, as well as inadequate transport services, and conflicts between cottagers and "new" residents (disputes, for example, over observing peace and quiet at weekends). Other displays of the failure of zoning include locating problematic structures near housing estates (industrial buildings and major capacity highways in the vicinity of residential areas), the architectonic design of certain housing estates that disrupt the character of the landscape and the traditional structure and appearance of village buildings, as well as threats to the area's natural values (specially protected areas, and bio-corridors in the landscape).

The issue that continues to plague current legislation governing the obtaining of zoning documentation is that it affords insufficient protection of the rights of real estate owners and inhabitants. It namely offers no right of appeal against the dismissal of objections (amendments) and it omits the possibility to request review of the builder's conduct by a court. According to Construction Law, the discussion and approval of zoning documentation and zoning details are not subject to the general provisions of administrative proceedings. This legal arrangement is the subject of repeated criticism by the Public Defender of Rights in his annual reports, submitted each year to the Chamber of Deputies of Parliament, and is again in this Report on Activities in 2004.

The Public Defender of Rights considers it necessary and beneficial to constantly criticise of all of these negative practices related to zoning to draw attention to the significance zoning has for the future appearance and development of the landscape and human dwellings.

In zoning proceedings, the Defender encountered procedural failings as well as insufficient assessment of the compliance of proposals for the issue of zoning permission with zoning documentation. Failure to correctly assess the compliance of the construction owner's plan with zoning documentation generally risks the state having to assume responsibility for having issued an illegitimate decision. Planning authorities should not underestimate assessment and handling of zoning documentation and should ensure that decisions issued by them are well substantiated and reviewable. During inquiries, the Defender repeatedly met with situations where valid zoning documentation had been disregarded and where zoning proceedings had ignored other requirements defined by law for the issue of decisions on the utilization of land or on the construction of buildings (the assessment of the impact on the character of the landscape, statements by environmental and landscape protection authorities, etc.). In this sense, the Defender noted that the relevant public administrative authorities that protect special interests have an obligation to act in a sufficiently proactive manner and to utilize in due time every power they have to draw attention to failure to adhere to legal procedures or failure to effect redress in response to negative expert opinions issued by them.

In inquiries into complaints about the conduct of planning authorities during planning permission and approval proceedings, the Defender frequently encounters complaints on the length of individual proceedings. Proceedings that drag on for more than two or three years are no exception and are often followed by planning permission proceedings of a similar length. The reason for this wholly unsatisfactory state of affairs cannot always be put down to inactivity by planning authorities. A common explanation is that the parties to the action exercise their right of appeal consistently and, consequently, the matter is discussed several times in an appeal or extra-appeal procedure, and is thus returned repeatedly to the administrative body of first instance. The disturbing fact is that in a significant portion of cases the reasons for which decisions are annulled are not related to the matter itself but to maladministration by planning authorities during proceedings and during the issue of planning permission, and they are therefore procedural. At the same time, it is not possible to say that this occurs, for example, during the positioning and approval of large complicated investment projects (for further details see section III). It is a problem of a general nature. A common shortcoming is, for example, the failure to issue decisions on objections to prejudice by planning authority officials.

Another problem area seems to be decisions by planning authorities on existing buildings, especially in connection with their structural and technical state. Frequently, it is possible to trace efforts by planning authorities to look upon the poor technical condition of buildings as if this were an issue pertaining exclusively to private law, where it is the obligation of the owner to deal with any damage caused by such technical state. In doing so, planning authorities disregard the public interest in maintaining buildings in a structural and technical state that guarantees above all their safety and minimizes risks to health.

Another persistent problem is the enforcement of decisions issued by planning authorities, namely orders to carry out maintenance work or orders for the removal of a building. The Public Defender of Rights continues (by means of press conferences on this topic for instance) to criticize this state of affairs and repeatedly declares cases where planning authorities refrain from implementing decisions and remain inactive to be cases of grave maladministration in the execution of public administration.

Complaint Ref.: 236/2003/VOP/KČ

Inactivity by the planning authority in a matter concerning extensive unauthorised construction may not be excused by either the complexity of the case or by the authority's lack of personnel resources.

The Defender was addressed by a house owner in municipality Ú., close to the capital. The complainant stated that the relevant planning authority was inactive in the matter of extensive unauthorised construction of family houses outside the municipality's development area. The Defender conducted a broad inquiry, studying more than 300 documents and leading frequent inquiries at the location itself.

The inquiry concluded that the roots of the case go back to 1996 and involve a total of seven family houses and several related minor structures. Whilst the first two houses had been duly approved and built prior to the approval of the Ú. municipal zoning plan, the other constructions were built after the approval of the zoning plan and in contravention of it. Despite this, three of them were subsequently approved by the planning authority. The rest received no such approval and proceedings on the removal of these buildings should have been initiated. The planning authority, however, remained inactive. Moreover, the houses under construction all stand on agricultural land, in no way intended for development, and near woods and a national park.

The long list of shortcomings that the Defender charged individual authorities with includes the erroneous issue of approval for the removal of plots of land from the agricultural land fund, insufficient penalization of offences under the Building Act, inactivity in the matter of removal of buildings, poor administration of documentation in administrative proceedings, the failure to forward submitted appeals to the appeal body, and many more. The Defender sent his report on the inquiry and, somewhat later, his final statement together with a proposal for measures of redress to all the relevant administrative authorities, including the Ministry of Regional Development. Under pressure from the Ministry and on the grounds of conclusions drawn by the Defender, efforts are at present being made to redress shortcomings, given that this is still possible. The observance of the proposed measures of redress remains under the close scrutiny of the Defender.

Proceedings on the Removal of Constructions

In 2004, 54 complaints dealing with this issue were received.

In the previous three annual reports presented to the Chamber of Deputies of Parliament, the Public Defender of Rights criticized the poor state of affairs concerning Public Construction Law in the area of enforcement. Based on experience acquired when dealing with complaints in 2004, planning authorities are still incapable and unwilling of safeguarding the enforcement of decisions issued by them. In failing to do so, the principle of legal certainty is left unfulfilled. This principle consists in the rightful expectation of individuals that decisions of state authorities will be implemented and effective fulfilment ensured by administrative bodies. The Defender warns that the present situation where decisions by planning authorities are not heeded on the part of construction owners and where planning authorities often tolerate the existence of illegally erected constructions has lead to a serious weakening of confidence in decisions issued by administrative authorities.

Complaint Ref.: 3514/2004/VOP/MH

The legal obligation of the owner of a construction is to take all necessary steps to ensure that valid decisions issued by public administration bodies are carried out and the principle of legal certainty is thereby fulfilled. This principle consists in the reasonable expectation that a construction will be removed as ordered by the decision of the relevant authorities. Inactivity by planning authorities in the enforcement of decisions on the removal of constructions is in breach of the Construction Code and the principles of good administration.

The Public Defender of Rights dealt with a complaint by Mrs B. C., who complained of inactivity concerning enforcement of a decision ordering the removal of an unauthorized construction, namely, a rotating platform and approach road. From documents sent to the Defender by her, it was clear that the valid decision issued by the Transport Department of the Municipal Office in R. had not been carried out, as the construction had not been removed by the given deadline. Its removal was eventually performed, though a certain degree of concern over the consequences of the execution of this decision could be traced on the part of the construction owner, the city of K. L. In the final report on the conclusion of the inquiry, the Defender observed that if a "quiet state of affairs" is to be reinstated, it is necessary that peaceful access to all constructions located here be ensured in the necessary extent. At the same time, this access must not lead to disturbance of or intrusion on the property rights of other owners.

The obligation of administrative bodies is to contribute in their activity to finding peaceful solutions to disputes among construction and land owners and to do so with regard for the principle of tolerance between neighbours defined by the Civil Code, which should be kept in mind by every owner.

Preservation of Historical Monuments

In 2004, 11 complaints dealing with this issue were received.

In the area of preservation of cultural heritage, the Defender encountered complaints about the procedure by state authorities for the preservation of cultural heritage in handling buildings declared historical monuments (individuals repeatedly pointed out failure by authorities to respond to warnings of imminent danger of damage or other degradation to historical monuments). In such cases, the Defender works to activate instruments, the application of which should be performed by state authorities for the preservation of cultural heritage as their official obligation.

Special attention must be devoted to the declaration of objects as cultural heritage, or more precisely, the classification of certain objects, whether movable or immovable, or collections thereof, by degree of cultural heritage protection (for example, the declaration of protected cultural zones). Under the Act on the State Care of Monuments, the Ministry of Culture may, after consultation with the regional authority, declare an area that fulfils the given legal prerequisites a protected cultural zone. The Defender found that communication on the part of the Ministry of Culture and the regional authorities with relevant municipalities is poor, whether this concerns the declaration of protected cultural zones, or the consultation and approval of strategies for the protection of cultural heritage. Although the law does not demand the consent of the relevant municipality for the declaration of its area a protected cultural zone, in the opinion of the Defender, the municipality should at least be given the opportunity to express its stance on the proposal and to put forward its suggestions. An opposite approach would be a breach of the principles of good administration.

Complaint Ref.: 1962/2004/VOP/KP

The protection of the right to the sanctity of the home is confirmed by the constitution and can only be breached on the basis of a law. Although the Act on the State Care of Monuments permits this, it is necessary to interpret it so that access to a dwelling is possible only in the presence of its owner.

Mr V. R. addressed the Defender asking him to hold an inquiry into the conduct of employees of the Department for the Preservation of Cultural Heritage of the Municipal Office and employees of the regional specialized department of the National Heritage Institute in connection with obtaining the documentation to a building, proposed for declaration as a historical monument. He stated that the employees of the Department for the Preservation of Cultural Heritage had entered his residence in his absence without his consent and without

having informed him of the necessity of conducting a survey of the place and documenting the condition of the building. The state authorities for the preservation of cultural heritage stated that access to the relevant buildings for purposes of documenting their historical or any other significant value is guaranteed them by the Act on State Care of Monuments, which, however, does not detail the conditions of such access. The question of the conditions of entry into relevant buildings was not dealt with by the employees of the Department for the Preservation of Cultural Heritage and they had not considered that their conduct could lead to a violation of fundamental rights and freedoms. They considered the problem to lie chiefly in the inadequacy of the Act on the State Care of Monuments and in view of this inadequacy, they could but proceed according to their own judgement.

Following the conclusion of the inquiry, the Defender observed that the employees of the Department for State Preservation of Cultural Heritage had failed to observe article 12 of the Charter of Fundamental Rights and Freedoms, which confirms the sanctity of the home, by having entered the building without the consent of the rightful occupant. Although the conditions of entry by employees of the Department for State Preservation of Cultural Heritage into residential buildings are not defined by the Act on the State Care of Monuments, it is unacceptable for such employees to act wilfully and entirely at their own discretion when entry into a residence for the purposes of documentation of historical value is necessary. In cases where legislation is inadequate, it is necessary to seek support in legal provisions of a superior legal strength, that is, in the constitution. The Defender continues to monitor the conduct of state authorities for the preservation of cultural heritage.

The Observance of Procedural Regulations and the Principles of Good Administration in Construction

In 2004, 44 complaints dealing with this issue were received.

In 2004, the Public Defender of Rights repeatedly criticized the practice of administrative authorities, which refuse to allow copies to be made of administrative files by the parties to actions and by persons who present substantiation of their request to study the contents of a certain file. The Public Defender of Rights refused to accept this practice and declared it inconsistent with the principals of good administration. He referred to the "open files rule", which safeguards and supports the openness of public administration to the public. The Public Defender of Rights supports the view that administrative bodies should, when dealing with requests for information by members of the public, first search for reasons why information should be provided, instead of choosing the opposite approach, whereby authorities first search for reasons to deny access to information.

In the opinion of the Public Defender of Rights, objections raised by administrative authorities arguing that the Code of Administrative Procedure does not address the issue of obtaining copies do not hold water, as the Code of Administrative Procedure must be interpreted in view of the year it was passed (1967) and with respect to the quality of modern copying technology today. According to the Defender, the right to study files and to make notes of the content guaranteed by the Code of Administrative Procedure must therefore be interpreted in this light. If a reason exists for the provision of information to members of the public, it must then be provided in the greatest possible extent. This matter has been duly addressed by the new Code of Administrative Procedure, which will come into force as of 1/1/2006.

To fulfil some of the aforementioned criteria of the openness of public administration, the Defender informed regional authority directors of the undesirable practice, whereby copying of administrative files is not permitted. Negotiations brought about the necessary outcome of an agreement by directors of all the regional authorities, including the Prague Municipal Office, permitting the copying of administrative files.

In exercising his mandate, which includes the protection of the rights of individuals from inactivity by authorities, the Public Defender of Rights repeatedly established undue delays in proceedings as well as inactivity by administrative authorities. This is commonest in the case of the Ministry of Regional Development, which also acts as superior administrative authority to regional authorities and the Prague Municipal Office as far as delegated competence, zoning planning, and the Construction Code are concerned. Objections to the procedure and decisions of subordinate administrative authorities are dealt with by the Ministry with inordinate delays, and cases taking more than six months to settle are no exception.

Although the law does not define any specific deadline for the settlement of this type of complaint, which may lead to the misapprehension by relevant administrative bodies that any delay in settlement is acceptable, such an interpretation is unacceptable. Besides the fact that its implementation in practise could lead to the ineffectual lapse of the three-year foreclosure period for the review of valid administrative decisions in extra-appeal procedures (regardless of the extent of its shortcomings or of the impact on the rights of individuals), it would also be a typical example of a contravention of the principles of good administration, especially the principle of equity and efficiency in settling the complaints of individuals.

Complaint Ref.: 3591/2002/VOP/SN

Complaints to an authority must be judged by their subject matter. If the complainant contests the legitimacy of a valid decision, the authority must handle the complaint as a motion for the review of this decision in an extra-appeal procedure in accordance with the provisions of section 65 of the Code of Administrative Procedure. If it lacks competence, it is obliged to forward the matter to the competent authority.

Mrs B. K. complained to the Defender about the regional authority, which had failed to settle her complaint submitted in the middle of 2002 regarding an illegitimate building approval. Although the complaint had been formulated vaguely by the complainant, this did not imply that such a complaint should not be dealt with by the relevant authority in any way whatsoever. Following repeated queries by the Public Defender of Rights as to how Mrs B. K.'s complaint, dating from 2002 had in fact been dealt with, the regional authority made reference to documents, which failed however to give a clear indication of how the given complaint had been handled. The Defender concluded his inquiry, clearly stating that the obligation of the regional authority was to settle the complaint submitted by Mrs B. As the complaint contested the legitimacy of a valid building approval, it should have been handled as a motion for the review of a decision in an extra-appeal procedure, as the subject matter implied this interpretation (although not explicitly).

The regional authority objected to the conclusion drawn by the Public Defender of Rights; that the authority had been inactive in the matter (since 2002). The fact of the matter is that given the subject of the complaint, the regional authority should have advanced it in 2002 to the relevant district authority, as at that time it was not yet competent to assess a first-instance decision or any related issues. As it failed to do so, the matter remained unsettled and as of 1/1/2003 (due to the termination of the functioning of district authorities) it passed to the competence of the regional authority. It remained unsettled until the Public Defender of Rights began to deal with the case. The regional authority subsequently informed the Public Defender of Rights that the complaint by Mrs B. K. would be dealt with as a motion for the initiation of proceedings under section 65 of the Code of Administrative Procedure. The purpose of the inquiry was thus fulfilled with no need to continue.

2.5 Taxes, Fees, and Customs Duties

Taxes and Tax Administration

In 2004, 131 complaints dealing with this issue were received.

In 2004, the Defender dealt with both routine inquiries into complaints about the procedure and decisions of the inland revenue office (contesting for instance procedure during expostulatory proceedings, tax inspection, tax assessment, appeals for payment of tax arrears by the guarantor, decisions on requests for tax deferments or for waivers of tax arrears) and paid heightened attention to tax distraints. Especially in the latter half of the year, complainants objected to undue delays in expostulatory proceedings and to the legitimacy of the summons issued by the inland revenue office, initiating these proceedings.

The Public Defender of Rights succeeded during 2004 in halting those tax distraints that curtail recurrent state social support benefits by means of claim payment orders. Partly on an appeal by him, draft amendments of the Code of Civil Court Procedure and of the Act on State Social Support were drawn up, clearly defining one single permissible method of distraint of these benefits, namely deductions.

The Defender regularly receives complaints about the administration of subsidies. Complainants infringing the rules governing the granting of subsidies, breach the rules of budgetary discipline and so face both the obligation to return subsidies and high penalties. A very specific case is described in the section below on public administration of employment,

complaint Ref.: 1534/2004/VOP/BK. In this case, an error by the Ministry of Labour and Social Affairs lead to imposing sanctions contravening budgetary rules within an agreement on the granting of subsidies.

Complaint Ref.: 4210/2003/VOP/BK

The inland revenue office is not entitled to dismiss claims to tax-free allowance afforded for dependant children for the mere reason that these children were unable to visit the taxpayer in the Czech Republic in the relevant tax year, as they had no valid residence permit (visa).

The Complainant (a foreigner) addressed the Defender after he was issued a payment assessment, which back-taxed his income due to a dismissal of the tax-free allowance afforded for dependant children. These children left for Iraq with their mother (wife of the complainant) in the middle of 2000 to study at university. The Complainant covered all their living costs; neither his wife nor his children had any income of their own.

The Defender informed the complainant of his view of the matter and expressed his readiness to handle the case, should appeals by the complainant be left unsatisfied. In the opinion of the Defender, the taxpayer was entitled to a tax-free allowance for dependant children who share the same household, if his children were absent from home only temporarily. The household as such is formed by individuals who live together continually and who share living costs. The condition stating that a household must have a 'consumer' character (where each household member contributes to the best of his/her ability to the payment and catering for common needs) was fulfilled as the complainant paid for all the living costs. The fulfilment of the condition of living together continuously is not obstructed in any way by the absence of the children from home, given that this is temporary. In the opinion of the Defender, the stay abroad (although in the country of origin) for the duration of university studies may be considered temporary.

The complainant submitted an appeal and addressed the Defender some time later with yet another complaint, objecting to undue delays in the handling of the appeal. The decision on the appeal had not been issued, despite the fact that the Financial Headquarters had but a few days left to settle it before the deadline defined in directive No. D-125 issued by the Ministry of Finance, and so the Defender requested an explanation. He found that the Financial Headquarters had returned the matter just before the deadline to the revenue authority, requesting evidence of the existence of a common household and instructing the authority to refrain from assessing the fulfilment of this condition in terms of permission to reside in the Czech Republic. The deadline for settlement of the appeal was not met as the Financial Headquarters changed its prior intention to dismiss it, harboured at the time of receipt of the appeal.

Customs and Customs Proceedings

In 2004, 12 complaints dealing with this issue were received.

Complaints in this area vary greatly in their subject matter, reflecting the diverse legal issues dealt with within them. The more complicated legal issues included complaints on customs clearance for international deliveries, namely, the concurrent application of both mailing and customs regulations. A number of on-the-spot inquiries and talks between officials of the General Directorate of Customs and the Ministry of Informatics were held on the matter.

The Defender also dealt with problems regarding interpretation of legislation governing the ban on the sale of tobacco products and spirits. In one such case, the Defender initiated an inquiry on the basis of a complaint by the town mayor of a municipality on an inspection carried out by customs officials at a marketplace. At the very beginning of the inquiry, the general director of the General Directorate of Customs was informed in a letter by the Defender of the danger of differing interpretations of the term marketplace (or market hall), as the legal provisions of the Act on Consumption Tax allow, in the view of the Defender, a relatively broad administrative interpretation by the inspection authority.

Frequent complaints concern the assessment of customs duty in connection with the import of personal vehicles. A recurring mistake by customs officials in such cases is the insufficient assessment of given facts. In the last few months of 2004, complaints began to appear pointing out problems with the interpretation of interim provisions related to the accession of the Czech Republic to the European Union.

Complaint Ref.: 2417/2003/VOP/PJ

Although conduct by employees of the administrative authority may not bear all the attributes of a criminal act, this does not imply that they acted in compliance with the law governing the matter. As a consequence of incomplete file documentation, inquiries performed as part of the inspection activities of the General Directorate of Customs could not be reviewed.

Mr S. G. stated in a complaint that he had addressed a letter to the Directorate, requesting an inquiry into the conduct of certain named officials of the customs administration. He explained why he considered their conduct unlawful. He was not satisfied with the manner in which his request had been settled and therefore appealed to the Directorate once again to duly investigate the matter. He argued in particular that although conduct by employees of the customs administration may not bear all the attributes of a criminal act, this does not imply that they had acted in compliance with the law governing the matter.

