A lighthouse in a sea of corruption

The Advocacy and Legal Advice Centre of Transparency International Czech Republic

Introduction of services, and selected areas of activity

Transparency International – Czech Republic is part of the Transparency International international network of non-governmental organizations. It focuses primarily on promoting systemic changes which limit the room for corruption not only in public administration, but also in the private sector. The Transparency International **Advocacy and Legal Advice Centre** *provides legal advice to citizens who have encountered corruption, and assistance to reporters of corruption (whistleblowers). Last but not least, it helps to expose corrupt practice and draw attention to cases of corruption.*

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Authors' note

This publication originated in late summer/early autumn 2014, which was quite a turbulent period in terms of the legislative development of some important legal standards which are discussed in the text. It may therefore happen that by the time the publication reaches the reader, certain passages may no longer be completely up to date.

At the time the text was being prepared there were, inter alia, fundamental discussions regarding the future direction of regulations on public procurement. They were brought about not only by the adoption of new European legislation (so-called procurement directives), with which the national legislation of each member state must comply, but also certain critical opinions about excess regulation in this area, which hinders the award process. Therefore, we can expect new legal guidelines on public procurement no later than April 2016.

There are also ongoing discussions, for example, in the area of the legal regulation of conflicts of interest, or the financing of political parties. In both areas, some of the legislative changes being prepared could have a positive contribution to clarifying the legal framework and detecting certain situations which the current legal framework cannot solve.

Introduction

Dear readers,

The Transparency International – Czech Republic Advocacy and Legal Advice Centre (ALAC) will soon celebrate ten years of operation. Experiences from our everyday activity confirm, time and time again, that it's important to constantly develop both our own knowledge and skills, and those of our potential clients. In your hands you hold a publication which discusses the legal advice centre and its operation, the services we provide, and certain topics which we deal with. We hope that it will provide you with useful information, and possibly even with directions on how to deal with certain difficult situations which you may encounter.

The Advocacy and Legal Advice Centre within the framework of Transparency International – Czech Republic was established in 2005, and gradually became one of the core pillars of TI. During almost ten years of its existence, the legal advice centre has stabilized, its staff has grown and it has become highly professional. Aside from legal advice itself, its lawyers also participate in other TI activities such as, for example, education.

Everyday contact with citizens' actual experiences enables us, aside from actual assistance for clients in specific cases, to identify, inter alia, where and how various forms of corrupt practice develop, how legislation functions in practice and where a need may arise to change standard mechanisms or strive to amend regulations. Such findings, in generalized form, can then be used in other TI activities, such as for example consulting on legislation. ALAC, therefore, plays an irreplaceable role of an explorer who can find out where society has "a stone in its shoe".

All of the above-mentioned, however, may be considered as a kind of side effect of the operation of ALAC. Our primary job description is still direct and free assistance to people who have encountered corruption. This work brings us many positive things, but it also has its difficulties. We often face the fact that not all clients are fully aware of the role and abilities of non-governmental organization in general, and TI's specialization in particular.

A wide range of clients turn to ALAC in order to solve very serious legal problems. But these are often problems far removed from the topic of corruption. Although the concept of corruption is interpreted widely by TI, and therefore does not only mean bribery, one can often come across business or purely family disputes in which the clients, for various reasons, see some potential for corruption.

Ambiguous situations sometimes arise even in cases of clients who are dealing with problems actually related to corruption. Many of them do not realize that the legal advice centre isn't there to solve the problem on their behalf. Its role lies more in providing guidance on how to achieve a certain improvement in the situation by using legal instruments. At the same time, one must remember that any legal actions are ineffective and aimless if they are missing a solid evidence base.

Unfortunately, sometimes client leave dissatisfied even if they have fulfilled all the required conditions. Sometimes all the effort in the world cannot guarantee a positive result. That's because the result always depends on various circumstances, not just on the willingness and knowledge of TI's lawyers.

On the other hand, we can state that ALAC is increasingly becoming a place which really serves its intended purpose. Gradually, the number of general queries not related to any of the more specific topics which the legal advice centre deals with (conflict of interest, access to information etc.) is decreasing. We still quite often contend with a lack of demonstrable facts, but even in this area a certain improvement has come about. Thanks to that, we can increasingly provide not just advisory services in specific cases and thereby assist clients, but also make use of our authentic experiences when promoting necessary systemic changes.

We've named the legal advice centre project "A lighthouse in a sea of corruption". Just like a lighthouse, ALAC can not only show the right way, but also draw attention to dangerous places in the sea of corruption on which attention must be focused. Our advantage, as opposed to a lighthouse in the true sense of the word, is that we're not fixed to a rock in one place, and that we can very quickly react to actual problems and needs. One of these needs is raising awareness of experiences with solving cases of corrupt practice.

We hope that our publication will be a source of useful information for you, and that it itself will serve you as a lighthouse, if you ever have to face difficulties in the sea of corruption.

The Transparency International – Czech Republic Advocacy and Legal Advice Centre team

The activity and operation of the Advocacy and Legal Advice Centre

Our mission, and our basic services

The mission of the ALAC is primarily to provide free legal advice to citizens who have encountered corrupt practice and are willing to report it. Furthermore, the legal advice centre focuses its interest on helping employees of both public authority bodies and private entities who find out about corrupt conduct in their workplace – so-called whistleblowers. We only provide legal advice to persons who turn to us in good faith, i.e. they are sincerely convinced that the provided information is truthful and complete.

ALAC specializes in the area of public law, meaning primarily administrative affairs and matters which have criminal law overtones.

What we can, and cannot, help with

ALAC can:

- Analyse the established problem from a legal perspective;
- Recommend a suitable and available legal solution;
- Submit a corresponding filing;
- Lodge a complaint with the appropriate body under TI's name;
- Initiate court proceedings within the framework of so-called strategic litigation (an effort to achieve the first court decision in an area where the relevant judicature has so far been missing).

What ALAC does not deal with:

- Reviewing legally binding court decisions;
- Interfering in ongoing court, administrative and other proceedings;
- Providing advisory services in private law matters not related to corruption (seizures and debts, labour law issues, family law, the internal affairs of legal entities, for example co-operatives, Owners' Assemblies).

Forms of assistance provided

TI provides free legal advisory services in the form of basic legal advisory services, and extended legal assistance. We always assess the character of the complaint on a "case by case" basis, and in debatable cases the options of the relevant involvement of ALAC are also consulted throughout the entire organization.

Basic legal advisory services

This is the service provided by ALAC in most cases with which clients turn to us. Using basic legal advisory services, the client gains information about a suitable approach when defending themselves against corrupt conduct, about the content of legal regulations, and about institutions to which they can turn.

Within this form of assistance, we not only advise our clients on how to orient themselves in the life situation in which they find themselves, but we often also reply to queries of a more general legal character which fall into the public law area. Some queries have a very similar character, and that's why ALAC processed the most common ones into general legal advice. You can find selected questions and answers on our website, www.transparency.cz.

Extended legal assistance

This form of assistance consists of a more long-term legal support for the client. It includes, primarily, an in-depth legal analysis of the case, and a processing of legal standpoints and submissions for the client. A basic condition for providing extended legal assistance is that the case must be described in sufficient detail and accompanied by verifiable information. Extended legal assistance by TI cannot be based merely on the client's claims. Furthermore, the provision of extended legal assistance presumes that the legal advice center's client is willing to become personally involved in the matter, i.e. that they are willing to make submissions, and participate in court or administrative proceedings, in their own name.

If the client fears retaliation, or if it will help him to succeed in the matter, TI can take legal action under its own name. In justified cases, TI can offer the client representation whereby a solicitor co-operating with TI will take charge of the case.

Without having convincing documents and evidential resources at its disposal, the ALAC cannot take legal action under its own name.

Using TI's broader abilities

The fact that ALAC is an integral part of the public benefit association Transparency International – Czech Republic is significantly advantageous to our activities. In particular, we closely co-operate with colleagues from the so-called Watchdog unit. Their sophisticated work with open sources both abroad and at home, advanced procedures in investigating suspicious clientelistic relationships and property links, and most importantly close relationships with investigative journalists and anti-corruption police, provide us with an additional effective tool for dealing with cases of corruption.

Before you contact us

Before you turn to ALAC, you should prepare for the following questions which will be posed to you by our lawyers:

- Do elements of corrupt conduct appear in your case? Alternatively, are you a victim of or a witness to clientelistic relationships in the public sector or, to put it simply, did a public official give preference to private interest over public interest?
- Are you able to give evidence of this conduct? What evidential resources do you have at your disposal in the given case?
- Are you willing to become actively involved in this case, and to take further action under your own name?
- Do you fear repercussion, and do you require your identity to remain hidden?

Rules, and limitations on the provision of services by the Advocacy and Legal Advice Centre

One must be aware that Transparency International, which includes our legal advice centre, is a non-governmental and non-profit organization, which means that our legal position in relation to public administration bodies is not different from the position of an ordinary citizen. For this reason, we do not have investigative powers at our disposal such as, for example, the Police of the Czech Republic, public prosecutors, or in some cases the ombudsman. The role of ALAC is also derived form this: if you encounter corrupt conduct, we can advise you on what rights you have, and we can recommend how to proceed in your case and which institutions to turn to.

Another limitation is the fact that, despite all efforts, many cases can never be brought to a successful conclusion. One must be aware that corruption is usually a highly sophisticated two-sided relationship, in which the only parties which play a part are the briber and the bribed. Both of these parties in the corrupt relationship have, for understandable reasons, an interest in the affected relationships remaining hidden. In practice, this means that in most cases there is a lack of evidential resources, especially in situations where it's not a completely "live" current case. We're not trying to say that there's no point trying to rectify an illegal situation. But one must prepare in advance for the fact that, even in the event of expending a huge amount of energy and time, the end result can be unsatisfactory.

How to contact us

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+420/ 773 248 385

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poradna@transparency.cz

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180 00 Prague 8, Czech Republic

In most cases, written communication is more practical. It enables us to analyse your case without interruptions, if necessary also consult legal regulations and the relevant judicature, and most importantly to study the submitted documents in detail. Thanks to this procedure, the speed and quality of the work of ALAC lawyers improves, as does the provision of the legal advisory services.

Finally, we would like to emphasize that our advisory services are not claimable, and TI reserves the right to refuse to provide them. Furthermore, ALAC is entitled to terminate the provision of legal services, if there is a breach of the essential trust between us and our client, or if the client does not co-operate with us as required.

Personal appointment only by prior arrangement

It's possible to arrange a personal appointment in the case of a complaint which falls within the scope of operation of ALAC. Due to the large workloads of ALAC lawyers, **we always insist that the appointment is arranged in advance**. We don't arrange personal appointments unless we have the option of familiarizing ourselves more closely with the nature of the case, and assessing whether it's a case which falls within the scope of our operation.

Principles which we abide by

Preserving a good reputation and maintaining the high standard of our work are key for us. In the provision of legal advisory services, ALAC lawyers are bound by the legislation in force, the code of ethics of TI office workers, and the principles of conduct of the lawyers of ALAC, which you can find on our website. Apart from the basic principles of interpersonal decency, our creed is to ensure a professional assessment without undue delay, and an impartial approach. Any lawyer who has a personal relationship with the case being solved will, of course, be excluded.

