2008 ANNUAL REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS

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PROSÍM

Introduction

INTRODUCTION

In the submitted annual report, JUDr. Otakar Motejl sums up his inspection activities in the area of public administration. The Public Defender of Rights (hereinafter the "Defender") continues the approach he chose in the annual report on his activities for 2007 and attempts to cover, in particular, the general observations he made in the individual areas of public administration. The report also contains information from those areas of his mandate the exercise of which he delegated to his deputy RNDr. Jitka Seitlová (primarily the environment, social benefits, citizenship, citizens register, the right to information and consumer protection).

A departure from previous practise is that the report deals in detail with the Defender's activities in the commenting on legal regulations and his activities within proceedings before the Constitutional Court.

The report is divided into seven parts.

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

The second part has been dedicated to the Defender's special powers and his participation in proceedings before the Constitutional Court. Furthermore, the Defender provides information on his activities in amendment procedures.

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

The fourth part presents information on the results of the Defender's systematic visits to facilities where persons restricted in their freedom are held.

The fifth part is focused specifically on the issue of social exclusion and discrimination, with regard to the ongoing legislative process for the so-called Anti-Discrimination Act, which is to bestow on the Defender a new competence concerning the right to equal treatment and protection against discrimination.

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 his legislative recommendations from the previous years were handled.

The seventh part is the closing summary.


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Part I

THE PUBLIC DEFENDER OF RIGHTS AND HIS OFFICE

1. BUDGET AND SPENDING IN 2008

In 2008 the Office of the Public Defender of Rights functioned with a **95,377 thousand** budget. Of this, **CZK 73,970 thousand** was used in 2008, i.e. 77.56% of the set budget.

CZK 21,407 thousand was **saved** from the 2008 budget, particularly from funds for running costs in the amount of CZK 21,203 thousand, primarily in operational expenses, partly in salaries of employees and other payments for work carried out and CZK 204 thousand was saved on investment costs. Details of the economic results of the Office are available at the website http://www.ochrance.cz.

2. PERSONNEL SITUATION IN 2008

The budget for the year 2008 determined an obligatory **limit of 98 employees of the Office**. **The actual** average recalculated **number of staff recorded** was **96.07** employees in 2008, whereby the limit stipulated by the state budget was met. Of the total number of employees, **73** were directly involved in dealing with complaints and making so-called detention visits.

Due to the comprehensive assessment of some important cases, **cooperation with external experts** continued, mainly with those 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 took place in the Office in cooperation with the Faculty of Law of Masaryk University.

3. PUBLICITY, INTERNATIONAL COOPERATION, CONFERENCES

3.1 PRESS RELEASES, TV SERIES, WEBSITE

The Defender organised **12 regular press conferences** and **3 extraordinary briefings** in 2008. Their topics were always current findings of the Defender from inquiries into cases of social importance. In particular the following were concerned:

- foreigner-related issues where the Defender criticised the situation at the Foreign Police Inspectorate in Prague and provided information on the results of an inquiry into the work of Czech consulates abroad
- findings from systematic visits to mental homes,
- the Defender's findings in the area of heritage preservation,
- the issue of noise and noise pollution from traffic,
- findings from the work of planning authorities and certain aspects of expropriation
- results of the inquiry into the mass taking of DNA samples in prisons,
- social and legal protection of children and failure to respect court decisions in the area of family law,
- persisting problems associated with public roads and obstacles on them,
- the institute of permanent residence and the problems associated therewith,

- information on the commitment of the Minister of Transport to commence review proceedings on erroneously fined citizens who have caused accidents in which they injured only themselves,
- the obligation of asylum seekers to pay regulation fees in healthcare facilities,
- the results of inspections of the safety of use of ammonia in winter arenas.

Journalists were given more than **40 press releases and statements** during the year.

The "***Registry Offices***" **miscellany** was a continuation of the successful series of collections of the Defender's statements and comments on selected themes. The miscellanies serve as a welcome methodological instrument primarily for civil servants, although there is also interest among citizens. The fourth miscellany, "***Pensions***", was prepared for printing at the end of the year. Furthermore, in connection with a workshop organised by the Defender, which was dedicated to the issue of the transposition of European directives in the area of joint asylum policy, the Defender issued the miscellany "***The Joint European Asylum System: Transposition of Directives***".

Czech Television broadcast 33 new episodes of what is already the **fourth series** of **A Case for the Ombudsman** programme. Czech Television commenced negotiations on continued cooperation given the enduring popularity of the programme.

All the media showed interest in the Defender's work throughout the year, as evidenced by the 3,291 printed or broadcast news items, articles and reports. TV channels reported on the Defender in 282 cases, while the Czech Press Agency publicised the Defender's work in 343 news releases. The Defender and his deputy appeared in television and radio broadcasts, giving interviews, participating in live broadcasting and discussions in studios, answered questions in online discussions on Internet news servers. The Defender also gave an interview to Austrian ORF television and the English service of Czech Radio. The CNN news network re-opened the case of Romani women's sterilisation in a documentary.

Interest in information available at the **Defender's website** continues to grow. 627,477 visits were logged, which is 100,000 more than in 2007. Again in 2008 the website retained the certificate of maximum accessibility for the blind and partially sighted and is authorised to use the international Blind Friendly Web logo.

3.2 INTERNATIONAL MEETINGS AND CONFERENCES

Meeting with judges of the Constitutional Court of the Lithuanian Republic

(Brno, February 27, 2008)

Theme: The relationship between the Constitutional Court and the Public Defender of Rights

Meeting with the Kyrgyz Ombudsman

(Brno, March 10, 2008)

Theme: Legal framework of the ombudsman in both countries, method of handling complaints, performing of inquiries

Meeting with deputies of the Romanian parliament

(Prague, April 21, 2008)

Theme: Human rights protection and functioning of the ombudsman's institute

Participation in the "*Modern Challenges to the Protection of Human Rights and Freedoms*" international conference

(Kiev, April 12 to 15, 2008)

Theme: Personal freedom, protection against terrorism and human rights protection

Participation at the "*20th Anniversary of Establishment of the Polish Ombudsman*" conference
(Warsaw, May 15, 2008)
Theme: Position of the ombudsman in democratic society

Meeting of "Visegrád 4" ombudspersons
(Bratislava, September 16 to 18, 2008)
Theme: Methods of ombudspersons' work, possibilities of further cooperation

Meeting with the representatives of the European Roma Rights Centre
(Brno, November 13, 2008)
Theme: Sterilisation of Romani women

Participation at the international conference "*Human rights – The promised land of law, but also fairness*"
(Sofia, November 17 and 18, 2008)
Theme: Current challenges in the area of human rights protection

Meeting with members of the Petitions Committee of the National Assembly of the Socialist Republic of Vietnam
(Brno, November 19, 2008)
Theme: Work and position of the Czech ombudsman

Meeting with the members of the Committee for Human Rights and Freedoms of the Parliament of Montenegro
(Prague, November 24, 2008)
Theme: Ombudsman's mandate, relationship of the ombudsman and the parliament

Participation in the international conference on the 60th anniversary of the Declaration of Human Rights
(Auschwitz, December 4, 2008)
Theme: The role of ombudspersons in modern society, remembrance of the victims of Nazism

Participation in the "*Freedom of expression, cornerstone of democracy – Listening and communicating in a diverse Europe*" international conference
(Paris, December 8 and 9, 2008)
Theme: Human rights and freedom of expression

3.3 CONFERENCES AND ROUND TABLE MEETINGS ORGANISED BY THE PUBLIC DEFENDER OF RIGHTS

"The Public Defender of Rights and Distraints"
(Brno, January 29, 2008)
Theme: Supervision over distraints, erroneous procedures of executors, legislative amendments

"Family and Child"
(Brno, February 25, 2008)
Theme: Rights of the child, removal of children, activities of the bodies of social and legal protection of children

"Consumer Protection"
(Brno, April 23, 2008)
Theme: Cooperation of state bodies in consumer protection, new phenomena in the area of consumer protection, role of consumer organisations

"Legal Regulation of Local (and Regional) Self-Government"
(Kroměříž, June 19 and 20, 2008)
Theme: Generally binding regulations, case law of the Constitutional Court

"The Common European Asylum System: Transposition of Directives"
(Brno, June 25, 2008)
Theme: Joint asylum policy of the EU

"Checking Observance of Employee Rights"
(Brno, October 7, 2008)
Theme: The role of labour inspectorates in the protection of employee rights, agency employment

"Social Housing"
(Brno, November 24 and 25, 2008)
Theme: Preventing the creation of socially excluded locations

Part II

RELATIONS WITH CONSTITUTIONAL AUTHORITIES AND SPECIAL POWERS OF THE DEFENDER

1. PARTICIPATION IN MEETINGS OF THE BODIES OF THE CHAMBER OF DEPUTIES

In the Chamber of Deputies, the Defender actively participated in the discussion of his new mandate stipulated in an amendment to the Courts and Judges Act (Act No. 314/2008 Coll.), which grants the right to the Defender to lodge a proposal for commencement of **disciplinary proceedings against any presiding judge and deputy presiding judge of a court**. The Defender had several presentations on this at meetings of the Constitutional and Legal Committee.

In relation to the other newly planned **mandate in the area of equal treatment and protection against discrimination**, the Defender also participated in meetings of the committees (the Constitutional and Legal Committee), as well as the plenum of the Chamber of Deputies. Although the Chamber of Deputies has not yet voted on the law which has been returned to the Chamber of Deputies in accordance with Article 50 (1) of the Constitution by the President of the Czech Republic for further discussion, the Defender declares that he is prepared to actively and responsibly attend to the new mandate.

The Defender also endeavoured in the Chamber of Deputies to ensure a **fairer calculation of the pensions of persons who care long-term for a relative dependant on care**. Although the draft amendment, in the drawing up of which the Defender was involved, was not adopted, the resulting situation where the amount of these persons' pensions will be calculated on the basis of the so-called allowance for care is seen by the Defender as an important step forward in comparison with the previous situation (in a majority of cases it will represent an increase of several thousand crowns for the given persons).

The hearings on the new **Police Act** (Act No. 273/2008 Coll.) was another case where the Defender submitted his proposals to the Chamber of Deputies. Here the Defender pointed out shortcomings in the regulations for the performing of medical examinations of detained persons and, in particular, the undefined relationship between handcuffing and other coercive measures (Sections 25 and 52 of the Police Act). However, the Chamber of Deputies did not accept these proposals. The Defender continues to insist on his conclusions and he is therefore again submitting a recommendation to the Chamber of Deputies to pass an amendment to the Police Act that would clearly resolve the relationship between handcuffing and other coercive measures.

2. PARTICIPATION IN MEETINGS OF THE BODIES OF THE SENATE

In the Senate, the Defender participated, in particular, in hearings on his 2007 Annual Report.

Furthermore, in the Committee on Regional Development, Public Administration and the Environment and the Committee on Economy, Agriculture and Transport, the Defender dealt with an **amendment to the Land Register Act** (promulgated under No. 8/2009 Coll.), which represents a significant limitation on the rights of citizens in studying the collection of deeds (studying will be possible only in the form of accepting a copy of the relevant document subject to a fee, and the applicant will also be obliged to prove his/her identity and state for what reason he/she wishes to "study" the deed in this manner). The Defender does not agree with the aforementioned regime of studying, in particular because a mere

studying of documents will not be possible in a number of cases as the applicant will not be able to specify the documents without studying them first. The Senate did not accept the Defender's proposal that the manner of studying the collection of deeds should remain in the existing form and did not pass the proposed amendment.

3. COMMENTS ON LEGAL REGULATIONS

The Defender used the possibility of commenting on legal regulations (he commented on **32** draft laws and decrees). His comments were concerned particularly with the following standards:

3.1 COMMENTS ON THE DRAFT AMENDMENT TO THE EMPLOYMENT ACT

The Defender's comments were primarily related to the relationship between the Employment Act and the draft Anti-Discrimination Act. Given that the Employment Act refers to the Anti-Discrimination Act which has not been passed to date, the Defender proposed that the draft be extended with a variant which would transpose the European "*Anti-Discrimination Directives*" into the text of the Employment Act. Furthermore, the Defender concentrated on issues associated with the registration of jobseekers (detailing of their obligations vis-à-vis labour offices, defining the circumstances under which a jobseeker may be excluded from the register, etc.). The Defender pointed out the problems associated with the unclear interpretation of the information jobseekers are obliged to provide to labour offices. The Defender proposed that the draft specify what information the jobseeker is obliged to provide, by what deadlines and what sanction he/she faces in case of failure to comply with the notification duty (the Defender also requested shortening of the period during which a jobseeker failing to comply with the notification duty will be excluded from the jobseekers register). The Defender also paid attention to the issuing of the so-called 'green card' for foreigners (the Defender stated that a foreigner's failure to submit a document on securing accommodation by the relevant deadline should not serve as grounds for annulment of permanent residence).

3.2 COMMENTS ON THE DRAFT AMENDMENT TO THE ENVIRONMENTAL IMPACT ASSESSMENT ACT

In the material, the Defender opined on the issue of assessment of the effect of the surface treatment of metals on the environment pursuant to Act No. 100/2001 Coll. The Defender proposed an adjustment of the assessment criteria based on the volume of the vessels used for the surface treatment of metals (the Defender proposes to leave it based on the treated surface only with respect to varnishing plants).

3.3 COMMENTS ON THE DRAFT AMENDMENT TO THE WASTE ACT

The Defender pointed out that the key thing from the perspective of the prevention of illegal waste management is to stipulate in more detail the monitoring of the movement of waste and its management in real time (i.e. in particular to interlink waste management records and the records on the operated facilities with those on the transport of hazardous waste, as well as continuous comparison and evaluation of the data from the aforementioned records).

3.4 COMMENTS ON THE DRAFT AMENDMENT TO THE PRICES ACT

The Defender supported an amendment to provisions of the Prices Act that prohibit the indication of incomplete prices (both generally and specifically in the provision of tours). Although a number of cases may be penalised already using an extensive interpretation of the existing provisions of the Consumer Protection Act (or the Advertising Regulation Act), the proposed change is welcome because the requirement for price completeness is expressly defined in it.

3.5 COMMENTS ON THE AMENDMENT TO THE DECREE ON COPYRIGHT FEES

The Defender generally pointed out, in particular, the fact that the difference between paper and data carriers is diminishing in today's information society. While the Copyright Act makes both "*traditional copy machines*" and "*CD burners*" subject to a fee, for the actual carriers of records/recordings it distinguishes between paper (not subject to a fee) and digital carriers (subject to a fee as unrecorded carriers). Yet the difference between the volume of data currently stored in one manner and the other has diminished to a considerable degree in the PC and Internet era.

The Defender pointed out some unjustified disproportions in relation to the charge on the data carriers; he pointed out in particular that some data carriers are made subject to a fee depending on their data capacity, while in other cases the unrecorded carrier is made subject to a fee as such (notwithstanding its data capacity).

3.6 COMMENTS ON THE PARLIAMENTARY DRAFT AMENDMENT TO THE NATURE AND LANDSCAPE PROTECTION ACT

The Defender disagreed on a matter of principle with the parliamentary draft. He pointed out that the control of public administration by the public and participation of the public in decision-making processes are important qualitative indicators of a democratic society, notwithstanding that participation of the public is also stipulated by the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention). For the aforementioned reasons, the Defender considers the attempt to reduce participation of civic associations in planning permission proceedings to contravene international obligations and the principles of the democratic state of the rule of law.

3.7 COMMENTS ON THE AMENDMENT TO THE PUBLIC HEALTH INSURANCE ACT

In addition to several technical recommendations, the Defender proposed removal of applicants for the granting of international protection from the obligation to pay regulation fees for the provision of health care. He repeatedly referred to the legally limited sources of income of the aforementioned group, which results in a situation where these persons do not have (and legally cannot have) sufficient means to pay regulation fees in the healthcare system.

3.8 COMMENTS ON THE AMENDMENT TO THE ACT ON FREE ACCESS TO INFORMATION

The Defender rejected the proposal that "*all information on administrative proceedings*" be excluded from the provision of information. An overwhelming majority of activities of the bodies of public administration,

which are the most important liable party, takes place in the form of administrative proceedings. Thus, exclusion of such information would in fact mean depletion of the right to information and extinction of this type of public oversight over public administration. The Defender also opined negatively on the proposal that as one of the requisites of a request for information, it would have to be stated in it that the applicant claims provision of the information pursuant to the Act on Free Access to Information. This, in the Defender's opinion, is excessive formalism, which is at variance with the objective of the Act on Free Access to Information.

3.9 COMMENTS ON THE AMENDMENT TO THE PUBLIC HEALTH PROTECTION ACT

The Defender proposed the adoption of legislation which would allow for the solving of situations where there are several sources of noise in a location that in themselves do not exceed the limits for protected spaces, but the exceeding occurs when they act concurrently. It would be expedient, according to the Defender, if the legislation were to stipulate the authorisation of the bodies of public health protection to impose measures upon the operators of noise sources aimed at a reduction of noise emissions.

3.10 COMMENTS ON THE TRANSPOSITION OF THE DIRECTIVE ON CREDIT AGREEMENTS FOR CONSUMERS

The Defender proposed consistent implementation of Art. 15 (1) of Directive 2008/48/EC of the European Parliament and of the Council on credit agreements for consumers and repealing Council Directive 87/102/EEC, consisting of automatic expiry of a credit agreement in case of withdrawal from the purchase agreement or a contract for the supply of a service. "*Misuse of disoriented consumers*" occurs in the Czech Republic as they can withdraw from a purchase agreement, but they continue to be bound (including interest and contractual fines) by the credit agreement, given the lack of interrelatedness between credit agreements and purchase contracts. Furthermore, the Defender proposed that a significant broadening of the powers of the financial arbitrator in disputes resulting from consumer credits be considered.

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** (Section 69 (2) of the Constitutional Court Act (Act No. 182/1993 Coll. as amended)) in proceedings on proposals to annul lesser legislation (usually generally binding decrees of municipalities). This year, however, the Defender also used his power stipulated in Section 64 (2) (f) of the Constitutional Court Act and lodged a **proposal for annulment of the so-called fire protection decree**. At the same time, the Defender has been asked by the Constitutional Court in some instances to give his legal opinion in proceedings on proposals for the annulment of laws (the Defender is not a party to these proceedings and acts only as ***amicus curiae*** – Section 48 (2) of the Constitutional Court Act).

4.1 PROPOSAL OF THE MINISTRY OF THE INTERIOR FOR ANNULMENT OF THE GENERALLY BINDING DECREE OF THE BUDYNĚ NAD OHŘÍ MUNICIPALITY NO. 2/2005 ON LAYING DOWN THE CONDITIONS FOR BURNING SOLID FUELS

In these proceedings, the Defender **disagreed with the Ministry of the Interior**, which holds the view that generally binding decrees must not overlap with the regulation stipulated in laws. Given that in the case concerned, the obligations concerning the burning of waste are stipulated in the Clean Air Protection Act, the Ministry of the Interior presumes that the obligations stipulated in the contested decree (e.g. the prohibition of the burning of fuels in boilers not designed for such fuels, prohibition of the burning of waste in open fires, etc.) are imposed at variance with the constitutional order.

The Defender holds the view that **municipalities are best aware of the local situation** and that there is no more suitable and apposite method of legal regulation of a local situation than the stipulation of rights and obligations by means of legal regulations issued by local self-governments. As opposed to the Ministry of the Interior, the Defender does not share the opinion that the regulations of regional self-governments absolutely must not overlap with the legislation. In the case concerned, **municipalities may also adopt generally binding decrees for environmental protection** (Section 10 (c) of the Municipalities Act). The Defender therefore proposed dismissal of the proposal of the Ministry of the Interior.

On the other hand, the Defender simultaneously criticised a provision of the contested generally binding decree, which prohibits "*the acquisition of boilers for burning solid fuels without a certificate of environmentally-friendly burning of the heat source*". The Defender holds the view in this case that by virtue of the aforementioned provision, **the municipality encroaches upon ownership title** when it prohibits an acquisition. **The acquisition** in itself **need not put the public interest of clean air protection or a private interest of persons at risk**. For the aforementioned reasons, the relevant provision of the generally binding decree unreasonably encroaches upon the constitutional protection of ownership title. The Defender therefore proposed annulment of the relevant article of the generally binding decree.

In its ruling of August 5, 2008, File Ref. Pl. ÚS 6/08, the Constitutional Court dismissed the proposal of the Ministry of the Interior and left the contested decree in force with the exception of the clause which prohibited the acquisition of boilers. For the latter case, the Constitutional Court stated that "*the very acquisition of an objectionable boiler does not cause deterioration of air in the municipality, and therefore stipulating the prohibition of its acquisition deviates from the legal framework*". To summarise, **the decision of the Constitutional Court corresponded with the Defender's view**.

4.2 PROPOSAL OF THE REGIONAL AUTHORITY OF THE CENTRAL BOHEMIAN REGION FOR ANNULMENT OF THE MNICHOVICE MUNICIPALITY ORDER NO. 2/2006 ON PROHIBITION OF CONSTRUCTION

The Defender submitted to the Constitutional Court his opinion that **an order of a municipality on the prohibition of construction is a measure of a general nature**, the **reviewing of which is**, pursuant to Sections 101a to 101d of the Court Procedural Code (Act No. 150/2002 Coll. as amended), **a competence of the Supreme Administrative Court**. The Defender therefore proposed dismissal of the proposal as the Constitutional Court lacks competence in this respect.

The Defender also concentrated on the issue of justification of the administrative acts by which the prohibition of construction was promulgated in the past. If the Building Act enabled the issuing of a decision on the prohibition of construction in two forms in the past (i.e. in the form of zoning permission

and in the form of municipality order), it was **necessary**, both based on the constitutional principle of equality and based on to the requirement for a fair trial in a broader sense, **that also the bodies of regional self-government incorporate into the municipality orders clear reasons due to which the prohibition of construction was promulgated**. They were also obliged to define the time during which the prohibition of construction applies.

Given that the municipality order on prohibition of construction did not specify any reasons making it possible to deduce whether the conditions for its promulgation were met, the Defender deduced that the order has a similar defect to the so-called "*unreviewable*" decisions in the sense of Section 76 (1) (b) of the Court Procedural Code. The Defender therefore stated that the order cannot be regarded as compliant with the law and the general requirements for the activities of the bodies of public administration resulting from Art. 1 of the Constitution and Art. 36 (2) of the Charter of Fundamental Rights and Basic Freedoms.

The Defender suggested that the proposal for annulment be complied with in case that the Constitutional Court deals with the matter on its merits.

4.3 PROPOSAL OF THE PUBLIC DEFENDER OF RIGHTS FOR ANNULMENT OF DECREE NO. 23/2008 COLL. ON TECHNICAL CONDITIONS OF FIRE PROTECTION OF BUILDINGS

The Defender submitted a proposal to the Constitutional Court for annulment of decree No. 23/2008 Coll. on Technical Conditions of Fire Protection of Buildings (the "*Fire Protection Decree*"), issued by the Ministry of the Interior effective from July 1, 2008. Among other things, the decree stipulates the obligation to furnish new houses with extinguishers and, for selected premises, smoke sensors.

According to the Defender, the Fire Protection Decree is at variance with the Constitution and the Charter of Fundamental Rights and Basic Freedoms and **private financial interests** are in fact hidden **under the term "*public interest*"**.