During the inquiry, the Defender drew attention to the inadequacy of file documentation mailed to him (records of inspectional activities preformed by the department were missing). If the Defender were to consider the file documentation complete in the state that it was mailed to him by the Directorate, then he would be forced to agree with the complainant that his complaint had not been duly investigated. Besides this, in its first reply, the Directorate merely stated that it agreed with the conclusion drawn by the Police, that no criminal act had been perpetrated. The Directorate thus failed to provide the Defender with a single piece of written evidence of having investigated the complaint by Mr S. G. It was not until its second reply that the Defender was provided with more specific evidence. In the opinion of the Defender, the customs administration was obliged to acquaint itself with the circumstances of the case. Instead of merely relying on mediated information it should have launched its own independent inquiry and at least held personal talks with the individuals named in the complaint, thereby drawing its own conclusions on the matter of adherence to relevant customs and official regulations (in contrast to the Police, who handled the matter from the criminal law angle). Later it, it was found that a local inquiry had been led; however, no written records thereof had been made. The Defender closed the case by concluding maladministration on the part of the office, obliging it to greater future consistency in managing file documentation.

Local Fees and Administrative Charges and Related Proceedings

In 2004, 16 complaints dealing with this issue were received.

The results of inquiries into complaints contesting the administration of local fees unfortunately serve as evidence of the insufficient qualifications of employees of local authorities, which is subsequently reflected in cases of procedural maladministration. Out of ignorance, local authorities frequently contravene the principle of equity when employing certain means for the recovery of local fees. Although they themselves may levy distraint, they call on a lawyer to do so without prior consideration, who in turn requests that the decision is carried out by a court executor. The costs of the distraint thus needlessly exceed several times the total amount due in arrears.

Complaint Ref.: 1390/2004/VOP/BK

If the local authority as the local fee administrator takes steps to recover local fee arrears without considering the fairness of such action by employing the services of a court executor, it may, in doing so, encroach upon the principles of equity of tax proceedings. This is especially true of cases where the costs of distraint (or any other costs) are several times higher than the total amount due in arrears and where the local fee administrator could have levied and carried out the distraint itself in the same way as the executor, with no difficulty or excessive effort on its part.

The complainant contested a local fee imposed for a system of communal waste collection, transport, sorting, usage and removal (hereinafter "the local fee") by stating that he himself creates no waste and therefore is not obliged to pay for these "services". He was also opposed to the procedure employed by the local authority during the recovery of the local fee. He raised the objection that the Czech Social Security Administration makes deductions from his income, although he was given no notification whatsoever of distraint proceedings by the local authority or the court executor. He was convinced that the levy of distraint had not been duly consulted with him and he was thus prevented from raising any objections.

The Defender found in an inquiry that the local authority had not handled appeals by the complainant against the payment orders, nor had it advanced them for a decision to the superior authority. Although the appeals had not yet entered into force, the office had provided them with a legal validity clause. During the recovery of arrears, the office then contravened the principle of equity (efficiency) of tax proceedings. In part due to ignorance of the powers vested in it, the office advanced the case to a lawyer who then called on a court executor, on its behalf, to perform the execution of the decision. The distraint was subsequently carried out by means of deductions from income. The distraint costs and the costs incurred by the entitled party (8,910 crowns in total) were thus several times the total amount due in arrears (525 crowns) and quite unnecessarily given that the local authority itself possessed the power to levy distraint (for instance by issuing a distraint order for deductions from the salary or pension). Objections by the complainant against the existence of his obligation to pay the local fee for the reason that he himself does not create any waste had to be dismissed by the Defender in view of valid legislation.

In the course of the inquiry, the local authority advanced the appeal to its superior authority. In view of the formal shortcomings of the decision, which the complainant had not contested, verification was carried out of the invalidity of the decision. (The complainant's obligation to pay the fee was not affected in any way; a new decision free of formal shortcomings will be issued). The local authority provided evidence of having called on the executor to verify the invalidity of the decision and to halt the distraint. The sum recovered through distraint was returned to the complainant, the local authority apologized for the maladministration perpetrated by it. On the Defender's suggestion, the local authority organized training for its employees.

2.6 Protection of the Environment

*Complaints from the area of the **protection of the environment** dealt with by the Public Defender of Rights in 2004 and in previous years are characterized by great diversity, touching on various disciplines. In the majority, issues from a number of branches of environmental protection and other branches of legal relations are united simultaneously in one complaint. Construction Law especially pervades inseparably the legal relations of environmental protection, which also encompass the work of authorities for the protection of public health. In many cases, administrative-law relations, classic civil-law and commercial-law relations and disputes can be found alongside one another. For this reason, the Public Defender of Rights presents a summary of findings in the area of environmental protection in this Annual Report as a whole, rather than specially commenting on the individual complaint categories grouped for purposes of a better understanding of his work in the period under scrutiny. Legal relations in the area of environmental protection are furthermore complicated by the fact that they come under the competence of several departments and special authorities, the absence of the cooperation of which would render the smooth development of these relations unthinkable. The faultless performance of public administration is not facilitated by common application and interpretation difficulties found by the Defender, stemming from the absence of links between laws and legislation of a lower legal force governing this area. Furthermore, the Public Defender of Rights presents a number of conclusions reached during inquiries into complaints in 2004, as well as examples of complaints illustrating these conclusions.*

In the previous year, the Public Defender of Rights repeatedly encountered complaints about maladministration by municipalities and towns in the area of protection of the environment and landscape, and specifically in the protection of wood species. Repeated findings of maladministration during inquiries into individual complaints lead the Defender to hold a special press conference devoted to this issue, at which he informed the public of his negative experience with the performance of public administration in the protection of wood species. In this connection, he went on to point out the shortcomings of current legislation.

On the grounds of the long-term monitoring of the issue of public participation in administrative proceedings, the Public Defender of Rights is forced to warn that the current legislation governing the participation of the public (and public associations) in administrative proceedings is in many respects inadequate and lacks concept. Besides this, decision-making by administrative courts in these matters is inconsistent and so fails to contribute in the necessary extent to the unification of practices. Admittedly, the situation of administrative authorities as far as decision-making is concerned is, in view of the aforementioned, often complicated. In consequence of differing approaches by individual authorities, one of the pillars of the rule of law, the principle of the legal certainty of actors of administrative-law relations, is breached. Varying and often contrary procedure by the public administrative authorities is

inconsistent with good administration. Therefore, the Pubic Defender of Rights considers it correct to point out the benefits of a change in legislation.

Observations by the Public Defender of Rights during inquiries related to large investment plans, especially those for linear structures for transport infrastructure, bear evidence of questionable practices by public administrative authorities and of a certain degree of chaos governing approval procedures. The Defender has often pointed out that authorities have failed to take into consideration all the potential options of approaching the design of these complicated structures. The Defender considers the consequences of inconsistent preparation of a particular investment plan, which do not generally become apparent till later, to be very serious indeed. Such consequences include lengthy proceedings (where the public, represented by citizens' associations omitted from the initial preparations, exercises all the procedural powers of appeal) and subsequent economic impact, such as complications in financing the given project from European cohesion funds or with the support of the European Investment Bank (due to strict requirements by them on the transparency of all procedures during the selection process and the approval of investment plans).

The attention of the Public Defender of Rights was drawn by several complaints to questionable legislation governing the granting of exemptions from bans in specially protected areas. This concerns the much criticized legislation adopted in 2004, whereby the agenda of granting exemptions has been transferred, wholly unsystematically, from the Ministry of the Environment and regional authorities to the Government. Not only does this lead to an unnecessary burdening of the Government, forced to concern itself with relatively marginal matters, but the high demands on time of the approved exemption approval procedure excessively burden both the entire public administration system and especially its clients. The approved legislation raises several other doubts over the competence of the Government to grant exemptions, not reflected by the law governing competence. Doubts also concern legal provisions, whereby decisions on the granting of exemptions are dealt with in administrative proceedings, which have remained unchanged (it is therefore necessary to respect the procedural rights of the parties to an action, such as the right to study the groundwork for a decision, the right to appeal and so on).

Complaints on the public administration of gamekeeping are few, but are however interesting, both from a legal and factual point of view. In comparison with the previous year, individual cases were directed to a greater degree at procedural failings during administrative proceedings lead by authorities for the protection of gamekeeping (municipal authorities, regional authorities, and the Ministry of Agriculture). They chiefly concerned proceedings on the recognition of new hunting grounds and proceedings on the registration of new hunting associations. The Defender found discrepancies in the procedure of authorities for the protection of gamekeeping at the regional level, especially in situations concerning the establishment of new hunting grounds and the registration of new hunting associations. These are based on efforts by owners of hunting grounds who have resigned from hunting association, but whose hunting grounds, however, remain a part of the original hunting grounds of the association, to have their hunting grounds extracted for the purposes of establishing their own hunting association with its own recognized hunting grounds. These plots of land are, however, incorporated within the original hunting grounds of the association.

Nature, Landscape, and Water Protection

In 2004, 29 complaints dealing with this issue were received.

Complaint Ref.: 1958/2004/VOP/JC

Consideration by the administrative authority of the existence of serious reasons warranting the felling of trees and assessment of the functional and aesthetic significance of wood species must be deducible from the groundwork for proceedings even in cases where decisions are communicated verbally or in the case of written decisions with no substantiation. If it is not possible to trace retrogressively the foundation for such assessment by the administrative body, there is no other option but to deduce the unlawfulness of its procedure.

The Public Defender of Rights was addressed by Mr L. H. with a request for an investigation into the procedure of the Local Authority in K. (hereinafter "LA") in delivering a decision that permitted the felling of a great elm tree in K. The inquiry by the Defender concluded that the functional and aesthetic significance of this wood species had not been duly considered during proceedings on the permission for felling and no evidence had been

presented of the existence of serious reasons that would warrant felling. In failing to do so, the LA had abused its power of administrative consideration. At the same time, the Defender questioned why, despite the evident environmental loss caused by felling the elm, the decision sanctioning it imposed no obligation whatsoever on the approval-seeker to carry out adequate compensatory planting. Furthermore, the Defender determined that the procedure of the LA had been unnecessarily obstructive in that it had refused to allow photocopies to be made of the decision that had sanctioned felling (merely allowing notes to be made). The Defender based this conclusion on the existence of the Act on the Right to Information on the Environment which in turn is based on the principle of broad public access to information on the environment and information on administrative proceedings in environmental matters. The LA accepted the conclusion of inquiries by the Defender and stated that it had agreed on compensatory planting of wood species with the landowner in the village surroundings.

In the course of the inquiry, the Czech Environmental Inspectorate and the regional authority superior to the LA were addressed. The authorities agreed with the Defender on the benefits of legislative change that would enable decisions on felling to be issued on a level that guarantees necessary professional competence and rules out potential prejudice of employees.

Protection of the Atmosphere

In 2004, 14 complaints dealing with this issue were received.

Complaint Ref.: 3578/2001/VOP/HVZ

The Defender dealt with the practice of administrative bodies in handling the negative impact of the operation of a chemical plant on the neighbouring residential estate in municipality V. M. Investigations by the Defender led to conclusions of shortcomings in public administrative procedure and the Defender activated mechanisms aimed at redress.

The Public Defender of Rights received a complaint from Mr L. K., about the negative impact of the operation of a large plant in the neighbourhood encroaching upon his rights to usage of his family house and adjoining garden. Although as the owner of a property that lies within a sanitary protection zone, he repeatedly appealed to competent authorities asking them to deal with this issue, no progress was made. He therefore addressed a request for assistance to the Public Defender of Rights.

The inquiry led the Defender to conclude that the occupants of family houses had been persistently limited in their rights and had been left in uncertainty over the usage of their property in connection with the impact of the operation of a large industrial plant in the neighbourhood, which exudes stench, benzene and benzo-pyrene pollutants, and exceeds noise pollution limits. A permanent solution in the form of purchasing the property from the complainant was met reluctantly by the chemical plant and the role played here by the relevant authorities was likewise rather passive.

The inquiry by the Defender moved the authorities to act more consistently in the matter, especially in dealing with the issues of noise pollution, stench, and high emission levels of certain pollutants that pose a danger to health. The chemical plant eventually agreed to purchase the house of L. K. and the removal of the house was completed in July 2004. Purchase offers were made to other real estate owners exposed to the impact of the plant's operation.

Other Cases Related to the Protection of the Environment

In 2004, 19 complaints dealing with this issue were received.

Complaint Ref.: 4222/2003/VOP/MH

In 2004, the Public Defender of Rights noted strong protests and outraged responses by both farmers and the general public in the media to the mass slaughter of cows suspected of being infected with BSE, or 'mad cow disease'. For this reason, he decided to open an own-initiative inquiry into the matter, during which he requested the cooperation of the Ministry of Agriculture, the General Director of the State Veterinary Administration and a European Commissioner.

During the inquiry, the Public Defender of Rights also requested the cooperation of Pavel Telička, a European Commissioner (hereinafter "the Commissioner"). The Defender informed

him of the steps he had already taken and asked him for his views on the possibilities of handling the protests of Czech farmers.

The Commissioner informed the Defender of his past repeated dealings with the relevant bodies during his work at the European Commission, during which he had presented the particularity of the situation in the CR, resulting in the adoption of the first revision of measures. The state veterinary administration in each country will now have the capacity to decide against the slaughter of animals where proof exists that these animals have not come into contact with the same feed as the infected animal. The Commissioner confirmed that the CR is seeking prolongation of the period, for which it is permitted that animals intended for slaughter remain alive, to six months, a term similar in length to the average lactation period. At the same time, he assured the Defender of the common objective to minimize excess costs incurred by farmers, at the same time maintaining the maximum level of protection of consumer health.

The Public Defender of Rights obtained news from the Minister of Agriculture of a proposal put forward by a representative of the CR at a meeting in Brussels, suggesting that a change be made to Regulation No. 999/2001 of the European Parliament and of the Council, and again stating the number of positive BSE cases in the CR, the number of animals in cohorts and the average number of animals in a cohort. The Defender acknowledged the report of the Minister of Agriculture informing the Defender of the necessity to at present employ standard mechanisms and methods of negotiation, lead by the Minister of Agriculture on behalf of the Government, proving that efforts to soften the impact of BSE-related veterinary measures in the CR are underway with the knowledge and support of the Government. In the interest of oversight of further steps in the matter, the Defender asked to be informed by the Minister of Agriculture of any developments in negotiations and of changes in the present EU rules.

2.7 Protection of the Rights of Children, Adolescents and Families

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

In 2004, 78 complaints dealing with this issue were received.

The Public Defender of Rights most often encounters complaints in this area about the practice of authorities for the social and legal protection of children (hereinafter "ASLPC") in cases where one parent does not live with the child in a common household and the other parent obstructs his/her contact with the child. These cases are all the more serious as they concern the manipulation of the child against the other parent, which often leads to interference with the healthy development of the child. Certain improvements have been observed in that the Government acknowledged in its resolution No. 1108 dating from 10/11/2004 the motion put forward by the government Council for Human Rights, which points out the right of a child separated from one or both parents to maintain regular personal contact with both parents. The Government entrusted the Minister of Labour and Social Affairs, the Justice Minister, the Minister of Education, and the Minister of Health with implementing the relevant measures.

In order to safeguard observance of the given principles, the following procedure practiced by the ASLPC seems suitable. In situations where one of the parents fails to fulfil the obligations ensuing from his/her duties as a parent, he/she is cautioned in accordance with section 43, paragraph 1, letter a) of Act No. 94/1963 Coll., on the Family. In this area, the Public Defender of Rights repeatedly encountered the reluctance of local authorities to issue decisions to impose disciplinary measures and with their ignorance of administrative proceedings. In certain cases, the authority failed to deliver a decision in the matter despite a motion having been submitted for the initiation of administrative proceedings. The extent of the child's contact with the parent with whom it does not share a common household was dealt with by the Constitutional Court, which recommends just as the Defender does, that courts ensure the broadest possible contact.

As far as exercising the right to information contained within file documentation deposited with the ASLPC is concerned, certain progress was made in 2004. The objections raised repeatedly by the Public Defender of Rights to the interpretation of the provisions of section 55, paragraph five, of Act No. 359/1999 Coll., on the Social and Legal Protection of Children, were incorporated within the government draft amendment of this Act. According to the draft, parents and others responsible for the upbringing of the child shall be permitted to obtain extracts and to make copies for a fee from those parts of the file documentation unrelated to specific administrative proceedings. In accordance with the proposed legislation,

access to those file sections related directly to specific administrative proceedings shall be governed by the Code of Administrative Procedure. Parents will thereby gain access to documentation containing all the data collected on the family by the ASLPC.

Complaint Ref.: 31/2003/VOP/ZV

If the contact of parents with the child has been modified, whether by a court ruling or agreement between both parents, the authorities for the social and legal protection of children cannot interfere with the performance of parental duties by one of the parents at the request of the other, at a time when the entitled parent has the child in his/her care in accordance with the ruling of the court or with the agreement governing contact.

The Public Defender of Rights dealt with the complaint of Mr P. who complained about the ASLPC, which had been appointed to serve as guardian *ad litem* for his son. The ASLPC should, in his opinion, have granted his request and instructed the mother to send their son to a swimming club while he was in her care. The mother refused to do so voluntarily and the ASLPC declined his request. The Public Defender of Rights concluded that in this case neither of the parents may unilaterally circumvent the ruling of the court or the agreement concluded between the parents by seeking a broadening of his/her entitlement beyond the rights to the upbringing and care for a child. Attending a swimming club may be regarded as a routine matter in the upbringing of a child and as such is decided upon by the parent who has the child in his rightful care at that time. It is therefore unnecessary for such an issue to be dealt with by both parents or, consequently, by a ruling of a court in accordance with section 49 of Act No. 94/1963 Coll., on the Family, which states that courts decide significant matters pertaining to the performance of parental duties.

It is therefore not possible to force the mother to send her son to the swimming club while he is in her care. In this case, the Public Defender of Rights provided the complainant with an explanation of the legislation governing the contact of parents with the child and why it is not possible to ask such measures of the ASLPC.

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

In 2004, 27 complaints dealing with this issue were received.

In 2004, inquiries lead by the Public Defender of Rights dealt with the conditions of institutional education in school establishments for institutional and protective education. The investigation into these establishments focused chiefly on the observance of the rights of children safeguarded by international documents on the protection of human rights and by the Act on the Execution of Institutional and Protective Education.

A frequent failing encountered by the Defender in institutional establishments is that children are forbidden to visit their parents (for a certain period) as a punishment. The Act on the Execution of Institutional and Protective Education does not give the establishment director the power to include contact of the child with its family in the system of rewards and punishments. The right of the child to contact with its parents is safeguarded by international documents on the protection of human rights and freedoms and as such may be limited by law only if contact of the child with the parents endangers the child's rights and interests protected by law (for instance the danger of physical cruelty or sexual abuse in the family).

An important topic dealt with comprehensively in the past by the Defender is the surveillance of children in institutional establishments by means of audio and video technology. This issue was dealt with by the Government on the basis of an appeal by the government Council for Humans Rights, which also reflected the observation of the Defender on the existence and unlawfulness of the camera surveillance of children in institutional establishments. The Government decided to deal with the problem by adopting an amendment of the Act on the Execution of Institutional and Protective Education, which incorporates the condition of legal authorization for the installation of audiovisual systems. The employment of surveillance technology is permitted in the common areas of the establishment only for the surveillance of children with imposed protective education. The amendment is to separate with greater consistency establishments for protective education from establishments for institutionalised education. The Defender anticipates that audiovisual systems will be employed in establishments for protective education only.

Another problem pointed out in the previous annual report is the absence of legislation governing the stay of children with imposed protective education with their parents. In cooperation with the officials of the Non-Criminal Division of the Chief Public Prosecutor's Office, the Public Defender of Rights prepared a draft amendment of the Act on the Execution of Institutional and Protective Education and the Act on Social and Legal Protection of Children, that would enable directors of institutional establishments to permit the leave of children with imposed protective education in order to stay with parents or family at weekends or during holidays. Although the Ministry of Education has not adopted the Defender's draft, it has drawn up in cooperation with the Ministry of Labour and Social Affairs a draft amendment of the relevant law. The issue has thereby been settled to the satisfaction of the Defender. The draft amendments have been approved by the Government and will soon be discussed in Parliament.

Complaint Ref.: 1116/2003/VOP/PM

Not permitting a stay with parents cannot be classed as a disciplinary measure as it touches upon the right of the child to maintain contact with its parents, safeguarded by article nine, paragraph three of the Convention on the Rights of the Child.

The Public Defender of rights established maladministration on the basis of an own-initiative inquiry in a reformatory that concerned certain provisions of internal rules. According to internal rules, wards were permitted to view statements of their paid income and savings once each month, despite the fact that the right of the child to information on the balance of his/her savings or claims ensues from the provisions of the Act on the Execution of Institutional and Protective Education. The Defender recommended that the delimitation of the right of the child is specified in the sense that the child has the right to information at any given time, however, the right to view the balance of income and savings may be exercised once each month.

Internal rules governing privileges that may be granted to wards included a clause stating that a ward may be granted leave to spend with his/her parents or other authorised persons with the consent of the director only. Article nine, paragraph three, of the Convention on the Rights of the Child affords the child the right to maintain contact with its parents from whom it has been separated, unless this is against its interests. The rights of the child cannot be secondary to privileges. The reformatory omitted this provision from the internal rules following an inquiry by the Defender. Another privilege was permission to accept "unobjectionable visitors", with no further specification of this term. As far as parents are concerned, contact with them is the right of the child and this fact cannot be subordinate to a system of privileges.

