ANNUAL REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS

IN 2007

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CONTENTS

INTRODUCTION

This annual report is a summary of the first year of JUDr. Otakar Motejl's second term in office and concurrently the first year of RNDr. Jitka Seitlová's as his new deputy to whom the Defender has delegated execution of part of his mandate [Section 2 (4) of the Act on the Public Defender of Rights (Act No. 349/1999 Coll. as amended)] in the agendas of the environment, social benefits, state citizenship, the right to information, consumer protection and some others. Given that the Public Defender of Rights (or "*Defender*") suggested he was going to make certain changes in the approach to his work in the new term of office as early as during the re-election process, this annual report has been drawn up a little differently to the preceding reports. Firstly its structure has altered in a way, and secondly the author has endeavoured to abbreviate the report compared to previous years, primarily in the number of individual cases described (these can be found at the http://www.ochrance.cz website). The Defender's intention is rather to **emphasise general observations** collected in different public administration fields including the **reflection of long-term trends**.

The Report has been broken into seven parts.

The first part comprises of general information on the management of funds of the Office of the Public Defender of Rights (or the "*Office*") and on the Defender's international activities.

The second part has been newly been dedicated to the Defender's special powers and his relations with constitutional authorities (the Chamber of Deputies, government, Constitutional Court, etc.).

The third part comprises of statistical data and presentation of practical observations from individual areas of public administration.

The fourth part presents information on the results of his systematic visits to facilities where persons restricted in their freedom are confined.

The fifth part newly concentrates specifically on discrimination pertaining to the ongoing legislative process of the Anti-Discrimination Act intending to bestow a new competence in matters concerning the right to equal treatment and protection against discrimination (Chamber of Deputies, 2007, 5th election term, parliamentary draft No. 253) on the Defender.

The sixth part draws general conclusions on the most severe problems and concurrently the Defender attempts to outline options for their settlement. The Defender also uses this part to respond to the manner in which the government approached the recommendations made by the Defender in his Annual Report in 2006.

The seventh part is the final summary.

PART I - THE PUBLIC DEFENDER OF RIGHTS AND HIS OFFICE

1. Budget and Spending in 2007

In 2007 the Office of the Public Defender of Rights functioned with a **CZK 94,363 thousand** budget. **CZK 76,639 thousand** were used from the aforementioned budget, i.e. 81% of the set budget.

CZK 17,925 thousand was saved from the 2007 budget, particularly from funds for running costs of CZK 13,422 thousand; primarily in operational expenses, partly in salaries of employees and other payments for work carried out and CZK 4,503 thousand was saved on investment costs.

2. Personnel Situation in 2007

The budget for the year 2007 determined an obligatory limit of **99 people** on the number of employees of the Office. The actual average recalculated number of staff recorded was 98.66 employees in 2007, which meant the limit stipulated by the state budget was met. Of the total number of employees 70 were directly involved in dealing with complaints and making regular so-called detention visits.

Due to the comprehensive assessment of some important cases, **cooperation with external experts**, mainly from the law faculties of Masaryk University in Brno, Charles University in Prague and Palacký University in Olomouc. **Compulsory work experience in legal practice** of selected students from the 5th year of the Master's programme was implemented at the Office in cooperation with the law faculty of Masaryk University.

3. Publicity, International Co-Operation, Conferences

Press Releases, TV Series, Website

The Defender organised **10 regular press conferences** and **1 extraordinary briefing** in 2007. Their topics were mainly current inquiry results in crucial cases. These pertained to:

- findings from systematic visits to facilities for institutional and protective education,
- inquiries in the matter of pensions of those caring long-term for a relative,
- consequences of changing terms for drawing water from wells,
- results of an inquiry into the eviction of Romani families in Vsetín,
- the Defender's findings in the issue of children travelling to EU countries against a registration in the parents' identity card,
- results of systematic visits to facilities for the elderly,
- the Defender's findings in the area of the Land Register,
- evaluation of the effects of the new Building Act,
- findings in the area of health and social care,
- publicising the illegal conduct of the Czech Social Security Administration in the issue of so-called *"Slovak pensions"*,
- findings on the use of coercive measures in facilities for the elderly,
- results of an inquiry in the area of social and legal protection of children, with emphasis on the inadmissibility of the removal of children from parents for housing reasons,
- informing the government of delays in the work of the Ministry of Labour and Social Affairs and the Ministry for Regional Development.

Journalist were given **40 press releases** and statements during 2007, published along with other crucial documents at the Defender's website (http://www.ochrance.cz/).

As part of his public education mission to the Defender started issuing **standpoint anthologies**, with the aim of assisting individuals and authorities in finding their bearings in select issues. The first two issues – ***Public Roads*** and ***Family and Child*** were published in 2007 (the anthologies are available for free downloading at http://www.ochrance.cz/cinnost/sbornik.php).

Czech Television broadcast a rerun of 16 episodes of the **second series of the *"A Case for the Ombudsman"*** and continued with **newly filmed episodes of the third series** starting in September. Due to high ratings and the great response, preparations for shooting a fourth series started at the end of the year.

All media showed increased interest in the work and results of the Defender's work. The Defender and his deputy appeared in television and radio broadcasts, during news reports, as well as in live studio broadcasts. The **Defender's work was therefore presented in the media** in **3 901 instances** in 2007, of which 273 were in television. **The Czech news Agency** gave information on the Defender's work in **410 reports**, while other printed and internet media along with radio stations published reports or interviews with the Defender on **3 218 occasions**. The Defender gave interviews to French public television and a television crew from Great Britain interested in the conclusion of the inquiry into Romani women's sterilisation, as well as to the Czech service of Australian public radio station SBS Sydney.

Increased interest was registered at the website of the Public Defender of Rights (http://www.ochrance.cz) in 2007. **530 409** visits were logged (against **410 710** visits in 2006). Again in 2007 the website retained an accessibility certificate for blind and visually handicapped users. Thus the website remains incorporated in the Catalogue of Blind-Friendly Websites and is authorised to use the international *Blind Friendly Web* logo.

International Co-operation

Korean Delegation Visit

A delegation of deputies from the *National Human Rights Commission of Korea* visited the Defender on February 5, 2007. Their talks focused on the Defender's work, particularly the issue of supervision over detention facilities.

Meeting of European Ombudspersons in Athens

On April 11 to 14, 2007, the Defender participated in a regular meeting of European ombudspersons and national institutions for the protection of human rights and fundamental freedoms in Athens. The meeting was concerned with co-operation between ombudspersons and the Council of Europe Commissioner for Human Rights regarding the implementation of judgements of the European Court of Human Rights in Strasburg.

Visit of a Turkish Delegation

A Turkish delegation (representatives of *Human Rights Boards*) visited the Defender between May 14 and 16, 2007. Its members were interested in the complaints the Defender deals with as well as the legislative provision for his activities.

Visit by Judges of the Constitutional Court of the Slovenian Republic

Judges of the Constitutional Court of the Slovenian Republic visited the Defender on May 29, 2007. They were particularly interested in the relations between the Public Defender of Rights and the Constitutional Court.

Visit of a Thai Delegation

A Thai ombudsmen delegation visited the Defender on August 23, 2007. The topic of their talks was the method of handling complaints, manner of performing inquiries and legislative provisions for the ombudsman's activities in both countries. The Defender noted with interest that the Czech and Thai ombudsman institutions are alike in terms of the year of their establishment (1999), and in their work.

Visit of Delegation of Deputies from Bosnia and Herzegovina, Montenegro, Kosovo and Serbia

A delegation of 20 deputies from the former Yugoslav republics visited the Defender on September 26, 2007. The agenda included Czech experience with the application of the lustration law and the role of the ombudsman in the democratisation and transformation processes in post-communist countries.

Meeting of European Ombudspersons in Strasburg

The Defender participated in a regular meeting of European Ombudspersons taking place under the patronage of the *Médiateur de la République* in Strasburg on October 14 to 16, 2007. The meeting covered the exchange of experience with good administrative practices in the member states of the European Union and discussion of the draft "*Declaration of the Network of the European Ombudspersons*" (*Déclaration du Réseau européen des médiateurs*) defining the basic principles and content of the ombudsperson's work.

Meeting of Ombudspersons and Constitutional Court Judges in Yerevan

The deputy of the Public Defender of Rights participated in an international conference on human rights entitled *"International Experience of Cooperation of Constitutional Courts and Ombudsmen in Providing Protection of Human Rights"* on October 4 to 6 in Yerevan. In her contribution to the conference, the deputy acquainted the audience with experience in the protection of human rights in the Czech Republic.

Conferences

The Position of Municipalities and Regions in the Mixed Public Administration Model

On January 30, 2007, the president of the Senate MUDr. Přemysl Sobotka and the Public Defender of Rights jointly held a working conference entitled "*The Position of Municipalities and Regions in the Mixed Public Administration Model"* in the Senate Meeting Hall. The conference was attended by senators, ministries' representatives, heads of regional authorities and mayors of villages and towns. The objective of the conference was to describe problems ensuing from the exercise of independent and delegated competence by municipalities and regions, and analyse positives and negatives of mixed public administration models.

Social Services in Homes for the Elderly

The Defender held a specialist workshop focused on the issue of providing social services in facilities for the elderly at the Office of the Public Defender of Rights conference hall on May 21, 2007. The workshop was attended by the head of the Department of Social Services of the Ministry of Labour and Social Affairs, staff of the social affairs department in individual regions, representatives of homes for the elderly, representative of the Association of Providers of Social Services of the Czech Republic and a representative of the National Centre for Nursing and Other Health Professions. The objective of the workshop was to acquaint participants with the results of visits the Defender had made to homes for the elderly (*see Part IV*), and to discuss issues brought up by the new Social Services Act.

International Workshop "The New Code of Administrative Procedure and Local Self-Government II"

On June 18 and 19, 2007, the Defender together with the law faculty of Masaryk University in Brno organised an international workshop in Kroměříž entitled "*The New Code of Administrative Procedure and Local Self-Government II*". The participants at the workshop included doc. JUDr. Pavel Kandráč, CSc., the Public Defender of Rights of the Slovak Republic, JUDr. Josef Baxa, the presiding judge of the Supreme Administrative Court, representatives of the academic community, the administrative courts, the central bodies of public administration and the regional authorities. The objective of the workshop was to provide for a meeting of representatives of Czech and foreign administrative practice, administrative justice and administrative science theorists, on the new legislation.

Permanent Residence

A specialist conference on "*Permanent Residence"* was held on October 25, 2007, in the conference hall of the Office of the Public Defender of Rights. The participants in the conference included judges of the Supreme Administrative Court, representatives of ministries, municipal authorities, municipal offices of statutory cities, NGOs and the Chamber of Executors. The objective of the conference was to analyse current legislation pertaining to the permanent residence of a Czech citizen and suggest amendments. The output of the conference can be found at the Defender's website (*see* http://www.ochrance.cz/dokumenty/dokument.php?back=/cinnost/konference.php&doc=1004) .

PART II - RELATIONS WITH CONSTITUTIONAL AUTHORITIES AND SPECIAL POWERS OF THE PUBLIC DEFENDER OF RIGHTS

1. Communication with Deputies, Senators and Bodies of the Czech Parliament

Inquiries on Deputies' and Senators' Initiative

Three deputies and **five senators** (+ the Committee on Education, Science, Culture, Human Rights and Petitions of the Senate in the case of Romani eviction from Vsetín) used the option to file a complaint with the Defender in accordance with Section 9 of the Act on the Public Defender of Rights, in 2007. The Defender provided the person a complaint pertained to with an analysis of the legal issue in a number of cases and opened **an inquiry against the pertinent public administration** authorities is some cases.

The Eviction of Romani Families from Vsetín

In January 2007 the Defender opened an inquiry at his own initiative in the matter of Romani families eviction from a gallery house at No. 1336 in Vsetín's Smetanova street. Concurrently the Czech Senate's Committee on Education, Science, Culture, Human Rights and Petitions approached the Defender on the same issue.

In the inquiry the Defender concentrated on reviewing the manner of **social benefit payment** (with an emphasis on the application of the special recipient institute) and the **exercise of social and legal protection of children**. The Defender paid special attention to the situation of Romani families resettled to the area around Jeseník, Prostějovsko and Uherské Hradiště (where he reviewed the conditions of the structure the families were settled in with respect to the **building code** and **public health protection**). Another part of the inquiry reviewed the procedure for construction and use of new houses at the Poschla site. The Defender concurrently reviewed the procedure of the planning authority in terms of the structural and technical condition of the gallery house (i.e. particularly the issue of proceedings for permission to demolish the gallery house where the Romani families had resided). The Defender also dealt with the assessment of Romani inhabitants' eviction from the perspective of the protection of fundamental rights and freedoms and assessed **social work with the Romani minority** and **Vsetín's housing policy**.

The inquiry concluded there had been maladministration by the Vsetín municipal authority.

The Defender ascertained maladministration in the system of social benefit payments. The body for social and legal protection of children was completely inactive in the sphere of statutory prescribed work with families and in **prevention** with the aim of ensuring protection of the **child's right to favourable development** and **proper upbringing**. Maladministration was shown in the planning authority's conduct (it remained inactive for a number of years in spite of the impartially ascertained poor structural and technical condition of the Smetanova street house). The only authority whose procedure in the entire case was exemplary was the Zlín regional health authority, which used all its powers to protect public health.

The Defender also dealt in detail with the fate of the six families (68 people) evicted by Vsetín council to the Olomouc and Jeseník districts. The Defender ascertained in particular that the "***media myth***" asserting these were rent defaulters has no basis in fact. All these families had paid for the use of the flats in the gallery house at Smetanova street. Three families owing rent on the previous lease had been repaying their debts. The remaining **three families had no debts**. The families were moved into houses in poor structural and technical condition while the planning authority had to order the demolition of a Čechy pod Kosířem building in June 2007. If the reason for the eviction of people from the gallery house in Smetanova street was the house's unsuitable condition and fear for the health of its inhabitants, then removal into other unsuitable premises in the areas of Jeseník, Prostějov and Uherské Hradiště was no solution.

On the whole, it can be said the forced eviction of Romani families outside the Vsetín municipality appears most problematic and it can be concluded that this intervention really did

violate fundamental human rights (freedom of movement and residence, the right to respect for private and family life).

Following disclosure of the final statement (for the unabridged version *see* *http://www.ochrance.cz/dokumenty/document.php?back=/cinnost/aktual.php&doc=798*) Vsetín municipally started to identify families with difficulty in paying rent on time to apply the so-called special recipient institute and establish individual plans to eliminate the debts, in terms of social benefits. With respect to the social and legal protection of children, the town has boosted the number of social workers, appointed a member of staff to inspect the file documentation and assure social and legal protection of Roma with a permanent address in Vsetín.

The Defender made general recommendations to the Ministry for Regional Development (cooperation on drafting an act on social housing) and the Ministry of the Interior (request to set up a methodology for towns and municipalities to ensure prevention of socially excluded communities arising).

Though it had appeared at first that Vsetín municipality had put most recommendations into practice, **its approach to the evicted families remains unsatisfactory**, primarily that towards the T. family deported to Čechy pod Kosířem. The house was in such a poor technical condition that the Kostelec na Hané municipal authority had to order its demolition, which had begun to put people's lives and health at risk (the demolition proceedings have not been completed). Finding replacement accommodation, respectively funds to ensure maintenance and renovation works at the house for the affected family is therefore imperative. The alarming fact about the situation of the T. family is that they were evicted from Vsetín in spite of having no debts and were properly repaying all their liabilities. It is also difficult to believe that in a democratic legal state the Vsetín municipality, as the current owner of the real estate (NB: the T. family were the only ones not to have signed somewhat dubious contracts on the transfer of the real estate and they were duly repaying their loan without being owners of the real estate concerned), **was able to disconnect a family of ten, including infants, from electricity and remove the metering device**, although the T. family had deposited an amount for the payment of gas and electricity with the mayor of the Čechy pod Kosířem municipality.

The Defender plans to organise a meeting on the matter between the mayor of the Vsetín municipality and the mayor of the Čechy pod Kosířem municipality aimed at settling the current problems the T. family faces as a result of the illegal procedure of the Vsetín municipality.

Participation in Meetings of Bodies of the Chamber of Deputies

In 2007 the Defender took an active part in discussions in certain matters pertaining to his work in the Chamber of Deputies. This concerned primarily the issue of his **newly planned mandate in the sphere of equal treatment and protection against discrimination** (he was repeatedly present at the Petitions Committee, Constitutional and Legal Committee and the Committee for Equal Opportunities). Although the Defender believes the institutional assurance of anti-discrimination protection ought to be assigned to a different state authority for reasons of legislative purity, the Defender is prepared to apply himself to this new mandate actively and responsibly. Amendments the Defender suggested in the course of the legislative process to the so called Anti-Discrimination Act (Chamber of Deputies, 2007, 5th electoral term, parliamentary draft 253) concerned in particular the efficiency of the proposed competences and issues of setting the effectiveness of the Anti-Discrimination Act (the Defender proposed suspending the effect of the second part pertaining to the execution of institutional assurance, for 6 months from declaration in the Collection of Laws).

The Defender also joined the discussion on the **amendment of the Distraint Code** in the committees of the Chamber of Deputies (Chamber of Deputies, 2007, 5th electoral term, parliamentary draft 178, declared as Act No. 347/2007 Coll.) and **amendments of the Residence of Foreigners Act and Asylum Act** (Chamber of Deputies, 2007, 5th electoral term, parliamentary draft 191, declared as Act No. 379/2007 Coll.).

In the first instance, the Public Defender of Rights focused on the issue of reimbursement of the costs of distraint, reimbursement of the executor's remuneration, procedural effects of appeals against a distraint order and deadlines for commencement of disciplinary proceedings against an executor. The Defender also suggested **boosting the supervisory mandate of the Ministry of Justice over the work of judicial executors**.

In the latter case the Defender disagreed with the provisions intended to weaken the procedural rights of applicants for visas and the narrowing of the range of persons entitled to file applications for a permanent residence permit after asylum proceedings have taken place.

The Defender also pointed out that some provisions of the amendment do not comply with the Czech Republic's **international obligations**, or with **community law** (this pertained particularly to the mode of so-called airport proceedings and the issue of access of persons with so-called supplementary protection to social benefits and health insurance).

The Chamber of Deputies accepted the majority of amending proposals for both amendments presented by the Defender.

2. Communication with Government

Delays in the Work of Ministries

Using his right to penalise (Section 20(2)(a) of the Act on the Public Defender of Rights) the Defender addressed the government in the matter of **delays** in the work of the **Ministry for Regional Development** (review proceedings under the Building Code) and the **Ministry of Labour and Social Affairs** (appellate proceedings concerning jobseekers excluded from the jobseekers register) in the second quarter of 2007.

Delays in the work of these ministries have been registered since 2005, and a satisfactory state has not been achieved in spite of repeated negotiations with ministers (this for instance concerned 2 377 uncompleted cases in the case of the Ministry of Labour and Social Affairs and 324 in the case of the Ministry for Regional Development). Based on the Defender's notification a **government** resolution on July 18, 2007 (Nos. 813 and 814), **tasked the department ministers** with (1) **putting in place measures** to ensure compliance with the deadlines stipulated by the Code of Administrative Procedures and subsequently (2) notifying the government and the Public Defender of Rights of the results. At the end of the year the Defender was notified of organisational and personne measures undertaken, the efficiency of which is currently under assessment.

3. Comments on Legislation

The Defender used the right to comment on legislation (he gave a statement on draft laws and decrees in a **total of 30 cases**). The comments pertained primarily to:

- the draft Anti-Discrimination Act,
- the draft Tax Code,
- amendment of the Distraint Code,
- amendment of the Residence of Foreigners Act and Asylum Act,
- the draft of a new concept of consumer protection,
- amendment of the Act on Pension Insurance,
- the proposed draft strategy for the constitutional Act on State Citizenship of the Czech Republic and the proposed draft strategy for the Act on State Citizenship of the Czech Republic,
- amendment of the Code of Civil Procedure (in the matter of the Hague Convention on the Civil Aspects of International Child Abduction),
- the major amendment of the Code of Civil procedure,
- the proposed draft strategy for the Act on the Remedy of Some Property Wrongs Caused to Churches and Religious Societies,
- the draft Act amending the Act on Municipalities, the Act on Regions and the Act on the Capital City of Prague,
- the new draft Act on the Police of the Czech Republic and Police Inspectorate,
- draft strategies for new medical laws.

Aside from these *"classic legislative materials"* the Defender commented on materials that do not have an output directly in the form of draft legislation, but more as analysis of a certain problem (as such materials directly related to the Defender's work and which would be referred to further - these will be treated in detail below).

Comments on the Complaint of the Government of the Czech Republic's Council for Human Rights on the Use of Movement Restricting Measures in the Provision of Social Services

The Defender expressed his **disagreement with the proposed judicial review** of the use of measures restricting the freedom of movement of persons in social services facilities (in particular homes for the elderly). In the Defender's opinion judicial review of matters concerning the everyday life of people in social services facilities is not an efficient instrument of protection, in particular with regard to the complexity and expense of proceedings in general courts as well as the general overloading of the courts. Although the complaint by the Government Council for Human Rights has been approved by the Government, the Defender continues to hold the view that protection against the unauthorised use of measures restricting the freedom of movement should be performed by the **Social Services Inspectorate** rather than the general courts.

Request of the Minister of the Interior for Co-Operation Concerning an Analysis of the Effect of the Act on Free Access to Information

The Defender was addressed by the Minister of the Interior this April concerning co-operation in an analysis of the effect of the Act on Free Access to Information (Act No. 106/1999 Coll. on Free Access to Information as amended). The Defender pointed out in the relevant material that if the application for the provision of information concerns management of public funds, the liable entities often deny access to information by unfairly claiming trade secret protection or copyright protection. The Defender also stated that the making of copies of administrative files continues to be an issue concerning access to information. In relation to potential legislative amendments, the Defender favoured a proposal that would **extend the range of liable entities** to controlled entities as defined by the Commercial Code. The Defender proposed detailing the situations in which the liable entity is to issue **decisions on denial of information**. He also proposed deletion of the provision stipulating that the liable entity must provide information to the applicant despite the **information** being **posted on the Internet**.

4. The Defender and the Constitutional Court

In relation to the Constitutional Court the Defender finds himself most often in the position of a so-called secondary party in proceedings on proposals to annul lesser legislation (usually generally applicable decrees by municipalities). At the same time, the Defender has been asked by the Constitutional Court in some instances to give his legal opinion in proceedings on annulling laws (the Defender is not a party to the proceedings and acts only as *amicus curiae*).

Court Executor Remuneration

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**. The Defender identified with the arguments of the Constitutional Court's first tribunal that the relevant provision has retroactive effects and executor remuneration treatment in compliance with the Constitution should be based on the complexity, responsibility and severity of the executor's work and not primarily on the amount recovered. In March 2007 the Defender as a secondary party joined the motion of the **Constitutional court** that **annulled** the provision of the decree (*see* Constitutional Court finding dated March 1, 2007, Pl. ÚS 8/06).

Generally Applicable Decree on the Means of Combating Infectious Diseases and Harmful Rodents

The Defender as a secondary party began proceedings at the Constitutional Court on the proposal of the Minister of the Interior to annul a generally applicable decree of the statutory city of Karlovy Vary on the means of combating infectious diseases and harmful rodents and proposed that the Constitutional Court reject the Ministry's proposal for inadmissibility. The Defender holds the view that in reality there is an **objective need for regular special preventive rodent control** in a number of cities and municipalities due to the regular spreading of the target populations (rodents, rats, etc.) beyond control, with resulting damage to people's

property and health. The Defender therefore finds the opinion in the proposal of the Ministry (*"the municipality should proceed to order widespread special rodent control only at the moment of an increased occurrence of pests instead of ordering it as a preventive measure"*) to be somewhat absurd, although in strictly formal legal terms it may correspond to the relevant provisions of the Public Health Protection Act (Act No. 258/2000 Coll. as amended).

On July 12, 2007, **the Constitutional Court rejected the proposal of the Minister** of the Interior (resolution Pl. ÚS 37/06). Thus, the Constitutional Court **ruled fully in accordance with Defender's proposal** and commented thus: "*The Constitutional Court points out the statement of the Public Defender of Rights in emphasizing the non-existence of authenticated factual justifications in the proposal made by the Ministry of Interior and points out the principle of efficient regulation of social relations under the conditions of familiarity with the reality of (local) specific social relations*. *Failing that, as the Defender correctly maintains, ordering area rodent control only at a time of increased/high occurrence of pests would lead to somewhat absurd formalist procedures by the local government, i.e. for instance annual approval of a generally applicable decree with virtually identical content (wording)".*

Proposal for Annulment of Section 171 (1) (c) of the Act on the Residence of Foreigners

The Constitutional Court addressed the Defender in November 2007 with a request for a statement on a proposal by the Supreme Administrative Court on the annulment of the provisions of Section 171 (1) (c) of the Act on the Residence of Foreigners (Act No. 326/1999 Coll. as amended). Based on the above call the Defender gave his statement on the proposal and his support. According to the Defender the proposal to annul the provisions of Section 171 (1) (c) of the Act on the Residence of Foreigners is justified because the provision in question **excludes decisions on administrative deportation from judicial review**. The absence of judicial review is incompliant with the human rights obligations of the Czech Republic from the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Favouring the State in Bankruptcy Proceedings

In December 2007 the Defender received a similar call concerning a proposal of the Supreme Administrative Court for the annulment of provisions that favour the state over other creditors in bankruptcy proceedings. The Defender backed the proposal by the Supreme Administrative Court opining that **there were not any material or legal grounds for favouring the state over other creditors in bankruptcy proceedings**. In relation to this the Defender stated that from the provisions of Section 105 of the applicable Act on Value Added Tax (Act No. 235/2004 Coll. as amended) in particular, it can be concluded that the provision is not in accordance with the requirements of predictability and inherent lack of contradictions of the legal order resulting from Art. 1 of the Constitution of the Czech Republic.

Decree of the Ministry of Culture on Copyright Fees

At the end of 2006 the Defender received a number of complaints disagreeing with the contents of the Ministry of Culture decree on so-called compensatory copyright payments (decree No. 488/2006 Coll.) Having assessed the legislation, the Defender stated he **would not file a proposal to annul the decree with the Constitutional Court**, because there are no material reasons to do so. The Defender is of the opinion the decree is explicitly authorised in the Copyright Act (provisions of Section 25 (7) of Act No. 121/2000 Coll. as amended) and the **Ministry did not exceed this legal sanction**. However, the Defender also stated that given that the capacity of storage media is rapidly increasing it is the duty of the Ministry of Culture to react to such developments and annually adjust the charge on the capacity of such media to the current average capacity in the market. Therefore, the Defender will monitor the Ministry's meeting such an obligation and whether the manner of charging, primarily with respect to so-called 'flash disks' and portable hard disks, does not contravene the **principle of proportionality**. The Defender was informed in association with this matter that an **amendment decree** is already being **drafted** and the Ministry awaits documents to be delivered by storage media producers.

5. Action to Protect the Public Interest

The Defender decided to address the Supreme Public Prosecutor in accordance with the provisions of Section 22 (3) of Act on the Public Defender of Rights in the matter of administra-

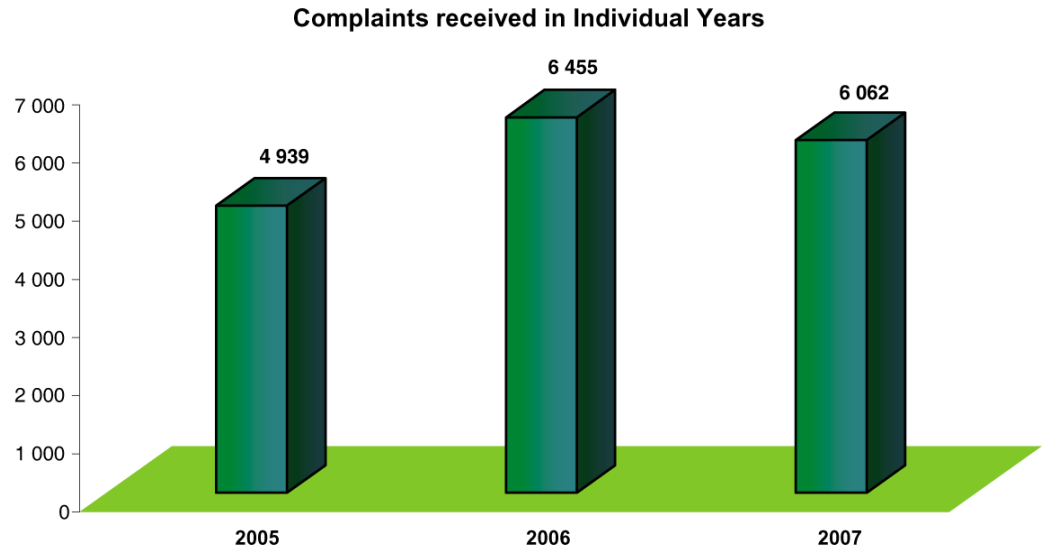
tive authorities' procedure in **authorising waste management**. The pertinent company received consent from the Zlín regional authority to extend running of a facility for collection, purchase and use of waste, even though expert opinions assessing the health risks ensuing from the contamination of soil ascertained multiple exceeding of the limits on polyaromatic hydrocarbons. As a result of the decision, the waste management undertaking **adversely affects human health**. Though the Defender tried to achieve remedy by proposing reopening proceedings, he was not successful. Consequently, the Defender addressed the Supreme Public Prosecutor with a request to file an action to protect the public interest [Section 66 (2) of the Code of Administrative Procedure (Act No. 150/2002 Coll. as amended)]. Upon this complaint **the Supreme Public Prosecutor** actually **filed an action** [Section 12 (7) of Act on State Prosecution (Act No. 283/1993 Coll. as amended)] and now the Defender awaits the decision of the administrative court in the matter.