The Defender finds a fundamental shortcoming in the fact that a majority of the provisions of the **Decree refer to Czech technical standards**, which **are not commonly available** to the public and, more importantly, **are not available free of charge**. However, when an order includes technical standards in its text, the standards also become legal standards. If the latter are not available free of charge, such practice contravenes the constitutional principles, according to which legal standards must be accessible to everyone, publicly and free of charge.

Furthermore, the Fire Protection Decree imposes an obligation on the owners of buildings to obtain fire extinguishers, ensure their regular revisions and, in specified cases, to obtain also a smoke sensor. The author of the decree – the Ministry of the Interior – justifies this obligation by public interest in protection against the threat of ignition and spread of fire. It states that the decree is a response to the overall, statistically proven, adverse trend of fires in flats and houses and the associated deaths.

However, the official, available statistics of the Fire Rescue Service do not suggest any increase – the number of fires in the years 2003 to 2007 remains practically identical and so does the number of people injured. There was even a decrease in the number of deaths in 2007 in comparison with the previous years. The Defender also ascertained that there are no statistics proving that there would be less frequent fires and less damage to health and property in premises furnished with extinguishers and smoke sensors. The mandatory increase in the number of extinguishers in large premises (1 extinguisher per 200 m^2 of floor area compared with the original 400 m^2) in 2001 did not have effect on the overall fire statistics.

The Defender deduces from these facts that the imposition laying down of the obligation to obtain extinguishers for new houses is not justified and it only contributes to the interests of those who will profit from the obligation imposed in such a manner. The Ministry of the Interior itself confirms this as

it openly states in the justification report on the decree that "*the decree will have a positive effect on the activities of small and medium-sized entrepreneurs from the viewpoint of their involvement in the production, revisions and repairs of some types of products serving for fire protection of buildings*".

According to the Defender, the prevention of damage caused by fire **can be achieved using other methods** falling within the **private law** area, such as for example more favourable insurance terms.

In the case of the smoke sensors, the Defender also points out senselessness of the requirement that owners of private houses install the sensor in the "*part leading to the exit*". Fire usually originates in other parts of the house and if a fire occurred for example at night in the children's room with a normal door and separated from the vestibule and exit by another room, the children would suffocate or die in the fire before the sensor could respond to smoke.

Only the owners of new houses have the obligation to install extinguishers and smoke sensors. Thus, the decree is discriminatory by nature and the distinguishing between the owners of new and old houses once again generates doubts regarding the relevance of the "*public interest*" by which the stipulation of the obligations is justified. The Defender holds the view that if the state wanted to defend the property and health of citizens due to actual public interest, it would impose the obligation on everyone. It is the same as if the state stipulated an obligation to furnish only cars manufactured from a certain date with a first aid box.

The Constitutional Court has not yet made a decision on the Defender's proposal.

4.4 STATEMENT ON THE PROPOSAL OF THE SUPREME ADMINISTRATIVE COURT FOR ANNULMENT OF SECTION 124 (1) OF ACT NO. 326/1999 COLL. ON THE RESIDENCE OF FOREIGNERS IN THE TERRITORY OF THE CZECH REPUBLIC

With reference to Section 48 (2) of the Constitutional Court Act, the Constitutional Court addressed the Defender with a request for his opinion on the proposal of the Supreme Administrative Court to annul the aforementioned provision of the Act on the Residence of Foreigners, which entitles the Police to detain a foreigner over the age of 15 on the basis of an exhaustive list of reasons.

According to the Defender, detention represents a **serious interference with the right of free movement** and hence restriction of one of the most fundamental human rights. In that case, procedural guarantees must exist in order to ensure that personal freedom is not restricted arbitrarily. Section 168 of the Foreigners Residence Act excludes application in full of the Code of Administrative Procedure to proceedings pursuant to Section 124 of the Foreigners Residence Act. The Defender pointed out in this respect that the situation is further intolerable as Art. 5 (1) (f) of the Convention for the Protection of Human Rights and Fundamental Freedoms fully affects the proceedings pursuant to Section 124 of the Foreigners Residence Act.

The fact that a decision on **administrative deportation** (i.e. an exclusive and necessary background for detention, which represents interference with the right to free movement of a foreigner) **need not be made** (even provisionally), **during the entire period of detention of up to 180 days**, is regarded as most serious by the Defender. Although the Foreigners Residence Act imposes an obligation on the Police to make a decision on administrative deportation within 7 days from commencement of the proceedings, the aforementioned deadline need not be definitive. The law permits the Police to prolong it and only notify the detained foreigner thereof with specification of the reasons. Thus, the Foreigners Residence Act allows for a forcible interference with the right to free movement without deciding, at least without legal force, whether the foreigner has at all engaged in conduct constituting grounds for administrative deportation or, as the case may be, detention (the Defender has already encountered cases where the

administrative body of first instance did not make a decision on administrative deportation during the entire maximum period of detention of 180 (or 90, where minors are concerned) days).

The Defender supported the proposal of the Supreme Administrative Court for the above-mentioned reasons and awaits a decision of the Constitutional Court in the matter.

4.5 STATEMENT ON THE PROPOSAL OF THE SUPREME ADMINISTRATIVE COURT FOR ANNULMENT OF SECTION 171 (1) (C) OF ACT NO. 326/1999 COLL. ON THE RESIDENCE OF FOREIGNERS IN THE TERRITORY OF THE CZECH REPUBLIC

The Constitutional Court addressed the Defender with a request for a standpoint on the proposal of the Supreme Administrative Court to annul Section 171 (1) (c) of the Act on the Residence of Foreigners (Act No. 326/1999 Coll. as amended). The Defender opined on and supported the proposal on the basis of the aforementioned request. In the Defender's opinion, the proposal to annul Section 171 (1) (c) of the Foreigners Residence Act is justified as the relevant provision excludes decisions on administrative deportation from judicial review. **The absence of judicial review is incompliant with the international obligations of the Czech Republic in the area of the protection of fundamental rights and basic freedoms** which result for the Czech Republic from the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Defender welcomed the Constitutional Court's ruling (File Ref. Pl. ÚS 26/07), which annulled Section 171 (1) (c) of the Foreigners Residence Act. According to the aforementioned provision, foreigners present illegally in the territory of the Czech Republic were unable to bring decisions on deportation before courts. **The Constitutional Court concluded identically with the Public Defender of Rights that the aforementioned provision is at variance with Art. 36 (2) of the Charter of Fundamental Rights and Basic Freedoms**, according to which the review of decisions concerning the fundamental rights and basic freedoms may not be removed from the competence of courts. The Charter does not differentiate whether the foreigner is staying in the territory of the Czech Republic legitimately or illegitimately. This should not affect his/her fundamental rights and basic freedoms.

In the justification of the ruling, the Constitutional Court also referred to the European Court of Human Rights, which confirmed that the autonomy of the contracting states in decision-making on the deportation of a foreigner is always limited by the fundamental rights of these persons, e.g. the right to protection from any unauthorised intrusion into their private and family life, the right to life and the prohibition of torture and inhuman or degrading treatment or punishment the foreigner might face in the country to which he/she is to be deported.

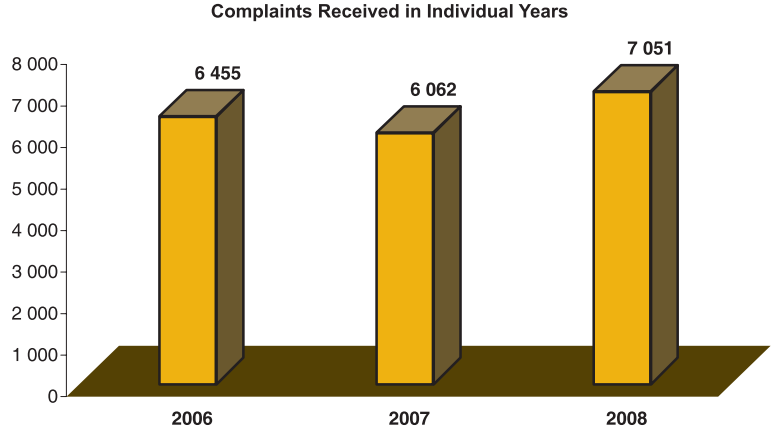
PŘÍJEM
PODNĚTŮ

COMPLAINTS RECEIVED BY THE DEFENDER

1. BASIC STATISTICAL DATA

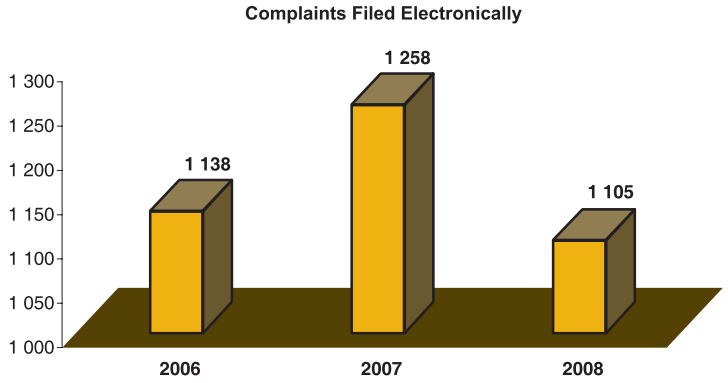
1.1 INFORMATION ON COMPLAINTS RECEIVED

The Defender received **7,051 complaints** in 2008. The Office of the Public Defender of Rights was **visited by 1,545 individuals in person**, of whom **706** used the option to compile **a complaint orally in a protocol** and 839 obtained legal advice on how to deal with a specific problem (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 of a single complainant received by the Defender while the file concerned is being handled. The bar graph below documents the comparison of the number of complaints received in previous years.



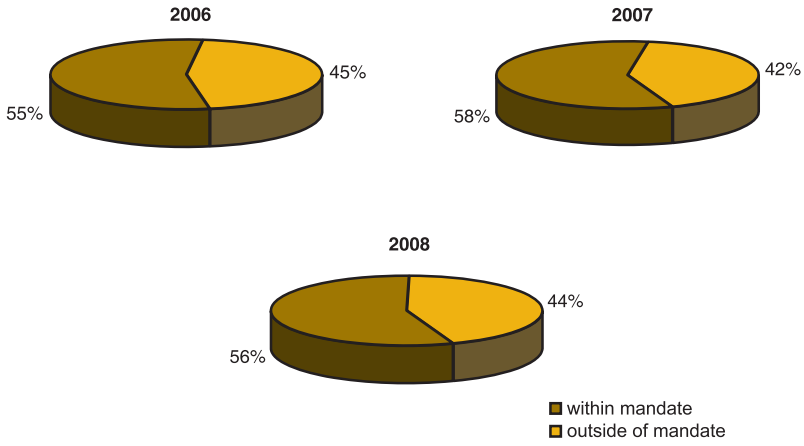
The information hotline available for requests for simple legal advice and queries regarding progress in handling a complaint was used by **5,672 people** last year.

Regarding the form of filing, the number of complaints filed electronically continues to rise year by year. **1,105 complaints** were delivered by standard electronic mail using the electronic registry in 2008.



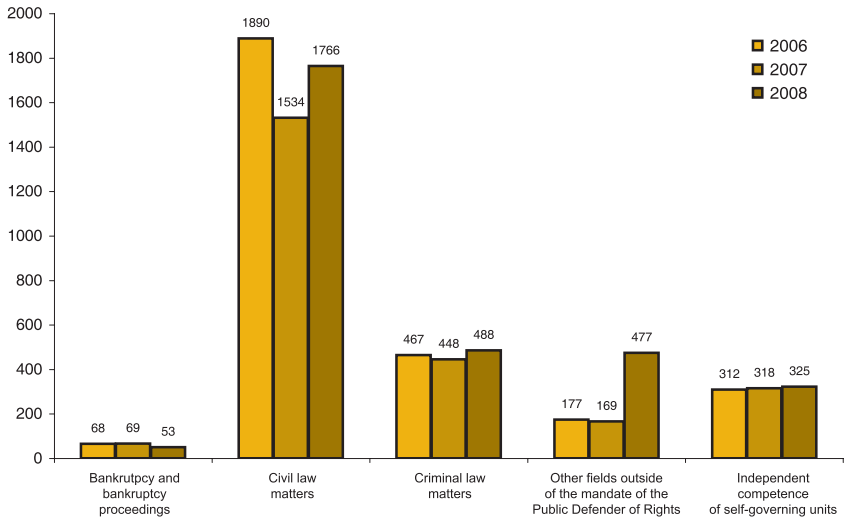
The structure of complaints in terms of the Defender's mandate did not change considerably in 2008 compared with the preceding years (see graphs). As in past years, complaints within the mandate of the Defender prevailed. 56% of the total in 2008 fell within the Defender's mandate, and **44%** of complaints outside.

Ratio of Complaints Within and Outside of the Mandate in Individual Years

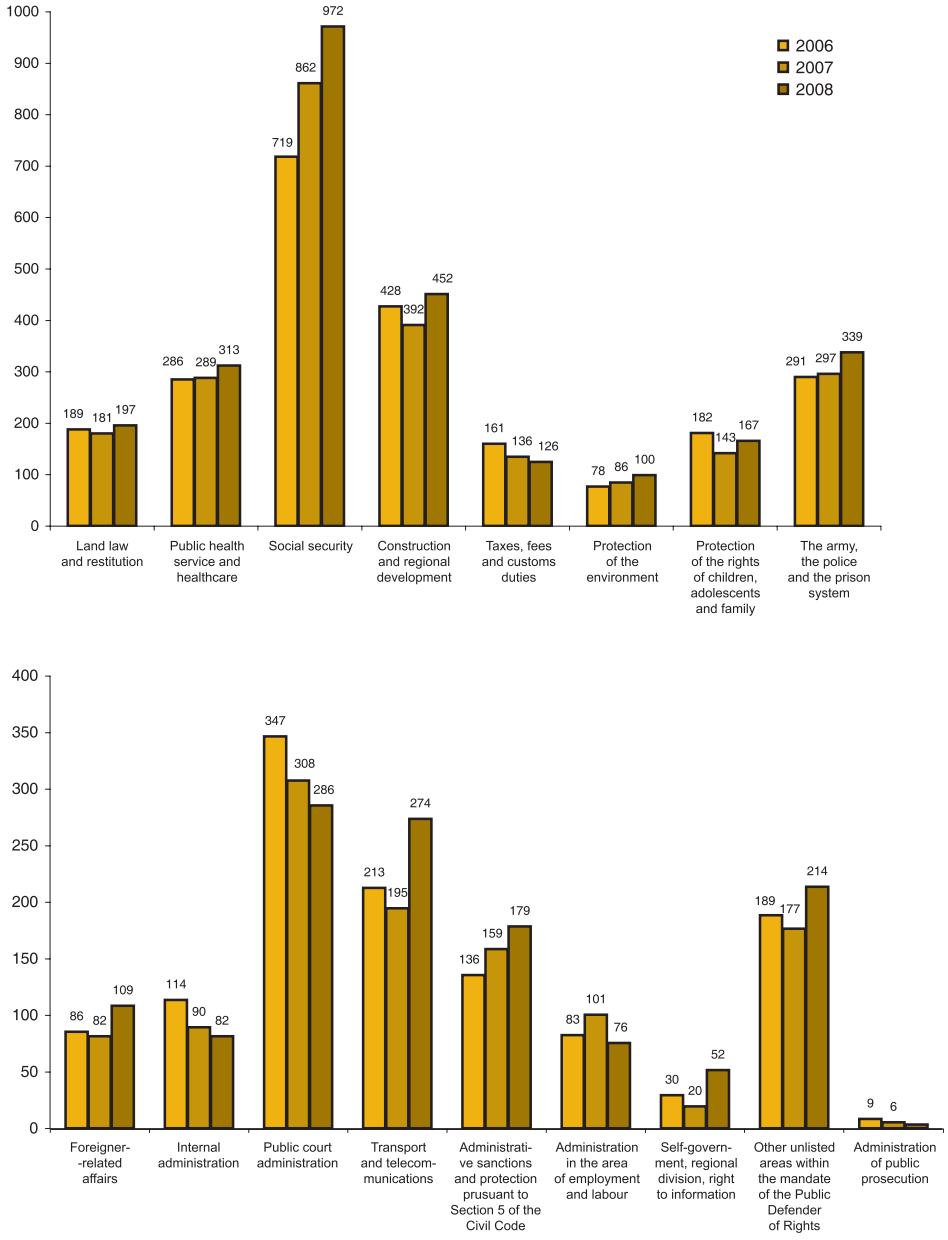


The complaints received by the Defender are classified not only in terms of his mandate, but **also in terms of individual public administration sectors**. The graph on the next page shows that most individuals commonly address the Defender in the fields of social security, the Building Code, the police,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

Complaints Received Outside of the Mandate in Individual Years by Area



Received Complaints Within the Mandate in Individual Years by Area



The Defender opened **755** inquiries in 2008, whilst using his entitlement to **open an inquiry on his own initiative in 29 cases**. The number of such inquiries remained approximately the same as in 2007 (**33** 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

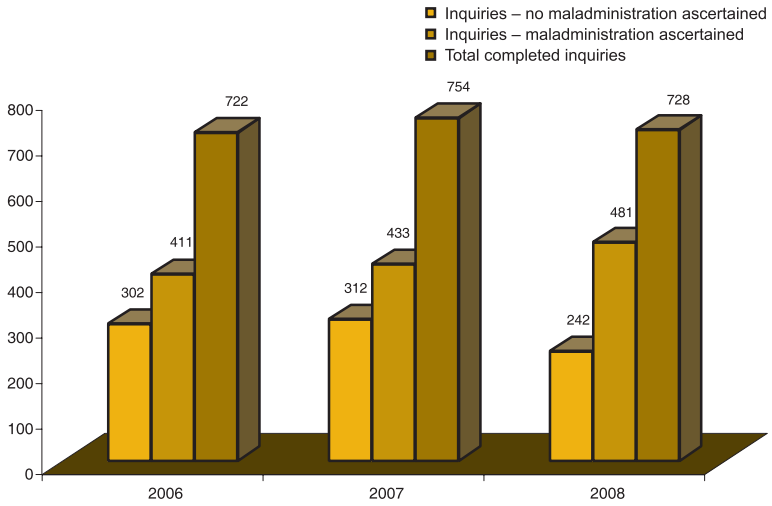
The Defender handled **6,978 complaints** in 2008. Of the complaints handled:

- **1,265 were suspended.** Suspension was primarily due to a lack of mandate. Fewer complaints were suspended as a result of failure to furnish the prerequisites of a complaint or as a result of an obvious lack of substantiation;
- **4,908 were explained.** The Defender provided the complainant with legal advice as to the further steps 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 **728 inquiries** in 2008:

- **242** were closed stating that the Defender's inquiry **had not ascertained any maladministration**;
- **481** were closed after the inquiry ascertained **maladministration by the pertinent authority**,
  - of these, the authorities took remedial measures following the **inquiry report** issued by the Defender in **401** cases;
  - authorities failed to take remedial measures and the Defender had to issue a **final statement**, including a proposal for remedial measures, in **74** cases (authorities' maladministration was thus remedied only upon the final statement);
  - the authority failed to remedy their maladministration even after final statement issue in **6** cases and the Defender therefore used his "*sanction*" power and notified a superior authority of the maladministration and informed the public.

Number of Inquiries, Number of Cases of Maladministration



The number of complaints handled in 2008 also includes **66 cases** where the complainants **withdrew their complaints** and **11 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 **4** so-called **files of particular significance** in 2008, which should result in a change in administrative practice in certain areas or creation of a legislative recommendation to the Government and the Chamber of Deputies. Information ensuing from this type of inquiry is contained *inter alia* in the commentaries on the individual areas of public administration and in Part VI of the present Report.

2. SELECTED COMPLAINTS AND COMMENTARIES

2.1 SOCIAL SECURITY

The disparate system of social benefits

The Defender has noted that the **system of social benefits** is **excessively complex** and that citizens are unable to find their bearings in it. State income support benefits (10 different benefits), material need benefits (subsistence allowance, contribution for housing and extraordinary instant assistance) and benefits for the disabled (7 benefits under the Social Security Act and the so-called allowance for care) are not paid at a single location. Various authorities, usually situated in different municipalities with different territorial competences, decide on them. Thus, for example, the delegated municipal authorities provide material need benefits, while applications for benefits for the disabled must be addressed to municipal authorities with extended competence. Unemployment benefits and state income support are handled by the labour offices in the former district towns.

The Defender finds the system excessively complex for ordinary citizens. Those for whom the benefits are intended are not (and cannot be due to the frequent amendments) aware of the legal regulations and **are unable to find their bearings in them**. In spite of the effort of the individual social workers to direct applicants to the correct authority, the Defender is addressed by people who do not know what benefit they can apply for or are entirely unaware of the existence of some benefits. In addition, social benefits are often used by elderly people or the disabled who, given their health, are unable to travel to all the relevant authorities and apply for the benefits.

The Defender would therefore welcome a **significant simplification of the system of social benefits**, which the Defender believes would contribute to a greater specificity of the benefits on the one hand and represent a considerable saving for the state budget on the other hand.

Joint assessment of the income of persons living in a single apartment

The Defender has been encountering problems since 2007 generated by the new definition of jointly assessed persons, which is based on the criterion of joint assessment of the incomes of persons sharing a single apartment (Section 4 of the Minimum Living and Subsistence Standard Act (Act No. 110/2006 Coll. as amended)). The applicable legislation anticipates that persons living together on a permanent basis also jointly cover their expenses. However, if parents and adult children live separately, incomes are not assessed jointly in relation to the material need benefits.

Thus, the new concept of jointly assessed persons impacts on the socially deprived unable to obtain "*separate housing*", adult children caring for their parents and parents caring for their adult disabled children. As a result, the **material need benefits** paid based on the amount of the joint income often **act against the principle of intergenerational solidarity** as they force children who for various reasons live with their parents and find themselves in a difficult social situation (due to lost employment, death of spouse/partner, divorce, etc.) to move away from the parents in order to be assessed separately.

The situation of a **single parent with a child** who shares a household with his/her parents (i.e. grandparents) is even more difficult. According to the Help in Material Need Act, the income of these persons is always assessed jointly if they live in the same flat (Section 4 (6), the second sentence, of the Minimum Living and Subsistence Standard Act). The Defender regards the consequences of the aforementioned provision of the law to be unfair. Had the parent not been "*single*", he/she would be assessed only together with the spouse/partner and their child, but not with the parents, even if they lived

in the same flat. He/she would also receive state assistance for him/herself and the child had he not lived with the parents at all.

In this respect, the Defender recommends the Chamber of Deputies adopt a **legislative solution** that would **eliminate the disadvantaging of single parents** in the joint assessment of persons for the purposes of material need benefits compared with the situation where two "*complete families*" (i.e. parents and a young family with a child) live together.

Payment of benefits by vouchers

The Defender has encountered a situation where, attempting to prevent misuse of social benefits, some municipalities **generally pay social benefits by means of vouchers**. However, contrary to the aforementioned procedure, the law admits the so-called combined payment of benefits (70% vouchers, 30% cash) only in individual cases, after it follows from the **specific social inquiry** that the monetary form of the benefit could be misused by the applicant for a purpose not permitted by the law. The Defender is critical of these procedures. They involve both a breach of the law and a display of inadequate social work with socially deprived citizens. The current general payment of benefits by means of vouchers supports various forms of usury and surreptitious traffic in vouchers.