At the same time, ALAC lawyers naturally abide by the principle of confidentiality in relation to facts which they have learned within the scope of fulfilling their duties. However, it also applies that the client can exempt TI from the confidentiality obligation.

Furthermore, it stands that all information supplied to TI is considered confidential, and is not used further without the clients' knowledge; i.e. it is not provided to third parties. In some cases we encounter, preserving our client's anonymity is key to protecting them against retaliation, which is why we deal with information about our client's identity very sensitively.

Promoting systemic changes

We use the experiences which we acquire in everyday contact with our clients not only to identify strong and weak points in the functioning of the legal system of the Czech Republic but also, for example, to evaluate the specific practices of a public administration bodies. Practical experiences and specific cases with which we have met also provide us with strong arguments within the ongoing discourse. And what are the main topics which we deal with in the long term, and in which we are trying to achieve systemic changes? They are mainly the following areas:

- Mapping of corruption;
- Transparent financing of political parties;
- Transparent law governing public procurement;
- An independent and trustworthy public prosecution;
- Unveiling of property relations;
- Whistleblowing;
- An open and quality local government;
- A professional state administration;
- The economical use of public funds.

Due to our active effort to promote systemic changes, we are also involved, as a respected partner, in consultations within the scope of various more or less formalized expert groups at state administration level. We are regularly involved in consultations, for example in the area of setting rules for public procurement, legislation in the area of conflict of interest, financing of political parties and, recently, the very topical theme of the regulation of the civil service of state administration employees.

Other activities

Apart from the actual provision of legal assistance to people who have encountered corruption, ALAC also develops other activities which play a significant role in strengthening the integrity of society. These mainly include organizing public debates, training and courses, and co-operation with the media.

Public debates

The Advocacy and Legal Advice Centre has been organizing public debates since the beginning of its operation. This is because it often happens that various problems relating to, for example, the management of municipal property, and which at first sight have a serious impact on citizens, cannot always be solved by legal means. Legislation may be missing completely, there may be a time limitation, there may be a lack of materials, etc.. On other occasions, it's more a case of insufficient communication between the citizens and the municipal management, or among various groups of the citizens themselves. In such cases, and if the given problem is well documented, ALAC can organize a public debate right at that location, to which it invites citizens, politicians and other interested groups, and where it attempts to create space for the clarification of various opinions on the given matter and contribute to solving the problem with its own professional and independent perspective.

The locations and topics are carefully selected by ALAC based on its own consideration, if this form is a suitable means of solving the given problem. A basic prerequisite for organizing a public debate is our detailed familiarity with the relevant situation.

The debate with the students at Gymnázium Františka Živného in Bohumín, 4 March 2014

Training, courses

A necessary basis for effective anti-corruption activity is knowledge of the legal and ideological framework within which each one of us operates. An integral part of the activity of ALAC, therefore, is the organizing of training, courses or workshops for almost every conceivable group. For example, ALAC can arrange professional training for officials about the issues of public procurement, it can organize a course for active citizens which presents ways of participating in the administration of public matters, or a workshop on how to behave in critical moments when reporting corruption, it can offer a basic overview to whistleblowers about possible procedures, or possibly provide students – from primary school to university – with basic orientation on the topic of corruption. At the same time we always work not just with legal regulations but also with examples of good practice and experiences from the operation of the legal advice centre so far. Thanks to this, we can present a highly comprehensive picture of the topics with which ALAC deals.

The mentioned activities, if they are not currently covered by any project, require a financial contribution by the other party, especially if they involve travel, or if a large amount of time must be spent on their preparation, or if they are used for the other party's commercial activity.

Co-operation with the media

In certain specific cases, ALAC can contact the media or a specific journalist, and with their help contribute to the overall solution to the problem. Just like with public debates, media coverage can be used in a situation where a legal solution isn't possible, or isn't effective. One of the advantages of

this approach is that the topic can become popular, or that, under public pressure, someone may start dealing with a previously overlooked matter. A disadvantage may be the fact that, eventually, neither the client nor ALAC can fully influence this process, and a lot depends on the quality of the individual media or the journalists – how they will perceive the given material. That is why it is not always suitable for the media to cover the issue, and this path should be the exception rather than the rule.

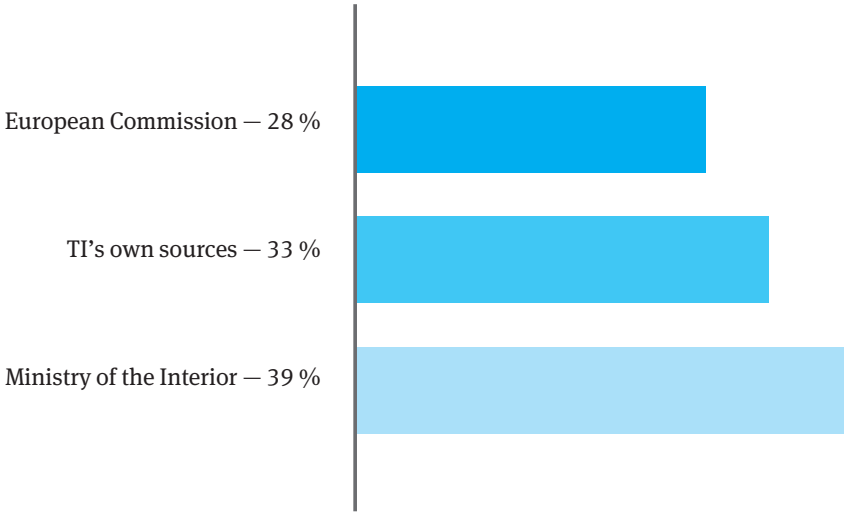
Media coverage of a case is not the type of assistance which the legal advice centre usually offers. That is why ALAC always reserves the right to make the final decision on this matter, as such action may be counter-productive and may endanger the legal solution to the problem. If the client takes such action without prior consultation, a breach of trust between them and ALAC may result, which may be a reason for us to terminate our co-operation with the client.

Financing activity

At present, the activity of ALAC is financed primarily from grant and subsidy sources. Namely, for such purposefully assigned financial support, we must be grateful primarily to the Ministry of the Interior of the Czech Republic and the European Commission. Both the national subsidy programme of the Ministry of the Interior, and the European Speak Up project, financed by the Directorate-General Home Affairs of the European Commission, however, represent a time-limited and project-bound financial assistance which gives us the opportunity to maintain a certain standard, but it's never quite certain whether in the year to come we will be able to maintain the current state of operation of ALAC.

Also, we must add that for more than a third of the expenditure of ALAC, as well as the co-financing of both of the above-mentioned projects, we must continuously seek other sources, not just in the form of donations from individuals and companies but also by looking for opportunities for paid consulting, analytical or lecturing activity.

The main sources of financing the Advocacy and Legal Advice Centre in 2013



If you appreciate our work, we will be very happy if you support our activities, for example as members of the Transparency International Club which has been functioning within the framework of TI since 2011, and which brings together individuals and companies who are convinced that the fight against corruption is meaningful. At the end of 2013 our club had 188 members, and it's constantly expanding. You can find more information about opportunities to become a member of the Transparency International Club on the TI website.

Private donations are very important to us because they provide us with essential financial independence, and without them we would not be able to ensure the entire portfolio of activities in which we are currently engaged, or retain employees who are capable from both a professional and a moral perspective.

For corporate members of the Transparency International Club in particular, we also offer the opportunity to support specific activities which we would like to develop and for which we do not have sufficient funds. Most of all, we would like to raise greater awareness of corruption in primary and secondary schools, because we are convinced that this educational activity is very important, and at the same time nobody else offers it. We would also like to implement other analytical projects which are more demanding in terms of time, and whose results always aim to increase the pressure on important systemic changes.

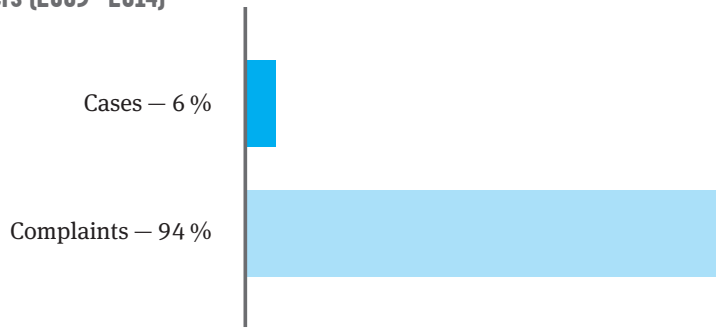
When acquiring funds for our activities, we always give priority to preserving the independence and good reputation of our organization. If there is a significant risk that the acceptance of funds from a certain source would breach TI's independence, or if TI's good name is exposed to a significant risk due to a connection with the donor, then the TI office may not accept funds from such a source.

Historical hindsight

The start of the existence of the Transparency International – Czech Republic Advocacy and Legal Advice Centre dates back to 2005, when ALAC pilot project was launched as the new pillar of TI's work. ALAC experienced a significant boom during 2007, when it participated in the operation of the Ministry of the Interior's 199 anti-corruption hotline. Since then we have enjoyed stable interest and support not just from clients, but also from the media. Around 15% of clients turn to our ALAC repeatedly.

From the start of the existence of ALAC until the present day, being the end of July 2014 when this document was published, we provided free legal advisory services to over six thousand active citizens. From this number of complaints, we assessed 378 cases as being serious and relating to corruption in the broad sense of the word; we have been dealing with these cases in the long term, and we are still dealing with some of them today.

The work of ALAC in numbers (2005–2014)



How to react to a corrupt invitation

This is one of the most frequent queries with which clients turn to us. Generally speaking, you can react to a corrupt invitation in several ways. Depending on the specific situation, you can

- postpone the final decision on how to react to the invitation, thus gaining time for consideration,
- refuse the invitation and continue to deal with the matter,
- refuse the invitation and no longer deal with the matter or
- accept the invitation and give, or alternatively accept, the bribe.

In any case, it's no harm if you react to the corrupt invitation carefully and postpone your decision, stating that you have to think over the whole affair first ("...I'll call you tomorrow...","...I'll stop by tomorrow..."). In the time you have gained, you can assess the whole situation in peace, and if you have doubts as to how to proceed you can call ALAC for advice or turn to the police directly. Here you will find out how the given situation can be assessed from a legal point of view, and what your options are for proceeding further.

Professional advice during the time you have gained will enable you to not only refuse the corrupt invitation, but also to subsequently deal with the whole situation. For this, you first need to obtain evidence of the corrupt invitation which would stand up in court proceedings. Such evidence may be audio or video recordings, in particular. The surest method is to obtain such a recording in direct co-operation with the police.

A decision not to pay a bribe, but at the same time keep everything to yourself, is undesirable in that it supports an environment of corruption in society. You yourself may have a good feeling that you resisted the corrupt invitation, but this is not enough to successfully fight corruption. In this context one must be aware that you can unintentionally arrive at this solution to a corrupt invitation by a rash reaction, whereby you may refuse the offer but you don't have any evidence at your disposal to show that it was made (a situation of "allegation against allegation"). For this reason, it's more suitable to use the above-mentioned approach: first of all gain time and professional advice, and only then deal with the situation.