The Defender considers the separation of individual floors by means of iron bars to be unacceptable. Although he comprehends efforts to prevent bullying, he does not believe that a locked iron grid could possibly be an efficient solution to this problem. In the opinion of the Defender, an intensification of work with wards on the part of employees would be far more effective and suitable. He also pointed out that there is nowhere to flee in the event of a fire on a floor that is cut off from the rest of the building by an iron grid. In consequence of the inquiry, a new set of internal rules was adopted in the reformatory, which no longer contains the afore-stated failings and disputable statements, which the Defender accepted as sufficient redress.

2.8 The Police, the Prison System, and the Army

The Police

In 2004, 49 complaints dealing with this issue were received.

The structure of complaints about the Police was as varied as in previous years, reflecting the broad competence of the Police. Police work is also remarked upon in this report in sections devoted to administrative sanctions and in areas outside the Defender's mandate, in particular where the Police act in criminal proceedings.

Much attention has been devoted to complaints about inadequate intervention by the Police. In one such case grave maladministration was established, in consequence of which the responsible officer was discharged from duty. A large portion of complaints are about the work of the police in connection with traffic. The most common complainants are participants in traffic accidents, in general those the Police label as suspected of having caused a traffic

accident and those who object in their complaint to the Defender to the unfairness of the inquiry. The aggrieved usually complain of the tardiness of the inquiry or object that the Police did not investigate the matter as a criminal act but merely as an offence (usually in the case of complaints by the aggrieved party, who lost a close relative in the accident). Several complaints were about passive participation of the Police in the execution of distraint by court executors, or failing to intervene during the distraint when the executor exceeded his authority. The Defender did not establish any failing by the Police in any specific case; he recommended, however, that evidence of the need for the precautionary presence of the Police during specific distraints should be demanded more consistently of executors in accordance with the Act on the Police of the Czech Republic.

In 2004, the Defender initiated own-initiative inquiries with respect to the Police in three cases on the basis of information obtained during inquiries into other complaints. These especially concerned the question of permitting the entry of lawyers into police cells, the use of photographs taken by the Police during inquiries into complaints led by the relevant Police authorities, the extent of necessary personal identification in Police resolutions on the initiation of criminal prosecution and on on-the-spot traffic accident investigations. In other cases, the Defender dealt with complaints on inactivity, whether in connection with ongoing proceedings, inquiries or in connection with the dismissal of a request for a certain official action or intervention, complaints on the power of the Police to request identification, objections to the duration of checks at border checkpoints, to police procedure when sealing the flat of a deceased tenant and so on.

Complaint Ref.: 1362/2004/VOP/DU, similarly 152/2004/VOP/DU for instance in the case of offences

The executive body must not favour the addressee of its actions over other addressees under the same conditions simply because this is a public figure. If circumstances show that such preference was given, the Defender is entitled to seek the reinstatement of equality of rights. The position of the Defender in such cases is highly significant, as the public has limited power to review the conduct of public law bodies in administrative proceedings that are closed to the public.

The media publicised the case of Mr J. T., who was involved in a car accident in the town of P. The Police investigating the accident at the scene established several serious violations of the Act on Road Traffic by the driver. Mr J. T. had caused significant damage both to the vehicle he was driving and to the property of the Road Administrative authority. The Police closed the inquiry prematurely without having investigated all the circumstances of the case and the matter was concluded at the scene of the accident in accordance with the Act on Offences by way of an agreement. Administrative proceedings were thus never initiated. The Defender was informed that the Police might have breached the principle of equality of rights to the benefit of a well-known public figure.

The Public Defender of Rights initiated an own-initiative inquiry, asking the relevant police department for a statement on the case and for the case file itself. In the light of several failings in the procedure of the Police in investigating and settling the matter established from the file, the Defender called upon the Police to remedy the dissatisfactory state of affairs. The Police, however, disagreed repeatedly with the established failings and rejected the appeal of the Defender. Therefore, the Defender suggested that the file be advanced to the relevant administrative authority as a means of redress and the file was indeed advanced. The administrative authority informed the Defender that J. T. had been found guilty of violating a number of provisions of the Act on Road Traffic, his conduct had been classed as an offence, for which he was punished with the highest possible fine.

The Prison Service

In 2004, 109 complaints dealing with this issue were received.

*The structure of complaints in this area was similar to that in previous years. The highest number of complaints dealt with were **requests for transfer** or objections to dismissal of a request for transfer. In most cases, complainants requested to be transferred to Moravia. This confirms the observation made in previous years of the insufficient capacity of prisons in Moravia in relation to the number of those convicted. In this sense, the situation is made even worse by the ongoing reconstruction of certain prisons. There has been no progress this year on the issue of transfers and prison capacities, while at the same time the appraisal system for transfer requests has also remained unchanged. Prisons consider transfer requests only at the*

time of their submission and do not return to them later. If such a request is dismissed, then although circumstances may change such that it may have been satisfied at a later date, it is not considered again; instead the current requests of other inmates are considered. This practise by the Prison Service is, in the Defender's opinion, a breach of the principles of good administration and was criticized by him in previous years.

Several complaints were again about the ***provision of healthcare*** *for prisoners. There is still no agreement between the Public Defender of Rights and the Prison Service on the issue of* ***access to medical documentation*** *in connection with inquiries into complaints. The Prison Service continues in its restrictive interpretation of the law governing this area. In contrast to the past, however, progress has been made in providing information held in medical documentation with the consent of the inmate. Especially in the latter half of 2004 the Defender rarely met with a refusal to cooperate.*

In 2004, the Public Defender of Rights dealt with complaints by ***inmates who had been placed in so-called high technical security wards*** *(hereinafter "HTSW"). These wards were established with effect from 1/7/2004 following an amendment to directive No. 345/1999 Coll. The HTSW are intended for "jail breakers" and other problem inmates and have taken the place of so-called special security wards, previously governed exclusively by the internal regulations of the Prison Service. In connection with the establishment of the HTSW, the Public Defender of Rights dealt, for instance, with the issue of visits in these wards.*

The Public Defender of Rights rates positively the change in legislation in force as of 1/7/2004, which concerns the ***serving of life sentences****. The Prison Service based the draft amendment of valid legislation governing the regime of those sentenced to life imprisonment especially on the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter "CPT"). In doing so, it abandoned the existing concept of the objective of life sentences, which had excessively emphasized the isolation of the inmate. In this context, it should be noted that changes in legislation have been accompanied by a number of other measures for the improvement of conditions for those serving life sentences, such as certain building work.*

Complaint Ref.: 742/2003/VOP/VK

It is necessary that the prison concerns itself with the impact of security measures on the conditions of those serving life sentences and that it chooses measures with the smallest possible negative impact on the health and healthy environment of inmates.

In connection with the findings of members of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which has become a permanent body of the government Council for Human Rights, the Public Defender of Rights opened an inquiry into the conditions governing life imprisonment in Department I of Mírov Prison, currently under construction. The Committee members questioned especially the lighting in cells, the access to sunshine and fresh air. At a distance of 5cm from the outer surface of the building walls, milk glass non-transparent screens made of polycarbonate had been positioned below the windows. This space was to allow fresh air into prison cells and, besides impeding the view from the window, the screen was also to serve as warning of any movement beyond the outer wall of the building, as any disturbance of it would activate an alarm system. As windows fitted with such screens would not allow enough daylight to pass through, it would be necessary to light the rooms continuously with artificial light. The windows of rooms intended for work by the inmates as well as the windows of the leisure room, were also to be fitted with screens. These rooms would also have to be permanently lit by artificial lighting. Inmates would then spend 23 hours each day within these cells or rooms in life imprisonment and the remaining one hour would be spent in an outdoor courtyard enclosed by walls and closed off by wire mesh.

The inquiry led the Public Defender of Rights to the conclusion that the planning authority of the Prison Service General Headquarters had erred in that it had applied general technical requirements on construction without heeding the sense of the provisions on general requirements on the protection of health and a healthy environment and the provisions on daylight, access to fresh air and sunshine in rooms intended for living and dwelling. In the light of the Standard Minimum Rules for the Treatment of Prisoners (UN 1955) and the criticism of insufficient lighting and airing in other prisons on the part of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Court of Human Rights in Strasbourg and several other institutions that deal with

prison system issues, the Defender went on to state that the lack of daylight and ventilation in cells could have a negative affect on the health of inmates (both physical and mental), which must be considered unacceptable. Concluding his inquiry, the Public Defender of Rights summarized that he considers the shielding screens, in their present state, a measure that may indeed safeguard security. There are, however, less intrusive alternatives that guarantee an equal affect, which the Prison Service failed to employ.

In view of these conclusions, the Prison Service called talks on the issue of life imprisonment in Mírov prison itself. In a follow up to these talks, it informed the Defender that it would fully accommodate his objections in that it would abandon its original intention, whereby the operation of Ward I was to be a systematic solution to life imprisonment. This ward will now house a different category of inmates who will spend much less time within it than those sentenced to life imprisonment would have done. Prisoners serving life sentences will remain in the existing ward, built and approved for this purpose, recently extended by another cell, a separate leisure room, and workplace. The shielding screens have been removed from the windows and at present, ways of improving the natural lighting of cells are being looked into.

2.9 Foreigner-Related Affairs

Anyone who feels injured by the actions of public administrative authorities, thus not only Czech citizens but also foreigners or stateless people (individuals without citizenship), can approach the Public Defender of Rights with a complaint. The number of foreigners addressing the Public Defender of Rights is not high but neither is it negligible. Moreover, foreigners often contact the Defender through Czech citizens or non-governmental organizations largely because they are not aware of this possibility, or due to the language barrier. In 2004, the Defender therefore boosted co-operation with NGOs in the field, and circulated brochures about his powers in defending the rights and interests of such individuals in several languages.

Residence of Foreigners, Proceedings on Asylum and Administrative Deportation

In 2004, 67 complaints dealing with this issue were received.

In 2004, the Public Defender of Rights encountered typical cases concerning ***administrative deportation and granting, extending and cancelling temporary or permanent residence permits****, and often with issues pertaining to* ***visa processing at Czech embassies (including consular offices)****, while cases where visas to enter the Czech Republic were denied prevailed. There is no legal right to a visa, and no defence against a decision to deny a visa. Therefore, while inquiring such cases, the Public Defender of Rights strove to weigh up reasons resulting in visa denial and take steps against possible arbitrary behaviour by decision-making authorities, i.e. embassies and the Police. He concurrently also tried to influence the situation where foreigners are forced to provide details other than those stipulated by the law and make sure embassy staff give precise and complete information.*

It should also be pointed out that some motions are not complaints or motions against a specific authority, but rather general criticisms, or actually applications for explanation and advice how to proceed further. Based on these motions and the Defender's experience, the Public Defender of Rights endeavours not only to provide a remedy in individual cases but also to amend discovered maladministration in the system concerning foreign issues. As a consequence, in 2004 the Defender repeatedly used knowledge acquired concerning compensation for foreigner's illegal arrest for administrative deportation, with the Minister of Justice. He alerted Head Office of the Foreign and Border Police that the opening page of travel identity documents declare in Czech and English that the card holder is a person without state citizenship (stateless), although the holder of such a card is usually a citizen of a different state and not stateless. On a general level, the Defender deals with the institute of invitations to visit the Czech Republic and the associated invitation forms.

The Public Defender of Rights voiced some of his general reservations in interdepartmental proceedings on a draft law amending Act No. 326/1999 Coll., on the Residence of Foreigners in the Czech Republic, held last September. Simultaneously, he expressed satisfaction with the manner in which the Ministry of the Interior tackled amending Head XII applicable to foreigners' detention institutions (see part III).

The Public Defender of Rights also took an active part in drafting a ***law amending Act No. 325/1999 Coll., on Asylum****, and amending Act No. 283/1991 Coll., on the Czech Police,*

and other laws. He made several fundamental comments concerning for instance judicial review of decisions concerning asylum, assessing the existence of obstacles to leaving the country and rendering financial assistance to an asylum seeker registered outside a residence centre. However, the Defender generally does not deal with complaints about decisions made by the Ministry of the Interior, pointing out the option of review by an independent court. The Defender only provides asylum seekers with basic legal information while referring them to NGOs dedicated to refugees and foreigners. The Public Defender of Rights noted a significant drop in the number of complaints (formerly numerous) on idleness and procrastination in asylum proceedings.

The Public Defender of Rights deems the ***conditions in asylum institutions*** *fairly satisfactory. Only in December 2004, he expressed his disagreement with the fact that Administration of Refugee Institutions of the Ministry of the Interior, which runs asylum institutions, removes plugs from rooms where foreign asylum seekers reside.*

Complaint Ref.: 3158/2004/VOP/VK

An undesirable alien who cannot leave the Czech Republic for reasons of health within the term stipulated in deportation order, must be granted an appropriate extension in the deportation order, or a new deportation order must be issued with respect to a doctor's statement.

Mr N. Z., a Macedonian citizen awaiting deportation, approached the Public Defender of Rights in a very grim situation. O. Foreign Police Department (hereinafter "FPD") issued him with a deportation order while laying down a deadline for leaving the Czech Republic. He could not leave the country by then though, as he substantiated with a medical report. The FPD refused to deal with his further stay in the Czech Republic, extend his deportation order, or issue a new deportation order. Mr N. Z. could not leave the country for health reasons, and was thus forced to remain illegally.

Following the Defender's intervention, FPD awarded Mr. N. Z. a new deportation order, thus sufficiently redressing the situation. A new deportation order was the only possible solution to Mr N. Z.'s further stay in the Czech Republic. A visa for a stay of more than 90 days for unavoidable reasons – the country suffers the stay/ – the usual solution where a foreigner cannot leave the country for reasons beyond his will, could not be granted in this particular case because a decision to deport the foreigner had been issued, and he was thus registered as a undesirable alien.

Proceedings on Obtaining State Citizenship

In 2004, 21 complaints dealing with this issued were received.

In the matter of deciding on granting citizenship, the Public Defender of Rights points out specifically that the Ministry of the Interior considers national security issues when evaluating a request, but the result of such evaluation, possibly crucial for the final decision, is not recorded in the final decision (see Part III).

Complaints Ref.: 2642/2001/VOP/VK and SZD 14/2004/VOP/VK

Should the Public Defender of Rights apply for the stances concerning national security from the police and the intelligence services required by the Ministry of the Interior to review a request for Czech citizenship, his application will be accepted.

In a follow-up to M. F.'s case, mentioned in the Annual Report of the Public Defender of Rights in 2003, it must be mentioned that once the matter was presented in accordance with section 24 par. 1 letter b) of Act 349/1999 Coll., on the Public Defender of Rights, to the Chamber of Deputies, the Ministry of the Interior facilitated the Defender's viewing of the national security opinions from the police and intelligence services requested to review an application for Czech citizenship.

Besides discussing the matter in the Petitions Committee of the Chamber of Deputies, a meeting called by the new Minister of the Interior František Bublan, held on September 24, 2004, played a very important, perhaps key role. All interested parties attended, including the Police and intelligence services representatives, and a conclusion was accepted by all those present that if the Public Defender of Rights or his deputy asked to view the stances of intelligence services or the police contained in a file related to an administrative proceeding on granting citizenship, they will be permitted to do view them.

Thus, in M. F.'s case, the Ministry of the Interior finally gave the necessary co-operation after almost three years from the onset of the inquiry and after the Public Defender of Rights had used up all legal tools to remedy it.

2.10 Internal Administration

Registry Offices

In 2004, 18 complaints dealing with this issue were received.

Complaints about registry offices were rare in 2004. In fact the number of complaints in this section actually dropped against last year. Thanks to the amendment to the Act on Registry Offices, Names and Surnames, in effect as of 16/4/2004 that settled the issue, women unhappy with the transmutation of their surname endings in registry documents stopped approaching the Defender.

Two complaints in 2004 concerned the registration of children born to Czech mothers abroad. A special registry office in Brno that records all registry events pertaining to Czech citizens occurring abroad, refuses to record a man stated in a foreign birth certificate of the child as the father in the registry, if the first presumption of paternity determination according to the Czech legislation indicates a different man. According to the Act on International Private and Procedural Law, paternity recognition is valid if it complies with laws of the state where such recognition took place. However, it is doubtful if a reference to foreign legislation can be applied when paternity can be ascertained in accordance with the Czech legislation leading to a different result. Even if the special registry followed this provision of the Act on International Private and Procedural Law, the registry will not accept mere registry documents as a foreign legal document because registry documents issued by the authorities of certain states log so called fictitious fathers only on the mother's say so. Despite the special registry's practice hitherto, it is undoubtedly in the child's interest to have the man who lives with the child and his/her mother established as the father under Czech legislation too. The simplest way to achieve this seems to be to apply to the Chief Public Prosecutor to lodge a motion to deny paternity according to the Family Act.

Complaint Ref.: 166/2004/VOP/MV

Regularisation of second presumption of paternity determination does not specify rules for registry offices on how to proceed. If positive declarations of paternity clearly fail to meet the Civic Code requirements, the registry office should refuse to register paternity in the register by an administrative decision.

Mrs B. V. was born in the Czech Republic as the daughter of Greek immigrants. However, she never had proof of Greek citizenship and cannot speak Greek. Aged 15 she was issued a residence permit for a foreigner stipulating a term which had to be extended after a specific period. The problems started when she forgot to extend the validity of the permit. The Czech Foreign Police demanded she present a document from the Greek authorities, acquisition of which proved very complicated.

Mrs B. V., divorced in 1991 by a Czech court, gave birth to a child while she had no valid proof of identity. The Registry Office only accepted assertions of paternity of the child after numerous visits of the parents to the Office. Two witnesses were heard at the Registry Office and a report from the Foreign Police was requested to prove Mrs. B. V.'s identity.

The Defender did not reprehend the Registry Office for recording paternity in the Register and issuing the parents with a birth certificate when only having credibly verified the mother's identity. He found the Registry Office's course of action in accepting a declaration of paternity erroneous. According to the Registry Office, paternity could not be ascertained until completion of investigation of data for the record in the Birth Register. It is impossible to deduce from legislation whether the Registry Office can only accept an assertion of paternity once it has verified that all legal requirements for the validity of the pertinent acts have been met.

The affirmations of the child's mother and father are two legal acts that do not have to be made concurrently. They must however meet the legal requirements pertaining to acts in law. They must be made with serious intent and without duress, clearly and comprehensibly. They may not contradict the law in content or purpose, evade it, or be against the principles of decent conduct.

The principles of good administration would have been met if the Registry Office had advised the person making an affirmation of paternity, as to what conditions (state of the mother, legal capacity, essentials of a manifestation of free will) this act can be deemed effective. The Registry Office may not refuse to compose a protocol if the declarer cannot prove fulfilment of all the requirements for some important reason while making the declaration. Refusal could be against the child's interests.

The Registry Office must examine whether an affirmation of paternity can be deemed effective prior to making the relevant record in the Birth Register. Any discrepancies can be settled in accordance with the Act on Registry Offices, Names and Surnames during administrative proceedings on making the pertinent record in the Birth Register.

Citizens Register, Identity Cards, Verification of Citizenship

In 2004, 42 complaints dealing with this issue were received.

The composition of complaints in this area varied in 2004. In addition to problems pertaining to the Citizens Register mentioned in last year's report, citizens contacted the Defender particularly in matters concerning proceedings on passport withdrawal, stating the place of birth in an identity card and failure to provide the address of another individual.

The Defender answered the majority of complaints by explaining that the specific authority or clerk had not erred; that their conduct ensued from the legislation in effect. Thus, the Defender favoured the interpretation that an administrative authority may withdraw a passport on the basis of a distrainer's request. He explained to other citizens that the authority is compelled to record the place of birth in the identity card according to the current regional division, not the situation at the date of birth. To a Czech citizen living abroad, the Defender endorsed the accuracy of the authorities' statement that valid legislation does not permit the sending of passports by mail and that she is obliged to pick it up in person at the embassy.

Even though the Defender informed the complainants that the authorities were proceeding in accordance with the law in force, he noticed that the presenters of draft laws, including the government, do not explain the purpose and sense of the new legislation in their justification reports. Given that it is in some cases difficult to follow the legislators' intention, it is equally hard to explain the sense of new legislation to a citizen convincingly, when the new law changes their life for the worse.

Complaint Ref.: 9/2004/SZD/MV

Two versions of the surname of a single individual on public documents and in official registers can arise by accepting an English or French transcription from a foreign passport or by transcription from a Registry document based on Czech spelling principles (to illustrate: Yushcenko – Juščenko). This situation brings complicates life for individuals as well as public authorities.