Complaint File Ref.: 2/2008/SZD/ZG

The general introduction of the payment of material need benefits by means of vouchers to all persons registered as jobseekers for over 6 months is at variance with the Help in Material Need Act. The payment of benefits by means of vouchers can be commenced in individually ascertained cases where it is obvious that the recipient uses the benefit for some other purpose than that stipulated by the law. The body of assistance in material need is obliged to issue a notification of the change in the method of payment from cash to combined form (cash + vouchers), which may be subject to lodged objections.

The Defender opened an inquiry on his own initiative into the matter of payment of social benefits in combined form. As of March 1, 2007, the municipal authority in Litvínov had begun to pay material need benefits in the so-called combined form to citizens registered at the labour office for over 6 months. It had set a ratio of combined income of 70% by vouchers and 30% in cash for all recipients. The measure applied to approximately 1,300 people.

The Defender reprehended the municipal authority for commencing general payment without social work and without issuing administrative decisions on the change in the method of payment in individual cases. The Ministry of Labour and Social Affairs was also addressed with respect to the legality of the general use of vouchers, and the Office for the Protection of Competition in order to assess the selection of the "meal voucher company" from the perspective of the Public Procurement Act.

On the basis of the Defender's request, the Ministry performed its own inquiry and stated that benefits must generally be paid only in cash. The Ministry simultaneously pointed out that a municipal authority may pay social benefits in kind in cases where it is obvious from social inquiry that the recipient would not use the benefit for the intended purpose.

The Office for the Protection of Competition subsequently imposed a fine on the Litvínov municipality for incorrect procedure in the selection of the contractor of vouchers for persons in material need. According to the Office, the Litvínov municipality had committed an administrative infringement by failing to observe the legal procedure before conclusion of the agreement for the services associated with the sale of goods based on the vouchers, which could significantly influence the selection of the best bid. The

selection of the contractor had not followed a transparent public tender that would objectively document that the selected tenderer offere the best contractual terms.

Given that the Litvínov municipal authority did not agree with the Defender's conclusions and failed to ensure remedy, the Defender was forced to advise the superior authority and publicise the case.

Pensions

Amendment to the Pension Insurance Act

Fundamental changes were adopted in the area of pension insurance in 2008, in particular through Act No. 306/2008 Coll. (the so-called parametrical changes to pension insurance). Although a majority of these changes will come into effect as late as January 1, 2010, the Defender finds it necessary to mention them as he participated in the adoption of the law both at the stage of interdepartmental amendment procedure and at the stage of hearings in the Chamber of Deputies.

The aforementioned amendment helped achieve, in particular, a **fairer calculation of pensions for those caring long-term for a relative dependent on care**. The Defender proposed during the legislative process that the level of pension for these insurees be calculated similarly to that for the "*disabled since their youth*", i.e. that a minimum amount of pension be set for insurees who have cared for a relative dependent on care for more than 15 years. The proposal became part of a draft amendment by the Committee on Social Policy of the Chamber of Deputies.

However, another legislative solution was chosen during the legislative process. The Minister of Labour and Social Affairs supported the deputies' proposal resulting in a situation where the pension of these people will be calculated in a standard manner, whereby the personal assessment base will be **set based on the amount** of the so-called **allowance for care pursuant to the Social Services Act**. Thus, the law will introduce a fictitious state where the allowance for care is considered to be income.

In addition to solving the issue of the pensions of persons caring for a person dependent on care, the Defender succeeded, within the approval of the law on parametric changes in pension insurance, in promoting a number of positive changes aimed at strengthening the rights of the clients of the Czech Social Security Administration and raising their awareness. These include, for example, **introduction of the obligation** of the district social security administrations **to send** to the insuree **a counterpart of the assessment of his/her medical condition** within 7 days from the medical examination, and the possibility of a retrospective payment of premiums for substitute insurance periods.

However, changes in the Pension Insurance Act also bring certain adverse effects. **The conditions for considering the period of registration with a labour office to be a substitute insurance period** changed effective from January 1, 2009. While under the legislation effective until December 31, 2008 the period of registration during which the jobseeker did not receive material benefits, was considered to be substitute insurance period for a maximum of 3 years before arising of entitlement to pension, since January 1, 2009 registration is regarded as substitute insurance period for a maximum of 1 year after reaching 55 years of age. The aforementioned measure, with respect to which the Defender expressed fundamental disagreement in the amendment procedure, will adversely affect especially the partially disabled who were registered with a labour office and subsequently became fully disabled. In a majority of cases, these people, unless they have some other period of insurance, will fail to comply with the conditions for entitlement to a full disability pension and remain dependent on material need benefits in the long term.

Slovak pensions

Given the long-term attention paid to the issue of Czech-Slovak pensions, the Defender believes that it is necessary to mention the measures of the Ministry of Labour and Social Affairs, which constitute fundamental progress as they finally provide a concrete framework for practical implementation of the rulings of the Constitutional Court of the Czech Republic.

The entitlements of persons to whom the Agreement on Social Security between the Czech Republic and the Slovak Republic applies are currently **dealt with by means of three directives issued by the Czech Social Security Administration**. The directives cover primarily situations where the pension entitlements arose by May 1, 2004 (the date of accession of the Czech Republic to the European Union). Furthermore, they apply to situations where the pension entitlement arose after May 1, 2004, but the place of employment was in the territory of the Czech Republic as of December 31, 1992 (disintegration of the Czech and Slovak Federative Republic).

Unfortunately, the entitlements that arose after the entry of the Czech Republic into the European Union, if the insuree had his/her workplace in Slovakia, remain unsolved. The Defender continues to negotiate solution of these cases with the Czech Social Security Administration.

2.2 WORK AND EMPLOYMENT

In the area of employment administration, 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

The Defender was addressed by citizens in the past year with complaints about the conduct of labour offices that had excluded them from the jobseekers register. These involved performance of work that does not clash (employment, agreement to perform work, agreement to complete a job with a wage lower than one half of the minimum wage), the commencement of which had been reported by the complainants later than the Employment Act requires.

Furthermore, the Defender criticised the application of the previous Employment Act (Act No. 1/1991 Coll. as amended) by the labour offices in the exclusion of persons from the jobseekers register **due to a failure to report decisive facts**. Although the failure to report occurred in the cases concerned when the new Employment Act (Act No. 435/2004 Coll.) was already in effect, the authorities concerned ended registration in an informal manner, applying the old rules.

The Defender used the possibility of informing the Ministry of Labour and Social Affairs and the latter requested the authorities to prevent non-action and remedy the defective act.

Agency employment

In October 2008 the Defender opened an inquiry on his own initiative concerning labour inspectorates, aimed at reviewing their inspection activities in the area of observance of labour-law regulations by employment agencies. Within the inquiry, the Defender took a model case of a selected employer (an employment agency employing a large number of Mongolian nationals) and concentrated on the **consistency of the labour inspection authorities** and the **labour offices** in inspections of observance of the labour-law regulations and employment regulations.

Complaint File Ref.: 4452/2007A/OP/JB

If an inspection body ascertains maladministration when performing an inquiry at an employer, it is obliged to consistently ensure elimination of all the ascertained shortcomings. Otherwise the inspection inquiry performed cannot fulfil its purpose.

The Defender was addressed by Mrs H. L, with a complaint about the conduct of her former employer, the R. C. company in whose premises she had worked as a sales assistant. She stated that the employer had terminated her employment during her incapacity to work. Since the employer had failed to pay her the sickness benefit as well as the due salary for October 2005, she had addressed the Area Labour Inspectorate for the South Moravian Region and the Zlín Region and instigated an inspection. She had allegedly been advised by the Area Inspectorate in a letter that the inspection had ascertained non-observance of the obligations resulting from legal regulations by the employer. The complainant had received the due balance of the sickness benefits from the employer, but the latter had not issued her with an employment history certificate.

The Area Labour Inspectorate had ascertained maladministration by the employer based on a repeated inspection and ordered elimination of the ascertained shortcomings. However, it had been satisfied with formal advice of implementation of the remedial measures without requiring proof of complete elimination of all shortcomings. Thus, in spite of the inspection, the complainant had still not received the employment history certificate from the employer and had been granted the minimum amount of unemployment benefits (Section 51 of Act No. 435/2004 Coll. on Employment as amended) from the labour office due to failure to submit the employment history certificate.

The Defender considered the conduct of the authority to be inconsistent and proposed within the remedial measures that the authority perform a new inspection inquiry that would lead to satisfaction of all the entitlements of the complainant. The area inspectorate finally achieved remedy in spite of initial reluctance and the employer issued the employment history certificate to the complainant.

2.3 FAMILY AND CHILD

Parents' disputes regarding contact with their children

In connection with inquiries into the complaints of parents who are denied contact with their children, the Defender repeatedly encounters shortcomings in the conduct of the authorities for the social and legal protection of children (hereinafter also the "*ASLPC*"). The Defender reprehends these authorities, in particular, for only **sporadic use of all the competences** entrusted to them by the law. The Defender refers to the fact that the ASLPC fail to consult and do not impose an obligation to submit to family therapy, admonition or supervision over upbringing. Instead, the Defender often encounters cases where the parents' "*post-divorce disputes*" are resolved as late as in escalated situations as a result of the helplessness of the ASLPC, and solution is found in submission of a motion for ordering a preliminary injunction pursuant to Section 76a of the Code of Civil Court Procedure (Act No. 99/1963 Coll. as amended) on placement of the child in an emergency facility. The Defender holds the view that the ASLPC often opts for such a solution without first considering in a qualified manner whether it is suitable in the case concerned and whether it corresponds with the needs and psychological condition of the child.

Entrusting a child to the care of the broader family

If neither of the parents is able to care for a child, immediate care must be ensured. In a number of cases, however, the ASLPC is unable to immediately identify a family member willing to assume care of the child

and is forced to resolve the matter by temporary placement of the child in a facility for children in need of instant aid. However, according to the Defender's opinion, the **ASLPC** is also **obliged to search out and contact the members of the wider family on its own initiative** and actively cooperate with them in the issue of entrusting children to care immediately after submitting the motion for ordering a preliminary injunction.

Nor does the Defender accept the argument that ASLPC personnel will begin an inquiry into the conditions of the members of the wider family only after the latter show an interest in taking the child, and any subsequent activity of the ASLPC in the matter cannot justify its previous inactivity. Given that it clearly follows from the law (Section 46 (2) of the Family Act (Act No. 94/1963 Coll. as amended)), that care by the family should be preferred to institutional care, it is an obligation of the ASLPC to check the possibility of placement of the child into the care of the broader family immediately after submitting a motion for ordering a preliminary injunction. The same conclusion can be deduced from Article 8 (1) of the Convention on the Rights of the Child, which states the child's right to preservation of its family relations.

Placement of children in alternative family care

The Defender was confronted with cases associated with decision-making on entrusting a child into pre-foster care (or pre-adoption care). Although the entrusting of a child into foster care is generally a more favourable instrument of ensuring alternative family care than entrusting it into institutional education, the Defender still had to express reservations regarding the conduct of the ASLPC. The aforementioned form of alternative family care is not always appropriate for the child. It is necessary that the state authorities carefully consider the circumstances of the case concerned.

The Defender stated in this respect that it is not appropriate to entrust children into foster care in a situation where the parents obviously show an **interest in improving their conditions after which they will be able to return the children into their care**, maintain regular contact with the children and are interested in short-term stays of the children in the family. In these cases, perhaps only temporary foster care ("*professional foster care*") would be conceivable. The Defender is aware that there is little interest in the latter form of alternative family care (foster care is usually perceived as a preliminary to adoption), but this means the state authorities should pay more attention and provide more support for it.

The Defender sees it as fundamental that **parents and foster parents** be **informed** of all the consequences of entrustment and the mutual rights and obligations before the actual decision on the entrustment of a child into pre-foster care. In cases where there is functioning contact of the children with the parents, the foster parents should be informed of the need to maintain the mutual contact. The ASLPC also have an obligation to monitor observance of the right to mutual contact and whether the foster parents unreasonably deny the contact.

Exercise of Institutional Education in Homes for Handicapped People

The Defender dealt on his own initiative with the situation in homes for handicapped people. The Defender stated within the inquiry that the heads of these facilities should place more emphasis on observance of the **Standards of Quality in Social Care**. Handicapped children should be attended to by qualified personnel trained in alternative and augmentative **methods of communication**. Another fundamental recommendation of the Defender involved placement of the children based on their specific characteristics so as to avoid cohabitation conflicts. Joint placement of autistic children and children with Down's syndrome is inappropriate as each of the two groups requires an entirely different approach and care.

An incoherent combination may result in increased demands on employees and, in particular, it is unfit in terms of the quality of care and development of the children.

Complaint File Ref.: 3781/2007A/OP/HVZ

An efficient procedure for the case of a breach of children's rights must be in place in a facility for handicapped children.

The employees of the facility can be reasonably required to be trained in alternative methods of communication.

The Defender performed an unannounced local inquiry in the Horní Poustevna Integrated Centre for Handicapped People (the inquiry was concerned with autistic children and children with Down's syndrome).

The Defender stated that autistic children should be attended to by a standing team of carers with a command of alternative methods of communication, and criticised the lack of personnel for the services and the failure to submit basic documents on specific professional profiles and qualification or personality requirements for employees.

Furthermore, the Defender stated that given the incompatibility of the two handicaps, it is inappropriate to place autistic children in the same room as children with Down's syndrome as each group needs an entirely different approach and the non-uniform composition of the children places increased demands on the employees.

The head of the facility performed the following changes after the Defender's inquiry: 1) created a separate household for autistic children; 2) strengthened the team with experienced personnel trained in alternative communication; 3) the schedules of duties were drawn up in accordance with the Labour Code; 4) cooperation was established with a foreign university; 5) all employees passed an accredited course for social care workers; 6) all documentation is kept in accordance with the social care standards and the information in it is kept according to the Personal Data Protection Act.

The Defender considered the aforementioned measures to be sufficient and he therefore closed the inquiry.

Office for the International Legal Protection of Children

The Defender has been repeatedly addressed by parents in the matter of the conduct of the Office for the International Legal Protection of Children (hereinafter the "*Office*") in the claiming of child allowance and in the procedure of the Office in proceedings on international child abductions. In this respect, the Defender perceives **the issue of conflict custodianship** as one that has been unresolved to date. The Defender is aware that rather than the Office, which protects the interests of one of the parents under the law, the locally competent ASLPC was appointed conflict custodian in some cases. However, there have also been a number of cases where the courts appointed the Office and the Office did not appeal against the relevant resolution. However the Office cannot be a conflict custodian as there is conflict of interest. The Defender therefore finds it desirable that the issue of conflict custodianship be dealt with legislatively.

2.4 THE PUBLIC HEALTH SERVICE

Complaints against healthcare

The Defender has encountered cases where citizens pointed out, in particular, non-observance of the deadlines set by the rules for handling complaints. The authorities (regional authorities, the Ministry of Health) often failed to advise complainants of the reasons for **exceeded deadlines** or did not provide information on all the findings and conclusions reached within the inquiry into the complaint. Cases where regional authorities unjustifiably referred complainants pointing out the **unethical conduct of a doctor** to the Czech Medical Chamber to handle their complaints, in spite of the fact that they have the authority to inquiry into such complaints, were rated as serious maladministration by the Defender.

The handling of these complaints is also adversely affected by a lack of uniformity in the procedure of the individual bodies of public administration, because **there is no regulation for handling complaints in the provision of healthcare** after the annulment of the governmental decree for the handling of complaints. Thus, in the handling of complaints, the Ministry of Health and the regional authorities proceed according to their internal regulations, but the latter usually set longer deadlines than the deadlines citizens were previously used to. Since the Ministry of Health has prepared a draft new law on health services, which also stipulates the handling mechanism for this type of complaint, the Defender did not request adoption of measures for unification of the existing practice.

Issuing of copies of medical assessments

In spite of the amendment to the Public Healthcare Act, which expressly addressed the right of the patient to view his/her medical records, as well as the right to acquire extracts, duplicates and copies of these documents, the Defender still encounters complaints which point to a failure to respect this right.

The complaints were concerned with the **refusal to provide a copy of a report** drawn up by an independent expert for the purpose of evaluation of healthcare, as well as refusal to provide copies of minutes of meetings of expert commissions. The Defender ascertained that implementation of the rights of patients may be problematic as some authorities do not handle requests in accordance with the applicable legal regulations. The Defender also repeatedly encountered **unwillingness of authorities to advise the patient of the name of the expert** who prepared the expert report. Yet this information is fundamental for the patient in order to verify whether the medical expert is really independent of the healthcare provider concerned.

Complaint File Ref.: 2501/2006/VOP/EH

At the patient's request, the Ministry of Health is obliged to provide a copy of the expert report drawn up by an expert for the purpose of examining her complaint about the provided healthcare.

The Defender inquired into the complaint of Mrs D. P. directed towards the Ministry of Health concerning the failure to handle her request for the provision of a copy of an expert report drawn up for the purpose of inquiring into a complaint about healthcare.

The Defender ascertained that the Ministry had refused the patient's request for provision of a copy of an expert report and offered her only a chance to study the report. Later the officials showed willingness to provide a copy of the report, but without the name of the author. They justified their conduct by the need to protect the personal data of the author of the report. The patient was therefore unable to verify whether the author of the report was a person independent of the medical facility concerned and/or whether he/she was an unbiased person.

The Defender criticised this conduct and requested the Minister disclose the name of the author of the report. The Defender holds the view that refusal to provide a full report is unsubstantiated from the perspective of personal data protection, since the exemption stipulated in Section 5 (1) (f) of the Personal Data Protection Act (Act No. 101/2000 Coll. as amended) applies to this case. The author of the report enters the position of an "employee of public administration" as he assesses the complaint only on the basis of an authorisation from an authority and thus becomes the recipient of public funds. Keeping the name of such a person confidential is therefore not justified.

The Office for Personal Data Protection agreed with the Defender's standpoint. Given that the Minister of Health repeatedly did not comply with the Defender's requests, the Defender is considering the adoption of sanctions in this case (publicising the case).

Copies of medical records and applications for certificates

The Defender also received complaints referring to the unreasonably high **fee for the making of copies of medical records** in some hospitals. The aforementioned procedure in fact results in inaccessibility of the records for patients or persons related to a deceased patient. The Defender disagrees with this conduct and addressed the Ministry of Health and the Ministry of Finance with a request for them to deal with the issue.

Allowance for a gluten-free diet

The Defender ascertained that the Czech Republic supports celiacs less than many other European countries. The state contributes to the diet only for those in material need although the costs of a gluten-free diet are approx. 2,400 CZK per month higher than for a normal diet. The prevention funds created by health insurance companies to cover care are the only option available to sufferers. The Defender addressed the heads of health insurance companies in connection with several complaints from celiacs with a request that they consider contributions to a gluten-free diet within their preventive actions.

Most of the heads of the health insurance companies responded to the Defender's request by stating that they would adjust their healthcare policies so that their insurees can draw on funds from the prevention funds also for the purchase of gluten-free food.

2.5 COURTS OF LAW

The Defender addressed the Minister of Justice in June 2008 with his current findings in the area of public court administration (in particular the agenda concerning the handling of complaints about delays in court proceedings), requesting his statement on selected issues and an outline of the steps the Ministry of Justice could take for their remedy. In particular the following areas were concerned:

Delays in drawing up expert reports

The Defender advised the Minister of some of the reasons for delays in court proceedings, in particular delays caused by court experts in drawing up expert reports and the issue of **excessive use of expert reports**. He also mentioned that the quality of expert reports is often very dubious and the Defender has even encountered several complaints about a report exceeding the expert's qualification.

The Minister of Justice informed the Defender that the Ministry is aware of the poor situation in the sector of experts and interpreters and that it had therefore prepared an amendment to the Experts

and Interpreters Act (Act No. 36/1967 Coll. as amended), which was submitted to the Government in November 2008. The amendment should resolve the current problems as soon as possible and work on an entirely new law on experts and interpreters should be initiated subsequently.

Complaint File Ref.: 1872/2007A/OP/DL

The length of proceedings must be regarded comprehensively, because the preparation of expert reports is almost always accompanied by the sending of the entire file to the appointed expert and while the file is with the expert, the court is virtually unable to perform any other acts in the case. Emphasis should thus all the more be placed on a timely drawing up of the expert report and the court is obliged to ensure that delays do not occur in spite of the considerable workload on experts. The Defender dealt with the complaint of Mrs V. M. about delays in court proceedings on the settlement of divided co-ownership before the Litoměřice District Court. The complaint was concerned primarily with delays in the drawing up of an expert report (staking out the limits of a plot of land).

The proceedings in the matter commenced on June 29, 2004, and an expert was appointed in 2006 for the purpose of drawing up an expert report in the area of geometry and cartography. Although the court set a deadline of 2 months for the drawing up of the expert report, the latter was finally delivered to the court as late as April 2007 (after 12 months). The Defender rated the situation as unacceptable from the perspective of smooth proceedings and stated that it would be appropriate to check first with the addressed expert whether he/she is able to draw up the report by the required deadline or, as the case may be, request information from more experts.

On the basis of the aforementioned findings, the court's presiding judge criticised the judge in charge for the significant delays in the drawing up of the expert report. The expert's fee was decreased in connection with the unreasonable period of drawing up the expert report. The presiding judge also discussed the issue of delays in the drawing up of expert reports with all the judges of the relevant district court.

Designation of complaints about court delays

In the period under review, the Defender repeatedly opined on the question of whether a case should be dealt with as a complaint under the Courts and Judges Act (Act No. 6/2002 Coll. as amended), as a request for information, as a request for legal assistance or as an enquiry concerning the progress of proceedings. The Defender also advised the Minister of Justice that **many complaints about delays in court proceedings are inserted into court files** without being administered in line with the Courts and Judges Act.

The Minister stated on these findings that he is aware that the aforementioned conduct is not exceptional and agreed with the Defender's opinion that failure to respond to complaints about "*court delays*" is wrong.

In this respect he pledged to perform measures consisting in discussion of the issue with the presiding judges of regional courts.

Acquiring photocopies of files

The Defender also advised the Minister of cases where the complainants (as parties to proceedings) were not permitted to acquire photocopies of documents from the file with their own digital camera.

The Minister informed the Defender that effective from January 1, 2008, the issue of acquiring personal photocopies of court files was included in the Instruction of the Ministry of Justice, issuing

the internal and office rules for district, regional and supreme courts (Instruction Ref. No. 505/2001-Org as amended). Section 190 (3) newly reads: "***The parties to proceedings**, their legal representatives or persons authorised by them **may make copies of the file or its parts using their own technical means** (e.g. camera) at their own cost provided that the file is not damaged*."

E-mail filings with courts

Apart from the areas of which the Minister of Justice was informed, the Defender also dealt with a case where the court administration **failed to register a complaint sent by e-mail without a certified electronic signature**. According to the Defender, in the case concerned the court inadequately informed the public of the requisites of electronic filings as it was not expressly specified on the website that the court's filing room accepts only electronic filings provided with an electronic signature. The presiding judge of the relevant court promised to supplement the website with the aforementioned information and apologised to the complainant for the inconvenience.

Delayed payment of remuneration to attorneys-at-law, experts and interpreters

The Defender received several complaints referring to the delayed payment of remuneration from a court's budget (remuneration of attorneys-at-law for *ex officio* defence, expert fees, interpreter's fees). The cause of these lasting problems is a lack of funds in the budget of the Ministry of Justice, as the rising mandatory expenditure of courts are not taken into consideration by the Ministry of Finance. The Defender stated that it was impossible for him to deal with the situation directly, but he drew the attention of the Chamber of Deputies to the issue concerned within the regularly submitted information on his activities.

