Public Ethics
at the Local and Regional Level
in the Czech Republic

Introduction

The presented study on public ethics at the local and regional level in the Czech Republic follows the national and international consultations to the publication "the Handbook of Good Practise", which was initiated in 2003 by Steering Committee for Local and Regional Democracy (CDLR) of the Council of Europe within framework of activity "Public Ethics at the Local Level: strategy for combating corruption and other forms of financial crime in local administration authorities ". The final version of the Handbook of Good Practise was approved at the international conference organised by the Dutch Government in cooperation with the Council of Europe in Noordwijkerhout (the Netherlands) in April 2004. On the 34th session of the CDLR in November 2004, the member countries obliged themselves to support use of the Handbook of Good Practise to make the best possible use of this Handbook of Good Practise in practical life. This process was launched by elaboration of national studies on public ethics. Basic data on public ethics at the local and regional level in the Czech Republic are just in your hands. The national study shall be updated every three or four years. Therefore the study on public ethics in the Czech Republic cannot be considered as a definitive one; in the meantime, it is necessary to develop activities leading to strengthening of public ethics in the Czech Republic, so it will be possible to present progress reached in three years. The Handbook of Good Practise and the study Public Ethics at the Local and Regional Level in the Czech Republic can be find in electronic version on the web sites of the Public Administration Modernisation Department, Section for Public Administration Reform, the Ministry of the Interior - www.mvcr.cz.

The Government of the Czech Republic feels the necessity of arrangement of a transparent exercise of public administration by means of the set rules of conduct of officials of public administration in relation to the private sector. In accordance with the above mentioned, the Government of the Czech Republic approved in March 2001 Resolution No. 270, on the Code of Ethics of Public Administration Employees, by which the Code of Ethics as an Enclosure to this Resolution was approved and further the heads of district offices were entrusted by this Resolution with obligation to introduce the Resolution to the mayors of municipalities in their district. Furthermore, the Resolution included a recommendation to presidents of regions, to the Lord Mayor of the Capital City of Prague and the Lord Mayors of the cities of Kladno, České Budějovice, Plzeň, Karlovy Vary, Ústí nad Labem, Liberec, Hradec Králové, Pardubice, Jihlava, Brno, Zlín, Olomouc, Ostrava, Opava, Havířov and Most and mayors of city districts to acquaint the staff of their offices with the Code, to act in accordance with the Code and if needed issue for their offices their own Code of Ethics drawing on the Code. As another tool for adhering to ethical principles in public administration can be understood also the Act No. 312/2002 Coll., on the Officials of Territorial Self-Governing Units, as Amended. Rules and principles, which support general ethical principles or are in accordance with them, are confirmed also by the new Act No. 500/2004 Coll., the Administrative Code, which shall come into effect on 1st January 2006. In Art. 4 of the Administrative Code, there is stipulated, that “public administration is a service to the public. Everybody who discharges tasks resulting from competence of administrative authority, is obliged to treat the persons concerned politely and to go them towards according to possibilities ".

In the framework of this study, a small enquiry via questionnaire was carried out, in which participated officials, senior officials and heads of territorial self-governing units, elected representatives and citizens. The enquiry showed that the public ethics is understood as a keystone of good public administration not only from the side of officials of territorial self-governing units and elected representatives, but also from the side of general public. Authorities of territorial self-government respect the above mentioned Code of Ethics of Public Administration Employees; some of them have already issued their Code of Ethics, some of them are preparing to do so. Also the effort of territorial self-government to clarify a work of municipal or regional offices to citizens and to involve as many citizens as possible into public life by means of public discussions, activities in commissions and committees, or on the development program of municipality. Edification sure contributes to strengthening of ethical principles. Some municipal and regional offices inform citizens by means of a public board, Internet sites and regional press on what behaviour shall they expect from officials and elected representatives. Via questionnaires, surveys or "satisfaction boxes " (in physical or electronic form), authorities of territorial self-government are interested, how satisfied are citizens with their activity and what could be possibly improved; questions are frequently oriented on possible corruption behaviour. Results of the enquiry via questionnaire indicated, that the question of ethics slowly but surely penetrates consciousness of the public. Regardless it is a long-term work, which requires patience, it is necessary to continue in activities supporting ethical behaviour. A big role in this area plays a personal example of politicians and senior officials, high-quality education of officials and the public, satisfactory transparency and adequate control.

Basic data

There live 10.207.888 inhabitants on the overall territory of the Czech Republic of 78.866 m2. The Capital City is Prague.

There exists a two-tier system of territorial self-government. In the Constitution of the Czech Republic is confirmed the division of the Czech Republic into fundamental and higher territorial self-governing units. Municipalities are fundamental self-governing territorial units (as of 1st March 2005, there exist 6.248 of municipalities in the Czech Republic), while regions are higher self-governing units (14 regions – the South Bohemia Region, the South Moravian Region, the Region of Karlovy Vary, the Region of Hradec Králové, the Region of Liberec, the Moravian-Silesian Region, the Region of Olomouc, the Region of Pardubice, the Region of Plzeň, Prague, the Central Bohemian Region, the Region of Ústí nad Labem, the Vysočina Region, the Region of Zlín). As concerns territorial self-government, it is not vertically hierarchical, in other words, there is no superiority or inferiority because every territorial self-governing unit has its own competences, which cannot be interfered by other territorial self-governing unit. In the Czech Republic is applied the so-called joint model of public administration; it means that municipalities and regions exercise in addition to their own competencies also the state administration in delegated competence.

I. Status of local and regional elected representatives

1. General framework

Status of local and regional elected representatives is governed by:

- the Act No. 128/2000 Coll., on Municipalities (the Municipal Arrangement), as amended,
- the Act No. 129/2000 Coll., on Regions (the Regional Arrangement), as amended,
- the Act No. 130/2000 Coll., on Elections to Regional Councils and on Amendment to Some Other Acts, as amended,
- the Act No. 131/2000 Coll., on the Capital City of Prague, as amended,
- the Act No. 491/2001 Coll., on Elections to Municipal Councils and on Amendment to Some Other Acts, as amended,
- the Act No. 96/2005 Coll., amending the Act No. 238/1992 Coll., on Certain Measures Relating to the Protection of Public Interest and on Incompatibility of Certain Office-Holding (the Act on Conflict of Interests), as amended
- the Act No. 65/1965 Coll., the Labour Code
- the Act No. 40/1964 Coll., the Civil Code
- the Government Resolution No. 37/2003 Coll., on Remuneration for Members of the Representative Councils,
- the Government Resolution No. 108/1994 Coll., implementing the Labour Code and Some Other Acts

2. Disqualification, termination of office and suspension

A mandate of a municipal representative ceases to exist in accordance with the Act No. 491/2001 Coll., on Elections to Municipal Councils and on Amendment to Some Other Acts, apart from general cases (refusal of taking the official oath, resignation, death, as of the day of new elections and as of the day of amalgamation of municipalities or of affiliation of a municipality to another municipality), also if the relevant council expresses so (or a head of regional office, or the Minister of the Interior in case of the Capital City of Prague) for the reason of:
a) a legitimate ruling of a court, by which a member of council has been sentenced to an unconditional prison term,
b) loss of capacity to be elected (due to execution of prison term, divestment of eligibility, permanent residence out of the municipal district),
c) incompatibility of functions.

The office of a member of municipal council, city council, territorially divided statutory city or of the Capital City of Prague (hereafter mentioned as "a municipality") is not compatible in accordance with the Act No. 491/2001 Coll., on Elections to Municipal Councils and on Amendment to Some Other Acts, with the office carried out by an employee of municipal office of this municipality, of authorised municipal office or of regional or financial office, under condition, that the employee carries out directly the state administration relating to the territorial competence of the relevant municipality, or under condition, that the person concerned is an appointed mayor, a lord mayor, a chief executive or a councillor of region or municipality (in case of a municipality, it is a secretary of municipal office or heads of departments of municipal office). In

accordance with the Act No. 96/2005, on Conflict of Interests, the office of a member of council is not further compatible with the office of a statutory authority of a municipal allowance organisation, with the office of person authorised to act on behalf of an organisational unit of the municipality, and with the office of officer of the municipal police. Furthermore, the office of member of municipal council is not compatible with performance of state administration according to the Service Act.

A member of municipal council, whose mandate is challenged by the resolution of the municipal council to the intent that this mandate shall cease to exist, may claim protection at the court within two working days (he/she may take the same action in the case of a similar decision made by the head of regional office or by the Minister of the Interior).
It means that the councillor violating the rules may be suspended only in case, that he/she has been sentenced by the court for a deliberate criminal act; violation of public ethics in not a criminal act, therefore he/she cannot by suspended for this violation. The only practical punishment may be publication of this information, which results in decrease of citizens´(voters´) satisfaction that is followed by non-election of this councillor in the next term. The Act on Municipalities regulates only the procedure, which can be applied in case of non-meeting liabilities of the council as such (dissolution of the council by the Ministry of the Interior).
Similarly, it is not possible to dismiss or to suspend the office of a councillor in the course of investigation.

A mayor, deputy mayors and other members of the municipal board are elected and suspended by the municipal council.
In effect, the same provisions on termination of mandate of a regional councillor is included in the Act No. 130/2000 Coll., on Elections to Regional Councils and on Amendment to Some Other Acts. The difference is that if the mandate is not suspended on a special session of the regional council, the mandate of member of the regional council ceases to exist at the moment, when the Minister of the Interior announces this.

