CZECH REPUBLIC

ANNUAL REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS

IN 2006

SUMMARY

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I. THE PUBLIC DEFENDER OF RIGHTS AND HIS OFFICE

1. Introductory Information

The Public Defender of Rights presents this Annual Report on his activities in the sense of Section 23 of Act No. 349/1999 Coll. on the Public Defender of Rights as amended. It follows on from the Annual Report on the Activities of the Public Defender of Rights in 2005, debated by the Chamber of Deputies after discussion at the Petition and Parliamentary Privilege Committee at its 55th session on April 26, 2006, as parliamentary protocol No. 1252 and acknowledged by virtue of Resolution No. 2452. It was discussed with participation of the Defender on June 21, 2006, as senate protocol No. 353 by the Constitutional and Legal Committee of the Senate and subsequently acknowledged after discussion by the plenary session of the 12th session of the Senate. The Report met with a positive response during the discussion in both chambers of Parliament.

The Annual Report on the Public Defender of Rights' activities in 2006 has been compiled in a similar manner to previous reports. General data on the work of the Defender and the Office of the Public Defender of Rights in the period under scrutiny is contained in the first section.

The second section comprises of statistical data and a presentation of practical findings from the activities of the Defender in the period concerned, along with examples of complaints of significant merit or otherwise interesting complaints dealt with by the Defender.

In the third section of this Annual Report, the Defender for the first time presents information on the results of his systematic visits to facilities where persons restricted in their freedom are confined. It is a generalisation of findings from the new mandate entrusted to the Defender as of January 1, 2006, by virtue of amendment of the Public Defender of Rights Act No. 381/2005 Coll.

The fourth section contains general observations from the most pressing issues rooted in an analysis of complaints dealt with not only in the period under scrutiny, but also in the preceding years. The Defender also attempts to outline the possible ways of dealing with such issues. Given that the Defender considers this particular section of the Report to be a significant instrument for fulfilment of his initiative role towards the legislature, the Defender recommends that those whom it concerns pay increased attention to the content of this particular section.

The presented Annual Report is an account of the last year within the six-year term of the first Public Defender of Rights in the Czech Republic. The mandate of JUDr. Otakar Motejl ended on December 18, 2006, and the term of Mgr. Anna Šabatová ended on January 31, 2007. Unlike Mgr. Šabatová, who did not stand again as deputy of the Public Defender of Rights, JUDr. Otakar Motejl was nominated by the Senate for a further term and the Chamber of Deputies re-elected him as Public Defender of Rights on December 2, 2006. He assumed the role by taking an oath before the Chairman of the Chamber of Deputies on December 19, 2006. On February 7, 2007, the Chamber of Deputies elected RNDr. Jitka Seitlová as the new deputy of the Public Defender of Rights, and Ms Seitlová took the oath on February 14, 2007.

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

2.1 Budget and Spending in 2006

In 2006 the Office of the Public Defender of Rights functioned with a **CZK 88,579 thousand budget**. **CZK 67,293** was used from the aforementioned budget in 2006, i.e. **76%** of the set budget.

The sum of **CZK 21,286 thousand** was saved from the 2006 budget, particularly courtesy to savings of **CZK 15,315 thousand** in drawing on the current funds, mainly in operational costs, i.e. salaries of employees and other payments for work carried out, and **CZK 5,971 thousand** was saved on investment costs.

Internal audits of the management of funds from the state budget are carried out in accordance with Act No. 320/2001 Coll. on Financial Supervision as amended and with internal

regulations of the Office of the Public Defender of Rights. In 2006, an analysis of the drawing of budgetary funds items in 2005 was carried out in accordance with the Internal Audit Department work plan and used as a basic document for better quality planning of expenses in the following budgetary period. The other two scheduled internal audits, i.e. a combined audit analysis of the acts performed in 2006 and a combined audit of compliance focused on compliance of the internal regulations on account keeping, were not performed as a result of an audit by the Supreme Audit Office taking place in the Office of the Public Defender of Rights between May and October 2006.

The audit by the Supreme Audit Office reviewed the Office's management of state assets and the budgetary funds allocated between 2001 and 2005. The audit was included in the schedule of audits of the Supreme Audit Office for the year 2006 under No. 06/15. The audit conclusion from the aforementioned audit was approved by the Board of the Supreme Audit Office by Resolution No. 8/XXI/2006 at its 21st session held on November 27, 2006, and published in volume 4 of the 2006 Supreme Audit Office Bulletin and on its website at http://www.nku.cz/kon-zavery/K06015.pdf. The Defender commented on the conclusions of the SAO audit in a press statement published by him on his website at http://www.ochrance.cz/media/index.php.

The Office presents the report on the results of the financial audits for the year 2006 in accordance with Section 22 (2) of Act No. 320/2001 Coll. on Financial Supervision as amended to the Ministry of Finance via the FKVS information system.

2.2 Personnel Situation in 2006

The budget for the year 2006 determined an obligatory limit to the number of employees of the Office of **99** people. The actual average recalculated number of staff recorded was **95.82 employees** in 2006, and thus the limit set by the state budget was observed.

As of December 31, 2006, there were **100 employees** excluding the Defender and his Deputy. 70 employees were directly involved in dealing with complaints and regularly visiting places where persons restricted in their personal freedom were confined (of which 57 were lawyers including personnel exercising the new mandate in the area of detention and 13 administrative and documentation department staff). This number provides a basis for comprehensive assessment and dealing with the individual cases by the Defender and corresponds to the professional and administrative needs in settling complaints and generalising on findings.

To the same ends, co-operation with external experts continued in 2006, mainly from the Law Faculty of Masaryk University in Brno, the Law Faculty of Charles University in Prague and in several cases from the Institute of Forensic Engineering in Brno. This takes the form of individual consultations on the most legally complex cases and the participation of renowned experts at regular consultative meetings of the expert staff of the Office.

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

The Office of the Public Defender of Rights received three requests for information pursuant to Act No. 106/1999 Coll. on Free Access to Information, in 2006, all of them delivered by electronic mail.

Information on the Office's management was requested in all cases. The information was provided to the requested extent, in full and by the deadline stipulated by the law, and no applicant appealed.

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

4. Public Awareness of the Work of the Defender

Section 23 (2) of the Public Defender of Rights Act tasks the Defender with systematic acquainting of the public with his activities and the findings resulting. The Defender fulfils this obligation at several complementary levels. The Defender organises regular and extraordinary press conferences, informs the public via public service and commercial television, the Czech News Agency, dailies and the specialised press, lectures, discussions, individual information and advisory activities, and obviously presents topical information on his own website.

4.1 Press Conferences and Other Publicity

The Defender organised **12 regular conferences**, **4 extraordinary press conferences** and **2 briefings** in 2006. The Defender selected the topics in consideration of the significance and topicality of inquiry results and other information resulting from his work for both the general public and experts. The following were dealt with:

- The Defender's findings from the inquiry into **the performing of sterilisations of mainly Romani women**;
- conclusions of the inquiry into the action of the **Police against participants of the CzechTek 2005 'technoparty'**;
- issues of **public administration in the area of heritage preservation**;
- illegal **curtailment of parental allowance and other benefits by distraint**;
- conclusions of a **workshop on the Principles of Good Administration**;
- results of systematic visits to **police facilities and social care institutions for the physically disabled**;
- significant changes in the legislation on **apartment lease notices** brought by an amendment of the Civil Code;
- the issue of **garden constructions and agreeable living conditions**;
- application of the **Hague Convention on the Civil Aspects of International Child Abduction** in the Czech Republic;
- results of systematic visits to **facilities for the detention of foreigners and institutes for long-term patients**;
- the issue of **surface communications and provision of access to real estate**;
- the issue of **the landscape as a precious asset** in relation to the construction of industrial parks, roads and other structures;
- publication of the results of an inquiry into the **Prague-Bohnice Psychiatric Hospital**;
- conclusions of a **workshop on the application of the Hague Convention** on the Civil Aspects of International Child Abduction in the Czech Republic,
- results of the **systematic visits to prisons** carried out within the exercise of the detention agenda;
- findings from dealing with **complaints directed towards public court administration**.

The full texts of the press releases, press statements and the aforementioned key documents were published at http://www.ochrance.cz/.

In early 2006 Czech Television's Channel 2 broadcast additional episodes of the **"Case for the Ombudsman" series** designed as a range of relatively independent "people's little stories". The series had an average of 360 thousand viewers according to the ratings and it was identified as a series with the highest audience figure among those made by the Brno Television Studio. Czech Television showed interest in filming **a second series**, the 16 episodes of which were broadcast from September to the end of 2006.

Essentially all media showed increased interest in the work and results of the Public Defender of Rights. In the period under scrutiny, the Defender and his deputy appeared on television for specific interviews, during news reports or visiting studio broadcasting in person, usually on a specific topical issue or cases extensively covered by the media. The frequency of informing the public via all types of media is also obvious from the monitoring of media output showing that the Defender was presented in **3,137 instances** in 2006, of which **195 appearances** were in Czech Television, including the aforementioned parts of the TV series. The Czech News Agency gave information on the Defender's work in **349 reports** in 2006 and

there were **2,609 cases** where other printed media, Internet media and radio stations published interviews with the Defender or information on his opinions, statements or work.

4.2 Individual and Other Informative and Advisory Activities

The Defender registered **746 personal visits** of complainants in his office to file oral complaints in 2006. In some cases however the complainants only wished to obtain information on the Defender's mandate and his options for helping with a specific issue or to obtain fundamental advice on how to resolve adverse circumstances. Since the very beginning of the Defender's work, the Office has strictly adhered to the principle that anyone addressing the Defender or his colleagues is treated kindly and given either help or an explanation as to why they cannot rely on the Defender's help.

4,861 calls were received by the Defender's information hotline (tel. No. +420 542 542 888) available to citizens in office hours on working days; mostly requests for advice, plus queries regarding the scope of the Defender's mandate and progress in the handling of a complaint previously filed.

Increasing interest in the **Defender's website** (www.ochrance.cz) was registered – **410,710 visits** logged in 2006 (against 176,548 visits in 2005). The increased traffic is attributable to the presentation of up-to-date information, tidy layout and easy access to the content, which meets the recommendations contained in the document entitled Best Practice – Rules for Creating Accessible Websites and WCAG 1.0. Again in 2006, the Defender's website retained the medium accessibility certificate within the Blind Friendly Web 2.3 Methodology ensuring the highest possible accessibility for blind and visually handicapped users. Thus the website remains incorporated in the Catalogue of Blind-Friendly Websites and is authorised to use the Blind Friendly Web logo.

286 people used the option to address the Defender via the web form for informal messages, comments and queries in 2006.

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

The Public Defender of Rights Act affords significant special powers to the Defender in Sections 22 to 24, consisting in special obligations towards the Czech Parliament on one hand, and on the other hand the right to present the government with recommendations for changes to legal regulations if he finds grounds for these in the exercise of his office. This is connected with the additional entitlement to petition the Constitutional Court for the annulment of lesser legislation or to take part in such proceedings if initiated by another party pursuant to Section 64 of Act No. 182/1993 Coll. on the Constitutional Court.

5.1 Relations with Parliament

To fulfil the obligation imposed by Section 24 (1) (a) of the Public Defender of Rights Act, the Defender presented to the Chamber of Deputies regular quarterly information in writing on his work and, based on the decision of the Chairman of the Chamber of Deputies, discussed this in person at meetings of the Chamber's Petition Committee. The text of the reports is accessible at http://www.ochrance.cz/en/index.php.

In addition, the Defender was present in particular at the following meetings:

- On January 18, 2006, the Defender attended a meeting of the Committee of the Senate of the Czech Parliament for European Union Affairs connected with the hearing of the draft Anti-Discrimination Act;
- At a meeting of the Petitions Committee of the Chamber of Deputies of the Czech Parliament on February 14, 2006, the Defender answered Deputies' questions on the final statement regarding the action of the Police against the participants of the CzechTek 2005 'technoparty';
- On April 26, 2006, the Defender attended the meeting of the Petition and Parliamentary Privilege Committee of the Chamber of Deputies in connection with the discussion of the 2005 Annual Report on the Activities of the Public Defender of Rights presented by him on the same day at the 55th session of the Chamber of Deputies;

- On June 21, 2006, the Defender attended a meeting of the Constitution and Law Committee of the Senate and subsequently the plenary session of the 12th session of the Senate that discussed and subsequently took note of his 2005 Annual Report;
- On November 1, 2006, the 2007 draft budget was discussed with the participation of the Defender and the head of the Office of the Public Defender of Rights in the Committee on Petitions of the Chamber of Deputies.

The Chamber of Deputies elected JUDr. Otakar Motejl as Public Defender of Rights for a further term on December 12, 2006. The Defender took the oath before the Chairman of the Chamber of Deputies in the sense of Section 4 of the Public Defender of Rights Act on December 19, 2006, and assumed the role for another six-year term.

5.2 Recommendations of Changes to Legal and Other Regulations, Exercise of Mandate Towards the Constitutional Court and Other Special Powers of the Defender

The Defender gives information on the exercise of the power to give **recommendations to issue, amend or annul legal or internal regulations** in section II. In 2006, the Defender did not find reason to use the power to make recommendations of changes to laws (government orders) to the government.

Section 64 of Act No. 182/1993 Coll. on the Constitutional Court as later amended (hereinafter the Constitutional Court Act) stipulates the Defender's right to **petition the Constitutional Court for the annulment of lesser legislation** and intervene in proceedings initiated pursuant to Art. 87 (1) (b) of the Constitution (here the Defender acquires the position of a secondary party). In 2006, the Defender received a number of motions from the Constitutional Court providing the possibility to intervene in proceedings, although in the majority of cases for the annulment of generally binding decrees. The Defender did not exercise this power in 2006, although he noted with satisfaction that the Constitutional Court dismissed, among other things, a motion by the Ministry of the Interior for annulment of an order by the Pozlovice municipality on the prohibition of construction in its territory (resolution of the Constitutional Court Pl. ÚS 16/06 – the decision was published in the Collection of Laws under No. 475/2006 Coll.). The municipality had restricted the methods of constructing power transmission lines by declaring the prohibition of construction in the form of an order. It had been led to do so by its disapproval to the possibility of high voltage installations in its cadastral district, which is a precious landscape, with supporting pylons disturbing the landscape character. The Defender had dealt with the case before; he agreed with the municipality, thus concurring with the legal opinion of the Constitutional Court.

In 2006 the Defender **as a secondary party joined** the motion of the first tribunal of the Constitutional Court to annul Section 5 (1), the second sentence, of Decree of the Ministry of Justice of the Czech Republic No. 330/2001 Coll. on Court Executor Remuneration and Reimbursement, on Remuneration and Reimbursement of Cash Expenses of Enterprise Administrators and the Terms of Insurance of Liability for Damage Caused by Executors as amended by Decree No. 233/2004 Coll., where he identified with the arguments of the Constitutional Court’s first tribunal. The proceedings were still pending as of the date of this Report.

Effective from January 1, 2006, the Public Defender of Rights is authorised to petition the Supreme Public Prosecutor **to bring an action for the protection of the public interest** (Section 22 (3) of the Public Defender of Rights Act). It should be taken into account in exercising this special power that a serious public interest must be given in the matter concerned and the proposal may only be used within inquiries with the most general impact. The Defender did not exercise this power in 2006, because the cases where the exercise of such power would be effective will not be closed until 2007.

Regarding the **power of the Public Defender of Rights to file a criminal complaint** as a remedial measure, such a step was taken in 2006 in the case of the inquiry into the sterilisations of mainly Romani women where the Defender filed a criminal complaint against an unknown perpetrator. In other cases the shortcomings of the authorities did not have a criminal element, and the Defender therefore did not exercise this power.

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

6.1 The Defender's International Contacts

In 2006, the Defender cultivated international contacts ensuing from membership in international ombudsmen's organisations, contacts within bilateral co-operation with partner ombudsmen and other institutions and personages. To mention just a few:

- visit by personnel of the office of the Commissioner for Human Rights of the Council Of Europe;
- visit by Judges of the Supreme Court of the Ukraine;
- receiving members of the Petitions Committee of the Turkish Parliament in connection with the contemplated establishment of an ombudsman's institute in Turkey;
- meeting with members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which was opening its inspection in the Czech Republic;
- taking part in the general assembly of the European Section of the International Ombudsmen Institute in Vienna;
- study visit by the representatives of central administrative authorities of the Republic of Montenegro;
- visit by Judges of the Constitutional Court of the Republic of Poland devoted to the work of public court administration and the Defender's powers in relation to the Constitutional Court;
- workshop in Trenčianské Teplice on the "Protection of the Rights of Persons Whose Freedom Has Been Restricted";
- visit by workers of non-profit organisations from Armenia, Belarus, Georgia, Moldova and the Ukraine within the Forum 2000 Foundation project concentrating on the mediation of experience from political and economic transformation of civic society in the Czech Republic;
- visit by a group of Belarusian lawyers within a study programme organised by the People in Need Foundation;
- visit by lawyers of the Office of the Public Defender of Rights in Amsterdam within reciprocal exchange of experience with the Dutch ombudsman on issues regarding the handling of complaints from detention agendas and public court administration;
- receiving a representative of the London headquarters of Amnesty International;
- visit by a delegation of Judges of the Constitutional Court of the Slovak Republic;
- attending an international conference in Athens on "The Work of Ombudsmen for Children";
- visit by the Dutch ombudsman with his entourage;
- receiving a delegation of lawyers from Armenia, Bosnia, Serbia and Montenegro interested in practical approaches and the work of the Public Defender of Rights.

6.2 Domestic Activities and Contacts of the Defender

The Defender met with many representatives of authorities and institutions of the Czech Republic in 2006. Although not lacking in a social aspect, a substantial part of such meetings consists of dealing with questions related to the exercise of the Defender's inquiry powers and seeking a way to remedy identified shortcomings. To mention just a few:

- On January 10, 2006, a meeting was held with the Director of the Riot Police Section of the Police Presidium on the final statement of the Public Defender of Rights regarding the action of the Police against the participants of the CzechTek 2005 'technoparty';
- On March 20, 2006, the Defender appeared at a workshop of deputy directors of regional Police administrations where he presented his comments aimed at improving the quality of potential police measures regarding events like the 'technoparty';
- On May 15, 2006, the Defender attended a discussion forum of the Chamber of Executors in Třešť;

- On September 20, 2006, the Defender was visited by the chairman of the Office for Personal Data Protection in the matter of clarification of disputable interpretations of the Act on Personal Data Protection;
- On October 6, 2006, the Defender attended the panel of regional authority directors in Prostějov, where he discussed the unification of regions' procedures in dealing with the settlement of issues pertaining to the local fee for the use of a public concourse and difficulties with the elimination of environmental damage;
- On October 9, 2006, the Defender met with the Minister of Health to discuss certain problematic areas within the department's mandate, in particular access to medical records;
- On October 11, 2006, the Defender discussed the issue of detentions at the Police Presidium;
- On November 8, 2006, the Defender met up with the Minister of the Environment to discuss procedures in approving and assessing large investment projects. On the same day he met with the Minister of Transport to deal with problems in the issuing of driving licences;
- On November 9, 2006, the Defender organised a working meeting at his office of the presiding judges of regional courts and Ministry of Justice representatives, focused on procedures in handling complaints about delays and judges' unethical conduct;
- On November 10, 2006, the Defender met up with the chairman of the Czech Mining Office and discussed his findings in the area of mining administration;
- On December 5, 2006, the Defender met up with the General Inspector of the State Office for Labour Inspection to discuss the conditions of Polish labourers employed in the Czech car industry based on contracts with employment agencies.

Among the other activities connected with the Defender's mandate, which are discussed in more detail in the following sections of this Annual Report, it is worth noting the **workshop dedicated to defining the principles of good administration**. The provision of Section 1 of the Act tasks the Defender with penalising, aside from violations of the law, cases where he encounters conduct of an authority during his work that among other things contravenes the principles of good administration. After making general observations from his previous work, the Defender dealt with in detail with the issue of defining the term 'good administration' in the first quarter of 2006 and described certain procedures in administrative practice that can be labelled 'good administration'. The Defender prompted discussion on the so defined principles by both academic and practising experts at a workshop organised by him on March 22, 2006. Over 150 participants accepted the Defender's invitation and almost 30 papers and discussion contributions were presented, which were gathered in a collection.

On October 5, 2006, the Defender organised a specialised workshop in the Office of the Public Defender of Rights in Brno on the issues of application of the Hague Convention on the Civil Aspects of International Child Abduction, attended by experts including judges, the ministries concerned, regional authorities and the non-profit sector. The meeting followed on from the inquiry of the Defender opened on his own initiative in connection with the case of the Fiordalisi children (extensively covered by the media). During the inquiry, the Defender had ascertained that fulfilment of the Convention had been found demanding in the practice of courts and authorities for the social and legal protection of children. The aim of the workshop was to provoke discussion, clarify certain disputable issues and enhance the effectiveness of inter-ministerial co-operation.

The collections from the conference and conclusions from the workshop are posted for experts and the general public at http://www.ochrance.cz/cinnost/stanoviska.php.

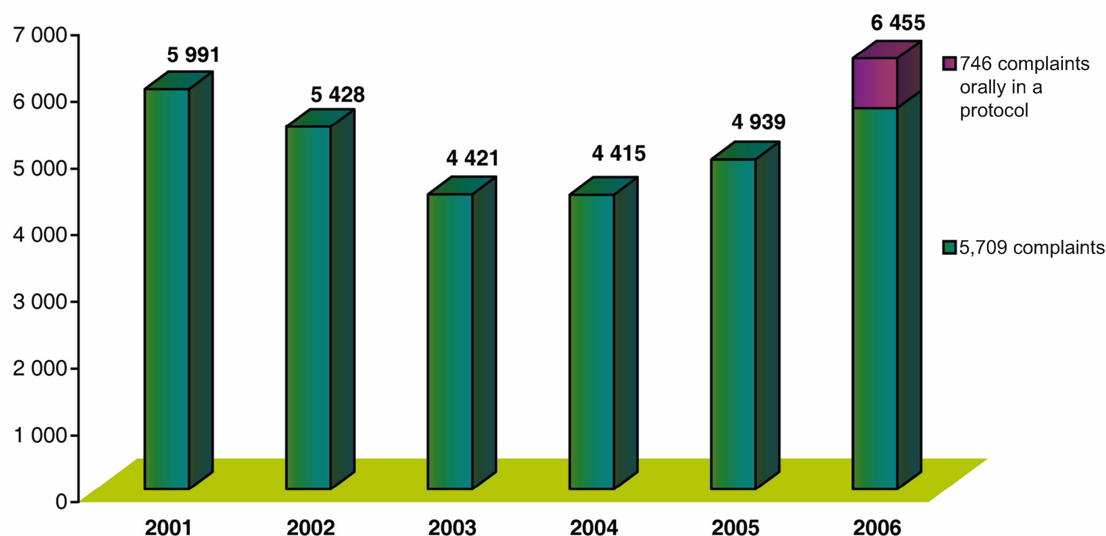
II. THE MANDATE OF THE PUBLIC DEFENDER OF RIGHTS – COMPLAINTS

1. Number of Complaints Received and Handled with Commentaries

1.1 Complaints Received by the Defender in 2006

The Defender received 6,455 complaints in 2006. The Defender received the highest number of complaints in March (654), February (650), January (650) and November (600) and the lowest number in July (404). The total number of complaints received includes complaints registered orally in a protocol in the Office of the Public Defender of Rights, which were usually handled on the spot by the authorised employee of the Office in accordance with the previously issued statements and practice of the Defender. Such complaints were not included in the total number of complaints in the previous years. 746 complaints were received and handled in this manner in 2006. Excluding the latter complaints, the Defender received 5,709 complaints in 2006.

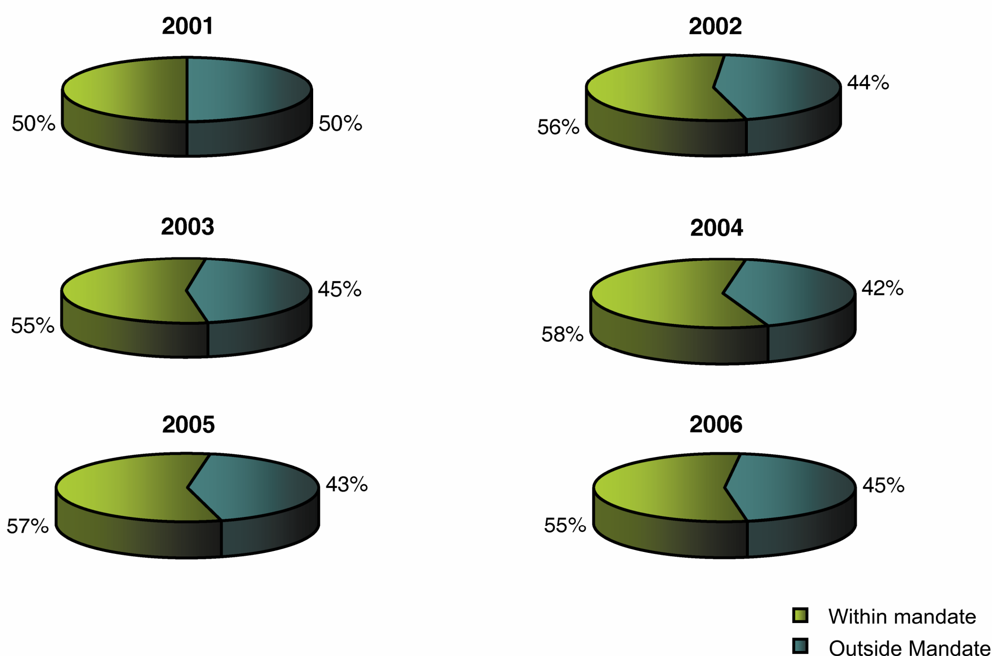
The number of complaints received (excluding the above-mentioned complaints registered in a protocol) increased by 770 in comparison with the year 2005. (There was an increase of 524 in 2005 in comparison with the year 2004.) A comparison of the comparable figures reveals that in 2006 the Defender received the second highest number of complaints after 2001, which was the initial year of his work. It should be noted for completeness' sake that the number of complaints received by the Defender has not and does not include additional filings made by a single complainant while the file concerned is being handled. The bar graph below documents the comparison of the number of complaints received in each year of the entire first term of the Public Defender of Rights.



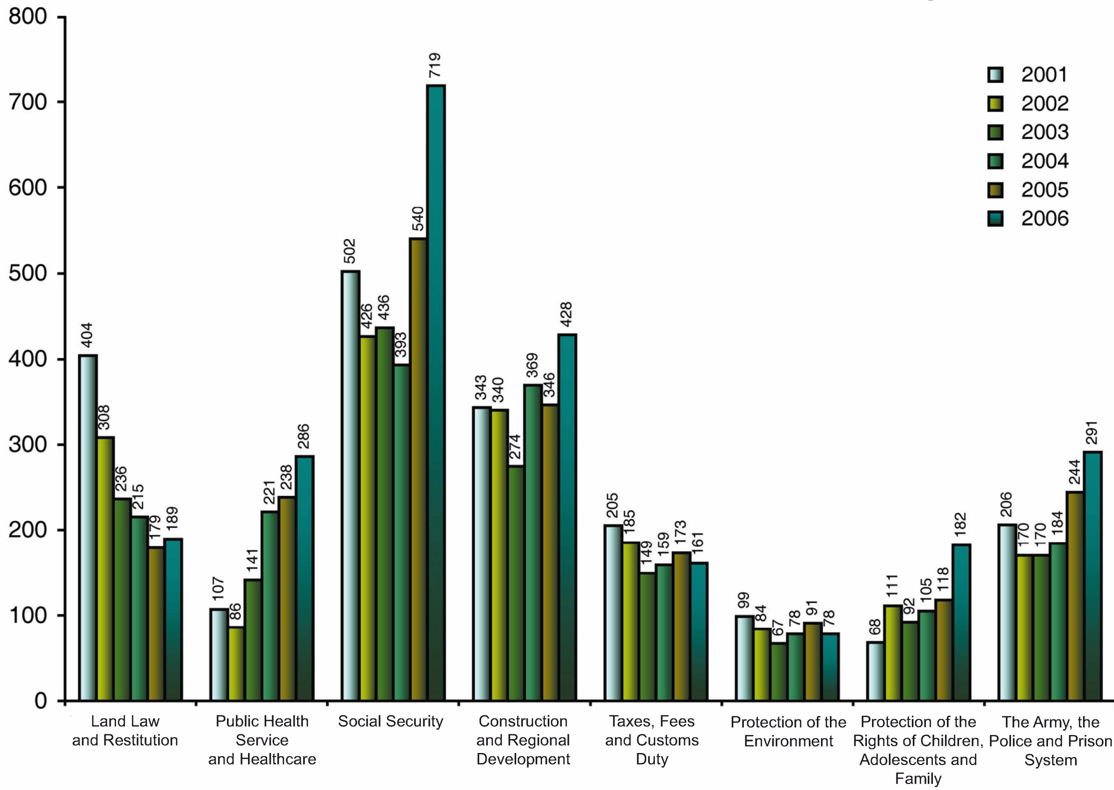
The Defender exercised his power to act **on his own initiative in 36 cases** in 2006. The number of inquiries opened in such manner remained approximately the same as in 2005. As in the previous years, they concerned issues the Defender found useful to be investigated after learning about them for example in the mass media or after they ensued secondarily from an inquiry into a specific complaint. The Defender also opened inquiries on his own initiative in cases where he had learned about the same issue from several analogous complaints in a relatively short period and found it efficient to request explanation from the authority and propose a remedial measure within a single file. The issues addressed by individuals and legal persons to the Defender are quite often of a general, systemic nature.

Regarding the form of filing, the number of complaints filed electronically continues to rise year after year. 1,137 complaints, i.e. 43% more than in 2005, were delivered by standard electronic mail or using the electronic registry with its form for submission placed on the Defender's website in 2006. Several filings provided with the guaranteed electronic signature were delivered to the Defender in 2006.

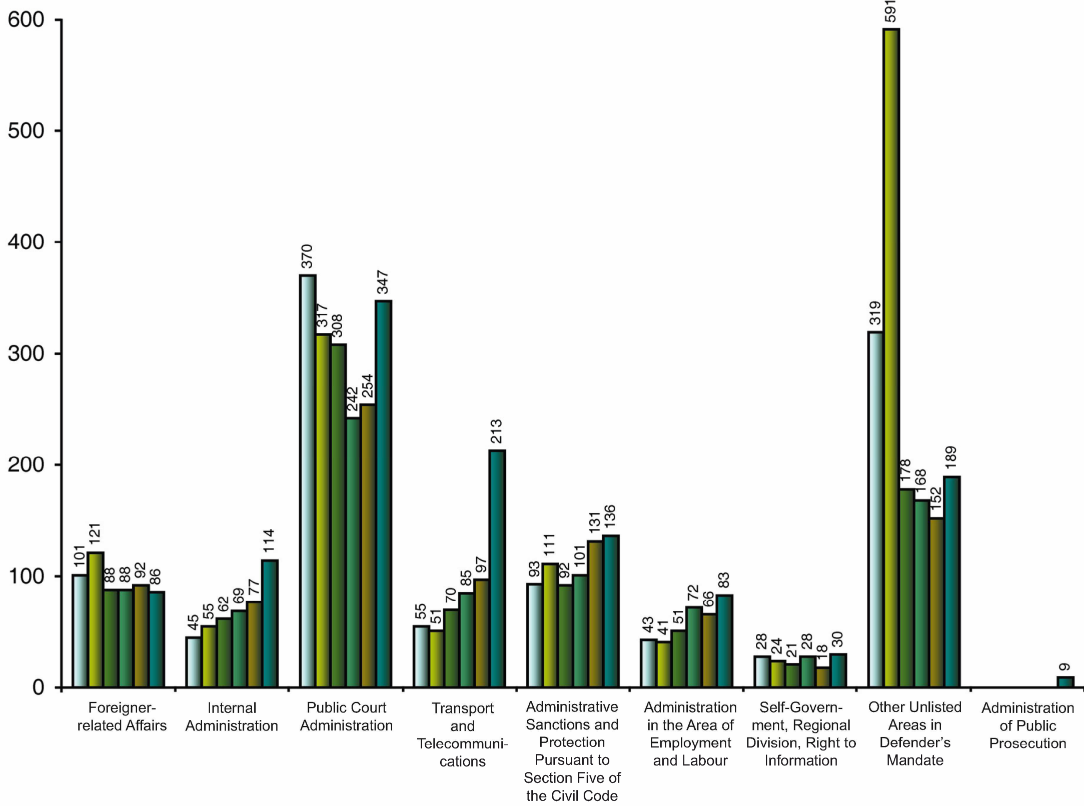
The structure of complaints in terms of the Defender's mandate did not change considerably in 2006 compared with the preceding years (see the graphs). As in past years, complaints within the mandate of the Defender prevailed. 55% of the total number of complaints in 2006 fell within the Defender's mandate. The lower number of complaints within the mandate in comparison with 2005 (57%) and 2004 (58%) was due to the new practice starting in 2006 of including complaints filed orally in a protocol and handled on the spot by an employee of the Office of the Public Defender of Rights. The majority of such complaints related to matters falling beyond the Defender's mandate and were sufficiently handled by an explanation of the scope of the Defender's mandate or provision of basic legal advice. A commentary on the handling of complaints beyond the Defender's mandate is contained in section II.3.



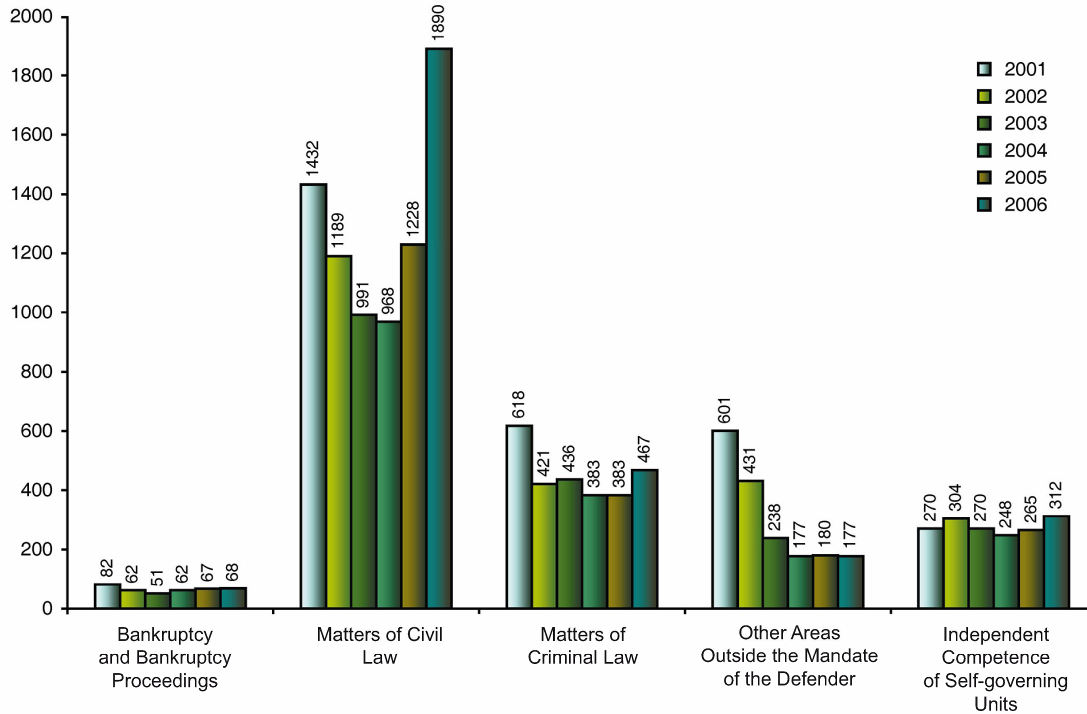
The complaints received by the Defender are classified not only in terms of his mandate, but also, with a certain degree of simplification, in terms of the individual legal areas and public administration sectors. The graph below shows that nearly all these areas contributed to the rise in the total number of complaints received in 2006. There was an increase particularly in the number of complaints concerning social security, protection of the rights of children, adolescents and family, healthcare, the number of complaints in the area of the Building Code, highway administration, prison system, internal administration, employment administration and public court administration. The number of complaints concerning tax and customs administration, protection of the environment and foreigner-related affairs remained relatively stable. The administration of public prosecution has been included in the mandate of the Defender since January 1, 2006. For more detailed information on the structure of the complaints received, please refer to the commentaries in the following section.



Received Complaints Within the Mandate in Individual Years by Area
2001
2002
2003
2004
2005
2006
Land Law and Restitution
Public Health Service and Healthcare
Social Security
Construction and Regional Development
Taxes, Fees and Customs Duty
Protection of the Environment
Protection of the Rights of Children, Adolescents and Family
The Army, the Police and Prison System



Foreigner-related Affairs
Internal Administration
Public Court Administration
Transport and Telecommunications
Administrative Sanctions and Protection Pursuant to Section Five of the Civil Code
Administration in the Area of Employment and Labour
Self-Government, Regional Division, Right to Information
Other Unlisted Areas in Defender's Mandate
Administration of Public Prosecution



1.2 The Handling of Complaints in 2006

The Defender **handled 6,412 complaints** in 2006. The number of complaints handled is below the number of those received, but merely by 43 complaints.

Of the total number of complaints handled in 2006:

- **1,592 were suspended**. The suspension was primarily due to a lack of mandate. Many fewer complaints were suspended as a result of a failure to furnish prerequisites following a request for them or as a result for an obvious lack of substantiation;
- **4,026 were explained**. Without opening an inquiry on the basis of the complaint, the Defender provided the complainant with legal advice as to the further procedure to be taken in protecting his or her rights. These included matters falling both within and outside of the Defender's mandate. In some of the cases falling within his mandate as defined by law, the Defender handled the complaint by informing the complainant that his or her issue was not rare and that he had opened a general inquiry on his own initiative on the basis of some similar complaints, which should result in a systematic solution of the issue;
- **303** were closed stating that the **Defender's** inquiry had **not ascertained** violation of legal regulations and any other **maladministration**;
- **406** were closed after the Defender's inquiry **ascertained** violation of laws or other **maladministration** in the work of the authorities and institutions falling within his mandate.

Of the aforementioned total of 406 inquiries ascertaining maladministration, the Defender:

- **found the remedial measures taken by the authority to be sufficient in 321 cases**;
- drew up a **final statement** including **remedial measures** in **76 cases**; in these cases the statement of the authority on the Defender's findings was disapproving, in the Defender's opinion the measures taken by the authority were insufficient or the authority failed to comment on the Defender's findings by the given deadline. Only then did the authority agree to the Defender's proposal and the Defender accepted this;
- the Defender exercised the sanction-imposing power in **9 cases** and **advised the superior authority or informed the public** of his findings.

The number of complaints handled in 2006 also includes **53 cases** where the complainants withdrew their complaints in different stages of their handling, plus **23 filings** where the complaint was a remedy by its content pursuant to regulations in administrative or judicial matters, action or remedy in the administrative court system or constitutional complaint and the Defender advised the complainant thereof without delay (Section 13 of the Public Defender of Rights Act).

In 2006 the Defender closed **one file** without additional measures after the Ministry of Informatics fully accepted his recommendation pursuant to Section 22 of the Public Defender of Rights Act for amendment of a legal regulation (change to the standard of public administration information systems for the transcription of uncommon Latin characters).

The Defender also closed 8 so-called files of particular significance in 2006. Within these inquiries opened on his own initiative, the Defender initiated negotiations with the central bodies of public administration and other central institutions in order to deal with issues of a general nature. Information on such closed inquires is contained in the commentaries on the individual areas in the following section of the present Annual Report and it usually follows on from section IV of the 2005 Annual Report on the Activities of the Public Defender of Rights (General Observations – Recommendations to the Chamber of Deputies of Parliament of the Czech Republic).

It should be noted in conclusion of the present section that already in 2001, the Defender in accordance with the provision of Section 2 (4) of the Public Defender of Rights Act delegated the exercise of part of his mandate to the deputy of the Public Defender of Rights, notably in agendas in the area of healthcare, social security, protection of the rights of children and adolescents, foreigner-related affairs, the prison system and some other areas. Thus, where the present Annual Report refers to the Public Defender of Rights, it also includes the work of the deputy of the Public Defender of Rights in those agendas whose exercise was delegated to her by the Defender.

2. Selected Complaints and Commentaries on Issues Within the Mandate

2.1 The Land Register and Settlement of Restitution Claims

In 2006, 189 complaints dealing with this issue were received.

In the previous Annual Reports, the Defender dealt with the procedures of the cadastral offices in administrative proceedings regarding correction of an error in the land register. In the past he primarily criticised a procedure where rather than just removing the shortcomings caused by an error in the responsible officers’ work in the restoration and keeping of the land register, the correction of an error also intervened in data on legal relations without a corresponding deed. In this context the Defender states that he did not register any case in the past year where the complainant would object to a similar intervention in rights by the cadastral office in proceedings on correcting an error. Thus restoration of the cadastral records and the associated precise setting of the area of the recorded plots of land became the most frequent cause for complaints. In such cases the Defender usually explains the role and purpose of the institute of records restoration in the land register to the complainant or advises him of remedies.

However, the number of complaints referring to **delays accompanying proceedings** at the Land Registry Office for the Capital City of Prague with its Seat in Prague, Subordinated Land Registry Office Prague (hereinafter the LRO Prague) again increased. In spite of the measures taken in previous years, the LRO Prague still fails to observe the legal deadlines for making entries or records. Therefore in August 2006, the Defender opened a repeated inquiry on his own initiative into the delays at the LRO Prague.

In connection with an inquiry into an individual complaint, the Defender dealt with the issue of the **passage of some items from the ownership of the Czech Republic into the ownership of municipalities, which is registered in the Land Registry by virtue of a record** (for more details please refer to chapter IV General Observations and Recommendations of the Defender for the Year 2006).

Again in 2006, the Defender dealt with complaints referring to **delays of land settlement offices in proceedings on restitution claims**. Although the Defender is aware

that the most demanding cases are dealt with at the final stage of the restitution process, legal security and the right to fair judgment require that all restitution cases be ended within the shortest possible period of time. Therefore the land settlement offices should consider accomplishment of restitution to be a primary task prioritised also over land consolidation.

The Defender was also presented with complaints responding to Constitutional Court finding No. 531/2005 Coll. The Constitutional Court had found that restriction to transfers of compensatory plots of land by the Land Fund (hereinafter the LF) had involved all those persons who had acquired title to the transfer of the land – the receivable – by virtue of assignment. Thus according to the aforementioned finding, the so-called **restitution 'full stop'** involved all but those to whom the title to a compensatory plot of land had arisen directly, most commonly on the basis of a decision of a land settlement office, and their heirs. However, a number of absurd situations occur as the finding is being applied. The Defender is addressed by persons who have acquired title to a compensatory plot of land by virtue of assignment (mostly) from their parent. The real estate was removed from the parent in the past and he or she is no longer interested in undertaking the lengthy negotiations with the LF concerning settlement of the title, for example for health reasons. However the finding of the Constitutional Court fails to differentiate between the persons who have acquired a receivable by assignment. This means that the restitution full stop identically involves both the persons who have acquired a receivable in the manner outlined above within their family affected by a property injury and those led to acquire the receivable purely by speculation. Given the valid legislation, in 2006 the Defender could only refer such actually affected persons to the possibility of being provided financial compensation if they apply for it anew within the foreclosure period. Expiry of the aforementioned period without action means, like the restitution full stop in the past, expiry of the entitlement to settlement for the entitled persons. The Defender’s findings suggest that the repeated changes to the terms of settlement of restitution claims causes complications for the entitled persons.