PART III - COMPLAINTS RECEIVED BY THE DEFENDER

1. Basic Statistical Data

1.1 Data on Complaints Received

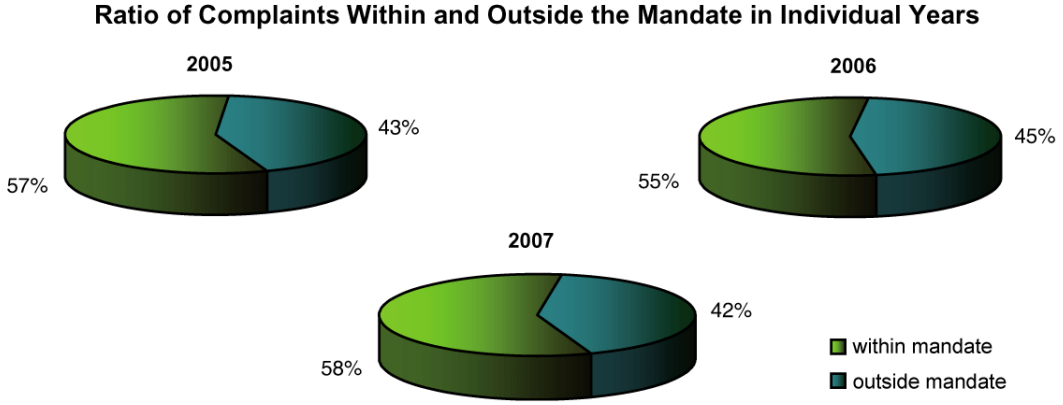
The Defender received **6 062 complaints** in 2007. The Office of the Public Defender of Rights was **visited by 1 492 individuals in person**, of whom **730** used the option to compile a **complaint orally in a protocol** and 762 obtained legal advice on how to deal with a specific problem there and then (such complaints are not incorporated in the overall number of complaints received). It should be noted for completeness' sake that the number of complaints received by the Defender 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 previous years.



The **information hotline** available for requests for simple legal advice and queries regarding progress in handling a complaint, was used by **4 813 people** last year.

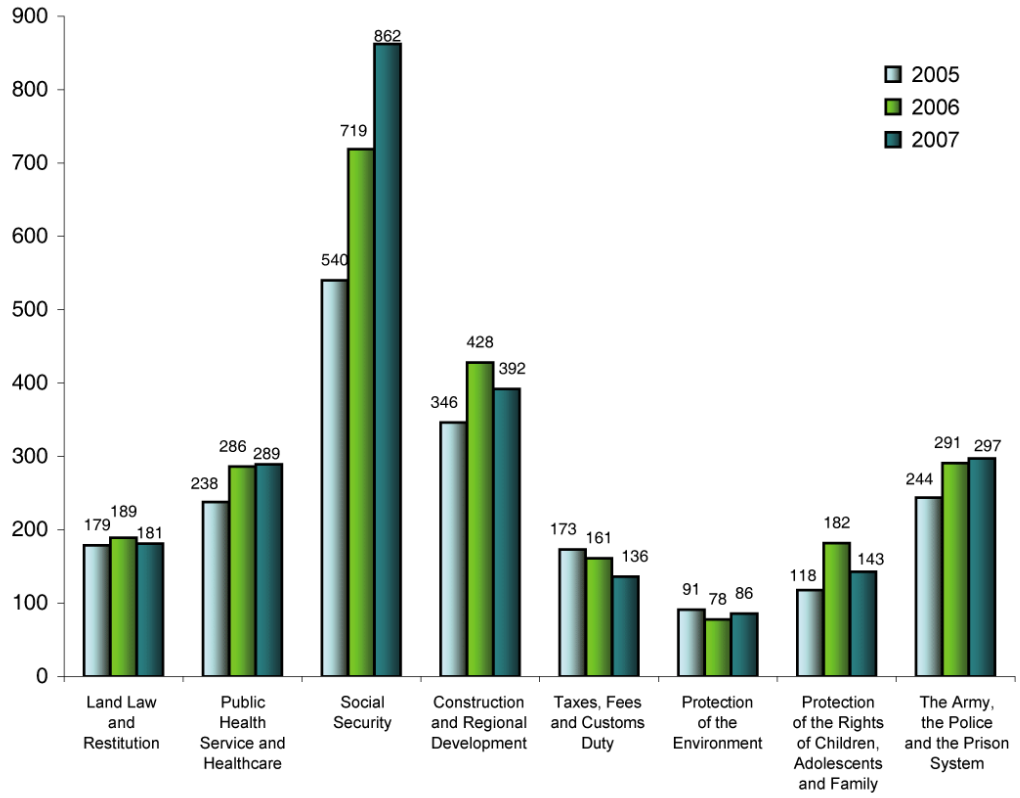
Regarding the form of filing, the **number of complaints filed electronically** continues to rise. **1 258 complaints,** i.e. 11% more than in 2006, **were** delivered by standard electronic mail or using the electronic registry in 2007.

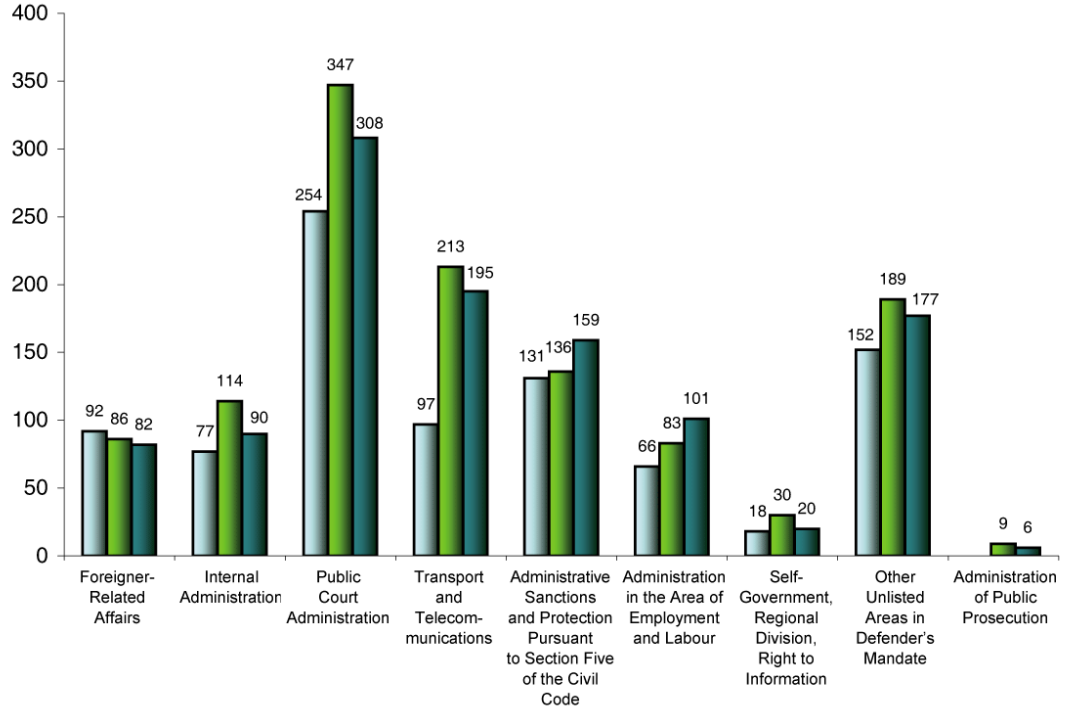
The structure of complaints in terms of the Defender's mandate did not change considerably in 2007 compared with the preceding years (*see graphs*). As in past years, complaints within the mandate of the Defender prevailed. 58% of the total number of complaints in 2007 fell within the Defender's mandate, and 42% of complaints outside.



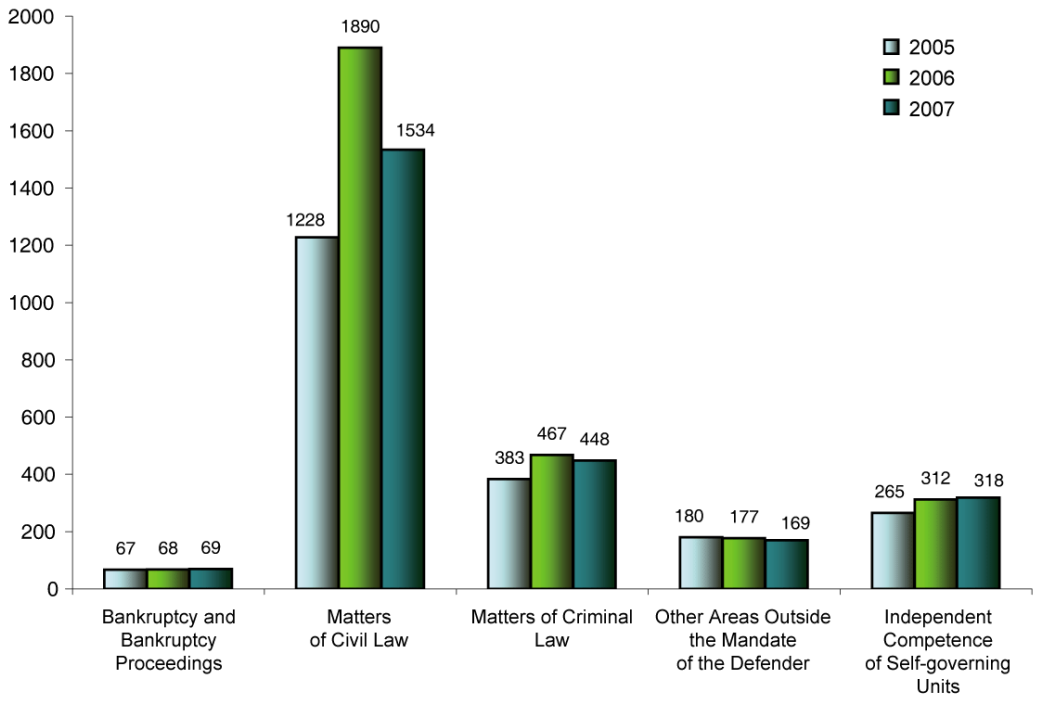
The complaints received by the Defender are classified not only in terms of his mandate, but also in terms of **individual public administration sectors**. The graph below shows that most individuals commonly address the Defender in the fields of social security, public court administration, the Building Code, the police and healthcare.

Complaints Received Within the Mandate in Individual Years by Area





Received Complaints Outside of the Mandate in Individual Years by Area



The Defender opened **704 inquiries** in 2007, whilst using his right to **open an inquiry on his own initiative in 33 cases**. The number of such inquiries remained approximately the same as in 2006 (36 cases). As in past years, these pertained to issues of general character or situations where the Defender learned of incorrect conduct by the authorities from the media.

1.2 Information on Complaints Handled

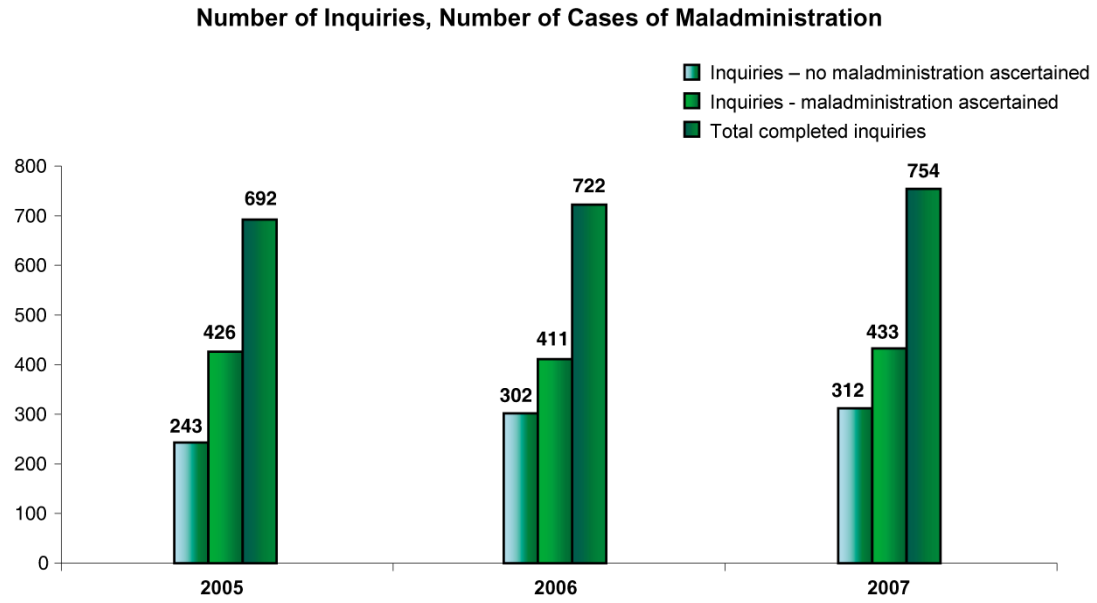
The Defender handled **6 071 complaints** in 2007.

Of the complaints handled in 2007:

- **1 476 were suspended**. Suspension was primarily due to a lack of mandate. Many fewer complaints were suspended as a result of failure to furnish the prerequisites following a request for them or as a result of an obvious lack of substantiation;
- **3 774 were explained**. The Defender provided the complainant with legal advice as to the further procedure to be taken in protecting his or her rights. The Defender handled some complaints by informing the complainant that his or her issue was not unusual and that he had opened a general inquiry on his own initiative on the basis of some similar complaints.

The Defender closed **754 complaints** in 2007:

- **312** were closed stating that the Defender's inquiry **had not ascertained any maladministration**;
- **420** were closed after the inquiry ascertained **maladministration** in the work of the pertinent authority
  - of these, the authorities took remedial measures following the **inquiry report** issued by the Defender **in 357** cases;
  - authorities failed to take remedial measures and the Defender had to issue a **final statement**, including remedial measures, in **51** cases (authorities' maladministration was thus remedied only upon the final statement);
  - the authority failed to remedy their maladministration even after final statement issue in **12** cases and the Defender therefore used his "*sanction*" power and notified a superior authority of the maladministration and informed the public.



The number of complaints handled in 2007 also includes **61 cases** where the complainants **withdrew their complaints** and **20 filings** where the complaint was in itself a remedy by its content pursuant to regulations in administrative or judicial matters (Section 13 of the Public Defender of Rights Act).

The Defender also closed **7 so-called files of particular significance** in 2007. Information ensuing from this type of inquiry is contained in the commentaries on the individual areas of public administration and in *Part VI* (*General Observations – Recommendations to the Chamber of Deputies*).

2. Selected Complaints and Commentaries

2.1 Social Security

Benefits Assistance in Material Need

The Defender handled in particular complaints associated with the consequences of new legislation on "*social benefits*" in 2007.

With regard to **benefits assistance in material need**, the Defender encountered large number of complaints by persons who had so far collected social welfare benefits due to social need and where this was reduced or removed in compliance with the new legislation. The reason in most cases was a significant alteration in the definition of jointly assessed persons. Adult children are assessed for the purposes of material need benefits together with their parents provided they live in the same home as of January 1, 2007. Given that the incomes of such persons are assessed together the material need benefit is lower than the previous social benefits or no entitlement arises whatsoever. This fact was a very frequent target of criticism by complainants.

In spite of expanding the definition of jointly assessed persons the legislator stipulated an exception in the Act on Minimum Living Standard (Act No. 110/2006 Coll. on Minimum Living and Subsistence Standard as amended) that **the family of an old-age pensioner,** in the case of a multigenerational family permanently using the same flat, shall be assessed separately. The objective of such a provision was to maintain pensioners' living standard, if they live in a single flat or together with their children and grandchildren. However, the Defender observed this exception was not correctly interpreted by the administrative authorities in practice. This was caused by incorrect guidance by the Ministry of Labour and Social Affairs (hereunder "*MLSA*"). Upon interpreting the provision in question the Defender established the crucial problem being that legislation treating the material need social benefit provision system does not define the term 'family'. To avoid differences in administrative authorities' decision-making practice, MLSA's methodology explained the term 'family' as that a family must comprise of two people at least. A multigenerational family in the case of old-age pensioners will be deemed to

be such a family as comprises of two old-age pensioners in the least (spouses of partners). Yet the Defender believes an interpretation of the term 'family' ought to be applied analogous to the provisions of Section 7 (1) of the State income Support Act (Act No. 117/1995 Coll. as amended), which stipulates that a single beneficiary may, in some cases, be deemed a family. This consequently means that a single old-age pensioner may be deemed a family. The Defender is of the opinion that the interpretation of the law by the MLSA made an unjustified distinction between single old-age pensioner families and families comprising of two old-age pensioners. Evidently, such an interpretation was not the legislator's intention.

New legislation changed the **payment of contributions for housing** fundamentally. In association with this, the Defender encountered problems with payment of contributions for housing in situations where socially deprived citizens reside at hostels or shelters. The law allows administrative authorities to pay contributions for housing for reasons worth special attention in such cases where statutory conditions were not met (a contribution applicant must usually hold a lease contract, be a housing cooperative member or owner of a flat). Authorities may only grant an exception if such a case pertains to "*other long-term use of real estate*". The "long-term" condition is interpreted in practice in accordance with the MLSA method as longer than three months. Given that the Defender has experienced cases when those living in hostels find themselves without funds for the first three months as a consequence of such a strict interpretation, he favoured an interpretation that allows this condition to be proved in advance (by an accommodation agreement for instance).

Complaint Ref. No.: 696/2007/VOP/ZG

A decision on a material need benefit must contain due substantiation listing reasons for the verdict, documents for its issue, considerations the administrative body followed when assessing it and information on the manner in which the administrative body dealt with parties' proposals and objections (Section 68 (3) of Code of Administrative Procedure). The administrative body's substantiation that a decision is issued by an automated computer system cannot be accepted. Insufficient reasoning for the decision makes it illegal, which may be rectified in principal by annulling a decision and returning the matter for another hearing, or exceptionally by supplementing the substantiation by the body of appeal.

Mrs. N. V. addressed the Defender with a request for a review of conduct by the department of social affairs of Jindřichův Hradec municipal authority, which in her opinion, failed sufficiently to justify a decision on not granting subsistence allowance and a contribution for housing.

In his inquiry the Defender confirmed procedural maladministration and stated that reasoning is an integral part of the administrative decision and the verdict alone cannot be accepted without it. Moreover the decision must always be justified comprehensibly for the applicant to understand why the administrative body did not accommodate him and to be able to defend himself duly on appeal. In this respect, the Defender reprehended the maladministration of the appeal body that confirmed the contested decisions without dealing with the complainant's objection of insufficient substantiation.

As a remedial measure in this matter, the South Bohemian regional authority stated it had complemented substantiation of a decision on material need benefits with decisive facts that have an impact on the verdict in an appeal proceeding in compliance with the principle of economy. Simultaneously, it would instruct the lesser administrative body on the necessity of due substantiation of a decision to complement substantiations of decisions according to the need and situation of the client.

However, the Defender believes the stipulated process is at the limit of the principle of two-instance proceedings. The first-instance decision should generally be annulled in such cases and returned to the first instance body for a new hearing. Therefore the Defender asked the regional authority to shift the focus of its specialist methodological assistance towards an effort to actually complement substantiation of decisions on material need benefits into the first-instance decision stage.

The work of the Public Defender of Rights suggested that procedural maladministration of bodies for material need assistance consisting of insufficient substantiation of a decision are systemic maladministration, and as a consequence he is currently negotiating intensively with the Ministry of Labour and Social Affairs, which promised an immediate change in the computer system.

State income support

The Defender gave notice in the 2006 Annual Report of the need to change the provisions of the Act on State Income Support pertaining to the **payment of child allowance applicable to a child entrusted to alternating custody**. The Defender ascertained the legislation in force where the child was entrusted to alternating custody of parents does not reflect the actual level of the decisive income and these children consequently receive lower benefits than children entrusted to one of the parents for exclusive custody, due to *"erroneous"* legislation. The amending Act on State Income Support that will prevent future occurrence of the above-described situations came into effect on January 1, 2008, and the Defender welcomes this change.

The Defender newly encountered complaints where citizens pointed out the unwillingness of authorities to give information on **which authority of a European Union member state ought to pay social benefits** for family members of those working abroad. The Defender informed complainants in such cases that the relevant authority to pay benefits is in principal the authority of the state where the person entitled to benefits lives. The Defender also requested labour offices to take measures to give the pertinent information to individuals in future.

Complaint Ref No.: 4744/2006/VOP/PB

A child with permanent residence in another EU member state has the right to child benefit pursuant to the Act on State Social Support provided the child's parent works in the Czech Republic.

Mrs K. S. addressed the Defender with a request for advice whether the children of her husband from his first marriage permanently residing in Poland were entitled to family benefits provided under the Czech social security system. She approached the pertinent administrative authorities in the Czech Republic and Poland but in each case was told that it is the other state that is relevant for provision.

The Act on State Social Support does stipulate permanent residence of all jointly-assessed persons in the Czech Republic as the fundamental condition for granting social benefits but this condition is overruled by Council Regulation EEC No. 1408/71, dated June 14, 1971, on applying social security to employed persons and their families moving within the Community (European Community legislation takes priority over member state laws).

According to the provisions of Article 73 of the above regulation workers, respectively their family members residing in a different member state, are entitled to family benefits stipulated by legislation as if they resided in the member state where the worker is employed.

The European Community regulation is a legal regulation directly applicable in terms of its nature and takes priority over the country's own legislation. Therefore, children in such a case have the right to child benefit granted under the Act on State Social Support regardless of whether they are permanently resident in the Czech Republic or not. The decisive fact is the employment of their family member (father) in the Czech Republic.

Allowances for Care in accordance with the Act on Social Services

The Defender handled a number of complaints pertaining to the **new Act on Social Services** (Act No. 108/2006 Coll. as amended) in 2007. At the beginning of the year, the Defender most frequently explained the new legislation to people and informed on the conditions of entitlement to the allowance for care, on conditions for making contracts on provision of services and on institutions that handle the inspection of provided care quality (*for the issue of provision of services contracts in homes for the elderly see also Part IV*). The Defender also clarified the conditions for granting an allowance for care of minors to parents.

Applicants for an allowance for care started addressing the Defender in 2007 with complaints pertaining to **delays in proceedings**. In his inquiries the Defender ascertained that such delays occur virtually all over the country. To start with, these were caused by a major increase in the agenda of authorities in municipalities with extended competence that had to process the transformation of increasing pensions for incapacity into an allowance for care. The municipal authorities' situation was aggravated by a considerable number of new applications for increasing the allowance because the income of some of those with health handicaps dropped against the previous conditions. The Defender ascertained, in this respect, significant **undermanning of doctor review services of labour offices**. Labour offices frequently do not issue reviews on the medical condition of applicants for allowances within the deadlines stipulated by municipal authorities or meet their obligation to notify the pertinent municipal

authority of the reasons that prevent them from issuing an opinion within the set deadline. The current state of affairs forces applicants for an allowance for care into testing social circumstances and their human dignity may be threatened in the case of some people. However the delays in proceedings are unpleasant for the state too because applicants for the allowance might seek compensation for erroneous official procedure. For the above reasons, the Defender decided to deal with this serious systemic problem with the Ministry of Labour and Social Affairs.

Another grave problem pertains to delays in proceedings. In situations when the beneficiary is being cared for by, for instance, a grandson, sibling, nephew, aunt or uncle and the proceedings on granting an allowance is still under way when the beneficiary dies in the course of the proceedings the caring person will not receive the allowance retrospectively for the period when he or she provided the services (the Act does not anticipate **conveyance of entitlement to allowance**). The shortcoming mentioned has been remedied partially since January 1, 2008 (should a relative provide the care, entitlement to payment of an allowance for care shall pass onto such a person). However, should the care be provided by a non-relative (a neighbour for instance), they will still not receive the allowance. The Defender will discuss this issue with the Ministry of Labour and Social Affairs as well to ensure citizens who are not relatives and also provide necessary social services to the handicapped receive payment too.

Pensions

The number and structure of complaints recorded in this area is stable. In general, citizens most often address the Defender with complaints pertaining to reviewing decisions by Czech Social Security Administration on pension payments. Complaints about the activity of individual district social security administrations are less common.

Orphan's Pensions and Pensions of Persons Caring for a Relative

Citizens filing complaints pertaining to orphan's pensions refer most often to the prerequisite of the entitlement to orphan's pensions complying with conditions for the deceased's acquiring entitlement to a pension payment. The Defender lodged a crucial comment concerning acquisition of the child's entitlement to an orphan's pension regardless of whether the deceased parent complied with the statutory conditions, in this sense in the course of the amending proceedings on parametrical changes to pension insurance [Act on Pension Insurance (Act No. 155/1995 Coll. as amended) would guarantee a minimum level of orphan's pension in such a case]. This comment was not accepted by the Ministry of Labour and Social Affairs.

In his previous Annual Report the Defender recommended the Chamber of Deputies to accept the amendment that will stipulate changes to **pension payments of persons who care long-term for a relative**. A year later, the Defender has managed to get cancelled the five-year limit stipulated for cutting of the so-called excluded periods to one half (amendment to the Act on pension Insurance came in to effect as of July 1, 2007). The Ministry of Labour and Social Affairs incorporated the second proposed change (consisting of enactment of a comparison computation between a pension set on the basis of inclusion of earnings achieved by employment in the minimum engagement and a pension determined upon acknowledgement of the period of care as an excluded period) to the proposal of parametric alterations in the Act on Pension Insurance to be presented to the Chamber of Deputies in 2008 (Chamber of Deputies, 2007, 5th electoral term, Parliamentary draft 435). The Defender states nevertheless that he failed to put through the most crucial comment in the form of introduction of a special computation of old-age pensions for those caring long-term for relative.

Slovak Pensions

Complaints pertaining to application of the **Agreement on Social Security between the Czech Republic and the Slovak Republic** were just as frequent last year. Complainants object that the insurance period before 1993 is deemed a period of insurance in the Slovak Republic. In this respect the Defender welcomed the Constitutional Court's ruling dated March 29, 2007, Pl. ÚS 4/06, where the Constitutional Court identified the Czech Social Security Administration (hereunder only "CSSA") procedure to be discriminatory in its reasoning. With respect to this the Defender presumes administrative bodies and courts will henceforth decide within the intentions of the ruling to the benefit of those whose entitlement to pension payment arose after January 1, 1993, and whose employer was located in Slovakia as of this date.

Dozens of complaints received by the Defender from **former Czechoslovak State Railways employees** can be included in the so-called Czech-Slovak pensions. Their common

factor is a complaint against the CSSA decision that applied the Agreement on Social Security between the Czech Republic and the Slovak Republic (hereunder the "Agreement") to their pension entitlement though this did not comply with the legislation in force (the decisive factor for the application of this Agreement is the distinction of who is deemed to be the employer for the period before January 1, 1993; whether Czechoslovak State Railways with its registered address in Prague, or the Transport Sales Administration organisational unit, with its registered office in Bratislava). Having analysed the matter thoroughly the Defender concluded that Czechoslovak State Railways, with its registered office in Prague, was the employer and therefore the pension insurance obtained by the complainants before January 1, 1993, are periods of insurance in the Czech Republic. The CSSA and the Ministry of Labour and Social Affairs incline to the opposite opinion and deem the acquired insurance periods to be insurance periods in the Slovak Republic.

The Defender based his conclusion on the fact that Czechoslovak State Railways issued the Czechoslovak State Railways Statute stipulating among other things the scope in which organisational units acted in the name of Czechoslovak State Railways. However the organisational unit by itself had no independent legal capacity. Therefore, the Defender deduced the organisational unit (Transport Sales Administration with its registered office in Bratislava) was not the employer of applicants for a pension in accordance with Article 20 (1) of the Agreement because it never had any legal capacity making it possible to enter into an employment contract with the named persons. The employer was always Czechoslovak State Railways with its registered office in the Czech Republic, and as a result all periods of pension insurance acquired by former employees before December 31, 1992, in accordance with Article 20 (1) of the Agreement, are insurance periods in the Czech Republic.

Several judicial decisions, where the courts accommodated complainants' actions and reached the same legal conclusions as the Defender, were issued in the course of the inquiry. CSSA filed cassation complaints in a majority of the cases however and the Supreme Administrative Court will thus rule on the matter. In this respect, the Defender criticises the CSSA as cassation complaints generally do not have suspensory effect and the decisions of regional courts that annulled CSSA decisions are in force and enforceable. As a result, it is the CSSA's duty to implement lawful court rulings. The fact that CSSA requested the granting of suspensory effect makes no difference in the matter. The Supreme Court may grant suspensory effect under certain circumstances; nevertheless it is at the court's discretion. Until this happens the CSSA is obliged to comply with the lawful ruling of the regional court and carry out payment of pension allowances.

Review Service and Other Complaints in the Area of Pension Insurance

An important portion of the pension insurance complaints concerned the **assessment of health condition by a CSSA Doctor Review Service**. The Defender does not deal with medical issues in such cases but may assess the procedure of review doctors to assess whether it complies with the requirements of legality and a state free of substantiated doubt [Section 3 of the Code of Administrative Procedure (Act No. 500/2004 Coll. as amended)]. The Defender focuses in these circumstances on the contents of the assessments, which must be complete and conclusive (i.e. must contain all decisive and important facts for the assessment and due substantiation of the review verdict). When he ascertains shortcomings the Defender recommends to the CSSA that it reassess the applicant's health condition and issue an accurate opinion. The Defender frequently discovered in the course of inquiring into such complaints insufficient substantiation of withdrawal of disability pension as well as not very persuasive stipulation of the date of the beginning of disability.

The Defender pointed out in the 2006 Annual Report that a party in proceedings on an allowance dependent on poor health is not automatically given a **record of the hearing on health state assessment** that largely affects the decision on granting or withdrawing the disability pension. In this respect the Defender proposed explicitly stipulating that records of the hearing of the assessment of health condition must be part of the disability pension decision in amendment proceedings on the Act on Pension Insurance. The Ministry of Labour and Social Affairs accepted this crucial comment and will make it part of the amendment treating so-called parametric changes in pension insurance (Chamber of Deputies, 2007, 5th electoral term, parliamentary daft 435).