Authorities are obliged to inform the relevant body only in case of a criminal act or an offence.

3. Rights and obligations of local and regional elected representatives

Rights and obligations of local elected representatives are set down by the Act No. 128/2000 Coll., on Municipalities, and similarly, rights and obligations of regional elected representatives are set down by the Act No. 129/2000 Coll., on Regions.
A member of municipal council has – at performance of his/her office – the right:
a) to present suggestions to the municipal council, to the municipal board, to committees and commissions for discussion,
b) to raise questions, comments and initiatives on the municipal board, on its individual members, on chairmen of committees, on statutory bodies of legal entities, which are founded by the municipality, and on heads of allowance organisations and organisational units, which are founded or established by the municipality; he/she shall receive a written statement within 30 days,
c) to require information on affairs, which are related to performance of his/her office, from employees of the municipality, who work within the municipal office, or from

employees of legal entities, which are founded or established by the municipality; information shall be provided within 30 days at the latest.

A member of municipal council is obliged to participate in sessions of the municipal council, or possibly in sessions of other municipal bodies when he/she is a member of them, to fulfil tasks assigned to him by these bodies, to protect interests of citizens of the municipality and to act and to behave in a way, which does not threaten respect to their office.
Rules of procedure of municipal councils may cover some specification on councillor's obligations as well, e.g. that members of municipal council are obliged to participate in every session, or otherwise they are obliged to provide to the mayor an excuse and to mention the reason.
Determination of the amount of remunerations to non-released members of municipal council belongs to competence of the municipal council.

As a matter of course, councillors may be sentenced for a criminal act related to performance of their office, e.g. for machination in a public tender and public auction, abuse of authority of a public official, obstruction of official's tasks due to negligence or accepting a bribe.

The Act No. 128/2000 Coll., on Municipalities (the Municipal Arrangement), as amended, rules on the conflict of interests arising in the course of administrative proceeding. Where circumstances indicate that the participation of a member of municipal council in discussions and decision-making in a certain matter in the bodies of the municipality might constitute an advantage or injury for the member concerned or for a person close to him/her, for a natural or legal person represented by this member pursuant to the law or power of attorney (conflict of interests), the member concerned shall be obligated to communicate this fact before the start of the meeting of the municipal body which is to discuss the matter. This municipal body shall decide whether there is good reason to exclude the member concerned from discussions and decision-making in this matter.

In accordance with the Act No. 96/2005 Coll., on Conflict of Interests, members of regional councils, of the council of the Capital City of Prague, of municipal councils with extended powers and of municipal parts of Prague, which perform competence with extended powers (hereafter mentioned as "councillors"), are obliged to make a notification before the start of the meeting of the municipal body which is to discuss the matter, which may constitute an advantage or which may be in a personal interest of the member concerned, his/her spouse, children, parents, siblings or partner. A councillor is obliged to announce to the Control Committee if he/she runs a business, as well as in which bodies of legal entities conducting business he/she is represented, and if he/she executes any activity in working, service or other similar relation; incomes, gifts and real estates. Only the released councillors including those, who have lost their mandate in the course of the year, are obliged to make a notification on incomes. The amount of incomes and name of donors have to be introduced in the notification, if the total amount for the year concerned exceeds the given limit.

4. Liability of elected representatives

An elected representative shall perform his/her obligations in a fairly and carefully manner.

Liability for damage arisen in the course of performance of a public office is ruled by the Act No. 65/1965 Coll., the Labour Code (in accordance with the provision of the Art. 206), as concerns both the liability of a citizen performing a public office, and the liability for damage arisen to him/her.

As a matter of course, the councillor is obliged to compensate the damage arisen due to negligence up to the extent of four-and-half multiple of his/her monthly average salary received by this councillor before a breach of obligation, which caused the damage. This limitation is not applicable, if the damage was caused under intoxication, which the councillor caused by himself/herself. If the damage was caused intentionally, it is possible to require compensation of another damage as well.

The councillor may require compensation of the damage, which arose to him in the course of performance of working tasks or in a direct connection with him/her due to breach of legal obligations of the municipal employee or due to intentional dealing contrary to good manners. The above mentioned is applicable as well as concerns employer's liability for damage arisen at work injury or industrial disease – an employee, who suffers a work injury or by whom an industrial disease is indicated, shall be provided by a compensation in the extent covering the loss of income, pain and handicap in terms of social assertion, functionally spent expenses related to curing and factual damage.

As concerns liability for damage towards a third person, it stands general provisions on liability for damage in accordance with the Act No. 40/1964 Coll., the Civil Code, - everybody is liable for damage, which he/she caused by breach of a legal obligation; damage is considered to be caused by a legal entity or a natural person, if it was caused in the course of their activity by those, who was used for this activity. Legal insurance of employer's liability stands for damage in the form of work injury or industrial disease.
The courts decide on possible disputes.

As concerns liability for voting, it is possible to note that sessions of the council are public and that it is the municipal office that provides information on a place, time and proposed agenda of the prepared session. Information is put up on the official board of the municipal office at least 7 days before the session of municipal council; in addition to this, it can publish this information in a way, which is locally usual. There is made a record on course of the municipal council's session; this record is signed by the mayor or a deputy mayor and appointed verifiers. In the record, there is always recorded a number of present members of the municipal council, approved agenda of the municipal council, course and results of voting and adopted resolutions. The record, which is necessary to be made within 10 days after the session, has to be deposited on the municipal office, so it can be referred by the public.

Hence, there exists a guaranteed possibility of control of activity of a councillor by the public.

Who deals out of accord with his/her statutory declaration presented on the basis of the Act No. 96/2005 Coll., on Conflict of Interests, or who even has not presented it, he/she can be inflicted by a penalty up to 30 000 CZK.

5. Remuneration, working conditions and career development of local and regional elected representatives

The municipal council is reserved to determine offices, for which members of municipal council may be released, to determine number of members of the municipal board, as well as the number of members of this council released on a long-term basis and to determine extent of remuneration for non-released members of municipal council. Non-released members of councils prevail.

An employer must not give a dismissal to an employee in the course of the protection period, which is apart from other things the period, when the employee is released on a long-term basis for performance of public office. If a working relation is constituted by election into a public office, the employer, with whom the employee concerned is in working relation at the time of election, is obliged to enable him/her performance of the office and to provide him/her with time off (without refund of salary) or to terminate the working relation with him/her upon request.

Performance of public office belongs in accordance with the Act No. 65/1965 Coll., the Labour Code, among barriers on the ground of public interest. An employee, who is released on a long-term basis for performance of a public office, is provided by the employer, for which he/she has been released, with adequate remuneration, which is appraised as a salary; refund of salary from the employer, with whom he/she is in working relation, does not belong to him/her.

As concerns a non-released councillor, the Government Resolution No. 108/1994 Coll., implementing the Labour Code and Some Other Acts, stipulates that employees use for performance of public offices their free time in particular. If it is necessary – in exceptional cases – to perform these offices within working hours, the employer provides the employee with time off in necessary extent for this purpose.

If the employee is released on a short term basis, the employer, with whom the employee is in working relation at the time of release on a short-term basis, shall cover refund of salary to the employer, with whom the employee was in the working relation before the release, if they do not come to an agreement on refraining from such a refund.

Providing of remuneration to members of the council is ruled by the Act on Municipalities, which furthermore stipulates, that a member of the municipal council may not be reduced on his/her rights resulting from his/her working or other similar relation. Actual extent of remuneration for councillors is given by the Government Resolution No. 37/2003 Coll., on Remuneration for Members of the Representative Councils.

There exists no law stipulating a prohibition as concerns a councillor's impossibility to work for certain employers after the termination of his/her mandate.

6. Training and co-operation with local and regional elected representatives

Methodical management of education of councillors is provided by the Education and Information in Public Administration Department of the Ministry of the Interior of the Czech Republic. It cooperates with all the actors, which participate in the system of preparation of public administration employees – with universities, individual colleges, higher professional schools, secondary schools, ministerial and educational institutions and other non-state educational institutions, as well as with scientific and research centres, which deal with the issue of education and human resources in public administration. The main partner in terms of implementation is the Institute of Local Administration Prague.

The Ministry of the Interior of the Czech Republic participates as well in the international MATRA II project: Improvement of Preparedness of Members of Regional and Municipal Councils in the Czech Republic. It is a bilateral programme of the Dutch Government, which is administered by the Dutch Ministry. The main goal of this project is to increase preparedness of elected members of municipal and regional councils in the Czech Republic by the means of a handbook, which shall concentrate on newly elected members of municipal councils and of regional councils in the Czech Republic; this handbook shall be combined with two series of television programmes and with creation of target schooling and consultancy for use of elected members of municipal and regional councils.

The obligation to participate in an organised educational preparation of councillors was included in the draft Act on Public Service. Whereas this legal regulation has not been adopted, the offer as well as participation in this educational system is entirely on the voluntary basis.

7. Evaluation of compliance with standards

In the framework of strengthening integrity and prevention to corruption, the Ministry of the Interior elaborates on annual basis the Report on Corruption in the Czech Republic and on Meeting the Updated Schedule of Measures Adopted by the Government Programme for Fight against Corruption, which includes data on development of criminal acts related to corruption as well. The Ministry of the Interior has made available as well the web site - www.korupce.cz, where citizens are informed, what can be understood under the criminal act with character of corruption and how it is possible to proceed. The web site contains also an overview of units, which are devoted to dealing with citizens´ submissions and which were established in the framework of ministries and some other central state administration authorities. Concurrently, the Ministry of the Interior operates the anonymous anticorruption telephone line.