In relation to the issue of land consolidation, in some cases the Defender encountered insufficient communication between land settlement offices and land registry offices in performing land consolidation. Such a lack of co-operation may result in **defects in land consolidation** through double registration of ownership of the real estate concerned. The Defender will continue to inquire into matters accompanying this negative phenomenon in 2007.

Complaint Ref. No.: 1289/2006/VOP/EHL

The land registry office is merely a registration body that cannot decide on legal relations to real estate. The correction of an error in the land register consisting of amendment of the real estate data on the basis of a documented result of cadastral records restoration is not intervention in ownership title.

The complainant, Ing. H., disagreed with the procedure of the Land Registry Office for the Hradec Králové Region, Subordinated Land Registry Office Hradec Králové (hereinafter the Land Registry Office) and the procedure of the Surveying and Cadastral Inspectorate in Pardubice (hereinafter the Inspectorate) in deciding on requests for the correction of an error in the Land Registry having occurred in the registration of plots of land in the cadastral district of Svinary. The Land Registry Office had decided and the Inspectorate had subsequently confirmed that the plots of land had been plotted and registered in the Land Registry within the boundaries as ascertained upon the cadastral records restoration. The restoration process had included an inquiry on site, during which the owners of the plots had confirmed agreement with the result of the examination and the marked boundary lines. Consent of the complainant’s predecessor in title is documented in the same manner. The Land Registry Office had therefore labelled the present plotting of the disposition and geometric determination of the plot as correct and had not corrected any error. The Defender stated that the administrative authorities in the area of land registry administration had not erred and that they had also sufficiently and conclusively substantiated their decision. They had also advised the complainant of how the changes requested by him in the plotting of the plot boundaries could be achieved, i.e. that a protocol on correction of an incorrect geometric and disposition determination would need to be documented as well as a result of land surveying capturing the requested condition. Owners of all the plots concerned, between which the change is to occur, must express their consent to the change of boundary plotting in the protocol.

2.2 The Work of Health Insurance Companies

In 2006, 79 complaints dealing with this issue were received

In 2006, the Defender received a number of complaints against health insurance companies. He most often inquired into the correctness of their procedure in **assessing and recovering premium arrears and penalties** and in assessing requests on abating the harshness of the law. There were also complaints referring to inclusion of policyholders into incorrect categories. However, the inclusion in another category had been primarily due to failure to observe the obligation to give notice by the payer or his or her employer.

In their complaints, complainants also criticised the method of handling requests for the reimbursement of treatment decided upon by **review doctors**, reimbursement of treatment abroad or the handling of proposals for spa health treatment. In the cases subject to inquiry, incorrect procedure by health insurance companies was found in several cases. For example, the Defender found repeated maladministration in failure to substantiate a dismissed application for reimbursement of treatment, shortcomings in an issued payment assessment in which the health insurance company had failed to specify the period to which health insurance premium arrears were to apply, and maladministration in providing incorrect or incomplete written information to policyholders. The insurance companies concerned accepted the conclusions of the inquiry and adopted measures to remedy the identified shortcomings. Unfortunately, insufficient and inconclusive outputs that do not have the characteristics of traditional administrative decisions are a widespread abuse. However the conclusiveness of the output from the work of the administrative body is a prerequisite for understanding and acceptance of the output by the recipient concerned.

The Defender was also addressed by policyholders health insurance companies had refused to grant consent to travel in order to obtain treatment in another member state of the European Union and reimbursement of such treatment from public health insurance. The Defender stated that if the granting of consent is within the health insurance companies' discretionary power, they must comprehensibly, sufficiently and conclusively substantiate their dismissing statement.

Where the Defender ascertained that the health insurance companies proceeded in accordance with the valid legal regulations, he explained the applicable legislation to the complainant. This involved for example those on whom health insurance arrears had been assessed for a period in which they had been without taxable income, where they argued that they had not paid the premiums as a result of difficulties in searching for a job. The Defender explained to them that the aforementioned fact had not relieved them of the obligation to pay helath insurance premiums unless they had also been registered at the labour office as jobseekers or unless they had it documented that they could be included in one of the categories of persons whose health insurance is paid by the state. On the basis of an individual assessment of the matter, the Defender always recommended a possible further procedure to resolve it – such as raising an objection of limitation, making use of a regular or extraordinary remedy, filing an application for abating the harshness of the law in the matter of penalties or filing an application for conclusion of an agreement on instalments.

In the part of the 2005 Annual Report where he made general observations from his work, the Defender referred to the issue of **the insurance of foreigners' children** after they are born. The Defender communicated with the Ministry of Health on this matter in 2006. As an acceptable minimum solution, he proposed introduction of dependent health insurance within the commercial insurance system where the policy of the mother staying long-term in the Czech Republic and paying health insurance would also apply to the child from the moment of birth. Following negotiations between the Ministry of Health and the VZP, a.s. Insurance Company, a substantial rise occurred in the limit for payment of care for the newborn from the contractual insurance of its mother so that the payment can cover even more costly care for the child. Following this the Defender received no new complaints concerning the insurance of foreigners' children.

Complaint Ref. No.: 3529/2004/VOP/EH

Health insurance companies are obliged to duly substantiate dismissal of requisition for reimbursement of a medicinal product.

Mrs A. K. filed a complaint to the Defender, asking for investigation of the procedure of the General Health Insurance Company in handling an application for reimbursement of the

treatment of her disease proposed by the doctor, which at the time concerned was not to be reimbursed from the general health insurance.

After inquiring into the procedure of the health insurance company, the Defender stated that it had erred in processing the request for reimbursement of the medicinal product by failing to substantiate the dismissal of the request by the review doctor. Dismissal may occur only due to reasons anticipated by the applicable legislation. Therefore the statement of the review doctor must itself be subject to review. The reasons for dismissal of the request must be obvious from the substantiation of the review doctor.

The management of the General Health Insurance Company concerned took remedial measures concerning the maladministration it was reproached for in the report on the inquiry. First, it had additionally examined the case based on information contained in the medical records of the patient and then sent a letter of apology with a detailed substantiation of the review doctor's statement. The management of the health insurance company also imposed an obligation on all review doctors assessing requests to specify the reason on which the statement of the health insurance company is based.

2.3 The Work of Public Health Protection Authorities

In 2006, 45 complaints dealing with this issue were received.

In his Annual Reports, the Defender has repeatedly pointed out the rising number of complaints regarding the issue of burdens from traffic, in particular **noise**. Such a burden frequently occurs in connection with the construction of new industrial or shopping parks and the associated concentration of traffic in such locations. The construction of bypasses around settlements and particularly their connection to already existing roads lacking in capacity are also problematic. According to the Defender, the objective of public administration must be to regulate such activities towards acceptable levels. The Defender stresses that as part of preventing negative phenomena accompanying road traffic, fundamental attention must be paid to the issues of traffic design already in the zoning procedures (see section IV).

In connection with the permitting of planned projects that will become a significant source of noise, the Defender finds it important to point out the so-called **uncertainty of calculation** used by investors to argue in favour of a plan, by claiming that the project meets the limits stipulated by the law where it is impossible to prove or calculate that the noise source will surely exceed the limits. As an interpretation of uncertainty of calculation, the actual future noise to be generated by the intended source cannot be calculated in an absolutely accurate manner; the calculation is therefore approximate and varies within a range. The Defender holds the view that in proceedings on the permission of a noise source, the applicant must prove that even the upper limit of the range of the noise calculation meets the limits stipulated by the law (thus for example if a noise pollution limit of 50 dB for the night time and 60 dB for the day time is stipulated by the legislation and a "calculation uncertainty" equal to 2 dB is to be used, in the Defender's opinion the applicant must document that the noise pollution will not exceed the limit of 48 dB, or 58 dB respectively).

Compared with the preceding year, in 2006 the Defender registered a considerable increase in the number of filings from people complaining about disturbing **noise from restaurants, discos, summer terraces or simple music performances** organised near residential housing. In the conducted inquiries, the Defender primarily requested an examination via the planning authority as to the purpose for which the **structure** was permitted and approved for use. The Defender also informed the complainants about the possibility to address the relevant regional health authority with a request for noise measurement (via the relevant health institution providing specialised measurements for the health authority) as well as a review of observance of the valid noise limits for the day and night times (for the protected exterior and interior environment of structures). The regional health authority is obliged to investigate complaints in terms of observance of the provisions of the Public Health Protection Act and Government Order No. 148/2006 Coll. on health protection against adverse effects of noise and vibrations, effective from June 1, 2006.

In inquiring into the complaints, the Defender encountered cases where the regional health authorities denied provision of **noise measurement records** to the complainant**.** They mostly did so claiming that they had been provided with the record by the entity generating the noise, which had the record produced at their own expense without a legal obligation to deliver it to the regional health authority. In the inquiries conducted the Defender criticised such procedure of the health authorities, stating that if the measurement record is a basic document

for handling the complaint, the complainant is entitled to acquaint himself with the content. Proceeding otherwise contravenes the principles of good administration, in particular openness of public administration towards citizens.

Complaint Ref. No.: 2701/2005/VOP/IF

If a music performance in a place of business has not been permitted by virtue of a final building approval, the owner of the building, if interested in such operation, must apply to the planning authority for a change in the purpose of the building. Every individual music performance is a breach of the Building Act until the decision on the change of the purpose of the building comes into legal force, and the planning authority must handle such a breach within the scope of its power regardless of whether or not the performance exceeds the noise limits stipulated by the law.

Complainant J. N. addressed the Defender with a complaint about inactivity of administrative bodies in the matter of disturbance by noise from performance of music in a café, or rather club, in his neighbourhood. It was ascertained during the inquiry that music was performed in the premises in contravention of the final building approval. The Defender stated in the report on the inquiry that the Municipal Authority of the Brno Centre Municipal Area (hereinafter the Brno Centre Authority) had failed to sufficiently investigate the complainant's complaints continuing over several years and to ascertain the actual state of affairs and omitted fulfilment of the merits of administrative infringement by both the tenant and the owner of the premises. The Brno Centre Authority fined the then owner of the premises only after the Defender's intervention. However fulfilment of the merits of administrative infringement of using a structure in contravention of the final building approval occurs with every single music performance. The administrative body has the possibility of imposing fines repeatedly, notably in a situation where the use of the structure without permission continues. In the meantime the owner applied for a change in the purpose of the building that would enable him to organise music performances. However, the requested change in the purpose was dismissed due to a disapproving statement of the Regional Health Authority of the South Moravian Region. The regional health authority concerned also performed a measurement that ascertained exceeded noise limits and filed an additional request to the planning authority to open proceedings on administrative infringement. The operator subsequently refrained from further music performances, which the complainant confirmed.

2.4 Healthcare and Other Competences of the Ministry of Health

In 2006, 125 complaints dealing with this issue were received.

As in preceding years, most of the complaints in the area of healthcare pertained to the procedure of authorities **in investigating and handling complaints against the quality of healthcare provided**.

The legislation on handling complaints pursuant to the provisions of Section 175 of the Code of Administrative Procedure is not to be applied to the handling of complaints about the procedure of medical personnel in providing healthcare as they are not complaints against the improper conduct of persons in authority or against the procedure of an administrative body.

The Ministry of Health therefore handled the aforementioned complaints using its internal regulation, which set lengthier deadlines than those the complainants were accustomed to pursuant to decree No. 150/1958 Off. Deed. In cases where doubts arose regarding the correct procedure in the exercise of healthcare, the regional authorities and the Ministry of Health set up expert commissions pursuant to the Act on Care of People's Health.

A number of instances of maladministration were found within the inquiry into the complaints against the Ministry of Health and the regional authorities, and the management of the authorities concerned adopted remedial measures on the basis of the report on the Defender's inquiry. The Authorities erred particularly in handling complaints. They failed to observe the deadlines set by their own rules for handling complaints and failed to advise complainants about the reasons for exceeding such deadlines. They also failed to inform the complainants about the progress of lengthier inquiries if these were conducted by means of setting up an expert commission. In some cases they failed to inform the person filing the complaint about their findings and all the conclusions or measures adopted to remedy the ascertained maladministration. An instance of maladministration was also found consisting in failure to take into account the content of the complaint and to investigate all the items of the complaint.

Complaints regarding the **issuing of certificates of qualification to exercise a medical profession** without specialised supervision recurred, directed against the procedure of the Ministry of Health. Although the Ministry changed the manner of handling applications for issuing such certificates based on an ascertained wrongful procedure, it still fails to proceed pursuant to the Code of Administrative Procedure where an application lacks any of the requisites.

On the basis of the conclusions he reached after reviewing the results of the inquiry by the Ministry of Health in the matter of **illegal sterilisations**, the Defender communicated with the aforementioned authority in the past year in order to adopt measures for remedy of the identified shortcomings. The Ministry of Health showed a will to adopt all the remedial measures requested by the Defender. These included the introduction of mechanisms ensuring training and supervision of doctors in the area of patient's rights and communication with patients, informing the general public using the website of the Ministry and comprehensible leaflets and brochures on the substance and consequences of sterilisation, publishing the wording of the informed consent to sterilisation in the Journal of the Ministry of Health and issuing a methodological interpretation on the provision of special informed consent ensuing from the inquiry of the advisory body of the Ministry. The Ministry of Health also promised to set up a central expert committee for selected cases of serious maladministration and notify certain healthcare facilities of the rules applicable to the management of medical records and prevention of their damage. It also promised to carry out the required legislative amendments by drafting an amendment of the existing Act on Care of People's Health. Although the Ministry responded positively to the Defender's proposal, to date it has not furnished any specific documents on adoption of the above-mentioned measures. The Defender therefore repeatedly asked the Minister of Health to document specific outputs in the matter. For more on the legislative measures, please refer to section IV.

Complaint Ref. No.: 484/2006/VOP/EH

In handling complaints against the quality of healthcare provided, the Regional Authority is obliged always to investigate all the items of the complaint and subsequently inform the person who has filed the complaint about its conclusions and findings in the matter. If the author of the complaint is other than the patient to whom the matter pertains, the authority should immediately apply for the patient's consent to studying his or her medical records.

The Defender investigated the complaint by Mr N. Č. regarding the procedure of the Regional Authority of the Ústí nad Labem Region in handling a complaint against the quality of healthcare provided to his wife by two healthcare facilities.

After closing the inquiry and evaluating the matter, the Defender pointed out certain shortcomings in the handling of the complaint. These included in particular insufficient investigation of a part of the complaint and failure to apply for the patient's consent to studying her medical records and informing her husband as late as several months later during the investigation of the complaint, instead of immediately after receipt of the complaint.

The maladministration pointed out by the Defender in the report on the inquiry was subsequently remedied by the regional authority by an additional investigation of the part of the complaint concerned, about which it advised the complainant. The management of the authority adopted a remedial measure intended to ensure that in case of similar filings, where the author is other than the patient to whom the matter pertains, an application is immediately sent to the patient for expressing consent to studying his/her medical records. The management of the authority also promised to enclose a suitable form for expressing the consent when addressing the patient.

2.5 Circumstances of Hospitalisation in Mental Homes

In 2006, 37 complaints dealing with this issue were received.

The number of complaints against mental homes continued to rise in 2006. The complainants mostly expressed dissatisfaction with enrolment in a mental home without their consent and demanded release. They also complained about insufficient communication by personnel and the limited possibility of participation in decisions regarding their health. Other frequent issues included: the **impossibility of studying one's medical records or disapproval of the use of coercive measures and the handling of a complaint by a senior mental home officer**. In terms of the regime in different departments, the Defender

dealt in particular with the violation and compromising of the human dignity of patients: removal of mobile phones, restricting personal freedom, non-observance of the right to privacy of patients, violation of the privacy of correspondence, restricting the possibility of using own clothing and failing to deal with the patients' social circumstances.

Inspired by resolution of the Supreme Administrative Court Ref. No. Vol. 29/2006-55 of June 22, 2006, in proceedings on a motion to acknowledge invalidity of election to the Chamber of Deputies in the Dobřany electoral ward, the Plzeň-south district, held on June 2 and 3, 2006, the Defender opened an inquiry on his own initiative as to whether mental homes observed the obligation to provide data for the special lists of voters. By failure to register them in the aforementioned list, patients not registered for residence in the electoral ward where they are long-term hospitalised in a mental home, are in fact deprived of the chance to vote. It was ascertained that for **registration in the special list of voters**, mental homes usually provide data of patients who have not been legally incapacitated on the basis of the attending physician's opinion as to whether the patient's health condition allows them to exercise the right to vote. Yet the only legal obstacles to the exercise of the voting right for election to the Chamber of Deputies of Parliament consist in restriction of personal freedom on the grounds of the protection of people's health (including in particular isolation due to a serious infectious disease) and legal incapacitation. The Defender's objective is to change the aforementioned practice. The inquiry has not been closed to date.

Complaint Ref. No.: 4258/2005/VOP/JŠL

A change to hospitalisation from voluntary to involuntary should be reported to a court within 24 hours. If money is credited to the patient's account kept by a bank, the mental home should allow the patient to collect the money even if they are hospitalised without their consent.

Mr P. N. was enrolled in a mental home based on his consent on October 25, 2005. He requested his attending physician for release on November 1, 2005. His request was not complied with and he therefore addressed the director of the mental home on November 2, 2005. The latter also refused to release the patient and on November 3, 2005, the change to the patient's hospitalisation was notified to a court.

If a voluntarily hospitalised patient whose health condition has not improved during treatment requests release from a mental home, the attending physician should talk to the patient and attempt to convince him to stay in the healthcare facility for some additional time. If the patient insists on his request, it should be complied with without unnecessary delay unless the patient qualifies for involuntary hospitalisation. As the attending physician decided not to release Mr. P. N., he should have promptly decided on a change to the character of the stay and notified the court within 24 hours. However, the notification to the court was not sent until November 3, 2005. Thus the deadline for notification of involuntary hospitalisation as stipulated in the provisions of Art. 8 (6) of the Charter of Fundamental Rights and Freedoms, Section 24 of the Act on Care of People's Health and Section 191a (1) of the Code of Civil Court Procedure was not observed.

The mental home also failed to deal with the social circumstances of the client, who found himself without money in the hospital, although this situation could have been avoided. A person having established an account kept by a bank and credited with an income for covering their fundamental subsistence costs should always be allowed by the personnel of the mental home to collect such money and pay for necessary expenses (e.g. the costs of housing, etc.). If there is apprehension of irresponsible handling of such money, they should try to agree with the person concerned on the collection of lower amounts so that the individual has money to satisfy his essential needs and handles it carefully. The filing of a motion for appointment of a special recipient of pension or alternatively social welfare benefits is also an option to be considered. The mental home acknowledged shortcomings in the matter and adopted remedial measures. The complainant and the mental home agreed on the manner of collecting his money.

2.6 State Income Support and Social Welfare Benefits

In 2006, 214 complaints dealing with this issue were received.

The complaints encountered by the Defender in this area in the past year primarily pertained to social welfare benefits based on social need, one-off social welfare benefits and state income support benefits.

As in the preceding years, in 2006 the Defender again ascertained maladministration by administrative bodies in deciding on recurring social welfare benefits consisting of **insufficient ascertainment of the actual state of affairs and inconclusive substantiation of decisions**, which is often stereotyped and schematic. In inquiries into individual complaints, the Defender ascertained maladministration consisting of insufficient fulfilment of the duty to instruct applicants for benefits and recipients of benefits as well as non-observance of the procedural deadlines in complicated cases. The Defender found fundamental maladministration in the unwillingness of the administrative bodies to decide on the **appointment of a special recipient of social welfare benefits**, in particular as far as the payment of rent using the aforementioned institute is concerned.

Some of the complaints pertained to the decision-making by administrative bodies on one-off social welfare benefits, for example the purchase of school materials, children's items and baby kits for an unborn child. The Defender ascertained in inquiring into such complaints that in some cases the administrative bodies exceeded the boundaries of administrative discretion, while in others they failed to conclusively substantiate their procedure and make it predictable.

In the area of state income support benefits, the Defender also repeatedly encountered maladministration by the relevant labour offices, which insufficiently fulfilled their duty to instruct. The labour offices should have better informed parents of their obligations connected with the provision of the parental allowance, since in such cases the failure to fulfil the duty to instruct resulted in a situation where the parent failed to apply for transfer of the parental allowance to a younger child in spite of meeting all the qualifications for its repeated granting. Although aware that the parental allowance is granted to those caring for a child below four years of age, parents do not know that it is child-specific. A surplus payout of the aforementioned state income support benefit is recorded where a parent places its child in a nursery school without reporting this to the relevant labour office while caring properly and in person for another child below four years of age for the whole day. The issue, pointed out by the Defender, was eliminated by virtue of an amendment to the legislation effective from January 1, 2007. In the described case, the parent no longer has to file a repeated application for granting the parental allowance.

Another area of issues concerning state income support benefits encountered by the Defender involves the **issue of child allowances applicable to a child entrusted to alternating custody**. Pursuant to the existing legislation, the child maintenance paid by one parent to the other in the period in which the other parent has the child in direct custody, is included in the income of the parent, which is decisive for granting the child allowance. The calculation of the parent's income pursuant to the existing legislation is suitable only where the child is entrusted to one of the parents for exclusive custody. The Defender repeatedly addressed the Ministry of Labour and Social affairs in this matter. Since the Ministry has not remedied the situation to date, the Defender will continue to attempt to get a change in the calculation of income in 2007, because he finds the legal regulation as unreasonable and unjust. The argument of the Ministry that there are few such cases is regarded as irrelevant by the Defender.

The Defender criticised the procedure of labour offices, which are in the position of sub-debtors, in **distraints curtailing state income support benefits**. In the case of distraints finally ordered before April 1, 2006, it was possible to curtail recurring state income support benefits replacing earnings (parental allowance, foster parent's remuneration) only by virtue of deductions from earnings (partly). Any other recurring state income support benefits were subject to distraint by ordering settlement of other claims in cash (i.e. in full). In all the cases where the Defender ascertained illegal conduct of the labour offices consisting in the full curtailment of benefits replacing earnings, the authorities refused to remedy their maladministration and refrain from distraints carried out in such a manner, referring to guidance from the Ministry of Labour and Social Affairs. In spite of the originally negative attitude of the Ministry, the matter was discussed on the basis of the Defender's legal argumentation and publishing of the matter and the Ministry supported the Defender's view. Subsequently the Ministry, in co-operation with the Defender, issued methodological instructions (March 10, 2006 and later on March 31, 2006), as a result of which the labour offices either refrained from the illegal curtailing of benefits on their own or took steps on the basis of which the illegally conducted distraints were abated by the decision of a court.

As a result of an amendment of the Code of Civil Court Procedure, drafting of which was also initiated by the Defender, all recurring state income support benefits may be curtailed only by deductions from earnings effective from April 1, 2004. However, the amendment did not

affect distraints finally ordered prior to the aforementioned date, which continue to proceed pursuant to the previous regulation. As a result of a legislative initiative of the Deputies, housing allowance has not been subject to distraint since January 1, 2007.

The Defender obtained additional complaints attesting to continuing illegal curtailing of recurring state income support benefits in late 2006. The situation is serious given the expected adverse results of illegal distraints after the parental allowance increase as of January 1, 2007. The Defender will request that the Ministry of Labour and Social Affairs ensure the legality of the labour offices' conduct.

Complaint Ref. No.: 2693/2006/VOP/PB

The provision of parental allowance is child-specific. If there are two children in the family and the parent places the elder of the children, to which the granting of the parental allowance is bound, into a nursery school without reporting this to the relevant state income support body and without claiming parental allowance for the younger child, a surplus payout of the parental allowance arises in respect of the elder child.

Mrs V. P. addressed the Defender with a request for help in dealing with her adverse situation, because the Labour Office in Břeclav had removed her parental allowance. The Labour Office demanded that she return the surplus payout of the aforementioned state income support benefit, due to her failure to report a change to a matter decisive for continuation of entitlement to the benefit, i.e. failure to report to the Labour Office in Břeclav that her elder son attended nursery school more intensively than allowed by the Act on State Income Support applicable at the time. While the elder son attended nursery school, Mrs V. P. cared for the younger son for the whole day. Immediately after his birth, she requested the Labour Office in Břeclav grant state income support benefits – the birth grant and the child allowance, which were subsequently paid out. She appealed against the decision of the Labour Office to the Regional Authority of the South Moravian Region, which had dismissed her appeal and confirmed the decision of the Labour Office in Břeclav.

The Defender had already dealt with similar cases before (notably complaints Ref. Nos.: 2495/2004/VOP/JŠL, 3140/2003/VOP/JH and others). As part of the inquiry into file 2495/2004/VOP/JŠL, the Minister of Labour and Social Affairs was advised of the ascertained matters and requested to comment on the issue. In his statement of October 25, 2005, the Minister stated, "in the future all the labour offices deciding on entitlement to the benefit concerned, its amount and payment will be informed of the statement of the Ministry regarding the procedure in deciding on surplus payouts of the parental allowance. If there is another child in the family qualifying for the parental allowance for the whole calendar month, in particular by not attending a preschool establishment for more than five calendar days before reaching three years of age and, after reaching three years, effective from February 2006, four hours a day, the said allowance will be transferred to the other child without the parent having to file a new application for the benefit, and thus no surplus payout of the benefit will arise for the parent."

To the Defender's query as to the reason why the bodies of state income support fail to respect the opinion of the superior administrative body, the Regional Authority of the South Moravian Region responded that "the legislation applicable to date does not allow transfer of entitlement of a parent caring for an elder child to the younger child without filing a new application". The Labour Office in Břeclav also stated, "the participants of a conference of the heads of the region's state income support departments held in December 2005 agreed on the aforementioned statement".

The Defender ascertained through an inquiry that the authorities fulfil their duty to instruct by furnishing an application form for granting the benefit where it is specified on the reverse side that the applicant is aware of the obligation to report to the labour office any changes to matters decisive for continuation of entitlement to the parental allowance within eight days, which they confirm by attaching their signature. Fulfilment of the duty to instruct by the authorities is very vague and the applicants are very often unaware about the nature of the decisive matter for the provision of state income support benefits. The general public is also not aware that the provision of parental allowance is bound to caring for the specific child whose name is specified in the application for granting the benefit. Thus Mrs V. P. believed that she qualified for the parental allowance by properly caring for the younger son for the whole day, i.e. that the provision of the parental allowance had been automatically transferred.

The Defender therefore concluded that in future applicants for the parental allowance should be acquainted with their obligations in a more detailed manner, namely that the instructions specified in the application for granting the parental allowance should be better phrased and accompanied by a demonstrative list of the potential situations that effectively constitute decisive matters for continuation of entitlement to the benefit concerned. Labour offices should also provide an instruction regarding the suitability of filing a new application for granting the parental allowance to be provided in connection with care for the younger child, and the instruction signed by the applicant should be included in the files kept by the state income support body. The Defender also ascertained that the Labour Office in Břeclav and the Regional Authority of the South Moravian Region failed to respect the statements of their superior public body.

As of January 1, 2007, the provision of Section 30 (8) of the Act on State Income Support came into effect, according to which entitlement to parental allowance does not expire if the parent has ceased to qualify for parental allowance granted on the grounds of caring for a child, on the basis of which the parental allowance was granted, provided that at the time of ceasing to qualify he or she qualifies for the parental allowance on the grounds of caring for another child.

2.7 Pensions

In 2006, 362 complaints dealing with this issue were received.

In the past year the number of complaints concerning pension insurance increased again. Citizens address the Defender on a wide range of issues. They most frequently complain about the **non-granting of a pension** or the **amount of the pension insurance payment.** Regarding the non-granting of pensions, citizens often point out insured periods that have not been included. In terms of the types of pension, most frequently the complaints pertain to old-age pensions and disability pensions. An issue where a citizen is acknowledged as fully disabled but fails to qualify for the required insured period is ever more frequent.

When inquiring into complaints, the Defender is provided with good and flexible co-operation from the Department of Internal Audit, Inspection and Complaints of the Czech Social Security Administration (hereinafter the CSSA), which often initiates adoption of remedial measures already during the inquiry. Differences between the CSSA and the Defender usually pertain to interpretation of the law.

The number of complaints in **pension matters with an international element** is gradually increasing after the accession of the Czech Republic to the European Union. Unreasonable length of proceedings on the granting of partial pensions from several member states and issues connected with the sending of forms confirming the insured period are the most frequent issues.

The Defender also dealt with several cases pertaining to the application of the Agreement on Social Security between the Czech Republic and the Ukraine. He also regards the lack of agreement on social security between the Czech Republic and the USA as a serious issue causing that some policy holders earning an income in both of the aforementioned states fail to become entitled to a pension benefit from any of the insurances, or alternatively that the amount of the benefit is substantially lower, because the insured periods included in each of them cannot be combined.

Complaints regarding **assessment of health condition by a CSSA review doctor** constitute a relatively separate category. Although the Defender is unable to review the work of review doctors in expert medical terms, he may judge whether a medical opinion meets the prerequisites set out by the regulations on administrative proceedings [effective from January 1, 2006, the application of the Code of Administrative Procedure is no longer ruled out in the issuing of opinions by the relevant District Social Security Administration (hereinafter the DSSA)]. The Defender primarily ascertains in accordance with the established administrative courts' practice as to whether the opinions meet the criteria of completeness and conclusiveness, i.e. whether the determination of the date of disability origin and the dominant cause of the drop in the ability to systematically earn an income are properly substantiated in them. If the Defender ascertains in a specific case that the opinion fails to meet these requirements, he recommends to the CSSA that it reassess the applicant's health condition and issue an accurate opinion. The Defender frequently learns in inquiring into such complaints that the date of disability is determined identically with the date of filing the application for a pension or alternatively the date of assessment of the applicant's health condition by the

review doctor. Yet the disability causes mostly appear before the applicant addresses the social security administration. Failure to deliver opinions (records of the applicant's hearing before the review doctor) to the party to the proceedings is another issue the Defender encounters in the area of health condition assessment. A copy of the record is sent only to the applicant's attending physician based on the applicant's consent. The content of the opinion is not quoted in the final decision of the CSSA, although qualification for full or partial disability is proved by virtue of the opinion in the proceedings. Thus the applicant for a pension will not learn the substantiation of the review doctor's conclusion during or after the proceedings, which reduces the applicant's potential to defend himself against the decision by virtue of an administrative suit. Although the provision of a copy of the record of the hearing to the party to the proceedings upon its request results from the current Code of Administrative Procedure, the Defender repeatedly encountered a situation where the applicant claiming such a right at the relevant DSSA encountered hesitation or obstruction. He therefore asked the CSSA to unify the procedures of the individual DSSAs and to adjust the form recording the hearing so that the applicant for a pension may choose already in the hearing before the review doctor as to whether he wishes to be provided with a copy of the record of the hearing.

Several dozen complainants addressed the Defender with the issue of **abatement of the harshness of the law** by the Ministry of Labour and Social Affairs. The complaints usually pertained to the length of the proceedings on abating harshness. Although the regulations on administrative proceedings may be partly applied to proceedings opened following January 1, 2006, dealing with the merits of the specific case is fully within the competence of the Minister of Labour and Social Affairs, because no material criteria have been set for the abatement of harshness. Respecting the aforementioned state of affairs, the Defender usually addresses, formally or informally, the Ministry of Labour and Social Affairs with the aim of ascertaining the approximate time by which a decision regarding the specific applicant is to be issued. However, entire fulfilment of the requirements of the Code of Administrative Procedure for the length of proceedings is currently beyond the possibilities of the Ministry given the specific nature of the handling of such applications (the benefit committee as an advisory body of the Minister comprises of representatives of the Ministry of Labour and Social Affairs, the CSSA and external parties).

The Defender also continued to be addressed by complainants in the matter of so-called "**Slovak pensions**". The filings pertained primarily to applications for abatement of harshness arising in the application of the Agreement on Social Security between the Czech Republic and the Slovak Republic by granting the "levelling allowance" equal to the difference between the Slovak pension paid in the Czech currency and the pension granted to them pursuant to the Czech legal regulations. For details the Defender refers to the previous Annual Reports on his work. It can be stated on the development of legal opinions on the issue of the "Slovak pensions" that an extensive statement of the grand chamber of the Supreme Administrative Court (hereinafter the SAC) was published in 2006. In the aforementioned decision, the SAC denied the possibility of granting the "levelling allowance" equal to the difference between the Slovak pension paid in the Czech currency and the pension that would be granted pursuant to the Czech legal regulations. It has been impossible to grant the aforementioned allowance since the Czech Republic's accession to the EU (May 1, 2004), according to the opinion of the SAC.

The Ministry of Labour and Social Affairs presently levels up the difference between the "Czech" and the "Slovak" pension in entirely exceptional cases. Only a revolutionary decision of the plenum of the Constitutional Court, of which the Defender and professional circles have great expectations, may bring a change in the view of the issue of "Slovak pensions".

Complaint Ref. No.: 2042/2006/VOP/PČ

I. It is necessary to consistently differentiate between the date of origin of entitlement to a benefit and entitlement to its payment in deciding on pension benefits.

II. In assessing health condition for the purposes of the proceedings on granting disability pension and for the purposes of increasing a pension for incapacity, the date of the real origin of disability and real origin of incapacity should be set, and regardless of the date the application for pension benefit was filed.

Disagreeing with the date as of which full disability pension had been granted to her husband, Mrs V. M. addressed the Defender. Mr M. had suffered a severe injury on September 1, 2005 (loss of both legs at middle of thighs); he had filed an application for a pension as well as for its increase on the grounds of incapacity on October 31, 2005. Since then Mr M. had

been acknowledged as fully disabled and partly incapacitated; pension benefits had been granted to him as late as from April 12, 2006, with regard to the need to terminate the payment of sickness benefits.

Mrs M. had also applied for an allowance for caring for her incapacitated husband on November 23, 2005, but the Municipal Authority in Tábor had dismissed the application and granted the allowance only after filing a new application, from the date of granting the increase in the disability pension.

The Defender initiated an inquiry towards the Czech Social Security Administration (hereinafter the CSSA). He ascertained maladministration by the CSSA in the inquiry in that it had failed to consistently differentiate between the date of origin of entitlement to pension benefit and entitlement to its payment in its decisions and that it also had failed to sufficiently substantiate the decisions. With regard to the injury suffered, the CSSA had also obviously erred in setting the date of origin of the disability and incapacity to as late as the date of filing the application for the pension benefits instead of the real origin of the disability and incapacity. As a result of the wrongly determined date of origin of the entitlement to a pension, the Municipal Court in Tábor had been unable to grant the allowance for caring for a related person on the grounds of the complainant's caring for the incapacitated husband the whole day.

CSSA accepted the conclusion of the Defender regarding the failure to differentiate between the origin of entitlement to a pension and origin of entitlement to its payment. As a remedial measure, it instituted new proceedings with the aim of issuing a decision where the date of origin of entitlement to a pension would be correctly differentiated from the date of origin of entitlement to its payment – the payment of the benefit had been set at a later date with regard to the payment of the sickness insurance benefits. Following the aforementioned decision, Mrs M. was able to apply at the Municipal Authority in Tábor for an additional payment of the allowance for caring for a related person as of the date the entitlement to a pension was granted.

2.8 Other Social Security Agenda

In 2006, 116 complaints dealing with this issue were received.

The filings in the area of **reparation of persons persecuted by the Nazi and communist regimes** pertained to reparations pursuant to Act No. 261/2001 Coll., Act No. 622/2004 Coll. and Act No. 357/2005 Coll.

Virtually all the complaints pertaining to the application of Act No. 261/2001 Coll. pointed out the issue of the difficulty in proving the hiding of persons on racial grounds in the territory of the former Slovak State. The Defender was addressed either by complainants who had not received certification from the Ministry of Defence or those who had not received reparations from the CSSA on the grounds of failing to obtain the certification from the Ministry of Defence or otherwise prove their entitlement.

The Defender found on the basis of specific complaints that applications for reparations are in many cases dismissed with reference to contradictions in accounts or untrustworthy testimony. The Ministry of Defence and the CSSA are the competent public administration bodies in proceedings on the granting of reparations. In the case of a change in the applicant's account concerning a change in the time in hiding, the applicant's account is automatically considered to be untrustworthy and the entitlement to reparations is subsequently dismissed. In the Defender's opinion, a contradiction in an applicant's account in itself should not constitute grounds for dismissing the application if the applicant can provide additional testimonies of persons who have obtained the certification. It should be taken into account that hardly anybody remembers the accurate course of events (hiding) 60 years later, including the precise determination of the time and place. The Defender maintains that a proper ascertainment of the state of affairs in such cases is not conditioned by an absolutely accurate determination of the hiding time and location given the long interval of time and the age of the applicant if there is other evidence in favour of the application's legitimacy which the administrative body may take into account in the discretionary evaluation of evidence.

From the work of the Defender it was found that **some municipalities as the founders of facilities for elderly people demand funds in the form of donations for the placement of clients in such facilities**, or alternatively monthly recurring fees for staying there. The Defender considers such conduct as circumventing of the valid legislation, which recognises no such notion as sponsorship donation or an entry fee and anticipates no such

method of obtaining funds from clients of social care facilities. It is a practice that contravenes the purpose of the legislation, which is to make available social care services to people who in a majority of cases belong to socially deprived groups of the population.

On the basis of several individual complaints where clients complained about the obligation to make payments in the form of donations, the Defender addressed the directors of all the regional authorities and requested their co-operation in the matter. It resulted from the replies that the directors of the regional authorities were not very aware of similar cases. In principle all of them stated that the social facilities established in their regions operated in accordance with the applicable legislation.

After comprehensively evaluating the issue, and also with regard to the links of the state grants policy to the construction and operation of facilities for elderly people, the Defender wonders at the practice of some municipalities. Social services are provided to citizens who have found themselves in adverse circumstances. The point is to facilitate a solution for the client in an effective and affordable manner. It should be admitted that the provision of social services is a very costly matter and the payments provided by the clients of such services pursuant to the applicable legislation cover just a portion of the actual operating costs. Organisations operating social care facilities attempt to obtain funds from various sources to cover the actual costs. Although donations may be among the sources of funds, and there is no legal standard prohibiting them, the principles of the social care system should be respected and the client’s situation should in no instance be worsened by requiring donations.

Complaint Ref. No.: 915/2005/VOP/ZG

An administrative authority deciding on the placement of an applicant in a retirement home and the amount of the payment for staying in the facility is bound by the relevant legal regulations. The purpose of the legislation is to make available social care services to people who in most cases belong to the socially deprived groups of the population. It is therefore obvious that the legislature’s objective is to prevent the social service in the form of the social care institution becoming economically unavailable to potential clients.

The Defender opened an inquiry on his own initiative in the matter of supervision over the exercise of independent competence of the R. municipality in allocating placements in a retirement home, the performing of which is in the competence of the Regional Authority of the South Moravian Region (hereinafter the Regional Authority). Inquiring into similar complaints, the Defender was informed that an applicant for placement in the retirement home is obliged to pay beforehand a sum of CZK 10,000 to 20,000 as a donation. The social department of the Municipal Authority in R. decides on the applicant’s placement in the home only after a payment receipt is delivered.

The Regional Authority replied to the Defender that the R. municipality had clearly restricted admission of citizens to the home to payment of a basic financial contribution in a specific amount. In the case concerned the donors – the applicants – provide obligatory financial donations if they want to be placed in the home or if the placement has already been offered to them by the municipality, although the aforementioned fact may not result from making the donation. This is illegal conduct of the municipality, which the Regional Authority finds primarily in the lack of legal authority to impose payment of an entry fee on applicants for placement in the home. As part of its supervision over the independent competence of municipalities, the Regional Authority therefore recommended to the Rosice Municipality to remedy the relevant resolution of the Municipal Council that contravened the law.

2.9 Construction and Regional Development

In 2006, 359 complaints dealing with this issue were received.

On March 14, 2006, Parliament passed Act No. 183/2006 Coll. on Zoning and the Building Code (the Building Act). The new legislation introduces a number of institutes and procedures adopted with the aim of simplifying the proceedings and procedures regulated by the Building Act. It must be mentioned in this context that the **new Building Act** will no longer be labelled as a “general expropriation regulation” as it has been to date, because the institute of expropriation including forced restriction on ownership title is regulated by a separate regulation – Act No. 184/2006 Coll. as of January 1, 2007.

In the previous Annual Reports presented to the Chamber of Deputies, the Defender criticised the existing legislation regulating zoning as it failed to provide sufficient legal protection to the owners of buildings and plots of land who disagreed with a decision on their objections against the utilisation of a territory approved by the municipal council in the zoning plan. The new legislation pertaining to zoning introduces a new decision-making instrument linked to the Code of Administrative Procedure – a provision of general nature that enables the owners of plots of land affected by the zoning documentation and the representative of the public, whose objections have not been accepted in the zoning proceedings, to have the provision of general nature reviewed, including the possibility of filing an administrative suit at the Supreme Administrative Court. The zoning documentation and changes thereto will continue to be obtained in shared competence of regional self-governing units.

In terms of the Building Code, it is necessary to mention the extensive broadening of the range of constructions and changes thereto, terrain treatment, facilities and maintenance works that will not be subject to a building permit and notification. A number of constructions are transferred from the administrative (permission) regime to the notification process by virtue of the new legal regulation. The possibility entrusted to the construction owner of deciding whether they carry out their planned project, under the terms given by the Building Act, on the basis of a building permit, a public contract or certificate of an authorised inspector, can be labelled as very important. In this context, emphasis is also placed on documenting ownership title to the plot of land on which the construction is to be carried out. A construction owner who does not own the plot of land concerned must document an agreement that authorises them to establish the construction on another person’s plot of land.

The Defender also criticised the inactivity of planning authorities in supervising the building discipline of investors in their territorial competence. The new design of building supervision as regulated in the new Building Act follows on from the principle of regular inspections of constructions with the possibility of taking operative measures directly on site.

The situation prevailing in the area of the Public Construction Law in the area of **decision enforcement (distraints)** can further be labelled as unsatisfactory, according to the Defender. In enforcing decisions in the area of constructions, modifications and facilities, administrative bodies will proceed pursuant to the Code of Administrative Procedure, because the Building Act contains no special legal regulation on distraints. The Defender repeatedly criticised the situation where the decisions of planning authorities ordering the removal of a construction are not enforced. Within the institute of decision enforcement by virtue of alternative enforcement, the new Code of Administrative Procedure effective from January 1, 2006, introduced more detailed rules utilisable also in the planning authorities’ enforcement practice. However, it failed to bring any substantial improvement regarding distraints within the Building Code. Planning authorities continue to point to a lack of funds and unwillingness of self-governing bodies to provide the necessary financial backing for decision enforcement. The fact that upon failure to respect a planning authority decision ordering removal of unauthorised constructions all the enforcement-related costs are borne by the municipality which must then claim them from the construction owner, results in a situation where decisions are not enforced. In the opinion of the Defender, it is a condition that reduces citizens' faith in the authority of administrative bodies and the principles of the rule of law. It should be admitted that the new Building Code legislation has failed to bring the needed and expected change required by the Defender.