Different variants of a surname of one person mean such a person figures twice in the Citizens Register's information system. That complicates for example assigning a personal number to a foreigner. To find ways to eliminate or at least limit such problems, the Defender initiated a workshop of directors of the concerned departments in the Ministry of the Interior, and representatives from the Foreign and Border Police of the Police Presidium and the Ministry of Informatics.

Even though the workshop participants' opinions initially differed on whether the name and surname's transcription on first entry to the information system should be executed according to the birth certificate or its translation, or always according to the Roman type version in the passport, in the end a possible solution was reached. The basis for the proposed change is already contained in the current Act on Residence of Foreigners stipulating that if a Czech registry document had been issued to a foreigner, name and surname will be given as set in the registry document. Nevertheless, the matter should be regulated more comprehensibly and fittingly.

Workshop participants agreed a foreigner's surname transcription based on Czech spelling principles should be carried out with *ex nunc* effects. It would be equivalent to a change of surname on marriage. The initial variation of a surname remains in the information system of the Citizens Register in a so-called archive. This legislation should cut back on possible complications. The Defender informed the Minister of the Interior of the workshop's conclusions, and asked him to establish measures to treat the changes to the Act on Registry

Offices, Names and Surnames, the Act on the Citizens Register and Personal Numbers, and the Act on Residence of Foreigners in the Czech Republic.

2.11 Public Court Administration

Delays and Inactivity of Courts

In 2004, 200 complaints dealing with this issue were received.

Complaints of undue delays in court proceedings are the most numerous. In complaints on court proceeding delays where the Defender initiated an inquiry, shortcomings were usually found in the public court administrative authorities' conduct in settling citizens' complaints of delays addressed to presiding judges.

The Defender's experience indicates that presiding judges are responsible for ***delays in proceedings*** *generally justified by a lack of judges and other staff in proportion to the number of cases received by a court (including unfinished cases from the past). Undue delays are usually explained by reasons such as a change in the judge, or personnel problems, mainly due to the fact that the Czech justice system is largely staffed by women, who take maternity leave. Another frequently mentioned cause of undue delays are short-term attachments of judges to other courts. The length of proceedings is also lengthened by the need for expert's reports and the failure of experts to meet court-set deadlines, the complexity of cases, and often also obstruction by participants and the fact they have not prepared. Likewise, presiding judges plead lack of technical facilities. Delays can be caused by delivering and handling a file (e.g. presenting the file to an expert, prison or court of appeal).*

Of great significance, according to the Defender, are late settlements of complaints about undue delays that the parties have addressed to presiding judges, or the judges' failure to react to complaints. According to the Defender's findings, these were mostly the fault of the court office, the judge or the court executor.

Those cases where the Defender initiated an inquiry usually take priority, and once the delay (respectively presiding judge's inadequate inquiry into a party's complaint) is pointed out, the matter is usually settled promptly, but although the complainant was satisfied in his complaint, prioritising one case may results in delays in other cases. Hence, the Defender does not find such a result satisfying.

This suggests the issue of the generally unacceptable length of court proceedings, as the Defender has repeatedly highlighted in previous reports, demands a comprehensive resolution. No substantial change in approach to eliminating delays in justice was detectable in 2004, except for enhanced supervision and monitoring of delays (pressure on existing judges). When it comes to dealing with conceptual issues, it is to some extent possible to generalise and say that long-lasting problems with undue delays and criticism of proceedings' incommensurate length commonly lead to a certain resignation on the part of presiding judges. Hearing a case, monitoring further progress in the matter, rebuking the relevant judge, imposing a disciplinary penalty or reducing remuneration of an expert, eliminating delays, augmenting staff, changing the acting judge, apologising to the complainant, technological improvements or warning superior authority of public court administration, mainly the Ministry of Justice, of the undesirable situation at the relevant court tend to be accepted as measures of redress. Disciplinary proceedings were initiated in several cases as a result of the Defender's findings.

The experience of the Public Defender of Rights implies that the options of presiding judges (budgetary above all) are relatively limited and the approach of different presiding judges varies considerably. Besides dealing with individual complaints, the Defender has recently focused more on conferring with the Ministry of Justice to solve problems, because the Ministry can be expected to carry out the necessary systemic change.

The Defender observed no significant improvement brought on by section 174a of the Act on Courts and Judges stipulating the right of a party to proceedings has – to submit a motion to a superior court to fix a deadline for a procedural step that is being delayed, when dissatisfied with the undue delay in complaint settlement. The court which is delayed must forward the pertinent complaint and procedural file to the superior court – it is therefore up to the party to decide whether such a procedure is beneficial or will paradoxically lengthen the proceedings.

In 2004 the Public Defender of Rights encountered a certain loss of citizens' trust in the domestic protection of the smooth functioning of the courts. In a number of cases, citizens

contacted the Public Defender of Rights for advice on how to address European Court of Human Rights in Strasbourg. Publication of several cases where the European Court of Human Rights decided on the validity of complaints about inordinate delays in proceedings against the Czech Republic and awarded the complainants compensation, undoubtedly played a role.

Complaint Ref.: 2936/2004/VOP/DM

The Public Defender of Rights discovered that a party's right to settlement of the matter within an appropriate period and without needless delay had been violated. The relevant authority of public court administration rectified this by discussing the case with the presiding judge and imposing a reprimand. It also promised to follow the case at regular intervals to its completion.

In August 2004, Mr I. Č. submitted a motion complaining of the length of civic court proceedings held by the City Court in B., which he had initiated by bringing an action in October 2003. According to his statement, the court had not acted in any other way than establishing a legal representative.

The Defender asked the presiding judge for an explanation and legal evaluation of the complaint from the viewpoint of court's execution of public administration that the court ensures as a public administrative authority. He also asked what actions had been taken in the matter since Mr I. Č.'s complaint was established as well-founded, and how burdened with of new or old cases the pertinent panel is.

The presiding judge stated that she had found undue delays in the proceedings, and reprimanded the acting judge in accordance with section 88, paragraph 3, of Act No. 6/2002 Coll., on Courts and Judges. She stated that as of 31/8/2004 the panel is yet to close 329 cases, of which 14 are older than 3 years, 11 older than 4 years and 35 older than 5 years. Finally she also informed the Defender that she is not filing the complaint as dealt with but will inspect the case at regular intervals with the next inspection date at the end of November 2004. The Public Defender of Rights considered such a preventive measure sufficient and thus decided to close the matter. Together with the complainant they agreed that if delays in the case continue, the complainant would get in touch with the Defender again.

Administration of Court Fees, Administration of Court Offices, Other Complaints within the Competence of Ministry of Justice

In 2004, 42 complaints dealing with this issue were received.

Complaint Ref.: 2012/2003/VOP/DM

The Public Defender of Rights discovered an incorrectly charged court fee for a petition to record changes in an association of residential unit owners in the Companies Register. The court fee was returned and the Ministry of Finance inspected the conduct of the Companies Register at all Regional Courts.

Mr K. Š. complained to the Public Defender of Rights that he was asked to pay a court fee for a petition for recording changes in an association of residential unit owners in the Companies Register, while believing he was not obliged to do so. Concurrently, he pointed out the P. City Court's varying procedure in recording associations of residential units in the Companies Register.

The Defender's inquiry established that legislative change had not been incorporated in the actual work of all higher court officers and Clerks of the Court, dealing with the issue in question. Amendments to section 11 par. 2 letter n) of Act No. 549/1999 Coll., on Court Fees, introduced associations' exemption from fees on not only the (initial) petition for incorporation in the Companies Register but on all petitions for recording, i.e. including registering changes. Once the varied conduct in this matter was discerned, the vice-chairman of the court alerted decision-making officers of the above incorrect procedure; the matter was also reviewed at the next training session of assistant staff so that correct and unified procedure was ensured in future.

The Public Defender of Rights also decided to inspect the procedure on a national scale. He addressed the vice-chairman of the court in question and the Minister of Justice, and initiated an inquiry to find whether such errors happened at other regional courts. The Defender proposed a solution to the situation potentially arising from the provisions of section 10, possibly provisions of section 12 of the Act on Court Fees, pertaining to the option of returning

the fee. The then Minister of Finance decided to initiate an inspection of with the Act on Court Fees by means of its Financial Headquarters and local financial authorities, while at the same time inspecting all documents that involved paying a court fee for proceeding in the matter of recording changes in associations of residential unit owners after July 1, 2000. The court issued an injunction, named officers to proceed in accordance with sections 10 and 12 of the Act on Court Fees, and set a month-long deadline to carry out the appropriate procedures after receiving the documents. Based on the ruling, the court refunded on all unfairly collected court fees. The court also refunded the incorrectly collected court fee to the complainant.

2.12 Transport and Telecommunications

Administration in the Surface Communications Sector

In 2004, 57 complaints dealing with this issue were received.

In 2004, citizens yet again contacted the Public Defender of Rights with applications for ***protection of public access to local communications and publicly accessible purpose-built surface communications*** *that access their real estate. In a number of cases, they objected either to inaction of the relevant highway administrative authorities or improper assessment of surface communication's existence.*

The Public Defender of Rights summed up his intelligence collected in this legislative sphere in a generously approached self-initiated inquiry, and asked the Minister of Transport to assume a stance on their methodological manuals and legislative concepts pertaining to interpretation and application of the Act on Surface Communications. In particular, he pointed out that authorities tend to have differing views on the form and character of a publicly accessible purpose-built communication, on powers in protecting public access to it, and failure to respect established courts' judicature. Moreover, the Defender recommended closer co-operation of pertinent highway administrative authorities with so-called charged local municipalities in stipulating local limitations of traffic on publicly accessible purpose-built communications. The Defender demanded authorities advise applicants of the need to obtain consent to restriction of public access and when stipulating local limitations of traffic.

In the matter of ***obstacles impeding public access to communications****, the Public Defender of Rights spoke of rather frequent cases when planning authorities insufficiently examined the facts of permitting fence-building, and of inadequate co-operation with the highway administrative authority in assessing the existence of a communication. The Minister of Transport accepted the Defender's recommendations and promised to ensure unified methodological management through regional authorities. The Defender's legislative suggestions were also noted.*

Complaint Ref.: 1183/2004/VOP/VBG

If a fixed obstacle is placed on a publicly accessible communication, the highway administrative authority is entitled to call on the entity that installed the obstacle to remove it. Failure to respect such a call can be treated as an offence.

Mr F. Ř. contacted the Defender asking him to examine the course of action of the Municipal Authority in B. concerning the restriction of use of a thoroughfare by a neighbour who had laid a concrete sleeper across it. Only after the Defender's intervention, did the authority institute administrative proceedings on the offence. The obstacle was placed in January 2003. This concrete sleeper was to be removed on the grounds of citizens' complaints, and was consequently replaced by a barrier that has remained in place. The complainant protested at the inaction of the authority.

An inquiry in situ revealed that a driven-on road, partly reinforced with gravel, partly – being unused – covered with vegetation, could be observed on the ground. Its previous use by road vehicles was still apparent. It also transpired the land in question was used as route to property in the area. The main, not exclusive, users were the complainant and his sister's family, even though there were several other routes. Given the previous transportation purpose of the land's use, the Defender declared it to be a publicly accessible purpose-built communication and thus deduced a legal interest in preserving public access. He therefore deemed the prosecution of the neighbour who repeatedly placed the obstacle on the public communication, for the offence of failure to obey the call of a public official, to be well founded.

Transport Administration Agenda

In 2004, 10 complaints dealing with this issue were received.

Complaints in the area of transport administration agenda comprise of a wide variety of problems citizens encounter in registering vehicles, importing vehicles to the Czech Republic or acquiring driving licences.

*A number of complaints concerned **operating public transport**, where regional authorities play a key role in the position of transport authorities responsible for assuring basic transport services within the region.*

Complaint Ref.: 649/2003/VOP/VBG

As the transportation authorities only have limited funds to ensure a basic regional transport service, they should first use tools that do not draw on their budgets, and only then resort to the obligations of a public service.

Private transporter F. H. approached the Public Defender of Rights, when unsuccessful in trying to change a licence granted to run a regular public service. The proposed change would increase the number of stops covered by him. The transporter protested that the transport authorities were favouring subsidised transporters (i.e. transporters obliged to fulfil a public service) despite the documented interest of individual municipalities in serving the new stops the transporter intended to include on his line. According to current legislation, an obstacle to licence granting or changing is that the transport needs where such a line is to run are already supplied by other state-subsidised public passenger transporter. In this manner, the transport authority justified not permitting a change of licence for the transporter.

Therefore, the Defender, in the light of the legislation, concluded that the transport authority in this case should try and prevent initiation and continuance of this licence-granting obstacle because spending funds on "subsidising" a transporter where a transporter "without subsidy" would be willing (and able) to undertake part of the transporting responsibility, appears inefficient and uneconomic.

Czech Telecommunication Authority

In 2004, 18 complaints dealing with this issue were received.

In 2004, the number of instances of maladministration by the Czech Telecommunication Authority increased. Inconsistencies were found mainly in the Authority's inaction, infringement of procedural regulations and of good administration principles. The Defender concluded several cases pertaining to assessing the administration charge for granting a permit to establish and operate radiobroadcasting stations. The Defender deemed exaction of charges not fixed in advance illegal.

*In 2004, the Public Defender of Rights concentrated on **the issue of "yellow lines"** described in the 2003 Annual Report. The Czech Telecommunication Authority changed its conduct and enacted a number of measures to prevent recurrence of such cases. The measures include changing of licensing conditions to individual telecommunication networks' operators and concluding punitive administrative proceedings. The problem has private and criminal law dimensions that the Defender was not empowered to investigate within his mandate.*

Complaint Ref.: 3031/2004/VOP/PJ

The duty to give a notice of entering property to install telecommunication lines is regulated in the Telecommunications Act. Complaints about failure to abide by the provision should be addressed to the Czech Telecommunications Authority, competent to assess the delict and decide on a fine. However, the telecommunications licence holder has a legal right to the installation as such.

Mr and Mrs Š. complained of the conduct of Č. T. which entered their land without prior warning and installed a telecommunications facility. The Defender explained to the complainants that his mandate does not allow him to enter into a conflict between them and the company, nor to make decisions, and concurrently informed them in detail of the legislation concerning the problem described. He alerted them to the company's legal duty to notify the owners of entry to their premises (land) at the time of installation. If the company failed to give a notice of its entry of the premises, the company could be fined up to five million Czech crowns for this illegal behaviour. Notice of failure to respect the provisions of the Act on

Telecommunications must be addressed to the Czech Telecommunications Authority, as the competent authority to assess the delict and decide on a fine.

According to the Act on Telecommunications, the company as holder of a telecommunications licence to establish and operate public telecommunications networks, has a right to install and operate above and underground telecommunications networks lines in the public interest on another person's property, including their supporting and alignment points, telephone boxes for public phones, cross such lands with lines, and locate lines in them. The municipal planning authority is competent to settle conflicts pertaining to these rights.

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

Offences and Other Administrative Infringements

In 2004, 85 complaints dealing with this issue were received.

In the administrative punishment sphere, the Defender most often deals with offences against public order, civic cohabitation, property, and against safety and smoothness of road traffic. Offence committees or the staff of the relevant municipal authority departments mostly consider these offences as the first-instance authorities. The appeal authorities are generally regional authorities that, besides the relevant ministry, either of the Interior or Transport, fulfil a methodological role towards first-instance administrative authorities.

Apart from these administrative authorities, the police authorities or municipal police authorities act in the given agendas. Generally more significant duties dwell on police authorities in accordance with the Act on Offences because they assess some offences as first-instance authorities, either in on-the-spot fine proceedings, or standard proceedings. In certain types of offence they have a duty to examine offences to a necessary degree before reporting them to an administrative authority. This corresponds with the higher number of complaints about the behaviour of the police authorities. In accordance with the Act on Offences, the municipal police are competent to take on-the-spot-fine proceedings and impose an on-the-spot-fine for an offence. The Defender has legally granted authority to investigate such conduct although only a few complainants have so far been addressed to the Defender in matters concerning municipal police authorities' acts in on-the-sport fine proceedings.

***Driving offences** produced the greatest number of complaints. These were about administrative authorities, police authorities or both simultaneously. The most frequent complaints about police authorities objected to the conduct and results of investigations into causes of traffic accidents at the site, and late reports on the offence to the administrative authority. Complaints about administrative authorities very frequently object to delays in proceedings. These complaints tend to be filed by aggrieved parties an insurance company refuses to reimburse for damages because the identity of the offender has not been established within the period stipulated by law. The possibility of the party's reimbursement for damages is thus complicated as a result of the dilatory behaviour of the administrative authorities, and sometimes also police authorities. Other complaints about administrative authorities frequently concern the change of a person's procedural status by an administrative authority (contrary to the police authorities' conclusions) from the injured party to the accused.*

*A general problem the Defender encounters in complaints concerns **the time after which the offence cannot be heard and its lapsing**. The practice benefits from the fact that time of a specific deed's hearing in criminal proceedings is not included in the running of a preclusion time limit given to hear an offence. The time limits for a first or possibly second-instance administrative authority to act are sequential time limits. Administrative authorities of both instances habitually violate such time limits and as a result, legitimate decisions establishing the guilty party are not made within the term stipulated by law. This is usually caused by the inaction of an administrative authority, insufficient use of procedural tools to ensure due course of a proceeding (e.g. producing a person, presumption of service, and others), as well as inadequate staffing of administrative authorities given the influx of offences, etc. Administrative authorities in the examined cases do not apologise to the complainant as would comply with the principles of good administration, not even for well-founded complaints. In well-founded cases, the Defender suggested administrative authorities apology to the complainant as one form of redress. The administrative authority did so several times only after repeated requests from the Defender.*

Complaint Ref.: 2597/2004/VOP/DU

In case of a combination of offences by one offender that can be heard by a single administrative authority, the authority deciding on the offence must apply the material provisions of the Act on Offences and impose a sanction applicable to the most severely punishable offence. The authority must do so having ascertained and proven guilt for perpetration of each offence in the course of a joint proceeding. This applies to municipal police authorities, too, if competent to hear an offence in an on-the-spot fine proceeding.

Mr J. Ch. approached the Defender with a complaint about the conduct of the municipal police in P. (hereinafter "the municipal police"). Two officers spotted the complainant cycling on a footpath. The constables ordered him to stop but he carried on. The municipal police found the complainant guilty of committing two offences: one against the road traffic safety committed by riding a bicycle on a footpath, second against public order by failing to abide by a public official's request. The municipal police imposed two separate sanctions in the form of a fine for each of the offences. Both offences were heard in one on-the-spot proceeding. On the complainant's initiation, the municipal police director and the city mayor examined the constables' conduct but neither found it erroneous. The complainant admitted to the Defender he rode the bike along a footpath and failed to stop as instructed by the constables. However, he believed he had committed no offence.

Having investigated the matter the Defender concluded the Complainant had committed both offences. Therefore, the Defender assessed the complaint as unfounded. A different form of maladministration was revealed by the complaint however. The administrative authority deciding on the offence contravened the provisions of section 12 of the Act on Offences because two separate fines were imposed for two offences heard by a single authority in a joint proceeding. The superior authorities failed to discern the failing or to ensure redress. Thus, the Defender notified the municipal police director and the city mayor of the maladministration, gave explanations and appealed for redress by means of examining decisions outside appeal proceedings. The municipal police director acknowledged the maladministration exposed by the Defender and promised to ensure redress as suggested by the Defender.

Proceedings on Protection of "Quiet State of Affairs"

In 2004, 16 complaints dealing with this issue were filed.

The Public Defender of Rights was also addressed by citizens who filed for protection against evident infringement of a quiet state of affairs under section 5 of the Civil Code and the authorities either failed to decide or dismissed the motion. The authorities' procedure in deciding on protection of a quiet state of affairs was therefore discussed at the Defender's meeting with the directors of regional authorities in January 2004.

The Defender mostly protested against the administrative authorities' attempts to assess whether the disturbed state of affairs was illegal while making a decision concerning asserting protection of quiet state of affairs. But only the factual state, i.e. the quiet state, is the subject of protection. Considerations of administrative authorities should only be focused on answering whether a quiet state of affairs had existed (in what form), whether it was infringed and whether such infringement of a quiet state is evident. Infringement is generally evident if proof to establish it (i.e. recognise it) is not necessary; or better proof by immediate perception, i.e. by inspection, is sufficient. A discrepancy in evidence found must essentially result in the administrative authority's conclusion that a more complex procedure is necessary to ascertain if a quiet state of affairs has bee infringed. As a result, infringement cannot be deemed evident. In such a case, application for protection under section 5 of Civil Code must be rejected.

Complaint Ref.: 3381/2004/VOP/KP

Proceedings concerning special legal protection under section 5 of the Civil Code are administrative proceedings that should always be concluded prior to issuing an administrative decision.

The Public Defender of Rights considered a complaint from Mrs J. F., who approached the Defender with an application to examine the procedure of the municipal authority in Rokytnice nad Jizerou in rendering protection of a quiet state of affairs under section 5 of the Civil Code. The complainant repeatedly addressed the municipal authority with a request to remedy matters in a house where the owner had stopped heating. Her first motion was not assessed as an application for protection of a quiet state and was passed onto the planning authority

without further enquiry. A new application was already assessed correctly but the municipal authority concluded there had been no infringement of a quiet state of affairs without commencing administrative proceedings. No decision was taken in the matter and the complainant's request was rejected in an informal letter.