II. Funding of parties, political associations and individual candidates at local and regional levels

1. General framework

Funding of political parties and political associations is covered by the Act No. 424/1991 Coll., on Association in Political Parties and Political Movements, as amended (hereafter mentioned as "the Act on Political Parties").

In accordance with the Act on Political Parties, as an income of a political party is acceptable:
a) a financial contribution from the State Budget of the Czech Republic to cover their election expenses,
b) a financial contribution from the State Budget of the Czech Republic to the activities of the political parties and political movements,
c) regular contributions of their members,
d) gifts and heritage,
e) incomes from rental and sale of chattel and real estate,
f) deposit interests,
g) incomes resulting from participation in conducting business of other legal entities determined by law (e.g. in trade association, whereas the exclusive subject of activity of this association are publication and promoting activities),
h) incomes resulting from organisation of tombolas, cultural/ social/ sport/ recreational/ educational and political events,
i) loans and credits.

A political party may not accept any transfers on the non-payment basis and gifts from:
a) the state, unless this Act stipulates otherwise,
b) allowance organisations,
c) municipalities, municipal parts and municipal districts and regions with exception of rental of non-residential premises,
d) state enterprises and legal entities with capital participation of the state or of a state enterprise, as well as from entities, where the state participates in their management and control; the above mentioned prohibition does not apply, if capital participation of the state or a state enterprise does not reach 10%,
e) legal entities with capital participation of municipalities, municipal parts or municipal districts; it does not apply, if capital participation does not reach 10%,
f) public benefit corporations,
g) other legal entities, if a special legal regulation stipulates so,
h) foreign legal entities with exception of political parties and foundations,
i) natural persons, who are not nationals of the Czech Republic; it does not apply, if foreign nationals are concerned, who have permanent residence on the territory of the Czech Republic.

If a political party gain a gift out of accord with this Act, it is obliged to return it. If such a procedure is not possible, it transfers the relevant amount into the State Budget. If the political party does not return such a gift, it is imposed a fine, which is double as high as the amount of the gift concerned.

A political party has claim on the contribution on activity, which consists from the permanent contribution and the mandate contribution, under condition that it has provided the Chamber of Deputies with a full annual financial report in the given deadline. The contribution on activity is paid out by the Ministry of Finance, which informs regularly on the provided contributions on its web site (www.mfcr.cz).

Claim on the permanent contribution arises to the political party, which gained in elections to the Chamber of Deputies at least 3% of votes.

Claim on the mandate contribution arises, if there was elected at least one candidate to the Chamber of Deputies, to the Senate, to the regional council or to the council of the Capital City of Prague, who was listed on a candidate list of the political party, or if he/she was elected on behalf of the political party from a list of the coalition under election procedure to the Chamber of Deputies, to the Senate, to the regional council or to the council of the Capital City of Prague.

The permanent contribution amounts annually 6 000 000 CZK for the political party, which gained in the course of the last election to the Chamber of Deputies 3% of votes. For any other – even commenced - 0,1% of votes, such a political party receives annually 200 000 CZK. If the political party gains more than 5% of votes, the contribution does not increase furthermore.

The contribution on mandate of a member of the Chamber of Deputies or of the Senate amounts annually 900 000 CZK, and on a mandate of a member of regional council and a member of the council of the Capital City of Prague amounts annually 250 000 CZK.

The mandate contribution belongs for the whole election period only to the political party, on which candidate list the elected member to the Chamber of Deputies, the Senate, a regional council of the council of the Capital City of Prague was listed. If a deputy, a senator, a member of regional council, or a member of the council of the Capital City of Prague was elected on a candidate list of a coalition, the mandate contribution belongs for the whole election period only to the political party, on behalf of which he/she was listed on the candidate list of coalition. If there is no substitute for a vacant mandate of a deputy, of a member of regional council or of a member of council of the Capital City of Prague, or if the mandate expires in the course of the election term, the mandate contribution does not belong to the political party.

2. Funding of local and regional parties and political associations

There are no special legal instruments on funding of local and regional parties and political associations in the Czech Republic.

3. Funding of local and regional election campaigns

The Act on Political Parties, neither the election laws cover funding of local and regional election campaign.

In accordance with the Act on Political Parties, the contribution to cover election costs is provided only on the basis of results of elections to the Chamber of Deputies. The Chamber of Deputies announces, as it verifies elections of deputies, data on a number of valid votes cast for individual political parties or coalitions to the Ministry of Finance. A political party or a coalition, which gained in elections at least 1,5% of votes from the total amount of valid votes, shall receive 100 CZK for every cast vote from the State Budget.

4. Monitoring of compliance with standards governing the funding of parties and elections at local and regional level

There is no special legal regulation towards the local and regional level as far as this area concerned.
If a political party does not respect obligations resulting from the Act on Political Parties, then the Supreme Administrative Court may decide on the proposal of the Government (or of the President of the Czech Republic) on suspension of its activities. If the facts, for which activities of political party concerned were suspended, persist even after one year, the relevant authority submits a proposal on dissolution of such a political party.

5. Information and disclosure

The Act on Political Parties obliges political parties to submit for informative purposes to the Chamber of Deputies (by 1st April at the latest) an annual financial report, which contains:
a) annual accounting statements in accordance with special laws,
b) a report of an auditor on verification of the annual accounting balance with a declaration of the auditor, that he/she has no reservations in terms of accuracy,
c) an overview of total incomes in the given classification and on expenditures in classification on operating and labour costs, expenditures on costs and fees and election costs,
d) an overview of gifts and donors introducing the extent of pecuniary gift, name, surname, birth number and address of residence of the donor; if the donor is a legal entity, there shall be introduced also its business name, seat and identification number,
e) an overview of value of property gained by heritage; if value of thus gained property exceeds 100 000 CZK, the name of testator shall be introduced,
f) an overview of members, whose total member contribution for a year is higher than 50 000 CZK, while the extent of this contribution, their names, surnames, dates of birth or birth numbers and address of residence shall be introduced as well.

If the gift from one donor exceeds in its total amount 50 000 CZK, the overview of gifts and donors is supported by verified copies of deeds of gift, which shall contain the same data to the data provided in the overview.

The annual financial report is submitted by a political party in a prescribed form and with annexes; a specimen of such a report was specified by the Decree of the Ministry of Finance.

The annual financial report of a political party is publicly available; it can be referred, and in the Office of the Chamber of Deputies it is allowed to make abstracts or copies of it.

III. External monitoring of the activities of local and regional authorities

1. General framework

Execution of competence of territorial self-governing units is subject to control and supervision. The particular means and procedures of performance of supervision and control can be distinguished according to the subject of supervision and control. If the subject of supervision or control is the performance of an independent competence or the performance of a delegated competence. As concerns the independent competence of self-governing units, Art. 101 (4) of the Constitution of the Czech Republic represents a significant intervention into their activities, because in accordance with the above mentioned Article, the state may intervene in the activities of self-governing territorial units only if such intervention is required by protection of the law and only in a manner defined by law.

The supervision represents a method, by which the state examines, if territorial self-governing units respect law at performance of their competences (legal regulations of territorial self-governing units or other implemented acts). Ascertained unlawfulness is the only reason for exercise of a supervisory intervention. As supervisory means stand authorisation to suspend effectiveness or implementation of unlawful acts, to bring legal actions or proposals on their abolishment to courts, or possibly to abolish these acts directly. Supervision is executed subsequently as a matter of principle.

Decisions delivered in the course of administrative proceeding and proceeding in accordance with the Act on Administration of Taxes and Fees are not subject of supervision (they are examined in the course of procedures before relevant authorities). Also the possible breach of regulations of civil, commercial and labour law is not a subject of supervision, namely if it results from contractual relations (courts are appropriate in such cases). As well activities of territorial self-governing units, by which are applied special control mechanisms, are not subject of supervision; namely it is control of financial management performed in accordance with the Act on Financial Control, or possibly control performed in the framework of internal control mechanisms by bodies of territorial self-governing units, especially by financial and control committees of the council and by units of internal audit.

Performance of supervision is governed by:

- the Act No. 128/2000 Coll., on Municipalities (the Municipal Arrangement), as amended,
- the Act No. 129/2000 Coll., on Regions (the Regional Arrangement), as amended,
- the Act No. 131/2000 Coll., on the Capital City of Prague, as amended,

- the methodical instrument of the Ministry of the Interior on performance of supervision over independent and delegated competence of municipalities of December 2003
- the directive of the Ministry of the Interior of 27th October 2003 on procedure of regional offices at implementation of supervision and control over municipalities.

Performance of the control over activities of territorial self-governing units, on the contrast to supervision, is not governed uniformly. Therefore, it is possible to distinguish internal control, it means the control performed within the territorial self-governing unit by its bodies, and external control, which is performed by a different subject from the controlled territorial self-governing unit. The control is exclusively a retrieval activity; the control bodies do not correct detected deficiencies, but they initiate their rectification at authorities with relevant competence. The control is not only a follow-up activity; it can have a preventive character as well. Means of control are not specially defined, as they are in case of supervision; the control does not concentrate exclusively on retrieval of unlawfulness, however it assesses the state also from the point of view of economy, efficiency, usefulness, it assesses even how resolutions and directions of central administrative authorities are carried out, although they are not legal regulations and their breach cannot establish unlawfulness.