In his work, the Defender repeatedly encounters underestimation or neglect of the **role and importance of zoning** in influencing the appearance of human settlements and landscape. It must not be omitted in this respect that the municipality as the entity approving the zoning plan acts in the role of something of a “territory manager”. It is the municipality that shapes the future appearance of the territory by virtue of the zoning documentation, thus fundamentally influencing its functioning in terms of regulating various interests subsequently presented in regulations on the utilisation of the territory. However the Defender encounters cases where municipalities still lack approved zoning plans or are unable to actively use them in their work. It is not rare that a municipality has a zoning documentation available but to such a low standard (which suggests a failure of the superior zoning bodies in charge of supervision of the process of obtaining the zoning plan) that they are in effect prevented from carrying out the intended regulation of the appearance of settlements and landscape. The work of planning authorities is an issue in itself as they many times fail to be aware of their fundamental role in permitting planned projects in their territorial competence (the principle of commonality of decision-making on territories by planning authorities), and hence of their share of responsibility for preserving the landscape’s appearance and values.

"Wild urban design" in the landscape and the structure of settlements is an entirely specific adverse display of underestimation of the importance of zoning and the role of planning authorities. It is an issue plaguing the outskirts of large cities, in particular Prague. A sufficient example of this is provided by the chaotic, unpremeditated, ad hoc construction of the new satellite communities artificially implanted in countryside settlements with specific stable landscape, cultural and social settings. Further displays of zoning planning failure include the placement of disputable constructions in the close vicinity of residential zones (industrial installations or heavy-traffic roads next to populated territories), urban and architectonic design of development disturbing the landscape character of the territory concerned or even the traditional structure and appearance of village development, as well as endangering the natural worth of the territory (particularly protected areas, bio-corridors in the landscape) by expanding development. The Defender believes that in view of the present unsatisfactory situation, managing the growth of urban territories must be one of the key tasks in creating all concepts including zoning documentation.

The Defender also dealt with complaints about **delays in handling motions for review of final decisions, but also regular remedies** by the Ministry for Regional Development. The Defender again points out in this context that with the adoption of the new Code of Administrative Procedure, the deadline by which a final decision is subject to review has been substantially shortened. According to the new Code of Administrative Procedure, proceedings on the review of a decision may be opened not later than within one year after the decision comes into legal force. The decision may be annulled or changed in the review proceedings not later than within fifteen months after the decision comes into legal force.

Given the shortened deadlines and in the interest in eliminating the ascertained maladministration in the work of the Ministry for Regional Development, the Defender discussed the matter in person with the Minister in early 2006. The Defender also comprehensively informed the Government via the Prime Minister of his findings regarding delays in the work of the central public administration bodies, pointing out the worsened situation as a result of the new Code of Administrative Procedure coming into effect, which shortened the deadlines for handling motions for review of final decisions. Regarding the Building Code agenda of the Ministry for Regional Development, the Defender was advised that the designated number of positions had been increased. However, given the generally increasing trend in the number of filings in this area, the Defender finds it necessary that increased attention continues to be paid to the personnel situation of the Ministry's zoning and building administration department, which handles motions for review of final decisions. According to the Defender, the personnel-related measures taken fail to respond to the contemporary needs of the department for preventing delays in dealing with the motions of those addressing the Ministry for Regional Development.

Already in the previous Annual Report, the Defender pointed to the **issue of prohibition of construction**. In the past year, citizens filed complaints particularly against the procedure in issuing exemptions from the prohibition of construction issued through an order of a municipality in delegated competence. The Defender held the view that the entity declaring the prohibition of construction was competent to hear exemptions from prohibition of construction. The new Building Act effective from January 1, 2007, stipulates that zoning provisions on the prohibition of construction are issued by virtue of provisions of a general nature by the municipal council in delegated competence. The municipal council may grant an exemption from a restriction on or prohibition of construction work. As a result, situations should no longer occur where exemptions from the prohibition of construction declared through an order of the municipal council are decided upon in administrative proceedings by the planning authority. The very institute of prohibition of construction as a provision of a general nature will be subject to review in proceedings at the Supreme Administrative Court pursuant to the Court Procedural Code.

In inquiring into the work of planning authorities, the Defender frequently encountered the issue of **documenting ownership title to a plot of land or building**. According to the Building Act valid until the end of 2006, in planning permission proceedings the construction owner had to document ownership title to the plot of land or building where they intended to carry out the planned project. A non-owner was obliged to prove another title to the plot of land or building entitling them to carry out the planned project. The Defender repeatedly criticised the procedure of the planning authorities that considered a mere consent, often expressed merely by a signature on an application for issuing building permit, to be a sufficient manner of documenting another title to a plot of land or building. The Defender holds the view that a title having the nature of a right *in rem* to another person's property must be understood

to be another title to a plot of land. It is impossible to derive another title to a plot of land or building from a mere consent, whether expressed in a separate deed or in the application itself. It is not clear from the consent as to what the owner expresses him/herself on and in particular in what extent and manner they allow intervention in their ownership title, which in effect may complicate the course of the administrative proceedings. The Defender therefore requested that another title to a plot of land be proved in the planning permission proceedings by documenting an agreement on the establishment of such title or at least a preliminary agreement. The Defender welcomes in this respect that the new Building Act effective from January 1, 2007, entirely clearly requires the owner to provide a contractually constituted document on the right to carry out construction.

The situation in proceedings on the removal of constructions continues to be specific. Failure to document ownership title or another title to the plot of land concerned makes it impossible to additionally permit the construction and results in a decision on ordering removal of the construction.

In 2006, the Defender dealt with the **structural and technical aspects of housing of socially excluded persons or persons threatened by social exclusion**.

Complaint Ref. No.: 36/2004/VOP/JP

If the owner of a construction fails to comply with a call for elimination of defects in the construction by the state supervision over construction, the planning authority is obliged to issue a decision ordering remedy.

Mrs R. H. addressed the Defender with a complaint about inactivity of the construction department of the Prague 1 City Area Authority concerning the poor structural and technical condition of her leased flat and the apartment house in Prague 1.

In her filing, the complainant pointed out the prolonged leaking of water into her flat, mold, problems with power and natural gas supply, insufficient structural soundness of the house, etc. The complainant documented her assertions on a 1999 expert report stating that the defects and deterioration of the house directly endangered the health of the people living in it as well as others who might be present there. The expert conditioned any further occupancy of the house on urgent measures to be taken. The complainant claimed that the conclusions of the expert as well as calls by the body of state supervision over constructions for elimination of the ascertained defects directed at the owner of the house had failed to have the desired effect.

The Defender concluded after an inquiry that the planning authority had failed to utilise all the legal possibilities to prevent further prolonging of the critical state of the real estate, which was in a structural, technical and health condition that directly threatened people's health and lives. The Defender found that the planning authority had erred when it failed to sufficiently fulfil the findings of the body of state supervision over constructions. Although the planning authority had carried out repeated examinations on site within the performance of state supervision over constructions and the body of state supervision over constructions had called for elimination of the ascertained defects in the building on the basis of the aforementioned examinations, failure to comply had not generated an adequate response in decisions that would order performance by the owner of the building by virtue of official authority. The Defender stressed that only final decisions of an administrative body may constitute grounds for decision enforcement. The matter was closed by agreement between the complainant and the new owner of the house who helped to obtain an appropriate new flat in a housing estate for the complainant.

2.10 Removal of Constructions

In 2006, 63 complaints dealing with this issue were received.

The removal of unauthorised ("black") constructions continued to be an issue in 2006. In this respect the Defender deems it necessary to advise the Chamber of Deputies that **the enforcement of decisions by planning authorities ordering a "penal" taking down of a structure, maintenance works and, if applicable, necessary modifications to the construction** occurs sporadically, because enforcement of such decisions is a financial burden for municipalities. The management (self-governing bodies) refuse to provide sufficient funds to the planning authorities for the enforcement of such decisions. The new legislation regulating enforcement of decisions by administrative bodies contained in the Code of Administrative Procedure has not brought any change in this respect. It should be mentioned that according to

the Act on Municipalities, municipal bodies are obliged to enforce administrative decisions they issue unless a motion for enforcement of the decision by a court has been filed. Thus the local government system clearly tasks municipal bodies (including the planning authorities) with enforcement of the administrative decisions they issue. In the inquiries conducted by him, the Defender consistently points out that the enforcement of administrative decisions is one of the key attributes of a legal state and good administration.

Complaint Ref. No.: 4310/2004/VOP/IFH

Insufficient financial and technical backing of administrative bodies cannot serve as an argument for their resigning from enforcement of administrative decisions. A matter may be decided again if the state of affairs and the legal circumstances of the case have changed substantially (i.e. the obstacle of a decided matter shall not be applied here).

The complainants, Mr and Mrs D., addressed the Defender with a request for help concerning inactivity of the relevant public administration bodies in connection with the enforcement of a decision of the Karlovy Vary Municipal Office on the removal of structures comprising of a swimming pool and a terrace on the plot of land owned by the married couple's neighbour. The liable person had failed to remove the structure voluntarily by a set deadline. The complainants had therefore filed a motion for enforcement of the decision pursuant to the then valid Act No. 71/1967 Coll., the Code of Administrative Procedure (hereinafter the Code). The municipal office had been inactive during the period for decision enforcement. Thus the three-year term stipulated by the Code for enforcement of the decision was nearly at an end. The Defender therefore called on the municipal office in the report on the inquiry to promptly commence alternative enforcement of the decision by virtue of actual removal of the construction concerned. The construction was not removed even then and the deadline by which the decision could be enforced lapsed. The subsequent correspondence revealed that the administrative body had failed to proceed to the forced enforcement of the decision due to the financial and technical demands of the action. The Defender therefore notified the administrative body in his final statement that our legal order does not acknowledge insufficient technical and financial potential for ensuring enforcement of a non-monetary performance as a reason for additional permission of a structure. The technical procedure in removing structures already forms part of the decision on the removal. It should be added on the financial burden for the municipality that works and action imposed by an administrative decision are performed at the expense and risk of the liable party. Given that the original decision could no longer be enforced, the Defender recommended opening new proceedings on removal of the structure concerned. In this particular case the opening of the new proceedings was not obstructed by a decided matter (res administrata), since the owner of the structure had commenced removal in the past and the intervention had substantially changed the condition of the structure as taken into account by the administrative body within the original proceedings. It was impossible to rule out that by its present condition the construction could threaten the surroundings or cause damage to the neighbouring real estate as a result of the intervention performed. The addressed Regional Authority of the Karlovy Vary Region accepted the Defender's opinion and called on the body of first instance to open new proceedings. This the municipal office did.

2.11 Care for Cultural Monuments

In 2006, 6 complaints dealing with this issue were received.

The Defender also dealt with complaints concerning heritage preservation in 2006. Although not frequent, they clearly show that some shortcomings in the work of the bodies of state preservation of heritage occur repeatedly in spite of the long-term validity of the Act on State Care of Monuments. The Defender repeatedly ascertains that **registration of cultural heritage** fails to meet the Act on State Care of Monuments; for example, the fronts of buildings continue to be kept as cultural monuments, which contravenes the valid Act on State Care of Monuments and generates uncertainty among owners. The Defender further noted that **in binding statements**, the bodies of state preservation of heritage specify **conditions imposing obligations on the owners of premises subject to heritage preservation on top of the obligations resulting from the Act on State Care of Monuments (for example conditions applicable to ownership relations)**.

The Defender informed the Ministry of Culture of his experience gained in the preceding years; the Ministry promised to make use of it when creating a new legal regulation on heritage preservation.

Complaint Ref. No.: 3336/2006/VOP/JPL

The exercise of state heritage preservation in relation to aggregately protected heritage areas includes regular monitoring of cultural and historical value of territories and the local building activity and timely adoption of measures to protect them, including co-operation with other public administration bodies.

The Defender encountered the case of the removal of a historic house in a poor structural and technical condition. The Defender ascertained that the house concerned had been earlier proposed for declaration as cultural monument, which had not occurred as a result of the critical condition and the resulting necessity of extensive structural replacements, i.e. the premises had been expected to lose authenticity in restoration. After hearing by the heritage preservation authorities, the premises had been proposed for demolition; the owner had obtained the relevant permit and decided to act. The public drew attention to the case in connection with the preparation for and commencement of the demolition. The house was demolished in spite of the local self-government's initiative; although not correct in the view of those admiring historic premises, it was not an illegal step from the perspective of the applicable legislation. The Defender could no longer influence the removal of the historic house.

The aforementioned case suggests possible failure of the relevant planning authority in observing fulfilment of structure maintenance obligations, although the work of the state heritage preservation body and the specialised state heritage preservation organisation should also be criticised in relation to the assessment of the heritage value of the house and commenting on the zoning documentation as well as on the subsequent application for permission for demolition. The state heritage preservation authorities and the specialised state heritage preservation organisation should prevent situations like the aforementioned by regular evaluation of the condition of territories subject to heritage preservation. Where historic premises are compromised by non-maintenance, it is necessary to contact the relevant planning authority.

Monitoring the condition of the historic environment is important because premises that were once omitted may over time attract the attention of society through their cultural and historic value and may become subject to heritage preservation.

2.12 Tax Administration and Other Agenda of Financial Administration

In 2006, 155 complaints dealing with this issue were received.

The complaints in this area continued to be varied in 2006. Apart from assessing the material correctness of decisions, the Defender regularly deals with problematic aspects of various procedural acts of the tax authority and responds also to reproaches directed at the legislation itself. It may be stated that in 2006 the Defender encountered a moderately higher number of complaints challenging **inactivity of the tax authority** (delays in appellate proceedings) as well as cases of disagreement with the imposition of payments for breaching budgetary discipline. It is not rare that a decision meets the legal regulation, but the latter seems to contradict the constitutional order. **The use of a tax surplus for the payment of tax arrears after bankruptcy is declared over the debtor's assets** is regarded as a burning issue by the Defender.

Complaint Ref. No.: 3159/2005/VOP/BK

The use of a tax surplus (whether value added tax or withholding tax) for the payment of tax arrears after bankruptcy is declared over assets of the debtor (tax entity) is illegal conduct of the tax administrator contradicting the inadmissibility of setting off stipulated in the Act on Bankruptcy and Settlement, with parallel validity of the earlier as well as the applicable Value Added Tax Act.

The Supreme Court was first to issue a decision on unifying the decision-making practice. The Court opined that the use of a tax surplus for the payment of tax arrears upon a pending bankruptcy is an inadmissible setting off. However, later the Supreme Administrative Court reached an entirely opposite conclusion in its statement. Subsequently the Constitutional Court repeatedly decided that the relevant provision of the Act on Bankruptcy and Settlement represented an exemption-free prohibition of any setting off whatsoever (and not only private, but also public receivables). The Supreme Administrative Court responded by giving an

assurance that it would respect the legal opinion of the Constitutional Court regardless of its inherent confidence regarding the correctness of a specific legal outlook.

It may seem that there is no doubt about the illegality of use of a tax surplus for the payment of tax arrears during bankruptcy. However, the Revenue Authority in Jihlava considers the described court rulings to be irrelevant in relation to value added tax, pointing out that the Value Added Tax Act (No. 588/1992 Coll.), applied in the above-described decision-making, was replaced by a new Value Added Tax Act effective from May 1, 2004 (No. 235/2004 Coll.). It deems that the provision of Section 105 (1) of the "new" act expressly regulates the (non-) return of an excessive VAT deduction upon bankruptcy.

The Defender holds the view that there was no such amendment of the legal regulation that would rule out further application of the legal opinion expressed earlier by the Constitutional Court. The Constitutional Court concluded that the provision of Section 14 (1) (i) of the Act on Bankruptcy and Settlement represents a special legal regulation stipulating inadmissibility of compensating both private and public receivables, which thus has precedence over the general regulation contained in the provisions of Section 59 (3) (s), Section 40 (11) and Section 64 (2) of the Act on Administration of Taxes and Fees.

The Defender fails to see any fundamental difference between the provision of Section 37a of Act No. 588/1992 Coll. and the provision of Section 105 (1) of Act No. 235/2004 Coll. in terms of traceability of an intention to stipulate a rule for using an assessed excessive deduction (surplus) for the payment of arrears of all taxes also during bankruptcy. In addition to this, both provisions primarily represent special legal regulations on the provisions of Section 64 of the Act on the Administration of Taxes and Fees in that they are based on the latter's regulation of assessment whether the so-called returnable surplus exists, and merely and specifically for the case of the latter's emergence as a result of assessment of an excessive deduction, they stipulate a rule for its returning without application, which is otherwise the rule.

Under the given circumstances, the Defender condemns the tax administrator's proposition that the provision of Section 105 (1) of Act No. 235/2004 Coll. represents an expressly phrased favouring of the state's position (revenue authorities as the tax administrators) in satisfying the state's receivables in the bankruptcy regime.

The case has not been closed to date. In so far as the Defender is aware, a petition for annulment of the "disputable" provision of Section 105 (1) of the Value Added Act has been delivered to the Constitutional Court on the grounds of unconstitutionality. The constant attempts of the Ministry of Finance to achieve the favouring by virtue of proposing amendments to the existing legal regulation and the guiding of revenue authorities towards the described illegal conduct should not be dismissed.

2.13 Customs Administration

In 2006, 15 complaints dealing with this issue were received.

The Defender encountered varied complaints in the area of customs administration in 2006, which is given by the variety of **powers of customs authorities after the accession of the Czech Republic to the European Union**. The matters included car imports, proving the origin of goods coming from the EU, seizure of goods, inspection activities of the General Directorate of Customs, stamping of undesignated liquor, and the excise duty on spirits and small-scale distilling by growers. The latest of the aforementioned topics involved the issue of interpretation of the Act on Spirits in relation to the Act on Excise Duties. In practice, where the term pursuant to Section 2 (1) (o) of Act No. 61/1997 Coll. on Spirits as amended is breached by the grower, the operator of the small-scale distillery is back-taxed with the excise duty on spirits. Pursuant to the aforementioned provision, a grower is an individual who has grown fruits on his own plot of land or a plot of land the individual is entitled to use on other legal grounds, or the individual's employees who have received fruit as performance in kind.

Complaints of a general nature are discussed directly with the General Directorate of Customs. In this context the Defender's interest is primarily aimed at the **issue of the still pending cases of imports that occurred while the previous Customs Act was in effect** (Act No. 44/1974 Coll.) and the case of a customs officer due to pay a customs debt (customs and value added tax) under a payment assessment by the customs office on the grounds of violating service regulations.

Complaint Ref. No.: 3203/2006/VOP/PJ

Exchange of information that may be essential for handling the issue should always be heeded in the organisation of customs administration. Awareness should be ensured both within each customs authority (the customs office, the Customs Directorate and the General Customs Directorate) and mutually between the aforementioned customs authorities.

A complainant addressed the Defender in the matter of the exchange of information on the result of verification proceedings regarding a EUR. 1 certificate. The result of the verification proceedings was fundamental for the complainant's customs and tax liability. It had been ascertained that a proof of origin presented earlier by virtue of a representation on an invoice could not be acknowledged due to a subsequent verification result resting on the statement of the German customs authorities. A customs debt and penalties had therefore been assessed on the complainant, because he had been illegitimately granted preferential origin in the original customs proceedings (goods originating in the EU).

The complainant had furnished to the then Prague III Customs Office (the Prague D1 Customs Office has been the successor authority since May 1, 2004), along with the application for annulment of the additional payment assessment (decision on additional assessment of the customs debt and penalties), the EUR. 1 certificate issued by the German customs office as an additional proof of the EU origin of the goods. Receipt of the application had been confirmed for the complainant, provided that his application would be heard after receipt of a decision on verification of the certificate of origin of the goods. He had filed the application in early 2004 but was not aware of the result of the verification proceedings by the date of filing the complaint to the Defender (in June 2006). In spite of this the distraint proceedings on the back-taxed amount of the customs debt and penalty had taken place and he had received another payment assessment for default interest and penalties.

A prevalent part of the delays in the verification proceedings occurred on the part of the German customs authorities, which cannot be influenced otherwise than by reminders from the Czech customs authorities. However, through his inquiry the Defender also ascertained delays on the part of the Prague D1 Customs Office and the Prague Customs Directorate. The inactivity of the Prague D1 Customs Office was due to the failure of the officer in charge of verification proceedings to deliver the file to the legal department for completion of the proceedings. The Defender was informed by the director of the Prague D1 Customs Office that the file was delivered to the responsible officer who would promptly carry out the proceedings. Since the EUR. 1 certificate passed in the verification proceedings, the proceedings were reopened.

The complainant's case revealed shortcomings in the exchange of information on the result of verification proceedings within the customs administration. Organisational measures aimed at eliminating the occurrence of similar situations were taken.

2.14 Local Fees Administration

In 2006, 20 complaints dealing with this issue were received.

The Defender received several complaints from the owners of plots of land, which are simultaneously a concourse pursuant to a generally binding municipal decree. The owners point out in their complaints that **the local fee for using the concourse is charged to them** for using their own plot of land. The Constitutional Court had also dealt with this issue and issued a finding published under No. 211/2005 Coll. It results from part VII./b of the finding as to how the provisions of Section 34 of the Act on Municipalities and Section 4 of the Act on Local Fees should be applied in a constitutionally conforming manner. In the special use of their plot of land, which is simultaneously a concourse, the owner of the plot should fundamentally not be subject to the obligation to pay fees for using a concourse. It results from the aforementioned opinion of the Defender that not only administrative courts, but the local fees administrator itself should differentiate the exercise of ownership title from its potential misuse already in the stage of assessing the obligation to pay fees so as to avoid charging fees by the public authority for the exercise of ownership title. Such charging of fees is inadmissible pursuant to the finding of the Constitutional Court.

The findings of the Defender suggest that the decision-making practice of the local fees administrators is not uniform in this area. He therefore notified the mayors of statutory cities and the directors of regional authorities of the aforementioned finding. The Defender's objective

is to achieve a situation where the administrators of local fees proceed in a constitutionally conforming manner in deciding on the obligation to pay fees, i.e. in the manner outlined by the Constitutional Court. It was clear from the Defender's inquiry that some cities and regions interpret the relevant provisions of the Act on Municipalities and the Act on Local Fees in a manner incompliant with the interpretation adopted by the Constitutional Court and the Defender. The scheme such local fees administrators refuse to abandon, i.e. a plot of land is a concourse pursuant to a generally binding decree (Section 34 of the Act on Municipalities) plus it is subject to a special use as defined in Section 4 (1) of the Act on Local Fees, meaning the user is automatically charged the fee regardless of the ownership of the plot of land, can be regarded as overcome given the finding of the Constitutional Court. The view of the Ministry of the Interior in terms of exercising supervision over the independent competence of municipalities and the view of the issue by the Ministry of Finance are also different. The Defender therefore deems it necessary to discuss the issue jointly with both Ministries. Thus the Defender's inquiry has not been closed to date and will continue.

In 2006 the Defender also dealt with the topic of **recovery of payments of a public nature** (local fees and fines). He ascertained that instead of conducting administrative proceedings on their own (or forwarding recovery to the customs administration), municipalities recover arrears via court (private) executors. Such a procedure usually contravenes the principle of reasonableness (burdening the debtor because of "a couple of hundred crowns" given the costs of recovering the arrears). This sometimes generates a paradox where a person failing to pay a local fee of CZK 300 finally had to cover an amount of about CZK 13,000 in total (the original due amount and the costs of the distraint). On the other hand the Defender's requirement that municipalities perform distraints on their own (rather than via costly executors) was confronted with the municipalities' limited access to information on debtors (see the 2005 Annual Report of the Public Defender of Rights, page 98) as well as the actual impossibility of securing the access in terms of personnel and material and technical facilities. Thus both small municipalities that lack both funds and personnel and large cities including the capital city of Prague, where an overwhelming number of public receivables are recovered, face difficulties. The Defender ascertained that certain arrears on on-the-spot fines are directly forwarded to court executors without a call for payment by an additional deadline and without examining the risk of delay (and hence whether the call is required). This is a breach of the Act on the Administration of Taxes and Fees. The Defender is considering recommending amendment of the legal regulation so that the self-governing units could perform distraints on their own in accelerated, procedurally shortened and simplified proceedings.

The Defender encounters complaints of lonely dog keepers – pensioners – who paid a decreased **local fee on dogs** (a maximum of CZK 200) while the husband or wife was alive, while after the spouse's death the municipality denied granting of the reduced rate and requested payment of up to CZK 1,500. The dispute consists in the interpretation of the provision of Section 2 (3) of Act No. 565/1990 Coll. on Local Fees as amended: "The fee on a dog kept by a recipient of disability, old-age or window's pension being the only income or by a recipient of orphan's pensions shall be up to CZK 200 for a calendar year."

The Defender holds the view that the decreased rate must be granted also where the so-called concurrence of pensions occurs. He has based his opinion both on the interpretation of the applicable text of the legal regulation and its comparison with earlier regulations. In addition to this, there is no practical reason for denying the decreased rate where there is a concurrence of pensions. The total income of a recipient of an old-age pension and widow's pension may often be lower than the income of another person receiving merely an old-age pension. Neither should the adverse impact of the legal regulation over time be omitted. A pensioner keeping a dog will be entitled to a reduced fee while her husband is alive. After the husband's death, she would not be entitled to the reduced rate as a result of the concurrence of pensions (old-age and widow's pensions), although her living standard has certainly not increased. The presented opinion of the Defender is not in accordance with the long-held view of the Ministry of Finance. The Defender will therefore deal with this issue also in 2007.

2.15 Protection of the Environment

In 2006, 78 complaints dealing with this issue were received.

Protection of the Environment and Landscape, EIA and Mining Issues

General awareness often identifies the environment only with the natural or open landscape. However, the environment encompasses any surroundings, i.e. also those created

by us, including cities and other settlements. In order to be pleasant, the environment must in the first place be safe. This is one of the reasons why the Defender has been dealing in the long run, among other things, with the issue of the **hazards of using ammonia in indoor arena refrigeration systems**.

In the previous Annual Reports the Defender repeatedly pointed out the numerous complaints regarding the issue of **burdens from traffic** (see section IV). In 2006, citizens continued to be critical about noise, increased concentrations of harmful substances and vibrations due to unsuitable roads overburdened with lorries. Apart from a critical expansion of traffic, contemporary global trends are characterised by the concentration of transport-related activities in a limited number of locations (large logistics terminals, transhipment docks, warehousing sites). The related traffic is often so great that it generates a rather understandable opposition of those affected in the neighbourhood. Therefore the task and objective of public administration must be to channel such activities within acceptable limits. The Defender takes the same direction in his inquiries. Every human settlement with its unique situation in the landscape is a complex urban organism that develops in time and space with a momentum, and any unpremeditated intervention lacking a previous thorough evaluation may adversely affect this original organism and its functioning far into the future.

In connection with the intolerable **situation in road transport**, flooded with the expansion of truck traffic, the Defender repeatedly points out the underestimation of the active policy of public corporations in this area. Although the state policy officially prefers proportionate solutions according to all the available development documents (such as the Strategy of Transport Infrastructure Development, State Environmental Policy), they are promoted slowly or not at all in practice. Although car traffic, with its adverse effects, cannot be prohibited, there is no doubt that effective pressure towards its reduction is possible, among other things by effective systematic support for rail transport. Active promotion of all the available measures aimed at the reduction of car use must be included as a permanent part of the work of all the institutions involved.

Already in several inquiries concerning **large** planned **projects in a territory**, the Defender made critical comments on the procedure of public administration bodies in hearing such plans (the environmental impact assessment and zoning procedures). He pointed out shortcomings of an entirely lacking concept assessment or failure to respect logical sequences of preparatory steps as well as inconsistent evaluation and mutual comparison of multiple relevant scenarios. According to the Defender's findings, the aforementioned inconsistent procedures continue. It is startling that although the relevant legal instruments for the selection of optimum scenarios of projects have been approved (and they take into account participation of municipalities and the public concerned), in fact the selection takes place outside such procedures anticipated by the law. This entirely negates the sense and purpose of zoning processes or the associated EIA evaluation processes, i.e. the searching for the optimum form of development of territories including the most environmentally appropriate solution possible for the necessary infrastructure projects.

The legal regulation on **environmental impact assessment** (EIA) was adopted specifically with the aim of contributing to the selection of scenarios of planned projects appropriate from the perspective of environmental protection. The Act on Environmental Impact Assessment stipulated not only a requirement for assessing specific constructions, activities and technologies, i.e. the so-called project EIA, but also a requirement for what is called concept assessment (on which the specific projects are based) using strategic environmental assessment or SEA. The importance of the SEA procedure becomes particularly apparent in the construction of network transport infrastructure where the optimum design of transport infrastructure (selection of a planned motorway corridor) can no longer be considered from a broader perspective when it comes to designing a specific section of the project. It is quite logical for example that the construction of a motorway or expressway should be assessed in its entirety. The task of the independent state administration with the help of the zoning and environmental impact assessment institutes should be to uncover all the matters related to the specific project and ensure objective evaluation of the relevant scenarios.

The Defender also finds it necessary to point out that the repeated hearing, approving, assessment and evaluation of the concept-related materials and the ensuing planned projects make it virtually impossible to find the right moment at which the specific proposals and objections of the public should be voiced. It is a phenomenon that can be encountered relatively often, in particular where inquiries into controversial planned projects are concerned, and the public is in fact squeezed out of decision-making. Comments of the public are denied throughout the process as coming too early only to be denied again later with the argument

that they should have been applied in the previous processes and that the project has in fact been given its final shape.

The Defender is concerned about the often casual approach of public administration bodies to the protection of open landscape and even farmland near large settlements. In this respect, the Defender criticises the **permitting of industrial parks** on the highest quality soil or chaotic, unpremeditated, ad hoc construction of new satellite communities, which are often artificially implanted in countryside settlements with specifically stabilised landscape, cultural and social settings. It is obvious that in such cases the protection of farmland and the landscape tends to get sidetracked. Unfortunately investors mostly ignore "brownfield" sites, arguing that the latter fail to meet the requirements for conflict-free implementation of their plans. However, if it is easier and cheaper to build on "Greenfield" sites for the investors, it should be specifically the public administration bodies that channel them in the desirable direction. The Defender points out that failure to observe legal procedures as early as in the preparation of the planned project brings an *ex post* problem-solving style, at a point where it is no longer possible to impartially assess and uncover many aspects (typically the impossibility of assessing different scenarios of the planned project's location). Other negative phenomena criticised by the Defender include the "undervaluation" of a planned project in a territory or division of the project and having it permitted "part by part". In some cases, impact assessment procedures are circumvented in these manners, thus clouding the public's picture of the actual impact on the territory.

In his work, the Defender also repeatedly encounters complaints criticising the procedure of authorities in the application of **mining legislation**. The conclusions and findings gained by the Defender in handling such complaints are described in more detail in section IV.

Complaint Ref. No.: 1234/2004/VOP/VBG

If a conflict of interests must be settled in order to permit mining, the mining authority must correctly evaluate the substance of such a conflict. Where access communication to the mining area is concerned, it is clear that the scope of use of the surface communication does not depend on the will of the owner of the land concerned, but instead on the structural and technical condition of the communication, the assessment of which is up to the highway administrative authorities.

A mining company addressed the Defender with a request for help in settling a conflict of interest pursuant to the Mining Act. Commencement of the mining of aggregate by the company depends on removal of the conflict of interest (potential threat to premises and interests protected by the law as a result of mining). A conflict of interest is seen by the mining authorities in the absence of a corresponding access communication to the mining area. The surface communication intended to serve the traffic of heavy machinery removing the exploited aggregate from the mining area is situated on the land of the municipality, which as the owner obstructs the use of its local road.

The Defender concluded in his inquiry that the mining authorities incorrectly defined where they found conflict of interest in the case concerned. In the Defender's opinion, permission of mining operations is not obstructed by disagreement of the owner of the land, which is simultaneously used as a local communication, with the use of the communication and passage over its land, but instead the fact that the surface communication concerned is not adequate for the expected load accompanying the mining of aggregate – it is a non-consolidated communication, in fact a field track. The necessary structural modifications to the communication depend on the consent of the communication's owner, and the mining company has not received consent from the municipality as yet.

The Defender holds the view that the municipality cannot appeal to the exercise of ownership title in relation to a plot of land being a surface communication and from such a position express disagreement with the use of the surface communication or operation on it. It is necessary to take into account that in the case concerned, the mining area will not be accessed via the plot of land, but instead via the surface communication, even though both are in fact the same (given the absence of consolidated surface of the communication) – the communication represents a specific quality of the plot of land concerned. The subsequent use of the communication will neither affect nor threaten the owner of the plot of land, but instead the owner of the surface communication, even though the two are a single entity. If a surface communication has been established in accordance with the will of the owner of the land, the owner cannot prevent its general use by virtue of a unilateral declaration. In this particular

instance the private rights of the owner of the land are restricted by the public institute of general use of surface communication, and hence everyone may use the surface communication free of charge in the usual manner and for the purposes it is intended for. Only the so-called structural and technical condition of the communication, or as the case may be, its pavement, may break the aforementioned generally applicable principle. Such a condition represents a restriction on the general use and the user of the communication is obliged to adapt operation (use) of the communication accordingly. Traffic on surface communications may also be restricted (mostly by virtue of various traffic prohibitions) on the basis of a defined local or temporary arrangement pursuant to the Act on Surface Communications Traffic.

Attempting to eliminate a conflict of interest, the complainant failed to achieve the agreement anticipated by the Mining Act with the authority in charge of the protection of premises and interests (the highway administrative authority supervising observance of the generally determined obligation to adapt use of surface communications to their structural and technical condition) and with the municipality as the owner of the local communication. In the situation concerned the Defender recommended to the complainant to address the Ministry of Industry and Trade with an application for settling the conflict of interest. The Ministry should assess the conflict of interest after discussing it with the Ministry of the Environment and the Czech Mining Authority in co-operation with the other central state administration bodies, taking also account the statement of the Regional Authority.

The Air, Chemical Substances, Wastes and Packaging

Complainants address the Defender with complaints concerning **air pollution**, primarily due to worrying about their health. They complained about the operation of sources of air pollution in their neighbourhood without a proper assessment of the environmental impact. The Defender often ascertains in his inquiries into such cases that the source of air pollution is operated after expiry of the period of permitted test operation intended to evaluate impact on the surroundings and to set the terms of permanent operation. However the operation is not halted after expiry of the set period and the source continues to be operated without the relevant permission, often for several years, even if an adverse environmental impact is ascertained. Simultaneously the relevant permission processes take place, which leads the public administration bodies to be reluctant to apply the instruments entrusted to them by the law against the operator of the source of air pollution. The Defender emphatically warns against such procedure and demands of public administration bodies in his inquiries that they promptly intervene against operations without permission.

The Defender conducted an inquiry in the matter of initiation of an amendment of Act No. 353/1999 Coll. on the Prevention of Serious Accidents in connection with the potential safety risks ensuing from the operation of indoor arenas and requested statements of the Chief Public Health Officer , the Minister of the Environment and the Minister for Regional Development. The risk factor in such premises is **ammonia**, i.e. a toxic substance hazardous to life, **as refrigerant**. The Defender requested the co-operation of an expert in toxic accidents in the matter. The expert provided an assessment of the safety risks of indoor arena operation in the Czech Republic. The expert report suggests that the safety risks are not negligible and they are not adequately assessed in indoor arena restorations where there is no pressure on investors to use two-circuit refrigeration systems with a lower volume of ammonia.

The Defender accepted a proposal to also acquaint the Minister of Industry and Trade, the Minister of the Interior (the Fire Brigade) and the Minister of Labour and Social Affairs in addition to the Minister of the Environment, the Minister for Regional Development and the Chief Public Health Officer, with the statements of the addressed central bodies of state administration and asking the Prime Minister for co-ordination of the discussions concerned. The discussion should result in a guidance document for administrative authorities. The Defender finds the drawing up of such a document to be desirable given the safety risks of the aforementioned operations that are not subject to assessment pursuant to the Act on the Prevention of Serious Accidents.

The Defender has also encountered the issue of **waste dumps created in the past on private plots of land**. The dumps were often established at the time of co-operative management of farmland, and some of them are residues of failed associated production. The Defender encountered a case where there was an order to remove an illegal dump, but the administrative authorities failed to claim the imposed obligation and enforcement of compliance with the obligation became subject to the statute of limitations. In addition the liable entity went into bankruptcy. In this respect the Defender welcomes the attitude of the court, which in this particular instance denied approval of the resolution on the distribution of assets unless the

administrator of the bankruptcy assets meets the obligation to remove the waste. Yet there are other cases suggesting that many dumps that have begun to burden those operating them were established or failed to be removed as a result of insufficient work of administrative authorities, including reviewing compliance with decisions issued. In this respect, the Defender draws the attention of the administrative authorities to the need for conscientious exercise of public administration and consistent claiming of imposed obligations.

Complaint Ref. No.: 272/2006/VOP/JPL

The Act on Clean Air Protection has the nature of a special regulation in relation to the Act on Environmental Impact Assessment. A clean air protection authority cannot issue permission to operate an air pollution source subject to the impact assessment process without a previous environmental impact assessment.

The result of proceedings for permitting operation of a source of air pollution that have not been finally closed is not a reference for a preliminary ruling on ceasing the operation of the source that lacks the appropriate permission.

The Z. citizens association addressed the Defender, pointing out the adverse effects of the cataphoretic coating plant in Dašice, in particular the odour from the operation, noise from handling and transportation, dust, vibrations and transport-related burdening of the area, and contested the previous procedures of the authorities that had allowed the operation. In the complaint, the association pointed out that an environmental impact assessment had not been carried out. After inquiring into the complaint, the Defender agreed with the complainant in that the lacking assessment of the environmental impact of the coating plant’s operation was fundamental maladministration in the authorities’ procedure. Although the above-mentioned maladministration is attributable to the Dašice Planning Authority, the inquiry into the complaint revealed that the Pardubice District Authority and subsequently the Regional Authority of the Pardubice Region had encountered the issue of the aforementioned operation before, although without taking any steps regarding the shortcoming; the regional authority as the clean air protection authority had even issued immediate permissions for operation of a source of air pollution, i.e. the coating plant.

The Defender also criticised the procedure of the Minister of the Environment in reviewing a decision outside appellate proceedings, which had removed the right to remedy upon a change of a final decision from the parties to the proceedings, and particularly the complainant.

The Defender also ascertained inactivity of the Czech Environmental Inspectorate (hereinafter the CEI) in deciding on halting operation of the coating plant as a major source of air pollution. The CEI had opened proceedings on halting operation of the source, but it suspended the proceedings after learning that proceedings on permitting test operation were in progress, stating that the aforementioned proceedings were a reference for a preliminary ruling with respect to the proceedings on halting operation of the source. Such an assumption by the CEI was wrong; in addition the Inspectorate pre-empted a decision of the clean air protection authority, which is uncertain in terms of the time it will be issued and whether and when it will comes into legal force.

The case also suggests a lack of links in the exercise of public administration where the administrative authorities and their sections are unwilling to take a comprehensive look beyond their specific field of expertise. As a result, permissions for operating sources of pollution are repeatedly issued without carrying out an environmental impact assessment.

Final permission for test operation of the air pollution source was issued during the inquiry, including technology for the removal of odorous substances, and a plan for reducing emissions from the operation was approved. The test operation was subject to a limited period of time. The missing environmental impact assessment will be delivered upon the approval of the project for use. The authorities were requested to monitor observance of the terms of permission of the test operation, including the deadline set for the test operation and the emission reduction plan.

2.16 Protection of the Rights of Children, Adolescents and the Family

In 2006, 182 complaints dealing with other areas in the Defender's mandate were received.

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

Most of the cases where the Defender opened an inquiry and subsequently ascertained maladministration, concerned **inactivity of the authorities for the social and legal protection of children** consisting in failure to open administrative proceedings and insufficient social work with the family given the seriousness of the case concerned.

On the contrary, in some cases the Defender found maladministration where the authority for social and legal protection of children (hereinafter ASLPC) intervened in the family to an extent disproportionate to the actual situation in the family. Such interventions mostly consisted in **filing a motion to the court for issuing a preliminary injunction,** which lacked substantiation through verified and complete information on the family concerned and in some cases resulted in removal of children from families and their placement in children's homes. Earlier in one such inquiry (in 2002) the Defender recommended to the parents to address the Constitutional Court . The parents partly succeeded with the complaint. The court annulled the judgment on the removal of parental responsibility with respect to the two youngest children and stated inadmissibility of the division of siblings. Then the parents addressed the European Court of Human Rights on their own where they once again succeeded with their complaint in the past year. The European Court stated among other things "the possibility of placing a child in an environment more convenient for its upbringing cannot in itself justify its forcible removal from the biological parents". Already at that time the Defender labelled the procedure of the authorities as contravening the child's interests if the ASLPC fails to work with the family in such a way as to ensure elimination of the shortcomings for which the child has been placed in institutional care and if it fails to contribute to returning the child to the family. If after ordering a preliminary injunction on placement of a child in an infant home or institutional care the conditions in the family change in such a manner that the return of the child is possible, the ASLPC is obliged to file a motion for annulment of the preliminary injunction. The Defender is also critical of the procedure of the ASLPC if it rates the parents as incapable of caring for their children and focuses merely on providing a foster family or divides siblings with a view to their "easier placement".

There is a persisting issue of **disallowing contact of children with their parent or parents by persons to whom the child's custody has been awarded by a court**. The Defender is convinced that if the ASLPC fully dedicates itself to such cases from the very beginning without underestimating seriousness of such conduct, if it alerts the manipulating person of the illegality and consequences of manipulation of the child and properly informs the custody court, in a majority of cases the conduct of the manipulating parent or another person caring for the child improves and the child's right to contact with both parents is respected.

The Defender also encountered **failure to respect the right of children placed in foster care to contact with their parents**. The Defender pointed out that the view of foster care should change. Foster parents often regard their role as a lower degree of adoption, based on which they disagree with the children's contact with the parents. Foster care should therefore be understood in accordance with the legal regulation as an institute where parental responsibility remains with the parents unless the court has decided otherwise. Thus the foster parents are always obliged to respect the children's right to contact with the parents. It is not up to the foster parents' good will as to whether or not they allow contact between the parents and the children. The court should determine the scope of foster care in its decision-making. In a majority of cases this consists in the foster parents' right to the upbringing of the entrusted child. It should be borne in mind that foster care may be temporary. It should only last until the parent is capable of bringing up his or her child on his or her own, or alternatively until the child is an adult. Regular and as frequent as possible contact, not only with the parents but also with the siblings, is important for the child. The ASLPCs are responsible for professional guidance of foster parents and they should therefore be helpful also with respect to communication between the biological and the foster family regarding contact with the child, thus contributing to assurance of the child's right to contact with the biological family.

Enforcement of a court's decision by removal of the child is an extreme means of ensuring placement of the child in a person's custody, which is also used in cases of obstructed contact or for enforcement of a decision on returning a child who has been abducted abroad by one of the parents. These are emotionally very extreme situations where the responsible

person often denies, even forcibly, physical release of the child. The problem consists primarily in a lack of professional qualification of court executors, poor co-operation with the personnel of the authority of social and legal protection of children as well as in disputes about who is in charge of the physical removal of the child. Following repeated alerts from the Defender, the Ministry of Justice in liaison with the Ministry of Labour and Social Affairs began to draw up a new instruction jointly for courts and authorities for the social and legal protection of children. The new instruction, which is due to be completed soon, should in short replace the existing instruction, which no longer meets the needs of the authorities concerned. It should clearly define specific forms of co-operation of court executors and social workers participating in decision enforcement and take preferential account of the child's interest as a major human rights dimension of the issue.