In 2007 the Defender also handled a problem pertaining to **additional payment of contributions for the period of voluntary participation in insurance**. The current situation is that CSSA and the Ministry of Labour and Social Affairs do not permit back payment of premiums for a missing insurance period. In doing so, they refer to Section 16 (2) of the Act on So-

cial Insurance Premiums and Contributions to State Employment Policy (Act No. 589/1992 Coll. as amended), which states premiums may not be paid after filing an application for granting of a pension. The CSSA and the Ministry argue using the principle that entitlement to a single pension that has already been finally decided on cannot be decided on again. However, the Defender believes that legislation does not prevent the insured person meeting the condition of the insurance period after an application has been rejected, by means of paying the amount for the missing period of insurance, and filing a new application for a pension. The legal and actual situation changes on payment of the additional premiums and acquisition of the missing insurance period and consequently the decision is not on the original entitlement but on a new one.

Given the Defender and the Ministry of Labour and Social Affairs failed to reach an agreement on the interpretation of the pertinent statutory provision, the Defender made his request to annul the disputed provision in amendment proceedings treating so-called parametric changes in pension insurance regulations. The Ministry accepted this and the option of paying additional premiums and of substitute pension insurance periods should be unambiguously permitted once the amendment comes into effect.

In 2007, there were more complaints about **pension issues with a foreign element**. The complainants most often referred to the disproportionate length of proceedings to grant a pension while such delays were ascertained both on the part of foreign pension security authorities as well as the CSSA. The Defender also handled the issue of paying pensions to a different European Community member state, social security of those who had pension insurance in a non-EU state, and the issue of place of residence influencing the disability pension of persons that collected disability pension in some European Community member states as a so-called special 'non-contributory benefit'.

2.2 Work and Employment

In terms of labour-law relations, the Defender has been inquiring into the procedure of labour offices with respect to implementing the right to work as well as the conduct of labour inspection bodies inspecting compliance with labour-law legislation.

Jobseekers Register

Delays in Handling Appeals against Labour Offices' Decisions on Exclusion from the Jobseekers Register

The Defender opened an inquiry into **delays of the Ministry of Labour and Social Affairs** (hereunder only MLSA) in handling appeals against labour offices' decisions on **exclusion from the jobseekers register** at his own initiative in the course of 2005. The above issue has been discussed extensively at personal meetings with Ministry representatives. Despite of this, there has been no significant increase in personnel terms in the competent department, not even after a change in the minister. Though ministers of labour and social affairs clearly adopted partial measures in an attempt to solve the situation in the work of the Department for Methodology and Administrative Proceedings, given the continuing volume of unprocessed files the Defender deems such measures insufficient. Therefore, he decided to submit the matter to the **government,** which passed resolution No. 814 on July 18, 2007, requiring the MLSA to adopt measures aimed at ensuring compliance with deadlines for issuing the administrative decisions stipulated by provision of Section 71 of the Code of Administrative Procedure (Act No. 500/2004 Coll. as amended) and present a report on measures adopted prior to December 31, 2007. The MLSA carried out a personnel audit and adopted **organisational changes** in the Department for Methodology and Administrative Proceedings on its basis. The number of administrative staff was reduced and the number of dedicated posts for staff with legal qualifications, who generally handle appeals, was boosted as of December 1, 2007. Following these measures the number of unprocessed appeals dropped significantly. The Defender will monitor the efficiency of the organisational measures and is prepared to notify the government again in the case of repeated delays.

Decisive Facts for Inclusion or Retention in the Jobseekers Register

The Defender has encountered instances where labour offices **failed to interpret the term "*facts decisive for inclusion or retention in the jobseekers register" identically***. The valid wording of the Employment Act (Act No. 435/2004 Coll. as amended) lacks unambiguous definition of the term and the Defender came across cases where mere change of permanent address within the labour office competence area was considered a decisive fact by a

labour office. A jobseeker may then be penalised by exclusion from the jobseekers register for not meeting the obligation to notify them of any change in decisive facts. Although the Defender does not agree with such an interpretation of the law, he lodged comments on the drafted amendment of the Employment Act for reasons of legal security.

Labour Inspectorates

Inspections of Compliance with Labour-Law Regulations

The Defender's **inquiry on his own initiative** pertaining to inspection of compliance with labour-law and salary regulations of the labour inspection authorities was concluded in 2007. The inquiry focused on performance of area inspectorates' new competence (i.e. inspections of compliance with labour-law regulations). The inquiry utilised conclusions obtained by local inquiries at four regional inspectorates (half of the newly-established area labour inspectorates).

After processing all information from individual inquiries, the Defender's conclusions were given in a report on the inquiry addressed to the State Labour Inspection Office. In this report the Defender pointed out the **inconsistencies in the inspection inquiries carried out** where in a majority of cases area labour inspectorates had no thorough written documentation showing that the maladministration ascertained on inspections had been remedied by the employer and the employer had adopted measures to avoid their future recurrence. He also reprehended the inspectorates for very **disputable imposition of penalties** in cases of serious violation of employees' rights. The Defender found the **insufficient number of inspectors** particularly alarming, together with the associated inadequate availability of labour-law consultations and restricted feasibility of efficient inspection.

Given that the inquiry revealed grave shortcomings in the work of the pertinent labour inspection bodies, the State Labour Inspection Office was given recommendations for remedial measures. As adopting part of the **remedial measures**, primarily personnel type measures (increasing the number of dedicated posts in the Department of Labour-Law Relations Inspection) do not fall under the pertinent authority's competence, the Defender addressed the Deputy Prime Minister and Minister of Labour and Social Affairs with a request to take cognisance of the conclusions in the inquiry report and notify the Defender of measures adopted to remedy the ascertained state of affairs.

Ban on Discrimination

The Defender inquired into several complaints against the procedure of area labour inspectorates in inspecting employers in relation to violating the principle of equal treatment and the principle of the ban on discrimination. It was ascertained during the inquiry that labour inspectorates fail to use all the powers the Labour Inspection Act grants (Act No. 251/2005 Coll. as amended) sufficiently to clarify the actual state. *Detailed information on this issue can be found in Part V.*

Ministry of Labour and Social Affairs and Failure to Pay Reimbursement for Wages Lost

In the 2002, 2003 and 2004 Annual Reports, the Defender pointed out the problems of employees whose employers found themselves in bankruptcy (in liquidation) and those who are to be reimbursed for wages lost (allowance) due to an industrial accident or an occupational disease. The Defender came across these types of complaints in 2007 as well.

Therefore, the Defender recaps here that this pertains to the issue of claims from industrial accidents that happened prior to January 1, 1993 (**the obligation to pay out an allowance passes to the state** when the employer was wound up without legal successor). In reality, difficulties with failure to pay an allowance occur in those instances where the former employer entered into bankruptcy but where bankruptcy assets did not contain sufficient funds to satisfy salary claims. The MLSA, which carries out compensation for the state has, until now, been of the opinion that the state's obligation to satisfy employee's claims arises at the time of the employer's deletion from the companies register. Given that bankruptcy proceedings take five or more years in many cases, still to be followed by liquidation of the business entity, the claimants find themselves in difficult circumstances for a long time. Besides delays in bankruptcy proceedings, many complainants referred also to the inactivity of the MLSA in those cases where the employer was actually deleted from the companies register. As a consequence,

the Defender initiated a meeting with head officers of the MLSA. At this personal meeting, discussions pertained to the possibility of **reconsideration of the Ministry's standpoint** in order for the Ministry to start paying an allowance to employees already after the end of bankruptcy proceedings, and also in cases where the bankruptcy was annulled having fulfilled the resolution on the distribution of assets or for insufficient assets. This interpretation is supported by Section 364 (9) of the Labour Code (Act No. 262/2006 Coll., as amended) that conditions the transfer of claims from an employer not on its dissolution but its liquidation. The above meeting resulted in reconsideration by the Ministry that is going to pay allowances from the moment the bankruptcy proceedings come to an end (1) having fulfilled the resolution on the distribution of assets, (2) due to the fact the business assets do not suffice to cover the costs of bankruptcy or (3) in case of rejection of filing for bankruptcy for lack of assets [Section 68 (3) (f) and (g) of the Commercial Code (Act No. 513/1991 Coll. as amended)].

2.3 Family and Child

In 2007, the Defender issued an anthology entitled Family and Child, which gives a comprehensive overview of issues related to the social and legal protection of children. Furthermore, it summarises findings and observations made by the Defender during the seven years of his involvement in this area (for more details *see* http://www.ochrance.cz/dokumenty/dokument.php?back=/cinnost/sbornik.php&doc=864). The publication was distributed to all municipalities with extended competence, regional offices, institutional establishments and non-profit organisations involved in the protection of children.

Removal of Children

In 2007, the Defender dealt repeatedly with the violation of children's rights in cases where children were removed from parents in contravention of the law. Specific cases include those where the child is removed from parents for **so-called housing reasons.**

Complaint Ref. No.: 3561/2007/VOP/KP

I. Social and economic reasons, in particular poor housing conditions or the loss of housing alone, without further justification, should not constitute a valid reason for the removal of children from the family.

II. The issuing of a preliminary injunction for the removal of a child must be followed by intensive work with the family to enable the return of the child. It is also necessary to assess, on an individual basis, which form of alternative family care is most suitable for the child. In cases where it is presumed the removal of the child will only be temporary, foster care should be made use of during the transitional period. At the same time the authority for the social and legal protection of children must take due care to prepare foster parents for communication with the child's parents and must ensure the contact of children with their parents.

The children of the K. family were removed from the family for housing reasons in August 2005. The family had moved frequently from one apartment to the next. In August 2005, the family was left with no housing whatsoever (the parents dealt with the situation by passing the night at their various acquaintances). As they were unable to find new lodgings to rent, they agreed with the authority for the social and legal protection of children (hereinafter ASLPC) on the voluntary and temporary stay of their children in an infant home until they found new housing. Subsequently, they decided to address the situation by moving the mother and the children to live with the mother's parents in Slovakia.

In spite of this, the ASLPC submitted a motion for a preliminary injunction (call for placement of the children in an infant home). Directly before the motion for a preliminary injunction was submitted, the parents admitted the children to a hospital as instructed by the ASLPC due to a suspected salmonella infection, in spite of the fact the attending GP had deemed hospitalisation unnecessary. The ASLPC then incorrectly informed the hospital's medical staff of the family's circumstances as a result of which the parents were refused the right to collect their children from the hospital (subsequently, the parents learned their children had been hospitalised chiefly in order to prevent the parents from departing with them to Slovakia before the preliminary injunction was issued). After the children's placement in an infant home, the parents visited them regularly; they requested the children's leave for stays at home and made great efforts to improve their family and housing arrangements.

In May 2007, when the ASLPC had advised the decision would be taken on placing the custody of the children into pre-foster care, the family situation had improved considerably (the family had obtained suitable housing and the father had found stable employment). In

spite of this, the infants were placed into pre-foster care. The foster parents then refused to communicate with the children's parents and refused to allow them contact with their children. Only after four months was communication established between the foster parents and the children's parents; however the contact of the children with their parents was only very limited. The foster parents submitted a motion to the court for placement of the children into their foster care while the parents submitted a counter-motion for the children's return to their custody (court proceedings in this matter are ongoing).

The Defender found serious errors in the procedure of the ASLPC, both in relation to its submission of a motion for a preliminary injunction and in terms of its decision to place the children in pre-foster care. At the time the motion was lodged, the mother had informed the ASLPC of her intention to settle the family's difficult housing situation by moving to her parents. In view of these circumstances, the lodging of a motion for a preliminary injunction by the ASLPC was deemed unjustified by the Defender. The Defender further established the ASLPC had overstepped its powers by issuing a "confirmation" stating hospital staff were not authorised to release the children into the care of their parents without prior agreement of the ASLPC. On the basis of this unlawful measure taken by the ASLPC, the hospital staff refused to allow the mother to collect her children from the hospital and thus prevented her from departing with the children to join her parents in Slovakia. The Defender stressed that such a measure has no legal footing whatsoever.

The removal of children from the family was, in this case, carried out on the sole grounds that the family's economic and housing situation was inadequate, an occurrence for which the Czech Republic has been repeatedly criticised by the European Court of Human Rights. The Court has labelled such reasons for separating children from the family as inadmissible (see judgment No. 23848/04 of October 26, 2006 in Wall and Wallová versus the Czech Republic, judgment No. 23499/06 of June 21, 2007, in Havelka versus the Czech Republic). It is therefore necessary to search for other means of recourse, by helping to provide housing though cooperation of the ASLPC with the municipal housing department for instance). The taking of children into the care of an infant home or into foster care is a last resort and may only be considered as a temporary solution, for the necessary period of time only and, at best, based on an agreement of the parents and the ASLPC.

In this case, the Defender found the placement of the children in pre-foster care was unsubstantiated. At the time the decision on pre-foster care was issued, the family circumstances had stabilised to the degree that steps should have been taken to return the children to the care of the family. During the time the children were in pre-foster care the contact of parents with their children was severed, although until then contact had been trouble free. The Defender considers this state of affairs to be in breach of the law, which guarantees children in foster care the fundamental right to maintain contact with their parents. This incident is testimony to the bad quality of preparation of pre-foster care and of the poor guidance provided to foster parents by the ASLPC (the ASLPC is obliged to monitor the observance of the right of parents and children to mutual contact).

Denial of Contact with a Child

In the period under review, the Defender has newly encountered cases where the authorities for the social and legal protection of children had decided that a child admitted to an establishment for children in need of immediate help be denied **contact with its parents** and other family members. Based on this "denial", the child was, in a number of cases, indeed prevented from seeing its parents, in spite of the absence of a court ruling, the sole authority with the exclusive right to deny parents contact with their child. In the opinion of the Defender, the ASLPC had significantly **overstepped its powers** in these cases. State power may only be applied in cases, within limits and in the manner defined by law (Article 2 Section 3 of the Constitution of the Czech Republic, Article 2 Section 2 of the Charter of Fundamental Rights and Freedoms). The overstepping of authority by the ASLPC in this manner may not be substantiated on the grounds the administrative body had acted on the basis of a recommendation by criminal prosecution authorities (which does not legally empower the ASLPC to deny parents contact with the child).

Similar conclusions were drawn by the Defender in the case of the directors of establishments for children that require immediate help. In this respect, the Defender rejected the view that directors of such establishments may justify the denial of parent's contact with their child by referring to paragraph 23 section 1 letter e) of the Act on the Exercise of Institutional and Protective Education (Act No. 109/2002 Coll., as later amended). These provisions state that the director of an establishment may break off or deny visits to persons responsible for the

education of children or other persons in the case of inappropriate behaviour that may negatively affect the education of children.

In the Defender's view, this regulation must be interpreted to mean it is possible to break off or deny visits to persons in ad hoc cases only. In other cases, in accordance with these provisions, the **directors of establishments may not deny parents visits with their child**, as such a step may only be authorised by a court of law. A contrary interpretation would contradict the fundamental principles of division of state power (in general, if a certain matter falls under the competence of the court, a decision of the same character and of similar extent may not fall under the competence of an administrative body).

In 2007, the Defender also focused his attention on the **work of regional authorities**, i.e. bodies entrusted with the methodological management of the social and legal protection of children. In this respect, the Defender organised an official meeting with the representatives of regional authorities. This meeting has led to closer cooperation of the Defender with individual departments involved in the social and legal protection of children. At the same time, at this meeting, the Defender recommended regional authorities focus their inspection and methodological activities in particular on **follow-up social work by the ASLPC**, i.e. on situations following the removal of children from the care of their biological parents.

Complaint Ref. No.: 3453 /2007/VOP/KP

The ASLPC oversteps its authority in cases where, on the basis of its standpoint, the contact of children with their legal guardians is denied in establishments for children requiring immediate help. The administrative authority has no legal authority to take such steps; decisions on denial of contact of the child with the parent fall under the exclusive competence of the courts.

Mr R. C. addressed the Defender with a complaint against the Department of Social Affairs, Education and Culture of the Brno-Židenice Municipal Office (hereinafter the "ASLPC") related to the social and legal protection of his infant children. The children of Mr R. C. were taken into the care of an establishment for children requiring immediate help. The family visited the children regularly until they were prevented from doing so by a decision of the director of the establishment. Subsequently, the ASLPC issued a decision forbidding contact of the children with their father and other family members. The children were also prevented from contacting the family by phone and family correspondence was withheld.

Based on an inquiry, the Defender stated that the ASLPC had broken the law. Although the right to intervene in relations between parents and children in the interest of the child is shared by ASLPCs and courts, the gravest interventions in these relations (the denial of contact with children) lies within the exclusive competence of the court. Decisions on the denial of contact between parents and children are so grave an encroachment on the fundamental rights of the parent ensuing from parental responsibility that, in accordance with the Act on the Family, such a measure may only be taken by a court of law. An analogous overstepping of power was perpetrated by the director of an establishment for children requiring immediate help, who issued an "interim decision on the denial of contact", as she was not authorised to take such a decision. In both cases, the rule is that state power may only be applied in cases, within limits and in the manner, defined by law.

Cameras in Schools

In connection with the publicity devoted in the media to the installation of cameras in schools, parents and school headmasters have addressed the Defender with questions regarding the admissibility of the use of cameras in schools. The Defender had dealt with this issue previously in 2006 and had expressed the view that if cameras are employed to monitor pupils (i.e. in areas where children and teachers are present during school hours), this is an **illegal encroachment upon privacy** (Art. 7 of the Charter of Fundamental Rights and Freedoms).

First and foremost, the law offers no legal justification for such an encroachment and, at the same time, such a measure may not be termed as necessary and adequate prevention of negative occurrences in the behaviour of pupils, as some head teachers argue. According to the Defender, **high-quality teaching and psychological guidance of children cannot be substituted for** by the children's monitoring using camera systems. However, it is also necessary to protect the privacy of individuals in cases where cameras have not been installed directly for the surveillance of persons but for example for the protection of property, as often argued by head teachers. To this end, an official position has also been issued by the Office for Personal Data Protection (*see* http://www.uoou.cz/index.php?l=cz&m=top&mid=02:01&u1=&u2=&t).

International Child Abduction, Length of Court Proceedings

In the period under review, the Defender also dealt with the *Hague Convention on the Civil Aspects of International Child Abduction* (hereinafter the "*Convention*") and its application in situations where the child is taken abroad without the consent of the other parent.

One of the chief failings the Defender pointed out is the **excessive length of judicial proceedings for the return of the child** to the country of origin (i.e. the state the child was unlawfully taken from). The Defender expressed the view that one of the causes of excessive length of judicial proceedings is the excessive broadness of the legal framework for right of appeal. If, namely, according to Article 11 of the Convention, the court should act speedily to return the abducted child, the question then arises to what extent it is possible to fulfil this international obligation when the Czech legal order gives both litigants not only the regular right of appeal but also the right to extraordinary appeal.

The Defender strongly emphasised that the decision on the release of children to the country of domicile is not a decision intended to address the child's circumstances but a **preliminary measure** aimed at deciding in the shortest possible time the return of the child. The objective of this measure is therefore merely to restore the original state of affairs, on the basis of which proceedings in the matter itself may subsequently take place in the country of domicile. At the same time, it is true the longer the entire process takes, the greater the risk the return will have a negative impact on the child. In addition to communicating with the concerned authorities and with chief justices, the Defender used his findings to promote his observations on the government amendment to the Code of Civil Procedure, which addresses a new type of proceeding in accordance with the Hague Convention on the Civil Aspects of International Child Abduction and at the same it rules out the possibility of filing for extraordinary appeal in this type of proceeding.

In terms of international child abduction, the Defender focused his attention on the **position and work of the Office for International Legal Protection of Children** (hereinafter "*the Office*"), which acts in relevant proceedings as the **child's conflict custodian**. The Office is authorised to act as conflict custodian by the Convention and furthermore by the provisions of paragraph 35 section 2 letter b) of Act No. 359/1999 Coll. on the social and legal protection of children, as later amended. In this connection, however, the Defender called attention to the fact that by definition of these same provisions, the Office is also a central state body obliged, whenever necessary, to (1) initiate proceedings for the return of the child, (2) enable and ensure the contact of parents with the child, (3) depending on circumstances provide the child's parents with legal aid and advice.

With respect to the mentioned accumulation of functions the Defender expressed the view that **it is impossible for the Office to perform the role of the child's conflict custodian** without risking a conflict of interest vis-à-vis the other parent. The Defender's objection was accepted by the Ministry of Labour and Social Affairs. At present, the situation has been stabilised by an internal directive according to which the Office will no longer assume the role of conflict custodian in view of a possible conflict of interest (from now on the role of conflict custodian will be entrusted exclusively to municipalities with extended competence).

2.4 The Public Health Service

In terms of public healthcare, the competence of the Defender is limited to health insurance companies and public administration bodies operating in the public health service (i.e. in particular the Ministry of Health and regional authorities). If the complaint is targeted directly against a particular health establishment or doctor, the Defender first refers the complainant to the complaints procedure defined by the Act on Public Health Insurance, the result of which the Defender may subsequently look into to.

Health Insurance Companies

On the basis of inquiries into complaints where individuals had appealed against incorrect steps taken by health insurance companies for the **recovery of health insurance premium arrears**, the Defender established that health insurance companies often took action to recover premium arrears with a delay and at a time when insurees could rightfully raise objections of limitation. The Defender also encountered a case where the insurance company had not taken into account a written objection of **limitation** of premium arrears raised by an insuree and took

steps to recover arrears in spite of the fact the debt had indeed expired. Following notification by the Defender, the health insurance company admitted its mistake and took immediate measures of redress.

The Defender found a number of other instances of maladministration by health insurance companies. One such case involved, for instance, a delay of several months in dealing with a request for the remission of penalties, in responding to a request for the conclusion of an agreement on gradual repayment of debt in instalments, the provision of wrong information on the calculation of penalties, provision of wrong or incomplete information as well as failure to explain changes in the amount calculated as due in arrears.

The Defender also received a number of complaints criticising the conduct of health insurance companies in dealing with requests for reimbursement of medical care provided in another EU member state during a **planned journey abroad for purposes of undergoing medical treatment**. The entitlement of individuals to medical care when travelling within the European Union is defined by the relevant EU Council directive. The Defender noted that health insurance companies must in each case substantiate their response to requests for reimbursement coherently, sufficiently and convincingly. If a request is refused, the Defender recommends that health insurance companies sufficiently inform the insuree of specific possibilities of undergoing further treatment in the Czech Republic.

The Defender also received inquiries as to the **determination of the EU member state where the insuree is to pay health insurance contributions** if his/her place of residence differs from the place of employment or the place of gainful occupation. European rules on the determination of competence state each individual should be insured in one state only. The state where one is insured is generally the state where one performs one's gainful activity (employment or self-employment). Therefore, employees who are, for instance, gainfully employed in the Czech Republic only, should be insured for health and sickness insurance in the Czech Republic, regardless of whether or not they are resident in another member state. Based on European law, they are then entitled to full healthcare both in the Czech Republic and in their country of residence. This same entitlement extends to dependant family members. A similar principle applies to cross-border workers who return each day, or at least once a week, to the state where they are resident. Their dependant family members are, however, only entitled to urgent medical treatment in the country where these "*commuters*" work.

The Defender also conducted an enquiry into the conduct of a health insurance company that refused to accommodate the **request of a parent for a statement of healthcare that had been provided to his/her dependant child**. The insurance company dismissed the request on grounds that the provision of the statement is subject to consent by the other parent. The Defender concluded that a request for a statement of healthcare provided may not be considered a matter requiring the agreement of both parents of the dependant child. The request must be accommodated if upon submitting the request the parent furnishes proof of the fact that he/she is the child's legal guardian. Based on conclusions drawn by the Defender, the health insurance company management amended its internal regulation governing the procedure in such cases.

Handling of Complaints against Healthcare Provided

The most common complaints related to the protection of patients' rights are those that raise objections to the procedure of the Ministry of Health and regional authorities in handling **complaints against healthcare provided.** Following the annulment of the Government decree on handling of complaints and suggestions, and in the absence of a general directive to govern this area, the procedure of public administration bodies entrusted with the handling of these types of complaint varies considerably. At present, the Ministry of Health and regional authorities handle complaints in accordance with their own internal guidelines.

The non-uniform procedure for handling complaints, especially the **fixing of longer deadlines** than in the previous period has raised a number of problems. Individuals who have addressed the Defender believed their interests had suffered, as their complaints had not been dealt with within the proper deadlines. This was caused by higher expectations of the handling of complaints within shorter deadlines and by the fact that authorities generally fail to inform individuals of the deadlines set for handling complaints. By failing to do so they raise doubts as to their willingness to duly examine complaints.

Public administration bodies should, to a certain degree, apply the deadlines defined by the Code of Administrative Procedure to the handling of complaints, even though these com-

plaints are not governed by paragraph 175 of the Code of Administrative Procedure (Act No. 500/2004 Coll., as later amended). Based on an investigation of several complaints, the Defender established that even these extended deadlines defined by the internal rules of individual public administration bodies are not always adhered to. In terms of the subject matter of complaints related to healthcare, the Defender concluded that although the quality of responses to complaints has recently improved, in certain cases authorities fail to inform the complainant of important findings and conclusions drawn during the course of the inquiry, or refuse to relay information established in the given matter.

As concerns the defining of the complaints mechanism itself, the Defender took note of the fact that future draft bills for new healthcare legislation shall address the handling of complaints against healthcare in a comprehensive manner and therefore the Defender refrained from requesting measures be taken to unify existing practice.

The Right of the Patient to Information and Other Complaints Related to the Public Health Service

On May 15, 2007, the amendment to the Act on Public Healthcare (Act No. 20/1966 Coll., as later amended) came into force. It explicitly addresses the **right of the patient** (and his representative) **to view his/her medical records**, as well as the right to **acquire extracts, duplicates and copies** of these documents. These same rights also extend to surviving close friends and relatives unless the patient previously disallowed the provision of information on his/her state of health. At the same time, national legislation was modified to incorporate so-called informed consent, as defined by the *Convention on Human Rights and Biomedicine*.

In connection with the right of patients to acquire copies of their medical files, the Defender encountered cases where complainants were not provided with **copies of records of meetings of expert committees** examining their state of health or copies **of expert reports** that had been drawn up for purposes of examining complaints against provided healthcare. Although today the Act on Public Healthcare explicitly addresses the right of the patient to acquire copies of medical documentation (including copies of records from meetings of expert committees and copies of expert reports), the Defender was forced to conclude that in certain cases exercising the right to information can be rather problematic. Individuals who addressed the Ministry of Health and certain regional authorities were first merely permitted to view the record of a meeting of an expert committee (and the expert report drawn up to assess their complaint), and subsequently they were provided an incomplete version of the report (the name of the author was missing) for reasons of personal data protection. The complainants were thus unable to verify whether the report had truly been drawn up by a party independent of the criticised medical facility. The Defender disagrees with such procedure and calls for the disclosure of the name of the author of the expert report. The stance of the Defender received the backing of the Office for Personal Data Protection which stated that, in the given case, there is no reason to protect the name of the author of the report as it involves the disclosure of personal data of an employee of the public administration that reveals information on their public activity [Article 5 section 2 paragraph f) of the Personal Data Protection Act (Act No. 101/2000 Coll., as later amended)].

The Defender dealt with a number of complaints related to **protective treatment** and specifically to high health insurance premium arrears of persons ordered to undergo protective institutional treatment. The state does not pay health insurance premiums on their behalf and they are thus, to a large degree, disadvantaged in comparison with those serving prison sentences or those in custody. Furthermore, these individuals may neither register as jobseekers with employment offices nor carry out any form of gainful activity that would allow deductions of health insurance premiums. The Defender therefore intends to address their difficult social situation in 2008.

2.5 Courts of Law

The competence of the Defender in relation to the judicial system is only defined vis-à-vis public administration bodies of courts, i.e. the chief justice and deputy chief justices, for handling complaints related to undue delays in court proceedings, for improper conduct by court executors and violations of the dignity of proceedings before the court. If a complaint about the decision-making of courts (objections to steps taken by the court or to court rulings), the Defender recommends the complainant take the procedural steps offered by the law.

Delays in Court Proceedings

The Defender has repeatedly encountered complaints against court delays where chief justices have substantiated them by claiming the delays were caused by objective reasons on the part of the court, in particular the large number of ongoing disputes in certain areas (especially commercial affairs, distraint and bankruptcy proceedings) or due to the insufficient number of judges. These arguments are unacceptable. Every individual is guaranteed the right to a fair trial and the handling of their matter in a reasonable time (*see* the findings of the Constitutional Court of January 16, 2004, I. ÚS 600/03).

For a generalisation of findings related to the public administration of courts, the Defender organised a discussion in September 2007 with the chief justices of regional and high courts, the Supreme Court, the Supreme Administrative Court and representatives of the Ministry of Justice on selected issues. The Defender pointed out certain causes of delays (such as delays caused by experts in drawing up expert reports, the quality of which is often debatable. Furthermore, the Defender criticised the absence of a system for the secondment of judges to courts of a higher level – the departure of judges for reasons of secondment should be given good consideration and should take into account the need to secure the smooth handling of disputes).

Complaint Ref. No.: 5533/2006/VOP/JBL

If a court-appointed expert fails to draw up an expert report by the given deadline and furthermore, from the very beginning, fails to respond to reminders by phone and refuses to take delivery of correspondence pertaining to proceedings, it is advisable for the court to begin immediately to investigate the whereabouts of the expert in an attempt to locate the file in his/her place of residence. The file can thus be returned without undue delay and delegated to another expert. If the file is not located, work on its reconstruction should begin as soon as possible.