The least suitable decision is to accept the corrupt invitation. In such a case you apparently commit a crime, and its exposure may lead to you being punished. Here it is important to be aware that **from the 1st of January 2010, so-called effective repentance is no longer applicable in relation to bribery.** This is because until the 31st of December 2009 you could not be punished in a case where you paid a bribe but after paying it you immediately reported it yourself to the Police of the Czech Republic. In such a case, the punishability of your conduct (payment of a bribe) ceased to exist, and only the person who accepted the bribe was persecuted.

Of course, we are aware of the complications which an effort to punish a person requesting a bribe can bring about. Whether it's time spent in the police station or in court, or the risk that the perpetrator won't be punished due to insufficient evidence. This is exactly why TI operates a legal advice centre. If you turn to us, you won't be alone in your efforts.

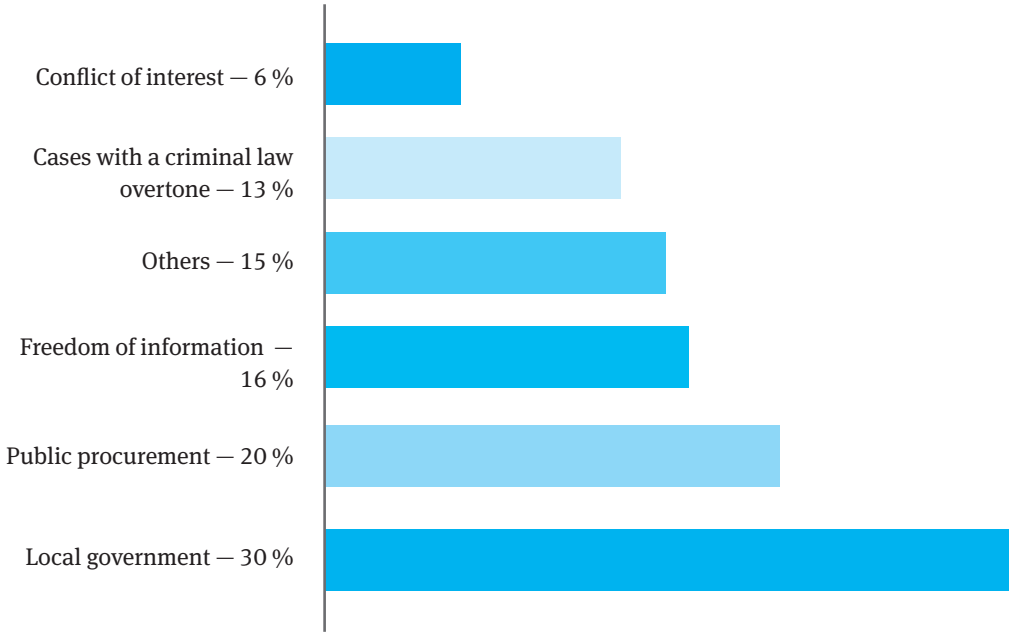
Areas of operation, and presentation of selected topics

What we deal with

Every year ALAC provides its clients with several hundreds of replies to queries of a more general character. The primary purpose of the existence of ALAC, however, is the provision of professional advisory services in specific matters, which require a solution for a specific situation which our clients encountered or were witness to, predominantly in contact with public bodies. Our lawyers do not have the capacity to provide free legal advisory services in all areas of law, which is why it is important that queries and complaints which are directed to ALAC truly relate only to the areas with which the legal advice centre deals in its activities.

An idea of what the legal advice centre most often deals with, and in which areas it can offer a significant degree of legal expertise, is provided by the following graph which represents the legal areas to which our clients' queries are traditionally most often directed.

The areas of operation of ALAC



The largest number of cases with which ALAC deals in its everyday practice (almost one third) relates to dealing with the property of municipalities, cities and regions. We provide legal advice not only to dissatisfied citizens who have information about the uneconomical management of property in their area of residence, but also for example to members of these self-governing units' bodies who watch the actions of some of their party colleagues with concern and attempt, using legal resources, to prevent the currently approved disadvantageous investment which could leave their city or municipality in debt for years.

Another area with which ALAC has extensive experience, as up to one quarter of our complaints have long been related to this issue, is the area of public procurement. Regarding the large volume of resources which are distributed through public procurement, it's also traditionally one of the areas most affected by efforts at corruption. It must be added that access to important information and documents about the course of public procurement in electronic form on the internet, which was facilitated by the so-called transparency amendment to the Act on Public Procurement in April 2012, made our work, and at the same time the citizens' control of this key area, much more efficient.

In the case of contracts awarded prior to the effectiveness of this important amendment to the Act on Public Procurement, it still applies that the most important tool for acquiring the necessary information is the submission of a request for information in accordance with Act no. 106/1999 Coll., on Free Access to Information, known in anti-corruption jargon as "the 106". The public's demand for enabling access to information, however, is not directed only at the area of public procurement. Clients also often turn to us in situations where they are trying to acquire information relating to other areas of the financial management of the municipality, the results of past inspections or audits, or for example extraordinary remuneration for employees or public body members. In this context, ALAC helps clients face the frequent obstructive efforts of the legally bound persons (approximately 16% of the complaints received are directed at this area).

Corruption, as the legal advice centre understands it, does not only relate to conduct punishable by criminal law, i.e. primarily bribery and other economic crimes. Nevertheless, in the event that the conduct in question reaches the intensity of a crime, we can also direct our legal assistance and activities at a criminal law solution. We do, however, honour the basic principle according to which criminal law repression is the last possible solution. It stands that around 15% of cases, with which we have dealt or are still dealing, fulfil the factual substance of one of the crimes. However, this unfortunately does not mean that sufficiently convincing evidential resources exist to prove them, or that their investigation will be swift, easy and will have a positive result for the client or the public.

An important area which is difficult to grasp not only for many active citizens, but also often for journalists for example, is the issue of conflict of interest. Our organization has long dealt with this topic, and extensive experience with specific cases, which current legislation cannot solve very effectively, enable us to currently participate in the preparation of draft systemic changes in this area.

Of course, we also deal with many other topics. For example, we consider electoral machinations and manipulations, to which TI devotes a great deal of energy, especially in the pre-election period, to be particularly important.

It's the very topic of electoral law, and furthermore the topics of public procurement, management of local authority property and the no less important issue of conflict of interest that we deal with in more detail in subsequent sections of the text.

We have deliberately selected only some of the topics outlined above with which TI works. We chose some of the themes due to their considerable topicality (the currently discussed insufficiency of conflict of interest legislation, the upcoming municipal elections), others because unlike some other topics, these areas and the issue of their legislation are not presented in detail in existing TI publications (public procurement, municipal management).

Visit the website www.transparency.cz, where you'll find **other useful handbooks and manuals prepared by TI**, for example:

- *Citizen against corruption. A handbook for civic anti-corruption self-defence:* a manual for active citizens, dealing in particular with the issue of filing a criminal complaint, submitting a request for information, local referenda or appearances at local authority meetings;
- *The local referendum (the last outpost of direct democracy):* a comprehensive step-by-step guide to the local referendum, including excerpts from the applicable judicature;
- *Whistleblowing, and the protection of whistleblowers in the Czech Republic:* a publication which aims to raise awareness of the protection of whistleblowers in the Czech Republic;
- *The financing of political parties, and necessary changes in regulation:* an overview of the current legislation on financing political parties, including a consideration of the necessary legislative changes;
- *An analysis of legally effective court decisions in matter of crimes of bribery issued in the period of 1st of January 2010 to the 30th of April 2012:* a mapping of almost three years of decision-making practice in the area of crimes of bribery.

Municipal management

Municipalities and regions, as well as the capital city of Prague, are self-governing territories through which citizens can participate in the management of public affairs and thereby effectively implement the principle of a civic society. The right to manage own property is an integral part of the right to self-government, and as such it is enshrined in article 101 paragraph 3 of the Constitution of the Czech Republic.

"The property of a municipality must be used purposefully and economically in accordance with the municipality's interests and tasks ensuing from its competence as laid down by law. A municipality is obligated to attend to the maintenance and development of its property. The municipality keeps records of its property."

The provisions of § 38 paragraph 1 of Act no. 128/2000 Coll., on Municipalities (the Municipal Order)

Local authorities are governed by the following legal regulations:

- Act no. 128/2000 Coll., on Municipalities (the Municipal Order; municipal establishments), (hereinafter "MO");
- Act no. 129/2000 Coll., on Regions (the Regional Order); and
- Act no. 131/2000 Coll., on the Capital City of Prague.

These legal regulations impose an obligation on local governments to care for their property purposefully and economically, with an effort to preserve and develop them. In practice, however, one can encounter cases where elected representatives breach this obligation, whether through negligance or with intent, motivated by personal gain, and administer municipal assets with the tactic that "foreign blood doesn't flow".

For simplification, the word "municipality" will be used in the following text, as other local self-government units are arranged in a similar way, and work on the same principle.

How should the municipality deal with its property?

The obligation to deal with municipal property purposefully and economically is elaborated on in more detail in the provisions of § 39 paragraph 2 of MO, which states: "Where property is to be transferred in return for consideration, as a rule the price shall be negotiated at the amount usual in the given location and at the given time, unless the price is regulated by the state. Any derogation from the normal price must be explained."

Legal regulations do not set out the method by which the normal price should be determined in any way, so it can be determined in several ways. Firstly, it can be determined according to Act no. 151/1997, on Valuation of Property and on the Amendment of Certain Acts (Property Valuation Act), which considers the normal price to be the price which would be achieved by selling the same or similar asset or by providing the same or similar service during the ordinary course of domestic trade on the day of valuation. Another option is valuation with the help of an expert, or by comparing real estate agents' prices.

The municipality does not always have to apply the perspective of maximal economical advantage. If, however, it "undersells" immovable property, it's obliged to properly justify this procedure. A case which can be considered to be defensible may be, for example, one where the municipal property is sold to an applicant who, while not offering the highest price, has undertaken to build a kindergarten on it, but not an applicant who offered twice as much but intended to build a second-hand shop on one floor and a gambling room on the other. Reasons for deviation must be objective and at the same time they must be recorded in such a way that they can be demonstrated, even retrospectively, for example in the minutes of a municipal council meeting during which the disposal of the specific property was approved.

Are there some limits to the freedom of the municipality to sell a property owned by the municipality?

Regarding the sale itself, or alternatively the reasons for it, it applies that this is a political and conceptual decision by the municipality. **No legal regulation states what the municipality should own, or what it can sell.** The sale itself is then decided on by a resolution by the municipal council, which has the final say in this decision. For a valid municipal council resolution, consent by the majority of all the municipal council members is needed. If it happened that the arguments presented before the municipal council's vote were inaccurate or politically biased, then this fact is irrelevant from a legal point of view (unless of course there was such intensive conduct that it fulfilled the factual substance of the crime of fraud).

- *Can the repeated sale of municipal property be realized without publishing the new intention? Is there a limit on the maximum length of the statutory period which must elapse between the announcement of intention and the sale of the municipal property?*
- *Is it possible for the sale of municipal property to be limited by a condition that the applicant must have a contract for a future contract signed with the municipality whose subject is the undertaking to sign a purchase contract?*
- *What are the legal consequences of the invalidity of a municipal council resolution regarding the sale of municipal land, in the event that the contract with the buyer was already concluded?*

You can find the answers to these and other generalized questions relating to handling municipal property, with which citizens often turn to ALAC, on our website, www.transparency.cz.