In the previous Annual Report, the Defender criticised the procedure of ASLPCs that obstruct parents or their legal representatives **in studying the file documentation kept by the ASLPC and making copies**. The issue has partly diminished upon the amendment of the Act on Social and Legal Protection of Children. The amendment, initiated by the Defender, expressly enables the parent having parental responsibility for the child's upbringing or another person responsible for the child's upbringing or their representatives authorised by virtue of a power of attorney study such file documentations and make extracts or copies of the file documentation or its parts for consideration.

Complaint Ref. No.: 437/2006/VOP/KP

If court proceedings are in progress on a motion for removing parental responsibility, the ASLPC continues to be obliged to co-operate with the parent concerned. The same holds true if parental responsibility has been removed, because it is not an irrevocable provision.

Based on a complaint of the mother of minor M. J., the Defender dealt with the procedure of the ASLPC at the Frenštát pod Radhoštěm Municipal Authority, which denied help to the complainant in a situation where the father into whose custody the child had been awarded thwarted his contact with the mother. The ASLPC substantiated its procedure by claiming that it was not obliged to provide help to the mother in a situation where the father had filed a motion for removal of parental responsibility from the mother. After inquiring into the matter, the Defender stated maladministration by the ASLPC consisting in its inactivity as it denied any co-operation or even communication with the mother. The ASLPC failed to contribute to communication between the child's parents for the purpose of resolving the conflict regarding the mother's contact with the child, and it even discouraged the father from attempting to be positive towards the mother. The ASLPC also erred in supporting the motion for removal of parental responsibility from the mother.

As a result of the confrontation between the parents of M. J., the mother did not visit or contact her son for a relatively long time after he was given into the father's custody. Therefore the father, with the support of the ASLPC decided to file a motion for removal of parental responsibility from the mother. However, removal of parental responsibility is so serious an intervention in the fundamental rights of the child and the parent that it may only be admitted if it is necessary for the child and if strict legal terms are met. Pursuant to the Family Act, parental responsibility may be removed only if the parent concerned abuses or seriously neglects his or her parental responsibility (which may occur for example if the parent has perpetrated a deliberate crime against the child or exploited a child younger than 15 ears of age in committing a crime). In the case concerned nothing indicated abusing of her parental responsibility by the mother, and accumulation of two factors would be necessary for meeting the qualification of seriousness of neglect of parental responsibility, namely systematic nature and grossness. None of the aforementioned qualifications was met.

The ASLPC seriously erred when it denied any co-operation whatsoever with the mother after the father filed a motion for removal of her parental responsibility. It was as if it pre-empted the court's decision on the substance of the matter by its attitude although the matter had only reached the stage of filing a motion for opening proceedings, notwithstanding that even if a court decided on removal of the mother's parental responsibility, this would not relieve the ASLPC from its social work obligation. It is not an irrevocable provision (if the reasons for removal cease, parental responsibility may be reinstated). In cases where parental responsibility has been removed from one or both parents, appealing to the parents with a view to achieving reinstatement of parental responsibility is undoubtedly in the interest of the children.

Institutional Care

The Defender repeatedly encountered **failure to respect the rights of children placed in institutional care**, infant homes, children's homes and reformatories. This occurs in two ways, namely by placing restrictions on the visits of parents or other relatives (such as for two hours a week in the afternoon) or by prohibiting visits as a punishment for improper conduct or poor school results. The most extensive possible personal contacts with the child's parents should be maintained within a positive approach to work with the family of a child placed in an infant home or children's home. Determining an extensive visit regime is one of the possibilities available. It is desirable that time limitations on visits do not thwart maintenance of emotional and family bonds between the placed children and their parents. Although fulfilling the biological and material needs of the child, infant homes and children's homes are never capable of substituting for the family in terms of creating identity, life prospects and a favourable psychological development.

The Defender labelled the so-called **placing of children under a regime and punishing them for every violation of a set regime** as a serious shortcoming in children's home practice. Instead of behaving better based on recognition gained through education, children regulate their conduct to avoid punishment. From the perspective of education, it is inadmissible to excessively insist on observance of a strict daily schedule and regime by children placed in children's homes. This may suppress an essential characteristic of human personality, i.e. the ability to live as a free individual, responsible for his/her conduct.

The Defender finds a procedure contravening the law in that an **ASLPC fails to visit a child placed in institutional care**, in spite of being obliged to do so by virtue of the Act on Social and Legal Protection of Children. The Defender repeatedly ascertained that an ASLPC or a facility for the exercise of institutional care itself were inactive or misguided the parents by providing them with incorrect information and by not recommending or by prohibiting visits of the child at the initial stage of the child's placement in the institutional facility, appealing to the need to give the child room to adapt to the new environment. Disaffection for the family or emotional deprivation often develops in the child or a motion is filed with the court to declare the parents uninterested in the child. The inactivity of the ASLPC consists in its failure to act in the interests of the child, failure to continue working with the child's family using individualised social work in the family, preference of the foster family to the biological parents, failure to visit the child in the institutional facility or making merely formal visits. An authority for the social and legal protection of children is obliged to monitor observance of the rights of the child in institutional care and regularly visit the child in the institutional facility to prevent its psychological deprivation. The purpose is to monitor the child's development, to assess whether the reasons for its staying in the institutional facility persist, and if possible, resolve its circumstances by returning it to the family or utilise one of the forms of foster family care.

Complaint Ref. No.: 5726/2006/VOP/IKČ

Differentiation of children into other than family groups in a children's home is inadmissible pursuant to Act No. 109/2002 Coll. on the Exercise of Institutional Care and Protective Care as amended. Neither the aforementioned act nor any other legal regulation authorise a children's home director to establish special preventive reformatory groups; no authorisation of the children's home director to adopt any such educational method is implied by Section 23 or any other provision of the Act on the Exercise of Institutional Care.

The Defender performed an inquiry on his own initiative into the Krásná Lípa children's home (hereinafter the CD) following information published in the Zámeček magazine, published with participation of children from children's homes, regarding the introduction of a system of preventive reformatory groups.

The inquiry ascertained a fundamental maladministration in categorising the children placed in the home into what was called reformatory groups A to E depending on the behaviour and school results in the preceding month. A system of rewards and punishments valid over the whole next month (applicable generally after a child was placed in a group) was attached to the categorisation. Yet categorisation of children in children's homes into other than family groups is not possible pursuant to Act No. 109/2002 Coll. on the Exercise of Institutional Care. Thus the personal regime of a child placed in groups C to E interfered with the child's fundamental rights (e.g. the right to have contact with the parents, or the right to relaxation and leisure time) over the whole month.

The Defender also stated that such a rating system only results in a situation where the children choose to behave properly not because they have acknowledged and adopted the underlying values, but in order to proceed to a higher reformatory group accompanied by more privileges. An individualised approach to children is suppressed as a result of the rating system.

The Defender declared misuse of the introduced system of reformatory groups for coercion of children as well as the use of the lower (i.e. worse) reformatory groups and the possibility of placement in them as a deterrent for the children, accentuation of their belonging to a group and impossibility of emancipation from it to be unacceptable and entirely incompatible with the basic principles of the work of education professionals; such procedure is used by the education professionals for improper or alleged motivation of children to achieve better results.

The Defender also expressed concern about the exercise of a daily regime for the children placed in group E as ascertained in the Krásná Lípa CD. The daily or weekly regime in the Krásná Lípa CD, designed as the personnel's absolute supervision over the children's activities and displays, is justifiable solely if a specific danger and threat to the child emerge. Such a regime, if imposed on the children, only supports their passivity and manipulates them. Every child is permanently shaped by the strict exercise of the regime; it is taught to eat at a precise time, sleep for a defined period, play within a precisely delimited time. It makes no decisions and does no thinking; it only passively receives other people's decisions. However, respect for the child's needs and potential is the basic principle that should always stand highest when organising the initial years of its life. The requirement for respecting a defined regime and its enforcement from the position of the stronger entity in the Krásná Lípa CD is not in the interest of the children placed in the home and is unacceptable.

The Defender closed the inquiry pursuant to Section 18 (1) of the Public Defender of Rights Act as amended and called on the director of the Krásná Lípa CD to adopt remedial measures. The director of the institutional facility subsequently informed the Defender that the order introducing the system of preventive reformatory groups had been suspended.

2.17 The Work of the Police of the Czech Republic

In 2006, 59 complaints dealing with this issue were received.

The number and structure of the complaints registered in this area have remained constant. Some filings against the Police of the Czech Republic were made in the area of foreigner-related affairs and offences.

Inquiries on the Defender's own initiative involved the following: conduct of the officers at the Karlín Department of the Police in Prague, searching for a person and identification of a corpse found abroad and the planned procedure of the Police involving mass taking of biological samples of prisoners serving sentences for deliberate crimes (the latter case is described below).

In the legislative process concerning the Police, the Defender finds a positive aspect in the stipulation of the competence of the Police in dealing with **domestic violence**. This took place by virtue of Act No. 135/2006 Coll., which amends certain acts on protection against domestic violence.

Complaint Ref. No.: 5497/2006/VOP/DU

The applicable Act on the Police of the Czech Republic does not allow the Police to carry out mass taking of biological samples from imprisoned individuals for DNA analysis for future identification of potential perpetrators of crimes if the personal data enabling the future identification can be obtained in another manner.

In November 2006, the Defender opened an inquiry on his own initiative into the planned procedure of the Police consisting in a mass taking of biological material (using buccal swabs) for the DNA analysis of individuals serving prison sentences for deliberate crimes. Fingerprints were also to be taken from the individuals concerned.

The Defender learned from the representatives of the Police Presidium and the General Directorate of the Prison Service that the aforementioned sample taking was planned for December 2 and December 3, 2006. The samples were to be taken from approximately 13 to 14 thousand individuals. The sample taking was to be performed by the bodies of the Police in prison facilities of the Prison Service on the basis of Section 42e (1) of Act No. 283/1991 Coll.

on the Police of the Czech Republic as amended by Act No. 321/2006 Coll. The objective of the Police was to obtain data for a future identification of potential perpetrators of crimes.

The biological samples and fingerprints were to be taken from all individuals convicted of deliberate crimes, i.e. including financial crimes. The aforementioned procedure was to be applied against individuals serving sentences, although the Police had never done so against individuals on remand; however the provision concerned towards the latter had been stipulated already by virtue of amendment No. 60/2001 Coll.

The Defender examined the content of Section 42e (1) of the Act on Police of the Czech Republic and began to doubt the legitimacy and legality of the intended sample taking. The interpretation by the Police goes beyond the text of the law, according to the Defender. However, according to the Constitution and the Charter, the state is authorised to act only within the boundaries of the law. The Defender presented his opinion to the Chief of Police and called on him to reassess the planned procedure.

In response to the Defender's opinion, the Chief of Police expressed confidence about the authorisation of the Police to carry out the intended taking of biological samples, but he postponed the sample taking indefinitely and informed the Defender that the scope of the authorisation of the Police would be reassessed.

2.18 The Work of the Prison Service of the Czech Republic

In 2006, 214 complaints dealing with this issue were received.

The number of complaints has been rising for a long time. Traditionally, the most frequent were requests for **transfer to another prison** or disagreement with dismissal of a request for transfer. As before, most complainants were requesting to be transferred to Moravia, because given the distribution of prisons in the territory of the Czech Republic, a substantial number of inmates from Moravia are placed in Bohemian prisons. However, as opposed to the previous years, the Prison Service is already in the process of preparing a comprehensive system for assessing requests for transfer within the newly introduced prison information system, which would enable responding to the current changes in the numbers of inmates in individual prisons and transfer inmates more effectively for example by exchanging inmates between prisons. A certain improvement is expectable with the establishment of a new prison in Moravia, in Rapotice (currently a branch of the Brno Remand Prison), which is to commence full operation (about 600 inmates) in 2007 and where convicts have been placed since September 2006.

Complaints regarding healthcare provided to prisoners and persons in custody were very frequent in 2006. Inmates complained especially about a failure to carry out special medical examinations requested by them or failure to provide the needed medication. Even after negotiations, the Prison Service continued to persist in a restrictive interpretation of the legal provisions treating the issue of studying medical records by patients; on the other hand the Defender is already provided with access to the records within inquiries, including the making of copies. As already suggested, no agreement was reached between the Defender and the Prison Service on the issue of to what extent the records could be studied, copies of them made, etc. by the patients. A clear resolution of the aforementioned issue was prevented by the presidential veto of an amendment of Act No. 20/1966 Coll. on Care of People's Health. In the Defender's opinion, such procedure of the prison doctors continues to reduce the already low confidence in the quality of their work among inmates.

Other complaints dealt with by the Defender related to various issues connected with **life in prisons**. These may be illustrated for example on problems of bullying by fellow prisoners and Prison Service officers (the number of complaints pointing out this issue increased in comparison with the preceding years), failure to provide a suitable diet, lack of work for inmates, employment and remuneration issues, or insufficient educational and therapeutic work with inmates; certain problems are due to the obsolete architecture of prison buildings and joint lodging. However, the actual conditions under which the Prison Service operates should also be mentioned. The Prison Service too is included in a scheme aimed at downsizing public administration personnel. In a situation where the prison capacity is exhausted and the number of prisoners keeps rising, increased demands are placed on every Prison Service employee in terms of surveillance as well as the work of specialised staff – psychologists, tutors, etc. Even now, the insufficient numbers of these personnel preclude effective educational and therapeutic work with inmates in many prisons. The Defender believes that attention should be paid to a general criminal policy of the state that would result in a decrease in the number of inmates

and that the number of specialised personnel should increase. The system of administering complaints of imprisoned persons by the prison service bodies is also worth considering, because inmates often lack confidence in such bodies and they do not regard their decision-making as objective and impartial.

Complaint Ref. No.: 4017/2004/VOP/VK

By its procedure, the prison must not prevent the exercise of the right to contract marriage, which is expressly mentioned, for example, in the Convention for the Protection of Human Rights and Fundamental Freedoms. It may only refuse organisation of the ceremony in its premises. Any such decision should only result from the principles for the exercise of custody or imprisonment.

Following a complaint by I. S., a Moldavian national currently in expatriation custody, the Defender opened an inquiry into the procedure of the Brno Remand Prison, which had dismissed the aforementioned person's request to be married in the prison premises. Through his inquiry, the Defender ascertained maladministration in the matter as the Brno Remand Prison had dismissed the person's request for reasons that fail to correspond with and far exceed the principles of the exercise of custody. In deciding on the matter, the Brno Remand Prison had "thought two moves ahead", led by an attempt to prevent the aforementioned person from being granted asylum to reunite his family, because at the time concerned the partner he wished to marry was applying for asylum in the Czech Republic together with their two children.

The Defender condemned such reasoning, pointing out that by its procedure, the prison must not prevent the exercise of the right to contract marriage, which is expressly mentioned, for example, in the Convention for the Protection of Human Rights and Fundamental Freedoms (art. 12), because marriage may also be contracted via a representative. In the case concerned the Brno Remand Prison could only refuse to provide the service of allowing organisation of the ceremony on its premises. However, it should have assessed compliance of its decision in terms of the principles of the exercise of custody, in particular from the perspective of preserving internal order and safety, while avoiding any other views that did not pertain to the prison and that are decided on by other bodies (the relevant registry office regarding the marriage ceremony and the Ministry of the Interior regarding the granting of asylum).

The Defender recommended that I. S. be allowed to marry in the premises of the Brno Remand Prison provided that the terms resulting from the Registry Act are met, and the General Director of the Prison Service complied with the recommendation after agreement with the director of the Brno Remand Prison.

2.19 Work of the Foreign Police

In 2006, 61 complaints dealing with this issue were received.

Complaints regarding problems with entry to the Czech Republic were repeatedly dealt with, in particular with regard to the method of deciding on the granting or denial of visas for residence in the Czech Republic and the related application practice, which shows a certain severity, rigidity, strictness, unreasonableness, etc. i.e. approaches not very compatible with the principles of good administration. The **Residence problems** of foreigners in the Czech Republic are connected with residence as such, i.e. the residence permit or prolongation thereof on the one hand, and other aspects of a foreigner's everyday life on the other hand (e.g. education, business or healthcare). Regarding the aforementioned traditional residence problems, in particular the Defender's initiative in connection with the low standard of conduct at the Foreign Police offices must be mentioned. This applies mainly to the Olšanská Street Foreign Police office in Prague, which was moved to more suitable premises in Koněvova street in the autumn of 2006. This, along with a new style of work (to some extent similar to that of a post office or a bank), should contribute to meeting the requirements for contact with foreigners that have many times been complained about as missing (transparency, responsiveness, accountability, timeliness, etc.). Among the other system-related matters dealt with by the Defender as part of the agenda concerned in 2006, it is worth mentioning the annulment of data on the reported residence of a foreigner in the Czech Republic, which should be regulated by future legislation so that an individual (usually a Czech citizen) who gives consent to accommodating a foreigner may also annul such consent. According to the findings of the Defender to date, the bodies of the Foreign Police have not responded to notifications from such individuals (usually the owner of real estate or a person authorised to use it),

claiming that the place of residence was mandatory data in the records of the Foreign Police and any change in it could only be made if the foreigner concerned applied for it in an official change reporting form.

In terms of the other aspects of foreigners' life, the problem of the relatively high number of foreigners who addressed the Defender regarding the **unequal access of foreigners** from so-called third countries (outside the EU) **to education** is worth mentioning. These are not provided with a certain level of education (e.g. primary art schools) and school services. According to the Defender, in the case concerned there is no objective and reasonable justification of the different treatment that occurred in the Czech legal environment after the adoption of the Schools Act (No. 561/2004 Coll.), and in this respect discrimination on the basis of nationality seems to be the case. The Defender therefore intends to consistently monitor the procedure of the Ministry of Education, Youth and Sports, which was tasked with solving the situation by Resolution of the Government No. 1029 of August 30, 2006.

Some of the complaints pertained to **leaving the Czech Republic**, namely administrative deportation and in particular determination of the period during which a foreigner cannot be allowed to enter the Czech Republic. In this respect, although no major errors are traceable here, it should be noted that the bodies of the Foreign Police were entrusted with considerable power of administrative discretion regarding the time over which a foreigner cannot be allowed to enter the Czech Republic. It is necessary to make sure that the entrusted administrative discretion is not misused and the period is not set at the legal maximum.

Following an evaluation of complaints regarding the **granting of visas**, there may be substantiated doubt as to whether the new Code of Administrative Procedure (Act No. 500/2004 Coll.) has been consistently incorporated in the work of the Police and embassies. The Act stipulates the obligation of co-operation of the administrative body in the removal of defects or other shortcomings of a filing including the provision of a reasonable deadline for their elimination (Section 37 (3)). However, in a number of cases the Defender encountered a situation again in 2006 where an application for a visa was dismissed without the applicant being called on to eliminate shortcomings in the application, often in cases where such defects could be eliminated very easily and quickly. The aforementioned situation results in pointless burdening of both the foreigners applying for a new visa and the public bodies. This negates the principles of procedural economy that should be incorporated in the work of all administrative bodies, including the Police and embassies in the processing of visas. Cases were registered in proceedings on the granting of a long-term visa where an application was accepted by the embassy as meeting all the prerequisites set by the law and subsequently dismissed by the Police due to failing to contain an annex or due to being incorrectly filled in. However, the embassy should not accept for processing any application lacking some of the prerequisites. The Police and the embassies should fundamentally review and mutually harmonise the methodological instructions regulating the processing of visas.

Given the frequent amendments of the legal regulation in the area of public administration concerned, the Defender finds it necessary to point out some lasting negative trends and legislative procedures consisting in the suppression of generality while on the contrary, creation of a very detailed and casuistic legal regulation, which is often a direct response to practical issues. Such instrumental law creation and the associated naïve legislative optimism – faith in an all-solving law and an attempt at capturing any and all issues by express legal regulation – results in creation of law to a template and ultimately in a static legal condition, rigid application and resignation from invention, creativity and courage to decide with a view of the individual circumstances of the case. In particular the main immigration legislation, the Act on the Residence of Foreigners, is regarded by the Defender as very extensive, complex, tangled and pointlessly casuistic. It should be replaced by a new regulation built on the requirement of generality as a fundamental attribute of the law and on the application of principles qualified to answer every individual question rather than on the creation of a detailed legal regulation resulting in the negative phenomena outlined above.

Complaint Ref. No.: 1069/2005/VOP/VK and others

Although there is no legal title to the granting of visa, it should be noted that the decision-making of the relevant administrative bodies – the Police or the embassies of the Czech Republic – cannot be arbitrary. Arbitrariness in the decision-making of administrative bodies would clearly contradict the nature of public administration as an activity lesser than and governed by the law. It is therefore fully proper to ask the reasons for denying a visa, advice on such reasons with reference

to the specific provisions of the law and specify them in more detail with regard to the potential impossibility of removing the obstacle resulting in the given denial.

D. F. K., a Chinese national with permanent residence permitted for the Czech Republic since 2004, addressed the Defender in connection with repeated dismissal of an application for the granting of visa for a residence exceeding 90 days for his wife D. X. M., a Chinese national. Based on an inquiry, the Defender stated that the reasons for denying the visa had in principle existed for all the five applications of the individual concerned.

However, after an overall evaluation of the case, the Defender concluded that due to unawareness of the reasons for denial of the visa and repeated filing of the applications for its granting, the decision had only been being postponed to a later point and hence pointless costs had arisen for both the foreigner concerned and the relevant public administration bodies. In addition, the consequences of the denial of the visas had been disproportionate to the reasons for which the visas had not been granted, particularly with regard to the fact that the person's husband lived in the Czech Republic and had even been granted the right of permanent residence, together with their son, F. W. The Defender also stated that with regard to the impact on the family life and private life of Mrs D. X. M. as well as with regard to the seriousness of the reasons resulting in the repeated denial of visas, the approach of the authorities concerned, i.e. the embassy of the Czech Republic in Beijing, the Prague Foreign Police Department and the Olomouc Foreign Police Department, could be regarded as very strict, restrictive and contravening the principles of good administration, in particular the principle of responsiveness, which among other things means that the authority always tries to help the person concerned in achieving the pursued objective unless the law or the justified interest of another person would obstruct this.

The reasons resulting in the repeated denial of the visas were not irremovable in the case concerned and in this respect the applicant could and should have been informed of them and advised in such a way that next time her application for the granting of visa could be complied with, which finally happened following the results of the inquiry by the Defender.

2.20 Proceedings on Asylum and the Integration of Foreigners

In 2006, 11 complaints dealing with this issue were received.

In 2006, the Defender encountered delays in the asylum procedure, the issue of making of copies of administrative files kept by the Ministry of the Interior and observance of deadlines for issuing decisions in the case that the foreigner concerned had filed an application for asylum (more recently for international protection) in the Prague-Ruzyně transit area. He also dealt with the conditions of sojourn at the new Prague-Ruzyně Airport Reception Centre and the latter's branch in Velké Přílepy as well as the situation and possibilities of those granted asylum in their integration into Czech society. He also dealt with the issue of health insurance of asylum seekers and foreigners with a visa for permission to remain where a problem stemming from a dispute between the Ministry of the Interior and the Ministry of Health remained unresolved until the introduction of a legal regulation and the creation of fictitious permanent residence for the purposes of public health insurance for the above categories of foreigners.

Complaint Ref. No.: 5077/2006/VOP/VK

An extraordinary situation in a reception centre, e.g. repeated breakouts from the facility, may be responded to by adopting certain restrictive measures. Such measures must be capable of eliminating recurrence of the extraordinary event; they must be proportionate and not go beyond the rights and obligations of the lodged asylum seekers.

Following the repeatedly presented news in the media on the breakout of Egyptian immigrants from the Velké Přílepy Reception Centre operated as a branch of the Prague-Ruzyně International Airport Reception Centre, the Defender decided to open an inquiry on his own initiative with the aim of mapping the very specific situation in the Centre, ascertaining and analysing the reasons for and the technique of the breakout, and in particular assessing the conditions under which foreigners are confined in the Centre.

After the inquiry, the Defender stated that in spite of his considerable reservations concerning the present system of sojourn, the extraordinary situations that have led to such an arrangement must not be overlooked. Such situations may recur and pose a risk to the safety and health of both the foreigners sojourned in the Centre and the personnel. The regime

introduced in the Velké Přílepy Reception Centre is undoubtedly a restrictive one, although substantiated to a considerable extent and appropriate to what happened in the Centre. The regime in asylum facilities is regulated very little by the law and although it is clear that the conditions of sojourn in the Velké Přílepy Reception Centre are the strictest of all asylum facilities, it is impossible to claim that the so-called hard core legal provisions, which expressly define the rights and obligations of the foreigners sojourned in the facility, are breached there. In addition to this, it is an extraordinary and clearly temporary regime where gradual relaxation until complete dissolution can be anticipated.

In the situation concerned, the Defender decided to close his inquiry with a reservation or in fact condition that the sojourn regime in the Velké Přílepy Reception Centre is a limited and temporary deviation, which will be removed as soon as the conditions re-stabilise.

2.21 Acquisition of Citizenship

In 2006, 12 complaints dealing with this issue were received.

Once again in 2006, some of the complaints concerning the citizenship agenda pertained to proceedings on the granting of Czech citizenship. Although there is no legal title to being granted Czech citizenship, an applicant for the granting of Czech citizenship may legitimately bring an action against a decision which denied the granting of citizenship if they insist that their rights as a party to the proceedings were violated in the proceedings on the application (see resolution of the Supreme Administrative Court 6 A 25/2002-42, www.nssoud.cz). In other words, it was stated that a decision of the Ministry of the Interior on denial of citizenship is reviewable within the administrative court system, which means that courts may annul decisions of the Ministry of the Interior that lack sufficient substantiation, *inter alia* from the perspective of national security. This should ensure the overcoming of the existing approach of the Ministry of the Interior, which the Defender dealt with in the past years.

As in previous years, in 2006 the Defender again dealt with complaints pertaining to the extension of deadlines for furnishing a document using which an applicant for the granting of Czech citizenship is to prove loss of existing citizenship. It results from the Defender's findings that the Ministry of the Interior reduced its earlier practice where it was often extending the deadlines for furnishing a document proving loss of existing citizenship for several years.

Complaint Ref. No.: 389/2006/VOP/MV

If an applicant for the granting of Czech citizenship maintains that they are unable to furnish a document on the loss of their existing citizenship, the Ministry of the Interior should review the inability to furnish the document and consider a waiver. If there is a clear lack of co-operation by the authorities of the state of which the applicant is a citizen, the Ministry should not further extend the deadline for furnishing the document and should decide on the application for granting citizenship.

Mr A. S., a citizen of the state of A., had applied at the Ministry of the Interior of the Czech Republic for the granting of citizenship of the Czech Republic in 2001. The Ministry had suspended the administrative proceedings on the application for a period of 18 months and the applicant had been called on to obtain a document on the loss of existing citizenship or a document that the citizenship of the state of A. could only be lost after he acquires Czech citizenship at his own request, or to furnish confirmation that the loss of his existing citizenship would occur automatically at the moment another citizenship is granted to him at his own request. Since he had been unable to obtain the required document from the authorities of his home state, the deadline for obtaining the document had been several times extended for him.

In January 2005 (after amendment of Act No. 40/1993 Coll. on the Acquisition and Loss of Czech Citizenship by virtue of Act No. 357/2003 Coll.), Mr A. S. requested the Ministry of the Interior to waive the above-mentioned condition for the granting of citizenship as the law allowed. The Ministry of the Interior had then officially addressed the embassy of the state of A. with a request for advise as to what had obstructed the processing of the application of Mr A. S. for release from the affiliation with the state and further extended the applicant's deadline for obtaining the document. Mr A. S. addressed the Defender. The Defender advised the Ministry of the Interior of his opinion that if the proceedings on the granting of citizenship are suspended for the purpose of obtaining a document proving loss of the existing citizenship while there being a deadline, the deadline should no longer be extended and the Ministry should either

comply with the application for the granting of citizenship or dismiss it, because the condition of proving loss of the existing citizenship has not been met.

The Ministry of the Interior subsequently advised the Defender that the application of Mr A. S. was handled in favour of the applicant after an unsuccessful attempt at ascertaining the statement of the state of A. on the procedure in handling applications of its citizens for the loss of citizenship. Mr A. S. took the citizen's oath and received the deed on the granting of Czech citizenship.

2.22 The Work of Registry Offices

In 2006, 20 complaints dealing with this issue were received.

In 2006, the Defender dealt with complaints pertaining, for example, to marrying foreigners, namely the possibility of waiving the furnishing of a certificate of legal capacity to contract marriage by foreigners or the obligation to furnish a confirmation on the legitimacy of staying in the Czech Republic for EU citizens. Several complaints pertained to the special registry in Brno. Again in 2006, the Defender encountered a case where paternity had been determined differently in the Czech Republic and in a foreign state. The Defender has already mentioned the different rules for determining paternity in different states and the possible solutions in the Czech Republic in the 2004 Annual Report. Another issue, which pertains to more than just the special registry, lies in the inscription of surnames of foreign citizens with the feminine derivative. It follows from judgment of the Supreme Administrative Court 4 As 52/2004-77 of December 28, 2005 (www.nssoud.cz) that the registry office should only transcribe the surname of a foreign citizen from the foreign registry document.

Since June 2006, the Office of the Public Defender of Rights has received several complaints about the **lengthy processing of documents for children – Czech citizens recently born abroad**. These complaints usually also refer to other associated issues, in particular health insurance. A child, a Czech citizen born abroad, initially has only one document of its existence – the foreign birth certificate. A certificate of citizenship issued by the Municipal Authority of the Prague 1 Area is required for the issuing of the Czech birth certificate by the special registry of the Municipal Authority of the Brno-Centre Area, in which the personal number is specified. The child is registered in the information system of the Citizens Register only after a personal number is assigned and the birth certificate from the special registry issued. The reason for the unreasonable length of the processing of Czech documents for children born abroad is not so much on the part of the special registry in Brno but rather due to the situation at the Municipal Authority of the Prague 1 Area. Following complaints, the Defender addressed the secretary of the aforementioned authority who informed him that an additional three designated positions had been established in the Department of Citizenship and Registries through a resolution of the council of the Municipal Area. However, the newly established positions had not been fully staffed in spite of repeated selection procedures. The Defender outlined the possibility of a more fundamental systematic solution through the transfer of the competence to issue certificates of citizenship from the Prague 1 Municipal Authority to regional authorities according to the permanent residence of the child's mother. However, such a solution requires a change in the established approach of the authorities to the interpretation of several laws, and it must therefore be preceded by negotiations and agreement of several ministries.

In 2006, the Defender again encountered conduct of the registry office not meeting the principles of good administration towards parents who wanted to make a **consensus declaration for the determination of paternity**.

Complaint Ref. No.: 3205/2006/VOP/MV

The principles of good administration are met if the registry office instructs the person making the consensus declaration for the determination of paternity in the conditions (status of the mother, requirements for legal acts pursuant to the Civil Code) under which the act may be deemed as valid. However, the registry office cannot refuse to draw up a protocol on the consensus declaration for the determination of paternity.

Mr M. S. filed a complaint to the Defender against the procedure of the Veselí nad Moravou Municipal Authority. He had been advised at another authority where he had previously applied for registration in the special registry that the birth certificate of his son, born in 2004 in the USA, provided with an apostil and officially translated, had not been

sufficient for registration of the birth in the special registry. M. S. had therefore decided to accelerate the issuing of the Czech documents for the son by making a consensus declaration for the determination of paternity together with the child's mother in the Czech Republic. However, the officer at the Veselí nad Moravou Registry Office had refused to accept the joint declaration, because the mother of the child, US citizen N. C., failed to prove her single status. Since there is no identity document specifying marital status in the USA, the parents of the child had proposed that they would make an affirmation with participation of a sworn interpreter that the mother of the child was single. The officer had rejected the proposal and she had also refused to confirm in writing that she was unwilling to accept the declaration and to state on what grounds she had done so.

Except for a description of the conclusion of the oral negotiations, the statement of the authority received by the Defender was identical with what M. S. had specified in his complaint. According to the authority, M. S. had not requested the drawing up of any protocol, but instead the issuing of a confirmation of his declaration of being the father of the child. The Defender evaluated the statement of the authority as inherently contradictory. It was clear from it that M. S. and N. C. had insisted on making the consensus declaration even after the explanation provided by the officer.

It is impossible to derive from the legal regulation that a registry office may accept acts of consensus declaration only after verifying that all the requirements of the legal order for their validity have been met. The legal regulation of the so-called second presumption of paternity determination does not set any rules for the procedure of the registry office. If the authority before which the consensus declaration for the determination of paternity is made has doubts about the validity of such a legal act, it shall advise the registry office competent to register the birth to which it sends the protocol. The registry office competent to register the birth may deny registration of paternity by virtue of an administrative decision.

It should be noted for the sake of completeness that the statement of the authority also contained legal considerations the Defender accepted. In the case concerned, M. S. should have first filed an application for issuing a certificate of the child's citizenship to the Municipal Authority of the Prague 1 Area and then an application for registration of the child' birth in the special registry kept by the Municipal Authority of the Brno-Centre Area. Only if the Municipal Authority of the Prague 1 Area denied acknowledgement of paternity based on the child's birth certificate issued in the USA, could M. S. and N. C. address the embassy of the USA in the Czech Republic with an application for issuing a confirmation of the mother's status and make a consensus declaration for the determination of paternity before a registry office. Before the registration in the special registry, the validity of an act towards the determination of paternity or, as the case may be, validity and prerequisites of the document by which the applicant proves such an act, is assessed by the authority competent to issue the certificate of Czech citizenship.

2.23 Administrative Activities (Citizens Register, Identity Cards, Passports)

In 2006, 67 complaints dealing with this issue were received.

The number of complaints concerning issues of **permanent residence** data is likely to continue to increase. Given the provision of Section 10 (2) of the Act on the Citizens Register, according to which no title to premises or right with respect to an owner of real estate result from the registration of a citizen for permanent residence, administrative courts do not regard decisions on annulment of permanent residence data as decisions constituting, amending, annulling or bindingly determining rights or obligations, and they therefore do not review them (e.g. judgment of the Supreme Administrative Court 6As 33/2003-81 of February 23, 2005, www.nssoud.cz). It cannot be ruled out however that the grand chamber of the Supreme Administrative Court will adopt a different statement on the existing practice of administrative courts.

Expiry of the right to use real estate is one of the conditions for annulment of permanent residence data. It happens in practice that an administrative body refuses to deal with this issue and dismisses an application for annulment of permanent residence data or suspends the proceedings, claiming that the expiry of the right of use has not been proved in the proceedings, and it indirectly calls on the party to address a general court with a determination action. However, courts in civil law proceedings refuse to deal with such matters, because urgent legal interest must be proved for the filing of a determination action; otherwise the

action is dismissed by the court. The courts have several times set out that urgent legal interest does not exist in such a case given the provision of Section 10 (2) of the Act on Citizens Register.

In proceedings on the annulment of permanent residence data, the Defender also criticised the formal approach of administrative bodies, which do not make any effort to ascertain the actual residence of a citizen whose permanent residence data is to be annulled and refer only to the data provided by those filing the motion. However, in such proceedings the interests of the person filing the motion are mostly contradictory to the interest of the party to the proceedings whose permanent residence data is being annulled. The Defender regards it as alarming that there is an increasing number of citizens registered for residence at a so-called official address, often without being aware of this.

In addition to the procedural issues connected with the administrative proceedings on the annulment of permanent residence data, the Defender also dealt with the interpretation of certain substantive provisions of the Act on the Citizens Register on the basis of citizens' complaints. According to the Act on Citizens Register, the mother's place of permanent residence is the place of permanent residence of a citizen at the time of his or her birth unless the parents agree otherwise. The Ministry of the Interior interpreted the aforementioned provision so that the Act defines permanent residence as the citizen's residence, i.e. that the provision concerned of the Act cannot be applied in the case of a child who is a Czech citizen born to a foreign mother with a permitted permanent residence in the Czech Republic. Thus according to the Ministry, the address of the residence registration office competent for the place of the child's birth is the first place of residence of such child after its birth. The Defender argues from systematic interpretation of the law and refers also to the fact that the term "permanent residence" is used in various meanings and contexts in the Act on the Citizens Register, i.e. not only as residence of a Czech citizen.

The Defender also dealt with the issue of the practical application of the provision of Section 10 (8) of the Act on the Citizens Register. According to the aforementioned provision, an owner of premises or a defined part thereof has the right to be informed of the data of individuals registered for permanent residence in the premises or a defined part thereof. As the Defender ascertained, the aforementioned provision of the Act is not practicable, because permanent residence is registered for the house number rather than a specific part of the premises. The registration office is therefore unable to properly respond to the request of the owner of a flat by searching for the persons registered for residence in a defined part of the premises. The existing situation is expected to change with the adoption of an amendment to the Act on the Citizens Register. The draft amendment anticipates that the right to be informed of the registered persons' data will be given only to the owner of the entire premises. The Defender does not regard the amendment as ideal, because the ownership of real estate has undergone a transformation enabling ownership of a defined part of premises, and hence the citizens register should respond to this. The land register keeps records of ownership of a specific residential unit. However, the register of regional identification of addresses and real estate prepared by the former Ministry of Informatics, today incorporated under the Ministry of the Interior, does not anticipate identification of addresses also by the residential unit number.

In terms of the issuing of **identity cards**, the Defender again repeatedly encountered a situation in 2006 where the authorities illegitimately requested furnishing a registry document with the citizen's application for issuing an identity card in spite of the fact that this was not necessary pursuant to the Act on Identity Cards.

In his 2005 Annual Report, the Defender gave information on two inquiries he opened on his own initiative on the basis of individual complaints from citizens. In the first case he pointed to the lack of legal definition of authorities' procedure with respect to the validity of passports after a change of surname by virtue of marriage. The second issue involved the situation of citizens having lost their identity card or whose identity card had been stolen. The Ministry of the Interior responded positively to both initiatives. The amendment (parliamentary draft 1068 from the 2002 to 2006 electoral term), which, in addition to other changes, brought changes in the Act on Travel Documents and the Act on Identity Cards initiated by the Defender, was passed after a complicated legislative development and declared as Act No. 136/2006 Coll. Since September 1, 2006, the authorities of municipalities with extended competence have been issuing identity cards without the machine-readable zone valid for a period of one month at the citizen's request on the grounds of a loss, theft, damage or destruction of an identity card.

Again in 2006 the Ministry of the Interior did not accept the Defender's recommendation to enable registration of municipalities that have ceased to exist as a place of birth in identity cards as non-mandatory data. Citizens unhappy with the existing regulation continued to address the Defender in the aforementioned matter in 2006. The Ministry also rejected as unsubstantiated the Defender's proposal for changing the designation of the form "Application for Issuing an Identity Card". The Defender argues that designation as an "application" fails to correspond to the actual nature of the proceedings for the issuing of an identity card. If a citizen has permanent residence in the Czech Republic, he or she is obliged to have an identity card. A citizen who fails to apply for the issue of an identity card, document the data given in their "application" or receive a completed identity card, commits an offence. If a citizen fails to furnish documents required for the issuing of a passport, his or her application is dismissed.

Complaint Ref. No.: 3812/2005/VOP/MV

An administrative body deciding on a motion for annulment of permanent residence data is obliged to perform an official inquiry to ascertain the actual residence of the citizen whose permanent residence data is to be annulled.

In making a municipal waste payment, Mr D. M. had learned that his permanent residence data had been annulled without his being aware of it. He had filed an appeal against the decision of the Brno Municipal Office, which had been dismissed by the Regional Authority as late, because D. M. had been represented by a guardian in hearings before the body of first instance. The Ministry of the Interior had also refused to deal with a complaint for review.

The Defender ascertained that the Department of Administrative Activities of the Brno Municipal Office had not performed any inquiry to ascertain the actual residence of Mr D. M. and had appointed an employee of the Municipal Office working in the same department that decided in the matter, as his guardian. However, when he had been away from the place of his permanent residence, Mr D. M. had always specified his contact address in official dealings.

The Defender also reproached the administrative bodies for failing to comment on the objection of D. M. that his wife T. M., in spite of being instructed by the administrative body in her obligation of true evidence and non-concealing, had withheld the actual place of D. M.'s residence in the proceedings on annulment of the permanent residence data in spite of being aware of the data.

The Defender found as a conduct not meeting the principles of good administration in the absence of official inquiry to ascertain the actual residence of the citizen whose permanent residence data were to be annulled, as well as in the appointment of a guardian from among the employees of the same authority and the same organisational unit thereof that carried out the actual proceedings. Although formally acting in accordance with the Code of Administrative Procedure in the case concerned, by its procedure the Department of Administrative Activities of the Brno Municipal Office had in effect violated the right of the party to the proceedings to a fair procedure. The Regional Authority and the Ministry had also dealt only with the formal aspects of the matter in their replies to Mr. D. M. They had not answered questions D. M. had legitimately asked in his filings and thus their conclusions were not convincing.

2.24 Public Court Administration

In 2006, 347 complaints dealing with this issue were received.

Compared with previous years, **delivery** caused much more frequent delays in court proceedings. Lack of judges or court personnel was a much less common argument justifying delays, probably because such objections are not viable towards a complainant with a guaranteed right to a fair trial. By the subject matter of the court proceedings, bankruptcy proceedings are usually accompanied by delays (mainly if the bankrupt is a private individual and in bankruptcies where a large number of creditors exist); delays also exist in distraint proceedings, proceedings on the settlement of joint property of spouses, deciding in matters concerning the care for minors and inheritance proceedings. Citizens often find reasons for delays on the part of certified experts, administrators of bankruptcy assets, court executors and notaries.

A discussion **meeting on selected issues of public court administration** was held in the Office of the Public Defender of Rights on November 9, 2006, with participation of the presiding judges of regional courts and other high courts, the Ministry of Justice and the Association of Judges representatives. The meeting summarised the Defender's findings and

discussed primarily the handling of complaints against delays in court proceedings (their causes and potential remedies), along with the issue of complaints against the unethical conduct of judges, issues associated with the work of experts and interpreters, and paying attention to the Ministry's supervision over distraints.

The Defender recommended public administration bodies use their **competence towards certified experts** more actively (even in the current version of the Act on Certified Experts and Interpreters, which no longer meets society's requirements). The Defender also opened the idea of copying sections of files where this would not imperil the decision-making work of judges at all. He also criticised the established system of taking files outside the court building to be studied by the judge, on account of the risk of loss of the file or its parts. He also found that internships of judges at high courts take place rather randomly, according to the momentary needs of high courts and the wishes or willingness of judges. He therefore advised presiding judges of regional courts to proceed with the concept and use their management skills (primarily in association with their work schedule).

The Defender ascertained that a number of **complaints against court delays** were not properly categorised and registered as complaints pursuant to the Act on Courts and Judges (nor were they filed). Public administration bodies also often erred by evaluating a complaint as unsubstantiated, although they had ascertained delays in handling the complaint. They substantiated this by claiming that the delays had had a reason outside of their control and that they were unable to ensure any remedy. The Defender disagreed with such a procedure. As a result, distorted statistical data on public court administration exist. The Defender also pointed out the risks of a merely formal investigation of a complaint with an excuse about the independence of decision-making. According to the Defender, an intervention in decision-making can always be assessed as a real situation and *ad hoc*. Nothing obstructs a consistent consideration of the substance of the case in handling a complaint. Everyone is authorised to make a complaint against court delays and they cannot be turned down with reference to the need for them to be a participant.