The public nature of court hearings

The Defender has also dealt with cases where a judge required disclosure of personal identity data from public representatives present in the courtroom. The judge subsequently dictated out loud the names of these persons in the protocol and even required the proving of identity by means of an identity card. If the person concerned refused to prove his/her identity, he/she was escorted from the courtroom by the judicial guard. The Defender identified the aforementioned procedure of the judge as extremely inappropriate and appealed at a meeting with the presiding judges of the district courts of Prague for all judges to be emphatically advised of all aspects of the **participation of the public in court hearings**. The Defender also stated that the aforementioned practices (recording names in the protocol or requiring an identity card from the public) obviously run counter to the constitutionally guaranteed principles of the public nature of court hearings and are outside the applicable legislation. Presiding judges should take this fact into account when handling complaints about the conduct of a judge.

New mandate of the Defender – disciplinary action

An amendment to the Courts and Judges Act (Act No. 314/2008 Coll.) came into effect on October 1, 2008, which newly granted to the Defender the right to submit a motion for commencement of disciplinary proceedings against any presiding judge and deputy presiding judge.

In case of fundamental doubt as to whether the presiding judge or deputy presiding judge of a court is discharging his/her office properly, the Defender will be able to submit a motion for commencement of disciplinary proceedings. The new mandate will enable the Defender to deal with the work of the presiding judges and deputy presiding judges of courts from a more general perspective than to date. A court official may be punished, depending on the severity of the disciplinary violation, by a reprimand, denial of an increase in salary coefficient, a salary decrease or even dismissal as chair (deputy chair).

2.6 CONSTRUCTION AND REGIONAL DEVELOPMENT

Zoning

In the area of zoning, people addressed the Defender with their complaints about new zoning plans and changes in the applicable zoning plans.

In this respect the Defender had to inform those affected by a change in a zoning plan that the new Building Act (Act No. 183/2006 Coll. as amended) has introduced **financial compensation** for changes in a territory that limit ownership title, but the compensation cannot be paid as the legislators postponed the effect of the provision on compensation to January 1, 2012.

On the contrary, the Defender perceives positively the **power of the Supreme Administrative Court to review zoning plans** issued in the form of measures of a general nature. The Defender had since 2001 systematically focussed on the protection of the owners of real estate who had no remedial measure at their disposal, on the basis of which they could bring about the review of a zoning plan by an independent body. Experience to date confirms that serious maladministration sometimes occurs in the zoning process, which cannot be remedied even by the superior body of zoning. The Defender therefore welcomed the newly designed authority of the Supreme Administrative Court. The Defender simultaneously believes that the review authority of the Supreme Administrative Court should be applicable also with respect to zoning plans approved before the end of the year 2006 (i.e. under the old Building Act effective until December 31, 2006).

Requirements for Regional Development

The Ministry for Regional Development is currently obtaining the so-called Regional Development Policy, a fundamental strategic document concerning the construction development of the entire Czech Republic. It has the objective of determining requirements for specification of the tasks of zoning in nationwide, trans-boundary and international contexts, in particular with regard to the sustainable development of the different territories. The Policy simultaneously determines the strategy and basic conditions for fulfilment of the aforementioned tasks.

Taking into account the importance of the document, the Defender finds it necessary that the Ministry for Regional Development duly address the comments of the public raised during the process of preparation of the material. In this respect the Defender critically commented on the fact that the Ministry has not paid sufficient attention to the **publicising** of this **strategic document**. Only two meetings were summoned for the purpose of discussing it with the public. The Defender holds the view that the Ministry for Regional Development should inform citizens much more broadly through the media.

The Defender also points out in connection with increasing noise pollution that the zoning authorities should refer to the produced noise maps in drawing up zoning documentation. **Strategic noise maps** are obtained by the Ministry of Health pursuant to the Public Health Protection Act (Act No. 258/2000 Coll. as amended) for major surface communications, railways, airports and agglomerations. The information gathered in this manner should, according to the Defender, be taken into account in zoning.

Noise from factory complexes and restaurants

Combined noise from several sources constitutes a considerable problem in the area of protection from noise. In practice, several operations of various owners within a single industrial complex sometimes generate a combined noise that exceeds the noise limits.

The overall effect of all these sources of noise impacts on the health of the public although none of the individual noise sources in itself exceeds the noise limit. In that case, the regional health authorities

should primarily attempt to conduct informal negotiations with the operator participating in the noise increase and direct them to a voluntary adoption of measures on each of the sources. It is also possible to consider simulated noise measurement where the individual sources are gradually put into operation and it is ascertained whether exceeded noise limits can be proven for any of them.

The Defender also registered an increase in complaints concerning **noise from music in restaurants and bars** in the summer. The Defender had to state inactivity or other maladministration by planning authorities in several cases and point out the pertinent issue of competence conflicts between planning authorities and regional health authorities in the handling of complaints about noise from restaurants.

Furthermore, the Defender repeatedly encountered a non-uniform interpretation of the term "*music performance*". The Defender remarks in this respect that reproduced music is of course also "music performance", which is to be taken into consideration by planning authorities and health authorities in the process of permitting construction projects. The Defender insists that if technical facilities for the playing of reproduced music are installed in premises without there being permission for the operation of music performance in the final building approval, the Building Act is breached. The Defender proposes for the purpose of elimination of the non-uniform interpretation of the term "*music performance*" that the Ministry for Regional Development and the Chief Health Officer provide for this issue in the uniform methodology intended for planning authorities.

Complaint File Ref.: 1744/2008A/OP/TM

Reproduced music is also "music performance", which must be taken into consideration by the planning authorities and the bodies of public health in the process of permitting construction projects. If technical facilities for the dissemination of reproduced music are installed in premises without there being permission for the operation of music performance in the final building approval, the Building Act is breached.

The Defender was addressed by Mr P. A. with a request to review the conduct of the planning authority in Mladá Boleslav regarding the handling of his complaint about noise from a bar and gambling house in the apartment house where the complainant lived. The complainant referred to noise, among other things, from the jukebox.

The Defender opened an inquiry into the issue; it followed from the reply of the planning authority that both premises had undergone "re-approval" from being a former food shop. A plan for operating music performance (the installation of a jukebox) was indicated neither in the attached documentation nor in the binding report of the district health officer.

The planning authority stated that it had been unable to ascertain whether the project under review could serve the purpose requested by the construction owner given the absence of a plan for operating music performance. Nevertheless, the planning authority adopted a position in connection with the music performance that it was not competent to deal with the furnishing of premises (for example the installation of TV sets, radios, jukeboxes and other music reproduction facilities), and if there is no breach of the safe noise limits, the observance of which is supervised by the regional health authority, such use is not at variance with the Building Act.

The Defender rejected the aforementioned arguments and stated that if technical facilities for the playing of reproduced music were identified in the premises without regulation of the operation of music performance in the final building approval, the Building Act is breached and the planning authority is competent to remedy the situation.

The planning authority subsequently performed construction supervision resulting in a request for remedy. After receiving no response, the planning authority initiated sanction proceedings on an offence and administrative infringement based on a breach of the Building Act.

Heritage Preservation

The Defender states that some adverse phenomena he has previously encountered in the area of heritage preservation are of a long-term nature and result from imperfections in the State Care of Monuments Act (Act No. 20/1987 Coll. as amended).

The Defender continues to encounter **non-uniform performance of state heritage preservation**, in particular in the approval of planned construction projects in sites with a valuable urban design. The Defender addressed cases where the National Institute of Cultural Heritage repeatedly expressed disagreement with a construction project, and yet the construction owner obtained a planning permit based on a positive standpoint on the construction from the municipal authority. The public justifiably asks in such cases why two separate institutions act in parallel, often with an entirely different view of a planned construction project. Although a statement of the National Institute of Cultural Heritage as the expert organisation is one of the underlying documents for issuing a binding standpoint by the municipal authority, it is not binding upon the latter. However, in the Defender's opinion, failure to respect the opinion of the expert organisation in heritage preservation without detailed substantiation of the differing procedure by the municipal authority is detrimental to heritage preservation and counter to the meaning of heritage preservation institutes as such.

Complaint File Ref.: 4829/2007A/OP/MH

It is the obligation of the state to ensure through its bodies the proper exercise of heritage preservation. Permitting a construction project despite disagreement of an expert heritage institution expressed three times can be regarded as breach of the principles of good administration.

Based on a complaint from Mrs Z. K., the Defender performed an inquiry into the construction of multifunctional premises on Šalda square in Liberec.

The Defender reprehended the planning authority for losing the file and he simultaneously wondered at a failure to respect the repeatedly expressed disagreement of the National Institute of Cultural Heritage with the proposed construction project.

The Defender stated that although the binding standpoint of the Liberec Municipal Office is decisive for the planning authority, the repeated disapproval of the National Institute of Cultural Heritage as the expert organisation in the area of state heritage preservation should have been respected. Therefore, the planning authority should have invited the investor and the Liberec municipality to open a discussion on the possible changes in the proposed construction project that will fundamentally influence the overall appearance of the city.

The state bodies concerned unfortunately did not respect the Defender's opinion and the Defender was forced to publicise the case in the media.

The Defender has also noted cases suggesting persisting pressure for the overuse of historic parts of cities. One of the methods of intense usage of city centres consists of general permitting of attic flats in historic premises, including cultural heritage, accompanied by the need to ensure parking places, which are logically scarce in historic developments. The consequences include **overloaded historic centres** and

the fact that the difference between the protection of cultural heritage and the other premises forming heritage reserves and zones has become indiscernible as extensions to premises subject to heritage preservation intended for housing are permitted.

The Defender continues to point out the **restrictions on the owners of real estate in heritage zones and reserves**, who, unlike the owners of cultural heritage, are not entitled to a financial contribution for the preservation of culturally and historically valuable premises, and it can be stated that the restriction imposed on them is not compensated by the law in accordance with Art. 11 (4) of the Charter of Fundamental Rights and Basic Freedoms.

In a situation where the bodies of heritage preservation tolerate substantial alterations to cultural heritage, the difference between the owners of cultural heritage and the owners of constructions in the territory of heritage reserves is becoming increasingly apparent.

For the aforementioned reasons the Defender submits a recommendation to the Chamber of Deputies in which he proposes adoption of a new law on heritage preservation.

2.7 ENVIRONMENT

Environmental Impact Assessment (EIA)

In his work, the Defender repeatedly encounters attempts at circumventing the legal requirements for assessment of the impact of planned construction on the environment. These include, in particular, **approval of the planned projects part by part**. The Defender has inquired into cases where the applicants divide extensive planned projects into partial projects, which they gradually submit to an authority for separate assessment in the process of the so-called fact-finding procedure pursuant to the Environmental Assessment Act (Act No. 100/2001 Coll. as amended). The relevant authorities subsequently state on the individual projects that they will not be further assessed in the sense of the Environmental Impact Assessment Act. They do so in spite of being aware, based on their official activities, of the actual scope of the plan and knowing that the submitted projects supplement one another and together form a single extensive plan. The authorities justify their procedure by claiming that the proceedings are concerned with a mere plan and there must be understanding for the detachment of parts of the overall planned project given the duration of the entire hearing. As a result, the planned project is not assessed comprehensively and the overall impact on the environment is not assessed at all.

Participation of civic associations in proceedings pursuant to the Building Act

In 2008 the Defender noted both legislative attempts of some deputies to **exclude environmental civic associations from administrative proceedings** performed pursuant to the Building Act and similar attempts of the actual planning authorities.

Most cases involve construction projects with a fundamental impact on the environment (in particular, public infrastructure, transport and the character of the territory concerned). The Defender holds the view that exclusion of civic associations from participation in planning proceedings would be an inadmissible denial of the **principles of transparency of public administration** and participation of the public in decision-making of administrative authorities. Should civic associations be excluded from participation in planning proceedings, the national legislation would be at variance with Arts. 6 and 9 (2) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention, Advice of the Ministry of Environment No. 124/2004 of the Coll. of Int. Tr.) and with Art. 6 (4) and (10a) of Council Directive 85/337/EEC on the assessment of the effects

of certain public and private projects on the environment. According to the aforementioned provisions, the so-called concerned public has guaranteed participation in the decision-making process, as well as access to legal protection via courts. The concerned public also includes, according to the aforementioned regulations, non-governmental organisations supporting protection of the environment.

According to the Defender, attempts at limiting participation of the public in the decision-making of bodies of public administration, whether by administrative authorities or in the form of legislative attempts to amend legislation, must be most emphatically rejected.

Complaint File Ref.: 4618/2008A/OP/MH

Exclusion of civic associations from participation in proceedings performed pursuant to the Building Act is an inadmissible denial of the principles of transparency of public administration and the requirement for participation of the public in the decision-making of administrative authorities.

The Defender opened an inquiry into the complaint of the Modrý most (Blue Bridge) Civic Association concerning the introduction of two-way car traffic on the so-called Blue Bridge over the Malše River in České Budějovice.

The Blue Bridge Civic Association pointed out in its filing that the České Budějovice municipal council has long endeavoured to replace the footbridge for pedestrians and cyclists, which connects the quiet district of Havlíčkova kolonie with a busy arterial highway, with a bridge for cars. The residents of Havlíčkova kolonie, one of the most interesting parts of the city in terms of urban design and architecture, disagree with the planned replacement. It has been one of the quietest parts of the city, situated on a link road used by cyclists and pedestrians, with access to a park, a children's playground and swimming baths.

The Defender ascertained maladministration by the bodies of public administration within the inquiry, specifically the planning authority of the České Budějovice Municipal Office, which had excluded the Blue Bridge Civic Association from participation in the proceedings on the permission of the construction project. The authority had incorrectly applied the Building Act and the Nature and Landscape Protection Act and it had also erred as it failed to perform proceedings on a change in the impact of the construction project on the environment.

Given that the planning authority did not accept the criticism of its procedure, the Defender recommended to the civic association to use the conclusions of the inquiry and file an action against the decision issued.

Old burdens on the environment

The Defender managed to make a significant advance in dealing with old burdens on the environment. These typically include unauthorised deposits of mixed waste, former pesticide deposits or disposal sites of hazardous chemical substances, which represent a long-term threat to the environment. Burdened real estate in the hands of physical persons represents the most serious problem. Physical persons usually lack funds for remediation of old burdens on the environment, and they therefore postpone the solution until the environment is actually damaged.

The Defender succeeded, in cooperation with the Ministry of the Environment, in **placing these persons in the operational programme Environment** (support area 4.2 – elimination of old burdens on the environment). Physical persons and civic association can now apply, via the State Environmental

Fund, for **subsidies from European funds** for survey work, risk analyses and feasibility studies and, in particular, remediation of real estate affected by old burdens on the environment.

Illegal waste management

The Defender continues to encounter 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.

The Defender dealt with the issue of how state authorities should proceed in a breach of the regulations in the handling of waste primarily in the case of unauthorised hazardous waste disposal in Libčany near Hradec Králové. Although the state authorities were not entirely inactive, the inspections performed were insufficient (the inspection was always aimed at ascertaining whether the company "*does correctly what it has been permitted to do*", instead of ascertaining whether it is "*doing something that it has not been permitted to do*"). Yet the authorities had the possibility of detecting the scope of the unauthorised management already on the basis of information from the citizens of the Libčany municipality.

The Defender stated that **a higher degree of cooperation between state authorities** and, in particular, **a consistent use of all legal competences** (for example the right to enter all the premises in the relevant complex) are prerequisites for successful prevention of similar errors. The Defender also summarised that the **record keeping in the sector of waste management suffers from shortcomings** as it is not interlinked with the record keeping of transfers of hazardous waste and the record keeping of other hazardous substances (pharmaceuticals, addictive drugs, chemicals). The Defender also holds the view that it would be suitable to stipulate conditions for business activities in the sector of hazardous waste management. He also finds it suitable to create an economic motivational tool (e.g. a **mandatory financial reserve**, **mandatory insurance**), which would provide for financial means immediately available in case that a threat to lives, health or the environment is ascertained as a consequence of the activities of a party handling waste.

2.8 THE POLICE

The Defender has repeatedly encountered a situation where the handling of complaints about the conduct of police officers contained **insufficient justification**. The handling of complaints is stipulated in the Code of Administrative Procedure, and although the law itself does not stipulate the extent to which a complaint should be handled, it should be deduced from the general principles of work of administrative bodies that the police bodies should address all the complainant's claims contained in the complaint and specify the underlying documents and considerations which led them to their conclusions.

The Defender further dealt with complaints about the Police entering homes to enforce prison sentences for convicted persons, conduct of the Police in searching for missing persons, and complaints about a failure to provide information on an investigation carried out regarding a reported offence. The Defender assessed the conduct of the Police as correct and legal in the majority of cases. A large part of the complaints were about the procedure of the Police in **investigating traffic accidents**.

2.9 THE WORK OF THE PRISON SERVICE

Transfer to another prison

Convicts most often address the Defender with a request for transfer to another prison. Most of the complaining inmates were requesting to be transferred to prisons in Moravia (because prisons are distributed unevenly in the Czech Republic and most are in Bohemia).

As for requests for transfer that have not been complied with, the Defender has several times encountered **insufficient substantiation** by the head of the prison who did not comply with the request. The Defender also established that the newly introduced information system of the prison service unfortunately did not bring any improvement, i.e. more efficient handling of requests for transfer.

Personnel situation in the Prison Service

The Defender points out that although the number of people serving prison sentences increased in comparison with the past year, the number of personnel of the Prison Service did not. Rather the opposite, the **number of personnel is being reduced** in connection with Government Resolution No. 436 of 2007. The lack of personnel affects the number and frequency of leisure time activities, surveillance personnel during visits, possibility of guarding convicts in outdoor worksites, etc.

Course of disciplinary proceedings

The Defender has been addressed by convicts who disagreed with imposed disciplinary punishment and, in a majority of cases, also complained about being transferred to the worse "*group of internal differentiation*". A convict subject to disciplinary punishment may lodge a complaint against the punishment within three days. However, if the disciplinary punishment of forfeiture or confiscation of an item is imposed on a convict, the convict may in addition file an action within the administrative court system. Convicts have not been advised of this possibility in the forms used to date. The possibility of filing an action within the administrative court system will be added to the forms on the basis of the Defender's inquiry.

Handling of complaints

The Defender is aware that convicts do not have much trust in the internal complaints mechanism of the Prison Service (according to statistics, less than 10% of complaints are recognised as justified). The Defender has observed that convicts often justifiably fear worse treatment as a consequence of lodging a complaint compared with the convicts who have not used the complaints mechanism. The Defender therefore finds it necessary to once again recommend the **creation of an inspection body**, which will be **independent** of the Prison Service in the handling of complaints.

The Defender encountered several cases where, after he requested the head of the prison to comment on a convict's complaint, the person concerned was questioned and his/her account recorded in a form for providing an explanation. It was indicated in the relevant protocol that the explanation was provided in the sense of Section 10 of the Act on the Prison Service and Judicial Guard of the Czech Republic (Act No. 555/1992 Coll. as amended). The Defender stated that the drawing up of a protocol under the above-specified provision cannot be used for ascertaining facts concerning any filing by inmates, but instead, it can be used only in connection with an inquiry into an infringement. It would be more appropriate, according to the Defender, if the complainant were interviewed on the matter with his/her tutor or some other specialised prison officer. The above-described procedure may generate the impression that by making a filing to the Public Defender of Rights, the convict committed an act at variance with the

regulations stipulating the exercise of imprisonment while in reality such filings must not be detrimental to complainants.

Organisation of visits to convicts

The organisation of visits is an important aspect for assessing the quality of the educational environment in prisons. Visits are scheduled **only for workdays** in some prisons, which **reduces the possibility of visiting convicts** for relatives. The fashion of so-called contact-free visits still persists in Czech prisons where the visitor is separated from the convict by a transparent partition. The Defender has earlier encountered the summary ordering of contact-free visits to convicts in departments with enhanced technical and structural security. However, a contact-free visit may be ordered only in specific cases and based on defined reasons. The Defender has noted an improvement in comparison with the previous year, consisting of refraining from the summary ordering of contact-free visits.

Complaint File Ref.: 3826/2008A/OP/MČ

Visits on weekends (holidays) cannot simply be denied to a convict with the justification that visits are not organised in the prison on such days. It is always necessary to assess individually whether such a procedure would result in a situation where the convict has no visits.

The Defender was addressed by Mr E. G., serving his prison sentence in the Ostrov Prison in the Karlovy Vary Region. The family of Mr E. G. lives in Prague. The complainant informed the Defender that he had had no visits for several months because visits in the Ostrov Prison were held only on weekdays, his wife and son were working, and were not given leave by the employer to visit him.

Given that visits to convicts are one of the most important motivational factors, the head of the Ostrov Prison was requested to comment on the situation. Although Section 26 of the decree issuing the order of the exercise of imprisonment (Decree No. 345/1999 Coll. as amended) stipulates that visits to convicts should be held, as a rule, on weekends or holidays, the head of the prison confirmed to the Defender that visits were held only on weekdays for organisational reasons. It was further ascertained within the inquiry that the tutor had refused to schedule the complainant's visit day for a weekend with the argument that visits were not held on weekends in Ostrov Prison. The convict had not had a visit for more than half a year at the time of the inquiry into the complaint.

The Defender invited the head of the Ostrov Prison to proceed in accordance with Section 26 of the aforementioned decree and enable convicts to receive visitors also on holidays or weekends. The Defender opined that only if such organisation proves to be impossible, the head could exceptionally schedule visit days also for workdays.

The Defender was assured by the head of the Ostrov Prison after his intervention that future visit days in the prison would also be scheduled for weekends or holidays. However, he stated that he was unable to introduce the measure immediately given the personnel and material conditions in the prison. The Defender was assured that visits to convicts on weekends or holidays would be organised in individual cases.

2.10 TRANSPORT

The Defender has repeatedly dealt with complaints concerning the replacement of driving licences, on-the-spot fines imposed for traffic offences and inquiries concerning "*queuing at the authorities*" to register road motor vehicles. Last but not least, the Defender was repeatedly addressed by citizens on the issue of permanent removal of a vehicle from the vehicle register.

Traffic policy, traffic load

The Defender has for several years pointed out the non-conceptual approach of transport authorities to investment in road infrastructure. As a result, the problematic sections of the road network (in particular those with the most intense load) are not dealt with first, there is an uncoordinated approach to transport projects (traffic is transferred to a different location) or costly, difficult to negotiate solutions are prioritised (resulting in delays and additional costs of construction). In addition, citizens increasingly complain about noise, increased concentrations of pollutants and vibrations due to roads overloaded with trucks.

In the conclusions of his inquiries, the Defender therefore always stresses the importance of public administration in the regulation of these activities. The objective of bodies of public administration must consist in the **channelling of traffic load in the territory concerned to acceptable boundaries** (given, for example, by the applicable limits of noise pollution), using the available constructional, technical and organisational measures. The Defender therefore recommended updating of the Schedule of Transport Infrastructure Construction in the years 2008 to 2013.

