MINISTERSTVO VNITRA
ČESKÉ REPUBLIKY

Practices Related to the Disclosure of Information to Local Residents by Municipal Authorities and the Participation of Local Residents in Local Government Affairs

Introduction

In Constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic, as last amended (hereinafter as "**Czech Constitution**"), the Czech government established – as part of the country's primary governmental authority – the right of local governmental bodies (i.e. municipalities and regions) to act as autonomous self-governing entities. This right is specifically addressed in the act under Article 8 (at a general level) and in Chapter Seven, "Territorial Self-Government", (in more detail). The Czech Constitution is based on the country's traditional system of dividing up the responsibility for municipal government into those assigned to local government and those assigned to national (State) government. Under its Article 105, the constitution anticipates that, besides being given self-governing rights (the right to function as a local government), local bodies may also perform function normally assigned to the national (State) government, if so authorized under the law. The responsibilities of local government are also addressed in the fundamental constitutional principles that limit the exercise of State power – specifically in those situations in which a self-governing territorial body is acting as an autonomous public authority.

In looking at these issues, it is important to recall that, even though the Czech Republic has now been a democracy for a relatively long period of time, until 1989, the ability to exercise governmental authority was limited to only State (national) bodies, or more specifically the authorities that were part of the State administrative apparatus (representing the power of the State). The political changes that followed have been combined with an effort to decentralize State administrative responsibilities by delegating certain functions to non-State entities – in this given situation, to municipalities. This process has gradually led to the elimination of the past system of so-called "National Councils" and the establishment of autonomous municipalities and State-run "District Councils". The country held its first elections for members of regional councils in 2000. Just two years later, the system of district councils was eliminated (with a few minor exceptions) and their broad scope of authority was passed on to individual municipalities and regions. Under the current system, a municipality is considered a local corporate body, which is guaranteed certain self-governing rights under the Czech Constitution, which can be allowed under the law to perform certain functions of State administration (the exercise of delegated authority). In a broader sense, municipalities perform the function of public administration – i.e. they are actively involved in the administration and management of public affairs.

The gradual expansion of the authority given to local self-governing bodies (municipalities and regions) has led to the question of how these entities should be controlled and supervised in their carrying out their public administrative functions. This oversight largely comes from the outside, while being directed into (inside of) the given local system.

The Czech Republic has traditionally used a properly functioning system of "institutional" oversight. Supervision is carried out by the Czech Parliament, the Supreme Audit Office, public law enforcement authorities, the Czech national government, its courts and other institutions. A special type of oversight is the monitoring of municipalities, regions and the City of Prague, while these entities are exercising their autonomous and delegated powers under Act No. 128/2000 Coll. on municipalities (the municipal order), as last amended (hereinafter as "**Act on Municipalities**"), Act No. 129/2000 Coll. on regions (the regional order), as last amended (hereinafter as "**Act on Regions**") and Act No. 131/2000 Coll. on the Capital City of Prague, as last amended (hereinafter as "**Act on the City of Prague**").

A new form of oversight, which has recently come into being, is oversight by the general public. Since the "rule by the people" is one of the fundamental principles of a democratic system under the rule of law, the Czech legal system expects its local citizen to become actively involved in public affairs (whether such an involvement comes through their direct participation or through the participation of their elected officials). Such oversight by the general public – a practice which is one of the basic foundations of properly functioning and supervised public administration in a democratic system – is primarily practiced through petitions and complaints, the public's participation in public hearings, etc. The protocol for the processing of petitions is separately covered under Act No. 85/1990 Coll. on the right to petition, as last amended; and, the processing of complaints against improper conduct on the part of public officials or administrative bodies is currently covered under Section 175 of Act No. 500/2004 Coll. on the Code of Administrative Procedure, as last amended (hereinafter as "**Code of Administrative Procedure**"). The duty to have such complaints reviewed at a municipal level is established not just in the provisions of the Code of Administrative Procedure, but also (and most importantly) under the legislation governing the rights of citizens residing in the given municipality and other legislation governing the competencies of municipal bodies (e.g. Section 102, Subsection 2(n) of the Act On Municipalities in the sense that a municipal council establishes its own more detailed procedures for the processing of petitions and complaints, which however cannot conflict with the general requirements established under current legislation).