The Defender was addressed by Mrs P. W. with a complaint against delays in proceedings on the settlement of joint property ownership of spouses by the District Court for Prague-West. The expert had been appointed by the court in November 2005 to assess the market value of a piece of real estate, which was a part of the joint property of the spouses. The deadline for submitting the expert report was 30 days. The report was not submitted within the given deadline. The Court then attempted, to no end, to press the expert for the report by phone and in writing at intervals of approximately one to two months. The expert failed to take delivery of correspondence and did not respond to telephone inquiries and reminders by the Court. In September 2006, he was called upon to either immediately submit the expert report or return the file to the Court. This appeal was, however, left unanswered.

In answer to the complaint, the chief justice of the District Court informed the complainant that the delays in proceedings were due to inactivity on the part of the expert; however, the Court had now exhausted all means of dealing with them. The chief justice stated that as soon as the file is returned it will be necessary to appoint another expert. She would inform the Regional Court in Prague of the failings in the work of the expert and would suggest he be removed from the list of experts.

In November 2006 the complainant addressed the Defender. In response to an inquiry by the Defender, the chief justice of the court stated that after the complaint of the complainant was settled, the expert was once again called upon to immediately return the file, again to no avail. The District Court informed the Regional Court in Prague of the situation and suggested the individual concerned be removed from the list of experts. Based on an investigation by the Defender, the judge dealing with the matter visited the address of the expert in January 2007 and talked to his family members. She established the expert had been inaccessible for a number of months and was allegedly residing in Prague, address unknown. The file was unfortunately not found at either of the two known places of residence of the expert.

Shortly afterwards, the complainant's lawyer provided the Court with the necessary documents for reconstruction of the file. Subsequently, a new expert was appointed who drew up an expert report in April. In June 2007 a court hearing was called.

The Defender noted that this type of proceedings generally requires expert evidence. This fact must be taken into account when assessing the length of proceedings as the drawing up of export reports almost always entails the sending of the entire file to the appointed expert. Moreover, during the time the file is in the hands of the expert, the court is practically unable to take any steps in the matter. This is all the more reason for greater emphasis on the timely elaboration of expert reports.

In this particular case, the Defender is of the opinion that a check on the whereabouts of the expert and a subsequent reconstruction of the file could have been carried out earlier. The Court took these steps only after an investigation was launched by the Defender, although repeated unsuccessful attempts to reach the expert during 2006 already suggested the timely production of an expert report was unlikely. The Defender concluded the inquiry and called upon the chief justice to keep him continuously informed of further developments in the case.

The Classification of Complaints against Court Delays

In the period under review, the Defender repeatedly addressed the issue of the very eligibility of complaints [i.e. assessment of whether they should be dealt with as a complaint under the Act on Courts and Judges (Act No. 6/2002 Coll., as later amended), as a request for information, as a request for legal assistance or as an enquiry into the state of proceedings]. The Defender established that many complaints against court delays are filed in the case file and are not dealt with in accordance with steps defined by the Act on Courts and Judges. Requests for information are treated in much the same manner. The Defender is of the view that complaints pertaining to the public administration of courts should be examined and handled in accordance with principles applicable to administrative proceedings, as it is impermissible to allow a lower **standard for handling of complaints** here than in "regular" public administration. First of all complaints received by a court must always be **classified according to their content**. Then it is necessary to select the appropriate legal regime for the handling of the complaint.

Persons Entitled to Lodge Complaints

In 2007, the Defender also dealt with the issue of whether a person who is not one of the parties to court proceedings is entitled to lodge a complaint against court delays. The Defender namely encountered cases where the chief justice refused to handle complaints against court delays on grounds that the complainant was not a party to the proceedings and was therefore not entitled to submit such complaints. In the view of the Defender, **complaints against court delays may also be submitted by persons not party to proceedings**.

Complaints against Court Executors

As in previous years, the Defender received a number of complaints last year against the unlawful conduct of court executors during debt recovery. The Defender is aware that these complaints largely stem from the burdensome consequences of ill-considered conduct by debtors. At the same time, we must not overlook **the often alarming fate of certain debtors**. The Defender repeatedly encountered instances of misinterpretation of the term *"common household furnishings"* (on one such occasion a children's bed was also seized), cases of **repeated distraint on the bank account of the other spouse**, or cases where distraint on the bank account led to unlawful seizure of amounts not in any way subject to distraint. Furthermore, the Defender encountered cases where **distraint on furniture and furnishings led executors to seize furniture in places where debtors did not in fact reside** (these are often cases where the debtor is registered as permanently resident at the parents' address and the executor seizes the parent's belongings at this address).

As the Defender has no direct investigative authority vis-à-vis executors, he refers affected individuals to the **complaints procedure of the Czech Chamber of Executors and to the Ministry of Justice**, which oversees the work of executors. Last year, the Defender offered his findings related to distraint under an amendment procedure for an amendment of the distraint code (Amendment No. 347/2007 Coll.). In future the Defender intends to engage in preparations of the amendment of the Distraint Code, which should be proposed by the Government in 2008.

Access to Files, Acquiring Own Photocopies of Files

In 2007, the Defender dealt with cases where the complainant (as a party to proceedings) was permitted to view the file but not permitted to **acquire photocopies of documents from the file with his own digital camera.** The chief justices of the courts concerned refused to allow the acquiring of copies on grounds that the provisions of Article 44 Section 1 of the Code of Civil Procedure does not imply the right to photograph documents from the file using one's own equipment. At the same time the chief justices stated they feared the risk the document could be altered by the litigant by means of a computer programme (whilst a copy made by the court itself guarantees the copy will be identical to the document in the file).

The reality remains such that the acquiring of own photocopies is not addressed in a uniform manner by courts (many courts have adopted a pragmatic approach and allow litigants to acquire photographs of file documentation). For the sake of unifying the approach of individual courts, the issue of photographing file documentation should be explicitly addressed at least by the court's internal operating procedures. In the view of the Defender, the court must allow participants to proceedings to **acquire photocopies by means of their own technology.**

2.6 Land Law

Land Register

In addition to the common problems associated with the registration of rights *in rem* to real estate in the land register and the **correction of errors in the cadastral records**, in 2007 the Defender concentrated more on the issue of cadastral record restoration by virtue of transformation of the set of geodetic information ("***digitisation***") and **new mapping**.

Digitisation of the Land Register

The so-called "***digitisation***" represents an approved system of restoration of cadastral records. Its objective is to transform the cadastral map from graphic form to a graphic computer file. Unlike the other possible manners of restoration of cadastral records (new mapping or on the basis of the results of land consolidation), only the input data available to the land registry office are referred to in digitisation (rather than the actual situation on site). The indisputable benefit of digitisation consists of the fact that it gradually eliminates the simplified records of those plots of land that originated in old records of plots of land (e.g. in the land settlement register and have not been clearly marked on site to date and therefore not recorded in the cadastral map. Problems arise however where the plotting of specific plots of land in the land settlement register significantly differs from the records in the land register (and, in a number of cases, from the actual situation on site). The Defender is then addressed by owners whose real estate has, according to the plotting in the digital cadastral map, *"moved"* from the existing location, which causes them considerable difficulties.

Although "*digitisation"* is essentially the fastest and the least costly manner of restoration of cadastral records, the Defender requires, on account of protection of ownership title, that the **new mapping** (Sections 13a and 14 of the Cadastral Act (Act No. 344/1992 Coll. as amended)) be used especially in complex locations where the input data for mapping are obtained directly on site instead of transforming old (often inaccurate) input data for mapping.

Registration of "Old Deeds"

A large number of the complaints received by the Defender in 2007 were directed towards the registration of *rights in rem* in the land register on the basis of **old deeds**. The latter very often include, apart from various decisions of the bodies of public authority (never submitted for designation of a change in records on plots of land), and various private agreements where, although they were registered by the former state notarial offices, the change concerned was never designated in the former real estate records.

The Defender is today addressed by persons who acquired real estate, in particular in the 1990s, on the basis of a permit of registration of the *right in rem* in the land register, yet shortly afterwards someone submitted a decision or agreement dating dozens of years back and properly registered by a former state notarial office, on the basis of which the land register makes a so-called ***"double registration of ownership"***. It is up to the parties concerned to solve the problem. They must claim their rights in court, which is lengthy and often costly. Practice has shown that similar disputes for the determination of ownership are won by the

"finders" of such old deeds as they acquired the ownership title earlier. Those who acquired the real estate through a *"proper"* agreement based on the data in the land register are deprived of their ownership title and face a very unpleasant situation.

For the avoidance of the future unexpected effects of such *"old"* deeds – registered by state notarial offices before January 1, 1993, and the effects of non-submitted decisions of the bodies of public authority, the Defender finds it suitable to consider the **setting of a deadline for their submission to the land registry office**.

Settlement of Restitution Claims

Again in 2007 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 over land consolidation.

The Defender encountered a serious problem in the complaints, and namely "***privatised restitutions***". In some cases a restitution claim was made for privatised real estate and those who had their property restituted were registered as the new owners on the basis of a decision of the land settlement office. However, the property concerned was acquired by the existing owners in privatisation where they participated in public auctions organized by state privatisation commissions. It is not unusual that the property had been repeatedly transferred over the years and the last owner in line loses ownership. Such owners rightfully object that they are not guilty of the ensuing situation; although they have improved the property acquired in good faith, they often cannot even claim reimbursement of the purchase price from the transferor.

The aforementioned situation suggests a contradiction in the procedure of the state, which enabled inclusion of the real estate in privatisation on the one hand and, on the other hand, surrenders the same plots of land to restituents without dealing with indemnification of the existing owners who have invested in the real estate or conduct a successful business there (the matter is by no means negligible according to information from the Central Land Settlement Office as it involves about 700 cases). Given these facts, the Defender discussed the issue with the Ministry of Agriculture and the Ministry of Finance, trying to appeal for acceleration of the procedure of the land settlement offices in restitution proceedings and a responsive attitude of the revenue authorities in the provision of indemnification to the injured parties.

Lease of Agricultural Plots of Land

Complaints concerning the lease of agricultural plots of land formed on the basis of the Land Act represent a specific issue. The owners of agricultural plots of land often point to the fact that the tenants farming their land **fail to pay rent to them**, not even the minimum annual amount of 1% of the price of the plot of land. The possibility of giving notice of termination on the lease is limited by the Land Act as the lease may be terminated with a one-year notice period as of October 1 of the current year. However, if the plot of land is not accessible, the notice period does not terminate until land consolidation is performed. There is a typical case of complainants to whom plots of land were returned in 1994. They gave notice of termination of the lease agreement as of October 1, 2005, but given the inaccessibility of the plots of land, the notice period continues until comprehensive land consolidation is performed. The aforementioned condition continues to exist as there is no legal entitlement to performance of the relevant consolidation by the land settlement office (in most cases, the law leaves it for the consideration of the land settlement office as to whether it will commence land consolidation in the area concerned). Given that the owners have long been unable to assert their rights, the Defender requested the Minister of Agriculture take the relevant steps towards the fastest possible **land consolidation**, thus ensuring actual enforceability of the protection of ownership.

The Defender finds solution to the failure to pay rent in reasonable **application of the Civil Code** (Act No. 40/1964 Coll. as amended), which makes it possible to **withdraw from an agreement** due to failure to pay rent (the Civil Code allows the lessor to withdraw from the lease agreement if the tenant has failed to pay the due rent by the due date of the next rent in spite of a reminder). The Defender therefore recommends to the complainants that they consider withdrawal from the lease relations that have arisen under the law if the rent is not properly paid.

In this context the Defender also points out that the unsettled problems of lease relations regarding agricultural land may adversely affect the **drawing of assistance from the European Union** or directly from the Ministry of Agriculture. Applicants for assistance must document legal grounds for using the plot of land, i.e. among other things that there is a lease. The government guaranteed in past years that the aforementioned condition is fulfilled by the land users receiving assistance from the EU funds. If a tenant fails to fulfil the obligations resulting from the lease agreement, he in fact looses entitlement to use the plot of land, which may subsequently affect not only the possibility of granting assistance, but there may also be an obligation to return previously drawn assistance to the European Union. The Defender has requested the Ministry of Agriculture in this respect to verify whether recipients of assistance fulfil the condition of proving legal grounds for using agricultural plots of land. He simultaneously suggested that in providing assistance, the Ministry consider introduction of the condition of fulfilment of the legal obligations resulting from the relationship the use of the agricultural land.

2.7 Construction and Regional Development

Zoning

2007 marked a fundamental change in the area of zoning in connection with the adoption of the new Building Act which newly introduced the possibility for the owners of real estate affected by a zoning plan subject to hearing of having the zoning plan reviewed by court (it must be mentioned that the Defender has pointed out the absence of court protection in the area of zoning from the very beginning of his mandate).

The Defender continues to encounter wrong practice and maladministration in the **hearing of major infrastructure projects**. The aforementioned experience is documented in particular by suburban dwellings near regional cities or large-scale projects of shopping or logistics centres. In spite of his repeated criticism, the Defender continues to observe that state bodies refuse to engage in serious dialogue with the public, restrict the right of the public to information on fundamental projects and tolerate the often arrogant approach of investors. The Defender has already been critical in his inquiries about the procedures of administrative authorities in the preliminary stages of hearing major infrastructure projects. He pointed out lacking concept assessment, failure to respect logical sequences of preparatory steps as well as **inconsistent comparison of multiple relevant variants**. Unfortunately, the Defender has not noted any significant improvement among administrative authorities in this respect.

The Defender continues to be confronted with a somewhat **non-conceptual approach of transport authorities** to investment in road infrastructure. Typically, the shortcoming consists of a lacking investment strategy (the problematic sections of the road network, in particular those with the most intense traffic, are not dealt with first), an uncoordinated approach to transport structures (traffic is transferred to a different location) or prioritisation of costly solutions (resulting in delays and additional costs of construction). The Ministry of Transport and the organisations established by the Ministry are unable to respond flexibly, through their investments in infrastructure, to topical issues in specific regions; instead, they attempt to put through only the originally planned project variant.

Lacking **interrelatedness of permission procedures** also continues to be a problem. The inquiry into the planned major road between Brno and Vienna (the R52 expressway) has indicated that the administrative authorities lack a clear opinion as to how to implement transit corridors in the zoning plans of so-called higher territorial units, the basis on which to perform the strategic selection of the corridors, how to ensure that the individual zoning plans of the higher territorial units are in harmony in fundamental questions and what to do when an outlined corridor subsequently proves to be unfit in a specific section.

Complaint Ref. No.: 2453/2006/VOP/JC

In the preparation of major transport structures, the bodies of public administration are obliged to look for optimum forms of development of the territory, including the most environmentally friendly solution. A situation where the bodies of public administration fail to examine the conceivable variants of positioning the transport structure contradicts the sense and purpose of the zoning processes and the associated EIA processes. Such procedure is not in accordance with the law and the principles of good administration.

The Defender was addressed by the Environmental Law Service civic association and several other civic associations with a request for an inquiry into the procedures of the administrative authorities during the preparatory stages of hearing the planned construction of a major road between Brno and Vienna.

In his inquiry the Defender criticised the fact that that the assessment of several variants of the transport corridor stipulated by the legislation had not taken place. The Defender furthermore pointed out that the plan was at variance with the protection of the NATURA territorial system, according to which the submitter is obliged, under the law, to draw up implementation variants so as to avoid adverse effects on the NATURA territory and, if this is no longer possible, a variant must be chosen that has the least adverse effect on the environment. In the given context, the Defender primarily pointed out that within the EIA procedure, only the Pohořelice-Mikulov/Drasenhofen (R52) corridor had been assessed without previously performing a strategic assessment of several possibilities of implementation of major traffic infrastructure between Brno and Vienna.

As a result of the Defender's inquiry, the Minister of Transport promised that both variants of the route of the R52 Brno-Vienna road (i.e. also the variant taking into account the use of the D2 motorway and the bypass around Břeclav) would be properly reassessed.

Noise Pollution

Traffic noise, noise mapping

For a number of years, the Defender has been encountering complaints of increased noise pollution from transport and simultaneously increased concentrations of pollutants and vibrations due to roads overloaded with trucks.

However, state bodies have still not provided a clear specification of how to deal with the issue of increased traffic. The Defender repeatedly appealed to the representatives of municipalities, regions and the state in the past year to actively endeavour to adopt the relevant measures. The arguments of some self-governments, according to which the planned transport infrastructure should be completed in the first place before contemplating specific forms of road traffic regulation, are perceived as entirely incorrect by the Defender.

The Defender holds the view that developed states have generally come to accept that **road traffic should be actively and specifically regulated**. A number of measures should be applied for this purpose, from permitting new premises only when they are accessible by public transport (an obligation may be placed on investors to participate in investment in public transport), to controlled reduction of parking places (rearrangement of street space in favour of pedestrians and cyclists, reconsideration of the construction of large-scale garages in areas with heavy traffic), regulation of the entry of cars to city centres, to introducing low speed driving in residential districts.

Already in the 2006 Annual Report, the Defender appealed for the adoption of legislation that would comprehensively deal with the issue of the assessment and regulation of environmental noise. The Defender had to state in the past year on the basis of inquiries into specific complaints that there are **delays** in the work of the bodies of public health protection (in particular the public health service) **in obtaining and publishing strategic noise maps** that should contain information on noise pollution in selected locations in accordance with European legislation. The Defender repeatedly revisited the issue in dealings with the Chief Public Health Officer.

Noise from Restaurants, Summer Terraces and Playgrounds

The Defender was also addressed by citizens with complaints about noise from local sources; primarily from restaurants, summer terraces and children's playgrounds. Complaints relating to various cultural events appeared in the summer. The complaints dealt with by the Defender showed that a number of noise-related problems stem from the fact that **the buildings** where music performances are organised **have not been permitted for such a purpose and approved for such use**. The Defender points out that the planning authority must intervene in such cases and it is obliged to impose a fine on such unauthorised use of the structure. The Defender simultaneously appeals to public health protection bodies to carefully consider the formulation of conditions in the planning proceedings (where they act as the so-called bodies concerned) so that noise from the operation of such premises does not exceed the limits stipulated by law (however, the conditions should be set clearly to enable checking of their observance).

Complaint Ref. No.: 2171/2006/VOP/JP

In the case of complaints about noise from music performances in a restaurant, the planning authority is obliged to assess whether the premises have been approved for use as a venue of public music performances.

Mr. J. R. and Mr. M. J. addressed the Defender with a complaint about the procedure of the Zlín Municipal Office in the matter of disturbing noisy music from the summer terrace at a restaurant.

The Defender stated after an inquiry that the planning authority of the Zlín Municipal Office had erred in failing to adequately respond to the fact that music had been performed long-term in the restaurant and on the summer terrace at variance with the applicable final building approval. The authority performed the relevant inquiries on the basis of the remedial measures proposed by the Defender, assessed the current use of the premises and initiated sanction proceedings vis-à-vis the owner of the premises on the basis of the ascertained facts.

The Defender also recommended to the complainants to file an action where the court would impose an obligation on the owner of the premises to refrain from producing untoward noise. The complainants were again successful and the court complied with their motion.

Planning Proceedings

The new legislation effective from January 1 dominated 2007 in the area of the Building Code. Having evaluated experience with the new legislation, the Defender must state that, contrary to the declared objectives, **simplification of the legal processes in construction was not achieved** (rather the opposite; the new legislation has brought complications both to planning authorities and investors in many respects).

Bias of the Head of a Planning Authority

The Defender also dealt with a situation in the past year where bias of the head of a planning authority was pronounced in the course of planning proceedings. The Defender encountered a procedure where a **regional authority refused to appoint another administrative authority** for dealing with a matter after the latter was referred to it due to bias of the head of the planning authority, and returned it for handling to the same municipal authority. It argued that rather than merely the planning department, the municipal authority as a whole was competent. The Defender finds the aforementioned procedure to be erroneous and at variance with the principles of good administration, namely with the principles of timeliness, impartiality and efficiency of decision-making as it will only result in additional delays in the matter and disputes regarding competence between the municipal authority and the regional authority. The Defender also holds the view that public administration must be provided for by professional capable civil servants. It was hardly conceivable given the complexity and highly specialised nature of the case concerned that some other department of the municipal authority could deal with the matter. Furthermore, in the Defender's opinion, the procedure of the regional authority did not correspond to the provisions of the Code of Administrative Procedure on the situation concerned (Section 14 (4) in connection with Section 131 (4) of the Code of Administrative Procedure).

Free Access to Technical Standards

Following the new Building Act, the Defender also began to deal with free access to technical standards. According to the Building Act, if the Building Act or another legal regulation issued for the latter's implementation stipulates the obligation to proceed according to a technical standard (ČSN, ČSN EN), **the technical standard concerned must be publicly available free of charge**. The Ministry for Regional Development interprets the provisions of the Act so that the words *"publicly available free of charge"* should be perceived as the possibility of acquainting oneself with the technical standard free of charge rather than publishing or even obtaining the standard free of charge. It is not specified in the Building Act as to who shall actually provide for the availability, according to the Ministry. In the opinion of the Ministry for Regional Development, it continues to be true that Czech technical standards may be duplicated and disseminated only subject to the consent of the Czech Standards Institute. The Defender does not share the aforementioned approach and holds the view that **free access includes the possibility of publishing or obtaining the standard**. The ambiguities concerning free public accessibility are currently being dealt with between the Ministry of Industry and Trade (the Czech Standards Institute) and the Ministry for Regional Development.

Heritage Preservation

The Defender noted an increase in the number of complaints in the area of heritage preservation in the past year, particularly in metropolises, with **increasing pressure from investors towards development on existing vacant sites**, often **within heritage reserves**. As a prerequisite for construction to be permitted in such areas, the building must comply with the zoning plan and the requirements of heritage preservation must be respected. As a characteristic phenomenon encountered by the Defender in the past year, investors were interested in building multi-storey apartment houses (to maximise profits from the sale of the built apartment projects) regardless of the existing urban and architectonic nature of the site. The Defender had to repeatedly criticise the **inconsistent approach of the bodies of state heritage preservation** in assessing the admissibility of such buildings in attractive urban areas. The Defender informed the Minister of Culture of his findings in the area of heritage preservation (in one case the Defender even proceeded to filing a motion for a review of a binding opinion of a body of state heritage preservation with the objective of achieving the review of consent to the building of an apartment house amidst valuable villas).

The Defender also encountered cases of additional looking for reasons for pronouncing architectonically valuable buildings to be national cultural heritage in situations where the **building concerned is threatened with demolition** on the basis of a final permit from the planning authority. This suggests that checking mechanisms capable of preventing similar cases are not functioning sufficiently in the system of state heritage preservation. The Defender holds the view that it is reasonable to ask for a degree of **co-operation between planning authorities** and **bodies of heritage preservation**. It is impossible to tolerate a situation where a heritage preservation authority additionally gathers information on the removal of a building that deserves heritage protection. It is necessary according to the Defender that the central bodies of the state (the Ministry of Culture and the Ministry for Regional Development) look for ways of preventing the recurrence of similar cases, in particular by working on the new heritage act.

In the area of heritage preservation, the Defender also encountered **ambiguities in the records on cultural heritage**. These involved situations where some of the structures are recorded in the Central List of Cultural Heritage with a note that only parts (e.g. fronts) are subject to protection, which results in uncertainty of the owners as to the structural adaptations for which they should ask for a binding opinion of the body of heritage preservation.

The Defender also dealt with the matter of **issuing consent to the relocation of cultural heritage** (a work of art in this particular case) and its possible conflict with the binding opinion on the renovation of that cultural heritage. The Defender stated that binding opinions may be issued only in cases defined by the law. One such case consists of the so-called **renovation of a cultural heritage**, which means its maintenance, repair, reconstruction, restoration or other treatment. Mere relocation is not specified among the means of heritage renovation, and it is therefore generally impossible for an administrative body to issue a binding opinion on it. However, a binding opinion may be issued where the relocation of the cultural heritage is connected with activities that have the nature of renovation of the heritage. However, the administrative authority must document in such a case that the heritage will be renovated during its relocation and indicate the specific steps it considers to be renovation.

As for the protection of cultural heritage within heritage reserves and zones, the Defender repeatedly points out that under the law, owners of historic premises that do not constitute cultural heritage are not **entitled to a grant for the restoration of the cultural and historic values** of such structures. Although grant schemes have been established in some regions that also support such owners, it depends on the budgets and priorities of the regional self-governing units whether they will be positive towards the owners of historic property.

The National Institute of Cultural Heritage has published a list of endangered cultural heritage in the Czech Republic. However, the Defender points out that the stating of specific heritage as endangered puts the administrative authorities under an obligation to use their powers in accordance with the Act on State Care of Monuments to ensure care for such heritage, including the imposition of an obligation on their owners to remove the state of disrepair and, potentially, exercise the imposed measures at the expense of the authorities. The published list should therefore not merely be a cause for increasing the funds for public schemes for heritage renovation.

2.8 Public Roads

As in previous years, the Defender encountered complaints in the area of surface communications where citizens point out the inaccessibility of a previously long-used road and, on the contrary, complaints of owners of plots of land used as roads. According to the citizens, authorities fail to deal properly with the issue of the existence of a publicly accessible purpose-built communication. There is persisting unawareness among the basic highway administrative authorities (i.e. municipal authorities) of how to deal with conflicts in accordance with the law. **Municipalities** as the highway administrative authorities are generally **unaware of their competences** and refer citizens with civil actions to the courts. For the aforementioned reasons, the Defender published a **collection of his opinions entitled *"Public Roads"*** in 2007 and distributed it to all the municipal authorities (including the authorities of municipal districts and areas), regional authorities and the Ministry of Transport. The collection is to provide basic guidance for public servants' work and it should be available for citizens' reference at the municipal authorities (the full text of the collection is posted on the Defender's website at http://www.ochrance.cz/dokumenty/dokument.php?back=/cinnost/sbornik.php&doc=726).

2.9 Offences against Civil Cohabitation, Protection of a Quiet State of Affairs

Offences against Civil Cohabitation

Offences against civil cohabitation form one of the basic groups of complaints citizens address to the Defender in connection with proceedings. They primarily consist in the complaints of those who have been the *"victims"* of an offence and are dissatisfied with the course of the proceedings.

Legal Position of the Injured Party in Offence Proceedings

In the offence agenda, the Defender encounters the dissatisfaction of victims of an offence, stemming from the fact that they often are merely in the **position of a witness** in the proceedings rather than a party to the proceedings with all the procedural rights (resulting from the definition of the constituency of parties to offence proceedings specified in Section 72 of the Act on Offences (Act No. 200/1990 Coll. as amended)). Victims are parties to the proceedings only in cases where **property damage has been caused to them** through the offence and **entitlement to indemnification has been claimed in the offence proceedings**. However, in cases where no property damage has been caused (often various forms of malice and slighting between neighbours, including minor bodily harm), the person concerned is often in the position of a mere **party notifying the offence** who is not entitled to information on the course of the offence proceedings and is often denied the right to study the offence file. The person will not learn whether and how the perpetrator of the offence was punished (this is prevented by personal data protection). In this respect, the legislation somewhat neglects the fact that offences against civil cohabitation are heard at the municipal level, i.e. often in the place of the concerned person's residence. The party notifying the offence perceives the offence proceedings as a solution to his/her personal dispute with the defendant and the result of the administrative proceedings may play a highly satisfactory role for him/her.

The Defender also encountered several cases in the past year where the affected party was not regarded by the administrative authorities as an injured party in the sense of Section 70 of the Act on Offences in spite of the fact that it should have been so regarded. The administrative bodies argued that although **bodily harm** had been caused to a specific person with a subsequent incapacity to work for several days (confirmed by a doctor), with the person thereby incurring a loss of earnings, this is not the causing of damage in the sense of the Offence Act since, in the Offence Act, damage means only *"actual damage"* or *"lost profit"* pursuant to the provisions of Section 442 of the Civil Code (Act No. 40/1964 Coll. as amended). The Defender rejected such interpretation, stating that it is obvious that damage consisting in the loss of earnings harms the injured party's property situation and is objectively expressible in money (*see* the judgment of the Supreme Court of September 25, 2001, File Ref. 25 Cdo 1147/2000). For the aforementioned reason, **loss of earnings may be subordinated to the term property damage** specified in Section 70 of the Act on Offences. The above conclusion seems to be supported by the specialised literature dealing with the issue. The offence commissions should therefore properly advise such persons of the possibility of joining the offence proceedings with their claim for indemnification for property damage in order to be able to become parties to the proceedings. Since the results of the inquiry suggest that the issue is not

rare, the Defender addressed the Ministry of the Interior with a proposal for directing the procedure of the subordinate administrative bodies within methodological guidance.

Evidence in Offence Proceedings, Use of Audiovisual Recordings

Failure of evidence, which often results in suspension of proceedings, is a frequent problem concerning offences against civil cohabitation. In order to find the defendant guilty and punish him, it is necessary to prove that the defendant has committed the act concerned. These are the basic principles of *"in dubio pro reo"* (**when in doubt, in favour of the accused**). The problem of failure of evidence is further stressed by the fact that the offence is often not committed in public, but instead in private premises (apartments, private houses) or in places with limited access (corridors of apartment houses, etc.). Given that the perpetrator tends to be well aware of the local characteristics, **no witnesses** of his conduct **are available** (examination of witnesses is one of the key ways to ascertain the actual state of affairs).

The Defender also dealt with the question, in connection with evidence in offence proceedings, as to whether it is possible in the sense of Section 51 of the Code of Administrative Procedure (Act No. 500/2004 Coll. as amended) **to use a video or audio recording** showing the committing of an offence. The Defender encountered views that the use of such recordings is *a priori* at variance with the regulations of the Civil Code since Section 12 (1) of the Civil Code (Act No. 40/1964 Coll. as amended) prohibits obtaining a video/audio recording without the consent of the other person. Although the Defender is aware that the Constitutional Court has also opined on the issue (judgment of the Constitutional Court of September 13, 2006, I. ÚS 191/05: *"If courts have admitted the production of evidence by reading a recording of telephone conversations against the express dissent of one of the parties to the conversation, his basic right to the protection of the confidentiality of a communication sent by telephone pursuant to Art. 13 of the Charter was thereby encroached upon and the evidence as such should be regarded as inadmissible…"*), he still holds the view that even such evidence (encroaching upon the personality rights of other citizen) may be admissible in administrative proceedings when the breach of a public interest protected by public law standards (protection of civil cohabitation) stands above the protection of privacy of the citizen concerned (similarly *refer to* the judgment of the Regional Court in Hradec Králové of May 31, 2007, File Ref. 51 Ca 7/2007, page 5). Thus the legitimacy of admitting evidence obtained in such a manner should always be subject to **individual consideration by the administrative body** that should examine whether the encroachment upon the protection of the personality of the person suspected of committing the offence is justified by the protection of peaceful civil cohabitation.