Traffic noise

Noise pollution is on the rise in the Czech Republic. The regional health authorities as the bodies of public health protection fail most often in the case of noise from old constructions, in particular roads (but also airports), built at a time when the effect of noise on the health of the population was underestimated. The authorities at the time did not require that the investor design measures against the escape of noise into the surroundings of the project. Today it is costly and technically demanding to ensure that such old constructions meet the applicable safe limits for noise. The regional health authorities therefore issue time-limited permissions, by which they permit further operation of the constructions. However, they should always require that the operator take at least such **noise protection measures** as can be reasonably required of him, thereby reducing noise to a reasonably achievable level. However, regional health authorities often require fulfilment of only the measures voluntarily proposed by the investor. In addition, if any of them are not implemented by the set deadline, the regional health authorities wait with any further steps until the entire period of the time-limited permission elapses.

As for noise from air traffic, partial success can be found in the conclusion reached by the Defender and the Chief Health Officer in their meeting, that air shows and similar one-off displays of aviation technology should be regarded as a "*cultural or sports event held at an airport*". The flights of airplanes during such events cannot be included in the half-year average used to determine the noise generated by the normal traffic of the airport. The organiser of the event is therefore fully responsible for observance of the noise limits in protected spaces. However, if observance of the noise limits is not reasonably achievable, the operator may request a time-limited permission, although subject to fulfilment of the conditions set by the regional health authority in the permission.

Complaint File Ref.: 3083/2008A/OP/KČ

The effect of time-limited permission to operate a source of noise exceeding safe limits is bound to fulfilment of the conditions set in such a decision. The time-limited permission should be removed from an operator failing to fulfil the given conditions by the set deadline.

The Defender inquired into a complaint about inactivity of the Regional Health Authority of the South Moravian Region, which issued time-limited permission for the operation of a source of noise exceeding the safe limits – the D1 motorway. The time limit was issued with validity to the middle of 2009, laying down in the conditions of the decisions that noise barriers were to be installed on both sides of the motorway by the end of the year 2008 and their efficiency verified in the first half of the year 2009. However, the Road and Motorway Directorate had not even commenced building the noise barriers by the end of 2008.

The regional health authority replied to the citizens addressing it with a request for remedy that it could not open the matter until expiry of the time-limited permission.

On the contrary, the Defender expressed his opinion that if the producer of a noise exceeding noise limits fails to fulfil the conditions set in the time-limited permission for its operation, the permission should be removed from him. He can thereby be sanctioned for non-observance of the noise limits even before expiry of the period for which the permission was originally issued.

The regional health authority informed the Defender after receipt of the report on the inquiry that the Road and Motorway Directorate would indeed remove the permission and open administrative proceedings with the operator for breaching safe limits.

2.11 TAXES, FEES, CUSTOMS

Waiver of ancillary tax rights

The Defender frequently encounters citizens' requests for waiver of ancillary tax rights on the grounds of harshness. In these situations, it is fully up to the assessment of the tax administrator whether it proceeds to waiver with consideration of the circumstances of the case and the Defender enters the matter only in cases of a breach of the principles of good administration.

In 2007 the Ministry of Finance issued **internal instruction DS-159** for the purpose of unification of decision-making practice, but it refused to **publish it in full** to enable the public to assess whether it is being respected. The Defender disagrees with such secrecy and requires that the Ministry publish the entire material.

Local fee for municipal waste

If a municipality introduces a local fee for municipal waste, all physical persons with permanent residence in the municipality become payers regardless of their age or financial self-sufficiency. If parents with a general maintenance obligation towards their children do not pay the fee, the latter is **assessed with respect to the child payer** (the municipal authority delivers the decision to the parents as the legal representatives due to the lack of legal capacity). However, given the legal definition of payers, **the authority cannot claim** even the assessed arrears **directly from the parents**. It is possible to curtail only the property of a payer, i.e. the child. Municipal authorities sometimes wait until the child is of age. The unsuspecting child subsequently receives a request for payment of arrears on local fees.

Although waiver of the fee may at first appear to be a suitable solution of the situation, the Defender would regard as reasonable a change in the legislation making it possible to claim the arrears directly from

those who have the maintenance obligation with respect to the payers (children). The Defender therefore recommends the Chamber of Deputies, in the conclusion of the present report, adoption of an amendment to the Local Fees Act.

Income tax – discrimination against non-resident taxpayers in the calculation of advance payments

The Defender's attention is sometimes also drawn to the problematic nature of the very legislation. These cases include several complaints of foreigners (Slovaks) employed in the Czech Republic, who pointed out that effective from January 2008, the legislation **does not allow non-resident taxpayers to apply the basic taxpayer's tax credit** (in the amount of CZK 2,070 per month) in the calculation of advance payments for income tax. It was finally not necessary to exercise the Defender's special power to propose an **amendment to legislation** as the Ministry of Finance was aware of the problem and took steps aimed at the required amendment to the legislation (effective from July 1, 2008). The Ministry simultaneously issued a measure aimed at **abatement of the harshness of the law**, which entitles employers to provide a tax credit.

Duty on spirits

The Defender believes that Czech legislation on the tax on spirits is not in accordance with Council Directive 92/83/EEC on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages in terms of definition of the subject of taxation. According to the directive, certain products containing spirits (ethyl alcohol, ethanol) are subject to taxation. However Czech legislation (Act No. 353/2003 Coll. on Excise Duties as amended) lays down that the spirits contained in products with a defined content of spirits are subject to taxation. Yet the Defender encounters a situation where tax administrators refer to the wording of the European directive and the subject of the tax defined therein in spite of the fact that the Czech legislation defines it in an entirely different manner. Such **application of a directive to the detriment of tax entities is inadmissible**. According to the case law of the European Court of Justice, only the citizen vis-à-vis the state can appeal to the direct effect of a directive. On the other hand, it is inadmissible that a member state of the European Communities should misuse European law to impose obligations at variance with its own laws.

2.12 FOREIGNER-RELATED AGENDA

Websites of embassies

Given that an overwhelming majority of applicants for a visa do not speak Czech and the lodging of the application is demanding for them in terms of time and expense, it is necessary that they have the possibility of obtaining the needed information on the visa process free of charge before they appear at the consulate in person. For the aforementioned reasons (supported by a number of specific complaints), the Defender concentrated on the most widely used manner of provision of information – via the Internet. In this respect, the Defender had to point out the following shortcomings.

In spite of the fact that the Internet makes it possible to easily inform an unlimited number of people in different language versions, the Defender ascertained that the **websites of some consulates were not available at all** or there were outages or the information on visa issues was **incomplete** or **obsolete**. Nor do the consulates' websites always provide basic information, such as to whom the visa obligation applies, the amount of the administrative fees, how the process of obtaining a visa takes place and

information on the potential grounds for rejection of their application and advice on the rules for lodging complaints against rejection of the application. A fundamental shortcoming also consists in the fact that the websites contain only sporadic mentions of the visa regime applicable to family members of EU nationals in spite of the fact that the Czech Republic is bound by EU Directive 2004/38/EC and should grant such persons every facility to obtain the necessary visas.

The Defender proposes that **information on the visa process be provided in a coordinated manner**. The provision of information and the very process of applying for a visa should be presented and implemented in such a manner as to enable the foreigner to the maximum possible extent to lodge an application for a visa on his/her own, without an intermediary. According to the Defender, the existing arrangement and unavailability of comprehensive information necessarily results in the use of various intermediaries who cash in on the lodging of visa applications. The entire process generates doubt regarding an equal approach to applicants, effectiveness and predictability of the work of administrative authorities.

The Defender acquainted the Minister of the Interior and the Minister of Foreign Affairs with the aforementioned facts. They found the Defender's comments to be substantiated and expressed preparedness to participate in the solving of the issue. They simultaneously acquainted the Defender with the measures their offices had taken to date in the matter concerned (a project took place at the Ministry of Foreign Affairs, its final output being a newly designed website with a separate "*Information for Foreigners*" link, which is supplemented from time to time).

Interviews in the visa process

The Defender finds the mechanism of **carrying out personal interviews with the applicants for visas** and, in particular, the drawing up of records of such meetings to be particularly **problematic**. The interview is administered by a consulate officer and an opinion on the granting/denial of the visa is issued on the basis of the interview (decisions on visas for a stay of up to 90 days are made directly by the consulate, while decisions on visas for stays in excess of 90 days are made by the relevant foreign police inspectorate on the basis of the opinion of the consulate). Thus, the interview plays an absolutely crucial role in the decision-making on the granting/denial of a visa.

It is unclear, according to the complainants, what rules the interviews follow. Although there is a methodology for interviews regarding applications for a visa for a stay in excess of 90 days, the record drawn up on each interview and subsequently sent to the foreign police as part of the file (in these cases the decision is up to the individual Foreign Police Inspectorates) **is not authorised by the applicant's signature**. No record on the interview is drawn up in the case of applications for a short-term visa up to 90 days, except for family members of an EU national (yet in the latter case, the record is again not signed by the applicant). Thus, there is no control mechanism that would enable retrospective verification of authenticity of the record of the interview. The aforementioned deficit is particularly significant among family members of EU nationals who have the right to enter and reside in the territories of EU member states subject to fulfilment of the conditions stipulated by the law and an entitlement to the granting of a short-term visa.

The Defender regards the above-described practice to be a systemic shortcomings of the visa process and proposes to the Ministry of Foreign Affairs to adopt measures that would unify the process of drawing up the protocol. The Defender also sees solution to the problem in the reasonable application of Section 18 (3) of the Code of Administrative Procedure, where the record on the interview with the applicant should be signed. The applicant will display consent to the content of the interview and simultaneously confirm its authenticity through the aforementioned act. This mechanism would simultaneously ensure that the

content of the interview can be subsequently checked in relation to the standpoint on the granting/denial of the visa and it would also serve as the officials' defence against a potential charge of bias or corruption.

"Call Centres"

One of the proposals the Defender earlier submitted to the Ministry of Foreign Affairs and the Ministry of the Interior in connection with complaints about the situation at Czech consulates consisted of the possibility of arranging the date and time of the interview using the Internet or by telephone. Partly due to criticism in the media, some consulates have introduced call centres that must be used by the applicant to book in advance.

Although the Defender welcomed the aforementioned step, the subsequent information about the functioning of the newly introduced call centres suggested that the measures were not sufficient. As the Defender ascertained, **the activities of the private agencies operating the service is not always transparent**. There are no publicly available details on the companies. It also seems that there is no methodology for the selection of an external operator. The amount of the fee for the service differs significantly (e.g. CZK 310 at the consulate in Lviv and about CZK 43 at the consulate in Hanoi). With such a lack of transparency, it cannot be ruled out that the waiting lists set up and controlled by such a company are manipulated in favour of certain applicants. Another problem is the fee for registration by telephone, a prerequisite for lodging a visa application. Although there are certain costs of the operation of a call centre, in the case concerned the fee is in fact collected for access to the administrative authority, which lacks support in any law.

The process of receiving applications and granting visas should be primarily ensured by the state and the above-mentioned solution (external subcontractors) should be introduced only in extraordinary situations where the earlier solution is impossible for objective reasons, although only provided that the entire process is entirely transparent. This is the only way to prevent corruption. In any case, the use of external subcontractors must be legally grounded in national or European law.

The Defender sees one of the potential solutions of the present situation in **automated booking via the Internet**, which has been introduced in some foreign countries and has brought positive results also in the Czech Republic (e.g. in the processing of personal identity cards and driving licences). According to the information provided by the Ministry of Foreign Affairs, a pilot project of electronic booking via the Internet is in progress in Southeast Asia, which was due to be completed by the end of 2008 (in this respect, the Defender has recently noted a news report that on February 17, 2009, the Embassy of the Czech Republic in Hanoi launched the operation of a system for the registration of all applications for visa in excess of 90 and for residence permits for the Czech Republic using the http://www.visapoint.eu website).

Situation in the office of the Prague Foreign Police Inspectorate in Koněvova street

The Defender has repeatedly dealt with the situation in the office of the Prague Foreign Police Inspectorate in Koněvova street. The Defender concluded in the middle of 2008 on the basis of a number of complaints and media reports that the situation in the office has returned to the once alarming state of affairs (e.g. surreptitious traffic in queue tickets, arbitrary organisation of queues before the office, dispensing all serial numbers immediately after the beginning of the office hours, etc.), which the Defender considered to be serious, primarily as they created the conditions for potential non-standard conduct and corruption.

The Defender decided to advise the head of the Foreign Police, the Minister of the Interior and the Chief of Police of the untenable situation. The Defender was subsequently informed by the Chief of Police that

- the inspectorate was strengthened by 50 civil servants and 25 police officers as of September 1, 2008
- a foreigner who falls short in the dispensing of the queue tickets is registered in a list with an invitation to a date set in advance,
- the office has introduced separate entries for foreigners from third countries and EU citizens and their family members and, even more recently, for foreigners from third countries with visa-free travel to the Czech Republic.

A part of the agenda was relocated in the last quarter of 2008 (which relieved the office in Koněvova) **to a newly established branch in Sdružení 1** street **in Prague 4 and premises in Olšanská 2. The authorised personnel of the Office of the Public Defender of Rights satisfied themselves in person between October 2008 and January 2009 that there was an obvious and substantial improvement of the situation in the office and its branches.** The Defender will continue to monitor the situation in the Prague offices of the foreign police.

Regulation fees for asylum seekers

In the Defender's opinion, asylum seekers should be exempt from the obligation to pay **regulation fees for medical care**. The Defender finds it inadmissible that medical care is inaccessible to persons who are objectively unable to pay the fees. The proposal is also supported by the Ministry of the Interior, which has commenced negotiations with the Ministry of Health in this respect. However, the latter repeatedly confirms its negative approach to the matter; it does not expect any broadening of the legal exemptions and claims that other solutions should be sought.

Since January 1, 2008, when the amendment to the Public Health Insurance Act came into force, the Defender has noted problems concerning the accessibility of medical care for foreigners applying for international protection. Medical facilities are obliged to collect regulation fees, under threat of a CZK 50,000 fine, from all not exempt under the law, i.e. including asylum seekers. However, the latter are **not allowed to work legally until expiry of one year from the commencement of the proceedings on the granting of asylum and depend on pocket money** paid by the state in an amount of CZK 16 per person per day. Asylum seekers living in private facilities instead of an asylum centre may receive an allowance of 1.3 to 1.6 times the minimum living standard depending on the number of family members, although only for a maximum of three months. Afterwards, they find themselves entirely without the possibility of a legal income.

However, even the pocket money is not paid without exceptions. Thus for example foreigners applying for asylum in the transit area of the international airport or those placed in the Velké Přílepy Reception Centre are not entitled to pocket money pursuant to the Asylum Act. Pocket money is also no longer paid to those foreigners who must be hospitalised, although the hospitals require them to pay the fees for care. The Defender finds it unethical in this situation that those who are unable to obtain means of payment for objective reasons face problems with the payment and claiming of the fees.

The Government Council for Human rights agreed with the Defender's arguments regarding the exemption of asylum seekers from regulation fees and approved a proposal to resolve the issue.

Given the above facts, the Defender **addresses a legislative recommendation to the Chamber of Deputies**, within the reading of new medical laws, to exempt applicants for international protection from the obligation to pay regulation fees.

The situation at Prague-Ruzyně airport

The Defender dealt with the conditions of access of foreigners to proceedings on the granting of international protection at Prague-Ruzyně airport. A partial improvement has occurred in this area (training of police offers from the relevant inspectorate of the Prague-Ruzyně foreign police by the personnel of the Department of Asylum and Migration Policy of the Ministry of the Interior, an amendment was made to instruction of the head of the Foreign Police No. 103/2006 on the provision stipulating the procedure of police officers in case of doubt whether a foreigner wishes to make a declaration on international protection, increased attention is paid to vulnerable groups of foreigners, etc.).

As for unaccompanied minors present in the transit area of the international airport, the Defender holds the view that the **Act on Social and Legal Protection of Children** must be applied to them to the so-called necessary extent. The Defender was informed during the year 2008 by the administrative authorities concerned of a wide range of steps which contributed to increased care of the children (changes occurred in the placement of children in the so-called "Blue School", police officers were trained in the recognition of vulnerable groups of people, cooperation between the foreign police and the childcare department of the Prague 6 municipal office deepened). The Defender concluded on the basis of the above-mentioned facts that the complex issue of the social and legal protection of unaccompanied minors at the Prague-Ruzyně airport had improved and the **children's protection was strengthened**. The childcare department should now be informed regardless of whether the minor requiring social and legal protection has demonstrated his/her intention to apply for international protection.

Mohamed Magdi Mansour Rashed versus the Czech Republic

The European Court of Human Rights in Strasbourg (hereinafter the "*Court*") delivered a judgment on November 27, 2008, in the case of *Mohamed Magdi Mansour Rashed versus the Czech Republic* (application No. 298/07). The Court confirmed the legal opinion expressed by the Defender in June 2007 (inquiry File Ref. 6336/2006/VOP/PP). The Court confirmed the Defender's opinion that prior to the date of effect of the Asylum Act (amendment No. 379/2007 Coll.), the conditions in which the applicants for the granting of international protection were held in the reception centre at Prague-Ruzyně airport (and Velké Přílepy) were at variance with Art. 5 (1) and (4) of the Convention for the Protection of Human Rights and Fundamental Freedoms (communication of the Federal Ministry of Foreign Affairs No. 209/1992 Coll. as amended). The court stated, *inter alia*, that there were no remedies available to the applicant, on the basis of which a Czech court could make a prompt decision on lawfulness of the applicant's deprivation of liberty and no decision on his deprivation of liberty had been given during the ten-month detention period since his detention. Thus, Article 5 (4) of the Convention ("*Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful*") was breached. Furthermore, the European Court of Human Rights took the view that **the Asylum Act in the previous wording was vague and did not afford adequate protection from arbitrary interference with personal freedom**.

The European Court also supported the Defender's legal opinion, according to which in the application of Section 73 (2) (a) of the Asylum Act in the wording effective until December 20, 2007, the date of issue of a decision should mean the date when a copy of the decision, rather than a mere call to accept it, is submitted to the applicant for the granting of international protection.

2.13 THE RIGHT TO INFORMATION

Information on the result of an inspection

The Defender agreed with the Office for Personal Data Protection on the provision of **information on the result of an inspection performed by a trade-licensing office on an entrepreneur**. The Office confirmed the view that information on whether the inspection ascertained shortcomings, whether sanctions were imposed for them and in what amount, **does not represent personal data of a natural person operating business**. According to the Act on Free Access to Information (Act No. 106/1999 Coll. as amended), mandatory confidentiality under special regulations also cannot be an obstacle to the provision of this information. The Defender therefore exerts pressure on the Ministry of Industry and Trade to instruct trade-licensing offices to provide the information to applicants. The issue of provision of information on the results of inspections by the Czech Business Inspectorate on legal persons operating a business is closely related to this issue.

Complaint Ref. No.: 3589/2006A/OP/KČ

On the basis of the Act on Free Access to Information, an authority is obliged to provide to any applicant with information on whether proceedings have been initiated with respect to an entrepreneurial entity on an offence associated with its business and the result of the proceedings, including the amount of the imposed sanction.

A fine was imposed on the complainant on the basis of the result of an inspection by a trade-licensing office for an offence associated with his business activities. The complainant expressed suspicion that the trade-licensing office in Tábor had been bullying him and requested that the office advise him of the result of the offence proceedings in another case, being aware that the facts in the latter were very similar to his own case. The trade-licensing office refused to provide the information and the Ministry of Industry and Trade confirmed this procedure based on an inquiry into the matter. The authorities referred to mandatory confidentiality, specificity of the provisions on the trade register in the Trade Licensing Act and also protection of personal data of the entrepreneur subject to the offence proceedings performed under the Trade Licensing Act.

The Defender concluded that the authority should have provided the requested information. Mandatory confidentiality is imposed on individual officials rather than the authority as a whole. The relationship to mandatory confidentiality is stipulated clearly in the Act on Free Access to Information. As for the alleged specificity of the provisions on the trade register, the Defender concluded that it could be applied if the applicant wanted a summary of all the sanction measures imposed on a specific entrepreneurial entity. However, if the applicant wants information on the result of specific sanction proceedings, about the existence of which he learned in some other manner, the Act on Free Access to Information should be applied. In the issue of the protection of privacy, the Defender addressed the Office for Personal Data Protection. The latter confirmed his view that information directly related to the business activities of a natural person does not represent personal data.

The Defender addressed the Ministry of Industry and Trade in the matter and now awaits to see whether the Ministry will accept his conclusions.

Information on the internal documents of a liable party

The Defender has earlier pointed out that those parts of documents that stipulate the rights and obligations of third parties vis-à-vis the liable party, cannot be regarded as internal instructions. Nevertheless, liable

parties have begun to resort to issuing some instructions affecting the rights of third parties in a concealed manner, in the form of **unofficial documents**, where only selected employees of the liable party are aware of their existence (conduct typical for the Ministry of Finance). The Defender emphatically warns against the above-described practice and, in particular, its use in public administration. It results in deviation from the principle of transparency of public administration, a decline in citizens' trust in democratic institutions and the generation of an atmosphere of concealment. The conduct also necessarily generates suspicion of wilfulness in decision-making and interventions in third-party rights.

Copies of documents

Regarding the making of copies of documents from administrative files, the Defender endeavoured to bring the Ministry for Regional Development and the Ministry of the Interior to interpret in a restrictive manner the legal provisions that limit the possibility of copying (Section 168 of the Building Act and Section 23a of the Asylum Act). For example, Section 168 of the Building Act should be interpreted according to its meaning, i.e. if an applicant requests a copy ofdesign documents, the provision of which cannot affect the rights of the designer or building owner, the authority should provide the copy to the applicant without the consent of the aforementioned parties. Given that the Defender's endeavour yielded no results and other problems with the obtaining of documents from administrative files occurred, the **Defender recommends the Chamber of Deputies** adopt amendments to the legislation.

2.14 CONSUMER PROTECTION

Shopping tours

The Defender encountered repeated complaints in 2008 referring to the activities of sellers within so-called "*presentation and shopping tours*". The most frequent victims of the sellers are the elderly who are very unlikely to defend themselves efficiently.

The Defender regards implementation of Directive of the European Parliament and of the Council 2005/29/EC, which introduces **prohibition of misleading and aggressive practices** into the Czech law, to be a significant strengthening of consumer protection, and not only in the area of shopping tours. However, it follows from the Defender's experience during the several months of effect of the Consumer Protection Act that authorities have not yet realised that **these infringements cannot be detected as they have been to date**. The existing practice of the administrative authorities is based, in particular, on written evidence (contracts, operating instructions, etc.). In reality, unfair practices are usually conducted verbally and there is no written record of the negotiations taking place before conclusion of the relevant contract. Success in the detection of unfair practices will be brought only by a **change in the authorities' strategy** in the investigation of administrative infringements. Authorities should therefore place more emphasis on testimony, questioning the sellers, mutual confrontation, etc. It is certainly a change that will considerably increase the time, material and personnel demands on the existing authorities.

Complaint File Ref.: 3769/2008A/OP/DS

The Czech Business Inspectorate should also use other means of evidence than its own findings and written documents in the investigation of unfair practices.

The Defender inquired into the procedure of the Czech Business Inspectorate in reviewing a reported infringement consisting of unfair practices. The complainants had purchased an instrument at a shopping tour of a business company, allegedly serving to detoxify the body (an instrument with therapeutic

effects). They had even received leaflets with a description of the therapeutic effects. However, the instrument did not have the declared characteristics; it was essentially a washbowl for foot hygiene with a coil connected to it only to make an impression. The inspectorate performed an inspection at the company based on the complaint and informed the complainants that it had found the product, but the instructions enclosed with the products at the company neither referred to a medical device nor contained any information on therapeutic effects. The Inspectorate closed the case on the aforementioned grounds, stating that the committing of the administrative infringement of misleading business practice had not been reliably proven (seeing the case only as statement against statement).