Following an inquiry, the Public Defender of Rights concluded the competent municipal authority renders protection of a quiet state of affairs as part of administrative proceedings. Such proceedings should be concluded with a decision under section 1 of the Code on Administrative Procedures because the proceeding makes a decision on rights, interests protected by law, duties of individuals and legal entities.

2.14 Administration in the Area of the Right to Employment

Administration of Employment

In 2004, 56 complaints dealing with this issue were received.

In 2004, a significant number of people approaching the Defender in matters concerning the right to employment, complained of decisions made by labour offices on the rights and obligations of jobseekers, mainly on granting unemployment benefit, surplus thereof, on punitive exclusion from the jobseekers register, etc. Some complaints protested against actual labour office acts, mostly exclusion from the jobseekers register and retroactive termination of registration for failing to fulfil inclusion conditions set out by law, generally due to carrying out offices in companies or due to continuous preparation for a future vocation. The Defender concluded that many of the cases could have been prevented if the labour office staff had a more forthcoming attitude in dealing with clients and sufficiently fulfilled their duty to inform.

The Defender also exhaustively examined the procedures of inspection carried out by labour offices. In several cases, the Defender found maladministration in the recording of inspection protocols, and in the inspection procedure. The Defender also enquired into the issue of a sanction's fitting the seriousness of an exposed infringement of labour regulations. The principles of good administration were often violated in dealing with written requests to inspect labour regulations infringement.

Executing his special powers, the Defender intervened profoundly with his comments in the legislative process of drafting a new Employment Act. The comments ensued from the Defender's experience with the application of the present legislation, gathered while investigating complaints. Even though some issues were not settled satisfactorily, once the Employment Act came into effect many negative phenomena brought on by application of past laws were remedied.

Complaint Ref.: 2327/2004/VOP/DL

A labour office cannot be accused of maladministration if it decided to exclude a person from the jobseekers register in compliance with the Employment Act, while unaware of a fact crucial to including a person in the register, if the person concerned failed to notify the office of the fact and thus failed to fulfil his/her duties stipulated by law.

Mrs J. S. approached the Defender with a demand for revision of steps taken by the labour office in P. in a matter concerning exclusion from the jobseekers register under section 7, paragraph three, of the Employment Act then in effect, and removing delays in appeal proceedings with the Ministry of Labour and Social Affairs.

The office issued the jobseeker with a letter of introduction for the job of seamstress. However, while negotiating with the potential employer, the jobseeker laid down conditions: that she will only iron and take only a part-time job. Thus, she failed to get the job. The labour office deemed this conduct wilful obstruction in co-operation with the labour office and excluded her from the jobseekers register. The complainant appealed against the decision. At the appeal, she presented a medical report stating she cannot work as a seamstress due to poor eyesight, and accounted for the part-time work request through her caring for an under-aged child. She failed to disclose these facts to the labour office while on the jobseekers register.

The Ministry of Labour and Social Affairs annulled the labour office's decision at appeal proceedings because it concluded the complainant's steps could not be deemed a wilful obstruction of co-operation with the labour office. Therefore, the complainant remains on the jobseekers register. In accordance with the Employment Act in effect, failing to disclose facts

crucial for inclusion in the jobseekers register justifies excluding a jobseeker from the register for wilful obstruction of co-operation with the labour office.

Other Competencies in the Labour Sphere

In 2004, 16 complaints dealing with this issue were received.

Complaint Ref.: 1534/2004/VOP/BK

Methodological instruction issued by the Ministry of Labour and Social Affairs instructed labour offices to integrate sanctions contravening budgetary rules in agreements that formed the platform on which grants were rendered to applicants. Thus, when an agreement was violated, the revenue administrators often imposed, subject to the budgetary rules, sanctions against grant recipients that exceeded the sanction in the agreement severalfold.

A complainant protested against the penalty imposed by the revenue authority pertaining to a violation of an agreement on reimbursement of costs for establishing a new self-employed job. The penalty was several times higher than that agreed with the labour office in case of the agreement's violation.

The Defender found no maladministration by the revenue authority. He ascertained that in concluding the agreement, the labour office followed the methodological instruction issued by the Ministry of Labour and Social Affairs also affecting cases when funds are paid from the state budget for active employment policy (grants to establish socially purposeful jobs and creating publicly beneficial works in the form of a recoverable financial aid, grants for salaries, grants to compensate interest from loans or other purpose-defined grants). In compliance with the instruction, the office agreed a sanction contravening the actual consequences of its violation, in the agreement.

The Defender did not query the legality of the inland revenue office's decision, or the value of the sanction imposed and respected also the rule that "ignorance is no excuse for breaking the law". On the other hand, the complainant was misinformed about the consequences of violating the agreement by a public administrative authority that is undoubtedly obliged to be aware of this duty. It is therefore possible, with reservations, to reason that the complainant incurred damage by maladministration in the course of discharge of public powers. The damage was the difference between the amount of penalty assessed by the revenue authority in accordance with budgetary rules and the amount according to the agreement. If the complainant had not relied on the contents of the agreement and knew the actual consequences of violating the agreement, she could have eased them by her conduct.

In view of the extent of the maladministration, the Defender also addressed the Ministry of Finance, which is empowered to waiver a specific part of a penalty pertaining to individual grant recipients' applications, or do so by means of a decision that would affect all grant recipients in similar cases. In this respect, the Defender has not achieved a specific result.

Complaint Ref.: 1632/2004/VOP/DL

While inspecting compliance with labour law and wage-related regulations at an employer, the labour office must notify the entity requesting the inspection of the final result of the inspection, and not merely of the interim result.

If the inspected entity refused to present the labour office with the required documents due to the sensitive data contained therein, the Defender deems such conduct a failure to meet obligations set by law, and the office should enforce execution of the obligation by imposing a disciplinary penalty.

Mrs A. P. complained of the inaction of the Labour Office in P. in inspecting her employer's compliance with labour law and wage-related regulations on her instigation, dated December 19, 2000. She claimed she still did not know the final result of the inspection. She had only received "Information on the Inspection Result" from the labour office. This Information informed her that proceedings on objections were under way, as the inspected entity had used its legal right to enter objections against the protocol.

The Defender inquired and found the Labour Office had informed Mrs A. P. in writing of the inspection carried out at her instigation, but it was not information concerning the "inspection result" as the law required. Such information could not have been sufficient for the complainant because proceedings on objections give more detailed facts of the matter as

uncovered by the inspection. The findings of the Labour Office can alter in the process and thus be reflected in the overall result of the inspection. Mrs A. P. should have received further information on the actual date and result of the inspection carried out.

The Labour Office explained delays in the inspection that resulted in its completion considerably behind schedule, by the fact that the inspected entity refused to present requested documents referring to various sensitive data contained therein. It is the Defender's opinion that such conduct cannot result in delays in the proceedings. If the inspected entity refused to present requested documents, it failed to comply with the duty imposed by law, and thus the Labour Office was entitled to demand compliance with the obligation by imposing a disciplinary fine.

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

State Supervision over Self-Governing Units

In 2004, 9 complaints dealing with this issue were received.

In 2004 too, the Defender found inconsistencies in supervision over self-governing units. They largely involved failing to request originals of examined documents or to examine contextual requisites of records and resolutions of municipal board or council meetings. Given the Defender's mission to protect the rights and freedoms of individuals, a high standard of documents produced at municipal authorities' meetings is a vital prerequisite to securing citizens' access to information on municipality's activities, to exercising the option to partake in its administration and a platform for executing the municipal authority's and mayor's information obligation.

The Defender concluded that individual supervision authorities could do with a certain level of co-ordination and methodological management, which directly affects their work. Supervising authorities carried their tasks out perfunctorily or in a manner that cannot be characterized as the due execution of supervising powers. Supervision over municipalities' self-government is rather complex and by and large calls for the supervising officer to have a legal qualification to be able to look at compliance with all regulations of public law, and not just to narrow it down to assessing whether a municipality's act in question complies with the Act on Municipalities. It is not uncommon for the constitutional, and other, views to be neglected. Then a situation arises where the supervising authority concludes no shortcomings found in the municipality, while the Defender uncovers blatant abuse of the law, or in fact discriminating conduct in the record, in the very same case.

Complaint Ref.: 2605/2003/VOP/ZS

In case of a regional authority's supervision over municipality's self-government, the supervising authority must use information of the actual state of the matter drawing on the original documents that record proceedings of the municipality's authority.

Mr B. M. complained about the regional authority. This case concerned supervision over the execution of municipality's self-government in implementing resolutions of the municipality board. He said the municipality board assumed a resolution containing specific manner of treating trees and shrubs (combination of felling with thinning down), but the mayor carried the treatment out differently. The complainant was not satisfied with the conclusion of the regional authority's supervision.

While inquiring into the regional authority's procedure, the Defender found the regional authority asked the municipality to surrender information necessary to supervise its self-government, and the information was rendered by the mayor orally and subsequently confirmed in writing. The regional authority claimed the municipality board reserved the decision in the matter, and deemed the resolution as general giving neither the number nor other identification of the trees to be felled or the time for the task's completion. The regional authority reached the conclusion the Act on Municipalities was not violated and notified the complainant of this conclusion.

The Public Defender of Rights found the regional authority based its supervision on a document recording the municipality board's meeting which did not show clearly whether it was a copy of a valid record from the meeting, because it was a mere computer print-out. It did not

mention that the board reserved the decision, changes or append the meeting's programme or the course of the meeting. The context of the resolution was very general; mayor's signature was missing. It was unclear what verifiers were appointed; only one person was identified under the resolution as the verifier but the person's signature was also missing. The Defender concluded that if this were an actual copy of the subsequently signed and verified document, verification by one verifier would be in violation of the Act on Municipalities. This demonstrates the regional authority did not survey the record's original, and in fact did not request delivery of a copy. The supervision file does not clearly show if the supervising authority called the municipality to account.

The regional authority accepted Defender's inquest conclusions, notified the municipality, corrected its shortcomings and informed the Defender of steps taken to avoid such failings in future.

Right to Information

In 2004, 19 complaints dealing with this issue were received.

As citizens demand access to information in a range of public administration spheres, the problem of providing or other manners of accessing documents in public administration occurs very often as a partial issue of complaints addressed to the Defender that pertain to other areas, like tax and finances, the building industry, heritage protection, offences and chiefly self-government administration. The Defender encountered infringements of Act No. 106/1999 Coll., on Free Access to Information, investigating complaints in other areas, in particular by the Ministry of Health Care.

The most recurrent failing in applying the Act on Free Access to Information is erroneous evaluation of citizens' complaints (an authority does not recognise a request as an application for information and does not actually register the case), authority's inaction (resulting in application of presumption of a decision to deny information), violation of the form for a decision to deny information, refusing access to information to a person who is not a party to proceedings, etc.

Aside from state or self-governing authorities denying information, the Public Defender of Rights observed a similar negative approach to giving information from so-called public institutions operating with public funds (such as the Road and Motorway Directorate and Securities Brokers Guarantee Fund), that deny being a liable entity. However, the Defender's mandate does not allow the Defender to take steps against such entities.

Complaints Ref.: 2192/2004/VOP/ZS, 3957/2004/VOP/ZS and others

If the liable entity failed to satisfy a request for information and issue a relevant decision, a legal presumption that the liable entity issued a decision denying information comes into place. Appeal can be filed against this presumption within 15 days of the day the term for settling the application expired.

If the applicant asks for information already disclosed, the liable entity can refer the applicant to the disclosed information without actually providing such information. If the applicant actually insists the liable entity give information that has already been made public, the liable entity must comply.

Mr K. K. asked the Public Defender of Rights for help in accessing comprehensive information on the region's subsidy programmes. The complainant believed the approved lists of subsidy programmes disclosed at the region's web address with financial figures, were not sufficient or transparent and the list of rejected projects was not included. He asked for information repeatedly, was not satisfied with the reply of the regional press spokesman or of an officer of the regional authority.

Decisions on granting subsidies from regional budgets and information concerning proceeding on providing grants fall under the independent authority of the region, and given his legally restricted mandate, the Defender could not offer the complainant any specific help in acquiring the requested information. The Defender at least provided a legal stance on the matter.

The complainant was referred to The Principles for Granting Purpose-Bound Subsidies from the Regional Budget on Announced Subsidy Programmes, giving information on how applications are assessed and selected, projects authorized, including the amount of the subsidies and the manner and deadline for disclosing the municipality board's resolution on the

official display board of the regional authority and the region's web pages, while adding that a list of rejected applications is not published on the web pages. The complainant was not satisfied with such a response and decided to request the information in writing in compliance with Act No. 106/1999 Coll., on Free Access to Information. Later he was e-mailed a list of projects where subsidies were granted and of those unsuccessful, including a list of projects containing formal inaccuracies. The information was given in the form and context discussed and approved by the regional board.

If the applicant believes the liable entity failed, if only partly, to meet the application, and did not issue a decision on it, a presumption is instituted that the liable entity issued a decision denying the information. It is possible to appeal against such a presumption within 15 days from the day the term for settling the application expires. Similar a presumption is set in the Act on Free Access to Information also in the case of the appeal authority's inactivity. The decision to deny information can be examined by a court.

2.16 Other Areas of State Administration and Areas of Activity

In 2004, 168 complaints from other areas were received.

Protection of Economic Competition

Complaints pertaining to economic competition tend to be of a multidisciplinary character, given either by the area of the actual contents of the given case addressed by the complainant to the Office for the Protection of Economic Competition, or by the proceedings of the Office for the Protection of Economic Competition. The Defender believes that administrative discretion in administrative proceedings (resp. inquiries) concerning violation of economic competition is relatively wide; he monitored whether the administrative discretion did not exceed the limits stipulated by the law; and above all followed the procedural aspect of administrative proceedings held by the Office.

Complaint Ref.: 2816/2003/VOP/PKK

If a joint administrator applies different conditions to two groups of users in identical cases, this violates the Authors' Act and the Act on the Protection of Economic Competition. The Ministry of Culture as well as Office for the Protection of Economic Competition can render protection against such behaviour.

Mr R. H. approached the Defender along with the company C. A. with a motion against the inactivity of the Ministry of Culture and the Office for the Protection of Economic Competition in the matter of supervision over the joint administrator's activities. The complainant addressed these administrative authorities with a request for execution of supervision powers against the joint administrator who illegally applied different conditions to two groups of users (jukebox operators). He also objected to disproportionate remuneration (tariffs) for the use of author's works demanded by the joint administrator. The Defender commenced an inquiry focused on verifying conduct (inactivity) of the administrative authorities in question.

The joint administrator enabled operators of hard-disc jukeboxes to produce an unlimited number of copies of audio recordings onto the box's hard disc while not enabling operators of classic juke boxes (with CD only) to copy audio recordings. The Defender believes that from the Author's Act standpoint, it is irrelevant whether the audio copy was produced in MP3 on a jukebox's hard disc or on a classical CD. The joint administrator's agreement described above violates the joint administrator's obligations specified in section 100, paragraph one, letter h) of the Author's Act (application of equal conditions to users of the protection objects).

At the same time, the Public Defender of Rights examined the joint administrator's conduct with respect to the Act on the Protection of Economic Competition. Given the potential abuse of a dominant position in the market, the Defender believes it is crucial to consider the fact that the joint administrator has a dominant position in a majority of cases, regardless whether the administrator has a right to grant licences to use objects of protection. The Defender asked the authorities concerned to take the necessary steps to remedy the situation. As the Office for the Protection of Economic Competition opened administrative proceedings on the potential abuse of a dominant position in the market against the pertinent joint administrator, the Defender decided to close the case. He asked the authorities in question for continuous information on the steps taken in the matter.

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

The Defender encountered a number of problems in the applicable legislation in administration of commercial activities (for instance suspending performance of a trade, obligation to prove ownership or a right to use a fixed asset where the trade is situated, trade licence termination and others). However, the Defender points out trade licensing offices have a greater authority than merely towards commercial activities. Regrettably, they do not often use their role in consumer protection. Trade licensing offices should be aware of their wider powers and should also carry out their trade inspection (or sanction proceedings) with respect to consumer protection.

In the area of consumer protection, the Defender predominantly encounters the absence of an efficient and fast procedure for dealing with consumer conflicts (settling complaints). Thus in 2005, the Defender decided to investigate the tools the Czech Business Inspectorate has. Consumer conflicts evidently are conflicts of private law; nevertheless there is a question whether the Czech Business Inspectorate has a greater legal competency in complaint settlement than it currently exercises.

Complaints Ref.: 2626/2003/VOP/TČ, 2471/2003/VOP/TČ and others

A public administrative authority's motion to cancel a trade licence for business activities in the travel industry must be deemed only a motion to initiate proceedings to cancel a trade licence or suspend commercial activity. Proceedings are then instituted ex officio by the first step the trade licensing office takes against the travel agency operator.

An appeal authority must decide on the matter once it is evident from the its character that cancellation of a decision and returning it to the first-instance authority, would only disproportionately lengthen the proceedings and thus violate the principle of speed and economy of administrative proceedings.

Several citizens approached the Public Defender of Rights with complaints concerning the conduct of the municipal trade licensing office in O. and the regional trade licensing office concerning Mrs H. K.'s travel business without compulsory bankruptcy insurance. The Defender found maladministration by both above-mentioned offices, mainly in insufficient use of the tools granted by the Code of Administrative Procedure. The Defender did not agree with the trade licensing office's opinion that it had to comply with a proposal issued by the Ministry for Regional Development to withdraw a trade licence even though the Ministry is allowed to issue stances on applications for trade licences to run a travel agency.

The regional trade licensing office as the appeal authority pointlessly protracted the proceedings by cancelling the trade licensing office's decision and returning the case for new proceedings, instead of complementing the substantiation and overruling the decision, although there were no doubts of the importance of speed in settling the matter with respect to third parties' interests. The regional trade licensing office explained that such procedure is impossible because if the appeal authority in the appeal proceeding changed the verdict to the detriment of the appellant based on a substantially complemented substantiation, the authority would decide in stark contrast to the conclusion of the first-instance authority. Thus, the proceeding party would be significantly restricted in its subjective rights, as it would be denied a right to a due remedy against such a decision. The Defender referred to the evident circumstances of the specific case and the option to attack the decision on appeal by means of an administrative suit.

Administration in the Area of Schooling

The Public Defender of Rights pointed out the poor state of schooling legislation scattered among many legal regulations of different force without systematic links, in last year's Report. The Defender welcomes the adoption of a new Schools Act that regulates administration in the schooling sector comprehensively, while responding to issues formerly legislated only by legal regulations of lower legal force (for instance the issue of school catering, education of students with specific learning needs or teaching religion in state schools).

The new law also clarified the school headmaster as an entity consigned to execute public administration in the schooling sector. The formerly applicable legislation did not make it clear what procedural regulations the headmaster should follow in making decisions (on enrolling a

child in school, expulsion, etc.) in cases where the law ruled out application of the Code of Administrative Procedure to decisions made by municipality-established schools.

This absence of specific and unambiguous legislation that often had to be settled by complicated and fragmented interpretation was decisively solved by the new Schools Act. It explicitly applied the Code of Administrative Procedure to decisions taken by headmasters of all schools established by public corporations (state, region, municipality). This strengthens citizens' legal confidence because headmasters will be compelled to follow not just the material aspects of the matter but also its formal prerequisites and procedural rules of administrative proceedings.

Complaint Ref.: 666/2004/VOP/JH

Material regulation explicitly excludes application of the Code of Administrative Procedure in specific sectors of public administration, but the decision involves citizens' rights and obligations in public administration, and the administrative authority must proceed in compliance with fundamental principles of an administrative proceeding that will be proportionately applied to this administrative process.

Mr P. M. approached the Public Defender of Rights complaining of delays in a headmaster's decision on the transfer of his daughter to a Waldorf class of the elementary school, and concurrently of the headmaster's conduct in the proceedings concerning the student's transfer. He claimed the headmaster was arbitrary, announced his decision only by phone, failed to send a written copy and thus thwarted the option of the complainant to respond to the decision by an appeal.

Shortly after the Defender initiated an inquiry, the headmaster mailed the complainant a written decision disallowing the transfer due to differences between the educational programme of Waldorf schools and of the elementary school the student had been attending. The headmaster also alerted the complainant by phone of an examination board assessing the child's abilities. The headmaster did not take such a step prior to issuing the decision. The regional authority refused to consider the complainant's appeal against the headmaster's decision although the law explicitly empowers the authority to do so. The authority argued the law excludes application of the Code of Administrative Procedure to decisions pertaining to a student's transfer taken by the headmaster of a municipality-established elementary school, which means no restrictions or methods for a regional authority's execution of state power in appeal proceedings are stipulated.