Among types of the internal control can be classed the control performed by committees of a council of a territorial self-governing unit (e.g. financial control performed by the financial committee) and further the determined liability among particular bodies of territorial self-governing unit (e.g. liability of a board towards a council). As concerns the external control, it can be distinguished the general control, which is performed under conditions of current legal order by regional offices towards municipalities; regional offices control performance of delegated competence of municipalities. As concerns regions, the control towards them is carried out by relevant ministries, under which competence belongs performance of delegated powers. The general control of independent competence is not governed in principle. The special external control applies especially on examination of financial management of territorial self-governing units, which is governed by the Act No. 420/2004 Coll., on the Audit of Economic Activities of Territorial Self-governing Units and Voluntary Associations of Municipalities. The relevant regional office, an auditor or an auditor society carries out an audit of economic activities of municipalities. As concerns an audit of economic activities of region, the Ministry of Finance is responsible for it. Control mechanisms are further regulated by the Act No. 320/2001 Coll., on Financial Control in Public Administration and on Amendments to Some Acts (the Act on Financial Control), as amended.

2. External monitoring bodies and procedures

Regional offices (within their delegated competence) are entrusted in the first instance by the supervision over performance of independent competence of municipalities. If a regional office detects unlawfulness of a certain act of a municipality, it invites the municipality to make rectification. If the invitation is not met, the regional office submits to the Ministry of the Interior a proposal on suspension of effectiveness or implementation of such an act. The Ministry of the Interior performs

supervision and possibly it implements supervisory measures (suspension of effectiveness and proposal on abolishment) either on the basis of initiative of a regional office or on the basis of its own findings. If the Ministry of the Interior concludes that the act of a municipality in its independent competence is in conflict with law, it decides on suspension of its effectiveness (the so called suspence or suspence decision) and it submits a proposal on its abolishment to a relevant court within 15 days (in case of legal regulations, the proposal is submitted to the Constitutional Court, in other cases to administrative courts). Regional offices and the Ministry of the Interior are entrusted by the supervision over lawfulness of municipal directives, while it is implemented in a similar way as the supervision over lawfulness of generally binding ordinances. Supervision over other measures of municipalities in delegated competence is performed only by regional offices, which are entitled to suspend implementation of the relevant act and if the rectification is not established, they can abolish it consequently. Specific procedures are applied as concerns acts of municipal districts or municipal parts of statutory cities, for the supervision over them is carried out by the municipal authority of the statutory city, which is entitled to suspend the act and if the rectification is not established, it can abolish it consequently.

Supervision over performance of independent competence of regions is carried out exclusively by the Ministry of the Interior, which is entitled to suspend effectiveness of a generally binding ordinance of region or to suspend implementation of other act of a region in its independent competence. Consequently, it applies to the relevant court (the Constitutional Court or the Administrative Court) with proposal to abolish the generally binding ordinance concerned or the other act of region under independent competence. Supervision over performance of delegated competence of regions is performed by relevant ministries or by other relevant central state administration authorities. As concerns a directive of a region, the relevant supervisory body suspends its effectiveness and consequently it submits a proposal on its abolishment to the Constitutional Court. If other act issued by a regional body in delegated competence is in question, a relevant supervisory body suspends its effectiveness and if the rectification is not established, it abolishes this act by itself.

Supervision over performance of independent competence of the Capital City of Prague is carried out by the Ministry of the Interior, which is entitled to suspend effectiveness of generally binding ordinance of the Capital City of Prague or implementation of other act in its independent competence, and if the rectification is not established, it can apply to the Constitutional Court with a proposal on abolishment of the ordinance concerned or to the Higher Court of Prague in case of the other act. Supervision over performance of delegated competence of the Capital City of Prague is carried out by relevant ministries. Supervision over directives of the Capital City of Prague proceeds likewise, as the supervision over generally binding ordinances. At performance of the supervision over other act in delegated competence, it is the relevant ministry that is entitled to suspend its performance, and if the rectification is not established by the Capital City of Prague, it can abolish such an act by its decision. Supervision over acts under independent competence, which were issued by municipal parts of the Capital City of Prague, is carried out by the Board of the Capital City of Prague, which is entitled to suspend performance of this act, and if the rectification is not established, it can bring a legal action to the Municipal Court in Prague. Supervision over acts of municipal parts in delegated

competence is carried out by the Municipal Authority of the Capital City of Prague, which is entitled to suspend performance of such an act, and if the rectification is not established, it is entitled to abolish the act concerned.

In practise of the Ministry of the Interior, the supervision is carried out either on the basis of its findings, or on the basis of an initiative of relevant regional authorities, if the supervision over competences of municipalities is in question, or on the basis of initiatives and complaints of third persons. It is proceeded to implementation of supervisory measures (i.e. suspension of effectiveness or implementation and legal action to the court) on principle only in that case, if territorial self-governing units do not remove the founded unlawfulness voluntarily (i.e. if they do not establish rectification voluntarily). It is necessary to note that territorial self-governing units establishe rectification voluntarily in most cases and only a small part of acts, which were found to be unlawful, is subsequently brought to the court to be abolished.

At performance of supervisory activity in practise, it is possible to meet different reasons of unlawfulness in activity of territorial self-governing units. In isolated cases, namely small municipalities do not always respect the relevant judicature, especially of the Constitutional Court and in the adopted regulations they regulate affairs, which they are not allowed to regulate, or possibly they do not regulate them in a lawful manner. As problematic can be seen as well the approach of some municipalities, which see the methodical support of central administrative authorities as an interference into their own affairs and they refuse to accept the methodical support without relevant legal reasons.

3. Evaluation of compliance with standards

The basic criteria of evaluation of activity of territorial self-governing units at performance of the supervision is the lawfulness of performance of independent competence of territorial self-governing units (accordance with law in case of generally binding ordinances and accordance with the complete legal order in case of other acts under independent competence) and lawfulness and accordance with the Government Resolutions and with directives of central administrative authorities at performance of delegated competence of territorial self-governing units (accordance with law in case of a municipal directive and accordance of other acts in delegated competence with by-law regulations, and with the Government Resolutions and directives of central administrative authorities issued within their scope).

From the above mentioned can be concluded, that ethical criteria of performance of competences of territorial self-governing units are not examined in the framework of the supervision, only in case, that such a breach would mean a breach of law as well. The simple „non-ethical“ behaviour of officials or employees of territorial self-governing units – as itself - does not constitute a breach of law.

The control is primarily aimed at legitimate performance of competence of territorial self-governing units. The control has not a repressive character; its aim is to notice a breach of obligations or to notice other deficiencies of performance of competence. While as a result of supervisory procedure stands a repressive act (abolishment of the supervised act), as a result of control stands a record on control, where are listed

the founded deficiencies and proposals of measures leading to removal of deficiencies.

Results of the supervisory activity (i.e. decisions on suspension of effectiveness of legal regulations or implementation of relevant acts and decisions on their abolishment) are published on the official board of the relevant territorial self-governing unit and as such are available to the general public. A decision of the Constitutional Court, which abolishes a legal regulation of a territorial self-governing unit, is afterwards published in the Collection of Laws of the Czech Republic. Results of the control activity do not have to be published on principle, for law does not stipulate such an obligation.

4. Conclusions

Contemporary legal regulation of performance of the supervision and control over territorial self-governing units does not correspond with current needs of efficient, fast and unified performance of the supervision. For this reason, a conception legislative amendment of performance of the supervision and control, which response namely to the above mentioned main problems (which are related especially to a conception of the supervision over performance of competences of municipalities and the control over performance of competences of territorial self-governing-units) was prepared:

1. The current conception of performance of the supervision constitutes duplicate competence of the Ministry of the Interior and regional offices at the supervision over municipalities and it results in an unequal approach compared to the supervision over regions and the Capital City of Prague. Municipalities are obliged to provide both of the authorities with data for performance of the supervision and to establish rectification on appeal of both of the authorities, but regional offices are entitled only to invite municipalities to establish rectification in statutory period of 30 days, a suspence authorisation and an authorisation to bring a legal action to a court is committed to the Ministry of the Interior, or to the Minister of the Interior. This participation of regional offices in the supervision constitutes a space for interpretative, methodical and competence discrepancies, which has a negative consequence for both municipalities and for efficient and unified performance of the state administration in the area of supervision.
2. Contemporary legal regulation also does not enable immediate intervention of a supervisory body, not even in a case of an evident breach of law. A statutory period for establishment of rectification on the basis of invitation of the regional office has to precede to a suspence decision, which means in a consequence, that the unlawful legal regulation or any other act of territorial self-governing unit is valid and efficient for the whole period devoted for establishment of rectification, and therefore it is capable of evoking of given legal effects.
3. Legal regulation also does not enable to municipalities to establish rectification also after the suspence decision is released, i.e. before a proposal in this matter is submitted to the relevant court, i.e. by issuance of the final decision by the relevant court. The Minister of the Interior is obliged, after the suspence decision is issued, to bring a proposal to the relevant court de facto immediately (within statutory period of 15 days), therefore municipalities (if they shall meet the legal conditions for convocation of a council) cannot establish rectification, although they accept the reproached breach of law.

4. Moreover, the contemporary legal regulation commingles the supervision over lawfulness with the control over performance of obligations provided by law. The Act on Regions understands the supervision and the control as synonyms, although they have different subjects and different corrective mechanisms (a complaint submitted to a court, in contrary to a record on control). The control of obligations assigned to territorial self-governing units under their independent competence (e.g. set-up of an official board, evidence of issued legal regulations and their submission to a supervisory authority) is not regulated at all.