In terms of remedial measures, the Defender believes that the bodies of public court administration should much more frequently apologise and should carry out inquiries into complaints in general more responsively and cogently, in accordance with the principles of good administration. The opening of a disciplinary procedure is also an option to be taken.

As in previous years, the Defender received complaints about improper conduct of court officials and court executors. There are not many such complaints, although the number has slightly increased and the content gained in significance. While the handling of complaints about improper conduct of court officials is an exercise of public administration, complaints about court executors are within the Defender's mandate insofar as they are dealt with by the Ministry of Justice within supervision work (otherwise it is more an area within professional self-government).

The Defender ascertained confusion of complaints about improper conduct of court officials (in terms of whether they are a complaint, a request for a disciplinary procedure, objection to prejudice, material comment on proceedings, or a request for a check or inspection). As a result of the wrong categorisation of complaints, the registration of complaints about improper conduct of court officials lacks in informational value. This is mainly a problem of the Ministry of Justice where the regime of handling complaints with objections against the conduct of a judge may split between the Department of Judicial Personnel Matters, Department of Complaints and Supervision, the Minister's Secretariat or the Internal Audit Department. The Defender ascertained an extensive bureaucracy and "departmentalism" in the handling of complaints by the Ministry, which causes late handling of complaints and a considerable unresponsiveness and lack of communication with the complainant (papers are often dealt with as mere requests for disciplinary proceedings, the matter is closed and the complainant is not advised of the result). This is not regarded as good administration by the Defender.

Insufficient ascertainment of the state of affairs in the handling of complaints about improper conduct of court officials in civil proceedings is another issue ascertained by the Defender (the other party is not heard, the legal representative or other persons are not heard; as a rule, only protocols, file, judge's statement and the complaint are referred to).

Ethical aspects should be evaluated more broadly in the Defender's opinion. Apart from the judge's conduct in the courtroom or in the decision-making itself, the life they lead (including private life) should not be omitted. Any conduct with a potential adverse impact on

justice should be considered in the handling of the complaint or even the disciplinary accountability of the judge should be evaluated.

The Defender recommended inclusion of judges' ethics in the trainings of judges, trainees as lawyers and other justice personnel. As with rhetoric, the topic should also receive attention at law faculties, in order to cultivate the culture and sophistication of legal demeanour in general.

Complaint Ref. No.: 2840/2006/VOP/ON

If a decision on returning children to the country where the family lived together the last time before abduction of the children by one of the parents is enforced after more than four years, the purpose and objective of the Hague Convention, which pursues a prompt introduction of the original quiet state of affairs for the subsequent deciding on the arrangement of relations to the children, is not fulfilled.

The interests of the children in healthy personal development are taken into account if social workers properly prepare the mother and the children for the proceedings, i.e. explain to them also the purpose and specific features of the decision-making, i.e. that arrangement of relations to the children are not decided upon in the situation concerned.

A non-divorced mother had travelled with her minor children (the citizens of both the Czech Republic and Argentina) in 2001 without the husband's consent from Buenos Aires in Argentina, where the whole family had lived for the last time, to the Czech Republic, the mother's place of origin. The father had petitioned the Czech courts for the return of his children to the place of usual residence. A final decision had been issued in February 2003. Subsequently the father had presented a motion for enforcement of the decision. The enforcement had taken place as late as the beginning of May 2006. This had taken over three years, in spite of the fact that an enforceable decision had existed.

The state cannot rid itself of its responsibility for ensuring prompt returning of an abducted child by referring to the unresponsive or negative attitude of a person involved. State bodies must ensure sufficient awareness of the children and, before enforcing the decision, enable the separated parent to have regular contact with the children. The children should be prepared for contact with the parent beforehand and all the involved parties should be provided with room for duly experiencing the contact, i.e. inter alia the right to privacy in meetings should be observed. Court proceedings, including enforcement, must take place promptly, ideally within six months of the motion.

The reasons for the lengthy hearing at the court consist of the following:

- *complexity of the case (foreign element – particularly in delivery, translations and relocation of the father for the purpose of enforcement of the decision, etc., expert reports, co-operation of state bodies and subject matter of the proceedings, which shows an increased degree of emotionality);*
- *obstructive conduct of the children's mother (she acted arbitrarily and in contempt of the court, failed to voluntarily observe the court's decisions and thwarted enforcement);*
- *the procedure of the social worker who, failing to sufficiently understand the substance of international law (where she failed to consistently recognise that the matter did not involve deciding on the arrangement of the relation to the children, but instead returning abducted children), was unable to properly instruct the mother and regulate her conduct as a 'conflict' custodian;*
- *hesitant procedure of the court (the enforceability of the decision was extended in connection with the motion for reopening of the proceedings; proceedings on the reopening of the proceedings were suspended with reference to a filed extraordinary appeal) particularly in the enforcement proceedings. Within a distraint, the court ordered a hearing in which it called on the liable person to act, and a fine was twice imposed on the latter);*
- *irresponsible or typically obstructive conduct of the mother's legal representative insofar as he filed an extraordinary appeal in the matter that was inadmissible under Czech law;*
- *insufficient organisation of work at the Supreme Court (the file was with the court for about 13 months; decision should have been denied and the matter could be prioritised outside the regular work schedule given the subject matter of the proceedings and the interests of the children);*

- *legal framework of decision-making on the returning of abducted children enabling lengthier proceedings than would be reasonable to expect given the interests of the children (the mother made use of remedies and other motions, the court called on the liable party in the distraint proceedings to perform and imposed fines on her).*

Thus the Defender ascertained that the social workers had failed to properly explain the purpose of the proceedings pursuant to the Hague Convention to the children, the Ministry of Labour and Social Affairs had failed to ensure qualified exercise of public administration, the court proceedings (namely the distraint and proceedings before the Supreme Court) had been accompanied by delays, the supervision of the Ministry of Justice over the length of the proceedings and work of the public administration bodies had been insufficient and formal, and the Ministry of Justice and the Ministry of Labour and Social Affairs are late in drawing up an up-to-date joint instruction regulating the procedure in the enforcement of court decisions.

The Defender proposed to the authorities concerned that:

1. *a workshop on Application of the Hague Convention on the Civil Aspects of International Child Abduction be organised in the Office of the Public Defender of Rights in the fourth quarter of 2006 for the purpose of deepening the qualification and fulfilment of methodological assistance;*
2. *the up-to-date instruction for authorities and the court concerning the procedure in the enforcement of court decisions on the upbringing of minors be completed;*
3. *the Supreme Court change the schedule of work so as to eliminate delays in extraordinary appeal proceedings;*
4. *the Czech procedural legislation be amended so that it meets international obligations and EU law where the timeliness of decision-making is concerned, or alternatively that extraordinary remedies that obstruct operative decision-making be ruled out in decision-making pursuant to the Hague convention;*
5. *the Minister of Justice detail the form of supervision work by the Ministry (in particular as far as the scope and intensity are concerned) or set criteria to assist with such work and inform the Defender thereof;*
6. *the Minister of Labour and Social Affairs detail the form of methodological assistance with the regional authorities and co-operation with the Office for International Legal Protection of Children.*

The proposed measures have already been implemented. On top of the above recommendations of the ombudsman, an agreement was made during the workshop that an advisory form would be created for citizens who have children (or contract marriage) with a foreigner, containing basic advice and references to NGOs that could provide citizens with basic help abroad. The Ministry of Justice has already prepared such a leaflet.

Complaint Ref. No.: 421/2006/VOP/DL

The hearing of custody matters concerning the upbringing and subsistence of minors must be prioritised. The European Court of Human Rights imposes an obligation of particularly quick and diligent handling of such matters, which should also be taken into account in the handling of complaints about delays in such proceedings on the part of the bodies of public court administration supervising smoothness of the proceedings. If reasons outside their control have been found in the matter (e.g. if the court grapples with a lack of courtrooms) that have made hearing and deciding the matter without delays impossible, it should be conclusively explained to the complainant in a reply about the delays in the proceedings for what reasons this was impossible and in particular what steps the bodies of public court administration are taking to avoid delays within their control. The complaint should not have been immediately evaluated as unsubstantiated.

The Defender dealt with the complaint of ing. J. S. about delays in appellate proceedings concerning the District Court in Olomouc, the Olomouc branch of the Regional Court in Ostrava, and the Ministry of Justice. Although the judgment of the District Court in Olomouc had been issued already in early April 2005, the court of appeal had been inactive in the matter. The complainant had been advised on his query in January 2006 about the progress in handling the matter that the file had not even been assigned to a judge; the deputy presiding judge of the regional court had found his complaint to be unsubstantiated without any explanation and the beginning of the second quarter of 2006 had seemed to be the nearest term for ordering appellate hearings. After inquiring into the matter, the Defender stated that he found a period

of at least 10 months without action in a matter, the hearing of which needed to be prioritised, as unreasonable. He also considered the manner of handling the complaint about delays to be unacceptable. The judge had not taken any steps or ordered any hearing in the matter from assignment of the file on June 23, 2005 to the end of her internship at the regional court on December 31, 2005. The Defender considers such delays to be unsubstantiated. In connection with the unreasonable length of the proceedings in the aforementioned custody matter, the Defender referred to the Report of the Ministry of Justice of the Czech Republic of March 2, 2006 (Ref. No.: 11/2006-KVZ-SP/1), for the period from July 1, to December 31, 2005, on the progress of handling complaints filed against the Czech Republic to the European Court of Human Rights. He also stated that he perceived the material and staff facilities of the Olomouc branch of the regional court as being very serious to alarming.

The Defender also found contravention of the principles of good administration in the procedure of the Ministry of Justice Department of Supervision and Complaints in the handling of the complaint. The Minister of Justice commented on the manner of handling the complaint by the bodies of public court administration – he identified with the Defender's opinion in the sense that if defects are found by the body of court administration within the handling of a complaint about delays pursuant to the Act on Courts and Judges in the smoothness of the procedure of the court, it is necessary to evaluate the complaint as substantiated (or partly substantiated) regardless of whether delays due to fault or delays given by reasons outside their control exist. The measure taken was that the Defender would acquaint the presiding judge of the Regional Court in Ostrava with the aforementioned statement and draw his attention to the fact that complaints about delays in proceedings pursuant to Act No. 6/2002 Coll. may be evaluated as unsubstantiated only in cases where no defects are ascertained in the smoothness of the court's procedure. The Defender found the measures taken sufficient.

2.25 Administration of Surface Communications

In 2006, 96 complaints dealing with this issue were received.

Compared with the previous years, the Defender registered an increased number of complaints concerning problems with **public access to purpose-built communications** in 2006. As in the past, he was addressed by citizens with requests for help with a situation where the owner of a thoroughfare had placed an obstacle restricting them in the use of the thoroughfare they had long been accustomed to using or entirely impeding such use. However, the Defender also received complaints from the owners of plots of land who must tolerate public use of the plots. Inquiring into such complaints, the Defender registered persisting unawareness among highway administrative authorities of the mandate and powers granted to them by Act No. 13/1997 Coll. on Surface Communications as amended. Planning authorities also repeatedly err as they permit projects without awareness of the local conditions and without requesting a statement from the highways administrative authorities on the nature of the plot of land concerned.

In response to the repeated findings on incorrect procedures of highway administrative authorities, the Defender is preparing a miscellany concerning purpose-built and local communications.

Complaint Ref. No.: 2551/2006/VOP/MB

A purpose-built communication cannot expire as a result of a change in the ownership of the plot of land on which it is situated. The new owner is obliged to respect use of the plot of land for communication purposes.

The Defender was addressed with a complaint by Mrs K. Š. who used for access to her garden a plot of land earlier owned by the municipality and recently acquired by another person. The complainant feared that the new owner could prevent her from using the plot of land. The Defender therefore contacted the Municipal Authority in Ledeč nad Sázavou as the competent highway administrative authority and requested it to express a statement on the nature of the plot of land concerned. He received a statement from the authority that the plot of land was a publicly accessible purpose-built communication.

On the basis of the aforementioned statement of the municipal authority, the complainant was advised by the Defender that given the nature of the plot of land, the owner could not decide to prevent her from using it. Should he do so, the complainant could seek remedy at the municipal authority as the competent highway administrative authority obliged to protect public access pursuant to the Act on Surface Communications.

Complaint Ref. No.: 877/2006/VOP/MB

A purpose-built communication originates from the law rather than on the basis of an administrative decision; nevertheless the Highway Administrative Authority is bindingly obliged to examine the issue of the nature of the plot of land.

Mr and Mrs R. approached the Defender, complaining about the placement of a sign with the name of the street on their real estate. However, the question as to whether the consolidated area in front of their house and the adjoining unconsolidated thoroughfare were a purpose-built communication proved to be the core of the issue.

Within the inquiry, the Defender studied the complainants' correspondence with the Municipal Authority of the Ostrava-Poruba Area and an inquiry on site was performed.

In the report on the inquiry, the Defender reproached the authority for maladministration consisting in the fact that the highway administrative authority had failed to adopt a statement to the issue of the nature of the plot of land, in spite of the fact that the complainants had repeatedly stated that it was a private, non-public plot of land.

2.26 Transport Administration Agenda

In 2006, 49 complaints dealing with this issue were received.

Complaints in the area of transport administration agenda include issues the citizens have to deal with in connection with the **registration of vehicles**, their import into the Czech Republic or in **obtaining driving licences**. In 2006, the Defender also focused his attention on the issue of the **import of older vehicles** into the Czech Republic.

Complaint Ref. No.: 3034/2005/VOP/MV

Unless the opposite is proved, a driving licence attests the data specified therein. An authority cannot decide that it will not grant a licence to an applicant for replacement of a driving licence for driving a group of motor vehicles designated in the driving licence but recorded neither in the register of drivers nor in the test protocol; instead it must declare by virtue of a declaratory decision whether the licence was or was not granted to the applicant in the past.

Mr I. Z. filed an application for replacement of the driving licence with the Znojmo Municipal Authority. However, after obtaining the new driving licence he found that the latter did not include the same range of driving licence groups. The Municipal Authority advised him on his oral query that group A (motorcycles) was not recorded in his driver's card. Mr I. Z. claims that the driving licence for driving motor vehicles of the group concerned was granted to him in 1978 together with the licence for driving group T vehicles. Mr I. Z. subsequently requested a written statement from the authority. Unsatisfied with the answer of the head of the Transport Department, he addressed the Defender.

In his statement for the Defender, the head of the Transport Department of the Znojmo Municipal Authority argued by referring to the relevant provisions of the Act on Surface Communications Traffic, the Act on Obtaining and Improving the Qualification to Drive Motor Vehicles and the provisions of the currently applicable implementing regulations. The Defender did not agree with such arguments. The authority had erred when issuing the new driving licence to Mr I. Z. only on the basis of the data in the official records after ascertaining a contradiction between the data in the application and in the existing driving licence and that in the official records. The authority had made impossible the use of the licence for Mr I. Z. without deciding in administrative proceedings that the data on the licence for driving group A motor vehicles in the existing driving licence was untrue.

The Znojmo Municipal Authority decided, after the deadline for statement elapsed in vain and the Defender requested adoption of a measure, by not granting the driving licence for group A to Mr I. Z. The Defender therefore informed the Regional Authority of his statement. Independently of this, Mr I. Z. appealed against the decision. The Regional Authority annulled the decision of the body of first instance in the appellate proceedings and returned the matter to the body of first instance for a new hearing and decision. The Znojmo Municipal Authority then followed the legal opinion of the body of appeal. Mr I. Z. obtained a new driving licence authorising him to drive also group A motor vehicles as a substitute document for the removed driving licence. The Municipal authority suspended the proceedings on the application for replacement of the driving licence in order to achieve a preliminary ruling as to whether the

driving licence for group A had been granted to Mr I. Z. in 1978. Only now did the authority examine the regulations on the granting of a driving licence in 1978 and notified the criminal prosecution authorities of a suspicion of the crime of falsification and alteration of a public deed. An expert examination carried out by the criminal prosecution authorities did not prove or disprove authenticity of the relevant stamp in the driving licence. The administrative body failed to document that the group A driving licence had not been granted to Mr I. Z. It subsequently issued a decision complying with the application of Mr I. Z. for replacement of the driving licence in full, i.e. including the section for the A group motor vehicles, which had not been recorded in the official records.

Complaint Ref. No.: 4491/2005/VOP/MON

The administrative bodies erred when they kept traffic offences older than three years and offences for which a fine below CZK 2,000 was imposed in the register of drivers.

The Defender inquired into the complaint of Mr K. D. regarding, inter alia, the legitimacy of keeping records of traffic offences registered in the driver's card. The complainant referred to the fact that one of the offence files had contained his driver's card with a record of 18 offences since 1991. The complainant contested the fact that the administrative body mentioned the figure in the substantiation of its decision by virtue of which it found the complainant guilty, namely in connection with considerations regarding the amount of the fine. The complainant pointed out that pursuant to the applicable legal regulation, only offences not older than three years and penalised by an amount of at least CZK 2,000 may be kept in the records.

The inquiry examined whether through Act No. 361/2000 Coll. on Surface Communications Traffic coming into effect as of July 1, 2001, an obligation arose for the then district authorities to which the traffic agenda passed at the time, to erase data exceeding the scope of the above-mentioned provision from the driver's card.

According to the statement of the Přerov Municipal Authority, data entered in the offence records before the Act on Surface Communications Traffic came into effect have not been removed from record keeping because the Act failed to regulate such removal. Thus the entries included in the offence records before the Act came into effect gradually passed from the Police to district authorities and then to authorities of municipalities with extended competence. The authority argued that public power may only be exercised in cases and within boundaries stipulated by the law, and it was therefore not authorised to remove entries from records without legal empowerment.

The Office for Personal Data Protection informed the Defender that the provision of Section 5 (1) (e) of Act No. 101/2000 Coll. on Personal Data Protection imposes an obligation on the personal data administrator to keep personal data only for a period necessary for the purpose of its processing. In the case concerned the purpose results from the Act on Surface Communications Traffic.

The Defender adopted a statement according to which after Act No. 361/2000 Coll. came into effect as of July 1, 2001, the administrative authorities should have erased offences exceeding the scope newly stipulated by the law, i.e. older than three years or even more recent if sanctioned by an amount below CZK 2,000. In the Defender's opinion, the provision of Section 119 (2) (g) of the Act on Surface Communications Traffic did not allow any other procedure. The Act did not contain any provision that would expressly impose an obligation to erase data not corresponding to the definition of the provision concerned, but there was no necessity for any such provision in the Act. The provision concerned determines entirely clearly as to what data on traffic offences may be contained in the register of drivers. Data exceeding the aforementioned scope should not be contained in the register of drivers. An opposite situation fails to meet the Act on Surface Communications Traffic and the Act on Personal Data Protection.

Deputy Prime Minister and Minister of Transport Milan Šimonovský informed the Defender that an amendment to the Act on Surface Communications Traffic was coming into effect on July 1, 2006, bringing a change in that records of all traffic offences would further be kept without limitation. He further stated that in the creation of the new programme for keeping the register, the Ministry of Transport requested that during the migration of data to the new application, all offence records older than three years from the date of the offence be automatically erased regardless of whether they were committed after Act No. 361/2000 Coll. came into effect or before.

2.27 Public Administration in the Area of Electronic Communications

In 2006, 60 complaints dealing with this issue were received.

In 2006, the Defender again dealt with the issue of **non-requested forwarding to a premium rate line on the Internet**. The Defender found maladministration in the work of the Czech Telecommunications Office primarily in failing to deal with the circumstances under which the forwarding occurred and whether the telecommunications service was duly provided by the so-called alternative operator who mostly operated the premium rate line. The Czech Telecommunications Office failed to deal with such circumstances; it based its approach on the complaint handling practice of the then ČESKÝ TELECOM, which from its position did not deal with the alternative operator's service and confirmed the charged amounts.

The Defender (taking account of German court practice) proposed compensation for the aggrieved citizens as a remedial measure. The Czech Telecommunications Office admitted that the existing approach would change and that it would reflect the Defender's opinions in its further decision-making.

The representatives of the Czech Telecommunications Office promised that the aforementioned change in attitude would be reflected also in already decided cases, if the decisions made can be reviewed, i.e. in decisions not older than one year. In older decisions, unfortunately including the cases of the citizens on the basis of whose complaints the Defender dealt with the issue, grounds for applying any of the extraordinary remedy that could change the existing decision no longer exist (also as a result of the initial hardened attitude of the Czech Telecommunications Office).

Complaint Ref. No.: 2783/2005/VOP/MON

I. End users must have an opportunity to lodge a claim against a provided service of content or effectively raise objections against the conditions under which it was provided. Unfair competition or even criminal practices of the service providers should always be taken into account, particularly with regard to the considerable number of those affected by so-called fraudulent web diallers accessing premium rate services.

II. An individual cannot be denied justice by the state and it is an obligation of the state to settle potential mutual negative competence conflicts. The Czech Telecommunications Office and the Czech Business Inspectorate are obliged to ensure consumer protection in the electronic communications market. The possibility of filing an action with a court or a criminal complaint is not prejudiced thereby.

Mr M. R. complained about billing by ČESKÝ TELECOM for the provided telecommunications services. The amount billed was influenced by the fact that in some cases M. R. had been fraudulently connected to premium rate lines. The connection to the higher rate had taken place automatically, without the complainant having an opportunity to decide for such a service.

His complaint about the service had been dismissed by ČESKÝ TELECOM, with the argument that no administrative error or technical defect had occurred on the latter's part. The reply to the complaint fails to deal with a potential breach of the law by other entities having provided the telecommunications service to Mr M. R. The decision of the Czech Telecommunications Office (CTO) had confirmed the same conclusion – it also failed to deal with the other aspects of the issue (consumer protection, unfair competition, or validity of a legal act).

The CTO had argued that access to the service had not been provided by ČESKÝ TELECOM; the latter only provides connection to the Internet for the subscriber and sets a price for such a telephone connection (established via a premium rate number) given by the applicable price list for connection to the premium rate service. The application (the calling of a premium rate service) had taken place from the user's terminal equipment. According to the CTO, the user is responsible for the manner in which the equipment is used. ČESKÝ TELECOM is responsible for creating a transmission route from the network termination point (subscriber's telephone socket) to the point of interconnection with another network, according to the signals emitted by the subscriber's terminal telecommunications equipment. It is not authorised or obliged to check whether the provided service was, or was not, requested by the subscriber. On the basis of an agreement between the provider of the service of content and the telecommunications service provider, a payment is made based on the billing for such services

also for the demonstrable use of the service of content, which the telecommunications service provider further re-bills the content provider. The service of content cannot be associated with the telecommunications service, which is subject to the lodged claim, and the service of content can therefore be provided without any defects.

According to the Defender, access to the Internet via a premium rate line is a telecommunications service. It had to be provided in accordance with the approved general terms and the user had to have an opportunity to lodge a claim against it. The CTO was obliged to supervise regulation of the telecommunications market, including the protection of the users of telecommunications services. The Defender therefore disagreed with the objection of the Chairman of the CTO Council that the Czech Business Inspectorate was in charge of consumer protection and the CTO had no competence here. On the other hand, the Czech Business Inspectorate argued that telecommunications services did not fall within its competence, and hence consumer protection was also beyond it. The Defender viewed this as a negative competence conflict in the area concerned.

The conclusions of the CTO are dubious according to the Defender. On the one hand the CTO maintains that it cannot deal with services of content, because the latter are not telecommunications services (electronic communications services). On the other hand it accepts a payment for content within the billing for telecommunications services (where ČESKÝ TELECOM may restrict provision of services until the user pays), and thus in assessing objections, it decides (apart from payments for telecommunications services) on the payment for the provided content. The CTO stated that it was not authorised to deal with the provision of services of content, and it indeed does not deal with the circumstances of its provision when assessing objections, including whether the provider of content or another entity has applied unfair competition or even criminal practices. On the other hand it decides on the amount for the provided content – and confirms it. Thus end users are unable to lodge a claim against a provided service of content or effectively lodge claims against the conditions under which it was provided.

The Defender further criticised the decision of the CTO for failing to explain that the service had been provided by another entity; it failed to deal with the question as to whether the service provided by this entity was defective or not; the CTO resigned from its obligations as a market regulator, and failed to explain on what legal basis the payment for such a service is collected by ČESKÝ TELECOM. The Defender therefore proposed that the decision of the CTO should be annulled as illegal. However, the deadline for opening review proceedings had elapsed in the case concerned. The Defender petitioned the CTO to provide indemnification to the complainant equal to the difference between the tariffs, or alternatively moral redress. The Defender furthermore appealed to the CTO and the Czech Business Inspectorate to actively and effectively co-operate with each other. The state cannot deny justice to an individual and it is the obligation of public authorities to settle potential mutual negative competence conflicts.

The CTO finally accepted the Defender's arguments and stated that in the future it would take account of the manner in which the forwarding has occurred when assessing objections.

2.28 Administrative Sanctions

In 2006, 128 complaints dealing with this issue were received.

The composition of the complaints received by the Defender was similar to that in previous years. The Defender was most often addressed in connection with the procedure of administrative authorities in inquiring into and hearing offences against safety and the smooth flow of traffic on surface communications; another large group consists of offences against civil cohabitation and public order.

Changes in the Act on Offences adopted in connection with **the amendment of Act No. 361/2000 Coll. on Surface Communications Traffic** as amended seem to be one of the reasons behind the increase in the offence agenda compared with the preceding year. On the one hand fines for traffic offences were substantially tightened and on the other hand the amendment imposed new obligations on drivers. Some of the complaints sent to the Defender contained reservations about new legal regulation; in this context, reservations about the points system, the amount of fines, the toleration of exceeded speed limits, and the use of child seats are worthy of mention. Given that the law usually anticipates intervention by the Defender only when remedy is not achieved using the standard inspection mechanisms of public administration, the Defender is presently unable to fully evaluate the impact of the legislative amendments occurring in 2005 (including the new Code of Administrative Procedure)

on the application practice of administrative authorities, with just one exception – the issue of penalising people injured in a traffic accident caused by themselves. The Defender registered that fines of CZK 25,000 or more are imposed on such people, which he considers to be a wrong interpretation. The Defender is negotiating with the Ministry of Transport on behalf of those so affected.

In several cases complaints in this area concerned **domestic violence**. The Defender began a systematic monitoring of the approach of administrative authorities to the issue in 2005. In offence proceedings, violent acts between related persons are most often placed in the category of offences against civil cohabitation or alternatively offences against property. Although the offence proceedings in themselves cannot resolve the issue of domestic violence, they may in time draw attention to the fact that domestic violence exists and perhaps prevent its escalation. However, in practice administrative authorities tend to underestimate the issue and assess individual conflicts between related persons separately as separate offences. In practice, administrative bodies do not keep records of offence proceedings concerning notified acts showing the elements of domestic violence (interconnected with Police records), which could facilitate identification of the crimes of tormenting a person in a shared apartment or house pursuant to Section 215a of the Criminal Code and application of expulsion from a shared dwelling pursuant to Section 21a of the Act on the Police of the Czech Republic. The obligation of the victim – the related person – to cover the costs of the proceedings in the case that the accused is not punished as a result of a failure to prove the offence also seems to be a problematic issue under the existing legal regulation. Given that domestic violence usually occurs in the flat without participation of third persons, the offence proceedings often end in the aforementioned manner. Even if the accused is found guilty of committing the offence, the offence proceedings neither stop violence nor provide protection to the victims of domestic violence. The sanction imposed on the perpetrator of domestic violence may consist in admonition or imposition of a fine of up to CZK 3,000. Where there is a shared budget, the burden of the sanction is in effect borne also by the victim.

Complaint Ref. No.: 5443/2006/VOP/VBG

The conduct of an individual who causes a traffic accident in surface communications traffic by violating a special regulation, in which he or she injures only him- or herself, is not an offence pursuant to Section 22 (1) (h) of the Act on Offences.

Mr Z. J. addressed the Defender after being finally found guilty of an offence against the safety and smooth flow of traffic on surface communications pursuant to Section § 22 (1) (h) of the Act on Offences. In the wording of the Act, such an offence is committed by an individual who causes a traffic accident in traffic on surface communications, in which a person is killed or injured. 70-year-old Mr Z. J. had caused a traffic accident when driving a bicycle on the way to the Police in Otrokovice in order to notify them of a passenger car theft. He hit a passenger car driving in front of him. Mr Z. J. was the only person injured.

The Defender deems that the law was incorrectly interpreted in the case concerned where in the proceedings on appeal the Otrokovice Municipal Authority as well as the superior Regional Authority of the Zlín Region restricted themselves to grammatical interpretation, according to which the individual who has caused a traffic accident is also a "person". Hence pursuant to the quoted provision, it is also possible to penalise an individual who has caused a traffic accident in which he injured only himself, with a fine of CZK 25,000 to CZK 50,000, and where possible, also by being banned from driving for from one to two years. The conduct of the authorities failed to respect the principle of reasonableness as one of the principles of good administration. In accordance with the aforementioned principles, authorities should apply laws in a manner corresponding to the objective pursued by the legislature and not resulting in absurd consequences, as in the Defender's opinion was the case of Mr Z. J.

Using different interpretation methods, the Defender reached a conclusion that the high sanction imposed for the aforementioned offence represents a sanction against the perpetrator of an offence for having injured or killed someone other than himself (another person), on top of the actual violation of the road safety regulations. The damage to the perpetrator's health does not represent greater social hazard and does not justify imposing such a high sanction, because in such a case the law does not require proportionality between the imposed sanction and the actual guilt of the perpetrator of the offence (seriousness of the unlawful conduct). In the Defender's opinion, the outlined boundaries given by the phrasing of the merits of the offence should not prevent a logical interpretation – the possibility of attributing the meaning of "another person" to the term "person" applied in the legislation.

Given the different view of the Defender regarding the liability of Mr Z. J. for the traffic accident, the Defender addressed the Minister of Transport with a request for review proceedings.

2.29 Administration in the Employment Sector

In 2006, 85 complaints dealing with this issue were received.

In the area of the right to employment, a substantial portion of those addressing the Defender in 2006 complained about the decisions of labour offices on the rights and obligations of job seekers, in particular **penal exclusion from the jobseekers register** and the **granting of and the amount of unemployment benefit for jobseekers**. Inquiring into the complaints, the Defender concluded that many issues arising in this area could be prevented by sufficient communication between staff of labour offices and jobseekers.

Many complainants addressing the Defender had been excluded from the jobseekers register because they had once not turned up for a meeting with the intermediary. In several cases they were very active jobseekers penalised by exclusion from the jobseekers register for a generally understandable omission (missing a single meeting). This also results in the loss of entitlement to social welfare benefits and payment of health insurance premiums by the state. The excluded jobseekers find themselves outside the social network for a period of 6 months. Failing to report a change in permanent residence within 8 days has similar consequences to a missed meeting with the labour office. The Defender is attempting, in co-operation with the Ministry of Labour and Social Affairs, to lessen the unreasonably harsh provisions of the Act on Employment, the strict application of which goes in some cases against the sense and purpose of the law and against the exercise of the constitutional right to work, which includes the right to employment. The labour office currently does not have any possibility of "lessening the harshness of the law" or, in other words, assessing the specific omission of the jobseekers individually, because the law does not give it any room for administrative discretion. Compared with the original Act on Employment, there has been a significant shift of jobseekers' responsibility from culpable to non-culpable liability.

A numerous group of complaints addressing the Defender were against the **inactivity of the Ministry of Labour and Social Affairs as the body of appeal, which decides in administrative proceedings on appeals against decisions of labour offices on exclusion from jobseekers registers and the (non-) granting of unemployment benefits or the amount thereof**. Here the Defender is negotiating with the Ministry of Labour and Social Affairs on the adoption of personnel-related measures that would result in remedying the undesirable situation.

The Act on Employment was subject to several amendments in 2006, although only one of them markedly affected the rights and obligations of jobseekers: this was implemented by Act No. 382/2005 Coll. effective from January 1, 2006. The latter stipulated that the jobseeker is obliged to report the start of employment not later than the workday preceding the day arranged as the day of the start of employment and the jobseeker must document origination of the labour-law relationship within 8 calendar days. The Act on Employment had stipulated until December 31, 2005, that the jobseeker was obliged to report changes in matters decisive for inclusion in the jobseekers register not later than within 8 calendar days. January 1, 2006, also marked commencement of the possibility of including 6 months of systematic preparation for future occupation, i.e. studies, when ascertaining entitlement to unemployment benefit. The criteria of suitable employment were softened for jobseekers included in the register for over a year. The proving of the period of participation in pension insurance by jobseekers older than 50 for the purposes of setting the length of support was abandoned.

Complaint Ref. No.: 1662/2006/VOP/JH

The labour office cannot require a jobseeker to prove a substitute employment period – the period of caring for a child below 4 years of age – by virtue of a decision on the period of pension insurance, unless such an obligation is stipulated for the jobseeker by the Act on Employment. Administrative authorities exercise public administration as a service to the public and they are not authorised to burden the party to the proceedings with obligations outside of the law.

The Defender was addressed by Mr P. C., an Italian national permanently residing in the Czech Republic with his wife and child. Mr P. C. had been included in the jobseekers register and he had also applied for the granting of unemployment benefits. He had stated that he met

the condition of the 12-month substitute employment on the grounds of caring for a child below 4 years of age. He had supplied confirmation of the payment of parental allowance along with his application. The Břeclav Labour Office had referred the jobseeker to the relevant district social security administration in order to apply there for a decision on the period and extent of care for the purposes of pension insurance. The complainant had difficulty in communicating with the DSSA as the Foreign Police had not assigned a personal number to him. As a result he had been unable to obtain a decision of the DSSA on the period and extent of care and hence the unemployment benefits.

The Defender opened an inquiry into the procedure of the labour office and the Ministry of the Interior, as the Foreign Police fall within the latter's mandate. Within the inquiry, he also addressed the CSSA with a request for information about the manner of assessing the period of pension insurance – care for a child below 4 years of age – for a man. The Defender ascertained through his inquiry that the labour office had requested the proving of the period of pension insurance by virtue of a DSSA decision on the basis of an internal regulation issued by the Ministry of Labour and Social Affairs. The internal regulation had required for proving the substitute period of employment – care for a child below 4 years of age – a declaration on the period of care and the child's birth certificate for a women and a decision by the DSSA on the period and extent of care for men. The Defender labelled the aforementioned internal regulation and the ensuing practice as discriminatory, inter alia in connection with the recently issued finding of the Constitutional Court, which had annulled a part of the Act on Pension Insurance placing stricter requirements on men in proving the extent and period of care. In the Defender's opinion, different criteria for proving the substitute period of employment for women and men lack a reasonable and impartial justification. In other words there is a lack of proportionality between the objective of such a procedure and its means. The Defender stated that the labour office should refrain from the requirement for proving the period of care for a child below the age of four by virtue of a DSSA decision, because it could prove the qualification on its own without burdening the party with the obligation to seek a decision of another administrative authority in further proceedings that would furthermore be complicated by the difficulty for the party to the proceedings in obtaining the personal number. The Defender also advised the Ministry of Labour and Social Affairs of his statement on the latter's internal regulation and requested annulment of the regulation. In his inquiry he also ascertained inactivity of the Ministry of the Interior, which had been incapable of assigning a personal number to the complainant for a period of 17 months. The personal number was assigned only during the Defender's inquiry.

After receiving the report from the Defender, the Labour Office in Břeclav obliged Mr P. C., refrained from the requirement for proving the period of care by virtue of a DSSA decision and judged the matter on its own. The Ministry of Labour and Social Affairs accepted the Defender's opinion that the internal regulation regulating the proving of the substitute period of employment needed replacement by a new regulation and promised to send it to the Defender as soon as it is issued. The Ministry of the Interior admitted delays, although stating that they were to a considerable degree due to the technical processing of personal number endings. The Defender closed the inquiry into the case on the basis of the aforementioned information by appealing to the Ministry of the Interior to create as soon as possible an electronic register of personal numbers that would significantly accelerate the process of assigning personal numbers.

2.30 Inspection Procedures by Labour Inspectorates and Labour Offices

The complaints are significantly less numerous than those in the area of administration in the employment sector. The lower number of complaints concerning the inspection work by the labour inspectorates and labour offices is attributable to the fact that citizens are not aware as yet that inspection of the observance of legal regulations by employers is carried out by labour inspectorates, while labour offices perform inspections of hiring on contract, illegal work and protection of employees in the employer's insolvency.

In several cases the Defender inquired into the procedure of the inspection authorities in the labour and employment sector. Every such inquiry ascertained a certain **inconsistency of inspection authorities regarding the use of their powers, in particular the power to impose fines**. When ascertaining shortcomings, the relevant labour office or labour inspectorate had required measures for elimination of shortcomings, although it had not always inspected the elimination and failed to impose fines.

The Defender encountered certain reservations on the work of the newly established inspection authorities both by complainants addressing the Defender and from broader professional circles. He therefore proceeded to perform a comprehensive inquiry focusing on the "new competence" of the **labour inspectorate** bodies, i.e. inspection of observance of labour-law regulations. The inquiry has not been closed to date given the complexity of the issue.

In the area of **protection against discrimination**, the Defender also received complaints concerning the inspection competence of labour offices in the matter of discrimination against jobseekers by employers. In several cases this involved discriminatory advertisements containing an age limit as a qualification for hiring. The following conclusions can be drawn from the aforementioned facts:

1. citizens have very little information about where they can file complaints in the matter of discriminatory conduct of employers in the hiring of employees,
2. the sensitivity of employers about whether conduct is or is not discriminatory is very low,
3. greater awareness and enlightenment of employers and employees regarding discriminatory practices would undoubtedly be a contribution for society.

Complaint Ref. No.: 1676/2005/VOP/JB

In performing an inspection inquiry, the labour office is obliged to act in view of the protection of the rights and justified interests of all the persons involved. The authority cannot respond by a telephone query to the employer upon the employee's notification that the employer refused to enter into an employment contract with him after he entered employment. Such a procedure thwarts the possibility of carrying out a future unannounced inspection, which is virtually the only way of proving illegal work.

Mrs T. S. addressed the Defender with a complaint about the wrong procedure of the Labour Office in Most (hereinafter the labour office) in performing inspection of observance of labour-law regulations at the employer she had taken up work with upon recommendation of the labour office. The employer had failed to issue an employment contract to her even after a week of employment. Since the complainant disagreed with "black" employment, she had addressed the inspection department of the labour office with a request for inspection of observance of labour-law and salary regulations at the employer concerned. She stated that although the inspection personnel of the office had learned that she had worked in the enterprise without having entered into an employment contract, they had failed to intervene; rather the opposite, by notifying the employer by telephone, they had generated the employer's vengeful response towards the complainant – prohibiting her entry to the workplace and sending a letter of complaint about illegitimate receipt of social benefits.

In the report on the inquiry into the complaint, the Defender stated maladministration by the authority through contravention of the principles of good administration in the sense of the provision of Section 1 (1) of Act No. 349/1999 Coll. on the Public Defender of Rights. It is indisputable, in spite of the obviously good intention of the employee of the authority in charge, that the possibility of carrying out any future inspection of the complainant's illegal employment at the above-mentioned employer was thwarted – if illegal employment is inspected following notification, the inspection cannot be effective in any respect. The only manner of proving an employer guilty of illegal employment is to detect the employee performing work on the spot. The response of the employer is also not unpredictable. In order to avoid sanction by the labour office, he will logically claim nothing other in the telephone conversation than that he does not employ the complainant. In the Defender's opinion, the labour office should have assessed the complaint as a request for inspection, commenced an inspection inquiry in the matter and performed an unannounced inspection after agreement with the complainant within the shortest possible time so as to ensure presence of the complainant in the employer's premises. Although the labour office did not accept the conclusions contained in the report on the inquiry into the complaint of T. S., it reviewed its original statement after the final statement of the Defender was issued, admitted maladministration in full and adopted the remedial measures proposed by the Defender.

2.31 State Supervision over the Exercise of Independent Competence by Self-Governing Units

In 2006, 12 complaints dealing with this issue were received.

On July 1, 2006, Act No. 234/2006 Coll., which changes the legal regulation of local and regional governments (Act No. 128/2000 Coll. on Municipalities, Act No. 129/2000 Coll. on Regions) and Act No. 131/2000 Coll. on the Capital City of Prague, came into effect. In relation to municipalities, the amendment brought changes in the legal regulation of supervision over the exercise of independent competence by municipalities. Supervision over the issuing and content of generally binding decrees of municipalities and resolutions, decisions and other provisions of the bodies of municipalities having independent competence is exercised solely by the Ministry of the Interior. Supervision over the issuing and content of orders of municipalities and resolutions, decisions and other provisions of the bodies of municipalities with a delegated competence is exercised by the regional authorities. The amendment of the Act on Municipalities changed the regulation of inspection of the exercise of municipalities with independent competence and those with delegated competence and stipulated that the Ministry of the Interior inspects the exercise of independent competence entrusted to municipal bodies and the regional authorities inspect the exercise of delegated competence entrusted to municipal bodies. The municipal offices of the statutory cities within the regional division exercise supervision over and inspection of the issuing and content of resolutions, decisions and other provisions of the bodies of municipal areas issued within independent competence.

In several cases citizens addressed the supervisory bodies with a request to review the work of municipal bodies not only regarding legality, but also requesting that the supervisory bodies deal with other quality aspects of the exercise of self-government, in the belief that the supervisory bodies are superior to municipalities in the exercise of self-government. However, such cases could not be subject to supervision as municipalities manage their matters independently (independent competence). State bodies and regional bodies may intervene in independent competence only if this is required by the protection of the law and only in a matter stipulated by the law.

The individual chapters of the present Report discuss the specific cases of the exercise of supervision (e.g. chapter 2.8, Other Social Security Agenda or chapter 3.3, Independent Competence of Self-Governing Units).

2.32 Free Access to Information

In 2006, 18 complaints dealing with this issue were received.

In March, an **amendment of the Act on Free Access to Information** came into effect. The Defender contributed to the text of the amendment in co-operation with the Deputies. The amendment for example regulated the access of the public to final court decisions and the relation between free access to information and personal data protection was specified more precisely so that the procedural regulation contained in the Act on Free Access to Information is always to be used where information is applied for.

In administrative practice, authorities have begun to show a better awareness of the basic principles of free access to information; however, often only to come up with **more sophisticated methods of denying access to information** instead of increased openness of public administration. The Defender's findings show that nowadays authorities only exceptionally make the provision of information conditional on entitlement to the information or advice regarding what the applicant intends to use the provided information for, which directly contravenes the Act on Free Access to Information. On the other hand, personal data protection and the exemptions specified in Section 11 of the Act on Free Access to Information increasingly serve as a pretence for denying information that should be provided according to the Act. Typically, information on the content of methodological instructions, directives and instructions affecting the rights and obligations of individuals are denied with substantiation that it exclusively consists of internal instructions and personnel-related regulations. Another frequent abuse consists of failure to provide information arising from the work of the authority (e.g. the result of an inspection carried out pursuant to public law regulations at a legal entity) with substantiation that this is information obtained from a third person. Exclusion from access to information on the basis of the provisions of a special legislation is frequent, even though the purpose of such a provision is only to regulate special cases of access to information rather than complete exclusion from free access to information (as an example, general denial of

access to all information from closed planning proceedings with a reference to Section 133 of the Building Act, with substantiation that the applicant has failed to prove a justified interest in studying the file pursuant to the aforementioned provision).