The Defender perceived the headmaster's shortcomings as being in proceeding in breach of the basic principles of administrative proceedings that apply to any administrative activity. The headmaster erred particularly in not assessing the actual state of the matter, in this case the capabilities and character of the child, though he had promised to do so in a discussion with the complainant. The Defender also pointed out failures on the part of the regional authority that was meant to review the complainant's appeal and assess whether the headmaster had decided in compliance with the basic principles of administrative proceedings.

Neither headmaster nor regional authority agree with the Defender's opinion. Nevertheless, the headmaster sent the complainant a letter of apology. Since the Waldorf classes were administratively relocated to a different school, student M. M. did not transfer to such a class. The regional authority continued to insist on their stance that the authority cannot examine decisions of headmasters of municipality-established schools. The Public Defender of Rights therefore addressed the superior authority, the Czech Ministry of Education, Youth and Sports. The Ministry confirmed the Defender's opinion while referring to their past statement instructing the headmasters of municipality-established schools to analogously comply with the Code of Administrative Procedure when making decisions.

As of January 1, 2005, the above-described problem has been sufficiently remedied by the new Schools Act, which stipulates that any decisions taken by headmasters of state elementary schools are governed by the Code of Administrative Procedure.

Supervision of the State over Financial Institutions, Price Control

The Defender concluded an inquiry focused on the issue of state supervision over pension schemes. The Defender found some shortcomings in the execution of state supervision, particularly insufficient co-operation between the Ministry of Finance and the Czech Securities Commission (these authorities differed in their opinions on the use of state supervision means).

As in 2003, the Defender received a considerable number of complaints against the Securities Brokers Guarantee Fund in the matter of payment of compensation for bankrupt securities brokers. Given that the Guarantee Fund is not an administrative authority, such complaints do not lie within the Defender's mandate. Given the gravity of the situation, the Defender continues to follow the issue of compensation payment, and in this Report repeatedly points out the shortcomings of the present legislation to legislators (see Part III).

Complaint Ref.: 5164/2002/SZD/TČ

The Public Defender of Rights perceives the difficulty of the present legislation pertaining to the state supervision over pension schemes in a potential conflict of competences between the Ministry of Finance and the Czech Securities Commission in choosing and applying instruments of supervision (suspending the right of a board of directors to handle pension fund assets and provisions of the so-called receiver of assets.

The second-instance authority must issue a decision within the deadlines stipulated in the Code of Administrative Procedure. The term starts running on release of the documentation file by the first-instance authority.

The Defender received a number of complaints from pension scheme participants that felt wronged, and protested, among other things, against insufficient state supervision over pension funds. The Defender examined the supervision by the Ministry of Finance (hereinafter "MF") and the Czech Securities Commission (hereinafter "Commission") over selected pension funds. He particularly highlighted the fact there currently are two authorities carrying out state supervision over pension schemes in the Czech Republic. However, they might (in fact often do) have different opinions on the choice of tools necessary for the supervision. The Commission could only assume a decision to suspend the board of director's right to deal with pension fund's assets and institute a so-called administrator in specific cases, only if the MF consents. If the Ministry did not agree with the measures proposed by the Commission, the Commission was not authorized to take an independent decision, and thus implement measures it deemed expedient.

The Defender also found maladministration in infringing terms stipulated by the Code of Administrative Procedure to issue a decision because in some cases, it took the MF over 6 months to decide on remedies against decisions to suspend a board of director's right to handle pension fund assets.

The Defender particularly baulked at the MF's dilatory supervision over specific pension funds. Given that a new concept of state supervision over the financial market (i.e. not just over pension schemes) agreeably regulating the issue of conflict of supervising authorities' competencies is being drafted, the Defender did not demand any remedies from the Ministry. The plan to gradually amalgamate state supervision over the financial market into one institution was accepted by government's resolution in May 2004 and by a subsequent draft law amending some laws pertaining to the first stage of amalgamation of state supervision over the financial market. The draft is currently in external amendment proceedings.

Visas and Other Areas in the Defender's Competence

Complaint Ref.: 2208/2004/VOP/VK

Embassies abroad must allow foreigners to file an application for granting a Czech visa. Failing to accept an application for a visa claiming the foreigner has to apply at a different embassy, is inadmissible and contravenes the law.

Mrs M. K. R., a citizen of Indonesia, was studying in Holland and wanted to visit a schoolmate in the Czech Republic on her holidays. The Czech embassy in The Hague (hereinafter "E. Hague") refused to accept her visa application explaining that she can only apply for a visa at the Czech embassy in the country of her origin, i.e. Indonesia. She addressed the Public Defender of Rights with a complaint and the Defender promptly initiated an inquiry.

In accordance with act No. 326/1999 Coll., on the residence of foreigners in the Czech Republic, visa applications are filed at embassies abroad unless the law stipulates otherwise. The quoted law stipulates otherwise only in the case of several exceptions when a visa application can be filed not abroad but in the Czech Republic. The filing of visa applications is

not geographically specified in any other way, and an embassy is any Czech diplomatic mission or consular office.

The enquiry showed that E. Hague failed through incorrect interpretation of internal instructions of the consular department of the Ministry of Foreign Affairs that controls execution of visa agenda at embassies. The maladministration of E. Hague was remedied in the course of the proceedings. The application of the named foreigner was accepted and positively settled.

The Public Defender of Rights was also promised that the consular department of the Ministry of Foreign Affairs would make sure all embassies fulfil their obligation to enable foreigners to apply for a visa and accept the filed application.

3. Areas Outside the Mandate of the Public Defender of Rights

Given the mandate of the Public Defender of Rights as defined by the law, the Public Defender of Rights is not able to help complainants using his legal authority. He therefore does not perform inquiries on the entities concerned or the relevant institutions, although a number of undesirable procedures are often apparent in their conduct. Even in such cases however the Public Defender may help the complainants by providing at least some basic advice that helps them gain a better insight into their position and the options they have to protect their rights by acting themselves.

These complaints also suggest the areas of complex and often unsolved problems of both citizens and legal entities approaching the Defender. The Defender's previous experience suggests that in many cases their problems lie in insufficient awareness, and frequently there is a lack of insight into intricate legal provisions. Hence the Public Defender of Rights performs one of the general tasks of ombudsman institutions active in a democratic state with the rule of law, which is to increase legal awareness among the public and strengthen civic society.

To illustrate, the Defender presents here some of the experience he has gained in handling such complaints, organised for better understanding into legal areas and groups of similar relations.

3.1 Bankruptcy and Bankruptcy Proceedings

In 2004, 62 complaints dealing with these issues were received.

Once again, a number of complainants addressed the Public Defender of Rights asking for help relating to bankruptcy or bankruptcy proceedings. These are often issues concerning the filing of claims for a bankrupt's property, complaints relating to delays in bankruptcy proceedings, complaints on the action or inaction of administrators of bankruptcy assets and a number of other issues, often interconnected with other legal areas within the mandate of the Defender.

Even though the mandate does not allow the Public Defender of Right to deal with civil law matters of citizens including recovery of debts in bankruptcy proceedings, intervening in the decision-making process of courts or in the activities of administrators of bankruptcy assets, mostly he can at least advise the complainants of further steps to be taken or what position they have in the bankruptcy proceedings in progress. Bankruptcy proceedings are a relatively complicated and, at present, extremely time consuming, and an area where the public has little legal awareness.

Looking at the experience of the Public Defender, it becomes obvious that in many instances the objective anticipated by the Act on Bankruptcy and Settlement is not achieved, i.e. to settle the property of the bankrupt so as to ensure proportional settlement of creditors from the bankruptcy assets.

With regard to the said experience, when handling complaints from this area, although he suspended them in accordance with the Public Defender of Rights Act, the Public Defender paid particular attention to increasing the legal awareness of those who approached him for help.

3.2 Civil Law Matters

In 2004, 968 complaints dealing with these issues were received.

Most of the filed complaints lying outside the mandate of the Public Defender of Rights are from various fields of civil law. Over the four years of his term however the Defender has

noticed that it is particularly the individual civil law fields where the number of complaints varies depending on the emergence and development of issues the citizens and other entities involved must face.

From the civil law matters, the Public Defender of Rights has decided to pick some information from the area of housing and associated issues, and for illustration from other fields, some interesting experience gained in the handling of complaints where, although lacking a mandate, the Defender could offer help to the complainants with advice as was said in the introduction to this chapter.

Housing Issues and Issues Associated with the Utilisation of Flats

As before, complaints concerning housing, housing situation of complainants and associated issues are the most frequent civil law relations, and the Public Defender of Rights even noticed a significant increase in 2004 compared with previous years. It is obvious that the number of complaints is closely related to the overall situation in the market for flats. Even though this is an area of law laying essentially outside the mandate of the Public Defender of Rights, the Defender paid increased attention to the issue, because it is inseparably linked with other legal areas that fall within his mandate, in particular with social and legal protection of children, social benefits, etc.

The Defender once again repeatedly encountering complaints through which the complainants, as a result of their personal negative experience, refer to ***the unsatisfactory housing policy of municipalities and the associated issues of the still unresolved concept of welfare housing****, which the Defender pointed out in the Annual Report last year. As a common feature of the filed complaints, the citizens addressing the Defender found themselves in oppressive living conditions. It can be said that certain social groups are excluded from the market for flats as a result of broader social conditions. The reason is not only the persisting inflexible regulation of the market, but also the existing housing policy of municipalities and towns. Many systematically rid themselves of housing, while others prefer to build new flats and support social groups from which they expect economic development and gains.*

Again in 2004 the Defender received complaints on ***the procedure of municipalities and towns in filing and dealing with citizen's requests for rented flats****. The Defender noticed a new phenomenon, inactivity of the municipality or town after the citizens address the regional self-government corporation, asking for their request for the renting of a municipal flat to be handled. This is self-government performance, which municipalities cannot be forced to perform. Supervisory mechanisms cannot be applied, because they have not been designed explicitly to eliminate inaction of a municipality with self-government status. In addition to this, supervision is but subsequent and relates in this matter solely to compliance of decisions, resolutions and other measures of a municipality with the law and other legal provisions. It is also difficult for the citizens to defend themselves procedures of a discriminatory nature, which usually lie in the method of setting criteria for accepting a request and the subsequent handling and assessment of the request. Some of the criteria set in this manner raise doubts about their compliance with constitutional principles; the legal approach to them is difficult as they represent self-government performance that may only be intervened in for the sake of protection of the law and solely in a manner set by the law. In addition to this, under the provisions of section 124a, par. 5, of the Act on Municipalities, supervision does not apply, among other things, to the breaching of the legal provisions of civil law where some municipalities and towns place all their steps relating to the leasing of council flats. The Defender's opinion is however that ensuring compliance with constitutional provisions is not excluded from supervision.*

Another type of complaint relating to housing is requests for help or advice in dealing with ***civil law disputes ensuing from renting*** *and the mutual rights and obligations of landlords and tenants; for example questions concerning the covering of repairs in flats are rather frequent. Applicants for flats and tenants prevail over landlords among complainants. Complainants very often address the Defender with a request for help in dealing with an oppressive housing situation after receiving notice of termination of a flat lease or after a proposal for enforcement of a decision through eviction has been filed, but the Defender also receives requests for help with obtaining lease contracts for council flats or with flat exchanges.*

Another area of frequent complaints concerning housing are those relating to the issues of ***joint administration of houses, whether by co-owners or associations of owners*** *of residential units and housing co-operatives, the number of which increases with the ongoing*

privatisation of housing, and often people lacking elementary legal knowledge enter the statutory bodies only because they are members of a group of tenants who have privatised the relevant housing unit.

Complaints relating to an individual check of and dissatisfaction with ***the charging of services associated with flat usage*** *are on an increase. On the other hand this shift in the owners' conduct is a desirable change in behaviour, evidencing an increased interest of flat owners and their associations in the economy of the services supplied and their invoicing.*

Labour Law Matters

People continued to frequently address the Public Defender of Rights on labour law matters. The complaints referred to a broad range of issues: conclusion of employment contracts, rights and obligations arising for the employees and employers in the course of employment contracts, termination of employment contracts, as well as agreement on work performed outside employment contracts. The most frequent issues dealt with were requests for help with terminating an employment contract, ways of claiming invalidity of an employment contract and the associated rights, failure to pay wage or wage compensation by the employer, including the claiming of wages from insolvent employers, and compensation for damage ensuing from the employer's liability for industrial injuries or industrial illness. In 2004 the Public Defender of Rights received a number of complaints concerning discrimination in labour law relations.

Although individual labour law relations do not fall within the mandate of the Public Defender of Rights, the Defender instructed the complainants on the possibility of filing an action with a court and filing a petition for inspection of compliance with labour law regulations by the labour office or inspection of labour conditions by the regional public health administration or industrial safety inspectorate. Since these authorities do fall within the mandate of the Defender, the complainants are instructed to file a new complaint with the Public Defender of Rights should they not be satisfied with the procedure of the relevant authority.

Distraints and Distraint Proceedings

There was an increase in 2004 in the number of people addressing the Public Defender of Rights from the position of a debtor in delay and financial distress. The Defender, with his mandate defined by the law, is not authorised to deal with civil law relations and the decision-making of courts or court executors (the so-called private executors), but even in these cases he usually tries to outline the available steps. However, the Defender is authorised to examine tax-related or other administrative distraints, various penalisations under public law regulations (such as tax, fee and budget regulations), supervision of the Ministry of Justice over the distraint activities of court executors, and the actions of court bodies of state administration.

Although an individual's indebtedness is often the result of previous unpremeditated acceptance of liabilities and the Public Defender of Rights does not intend to question the creditor's right to the settlement of receivables, his position is that the debtor must also be treated in compliance with the law and its principles. There are several valid legal means of recovering debts. Liabilities from civil law relations can be recovered through a petition for the enforcement of a decision under the Civil Court Procedural Code (they are carried out by a court administrator) or through a court executor (a so-called private executor). Through this action however the debt increases, because the distraint costs are added to the debt balance of the liable party, including, apart from the executor's remuneration, other executor's costs and expenses. Payments of a public law nature (local fees, taxes, penalties, state schemes, other payments, etc.) can be recovered, in addition to the two mentioned methods, through tax distraint or another administrative distraint. However, the Defender has repeatedly encountered cases in which municipalities, although they can order distraint themselves, in particular where small sums are concerned, enforce decisions through a court executor. In these cases the cost of the distraint exceeds several times the total amount claimed. Such a procedure is incompatible with the municipalities' duty to select provident means of debt recovery. If the municipalities argue to the Defender that they acted in this manner also "to teach a lesson to other debtors", the Defender feels obliged to state that he cannot regard such indirect exemplary punishment as a procedure compatible with legal principles.

The Defender has also encountered several complaints concerning confiscation of property during enforcement of a decision, which however was not the property of the liable party. Most of these were cases in which parents of debtors addressed the Defender, claiming

that their children had long ago left home. The Defender advised them as to how they should proceed.

Funeral Services

Recently the Public Defender of Rights has encountered issues concerning funeral services. These usually include damage to graves by growing trees, duration of rental of graves, ownership of graves (tombstones, tombs) and rental for grave usage. Complaints concerning disturbance of piety at burial places are frequent, most often due to the insensitive location of, for example, restaurants and wine bars, or organising cultural or similar events.

Although such complaints are mostly outside the mandate of the Public Defender of Rights, as they are civil law relations between those renting burial sites and the municipalities as the owners and operators of burial sites, even in these cases the Public Defender of Rights provides a legal advice on how the issues should be approached, in particular under Act No. 256/2001 Coll., On Burial, and the Civil Code. Public law aspects have been penetrating graveyard and burial law since the 19th century in the form of legal regulation declaring the state's interest in proper burial, as well as civil law aspects embedded in usage or rental relations and contracts on the basis of which burial sites are rented.

3.3 Matters of Criminal Law

In 2004, 383 complaints dealing with these issues were received.

As in previous years, complainants addressed the Defender relatively often with complaints on criminal proceedings as such or on specific bodies active in criminal proceedings. The complaints related to proceedings in progress, pending proceedings and concluded proceedings.

The Defender is most often requested to ensure re-examination the whole matter, new substantiation of evidence, influencing the actions or decisions of bodies acting in criminal proceedings, mitigating a sentence or even gaining an amnesty. In some cases the Defender is asked to be present at and supervise procedural acts or even to represent them in court proceedings. The Defender is addressed not only by the individuals against whom the proceedings are instituted, but also by relatives, people reporting crimes and injured parties. The Defender suspends these complaints for lack of mandate, although he usually gives general advice, for example instructing the complainant briefly about their rights and obligations, legal remedy options or the purpose of some institutes of material law or procedural law.

3.4 Independent Authority of Regional Self-Governing Units

In 2004, 248 complaints dealing with these issues were received.

The mandate of the Public Defender of Rights does not cover the independent authority of regional self-governing units. In cases worth consideration however the Defender may be helpful by providing an informal contact or sending a non-binding position to the relevant authority. The Defender's motivation is to attempt correction of an improper procedure that is often quite obviously due to a lack of awareness or wrong interpretation of law. In some cases the Defender's concern may bring positive results provided that it falls on fertile ground and is not perceived as an inadmissible intervention in self-government.

In 2004 citizens traditionally sought explanation and help concerning municipal waste management and fees for the same. Most municipalities introduced local fees for municipal waste through a generally binding municipal directive. Some citizens are concerned about being subject to fees for keeping dogs or fees for parking in municipalities. Many expressed discontent with duties imposed through generally binding municipal directives aimed at maintaining clean streets and other public spaces.

In 2004 the Defender again encountered cases of misunderstanding of self-government democracy as such and the position of a municipality as a sovereign entity of regional self-government with the right to perform self-government. Citizens expect that defects in self-governing performance will be removed by another state body or another institution, including the Defender. The Defender is also approached by opposition members of self-governments in individual municipalities asking for access to certain materials of municipal bodies, etc.

III. GENERAL OBSERVATIONS

In theoretical treatises the Public Defender of Rights is often referred to as "Parliament's extended arm". According to the explanatory report to the Public Defender of Rights Act, by pointing out shortcomings identified in handling complaints, the Defender provides important feedback between the legislature and the executive. By signalling the sources of dissatisfaction of citizens or other entities with public affairs, the Defender is an important source of information for the legislature, which can be used in the legislative process. This is especially true of shortcomings in the effectiveness of a valid legal treatment, lack of interconnectivity of legal provisions within one system, but also inconsistent procedures in their application or interpretation, often aided by the ministries' policies.

Among other things the Public Defender of Rights has used, from his inception, annual reports on his activities in the past year, concluded by a general summary of observations made when handling individual complaints, trying to define reasons and usually proposing remedies. These are serious problems where the Defender seeks remedy with difficulty or in vain. He therefore sends a signal to Parliament and the other relevant bodies to which he reports that there is a need to solve these issues.

Over his four-year term, the Public Defender of Rights has pointed out the need to seek a solution to 27 problems of society in everyday situations. It is already possible to conclude on the basis of the Defender's four-year experience that the recipients have gradually become used to the signals and they have even begun to take them into account. It can be said that the information from the Public Defender of Rights has helped to a greater or lesser extent the purposes to which they are intended to help, as the above principles suggest. Some of them have provided information and lost topicality, some have been taken into account when adopting amendments to legal provisions in the matter or gathering arguments in the legislative process. Some of the serious issues however, despite constant attention from the Public Defender, remain to be resolved.

Hence in this part the Public Defender of Rights presents information on the progress of some of the most serious observations he pointed out in previous reports, which have not yet been satisfactorily resolved, and general observations in the following chapter from the most serious observations from 2004; ones he considers necessary to inform the legislature about for the reasons specified above.

1. Selected Observations Based on the 2001 to 2003 Reports

1.1 Position and Activities of the Land Fund of the Czech Republic

In part III of the 2002 Annual Report, observations were made on the position and activities of the Land Fund in the realisation of the transfer of substitute plots of land to the entitled persons in accordance with Act No. 229/1991 Coll. on Land. The Report pointed out that the Land Fund does not act from the position of an administrative authority and there is no instrument of direct supervision over its activities, including a lack of mandate for the Public Defender of Rights, although many entitled persons demand the Defender's intervention, pointing out in particular delays and some wrongdoings by the Fund (such as multiple handing over of the same property or handing over of obstructed property and the subsequent impossibility of registering the ownership transfer in the Land Register).

The law treating the position of the entitled persons has been amended in the meantime, although not in a fully satisfactory way. However, the Land Fund still remains outside the mandate of all state inspection mechanisms.

1.2 Procedures of Co-operative Farms Concerning Settlement of Property Shares of the Entitled Persons

In 2004 the Chamber of Deputies of Parliament read a deputy's draft act to amend and extend the so-called transformation act. In the explanatory report on the draft act, the deputies explicitly referred to a previous advice from the Public Defender of Rights stating that he considers the existing legal regulations concerning the settlement of property shares of persons in co-operatives to be insufficient. This position is responsibly based on the observations of over 140 persons who have addressed the Defender since 2001.