The draft amendment responses to the above mentioned main deficiencies of the current conception of the supervision and the control over performance of competence of territorial self-governing units and it projects within its provisions to implement the following conception amendments. Supervision over independent competence (over generally binding ordinances and resolutions and other decisions) of all territorial self-governing units shall be carried out just and only by the Ministry of the Interior. In the area of the supervision over performance of independent competence of municipalities is so removed the current ineffective and counterproductive duplication of performance of this supervision both by the Ministry of the Interior and by regional offices. The supervision over resolutions and other decisions of municipal parts of the Capital City of Prague and of statutory cities shall be carried out by municipal authorities of these municipalities. Concurrently, it constitutes a subsidiary competence of the Ministry of the Interior, just in case of inaction of a municipal authority. Both the supervision and the control over delegated competence of municipalities (over directives and other acts) shall be carried out by regional offices. Concurrently, it constitutes a subsidiary competence of the relevant central administrative authorities, just in case of inaction of a regional office. Both the supervision and the control over delegated competence of regions and the Capital City of Prague shall be carried out by the relevant central administrative authorities.

Both the supervision and the control shall be regulated separately (in separate chapters of law), so there shall be no space for uncertainties concerning the content of these activities and the way of their implementation. The current legal regulations does not make a clear differential between these activities, which results – in addition to ambiguities concerning content of the control and impossibility to control performance of independent competence of municipalities – in overlapping of the supervision and the control.

IV. Status of local and regional public servants

1. General framework

Status of territorial self-governing units is covered by:

- the Act No. 312/2002 Coll., on Officials of Territorial Self-Governing Units and on Amendments of Some Other Acts, as amended by the Act No. 46/2004 Coll.
- the Act No. 65/1965, the Labour Code, as amended
- the Act No. 143/1992 Coll., on Salaries and Availability Payments in State-Financed Organisations, as amended,

- the Act No. 128/2000 Coll., on Municipalities (the Municipal Arrangement), as amended,
- the Act No. 129/2000 Coll., on Regions (the Regional Arrangement), as amended,
- the Act No. 131/2000 Coll., on the Capital City of Prague, as amended,
- the Act No. 451/1991 Coll., by which several further conditions of service are determined for several posts in state bodies and organisations of the Czech and Slovak Federative Republic, the Czech Republic and the Slovak Republic, as amended,
- the Government Resolution No. 108/1994 Coll., implementing the Labour Code and Some Other Acts, as amended by the Government Resolution No. 516/2004 Coll.
- the Government Resolution No. 330/2003 Coll., on Remuneration of the Officials in Public Administration and Services, as amended by the Government Resolution No. 637/2004 Coll.
- the Act No. 435/2004 Coll., on Employment,
- the Decree No. 511/2002 Coll., on Recognition of Equivalence of Education of Officials of Territorial Self-Governing Units,
- the Decree No. 512/2002 Coll., on Special Professional Competence of Officials of Territorial Self-Governing Units.

The Act on Officials is in relation of speciality to the Labour Code. The Act on Officials shall be used preferentially in such cases, when it “sets down differently” in contrary to the Labour Code. In cases, where are no differences, the Labour Code shall be applied. The general principle of supportive competence of the Labour Code is thereby confirmed. On the basis of this principle, the Act on Officials regulates only the essential differences to the Labour Code, which correspond to the specific position of officials of territorial self-governing units; in all other cases, the labour Code shall be applied. However, general provisions of the Labour Code are always applied. The Act on Officials, i.e. the special Act, either regulates the area of working relations, which is not regulated by the Labour Code, or it regulates differently the area of working relations, which is already regulated by the Labour Code.
The Act on Officials of Territorial Self-Governing Units does not cover salaries of officials, which keep to be regulated by the Act No. 143/1992 Coll., on Salaries and Availability Payments in State-Financed Organisations, and by legal regulations issued for its implementation.

2. Disqualification, termination of office and suspension

In so far as the Act on Officials does not provide any different regulation as concerns the working relation of an official, the provisions given under Art. 42 and subsequent of the Labour Code are applicable to officials. Therefore the working relation of an official can be terminated - as in case of other employees – in four basic ways: by agreement, release, immediate dissolution and by dissolution within a probationary period. The working relation is terminated also by death of the employee. And of course, the working relation agreed for a determined period is terminated by expiration of the agreed period.

As concerns senior officials or heads of authority, the Act on Officials provides enumaratively the reasons, for which they can be dismissed. These reasons

introduced under Art. 12 of the Act are exclusive, it means that dismissal for other reasons or without giving any reason is excluded (e.g. a senior official cannot be dismissed for organisational reasons in accordance with Art. 46 (1 (a), (b) a (c)) of the Labour Code. It is a differing regulation in contrary to Art. 65 (2) of the Labour Code, which stipulates that "an employee, who was elected or appointed into his/her office, can be dismissed from this office". As results from the above mentioned, the Act on Officials contributed to improvement of position of senior officials and heads of authority, which could be dismissed, even without giving any reason.

In accordance with provisions of Art. 12 (1) of the Act on Officials, a senior official or a head of authority shall be dismissed only if one of following occurs

a) an official no longer complies with all of the conditions referred to in Section 4,
b) an official has committed a serious breach of the legal obligations, or committed at least two less-compelling breaches of the legal obligations within the past six months, or
c) an official has not finished the training for a senior official within the time limit pursuant to Section 27 (1).

From the above mentioned results, that one of the reasons, for which a senior official shall be dismissed, is a serious breach of his/her legal obligations or committal of at least two breaches of his/her legal obligations within the past six months. These obligations are given e.g. under Art. 16 and Art. 18 (1) and (2) of the Act on Officials, and under Art. 35 (1 (b)) and Art. 74 of the Labour Code, in the working order.

Neither the Act on Officials, neither the Labour Code defines terms "serious breach of the legal obligation" and "less-compelling breach of the legal obligation". Therefore it is necessary to come out from particular circumstances of each individual case and also to take into account the personality of an employee, the office, which he/she is holding, his/her existing attitude to carrying-out of his/her working tasks, time and situation, when it comes to the breach of the legal obligation, extent of guilt, manner and intensity of the breach of the legal obligations, consequences of the breach of the legal obligations for the employer etc. E.g. it is not possible to dismiss a senior official for less compelling breach of two legal obligations, which he/she has committed within the past six month, when he/she has been rewarded for accomplished work within this period.

In case that the breach of the legal obligation shall be legally afflicted as a reason for dismissal, this breach of the legal obligation has to be caused by the senior official concerned (at least due to negligence) and it has to reach certain degree of intensity.

The working relation of the dismissed official with the territorial self-governing unit does not terminate. In this case, the Act on Officials is applied jointly with the Labour Code. The Act on Officials regulates a dismissal differently in comparison with the Labour Code. On the contrary, the regulation of working relation after dismissal and the regulation of abnegation of an office are governed by provisions of the Labour Code. As a sanction for non-completion of requisites of dismissal, the Act stipulates invalidity of such a dismissal. The dismissal has to be provided in writing and it has to include at least one of the reasons, which are stipulated by the Act as requisites of the dismissal, and it has to be delivered to the senior official concerned.

3. Rights and obligations of local and regional public servants

Regulation of fundamental obligations of an official belongs among cases, when provisions of the Act on Officials are applied instead of effective provisions of the Labour Code. Under Art. 16 of the Act, it is explicitly stipulated that the provision of Art. 73 of the Labour Code shall not apply. However, it does not mean that obligations of officials are regulated only by the Act on Officials. Of course, provisions of Art. 35 (1 (b)) of the Labour Code, which stipulates that an employee is obliged to exercise activities in person, according to instructions of the employer, in accordance with the employment contract, within the determined working hours and to respect work discipline, are applied as well.

Legal regulation of obligations of an official given under Art. 16 of the Act emphasizes his/her obligation to act in public interest, to act and decide impartially, observe any constitutional regulation, acts and other legal regulations etc. Among fundamental obligations of an official in accordance with the Act on Officials are listed not only ordinary work-legal duties, by which the official is obliged only within the period, when he/she executes his/her job, but also obligations, which relate to behaviour of the official out of execution of his/her job (e.g. the official shall refrain from any actions that might, in a serious manner, damage the creditworthiness of a territorial self-governing unit, the official shall refrain from any abuse of information, the official refuse any gifts or other benefits and the official hold in confidence any information obtained on the job).

In comparison to the above mentioned, work-legal obligations provided by Art. 16 (1 (k), (l)) (e.g. the official is obliged to provide information on the activities of territorial self-governing units under the special legal regulations, in the scope, which results from his/her position) can be listed among work-legal obligations, which the official is obliged to observe only at time of execution of his/her office.

In accordance with Art.16 (2 (c)) of the Act on Officials, officials are obliged to properly manage any assets entrusted to them by their territorial self-governing unit, safeguard and protect its property from damage, loss, destruction and abuse, and never act in contradiction to the legitimate interests of the territorial self-governing unit.

Provision of Art. 16 (3) excludes membership of an official in managing, supervising or control bodies of legal entities engaged in business activities. The only exception is a case, when the official has been authorised to do so by the territorial self-governing unit, by which he/she is employed (in such a case however, he/she is not entitled to receive any reward for performance of the office in such a body, not even after termination of his/her working relation).