It should be mentioned that the proportion of complaints against **the Ministry of Justice** was statistically significant. According to the Defender's findings, in several cases the press department of the Ministry had not only failed to meet its legal obligation towards a citizen requesting information, but it had also failed to properly meet its obligation of co-operation with the Defender during the inquiry. The Defender therefore directly addressed the Minister of Justice to change the unsatisfactory situation together with him. In January 2007 the Minister of Justice finally admitted that the department of contact with the public had actually had problems. As a remedial measure, the Minister of Justice began to prepare a new instruction on the implementation of the Act on Free Access to Information to replace the previous one.

Filings addressing the Defender concerning the provision of information frequently deal with the issue of informing the public in the process of obtaining zoning documentation, in particular **complaints of the public about the denial of an opportunity to study statements of the public administration bodies concerned** gathering the latter as they are obtained by the zoning body, and also against the dismissal of requests for obtaining copies from storage devices – electronic data carriers pertaining to zoning.

The Defender holds the view that the denial of statements of the public administration bodies concerned as well as of electronic data carriers should be viewed as conduct contravening the principles of good administration or the principle of openness of public administration.

Complaint Ref. No.: 2949/2005/VOP/MH

The process of zoning is a mechanism regulated by the Building Act designed for dealing with public affairs and it should therefore be as transparent as possible. Administrative bodies must therefore take all steps to ensure that the public is provided with as much information as possible in this area unless this involves insurmountable or particularly difficult obstacles. In the Defender's opinion, the denial of information to the public in the process of zoning contravenes the principles of good administration.

Mr M. V. addressed the Defender, requesting investigation of the procedure of the Regional Authority of the South Moravian Region in the matter of denial of information pursuant to Act No. 123/1998 Coll. on the Right to Information on the Environment, in the form of an electronic copy of the Břeclav Region Zoning Forecast. The Defender stated in the inquiry that a restrictive attitude to the provision of information, whether the obtaining of copies of papers from administrative files or the making of copies of electronic data carriers, etc., is not and cannot be in accordance with the principle of openness of public administration and with the principles of good administration. The Defender pointed out that the process of zoning is a mechanism regulated by the Building Act established to deal with public affairs, intended for the public and transparent to the maximum possible extent, which is obvious from the edictal (conducted via a public decree) nature of the zoning process. The Defender opined that administrative bodies must take all steps to ensure that the public is provided with as much information as possible in this area unless this involves insurmountable or particularly difficult obstacles. Given the above arguments, the Defender labelled the denial of the CD-ROM with the Břeclav Region Zoning Forecast to Mr M. V. as contravening the principles of good administration as well as the principle of openness of public administration to the public. The Defender closed the inquiry with a final statement, remarking that the regional authority had failed to proceed in accordance with the principles of good administration in the given case as it had denied provision of the zoning forecast to Mr M. V.

The Ministry for Regional Development and the regional authority accepted the remedial measures proposed by the Defender. At a conference with regional authorities organised by the Ministry, the representatives of regional authorities were acquainted with the Defender's statement in the above-mentioned matter, obtained copies of the statement and were called on to oblige requests for providing information especially in cases where it is not clear whether the information should be provided or not. An appeal was also made for the publishing of information on regions' websites. The regional authority stated that it published information in the area of zoning via a website and that in the future it would provide information by making copies of storage devices where there are no legal grounds preventing such provision.

2.33 Right of Assembly

Filings concerning the exercise of public administration in the application of the Act on the Right of Assembly are rather unique and not monitored separately in terms of their numbers. However, this does not mean a lack of shortcomings in this area.

Complaint Ref. No.: 1650/2005/VOP/MV

Pursuant to the Act on the Right of Assembly, monitoring the progress of assemblies and analysing as to whether grounds for dissolving them exist is the task of a representative of the municipal authority rather than the Police. A representative of the authority may request co-operation of the Police in fulfilment of the task.

Following a complaint of civic activists, the Defender inquired into the procedure of the Municipal Authority of the Brno-Centre Area after receiving notification of an assembly to take place. The assembly taking place on May 1, 2005, in the centre of Brno had been notified to the authority as a march of student youth, but in fact it had been organised by the neo-Nazi group entitled Národní odpor [‘National Resistance’]. The intention of the inquiry was to clarify the role of the authority and the Police in assemblies that are not prohibited but substantially deviate from the notified purpose. The Defender corresponded in the matter not only with the mayor of the municipal area, but also with the head of the Municipal Directorate of the Police in Brno.

The Defender reproached the authority for underestimating its role stipulated by the Act on the Right of Assembly in the case concerned, according to which it should have monitored whether grounds for dissolving the assembly existed. The mayor of the municipal area responded to the Defender’s report with discontent; however she promised to attempt to increase the number of personnel of the authority who monitor the progress of similar assemblies.

The Defender’s inquiry showed that authorities are not guided in exercising delegated competence under the Act on the Right of Assembly and that they do not work for example with information from the Ministry of the Interior contained in reports on extremism in the Czech Republic. The Defender therefore acquainted the Ministry of the Interior with the results of the inquiry and prompted it to organise a meeting of representatives of the authorities of those municipalities and municipal areas in whose territories extremist groups hold their assemblies most often. The meeting has not taken place to date.

2.34 Administration in the Sector of Business and Consumer Protection

In 2006, 25 complaints dealing with this issue were received.

In the sector of commercial activities administration, the Defender repeatedly encounters the issue of **acknowledgment of certificates decisive for documenting so-called professional competence**. Given that school documents (school reports) are often concerned, trade-licensing offices must approach the relevant departments of education at regional authorities. Poor communication between the authorities concerned often results in maladministration in the issuing of licenses or trade certificates.

With respect to the acknowledgment of professional competence, the Defender encountered an inconsistent approach of administrative authorities towards the operators of domestic freight transport. Problems arose as a result of different procedures of the former district authorities in the period from 2000 to 2001 as a new legal obligation was imposed on the freight carriers to have a special professional competence (examination) for domestic and international freight transport. Given that freight carriers operating international freight transport had been obliged to take professional competence exams also involving the issues of domestic transport already before, some district authorities automatically acknowledged such qualifications, although without issuing a special certificate for domestic freight transport to the freight carriers. Nowadays, if a freight carrier moves his registered office to another region, he may be required to furnish a document he has not received from the former district authority. Some regions require such freight carriers to take once again the professional competence exams they have taken before.

In the area of consumer protection, the Defender welcomed the amendment of the Act on Consumer Protection that stipulated the obligation of sellers **handling a complaint** to issue

a document acknowledging it. To date the aforementioned obligation resulted only from the Civil Code, as a result of which the Czech Business Inspectorate was not authorised to inspect observance of such a basic matter with great weight in potential court proceedings. It continues to be true that the Czech Business Inspectorate is not authorised to intervene in the material assessment of complaints (only a court is competent to assess such matters). Thus the Inspectorate only inspects observance of the obligation to handle the complaint within 30 days. However, a question opens for the future as to whether it would be sensible to attempt to find a more effective and less costly manner of dealing with consumer disputes than that represented by the present civil court proceedings. Inspiration could be drawn for example from the American small claims courts that decide on complaints within a short term without allowing appeals.

Complaint Ref. No.: 1040/2006/VOP/TČ

A school-leaving certificate is a public deed. If the content of a public deed is to be contested, the contesting party must provide proof of the opposite. A public deed is endowed with the so-called "presumption of authenticity" in terms of its origin.

Mr P. C. addressed the Defender with a request for inquiry into the procedure of a municipal trade-licensing office that had dismissed his application for license with the substantiation that the qualification of professional competence had not been met. Mr P. C. had provided a 1986 school-leaving certificate from grammar school along with the application where the principles of electrical engineering had been one of the subjects of the school-leaving examination and an additional text had been given on the reverse side concerning grammar school graduates with professional education in the essentials of electrical engineering. The municipal trade licensing office had requested a statement of the regional authority in the matter. After consulting the Ministry of Education, Youth and Sports, the regional authority had concluded that Mr P. C. did not meet the professional competence requirement stipulated by the Trade Licensing Act.

Disagreeing with this opinion, the Defender opened an inquiry and called on the regional authority to furnish a statement. He also recommended to Mr P. C. that he contest the decision of the regional authority on dismissal of his appeal at a court, because the Defender was not in a position to annul the decision, but he could merely petition for its review.

In the case concerned, the problem was inter alia that the legislation on schools effective in 1986 did not recognise the notion of "full specialised secondary education", which is now stipulated in the Trade Licensing Act (the latter notion has been acknowledged by the Schools Act since as late as June 1, 1990 – on the basis of amendment of the Schools Act No. 171/1990 Coll.). In 1986, the time Mr P. C. took the school-leaving examination, secondary education and full secondary education were differentiated between, the latter comprising of secondary education and professional education differentiated by learning programmes. The full secondary education was obtained by successfully taking a school-leaving examination at a secondary school. Professional education (as a possible part of full secondary education) was completed by successfully taking final exams in apprenticeship studies and by successfully taking the school-leaving examination in learning programmes studies.

Since the regional authority disagreed with the Defender's opinion, an inquiry on site was agreed in order to clarify the matter. However, in the meantime the regional court complied with Mr P. C.'s action (the court annulled the decision of the regional authority on the grounds of its being not subject to review). The meeting was therefore cancelled. Finally in September 2006, Mr P. C. obtained the trade license.

2.35 Administration in the Schooling Sector

In 2006, 64 complaints dealing with this issue were received.

In the area of schooling, the Defender has traditionally dealt with complaints of students or their legal guardians against the managements of schools and the conduct of teachers as well as complaints of schools against the procedure of the Ministry of Education, Youth and Sports. As in the preceding years, the Defender received a considerable number of complaints concerning the interpretation of legal regulations, in particular the still relatively new Schools Act. He also encountered problems exceeding the framework of the individual complaints.

The Defender received several filings pointing out the **unequal access of some foreigners to education**, namely access of foreigners from so-called "third countries" (outside

the EU) to education not providing non-compulsory education and school services. By the adoption of the new Schools Act, a situation arose where certain categories of foreigners from third countries are given entitlement to equal access only with respect to a part of education, namely primary, secondary and higher specialised education, while other types of education, i.e. pre-school, primary art school, leisure time education and language teaching, which may be summarised as non-compulsory education, as well as to so-called school services (accommodation, catering, etc.) are not provided to such foreigners, which represents a considerable financial burden for them. The unequal treatment results from the provision of Section 20 of the Schools Act. From January 1, 2005, the categories affected included all foreigners who were not EU citizens or relatives of EU citizens. Since April 27, 2006, as the amendment of the Schools Act came into effect, a partial change has occurred, according to which foreigners granted the position of long-term residents were equalised with EU citizens and their relatives. Yet an extensive group of persons remains impacted by the unequal treatment. According to the complaints received by the Defender, this involves all foreigners with the exception of those staying in the Czech Republic on the basis of short-term visas. Following the aforementioned situation and the repeated critical responses of the affected foreigners, on August 30, 2006, the Government adopted a resolution on a motion of the Government Council for Human Rights, by virtue of which it tasked the Minister of Education, Youth and Sports with drawing up and presenting to the Government by December 31, 2006, a draft amendment of the Schools Act in a form so as to ensure equal and effective access of foreigners to education and school services and with continuous adoption of measures aimed at minimising the adverse impact of the existing legislation on the access of foreigners to education and school services. The Defender will continue to monitor developments in the approach to the issue until adoption of the new legislation.

In connection with the cameras installed in the Josef Škvorecký Private Grammar School in Prague, an issue debated in the media, the Defender labelled the **installation of cameras in schools an illegitimate encroachment upon privacy**. The Defender stated that the placement of audiovisual facilities in schools contravened the Charter of Fundamental Rights and Freedoms, the International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention on the Rights of the Child. Art. 7 of the Charter of Fundamental Rights and Freedoms stipulates that inviolability of the privacy of a person is guaranteed and that it may be restricted only in cases stipulated by the law. In Art. 10 (2), the Charter of Fundamental Rights and Freedoms guarantees the right to protection against illegitimate intrusion into private and family life. Surveillance of persons is a serious encroachment upon privacy and as such it has boundaries of utilisation precisely defined by the law. The legal order of the Czech Republic allows surveillance of persons by, for example, a police body in the preparatory stage of criminal proceedings where the utilisation of such facilities must be permitted by the public prosecutor. In the schooling sector, the utilisation of audiovisual systems is allowed only in facilities for the exercise of protective education where children with the most serious educational problems are placed; even here cameras may only be used in premises to which children do not have access. In addition, as in all the fundamental rights and freedoms guaranteed by the Charter, observance of the right to privacy is subject to the same principle that the intrusion not only must rest on legal empowerment, but the law concerned must also meet the standards of a democratic society, attempt at legitimate objectives for the protection of the pursued values and it must be necessary. In the Defender’s opinion, none of the aforementioned qualifications is fulfilled in the case of the cameras installed in schools. In the first place, there is no legal empowerment for such intrusion. However, neither can such intrusion in any instance whatsoever be labelled as a necessary and reasonable prevention of negative phenomena in the behaviour of students as some head teachers argue. High-quality teaching and psychological guidance of children cannot be substituted for by the children’s monitoring using camera systems. Thus, according to the Defender, the utilisation of cameras for the surveillance of persons in schools is an illegitimate, wilful intrusion into the right of students and teachers to privacy.

Complaint Ref. No.: 2616/06/VOP/KP

If there is a wide range of punishments in the school system (teacher’s admonition, class teacher’s reproach, head teacher’s reproach, suspended expulsion, expulsion), then either the head teacher’s reproach or suspended expulsion are reasonable sanctions for a student who has for the first time seriously violated the school rules.

Following a complaint by K. C., the Defender dealt with the procedure of the head teacher of the Integrated Secondary School of Building Construction in České Budějovice and

the Regional Authority of the South Bohemian Region in the matter of expulsion of the complainant's son, J. C., from school for violation of the school rules consisting in the possession of marihuana. Having evaluated their statements and studied the presented documents, the Defender stated that the head teacher and the regional authority had erred by violating the principle of reasonableness of administrative sanction.

In assessing sanctions, the principles of legality, fairness, individual approach and reasonableness are applied. A reasonable sanction is to embody achievement of the intended deterrent and preventive effect. Reasonableness (adequacy and proportionality) of the sanction is a prerequisite for the punishment to be not only effective, but also fair. Adequacy of sanction is based on its proportionality to the committed delinquency and the personality of the culpable person; thus, an individualised sanction results from the thus-perceived adequacy. What matters is not "equivalence" of the sanction to the committed delinquency, but rather a sanction assessed with maximum regard to the nature of the case concerned. The aforementioned qualification was not met in the case concerned.

Although J. C. had undoubtedly committed an offence and violated the school rules, the Defender evaluated the head teacher's decision on his expulsion as an unreasonable punishment. One of the principles pervading the legal order is that a punishment must be reasonable, i.e. it must penalise rather than ruin and prevent remedy. In the Defender's opinion, such qualifications were not met in the case concerned. If there is a wide range of punishments in the school system (teacher's admonition, class teacher's reproach, head teacher's reproach, suspended expulsion, expulsion), then either head teacher's reproach or suspended expulsion are adequate sanctions for a student who has for the first time seriously violated the school rules, rather than his expulsion from school given the consequences for his further fate (his life, especially the route to further education, have thus been significantly complicated after four years of studies). The Defender evaluated the procedure of the head teacher as an attempt at deterring other students from similar violations of the school rules by virtue of an exemplary rather than individually-oriented punishment. Such procedures can definitely not be regarded as part of drug prevention in schools.

3. Complaints beyond the Mandate of the Public Defender of Rights

3.1 Civil Law Matters and Bankruptcy Proceedings

1,953 complaints from this area were registered in 2006.

In 2006, the Defender registered an increase in the number of **complaints connected with the issue of deregulation of rent and amendments of the Civil Code related to the issue of apartment lease notice**. It is obvious that the Act on Unilateral Increase of Apartment Rent involved considerable compromises, which resulted in ambiguity. Interpretation issues arise in particular where the lessee turns to a court with an action for invalidity of rent increase. It is not obvious if the person concerned is obliged to pay the increased rent while the legal dispute is pending or if the action has an automatic suspending effect. It also fails to explicitly result from the text of the Act as to what relations it pertains to. There are also opinions that given its generality, the Act also affects lease relations that have not been regulated to date and it therefore enables a unilateral increase of rent also in cases where it is stipulated in the lease agreement that increase may only occur by virtue of agreement between the lessee and the lessor (the Act anticipates a unilateral act of the lessor).

In terms of the issue of apartment lease notice, following the increased number of complaints, the Defender informed the public in March 2006 that notice may newly be given even without court consent. Similarly as in the case of the Act on Unilateral Increase of Apartment Rent, the Civil Code contains a number of ambiguities in the issue of notices. The collision of the general notice period (3 months) with a case where court consent is required for lease notice seems to be the most serious one. The Civil Code fails to contain a special new provision in this respect that would regulate the course of the notice period (for example depending on the moment of legal effect of the court's decision on consent to apartment lease). The unspecific notion of *"living in an apartment"* is also problematic, notably in relation to the obligation of the lessee to inform the lessor of any changes in the number of persons living in the apartment together with the lessee. The interpretation of the unspecific provision of the Civil Code is subject to a number of disputes between lessees and lessors, in particular where a relative of the lessee arrives at the apartment, for example, only on weekends.

The Defender is also often addressed by members of **housing co-operatives**. These are affected by the fact that housing co-operatives are governed by the Commercial Code. However, the latter primarily applies to entrepreneurial entities, which in fact is not the case of housing co-operatives. Given the specific nature of housing co-operatives, adjustment of the legislation to the specific requirements of the housing co-operatives or alternatively adoption of an entirely new act on housing co-operatives seem to be optimum solutions. The problematic nature of the business law regulation of housing co-operatives becomes fully obvious particularly in a situation where a housing co-operative becomes bankrupt. For example, by-laws allow housing co-operatives to stipulate the reimbursement obligation towards their members. Hence in the aforementioned cases, members of housing co-operatives may be called on by the administrator of bankruptcy assets to pay the debts of the former management that has brought the co-operative into bankruptcy. Furthermore, the co-operative is dissolved after the end of bankruptcy and hence the benefits brought by membership of the co-operative expire. Given the aforementioned as well as other reasons, it would be desirable if Parliament adopted a special law better adjusted to the specifics of housing co-operatives.

Similarly the Defender was addressed more frequently by members of **associations of residential units owners**. Here the Defender again encountered issues related to the funding of maintenance, repairs or upgrading of a joint property – the house co-owned by the complainants. In this respect, a number of citizens repeatedly complain about the issue of defining joint premises of a house (primarily in a situation where balconies, lifts or inside windows are to be restored). Although the law specifies the notion of joint premises of a house, according to a decision of the Supreme Administrative Court it is also necessary to take into account the declaration of the owner who had to define joint premises for the specific building for the purposes of the land register. In practice it is therefore difficult to decide in some cases whether joint premises of a house or a part of a residential unit are concerned, and the disputable matter must be decided by a court. The issue of house maintenance and restoration is also connected with the course of planning proceedings where the association of unit owners has had the position of a party to the proceedings since January 1, 2007.

Statistics reveal that the debt of Czech households is growing quickly and thus the number of **distraints** ordered increases year by year; this became obvious also in the work of the Defender who registered an increase in the number of complaints about the work of court executors in the enforcement of decisions. The filings point out namely the unscrupulous conduct of court executors in performing distraints on movable assets in a place where the liable person in fact does not dwell (although having his permanent residence registered there). Complaints about distraints ordered on state income support benefit paid by labour offices (municipal areas in Prague) are becoming ever more frequent; the Defender dealt with this issue in more detail in 2006 (see section II.2.6).

In 2006, the Defender also noted an increased number of complaints by which citizens expressed their dissatisfaction with the manner in which complaints are handled by the Chamber of Executors or with inactivity of the Chamber of Executors in handling such complaints. An improvement may be anticipated in this respect as an amendment of the distraint code has been drawn up, detailing the powers of the Chamber and the Ministry of Justice in exercising supervision over distraints and introducing deadlines by which complaints are to be handled.

The debt issue is also related to **bankruptcy**. Complaints of creditors unable to recover their receivables are very common. Requests for help in a situation where there is a bankrupt securities trader to whom people have entrusted their savings are common. Then such complainants find themselves in secondary insolvency. The situation is complicated by the fact that the Guarantee Fund fails to fulfil its role and the Government has not adopted any solution in spite of repeated comments of the Defender (see section IV). However, there is also an increase in the number of cases where the Defender is addressed by the very bankrupt, usually an entrepreneur (private individual), confronted with bankruptcy. Such a person would like to discharge himself from debt, but cannot cope at the moment as he is attacked by requests for payment. The Defender is unable to solve the merits of such cases given the boundaries of the mandate entrusted to him by the law and he can only deal with delays in bankruptcy proceedings.

Again in 2006, the Defender registered an increased number of complaints from parents where the liable parent failed to pay **child maintenance**. As in the preceding years, the Defender perceived this issue as a serious society-wide problem, because material need in the family of the self-supporting parent often threatens harmonic development of the child's personality. The irresponsibility of a parent failing to meet the maintenance obligation towards

his or her child set by a court also burdens society as the family of the self-supporting parent often becomes dependent on social benefits provided to it from the state budget.

There is an increase in the number of complaints from parents where the liable parent is a foreigner living abroad and failing to pay maintenance set by a court, or a citizen of the Czech Republic living and working abroad and deliberately avoiding payment of the maintenance. It is a situation complicated by the fact that it is impossible to proceed exclusively pursuant to the legal order of the Czech Republic, but instead it is also necessary to act in accordance with international agreements. The recovery of maintenance from a liable parent living abroad is carried out via the relevant authorities of the liable parent's country.

A considerable portion of complaints is filed by parents, particularly fathers, complaining about the procedure and decisions of custody courts, which have failed to oblige their motions for setting up alternating custody. The Defender is not authorised to judge the procedure and decision of courts; he was therefore unable to help such parents and could only clarify the matter.

The Defender was also addressed by fathers complaining about the procedure and decisions of the Supreme Public Prosecutor in the matter of a motion for the **disavowal of paternity**. Since the determination of paternity using so-called presumptions is relatively difficult to understand, the Defender has produced an information leaflet in which he clarified the rules for determination and disavowal of paternity. In the leaflet he also informs of the possibility of the Supreme Public Prosecutor filing a motion for disavowal of paternity.

The Defender continues to be addressed by a large number of citizens, particularly women, who participate in divorce proceedings, lack finances and need advice about how to procede in the **settlement of joint property of spouses**. The breakup of marriage and the subsequent settlement of property are a sensitive area, because in effect it is minors who will be closely affected by the often fierce disputes between the parents. This often impacts not only on the material situation, but also the psychological condition of the children. However, for a targeted advice, a number of relevant facts must be available, which are mostly not contained in the filings. In spite of this, the Defender tries to generally clarify the existing legal regulation in his replies.

In the past year, the Defender also received several complaints from persons addressing him with a request for advice or help in matters relating to **burial**, in particular the use of burial sites. Although the merits of such filings were beyond the Defender's mandate, all such persons were provided with basic legal advice on how to proceed. The Defender *inter alia* pointed out that the right to burial site rental as well as ownership title to burial facilities (monument, marker or other permanent decorations of the grave) must be subject to inheritance proceedings in which the court, usually on the basis of an heirs' agreement, determines to whom the right of burial site rental and the ownership title to the burial facility shall pass. If such rights have not been subject to inheritance proceedings, the matter must be dealt with within an additional inheritance discussion.

3.2 Criminal Law Matters, Criminal Prosecution Authorities

464 complaints from this area were registered in 2006.

The quantity of complaints dealing with this issue increased considerably compared with preceding years. For example compared with the previous year, there was a rise of almost 100 filings. The structure of complaints and those sending them remains constant. These are complaints from an area beyond the Defender's mandate and they therefore must be laid aside. In spite of this, the Defender provided basic information on the cases as long as this was possible given the content of the filings and the filing person's request.

The filings referred to all the criminal prosecution authorities (court, public prosecutor, Police bodies). Where Police bodies were concerned, complaints directed **against laying aside a criminal complaint, procedure in reviewing and resolving facts justifiably indicating committing a criminal act and against the course of investigation**. In terms of public prosecutors, reservations related to supervision over the observance of legality in preparatory proceedings and the exercise of supervision performed pursuant to the Act on Public Prosecution. In terms of courts, the reservations related primarily to the **course of the trial and decision on guilt and sentence**.

A number of queries in this area had the nature of queries on **criminal proceedings**. The aggrieved persons' queries pertained to the contents of criminal complaints and the place

where they should be filed, the terms applicable to the raising of claims for indemnification or the public prosecutor's supervision over the observance of legality in preparatory proceedings, etc. In terms of the accused (defendants, convicts), whose filings prevailed, the queries pertained to the duration of custody, confiscation of a thing, searching of homes, the prerequisites and meaning of penal order, the raising of regular or extraordinary remedies, inclusion of custody, delay of imprisonment, terms of probation or the terms of alteration of a community service sentence into an imprisonment or deportation sentence, etc.

A change in the Defender's mandate occurred effective from January 1, 2006, in relation to public prosecution on the basis of Act No. 381/2005 Coll. amending Act No. 349/1999 Coll. on the Public Defender of Rights as amended. The mandate was broadened to the authorities of public prosecution administration while originally it had not pertained to public prosecution in its entirety.

3.3 Independent Competence of Self-Governing Units

313 complaints from this area were registered in 2006.

An absolute majority of the complaints pertained to municipalities, only a few were directed at regions. The Defender's mandate pertains to the conduct of municipal bodies only in the exercise of public administration delegated to municipalities by the state (e.g. trade licences, planning proceedings, provision of social benefits, identity cards and travel documents agenda, administration of fees for municipal waste, offence proceedings). On the contrary, the independent competence of municipalities (self-government) (e.g. municipalities' management including the handling of flats, determination of local fees, exercise of citizens' rights at meetings of the municipal assembly) falls outside the Defender's mandate.

The Defender therefore judges every complaint against the conduct of a municipality in terms of whether it falls within his mandate. In cases where it is obvious that a breach of law or another serious maladministration occurred in the decision-making of a municipality with independent competence, the Defender evaluates whether they could fall within the mandate of the body of supervision over the independent competence of the municipality and draws the attention of the complainant to the possibility of turning to the supervision over regional self-government. The exercise of supervision is within the Defender's mandate; therefore, if the complainant is discontented with the results of the supervision, he may address the Defender again. The Defender also uses the possibility of informally influencing municipal bodies, which he usually advises of the maladministration and recommends a correct procedure.

Complainants most often addressed the Defender in the area of **municipal waste management and fees for the same**. Most of the complainants requested assistance or advice on how to assert exemption from or remission of fees, often arguing that the required amount of the fee was inappropriate to the quantity of waste generated by them and the standard of its sorting. Referring to a finding of the Constitutional Court, the Defender explains to the complainants that waste disposal is not designed as a service to individuals but as fulfilment of the public interest in the protection of the environment against contamination. Private individuals are tasked with the obligation to participate in the method of municipal waste disposal guaranteed by municipalities and submit to the applicable fee.

Another large group of individuals addressed the Defender with a request for ensuring remedy in the **management of immovable property by municipalities**. The complainants mostly objected to failure to properly publish municipal real estate offered for sale and lease and non-transparent selection of the interested persons.

The Defender relatively frequently encountered complaints in connection with the **citizen's right to information regarding the independent competence of municipalities**.

The Defender was in several cases approached by citizens' associations that had the objective of improving the position of citizens of the municipality and were discontented with the **quality of communication with municipal bodies**. The law restricts citizens' associations only by not allowing them to exercise the role of public authorities, manage public authorities and place obligations on citizens who are not members of the association. The law neither stipulates any additional restrictions nor gives any specific list of activities an association could pursue. The selection of the forms and tactics of work is therefore up to the association. Given the right of municipalities to self-government, the Defender recommended to citizens' associations that they communicate more informally with municipal bodies.

Municipalities should not obstruct citizens' initiatives in the area of self-government exercised in any manner not contravening the law.

As in the previous years, the Defender encountered current issues connected with the exercise of independent competence of municipalities in the management of **municipal housing**, primarily the municipalities' failure to observe their own rules for allocating flats for lease with a reference that these are not a binding legal regulation.

The Defender furthermore ascertained that in these cases, the exercise of the supervisory power by the Ministry of the Interior is restricted to evaluation of legitimacy of the flat allocation criteria, in particular in terms of equality of access to rights. However, the Ministry advocates a self-restraining approach to intervention in the independent competence of municipalities, which means that it uses its supervision authority only in cases of an explicit breach of the law or constitutional principles through an act of a municipal self-governing body.

The Defender furthermore encountered attempts of some municipalities to evict large groups of socially deprived citizens (the "squeeze-out" effect), including those who meet their obligations towards the municipality as the lessor. To do so, the municipalities use civil law mechanisms – termination of lease with the consent of court and subsequent provision of compensatory accommodation. In the Defender's opinion, the above-mentioned issues he repeatedly points out are due to a lacking concept of a social housing system (see section IV).

The housing issue is also reflected in the issue of social and legal protection of children where children are removed from socially deprived parents and placed in institutional care as the parents are unable to obtain a flat. The Defender repeatedly points out that such a manner of dealing with the housing issue and the failure to help such families is very uneconomical for the state as the institutional care of such children is much more costly, in particular where large families are concerned. The costs associated with institutional care are many times higher than the costs of handling housing problems of socially deprived families.

III. SYSTEMATIC VISITS TO FACILITIES WHERE PERSONS RESTRICTED IN THEIR FREEDOM ARE CONFINED

Up until January 1, 2006, the Czech Republic lacked a body responsible for carrying out systematic precautionary inspections of places where persons restricted in their freedom are confined. A communication of the Ministry of Foreign Affairs on the conclusion of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was issued Under No. 78/2006 Coll. Int. Agr. This Protocol obliges parties to the Convention to establish so-called national preventive mechanisms. As of January 1, 2006, this national preventive mechanism is embodied by the Defender, who meets all the criteria required of this element of prevention by the Optional Protocol.

The obligations of the Defender have been broadened to include systematic visits to all places (facilities), where persons are or may be located who are restricted in their freedom (the provisions of Section 1 (3) and (4), provisions of Section 21a of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended – hereinafter the "Public Defender of Rights Act"). It is irrelevant whether the freedom of these people has been restricted by a decision or ruling of a public authority, or as a result of the real circumstances they have come to be in. During such visits, the Defender investigates how these persons are treated, and endeavours to secure observance of their fundamental rights and to reinforce their protection against maltreatment.

Maltreatment in the general sense is understood to mean any conduct that shows disregard for human dignity. Depending on the degree of violation of human dignity or even physical integrity, maltreatment can take the specific forms of torture; cruel, inhumane or degrading treatment or punishment; disrespect for the individual and the rights of the individual; disregard for an individual's social autonomy, privacy and the right to partake in the decision-making process to determine one's own life; or taking advantage of an individual's dependence on the provision of care or its further intensification. Formally, maltreatment not only means infringement of fundamental rights stipulated by the Charter of Fundamental Rights or by international conventions, the breaking of the law and other lesser legislation, but it is also understood to mean the failure to fulfil more or less binding instructions, guidelines, norms on the quality of provided treatment, assistance and care, good practice or procedures that are in accordance with the law.

Employees of the Office of the Public Defender of Rights (hereinafter employees of the Office) visit a number of facilities of a similar type within a planned thematic focus. Section 21a (2) of the Public Defender of Rights Act obliges the Defender to draw up a report on the conclusions drawn from the conducted visit. This report may include recommendations and suggestions for remedial measures. Having sent the report, the Defender calls upon the facility in question to respond within the stipulated deadline to the report, and to his recommendations and suggestions for remedial measures (the provisions of Section 21a (3) of the Public Defender of Rights Act). The Defender has at his disposal the means to employ sanctions in connection with carrying out systematic inspections of facilities. These include notifying the governing superior body or, in the absence of a superior body, notification of the Government and alternatively, notifying the public. In addition to reports on individual facilities, the Defender also draws up general reports that contain general observations on all visited facilities of a similar type. These reports are presented to the public at regular press conferences and are also made available at www.ochrance.cz.

Systematic visits are carried out by the Defender according to a specific system and plan, which is prepared ahead of time for a particular period and is divided up into three phases: preparation of the visit, execution of the visit, and the processing of acquired information and the publication of a report on the visit to the facility. These visits are regular and have a strong preventive focus. One or two types of facility are selected for each given period. The selection of specific facilities is based, for instance, upon previous observations made by the Defender, referral by the public or by persons confined to such facilities (both positive and negative) or upon findings made by ministerial control mechanisms. During the selection procedure consideration is also given, if the type of facility permits it, to who is the founder of the facility, its location, and its size and so on in order to ensure various facilities are included in the selected sample.

Having selected the specific facilities, employees of the Office gather information on the chosen facilities, on applicable legislation, whether domestic or international, including

non-binding recommendations, declarations, non-legal standards, the practice of the European Court of Human Rights, or internal regulations issued by the relevant Ministry. Once the gathered information has been processed, the procedure of the visit itself is prepared. The procedure is divided up into basic areas, which the visit is to cover (e.g. the right to privacy, right to personal freedom, healthcare, cultural and social needs, the right to complain etc.). A set of questions on each of the given areas is drawn up. These questions are then put both to the staff of the facility and to persons confined in the facility.

These visits last between one and three days in length and involve three to four employees of the Office. Specialists in the given area (such as doctors, nurses and so on) are also invited to participate on an ad hoc basis. At present, the practise in most cases is to inform the facility of the visit three to five days in advance (with the exception of visits to police cells, which are conducted unannounced). This time allows the facility to, for instance, send the Office its internal regulations, provide general information on the number of persons currently located within the facility and so on. The schedule of the visit is as follows: on the first day of the visit, an introductory meeting with the head of the facility takes place in the morning, following which employees of the Office conduct a survey of the facility and take photographs. If possible, informal interviews are conducted with persons confined to the facility. During the visit special attention is paid to how well the facility is equipped, to the degree of privacy afforded to persons (privacy related to accommodation in rooms as well as privacy during performance of personal hygiene and other needs), whether the facility is fitted with certain specific structural elements (such as metal bars) or audiovisual equipment, whether there are any visible elements that could potentially limit the personal freedom of confined persons (such as round door knobs, disabled access on the premises in the case of persons with a physical handicap), the level of hygiene and so on. In the afternoon of the first day documentation and records are scrutinised (the personal files of clients, social files, medical records, entries recorded by staff in shift reports, the internal regulations and rules governing stays, etc.) and interviews are conducted with facility staff. If the visit is limited to one day, the afternoon is also devoted to talks with persons confined to the facility. In the case of a two- or three-day visit, these talks are conducted throughout the visit. In some cases, before the visit is concluded discussions take place with the head of the facility on the preliminary findings of the employees of the Office and information acquired during the visit is clarified.

Following the visit, the Defender addresses a report of the visit to the head of the facility as stated above, informing him of his findings, of the legal evaluation of the state of affairs, of his recommendations and of any remedial measures. The specific approach to legal evaluation is determined to a certain degree by the type of facility.

In the case of facilities where persons are or may be held due to their dependence on care, the provisions defining the rights and duties of persons located here as well as regulations governing the operation of such facilities are largely incomplete or simply do not exist. In such cases the Defender bases his inquiry on fundamental rights and freedoms as defined by the Charter of Fundamental Rights and Freedoms or by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms. During the application of individual rights to specific situations it is also possible to take inspiration from the practice of the European Court of Human Rights as well as from non-legal standards (such as the standards of the European Committee for the Prevention of Torture – CPT), recommendations of a non-binding character (such as recommendations of the Committee of Ministers of the Council of Europe, the Office of the United Nations High Commissioner for Refugees – UNHCR) or declarations issued by international nongovernmental associations (such as the Declaration on the Rights of Mentally Retarded Persons, the Charter of Rights of the Physically Handicapped, the European Charter for Senior Patients, the recommendations and standards of the World Medical Association – WMA, the International Association for the Treatment of Sexual Offenders – IATSO, the World Psychiatric Association – WPA, etc.).

The rights and obligations of persons confined to facilities on the basis of a ruling of a public authority as well as the rights and obligations of the facility provider are, for the most part, governed by laws and other legal provisions and are further elaborated upon by internal regulations (e.g. Act No. 169/1999 Coll. on Imprisonment as amended, Decree No. 345/1999 Coll. which sets out the procedure of exercise of prison sentences, as amended, regulations issued by the General Director of the Prison Service, regulations issued by the Minister of Justice, etc.).

In the first quarter of 2006, systematic visits were carried out in five of the seven **social care institutions for physically handicapped adults** (hereinafter SCI or institution) and in 19 **police establishments**, where over 110 cells were inspected.

In the second quarter of 2006, all four **detention facilities for foreigners** in the Czech Republic were selected together with five **institutes for long-term patients** out of the total 73 medical care facilities and similar institutions established by legal entities other than regions, towns, municipalities or private individuals.

In the third quarter of 2006, systematic visits were conducted in seven **medium security and high security prisons** out of the total 14 medium security prisons and three high security prisons.

In the last quarter of 2006 systematic visits were conducted in four **facilities for institutional and protective education** with a special focus on facilities that provide both forms of education concurrently. The total number of facilities where both institutional and protective education are provided concurrently is 32, of which one is a diagnostic institution, seven are children's homes with school, eight are children's homes with school organisationally linked to a reformatory and sixteen are reformatories.

General reports were drawn up and issued by the Defender on the visits conducted. These reports also contained recommendations to the relevant central public administration bodies (Ministry of the Interior, Ministry of Labour and Social Affairs, Ministry of Health, Ministry of Justice, Ministry of Education), the Police Presidium, General Directorate of the Prison Service, the Czech School Inspectorate, as well as to the Supreme Public Prosecutor's Office, the facility founders and directly to the visited facilities.

1. Social Care Institutions for Physically Handicapped Adults

Systematic visits were conducted in **five social care institutions for physically handicapped adults** (hereinafter SCI or institution). The reason for visits to social care institutions was the fact that these facilities had stood outside the Defender's former mandate (the provisions of Section 1 (3) of the Act). Furthermore, the general conditions in social care institutions, especially the rights and obligations of those within them had not been regulated by law at the time of the visits (this area was merely partially governed by rules and regulations and other lesser legislation) with the single exception of Section 89a of Act No. 100/1988 Coll., on Social Security as amended, which introduced certain obligations of the institution (as of October 1, 2005) related to the use of measures limiting the freedom of movement of persons. With the coming into effect of Act No. 108/2006 Coll. on Social Services and related implementing decrees, the provision of social services will newly be regulated by law. The protection of the rights of patients and the quality of provided services is governed by the Standards of Quality in Social Services, a set of criteria that define the required necessary quality of provided social services in terms of personnel, procedures and operation. The introduction of these standards in practice on a nationwide scale will make it possible to draw comparisons of effectiveness among different types of service that address the same type of unfavourable social situation, as well as the effectiveness of different types of facility that provide the same type of service. During the conducted visits, standards were elaborated on various levels in different facilities.

Social care institutions for physically handicapped adults (in accordance with the wording of Act No. 108/2006 Coll. on Social Services) provide comprehensive social services to physically handicapped adults (especially accommodation, meals, nursing, rehabilitation, facultative social activities, organisation of free time activities, employment, etc.).

The facilities selected for visits were those with various founders, located in different regions and of various sizes.

Visited institution	Region	Founder	Number of clients	Average age of clients	Number of employees involved in direct care
SCI Habrovany	Region of South Moravia	Region of South Moravia	66	52.0	29 in three shift operation
SCI Bolevec	Pilsen Region	City of Pilsen	23	82.3	12 in three shift operation
SCI Hrabyně	Moravia-Silesia Region	Ministry of Labour and Social Affairs of the CR	170	53.6	75 in three shift operation
SCI Hořice	Hradec Králové Region	Hradec Králové Region	81	52.8	31 in three shift operation
Domov Betlém	Region of South Moravia	Diacony of the Evangelical Church of Czech Brethren	9	56.1	16 by session

Explanations:
SCI – social care institution

Findings and Recommendations of the Defender

The visited institutions fail to offer clients a home-like environment – the character of a medical facility prevails. The institutions are located in buildings, the majority of which originally served a wholly different purpose (such as nursery schools, or chateaus). The rooms of clients are for the most part fitted with uniform institutional furniture. In all visited institutions, the sanitary facilities were located in the corridors. SCI Hrabyně is the only institution where clients are lodged in units comprising of two rooms with shared sanitary facilities. In Domov Betlém, each client was housed in a separate room (one room with twin beds). The possibility of cooking one's own food is very limited in most institutions, which mainly inconveniences the more self-sufficient clients, married couples and non-married couples. Most facilities (with the exception of Domov Betlém) conform to the "medical model" where all or a majority of those involved in direct care are medical staff. This model is further affirmed by the uniform white clothing of facility staff, giving the impression of a medical facility.

At the recommendation of the Defender, the facilities (i.e. their founders) undertook to carry out suitable refurbishments of the interior in order to accomplish, in so far as possible, the resemblance of a home-like environment, e.g. by painting the walls a colour other than white, changing the colour of clothing worn by staff, preparing conditions that would allow clients to have their own furniture in the facility, and by giving consideration to whether self-sufficient clients would be given the option to prepare their own meals.

Institutions fail to provide clients with a sufficient privacy. The privacy of clients in visited institutions depends on the number of clients housed together in one room. In recent years, it is possible to observe certain reductions in the number of beds per room, which is seen as a positive development. The majority of rooms in visited facilities were two- to three-bed rooms. Only one single facility offered exclusively single-bed rooms. Another facility, however, housed five clients in two walk-through rooms. Not all institutions provided clients with keys to their rooms, cupboards and desks, although many clients would have welcomed the possibility to lock away their belongings. Another area even more serious in terms of possible encroachment upon the privacy and human dignity of clients is the performance of personal hygiene and satisfaction of other fundamental needs. As already indicated, the majority of sanitary facilities in all institutions are shared. Furthermore, they are not always lockable from the inside, neither do they offer any means of indicating the toilet is in use. Human dignity suffers as a result of the practice common in a number of institutions, whereby toilet chairs situated directly in rooms are used in the presence of other clients with no shielding curtain in place whatsoever.

At the recommendation of the Defender, the institutions undertook in particular to respect the privacy of clients when staff enter the rooms, to enable clients to lock their rooms, furthermore, to label shared toilets, for example by using signs marked "VACANT/ENGAGED"

that can be turned, and to employ shielding curtains for use by individual clients when toilets are used in the rooms.