Procedure by the municipality when selling its own property

As in its judgement dated the 15th of November 2010, sp. ref. no. 28 Cdo 3950/2010, the Supreme Court concluded: *"The municipality, even as a participant in a private law relationship, cannot be exempted from the requirements imposed on public matter administration. The municipality is a public-law corporation and when handling its property has certain special obligations arising from its status as a public entity. That is why it also applies here that property management must be maximally transparent, effective and accessible to the public."*

If the municipality decides to dispose of its property it must, under the title of a public-law corporation, fulfil legally required conditions. These conditions can be divided into three phases.

1. Announcement of intention

The provisions of § 39 paragraph 2 of Act no. 128/2000 Coll., on Municipalities, apply. The first stage is the announcement of the municipality's intention to dispose of property on the official notice board. This is an informative act which, on the one hand, enables all potential applicants to submit their offers and thereby commence the contractual process, and on the other hand notifies citizens of possible improper management or risk of malpractice by the elected representatives.

> *"The intention of a municipality to sell, exchange or donate real property, or to lease such property or to provide such property as a loan, shall be published by the municipality for a minimum period of 15 days prior to a decision thereon in the bodies of the municipality by displaying such intention on the official notice board of the municipal office so that interested parties may express their opinion and submit offers. The municipality may also publish the intention in the manner usual in that location. Should the municipality fail to publish its intention, the legal transaction shall be considered null and void from its very beginning. The real property shall be identified in the intention by means of information as set forth in a separate Act15a) in force as at the date of publication of the intention."*
>
> The provisions of § 39 paragraph 2 of Act no. 128/2000 Coll., on Municipalities

The intention must be published for a specified period of minimal 15 days, and not only on the physical notice board which is usually located in front of the municipal office, but in the interest of increased transparency also in a manner which allows remote access, i.e. on the internet. The content of the official notice board is entered in the records of published documents, and the documents themselves are then archived with a stamp and signature, together with the dates of posting and removal. Supervision of adherence to obligations in the division of archiving and records services is performed by the State Regional Archive, in accordance with Act no. 499/2004 Coll., on Archiving and Records Services.

In order for the published intention to be sufficiently specific and therefore valid, it must contain the specific type of asset disposition which the municipality intends on performing (sale, exchange etc.), and the precise identification of the property (labelling by plot number and cadastral area). Other content requisites in the intention are not stipulated by law, but their inclusion can be described as an example of good practice.

The body authorized to accept the decision on the announcement of intention, within the scope of unreserved authority under the provisions of § 102 paragraph 3 of MO is the municipal board. The decision on the transfer of immovable property, being either a sale or an exchange, appertains to the municipal council under the provisions of § 85 subsection a) of MO, which is why in practice it is also allowed to decide on the announcement of this intention.

2. Decision on the legal transaction, and the appropriate municipal body in relation to it

Under the provisions of § 41 paragraph 2 of MO, legal proceedings conducted without prior approval by the competent body in cases where the Act requires this approval are absolutely invalid.

Depending on the type of property right dealings and the type of municipality, the decision on the appropriate action appertains to the municipal council, the municipal board or the mayor. While the municipal council reserves, inter alia, the right to decide on the acquisition and transfer of immovable property and the transfer of residential units and non-residental premises, the municipal board has the right to decide on the conclusion of rent and loan contracts. In municipalities where a board isn't elected, its authority is exercised by the mayor, and therefore he has the right to decide on the property law proceedings.

If we focus on the sale of the municipality's property then, according to the information stated above, the appropriate decision-making body is the municipal council. The municipal council's resolution, which approves the intended sale, does not have to approve the full version of the purchase contract; it's sufficient if the so-called substantive requisites have been approved. The substantive requisites of a purchase contract are considered to be:

- the identification of the contractual parties;
- the purchase price;
- the subject of the purchase.

3. Conclusion of the contract

Under the provisions of § 103 paragraph 1 of the MO, the mayor is the external representative of the municipality. In practice this means that his role is to mediate the legal proceedings decided upon by the appropriate body, which in the case of a sale or exchange of property is the municipal council. From the above-stated title, the mayor is authorized not only to conclude the contract on behalf of the municipality, but also to fill in the remaining content of the contract (deadlines, payment terms etc.).

The contract is then accompanied by a supplement certifying the previous announcement of intent and approval by the relevant municipal council resolution, thus confirming that all the statutory conditions have been met.

Sanctions for breaching statutory conditions

If the municipality crosses the boundary defined by law for the transfer of immovable property, then these property right proceedings are affected by absolute invalidity. This operates directly from the law, from the very beginning, i.e. from the conclusion of the contract. Absolute invalidity also excludes the objection of time limitation as well as the additional approval of such a contract (with the exception of convalidation for a defect in form) – the process would have to be repeated, beginning with the announcement of intention or alternatively the decision on its publication.

The MO explicitly mentions the invalidity of purchase contracts in cases of:

- Failure to announce the municipality's intention to sell the immovable property;
- Failure by the municipal council to approve the sale of the immovable property.

Furthermore, the judicature concluded that concluded purchase contracts are invalid in cases of:

- Insufficient identification of the part of the property being sold, in the announced intent;

- Failure to justify a price substantially lower than what is usual in the given location and at the given time;
- Discrepancies between the concluded purchase contract and the announced intention;
- Failure to approve the substantive requisites of the purchase contract by the municipal council's resolution;
- Approval of the contract at a municipal council meeting which was not properly convened, and which was not accessible to the public.

Who is entitled to submit a petition to deem a concluded contract invalid?

Absolute invalidity may be achieved primarily by a person directly participating in the legal negotiations. Nevertheless, in most cases, it isn't in the interest of the municipality or the new acquirer of the property to invalidate the contract in a court procedure. Who else, therefore, is authorized to challenge the contract?

An active petition authorization (the opportunity to submit a petition to invalidate the property purchase contract due to a failure to abide by statutory conditions) can be used only by a person in whose favour a so-called pressing legal interest exists. The Supreme Court, in its judgement dated the 27th of October 1999, sp. ref. no. 2 Cdon 824/97, adjudicated that this pressing legal interest is not based on the title of citizenship in the municipality; only unsuccessful participants in the tender process have it, i.e. only persons who themselves submitted a bid to the municipality on the basis of the announced intention.

If the petition is successful and the court declares the concluded purchase contract invalid, a mutual reversal of discharge would have to come about, i.e. the municipality would be obliged to return the purchase price to the buyer, and the buyer would have to transfer the ownership rights to the property back to the municipality since, as has already been stated above, an absolutely invalid legal act cannot be mended with a subsequent approval (with the exception of the convalidation of a defect in the form of legal act), and the entire process would have to be repeated.

Example

Announcement of intention, the deadline and the consequences of not abiding by it

On 15/08/2014, the municipality of Kocourkov received a request for the purchase of an immovable property in its ownership. It was arable land at the very edge of the municipality, and the request came from a natural person. On 01/09/2014, the municipal board decided to announce its intent to sell this land, and on 03/09/2014 the municipal council then announced it, with all the legal requisites, both on the official notice board and on the municipal website. On the same day, i.e. on 03/09/2014, it also announced information about the 24th municipal council meeting which was to be held on 12/09/2014.

On 12/09/2014, the municipal council discussed issues of municipal management, residential units allocation, parking layout and the sale of the land; it then approved it by a resolution and authorized the mayor to conclude the contract. On 14/09/2014, the intention to sell the property, and the information about the municipal council meeting which had been held, were removed from the official notice board and the mayor concluded the purchase contract for the sale of the property. ***Is it possible to challenge the purchase contract?***

Solution:

The body competent to receive the decision on the announcement of intention, within the scope of unreserved authority under the provisions of § 102 paragraph 3 of MO, is the municipal board. Therefore, the municipality fulfilled this requirement.

Under the provisions of § 93 of MO, the municipal council must announce the location, time and proposed programme of the upcoming municipal council meeting. It must post the information on the municipal official notice board at least 7 days before the municipal council meeting; aside from this it can also announce the information in the manner usually used in that location. The municipality announced the information on 03/09/2014 and the municipal council meeting was held on 12/09/2014, i.e. the information was published for a period of 9 days, and so in this respect the municipality complied with the letter of the law.

Under the provisions of § 85 of the MO, the municipal council reserves the right to decide on the acquisition and transfer of immovable property; the municipality also fulfilled this requirement.

Under the provisions of § 39 paragraph 1 of MO, the intention to sell a municipal property must be published for a period of at least 15 days before the appropriate municipal body makes the decision, which in this case was the municipal council. The municipality did not fulfil this requirement, as the announcement of intention took place on 03/09/2014 and the approval took place on 12/09/2014, which was 9 days later. A failure to abide by the deadline for announcing intention is considered to be a failure to announce intention, whereby MO associates it with the absolute invalidity of such a legal act.

The provisions of § 103 of MO may authorize the mayor to represent the municipality externally, on the basis of which he would be authorized to conclude a purchase contract for the land in question, but given the fact that the condition of publishing intention for a minimal period of 15 days was not fulfilled, the concluded contract was invalid from the start.

The concluded purchase contract may be challenged as being an absolutely invalid legal act only by a person in whose favour a pressing legal interest exists, or by the Public Prosecutor if they discover that this action is in the public interest.

Options of civil supervision of the management of municipal property

1. Participation in, and appearances at, municipal council meetings

Under the provisions of § 93 paragraph 3 of MO, a municipal council meeting is public, and therefore everyone has the right to participate in the meeting. Moreover, in accordance with the meeting rules, the citizens of the municipality have the right to appear at municipal council meetings and express their opinion on the matter being discussed at the time, to which a specific point in the meeting programme is devoted. The citizen of the municipality, therefore, can ask the representatives about all aspects of the upcoming property sale and about the justification for this action, or alternatively draw their attention directly to a potential conflict with MO.

You can find **a sample request for the provision of information**, and a detailed essay about this institute, **in the Citizen Against Corruption handbook** which is available on the website www.transparency.cz.

2. The Free Access to Information Act

The main purpose of this legal regulation is to ensure the public's right to access to information from the public sector. For example, on the basis of this Act, it's possible to ask a municipality, as a so-called public enterprise, about a specific already

concluded contract for the sale of a municipal property, including the announced intention and all the records from the municipal council meetings at which the disposition in question was discussed.

3. A complaint to the Ministry of the Interior

Municipal self-government authority can take two forms – independent or transferred. In the case of independent authority, the municipalities deal with their own property, issue generally binding regulations, create and implement a budget etc. The independent municipal authority is controlled by the Division of Inspection and Supervision in Public Administration of the Ministry of the Interior, within its supervisory powers. The subject of this supervision, however, is neither the effectiveness nor the economy of the property disposition performed, but merely the fulfilment of formal legal requirements. If there's a suspicion that the municipality did not fulfil the above-mentioned legal conditions, it's possible to turn to the Ministry of the Interior with a complaint in order for the property disposition to be examined.

No formal criteria have been stipulated for lodging a complaint. The complaint can be lodged in writing in the form of a document, electronically without a secure electronic signature, through a data box, or verbally. It should be evident from the complaint who made it, what it relates to, and what the sender demands. A complaint can even be made anonymously, but in that case the sender loses the opportunity to find out how the complaint was dealt with.