The Defender stated after the performed inquiry, in the first place, that if there actually were a presentation of the product declaring the latter's therapeutic effects, while in reality there would be a washbowl for foot baths, the merits of an infringement of the prohibition of unfair practices would be fulfilled. The Defender also ascertained maladministration by the Inspectorate as it had incorrectly evaluated the available information, failed to open administrative proceedings on the administrative infringement and thus disabled its detection. The Defender pointed out that it is the task of the bodies of public administration to investigate an administrative infringement and obtain proof of the seller's guilt or innocence. The Defender finds this long-term underestimation of proof through testimony and insistence on written proofs to be incorrect. Testimonies supported by other evidence and evaluation of all evidence are key to the detection of unfair practices.

A wide range of unfair practices take place verbally, without a written record of the negotiation, which mostly occurs in the pre-contractual stage. Only a change in the authorities' strategy in the investigation of administrative infringements with a greater emphasis on other than written means of evidence can bring success in the detection of these unfair practices.

The area inspectorate took due note of the Defender's report, although it did not take any steps aimed at sanctioning the seller. The Defender is therefore considering further steps aimed at bringing the Czech Business Inspectorate to initiate additional proceedings on an administrative infringement.

Hire-purchase

The issue of the associated credits for consumers provided by non-bank entities directly at the shopping tours is related to the shopping tours issue. The Defender deduces from the range of repeated complaints that **credit agreements for consumers** must be **agreed** at these tours at least in some cases without the awareness of the consumers who sign, in addition to several copies of purchase agreements, also credit agreements, and the seller, representing also the provider of the credit, retains all the copies. These cases often take a pattern where the seller does not respond to withdrawal from the purchase agreement within the legal period, but the credit agreement continues to be "*binding*" upon the consumer (the consumer has not withdrawn from the credit agreement) and the non-bank entity providing the credit claims its receivables. This takes place regardless of **expiry of the purchase agreement**. The business companies of sellers are established and terminated as needed by their shareholders, changing names and evading liability. Consumers, on the other hand, must repay the "agreed" credits to the formally blameless credit providers. The current regulation contained in the provisions of the Act on Some Conditions of Agreeing Consumer Credits (Act No. 321/2001 Coll. as amended), which is to deal with the issue, is very problematic and not applicable in practice. The Defender therefore requests, within the consultations with the Ministry of Industry and Trade regarding transposition of Directive 2008/48/EC on credit agreements for consumers, the well-considered implementation of the part of the Directive stipulating **automatic**

expiry of a credit agreement in case of withdrawal from the purchase agreement or a contract for the supply of a service.

The forwarding of complaints

The scattered powers of more than a dozen authorities active in the field of consumer protection are seen as very problematic by the Defender in the long term. Consumers are thus disadvantaged at the start as they often have to painstakingly work their way to the right authority competent to deal with the relevant administrative infringement.

In the existing model of consumer protection, the Defender insists on **cooperation of all the authorities active in the area of consumer protection.** However, he still encounters cases where the administrative bodies to which a consumer's complaint is addressed incorrectly evaluate the content and deal only with the part falling within their competence without referring the other parts to other authorities pursuant to Section 42 of the Code of Administrative Procedure and informing the consumer of the forwarding. In particular the municipal trade-licensing offices in small towns are usually unable to evaluate all the aspects of the delivered complaints. Many administrative infringements are not investigated at all, because information on them does not even reach the relevant authority.

Complaint File Ref.: 5233/2007A/OP/DS

If a trade-licensing office receives a complaint pointing out an administrative infringement, for the hearing of which the relevant Czech Business Inspectorate is competent, it is the obligation of the trade-licensing office pursuant to Section 42 of the Code of Administrative Procedure to forward the complaint to the Inspectorate in writing and advise the consumer thereof.

The Defender reprehended the trade-licensing office in Bystřice pod Hostýnem for dealing with the complainant's complaint only in the part falling within its competence but leaving the other parts of the complaint unnoticed instead of forwarding them to the relevant authority (the Czech Business Inspectorate) in accordance with the Code of Administrative Procedure. The consumer must be informed of the forwarding in writing in order to always be aware who will be dealing with his/her complaint (or, as appropriate, its relevant part).

Based on the Defender's inquiry, the Czech Business Inspectorate additionally heard the administrative infringement (failing to handle a claim within 30 days) and imposed a fine for the infringement.

Public nature of the results of inspections by the Czech Business Inspectorate

The Defender is dealing with the standpoint of the Czech Business Inspectorate which refuses to provide information on the results of the inspections opened on its own initiative in cases where citizens request the inspection under the Act on Free Access to Information (Act No. 106/1999 Coll. as amended).

Complaint File Ref.: 3186/2008A/OP/DS

A decision to refuse to provide information consisting of the names of operators of petrol stations, on whom fines were validly imposed, is illegal. The exemption from the general obligation to provide information set forth in Section 11 (3) of the Act on Free Access to Information does not apply to the results of administrative proceedings.

On the basis of the available information, the Defender inquired into the work of the Czech Business Inspectorate, which refuses to disclose the names of the operators of petrol stations on whom fines have been imposed. In the case subject to inquiry, specific persons requested them under the Act on Free

Access to Information and the Inspectorate made decisions refusing to provide the information to the applicants.

The Defender found the aforementioned decisions to be illegal, because Section 11 (3) of the Act on Free Access to Information, by which the denial of the information was substantiated, does not apply to such cases as the information concerned arises through the work of the very Inspectorate in the fulfilment of its tasks and such information must be provided.

The information may not be denied with reference to the obligation of confidentiality of personnel under the State Inspection Act, because the provision of information under the Act on Free Access to Information does not constitute a breach of confidentiality.

The Defender holds the view that the general insistence of the Inspectorate on the aforementioned position may violate the principle of openness of public administration.

The Czech Business Inspectorate insisted on its legal opinion and the Defender therefore addressed the matter to the superior authority (the Ministry of Industry and Trade) and publicised the case.

The Czech Telecommunications Office

The Defender noted complaints in the past year about the conduct of a telephone company in cases **where an agreement concluded for a fixed term is terminated as a result of a subscriber's death**. In some cases the telephone company required payment of the contractual fine for early termination of the agreement from the heirs. Since the Defender regarded the conduct as incorrect, he advised the Czech Telecommunications Office of this practice and requested it to provide a standpoint.

The Czech Telecommunications Office expressed an opinion on the basis of several administrative proceedings conducted in similar cases that the **contractual relationship of subscription between the telephone operator and the subscriber expires upon the subscriber's death**, notwithstanding whether this is stipulated in the terms and conditions of the agreement. The standpoint of the Czech Telecommunications Office is based on the opinion that the rights and obligations of the subscriber resulting from such a contractual relationship have a personal nature and relate only to the subscriber. They do not pass to another person in the event of death.

According to the standpoint of the Czech Telecommunications authority, with which the Defender agreed, the contractual relationship expires as of the date of death, but the testator's obligations incurred prior to the date of death are not prejudiced thereby.

2.15 STATE SUPERVISION OVER AND INSPECTION OF REGIONAL SELF-GOVERNMENT

The making of visual and audio recordings at a meeting of the assembly

Rights related to the participation of citizens in meetings of municipal assemblies are a persistent problem dealt with by the Defender. Specifically, the Defender dealt with the possibility of making video recordings at the meetings of regional assemblies.

The Defender disagreed with conduct where a regional assembly prohibited the making of a video recording at its meeting in spite of the fact that the citizen did not disturb the meeting by making the recording. The Ministry of the Interior did not find any breach of the law in the conduct of the assembly. On the other hand, the Defender took the view that the meetings of municipal and regional assemblies are public and public (communal) matters are discussed there. **The citizen therefore has the right to access to information from the meetings of assemblies**, including by making visual and audio

recordings and the assembly is obliged to enable him/her to do so. It is not entitled to prevent him/her from making visual and audio recordings at a meeting of the assembly in the rules of procedure or in a specific resolution insofar as the making of the recording does not disturb the meeting.

On the other hand, the citizen making the recording **has the obligation to respect the rights to personality protection under the Civil Code**. The citizen must be aware that he/she cannot record so-called "*presentations of a personal nature*" in the making of visual and audio recordings and that he/she may do so only subject to the consent of the person whose presentation is to be recorded. The Defender discussed his standpoint with the Ministry of the Interior and the latter accepted his legal conclusions.

Leasing of municipal flats

Many complaints concerned the conduct of a municipality in the leasing of municipal flats. Municipalities tend to include conditions of a **discriminatory nature** in their **rules applicable to the management of flats**. As an example, a citizen complained that the municipality had refused his application for a flat because the rules for the management of flats provide that the applicant for a flat, as well as all persons who live with him/her in a common household, must have no criminal record and are obliged to prove fulfilment of this condition with an extract from the Criminal Records.

In these cases the Defender initiated the performance of supervision over and inspection of the exercise of the independent competence of the municipality. The inquiries resulted in a statement that these and similar conditions are not in accordance with the Charter of Fundamental Rights and Basic Freedoms. A provision making the possibility of applying for a flat conditional on citizenship of the Czech Republic was also found illegal. In the latter case, the Ministry of the Interior stated variance with the laws of the European Union, according to which economically active immigrants and their family members should have access to housing equal to nationals of the member state. Remedy was ensured by removal of the illegal and discriminatory provisions from the rules for the management of flats.

Right of citizens to express standpoints on matters discussed at a meeting of the assembly

The Defender has encountered complaints in which citizens complain about being restricted in their right to express themselves on matters discussed at a meeting of an assembly, which occurs on the basis of the rules of procedure of some municipal assemblies.

The rules of procedure restrict the right of citizens for example by ruling out the possibility of presenting a standpoint orally, setting a limited number of presentations on a single item or defining a time limit.

In these cases the Defender cooperates with the Department of Supervision and Inspection. The Defender holds the view that in accordance with the Constitution, the relevant provisions of the Municipalities Act should be interpreted in that all matters discussed by an assembly at its meeting apply to all the citizens of the municipality and the latter therefore have the right to express themselves on the matters. Thus, in the sense of the law, **citizens may express their standpoints on any discussed matter**, i.e. they must have the possibility of expressing themselves before a decision is made in the matter (before a resolution is adopted). They also have the right to express themselves on a matter discussed on the agenda of the meeting, notwithstanding whether a resolution on the matter is to be adopted (a so-called information item). Conduct where a single item is included in the agenda of the meeting, intended for citizens' summary statements on all the previously discussed items at the end of the meeting, contravenes democratic principles. Citizens would thus be denied the right to influence the decision-making of the assembly and, simultaneously, the general right of a citizen to participate in the administration of public affairs pursuant to Art. 21 (1) of the Charter of Fundamental Rights and Basic Freedoms is thereby breached.

The Ministry of the Interior supported the Defender's conclusions and proceeded to ensure remedy.

2.16 PERSONAL DATA PROTECTION

Although the Defender did not close any inquiry directly against the Office for Personal Data Protection (hereinafter the "*Office*") in 2008, he encountered the issue of personal data protection in a number of cases across his mandate. The Defender observed in this respect that the bodies of public administration sometimes arbitrarily use personal data protection as an argument. These include cases where they do not want to provide information or disclose the name of a person. Although the Defender perceives the fact that the **principle of openness of public administration** may come into conflict with the **protection of privacy**, he holds the view that personal data protection is sometimes misused for the hiding of information that should be publicly available.

On the contrary, relatively sensitive personal data is provided in some other cases and the state bodies are indifferent to such activities (for example the involuntary taking of DNA in prisons, the provision of data from the citizens register on irreversibly adopted children). The Defender criticises the fact that in some cases "*the end justifies the means*" and the authorities exceed, in the name of a proclaimed public interest, the limits stipulated for the protection of privacy by Arts. 7 and 10 of the Charter of Fundamental Rights and Basic Freedoms.

The provision of data from the citizens register on irreversibly adopted children

The Defender has repeatedly encountered the issue of the provision of data from the citizens register on irreversibly adopted children. These generally involve cases where the biological parents are sought by the police or a court in the new place of residence of the adopted child. The cause of such interference with privacy can generally be seen in the insensitive processing of the adoption data by various state bodies. For example, the Defender ascertained that the data on the relationship between the adopted child and the biological parent is not updated for some time in the citizens register in spite of the fact that the child has already been properly adopted.

The Defender therefore opened an inquiry into the matter and initiated a dialogue with the Department of the Central Citizens Register of the Ministry of the Interior. This activity should result in an endeavour to ensure the promptest possible **elimination of insensitive interference with the privacy of irreversibly adopted children**.

Personal Data Protection in the National Health Information System

The Defender supported the endeavours of the Office for Personal Data Protection to protect personal data in the legal regulation of the National Health Information System prepared by the Ministry of Health in the draft law on healthcare services.

The Defender opined that the proposed legal regulation is unsound with respect to the protection of privacy of those patients whose data is to be gathered and processed **without** their **express consent** and without stipulation of a requirement for **making them anonymous**. In addition, in comparison with the foreign regulations, it even becomes grossly at variance with the European standard of data protection in the healthcare system.

The Defender supported the intention of the Office that all the partial aspects be regulated by a law rather than a mere governmental decree or order as was originally planned by the Ministry. He would simultaneously welcome a proposal that each register be defined in detail in terms of the **purpose**, **extent** of the processed data and the **period of processing** of the data, after which the data will be made anonymous.

Last but not least, the Defender commented on access to the National Health Information System. It was indicated in the Ministry's draft that anyone should have access to the public parts of the registers. However, it is not clear from the text of the draft as to what is the actual scope of the publicly available data, what constitutes the **public** and the **non-public** parts and who shall set the scope (the Ministry, the administrator, or the processor of the data).

The Ministry of Health did not accept the comments of the Defender and those of the Office in the amendment procedure. The Defender therefore recommends the Chamber of Deputies take into consideration personal data protection in the National Health Information System in the reading of the new medical laws.

Personal data protection and studying the collection of deeds of the land register

The Defender expressed in the Senate of Parliament his fundamental disagreement with the amendment to the Land Registry Act (promulgated under No. 8/2009 Coll.), which **significantly limits the rights of citizens to study the collection of deeds** (studying will now be possible only by accepting a copy of the relevant document subject to a fee, the applicant will have to prove his/her identity and indicate for what reason he/she wishes to "*study*" the document in this manner).

The Czech Office for Surveying, Mapping and Cadastre (submitter of the amendment) used personal data protection as one of the arguments in favour of limiting publicity of the land register. It holds the view that citizens should not have free access to data such as the price of real estate sold, lists of probate estates, etc.

The Defender disagrees with the approved regime, on the one hand because there has been no **personal data protection** (the regime of provision of data from the register has only become more bureaucratic) and, on the other hand, because "*acceptance of a copy subject to a fee*" will be impossible in a number of cases as the applicant will not be able to identify specific documents without studying them first.

The Defender's proposals were unfortunately not received favourably and the Senate passed the proposed amendment. However, the Defender continues to hold the view that the publication of the register should be preserved in the form in which it existed before the amendment. More importantly, the Defender considers it strange that the submitters arbitrarily argued from the need to protect personal data, although it must have been clear to them that in fact there will be no enhancement of privacy protection. The actual purpose of the approved amendment consisted of the **financial interests of the land registry offices**.

Personal data protection and the provision of data on natural persons operating a business

The Defender agreed with the Office for Personal Data Protection in the issue of provision of information on the result of state inspection performed by the trade-licensing office at an entrepreneurial entity. Information on whether the inspection ascertained shortcomings, whether sanctions were imposed for them and in what amount, does not represent personal data with respect to a natural person operating a business. Applicants for information may therefore not be denied the aforementioned data with reference to the need for personal data protection [Section 8a of the Act on Free Access to Information (Act No. 106/1999 Coll. as amended)].

Personal data protection and concealing the names of review doctors

The Defender encountered the issue of personal data protection also with respect to applications for copies of an expert report. The Defender ascertained that the officials of the Ministry of Health **were refusing to provide** to a complainant **the full copy of an expert report** (including the author's name),

which had been drawn up in connection with her complaint about the healthcare provided. They justified their conduct with the need to **protect the personal data of the author of the expert report**. However, the patient was unable to verify whether the author of the expert report was a person independent of the medical facility concerned, with a corresponding expertise, and/or whether he/she was an unbiased person. A patient has the right to provision of copies of all the information gathered in the medical records and other records relating to him/her.

The Defender criticised the above conduct and requested the Minister to disclose the name of the author of the expert report. The Defender holds the view that refusal to provide a full report is unsubstantiated from the view of personal data protection, since the exemption stipulated in Section 5 (1) (f) of the Personal Data Protection Act (Act No. 101/2000 Coll. as amended) applies to this case. **The author of the report enters the position of an "*employee of public administration*"** as he assesses the complaint only on the basis of an authorisation from an authority and thus becomes the recipient of public funds. Keeping the name of such a person confidential is therefore not justified.

The Office agreed with the Defender's standpoint.

SYSTEMATIC VISITS TO FACILITIES WHERE PERSONS RESTRICTED IN THEIR FREEDOM ARE HELD

In 2008 the Defender continued to perform systematic visits (Section 1 (3) and (4) of the Public Defender of Rights Act) and he also performed follow-up visits to some of the homes for the elderly which he had visited in 2007.

1. MENTAL HOMES

Given that the treatment of patients in mental homes is not subject to efficient external control (the existing control mechanisms are strictly sector-oriented, e.g. on hygienic rules, management of funds, compliance with insurance companies' limits, etc.) and general courts assess only justification of hospitalisation (rather than its conditions) within the proceedings on the admissibility of reception or holding a person in a healthcare institution, the Defender performed systematic visits to eight mental homes in the first quarter of 2008.

The objective of the two- to three-day visits consisted, in particular, in assessment of the **legal regime of the stay of persons** in the **reception departments** (mostly enclosed, intended primarily for a period of time before placement of the patient to a specialised department), specifically because many patients in the regime of **involuntary hospitalisation** are placed there. The visits were also directed at evaluation of the legal aspect of hospitalisation and treatment on the one hand and, on the other hand, comprehensive assessment of the regime in the enclosed departments of mental homes. Gerontopsychiatric departments and departments for mentally handicapped patients were also visited. The Defender invited psychiatric experts to participate in the visits and help him evaluate the medical records.

The table below lists the visited facilities. Except for the mental home in Lnáře, founded by the South Bohemian Region, all the homes visited had been founded by the Ministry of Health.

Name of facility	Region	Number of visited departments	Capacity	Number of patients at the time of the visit	Average duration of hospitalisation (in days)
Šternberk MH	OL	3	530	509	85,2
Kosmonosy MH	SČ	3	600	554	86
Kroměříž MH	ZL	4	1 083	1 019	60
Havlíčkův Brod MH	VY	3	845	747	107
Dobřany MH	PZ	5	1 260	1 220	132,6
Opava MH	MS	6	1 015	930	54
Horní Beřkovice MH	ÚS	4	587	544	96
Lnáře MH	JČ	2	70	70	52

Table explanation:
Acronyms: MH = mental home; SB = South Bohemian Region, PZ = Plzeň region, ÚS = Ústí nad Labem Region, OL = Olomouc region, CB = Central Bohemian Region, MS = Moravian/Silesian Region, ZL = Zlín Region, VY = Vysočina Region.

The Defender did not ascertain treatment that could be labelled as cruel or even torture. However, he ascertained cases of a formalised detention facility and the performing of interventions with only the formal consent of the diseased (also without consent), cases of a dehumanised regime in departments or an undignified environment for treatment.

The Defender would like to make the general observation that the position of patients greatly differs from institution to institution. There are also differences between comparable departments within a single institution (e.g. a department for men and a department for women). There are established regimes of rules without support in the legal regulations justified by organisational rather than therapeutic reasons.

The Defender ascertained in relation to the reception departments that patients showing agitation are generally placed there. Thus, they involve both newly received patients and already hospitalised patients whose disease is accompanied by agitation. The Defender criticised this situation as the **varied composition of patients** places considerable demands on the coping of the patients and the cohabitation of patients with different diagnoses is problematic.

As for material conditions, the Defender stated that the **internal environment of the visited departments is, with a few exceptions, very unfortunate and undignified**. The technical condition and design of the departments are the reason for many regime limitations: they aggravate supervision over the patients, the latter have impaired access to leave outside the premises, and the departments for agitated patients are not separated from the other departments, etc. Small therapy groups cannot operate due to the state of repair of the buildings.

The Defender consulted on his findings with the heads of the visited institutions during their meetings and subsequently addressed systemic recommendations to the Ministry of Health, the Ministry of Labour and Social Affairs, the Ministry of Justice and the regional authorities. The Defender requires a report on the implemented measures by June 2009. The Defender also appealed to the Ministry of Health to initiate, in cooperation with the representatives of mental homes and health insurance companies, a professional discussion concerned with the funding of psychiatric care.

1.1 THE DEFENDER'S RECOMMENDATIONS

Voluntary and involuntary hospitalisation

It was ascertained in connection with the proceedings on the reception or holding of a patient in a medical facility without his/her consent (detention proceedings) that although courts make decisions within the statutory periods, the decision is delivered much later to some institutions. Thus, the medical personnel are not aware of the result of the proceedings at the end of the statutory period (Section 191b (4) of the Civil Code) and the institution itself does not seek the information.

The Defender recommended the heads of the institutions actively ascertain the progress of the proceedings in order to make clear at the end of the period whether the patient may leave the institution or a decision has been made on his/her involuntary hospitalisation.

It was ascertained in connection with the issue of admissibility of holding a patient in an institution that the institutions require patients to provide written consent to hospitalisation, treatment, observance of the internal rules and sometimes other rules within the reception procedure. Yet the placement of patients into the "*agitation departments*" is usually a consequence of their poor psychological condition.

The Defender therefore recommended that the consent be submitted gradually to these patients (i.e. only in a situation when the patient is able to perceive the advice and make a qualified decision on his/her consent or disagreement).

Although decisions on involuntary hospitalisation are made by a court, it is virtually impossible for an involuntarily hospitalised patient to be released in the case that his/her further holding in the institution is unsubstantiated. If he/she lacks support from family or friends, there is no help available in the institution to help them succeed before the court or even to be heard by the court. The same applies to legal assistance

in the initiation of proceedings aimed at restoring legal capacity. The institutions are unable to provide consultancy and assistance in this respect.

The Defender therefore recommended the Ministry of Justice submit a proposal that would legislatively stipulate the tools of protection of persons with a mental disorder.

As for the issue of the annulment of protective treatment, which is usually imposed by the court in criminal proceedings in addition to or instead of serving a sentence, the Defender ascertained that although the medical facility should report to the court "*without delay*" that the grounds for further protective treatment have ceased to exist, the patient usually waits for months for the ordering of a hearing after the lodging of the proposal. The court is not bound by any deadlines for decision and the patient may stay in the institution for a long time even though the doctors do not consider it necessary from the medicinal view or do not consider his/her being at large dangerous.

The Defender recommended the Ministry of Justice submit a proposal to enact deadlines for decision-making by the court on the annulment of protective treatment. The Defender addresses the same recommendation to the Chamber of Deputies.