Protection of a Quiet State of Affairs

As for the provision of the protection of a quiet state of affairs pursuant to Section 5 of the Civil Code (Act No. 40/1964 Coll. as amended), in 2007 the Defender dealt primarily with complaints of several tenants of flats **disconnected from electricity and water** by the owner of the house. They were tenants with valid agreements who properly paid the rent and all the payments for the services associated with the use of the flat.

Although aware of the fact that decisions on the protection of a quiet state of affairs are difficult to exercise in practice, the Defender believes that the task of both self-governing and state institutions is to endeavour to put the aforementioned form of protection into effect. The delegated municipal authorities should therefore conduct proceedings pursuant to the provisions of Section 5 of the Civil Code on the basis of justified requests of the injured tenants, since the situation where the owner of the house ceases to provide heating to his tenants, or disconnects them from electricity or water, may qualify as a violation of the quiet state of affairs. **Thus the municipal authorities are obliged to provide protection to the affected citizens** and issue a decision imposing an obligation on the owner to restore the previous state of affairs.

However, the Defender simultaneously advises the injured persons also to address a court whatever happens, with a request for issuing a preliminary injunction for the restoration of the supply of water, electricity or heating. The Defender simultaneously points out in this respect that the **commencement of court proceedings does not constitute grounds for suspending administrative proceedings by the municipal authority** as has been the case several times in the past. Protection of the quiet state of affairs and court proceedings are two separate procedures that may progress simultaneously.

2.10 Environment

Old Burdens on the Environment

Old burdens on the environment continue to be an unsettled problem. Czech law deals sufficiently only with urgent threats to individual elements of the environment (e.g. ground water). However, where (1) unauthorized deposits of mixed waste, (2) former pesticide deposits or (3) disposal sites of hazardous chemical substances are concerned, which are a **long-term threat to the environment**, **such tools are missing**. Burdened real estate in the hands of private individuals represents the most serious problem. Private individuals usually lack funds for remediation of old burdens on the environment, and they therefore postpone the solution until the environment is actually damaged. However, the latter approach is not in accordance with the **principle of precaution**, which is stipulated in Section 13 of the Act on the Environment (Act No. 17/1992 Coll. as amended). The state should therefore create tools and **financial incentives** that would make it possible to remove all the old burdens on the environment, in particular those where responsibility of a specific person for the state of affairs does not exist (e.g. if the burden is the result of an activity that took place in accordance with regulations applicable earlier). Given the persisting problems in dealing with old burdens on the environment, the Defender established communication with the Ministry of the Environment in 2007 on the **possibility** of provisions on **the drawing of assistance from European funds**.

Waste Management

The Defender encountered complaints pointing out **illegal waste management** (waste management without the appropriate authorisation, waste disposal in an unauthorised manner or waste storage in premises not adapted to that purpose). Such activity results not only in an endangered environment, but also in some cases directly endangered health and lives of citizens. In this respect, the defender dealt in particular with the possibilities of the bodies of public administration in detecting a breach of the regulations in waste management within their inspection and supervision work.

Field Work

A new phenomenon encountered by the Defender in environmental protection consists of the **arising of deposits of excavated soil and building waste,** in particular near rapidly developing big cities. The pressure for cheap and quick depositing of such materials causes undesirable terrain changes in the landscape around construction sites. An official decision on terrain treatment in a location or reclamation of an old deposit may serve as a pretence for storing material. However, instead of the original purpose (terrain treatment, covering deposited waste), the location serves for storing an excessive quantity of materials from building activities. The *"hill"* of dry soil created is often abandoned without attempting to reclaim it or integrate it into the landscape. Although there is a threat of a direct damage to an element of the environment only if waste or hazardous substances are deposited together with the soil without authorisation, the heap of soil in itself may have a **devastating effect on the landscape character and drainage characteristics of the area**.

Environmental Impact Assessment

In the area of environmental protection, the Defender continues to encounter inconsistent procedures of administrative authorities within the environmental impact assessment (SEA, EIA). The Defender points out that every inconsistency in preparation becomes obvious when new projects are integrated into a territory. The Defender encounters a situation where the planned project fails to undergo all the processes stipulated by the law (SEA, EIA); the latter processes are *"substituted"* in one way or another only when attention is drawn to legal shortcomings. In doing so, there is a strong **effort to adapt the assessment to a previously selected solution**. The Defender points out that a failure to observe the legal procedures in preparing the planned project brings an *ex post* problem-solving style, at a point where it is no longer possible to assess different variants of the plan. The negative phenomena criticised by the Defender include "***undervaluation***" **of the impact** of planned projects or their division and having them **approved *"part by part"*.** Thus the sense of the environmental impact assessment procedures is again circumvented.

The Defender furthermore noted that investors often attempt to circumvent the legislation (for example through arbitrary manipulation of the planned project) as a result of the

lengthiness of the environmental impact assessment procedures and the assessing bodies fail to actively prevent such steps. Although the Defender is aware that preventing such circumvention is often problematic, as a matter of principle he must insist that it is the task of public administration to ensure an objective **evaluation of the relevant variants** using the environmental impact assessment and to clarify the substantial matters concerning the specific investment.

Activities of Mining Companies

Again in 2007, the Defender encountered complaints concerning those affected by the extraction of mineral resources. The Defender performed an inquiry on site in Karviná where he in person acquainted himself with the situation and the impact of extraction on the lives and property of the residents. The Defender has identified the following problem areas with respect to the extraction of mineral resources:

- **the affected municipalities** are significantly **limited in their development** due to mining (the stipulation of protected natural deposit territories effectively means the prohibition of construction in the territory),
- **the adverse effects** of mining **on health and the environment** (landscape destruction, excessive dust formation, etc.) are neglected in permitting mining activities,
- participation in proceedings on permitting mining is defined using methods that fail to reflect the **actual impact of undermining** (the parties to the proceedings should include owners of real estate as far as the so-called zero isoline of subsidence and not merely within the so-called boundary of the affected territory corresponding to the isoline of anticipated subsidence of 0.04 m),
- **the unlawful division of parties** within the proceedings on the permission of mining into so-called **endangered** and **affected** parties continues to exist. A situation even arises where the mining companies arbitrarily transfer parties from the *"endangered owners"* group to the *"affected owners"* group in cases where citizens disagree with the dictated terms and conditions of an agreement on settlement of the conflict of interests (in the opinion of the mining authorities, mining companies are not obliged to enter into agreements with those in the affected owners group),
- problems persist with the **permitting of restoration** of real estate in areas affected by mining,
- there are persistent attempts not to deal with the provision of **indemnification for non-proprietary damage** consisting of the loss of home and uprooted feelings among the elderly who had to move due to mining,
- underground mining causes **rock bumps**, which result in additional damage to the affected real estate (the mining company does not deal with such damage),
- **the obligation to pay court fees** discourages injured parties from forwarding disputes to a court.

The Defender continues to make all efforts to achieve a more balanced position of the owners of real estate vis-à-vis the mining companies. In this context, he requests an **amendment to mining legislation** (*see Part VI*).

Use of Ammonia in Indoor Arenas

The Defender has been long dealing with the safety risks associated with the operation of facilities where ammonia is used as refrigerant (this involves in particular indoor arenas, cold stores, etc.) The main reason why the Defender decided to deal with the issue consisted of doubts concerning the safety of such premises, because the **risk of a potential breakdown** for the residents of the adjacent housing seemed serious. The Defender ascertained during an inquiry that the aforementioned facilities are not subject to the safety procedures under the Act on Prevention of Serious Accidents (Act No. 59/2006 Coll. as amended), since the quantity of ammonia involved usually does not reach the limits specified in the annex to the aforementioned Act.

After a detailed analysis of the matter (including the drawing up of an expert opinion), the Defender stated on the question of the safety of indoor arenas that the statements of the addressed administrative authorities indicate serious shortcomings that may arise in the area of prevention of serious breakdowns. Within the inquiry, a working meeting took place in the Office of the Public Defender of Rights in September 2007 with participation of representatives of

the Ministry of the Environment, the Ministry for Regional Development, the Ministry of Labour and Social Affairs, the Ministry of the Interior, the Ministry of Industry and Trade and the Chief Health Officer. Agreement was reached at the meeting in that **the Ministry of the Environment** in co-operation with the other departments shall **draw up an analysis of the safety situation** in indoor arenas in the Czech Republic (the analysis was performed on the basis of the basic documents provided on the matter by the addressed regional authorities). Another working meeting took place in late 2007 where the departments concerned promised to perform **coordinated inquiries** inspecting the safety of the most risky facilities (joint inspections of the Czech Environmental Inspectorate and the State Labour Inspection Authority are to be carried out in selected premises in 2008).

2.11 The Police

Complaints about the Procedure of Police Officers

The Defender frequently encountered insufficient **substantiation** of the handling of complaints about the procedure of police officers. The handling of complaints is stipulated in the Code of Administrative Procedure. Although the law itself does not set the extent to which the complainant's complaint should be handled, the Defender deduces from the general principles of the work of administrative bodies and from the reasonable use of the provisions on substantiation of decisions that the police bodies should **assess all the affirmations of the complainant** contained in the complaint and specify the basic documents and considerations based on which they have reached their conclusions. The requirement for a proper and convincing substantiation is also set forth as one of the principles of good administration citizens should encounter in state institutions.

Complaint File Ref.: 3218/2007/VOP/MK

It results from the provisions of Section 175 of Code of Administrative Procedure that the administrative body should assess all the affirmations of the complainant contained in the complaint, respond to them and specify the documents and considerations based on which it has reached its conclusions.

Mr R. B. addressed the Defender with a complaint about the procedure of the District Directorate of the Police in Opava regarding the procedure in investigating the theft of his bicycle. It was ascertained during the inquiry that the complainant had been advised by the Police body only in the sense that the investigation procedure by the District Department of the Police in Opava had been in accordance with the legal regulations and the complaint was found unsubstantiated without further notice. However, the complainant did not receive answers to his specific objections against the procedure of the Police.

The Defender pointed out the provision on substantiation of a decision (Section 68 (3) of the Code of Administrative Procedure) and deduced that the information on the handling of the complaint pursuant to Section 175 of the Code of Administrative Procedure should contain a response to the affirmations of the complainant and an indication of the basic documents and considerations based on which the administrative body has reached its conclusions. The Defender simultaneously drew the attention of the Police body to the fact that the same principles are contained in the Application Rules for Handling Complaints issued by virtue of instruction of the head of the Office of the Minister of the Interior No. 1/2006. The Police body admitted its shortcomings on the basis of the Defender's inquiry and properly answered the complainant's questions.

Taking of DNA in Prisons

Although the Defender informed the then Chief of Police in the past year that his intention to perform a **mass taking of DNA** from prisoners and those on remand **lacked support in the applicable legislation**, buccal swabs (i.e. swabs from the inside of the cheek) were taken in June 2007 and 16,930 samples obtained (only 165 imprisoned individuals or persons in custody rejected them and force to overcome resistance was used by the Police on 9 individuals).

In this context the Defender stated there had been a breach of the Act on the Police in all the performed takings. All the convicts and individuals on remand called to undergo the taking of biological samples had been incorrectly advised of the possibility of overpowering resistance using violence. The applicable Act on the Police of the Czech Republic (Act No. 283/1991 Coll. as amended) does not enable the Police to use violence to overcome resistance if the latter is put up by a person in connection with an act of the Police that represents interference with the

person's physical integrity. Thus the procedure of the Police in taking biological DNA samples was illegal. Given that the Police bodies do not identify with the Defender's conclusions, he will continue to deal with DNA taking in 2008.

2.12 The Work of the Prison Service

Transfer to another Prison

As in the previous year, complaints in the area of the prison system are dominated by requests for transfer to another prison. As in past years, most complainants were requesting **to be transferred to Moravia** (due to the fact that prisons are distributed unevenly in the Czech Republic and a substantial number of inmates from Moravia must be placed in Bohemian prisons). The Prison Service is currently in the process of **introducing additional modules of the prison information system** that is to contribute to a more efficient evaluation of the requests for transfer, for example by exchanging convicts between prisons. Creating sufficient lodging capacities in the eastern part of the Czech Republic would be a comprehensive solution. The situation may improve with the establishment of **a new prison in Moravia,** in Rapotice, planned to commence full operation in 2008. It should be noted however that the construction is delayed and the planned capacity has been reduced (from about 600 to 450 inmates).

Healthcare in Prisons

Again in 2007, the Defender encountered complaints regarding healthcare provided to prisoners and those in custody. Inmates complained especially about failure to carry out **special medical examinations** requested by them or **failure to provide the needed medication**. As a result of the amendment to the Act on Care of People's Health (Act No. 20/1966 Coll. as amended), the Prison Service withdrew from the previous restrictive interpretation of the provisions concerned with the issue of studying medical records and it now enables the prisoners to study the records. After comprehensive negotiations with the Prison Service, the Defender also noted a **decrease in the number of complaints from Pardubice Prison,** a prison with a special department for permanently unemployable inmates (a modern health centre is also to be promptly built in the latter prison).

Departments with Enhanced Technical and Structural Security

The institute of the so-called department with enhanced technical and structural security has for a long time lacked support in the law. It is stipulated only by a decree issuing the order of the exercise of imprisonment (Decree No. 345/1999 Coll. as amended) and it therefore **has no legal basis**. In addition, the aforementioned regime is often used other than as indicated by the text of the quoted decree. The ambiguities in its use are apparent for example in the form of permitted visits (the Defender encountered summarily ordered visits in which the convict is divided from the visitor by a partition). The Defender is convinced that an individual approach must be applied also to the convicts placed in the aforementioned department and specifically decision-making on ***"contactless visits"*** should be made depending on the personality of the convict concerned (a separate decision must always be made on the *"contactless regime of a visit"* as provided for by Section 19 (6) of the Act on Imprisonment (Act No. 169/1999 Coll. as amended)).

System of Handling Complaints, Other Types of Complaints

The complexity of the prison issue is obvious from the other complaints regarding the problems connected with **life in prisons**. Complaints about bullying by fellow prisoners and Prison Service officers, failure to provide a suitable diet, lack of work for inmates, employment and remuneration issues are not unique. Certain problems result from the **obsolete architecture** of prison buildings and the collective Soviet-type 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**. With the existing prison capacity, increased demands are placed on every Prison Service employee in terms of surveillance as well as the work of specialised staff – psychologists and tutors.) The insufficient numbers of tutors preclude effective educational and therapeutic work with inmates in many prisons. The Defender believes with regard to these facts that there should be an **increase in the number of specialised personnel**.

The **system of handling complaints of inmates** (Government Decree No. 150/1958 Off. Rep. on the Handling of Complaints, Notifications and Motions of Workpeople was annulled

and the internal complaints system made subject to Section 175 of the new Code of Administrative Procedure (Act No. 500/2004 Coll. as amended)). Nevertheless, the complaints handling system continues to be affected by the lack of trust among inmates in the internal bodies dealing with complaints whose decision-making is not regarded as objective and impartial (less than 10% of all the lodged complaints are accepted as justified or partly justified). The inmates simultaneously point out apprehension of a possible subsequent sanction. The Defender therefore understands the inmates' requirement that their **complaints be inquired into by a body independent of the Prison Service**.

In connection with the handling of complaints concerning the prison system, the Defender also dealt with the question as to whether **convicts are obliged to stand up at the moment of entry of a Prison Service officer to the cell**.

Complaint Ref. No.: 65/2005/VOP/FH

The obligation of the convict to stand up at the moment of entry of a Prison Service officer to the cell cannot be, without other considerations, regarded as a degrading treatment pursuant to Art. 7 (2) of the Charter of Fundamental Rights and Basic Freedoms or Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Mr. R. S. addressed the Defender with his complaint, claiming that the disciplinary proceedings against him for refusing to stand up at the moment of entry of a Prison Service officer to the cell was illegal. He believed that the Act on Imprisonment (Act No. 169/1999 Coll. as amended) did not impose such an obligation on him, including in Section 28 (1), according to which the convict is inter alia *obliged to "observe decorum in dealing with the persons he contacts" (he provided similar arguments with respect to Decree No. 345/1999 Coll. issuing the order of the exercise of imprisonment). The complainant found the aforementioned requirement of the Prison Service to be illegal and in its essence fulfilling the notion of degrading treatment.*

The Defender did not identify with the complainant's arguments after an extensive inquiry. He did not find conflict of the obligation to stand up with the law or the Charter of Fundamental Rights and Basic Freedoms. The Defender stated that it is not unusual even in the normal civil environment in certain situations that those present greet the incoming person by standing up. In addition to this, the aforementioned obligation may be deduced from other provisions of the Act on Imprisonment and it must not be directly connected to decorum. The Prison Service is obliged to perform many tasks every day that may be facilitated by the standing up of persons in cells or bedrooms (e.g. in regular checks, physical counting of inmates, etc.). The safety factor may play a role in some cases and it is specifically for such cases that the management of the prison has the right to stipulate the daily regime of the prison in internal rules (the internal rules did contain the obligation concerned).

The Defender furthermore expressed the opinion in the matter that an automatically set obligation to stand up at the moment of entry of a Prison Service officer to the cell is paradoxically less vulnerable to misuse than an alternative stipulation, according to which the obligation to stand up would exist only upon an express instruction of a specific Prison Service officer. In the latter case there could be guesses and suspicions as to why the instruction was issued in one case and not in another.

2.13 Transport

In addition to the standard problems connected with the registration of vehicles, their import into the Czech Republic or obtaining driving licences and their replacement, the Defender also dealt with the following problem areas with respect to transport.

Penalty Point System, Traffic Signs and Markings

In 2007 the Defender dealt with the procedure of the Ministry of Transport (hereinafter the Ministry) that, at variance with the law, annulled an item in the Central Registry of Drivers that stipulated the issuing of one penalty point for persons who have violated some of the obligations resulting from the *"Residential Zone"* or *"Pedestrian Zone"* signs. The Ministry introduced a condition due to the annulment of the aforementioned item where 2 to 5 penalty points were issued to drivers instead of one for excessive speeding in the relevant zone. Thus the procedure of the Ministry effectively brought **harsher penalties than those intended by the legislator** (the number of penalty points for violating traffic obligations is precisely defined in an annex to the Act on Surface Communications Traffic (Act No. 361/2000 Coll. as amended) and the Ministry therefore acted in excess of its power given by the law by annulling the item in

the Central Registry of Drivers). The practice of the Ministry and the legal provisions were unified on the basis of the Defender's inquiry; the item "*violation of the obligation resulting from the Residential Zone or Pedestrian Zone signs*" was omitted also from the text of the law thanks to a government amendment (amendment No. 215/2007 Coll.) to the Act on Surface Communications Traffic.

Form of Issuing Driving Licences

In the period under scrutiny, the Defender concentrated in more detail on the methodological activities of the Ministry of Transport concerning the acquisition of driving licences. In the cases concerned, those who have successfully completed driving licence exams demand immediate issue of the driving licence in order to promptly enter **extension education in order to obtain another category driving licence**. Given that a valid driving licence must be available for the extension education, which takes up to 30 days to be issued, the Defender found that immediate extension of the completed education was very debatable.

The Ministry of Transport attempts to deal with the situation arising by guiding the authorities to **pronounce the decisions on issuing a driving licence verbally** and issue written confirmation on issuing the driving licence to the applicants, on the basis of which the latter may be included in the extension education and training. The Defender finds such a methodological recommendation to be problematic and, due to legal security, finds a procedure where the administrative authorities will issue **a proper driving licence within express deadlines** to be more suitable. The Defender will discuss additional details with the Ministry already in 2008.

Duplicate Driving Licences

The Defender of Rights adopted a standpoint on the issue of the **territorial competence of authorities in issuing duplicate driving licences** to citizens of the Czech Republic without permanent residence in the territory of the Czech Republic. In the Defender's opinion, it is not a prerequisite for issuing a duplicate driving licence that the applicant is registered for permanent or temporary residence in the Czech Republic. Only the authority in whose territorial competence the applicant had the last known place of residence in the Czech Republic is competent to issue a decision in the administrative proceedings.

Fines on Injured Cyclists

The Defender pointed out already in the 2006 Annual Report the issue of sanctioning those causing a traffic accident where no other person was injured (only the person who caused the accident). Such people were frequently fined by the administrative body an amount from CZK 25,000 to CZK 50,000. The Defender did not agree with such procedure of the administrative authorities. In his opinion, the authorities failed to respect the principle of reasonableness in such procedure as they placed the offence under the provisions of Section 22 (1) (h) of the Offence Act (Act No. 200/1990 Coll. as amended), which set such a high fine for traffic offences where generally **a person was injured or killed** (the law did not expressly specify that the latter must be a person other than the one causing the accident). In the Defender's opinion the authorities applied the law in a manner that had absurd consequences.

After the Defender pointed out the matter, the Offences Act was amended effective from August 22, 2007. The injured person must be other than the one who caused the traffic accident. However, the new legal provisions apply only to accidents occurring after the mentioned date or, as the case may be, pending offence proceedings. The amendment does not cover wrongly assessed cases in the period from July 1, 2006, to August 22, 2007, where the original text of the relevant provision applied. The Defender therefore repeatedly addressed the Ministry of Transport with a request for general **review proceedings** of cases completed according to the incorrect interpretation. **The Minister of Transport** finally **complied** with the Defender's request and commenced review proceedings in those cases where the affected persons applied for review.

Traffic Offences

Apart from the penalising those injured in a traffic accident *(see above)*, the Defender encountered complaints in the area of traffic offences about the procedure of offence bodies (i.e. bodies of the Police, municipal police, offence commissions) in **imposing fines for parking offences and excessive speeding** and **the conduct of on-the-spot proceedings**. It

may be stated that the most recent major amendment to the Act on Surface Communications Traffic effective from July 1, 2006, has not brought a significant increase in the number of complaints.

2.14 Taxes, Fees, Customs

Claiming of Outstanding Payments of Local Fees and Fines

In the area of tax administration in 2007, people most often complained about the manner in which authorities claimed outstanding public payments from them (unpaid local fees and on-the-spot fines).

As for **local fees**, municipal authorities proceed pursuant to the Act on the Administration of Taxes and Fees, which stipulates that if there is not a danger of thwarting of the purpose of the distraint, they are obliged to call on the debtor to pay the due amount by an additional deadline. On the contrary, the municipal authority **claims other public receivables** (**in particular fines**) based on the Code of Administrative Procedure (Act No. 500/2004 Coll. as amended), which does not expressly stipulate an obligation to send a call before the claiming itself, but taking into account the principles of good administration, the principle of minimising infringements and reasonableness (Section 2 (3) and (4) of the Code of Administrative Procedure), the aforementioned obligation can be deduced when taking into consideration the circumstances of the given case. However, the Defender simultaneously admits that in certain cases the obligation to send a call may be refrained from (for example if the call would be obviously ineffective or if sending it is beyond the reasonable possibilities of the authority).

The next steps depend on the specific circumstances and possibilities of the given authority. The Defender generally welcomes cases where the municipalities perform distraints on their own. However, once the authority decides to perform a distraint via a private executor, the Defender believes that (except for justified cases), they should be able to draw up the motion for ordering distraint on their own **without using attorneys-at-law** for such repeated (form-based) filings, thereby increasing the inappropriate burdening of debtors.

Imposition of an On-the-spot Fine

In connection with the exaction of on-the-spot fines, the Defender also encountered complainants' objections that they had **not learned about the on-the-spot fine until distraint**. An offence can be dealt with in on-the-spot proceedings only if it has been reliably ascertained, reprehension is insufficient and the person accused of the offence is willing to pay the fine. Thus if the on-the-spot fine was not properly imposed (confirmation of receipt of the fine receipt by the offender), it would be an illegal distraint due to a lack of enforceable decision. The Defender advises people in such cases to challenge the ordering of distraint by lodging an appeal or, later, to apply for abating of the distraint due to inadmissibility.

Local Fees for the Special Use of a Concourse

The Defender holds the view that the owners of plots of land designated as a concourse in generally binding decrees of municipalities should not be payers of the fee for the special use of a concourse, since in such cases **the exercise of their ownership title is made subject to a fee**. The owner of a plot of land designated as a concourse is limited already by having to suffer the so-called common use of the concourse (i.e. the fact that anyone has the right to enter their plot of land). Making a concourse subject to a fee for so-called special use (e.g. in the placement of an advertising installation or creation of a parking place) may then in a number of cases result in making the exercise of ownership title subject to a fee, which is not in accordance with the constitutional protection of ownership. Article 11 (4) of the Charter of Fundamental Rights and Basic Freedoms stipulates that expropriation or mandatory limitation of property rights is permitted in the public interest, on the basis of the law, and for compensation. From this point of view, the exercise of ownership title should not be made subject to a fee, but rather the opposite, the owners of plots of land designated as a concourse in the public interest could demand indemnification for the limitation of their ownership title.

The Defender obviously does not cast doubt on the fact that a municipality has the right to designate a plot of land a concourse, whether on the grounds of ensuring general passability, clean municipality (prohibition of contamination of a concourse) or with regard to the right of assembly. However, the Defender objects that the local **fee for the special use of a concourse lacks the so-called regulatory function**, which is the main argument of the sup-

porters of making the exercise of ownership title subject to a fee. Rather the opposite, in cases where the person using a concourse is sufficiently wealthy, it is impossible for the municipality to achieve real passability of a specific plot of land via the Act on Local Fees. On the contrary, as for the issue of **ensuring the passability** of a specific plot of land, this may be achieved using the **institutes of the building law, the surface communications law** or by means of the **Trade Licensing Act** (market rules). The making of a special use of a plot of land by the owner subject to a fee may not result in restored passability; instead it results in a condition directly opposite to that provided for by the Charter of Fundamental Rights and Basic Freedoms.

The Constitutional Court stated in its judgment of March 22, 2005, Pl. ÚS 21/02 (promulgated in the Collection of Laws under No. 211/2005) that in the use of their plot of land, which is simultaneously a concourse, the owner of the plot of land should fundamentally not be subject to the obligation to pay fees for using a concourse. The Constitutional Court simultaneously deduced that the administrator of the local fee should differentiate between the exercise of ownership title and its potential misuse. Given the case law of the Constitutional Court, there should be a procedure where the administrator of the local fee **differentiates between the exercise of ownership title and its potential misuse** already when assessing the obligation to pay fees so as to avoid the making of the exercise of ownership title subject to a fee by the public authority.

In practice the Defender encounters inconsistent decision-making practice among the administrators of local fees; the administrators generally tend to refuse to identify cases where the owner misuses his ownership title. The Defender will therefore continue to **observe** such cases and consistently demand that the opinion expressed by the Constitutional Court in its judgment be respected. If there is no improvement in the matter and it is not solved by the case law of the Supreme Administrative Court, the Defender will consider lodging a proposal with the Chamber of Deputies to amend the legislation itself.

Local Fees for Dogs

The Defender encountered a case where a municipal authority assessed a fee for dogs upon the operator of a dog rescue centre and refused to comply with his application for a waiver of the fee. In a majority of cases, dog rescue centres are established by the municipality and therefore a waiver applies to them directly under the law (Section 2 (2) of the Act on Local Fees (Act No. 565/1990 Coll. as amended)). For other operators of dog rescue centres however, it is up to the consideration of the specific municipality as to whether it makes the holding of dogs in the rescue centre subject to a fee. In the case concerned, the Defender did not challenge the assessment of the fee as such, believing in the correctness of the conclusion that the rescue centre was holding dogs; however, he pointed out the **risk of variance of the Act on Local Fees with the constitutional order** (prohibition of discrimination) and the general logicality of the fee. From the perspective of civil law, making dogs placed in a non-municipal rescue centre subject to a fee creates a paradoxical situation since **abandoned dogs are municipal property** (Section 135 (1) of the Civil Code). If the operator of the rescue centre cares for municipal property, **the making of the dogs subject to a fee seems illogical and unjust**. With regard to the specific circumstances of the case, the Defender recommended to the municipal authority to at least waive the assessed fee.

Given the contradictory legislation, the Defender decided to lodge a recommendation with the Chamber of Deputies to amend the legislation that should consist of exempting all the operators of dog rescue centres regardless of whether they have been established by a municipality (*see Part VI*).

Method of Creation of a Tax Identification Number

In 2007 the Defender also dealt with the reservations of entrepreneurs regarding the method of creation of the tax identification number stipulated by law. Since the aforementioned number consists of the personal number for natural persons, the entrepreneurs objected that the protection of sensitive personal data is violated due to stipulation of the obligation to indicate the tax identification number in normal contact with business partners. The Defender holds the view that **the personal number does not constitute sensitive personal data**, although he admits that it should be protected against disclosure more than other personal data (it should not be publicly accessible by means of various registries or even remote access). The Defender addressed the Ministry of Finance in the matter with the question of whether some other unique identifier could be used instead of the personal number in the creation of the tax

identification number. The Ministry responded by explaining that all the available records essential for effective collection of taxes are based on the personal number, adding however that if a new general identifier is introduced, it is prepared to accept such a change.