If the Ministry of the Interior finds the complaint to be relevant, it will invite the municipality to submit the necessary documents and express their opinion on the complaint which it sent to the Ministry of the Interior, together with an invitation. If there is a well-founded fear of retaliation by the municipal representatives, a request can be made for the complaint to be dealt with in an anonymous form. From the sent materials, the Ministry of the Interior will then confirm whether the municipality erred during the sale of the municipal property, or whether it proceeded in accordance with the law. In the first case, the Ministry of the Interior will first informally invite the municipality to rectify the situation. If the situation is not rectified, supervisory measures will be used.

4. A complaint to the Regional Office

Regional offices perform yearly inspections of delegated competence of municipal management (they perform state administration which the state transferred to them in a limited extent) on the basis of Act no. 420/2004 Coll., on the Examination of the Operations of Territorial Self-Governing Units and Voluntary Associations of Municipalities. This activity includes, inter alia, an examination of the handling and management of property in the ownership of the municipality through the prism of effectiveness and economy. You can find a sample request for the provision of information, and a detailed essay about this institute, in the Citizen against Corruption handbook which is available on the website www.transparency.cz.

In the event that discrepancies can be inferred in management within the scope of the current or previous calendar years, it's possible to notify the appropriate Regional Office about the specific property disposition, as well as about any other misconduct. When lodging a complaint with the Regional Office, the same rules apply as when lodging a complaint with the Ministry of the Interior.

5. A complaint to the Public Prosecutor

From the provisions of § 42 of Act no. 283/1993 Coll., on the Public Prosecution Service, a special authority arises for the Public Prosecutor which consists of the ability to initiate civil action proceedings on the invalidity of an ownership transfer contract in cases where, during its conclusion, the provisions restricting the contractual freedom of its participants were not respected. When formulating the complaint, one can proceed as in the case of the Ministry of the Interior and the Regional Office.

Beyond civil control and the control performed by the municipal controlling and financial committee, **a financial control system also exists which is performed on the basis of Act no. 320/2001 Coll., on Financial Control in Public Administration (Act on Financial Control)**. Under this legal regulation, the person responsible for organizing, managing and ensuring the suitability and effectiveness of the financial control is the mayor, who under the practice recommended by Department 17 of the Ministry of Finance should **regulate the setting and function of financial control by an internal standard, for example a directive**. This directive, apart from regulating actual preliminary and continuous control and control after the completion of the operation, should also elaborate further on the responsibility of the particular persons involved in financial control activity.

Conflict of interest

A conflict of interest arises when a choice must be made between two or more possible solutions for a certain problem. The people deciding on the chosen solution always pursue certain aims and motivations, and they prefer or promote a certain variant because of them. In the sphere of public administration this problem acquires specific dimensions, because this is where personal interest meets public interest.

"If any conflict between the interest of the public and his/her private interest occurs, no public official may prefer his/her own interest over the interests that he/she is obligated to enforce and defend as a public official. For the purpose of this act of law, personal interest is understood to mean any interest securing any private benefit or preventing possible reduction of any material or other benefit."

The provisions of §3 paragraph 1 of Act no. 159/2006 Coll., on Conflict of Interests

Let's imagine a situation where a public authority representative, a so-called public official (politician or official), has to make a binding decision on a matter which affects either them directly or somebody else (for example their friends or relatives) or alternatively, for whatever other reason, they have a personal interest in the matter. Uncertainty then arises here as to whether the given person is, at the given time, defending the interests of the institution (state, municipality), or the public whom they represent, or their personal interest.

Questions from life, or what our clients turn to us with

- *Is there a conflict of interest if a public tender announced by the municipality is won by a company in which the mayor's son or husband works?*

- *Is there some way of punishing the clientelistic rental of apartments in a city district where the President of the Housing Commission proposes certain "prominent persons" linked to regional politics as future tenants?*

- *Is there a conflict of interest in a case where the deputy town mayor, apart from occupying this function, also holds the position of representative of a trading company whose partners, aside from the town, also include private entities? The same person is also a member of the Friends of the City Association, which is mostly financed from municipal subsidies.*

- *Is there some way of punishing the clientelistic appointment of leading state administration positions? And do I have any legal defence in the event that I'm dismissed from a leading function and replaced by a new director appointed from outside my office "on the basis of merit"?*

We have processed the replies to frequently asked questions, which we encounter in ALAC, in the form of instructions on how to proceed in the given situations. Have a look at our website, www.transparency.cz, where you will find a series of generalized cases with which our legal advice centre has dealt with, including examples of good practice.

What public interest is, and why protect it

In contrast to personal interest stands so-called public interest. This term does not have a clear definition, and it can take different forms at different times. It usually arises, directly or indirectly, from various legal regulations which govern a certain area. It can however also happen that a conflict arises not just between private and public interest, but even among several public interests.

Furthermore, public interest isn't always identical to the interest of the majority or the public. In public interest, therefore, there can be democratic majority decisions, but also at the same time protection of the minority. Similarly, emphasis is placed on the economy and effectiveness of the performance of public administration, although one should not forget about its social function and mission either.

At first sight it might seem that public interest is a vague term, and as such cannot be effectively protected. But it's important to realize that public administration is performed by real people, whose motives can acquire highly profit-seeking dimensions. Legislation which deals with conflict of interest approaches this problem from the opposite side and most importantly attempts to encourage those personal interests not to remain hidden, so that it can assess whether the particular official committed a breach of some obligation in relation to the performance of public authority.

How it works in practice

A conflict of personal interest with public interest can arise in any area. In specific proceedings, such as for example administrative proceedings, (typically construction or misdemeanour) or court proceedings (civil or criminal), this issue is dealt with using the institute of bias, or alternatively by expulsion from the discussion. This happens if the person in question has any personal relationship whatsoever with the matter being discussed.

> *"Every person directly involved in the execution of the powers of an administrative body (hereinafter "official person") who can be reasonably expected to have, with regard to their relationship to the matter, participants in the proceedings or their representatives, such an interest in the result of the proceedings that their impartiality is in doubt, must be excluded from all acts in the proceedings during whose implementation they could influence the result of the proceedings."*
>
> The provisions of § 14 paragraph 1 of Act no. 500/2004 Coll., Code of Administrative Procedure

These, however, are cases where highly legally regulated proceedings take place according to the law (Code of Administrative Procedure, Criminal Code) which directly affect the life of a particular person. But aside from these proceedings there is a whole range of decision-making processes, which do not directly affect citizens' rights and obligations but also have a fundamental influence on their lives. These are decisions by politicians and high-ranking public administration officials, mostly in matters of handling public property but also in other, for example conceptual, matters and in general in issues which are to ensure the smooth running of public administration. Typically these are members of evaluation committees during the course of awarding public contracts, who must not be biased in their relationship with the applicant and the public contract. Otherwise, such a member must be expelled from the evaluation committee. The Civil Service Act is important for similar reasons – its purpose is to ensure not only the impartiality of officials in specific matters, but also to ensure their overall professionalism, expert decisions on the basis of legal regulations, and independence from political influence.

For this purpose, a special Act on Conflict of Interests came into existence (Act no. 159/2006 Coll.) which describes public officials as being politicians, deputies, ministers and other high-ranking officials, as well as members of municipal council, board and mayors. These public officials must not prefer their personal interest before interests which they are supposed to protect in their position. In particular, this means a prohibition on using their official standing, their executive powers or any information obtained in connection with their office to acquire material or other benefit for themselves or any other person, and a prohibition on referring to their function in personal matters (for example in business).

Even stricter conditions have been stipulated for some public officials, because given the importance of their function, an even greater interest in minimizing the risk of conflict of interest exists. For example, ministers or bank board members of the ČNB [Czech National Bank] may not be involved in business or be members of a business entity body. It therefore generally applies that any public official is obliged, during the meeting of the body in which they act (appear at a meeting, submit a proposal, vote), to announce their personal relationship to the matter being discussed. Such an announcement is included in the minutes of the meeting.

The purpose of the announcement requirement isn't to restrict the public official's active participation. After all, from the perspective of constitutional law, this isn't even possible. The aim is to shed light on the motives for their way of decision-making. The public can subsequently inspect whether the particular member of the municipal council or board was involved in a conflict of interest, and how serious the situation was. At the same time the measure should serve preventively, so that every public functionary can consider whether, in the event of a conflict of interest, they should best refrain from any involvement in the proceedings.

Conflict of interest in zoning plans

A purchase of municipal land by municipal council body members, or alternatively by their family members, followed by an appropriate change in the zoning plan – this is scenario described quite frequently by a large number of ALAC's clients. At the same time this is a situation where it can be difficult to suggest how to proceed effectively, especially if the municipal council body member in question abides by the letter of the law in the sense that they publicly declare their private interest, and possibly also abstain from voting on the change to the zoning plan.

ALAC does not consider the current legislation governing this issue in Act no. 159/2006 Coll., on Conflict of Interest, to be sufficient. In this sense, we are involved in consultation processes for the upcoming amendment to the Act on Conflict of Interest, on behalf of TI and in co-operation with the Reconstruction of the State initiative.

In the current situation, within the scope of our educational activities and public debates, we are trying to mainly operate "preventively", i.e. to provide instructions on how the citizen can become actively involved in events and decisions in the municipality, what they should concentrate on in issues of public property management, how to acquire sufficient information, and possibly also what options there are of using legal instruments.

What you should know

By failing to fulfil the reporting obligation, the public official commits a misdemeanour for which a fine of up to 50,000 CZK can be imposed. These misdemeanours are dealt with by the municipality carrying out extended competence in the public official's place of permanent residence. Any citizen can report the possible perpetration of such a misdemeanour.

Aside from a notice of personal interest, every public functionary must also submit a notice of their activities, assets, income, gifts and liabilities, always within the first half of the following year, for the entire period of their function. Completed notices are subsequently available in a special register which, minor exceptions aside, is kept by the office in which the public official works. Anybody can consult this register, free of charge, on the basis of a written request.

It's an "open secret" that the mayor's property have increased by over 10 million CZK during the period of his function. How can more detailed information about the mayor's asset situation be acquired, and how can potential discrepancies discovered in his asset situation be dealt with?

The mayor's asset situation is the subject of the notice of assets submitted by them in accordance with the provisions of § 10 of Act no. 159/2006 Coll., on Conflict of Interests. Under § 10, the mayor (i.e. public official under §2 of the Act on Conflict of Interest) is obliged to *"declare in writing, precisely, completely and honestly, that he/she during his/her term of of-fice acquired*

a) ownership rights or other material rights to real estate, including the price of such real estate or the price of acquisition of his/her ownership or other material right to such real estate and the method of acquisition

b) ownership rights to chattels, other rights or other material assets, including the method of acquisition of such chattels, other rights or other material assets, if the overall value of such chattels, other rights or other material assets acquired in the course of one calendar year exceed CZK 500,000.00; the said sum shall not include chattels, other rights or other material assets whose value does not exceed CZK 25,000.00,

c) securities or securities-related rights in compliance with special legal regulations, if the overall purchase price of such securities or securities-related rights at the time of their acquisition exceeds CZK 50,000.00 in the case of the same issuer or CZK 100,000.00 in the case of several issuers,

d) interests in other business corporations than those specified in subsection c), if the value of such interest exceeds CZK 50,000.00 in the case of one business corporation or CZK 100,000.00 in the case of several business corporations."