The Defender described the developments in this area in his previous Reports, noting that the due parties are gradually entering the process of liquidation and are being declared bankrupt, the latter being often suspended for a lack of property. With an aim of resolving the issue, the authors of the draft proposed that the property shares of the entitled persons be settled through a transfer of goods or title to another property owned by the due party – the co-operative. They proposed this at a time when the court judicature agreed upon the position that such persons have the right to demand settlement of property shares through financial performance. As early as January 28, 1992, the effective day of the Transformation Act, there was no obstacle to settling the entitled persons' property shares in kind. This means that whoever was interested in such performance was able to receive it, because experience shows that the co-operatives preferred performance in kind. The core of the issue is providing performance to those who have refused performance in kind, mostly referring to its impracticality. As already noted, courts granted these persons the right to financial performance. In this respect the proposed solution has brought no change as it has even narrowed the performance methods set so far. It is obvious that the presented draft reflected the actual economic potential of the co-operative farms, at the cost of additionally changing a system set by the legislature as early as 1992.

In the previous Reports the Public Defender of Rights stated that the state had granted to the entitled persons, through the law, the right to settlement for property lost in the past, but without doing anything to ensure that the right can be actually pursued and that the actual performance can be claimed, and responsibility for implementation of a law lies with the state.

The solution should therefore attempt to make the performance granted through the 1992 act realizable and enforceable for the entitled persons rather than additionally narrowing the already valid means of performance.

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

Issues concerning deportation custody and the execution of deportation sentences became an area of concern for the Public Defender of Rights as early as 2001. However, the valid legal regulation and its application can still not be regarded as ideal. On the other hand, although some of the reservations contained in the previous Annual Reports of the Public Defender of Rights still persist, it can be said that the situation has improved over the period the issue has been intensively approached by the Defender and the Government Council for Human Rights, in particular as the legal security of deported foreigners has increased. A significant decrease has indeed been experienced in the number of complaints filed with the Public Defender of Rights in this matter. It is only the planned re-codification of the existing Criminal Code that is expected to bring comprehensive treatment including the elimination of some interpretation obscurities.

It is worth mentioning in this respect that the European Court of Human Rights in Strasbourg also dealt with the issue in the Singh versus the Czech Republic case (60538/00). In January 2005, the Court concluded that in the case of two Indians held several years in deportation custody, the Czech Republic had breached article 5 of the European Convention on Human Rights and Fundamental Freedoms, concerning the right to liberty and security of person.

1.4 "Slovak Pensions" Paid Under the Agreement Between the Czech Republic and the Slovak Republic on Social Security

It was already in 2001 that the Public Defender of Rights pointed out the still unsolved issue concerning the impact on pensions of the dividing of the Czechoslovak Federation. Under the Agreement between the Czech Republic and Slovakia on Social Security ("the Agreement"), people living in the Czech Republic are paid pensions by Slovak social security bodies. As a result of an amendment of the legal regulation in the Czech Republic as of January 1, 1996 (including valorisation), the difference between pensions in the two countries keeps increasing and is even more remarkable due to the exchange rate between the Czech Crown and the Slovak Crown, an aspect that probably was not anticipated.

First of all the issue pertains to individuals granted a pension by the Slovak Republic social security body before the actual division of Czechoslovakia took place. The Agreement not only needed to define rules for assessing entitlements arising in the future, but also, given the dividing of the state, set out a key for dividing the Federation's liabilities between the successor

states. Therefore a pension granted by a Slovak Republic body becomes a pension of the independent Slovak Republic after January 1, 1993.

There is a similar problem in a second group of "Slovak pensioners". Under article 20 of the Agreement, the periods of social security enjoyed during the Federation are considered to be periods of security from the state in the territory of which the employer, involved in labour law relations with the relevant employee, had its registered address on the day of the dividing of Czechoslovakia. Under the said provision a considerable number of people who worked for a Slovak employer before January 1, 1993, however briefly it may have been, receive Slovak pensions today either in full or partly (if partly, the Slovak pension still constitutes a majority of their income as the Czech part of the pension is calculated solely for the period of security enjoyed in the territory of the Czech Republic after January 1, 1993).

In both cases the Minister of Labour and Social Affairs approached the issue in the initial years by applying the institute of abatement of harshness and granted the so-called "variance" to certain groups of applicants – a pecuniary compensation up to the amount of the hypothetical pension they would be entitled to if only the Czech legal provisions were taken as relevant. Later on however the criteria for recognising harshness were made stricter even though the legal regulation and factual circumstances had not changed.

The Public Defender of Rights believes that application of valid legal regulations of pension insurance must not result in disadvantaging the Czech residents receiving a pension from the relevant Slovak institutions by application of the Agreement in comparison with a situation not governed by the Agreement. Even though the Constitutional Court in ruling Ref. No. II. ÚS 405/02 supported the said opinion, the Ministry of Labour and Social Affairs persists in its interpretation of the proper application of the Agreement in connection with Act No. 155/1995 Coll. on Pension Insurance.

Attempts to change the Agreement through bilateral negotiations between ministers of both parties have not been successful due to the position of the Slovak party, for the citizens of which the Agreement is favourable; the "Slovak pensions" issue therefore remains unsolved.

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

In the 2001 and 2002 Annual Reports, the Defender pointed out that the existing legal provisions conform to outdated principles that do not reflect the transformed social and economic environment in the Czech Republic within which labour and employment relations are now conducted. This applies especially to ex-employees who suffered an occupational disease before January 1, 1993, and where the employer responsible for such an occupational disease was not insured at the time and is now bankrupt or insolvent. If the administrator of the bankruptcy assets lacks financial resources to satisfy these claims and ceases to provide compensation, these partly or wholly disabled people live in poverty and have to rely on social security welfare benefits, often for several years while the bankruptcy proceedings continue. Their claims do not transfer to the insurance institution, unlike the claims of citizens who suffered an industrial injury or occupational disease after January 1, 1993. Instead they are settled by the state through the Ministry of Labour and Social Affairs. However, the state begins to provide the compensation through its contractual relation with the insurance institution only once the employer ceases to legally exist, leaving no successor, i.e. after the employer is erased from the Companies Register. The Defender noted that that there is a tendency to transfer the consequences of long-lasting bankruptcy proceedings to socially-vulnerable injured parties. At the same time a significant disproportion arises in the positions of people who basically meet the same conditions (entitlement to compensation for damage), except for one condition – when they suffered the disease.

The Defender presented proposals to solve the present poor situation by adopting a legal regulation to be based on the same principles as Act No. 118/2000 Coll. on the Protection of Employees upon Employer Insolvency. Although several direct and indirect amendments to the Labour Code and the associated regulations have been made in the meantime, the issue has not been satisfactorily resolved to date and the position of people involved remains no less oppressive.

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

The Public Defender of Rights pointed out this long-unsolved issue in the 2002 Annual Report and he has also paid attention to it since then. In 2004 an amendment to the Water Act was adopted, amending the provision of section 42, paragraph 4. In cases where serious threat to or contamination of surface and ground water exists and remedial measures cannot be imposed on the person responsible for the situation, the respective water-rights authority is bound by the law to ensure the necessary remedial measures. After the amendment became effective, regions established special accounts for this purpose from their budgets, annually supplemented to a balance of CZK 10 million. Under the previous legal regulation, the Ministry of the Environment had CZK 50 million allocated for the above purpose, i.e. for the entire territory of the Czech Republic. Partly due to the limited funds available, but also with the aim of finding a regular solution, the Ministry proposed the said transfer of its previous authority to the regions.

The amended provision of the Water Act has not entirely met expectations, according to the Public Defender of Rights. Some regions fundamentally refuse to handle emergencies that occurred before the date the Water Act was amended. The regions insist that it is up to the state to deal with old burdens on the environment, and an emergency arising from them should be the state's responsibility through the Ministry of the Environment, because the state should not relinquish its duty to defend the society-wide significance of protection of water and the environment as such. The regions therefore refuse to expend self-government funds on old environmental burdens under the provisions of section 42, paragraph 4, of the Water Act.

According to the Ministry of the Environment the situation would be best resolved by returning the authority back to the Ministry and increasing the sum to about CZK 150 million for the whole country. In 2003, a year when the Ministry of the Environment had the authority but the earmarked funds were limited, the Ministry expended virtually all the funds on measures required to remedy old environmental damage. It is therefore reasonable to assume that the Ministry fulfilled the legal duty imposed on it, although within the limits given by the amount of allocated funds. Although the Ministry acted to gradually remove the most seriously contaminated sites in the Czech Republic, the process has recently been suspended.

As a result, there is still no functioning, comprehensive and regular solution in place to remove old burdens on the environment and emergencies arising from them. The Public Defender of Rights therefore appeals to the necessity to find and support a solution that would be truly targeted and, even more importantly, functional.

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

In the 2003 Report the Public Defender of Rights stated that the Act on Healthcare drafted by the Ministry of Health following a resolution of the government in response to a notification from the Public Defender of Rights, treats the issue of providing information to patients and persons related to the deceased along the lines required by the Public Defender of Rights. However, the draft Act was withdrawn in early 2004 and the Ministry of Health did not respond to requirements for a partial amendment of the existing Act No. 20/1966 Coll. on Public Healthcare.

In the context of some widely publicised cases the Public Defender of Rights once again publicly criticised the inactivity of the Ministry of Health and urged a prompt partial amendment of the Act on Public Healthcare so as to ensure access to information from medical documentation for patients and, where applicable, persons related to the deceased as the Public Defender of Rights required already in his notifications to the government.

In late 2004 the Ministry of Health produced a Draft Amendment of the Act on Public Healthcare, which has been presented to the government and is likely to be adopted.

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

In previous years the Public Defender of Rights repeatedly pointed out the pitfalls of using the provisions of section 16 of Act No. 48/1997 Coll. on Public Health Insurance,

according to which in extraordinary cases the health insurance institution covers treatment otherwise not normally covered by healthcare institutions, based on approval granted by a review doctor (a doctor working for the insurance company). Such treatment is only provided if it represents the sole possibility of medical treatment given the health condition of the insured party.

If the review doctor disapproves reimbursement of healthcare chosen by the patient's physician, the existing legal regulation allows unequal availability of healthcare for patients despite the fact that the professional assessment of the attending physicians has revealed it is urgently needed and given the patient's health condition no other treatment can be applied. At present there is nothing to prevent the review doctor from not approving the reimbursement for reasons other than those anticipated by the law, such as due to the high cost of the treatment under the present economic circumstances of the health insurance company or even for personal reasons. There is no independent control mechanism to overrule the review doctor's disapproval in justified cases.

In the past year the Public Defender of Rights repeatedly notified the Ministry of Health of the issue. So far he has received no answer to his direct query concerning the use of the said provision.

1.9 Violation of the Obligation to Undergo Vaccination

In previous years the Public Defender of Rights repeatedly pointed out in the Annual Reports the necessity to create space in the legal regulation or its interpretation for reflecting situations that may occur in real life situations in the strict application of Act No. 258/2000 Coll., on Public Health Protection. Among other things the Act sets out a duty to undergo regular vaccination in the cases and by the deadlines specified in the Act, without taking into account a situation for example in which parents refuse to have their young children vaccinated due to a previous negative experience with vaccination in the family or for other serious reasons.

Refusal to have a child vaccinated, unless there is an identified health contraindication, is punished by a fine imposed by institutions for the protection of public health. These bodies still exert unacceptable pressure on parents, claiming that their refusal to vaccinate may be considered to represent insufficient childcare. The Defender regards such an approach to parents as unacceptable. Before the above proposals are implemented, the Defender additionally urges in particular improved communication from the public health protection authorities with parents, approaching the individual cases on an individual basis and abstaining from sanctions for refusal to undergo vaccination in exceptional, justified cases.

In 2004 the Public Defender of Rights repeatedly requested the Ministry of Health to start considering exceptions in cases where vaccination is refused for serious reasons and asked it to consider a change in the legal regulation. The Ministry of Health continues to be negative about these proposals.

1.10 Dual Citizenship and Presumed Citizenship

In the 2002 and 2003 Annual Reports, in the parts presenting general observations gained in the Defender's activity, issues concerning citizenship are mentioned. A common feature was criticism of the legal regulations considerably restricting the possibility of dual citizenship. The Defender perceives Czech legislation based on the principle of exclusive and sole citizenship as unjustifiably strict. He also mentioned the cases of those erroneously regarded by offices to be Czech citizens. Czech law makes no provision for resolving such situations.

In the last year's Report the Defender mentioned the senators' proposal for amendments to Act No. 193/1999 Coll. on State Citizenship of Some Former Czechoslovak Citizens. In May 2004 the proposal was turned down in Chamber of Deputies of Parliament at the first reading. The amendment would make the acquisition of Czech citizenship possible solely for those who did not manage to make a declaration within the five-year period by September 1, 2004, and for former citizens naturalised by August 21, 1997, in the U.S.A., but not to those who lost citizenship under section 17 of Act No. 40/1993 Coll. through acquisition of another citizenship after January 1, 1993, at their own request.

In his previous Annual Reports for the Chamber of Deputies the Defender mentioned the cases of those who have a close relationship to the Czech Republic, but are not given the possibility under existing law of a simplified procedure for acquiring Czech citizenship.

In 2004 the Defender dealt with a complaint noting that Czech citizenship is inaccessible for the children of those who were granted citizenship through Act No. 88/1990 Coll. Had these people "waited" for a short time and make their declaration under Act No. 193/1999 Coll., they might have had their children included within their declaration on the acquisition of citizenship.

Following the government's resolution No. 186 in February 2003, the Ministry of the Interior produced an analysis of the law governing the acquisition and loss of citizenship and circulated it for inter-ministerial comments, the results of which are now being evaluated by the Ministry. The results of the analysis should be presented to the Government by June 30, 2005. Not being a so-called comment site, the Defender has not commented on the analysis.

The Ministry of the Interior promised in its comments on the Defender's reports with the results of examination of specific cases that the Defender's comments concerning defects in the system would be taken into account in the analysis. This applies in particular to the cases of people living in the territory of the Czech Republic in the belief that they are Czech citizens. The Defender points out that it is insufficient to solve the situation of these people solely by giving them the possibility to acquire Czech citizenship through a declaration. Although such a provision would solve the present situation, it would leave the question open as to how to approach the periods in which such people were erroneously considered Czech citizens. The new legal regulation should also contain the required transient provisions.

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

As already mentioned in the 2003 Annual Report, improvement in facilities for the detention of foreigners should be significantly aided by the currently drafted amendment of Chapter XII of Act No. 326/1999 Coll. on the Residence of Foreigners on the Territory of the Czech Republic. The parties involved commented on the amendment in September 2004 and it is reasonable to express satisfaction with the way the Ministry of the Interior approached the issue.

The proposed amendment is based on a presumption that any limitation of rights and freedoms of detained foreigners should not exceed an extent necessary to convey the purpose of detention. In addition to freedom of movement of the detained within the facility, changing the regime governing visits, providing psychological and social care, modifying the possibility of placing foreigners in strict detention regime and other measures aimed at an overall humanisation of the facilities, it should be noted as a very substantial thing that a transfer is proposed of the authority to establish and operate foreigner detention facilities under the Ministry of the Interior, and specifically the Administration of Refugee Establishments. The Police as a repressive state unit would be limited to essential acts in facilities for the detention of foreigners. The Administration of Refugee Establishments, which operates facilities for asylum seekers and has personnel with professional skills for everyday contact with foreigners, should provide for the other matters relating to the operation of the facilities and the purpose they are intended to serve.

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

Following the 2003 Annual Report in which the Public Defender of Rights pointed out the issue, it should be noted that in March 2004 a group of 17 senators filed, under article 87, paragraph 1, letter a) of the Constitution of the Czech Republic and under section 64, paragraph 1, letter b) of Act No. 182/1993 Coll. on Constitutional Court, a proposal for annulment of the particular provision of section 9 of the Act on Asylum which speaks of the inapplicability of section 33, paragraph 2 of the Code of Administrative Procedure to asylum granting or withdrawal.

In their proposal kept under Ref. No. Pl. ÚS 13/04 the senators declaim, just like the Public Defender of Rights, against limitation of the procedural rights of asylum seekers in asylum proceedings. The same holds true for the proposal filed by the Regional Court in Ostrava pursuant to article 95, paragraph 2, of the Constitution of the Czech Republic and section 64, paragraph 3, of the said Act on the Constitutional Court, although the latter proposes annulling of a part of the amending act, i.e. Act No. 222/2003, instead of annulling

provisions of the amended Act. The proposal of the Regional Court in Ostrava had been delivered to the Constitutional Court several days before the senators' proposal and kept under File Ref. Pl. ÚS 12/04.

It should be added in connection with the proposal of the Regional Court in Ostrava that the Public Defender of Rights was invited by the Constitutional Court to comment on the matter in writing. In the comment the Defender informed them that he agreed with the proposal and repeated his reservations presented before the Chamber of Deputies and Senate during the discussion of Act No. 222/2003 Coll. He also pointed out the significance of the provisions of section 33, paragraph 2, of the Code of Administrative Procedure, which is a display of the basic principles of administrative proceedings and a procedural warranty of a fundamental right under article 38, paragraph 2, of the Charter of Fundamental Rights and Freedoms. The obligation of an administrative body embedded in section 33, paragraph 2, of the Code of Administrative Procedure and the corresponding rights of a party to proceedings should therefore be preserved also in relation to parties to proceedings concerning the granting or withdrawal of asylum in the territory of the Czech Republic. The Constitutional Court has not as yet ruled on the matter.

1.13 Housing Policy and the Need to Provide Fundamental Living Conditions

In the 2003 Annual Report the Public Defender of rights pointed out the long-unsolved issue of availability of appropriate or social housing. In addition to people in an oppressive social situation due to adverse circumstances, there are other groups of people vulnerable over a long-term perspective. The Defender also stated that there are no institutions or institutes to provide effective assistance to such citizens with respect to the oppressive housing situation, at least for the necessary period of time.

The Defender mentioned the generally known fact that the extent to which society provides a safety mechanism preventing the exclusion of the socially-disadvantaged from standard social relations indirectly influences the number of people who will remain dependent on direct state assistance and how long they will be so. The situation represents a vicious circle since dependency on state support becomes rooted throughout the whole family. The Defender does not intend to interfere with private legal relationships between landlords and tenants, but issues of social and legal protection of children as well as social security benefits and foster care are within his mandate. These situations, the resolution of which are to a certain extent attempted by the Defender, cannot be comprehended without some broader context.

The basic documents of international law, the standards of which the Czech Republic should approximate, are the International Treaty on Economic, Social and Cultural Rights (the "Treaty"), the European Social Charter as well as the European Convention on Human Rights and Fundamental Freedoms. These documents presume that the state will respect, among other things, the requirement for equal access to housing. Article 11 of the Treaty stipulates the right of everyone to an adequate living standard for the person and his/her family inclusive of sufficient food, clothing, housing and increasing improvement of living standards. Such a right must be applied in the same non-discriminatory way other constitutional rights are applied, as stipulated by article 3, paragraph 1 of the Charter of Fundamental Rights and Freedoms (the Charter) and article 2, paragraph 2 of the treaty.

In 2004 the Public Defender of Rights continued to pay increased attention to the issue, noting certain individual activities that had aroused a broader discussion, with a potential positive effect. The Ministry for Regional Development prepared a long-expected draft strategy for an act on flat leasing, for which the author requested the Defender's comments regardless of the fact that the Defender is not a comment site in this respect, probably being aware of the Defender's previously presented positions concerning the unfavourable aspects of regulation (distortion of the market for flats, breaching the Czech Republic's obligations from the Treaty, impact of high rents on young families despite the declared will of the state to help increase availability of housing).

A draft "Anti-discrimination Act" has already been presented to Parliament. The document incorporates the relevant regulations of the EU and could become, following the Charter of Fundamental Rights and Freedoms and the international agreements the Czech Republic is bound by, an instrument eliminating questionable procedure in providing flats. Among other things the Act removes the existing legal gap pointed out in detail by the Defender in his previous Annual Report by defining more specifically the right to equal

treatment in, among other things, access to products and services including housing offered or provided to the public or in granting and providing social benefits.

Despite the mentioned partial progress in the issue, an absence of effective mechanisms for a general solution of the housing situation of socially vulnerable groups persists.

1.14 Noise Pollution Caused by Increasing Traffic

In the 2004 Annual Report the Public Defender of Rights pointed out the need to deal with the public burden caused by noise pollution from increasing traffic, which rose significantly in 2004 due to the increase in truck transport. In his inquiries the Defender repeatedly appeals to representatives of public administration bodies and those of self-governing bodies, asking that they adhere to the European Charter for Regional/Spatial Planning as part of the protection of the public. The "Torremolinos Charter" was ratified by the ministers of the European Community member states in 1983. This document indicated one of the greatest problems to be the management of municipal area growth. Furthermore, the Defender drew the attention of the relevant bodies to the fact that the question of transport had been seriously dealt with by the European Commission, having issued a Green Paper on Transport in 1996, which implied that both the number of and the use of cars in Europe has increased sharply since the seventies and it is expected that it will increase by up to 200% over the coming 25 years. The consequences of this transport revolution are generally acknowledged and are manifested in pollution, traffic congestion, threats to health (in part due to breaches of noise pollution limits in housing areas) and the exploitation of non-renewable resources.