The lack of staff involved in care for highly dependant clients leads to limitations in the fulfilment of their rights and to a necessity to observe regime measures. All visited institutions (with the exception of Domov Betlém) are affected by an obvious lack of staff involved in direct care, which leads to the necessity to adhere to regime measures, especially in the case of dependant clients. These in fact lead to limitations of the right to personal freedom, a complete absence of the freedom of choice and practically no individual approach to clients. The needs of clients are thus adapted to the manner in which work is organised and to the working conditions. The greatest impact is that of the absence of social work with bedridden clients who have difficulties with verbal communication and thus communicate by means of gestures and sounds. Although these persons do not communicate verbally, this does not mean they are unaware when spoken to and that they have no need for such verbal contact. It is often their sole direct contact with the outside world. Speech or any other form of communication with these clients is the only way in which to ensure their real needs and wishes are met and to secure more than a mere satisfaction of basic needs such as meals, hygiene and so on. If the staff are unaware of how the client feels about the care he is afforded, what he likes and what is uncomfortable for him, it could well happen that he is handled in a way that he dislikes or that is in fact unpleasant to him.

Separate attention is paid to the great lack of respect for fundamental human rights and freedoms of legally incapacitated persons. Certain institutions displayed objectionable practice by adhering to the provisions of Section 78, Decree No. 182/1991 Coll., implementing the Social Security Act. These provisions in fact contravened the fundamental human right to personal freedom and the related right to freedom of movement as they permitted legally incapacitated persons to leave the institution only with the prior consent of the guardian. These provisions were nullified by an amendment to the mentioned Decree (Decree No. 506/2006 Coll., which amends Decree No. 182/1991 Coll.), which annulled part four of the Decree and with it Section 78.

At the recommendation of the Defender, the facilities (i.e. their founders) expressed the will to seek an increase in the number of social workers, the mission of which will be to work directly and individually with clients on the basis of individual plans gradually drawn up with the objective of affording the greatest support possible for the client's social rehabilitation. The institutions also undertook to guide staff involved in direct care towards a greater understanding of augmentative forms of communication (complementary communication systems that broaden limited communication capacity, i.e. communication that goes beyond speech) and alternative forms of communication (communication systems that aim to fully compensate for speech) and to promote such methods by means of supervision.

Institutions have poorly defined rules for dealing with complaints. There are also shortcomings in facilities' internal regulations. Two of five institutions have no internal regulations addressing the manner in which complaints are filed and dealt with. With the exception of two institutions, clients had not been informed of whom they may address their complaints to should they feel dissatisfied. In most cases clients had no notion of the fact they could ask another person to act on their behalf. In one institution, although rules for the administration of complaints had been in place since 2004, patients were unaware of them as were certain members of staff.

In all visited institutions, clients rather prefer to express their complaints in an informal fashion. So-called house rules display shortcomings in certain institutions in that they infringe upon the fundamental rights and freedoms of their clients. Decisions regarding the wording of these rules should be agreed by staff in close cooperation with clients.

At the recommendation of the Defender, the institutions undertook to modify their internal regulations in cooperation with the clients themselves.

2. Police Cells

There were a number of reasons for conducting visits to police cells. One reason was the current state of legislation governing this area, in particular Act No. 283/1991 Coll. on the Police of the Czech Republic as amended (hereinafter APCR), and internal legal provisions issued by the Ministry of the Interior and by the Chief of Police, in particular the binding directive on police cells issued by the Chief of Police (hereinafter BD CP) on December 29, 2004. These provisions stipulate who can be placed inside a police cell and when and define the

type of regime that applies. Legislation at the level of acts of law is only fragmentary (Sections 26 to 32 of the APCR). Internal regulations, instead of merely administering the existing provisions laid down by law, tend to stipulate themselves the scope of rights and obligations of imprisoned persons, which is a practice untenable in a state of rule of law.

The employees of the Office conducted visits to 19 police establishments (two–three police establishments in each of the regional police administrations). In the course of the visits a total of 110 police cells were inspected. The visits were all conducted unannounced, both during the day and in evening hours, on weekdays as well as weekends and public holidays.

Administration – region	Total No. of departments**	Departments equipped with police cells*	No. of cells for confinement lasting several hours *	No. of cells for short confinement*
Capital City of Prague	55	1	27	none
Central Bohemia	91	30	46	4
South Bohemia	69	39	55	6
West Bohemia	87	13	37	none
North Bohemia	102	17	50	none
East Bohemia	99	50	69	11
South Moravia	105	38	63	15
North Moravia	101	45	81	none
Total	**709**	**233**	**428**	**36**

Explanations:

* Data in this column were provided by the Police Presidium

** Data acquired from public information systems, chiefly the website of the Ministry of the Interior of the CR

Findings and Recommendations of the Defender

Restricting the freedom of movement of aggressive people – in particular handcuffing to metal rails. The right of police officers to restrict the freedom of movement of aggressive people is governed by the provisions of Section 16 of the APCR. "The freedom of movement of any person that physically attacks another individual or a policeman, damages property or attempts escape, may be restricted by handcuffing to a suitable object. The restriction of freedom of movement may last up to the moment the person ceases to act in the afore-mentioned manner or until he/she is confined to a police cell, however, for no longer than two hours." This wording clearly implies that the restriction of freedom of movement for the aforementioned reasons may take place practically anywhere with the exception of a police cell, given that the necessary conditions are met. The BD CP on the other hand states that the compulsory fittings of a cell for short confinement include a means of binding aggressive persons in order to restrict their freedom of movement. This internal directive is thus in conflict with the law. Such a state of affairs cannot be maintained for reasons of non-uniform practice: in the absence of any clear regulation of their installation or their subsequent use, certain police cells are fitted with handcuffing rails while others are not.

In order to find a solution to this point of conflict (as well as other issues – see below) and following an evaluation of all conducted visits, the Defender initiated a personal meeting with representatives of the Police Presidium. This marked completion of the process of amending the internal regulations of the Police of the Czech Republic. The outcome of the meeting was, among other things, an agreement to omit the mention of rails for the handcuffing of aggressive persons in cells for short confinement from the new wording of the BD CP (currently under preparation). Fitted rails will be removed both from these cells as well as from areas in front of cells, where persons are detained for several hours in the absence of camera surveillance (see the specific cases mentioned in the report of the Public Defender of Rights on visits to police establishments).

The right of persons confined to police cells to be advised of their rights and obligations is not always observed. Informing persons held in police cells of their rights and obligations is based on an official document entitled Instructions to Persons Detained, Arrested, Brought Forward or Apprehended at a Police Station. The obligation to ensure these instructions

are mediated to the detained individual falls on those police officers that placed the person in the police cell – usually the police officers of district departments. During the conducted visits, it was ascertained that certain district (local) departments fail to fulfil this obligation and persons held in police cells had been proven not to have received any instructions.

Following a meeting with the experts of the Police Presidium, the Defender recommended that the obligation to advise persons as stipulated in the Instructions to Persons Detained, Arrested, Brought Forward or Apprehended at a Police Station, should be performed both by the apprehending officers, and later again by the body acting in criminal proceedings (the investigator, public prosecutor, judge) at a time not directly following apprehension, instead later, after the individual has calmed down and is able to take in the content of the instructions without any stress. This should be documented by a written record signed by the detained individual. The Defender was assured that the obligation to reiterate the instructions as stated above will be laid down in the relevant provisions of criminal law and other related legal provisions (including the BD CP).

The instruction of persons held in police cells of their rights and obligations is often performed verbally. The written notification advising those detained in police cells of their rights and obligations, which contains a listing of all significant rights and obligations of persons held in cells, is not in use by all police departments. The existing written notification also fails to mention the right to certain material conditions and other rights related to the general restriction of personal freedom, in particular the right to legal aid and the right to be informed of one's situation by a third person. Another objectionable aspect is the fact that these instructions are several pages in length and, furthermore, persons asked to sign the form are not provided with a copy.

The above-mentioned uniform written notification was also amended by the Defender: on the basis of a complaint filed by the Defender, the complaint of the Committee against torture and other inhumane, cruel, degrading treatment and punishment of the Government Human Rights Council and in cooperation with the Ministry of the Interior, a new form will be issued with instructions on the rights and obligations of persons detained in police cells (one double-sided A4 page) as an annex to the BD CP, which will be amended to include these rights. One copy will be provided to the detained individual to ensure that he/she is able to check the details at any time during confinement.

The medical examination of persons detained in cells is in most cases (with a handful of exceptions) carried out in the presence of police officers. Medical examinations should be carried out beyond earshot of police officers and, unless otherwise specifically requested by the doctor, also out of their sight. As regards the presence of police officers at the medical examination, the standard procedure is to involve the assistance of police officers at the examination for reasons of security and the necessity to protect medical staff. Although such arguments are justified, it is necessary to bear in mind the human dignity of the examined individual and the obligation to protect information on his/her state of health in accordance with medical confidentiality.

The new wording of the BD CP contains completely new provisions on the performance of medical examinations that take into account the aforementioned requirements. Medical examinations must be performed out of earshot and, unless otherwise decided by the doctor, also out of sight of the police escort. The escorting officer must be of the same sex as the escorted individual.

The right to submit proposals, suggestions and complaints (notifications) to Czech state bodies or to international organisations competent (in accordance with international agreements by which the Czech Republic is bound) for the handling of human rights complaints, **is problematic in the present police practice** due to technical aspects of guaranteeing this right. From a practical point of view, there is no clear solution to guaranteeing/enabling the right in question. The Defender is inclined to believe the submission of proposals, suggestions and complaints (notifications) can, in practice, be ensured through the medium of the legal representative of the detained individual. If the detained individual has no legal representative, he/she writes the complaint him/herself – and for reasons of security – under the supervision of a police officer in a room otherwise used for questioning or in any other similar room available at the police department. If, for objective reasons, the detained individual is unable to write the complaint him/herself, he/she dictates it to a police officer and attaches his/her signature.

The Police of the CR has been forthcoming on the suggestions of the Defender as well on those put forward by the Committee against torture and other inhumane, cruel, degrading

treatment and punishment of the Government Human Rights Council and intends to guarantee this right to persons detained in cells.

The provision of meals during the night. The BD CP in force at the time of the visits failed to observe the provisions of Section 31 of the APCR, which state: "in principle, meals are provided to the individual every 6 hours from the time of restriction of personal freedom", not from the time the person is confined to a cell. The valid BD CP does not account for the provision of meals (not even cold meals) during the night, i.e. between 10 p.m. and 6 a.m. In practice, there were occurrences where the detained individual had been placed in a cell during the night, during which time the six-hour necessary period for obtaining a meal elapsed and the meal was thus not provided till another several hours later.

Based on negotiations of the Defender with representatives of the Police Presidium, the new wording of the BD CP will include provisions stating meals are to be provided during the night also, and as such will be provided if the individual wishes to obtain a meal and requests it (with regard to the conflict between the right to meals and the right to undisturbed sleep). The individual will be demonstrably advised of this right by the police guard upon or shortly after being placed in the police cell by means of instructions for individuals placed in police cells, which the Defender suggested include the above.

The material conditions in cells for confinement lasting up to several hours in length. Human dignity continues to be encroached upon by the fact that the latrine area is in no way whatsoever optically shielded from the rest of the prison cell (by means of a partition, curtain or other suitable means) and the person using the toilet is thus afforded no privacy in the presence of others sharing the cell. The Defender made a recommendation to the Police Presidium of the CR to ensure that WC's in police cells are partitioned off optically both in existing cells and in newly refurbished or newly built cells. This recommendation was accepted as were suggestions for supplementing material accessories in cells to include toothbrush and toothpaste, paper handkerchiefs and hand towels.

Artificial lighting in cells of the same intensity 24 hours a day. In a number of police establishments, it was found that no changes of lighting regime were applied to distinguish day from night and vice-versa. It is the view of the Defender that unchanging lighting intensity may have a negative impact on the mental condition of an individual. The absence of a different lighting regime to distinguish night from day may in addition render it impossible to maintain any clear notion of time. The Defender argued in particular that the denial of sleep is considered to be one of the identifying signs characteristic of torture or cruel, inhumane and degrading treatment.

In spite of an initial unwillingness, the Police of the CR agreed to the requirement of the Defender to change the present lighting system in certain facilities and to thus immediately introduce a dual system of lighting not only in new cells or newly refurbished cells and in the **four facilities for the detention of foreigners** but in all police cells that lack such lighting.

3. Institutes for Long-term Patients

In the course of the second quarter of 2006, systematic visits were carried out in **five institutes for long-term patients** [the provisions of Section 1 (4) (c) of the Public Defender of Rights Act]. The reason for visits to institutes for long-term patients were similar to those that led to visits in social care institutions, i.e. these facilities had stood outside the Defender's former scope of competence (the provisions of Section 1 (3) of the Public Defender of Rights Act) and furthermore, the fact that the general conditions in healthcare facilities, the rights and obligations of patients located within them were not governed by legal regulations. Merely the rights of patients in general are the subject of legislation.

Institutes for long-term patients (hereinafter ILP) are medical facilities. As such, they rank among specialised healthcare facilities that provide healthcare supplementary to the treatment provided by hospitals.

ILP facilities are determined for the provision of specialised institutional care, which focuses on nursing and rehabilitation of persons suffering from long-term illnesses (the average age of persons in the visited ILP is 78.4). In addition to healthcare, nursing and rehabilitation, it is necessary that these facilities work towards the reintroduction of patients to society and provide psychosocial care. Due to the highly inadequate system of aftercare, it is often necessary for facilities of the ILP type to also ensure palliative and gerontopsychiatric treatment.

Generally speaking, it is necessary to find a solution to the problem of financing aftercare for this area. The effect of expensive medical treatment, often of the highest quality, is nullified if, following discharge from the facility patients have no access to specialised mobile medical care, i.e. the current system of aftercare is affected by a serious lack of geriatric out-patient care and so-called social beds.

Accompanied by specialists in medicine and nursing, employees of the Office conducted visits to five ILP in total, which had been selected in such a way so as to ensure that facilities of various sizes, with different founders, specialisations and of different age would be represented. (ILP in Bílovice nad Svitavou, Ostrava-Radvanice, Kroměříž, Nejdek and Moravské Budějovice).

Visited ILP	Region	Founder (provider)	No. of patients	Capacity of the facility	Average age of patients
ILP Bílovice	South Moravia	Ministry of Health of the ČR	88	85	78
ILP Ostrava--Radvanice	Moravia-Silesia	City of Ostrava	188	190	77
ILP Kroměříž	Zlín Region	Czech province of the Congregation of the Sisters of Mercy	97	105	79
ILP Nejdek	Karlovy Vary Region	Region	86	90	79
ILP Moravské Budějovice	Vysočina	Region	66	80	79

Findings and Recommendations of the Defender

Not one of the visited facilities addressed the legal standing of patients in the correct way. Firstly, there is the question of voluntary hospitalisation (Section 23 of Act No. 20/1966 Coll., on Care of People’s Health as amended, Art. 6 (3) of the Convention on Human Rights and Biomedicine) – healthcare facilities were not prepared to consult courts, they failed to require the consent of the patient to his/her hospitalisation or they substituted the agreement of another person for the agreement of the patient. As for the granting of prior, free, informed and retractable consent to medical interventions (Art. 5 of the Convention on Human Rights and Biomedicine), three facilities have no formal procedure for the granting of patient’s consent. The representatives of certain healthcare facilities claimed that ILP do not perform any medical treatment and therefore no prior consent is necessary. This view is in conflict with the mentioned provisions of the Convention on Human Rights and Biomedicine, which refer to any type of intervention related to healthcare, not merely treatment in the sense of Czech legal regulations. As recommended by the Defender in his reports of visits in individual ILP, the granting of agreement with hospitalisation in an ILP and with performed interventions should be formalised.

Upon the arrival of a new patient, often no effort is made to ascertain whether the patient is fully informed of his/her state of health. Not a single one of the visited ILP ensures, let alone documents, the informing of the patient upon arrival of his/her state of health, of the character of the illness, and of the purpose and nature of subsequent treatment or nursing procedures where the patient is interested in such information. **This is a violation of one of the most important prerequisites of granting informed consent to medical treatment and to hospitalisation in general.** The granting of consent is a legal act often performed before the patient is received, sometimes even before his/her first talk to a doctor. As a result the patient may not necessarily comprehend the full extent of the granted consent.

Only one of the visited ILP inquired upon the arrival of patients whether they wished to be kept fully informed of their state of health. The state of health of many patients of long-term healthcare facilities no longer permits the full restoration of health with some patients in the terminal phase of their illness. With the exception of one facility, doctors failed to proactively ascertain whether patients wished to be informed in the case of a negative diagnosis. In view of the delicacy of this issue, the most appropriate approach appears to be to establish the wishes of each patient upon their arrival to the facility and to employ a sensitive approach if and when the patient’s state of health begins to deteriorate. No indications were, however, found of patients having been denied requests for information on their state of health by the facility. On the contrary, in all cases, patients were provided with the option to study their medical file; the

management of the visited facilities allowed patients to make copies or obtain extracts from medical documentation upon request.

At the recommendation of the Defender on the aforementioned points, the healthcare facilities undertook to introduce correct procedures and to alter existing internal regulations and forms.

Institutes for long-term patients display a clear lack of privacy. Especially older ILP face the problem posed by multiple bedded rooms – up to six beds per room is a socially unacceptable state of affairs. Due to the long-term character of stays, patients have a greater need for privacy and a home-like environment. This state of affairs can thus be viewed as maltreatment in the sense of the Public Defender of Rights Act. This applies in particular to the following situations: the use of toilet chairs, the intimate hygiene procedures of bedridden patients, and the changing of sanitary towels are all carried out in ILP in full view of other patients without employing any means to preserve the dignity and privacy of individuals – in some cases doors leading from the room to the corridor are even left ajar.

In connection with inquiries into the dignity of persons and the preservation of their privacy, the Defender recommended that the facility management alter certain procedures employed by staff (knocking on doors, closing doors when performing hygiene procedures, the use of shielding curtains), which the facility representatives more or less undertook to adhere to. Furthermore, the Defender voiced a recommendation for changes to be made to the structural design in certain areas and recommended that either the number of patients is reduced or greater investments be made. The ILP representatives accepted this recommendation. They referred, however, to the lack of financial means. The situation regarding multiple bedded rooms where toilets are shared by entire wards will thus not improve immediately on the basis of suggestions made by the Defender.

Individuals are not permitted to exercise their right to ownership, as the majority of rooms in healthcare facilities are not fitted with lockable bedside tables. Patients are generally denied the possibility to lock their valuables and money away in bedside tables. The average length of a stay in an ILP differs from facility to facility – from a maximum three months to stays lasting several years in length. In view of this length, the absence of the possibility to keep one's belongings safely locked away is untenable.

The Defender recommended that each of the healthcare facilities purchases lockable bedside tables. This solution will take some time before it is implemented.

The practice common in institutes for long-term patients – to **take away the personal identity cards of patients** – is against the law. In one such healthcare facility, both the personal identity cards and health insurance cards of patients were taken away on arrival. On a broad scale this practice is inadmissible. The personal identity card is a public document that must be carried by the individual, even persons with diminished legal capacity, in order to allow them to furnish proof of their identity. The provisions of Section 2 (4) of Act No. 328/1999 Coll. on Identity Cards forbids the taking away of personal identity cards upon entry into buildings. The healthcare facility may merely offer to keep safe the patient's personal identity card. It may not, however, demand its surrender or word the offer in a way that does not allow the patient to make a free choice. The safekeeping of personal identity cards is substantiated in the case of patients who are disorientated, in which case healthcare facilities are providing the patient a service.

The Defender recommended the healthcare facility alter the internal regulations and related practices and the ILP undertook to do so.

Institutes for long-term patients wrongly interpret the term "means of restriction". The use of means of restriction is subject to the decision of a doctor and to the observance of given nursing procedures. As stated by the staff of one ILP, the sideboard of beds is not understood as a regular means of restriction whereas the binding of the arm while the catheter is being fitted, is. The Defender disagrees – this practice indeed constitutes a restriction of movement and, as such, is subject to the same conditions as other means of restriction. Furthermore, it was established that pharmacological means of restriction were considered to be medicines and no special records were kept of their use. This procedure is in conflict with the nursing standards of the facility and, furthermore, it is inconsistent with methodological measures. The Defender must insist that methodological measures are observed consistently in order to prevent the violation of personal freedom of patients.

The healthcare facility has altered its procedure in accordance with the Defender's recommendation.

The system of aftercare lacks a well-developed network of hospice type facilities that would alleviate the present burden on ILP by managing the care of patients in terminal stages of their illness. This type of care is very demanding both in terms of finance and in terms of expertise of staff. Under the present system of care, the quality of care could thus suffer.

In his report, the Defender recommended that the Ministry of Health place adequate pressure on the adoption of a conceptual solution to hospice care. In the course of 2006, work was begun on an amendment to Decree No. 134/1998 Coll., which lists various types of medical treatment each allocated a certain number of points and newly includes a calculation of a single individual day of treatment in hospice care. The amendment was implemented by Decree No. 620/2006 Coll.

4. Facilities for the Detention of Foreigners

In the course of the second quarter of 2006, systematic visits were carried out **in four facilities for the detention of foreigners** [the provisions of Section 1 (4) (b) of the Public Defender of Rights Act]. One of the reasons for these visits was in particular the amendment to Act No. 326/1999 Coll., on the Residence of Foreigners on the Territory of the Czech Republic as amended, which has led, as of January 1, 2006, to a transfer of facilities for the detention of foreigners (hereinafter FDF) under the Refugee Establishments Administration of the Ministry of the Interior of the CR (hereinafter REA). Until then, these establishments had been governed by the Police of the CR.

FDF are establishments where persons of foreign citizenship are restricted in their freedom of movement. They are issued with a decision on detention in accordance with the provisions of Section 124 (1) of Act No. 326/1999 Coll. on the Residence of Foreigners on the Territory of the Czech Republic as amended (hereinafter the Act). The amendment mentioned above aims to ensure that limitations of the rights and freedoms of detained foreigners do not exceed the extent necessary for the purposes of their detention. Internal regulations governing the running of such establishments should measure up to those common in reception centres of asylum facilities, with the difference that foreigners in detention facilities do not have the right to leave the facility in the course of their detention (except in certain cases defined by law). Changes have been made to the regime governing receiving of visitors, to the conditions of leave from the facility with children; there is a greater focus on the need for leisure activities, and on the provision of psychological and social care. The scope of activities governed by the internal regulations of the facility (hereinafter IR) was also substantially broadened. Provisions governing the obligations of foreigners placed within the facility have been further specified as has the procedure to be followed by the Ministry of the Interior of the CR (hereinafter the Ministry) and the Foreign and Border Police (hereinafter the FBP) on ending the period of detention. In the sense of the Convention on the Rights of the Child special conditions have been introduced for the detention of children aged between 15 and 18 residing in the Czech Republic unaccompanied by a legal representative. Since the coming into force of the amendment, the Police of the CR merely carry out necessary indispensable activities and tasks entrusted to them by the provisions of Section 164 and subsequent laws. At present, the Police of the CR merely ensures security along the perimeters of facilities and security in areas with so-called high security regime.

Law and order within FDF is ensured by a private security agency (hereinafter PSA).

The employees of the Office visited all four existing facilities (Poštorná, Frýdek--Místek, Velké Přílepy and Bělá-Jezová).

Facility	Capa-city	MR	HSR	Number of foreigners	Male	Female	AD/UM	Asylum seekers
Poštorná	170	164	6	124	118	6	0/0	49
Frýdek-Místek	43	37	6	35	35	0	0/0	12
Velké Přílepy	140	123	17	113	86	27	0/0	40
Bělá-Jezová	54 (340*)	54	–	33	10	23	11/0	29

Explanations: * Foreseen capacity

MR – moderate regime; HSR – high security regime; AD – adolescents; UM – unaccompanied minors

Findings and Recommendations of the Defender

It was ascertained that FDF apply non-uniform practice when instructing foreigners of the rights linked to their legal position as detained foreign nationals. In certain facilities such instructions were limited to providing information on the possibility of submitting a request for the granting of asylum. In other cases, foreigners were also informed of the possibility of taking legal action in administrative proceedings against the decision on their detention and of the possibility of submitting a motion for release during the time of their detention on the grounds that the reasons for their detention have expired.

At the recommendation of the Defender, the Head Office of the Foreign and Border Police undertook to incorporate in its internal administrative acts the obligation of the Police to provide individuals detained in facilities for the detention of foreigners with complete written instructions, informing them of their right to take legal action in administrative proceedings against the decision on detention and of the possibility to declare their intention to request asylum.

FDF often fail to provide translations of internal facility regulations in all the necessary language versions as well as translations of the forms: Information to foreigners on the internal regulations of the facility for the detention of foreigners and Information to foreigners on the handling of money or private belongings placed in custody.

At the recommendation of the Defender, the Refugee Establishments Administration promised to take prompt remedial measures.

Files lack records of whether relatives of detained foreigners residing legally in the CR or authorities for the social and legal protection of children have been informed of a foreigner's detainment. If no such records are on file, it would be desirable if the police officer receiving the foreigner to the facility requested this information and entered it in the files. Alternatively, if the officer learns that such steps have not yet been taken, he may inform the authorities himself of the foreigner's detainment in accordance with the law.

At the recommendation of the Defender, this non-uniform practice was addressed as of July 1, 2006, in a directive of the Chief of the Foreign and Border Police. This Directive specifies the obligation of police officers to inform detained foreigners of their right to inform a third party – a relative, authority for the legal and social protection of children, embassy (consular office) – of their detainment. At the same time, a uniform template for instructions to foreigners has been introduced.

Visits must often be conducted in the presence of employees of the PSA, even in moderate security regime facilities.

At the recommendation of the Defender, the Refugee Establishments Administration declared that foreigners would in each case be informed of their right to request that the visit takes place in complete privacy. Such a request will, however, always be subject to consideration with regard to its individual character.

Police officers fail to provably inform foreigners **of the reasons for which they have been placed in high security regime detention** or of their right to lodge complaints to contest such placement. A confirmation of the fulfilment of these obligations must be signed by the detained foreigner, and deposited as proof in his/her file.

At the recommendation of the Defender, a modification of a directive of the Chief of Foreign and Border Police has broadened the duty of police officers in the following sense: in the case of the placement of a foreigner in detention with high security regime, the foreigner must be informed of the reasons for this placement, the period for which he/she may be detained in such a way and of the right to lodge a complaint. A written record must be made of this notification by the police officer. At the same time, the department of the Ministry of the Interior responsible for asylum and migration policy initiated an amendment to Act No. 326/1999 Coll., on the Residence of Foreigners on the Territory of the Czech Republic and on Amendments to Certain Other Laws, as later amended, to reflect the above.

The statute of "medical facilities" remains unclear as it does not correspond, de facto and de jure, to current legislation is thus affecting the operation of these facilities as well as their capacity to provide health care.

At the recommendation of the Defender, this area has been addressed by specialised departments of the Ministry of the Interior.

In one such facility, **cameras** had been **installed in the living quarters of** foreigners with moderate security regime. The director of the facility and the police claimed they were not in use. On the contrary, cameras in areas with a high security regime were fully functional and in use. This measure encroaches upon the privacy of detained foreigners and is a violation of their right to personal integrity and privacy as laid down by Art. 7 (1) and Art. 10 of the Charter of Fundamental Rights and Freedoms. The installation and operation of a camera surveillance system in cells or rooms where foreigners are of may be placed has no legal basis and fails to comply with the first condition of encroachment into the private life of an individual – empowerment by law to encroach upon/restrict the right to privacy. For this reason it is irrelevant that the possibility of camera surveillance was established by an internal regulation of the Police of the CR issued by the Ministry of the Interior. This regulation elaborated upon a measure that is not governed by law, and as such, stood outside the law.

At the recommendation of the Defender, the Refugee Establishments Administration removed the cameras from the rooms of foreigners.

5. Prisons

In the third quarter of 2006, systematic visits were carried out in seven prisons profiled as medium security and high security prisons [the provisions of Section 1 (3) and (4) (a) of Act on the PDR].

The visits were narrowed down, unlike in the first and second quarters, for reasons of experience gained from the prison environment when inquiring into individual complaints which suggested visits should be more intensive in terms of time and content. The capacity of most prisons exceeds several fold those facilities visited so far, and interviews with persons confined to these facilities/convicts formed an essential part of the visits.

Visits to selected prisons were carried out in Mírov, Plzeň, Oráčov, Valdice, Rýnovice, Vinařice and Bělušice prisons. Besides standard departments for convicts, special departments (see table) and departments for those serving life sentences were visited.

Prison	Type of imprison-ment	Special departments	Capacity No. C, D à 4 m^2	Number of convicts in C and D	of which for-eigners	Fullness in %
Mírov (M.)	B, C, D	DETSS for DT SpD for D	336	372	9	**110.7**
Plzeň (P.)	A, B, C, D	SpD toxi for C	908	943	113	**103.8**
Oráčov (O.)	C, B	none	459	526	26	**105.4**
Valdice (V.)	B, C, D	DETSS for D, DT SpD for D	1,074	1,159	147	**107.9**
Rýnovice (R.)	B, C	DETSS for C SpD for C TD for B and C	399	478	34	**119.8**
Vinařice (Vin.)	C	SDMR	758	846	32	**107.8**
Bělušice (B.)	B, C	SpD toxi for C	560	638	34	**113.0**

Explanation of the table:

A – supervision, **B** – low security, **C** – medium security, **D** – high security, **DT** – life imprisonment

TD – specialised department for serving protective institutional anti-addiction treatment

SpD – specialised department for convicts with mental and behavioural disorders

SpD toxi – specialist department for imprisonment of convicts with personality and behavioural disorders caused by the use of psychotropic substances

SDMR – specialist department for the imprisonment of mentally-retarded convicts

DETSS – departments with enhanced technical and structural security

On his visits, the Defender concentrated primarily on compliance with convicts' rights as defined in the Act on Imprisonment and in the order of the exercise of imprisonment while paying attention to the conditions of imprisonment in different prisons in general (with respect to material and hygienic conditions, prison staff conduct and their relations with convicts).

Based on this observation, the Defender stated that conditions of imprisonment, and not only in terms of compliance with convicts' rights, are not identical. This finding is particularly important when the diversity of conditions for serving sentences can breach the equality of rights of convicts as declared in the Act on Imprisonment.

The visits confirmed the longstanding **problem of overcrowding**, which can be solved, as the Defender believes, only by conceptual steps, i. e. by effective imposition of alternative sentencing. Given that many alternative sentences end up with a sentence of imprisonment because the alternative sentence was not served, increasing prison capacity must be considered. As the numbers of Czech Prison Service staff keep dropping, the number of imprisoned persons is increasing (the number of employees fell by 3.4% compared to 2003, while the number of prisoners increased by 17% in the same period). A system of collective accommodation of 6–15 convicts is established in the vast majority of standard departments of prisons visited.

Overcrowding, collective accommodation, and lack of staff to work with convicts are factors that undermine the intended role of the sentence as the education and subsequent rehabilitation of the convict as well as the protection of society, since every sentence comes to an end one day. Yet, in spite of these obstacles, it can be said that several prisons are managing to build constructive relations with the convicts, which again demonstrates the diverse conditions ensuing probably from the different approaches of different prisons to securing the service of imprisonment. Special attention was paid to special departments, so-called departments with enhanced technical and structural security, convicts serving life sentences and foreigners. Others of the Defender's findings pertain for instance to the convict's possibility of phone contact with close persons, employment of convicts, violence among convicts, convict's options for spending free time, convicts' self-government and health care.

Findings and Recommendations of the Defender

Overcrowding of prisons must be dealt with by conceptual steps, among other things by the expedient imposition of alternative sentences. Presently, when many alternative sentences end with imprisonment as a result of a failure to perform the alternative sentence, increasing prisons' capacity must be considered. According to the statement by the General Directorate of the PSCR (hereunder only the GD of PSCR) the capacity of Kynšperk nad Ohří prison increased by 216 places in December 2006, and the new structure of the Brno prison in Rapotice (up to 400 places) is being brought into service at present. A further increase in prison capacity for 2007 will be possible once the PSCR knows the volume of its investment resources from the Czech 2007 budget.

Departments with enhanced technical and structural security have no support in the law (only a mention in a lesser legal regulation). Convicts placed in such departments lack the guarantee of a right to be demonstrably acquainted with the reasons for their placement and the right to file a complaint against such placement to be decided by a body other than the one that decided such placement in the first place. Upon the Defender's recommendation, the GD PS CR will submit a draft amendment to the Act on Imprisonment to the Ministry of Justice, which should institute the concept of departments with enhanced technical and structural security, including the procedure for placement and removal of convicts, and their treatment in such departments, in the first half of 2007.

Restrictive measures used within service of imprisonment are often based not on assessment of individual risks of a specific convict but applied evenly to a certain group of convicts. Upon the Defender's recommendation, locking convicts in cells or bedrooms for instance will be treated uniformly by an internal order that will come into effect in all prison facilities in the first quarter of 2007.

Convicts without income and on social pocket money are issued with **hygienic supplies that cannot be deemed sufficient**. Convicts without income who are on social pocket money (CZK 100 per month) must be issued hygienic supplies in such amounts and kinds as to be useable for their personal hygiene. At present, there is a practice of one bar of soap and one roll of toilet paper per convict per month almost without exception. First and foremost, the list of basic hygienic supplies should be set uniformly (obviously with differences for men and women), and such a list should include for instance shampoo, toothpaste, a toothbrush, shaving kit, etc., with respect to the convict's obligation to keep their hair and beards clean. Upon the Defender's recommendations issued in association with the amendment to the Act on Imprisonment, convicts without income will be issued hygienic packages in such amounts as to be able to maintain all personal hygiene.

Convicts on social pocket money only, respectively foreigners without health insurance, **do not have sufficient means to pay for additional charge medicines**. The Defender believes such convicts should have a "special account" established that will not be reduced in any way while such funds will serve exclusively to pay for medicines (or medicinal additives like artificial sweeteners for diabetics). It is also possible to institute a corroborative system of deducting part of the funds from the convicts' income for any potential medical care. On the Defender's recommendation, GD PSCR will assess institution of a "special account" as well as deduction of funds from a convicts' income to the benefit of health care in association with the amendment to the Act on Imprisonment.

The widespread practice of warders' presence at medical check-ups contravenes the pertinent provisions of the Act on Care of People's Health, the Convention on the Protection of Human Rights and Biomedicine and the decree issuing the order of the exercise of imprisonment. The Defender recommended settling the situation by for instance installing signalling technology in surgeries, or fitting the door with a Perspex peephole that would enable the PS CR member to monitor the convict, but be at the same time to be out of earshot if the doctor so wishes. Upon the Defender's recommendation, the PS CR, having carried out a material and financial needs analysis, will decide on implementation of the specified measure – doors of surgeries in prisons shall be fitted with Perspex peepholes.

The practice of **permitting convicts phone calls** to relatives and others fails to create sufficient room for preserving convicts' family and social bonds. The decision to permit or forbid a phone call must be issued in a matter of days. Convicts ought to be allowed to phone without the presence of third parties, with respect to the options of PS CR to acquaint themselves with the contents of the call either by direct tapping or making a record of such a call. Upon the Defender's recommendations, GD PS CR will initiate a procedure that will ensure a decision to permit or forbid a call to the convict will be made as quickly as possible.

Convicts are not allowed **contact with their minor children** in the course of visits. Any restrictions can be acceded to only in the case of a justified suspicion that the child is being used as a means to smuggle unauthorised items, not as a general rule. Visits without video or audio control are not permitted under stipulated conditions, yet practice tends to be a general refusal to allow such visits at all. Upon the Defender's recommendations, GD PS CR promised to draft a methodology for the procedure of permitting and implementing visits to convicts in 2007 to apply to all prisons uniformly.

The **System of Sectional Service, so called 'Catwalkers', or the post of head of cell/bedroom, or co-ordinators from among convicts** is a source of factual inequality of convicts. The convicts' self-governing system should include an option to take an active part in the prison's operation – for instance the possibility to raise their comments at regular meetings with prison staff. Upon the Defender's recommendation, GD PS CR instructed all prisons that convicts may not be assigned roles that could in fact give rise to convicts' inequality.

Up until November 30, 2000, **the basic component of remuneration** was derived from minimum wage tariffs in the civil sector (i.e. increase of such tariffs reflected in the amount of remuneration), but since then it has been determined as fixed and has not been altered. Some working convicts fail to achieve remuneration in the amount of social pocket money of the non-working convicts; objectively unattainable standards still apply and therefore convicts are penalised for failure to meet them. Upon the Defender's recommendations, the GD PS CR promised to make the convicts' working remuneration more accurate in the amendment to the Act on Imprisonment.

Thorough personal searches still have a collective character. There is no obstacle to other convicts watching those being searched and to violating their dignity in being monitored by camera systems. Upon the Defender's recommendations, the GD PS CR will methodologically treat the ban on the collective nature of thorough personal searches. Simultaneously, places for such searches to be performed (premises not monitored by a camera system) shall be ascertained.

6. Facilities for the Exercise of Institutional and Protective Education

Systematic visits in four facilities where institutional and protective education takes place [the provisions of Section 1 (3) and (4) (a) of the Public Defender of Rights Act], were carried out in the 4th quarter of 2006. Chrastava Reformatory and Children's Home with School, Primary and Secondary School with School Dinning Hall, the detached workplace of the

Ostrava-Hrabůvka Reformatory and School Dinning Hall in Polanka nad Odrou, Pšov Reformatory with School Dinning Hall (hereunder only "facility", "reformatory" or R) and Department for Children with Extreme Behavioural Disorders at the Children's Home with School as part of the Boletice nad Labem-Děčín Reformatory, Children's Home with School, Centre of Educational Care, Primary School, Secondary School and School Dinning Hall (hereunder only the "EBD dep.") were visited.

Characteristics of the facilities and children in them are detailed in the tables below:

Name of facility	Region	Founder	School with facility	School dislocation	Type of school
Chrastava R	Liberec	MEYS	Yes	in facility	PS, SS
Polanka R	Moravian-Slesian	MEYS	No	–	IEP
Pšov R	Karlovy Vary	MEYS	No	–	WEG
EBD dep.	Ústí	MEYS	Yes	in facility	PS

Glossary with the table:

IEP – Individual educational plan

WEG – work-education group pursuant to Section 2 (7) of MEYS Decree No. 438/2006 Coll.

MEYS – Ministry of Education, Youth and Sports

PS, SS – primary school, secondary school

Name of facility	Total capacity	No of education groups	Inst. educa-tion	Prot. educa-tion	No of children present / outside institute	On the run	No of ped. staff
Chrastava	44	6	27	3	30/1	7	30
Polanka	12	2	5	2	7/3	2	19
Pšov	63	5	23	6	29/12	22	36
EBD dep.	12	2	0	7	7/0	0	32

Among other things, on his visits the Defender focused on meeting the request for greater division between children with ordered institutional education from children with imposed protective education, the legality of installing audio-visual systems and special technical and structural aids (bars), the regime in different facilities and fulfilment of children's rights in the sense of international conventions and Act No. 109/2002 Coll., on the Exercise of Institutional and Protective Education in School Establishments and on Preventive Educational Care in School Establishments – hereinafter the AEIPE). On a general level, the Defender also paid attention to the overall concept of care for family and child, respectively foster care, using knowledge from the complaints agenda.

Findings and Recommendations of the Defender

a) General Findings

The Defender first and foremost believes that the overall concept of foster care for children and adolescents, respectively care for family and children – at present fractured and often uncoordinated between the Ministry of Education, Youth and Sports, Ministry of Health and the Ministry of Labour and Social Affairs, should be unified under the authority of one central state body to prevent any further rebukes from Committee on the Rights of the Child – the supervisory body over implementation of the Convention on the Rights of the Child, i.e. the international agreement by which the Czech Republic is bound and that has application priority over the law. Given the extension of the social work context often to the entire family, this body should be the Ministry of Labour and Social Affairs. Besides, the Czech government has committed itself to promoting a change in the character of the social and legal protection of children by *preferring family care to institutional care, in its statement of policy. The agenda of social and legal protection of the child will be unified under the Ministry of Labour and Social Affairs (MLSA). Therefore, the government shall establish a Ministry of Labour, Social Affairs*

and the Family where it will gradually unify the pertinent agendas for the area of the family in state administration.

The Defender recommended taking immediate conceptual steps toward unifying care for children under the authority of one body.

The Defender believes work with the family must be intensified – the current state policy and practice does not pay much respect to this aspect however, and relatively little attention is actually given to preventive aspects and continuous work with the family. The remaining alternative to undersized terrain work with the family is a stay in an institution. This fact is due to an insufficiently developed system of social services on the preventive and advisory level, as well as an inadequate number of staff in the bodies of social and legal protection of children. While 10 to 12 cases fall under one worker in other countries, this number is higher by 100 and more in the Czech Republic. Therefore, it is understandably impossible to work intensively with a child let alone the family under such conditions (sometimes also the great distance between the institute and the child's home plays a role – see below). For instance, "temporary" care plans (Great Britain) or plans for social work with children (Slovakia) are compiled on the first signs of problems in a family that may have an impact on the child's development and education, in other countries. The objective of these plans that pertain not only to the child, but the entire family, is the effort to help such a family overcome difficult circumstances, and thus prevent much greater disruption of family life – in extreme cases also removal of the child. Parents partake in compilation of the plans, and the child too – depending on his/her cognitive skills but sometimes the wider family too (Slovakia). If the child is removed, work with the child is not at an end, and neither is work with the family. Placement outside the family is perceived as a temporary measure. For instance bodies of social and legal protection of children in Slovakia are under an obligation to aim for as short a stay of a child outside the family as possible, or to apply a different measure. Slovak legislation also explicitly rules out housing or property relations as a serious threat or disturbance to the child's upbringing, as a reason for ordering institutional education.

The Defender recommended focusing on a change to the overall concept of foster care and care for family and children as follows:

- **augmenting the social services system in the field of prevention and counselling,**
- **heightening preventive activity pertaining to threatened children and their families,**
- **continuous intensive work with threatened children and their families, including**
- **compilation of aid plans in the presence of related parties,**
- **stress on the fact that child removal is only an extreme option and housing or property relations should not be a reason for such action.**

b) Findings on the Regime of Service of Institutional and Protective Education

The basic principle of separating children with ordered institutional education from children with imposed protective education the law presumes, ensued from legislative changes (AEIPE amendment executed by Act No. 383/2005 Coll.) aiming towards harshening conditions in the protective education regime (particularly the option to use special technical and structural aids and audio-visual systems). The purpose of the separation of both regimes is to protect children with ordered institutional education, i.e. a guarantee that the stricter regime, including the existence of technical and structural aids and cameras, will not impact on them, too. On his visits, the Defender gained an impression that this requirement is being ignored. Children with protective education are mostly incorporated in institutions in a different educational group, which should be an exception in keeping with the law.

Given the fact that protective education has been imposed on 102 children at present [whilst 98 cases are a deviation from the criminal measure pursuant to Section 12 (b) in association with Section 22 of Act No. 218/2003 Coll. on the Liability of Juveniles for Illegal Acts and on Juvenile Courts – ALJ], their placement in the few facilities would impact on their opportunity to preserve bonds with family and relatives with respect to the distance of the facility from their homes. This is only corroborated by the fact the institutional education concept should proceed towards establishing small facilities of family type as are common in neighbouring countries. A similar problem (large distance from family) occurs in cases of facilities that should focus on children with special needs (like the Polanka facility).

The Defender recommended establishing "small" family type facilities; primarily facilities for groups of children in need of heightened, or specific care (for instance drug addicts' children).