The mayor, as a public official, also submits **a notice of their income, gifts and liabilities**.

Under § 11 the mayor is obliged to *"declare in writing, precisely, completely and hone-stly, that he/she*

a) during the term of his/her office acquired any income or other material benefits, especially gifts, except for the gifts included in his/her notice of assets in compliance with Article 10 herein, bonuses, revenues from business or other gainful activities, dividends or other income from his/her interests in or for his/her services for business corporations (hereinafter only the "income or other material benefits"), if the overall amount of such income or other material benefits exceed CZK 100,000.00 in one calendar year; for the purpose of this act of law, the term "income or other material benefit" does not include any salary, remuneration or allowance to which a public official is entitled in connection with his/her execution of official duties in compliance with special legal regulations; the aforementioned overall amount shall not include gifts whose value does not exceed CZK 10,000.00,

b) has unsettled financial liabilities, especially loans, credits, rental charges, obligations resulting from leasing contracts or bill payables, if the overall amount of such liabilities exceeds CZK 100,000.00 as of 31 December of the calendar year to which the relevant notice of income, gifts and liabilities relates."

The notice states the amount, type and source of every income (section a) and the amount and type of liability (section b), including information about who the public official has such a commitment to.

These notices are recorded in the **register of notices**, which at the municipal level is kept by the secretary of the municipal office, or, if there is no such a secretary, by the mayor.

You can therefore submit **a written request to consult the register free of charge**, in accordance with § 13 paragraph 2 of the Act on Conflict of Interest. You can consult the register in person in your municipal office, or in electronic form through a public data network. If you ask to view it with the help of a public data network, you will receive a user name and log-in password for your request by post. Only you personally are entitled to use this access method and it's granted for a limited time only, calculated from the time you first access the register.

If you discover **discrepancies in the mayor's asset situation** through these notices, **we would recommend that you turn to the municipality carrying out extended competence, due to a breach of the Act on Conflict of Interest, and also the locally competent financial authority.**

Public contracts

§ Public contract

"(1) 'Public contract' shall be a contract for pecuniary interest concluded between the contracting entity and one or more economic operators, having as its subject-matter supply of products or the provision of services or the execution of public works. The public contract which the contracting entity shall be obligated to award under this Act shall be carried out on the basis of a contract in writing.

(2) Public contracts according to their subject-matter shall be classified as public supply contracts, public service contracts, and public works contracts (hereinafter referred to as 'the types of public contracts').

(3) Public contracts, according to their estimated value, shall be classified as above-the-threshold public contracts, below-the-threshold public contracts, and small-scale public contacts."

The provisions of § 7 of Act no. 137/2006 Coll., on Public Contracts

The paid provision of products and services, or the paid provision for public work to contracting entity who, simply put, are not private business entities, but ensure the fulfilment of public tasks (typically state administration or local authority body, or state funds), dispose of public resources (subsidized entities, other public-law entities), or possibly have a position of monopoly in a certain relevant activity (gas industry, heating plants, water industry) and are governed by a set of rules summarized in Act no. 137/2006 Coll., on Public Contracts (hereinafter "the Act"). According to the nature of the entity, these contracting entities who are obliged to proceed in accordance with the Act are divided into contracting authority, subsidized contracting entity and sector contraction entity.

What purpose does this public procurement framework serve?

Given the fact that, under the contracts, relatively significant volumes of public funds are spent, the main aim of the public procurement framework is primarily to save public funds. The Act then formalizes the supplier selection process for legal and natural persons who are obliged to award contracts in accordance with this Act, and regulates the obligatory procedure leading to the conclusion of the public contract, which must be abided by and respected. These rules aim to ensure an open competitive environment, whereby open competition can be restricted or excluded only in precisely defined cases, such as for example in the event that the country's fundamental security interests are at stake, if only one supplier can fulfil the public contract due to technical or artistic reasons, or if exclusive rights must be protected.

Even the best public procurement framework and flawless compliance with the prescribed procedure, however, cannot guarantee that the main aim of the existence of this public procurement legal framework, which is to save the contracting entity's funds, will be achieved. Most importantly, contracting entities must want to not just formally abide by the rules regulating public procurement, but also to bear in mind their purpose. Moreover, this is quite a complex area, affected by very frequent changes to the set rules and sometimes also by an unequal interpretative practice by the entities who are supposed to supervise compliance with these rules, which further facilitates an environment of corruption. Not only the motivation to acquire an improper advantage, but very often also the insufficient professionalism of contracting entities' employees, is a frequent source of queries addressed to ALAC in the area of public procurement.

What types of queries do our clients turn to us with?

- *Can an entity who is the author of the project documentation, and so a part of the tender documentation, apply for a small-scale contract?*
- *If the town is planning to conclude a loan contract, does it have to initiate the tender process in accordance with the Act?*
- *The municipality is the founder, 100% owner and the only partner in a legal entity – a limited liability company. Does a tender process in accordance with the formalized procedure stipulated in the Act have to take place for the supply of services to the municipality with a value of over 2 million CZK per year, or can this service be performed by the municipality-owned company without a tender process?*
- *What form must a submission to the Office for the Protection of Competition take?*

You can find the answers to some frequent queries by ALAC clients at www.transparency.cz.

Regardless of the type of public contract or the type of tender process chosen for the selection of the supplier, every entity must pay attention to the basic principles of the Act when awarding public contracts, which are transparency, equal treatment and non-discrimination. In accordance with these principles, every contracting entity must ensure the greatest transparency possible and the possibility to scrutinize the entire process, they must approach all suppliers in the same manner, and they must not allow unjustified discrimination against any of the suppliers.

Not all contracts are the same

It would, however, not be effective if the procedure for all the contracts was identical, regardless of their value. The negatives of the administrative demands of this process could outweigh the savings brought about by an open competitive environment, especially in the case of small-scale public contracts. This basic consideration resulted in the need to differentiate between public contracts in terms of the estimated amount of the financial commitment (the so-called estimated value of the contract) where the Act differentiates between small-scale public contracts, below-the-threshold public contracts and above-the-threshold public contracts. Above all it's important to differentiate between so-called small-scale contracts and below-the-threshold contracts, as the tender processes mentioned in the Act are designed only for below-the-threshold and above-the-threshold contracts.

The basic rule states that small-scale contracts are contracts with an estimated value of less than 2 million CZK ex VAT, or in the case of a public work contract, 6 million CZK ex VAT. Regarding below-the-threshold contracts, these are contracts which at least reach the limit for small-scale contracts, and whose value does not reach the financial limit for a above-the-threshold public contract as stipulated in government regulation no. 77/2008 Coll. For example, for state administration bodies, below-the-threshold contracts are defined as contracts for supplies whose financial fulfilment value is equal to, or higher than, 2 million CZK, and does not reach a value of 3,256,000 CZK. With public work contracts, however, we use significantly different financial volumes – the boundary value above which the contract is considered to be above-the-threshold is 125,265,000 CZK.

The Act differentiates between, and regulates, open procedure, restricted procedure, negotiated procedure with publication, negotiated procedure without publication, competitive dialogue and simplified below-the-threshold processes. The opportunity to use individual tender processes depends on the category of contracting entity and other legal conditions, whereby open processes and limited processes, which ensure an unrestricted competitive environment, can be used by the contracting entity without restriction.

More information about individual types of procedures can be found, for example, in the Public Procurement Methodology of the Ministry for Regional Development, available on the Public Procurement and Concessions Portal www.portal-vz.cz.

Why should the awarding of small-scale public contracts not be equated with "awarding by hand"?

For small-scale contracts, i.e. for contracts for supplies and services with a value of less than 2 million CZK, or in the case of public work less than 6 million CZK, the Act does not mention any specific procedures, and merely refers to the need to comply with the above-mentioned three basic principles of public procurement. The necessary administrative simplification for these smaller-volume contracts, however, is accompanied by decreased transparency in these processes and the absence of an entity which would supervise the proper course of these small tender processes.

At the recommendation of the Ministry of the Interior, some towns and municipalities handle contracts which involve smaller volumes of funds, to which the formal legal procedure governing public contracts does not apply, through their own approved principles or internal procedures. These internal procedures or directives give the appropriate entity's employees more detailed instructions on how to ensure supplier selection in compliance with the principles of transparency, equal treatment and non-discrimination. If the town or municipality has such a directive at its disposal, then it's obliged to proceed according to it when selecting a supplier. The area of small-scale public procurement, which is co-financed from European funds, is also currently governed by the so-called "Mandatory procurement procedures co-financed from EU funds, not covered under Act No. 137/2006 Coll., on Public Contracts, in the 2007–2013 programming period"(hereinafter "Mandatory Procurement Procedures"; a similar document was also created for the programme period 2014–20). These Mandatory Procurement Procedures are then elaborated on in more detail within the framework of rules for the recipients of individual operational programmes financed from EU funds. It therefore applies that in the case of these small-scale contracts, it's above all always necessary to consult the relevant principles or methodological instructions which in this area are very often above the scope of legislation.

In practice, not only a large number of local authority units, but also for example all ministries, select a procedure whereby they stipulate the rules for these small tender processes in the form of an internal instruction (internal directive).

An example of internal rules for small-scale public procurement

The internal directives of the town Týniště nad Orlicí differentiates small-scale contracts into several categories. For contracts not exceeding 50,000 CZK ex VAT, it states that it's possible to award these small purchases "by hand" as it's known, using a knowledge of companies and the market situation. Therefore, an order is sufficient for these small contracts, and there is no need to conclude a written contract with the selected supplier. In the case of public contracts where the total amount of the financial commitment does not exceed 150,000 CZK ex VAT, one must proceed using a demonstrable tender process where the amounts tendered by at least three addressed potential suppliers (even in electronic format) must be available for inspection at any time. And for contracts in the 150,000 CZK to 2 million CZK category, the directive foresees the further formalization of the process, being the establishment of a commission with at least three members to open envelopes, and evaluate and assess bids. The town's internal directives also stipulate other requirements, mainly relating to the clear assignment of responsibilities within the public administration body, or requirements for the archiving of documents.

Source:
http://www.tyniste.cz/?page=smernice-pro-zadavani-verejnych-zakazek-mesta-tyniste-nad-orlici

Where to find information

For contracts where it is necessary to comply with the formal procedure under the Act, a very important tool not just for the fair conduct of the economic competition among the applicants, but also for continuous or subsequent civil control, is a quota of reporting obligations which this Act requires the contracting entities to abide by.

Basic sources of information which offer the public information about tender processes in electronic format, with the option of remote access, are:

- The Public Procurement Journal; and
- The so-called contracting entity's profile.

The Public Procurement Journal (available at http://www.vestnikverejnychzakazek.cz) contains mainly contract notices, prior information notices, contract award notices, notices of setting aside the award procedure, and information about the creation or cancellation of contracting entities' profiles.

On the contracting entities' profile, which contracting entities are obliged to create, and for whose administration they use one of the certified electronic instruments, we can then find a concluded public contract including all its changes and appendices, the price actually paid for the fulfilment of the public contract, and a list of sub-contractors who participated in the fulfilment of the public contract. Some contracting entities, for reasons of greater transparency in handling public funds, also voluntarily report, above the scope of the Free Access to Information Act, on the smaller volume tender procedures for which the said reporting obligations are not compulsory.