Under its Article 17 (the section discussing political rights), the Charter of Fundamental Rights and Freedoms established the right to be provided with information and the corresponding obligation to provide the given information. These constitutional provisions have been covered – in legislative and largely procedural terms – under Act No. 106/1999 Coll. on free access to information, as last amended (hereinafter as the "**Information Act**"). The object behind the passing of this act, as well as the actual definition of the 'right to have access to information', was to enhance the public's awareness of the how the institutions that encompass the system of public administration function. This enhanced the position of individuals who were asking for information and had the right to file a complaint with a court in a situation in which they had asked for certain information and such information had not been provided to them – despite their having pursued and exhausted all administrative remedies and appeal options.

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How does a municipality keep the public informed about its activities?

In discussing the options and procedures that can be used by a municipal body to keep the general public informed about its activities, municipal authorities have the following three options:

1) An official public bulletin board and an internet-based version of such a bulletin board.
2) The distribution of information at municipal council meetings and the use of other methods, which are customary in the given locale.
3) The publication of information in a manner such that it can be remotely accessed.

In discussing the options and procedures that can be used by a municipal body to provide information in a passive manner (i.e. the party seeking the information must actively look for it), municipal authorities have the following options:

4) To let the public access the given information at the city hall (Section 16, Section 52(a), Section 95(2) and Section 101(3) of the Act on Municipalities).
5) By allowing the public to request information in a manner, which conforms to the provisions of the Information Act or Act No. 123/1998 Coll. on the right to environmental information, as last amended (hereinafter as "**Act No. 123/1998 Coll.**").

1. Public Bulletin Board

1. 1. Legal Grounds

Although the 1990 Act on Municipalities (Act No. 367/1990 Coll.) had anticipated the existence of public bulletin boards maintained by municipal councils, the law did not (unlike the legislation passed in 2000) explicitly require public administrative bodies to set up or provide access to such bulletin boards. In the period between the passing of the new Act on Municipalities in 2000 and the passing of the new Code of Administrative Procedure (Act No. 500/2004 Coll.), the concept of municipal public bulletin boards was legally covered under Section 112 of the Act on Municipalities (the version that was in effect prior to the passing of the new Code of Administrative Procedure). The currently applicable legislation governing this topic (Section 26 of the new Code of Administrative Procedure) has therefore replaced – effective January 1, 2006 – the legal treatment, which is part of the Act on Municipalities. Besides explicitly requiring public administrative bodies to set up or provide access to their public bulletin boards, the new Code of Administrative Procedure also requires these bulletin boards to be accessible on a round-the-clock basis.

Under Section 26, Subsection 1 of the Code of Administrative Procedure, current legislation therefore dictates that *every administrative body must set up a public bulletin board, which must be accessible to public users on a round-the-clock basis. A single bulletin board is to be set up for all bodies that are part of a single local self-governing entity. The contents of the bulletin board are also to be published in a remotely accessible manner.* As part of the passing of the new Code of Administrative Procedure, the government has set up an "Advisory Committee of the Minister of the Interior for the Code of Administrative Procedure". It is the responsibility of the committee to provide advice on the interpretation of the provisions contained in this legislation. The committee has issued two separate statements related to the public bulletin boards – one was part of Summary Report No. 12/2005 ("Establishment of Permanently Accessible Public Bulletin Boards, in Accordance with Section 26 of the Code of Administrative Procedure) and Summary Report No. 14/2005, ("Interpretation of Section 26, Subsection 1 of Act No. 500/2004 Coll.". Both of these reports can be found on the website of the Czech Ministry of the Interior (www.mvcr.cz), under the following link: *legislativa/správní řád/závěry poradního sboru ministra vnitra ke správnímu řádu*.

1. 2. General Recommendations

When searching for a description of what exactly makes up such a public bulletin board, one can basically look at what is generally known and establish that a bulletin board is a technical setup, which includes a publicly accessible area where documents can be posted (usually in a written form).