The Defender also concentrated on the installation of special structural and technical aids and audio-visual systems pursuant to the provisions of Section 15 of AEIPE containing legal sanction to install camera systems and monitor the building surrounding and site of the facility, premises where children have no access, and the facility's corridors. The Defender found the existence of cameras in Chrastava reformatory and at the EBD dep. in Boletice. The cameras in Chrastava reformatory have been fitted in the building for children with imposed protective education, yet the Defender discovered their installation in a section housing exclusively children with ordered institutional education, which is in contravention of Section 15 (1) of AEIPE. Cameras have also been installed at EBD dep. in Boletice too: in corridors, common areas and rooms for teaching of children – though the law does not enable installation of cameras to such an extent.

The Defender recommended instantly removing the cameras from places where they are not legally sanctioned, and likewise recommended to interpret pertinent provisions of the law in order for the option to fit in audio-visual systems not to affect children with ordered institutional education and to protect the rights of children with imposed protective education as much as possible.

On his visits the Defender perceived differences in material equipment of facilities, the number and qualifications of personnel, presence of psychologists as well as in the very regime (for instance setting of points systems, steps in education that have no hold in the law – like removal of their own clothing) and similar. With respect to this fact and pursuant to the concept of equal rights, the **Defender recommended drafting standards of care provided to children in school facilities.**

Further Defender's findings and recommendations pertained for instance to differently set so-called points systems, the possibility of children's stays at home with their parents, to outings, etc.

IV. DEFENDER'S GENERAL OBSERVATIONS – RECOMMENDATIONS TO THE CHAMBER OF DEPUTIES

In this section of the Annual Report, the Defender summarises his previous recommendations pointing out the required amendments to the legislation he addressed to the Chamber of Deputies of Parliament of the Czech Republic in the period from 2001 to 2005. These recommendations (partly) continue. The Defender also provides recommendations resulting from his work in 2006.

1. Selected Recommendations from the 2001 to 2005 Annual Reports

1.1 Noise from Traffic

The Defender pointed out the increasing number of complaints concerning the issue of burden from traffic already in two Annual Reports on his work. Citizens are critical about noise, increased concentrations of harmful substances or vibrations due to unsatisfactory communications overloaded with trucks. Unfortunately, globalisation trends are characterised by a considerable intensification of traffic in general and a concentration of transport-related activities in a limited number of locations (large logistics terminals, transhipment docks, warehousing sites), often in volumes so huge that it generates a rather understandable opposition of those affected in the neighbourhood. The Defender believes the objective of public administration must be to channel such activities within acceptable dimensions. The Defender stresses that as part of preventing the negative phenomena accompanying car traffic, fundamental attention must be paid to the issues of traffic design already in the zoning procedures.

Municipalities must bear in mind according to the Defender that incorporation of for example industrial parks into the complex city organism will, in connection with the general trend of traffic intensification, necessarily demand solution of the issues of noise burden, which keeps increasing with the intensification of traffic. Municipalities, as the zoning bodies, should be considering agreeable living conditions of their inhabitants and their task is to look for possible ways to addressing the issue sufficiently ahead of time. The existing findings made by the Defender in the performed inquiries suggest that the attention paid to the issue of traffic noise and the resulting infringement of agreeable living conditions of inhabitants remains wanting. In particular urban population is plagued by noise, which often exceeds the highest allowable limits. The Defender is also not positively inclined towards the practice where noise (in particular) from communications is dealt with by granting an exemption to the communication owner. This is a procedure taken in particular where so-called old noise burdens are concerned. The Defender points out that such a procedure is only possible when the owner of the communication proves to have taken all the measures that can be reasonably required from him and has not succeeded in reducing the noise. The Defender also points out that the granting of an exemption represents a temporary measure, which is not actual but merely legal. It is therefore necessary to look for other ways of dealing with noise from traffic in a comprehensive fashion, for example by preferring or advantaging types of transport than road transport.

The Defender also finds it necessary to point out that Directive 2002/49/EC has not been transposed to the Czech legal order to date. The aforementioned Directive tasks itself with defining a common approach of the member states of the EU to the prevention or reduction of harmful or annoying effects of environmental noise. The Directive introduces so-called noise-mapping for determining the amount of environmental noise and enabling the public to obtain information on the noise situation. Action plans should be subsequently adopted to improve the acoustic situation in locations where noise exposure compromises health or quality of life. The Directive applies to environmental noise to which people are exposed in particular in built-in areas, in public parks or quiet areas in an agglomeration, in quiet areas in open country, near schools, hospitals and other noise-sensitive buildings and areas, including noise emitted by means of transport, road traffic, rail traffic, air traffic, and from sites of certain industrial activities. The Directive was to be incorporated in the legal orders of the individual member states by July 18, 2004.

Implementation into the Czech legal order was to take place via a separate act on the evaluation and reduction of noise in the environment. However, the governmental draft act (with subsequent amendments during the legislative process) was rejected at the 41st session of the Chamber of Deputies.

The Public Defender of Rights recommends to the Chamber of Deputies to adopt the draft Act on the Evaluation and Reduction of Environmental Noise.

1.2 Plots of Land without an Owner

In 2005 the Defender dealt on his own initiative with the issue of plots of land kept in the Land Register where the owner is unknown and plots of land whose registered owners are likely deceased. He stated that those wishing to dispose of such plots of land (co-owners, potential buyers and the like) face considerable complications as they can hardly trace more information on an owner in other sources (private entities do not have access to the central citizens register). Solving the issue by initiating court proceedings on declaring the existing owners as dead with the subsequent discussion of inheritance is also objectionable and time consuming.

A meeting with the representatives of the Czech Office for Surveying, Mapping and Cadastre (hereinafter also COSMC) and the Office of Government Representation in Property Affairs (hereinafter also OGRPA) was held in the Office of the Public Defender of Rights under the patronage of the Defender already in 2005 with the objective of exchanging experience with the issue of real estate registered in the aforementioned manner and to seek a suitable solution.

A need was voiced in the meeting to adopt a suitable legal regulation that would facilitate settlement of ownership relations to all the described categories of real estate and result in elimination of such ambiguities from the Land Register. The Defender therefore pointed out the issue in the 2005 Annual Report and recommended to the Chamber of Deputies to task the government with presenting a draft legal regulation that would settle relations to property without an owner.

In 2006 the Defender was advised by OGRPA and COSMC that both institutions had entered into "Agreement on Long-term Co-operation Aimed at Contributing to Removal of Registration for Unknown Owners in Land Register". The purpose of the agreement is to ensure co-operation between OGRPA and COSMC in ascertaining ownership title to real estate whose owner is not ascertainable from the Land Register and co-operation regarding the registration for specific persons.

The Defender was also advised that both authorities would jointly prepare a draft act comprehensively dealing with the issue and endeavour to ensure that the government deals with the issue. The Defender is prepared to support such an endeavour.

The Public Defender of Rights recommends to the Chamber of Deputies to adopt a draft act settling ownership relations to real estate registered in the Land Register without an owner or with an unknown owner.

1.3 Mining Legislation

In his work, the Defender repeatedly encounters complaints criticising the procedure of authorities in the application of mining legislation. The conclusions and observations made by the Defender in dealing with such complaints suggest that the existing legal regulation is not appropriate in terms of protection of the ownership title of persons affected by mining. The Defender supports endeavours towards a higher degree of balance between the owners of real estate and the mining company. The intervention by the Defender was one of the factors contributing to adoption of an amendment of the provision of Section 19 of Act No. 44/1988 Coll. on the Protection and Utilisation of Mineral Resources (Mining Act) in Parliament in a form that should help eliminate the existing difficulties in obtaining positions of the mining organisation that result in delays in planning proceedings. The new legal regulation came into effect as of January 1, 2007.

The issue of decreasing estimated prices by what is called marketability factor in the valuation of real estate affected by mining is perceived as particularly controversial by the Defender. He expressed his conviction that mining organisations act in contravention of legal regulations if they actually decrease the purchase price of real estate under the cover of a decree of the Ministry of Finance. There fails to be any consideration of the fact that the amount of reparation is subject to agreement, i.e. consensus between two parties, and if no

agreement is reached, a court must decide on the matter (proper expropriation proceedings are another issue where a procedure according to the applicable legislation must be taken in valuation – including decree of the Ministry of Finance No. 540/2002 Coll. implementing certain provisions of Act No. 151/1997 Coll. on the Valuation of Property). All this is connected with the practice criticised by the Defender where there is a failure to enter into agreements on the conflict of interest already before mining is permitted. As a result, the owner of real estate affected by mining is in fact "coerced" into the agreement (based on a real estate valuation decreased by the marketability factor). It is worth remembering here that with the intention of dealing with the situation, an amendment of Section 37 (5) of the Mining Act was adopted effective as of January 1, 2006, stipulating: *"Where the two parties fail to agree on the form of compensation, the amount thereof is set by virtue of an expert report. The amount of compensation computed in the aforementioned manner must not be reduced by the marketability factor if the latter's value is lower than one."*

Given the subsequent attempts at annulling the newly adopted regulations (the intention to remove the provision in question arose less than three months of its coming into effect!), the Defender supported its preservation in 2006. In doing so, he utilised his power in the sense of Section 24 (3) of Act No. 349/1999 Coll. on the Public Defender of Rights, i.e. the power to partake in an assembly of the Chamber of Deputies and request leave to speak where matters pertaining to his mandate are dealt with. As a result, the requirement for the prohibition of reducing the computed amount of reparation by the marketability coefficient continues to exist if the latter's value is lower than 1.

The Defender continues to stress the necessity of reaching a consensus between the mining organisation and the owners of the affected real estate as a prerequisite for mining to take place. The issue of the so-called conflict of interest in the sense of the provision of Section 33 of the Mining Act should in the Defender's opinion be approached along the same lines. The Defender holds the view that the burden of settling the conflict of interest should not be with the owner of the affected real estate as the bodies of public mining administration are sometimes inclined to ague ("the owner of the real estate has the opportunity to address a court"). In the Defender's opinion, all the conflicts that may arise in connection with mining in the future should be dealt with, which is a procedure resulting from the general principle of prevention. Recent practice of the Supreme Administrative Court is in favour of such a conclusion. The Defender believes the public administration bodies involved err if they fail to request a document from the mining organisation proving settlement of the conflict of interest with real estate owners before they permit mining. By failing to proceed in the aforementioned manner, the public administration bodies essentially weaken the position of the owner of the real estate towards the mining company. Settlement with the owners of all affected real estate should be primarily up to the mining company intending to commence mining, which may also use any appropriate legal instruments.

The Public Defender of Rights recommends to the Chamber of Deputies that within the legislative activity it continues to endeavour for a higher degree of balance between the positions of the owners of real estate affected by mining and the mining companies.

1.4 Public Administration in the Sector of Experts and Interpreters

As in 2005, the Defender continues to appeal for the issuing of a new legal regulation in the sector of public administration of experts and interpreters corresponding to the present needs, trends and guarantees of a fair trial. A discussion meeting with the representatives of justice on November 9, 2006, in the Office of the Public Defender of Rights in Brno confirmed the inadequacy of the existing legal regulation in Act No. 36/1967 Coll. on Experts and Interpreters including Decree of the Ministry of Justice No. 37/1967 Coll. on the execution of the Act on Experts and Interpreters. A better stipulation of linkage to the application of the Code of Administrative Procedure also seems essential, and not only with regard to the appointment or dismissal of experts, but also in terms of handling complaints about the work of an expert in general (differentiating complaints containing objections against an expert report).

The Defender therefore recommends to the Chamber of Deputies to adopt a new legal regulation in the sector of experts and interpreters.

1.5 Supervision over Distraints

In the 2005 Annual Report, the Defender recommended an amendment of the Distraint Code so that the supervisory power of the Ministry of Justice is defined in more detail (in

particular in relation to the Chamber of Executors) or that it is directly strengthened. The Defender maintains that by entrusting certain powers to other entities, the state does not fully rid itself of responsibility for the outcome of the exercise of such (delegated) power. He stated that a situation should be aimed for where citizens have the opportunity to effectively defend themselves not only against unprofessional procedure of court executors, but also against improper conduct of court executors and distraint authorities.

The Defender welcomed that the Ministry of Justice proposed, in accordance with his recommendation, an amendment of the Distraint Code (Act No. 120/2001 Coll.) in relation to supervision over distraints. By virtue of the proposed Section 115a of the Distraint Code, a legal regulation of the handling of complaints against the work of court executors is being included in the Act. Complaints have been handled informally to date. Complaints against the work of executors should also be dealt with by the Ministry of Justice, apart from the Chamber of Executors. The legal regulation does not deal with the competences and co-operation of both institutions in detail (e.g. when a person addresses both at once). The Defender believes the relationship between the Chamber of Executors (as a professional self-governing organisation) and the Ministry (as the central public administration body that delegated its powers to the Chamber) should also be dealt with.

The Public defender of Rights recommends to the Chamber of Deputies to adopt the legal regulation proposing the detailing of the supervision by the Ministry of Justice and the Chamber of Executors over distraints.

1.6 Compensation Paid by the Guarantee Fund of Securities Traders

In his Annual Reports (2003, 2004, 2005), the Defender repeatedly and systematically attempts to point out that the Guarantee Fund of Securities Trader lacks sufficient resources to pay all the compensation for the bankrupt securities trader entitled KTP Quantum, a.s. Again in 2006, the Defender was addressed by clients of the aforementioned securities trader and pointed out obstructions by the Guarantee Fund of Securities Traders (hereinafter also the Fund) in paying out their compensation.

The Fund was created by virtue of an amendment of Act No. 591/1992 Coll. on Securities implemented by Act No. 362/2000 Coll. as a consequence of implementation of Directive 97/9/EC of the European Parliament and of the Council of March 3, 1997, on investor compensation schemes. Thus the Fund was established as an institution intended *inter alia* to compensate customers of securities traders in cases stipulated by the law; entitlement to compensation is stipulated by the law and the Fund is obliged to provide compensation under the terms stipulated by the law.

A fundamental turning point occurred in 2006 as regards payments. In September 2006, the Supreme Court dismissed the Fund's extraordinary appeal against a decision of the High Court in Prague, which stated that the Fund had been retaining payment of the legal compensation illegitimately for over two years and ordered the Fund to immediately pay the compensation to the customers (including the interest accrued). In its decision (Ref. No. 29 Odo 242/2006), the Supreme Court deals *inter alia* with determining what is customer property in the sense of the Securities Act, whether compensation from the Fund also applies to customer property that cannot be released to customers for reasons directly connected with the trader's financial situation, etc.

Payment of the remaining compensation is currently prevented by a lack of resources in the Fund's accounts. Although the state has formally implemented the European directive, the latter's material fulfilment is prevented by the fact that the Guarantee Fund lacks resources for the provision of the compensation and it is hard to imagine an institution in the current Czech banking market that would loan a substantial sum to the Fund without a state guarantee. There is a risk of legal disputes before the European Court of Human Rights and proceedings before the European Commission on the grounds of a specific failure to observe the requirements of the European directive on investor compensation.

The Public Defender of Rights recommends to the Chamber of Deputies in the interest of the clients of the bankrupt securities trader and in the interest of increased confidence in the capital market in the Czech Republic to provide refundable financial assistance to the Guarantee Fund or guarantee a loan the Fund will obtain in the banking market.

1.7 Housing of Persons Threatened by Social Exclusion (Social Housing)

In his previous Annual Reports the Defender repeatedly pointed out the continuing and escalating issue of social exclusion of certain groups, expansion of substandard housing and the rise of ghettos.

Insufficient legal regulation and communal policy of some municipalities contribute to the aforementioned situation. In terms of the basic framework of legal instruments for the provision of housing, the housing policy concept adopted by the Government by virtue of resolution No. 292 of March 16, 2005, anticipates the construction of municipal flats supported out of the specially allocated resources of the Ministry for Regional Development and the State Housing Development Fund and the existing municipal rental flats for low-income citizens and citizens on the outskirts of society. It is obvious that the use of these instruments and the exercise of the housing policy in practice entirely depend on the activity and approach of municipalities.

In the Defender's opinion an actual solution of housing for the so-defined group can only arise from co-operation between the Ministry of the Interior, Ministry for Regional Development and Ministry of Labour and Social Affairs. The Defender is led to believe so for the following reasons.

The state's financial support to the construction of new or restoration of existing flats within the municipal housing fund, to date carried out by the Ministry for Regional Development, is in itself unable to prevent or resolve social exclusion.

Social exclusion always involves a limited group of people who are not a majority in society. A risk stems from this fact that the communal housing policy will not (in time) consider the needs of such a group and will look for pragmatic solutions that do not correspond to social role, i.e. one of the functions of a municipality as a community of citizens and a public corporation. The result is social exclusion and isolation that brings benefit neither to the municipality nor to the state.

The Defender holds the view that the state is obliged to ensure a minimum standard of housing to those threatened by social exclusion, which is undoubtedly one of the basic living conditions as conceived by Section 30 (2) of the Charter of Fundamental Rights and Freedoms: *"Every person in material need has the right to such help as is necessary for ensuring fundamental living conditions."* Such a right may only be asserted within the boundaries of the laws implementing the provision. These include, with respect to housing, in particular Act No. 128/2000 Coll. on Municipalities, Act No. 117/1995 Coll. on State Income Support, Act No. 482/1991 Coll. on Social Need, and Act No. 463/1991 Coll. on the Minimum Living Standard (effective from January 1, 2007 Act No. 111/2006 Coll. on Help in Material Need, and Act No. 110/2006 Coll. on Subsistence Level and Minimum Living Standard). The very design of the housing allowance, the contribution for housing and the very general formulation of the municipalities' obligation to heed satisfaction of citizens' social needs including housing needs (Section 35 (2) of the Act on Municipalities) do not represent a systematic solution of social housing facilitating prevention of social exclusion.

In itself, the possibility of being granted state income support benefits and social welfare benefits will not ensure a dignified minimum standard of housing and overcoming of an adverse social situation within a foreseeable time span. It is anticipated that there is a housing fund that will satisfy the so-defined housing needs of those threatened by social exclusion. The reality is, however, that even municipalities (whose co-operation is anticipated by the present housing concept of the government) prefer such tenants in the market for flats who will not struggle for subsistence and whose rent payments will not depend on the granting and payment of social benefits. The entering into a lease agreement in the present market for flats is routinely made conditional on the payment of relatively high commission, and a security for the lessor. Thus the persisting problem is *"where"* the housing need is to be satisfied.

The Defender therefore sees a solution in the drawing up of a draft Act on Social Housing that would, in the area of housing policy for persons threatened by social exclusion, systematically and entirely clearly define the position of the state and municipalities, set their obligations, determine a minimum standard of housing, define the target group of persons for social housing, set the necessity of creating a housing fund for the purposes of social housing, unify the already existing special regimes in the area of housing policy (special purpose flats, so-called "integration flats") and resolve links to the related legal regulations, in particular the

Act on Municipalities, the Civil Code, Act on Help in Material Need and Act on Subsistence Level and Minimum Living Standard.

The obligation of creating a housing fund for the purposes of social housing in a determined territory (such as in municipalities with extended competence or regions) and those operating such a housing fund (municipalities, non-profit organisations, housing co-operatives, private investors) needs to be stipulated by law. The scope of the housing fund for social housing should arise from an analysis by the Ministry of Labour and Social Affairs, taking into account regional differences. Such a scope would be updated at specified intervals. Where the need for social housing would diminish, the lessor could unilaterally increase the rent. In setting the target group of persons entitled to social housing, attention should be paid namely to the following vulnerable groups: single parents with children, pensioners, large or young families with supported children, handicapped persons, refugees, asylum seekers, and entitlement should be bound either alternatively or cumulatively to meeting a set income limit. It is certainly a matter of political consensus as to how broadly such a group of persons will be defined.

The Public Defender of Rights recommends to the Chamber of Deputies adopt a draft act on the housing of persons threatened by social exclusion.

1.8 Dual Citizenship and Presumed Citizenship

In his previous Annual Reports the Defender repeatedly pointed out the cases of persons erroneously regarded as Czech citizens and the lack of substantiation for the insistence on the principle of exclusive and sole citizenship. He therefore welcomed that the aforementioned principle was abandoned in the draft strategy for a new act on the acquisition and loss of Czech citizenship presented by the Ministry of the Interior for interdepartmental amendment proceedings in 2006. This applies in particular to the provision on the loss of Czech citizenship by virtue of acquisition of foreign citizenship on the basis of a display of one's own will. Yet the Defender finds the solution to the issue of persons erroneously regarded as Czechoslovak and Czech citizens in the past to be insufficient. According to the draft strategy, the possibility of acquiring Czech citizenship by virtue of declaration should pertain solely to those to whom a certificate of citizenship was illegitimately issued in the past. The possibility of simplified acquisition of citizenship for the citizens of the Slovak Republic that has been in place to date is no longer anticipated. The Defender points out that the certificate of Czech citizenship had been issued in entirely exceptional cases in the past, while on the contrary, there were frequent cases where the Police bodies or registry offices erroneously marked Czech citizenship in a federal identity card in 1993 and 1994.

The Defender therefore proposes such formulation of the provision that the possibility of acquiring citizenship by virtue of declaration pertains also to those to whom a document for proving Czech citizenship was illegitimately issued and that the declaration has a retroactive effect. The Defender mentioned this issue already in the previous Annual Reports as a general observation from his work.

The Public Defender of Rights recommends to the Chamber of Deputies to consider his above-mentioned recommendations in hearing the new legal regulation on the acquisition and loss of citizenship.

1.9 The Performing of Sterilisations

In the 2005 Annual Report on his work, the Defender informed the Chamber of Deputies of the results of inquiries into the individual cases of people who addressed him with a complaint that they had been sterilised without their consent or on the basis of coerced consent or manipulation.

The legislative measures proposed by the Defender were to be carried out through a modification of the Act on Public Healthcare, which was to be submitted to the Chamber of Deputies and replace the existing Act on Care of People's Health. However, the hearing of the draft Act on Public Healthcare ended in the Chamber of Deputies of Parliament in the first reading before the 2006 elections.

Parliament heard the amendment of the Act on Care of People's Health in 2006. However, the adopted amendment was vetoed by the President. The Chamber of Deputies of Parliament is currently hearing as parliamentary protocol No. 83 a draft of the aforementioned Act submitted again by the Government in late 2006.

The Annual Report of the Public Defender of Rights on his work in 2005, which has been heard by the Chamber of Deputies and the Senate, also contained a recommendation to consider adoption of a legal regulation that would allow compensation for women affected by illegal sterilisation. The Swedish legislation was labelled as a suitable pattern for the design of such regulation. Although having taken a due note of the content of the report, none of the Chambers has come up with any legislative initiative in the matter.

The Public Defender of Rights recommends to the Chamber of Deputies to adopt a legal regulation that will stipulate the provision of consent before the performing of sterilisation for health reasons or for other than health reasons within the legal regulation of informed consent.

1.10 Right of Patients to be Granted Information Collected within Medical Records and the Right of Persons Related to the Deceased to Information

Given the persisting problems faced by some patients in the obtaining of information collected on them in medical records, in the previous Annual Reports the Defender repeatedly pointed out the need to adopt an amendment of Act No. 20/1966 Coll. on Care of People's Health, which would expressly regulate not only the right of patients to any and all information, but also their right to study medical records and obtain copies of the required data. The Defender also pointed out a similar situation regarding those related to a deceased patient. The latter are still in many cases denied information concerning treatment and the causes of the patient's death, because the applicable legal regulation fails to expressly deal with the situation after a patient's death. Denial of access to data from medical records of persons related to the deceased can be labelled as a serious problem as it represents an encroachment upon the personal right to the protection of life and health of the closest blood relatives given that the data may contribute to determining the actual diagnosis of their own diseases.

An amendment of the Act on Care of People's Health detailing the rights of patients and persons related to the deceased was heard by Parliament in 2006. The adopted amendment was vetoed by the President. The Chamber of Deputies is currently hearing as parliamentary protocol No. 83 a draft of the aforementioned act again submitted by the Government in late 2006.

The Public Defender of Rights recommends to the Chamber of Deputies to adopt an amendment of Act No. 20/1966 Coll. on Care of People's Health that will detail the rules for studying medical records.

2. General Observations and Recommendations of the Defender for 2006

2.1 Notifying Passage of Property from State to Municipalities

In his work, the Defender repeatedly encountered problems caused by Act No. 172/1991 Coll. on the Passage of Certain Items from the Property of the Czech Republic to the Ownership of Municipalities. The Act failed to define the real estate that passed as of the date of its coming into effect (i.e. as of May 24, 1991) from the ownership of the Czech Republic to the Ownership of Municipalities in the usual fashion, i.e. by their specification in the then applicable records by municipalities, cadastral areas and property lot numbers. Immovable property is defined merely indirectly in the aforementioned Act, by defining legally relevant matters that, if in place, were a decisive qualification for the passage of ownership from the Czech Republic to municipalities.

In order to meet their obligation imposed on them by the Act, municipalities must not only precisely ascertain the extent of the immovable property having passed to their ownership, but also specify the property in their motion for registration in the legally prescribed manner, i.e. as real estate kept in the currently applicable Land Register.

Due to these complications, passage of property is still being registered in spite of the fact that more than 15 years have elapsed from the Act's coming into effect. Situations often arise where the plot of land concerned has already been transferred and it is currently owned by other persons in good faith. The registration threatens legal security and generates pointless legal disputes.

Although the Act anticipated municipalities would meet their notification obligation within one year, this was absolutely impossible for municipalities both technically and for record-keeping reasons. Although having understanding for this, the Defender regards the current interference in already existing legal relations as a fundamental problem. In the Defender's opinion, interest in the registration of passage after 15 years have elapsed cannot exceed interest in the protection of the existing owners' ownership.

Another area of problems generated by the aforementioned Act involves the situation of notification of passage of ownership acquired by a former national committee on the basis of confiscation during the communist regime. These are cases where the confiscation was not registered in the former real estate registry and the matter has not become obvious until today. In such a case, if the municipality (as the successor of the national committee) submits notification, the affected current owner (usually a descendant of the person from whom the real estate was confiscated) points out rather justifiably that this in fact represents circumventing of the restitution laws. Had the confiscation been registered in the past, the existing owner could have successfully asserted restitution in the 1990s pursuant to the restitution laws. If he has not learned about the confiscation until today, restitution is no longer possible as the foreclosure periods for its assertion have elapsed.

In this context the Defender points out the profoundly different position of restituents and municipalities. For the latter, the aforementioned Act essentially represents a universal restitution regulation. As already mentioned, the relevant laws have stipulated strict forfeiture periods where a failure to assert restitution within the given period resulted in expiry of the claim. Such a situation does not arise in the case of the passage of property to municipalities as the one-year period stipulated by the Act is merely procedural.

Although the legislature did not stipulate a foreclosure period for notification, the Defender holds the view that a process of notifying passage of the historic property of municipalities unlimited in time is not acceptable. Such an approach would not be in accordance with the basic requirement of the democratic legal state – the principle of legal security.

The Defender therefore concluded that setting a final date for submitting notifications pursuant to Act No. 172/1991 Coll. by virtue of an amendment of the Act would be the most efficient solution. It may be pointed out in this respect that while the restitution 'full stop' has already been enacted towards restituents, municipalities still may use the possibility provided to them by the aforementioned Act.

The Chamber of Deputies is currently hearing a draft Act on the Passage of Items from the Property of the Czech Republic to the Ownership of Municipalities submitted by the Senate (Senate protocol No. 14). The latter is to newly stipulate the passage of historic property of municipalities that did not pass on to municipalities on the basis of Act No. 172/1991 Coll. The Government has adopted a statement on the draft act where it points out that the draft fails to consider an approach to situations where a municipality shows no interest in administration of the property concerned, and likewise, the draft fails to deal with situations where the property concerned has already been transferred from the ownership of the Czech Republic to the ownership of private entities. The Defender fully identifies with the Government's reservations on the Senate draft and adds that the same reservations apply to the applicable wording Act No. 172/1991 Coll.

The Public Defender of Rights recommends to the Chamber of Deputies to adopt an amendment of the Act stipulating a final deadline for notifying passage of property from the state to municipalities pursuant to Act No. 172/1991 Coll. so as to avoid encroachment upon the legal security of the existing owners of plots of land held in good faith.

2.2 Delays in Court Proceedings

The Defender ascertained that the Czech legal environment responds insufficiently to the EU law regarding Council Regulation No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, according to which the "court" must issue a decision within six weeks after an application is lodged for return of an abducted child. The Regulation specifies the rules determined by the so-called Hague Convention on the Civil Aspects of International Child Abduction. The Defender therefore proposed to the Ministry of Justice as a remedial measure such amendments to take place in the Code of Civil Court

Procedure that would eliminate the risks of delays in court proceedings and meet EU and international laws.

The proposal of the Defender received support both from the Ministry of Justice, which has already incorporated at least the exclusion of extraordinary remedies in its concepts (if decision-making according to the Hague Convention is the case) and the Ministry of Labour and Social Affairs and the Office for International Legal Protection of Children.

The Public Defender of Rights recommends to the Chamber of Deputies to adopt an amendment to the Code of Civil Court Procedure that will result in an acceleration of decision-making in civil proceedings on the return of a child abducted abroad or from abroad.

2.3 Pensions of Persons Caring Long-term for a Related Person

On the basis of several analogous complaints, the Defender dealt with the issue of the **pensions of persons caring long-term for a related person or another incapacitated person**. The Defender was addressed by several complainants who had been granted an old-age pension or full disability pension in an amount markedly below the average, in accordance with the applicable legal regulation. The amount of the pension was adversely affected by long-term care for an incapacitated related person, which, even considering all the related expenses borne by the state, significantly spares public budget resources in comparison with institutional care and is in accordance with one of the ideal principles of social policy – the subsidiarity principle (an individual in a difficult social situation ought to be in the first place cared for by his next of kin rather than the state). Somewhat paradoxically, the amount of the carer's pension is adversely affected by the person's effort to earn extra income, at least in a part-time job. Given the principle of prioritising assessment bases (earnings from employment) to the excluded period, in the assessment of pension the earnings of carers are reduced more than they would have had the person concerned not earned extra income at all (in the latter case, the period of care would be excluded and the pension would be computed from earlier earnings). Moreover, if the person cares for a related or another incapacitated person for more than five years, the excluded period is cut to half, i.e. earnings are additionally reduced in the computation of pension.

The Defender therefore addressed the Minister of Labour and Social Affairs with a proposal to consider amendment of the Act on Pension Insurance with the following parameters:

- annulment or at least a substantial increase in the five-year limit set for the cutting of the so-called excluded periods to one half, which when applied results in a reduction of the basis for computation of the amount of pension;
- introduction of a special computation of old-age pension for those caring long-term for the incapacitated person (for example for 15 and more years), which would in special cases represent an analogy to the computation of the disability pension. In the opinion of the Defender, in terms of capacity to work, the limitation to work potential due to caring for an incapacitated person is essentially comparable to limitations due to disability;
- enactment of a comparison computation between a pension set on the basis of the inclusion of (low) earnings achieved by employment in the minimum engagement and a pension determined upon acknowledgement of the period of care as an excluded period.

The Minister of Labour and Social Affairs advised the Defender that the Ministry had already prepared a draft act that would enable any insured person, i.e. not only those caring long-term, to choose between inclusion of the substitute period of insurance and earnings achieved in the same period (item three of the proposed changes). The Minister rejected the Defender's remaining proposals. He stated that the period of care is a substitute period of insurance during which the insured person does not contribute to the insurance system and should therefore not have any benefits. He also pointed out that the period of care is an excluded period and it therefore does not dissolve earnings achieved before or after the care, which the Defender's experience suggests is a rule only when the five-year limit (that, when achieved, cuts the substitute periods of insurance to half) is not applied.

The Public Defender of Rights recommends to the Chamber of Deputies to adopt a draft act by which the above-mentioned changes proposed in favour of the pensions of persons caring for an incapacitated related person or other person will be incorporated in the Act on Pension Insurance.

2.4 Provision of Data from the Citizens Register

Act No. 133/2000 Coll. as amended (Act on Citizens Register) does not enable provision of data to applicants on the permanent residence of another person. Although this is not a significant agenda in terms of the number of complaints in comparison with the other areas of the exercise of public administration, it can be stated that from the beginning of his work, the Defender has been addressed by relatively numerous citizens with complaints against authorities denying them the provision of data from the citizens register information system. There are various reasons for why people wish to obtain data on the permanent residence of others. They organise homecomings, search for the fate of their early loves, look for siblings life separated them from, wish to know their biological parents, or need the death certificate of a relative without knowing the place of death. The Defender must evaluate such complaints as unsubstantiated, because authorities proceed pursuant to the law and reproaching them for maladministration is not appropriate. However the Defender finds the existing legal regulation of the provision of data from the citizens register information system unreasonably strict and "incompatible" with the legal regulation of the issuing of registry office documents and studying registry records, which enables a defined range of persons to acquaint themselves with much more sensitive data. The Defender therefore proposes that the provision of data on the place of permanent residence to applicants is allowed if the person concerned agrees to this. If the applicant wishes to know data of a deceased person (date and place of death, last place of permanent residence), the Defender recommends that the data can be provided to a range of persons identical with that currently allowed to study the collection of registry deeds (Section 8 of Act No. 301/2000 Coll. as amended).

The Public Defender of Rights recommends to the Chamber of Deputies to adopt the outlined amendment to the Act on Citizens Register.

2.5 The Principles of Good Administration

Pursuant to the law, the Defender is obliged to protect people not only against the breach of law by the authorities, but also against conduct in contravention of the principles of a democratic legal state and good administration. He therefore daily faces the issue of application and fulfilment of what the principles of good administration are. It is obvious that they are informal principles of the high-quality administration of public affairs based on constitutional principles, general legal principles, moral rules and legitimate social expectations. Thus good administration refers to a procedure of an authority which is not only in accordance with the law, but also cannot be reproached for arbitrariness, wilfulness, evasiveness, inefficiency, inertia and other undesirable attributes.

Some of the principles of good administration continue to be mentioned or defined in a scattered fashion and non-uniformly in laws and the already existing documents of various origins and quality. In 2006, the Defender therefore decided to summarise his findings to date and discuss them with experts. In doing so, he built on his six-year experience as well as the already existing European Code of Good Administrative Behaviour of the European Union, the prepared recommendation of the Council of Europe on good administration and other international documents. Czech experts broadly commented on the approach to the principles of good administration at a conference organised by the Defender in March 2006 (see section I.6.2).

The efforts of the Defender resulted in the following ten principles. They should serve the Defender in his future inquiries towards authorities as an interpretation aid that will make his procedure predictable. The Defender submits them to the Chamber of Deputies, to which he is accountable for the exercise of his position, for reference as to how he interprets the legal term of principles of good administration in his practice.

1. Compliance with the Law

The authority shall act in accordance with the legal order of the Czech Republic as a whole. It applies legal regulations in the context that exists between them. Where the interpretation of a specific legal provision is ambiguous, the authority shall interpret it according to its sense, whereby it shall respect in particular the statements of the superior authority and court practice. Upon a request of the subordinated authority, the superior authority shall provide its unambiguous and comprehensible legal statement on the solution of a specific legal issue. The superior authority itself shall also actively unify the procedure of subordinated authorities by issuing binding legal statements.

2. Impartiality

The civil servant shall approach all in the same situation identically and it shall not make any unsubstantiated differences in their treatment; in doing so he shall respect the principle of reasonableness. The civil servant shall endeavour to free himself of any prejudice, maintain political and religious neutrality and be the cause of no doubts about his non-prejudice. If he decides to disregard the statement or requirement of a person, he shall always substantiate such procedure. Complaints about a specific civil servant shall always be dealt with by a civil servant other than the one against whom the complaint is directed. The result of the investigation of such complaints shall come from a comparison of both parties' affirmations and the ascertained facts.

3. Timeliness

The authority shall handle every filing by a person within a sensible and reasonable time without unnecessary delays. If the handling requires more time than usual, the authority shall always advise the person thereof, specifying the reasons for the delay and the anticipated term by which the filing will be handled. If the decision of the authority may influence the result of other proceedings, the authority shall endeavour to decide before the end of such related proceedings. It shall advise the authorities for which the result of its proceedings is important about its procedure in the matter. In proceedings opened on its initiative, the authority shall open the proceedings without delay after becoming aware of a reason for opening the proceedings and complete them within such time as to achieve their purpose.

4. Predictability

The authority shall fulfil legitimate expectations and decide as it decided similar cases before or as the superior authority decides similar cases. If it deviates from its existing practice in a specific case, it shall expressly specify this in the decision and substantiate such procedure. In using administrative discretion, the authority shall use analogous procedures in analogous cases and adhere to general criteria set beforehand. Upon a change of general rules, the authority shall publish such a change in a reasonable fashion sufficiently ahead of time and create grounds for a smooth transition to new rules. The authority shall publish the most significant conclusions and findings from its work. The structure of the authority's significant documents shall be established and well-arranged to ensure persons can easily orientate in them.

5. Conclusiveness

In proceedings, the civil servant provides reasonable information about the ascertained facts and the person's obligations towards the authority and informs about the procedure of the authority so that it fully takes in the purpose of the proceedings, orientates in the course thereof and can use its procedural rights. The civil servant endeavours to provide accurate information in a fashion so as to ensure he does not misguide any individual. He/she takes account of the person's communication and intellectual abilities in communication with him/her and endeavours to properly answer all queries. Official documents intended for people shall be written in a simple and clear language so that they can easily understand them.

A written substantiation of a decision by the authority shall be well set out, comprehensible and unambiguous. The authority shall instruct the person of the possibility of using remedies against its decision including review by a court. The authority shall always take effective steps to ensure that the person the decision concerns learns about the decision. The authority shall also honestly inform the public about the preparation of a decision of general impact and give it an opportunity to comment on its content.

6. Reasonableness

The authority shall interfere in people's rights and justified interests only where this is necessary in order to achieve the purpose of the proceedings and only to the necessary extent. In exercising its powers, the authority shall take account of the extraordinary situation of a specific person so that its procedure against the person is not unreasonably harsh. It shall require only such co-operation as is essential for achieving the purpose of the proceedings. It shall set a reasonable period to persons for fulfilment of imposed obligations in consideration of their personal circumstances including time required for preparation to fulfilment of newly imposed obligations. In the interest of rationality of the exercise of administration, the

authority shall apply laws in a fashion that does not lead to absurd results and meets the objectives pursued by the legislature.

7. Efficiency

The authority shall endeavour to handle the matter comprehensively. If a department or organisational unit of the authority receives a filing it is not competent to handle, it shall forward the filing to a part of the authority competent for the subject matter and inform the person thereof. If a matter is handled by several departments or organisational units of the same authority or by several authorities in parallel, they shall mutually ascertain information on their procedure, provide the same to each other and co-ordinate the procedure together. Every authority is consistent in its work and endeavours to arrive at an actual rather than formal solution of the whole matter. It therefore takes suitable steps for practical realisation of its decisions and subsequently inspects their fulfilment.

8. Accountability

The authority shall not avoid evaluation of an issue or adoption of a decision in a matter falling within its competence. If making an error, the authority shall clearly and expressly admit the error, apologise for it to the person in writing and take effective remedial measures without any delay or, where applicable, it shall instruct the person of the possibility of requesting indemnification for the damage suffered from the incorrect official procedure.

The public servant shall expend public resources only in an extent necessary to achieve the purpose of the proceedings. He endeavours to prevent damage to health and property of persons and the state and to national assets. He shall handle information obtained in the exercise of public administration sensitively and provide due protection for it, taking account of privacy and family life.

9. Openness

The authority shall enable people to study all official documents and make copies thereof. The authority shall diligently observe file order and it shall therefore be able to trace individual documents. Access to official documents shall be restricted by the authority only to an extent required by the protection of personal data, privacy, justified interests of others, classified information, trade secrets or other legal limits. A fee for making official documents accessible or for making copies thereof shall be set by the authority so that it does not prevent people obtaining information about the work of the authority.

When contacting people, the civil servant handling the matter shall specify his name, position and telephone or e-mail contact. The aforementioned data is specified in all documents and the website of the authority. The building of the authority is provided with an information system ensuring easy orientation of persons and the possibility of identifying civil servants in their worksites. The official notice board is placed visibly; it is clearly marked and tidily arranged.

10. Responsiveness

The civil servant shows respect and is polite, and acts irreproachably towards other civil servants. He pays proper attention to all communications and duly responds to all filings, with the exception of anonymous and repeating filings. He takes all efforts to help achieve the objective pursued by its filing. Being aware that his work serves the public, the civil servant shall under no circumstances infringe upon human dignity.

The Public Defender of Rights recommends to the Chamber of Deputies to take a due note of the submitted Principles of Good Administration within the hearing of the present Annual Report and thus support their promotion in the exercise of the Public Defender of Rights' mandate.

V. CONCLUSION

The year 2006 was another turning point in the work of the Office of the Public Defender of Rights. As of January 1, 2006, an amendment of the Act on the Public Defender of Rights (Act No. 381/2005 Coll.) came into effect, which broadened the mandate of the Public Defender of Rights to the area of regular and systematic inspections of facilities where persons *de iure* and *de facto* restricted in personal freedom are confined. The original task for the Defender, i.e. the handling of individual complaints of citizens against the exercise of public administration, remained valid in parallel with these changes.

The Office of the Public Defender of Rights succeeded in coping with the broadening to additional obligations by effectively developing the new mandate partly carried out by new colleagues and the regime of systematically planned visits to individual types of facility has become an inseparable part of my everyday agenda.

Development to date, which may be characterised as a deepening confidence of the public in the work of the Public Defender of Rights, continued in the basic agendas of individual complaints, and simultaneously a certain increase in the quality of the individual filings has been observed. The available findings on the work of similar institutions abroad even suggest that Czech society has comprehended the purpose and possibilities of the Defender somewhat more distinctly and faster, which was obvious particularly from the number of complaints in areas where his mandate is stipulated.

While in the above-mentioned respects it may be concluded that the work of the Defender successfully meets the criteria anticipated by the law, more could be done concerning the general observations made and the presentation of results. The institution of the Public Defender of Rights is unique to the extent as it gathers information on the work of essentially all public administration bodies. I am aware of the aforementioned potential and I therefore endeavour together with my colleague to point out general phenomena in the individual spheres of my mandate. It is obvious that the submitted Report in itself will not be sufficient to remedy problems, although partial success has been achieved by organising certain working meetings with the representatives of the departments involved, as specified in section 1.

Some new methods of presenting findings could make the generalising role of the Public Defender of Rights more effective in future. This includes in particular the deepening of the activities towards the Chamber of Deputies where participation in the hearing of legislative projects, in second readings, is an option that could be considered. However, I am simultaneously aware that such utilisation of legal powers is likely to be limited also in the coming periods, as I must primarily attend to the handling of the cases of those addressing me with complaints.

I would like the Chamber of Deputies to take due note of this Report and also for it to serve the Chamber of Deputies and all those who acquaint themselves with the Report as an impulse for contemplation of the standard and condition of public administration. I hope it will also be a source of information about the potential of the Office of the Public Defender of Rights to provide a relatively extensive range of findings about current problems and possibilities for their solution.

Brno, March 21, 2007

JUDr. Otakar Motejl,

Public Defender of Rights

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ANNUAL REPORT ON THE ACTIVITIES
OF THE PUBLIC DEFENDER OF RIGHTS
IN 2006

SUMMARY

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