Informed consent

The Defender holds the view that Arts. 6 (3) and 7 of the Convention on Human Rights and Biomedicine have not been implemented in the Czech legal order (Advice of the Ministry of Foreign Affairs No. 96/2001 Coll. of Int. Tr.). Although the Care of People's Health Act (Act No. 20/1966 Coll. as amended) provides for the patient's consent to treatment in Section 23, it does not adequately respond to situations where the person is not able to give qualified consent due to his/her mental health and has no legal representative (Art. 6 (3)), or does not wish to give consent and his/her health is very likely to be seriously harmed without intervention aimed at the treatment of his/her mental disorder (Art. 7).

The Defender also encountered a situation in five of the visited institutions where **consent to hospitalisation was combined with consent to treatment**. Patients are required to sign a very general form containing not only consent to hospitalisation, but also all diagnostic and therapeutic actions. Refusal to of sign is commonly reported to the court and a decision on involuntary hospitalisation usually follows. No additional consent is usually required after the consent is signed.

Such formalised procedures comply neither with the requirements of the Convention on Human Rights and Biomedicine, nor the national legislation contained in the Care of People's Health Act. The statutory exemptions from the requirement for performing a medical intervention without informed consent (Section 23 (4) of the Care of People's Health Act) do not apply to all situations of patients placed in mental homes.

The Defender therefore addressed the Ministry of Health with a legislative recommendation that it reflect in the medical laws under preparation the need for national regulation of the provision of consent to treatment in mental homes. The Defender addresses the same recommendation to the Chamber of Deputies.

Restrictive measures

The Defender paid attention to the use of restrictive measures the legal definition of which, including the conditions of their legal use, are missing in the Czech legislation. The practice is based on the 2004 methodological instruction of the Ministry of Health, which is respected only partly. The conduct of mental homes is non-uniform, restriction is not stipulated adequately in their internal regulations and some measures are not at all perceived as restrictive measures in a number of homes (for example the

use of medication for the management of agitation, placement in an enclosed department or the use of sideboards).

Furthermore, the Defender points out that the most fundamental **safeguards against excessive use and misuse of such measures** are not used (there are no central records of these measures, adequate records are not made within medical records, the competences of individual employees and the maximum period of validity of consultations are not laid down).

The fact that personnel other than **doctors** (most often nurses) regularly **make decisions** on the use of restrictive measures in some institutions is regarded as a fundamental shortcoming by the Defender. The Defender also encountered a situation in a number of institutions where doctors provided inadequate consultations in the sense that nurses lacked clear instructions concerning the type, quantity, possible repetition and conditions for the use of a restrictive measure.

The use of restrictive measures was many times ascertained in situations where the patient or his surroundings were not at risk (Section 23 (4) (b) of the Care of People's Health Act). As an example, a patient whose behaviour was causing agitation among other patients was locked up so as to be separated from them, or **patients of gerontopsychiatric departments** were locked in netted beds overnight to avoid their falling off the bed. The Defender also encountered a situation where some patients were locked up because the personnel were unable to ensure systematic supervision over them. The Defender also noted that the restriction on some mentally handicapped patients was permanent (**these persons are permanently placed in a netted bed**). This approach is perceived by the Defender as particularly alarming.

As for the use of netted beds, the Defender noted in some of the institutions that **netted beds** were included in the stock of normal beds, allocated as such and the net was used when needed. The Defender considers this conduct to be undignified and involving the risk of excessive use of netted beds. In addition to this, a patient who normally sleeps in such a bed faces a permanent threat that the net will be used or that he/she will be moved to vacate the place for another patient.

For the aforementioned reasons, the Defender made comments on the draft law on health services which is to provide for the use of restrictive measures. The Defender simultaneously requested the Ministry of Health to address the fact that patients are placed permanently in netted beds.

Lack of privacy

The Defender noted that there was virtually no privacy in all of the visited reception departments. Based on the regime in place, all the patients (an average of 35 people) spend several months in joint premises and are placed in **multi-bed rooms** at night. There are no "*rest areas*" and the patients are exposed to noise and the other patients all day. The departments are often not equipped with suitable rooms for visits and social rooms.

The patients are most often accommodated in three- to five-bed rooms, although twelve-bed rooms or walk-through rooms are often the case. With a few exceptions, the bedrooms are locked all day and it is not ensured that each patient has a lockable space for everyday items.

The privacy of patients in the toilet and in performing personal hygiene is not respected by the visited departments. Shielding curtains are not used in the performing of nursing and hygienic procedures on bedridden patients. The joint toilets are not lockable, some departments have not equipped their toilets with doors and some even lack toilet compartments.

In order to resolve these most serious cases, the Defender directed a recommendation to the heads of the mental homes and the Ministry of Health to ensure that the patients have lockable

cabinets, their privacy is protected in the performing of hygienic and nursing procedures, toilet compartments are provided with lockable doors, toilet compartments are available in selected departments and shower stalls are furnished with curtains.

The Defender also concentrated on the protection of patients' privacy during ward rounds. Although the latter are performed "*privately*" as a standard in some departments, they still take place summarily in many others with participation of all the patients in the department and sensitive information on the health condition is communicated publicly.

The Defender therefore recommended the heads of the institutions perform ward rounds so as to protect the sensitive data communicated during the ward round.

The Defender perceives as problematic the operation of camera systems in six of the visited institutions, as the law does not provide the relevant authorisation for their installation in the present form and consent of the relevant persons has not been obtained. In addition, attention is not paid to proper informing of the persons of the placement of the cameras and security of the recordings made is not ensured. Some cameras are directed in an unacceptable manner (e.g. to a squat toilet in the isolation room, or to a toilet compartment with no door).

The Defender recommended the heads of the institutions obtain consent of the patients to the making and use of their visual recordings, apply with the Office for Personal Data Protection for registration of the camera systems and, most importantly, consider whether the use of camera systems is at all necessary in certain places.

Social services for mentally diseased persons

The Defender ascertained that a number of patients stay long-term in mental homes (especially in gerontopsychiatric departments, but also in some agitation departments) in spite of the fact that their placement there is not necessitated by the need for permanent institutional care, but instead a because of a lack of specialised social service facilities.

The Defender recommended the Ministry of Labour and Social Affairs extend the network of social services with facilities for mentally diseased patients.

2. THEMED VISITS TO HOMES FOR THE ELDERLY

Themed visits to 17 social service facilities for elderly people (hereinafter the "*homes for the elderly*") were performed from April to October 2008. During the themed visits, the Defender concentrated primarily on the issues he had pointed out in his 2007 Annual Report. These include, in particular, the issue of factual inequality of parties concluding an **agreement on the provision of a social service**, the unsatisfactory position of persons formally capable of legal acts but in fact unable to make decisions on themselves or the non-uniform approach of founders to the division of services into basic and facultative services. The Defender also dealt with the financial aspect of clients' stay in the facilities. The table below shows the facilities visited.

Name of facility	Region	Founder	Capacity	Number of agreements concluded
Home for the elderly, Vychodilova, Brno	JM	municipality	130	28
Home for the elderly, Jihlava-Lesnov	VY	municipality	134	134
Home for the elderly, Stará Role, Karlovy Vary	KV	municipality	23	21
Home for the elderly, Orlická, Ústí nad Labem	ÚS	municipality	186	45
Jindřichovice pod Smrkem home for the elderly	LI	region	67	67
Liberec-Františkov home for the elderly	LI	region	200	198
Letovice home for the elderly	JM	municipality	72	71
Vesna home, Orlová-Lutyně	MS	region	182	26
Home for the elderly, Kamenec, Ostrava	MS	municipality	98	91
Home for the elderly, Rybniční, Strakonice	JČ	municipality	120	119
Harmonie home, Mirošov	JČ	region	172	171
Sloupnice home for the elderly	PA	municipality	107	107
NADĚJE (Hope) Social Services Centre, Broumov, retirement home	KH	municipality	34	34
SENIOR Otrokovice	ZL	municipality	75	75
Šumperk retirement home	OL	region	250	55
Prostějov retirement home	OL	region	270	99
Mělník centre for the elderly	SČ	municipality	222	222

Table explanations:
Acronyms: SM = South Moravian Region; VY = Vysočina Region; KV = Karlovy Vary Region; ÚS = Ústí Region; LI = Liberec Region; MS = Moravian/Silesian Region; SB = South Bohemian Region; PA = Pardubice Region; HK = Hradec Králové Region; ZL = Zlín Region; OL = Olomouc Region; CB = Central Bohemian Region

2.1 THE DEFENDER'S FINDINGS AND RECOMMENDATIONS

Treatment of the person interested in the service

Although in all the visited facilities the person interested in the service is acquainted with his/her rights and obligations, not every facility delivers this information in written form. The Defender holds the view that delivery of the basic information in written form is important for ensuring that the interested person and, where applicable, his/her family, can subsequently take their time and acquaint themselves with the provided information in detail. The requirement for it to be in written form is also necessary because the authorised personnel of the facility do not always act uniformly and there is no guarantee that all the information relevant for conclusion of the agreement will be delivered. The Defender believes that the home's rules should also be provided, especially in a situation where the agreement refers to them. It should go without saying that the facility is to provide and allow the interested persons to study a draft agreement.

The Defender recommended the heads of the homes for the elderly provide the persons interested in social services with information on their future rights and obligations in written form. The home's rules should be provided in the same manner.

The Defender ascertained that with a few exceptions, the facilities have not drawn up a uniform methodology and criteria for filling vacant places that would enable objective consideration of the urgency and necessity of receiving a person interested in being received. Although the personnel state that the facility is able to cope with a serious health condition of a client, they are unable to specify the procedure to be followed in that case.

The Defender therefore recommended creation of a methodology in retirement homes for assessment of the interested persons' applications, taking into account urgent cases.

Agreement

The Defender has repeatedly encountered cases where agreements on the provision of a social service are concluded by persons who, although not incapacitated, are **in fact not legally capable**. A number of cases were ascertained where the agreements had been signed by clients disoriented due to Alzheimer's disease or some other dementia. They did not know at all that they had signed the agreement on the provision of the social service several days ago.

The Defender believes that in order to achieve legal certainty, Section 29 of the Commercial Code (Act No. 40/1964 Coll. as amended) should be applied in these cases, according to which the court shall appoint a **guardian** if this is necessary on serious grounds. It is also possible to use Section 91 (6) of the Social Services Act (Act No. 108/2006 Coll. as amended), which allows that a person who is unable to act independently and lacks a legal representative be represented by the municipal authority of a municipality with extended competence in the conclusion of the agreement. However, the Defender points out with respect to this possibility that the civil servant representing the client may find him/herself in a **conflict of interest** in cases where the homes for the elderly are founded by municipalities. The Defender therefore tends to prefer a procedure where the relevant facility uses the possibility of appointing a guardian on the basis of Section 29 of the Civil Code.

The Defender recommended the heads of the homes for the elderly ensure appointment of a representative for persons who are in fact incapable of legal acts. The representative should not be in a conflict of interest.

The Defender ascertained that agreements on the provision of a social service are usually in a form not incorporating the individual requirements and needs of the interested persons. The Defender also noted that the employees of many of the visited facilities have difficulties in formulating the extent of the provided care although the latter is a requisite of the agreement pursuant to Section 91 (2) (c) of the Social Services Act (agreeing the scope is also anticipated by Section 73 (1)). The law is copied in the agreement without the required individualisation.

The Defender therefore recommended laying down the extent of the provided service (care) with adequate precision in the agreement. It is possible to set a personal goal with reference to an individual plan, which will specify the extent.

The issue of a clear definition of the rights and obligations of the parties is associated with the requirement for precision of agreements. It is often indicated in agreements that the clients have the obligation to observe internal rules, without clearly stipulating them. The use of the general term "*observance of internal rules*" could in an extreme case constitute grounds for nullity of the agreement due to vagueness.

The Defender therefore recommended the heads of the homes for the elderly clearly define the content of the binding rules in the agreements or, as the case may be, refer to them in the agreement and use their text as an annex to the agreement.

In relation to the provision of a social service, the law imposes the obligation on the provider to plan the course of the provision together with the user. However, the Defender ascertained in this respect that some facilities fulfil this obligation only formally or restrict themselves only to the provision of healthcare. The Defender found that many employees did not have an adequate opportunity to acquaint themselves with the method of individualised planning and the goals therefore tend to be concentrated on basic activities of a non-nursing nature listed in Section 49 of the Social Services Act or goals which do not sufficiently take into account the clients' everyday life.

The Defender recommended the heads of the homes for the elderly pay sufficient attention to effective individualised planning and recommended that the relevant personnel be trained in this respect.

The Defender noted that the notice periods of agreements on care considerably differ between facilities. Notice periods of 7 days, two and three months can be encountered. The Defender holds the view that notice periods should be set appropriately to the social situation of the clients. They should also approximate to the conditions stipulated by the Civil Code for the relationship of leased housing. The Defender sees no reason for concluding only agreements for a fixed term. Many elderly people obviously intend to spend the rest of their lives in the social service facility and restricting the agreement is unreasonably stressful for them.

The Defender recommended that the notice periods of agreements on the provision of social services be approximated to the notice periods stipulated in the Civil Code for the notice of termination of the lease of a flat by the landlord. The Defender also opined that the agreements in general should not be concluded for a fixed term.

Payment for the services provided

The Defender dealt with the issue of the amounts to be refunded to clients for services not used. These cases occur especially when the user leaves the home for a temporary period (for example for a holiday). As for the refunding of advances for catering, the Defender ascertained that individual meals could not be cancelled in any of the visited facilities. Refunding is possible only in case of an absence from the facility lasting several days. Yet the price of the individual meals is set, including specification of the overheads and the cost of the meals.

The Defender recommended that the clients be refunded also for advances for individual meals under preset conditions.

The Defender continues to encounter a situation where some services are designated as facultative by the facilities (the client pays an extra on top of the allowance for care for them) in spite of the fact that the law designates them as "*basic activities*". The Defender criticises this fact and points out that the "*handicap*", based on which the client receives the allowance for care, should always be taken into consideration. The Defender holds the view that the facility may charge the provision of care interventions that can be subordinated to "*basic activities*", but not in a situation where the user is dependent on the help of another person in the relevant interventions due to his/her handicap and the allowance for care is therefore provided to him/her.

The Defender requested that care interventions be not charged as facultative in cases where "basic activities" pursuant to the Social Services Act are concerned, to the extent that the specific user is dependent on the help of another person.

3. FOLLOW-UP VISITS

3.1 HOMES FOR THE ELDERLY

The Defender performed follow-up visits to four homes for the elderly where he wished to verify observance of the recommendations he had addressed to the management of the homes for the elderly after the visits in 2007. The Defender selected the Domažlice home for the elderly, the Kladno retirement home, the Podlesí home for the elderly, the Skalice home for the elderly, the Telč home for the elderly and the Krč home for the elderly for his follow-up visits.

The Defender ascertained that a part of the recommendations had been fully implemented by the facilities. These included, for example, the installation of bedside signalling, temperature controllers on heaters and increased specialisation with respect to elderly people suffering from dementia. There was also an improvement in the application of the standards of quality of social services and **more intense work with the individual plans**. The home rules of many facilities had also been reworked and the earlier practice of "*permitting*" or "*approving*" leave outside the home were no longer used. The homes had also accepted the recommendations directing the **possibility of locking cabinets, rooms** and **toilets**. Almost all the homes increased the number of their personnel, in particular carers and social workers, and the homes were also **establishing new jobs** (a worker for leisure time activities, occupational therapist, etc.). Some homes had introduced external supervision to support their personnel.

On the other hand, some measures had not been implemented, for example the **re-registration of permanent residence**. Although the internal regulations grant the clients the right to a free decision as to whether to re-register their permanent residence, in fact the personnel still force them to re-register. The personnel also often do not provide the possibility of **choosing the method of payment of pension** (the only option in some facilities still being a "*collective list*", where the pensions of all clients are remitted to the home's joint account). In some cases the personnel of the facility (primarily social workers) perform the role of the clients' guardians and the possibility of conflict of interest still persists.

As for the use of provisions restricting the freedom of movement, the personnel of the facilities pay increased attention to it (for example by documenting it more thoroughly or taking a more careful approach), but the Defender must reiterate that the use of provisions restricting the freedom of movement has accurate rules stipulated in Section 89 of the Social Services Act, which must be observed (e.g. the practice concerning the use of sideboards has not changed). A certain progress lies in the fact that clients with psychiatric diagnoses are no longer locked in their rooms.

The Defender deems the situation in the Podlesí home for the elderly as unsatisfactory. The facility has not yet adopted a revision of the home rules so as to correspond to the new legislation on social services (because the draft new text was sent one year ago to the operator (Vsetín Social Services) and the latter has not approved it to date)). A controlling approach to clients persists in the facility, the care plans concentrate only on satisfaction of basic needs (catering, housing, hygiene), and individualised planning of the provision of the service has not been introduced. Curtains for hygienic procedures are not used, the personnel is still not aware of how to use restrictive measures, sideboards for the prevention of falling are used in an entirely arbitrary manner and no records are kept of their use.

The elderly people are locked in the department for clients suffering from Alzheimer's disease without permanent presence of the personnel. Haloperidol and other psychiatric drugs are used to sedate them only on the basis of a preliminary or general consultation (the doctor is not contacted after the application and the latter is not properly documented).

It can be summarised in spite of the aforementioned shortcomings that the facilities have usually paid attention to the Defender's recommendations and implemented a number of them in practice within the framework of their capabilities.

Part V

DISCRIMINATION, SOCIAL EXLUSION

1. COMPLAINTS IN THE AREA OF PROTECTION AGAINST DISCRIMINATION

Complaints pointing out discrimination are usually encountered by the Defender in labour law relations. Given that the draft Anti-Discrimination Act has not been approved to date, which would establish the Defender's mandate directly in relations between the jobseeker/employee and the employer, the Defender encounters discrimination when inquiring into the work of the labour offices and area labour inspectorates. **In the aforementioned sector, age was the most frequently alleged cause for discrimination** (usually in remuneration, or in termination of employment). In his inquiries, the Defender usually reprehended the labour inspectorates for inconsistent application of the available legal competences, the imposition of "*symbolic*" fines and failure to demand remedial measures.

Based on a complaint of a coalition of NGOs on the judgment of the European Court of Human Rights in the case of D. H. and Others vs. the Czech Republic, the Defender also dealt with **access of Romani pupils to basic education in the Czech schools system**. In this respect the Defender actively cooperated in the creation of an amendment to the Schools Act that should ensure a systemic change in relation to the inclusion of Romani pupils in mainstream education.

In the area of discrimination in access to education, the Defender also dealt with the issue as to whether schools where Polish is the language of instruction are obliged to keep school records in Polish.

Complaint File Ref.: 3218/2008A/OP/DV

The requirement that school records be kept in Czech in educational establishments with Polish as the language of instruction does not breach the principle of prohibition of unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language, intended to discourage or endanger the maintenance or development of it. On the other hand, the requirement does not preclude the keeping of parallel school records in Polish.

Complainant W. S. disagreed with the requirement of the Czech Schools Inspectorate supported by the Ministry of Education, Youth and Sports that the documentation of educational establishments with Polish as the language of instruction be kept exclusively in Czech. The measure was, in his opinion, at variance with the Framework Convention for the Protection of Ethnic Minorities in the Czech Republic (Decree No. 96/1998 Coll.) and the European Charter for Regional and Minority Languages (Advice of the Ministry of Foreign Affairs No. 15/2007 Coll. of Int. Tr.), which are to prevail over the law.

The Defender concluded that the conduct of the authorities was not at variance with the above-stated treaties. Art. 8 of the European Charter for Regional and Minority Languages refers only to access of ethnic minorities to education. However, the language in which school records are to be kept is not expressly stipulated anywhere in the document. No similar requirement follows from Art. 10 (3) of the Framework Convention for the Protection of Ethnic Minorities in the Czech Republic. The Defender agreed with the arguments of the Ministry of Education, Youth and Sports, which states on the issue that some school documents (e.g. the school curriculum or the annual report) must be publicly available and anyone has the right to study them. If the "procedural language" in the Czech Republic is Czech, it is not fair to require that it be possible to acquaint oneself with the relevant documents only in the language of the ethnic minority or that it be necessary to apply to the headmaster of the school for translation of the documents. The aforementioned arguments obviously do not rule out the keeping of school records in both

languages. On the other hand, it is obvious that such a requirement is difficult to manage administratively and it depends only on the headmaster of the school whether he/she accepts it.

The Defender did not find maladministration in the conduct of the headmaster of the school, the Czech School Inspectorate and the Ministry of Education, Youth and Sports and suspended the proposal to open an inquiry.

The Defender also received complaints pointing out discriminatory and racially motivated performance of customs inspections on tradespersons of Vietnamese nationality. Although the Defender did not find maladministration in the very conduct of the bodies of customs administration and foreign police (these bodies are entitled to perform random inspections and it was not proven that these were performed more often specifically on tradespersons of Vietnamese nationality), he identified the **manner of publishing the results of the inspections in the media to be problematic**. It made the impression of stigmatising an ethnic group (Vietnamese), while suppressing the very substance of the problem (apprehension of the illegal trading of certain goods). In this respect the Defender suggested the complainants address their complaint to the Council for Radio and Television Broadcasting.

Other complaints include those where the complainants referred to **discriminatory conduct in the offering of services**. The Defender opined on the question as to which parties are subject to the prohibition of discrimination stipulated in Section 6 of the Consumer Protection Act (Act No. 634/1992 Coll. as amended) in the case of the publishing of discriminatory advertisements in the leasing of flats.

Complaint File Ref.: 5553/2008A/OP/DS

Neither real estate agencies nor landlords of flats, who are in the position of entrepreneurs in the sense of Section 2 (1) (a) of the Consumer Protection Act (for example project developers and administrators), may discriminate against consumers in offering their services. If they do so, this constitutes grounds for the imposition of sanctions by the Czech Business Inspectorate.

A civic association addressed the Defender with a complaint requesting an inquiry into the procedure of the Czech Business Inspectorate in the matter of assessment of discriminatory advertising by a real estate agency.

The area inspectorate originally held that under the Consumer Protection Act it was not entitled to fine the owners of flats for their discriminatory requirements as they are not entrepreneurs and the Czech Business Inspectorate therefore lacks competence. It deduced in relation to real estate agencies that although they had a trade license, they only "reproduced" the wishes (although discriminatory) of their clients and therefore were not liable for their conduct.

The Defender opened an inquiry into the matter and, already during the inquiry, the central inspectorate correctly assessed the position of the real estate agency which bears its own liability for advertisements, notwithstanding that they are the wish of its customer. As the central inspectorate correctly stated, the penalties apply not only to real estate agencies but also other entrepreneurs. The Defender provides the example of developers and landlords of flats whose business activities include the leasing of flats. The obligations imposed by the Consumer Protection Act apply also to these parties, and the Czech Business Inspectorate is entitled to penalise the relevant breach of the prohibition of discrimination.

Given that the Czech Business Inspectorate finally began to act in the matter and a penalty was imposed on the real estate agency, the Defender closed his inquiry.

The complaints in which complainants pointed out unequal treatment included those in the area of the **prison system**. Here the Defender confirmed the legitimacy of a complaint that contested the procedure of the Prison Service in the placement of convicts in low security departments.

Complaint File Ref.: 3749/2008A/OP/IK

The deliberate placement of accused people of other than Czech or Slovak nationality in low security departments constitutes discrimination on national grounds. The limited capacity of the department is not reasonable grounds for such a procedure.