2.15 Foreigner-related Agenda

The Visa Process

Assistance in the Correction of Errors in a Filing

As in previous years, the Defender dealt with complaints concerning the procedure of the Foreign Police in denying visas for a stay in the Czech Republic in excess of 90 days. The Defender has concluded that in connection with the adoption of the new Code of Administrative Procedure (Act No. 500/2004 Coll. as amended), an obligation of the Foreign Police to assist the applicant with the correction of errors in a filing and supplementation of the required requisites has entered the visa process (Section 37 (3) of the Code of Administrative Procedure). The Defender succeeded in achieving an amendment of the methodological instruction of the Head Office of the Foreign and Border Police and subsequently in inclusion of cooperation directly in the amendment to the Act on the Residence of Foreigners (new Section 170 (10)). If an application for visa contains errors or is not supported by all the requisites, the Foreign Police and the embassy **must call upon the applicant for the visa to supplement the filing and provide a reasonable deadline for this before dismissing the application**. Thus cases should not recur where an application for a visa is dismissed in spite of the fact that the errors in the filing are easy to correct.

The Work of Embassies

Concerning the visa process, some complaints were about the work of the Embassy of the Czech Republic in Vietnam. Inquiring into these cases, the Defender ascertained that a **record is drawn up of an interview with the applicant** and subsequently sent to the Foreign Police as part of the file without authorisation by virtue of the applicant's signature. The Defender regards this as a significant deficiency in the visa process as there is not any **checking mechanism** for **verifying the objectiveness of the record** in relation to the actual contents of the interview. The lack of checks has a fundamental impact on the granting/denial of the visa by the Foreign Police. The existing model also leaves room for potential corruption in deciding on applications for visas. The Defender proposes as a remedial measure that the record of the interview with the applicant be signed by the person concerned as an act of consent to the contents and simultaneously as confirmation of authenticity.

Change in Methodological Instructions

In the area of the granting of visas, the Defender welcomed changes in the methodological guidance of the Head Office of the Foreign and Border Police and the Consular Department of the Ministry of Foreign Affairs occurring during 2007, which newly placed increased demands both on the structure of the interview and the **contents of the opinion of the embassy on the granting/denial of a visa**. The opinion of the embassy must now contain the specific findings, on the basis of which it was drawn up (matters indicating legal causes for denial of the application for the visa must simultaneously exist in the record of the interview).

Right to Legal Aid

As for the right to legal aid in the premises of the embassies of the Czech Republic, the Defender has concluded that although the right to legal aid in the sense of Art. 37 (2) of the Charter of Fundamental Rights and Basic Freedoms must be guaranteed to an applicant for a visa in the premises of an embassy, such legal aid must simultaneously be in accordance with the laws and regulations of the host state pursuant to Art. 41 (1) of the *Vienna Convention on Diplomatic Relations* (Decree of the Ministry of Foreign Affairs No. 157/1964 Coll.) The Defender stated in this respect that although the territory of an embassy of the Czech Republic abroad is subject to the diplomatic privileges and immunities pursuant to international law, it is not the state territory of the Czech Republic and the building of the mission continues to belong to the state territory of the host state. If the legislation of the relevant state makes the work of foreign attorneys-at-law in its territory conditional on obtaining prescribed permission, **the Czech attorney-at-law wishing to provide legal services in the premises of the embassy must have such permission**. Should the embassy permit provision of legal aid by a

Czech attorney-at-law without the relevant permission, such activity could violate Art. 41 (3) of the Vienna Convention.

Deportation of Family Members

Other complaints in the foreigner-related agenda were concerned with the deportation of foreigners who had married a Czech national or had a child born (whose second parent is a Czech national) after a decision on deportation was issued. In cases where it is proven that a **truly functioning marriage/parenthood is concerned** (rather than arbitrary marriages or arbitrary acknowledgment of paternity), the Defender recommends commencement of proceedings pursuant to the provisions of Section 120a (2) of the Act on the Residence of Foreigners (Act No. 326/1999 Coll. as amended), resulting in the **issuing of a new decision** (as the reasons rendering the foreigner's leaving of the country impossible arose only after the administrative deportation). The obligations of the Czech Republic resulting from Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (right to the protection of private and family life) and the obligations resulting from EU law must simultaneously be consistently observed in the new proceedings. In matters of administrative deportation, the Defender appeals for consistent ascertainment of the state of affairs in the matter (Section 3 of the Code of Administrative Procedure (Act No. 500/2004 Coll. as amended)), since in cases where a foreigner claims the right to stay in the Czech Republic based on an acknowledgement of paternity which has been proven arbitrary, the so-called reservation of public order can be applied given the most recent case law of the Supreme Administrative Court (see the judgment of May 16, 2007, File Ref. No. 2 As 78/2006) and administrative deportation of the foreigner can be decided upon.

Complaint Ref. No.: 3423/2006/VOP/PP

If a document is already available to an administrative authority in the related file, it is obliged to use the document without requesting its repeated submission from the party to the proceedings.

Mrs E. S. addressed the Defender with a complaint about the procedure of the Brno-city Foreign Police Department in issuing a confirmation of temporary residence in the Czech Republic for her son A. S. (both were Slovak nationals). Mrs E. S. appeared at the Foreign Police department in December 2006, wishing to apply for a temporary residence permit jointly for herself and her son. She was told to lodge an application for herself first and then apply for her son. She submitted an original document on access to accommodation together with her application. She lodged the application also for her son after the temporary residence permit was granted to her. She personally asked in lodging the application that the Foreign Police use the original document on access to accommodation from her file for the purposes of her son's application. This was not allowed. She was also not allowed to take the original document on access to accommodation from her file and obtain a notarised copy for the purposes of her son's application.

The Defender initiated an inquiry in the matter and stated that the Code of Administrative Procedure applies to proceedings on the temporary residence of foreigners. As a result, the Foreign Police department was obliged to observe the principle of co-operation of an administrative body in obtaining basic documents for a decision (Section 6 (2) of the Code of Administrative Procedure). The Foreign Police was therefore obliged to use the document on access to accommodation, the original of which was in the related file, in the proceedings on the complainant's son.

In the case concerned, the undesirable situation was remedied already during the inquiry; the Foreign Police department admitted its maladministration and issued the confirmation of temporary residence to the complainant's son.

Proceedings on Asylum

The Velké Přílepy Reception Centre

In the past year, the Defender inquired into the complaints of 42 Egyptian asylum seekers about the duration of detention and the conditions in which they were held at the Velké Přílepy Reception Centre (a branch of Prague-Ruzyně airport Reception Centre). In the Defender's opinion, the complainants were deprived of their freedom **in contravention of the international obligations of the Czech Republic** (Art. 5 (1), (2) and (4) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*). Similar shortcomings were found in relation to the actual airport proceedings on asylum granting. In this re-

spect, the Defender criticised legislation that fails to stipulate the maximum duration of detention during airport proceedings, fails to guarantee asylum seekers' right to an effective court review of the legality of the detention, fails to admit a periodical court review of the grounds for continuation of detention and fails to enable an individual evaluation of the necessity of detention with regard to the specific situation of an asylum seeker. The Defender repeatedly pointed out these serious shortcomings within the legislative process in the adoption of the **amendment to the Act on Asylum** (amendment No. 379/2007 Coll.), thus significantly contributing to adoption of amended wording of Section 73 of the Act on Asylum (airport proceedings), which eliminates fundamental shortcomings in previous legislation.

The Prague-Ruzyně Reception Centre

In the past year, the Defender also inquired into complaints about a failure to observe the provisions of Section 73 (2) (a) of the Act on Asylum (Act No. 325/1999 Coll. as amended), stipulating the **maximum five-day detention of an asylum seeker at the airport reception centre** unless the Department of Asylum and Migration Policy of the Ministry of the Interior issues a decision on international protection within the aforementioned period (NB: on the basis of the amendment to the Act on Asylum effective from December 21, 2007, the period for issuing the decision was extended to 4 weeks from the moment the foreigner makes a declaration of the intention to apply for asylum). In some cases the Defender observed that the Department of Asylum and Migration Policy circumvented the five-day period by considering already the delivery of a written call to receive the decision to be the moment of issuing the decision (relying on an interpretation of Section 71 (2) (a) of the Code of Administrative Procedure). The Defender rejects such procedure and requires that the decision also be actually delivered to the asylum seeker within the five-day period, otherwise he/she must be released from the airport to an asylum facility in the Czech Republic. The Department of Asylum and Migration Policy finally adopted measures to ensure that either the decision is delivered within the legal period or the asylum seeker is released to an asylum facility in the Czech Republic where he/she will be subject to standard proceedings. *See also Part IV on the rights of persons placed in reception asylum centres*.

Complementary Protection

The Defender concluded in the period under scrutiny that the Czech Republic **has failed to consistently transpose the obligations resulting from the so-called qualification directive** (Council Directive 2004/83/EC) in relation to applicants for complementary protection (an alternative to asylum protection). Specifically, shortcomings exist in the area of **access to social care and healthcare**. In the legislative process, the Defender succeeded in achieving amendment of the relevant legislation (the State Income Support Act, the Act on Asylum and the Act on Employment), which will ensure equalisation of the persons subject to complementary protection with asylum seekers as required by the Qualification Directive.

Granting of Citizenship

On complaints over the granting of citizenship, the Defender has concluded that in granting citizenship, administrative authorities **consider additional criteria in relation to the integration of the applicant that, however, are not stipulated in any legal regulation**. The Defender does not find such practice to comply with the principle of legality in the exercise of public authority. The Defender believes that the integration criteria are clearly contained in the provisions of Section 7 (1) (e) of the Act on the Acquisition and Loss of Citizenship (Act No. 40/1993 Coll. as amended), and the aforementioned provision makes it possible to sufficiently assess the degree of the applicant's integration into Czech society.

The Defender furthermore addressed the Ministry of the Interior in 2007 in connection with the **revolutionary judgment of the Supreme Administrative Court** (judgment of May 30, 2007, File Ref. 1 As 62/2006) concerning interpretation of the provisions of Section 17 of the Act on Citizenship in the wording before the amendment implemented by Act No. 357/2003 Coll. (it came into effect on October 29, 2003). The judgment of the Supreme Administrative Court represents **a fundamental change for hundreds of people** who have not been regarded as Czech nationals to date. The Ministry of The Interior was giving an interpretation in the past that a Czech national loses Czech citizenship if he/she concludes marriage with a foreigner and subsequently obtains foreign citizenship at his/her own request. However, the Supreme Administrative Court stated that in cases where a Czech national obtained the spouse's citizenship at his/her request until October 29, 2003, he/she continues to be a Czech national. Given the aforementioned judgment, the Defender requested the Ministry of the Interior to

inform the regional authorities of the impact of the judgment. He simultaneously addressed the Ministry of Foreign Affairs to publish information on the judgment on the websites of Czech embassies and simultaneously to inform compatriot associations.

2.16 Citizens Register, Registry Offices, Travel Documents

Documents for Children Born Abroad

Already in the 2006 Annual Report, the Defender mentioned citizens' complaints about the lengthy processing of documents for Czech children born abroad. The parents of these children complained about the **inordinately long period** before **a birth certificate is issued by the special registry** kept by the **Municipal Authority of the Prague 1 Area**. The delays cause significant problems to the families, because although the parents with the child are allowed to travel to the Czech Republic with a so-called *"emergency passport"*, they cannot return with the child back to the state where they work (it is necessary to wait until a proper passport is issued to the child or, as the case may be, until the child is recorded in the parent's personal identity card). The Defender initiated a **working meeting** in October 2007 to solve the situation, on the basis of which **organisational measures were adopted** and birth certificates are now issued as promptly as possible. The improvement is obvious from the fact that the Defender received no further complaints about the lengthy processing of documents for children during the second half of the year.

Annulment of Permanent Residence

Regarding the annulment of permanent residence, the Defender has been addressed both by citizens whose permanent residence data was annulled (often without their being informed) and those whose application for the annulment of another citizen's permanent residence data was not complied with by a municipal authority. The Defender consistently holds the view that it is **the obligation of the municipal authority to perform an official inquiry to ascertain the actual residence of the person** whose permanent residence data is to be annulled (in support of the opinion, the Defender uses the most recent case law of the Constitutional Court-*see* judgment of the Constitutional Court of August 7, 2007, II. ÚS 1090/07). The Defender organised a special conference dedicated to the legal stipulation of permanent residence on October 25, 2007 (a collection of papers from the conference is available on the website at http://www.ochrance.cz/dokumenty/dokument.php?back=/cinnost/konference.php&doc=1004) .

Travelling in the European Union with Children Recorded in the Personal Identity Card

Several citizens addressed the Defender in the matter of travelling to EU member states with children recorded in the parents' personal identity card. The citizens pointed out the inconsistent information they obtained on border crossings and at authorities (they were advised that they were not able to travel abroad with a child without the child having its own passport). The Defender holds the view that the right to free movement within the European Union results directly from the Treaty establishing the European Community. **If a child does not have its own passport, it is entitled to travel abroad with the parent in whose travel document** (personal identity card) **it is recorded**, because the European Union has officially acknowledged personal identity cards as valid travel documents. Given the suspicion that the administrative authorities do not provide unambiguous information to citizens, the Defender addressed the Ministry of the Interior to ensure remedy.

2.17 Right to Information

Although the amendment to the Act on Free Access to Information (amendment No. 61/2006 Coll.) had a positive impact in practice, the wrong procedures encountered by the Defender in the past continue to exist in the work of the authorities.

Provision of Information and Studying Files

It may be said in general that a number of authorities fail to show sufficient responsiveness and openness vis-à-vis applicants. For a more specific example, it is not clear from some applications as to whether **application for a specific piece of information from the given proceedings** or **an application for studying a file pursuant to the Code of Administra-**

tive Procedure (Act No. 500/2004 Coll. as amended) is concerned. The Defender repeatedly stated in such cases that the authority should notify the applicant in such a situation that he/she is allowed to physically study a file in proceedings he/she has not been a party to only if he/she proves a legal interest or another serious reason. If he/she fails to prove a serious reason, he/she is entitled to information from the proceedings within the scope provided for by the Act on Free Access to Information (Act No. 106/1999 Coll. as amended), but he/she must precisely specify what information he/she is interested in. In spite of notifying of the correct procedure, the Defender unfortunately continues to observe that authorities generally dismiss such applications instead of **advising** the applicants and **calling** them to supplement the application.

Provision of Information Published Before

As previously, in 2007 the Defender again encountered cases where liable parties groundlessly refused to provide information published before (materials from the individual stages of preparation of a zoning plan or a final report of an administrator of bankruptcy assets posted on a court's official notice board). The Defender holds the view that if a piece of information is published on the official notice board under the law, it is reasonable to presume that the information **should** (within the scope stipulated by the Act on Free Access to Information) **remain accessible to the public also after removal from the official notice board**.

Information on the Internal Documents of a Liable Party

Misuse of the provision on the denial of information on the contents of internal documents of a liable party (Section 11 (1) (a) of the Act on Free Access to Information)) continues to be a serious phenomenon. The Defender believes that those parts of documents that stipulate, although perhaps partly, the rights and obligations of third parties vis-à-vis the liable party, cannot be regarded as internal instructions. In these cases, reference to the internal nature of the document is not viable. It is therefore impossible to refer without further notice to the fact that an internal instruction or personnel-related regulation is concerned and refuse to provide the whole document with such substantiation. Rather the opposite, **it is necessary to provide at least those parts of the document that stipulate the position of third parties vis-à-vis the liable party**.

Complaint Ref. No.: 730/2007/VOP/VBG

The purpose of the denial of information on the decision-making of courts consists of the interest in the protection of due exercise of judicial power. Since the complainant requested a piece of information which is commonly published in the court's official notice board, denying the provision of such information is ungrounded after the elimination of information that cannot be provided for other (e.g. personal) reasons.

Mr M. M. addressed the Defender with a complaint requesting an inquiry into a decision of the Ministry of Justice dismissing his appeal against a decision of the Municipal Court in Prague. Through the challenged decision, the Municipal Court in Prague as the liable party pursuant to the Act on Free Access to Information refused to provide information to the complainant (a copy of a final report of an administrator of bankruptcy assets after the aforementioned information was posted on the court's official notice board from September 13 to September 27, 2006). Both the court and the Ministry dismissed the application with a substantiation that the requested final report of the administrator of bankruptcy assets was the so-called decision-making of a court, i.e. information that is not provided for reference pursuant to the provisions of Section 11 (4) (b) of the Act on Free Access to Information.

The Defender stated that the aforementioned arguments were wrong. In his opinion it represented mechanistic and formalistic application of the individual legal standards. In the Defender's opinion, the purpose of the denial of information on the decision-making of courts consists of the interest in the protection of the due exercise of judicial power. However, the legislator itself chose the public delivery of the final report of the administrator of bankruptcy assets, on the official notice board where everyone may acquaint him/herself with the report. It can therefore hardly be deduced that its subsequent provision would be capable of infringing the independent decision-making of the court.

The Ministry of Justice accepted the Defender's arguments, although given that in the meantime the complainant filed an administrative action against the decision of the Ministry, it proposed waiting for the court judgment.

Copies of design documents

The complaints received show that administrative bodies continue to fail to provide copies of design documents in accordance with the law. The aforementioned phenomenon is particularly significant in the making of copies of design documents of constructions pursuant to the new Building Act, which stipulates that the building authority shall submit a copy of the design documents only subject to the consent of the party who has obtained it or, if applicable, the owner of the construction project. However, the aforementioned provision must be interpreted according to its sense, i.e. that it has the objective of providing the **protection of ownership and privacy of the owner of the construction project** or, if applicable, **protection of the intangible property of the author of the design** (however, the latter may apply only in the case of an innovative technical approach to a construction project or a part thereof). Thus if an applicant requests a copy of the design documents, the provision of which cannot prejudice the rights of the designer or owner of the construction project, the authority should provide a copy to the applicant even without the consent of the aforementioned parties.

Procedural steps in the Provision of Information

In the period under scrutiny, the Defender also opined on a number of procedural issues provided for in the Act on Free Access to Information. The Defender stated in particular that if a liable party fails to provide the required information to an applicant without simultaneously suspending or dismissing the application, it **must always issue a decision on the denial of information**. This also applies in a situation where the authority itself does not have the information and is convinced that the law does not impose an obligation on it to have it or, as the case may be, where it believes that rather than information, an inquiry about opinion, etc. is concerned. The Defender further stated that when the last day of the deadline for the provision of a piece of information falls on a Saturday, Sunday or holiday, the deadline shall be postponed to the next workday.

Information on the Result of State Inspection

The Defender is still dealing with an issue consisting of the provision of information on the result of a state inspection performed at a business entity. The Defender achieved a change in opinion among the relevant authorities towards admitting that **anyone has the right to information on whether and when an authority inspected an entity.** However, a dispute concerning the information on the result of such an inspection continues to exist. The Defender is attempting to convince the authorities that everyone has the right to know whether an inspection at a business entity **found shortcomings**, whether **sanctions were imposed** for such shortcomings and their **amount**. In the Defender's opinion, it is a necessary part of supervision over public administration by the public, which is not at variance with personal data protection or the obligatory confidentiality pursuant to the relevant regulations.

2.18 Consumer Protection

In the area of consumer protection, the Defender primarily encountered a number of complaints about the unsuccessful claiming of products. As in previous years, the Defender points out that the **existing system of claiming consumer rights is non-functioning** and a new specialised institution for the protection of consumer rights should be established or the whole agenda should be entrusted to one of the existing bodies (most likely the Czech Business Inspectorate). The aforementioned body would be authorised to decide on consumer-related disputes in a binding manner (like a financial arbitrator), and its decision could be reviewed by court from a specified amount.

The Defender also encountered repeated complaints against the inactivity of bodies in the area of **advertising regulation** in 2007. In this area he primarily criticised the failure to use legal competences and overlooking of obvious violations of the Advertising Regulation Act (Act No. 40/1995 Coll. as amended) by a mobile operator who specified prices without VAT in an advertisement.

2.19 State Supervision Over and Inspection of Regional Self-Government

In relation to the exercise of the independent competence of municipalities/regions, the Defender's mandate applies only to the exercise of supervision over and inspection of the Ministry of the Interior.

Management of Municipal Property

A substantial portion of complaints in the area of supervision and inspection were concerned with the municipalities' management (citizens objected to shortcomings in the process of **adopting and publishing plans to handle immovable property**). The Defender several times ascertained through inquiries into the work of the Ministry of the Interior that in the sale and lease of immovable property, municipalities failed to observe the obligation to publish the planned disposal of property on the official notice board of the municipal authority. In the cases subject to the inquiries, the municipalities ensured remedy on their own and repeated the process of sale of the real estate after being notified of the maladministration.

Applications for Lease of Municipal Flats

The Defender is traditionally addressed by citizens complaining about the procedure of municipalities in deciding on applications for the lease of a municipal flat. The Defender ascertained in this area that a number of municipalities stipulated the procedure in deciding on applications for the lease of a municipal flat using its own rules/directives where it stipulated criteria for acceptance of the application and its evaluation. In setting such criteria, some municipalities resort to conditions that fail to respect the equality in rights guaranteed by the Charter of Fundamental Rights and Basic Freedoms. In the Defender's opinion, the rights of the citizens of a municipality stipulated in the Act on Municipalities must be exercised under **equal terms** unless other treatment is allowed by the Act on Municipalities or some other special legal regulation. Some groups of persons (particularly the socially deprived) find themselves in a marginal position due to the rules of the municipalities and their access to housing by virtue of a lease on a municipal flat is significantly aggravated if not impossible.

The following criteria have appeared in the rules of some municipalities:

- proving that the future tenant, a member of his family or a person who has lived with him/her in a common household do not have any due receivables vis-à-vis the municipality,
- so-called minus points for receiving social benefits or state income support benefits,
- exclusion from auction (disallowing participation in auction) due to receiving social benefits or state income support benefits,
- fulfilling a condition that the applicant and all the persons living with him/her in a common household are without criminal records.

The Defender believes that an application for the lease of a municipal flat must be heard while respecting **legality of the process**. It is therefore impossible to agree with views that this is a part of independent competence that can be labelled as an entirely civil relationship and thus excluded from the supervisory power of the Ministry of the Interior. The Defender holds the view that the purpose of excluding private relationships from the supervisory power of the Ministry (Section 124 (6) of the Act on Municipalities) is to ensure non-intervention into municipal self-government where there is a private relationship and where a court is authorised to intervene in case of a dispute. However, it is impossible to agree that the legality of the conditions applicable to the access of citizens to the municipal housing stock cannot be supervised with reference to the fact that it is municipal property and there would be an unconstitutional encroachment upon the ownership rights of the municipality. **A municipality is a public corporation** fulfilling a number of public tasks, in which it fundamentally differs from legal persons in private law. **The Defender** therefore **requested the Ministry of the Interior** to deal in more detail with cases where the rules for the lease of municipal flats obviously include discriminatory criteria and, if applicable, **suspend** the effect of such rules and **file a motion with a court**.

In this respect, the Defender welcomed a draft amendment to the Act on Municipalities that was explicitly taking into account the issue of the rules for the management of flats. The Defender is nevertheless concerned that the Ministry of the Interior withdrew from a number of

proposals after hearing comments and it intends to leave this sensitive area without legislative treatment (*for more see Part VI, page 80*).

PART IV - SYSTEMATIC VISITS TO FACILITIES WHERE PERSONS RESTRICTED IN THEIR FREEDOM ARE CONFINED

In 2007 the Defender continued to perform systematic visits in the sense of Section 1 (3) and (4) of the Public Defender of Rights Act.

A change in the method of performing the visits occurred in comparison with 2006 in that all the visits (except for the Prague-Ruzyně Reception Centre) were **unannounced**. The head of the facility concerned was advised of the visit by the authorised personnel of the Office of the Public Defender of Rights (hereinafter the *"Office workers"*) immediately after the Office workers' arrival and, in case of his or her absence, the deputy employees were requested to advise him or her. The Defender ascertained in connection with the unannounced arrival of the Office workers that **the head** or director was not always **represented by deputies** in the facilities. In some cases the personnel were unable to say who represented the head; in some rare cases neither the director nor his/her deputy were present and the facility was *"entirely abandoned"*.

Visits to 27 retirement homes or apartment homes for retired people (hereinafter ***"homes for the elderly"***) were carried out in the first half of 2007. A meeting with the authorised personnel of the Ministry of Labour and Social Affairs took place on the provision of social care in such facilities and the Defender organised a special conference on *"Social Services in Homes for the elderly"* on May 21, 2007. Two **reception centres for asylum seekers** (i.e. all such facilities in the country) were visited in the second half of 2007 and **follow-up visits in the facilities** were underway subsequently with the objective of ascertaining how the measures proposed by the Defender for individual types of facility in the past year were implemented.

1. Homes for the Elderly

Systematic visits to **27 homes for the elderly** were carried out from January to June 2007 with the objective of verifying how the clients of the facilities were treated and their rights respected. The visits also took place due to the current situation in the area of social services, in particular the transfer to the new circumstances introduced by the Act on Social Services (Act No. 108/2006 Coll. as amended) effective from January 1, 2007. The latter act substantially changes the conditions for the provision of social services by introducing contractual elements, changing the method of financing of services and imposing new obligations on municipalities and regions.

The systematic visits were carried out during the **half-year period for registration of facilities** as the providers of some of the social care services in the sense of the provisions of Section 120 (5) of the Act on Social Services. By name, the visited facilities include retirement homes, homes for the elderly and apartment homes for retired people. The visited facilities can be defined, with some exceptions, as providing permanent **housing**, **catering** and **care to elderly people**, mostly to some degree dependent on the care of another person. The necessary degree of care and support is paid by the user from the allowance for care, while housing and catering are paid from their income (the law limits the payment to 85% of the income). The relevant performance takes place on the basis of an agreement on the provision of social service (Section 91 of the Act on Social Services).

There was a considerable **uncertainty resulting from the new legislation** among both the providers and users of the services at the time of the visits. Allowances for care were gradually granted for the elderly people; in several facilities, barely half of the clients were receiving the allowance. The founders had generally not been impacted by the change in the system of funding from public budgets so far, but anticipated this in 2008 and the expected decrease in redistributed assistance.

The table below shows the facilities visited by the Office workers. All the regions of the Czech Republic, all types of founders and facilities of various sizes were represented.

Name of facility	Status	Region	Founder	Capacity
Albrechtice nad Orlicí Retirement Home	HSR	HK	Region	57
Bechyně Home for the Elderly	RH	SB	Region	65

Kosmonautů Retirement Home, Brno	HEP, HSR	SM	Statutory city	119
Český Dub Retirement Home	RH	LB	Region	104
Čížkovice Retirement Home	RH	US	Region	55
Doksy Home for the Elderly	HEP	LB	Town	60
Domažlice Home for the Elderly	HEP	PZ	Region	140
Dubí Home for the Elderly	HEP	US	Region	343
Cheb Home for the Elderly	HEP	KV	Region	105
Chválkovice Retirement Home	HEP	OL	Region	201
Kladno Retirement Home	HEP	CB	Town	197
Nechanice Private Retirement Home	RH	HK	Natural person	52
Saint Zdislava Home, Opava	HEP	MS	Religious order	21
Pačlavice Home for the Elderly	HEP	ZL	Municipality	54
Podlesí Home for the Elderly	HEP	ZL	Region	227
Polička Retirement Home	HEP	PD	Town	50
Prague 4 Retirement Home	RH	PR	Region (Prague Municipal Office)	195
Apartment Homes of the Prague 8 Retirement Home	AH	PR	Region (Prague Municipal Office)	258 home 457 AH
Home in the Rychmburk Castle	HEP, HSR	PD	Region	72
Skalice Home for the Elderly	HEP	SM	Region	64
Soběsuky Home for the Elderly	HEP	OL	Town	54
G-centrum Tábor, Home for the Elderly	HEP	SB	Town	147
Telč Home for the Elderly	HEP	VY	Town	60
Tmavý Důl Retirement Home	RH	HK	Region	110
The Sosna Home for the Elderly, Třinec	HEP, HSR	MS	Town	185
Velké Meziříčí Home for the Elderly	HEP, HSR	VY	Region	165
Všestudy Retirement Home	RH	CB	Region	51

Glossary with the table:

The acronyms in the table in the Status column are based on the situation at the time of the visit (often before registration pursuant to the Act on Social Services): RH = retirement home; HEP = home for the elderly; HSR = home with special regime; AH = apartment home for retired people according to the original wording of Section 61 (1) (l) of Decree No. 182/1991 Coll.

Acronyms in the Region column: HK = the Hradec Králové Region, SB = the South Bohemian Region, SM = the South Moravian Region, LB = the Liberec Region, PZ = the Plzeň Region, US = the Ústí nad Labem Region, KV = the Karlovy Vary Region, OL = the Olomouc Region, CB = the Central Bohemian Region, MS = the Moravian and Silesian Region, ZL = the Zlín Region, PD = the Pardubice Region, PR = the Capital City of Prague, VY = the Vysočina Region.

The Defender's Findings and Recommendations

Technical Condition of Buildings, Protection of Privacy

The technical condition of buildings, a circumstance not directly dependent on the efforts of employees and yet strongly influencing the quality of life of elderly people, was also an issue included in the Defender's recommendations. Unfortunately, most elderly people housed in a social service facility enjoy very little privacy in rooms of three and more (up to six) beds where they can only keep the most essential personal belongings and clothing, sometimes without lockable cabinets or tables. The recommendations addressing the facilities or their founders directed a **better standard of housing** (barrier-free housing, three-bed rooms as a maximum, at least one lockable piece of furniture).

Internal Regulations

The internal regulations (house rules) of some facilities contain provisions contravening the legal regulations. These include the making of the clients' outings or visits conditional on the consent of the workers of the facility, setting of the obligation to undergo medical examinations, removal of identity papers, etc. A number of cases of **restrictive approach to clients** was furthermore identified during the visits: failure to issue keys to rooms, prohibiting TV at night, lack of a chance not to follow the diet prescribed by the doctor, not allowing (or prohibiting) the use of kitchen appliances, prohibiting smoking and the use of alcohol, failure to return at least a part of payments for days spent outside the facility. As for the daily regime in the facility, with only minor exceptions it is not based on the habits and needs of the housed clients, but instead operational aspects. Many facilities do not take account of the elderly people's dignity and embarrassment: the personnel do not knock on the door before entering a room, it is impossible to lock toilets and bathrooms or otherwise indicate that they are in use, personal hygiene and other intimate acts are performed without shielding curtains or other provisions to ensure privacy of non-self sufficient clients.