The findings of the Defender during inquiries indicate that traffic noise and the ensuing decrease in housing comfort of residents are still not receiving much attention. After evaluating cases dealing with the Construction Code, the protection of public health and surface communications, the Public Defender of Rights decided on his own initiative to commence a broad inquiry directed towards the central state administration bodies acting in the relevant public law areas. Noise pollution from surface communications will be one of the areas of concern in the Defender's inquiry. Hoping to open a broader discussion of the issue, the Defender noted legislative activities relating to the preparation of a draft act on assessing and reducing noise in the environment.

1.15 Observations on Social Security and State Social Benefits

In the 2004 Annual Report the Public Defender of Rights mentioned several issues relating to the application and interpretation of Act No. 482/1991 Coll. on Social Needs amended by Act No. 422/2003 Coll., encountered through his activities. The amendment emphasised the opportunity of the citizen to increase income by his/her own efforts. The Defender mentioned several issues concerning the meeting of the condition required to assess a citizen as a person in social need – that such a citizen owns no property, the sale or other usage of which could increase his income.

In May 2004 a meeting took place between the Public Defender of Rights and the representatives of the Ministry of Labour and Social Affairs to discuss the controversial issues of social security and state social benefits pointed out by the Public Defender of Rights in his 2003 Annual Report. The meeting yielded a consensus in nearly all the issues. The Ministry of Labour and Social Affairs promised the consistent direction of the management of regional, municipal and Labour Office bodies to ensure that application is harmonised with the joint perception of the Ministry and the Public Defender of Rights.

A fundamental disagreement remains in the issue of fulfilment of the obligation of a legal representative of a dependant child related to compulsory school attendance as a prerequisite for receiving benefits. Details are available in the statements of the Public Defender of Rights on the issue in his last report.

1.16 Issues of the Purchase of Plots of Land Under Motorways

The Public Defender of Rights pointed out this long-unsolved issue in his 2004 Annual Report with the aim of protecting the owners of plots of land under motorways and roads owned by the state and the regions. By doing so, he appealed to the necessity of adherence to the principle of inviolability of ownership rights as an immanent feature of the legal state pursuant to article 11 of the Charter of Fundamental Rights and Freedoms, as well as article 1 of Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms. The said documents oblige state bodies to respect the ownership rights of everyone without

exception and impose a duty to ensure untroubled usage of the same. The Public Defender of Rights holds the position that the current behaviour of state bodies is incompatible with the said principles.

In March 2004 the Defender received a communication from the Minister of Transport informing him that comments are currently being reviewed on a previously presented proposal concerning legal property settlement with respect to plots of land under motorways and roads. It was expected that the material would be presented to the government again for discussion in the second quarter of 2004. On August 31, 2004, the Public Defender of Rights received the position of the Minister of Transport with a report that the amended draft "Issues of Legal Property Settlement with regard to the Plots of Land under First Category Motorways and Roads Built before 1993" was circulated on May 5, 2004, for comments. The comments resulted in a recommendation to deal with the issue as part of the ongoing reform of the public finances in 2005 and of preparing the state budget for 2006. Under these circumstances the Public Defender of Rights applied his legal authority and repeatedly invited the relevant state bodies (the Ministry of Transport and the government) to ensure remedy without constantly postponing a solution and to take measures clearly showing the state's willingness to close the issue.

Given that the government has postponed a solution once again and, according to the latest report from the Minister of Transport, further steps can be expected only in the continued reform of public finance next year, the Public Defender of Rights addressed, in accordance with the provisions of section 24, paragraph 1, letter b) of the Public Defender of Rights Act, the Chamber of Deputies. He proposed that the Chamber of Deputies discuss his report, take due note of it and recommend to the government specific steps to ensure remedy.

(Note: The Chamber of Deputies discussed the report on February 16, 2005, took note of it and obliged the Government to propose a solution by June 30, 2005.)

1.17 Delays and Lengthy Court Proceedings

In the 2003 Annual Report the Public Defender of Rights presented an analysis of the issue of the length of court proceedings, which can only be reiterated in the present report.

The reason for this is that the approach to removing obstacles in justice hardly changed in 2004, with the exception of increased supervision and monitoring of delays where enforcement aimed at existing judges remained the sole instrument. Although the Ministry has paid some attention to assistant court personnel, it can be said with a certain degree of generalisation that the problems of the whole system remain unsolved. The situation remains unchanged, as does the Public Defender's appeal for a comprehensive solution.

The European Court of Human Rights sets out in its decisions that it is a matter for the state to organise its judiciary in a way as to ensure quick and efficient protection of human rights. A lack of judges and other court officials does not justify the delays in proceedings. The member states of the European Convention on Human Rights and Fundamental Freedoms should organise their judiciary in such a way as to comply with the requirements of article 6, paragraph 1, of the Convention (i.e. in particular the requirement that the matters are dealt with before a court within a reasonable period of time). Even the partial measures adopted by the state are not considered effective and sufficient by the European Court of Human Rights if they do not help to radically solve a problem (for example the Zimmerman and Steiner versus Switzerland judgment).

Given the persistent problems in public court administration the Public Defender of Rights summarised his findings and sent them in early 2005 to the Minister of Justice along with an appeal for co-operation.

1.18 Compensation Paid by the Guarantee Fund of Securities traders

Already in the 2003 Annual Report the Public Defender of Rights pointed out shortcomings in the law governing the payment of compensation to clients of bankrupt securities traders, in particular inadequacies in legal provisions governing payment of compensation by the Guarantee Fund of Securities traders (hereinafter "the Guarantee Fund"). It has to be said that 2004 has not brought the much-needed progress.

The Fund was established on the basis of amendments to Act No. 591/1992 Coll. on Securities, made through Act No. 362/2000 Coll. as a result of implementing the relevant European Union directives (Directive 97/9/EC of the European Parliament and Council of March

3, 1997 on investor-compensation schemes). The recently passed Act No. 256/2004 Coll. on Undertaking on the Capital Market newly treats the position and activities of the Guarantee Fund effective from May 1, 2004. However the new legal regulation has not only failed to eliminate the identified problems accompanying the activities of the Guarantee Fund, but it contains additional controversial provisions regarded by the Defender as a potential cause for new disputes and indeed class action suits.

In the Defender's opinion the part of Act 256/2004 Coll. governing the position and activities of the Fund should be made transparent and simple in order to make clear what rules of conduct (duties) exist and on what entities the Act imposes them. At present some of the provisions are not related to one another or allow various interpretations. This causes serious problems in the interpretation and application of the regulation. It would therefore be positive if the act were amended with a focus on clarifying and eliminating the fundamental problems the Guarantee Fund faces (such as clarifying who is to provide grounds for assessing compensation from the Fund, precisely defining client property or the special expertise of administrators of bankruptcy assets as well as their supervisors. In particular the issue concerning supervision of the activities of administrators of bankruptcy assets and the missing requirement for special expertise are substantial gaps in the present law.

The Defender holds the position that the shortcomings in the law not only threaten the clients of securities traders who have suffered harm, but they also cast a negative light on capital market as such, undermine the trust of small investors and indirectly jeopardise the interests of the Czech Republic, which as a member of the European Union is from May 1, 2004, accountable to the EU for proper implementation of Directive EP 97/9/EC in domestic law.

The Public Defender of Rights held the same positions when dealing with complaints from the same area in 2004. Based on the approved legislative plan of government activity for 2005 the Ministry of Finance produced a draft act amending the Act on Undertaking on the Capital Market and the associated acts. In the presented version the draft act already reflects the above issues concerning compensation paid by the Guarantee Fund.

2. Selected Observations from the Activities of the Public Defender of Rights in 2004

2.1 Issues Concerning Taxation in the Cancellation and Settlement of Divided Co-ownership of a Set of Real Estates

Despite detailed arguments the Defender did not manage to convince the Ministry of Finance that inland revenue offices have long taken a wrong position in the application of the Act on Inheritance Tax, Gift Tax and Real Estate Transfer Tax in cases where due to cancellation and settlement of divided co-ownership of a set of real estates the former co-owners acquire into exclusive co-ownership the individual estates from the originally co-owned set of real estates. In the two inquiries carried out in this matter the Defender addressed the Chief Public Prosecutor with a proposal for employment of the right to file a grievance in the public interest against the challenged decisions of the inland revenue office.

Given the lack of unification in the judicature the Defender also addressed the Court of Administrative Justice with a motion for adopting a standpoint on the decisions of courts in the said matters.

Instead of adopting a standpoint, the Court of Administrative Justice employed a primary unifying instrument and commented on the matter raised by the Defender in Decision Ref. No. 5 Afs 20/2003-45 dated November 30, 2004, supporting the legal conclusions of the Defender. According to the Court, a true division of goods between the parties to divided co-ownership is not only the division of single goods (such as dividing a plot of land in a geometric plan), but also an arrangement of relations with respect to a set of goods (real estate) where the former co-owners acquire into exclusive (or again divided) co-ownership the individual real estates from the set formerly subject to co-ownership.

By doing so the Court of Administrative Justice rejected down the long-held position of most inland revenue offices that the said cases involve transfers or exchanges of co-ownership shares in the real estate. The methods and amounts of taxation differ significantly depending on the adopted position on the matter, and the decision of the Court of Administrative Justice may theoretically have a significant impact on the number of taxed instances. In the light of

the said decision the Ministry of Finance should comply with timely filed applications for a review of those decisions in which the real estate transfer tax has been assessed incorrectly. So far the Ministry has not responded to the Defender's request for a comment on how such applications will be approached, i.e. whether the Ministry will allow a review of the decisions or even proceed to order reviews of the relevant decision as an official obligation.

2.2 Correction of Errors in the Land Register

As in previous years, in 2004the Public Defender of Rights repeatedly dealt with the correction of errors ("error correction" or "error correction institute") in the Land Register. The Defender repeatedly encounters a lack of uniformity among Land Registry Offices in determining what errors in the Land Register may and may not be corrected using the error correction institute.

The Defender's position is that the error correction institute [Section 8 of Act No. 344/1992 Coll. on the Land Register of the Czech Republic (Cadastral Law) as amended] should not be used to correct legal relation data. Where the Land Registry Offices correct legal relation data as part of the error correction proceedings, they become involved in complicated proceedings that are *de facto* discovery proceedings. In such proceedings, instead of establishing whether an error in the data on the relevant legal relation exists, the Land Registry Offices intricately examine the very existence of the legal relation. Such activities not only put an extra burden on the offices, but they in fact fall outside their mandate as examining the existence of legal relations is solely a matter for the courts.

In the Defender's opinion the Land Registry Offices should use error correction solely to eliminate errors arisen through inaccuracies in detailed surveying, erroneous representation of the subject in the Cadastral Map and errors in the calculation of plot area if limit deviations have been exceeded. Errors concerning legal relations should be corrected using Act No. 265/1992 Coll. on the Registration of Ownership Rights and Other Tenure of Real Estates as amended, i.e. through fresh registration in the form of an entry, record or note, obviously while observing all the legal requirements.

With the findings from an inquiry on his own initiative, the Defender decided to address the Czech Office for Surveying, Mapping and Cadastre. His motivation was to ensure clarification of the scope of the error correction institute, i.e. defining what errors can and cannot be corrected through the error correction institute. At the same time the Defender intends to recommend the central authority in the land register sector that it instructs the Land Registry Offices subject to its authority to interpret the provisions of section 8 of Cadastral Law uniformly. Negotiations have yielded no final solution so far. *The issue was discussed with the management of the Czech Office for Surveying, Mapping and Cadastre in February 2005; the Defender will continue to deal intensively with the issue.*

2.3 Justification of Decisions Not to Grant Citizenship

Citizenship is an institute of domestic law, and deciding who will be granted citizenship lies solely with the state, which also creates the relevant decision-making mechanisms. Conditions governing the granting of citizenship are given by the law, although compliance does not constitute a legal entitlement to citizenship. This does not imply however that the conduct of administrative bodies authorised to decide may be entirely arbitrary.

In its decision on a matter kept under File No. 6 A 94/2002 the Court of Administrative Justice stated: "…stating merely in general that there is no legal entitlement to being granted citizenship of the Czech Republic must be regarded as insufficient and contravening the provisions of sections 46 and 47, paragraph 3, of the Code of Administrative Procedure, according to which the decisions must be based on a reliably established state of the matter and the administrative body specifies in its justification the facts on which the decision was based, the considerations the authority was lead by when evaluating evidence and when applying the legal provisions on the basis of which it decided."

In the light of the above decision and following the provisions of section 3, paragraph 4, and section 47, paragraph 3, of the Code of Administrative Procedure treating the conclusiveness of decisions and their proper justification, it is the duty of the Public Defender of Rights to point out the absence of justification in the decisions of the Ministry of the Interior in connection with section 10, paragraph 3, of Act No. 40/1993 Coll., which sets out the obligation to examine applications for the granting of citizenship also from the perspective of national security. Both the Ministry of the Interior and the Minister of the Interior have repeatedly failed,

in justifications of their negative decisions, to specify the way in which the application for granting citizenship has been examined from the perspective of national security.

This conduct of not offering any justification in connection with the examination of applications for the granting of Czech citizenship viz. national security must be rejected according to the Public Defender of Rights, with reference to one of the basic principles of rule of law – adherence to the principle of predictability of law and elimination of any wilful use of executive power. A situation in which national security interests are examined but not justified in administrative proceedings significantly undermines the legal security of the applicants for the granting of Czech citizenship and affects the transparency of the administrative proceedings.

Therefore the Public Defender of Rights takes the position that the examination of applications for the granting of citizenship from a national security perspective of should be properly justified in the decisions and it is up to the deciding administrative bodies to find a suitable way of harmonising the legitimate public interest of protecting confidentiality on the one hand with the interest of the applicant to learn the reasons for rejecting his application, on the other. Even a very brief and general statement informing the applicant whether the rejection has been influenced by national security considerations may be considered to be proper justification.

2.4 The Issue of Orphan's Pensions

Through the adoption of Act No. 155/1995 Coll. on Pension Insurance as amended, effective from January 1, 1996, the terms of entitlement to orphan's pensions have changed. From this date the entitlement of a dependent child arises if the deceased individual (parent, adoptive parent or guardian) was the recipient of an old-age pension, partial or full disability pension or had qualified for full disability pension or old-age pension by the day of death as a result of meeting the required period of insurance, or if the individual died as the result of an industrial injury. In other words, if the deceased failed to qualify by meeting the said conditions, the dependent child is not entitled to an orphan's pension.

Complaints filed with the Public Defender of Rights in connection with this issue are rather frequent and the stories attached rather similar. The father has left, paying neither maintenance nor social security from his business or even not working at all. The standard of living of mother and children has dropped significantly. After the father's death the children did not qualify for orphan's pensions.

The unenviable situation orphaned children may face is a consequence of the legislature's attempt to introduce radical changes in the perception of the basic principles of pension insurance, by replacing Act No. 100/1988 Coll. on Social Security, built on the security principle, by Act No. 155/1995 Coll. on Pension Insurance, with clear emphasis on the insurance principle. Although this essentially correct, it is also plain that the issue involves many Czech citizens and must be dealt with. In its explanatory report the legislature justified changing the conditions applicable to entitlement to an orphan's pension (*under the preceding law treating pensions, Act No. 100/1988 Coll. on Social Security, entitlement to an orphan's pension for a dependent child always arose following the death of the aforesaid individuals, and only the amount was derived from the pension of the deceased, if any, and a minimum orphan's pension was defined)* by stating that these orphans – i.e. orphans not qualifying for orphan's pensions – will be provided for by the system of social assistance and state social benefits.

Experience has revealed that this was not an ideal solution. People affected by it perceive the non-granting of an orphan's pension and dependence on state social security and social benefits as an injustice, because they have had no chance of influencing the conditions of entitlement to them. They are significantly lower and their granting is influenced by additional factors that often effectively mean non-granting (overall financial status, income, etc.). It is a failure to meet the purpose of the orphan's pension, i.e. partial compensation for the loss of parent's income for the child dependent on the parent based on an assumption that such a condition arises for all children considered dependent under the pension insurance regulations (the provisions of section 20, paragraph 3, of the Act on Pension Insurance). There are several potential remedies, and the adoption of one of the proposed solutions is left wholly with the legislature, as is discussion of them.

1. The first solution is a return to linking entitlement to an orphan's pension to the original pension that existed in Act No. 100/1988 Coll., while defining a lowest possible assessment

for situations in which qualification for the original pension would not arise due to failure to meet the legal requirements. Even though it would solve the problem, it would be retrograde given the trend established through the Act on Pension Insurance.

2. The second possible way is establishing entitlement in a fixed minimum amount while preserving the existing legal provision. This solution would not constitute a return to the previous pension system; it would better respect the existing insurance principle.

3. As an ideal solution, an entirely new benefit would be established that would not necessarily be a pension insurance benefit, covering the cases of orphans failing to qualify for an orphan's pension due to failing to meet the conditions of entitlement to a full disability pension or old-age pension by the deceased.

2.5 Inclusion of a Period For the Purpose of Pension Insurance Upon Invalid Termination of Employment

The existing legal provision contained in Act No. 155/1995 Coll. on Pension Insurance fails to deal satisfactorily with a situation in which a citizen, through legal action and often after several years, successfully asserts his/her right to acknowledgement of the invalidity of employment termination. Despite the due wage having been paid, the individual is not, under the provisions of section 11, paragraph 2, of the Act, considered to have contracted pension insurance in all the months for which he/she was paid the due wage through an additional one-off payment, but solely in the month in which the wage is settled, regardless of the fact that the individual has paid all the contributions to the state including social security insurance from the one-off payment. The Public Defender of Rights has proposed certain solutions, towards which an amendment should aim if there is any. So far however his only achievement is a change in the minister's attitude as the minister has admitted that the legal provision might change.

It is necessary to bear in mind when considering a remedy to the existing legal provision that the citizens are injured in more than one way, in a process that in this context always arises through an act of the employer, which was illegal as the court has legitimately concluded. Firstly the injured employee fails to have included their period of insurance for the time they were not income earners for reasons other than their own fault, and specifically due to obstruction by the employer, and secondly they fail to have their income for each calendar year adjusted using the increase coefficient of the general assessment base as it would have been had the employer not terminated employment, which has later been found invalid by the court. Last but not least the employee may be paid the due amount, from which all the insurance has been deducted, upon entering old-age pension or after an old-age pension has been assessed, as a result of which the paid compensation for wages, often amounting to hundreds of thousands Crowns, cannot be included in their assessment base.

The Public Defender of Rights believes that an amendment remedying the existing legal provision, in which applying for abatement of the harshness of the law is the only remedial instrument, should take two directions:

1. Amending the provisions of section 11, paragraph 2, of the Act on Pension Insurance by adding the following words in the first sentence: "with the exception of cases in which income earning has not existed due to obstruction on the employer's part", would at least ensure inclusion of the period of insurance during which the employment in fact existed, according to the court's decision.

2. Including the relevant period in the so-called excluded period, which would avoid disintegration of the earnings included in the assessment base. This would be ensured through inclusion of the reason quoted above, obviously in context with the whole provisions of section 11, paragraph 2, of the Act, in the detailed listing of excluded periods in the provisions of section 16, paragraph 4, of Act No. 155/1995 Coll. as amended. This solution would minimise the damage suffered by the applicant for pension insurance caused by the already delayed payment of the due wage.

IV. CONCLUSION

This Report closes the year 2004, the fourth year of the Public Defender of Rights and his Office.

From the Defender's perspective this Report serves as a basis for self-assessment of his activity. However, such an assessment is in particular up to the Chamber of Deputies of the Parliament, to which the Report is presented for discussion. The Report should therefore primarily prompt Deputies to think about the picture it draws of state administration in the Czech Republic, and also about whether, and to what extent, the Defender is fulfilling the tasks imposed on him through the Public Defender of Rights Act.

The coming year 2005 is a groundbreaking year both for the Defender and state administration. At present the Chamber of Deputies is discussing two government draft acts intended to influence, in a very significant way, the future mandate and, consequently, activities of the Public Defender of Rights. At the same time 2005 is the last effective year of the 1967 Code of Administrative Procedure and a year of preparation for the application of a new Code.

The findings and conclusions ensuing from this Report are not and cannot be absolute truths and therefore the solutions contained in it may not be perceived as the only possible and correct ones. On the other hand the Report might become, in relation to the Parliament of the Czech Republic as well as both experts and the general public, a source of information and an inspiration for considering how to improve the administration of public affairs.

Brno, March 21, 2005

JUDr. Otakar Motejl, v.r.

Public Defender of Rights

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ANNUAL REPORT ON THE ACTIVITIES OF
THE PUBLIC DEFENDER OF RIGHTS
IN 2004

SUMMARY

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