The complainant, a convict, addressed the Defender with a complaint pointing out an alleged denial of a transfer to a low security department on the grounds of his being a foreigner. The Defender opened an inquiry against the Prison Service of the Czech Republic.

It was ascertained in the inquiry on the site that nationality criteria had been earlier applied in the Prague-Pankrác Remand Prison in the selection of accused persons to be placed in a low security department. Although the relevant instruction of the head of the prison had already been annulled, the personnel of the Prison Service continued the established practice. For example, the special tutor stated that principally only accused of Czech and Slovak nationality were placed in the low security department, as there could arise animosities among the foreigners who do not succeed in placement in the department (it had a capacity of 18 persons).

In spite of the fact that there is no legal entitlement to placement in a low security department, non-placement cannot be justified by a person's nationality. On the contrary, a negative recommendation by a psychologist or the fact that the conduct of the accused provides no guarantee that he/she will not act counter to the purpose of the remand and the internal rules could be accepted as grounds for non-placement.

The Defender stated that measures consisting in excluding placing a foreign national in a low security department should be rated as inadmissibly discriminatory, because their application violates equality of the accused, which is at variance with Art. 42 of the Charter of Fundamental Rights and Basic Freedoms, Section 27 of the Imprisonment Act (Act No. 169/1999 Coll. as amended) and, last but not least, Art. 13 of the European Prison Rules.

The Defender recommended the management of the remand prison adopt measures ensuring that equal criteria are followed in the selection among the accused who wish to be placed in a low security department.

The head of the prison informed the Defender that the relevant instruction had been annulled and that it represented maladministration by specific employees. He also stressed that national, racial or religious criteria should not be followed in the placement in low security departments of remand prisons and ensured that the relevant personnel be retrained in this field..

2. SOCIAL EXCLUSION

The Defender received a number of complaints from those at risk of social exclusion. These included filings pointing out poor social circumstances, undignified housing or lack of access to employment. Some citizens complained about the fact that they had not qualified for material need benefits or state income support benefits, fallen through the social net and were grappling with debt.

In this respect, the Defender considers it to be alarming when people finding themselves in difficult social circumstances are concentrated in a single location. This is accompanied by increased demands on

social fieldwork, coordination of the personnel of social departments, departments of social services and social and legal protection of children and labour offices. In addition, the chance of returning to normal life from such a "*ghetto*" tends to be very difficult.

There is no doubt, according to the Defender, that municipalities are closest to citizens at risk of social exclusion and can best use the tools for preventing the arising and expansion of socially excluded sites. On the other hand, this does not mean that municipalities should "*be left alone*" in solving the problem. The Defender therefore initiated establishment of a working group at the Ministry of the Environment, aimed at drawing up a "***Recommendation for Municipalities and Cities for Preventing the Arising and Extension of Socially Excluded Sites, with Emphasis on Securing Housing***". It is a summary of the available tools for solving the issue of social exclusion, including examples of good practice. The latter were collected within the "***Social Housing***" **professional conference** organised by the Defender on November 24 and 25, 2008. The recommendation (it will be published as the first volume of the new "*Good Administration Series*" in the 1st quarter of 2009) also contains information that can serve municipalities in their work with those at risk of social exclusion or already socially excluded.

Part VI

GENERAL OBSERVATIONS – RECOMMENDATIONS TO THE CHAMBER OF DEPUTIES

The Defender traditionally submits to the Chamber of Deputies in the conclusion of his report his suggestions for amendments to laws and other legal regulations. Given that in 2008 the Chamber of Deputies did not read the 2007 Annual Report on the Activities of the Public Defender of Rights and did not adopt any accompanying resolution requesting the government to comment on the Defender's legislative recommendations, in contrast with the previous Annual Report the Defender is not dealing in the following text with the question of the degree to which the government has reflected the Defender's recommendations to date. Instead, the Defender stresses the recommendations that have not been implemented to date and proposes new recommendations that follow from his findings made in 2008.

The Defender simultaneously appreciates the progress achieved in the areas where he has over many years pointed out shortcomings (primarily the issue of pensions of those caring long-term for a handicapped relative, the amendment to the Experts and Interpreters Act and the changes in the provision of data from the citizens register).

1. RECOMMENDATIONS THAT HAVE NOT BEEN IMPLEMENTED TO DATE

1.1 THE MINING ACTIVITIES ACT

The Defender continues to hold the view that practice of the mining companies significantly infringes upon the protection of ownership of those whose real estate is affected by mining. The Defender believes 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 provided 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 Section 17 (2) of the Mining Activities Act (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 incorporating 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 a draft amendment to the Mining Activities Act 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.

1.2 A NEW CONCEPT OF THE OFFICE FOR THE INTERNATIONAL LEGAL PROTECTION OF CHILDREN

The fact that the Office for International Legal Protection of Children continues to be appointed conflict custodian of children subject to international abductions in spite of the Defender's repeated meetings with the Ministry of Labour and Social Affairs and the Ministry of Justice remains a problem. In this respect, the Office finds itself in a conflict of interest as it simultaneously represents one of the parents who addressed it with a request for help. The Defender ascertained that in some cases the Office lodges

an appeal against the resolutions of the courts by which it is appointed a conflict custodian, but in other cases it simply acts as conflict custodian.

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

1.3 ORPHAN'S PENSIONS

A change in the conditions for entitlement to an orphan's pension arising has been in place since the adoption of the Pension Insurance Act (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 qualified for a pension (full disability pension or old-age pension) in terms of the required insured period 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 Pension Insurance Act, the legislator substantiated the change in the conditions for the arising of entitlement to an orphan's pension on 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). Practical experience 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

submit an amendment to the Pension Insurance Act 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) at the time of death,

or to

submit an amendment to the State Income Support Act that will introduce a new benefit within the non-insurance systems, similar in its purpose to the guaranteed orphan's pension.

1.4 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 convict's prison sentence, the stipulation should be contained directly

in the Imprisonment Act (Act No. 169/1999 Coll. as amended). The new legislation should also 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 the placement "*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 to punish 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 an amendment to the Imprisonment Act that would clearly stipulate the regime, nature and purpose of the departments with enhanced structural and technical security.

1.5 PERIODICITY OF COURT REVIEW IN THE REMOVAL OF A CHILD

The Family Act (Act No. 94/1963 Coll. as amended) stipulates in Section 46 that the 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 indefinitely). 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 adequate pressure on social work with the original family to which the child should return fails to be generated. 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 an amendment to the Family Act 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.

1.6 CAMERA SURVEILLANCE SYSTEMS IN ASYLUM CENTRES

The prevention of violence and bullying among the accommodated asylum seekers was given as the 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 Asylum Act (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 conforming to the constitution (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 Asylum Act after the fashion of parliamentary protocol No. 191 (Chamber of Deputies, 2008, 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 an amendment to the Asylum Act that would legalise the use of camera surveillance systems in asylum facilities.

1.7 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 Local Fees Act exempts from the fees on dogs only parties operating rescue centres founded by a municipality (persons operating private rescue centres are thus not exempt). The Defender holds the view that there are no 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 unfair.

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

1.8 NEW LAW ON HERITAGE PRESERVATION

The Defender has repeatedly pointed out shortcomings in the system of 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, obliged 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. Furthermore, it is not obvious why the "*duplication of heritage preservation*" should be preserved, i.e. the situation where two independent institutions (National Institutes of Cultural Heritage and heritage authorities) exist in parallel and many times view a planned construction project in entirely different ways.

The Defender recommends the Chamber of Deputies request the government to submit a new law on heritage preservation that

will stipulate the possibility of compensation for the costs of renovation and maintenance of heritage values of premises in heritage reserves and zones which are not cultural heritage

and

unify the exercise of heritage preservation under a single institution whose standpoint on heritage preservation will be binding.

1.9 HOUSING OF PERSONS AT RISK OF SOCIAL EXCLUSION (SOCIAL HOUSING)

The Defender has repeatedly pointed out the absence of legislation on social housing as a problem of growing seriousness that contributes to the gradual decline of socially deprived citizens into poverty and simultaneously increases social tension. Although the government indicated in its statement on the 2006

Annual Report on the Activities of the Public Defender of Rights that the draft strategy for the law will be submitted in April 2008, it has not done so to date. Rather the opposite: the draft law was omitted from the plan of legislative work of the government in 2008.

The Defender recommends the Chamber of Deputies request the government to approve a draft strategy for a law on social housing.

2. THE DEFENDER'S NEW LEGISLATIVE RECOMMENDATIONS AND OTHER RECOMMENDATIONS

2.1 LEGAL LIABILITY OF PARENTS FOR THE PAYMENT OF A LOCAL FEE FOR MUNICIPAL WASTE

Under Section 10b (1) (a) of the Local Fees Act (Act No. 565/1990 Coll. as amended), every natural person with permanent residence in a municipality regardless of his/her age, and thus regardless of his/her potential lack of financial self-sufficiency shall pay the local fee for the operation of the system of gathering, collection, transport, sorting, use and disposal of municipal waste.

Since there is mutual maintenance obligation between parents and children and parents are the legal representatives of their children also in potential proceedings on a local fee, the current legislation does not allow that arrears on a local fee payable by a minor be claimed from the child's parents. If the child has no property of its own that the administrator of the local fee could access, the latter usually awaits the child's legal age and begins to claim the fee from the child after years. The theoretical possibility of subsequently claiming compensation for the financial performance from the parents is unlikely to alleviate the problematic situation faced by such children, notwithstanding the risk of a fundamental increase in the total debt in the case of claiming it by means of court distraint.

The Defender holds that it would be suitable to stipulate the obligation of legal liability of persons obliged to maintain minor payers for payment of the relevant local fee while preserving the existing definition of payers.

The Defender therefore recommends the Chamber of Deputies request the government to submit an amendment to the Local Fees Act which would stipulate the legal liability of persons obliged to maintain minor payers of the local fee for the operation of the system of gathering, collection, transport, sorting, use and disposal of municipal waste.

2.2 UPDATING THE SCHEDULE OF CONSTRUCTION OF TRANSPORT INFRASTRUCTURE

The Defender has encountered a situation where the Ministry of Transport or an organisation controlled by the latter is unable to effectively respond to the development of traffic stress in specific regions by means of investment in infrastructure. Noise in some areas considerably exceeds the permitted limits. The Defender holds the view that it would be suitable to set priorities in the creation of the Schedule of Construction of Transport Infrastructure so as to ensure that the funds direct primarily those areas that are affected by the increased intensity of traffic.

The Defender recommends the Chamber of Deputies request the government to update the Schedule of Construction of Transport Infrastructure for the years 2008 to 2013 so as to ensure maximum acceleration of the preparation of investments in those transport constructions which are primarily aimed at reducing noise stress in the most affected areas.

2.3 OLD NOISE STRESS

The Defender ascertains that the most serious problems in the area of protection from noise consist of "*old noise stress*". The bodies of public health protection most often deal with this problem by issuing permission without a time limit for the operation of a noise source exceeding the safe limits. However, before issuing it, they do not require submission of a comprehensive noise study proving that the noise limits indeed cannot be observed on material grounds. As a rule, only the noise protection measures proposed by the very applicant are imposed in the permission.

The Defender believes that these errors could be partly reduced if the persons to be affected by the ongoing operation of the source of noise could participate in the proceedings on the issuing of the permission (which is currently impossible as Section 94 (2) of the Public Health Protection Act (Act No. 258/2000 Coll. as amended) stipulates that only the applicant shall be a party to proceedings on permitting an exemption from noise limits). The conduct of the bodies of public health protection would thus be under the critical supervision of those to whose health it directly applies. To achieve this, it would be sufficient to remove the special stipulation of participation in these types of proceedings from the Public Health Protection Act (Section 94 (2)) and consistently apply the Code of Administrative Procedure on the proceedings.

The Defender recommends the Chamber of Deputies request the government to submit an amendment to the Public Health Protection Act, which would enable participation of a party affected by the operation of a noise source to proceedings on the permission of an "exemption from noise limits" (Section 31 (1) of the Public Health Protection Act).

2.4 THE UNFAVOURABLE POSITION OF SINGLE PARENTS WITH CHILDREN IN THE SYSTEM OF MATERIAL NEED BENEFITS

The Defender points out the unfavourable position of socially deprived single parents who cannot obtain independent housing and therefore live together with their parents. Under the Help in Material Need Act, their incomes are always assessed jointly if they live in the same flat (Section 4 (6), the second sentence, of the Minimum Living and Subsistence Standard Act) (Act No. 110/2006 Coll. as amended). The Defender regards the consequences of the aforementioned provision of the law to be unfair. Had the parent not been "*single*", he/she would be assessed only together with the spouse/partner and their child, but not with the parents, even if they lived in the same flat. He/she would also receive state assistance for him/herself and the child, had he not lived with the parents. A similarly disadvantageous principle obviously applies in relation to the parents of a single parent in comparison with the parents of a "*non-single parent*" if they apply for material need benefits.

In this respect, the Defender recommends the Chamber of Deputies request the government to adopt an amendment to the Minimum Living and Subsistence Standard Act that would eliminate the disadvantaging of single parents and the parents of a single parent for the purposes of joint assessment of persons in the system of material need benefits.

2.5 PROHIBITION OF MAKING COPIES OF DOCUMENTS FROM ADMINISTRATIVE FILES

Commenting on all the underlying documents for the issue of an administrative decision is one of the most important procedural rights of a party to administrative proceedings. If the party wishes to effectively

defend its rights, it must also have the possibility of copying the underlying documents in order to study them at home or consult on them with an expert in the given area.

The provisions of some laws form an obstacle to these steps (for example Section 168 (2), the second sentence, of the Building Act (Act No. 183/2006 Coll. as amended), Section 23a of the Asylum Act (Act No. 325/1999 Coll. as amended)), which groundlessly restrict the right of the party to make copies of documents from the file. If a party to the proceedings has the possibility of acquainting itself with the contents of the file, there is no reason not to give them a copy of the documents they have studied. The Defender holds that arguments on the possible misuse of the copies are unfounded because with respect to documents that, when misused, could thwart the purpose of the proceedings or infringement of third-party rights, a party to the proceedings should have no possibility of acquainting itself with these documents at all (even the mere studying of these documents could be misused). In reality, the authorities' attempt to make their work easier and reduce the possibility of a critical evaluation of their conclusions seems to be behind the attempt to restrict a party to the proceedings only in the possibility of copying the documents it is allowed to study under the law.

The Defender recommends the Chamber of Deputies request the government to submit an amendment to the Building Act and Asylum Act so as to fully ensure the right of a party to proceedings to make the copies of documents from a file.

2.6 AMOUNT OF FEE FOR COPIES OF DOCUMENTS FROM ADMINISTRATIVE FILES

Apart from the problem concerning the restriction on the right of parties to proceedings to make copies from administrative files, there is another obstacle to the exercise of the right to comment on the underlying documents of a decision, specifically an administrative fee for issuing a counterpart, duplicate, photocopy or extract from official files (the fee is CZK 15 per page for a simple copy). Although the amount may seem low, it may reach thousands of crowns for extensive materials. It is not expressly stipulated that the fee does not apply to parties to administrative proceedings in progress and the Ministry of the Interior instructs authorities to always demand it from parties. This results in an absurd situation where the party to the proceedings must pay a much higher amount for a copy of a document from the file than someone who requests a copy of the same document within the regime of the Act on Free Access to Information (Act No. 106/1999 Coll. as amended).

The Defender recommends the Chamber of Deputies request the government to submit an amendment to the Administrative Fees Act, which would stipulate the regime of charging copies from administrative files in a manner similar to that in Section 17 of the Act on Free Access to Information.

2.7 THE HANDCUFFING REGIME IN THE NEW POLICE ACT

The Defender points out that in the new Police Act (Act No. 273/2008 Coll.), vagueness concerning the legal regime of handcuffing of a person (Section 25) persists, because the relation of the aforementioned restrictive measure to coercive measures (in particular, the relation of handcuffing under Section 24 to the use of handcuffs under Section 53 of the Police Act) is still unclear. If handcuffing is not a coercive measure, it should simultaneously be stated that the conditions applicable to 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 a 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.

As opposed to the previous legislation, the newly adopted law also permits the handcuffing of a person in a police cell, which lacks justification. Thus the new law reduces the previous 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 hardly threaten his or her own life).

The Defender recommends the Chamber of Deputies request the government to submit an amendment to the Police Act 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.

2.8 DEADLINE FOR DECISION-MAKING ON PROTECTIVE TREATMENT

In cases where protective measures in the form of institutional protective treatment performed in a mental home have been imposed in addition to or instead of serving a sentence, the mental home should report to the court "*without delay*" when the grounds for further protective treatment have ceased to exist. However, the Rules of Criminal Procedure (Act No. 141/1961 Coll. as amended) do not stipulate any deadline for the decision of the court regarding the further exercise of or termination of the protective treatment and the patient waiting for a decision must stay in the mental home in the regime of involuntary hospitalisation (which has lasted several months in some cases). Protective treatment of an institutional form is a serious restriction on the treated person's personal freedom, which may sometimes have a greater impact than imprisonment, especially due to its indefinite terms. The Rules of Criminal Procedure should therefore be amended in that the court would be obliged, following the lodging of a qualified proposal, to make a decision within a set period on the justification of a further protective treatment.

The Defender recommends the Chamber of Deputies request the government to submit an amendment to the Rules of Criminal Procedure that would stipulate a deadline in which the court must make a decision on a proposal of a medical facility for the termination of protective treatment.

2.9 THE PATIENT'S CONSENT TO TREATMENT IN MENTAL HOMES

The Defender holds that Arts. 6 (3) and 7 of the Convention on Human Rights and Biomedicine have not been implemented into the Czech legal order (Advice of the Ministry of Foreign Affairs No. 96/2001 Coll. of Int. Tr.). Although the Care of People's Health Act (Act No. 20/1966 Coll. as amended) provides for the patient's consent to treatment in Section 23, it does not adequately respond to situations where the person is not able to give qualified consent due to his/her mental health and has no legal representative (Art. 6 (3)), or does not wish to give consent and his/her health is very likely to be seriously harmed without an intervention aimed at the treatment of his/her mental disorder (Art. 7).

Given that statutory exemptions from the requirement for performing a medical intervention without informed consent (Section 23 (4) of the Care of People's Health Act) do not apply to all situations of patients placed in mental homes, it would be expedient to adopt legislation that would stipulate the cases of psychiatric treatment taken into account in Arts. 6 (3) and (7) of the Convention on Human Rights and Biomedicine.

The Defender recommends the Chamber of Deputies stipulate, in the reading of medical laws, the treatment of psychiatric patients in a manner that will be in accordance with Section 6 (3) and Art. 7 of the Convention on Human Rights and Biomedicine.

2.10 EXPIRY OF CREDIT AGREEMENTS FOR CONSUMERS

The Defender points out that a credit agreement concluded by a consumer in connection with the purchase of goods/provision of a service remains valid even if the consumer has withdrawn from the purchase agreement (Section 53 (7) and 8, Section 57 of the Commercial Code (Act No. 40/1964 Coll. as amended)) and continues to be "*binding*" upon the consumer (unless the consumer has withdrawn from it). Thus, the non-bank entity providing the credit claims its receivables under the credit agreement for consumers regardless of the fact that the purchase agreement, due to which the credit agreement for consumers was agreed, is terminated *ex tunc* by the withdrawal. In contrast to this, Directive 2008/48/EC of the European Parliament and of the Council of April 23, 2008, on credit agreements with consumers stipulates automatic expiry of the credit agreement for the aforementioned cases.

The Defender therefore recommends the Chamber of Deputies request the government to submit an amendment to the Act on Some Conditions of Agreeing Consumer Credits which would stipulate expiry of the credit agreement in case that it is agreed on in connection with the conclusion of a credit agreement which is subsequently terminated due to the consumer's withdrawal.

2.11 REGULATION FEES FOR ASYLUM SEEKERS

The Defender points out that asylum seekers should be removed from the obligation to pay regulation fees for medical care. Since January 1, 2008, when the amendment to the Public Health Insurance Act came into force, the Defender has noted problems concerning the accessibility of medical care for foreigners applying for international protection. Medical facilities are obliged to collect regulation fees from all not exempt under the law, i.e. including asylum seekers. However, the latter are not allowed to work legally until expiry of one year from the commencement of the proceedings on the granting of asylum and depend on pocket money paid by the state in an amount of CZK 16 per person per day. Asylum seekers living in private facilities instead of an asylum centre may receive an allowance of 1.3 to 1.6 times the minimum living standard depending on the number of family members, although only for a maximum of three months. Afterwards, they find themselves entirely without the possibility of a legal income.

However, even the pocket money is not paid without exceptions. Thus for example foreigners applying for asylum in the transit area of the international airport or those placed in the Velké Přílepy Reception Centre are not entitled to pocket money pursuant to the Asylum Act. Pocket money is also no longer paid to those foreigners who must be hospitalised, although the hospitals require them to pay the fees for care. The Defender finds it unethical that those who are unable to obtain means of payment for objective reasons face problems with the payment and claiming of the fees.

Given the above facts, the Defender recommends the Chamber of Deputies adopt, within the reading of new medical laws, an amendment to the Public Health Insurance Act, which would exempt applicants for international protection from the obligation to pay regulation fees.

Part VII

CLOSING SUMMARY

The Public Defender of Rights Act lays down that "*the Defender shall submit an annual written report to Chamber of Deputies by March 31 each year on his/her activities during the past year. This report is a parliamentary publication*".

It may appear at first sight that it is primarily an obligation to submit this report. Yet I do not accept this interpretation, because I am convinced that it is simultaneously an important right that I submit a report on my activities, which becomes a parliamentary publication and which I subsequently publish.

The activities of the Public Defender of Rights are by definition concentrated, in particular, on reviewing complaints of individual citizens who claim failures of public administration, and the Defender to a certain degree lacks the possibility of drawing general observations from the results he achieves. I am therefore convinced that the reading and publication of the annual report offers a unique and authoritative opportunity for an objective evaluation of the activities as a whole.

The submitted report is the most recent of eight reports, and hence part of a series of formally and materially sequential documents. It has therefore become a rule that the annual report includes a look back to the findings and conclusions resulting from the previous report.

Paradoxically, current political reality has made the Chamber of Deputies unable to read the 2007 Annual Report up to the moment I am finishing work on the 2008 Annual Report. If I claim that the present report follows on from the 2007 report, I must simultaneously adopt the position of light-hearted self-confidence and assume that the report waiting to be heard would be rated as positively as the previous ones and the Chamber of Deputies would again express benevolent satisfaction with the work of the Public Defender of Rights. This conclusion is perhaps justified by the simple fact that no substantial variations or changes in my activities have occurred in the past year.

Disregarding the above-stated criteria, the only explicit display of a positive rating of my activities I can see lies in the fact that the number of complaints citizens and institutions addressed to me in 2008 continued to rise. On the other hand, the complaints submitted in this period are similar to those in the preceding years, which suggests that no substantial change or improvement has occurred in a number of areas of public administration.

I must stress at the moment when I attach my signature to the 2008 Annual Report on my activities that the report, as well as the individual underlying documents and solutions, are the result of the responsible work of my professional colleagues and it is therefore appropriate that I use this opportunity to thank them for a job well done.

Brno, March 21, 2009

JUDr. Otakar Motejl
Public Defender of Rights

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