Provisions of Art. 16 (4) and (5) regulates rules of performance of any other gainful activity of the official. Provision on prohibition of any other gainful activity without prior written consent from the territorial self-governing unit as their employer is adopted from the provision of Art. 73 (4) of the Labour Code. Consent with performance of any other gainful activity shall be given on behalf of the territorial self-governing unit by that person, who carries out tasks (office) of a statutory body as concerns work-legal relations, e.g. in accordance with the Act on Municipalities, it is the Secretary, in

accordance with the Act on Regions, it is the Head of Regional Office. However, the Act on Officials define an exception from the above mentioned prohibition of any other gainful activity without prior written consent of the territorial self-governing unit, where the official is employed. The restriction shall not apply to academic, teaching, media, literary, artistic, expert or interpreter activities performed under a special legal regulation for courts or administrative agencies, nor to any activity on advisory bodies of the Government, nor to management of the officials own property.

4. Liability of local and regional public servants

Legal regulation of compensation for damages is covered by the Labour Code. In so far as the Act on Officials does not include different legal regulation, the above mentioned regulation of compensation for damages in work-legal relations shall apply for officials of territorial self-governing units as well. At the same time, the Act on Officials extents this regulation with liability of territorial self-governing unit for damage on property, which incurred by their officials provided that the damage is shown to have been caused by an official's discharge of his or her tasks.

5. Recruitment, remuneration, working conditions and career development of local and regional public servants

One of the provisions of the Act on Officials, which regulates issues, which have not been so far regulated by the Labour Code, is a requirement of the public call and of the tender procedure at recruitment of officials.

The public call is a pre-requisite for constitution of a working relation for a limited period with an official employed by the municipal office of a municipality, which is not a municipality with extended powers, neither a municipality with authorised municipal office.

Requirement of the public call is not applicable on applicants for a limited period employment.

The Act on Officials enumaratively stipulates requisites of content of the public call and requisites of application for conclusion of employment contract. A territorial self-governing unit is obliged to post a public call advertisement on an official board no later than 15 days prior to the deadline for applications, and concurrently to post it through a remote access channel. The Act No. 106/1999 Coll., on Free Access to Information, stipulates that a possibility of a remote access is an access to information enabled to unlimited circle of applicants by means of telecommunication device, e.g. by means of the Internet. In case, that the application of an applicant for conclusion of an employment contract does not include all the requisites prescribed by law or it has not attached all the documents prescribed by the Act, the applicant for conclusion of an employment contract shall be called by the head of authority to make completion within a reasonable period of time. However, the Act does not stipulate, how long the reasonable period of time shall be. It shall be the own interest of the applicant for conclusion of an employment contract to fulfil all the prescribed requisites. One of the documents, which are required by the Act to be attached to the application, is an authenticated copy of the certificate of the highest achieved academic degree. The Act does not explicitly stipulate the "officially" authenticated

copy, however by an authenticated copy is understood a copy authenticated in accordance with the Act No. 41/1993 Coll., on Authentication of Conformity with Copies of an Entry or Copies with List and on Authentication of Signature by Municipal Bodies and on Issuing of Confirmations by Municipal Bodies and by District Bodies. The head of authority is obliged to make a report on assessment and evaluation of the applicants for conclusion of an employment contract; this report has a content, which is enumaratively stipulated by the Act. One of the given requisites of the content of such a report is a brief description of evaluation of the applicants. It is a very important precondition, which shall make the affairs related to a rise of working relations with new officials. However, this precondition does not mean that the head of authority shall introduce placing of the individual applicants in the description of a method of assessment of the applicants. As concerns making of the report, the Act stipulates, that it shall be within 15 days after conclusion of an employment contract with the applicant for conclusion of an employment contract on the basis of the public call or within 15 days after decision that no employment contract will be concluded with any of the applicants for conclusion of an employment contract. This report can be referred by all the applicants for conclusion of an employment contract. The Act stipulates that an employment contract can be concluded only with an applicant who complies with all the conditions and requirements laid down in the public call, and who submitted a complete application, his/her identity card or a residence permit card in the case of a foreign national, and the documents, which are required by the Act to be attached to his/her application.

The tender procedure is a precondition for rise of a working relation of an official for a non-limited period, who is placed:

1. in a regional office,
2. in the Municipal Authority of the Capital City of Prague,
3. in municipal office of a municipality with extended powers,
4. in delegated municipal office and
5. in office of a municipal district or a municipal part of a territorially divided statutory city or of a municipal part of the Capital City of Prague, which is responsible for performance of delegated competence in the scope of a delegated municipal office.

The tender procedure is as well a precondition for any appointments of a head of authority or a senior official of authority.

A tender procedure advertisement shall include the same data, which are enumaratively stipulated by the Act concerning a content of the public call. The tender procedure is posted by the head of an authority on an official board of authority of the territorial self-governing unit and concurrently to post it through a remote access channel. Arrangement of a term for announcement is the same as of the term for announcement of the public call. Requisites of the application for the public tender are also the same as of the public call and an applicant for conclusion of an employment contract of an official shall attach to his/her application the same documents as the applicant for conclusion of an employment contract. Similarly in the case, that the application of the applicant for a conclusion of an employment contract does not contain all the requisites stipulated by the Act or if all the documents prescribed by the Act are not attached to it, the applicant for conclusion of an employment contract shall be invited by the head of authority to completion within a

reasonable period of time. Similarly as in case of a public call, the Act on Officials does not stipulate, how long the reasonable period of time shall be. After expiration of the given deadline for announcement of a public tender, or possibly after expiration of a reasonable period of time, within which the applicant for conclusion of an employment contract was invited by a head of authority to complete requisites of the application, the head of authority shall hand the application over to the Selection Committee. The Selection Committee can - but it is not obliged to - invite the applicant for an interview. However, for an interview is not invited such an applicant, who did not submitted complete applications, including all the documents prescribed by the Act, or who does not meet the by the Act stipulated prerequisites for a rise of an employment contract of an official or for an appointment of a head of an authority. It is necessary to emphasize, that meeting of prerequisites stipulated by the Act No. 451/1991 Coll., by which several further conditions of service are determined for several posts in state bodies and organisations of the Czech and Slovak Federative Republic, the Czech Republic and the Slovak Republic, is required for an appointment of a head of an authority or a senior official. Therefore it is necessary that an applicant for an appointment of a head of an authority or of a senior official proves meeting of these requirements. The Selection Committee shall produce a report on the assessment of applicants, which includes only data on its composition, list of applicants and a list and placing of applicants, who submitted completed applications, including all the documents prescribed by the Act, who meet the prerequisites prescribed by the Act for a rise of a working relation of an official or for an appointment of a senior official, and who meet requirements quoted in the advertisement. A placing of applicants for a conclusion of an employment contract is made by the Selection Committee and is not binding. The head of authority shall decide, with which of the applicants shall be concluded an employment contract. However, the Act stipulates a condition, that the employment contract can be concluded only with such an applicant, who submitted a complete application, including all the documents prescribed by the Act, who meets all the prerequisites prescribed by the Act for a rise of a working relation of an official and who meets all the requirements quoted in the advertisement. Similarly, for an office of a head of authority and a senior official can be appointed only such an applicant, who submitted a complete application, including all the documents prescribed by the Act, who meets all the prerequisites prescribed by the Act for an appointment of a head of authority or of a senior official, and who meets the requirements quoted in the advertisement. A board of a territorial self-governing unit shall appoint heads of departments of territorial self-governing unit, while other senior officials are appointed by a head of authority of a territorial self-governing unit. Appointment of heads of departments of a municipal office is conditioned by a proposal of a secretary, however the Act on Municipalities does not stipulate any sanction of invalidity in case of absence of such a proposal. Appointment of heads of departments of a regional office or of the Municipal Office of the Capital City of Prague is bound on a proposal of a head of regional office or of a head of the Municipal Office of the Capital City of Prague under sanction of invalidity. A head of authority is appointed by a mayor, a president of regional council or a Lord Mayor. Appointment of a secretary of municipal office is bound under sanction of invalidity on consent of the head of regional office, appointment of a head of regional office and a head of the Municipal Office of the Capital City of Prague is bound under sanction of invalidity on consent of the Minister of the Interior.

The head of authority adds to the written report of the Selection Committee a record on the conclusion of an employment contract or an appointment, while every applicant shall be enabled to refer to the report upon request. The Act stipulates, that the applicant for conclusion of an employment contract shall cover by himself/herself all the costs that occurred to him/her by participation in the public tender.

One of advantages for an official, which are introduced by the Act on Officials, is duration of the employment. It is a significant and for an official advantageous difference to regulation of duration of employment by the Labour Code (e.g. the Act on Officials excludes a possibility, with exception of two enumeratively defined reasons, to contract an official only for a limited period, even in the case that an official explicitly demands a contract for the limited period). In accordance with Art.10 of the Act, officials shall be employed only for the unlimited period.

The first reason, for which an official can be employed for a limited period, is a need to ensure a time-limited administrative activity. It is activity, which is not executed permanently by a municipality, but a need to cover such activities arose (e.g. exacting of claims). The second reason, for which an official can be employed for a limited period, is a need to replace officials on a temporary leave. An official on a temporary leave does not execute his/her office due to an excused barrier to working activity on his/her side, which is e.g. maternity or parent leave; leave for incapacity to work or leave to serve in another public office etc. The Act on Officials stipulates only the minimal length of incapacity of an official to work, minimal length of other barriers to working activity, for which an official on a temporary leave can be replaced, is not specified.