Supervisory body

Supervision over the legality of the course of the public procurement process is performed by the Office for the Protection of Competition. A complaint may be lodged with this supervisory body not only by the entity which applied, or intended to apply, for the public contract, but also by any other person not participating in the tender process.

With small-scale contracts, the stipulation of the supervisory body which could intervene in the event of manipulation with these smaller volume tender procedures, is much more complicated. For example, if it isn't a small-scale contract which is paid for using European or national subsidies (here, for example, the supervisory power is held by the provider or the appropriate tax authority), it's possible to first and foremost use the contracting entity's own supervision mechanisms (internal audit) or turn to the founder of the contracting entity, if they exist. Furthermore, municipal and town small-scale public contracts are subject to an examination performed every year by the Regional Office or auditing company, and in some cases where the illegal situation can still be rectified it's also possible to use the supervisory powers of the Ministry of the Interior over the illegality of the acts accepted by the municipal body which relate to the smaller volume tender procedure.

As an unsuccessful applicant for a public contract, I lodged objections against the actions of the contractual entity, by whom I was, for formal reasons, excluded from participation in this tender process. To which institution should I turn now? Also, is it possible for a complaint about the infringement of the law by the contracting entity procedure to be lodged by another person, one who did not participate in the tender process? Are any rules stipulated regarding the form which this notice on the infringement of the law on the part of the contracting entity must take?

If you are in the position of unsuccessful applicant for a public contract (the Act uses the term "complainer", being a supplier who has or had an interest in the acquisition of a certain public contract and to whom, as a result of the alleged breach of law, there is a risk of or an actual violation of their rights), a procedure reviewing the actions of the contracting entity before the Office for the Protection of Competition (ÚOHS) can, in compliance with this Act, be initiated on the basis of a **written proposal submitted by you**. With the exception of a proposal to impose a ban to perform the contract, **a condition for the submission of the proposal is the previous lodging of objections with the contracting entity**. The calculated submission of proposals to the Office for the Protection of Competition within the meaning of § 114 of the Act is supposed to be prevented by the institute of a cash deposit which the proposer is obliged to pay in connection with the submission of their proposal and which consists of 1% of the proposer's bid price for the entire period of fulfilment of the public contract.

The procedure of reviewing the contracting entities' actions may also be initiated by the Office for the Protection of Competition ex officio. Given the general obligation on the part of the administrative body to investigate citizens' complaints, it's also possible for any citizen (including the unsuccessful applicant) to deliver an **"informal" complaint** to the Office for the Protection of Competition which is not a proposal under § 114 of the Act. The payment of the appropriate deposit is therefore not a condition for the acceptability of such an informal complaint. However, in the case of an unsuccessful applicant who, under the Act, is expected to use the option of submitting a proposal, lodging such an informal complaint with the Office for the Protection of Competition may be perceived as a circumvention of the law with the intention of avoiding the obligation to pay the cash deposit.

The informal complaint or proposal must first fulfil the general submission requisites in accordance with § 37 of Act no. 500/2004 Coll., of the Code of Administrative Procedure. Under this provision, **the submission must indicate who made it, what matter it relates to, and what it proposes**.

A natural person must state their name, surname, date of birth and place of permanent residence in the submission; if applicable also a different delivery address. In a submission relating to their business activity, the natural person must state their name and surname, and possibly an amendment distinguishing the entrepreneurial entity, or the type of business relating to this person, or the type of business operated by them, the ID number of the entities and the address entered in the Commercial Register or other statutory information such as their registered office, and if applicable a different delivery address.

A submission by a legal person must state their name or trading company, the ID number of the entities or similar information, and the address of their registered office; if applicable also a different delivery address. The submission must contain the name of the administrative body to which it is addressed, other requisites stipulated by law, and the signature of the person who is making it.

If you are submitting a proposal to the Office for the Protection of Competition as an **unsuccessful applicant** under § 114 of the Act, then this proposal must also contain, apart from the above-mentioned general requisites, **the name of the contracting entity, a statement of where the breach of law – as a result of which there is a risk of or an actual violation of the proposer's rights – was discovered, proposals for demonstrating evidence, and a description of what the proposer demands.**

According to the provisions of § 37 paragraph 4 of the Code of Administrative Procedure, **it's possible to make a submission in writing or verbally into the protocol, or in electronic form signed with a verified electronic signature**. On condition that the submission is confirmed within 5 days, and possibly supplemented in the above-mentioned manner, it's possible to make the submission using other technological means, in particular through a public data network without a verified electronic signature.

We would like to add that in accordance with the provisions of § 114 paragraph 4 of the Act, the proposal must be delivered to the Office for the Protection of Competition and an identical copy must be sent to the contracting entity within 10 calendar days from the day on which the complainer received the decision by which the contracting entity failed to meet their objections.

Elections

"(1) Citizens have the right to participate in the administration of public affairs either directly or through the free election of their representatives.

(2) Elections must be held within terms not exceeding the regular electoral terms provided for by law.

(3) The right to vote is universal and equal, and shall be exercised by secret ballot. The conditions for exercising the right to vote shall be provided for by law.

(4) Citizens shall have access, on an equal basis, to any elective and other public office."

Art. 21 Charter of Fundamental Rights and Freedoms

In the Czech Republic, citizens can exercise their electoral rights in several ways and in several electoral processes. To begin, however, we must explain what electoral rights themselves mean.

The list of fundamental rights and freedoms states, inter alia, that citizens have a right to participate in the administration of public affairs directly, or by electing their representatives. A free election of political representatives is the basic cornerstone of the democratic establishment and the rule of law. Similar rules are also enshrined in international documents which the Czech Republic adopted (the International Pact on Civil and Political Rights, Charter of Fundamental Rights of the European Union, the European Council Code of Good Practice in Electoral Matters).

Electoral rights, therefore, mean the option of voting for certain candidates and thereby expressing one's political opinion, and also deciding on certain issues directly, for example if a referendum is held on them. Both of these fall under so-called active electoral rights. However, citizens can also apply for various public functions themselves, which is known as a passive electoral right. A refusal to participate in the elections can also be considered a legitimate expression of opinion and an implementation of electoral rights.

It's important to emphasize that the rights contained in article 21 of the Charter of Fundamental Rights and Freedoms can never be taken away from the citizens of the Czech Republic, or restricted on the basis of gender, race, education, social standing etc.. In the exercise of electoral rights, however, there can be legally stipulated restrictive conditions (imprisonment, restriction of legal capacity, performance of military service).

In some countries in Europe and around the world, one can come across electoral obligations (this only affects active electoral rights) Examples are Belgium, Luxembourg, Greece, Italy, Cyprus, Lichtenstein and Turkey, but also Australia, Brazil, Argentina and Singapore. In some of these countries the electoral obligation is strongly enforced (for example using fines or a removal of electoral rights), in others the obligation is merely a declaration, and a lack of participation isn't sanctioned in any way...

Types of elections

In the Czech Republic, it's typical to firstly elect members of various collective bodies (the Chamber of Deputies, the European Parliament and municipal and regional representatives; the president is an exception), usually for four years (with the exception of senators, whose mandate lasts 6 years). In practice this means that on average once every two years, the citizen has the option of demonstrating their political opinions. Given the fact that elements of direct democracy aren't very traditional in the Czech Republic, elections are still one of the most effective means of influencing the functioning of the local or wider environment. Traditionally, the highest participation has been enjoyed by the elections to the Chamber of Deputies of the Parliament of the Czech Republic, and recently also by the direct election of the president.

Municipal and regional elections are somewhere in the middle of voter interest. At the other end we then find elections to the European Parliament and Senate elections; particularly their second round.

From a legal perspective, it's always a separate regulation which regulates electoral rights, the electoral process and various other procedures relating to it, including administrative offences and judicial review. The list of these regulations includes:

1. Act no. 247/1995 Coll., on Elections to the Parliament of the Czech Republic;
2. Act no. 275/2012 Coll., on the Election of the President of the Czech Republic;
3. Act no. 62/2003 Coll., on Elections to the European Parliament;
4. Act no. 130/2000 Coll., on Regional Council Elections;
5. Act no. 491/2001 Coll., on Elections to Representative Bodies of Municipalities.

In the long term, the Ministry of the Interior has been considering creating an electoral codex that would contain rules for all types of elections in the same place, and which in an ideal case would surely contribute to a greater clarity of the issue for the public.

Direct democracy

Apart from the normal election of representatives to various bodies, the referendum - one of the classic tools of so-called direct democracy - is becoming a more and more popular tool for influencing public events. Referendums have an almost identical process in common with elections; the difference lies in the fact that it doesn't involve voting for people but for specific issues and ways of solving them. At a national level, a constitutional law is needed to legalize referendums. During the period of existence of the independent Czech Republic it has been proposed several times in different forms, but for various reasons it was never approved. On the contrary, local and regional referendums have already been legalized for a number of years, and one could say that the local referendum has been experiencing a kind of boom in recent years.

You can find out more about the specifics of local referendums and about how to organize one in the publication TI Local Referendum, from 2010, which is available on our website.

Is it possible to organize a local referendum, together with the presidential elections, in two days?

According to § 5 of Act no. 22/2004 Coll., on Local Referendum, a referendum takes place in one day. If, however, it takes place at the same time as any other elections, it adapts to the date on which the elections are held (i.e. two days). A problem arose in that presidential elections are not explicitly mentioned in the list of elections with which the referendum can be associated. Therefore, the Ministry of the Interior recommended that the literal wording of the law should be followed, and a referendum should be held in just one day. A breakthrough came about as a result of the decision by the Supreme Administrative Court ref. no. Ars 2/2012-29 in the matter of referendums in the city district of Prague 7 and the Regional Court in Plzeň ref. no. 57A 75/2012-101 on what was so far the "biggest" local referendum in the statutory city of Plzeň. On the basis of this analogy, it was concluded that the regime of presidential elections is the same as that of any other elections, and there's nothing to prevent a referendum being held in two days together with them.

Problems in elections

Overall, the Czech Republic maintains a high standard in the adherence to the fundamental rules of free elections enshrined in the constitutional order. Even so, from time to time a phenomenon appears which has a negative impact not only on the result of elections and voting, but also on the political scene, the quality of public administration and citizens' quality of life.

1. Buying votes

This practice appeared, to a larger extent, in connection with the municipal elections in 2010. Specifically, this involved the organizers of these deals promising, and subsequently also paying, a certain sum of money to voters who undertook to vote for a specific party or candidate. This mainly took place in smaller municipalities, where a relatively small number of votes is sufficient to influence the results of the elections. The vicinity of the polling booths saw the direct handing

over of money as well as the handing in of unused ballot slips, and thereby supervision over whether the voter really threw the "correct" slip in. This could have been circumvented by only collecting the ballot slips inside the polling booths, but the buying of votes was directed primarily at people with a lower standard of education, social standing and interest in political events, who often prioritized immediate financial profit before the free exercise of electoral rights and long-term goals.

"Anybody who provides, offers or promises financial, material or other similar benefit to another person or for another person in connection with the exercise of electoral rights or the right to vote in a referendum, so that they vote or elect contrary to the independent expression of their will, will be punished by six months' to three years' imprisonment."