Provisions Limiting Freedom of Movement

The use of provisions limiting the freedom of movement (Section 89 of the Act on Social Services) is relatively frequent in facilities for the elderly. Given the **protection of the fundamental right to freedom of movement and residence,** the Defender repeatedly criticised some inappropriate uses of the limiting measures: (1) the personnel of the facility administers tranquillisers at their own discretion based on a general prescription of the medicament by the doctor made in advance, *"in case of unrest"*; (2) in some facilities, demented clients were without further consideration locked in their rooms, including for a whole day; (3) sideboards of beds are used everywhere, often regardless of the clients' mobility, without analysing the client's risks and possibilities. In this respect the Defender voiced the **principles for using legitimate limiting measures**.

Planning the Course of Provision of Social Service

According to the Act on Social Services (Section 88 (f)), it is the obligation of the facility to plan the course of the provision of the social service together with the user and appropriately keep the related records. The aforementioned activity is performed only **formally** in many facilities, often with identical outputs for all the clients and **without professional preparedness of the personnel**. The visits showed that the personnel of the facilities for the elderly are often unable to communicate with demented clients. In this context, the Defender recommended proper training of personnel and more intense use of individual plans.

Facultative Services

The Act on Social Services (Section 35) stipulates the basic and facultative services in the provision of social services. The Defender observed in a number of cases that the directors of the individual facilities opined differently on the activities falling within the *"mandatory standard"* and those that may be provided *"in excess"* (it is obviously necessary in the latter cases that the clients **pay extra** for such services since such care is not paid from the allowance for care). The Defender pointed out in these cases that the **law defines the basic activities for the homes for the elderly so broadly** (Section 49 (2)) that most of the activities regarded as facultative by the directors should in fact be regarded as *"basic activities"*. The Defender offered a solution to the visited facilities based on the activities or, as the case may be, limitations, for which the allowance for care was granted to the specific client. The client must re-

ceive the care with what he/she is unable to cope with given the **degree of his/her non-self sufficiency** at the price of the contribution (i.e. without additional payments). **The rest may be made subject to a fee**. This means that the client will pay for some activities in certain cases and some he/she will not pay for (depending on his/her abilities).

Agreements on the Provision of Care

The transition to the contractual system was **formal** in many places. The management of some facilities had been waiting and the conditions remained unchanged. The three-year transitional period of validity of the original *"decisions on admission to a social care facility"* (Section 120 (6) of the Act on Social Services) was ignored in some facilities and the clients were **forced to sign form agreements**; in other facilities the representatives openly admitted they were **in doubt regarding the legal position of the existing clients and the method of financing** during the transitional period. The Defender most often encountered the following shortcomings: (1) the management of the facility did not admit individualised contents of the agreement; (2) the existing clients were not informed of the three-year transitional period stipulated by law; (3) the facility failed to invite the clients' families to the negotiation of the agreements and failed to discuss the contents of the agreements with the clients; (4) the facilities entered into agreements with entirely demented clients (in fact incapable of legal acts); (5) some agreements prepared grounds for an illegal claiming of a *"debt"* (i.e. the difference between the calculated payment for the stay in the home and the actually paid amount corresponding to the maximum of 85% of the service recipient's income as stipulated by law).

Communication with Ministries

The Defender recommended the **Ministry of Labour and Social Affairs** as the central body responsible for the situation in social services deal *inter alia* with the following:

- the situation of the clients not legally incapacitated (not placed under restricted legal capacity) by a court who, given their physical/mental condition are in fact legally incapable, in order to ensure that they are not disadvantaged in the conclusion of the agreements on the provision of social service;
- the methodology of conclusion of agreements on the provision of social service (to eliminate the situation where the facilities misuse their position as a stronger party; unify notice terms, etc.);
- the methodology of use of measures that may cause limitation of the movement of persons.

The Ministry advised the Defender that his recommendations were fully in accordance with the Ministry's intentions (the Ministry is preparing a methodology for the conclusion of the agreements and a methodology for the use of measures limiting movement; the Ministry has simultaneously begun to work on a stipulation of custodianship and capacity to take legal acts).

The Defender recommended the **Ministry of Health** initiate a legislative process in order to ensure that the use of measures limiting movement in healthcare facilities is in accordance with the requirements of the international agreements by which the Czech Republic is bound. In the Defender's opinion, the legislation on the use of limiting measures in social and healthcare facilities should be unified.

2. Reception Centres for Asylum Seekers

Visits to two reception centres for asylum seekers in the Czech Republic were carried out in the third quarter of 2007, the centre in **Vyšní Lhoty** and the centre in **Prague-Ruzyně** (*for the issue of the rights of persons placed in asylum facilities, see also Part III, paragraph 2.15*).

Both facilities were founded by the Refugee Establishments Administration of the Ministry of the Interior. **Each centre has a different regime**.

The Prague-Ruzyně centre is a place where asylum seekers are concentrated within the so-called *"**airport procedure**"* (Section 73 of the Act on Asylum). Asylum seekers should be placed here for a relatively short time given the legislation and the **structural and technical design of the facility**. In practice however, some asylum seekers are placed at the centre for the whole period of the asylum proceedings (at the time of the inquiry, some asylum seekers were placed there until a court decides on their action against the decision on the denial of asylum; in many cases waiting until the Supreme Administrative Court would decide on a cass-

ation complaint). As for the total length of the stay, the situation was somewhat complicated by the amendment to the Act on Asylum effective from December 21, 2007 (amendment No. 379/2007 Coll.), which sets a maximum of 120 days for a stay at the airport facility (then the asylum seeker must be transferred to another facility in the Czech Republic regardless of whether a court has decided in the matter). The defender finds the standard of housing to be inconvenient given the potential 4-month stay.

The Vyšní Lhoty facility is a centre where the asylum seekers stay until the acts listed in the law are taken (identification acts, medical examination, end of quarantine). Then they are transferred to other sojourn centres in the Czech Republic.

Reception centre	Total capacity	Number of people placed there	Of which children
Vyšní Lhoty	580	117	15
Prague-Ruzyně	45	39	6

Glossary with the table:

The "Number of people placed there" column gives the number of asylum seekers or foreigners who have shown their intention to apply for the granting of international protection, placed at the reception centre at the time of the visit of the Office workers.

The Defender's Findings and Recommendations

Camera Surveillance System

The Defender ascertained that the outdoor areas and the corridors of both reception centres were covered by a camera surveillance system. Although introduced to prevent violence and bullying, the Defender pointed out that there were no legal grounds for the installation of audiovisual equipment in the Act on Asylum (the recently adopted Section 132a of the Act on the Residence of Foreigners is not a legal solution as it does not apply to asylum facilities). With regard to the above, **the Defender regards the installation of cameras in the premises of both facilities as a problematic matter** and continues to discuss it with the Refugee Establishments Administration of the Ministry of the Interior.

Accommodation Conditions

The visits to both facilities ascertained that the accommodation conditions in them significantly differed, the main difference being that the Prague-Ruzyně centre is adapted to the high security transit area of an international airport and the general **structural and technical parameters of the facility**. Paradoxically, asylum seekers should not stay here for prolonged periods for the same reason (the facility was designed for the short-term stay of asylum seekers whose applications are obviously ungrounded). However, the Defender ascertained that the centre is transforming into a traditional sojourn centre, which is inappropriate for several reasons. There is a poor standard of housing (as opposed to other sojourn centres, the asylum seekers lack electrical appliances for preparing their meals, requirements for the capacity of accommodation rooms are not observed, bedrooms lack curtains, the spaces are not lit with direct daylight except for bedrooms, etc.), the facility lacks sufficient **space for the persons' spending time in the open air** (the premises only include a courtyard limited in space, in fact a reserved part of the airport area that makes being in the open rather unpleasant due to the noise and pollution from the airport traffic). The placement of children at the centre is also problematic as the facility is not equipped for their stay (the issue was recently solved by the above-mentioned amendment to the Act on Asylum that does not allow keeping vulnerable groups of people, including children, in these types of facilities).

As for the accommodation standard, the Defender proposed in the first place that the **number of people accommodated and the time they spend there is reduced as much as possible**. The Defender is discussing the matter with the Ministry of the Interior as of the date of drawing up this Report.

Receiving of Visitors, Access to Social Workers

Additional drawbacks concerning the receiving of visitors result from the high security status of the airport. Although the accommodated persons have the right to receive visitors, the exercising of the right is considerably aggravated by the **formal procedure,** which is more

complicated than for example in facilities for the detention of foreigners. Furthermore, foreigners do not have direct access (unlike the Vyšné Lhoty centre) to social workers for safety reasons (the space between the asylum seekers and the social workers is divided by bars). The Defender recommended to change the system of receiving of visitors and to ensure direct contact of asylum seekers with social workers.

Comparison of Both Facilities

The Defender stated after the performed inquiry that those travelling to the Czech Republic with an intention to seek asylum are exposed to two **different manners of treatment** depending on the reception centre they are placed at. The Defender will continue to discuss the aforementioned *"disproportion"* with the Ministry of the Interior and attempt to act vis-à-vis Department of Asylum and Migration Policy in order to ensure that only a small percentage of asylum seekers are accommodated at the airport facilities, and only for the shortest possible time.

3. Follow-up Visits

Since 2006, when the mandate of the Public Defender of Rights was broadened to the performing of detention visits, the Defender has visited various types of facility. Given the need to evaluate the effectiveness of the visits, it was necessary to carry out **follow-up visits to some of the facilities** visited in 2006 (the Defender engaged in these activities in the second half of 2007). Instead of focusing primarily on system shortcomings in the follow-up visits, the Defender was interested in ascertaining the degree of implementation of the promised changes that had resulted from the initial visit to the facility concerned.

The follow-up visits were made to:

- two social service facilities (a home with a special regime and a home for physically handicapped people),
- five police facilities,
- two facilities for the detention of foreigners,
- two institutes for long-term patients,
- three prisons,
- one reformatory.

3.1 Social Service Facilities

The Defender had chosen the Institute of Social Care for the Physically Handicapped in Hořice v Podkrkonoší and the Home with Special Regime in Bolevec for the follow-up visits.

The results of the follow-up visits in the two facilities sharply differed. In the Bolevec home, the Defender appreciated the goodwill, gradual implementation of the recommendations and an effort to meet the requirements resulting from the Defender's final statement after the visits in 2006. On the contrary, the Defender had to state in the **Hořice institute** that most of his **recommendations had not been respected and implemented** (primarily a failure to eliminate shortcomings in individual planning, to strengthen the privacy of clients, adjust the meal serving regime and the performance of personal hygiene). Given the persisting serious shortcomings, the Defender discussed the specific measures and procedures that would lead to implementation of his recommendations and a gradual fulfilment of quality standards in the facility with a representative of the founder.

3.2 Police Cells

Follow-up visits to four police departments that established police cells were made in August and September 2008. Three (Brno, Ostrava and Plzeň) were large prison/escort departments, and one (Chomutov) a patrol service department. In the follow-up visits, the Defender also concentrated on the implementation of the new internal regulation of the Police (Instruction of the Chief of Police No. 118/2007 on Police Cells), which has a significant impact on the rights of those placed in police cells.

The follow-up visits ascertained that **some partial recommendations of the Defender were respected** (for example the removal of the rails to which the detained person can be

handcuffed, providing all bunks with mattresses, establishing a visiting room, etc.). There was also an effort to increase the number of female police officers, which has positive effects on the safety searches of detained women.

On the contrary, **many of the Defender's recommendations** that had been largely included in the new internal regulations of the Police and are therefore directly binding upon police personnel, **had not been implemented**. These include in particular material and technical accessories of police cells such as dual regime lighting (day and night, the latter using a dimmed light) or the separation of toilets from the bunk section in double-bunk cells. However, the police department are working towards the elimination of the aforementioned shortcomings and changes within a short time were promised to the Defender.

The most serious problem that has not been successfully eliminated to date consists of the **formalistically designed advising of the rights and obligations** of persons placed in police cells. The Defender observed in only exceptional cases that the copies of advice forms were submitted to the detained persons in order to ensure that the person placed in a cell is aware that he/she may request for example a tooth brush, blanket or toilet paper.

3.3 Facilities for the Detention of Foreigners

Follow-up visits were also made to two facilities for the detention of foreigners in 2007 (Poštorná and Bělá-Jezová). An individual visit was made to the facility in Velké Přílepy (*see also Part III, section 2.15*) at a time when it temporarily served as a branch of the Prague-Ruzyně Reception Centre.

The follow-up visits verified that the **Defender's recommendations had been implemented** with respect to the provision of language versions of advice forms. The Refugee Establishments Administration of the Ministry of the Interior also shows efforts to accommodate foreigners separately based on national criteria; arresters on the outside of the doors to the foreigners' rooms have been removed, the conditions in the high security regime have improved (toilets separated from the rest of the rooms by a non-transparent partition, multiple language versions of the internal rules posted in the high security cells), the practice of placing foreigners with self-mutilation tendencies in the high security regime and the generally practiced presence of security personnel during visits received by the foreigners have been abandoned. The technical condition of the dwelling parts of the facility has been improved (shower curtains, mirrors, electric kettles, etc.). The position of pregnant women has also generally improved, in particular in terms of catering.

On the contrary, **the Refugee Establishments Administration was not successfully persuaded** of the necessity to establish lockable cabinets for the foreigners, to remove bars from the foreigners' rooms so that they can regulate ventilation and heating without difficulty and to create foreign-language texts that would acquaint foreigners with the effects and nature of the medication they receive and the nature of the investigation acts they must undergo in the facilities. The Defender will continue to discuss the implementation of the aforementioned measures with the founder of the relevant facilities.

3.4 Institutes for Long-term Patients

In the course of the second half of 2007, follow-up visits were made to two institutes for long-term patients (five such facilities had been visited in 2006). Given the nature of the institutes (hospitalisation in them may extend to several years, the patients often suffer from a very serious health condition and lack of self-sufficiency), they are places with a significant risk of misuse of the dependence on care.

The Defender appreciated the constructive approach to the implementation of the recommendations in both of the institutes subject to the follow-up visits. It was ascertained that the fulfilled recommendations prevailed over those neglected. For example, the number of social workers had been increased, locks had been installed on the patients' bedside tables, the institutes' internal regulations and forms including house rules had been altered, and the rules for the patients' movement within the facilities had changed.

T**he situation had not improved** due to conceptual problems in the area of reducing the number of beds per room, increasing the number of nurses, ensuring a standard of privacy and dignity in the personal hygiene acts on non-self sufficient patients and sometimes in healthcare acts.

3.5 Prisons

Follow-up visits were made to Bělušice, Plzeň and Valdice prisons. The purpose of the visits was to verify the remedial measures taken after the systematic visits conducted in the third quarter of 2006 to seven prisons profiled as medium security prisons and high security prisons.

The following may be placed among **implemented recommendations**: adjustment of the area for the inmates' outdoor exercise; more activities offered to the inmates; strengthened protection of potential targets of violence. Better conditions for visits were created in one of the prisons. **As for the unfulfilled recommendations**, they are dominated by the recommendation concerning the missing legal stipulation of the existence of departments and regimes with enhanced structural and technical security, which is only mentioned in an implementing legal regulation. The visited facilities continue to face a lack of professional medical personnel (although the required standard of healthcare is provided, it is delivered by external staff and not by the prison's own physicians). This results in increased costs of operation and demands for the organisation of work, in particular on the guards.

On the proposed conceptual changes in the prison legislation, see also Part VI.

3.6 Facilities for the Exercise of Institutional and Protective Education

Of the four institutes for the exercise of institutional and protective education visited in 2006, follow-up visits were conducted to the Polanka nad Odrou Reformatory. The facility had implemented *inter alia* the following recommendations: the institute is employing a psychologist, the inmates are allowed to wear clothing based on their own discretion, a prolongation of stay is no longer designated as a punishment in the internal regulations, boys in institutional education are now allowed to receive visitors according to the law and outings are permitted in accordance with the law. However, practical training has not been ensured to date and the material conditions for receiving visitors have not improved.

PART V - DISCRIMINATION, SOCIAL EXCLUSION

Given the potential broadening of the Defender's mandate in the area of the promotion of the right to equal treatment and protection against discrimination (governmental draft Anti-discrimination Act, Chamber of Deputies, 2007, 5th electoral term, parliamentary protocol No. 253), the Defender finds it important to present some of the findings he obtained in exercising his existing mandate (i.e. in notably in inquiring into the work of administrative authorities). In particular the following fall within the Defender's mandate in the area of protection against discrimination:

- labour inspectorates (labour-law relations),
- Czech Business Inspection (consumer protection, access to goods and services),
- Czech School Inspectorate (access to education),
- labour offices (access to employment, state income support benefits),
- Social Services Inspectorate (social services),
- the Ministry of the Interior (supervision over territorial self-government),
- bodies of the social and legal protection of children (care for children and socially deprived families),
- municipal authorities (material need benefits).

The Defender has noted the following phenomena in the area of protection against discrimination over the period of his work:

Discrimination in the Area of Access to Housing and the New Concept of Social Housing

The Defender is increasingly addressed by people who find themselves in **difficult social circumstances** (in particular the elderly, handicapped persons, families with children, single parents with children, persons whose lease agreement for a fixed term is about to terminate, persons released from prison or *"persons living on the street"*) and requesting help in the provision of housing. There are also related filings, which are critical about the expansion of *"**socially excluded areas**"* to which socially deprived families are moved together (usually to buildings in an unsuitable structural and technical condition). The problem mostly escalates in cases where the buildings are **demolished** and their inhabitants **summarily evicted**. The Defender has dealt with such cases repeatedly in the course of his work, inquiring in particular into the procedure of municipal authorities in the provision of the benefits of aid in material need, the exercise of the social and legal protection of children, the procedure of planning authorities in the evaluation of the structural and technical condition of buildings, and the procedure of the bodies of public health protection and labour offices.

The eviction of the Romani inhabitants from the gallery house in Vsetín's Smetanova street No. 1336 is an example worth mentioning for 2007. The Defender strongly rejected the export of socially excluded families and stated that there was significant room for improvement in the work of the administrative bodies concerned, in particular in the area of prevention and social work with Romani families (*see Part II*).

Given that the Senate Committee on Training, Science, Culture, Human Rights and Petitions recommended that the Defender's final statement be used as a basic document for the municipalities of the Czech Republic, the Defender requested the Minister of the Interior to provide **methodological guidance** to municipalities until adoption of a law on social housing. The Defender furthermore participates in working meetings on the issue of social housing, organised by the Ministry for Regional Development on the project *"Refining the Definition of Social Housing, Defining Support to Social Housing and Extension of Financial Support to Municipalities in the Area of Social Housing with Emphasis on Responsibility of Municipalities"* (*see Part VI, paragraph 1.4*).

Complaints about the conditions of access to the municipal housing fund represent an issue in itself among complaints. A number of municipalities have stipulated the procedure in deciding on applications for the lease of a municipal flat by virtue of **rules** where it sets the criteria for acceptance and evaluation of the applications. Some of the latter criteria generate doubts regarding their legality and often constitutionality. Given that the exercise of municipal self-government is not concerned here, the Defender attempts to act in the matter by inquiring into the supervising powers of the Ministry of the Interior.

The Defender has repeatedly observed in the recent period that **persons receiving maternity benefits/parental allowance** obtain ***"minus points"*** in the hearing of applications for the lease of a municipal flat or are even altogether excluded from those eligible to apply. The Defender believes that gender discrimination may be the case here as the aforementioned benefits are mostly received by women. The Defender has therefore repeatedly initiated meetings with the representatives of the Ministry of the Interior and endeavours to find a solution within supervision and methodology. The Defender intends to co-operate with the Office for Personal Data Protection in verifying other conditions such as the gathering of data on blamelessness of the applicant and his/her family members.

Mere supervisory mechanisms cannot be an effective means of protection against discrimination, because citizens are not entitled to the performance of supervision and the supervisory measures are not directed at solving specific cases. Remedy is expectable only with adoption of so-called Anti-discrimination Act that represents *inter alia* implementation of the so-called Racial Directive (2000/43/ES), which stipulates the requirement of equal treatment in access to goods and services, including access to housing.

Discrimination in Access to Employment and in Labour-Law Relations

The Defender was addressed by jobseekers with complaints about **selection procedures**. The alleged discrimination was most frequently due to age (graduates, jobseekers close to retirement age), gender (women returning from maternity leave), nationality (Romani), but also health (the setting of physical prerequisites for the exercise of a position). The complainants were in most cases advised of the possibility to defend themselves against discriminatory conduct by virtue of an action in court and the possibility to file a complaint to the relevant labour office into whose procedure the Defender is competent to inquire.

Complaint Ref. No.: 3209/2005/VOP/PKD

Violation of the principle of equal treatment and prohibition of discrimination is a serious shortcoming for which the inspected parties should be fined by labour offices.

Mr P. V. addressed the Defender with a complaint about the procedure of the Brno-Centre Labour Office in performing an inspection at a party (active in the area of the news media) where the complainant applied for employment. Based on an advertisement published in dailies, the complainant had applied for the selection procedure for a reporter. He complied with all the requirements indicated in the advertisement. In spite of this he had received advice from the company on non-inclusion in the narrower round of selection. He believed that no fact other than his age could have been the cause for his non-inclusion in the shortlist as the offer of the vacancy, placed also on a website, indicated that the "vacancy is offered in a young team", which the complainant regarded as a hidden requirement for young applicants.

The labour office had performed an inspection in the company and found a violation of the prohibition of discrimination as the party subject to the inspection had published an advertisement in dailies, offering a vacancy including a qualification of being younger than 30 years old. The labour office imposed an obligation on the inspected party to eliminate the ascertained shortcomings and submit a written report thereon.

In spite of this the Defender found maladministration in the procedure of the office. He primarily criticised it for failing to impose a fine for committing an administrative infringement. According to the Defender, the measures imposed by the office have a future effect, but the advertisement containing a clearly discriminating element (age) had been published twice before. Its wording could therefore discourage more potential candidates for employment discriminated against by the inspected party on the basis of age. According to the Defender, the imposition of a fine for such a serious violation of the Act on Employment would have a preventive effect not only with respect to the inspected party, but also with respect to other parties offering vacancies. However, it was no longer possible to impose the sanction given the foreclosure periods set for the expiry of liability for an administrative infringement. The Defender therefore requested the labour office proceed more restrictively in similar cases.

The Defender also dealt with complaints about **discrimination in labour-law relations**. The most frequently claimed cause for discrimination was age (usually with respect to remuneration and the termination of employment). In some complaints where the given person had addressed the relevant labour inspectorate to no avail, the Defender initiated an inquiry (for

example an employee's complaint that the employer had failed to deal with the bullying or 'mobbing' conduct of his colleagues).

Complaint Ref. No.: 5713/2006/VOP/PKD

The employer is obliged to discuss with the employee at the latter's request a complaint about the exercise of the rights and obligations resulting from the labour-law relation. If he fails to do so and ignores the employee's complaints, he exposes himself to the risk of committing an offence or infringement in the area of equal treatment.

Mr J. K. addressed the Defender with a complaint about a wrong procedure of the Area Labour Inspectorate for the South Bohemian Region and the Vysočina Region seated in České Budějovice (hereinafter the labour inspectorate) in inspecting observance of the labour-law regulations at an employer who had refused to discuss complaints about the exercise of the rights and obligations resulting from the labour-law relation with the complainant. The complaints were primarily concerned with the conduct of the complainant's colleagues and senior employees perceived by the complainant as inappropriate, unwelcome and offensive.

In his inquiry, the Defender found maladministration by the labour inspectorate, namely inconsistent inspection work. The inspectorate had failed to effectively use all the authority granted to it by the Act on Labour Inspection, as a result of which it had been unable, according to the Defender, to ascertain the state of affairs in the matter (Section 3 of the Code of Administrative Procedure).

According to the Defender, remedy of the ascertained shortcomings should have consisted of performing an inspection at the employer using all the available means to ascertain and clarify the claimed facts. The labour inspectorate fully admitted the criticised shortcomings and stated after a repeated inspection that the employer had committed an administrative infringement in the area of equal treatment by failing to discuss the complaints about the exercise of the rights and obligations resulting from the labour-law relation with the complainant and failing to stop the harassment the other employees had committed against the complainant at the worksite. The inspectorate simultaneously tasked the employer with taking the imposed remedial measures by the set deadline and giving a written report on them to the inspectorate.

Discrimination Against Men in Retirement

Complaints about the set conditions for some entitlements in social security were a specific group of complaints. As an example, there were complaints of **men caring long-term for children** about the setting of **retirement age**. The latter is lowered only for women depending on the number of children brought up, while men are not allowed to retire early based on children brought up.

The Defender is aware that the Constitutional Court has decided in the matter (judgment of the Constitutional Court of October 16, 2007, Pl. ÚS 53/04, promulgated in the Collection of Laws under No. 341/2007), dismissing a motion for annulment of Section 32 of the Act on Pension Insurance (Act No. 155/1995 Coll. as amended) and stating that it *"does not share the opinion that… equality of both genders in relation to the right to reasonable material security in old age would be introduced by virtue of annulment of Section 32 of the Act on Pension Insurance. If the contested provision was annulled, a certain advantage would be removed from women (mothers) without the men (fathers) obtaining within equalisation the same advantage the women (mothers) have… The Constitutional Court states in this context that no contradiction between positive law and equality arose in the case concerned"*.

The Defender has a different view of the issue and agrees with the complainants (men) in that there is not a sensible reason nowadays for lowering retirement age only for women who have brought up children. The Grand Chamber of the European Court of Human Rights decided similarly in the case of *Stec and Others v. the United Kingdom* (judgment of April 12, 2006, Nos. 65731/01 and 65900/01). The Defender believes that although the lower retirement age of women bringing up children was originally perceived as a legitimate measure advantaging women, **nowadays**, after **significant socio-economic changes**, **differentiating between women and men is not appropriate** in this matter.

PART VI - 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 past years. The Defender simultaneously provides recommendations resulting from his work in 2007.

1. Evaluation of the Government Report on the Use of the Recommendations of the Public Defender of Rights for Amendment to Legislation Indicated in the Annual Report on the Activities of the Public Defender of Rights in 2006

The Chamber of Deputies adopted a resolution (No. 383) in hearing the 2006 Annual Report of the Public Defender of Rights, in which it requested the government to *"deal with the legislative suggestions indicated at the end of the Annual Report and submit a report on the use of these suggestions to the Chamber of Deputies by the end of 2007"*. In response to the Defender's recommendations, the government drew up a *Report on the Use of the Recommendations of the Public Defender of Rights for Amendments to Legislation Indicated in the Annual Report on the Activities of the Public Defender of Rights in 2006* (hereinafter the ***"Report on the Use of the Defender's Recommendations"*** or the *"government report"*) and submitted it to the Chamber of Deputies in December 2007 (Chamber of Deputies, 2007, 5th electoral term, parliamentary protocol No. 365). The government report was first heard by the Petitions Committee and subsequently, on February 6, 2008, by the plenum of the Chamber of Deputies, taking due note of it (Resolution No. 640). During the discussion the requirement was repeatedly voiced that in his 2007 Annual Report the Defender evaluate the manner in which the government handled his previous recommendations. The Defender has therefore not designed the following part of the Report in the traditional manner (i.e. indicating fulfilled and non-fulfilled recommendations from the previous years); instead he presents his view of the information contained in the government report.

On the one hand the Defender appreciates the **partial progress** achieved in the areas that have shown shortcomings for a number of years. These include primarily the issue of noise from traffic, supervision over distraints, payment of compensations from the Guarantee Fund of Securities Traders, dual citizenship and presumed citizenship, delays in court proceedings on international child abductions, and stipulation of informed consent of patients to treatment. Nevertheless, the Defender does not fully share the government's optimism that most of the problems pointed out by the Defender in the 2006 Annual Report were successfully stipulated in legislation. Below the Defender points out only those legislative suggestions that **have not been fulfilled to date**.

1.1 Plots of Land without an Owner

In the material, the government indicates on the matter that agreement was successfully reached thanks to co-operation between the Czech Office for Surveying, Mapping and Cadastre and the Office of Government Representation in Property Affairs on a solution consisting in an amendment to the Cadastral Act (Act No. 344/1992 Coll. as amended). The government simultaneously indicates that the material should be submitted to the government by the end of 2007 in accordance with the government's legislative rules. On the one hand the Defender appreciates the partial progress occurring thanks to the co-operation between the above-mentioned institutions; on the other hand he must state that the **material has not been submitted to the government** and the legislative recommendation concerned therefore cannot be regarded as fulfilled. The Defender again points out that the unsettled issue of plots of land without an owner continues to complicate things, primarily in planning proceedings and in the implementation of linear construction projects.

The Defender therefore again recommends the Chamber of Deputies request the government to submit, by the end of 2008, a draft law settling ownership relations to real estate registered in the Land Register without an owner or with an unknown owner.

1.2 Act on Mining Activities

The government indicates in the material that it will take the recommendation into account in a draft amendment to the applicable legislation. The Defender was not content with such a vague statement and continues to insist that the existing practice of the mining companies significantly **infringes upon the protection of ownership** of those whose real estate is affected by mining. The Defender holds the view that certain issues could be overcome through interpretation of the existing legal standard if the mining companies showed *good will* and the Ministry of Industry and Trade proper methodological guidance. Nevertheless, the Defender's experience suggests that the conduct of the mining companies will not change if certain requirements are not explicitly pronounced directly in the text of the law. The Defender therefore in particular requests an amendment to the wording of the provisions of Section 17 (2) of the Act on Mining Activities (Act No. 61/1988 Coll. as amended) in the manner that existed in the period from January 1, 2006 to June 22, 2006 (i.e. by stipulating the obligation of the mining organisation to *"submit agreements on the settlement of conflict of interest also with the owners of the affected premises in cases where they request this in writing"*).