Under the new Code of Administrative Procedure, the public bulletin board must be accessible on a round-the-clock basis (i.e. even during nighttime hours). The bulletin board should also be protected from unauthorized tampering with its contents. In formal terms, it is suitable to include the contact information of the given administrative body on the bulletin board and it is also necessary to include the designation "public bulletin board" to fulfill the true objective of this information distribution system and to comply with the applicable regulatory requirements. The bulletin board should also contain a link to its internet-based version (if available). It is common practice for municipalities to use other types of notice boards, which are located in prominent locations, for the posting of information. In such cases, it is however recommended that such notice boards be properly identified by indicating that they are not an official public bulletin board and to include information about the location of the official public bulletin board.

The law also dictates that a municipality (or the given self-governing body) is to set up only a single official public bulletin board (e.g. a board for construction projects, a misdemeanor hearings board, a posting of public ordinances, etc.). In drafting the new Code of Administrative Procedure, this explicit legal treatment has had the sole purpose of standardizing the procedures, which are to be followed – thus ensuring consistency across all administrative bodies, making sure the public bulletin boards maintained by self-governing entities conform to the same standardized rules (in accordance with the overall objectives of

the Code of Administrative Procedure). This requirement is therefore reflective of the fact that, until the new Code of Administrative Procedure (Act No. 500/2004 Coll.) was passed, the existing (i.e. previous) version of the code (Act No. 71/1967 Coll.) only applied to State bodies (i.e. bodies with a national scope of authority) and not to local self-governing entities. The official public bulletin board is therefore used to post documents that are required to be published in this manner under the current Code of Administrative Procedure, as well as documents that are required to be published in this manner under special legal regulations (in the case of a municipality, this would specifically be the Act on Municipalities).

1. 3. Posting of Documents

When posting a document on a public bulletin board, the entire contents (i.e. the full text) of the given document, announcement, etc. must be posted on the board. The posted document must indicate the date on which it was put up and the date on which it is to be taken down from the board. This requirement is currently directly dealt with under the law (specifically under Section 65, Subsection 3 of Act No. 499/2004 Coll. on archiving and filing services and changes to certain acts, as last amended). The posting of documents on an official public bulletin board is frequently associated under the law with certain legal consequences and one must therefore know the precise timing for determining, for example, the date on which a specific statutory deadline is to begin, etc.

As previously mentioned, administrative bodies have an obligation to post on their official bulletin boards documents related to various administrative proceedings and other documents that are required to be posted on a public bulletin board maintained by the given administrative body under special legal regulations.

In the specific case of a municipality (i.e. under the Act on Municipalities), the following types of information must be posted on a public bulletin board:

- Public ordinances and municipal regulations (Section 12 of the Act on Municipalities).
- Plans of the municipality to sell, trade-in, donate, lease or lend real assets (Section 39 of the Act on Municipalities).
- The number of municipal council members who are to be elected (Section 68, Subsection 2 of the Act on Municipalities).
- Public contracts that have been signed (Section 66(c) of the Act on Municipalities).
- Announcement of the time, location and proposed agenda for an upcoming municipal council meeting (Section 93 of the Act on Municipalities).
- Various types of decisions (Section 128 of the Act on Municipalities):
    - Decision to suspend a municipally issued ordinance.
    - A ruling issued by the Constitutional Court, which revokes a municipally issued ordinance, or certain provisions of such an ordinance.

  - A court decision revoking a resolution, decision or other measure passed by a self-governing municipal body.
  - Decision revoking the suspension of a municipally issued ordinance.
  - A decision by the Constitutional Court revoking the validity of a decision to suspend the validity of a municipally issued ordinance.

- Information for the public on municipal council activities related to the results of an audit of the municipality's exercising of its autonomous authority. This would includes information on any proposed remedial steps for dealing with inconsistencies or nonconformities identified during the audit and/or information on how the municipal authorities plan to remedy illegal conduct in which they have engaged (Section 129(a), Subsection 8 of the Act on Municipalities).