In case, that a territorial self-governing unit concludes an employment contract with an official for a limited period, but it does not introduce in the employment contract or in the appointment to an office a reason for a conclusion of an employment contract for a limited period, which consists in a need to ensure a time-limited administrative activity or in a need to replace officials on a temporary leave, or the introduced reason does not correspond with reasons, which the Act on Officials stipulates, then the working relation for a limited period shall transform into a working relation for an unlimited period.

Other advantage, which is introduced by the Act on Officials, is enhancement of the additional severance pay beyond the legitimate claim referred to in the Labour Code. The amount of additional severance pay, which an official at termination of their labour relation by a notice for organisational reasons or by agreement for the same reasons receives in addition to additional severance pay to that which is due under the Labour Code (twice the average monthly salary), shall depend on length of the labour relation of the official to the concerned territorial self-governing unit (also to other than that one, where their labour relation is being terminated) or to the administrative authority. However, the Act stipulates that it has to be such a labour relation, which involved mainly administrative activities. For the purpose of determination of length of labour relation, only period of existence of labour relation after entrance into effect of the Act No. 367/1990 Coll., on Municipalities (Municipal Arrangement), is taken into account, it means after 24 November 1990. However, labour relation carried out within an extra employment is not taken into account.

6. Training and co-operation with local and regional public servants

As results from provisions of Art. 18 (1) of the Act on Officials, an official is obliged to enhance his/her qualification by participation in the initial and continuous training and also in training and testing for special professional competence, except where otherwise provided by this Act. A head of authority and a senior official are obliged to enhance his/her qualification by participation in the training for senior officials, except where otherwise provided by this Act (see provision of Art. 18 (2) of the Act on Officials). While a territorial self-governing unit is obliged to arrange for an official an enhancement of qualification in accordance with the Act on Officials by means of educational institutions accredited for a relevant educational programme (see provision of Art. 17 (3) and (4) of the Act on Officials).

7. Conclusions

The Act on Officials does not define sufficiently precisely the personal competence of the Act. In practice, there comes to a situation, that employees of individual territorial self-governing units, who perform the same activity, are placed differently (i.e. one is placed as an official, however the other in not). Therefore, it is necessary for legal certainty of employees of territorial self-governing units, to precise the personal competence of the Act on Officials (it means to define more precisely, who of employees of territorial self-governing units is an official and who is not).

Legal regulation of integrity under the Act on Officials is not adapted to all the needs of territorial self-governing units. One of the aims of the Act on Officials is to increase the quality of performance of public administration. For this reason is therefore necessary to widen the definition of integrity also on cases of conditional suspension of criminal prosecution of an official for a criminal act committed deliberately and committed in negligence, while in both of the above mentioned cases for acts connected with performance of public administration.

Current legal regulation of the Act on Officials does not contain a special provision on regulation of a probationary period. For its arrangement is therefore necessary to use provisions of Art. 31 of the Labour Code. The problem is that provisions of Art. 31 of the Labour Code does not contain a possibility of arrangement of a probationary period for a working relation, which is constituted by an appointment. At arrangement of a probationary period in case of working relations, which are constituted by an appointment, provisions of Art. 68 of the Labour Code can be applied: “for working relations constituted by an election or an appointment is otherwise valid a provision on working relation constituted by an employment contract “. But it is possible to meet with legal opinions, which do not admit arrangement of a probationary period at working relations constituted by an appointment, for the provision of Art. 31 of the Labour Code admits a possibility to arrange a probationary period only under the employment contract. Legal regulation of a dismissal according to the Labour Code is different to the legal regulation of the Act on Officials. In accordance with provision of Art. 65 of the Labour Code, an employee, who was appointed to his/her office, can be dismissed without giving any reason. But in accordance with provision of Art. 12 of the Act on Officials, a senior official can be dismissed only for reasons stipulated by this Act (these reasons are exclusive, it means that no other reason for dismissal can be applied).

Because the Act on Official - on the contrary to the Labour Code – tightens conditions for a dismissal, it is necessary to set a possibility for arrangement of a probationary period even for working relations constituted by an appointment. For the sake of specification of legal regulation, it seems to be desirable to regulate the probationary period directly in the framework of the Act on Officials.

Current form of the Act on Officials does not define sufficiently precisely the content of components of education (initial, continuous, training and testing for special professional competence and training for senior officials), which brings problems especially at accrediting of particular educational programmes.

Current form of the test for special professional competence showed to be not completely inconvenient. The Act on Officials overtook two categories of officials. One category had and still has prescribed a test for special professional competence as a qualification prerequisite for performance of their work, while the other category of officials has not prescribed a test for special professional competence at all. It constitutes unequal status within one category of employees (see the Act on Employment). For this reason, it seems to be necessary to determine similar obligations for all the officials.

At present, the Ministry of the Interior is working on amendment to the Act on Officials, which is supposed to solve the above mentioned problems.

V. Local and regional authorities' relations with the private sector

1. Public contracts for the supply of goods and services

As regards public contracts, the following provisions cover this issue:

- the Act No. 40/2004 Coll., on Public Procurement, as amended,
- the Act No. 128/2000 Coll., on Municipalities (the Municipal Arrangement), as amended,
- the Act No. 129/2000 Coll., on Regions (the Regional Arrangement), as amended,
- the Act No. 101/2000 Coll., on Protection of Personal Data and on Amendments to Some Other Acts.

The Ministry for Regional Development operates „The Information System on Award of Public Contracts " and provides publication of data and information on public contracts on the central address and in the Official Journal of the European Communities. Within the information system, it operates the List of Qualified Suppliers. On this List are subscribed such suppliers, which met qualification in accordance with the Act on Public Procurement and proved it by relevant documents. In accordance with the Act No. 40/2004 Coll., on Public Procurement, as amended

a) the public contracting entity, which is:
    1. the Czech Republic,
    2. a state allowance organisation,

3. a self-governing territorial unit and in the case of the capital city of Prague and statutory cities, in addition, a city borough or a city district, and allowance organisations managed and set up thereby,

4. the Fund of National Property of the Czech Republic, Land Fund of the Czech Republic, State fund, Czech National Bank, Czech Radio, Czech Television, Czech Consolidation Agency, a health insurance company, a voluntary partnership of municipalities and another legal person, provided that it was set up by law or by virtue of law for the purpose of meeting needs in the general interest and is financed, for the most part, by public contracting entities, or is subject to management supervision by public contracting entities or having an administrative, managerial or supervisory board, more than half of whose members are appointed by such public contracting entities,

b) another legal entity or natural person, where it awards a supply, service or construction works contract, which is reimbursed by more than 50 % by a public contracting entity, or

c) the entrepreneur, if he/she is subject to dominant influence of the public contracting entity, or the pursuit of business activities thereof is conditional on granting authorization [7)] rendering special or exclusive rights and pursues some of the activities referred to in § 3.

Supervision of compliance with this Act is exercised by the Office for Protection of Economic Competition (hereinafter referred to as “the supervisory body”). This supervisory body is the only state authority, which is entitled by an exclusive competence to intervene into the course of ongoing public procurement, to execute administrative proceeding and possibly to impose sanctions or to implement other measures in accordance with the Act on Public Procurement. The competence of other authorities performing control according to special legal regulations (e.g. the Police of the Czech Republic or the Supreme Audit Office) is not influenced by this.

Of course, that excluded is not even a possibility of functioning of internal control mechanisms of the contracting entity, i.e. that the municipal council is entitled to entrust the Control Committee by execution of a control of public procurement. This control can be performed by the Control Committee both in the course of the particular public contract, and after its completion. However, it may not impose any sanction measures, neither it can interfere in the ongoing process of public procurement (these operations can be executed in accordance with the Act No. 40/2004 Coll., on Public Procurement, only under the administrative procedure, which is under exclusive competence of the supervisory body). Members of the Control Committee are obliged to maintain confidentiality and the rule of non-prejudice. The above-mentioned shall be applied analogically on members of the Evaluation Commission. It is unconditionally necessary to protect personal data, trade secrecy and intellectual property (see the Act No. 101/2000 Coll., on Protection of Personal Data and on Amendments to Some Other Acts). It is the contracting entity, which is responsible for breach of these obligations.

Most of employees of territorial self-governing units, who participated in the inquiry via questionnaire to this study, pointed out complicatedness and non-transparency of the Act. 40/2004 Coll., on Public Procurement, as amended. Concurrently, the Ministry for Regional Development is preparing a paragraphed version of a draft new legal regulation on public contracts. This task results from the Government

Resolution No. 1157 of 24th November 2004, which was adopted by the Government of the Czech Republic in connection with the Directive 2004/18/ES and 2004/17/ES. These new Directives (regulating the public procurement, published in the Official Journal of the European Communities on 30th April 2004), shall be transposed by the Member States of the European Union into national legal orders by January 2006. The Ministry for Regional Development informs on this fact general public on the web-sites www.mmr.cz. A part of this information is as well an appeal to the public to participate in a discussion on this issue, so the new regulation of public contracts would be the of the most quality.

2. Delegation of public services to the private sector

Delegation of public services to the private sector is covered by the following legal regulations:

- the Act No. 128/2000 Coll., on Municipalities (the Municipal Arrangement), as amended,
- the Act No. 129/2000 Coll., on Regions (the Regional Arrangement), as amended,
- the Act No. 40/2004 Coll., on Public Procurement, as amended,
- the Act No. 40/1964 Coll., the Civil Code,
- the Act No. 513/1991 Coll., the Commercial Code.