Provisions of § 351 of the Criminal Code

The consequences, even though they may not have appeared immediately, could have been fatal for the municipality. With such a business-market concept of electoral rights and representative democracy, one can't be surprised at the subsequent unfavourable sales of municipal property, calculated land zoning changes in favour of relatives or business partners, or subsidy support for suspicious entities by the very people who bought their political post, instead of gaining the favour of voters with their plans and visions for the municipality's future development.

In TI's opinion, the described practice fulfilled the factual substance of the crime of bribery. However, after experiences with past elections, the Criminal Code was amended and now contains a provision which deals directly with bribery in connection with elections.

One must distinguish between this practice and pre-election promises, or the provision of promotional material at various pre-election events which serves primarily to promote and explain the programme and attract voters' attention, rather than to influence the exercise of electoral rights themselves.

Example

Pre-election campaign

The newly formed political movement Demokratické Ano-Ne [Democratic-Yes-No] (D-Ano-Ne in abbreviated form), aimed at promoting the institutes of referendum and direct democracy at a national level, launched a huge campaign composed of three main parts before the elections to the Chamber of Deputies.

The party leaders held meetings with citizens in the town squares of many cities around the country. At the meetings there was music, candidates explained their programme, promotional materials were handed out (balloons, pens) and there were even free refreshments (beer, grilled sausages).

The second part of the campaign consisted of a special website where, aside from several political slogans, they offered the first ten thousand registered voters of the D-Ano-Ne movement a discount voucher with a value of 5,000 CZK against the purchase of a tour from a travel agency owned by one of the main party sponsors. All the potential voters had to do was fill in an internet questionnaire, and undertake to vote for the D-Ano-Ne movement in it.

The third part of the campaign took place just before election day. Members of the movement's local cells walked around selected locations, mainly in housing projects. They went from apartment to apartment, spoke to citizens and asked them whether they would take part in the elections and who they would vote for. If the citizens didn't want to vote at all, or if they wanted to vote for a different party, the movement members promised them a lift to the polling booth and a reward of 500 CZK for a change of opinion and a vote for D-Ano-Ne.

Do any of the previous situations involve conduct which is beyond the boundary of a normal campaign, and could be perceived as illegal influencing of elections?

Solution:

The first case is fine. The politicians clarify their vision, and try to convince the voters with more or less rational and truthful arguments. The benefits offered (promotional items, refreshments) are there primarily to make the meeting more pleasant for citizens, not to directly influence their decision on whom to vote for. From a criminal law perspective, the intent to endanger the legally protected interest in the proper conduct of the elections is missing (or, alternatively, it's not demonstrable from the conduct). A clear connection with the exercise of electoral rights is also absent. The meeting was held quite a long time before the elections, i.e. the citizen could go to more events like this and they will still have sufficient time to freely choose whom they will vote for. Given that, and also the very low value of the benefit gained (although the Criminal Code does not stipulate a minimal bribery value), the condition of subsidiarity of criminal repression, namely harm to society, apparently isn't fulfilled either.

The second case is borderline. Political opinions are presented on a much smaller scale, and the campaign is intended to function on the principle of "something for something". In return for their vote for a political entity, the citizen receives a relatively high value financial sum, and at the same time they must undertake to vote in a particular way. We can therefore register a much closer relationship with the exercise of electoral rights, the gaining of a higher value benefit (and therefore more harm to society) and a lack of the political component of the campaign, which suggests that the given entity must have known that their actions could at the very least endanger the legally protected interest in the proper conduct of the elections. Even though the mentioned links seem to attest to this campaign already being at the edge of the law, the voter's commitment to a particular vote isn't legally enforceable, and there's no way of confirming whether the voter abided by it. Therefore, a situation may arise where all the registered voters receive a discount voucher and not one among them votes according to the commitment they made, which on the contrary seems to suggest that this isn't a campaign punishable under the Criminal Code.

The third case is a criminal offence. The campaign lacks any political dimension whatsoever. The political entity merely finds out voters' preferences, and if they don't agree with the idea, they are promised a direct financial reward in exchange for their vote. This financial reward is then supported by the mass transportation of voters to polling booths and there is even some on-site supervision of their voting (in practice this often takes place by giving out filled-in ballot slips and, after the vote has been cast, collecting the unused ballot slips which were collected by the voter in the polling booth). Here there is also an evident intent to endanger the legally protected interest in the proper conduct of the elections, as well as obvious social harmfulness (a degradation of political culture to a purely market-based concept of democracy, where the wealthiest candidates have secured access to elected functions).

2. A calculated change of permanent residence before the elections

The second way of illegally influencing the outcome of elections (again, mainly municipal elections in smaller municipalities), has become a calculated change of permanent residence right before election day. Very close before the start of the elections, a "re-registration" occurs of citizens who are clear and resolved supporters of a certain political party, to one address or a small number of addresses in the given municipality. In the case of a municipality with several hundred inhabitants, for example, 30-40 new voters can have a significant influence on the outcome of the elections. Given the fact that permanent residence, as opposed to the former institute of right of domicile, is merely evidential information and nobody can be prevented from changing it, it wasn't completely clear what steps to take against such practice, which at first sight seems to be unethical.

A few disputes went all the way to the Constitutional Court, which quite clearly ruled in favour of the proper conduct of the elections. Firstly, it accepted the right of the body which creates voter lists to strike these formally registered voters off, and at the same time it stated in general that in order for electoral rights to the local municipal authority to exist, there must be an actual relationship to the municipality in which these rights are realized.

In the cases of Hřensko (Pl. ÚS 59/10) and Karlova Studánka (Pl. ÚS 6/11), the Constitutional Court ruled as follows:

"The purpose of the formal existence of the municipality is for its inhabitants to be able to administer their own affairs. They can do this through the municipal bodies. That is also why the entitlement to create these bodies is subject to an actual bond between the inhabitant-voter and the municipality. The existence of this bond is not indicated by the subjective will of the person themselves in the form of an entry among the citizens of the municipality, but must be objectively expressed in a corresponding manner. In a situation where permanent residence is the decisive criteria for the creation of active and passive electoral rights to the local municipal authority bodies it is necessary, given the seriousness of the possible effects, to carefully review the fact that the registration may have been a highly calculated action whose only aim was to create active electoral rights through an action circumventing electoral law."

A ruling by the Constitutional Court dated the 4th of May 2011 Pl. ÚS 6/11

3. Political campaigns

Most of the mentioned regulations governing elections contain only a brief mention regarding the manner of managing electoral campaigns, and sometimes contain no information at all. When there was something to be found, the legislator limited themselves to stating that: *"an electoral campaign must proceed honourably and honestly; in particular no untrue information may be published about candidates, political parties or the coalitions on whose schedules of candidates they are mentioned."*

A breach of this obligation, however, is not sanctioned by even one of the applicable laws. The only conceivable alternative is a defence in court. Furthermore, the provision is so vague, and no appropriate judicature exists for it, that it's hardly likely that even a model interpretation of the management of a campaign which is in conflict with this provision will be found.

Sometimes it is possible to come across a situation where a premises which should be primarily apolitical, as it is paid for from the public budget, is being used for a pre-election campaign.

The town publishes a municipal magazine which for most of the year promotes cultural and sporting events; citizens are informed of various restrictions during reconstructions and they can find out purely practical information. The articles are written by representatives, officials and other contributors. In the period before elections, however, it regularly happens that the articles become less balanced, they speak only positively of all the town's actions, and their authors are mainly members of the ruling coalition. It all sounds more like a campaign than citizens' information. Is this OK, and what can we do about it?

The publishing of periodicals is governed by Act no. 46/2000 Coll., the Press Act (PA), which since the end of 2013 also contains special provisions for periodicals issued by local self-governing units. The provisions of § 4a PA states:

"A publisher of a local self-governing unit periodical is obliged to provide objective and balanced information about the local self-governing unit, and to provide appropriate space for publishing information which represents the opinions of the local self-governing unit members relating to this local self-governing unit."

As is evident from the above-described situation, the publisher must above all provide objective information and give the appropriate space to all representatives. The citizens of the municipality, however, don't have such rights and the publication of their contributions depends only on the publisher's decision. On the contrary, representatives whose contributions are not published have the right to request the publication of additional information and eventually even demand this through the courts in accordance with provisions § 11a, and analogically also § 13 PA.

4. Financing of political parties

The financing of political parties is regulated by Act no. 424/1991 Coll., on Associations in Political Parties and in Political Movements. Unfortunately, however, this regulation contains only minimal rules regulating the management of parties and movements. First of all, we can come across the obligation to present an annual financial report to the Chamber of Deputies of the Parliament of the Czech Republic every year and a prohibition on accepting donations from states, regions, municipalities, state, regional and municipal companies, foreign nationals (if they don't have permanent residence in the Czech Republic) and foreign companies (with the exception of foundations and political parties).

The biggest drawback of this system is that practically no supervision exists during election time, and that the deputies inspecting the annual reports basically supervise themselves.

Transparency International – Czech Republic monitors, before the elections and during the course of individual elections, t**he availability of information about the financing of individual parties' campaigns** and thereby provides the public with another opportunity to create a complete picture, and an informed opinion, on individual political entities.

For more information, visit **www.transparentnivolby.cz**.

Our team

The lawyers who currently work in ALAC form a well-coordinated team. If you asked each one individually why they devote themselves to work in the free-of charge legal advice centre of a non-profit organization, among other things they would answer in unison that an important motivating factor is the friendly atmosphere and the mutual support of colleagues in everyday work, which can often be difficult.

And what do the individual team members reply to the query about the specific reason why, as lawyers with diverse life and work experiences, they chose to work in TI?

Radka: *TI is a highly professional organization, and with its professional approach to the issue of corruption it has gained respect throughout all of society. An added value for me is the management of the legal advice center team which is composed not only of highly-qualified lawyers, but also brilliant colleagues on whom I can always rely.*

Petr: *I started in TI in the form of a short-term voluntary internship while I was studying at university. I gradually found out that work in TI offers the opportunity to deal with many areas of public law and at the same time other types of activities besides just legal ones – from working with clients through negotiating with authorities and participation in educational activities, to consulting on new regulations. At the same time, it all stands on a solid base of values. In my opinion such a wide range of experiences is priceless and would be hard to find anywhere else.*

Helena: *An orientation on helping citizens, interesting and at the same time diverse work in an area of law which is very close to me both professionally and personally, and a very inspiring friendly collective; that's what I always expected from my future work, and finally I've found it.*

Aneta: *Work in the area of the public sector for the benefit of a non-profit organization whose work, especially nowadays, has a real meaning, but also a job description which includes actual participation in public affairs, simply combines everything I wanted to pursue after university.*

Zdeněk: *TI has always been for me an example of selfless fight not only against the corruption, That's why when I found out about the job opportunity in TI after I finished the Law Faculty, I didn't need to think about a lot. In return I gained a very varied work in the public law field orientated on the helping citizens within the team of highly-qualified lawyers.*

Jitka: *Given the fact that I couldn't imagine myself in the area of private law or in a solicitor's office, the chance to work in ALAC really appealed to me and I became enthusiastic about it. Moreover, when dealing with individual cases, I realize more and more every day how terribly important the work of the people from TI is.*

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