The Defender again recommends the Chamber of Deputies request the government to submit, by the end of 2008, a draft amendment to the Act on Mining Activities that will task the mining organisation with an obligation to submit agreements on the settlement of conflict of interest also with the owners of the affected premises in cases where the latter request this in writing.

1.3 Public Administration in the Sector of Experts and Interpreters

The government indicates in the material that it will take the Defender's recommendation into account in preparing a new draft law on experts and interpreters. The Defender nevertheless found that no draft strategy for the law on experts and interpreters is contained in the plan of legislative work of the government for 2008; instead it indicates an amendment to the existing law (Act No. 36/1967 Coll. as amended). The Defender holds the view that the Ministry of Justice has been aware of the absence of new legislation on experts and interpreters for a number of years and that there should be a change in the general concept rather than a mere amendment to the existing law. The Defender therefore proposes that the government abide by its promise and prepare a **draft strategy for the new law** on experts and interpreters by the end of 2008.

The Defender recommends the Chamber of Deputies request the government to

(1) approve a draft strategy for a new law on experts and interpreters by the end of 2008 and

(2) submit a draft law on experts and interpreters by June 2009.

1.4 Housing of Persons at Risk of Social Exclusion (Social Housing)

The Defender views the absence of **legislation on social housing** as a problem of growing seriousness that contributes to a gradual decline of socially deprived citizens into poverty and simultaneously increases social tension in society. It must furthermore be taken into consideration that the Czech Republic should adopt a law on social housing with regard to the case law of the European Court of Human Rights anticipating that states will adopt so-called positive measures to protect the right to respect for private and family life pursuant to Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court has repeatedly stated in past years that the Czech Republic was violating Article 8 of the Convention when it ordered delivery of a child to institutional education on the *"grounds of housing"* (see judgments *Walla and Wallová vs. the Czech Republic*, and *Havelka vs. the Czech Republic*).

The government indicates in its statement that a draft strategy for the law will be presented in April 2008. The Defender therefore regards the measure as conditionally fulfilled, although he simultaneously points out that the draft law must fulfil certain **qualitative conditions**.

First of all the term social housing must be defined, the division of powers between the parties providing for social housing clearly set and the target group for social housing defined. The Defender insists in this context that one of the key roles must be played by the municipalities, which are obliged to fulfil a social role in addition to the proper management of municipal property. Thus a legal obligation should be imposed on municipalities to deal with the housing

of their socially deprived citizens and to actively act against the rise of socially excluded areas (the provisions of Section 35 (2) of the Act on Municipalities should be changed in this respect, which currently contains only a general and legally unenforceable wording in the matter of social housing). The law should furthermore determine a minimum standard of housing and set the necessity to create a housing fund for social housing purposes. Solving the relations between social housing and the existing *"social laws"* (Act on Social Services, Act on Help in Material Need and State Income Support Act) is an obvious requirement.

The Defender recommends the Chamber of Deputies request the government to

(1) adopt a draft strategy for a law on social housing by the end of 2008 and

(2) submit a draft law on social housing by June 2009.

1.5 The Performing of Sterilisations

Given that a draft strategy for a law on specific healthcare services that is to stipulate the performing of sterilisations was submitted for amendment proceedings in December 2007, and given that the structured wording of the law is to be submitted to the government by May 2008 according to the government's plan of legislative work, the Defender finds the recommendation as conditionally fulfilled (provided that the government actually adopts the structured wording and submits it to Parliament for hearing).

The Defender recommends the Chamber of Deputies request the government to submit, by the end of 2008, a law on specific healthcare services that would stipulate the performing of sterilisations.

1.6 Pensions of Persons Caring Long-term for a Relative

Comparative Calculation

The Defender recommended the Chamber of Deputies in his last Annual Report to adopt a draft law changing **the pension benefits of persons caring long-term for a relative dependent on care**. The Defender states after the year that the five-year limit set for the cutting of the so-called excluded periods to one half was successfully annulled (amendment No. 152/2007 Coll.). The second proposed change (consisting of enactment of the **comparative calculation** between a pension set on the basis of the inclusion of earnings achieved by employment in the minimum engagement and a pension determined upon acceptance of the period of care as an excluded period) was incorporated by the Ministry of Labour and Social Affairs into the draft parametric changes in the Act on Pension Insurance, which was adopted by the government on February 11, 2008, and has been submitted to the Chamber of Deputies for hearing (Chamber of Deputies, 2007, 5th electoral terms, parliamentary protocol 435).

The Defender therefore recommends the Chamber of Deputies adopt supplementation of the provisions of Section 16 (8) of Act No. 155/1995 Coll. on Pension Insurance as amended as anticipated by the government draft of the so-called parametric changes in pension insurance.

Setting the Minimum Amount of Pension

Although, due to an initiative of the deputies and an initiative of the government, two major changes have been (or, respectively, should have been in the latter case) made that may effectively result in an increase in the pensions of persons caring for a relative, the Defender continues to find a need for a third change consisting of **introduction of a minimum amount of pension for persons caring long-term for a relative dependent on care**. The reason is that the Defender continues to be addressed by dozens of complainants who long (often for dozens of years) cared for a relative dependent on care and where the minimum amount of pension has been granted to them. These include particularly persons who performed the personal care before 1996. The adopted amendment to the Act on Pension Insurance does not apply to them as their excluded periods were not cut. The low pension was granted to them because they dedicated virtually all their life to the care for the relative dependent on care, were unable to fully develop their work potential and had very low earnings before the care, e.g. from their first employment. In the Defender's opinion the strict application of the insurance principles by the state generates injustice as the persons concerned have saved the state considerable funds from the state budget.

The Defender therefore recommends the Chamber of Deputies request the government to submit, by the end of 2008, an amendment to the Act on Pension Insurance that will guarantee a minimum amount of pension to persons who have long cared for a related dependent person and therefore virtually did not have the opportunity to have earnings in the decisive period.

1.7 Notifying Passage of Property from State to Municipalities

The government notes in its statement that the adoption of this recommendation is very problematic in legal terms given the constitutional principles guaranteeing protection of ownership title.

The Defender respects the legal arguments indicated in the government report, although he holds the view that the time limitation for notifying property that was passed to municipalities on the basis of Act No. 172/1991 Coll. is at least as relevant as was the legislator's "restitution full stop" (i.e. a time limitation for the provision of compensation for property not surrendered in restitution). Although the Defender is aware that the property has passed to the municipalities *ex lege*, there are other principles apart from the *"protection of property of regional self-governments"* in a democratic legal state. Such principles include primarily the **principle of legal security**, which is infringed upon in a number of cases as a result of the lack of time limitations for notifying property. Municipalities lodge property notifications also in cases where the property concerned has been held for a number of years by persons in **good faith** on the basis of valid title**.** In case of notification, these persons are forced to initiate senseless proceedings for the determination of ownership (adverse possession), burdening not only the persons concerned but also the entire court system.

The Defender therefore insists that it is entirely in accordance with the basic civil law principle of *vigilantibus jura scripta sunt* that the right to notify property pursuant to Act No. 172/1991 Coll. be made subject to a time limitation (as opposed to common restituents, municipalities have had enough time for notification) and that registration of the passage of ownership be ruled out in cases where the property is held by an entitled holder in good faith for a period of ten years as in the institute of adverse possession (Section 134 of the Civil Code).

The Defender recommends the Chamber of Deputies request the government to submit, by the end of 2008, an amendment to the Act on the Passage of Certain Things from the Property of the Czech Republic to the Ownership of Municipalities that would make notifying the passage of property to municipalities subject to a time limitation and expressly rule out registration of the passage of ownership in cases where the property is registered for a natural or legal person in the land register.

1.8 Provision of Data from the Citizens Register

The Defender recommended in the previous Annual Report that the Chamber of Deputies adopts an amendment to the Act on Citizens Register that would enable provision of data on the **permanent residence of another person** to applicants subject to consent of the person concerned (the Defender proposed for data of a deceased person that it be provided under the same conditions as those for the studying of the collection of registry deeds). The government indicates in the material that it will take the aforementioned recommendation into account when drafting new legislation on the citizens register. The draft strategy for the law on the citizens register is to be submitted to the government for hearing by the end of 2008, according to the government's plan of legislative work. The Defender therefore regards the measure as conditionally fulfilled (provided that the government actually adopts the draft strategy and subsequently submits the draft in the structured wording to the Parliament).

The Defender recommends the Chamber of Deputies request the government to

(1) adopt a draft strategy for a new law on the citizens register by the end of 2008 and

(2) submit a draft law on the citizens register by June 2009.

2. The Defender's New Legislative Recommendations

2.1 New Concept of Consumer Protection

Given that the Act on Consumer Protection was adopted at the last minute in the expiring Federal Assembly of the Czech and Slovak Federative Republic (the hearing took place on December 16, 1992, i.e. shortly before the demise of the CSFR), the law still bears the marks of the time of its drafting. Given that it was subsequently 24 times amended and areas were incorporated in it that are not directly related to consumer protection (e.g. the protection of intellectual property by customs authorities), it is entirely appropriate to consider **adoption of entirely new legislation** that would **conceptually and effectively guarantee consumer rights**, determine what authorities shall protect such rights and simultaneously define what issues of public interest shall be subject to the supervising competences of administrative authorities.

The Defender finds shortcomings in the existing legislation primarily in that **16 authorities** are engaged in consumer protection and fail to cooperate with each other. The **scattered style of work** results in legal insecurity, **departmentalism and negative competence conflicts**. As a solution to the existing poor situation, competences in the area of consumer protection should be entrusted to a substantially smaller number of bodies (ideally only the Czech Business Inspectorate and the State Power Inspectorate) that would cover all the sub-areas of the consumer agenda (the principles of consumer protection are identical in all the spheres of the provision of goods and services and therefore, for example, the Czech Business Inspectorate should not find the assessment of *"quality"* or *"prohibition of discrimination*" difficult in areas like pharmaceuticals, agricultural products or ammunition).

The Defender simultaneously holds the view that the bodies of consumer protection **lack the authority sufficient to effectively deal with consumer disputes**. The Czech Telecommunications Office and the Financial Arbitrator are the only bodies (apart from courts) that currently have the authority to decide on consumer disputes in a binding manner. All the other bodies have the public sanction authority, yet they cannot decide on whether a product is defective, they cannot determine in a binding manner as to what entitlements result from the seller's liability for defects of goods (or for non-conformity with the purchase agreement) in a specific case, they cannot decide on entitlements from consumer agreements, etc. Although general courts do have all these authorities, the Defender's experience shows that traditional court protection is not an effective tool of protection in consumer disputes, and primarily in disputes worth up to CZK 20,000. The Defender therefore finds it ideal to draw inspiration from the system that has been in use relatively successfully in the area of electronic communications and authorise an administrative body (most likely the Czech Business Inspectorate) to decide in a binding manner on the entitlements of consumers resulting for them from the seller's liability for damage or, as the case may be, from consumer agreements. Such a decision would then be "*reviewable*" by a court pursuant to section V of the Code of Civil Court Procedure (Act No. 99/1963 Coll. as amended).

The Defender recommends the Chamber of Deputies request the government to

(1) adopt a draft strategy for a new law on consumer protection that would

a) decrease the number of bodies in the area of consumer protection,

b) entrust supervisory competencies to selected authorities,

c) entrust the authority to decide consumer disputes in a binding manner to these bodies analogously to the Czech Telecommunications Office, by June 2009, and

(2) submit a draft new law on consumer protection by the end of 2009.

2.2 Submission of Old Deeds to the Land Register

The issue of uncertain ownership resulting from the possibility of registration of rights *in rem* in the Land Register based on **deeds that may be dozens of years old** is perceived as a serious problem by the Defender (they often include, apart from decisions of public authorities that have never been submitted for the designation of change in records on plots of lands, private agreements that were duly registered by the former state notarial offices before 1993, yet the change concerned was never designated in the former real estate records). When **double registration of ownership** occurs on the basis of such a deed, the existing owners are forced

to initiate complicated suits for the acquisition of ownership title by subscription and their ownership security is at risk. The Defender proposes the setting of a reasonable deadline for the submission of such *"old"* deeds to the land registry office as a means of preventing their unexpected future effects.

The Defender recommends the Chamber of Deputies request the government to submit, by the end of 2008, a draft amendment to the Act on Registration of Ownership Title and Other Rights *In Rem* to Real Estate and an amendment to the Civil Code that would limit the possibility of registering rights arisen from agreements and other legal matters stipulated by law unless a proposal for registration or proposal for registration in the real estate records was lodged by December 31, 1992.

2.3 Management of Municipal Property

The Defender welcomed the draft amendment to the Act on Municipalities, Regions and the Capital City of Prague (draft Ref. No. LG 172/2007 submitted for broader amendment proceedings on October 24, 2007), which responded to a number of shortcomings brought about by existing practice (in particular the newly proposed provisions concerning **the disposal of municipal property**, the provision of **copies of** municipal self-government **documents**, rules for the management of flats, etc.), and simultaneously represented one of the ways of implementing the *Government Strategy in Combating Corruption for the Period of 2006 to 2011*. Given that after hearings on the material, based on a request of the Union of Municipalities, the Ministry of the Interior withdrew from a number of provisions the adoption of which the Defender supported, the Defender recommends the Chamber of Deputies call upon the government to submit the material as it was originally submitted to the broader amendment proceedings.

The Defender recommends the Chamber of Deputies request the government to submit, by the end of 2008, a draft amendment to the Act on Municipalities, Regions and the Capital City of Prague that would contain provisions on the management of the property of regional self-governing units, rules for the management of flats, etc. as specified in the proposal of the Ministry of the Interior submitted for the broader amendment proceedings.

2.4 New Concept of the Office for the International Legal Protection of Children

The Defender stated within an inquiry concerning the Office for the International Legal Protection of Children that this Office finds itself in a conflict of interest in the cases of international abductions of children where it performs the role of a "conflict" custodian of a child and simultaneously represents one of the parents who addressed it with a request for help. The central authorities of public administration have also changed their attitude in this respect. It was agreed by the Ministry of Labour and Social Affairs and the Ministry of Justice that the Office for the International Legal Protection of Children should no longer assume "collision" custodianship in new cases to **avoid the conflict of interest** with the Office's obligations resulting from the Hague Convention on International Child Abduction. However, the legal provisions contained in the Act on Social and Legal Protection of Children do not correspond to the aforementioned arrangement.

The Defender therefore recommends the Chamber of Deputies request the government to submit, by the end of 2008, an amendment to the Act on Social and Legal Protection of Children in order to ensure that the Office for International Legal Protection of Children cannot find itself in a conflict of interest in dealing with international child abductions.

2.5 Orphan's Pensions

A change in the conditions entitlement to an orphan's pension arising has been in place since the adoption of the Act on Pension Insurance (Act No. 155/1995 Coll. as amended). The entitlement of a dependent child arising is conditional on the fact that the deceased person was a pension recipient (old-age pension, full or partial disability pension) or fulfilled the required insured period for entitlement to a pension (full disability pension or old-age pension) as of the day of decease or died as a result of an occupational injury. In other words, **if the deceased person failed to fulfil the above-mentioned conditions, entitlement to an orphan's pension will not arise for the dependent child**.

The unenviable circumstances orphaned children may face results from a change in the system of pension insurance (emphasis on the insurance principle). In a justification report to the Act on Pension Insurance, the legislator substantiated the change in the conditions for the arising of entitlement to an orphan's pension by the fact that orphans whose entitlement to an orphan's pension has not arisen would be secured through the system of social aid and state income support (NB: under the previous Act No. 100/1988 Coll. on Social Security, the entitlement to an orphan's pension arose for the child always after the death of the deceased person and a minimum assessment of an orphan's pension was set). The practice has shown that this is not an ideal solution. The citizens concerned perceive dependence on state income support (social care) benefits as an injustice, because they were unable to influence the conditions of entitlement to a pension arising in any manner whatsoever. The relevant social benefits are significantly lower and their drawing is influenced by other matters that often result in a denial of the benefits. The purpose of the orphan's pension, i.e. partial compensation for the loss of a breadwinner, fails to be fulfilled.

The Defender therefore recommends the Chamber of Deputies request the government to

(1) submit an amendment to the Act on Pension Insurance that will stipulate entitlement to an orphan's pension at least in the minimum guaranteed amount also to those orphaned children whose parents failed to fulfil the conditions for entitlement to old-age or disability pensions (guaranteed orphan's pension),

or to

(2) submit an amendment to the Act on State Income Support that will introduce a new benefit within the non-insurance systems, similar in its purpose to the guaranteed orphan's pension, by the end of 2008.

2.6 Departments with Enhanced Technical and Structural Security

The Defender has long found the institute of so-called departments with enhanced technical and structural security to be problematic. Given that the **legal stipulation of the regime** (the definition of the persons subject to it) is currently **contained only in a decree** issuing the procedure of exercise of prison sentences (Decree No. 345/1999 Coll. as amended) and placement in the department represents a relatively serious intervention in the regime of the inmate's prison sentence, the stipulation should be contained directly in the Act on Imprisonment (Act No. 169/1999 Coll. as amended). The new legislation should simultaneously define more clearly the substance of the department, which is in practice used far more often for dealing with disciplinary issues of problematic convicts than for placing *"escaped convicts or convicts who have committed an additional criminal act while imprisoned"* (Section 8 (3) of Decree No. 345/1999 Coll.) Although the Defender has understanding for the procedures of the Prison Service that essentially uses the aforementioned department for punishing problematic prisoners, he cannot regard such methods as legally conforming and finds it suitable to stipulate the relation between disciplinary punishment and placement in a department with enhanced technical and structural security in a law.

The Defender recommends the Chamber of Deputies request the government to submit, by the end of 2008, an amendment to the Act on Imprisonment that would clearly stipulate the regime, nature and purpose of the departments with enhanced structural and technical security.

2.7 Periodicity of Court Review in the Removal of a Child

The Act on the Family (Act No. 94/1963 Coll. as amended) stipulates in Section 46 that a court may under certain circumstances order institutional education and the court is obliged to review at least once every 6 months whether the reasons for ordering the measure continue or foster care could be provided for the child (although otherwise the decision on the removal of the child and its placement outside the family is issued for an indefinite term). The Defender is not convinced of the suitability of the present legislation from the perspective of practical functioning of the system of foster care, the reason being that courts fail to sufficiently observe whether the reasons for the child's placement outside the family continue and there fails to be generated sufficient pressure on social work with the original family to which the child should return. The Defender therefore finds it more appropriate to amend the law so that a **decision on the placement of a child is always issued for a fixed term** and if the causes for the removal of the child continue, this would have to be specified in a new decision.

The Defender recommends the Chamber of Deputies request the government to submit, by the end of 2008, an amendment to the Act on the Family in such a way that a decision on the removal of a child is always issued for a fixed term and, if the causes for the removal of the child continued, they would have to be specified in a new decision.

2.8 Stipulation of the Legal Representation of Clients in the Act on Social Services

The Act on Social Services (Act No. 108/2006 Coll. as amended) stipulates in Section 91 (6) that "a person who is unable to act independently and does not have a legal representative shall be represented by the municipal authority of a municipality with extended competence" in the conclusion of an agreement. The intention of the legislator, i.e. whether proceedings on the appointment of a guardian pursuant to Section 29 of the Civil Code should precede the aforementioned type of representation, is not entirely clear from the legal provision. Another problem occurring in this respect consists of the provision of Section 22 (2) of the Civil Code, which stipulates that a party whose interests are at variance with the interests of the represented person cannot be a representative, which is often the case for municipalities with extended competence. The Defender furthermore believes that the **provisions of Section 91 (6) of the Act on Social Services is unsystematic** as it stipulates representation only for a specific act (conclusion of an agreement on the provision of a social service), for which the specific person is identified as incapable of a legal act, although *de jure* he/she is regarded as fully capable for the future. A better solution from the perspective of systematic civil law would be to ensure that the persons who are *de facto* partly incapable of legal acts would be restricted in their legal capacity by a court and, subsequently, agreements worth amounts exceeding a specified sum would be negotiated on their behalf by a guardian appointed by the court.

The Defender recommends the Chamber of Deputies request the government to submit, by the end of 2008, an amendment to the Act on Social Services that would annul the provisions of Section 91 (6) of the aforementioned act.

2.9 Protection of the Rights of Persons in the new Act on the Police

Obligation to Advise

In performing detention visits, the Defender observed that the applicable Act on the Police (Act No. 283/1991 Coll. as amended) insufficiently stipulates the obligation of police officers to advise persons placed in police cells. The enacted legal provisions are relatively fragmentary and most of the issue is stipulated only in an internal regulation (binding instruction of the Chief of Police No. 118 on Police Cells). A **new law on the Police of the Czech Republic** is currently going through the legislative process (Chamber of Deputies, 2007, 5th electoral term, parliamentary protocol 439), which sets the advisory obligation of police officers more precisely (the newly proposed Section 13). The draft law furthermore stipulates the advisory obligation in Section 33 (5) (*"a person placed in a cell must be demonstrably informed of the rights and obligations of persons placed in a cell"*).

The Defender therefore recommends the Chamber of Deputies adopt provisions in hearing the new law on Police that will clearly stipulate the advisory obligation of police officers vis-à-vis persons restricted in their freedom.

Legal Regime of the Handcuffing of Persons

The Act on the Police (Act No. 283/1991 Coll. as amended) entrusts the authority to police officers to use a special restricting measure in justified cases, consisting of the handcuffing of a person with aggressive conduct to a suitable object. Given the system of police authorities, primarily in relation to coercive measures (Section 38 of the Act on the Police), the precise **legal mode of handcuffing** is not obvious. While the police officer is obliged to give a warning, provide first aid, report the use to a senior officer, etc. in the use of coercive measures, the conditions of handcuffing to a suitable object are not stipulated in more detail (only the time limitations to its use are specified clearly – for a maximum of 2 hours).

The draft new Act on the Police of the Czech Republic fails to bring any clarification in this respect. The relation to coercive measures is still not defined in handcuffing (in particular the relation between Section 24 and the use of handcuffs pursuant to Section 53 is not obvious; if it is concluded that handcuffing is not a coercive measure, it should simultaneously be stated

that the conditions set for coercive measures do not apply to its use (in particular previous notice, appropriate use, obligation to ensure first aid and the obligation to report the use to the superior/prosecutor) and the relevant police officer is therefore *de facto* rid of all the obligations that ensure the checking of his/her work as a public agent in a democratic state of rule of law.

The government draft simultaneously (as opposed to the applicable legislation) admits that a person is handcuffed in a police cell, which lacks justification (the applicable wording stipulates that free movement may be restricted only until the person is placed in a police cell). **Thus the draft reduces the existing level of protection to personal freedom** in a situation where there is not a practical reason to do so (the detained person is unable to attack anyone after placement in the cell and he or she can very hardly threaten his or her own life – if yes, they have nothing to do in a police department and should be relocated to a medical facility where they cannot destroy any equipment).

The Defender recommends the Chamber of Deputies adopt provisions in the hearing of the new Act on the Police that will clearly settle the relation of handcuffing (Section 25) to coercive measures (Section 52 et seq.) and will prohibit the use of handcuffing in police cells.

Performing of Safety Searches by Police Officers of the Same Sex

The provisions of Section 27 (1) of the Act on the Police stipulate that a police officer shall perform a safety search before placement of a person in a police cell, in which the officer shall take away things from the detained person that could be used by him/her to put his/her health/life or the health/life of another person at risk. The aforementioned provisions are somewhat terse in the Defender's opinion and omit the **ensuring of human dignity**, i.e. the necessity of carrying out the safety search by a person of the same sex, including making sure that no person of the opposite sex is present at the search (nor are these conditions stipulated in the internal regulations of the police). An endeavour to stipulate the aforementioned provisions is observable in the legislation (e.g. in the prison system or the foreigner-related agenda) and the Defender therefore cannot see any reason why the same rules should not apply to the police.

The draft wording of the new Act on the Police of the Czech Republic has not brought anything new in this respect.

The Defender therefore recommends the Chamber of Deputies adopt legal provisions in the hearing of the new Act on the Police that will define a more dignified framework for the performing of safety searches of persons to be placed in police cells.

2.10 Camera Surveillance Systems in Asylum Centres

The prevention of violence and bullying among the accommodated asylum seekers was given as a reason for introducing a camera surveillance system in the common premises (corridors, dining room, outdoor areas) of asylum facilities. However understandable the aforementioned solution may be, the Defender must insist that the **Act on Asylum** (Act No. 325/1999 Coll. on Asylum as amended) currently **does not provide a legal background for the installation of audiovisual equipment** (and such equipment illegitimately infringes upon privacy, which is subject to protection by virtue of Art. 10 (2) of the Charter of Fundamental Rights and Basic Freedoms). The Defender is convinced that the current condition cannot be regarded as constitutionally conforming (the so-called official licence pursuant to Section 12 (2) of the Civil Code is missing). A future solution should consist of an amendment to the Act on Asylum after the fashion of parliamentary protocol No. 191 (Chamber of Deputies, 2007, 5th electoral term) where the installation of camera surveillance systems in detention facilities was stipulated in the Act on the Residence of Foreigners (Act No. 326/1999 Coll. as amended).

The Defender recommends the Chamber of Deputies request the government to submit, by the end of 2008, an amendment to the Act on Asylum that would legalise the use of camera surveillance systems in asylum facilities.

2.11 Local Fees in Dog Rescue Centres

The Defender holds the view that the amendment to Act No. 229/2003 Coll. on Local Fees has created **unequal conditions between the operators of municipal and non-**

municipal dog rescue centres as the Act on Local Fees exempts only parties operating rescue centres founded by a municipality from the fees on dogs (persons operating private rescue centres are thus not exempt). The Defender holds the view that there are not any reasons that could account for the more favourable treatment of the operators of municipal rescue centres. Paradoxically, from the perspective of civil law, abandoned dogs are municipal property (Section 135 (1) of the Civil Code). If the operator of the rescue centre cares for municipal property, the making of dogs subject to a fee seems illogical and unjust.

The Defender recommends to the Chamber of Deputies to request the government to submit, by the end of 2008, an amendment to the Act on Local Fees that would exempt all the persons operating a rescue centre for dogs astray or abandoned dogs from payment of the fee on dogs regardless of who is the founder of the rescue centre.

2.12 New Law on Heritage Preservation

The Defender has repeatedly pointed out shortcomings in the system of heritage preservation. He therefore welcomes the fact that the Ministry of Culture, according to the plan of legislative work in the 1st quarter of 2008, intends to submit to the government a draft strategy for a law on heritage preservation and subsequently, in the 1st quarter of 2009, a draft law on heritage preservation. The Defender points out in this respect that the **owners of premises situated in aggregately protected heritage areas** (heritage reserves and zones) **are not**, as opposed to the owners of cultural heritage, **entitled** under the law **to financial support for the renovation of historically valuable premises**. The owners of such premises are, like the owners of cultural heritage, bound to fulfil the requirements of the bodies of heritage preservation (e.g. roof covering material, tin work, window and door materials and plasterwork). However, they are not entitled under the law to compensation for the increased costs associated with the requirements of heritage preservation.

The Defender recommends the Chamber of Deputies request the government to

(1) adopt the draft strategy for the new law on heritage preservation by the end of 2008 and

(2) submit, by June 2009, a new law on heritage preservation that will stipulate the possibility of compensation for the costs of renovation and maintenance of heritage values of non-heritage premises in heritage reserves and zones.

PART VII - CLOSING SUMMARY

The submitted Report concerns the first year of my second term. As far as a comparison with the previous years can be made, it can be said that the potential of the Office of the Public Defender of Rights has developed in the drawing of general observations from findings in the area of public administration. This became obvious primarily in increased comments on legal regulations, more frequent participation in proceedings before the Constitutional Court, the publishing of the *Public Roads* and *Family and Child* collections and in the organisation of various specialised conferences and workshops. I am truly pleased that my colleagues have managed to *"sell"* the acquired experience and simultaneously to influence the preparation of laws and other legal regulations.

In my opinion, the condition of public administration in the Czech Republic is relatively satisfactory. There is obviously room for improvement. I also believe that the established clichés about a *"fundamental lack of professionalism and the corruptness of public administration"* are not entirely founded. It may even be said that compared to other countries, the Czech Republic has a relatively decent standard of public administration.

However, a serious contemporary problem consists of the fact that the administrative process has been *"judicialised"* to a considerable degree. Much higher demands are now placed on the substantiation of decisions as well as on the actual conduct of administrative proceedings. These matters logically cause delays in proceedings. Just as I repeatedly pointed out in the past that court proceedings were falling into the trap of *"fair trial"* (among other things due to the *"unsound"* quantity of remedial measures), the same can now be said about proceedings in the area of public administration. I believe that there is also an excess of remedial measures concerning review proceedings that lack sense to a considerable degree in a functioning administrative court system. Delays also exist in this area, because ministries fail to handle complaints for review proceedings by the deadlines set by the Code of Administrative Procedure. Thus if the Defender can afford to *"send an alarm signal"*, he would do so specifically with respect to the concept of remedial measures in administrative proceedings.

In the detention agenda, I attempted to promote new standards of quality of care in homes for the elderly. Although the heads of the individual facilities accepted most of my comments, I could not overlook a certain contradiction between the contractual principle applied in the area of service provision and the existing *"directive mechanisms"* where the clients are perceived as objects of care. It will be necessary to continue to appeal to the individual facilities so as to ensure an actual change in the perception of social care as a service provided to the other contractual party – the clients.

I would like the Chamber of Deputies to take due note of this Report and also for the government to deal with the general observations contained in Part VI. It is clear to me that not all the legislative shortcomings can be eliminated immediately and I admit that some of my proposals may to a certain degree be *"daring"*. I am confident however that the submitted matters should be dealt with or at least discussed.

Brno, March 21, 2008

JUDr. Otakar Motejl

Public Defender of Rights

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