For cooperation of a municipality with another legal entities and natural persons under civil-law relations, there can be established an interest grouping of legal entities, which is a legal entity and whose position, establishment and termination is regulated by the Civil Code. However, this grouping has not eligibility to rights and obligations. However, on contrary to this, application of these forms of cooperation only among municipalities is explicitly excluded by provisions of the Act on Municipalities.

Delegation of public services on the private sector is possible exclusively on the contractual basis; and only under condition, that it would not be a transfer of performance of public administration to the private sector. The above mentioned delegation can be used only in such cases, when e.g. area of services to the public is concerned.

3. Shareholdings

A territorial self-governing unit is allowed - in accordance with the Act No. 250/2000 Coll., on Budgetary Rules of Territorial Budgets - under its competence to establish also business societies, i.e. shareholdings and limited liability companies, especially for economic use of its property and for provision of public benefit activities.

Especially the cooperation in the area of the public-private partnership is concerned, where a territorial self-governing unit (municipality or region) creates in cooperation with a private sector a new subject. A typical example, which can be mentioned, is establishment of new industrial zones, when a municipality invests immovable assets (landed estate) and a private company invests capital. The given aim is especially to create new working positions. Investments are oriented e.g. on automobile industry,

electro-technical production, logistics, research and development. A similar example can be a joint venture in the area of construction and regeneration of realties.

4. Privatisation of public undertakings

The Czech Republic has by now no experience with privatisation of public undertakings. On the contrary, territorial self-governing units are establishing allowance organisations in order to provide public services (social services, maintenance of greenery etc.).

5. Subsidising associations and delegating public services to them

Activity of NGOs in the Czech Republic is regulated by the following Acts, which stipulate the process of registration, organisation structure, financial management, economic activities of an organisation and its termination:

- civil societies are ruled by the Act No. 83/1990 Coll., on Civil Associations, as amended,
- public benefit corporations are ruled by the Act No. 248/1995 Coll., on Public Benefit Corporations and on Amendments and Completions to Some Other Acts, as amended,
- churches and religious communities, religious legal entities are ruled by the Act No. 3/2002 Coll., on Freedom of Faith and the Position of Churches and Religious Communities and on Amendments to Some Other Acts, as amended.
- foundations and foundation funds are ruled by the Act No. 227/1997, on Foundations and Foundation Funds o and on Amendments to Some Other Acts, as amended.

Under the current legal order of the Czech Republic, there exist a number of general legal regulations, which stands for NGOs as well. The most important of them are:

- the Act No. 198/2002 Coll., on Voluntary Service and on Amendments to Some Other Acts, as amended,
- the Act No. 117/2001 Coll., on Public Collections and on Amendments to Some Other Acts,
- the Act No. 202/1990 Coll., on Lotteries and Other Similar Games, as amended,
- tax legislation (e.g. the Act No. 586/1992 Coll., on Income Tax, as amended, the Act No. 235/2004 Coll., on Value Added Tax),
- the Act No. 563/1991 Coll., on Book-Keeping, as amended.

A number of relevant Acts deals with an issue of NGOs acting in different areas (e.g. sport, social services etc.), however the list of all of these Acts is not introduced in this study. The amendment to the Civil Code is under preparation as well, and it is supposed to influence significantly the activity of NGOs (new legal definition of foundations and foundation funds, civil societies (newly associations) and public benefit societies (newly institutions), legal definition of public benefits etc.).

NGOs operate in a number of areas of public benefit, mentioned can be social services, support to handicapped, prevention and solution of social risks, protection

of environment, culture and protection of cultural sights and development of community life. In connection with role of the non-profit sector as of provider of services in the area, where in the most of the European countries operates NGOs, in the Czech Republic, there exists a number of allowance and budgetary organisations of the state, regions and municipalities.

According to the data of the Czech Statistical Office, there worked 654 thousands of volunteers in the non-profit sector in 2003. The number of volunteers has increased since 2000. A quantitative drift came in 2002 – when the number of volunteers increased more than two times.

The main institutionalised form of cooperation among NGOs and the Government of the Czech Republic is the Governmental Council for Non-State Non-Profit Organisations (http://wtd.vlada.cz/vrk/vrk.htm). It has been established by the Government as its permanent initiative and advisory body and it is a part of the Office of the Government of the Czech Republic. It is the only body of the state administration dealing with the issue of non-profit sector in general context. It is lead by a member of the Government, and by virtue of this fact, it has a direct contact with the Government of the Czech Republic. However, it has ho executive competences. It consists of representatives of NGOs, central state administration authorities and regions. The Governmental Council for Non-State Non-Profit Organisations initiated formation of a document the Report on the Non-Profit Sector in the Czech Republic, which was elaborated on the basis of the Government Resolution No. 807 of 6th August 2003 and it is intended primarily for the Government and public administration. The Report presents brief and quality information on state of the non-profit sector in the Czech Republic and it identifies some key issues. There is introduced in the 10th Chapter an overview of all particular proposals, measures and tasks, which the Government committed by its Resolution No. 19 of 5th January 2005 to work up.

Interested persons can find topical information on activity of non-profit organisations, as well as relevant documents related to this issue also on the web sites of the Information Centre of the Non-Profit Organisations (www.neziskovky.cz).

Significant resources of financing of non-profit sector in the Czech Republic are public budgets. NGOs can gain some resources from public budgets in a few main ways: the state policy of subsidies towards NGOs, which is bound on the Main Areas of the State Policy of Subsidies towards NGOs; subsidies allocated apart from the state policy of subsidies; support to research and development; public contracts; contracts concluded in accordance with the Civil Code. The state policy of subsidies is not obligatory for regions and municipalities and represents the only framework of support, which is explicitly designed for NGOs; other ways of gaining resources from public budgets relate also to other subjects. Currently, we are not able to estimate the proportion of resources actually provided to NGOs within the state policy of subsidies and within other rules. The main piece of information on resources provided from the State Budget, which we currently have, concerns the state policy of subsidies.

In 2003 in the Czech Republic, subsidies were provided to NGOs – within the state policy of subsidies – by ministries and regional and municipal budgets. The total amount of subsidies of all the levels of public budgets in 2003 reached 5.409

milliards CZK. Ministries provided in 2003 resources in the amount of 3.318 milliards CZK. In comparison with the previous years, it means annual increase of approximately 15 %. Since 1999, it means within 4 years, the total amount provided by Ministries increased by 75 %. It still predominates the centralised character of support provided to NGOs and financial resources from the State Budget are dominant. In 2003, NGOs received from regional budgets only one fifth of resources, what they received from Ministries, it means 634 millions CZK, and from municipal budgets, they gained 956 millions CZK. However, regions exist only since 2000 and the amounts, which they can distribute, depend on successively progressing decentralisation of public budgets.

NGOs are supported by subsidies from the ministerial level mostly in the three following areas: provision of social services (36 %), development of sport and physical education (34 %), development of culture and protection of cultural heritage (11 %). These three areas receive 80 % of resources, which are provided by ministerial budgets within the state policy of subsidies to the non-profit sector. Situation in regions and municipalities is similar, but with such a difference, that the most supported area is sport and physical education.

6. Issuing licences/permits and certificates (particularly in town-planning matters)

Permits are issued e.g. in connection with building control.

7. Management of municipal assets

The Constitution guarantees to municipalities the independent treatment of their own property and financial resources, the Act on Municipalities obliges municipalities to use this property efficiently and functionally, to protect it from destroying, damage, misappropriation or misapplication. Financial management itself is governed by a special Act (the Act No. 250/2000 Coll., on Budgetary Rules of Territorial Budgets, as amended), according to which municipalities prepare their budget, they manage their financial resources according to it and establish and found legal entities in accordance with rules of this Act.

The Act No. 420/2004 Coll., on Audit of Economic Activities of Territorial Self-Governing Units and Voluntary Associations of Municipalities regulates the subject, perspectives, procedure and rules of audit of financial management of municipalities in the last calendar year by a regional office or an auditor. The Act also stipulates, that the State (the Ministry of Finance) performs supervision over implementation of the audit.

A municipality is obliged in accordance with the Act on Financial Control to require the relevant regional office or an auditor to let audit its financial management in the past calendar year. The subject of the audit are data on annual financial management of the municipality in particular, furthermore bookkeeping, treatment of property owned by the municipality, public procurement, and respect to obligations set down by special legal regulation.

An obligatory part of a conclusion of such an audit shall be also notice on possible risks, which can arise from discovered deficiencies.

The Act stipulates, that the municipality is obliged to ensure mutual cooperation of its employees and elected bodies of the territorial unit.

On the Internet sites of the Ministry of Finance (www.info.mfcr.cz/aris/) are periodically published essential financial and accounting information on financial management of municipalities via the ARIS system. Public availability of these data contributes significantly to higher transparency of financial management of municipalities and it enables a basic perspective on efficiency in their treatment of financial resources.

Resources

- www.mvcr.cz
- www.mfcr.cz
- www.mmr.cz
- www.neziskovky.cz
- www.korupce.cz
- Council of Europe: *Model initiatives package on public ethics at local level*. Strasbourg, Steering Committee on Local and Regional Democracy of the Council of Europe, 2004.
- Group of authors: *Reforma veřejné správy v České republice (Public Administration Reform in the Czech Republic)*. Prague, Ministry of the Interior, 2004.
- Vajdová T.: *Zpráva o neziskovém sektoru v České republice (Report on the Non-Profit Sector in the Czech Republic)*, adopted by the Government Resolution No.19 of 5th January 2005