In the case of public ordinances and municipal regulations (Section 12), the municipality's plans to sell, trade-in, donate, lease or lend real assets (Section 39), the number of municipal council members who are to be elected (Section 68, Subsection 2) and the announcement of the time, location and proposed agenda for an upcoming municipal council meeting (Section 93), the Act on Municipalities anticipates that this information is to be not just posted on the official public bulletin board but that the municipality will also have the ability to publish this information in a "manner, which is customary in the given location". These procedures have been specifically designed to allow multiple bidders have access to bidding on public contracts and to allow the municipality to select from a wider range of options (for example, in a situation in which the municipality plans to dispose of certain assets). Additionally, these procedures are designed to allow better public oversight of transactions involving municipal property.

It should also be noted that under the Act on Municipalities, the posting of public ordinances and municipal regulations (Section 12) and the municipality's plans to sell, trade-in, donate, lease or lend real assets (Section 39) on the official public bulletin board of the given municipality is considered to be one of the conditions for the legal enforceability of the given legal act (e.g. its validity). This means that, should anyone feel that they have suffered a loss, etc. as a result of the fact that the given legal act has come into effect, but the municipality failed to post the information announcing it on its bulletin board, they can seek redress through a court.

1. 4. Internet-Based Version of the Official Public Bulletin Board

Czech law doesn't provide a specific definition of what makes up an internet-based (i.e. electronic) version of the official public bulletin board. In the following, this concept will be referring to the fulfillment of the requirement to publish the contents of the bulletin board in a "remotely accessible manner" (in accordance with Section 26 of the Code of Administrative Procedure). Public administrative bodies normally approach this requirement by setting up a website on which they post the contents of the bulletin board. Alternatively, the body may also proceed in accordance with Section 26, Subsection 3 of the Code of Administrative Procedure (i.e. they may sign a public contract on the publishing of the

contents of the official public bulletin board in a remotely accessible manner with the municipality with extended powers which has administrative jurisdiction over the given body).

1. 4. 1. General Recommendations

Based on the provisions of Section 26 of the Code of Administrative Procedure (i.e. with respect to the tie-ins between the contents of the rudimentary version of the official public bulletin board and the contents of its internet-based version), the same documents should be posted on the two versions of the bulletin board at the same time (or at least without any unnecessary delay).

Furthermore, whenever a municipality has not set up its own internet-based public bulletin board, this service is provided on behalf of the given municipality by the municipality with extended powers which has administrative jurisdiction over the other municipality. The two municipalities need to sign a public contract under which the municipality to which the given bulletin board belongs is responsible for its content. Notwithstanding, each municipality should come up with their own internal directives and protocols listing the procedures that must be followed in posting public content (for example, this could become a part of the organizational rules for the local town or city hall).

For purely practical purposes, the reference to the internet-based version of the public bulletin board posted on the website of the given town or municipality should be posted in a location where it can be easily spotted (ideally on the 'home page' of the website). The link to the internet-based version of the bulletin board (i.e. the web address) should also be included on the physical version of the board. Since under Section 26, Subsection 1 of the Code of Administrative Procedure the contents of the public bulletin board are also to be published in a remotely accessible manner, the contents of the physical version of the bulletin board should for all practical purposes correspond to that of the internet-based version of the board. In other words, unless otherwise required under special legislation, the contents of the physical and the internet-based bulletin boards should be identical.

1. 4. 2. Posting of Documents

Administrative bodies are required to post the entire contents of their official bulletin board in a remotely accessible manner; and, this applies to both individual pieces of correspondence (or notices to collect such correspondence), which are being posted in the form of a public notice (in accordance with Section 25 of the Code of Administrative Procedure), as well as to other types of documents that must be posted on the public bulletin board under the requirements of special legislation. However, the legal act which is related to the posted item is only going to be deemed invalid (or unenforceable) as the result of a failure to post the related correspondence (or notice to collect the correspondence) in a remotely accessible manner in situations in which this is explicitly stated under the law (e.g. the delivery of correspondence in the form of a public notice, in accordance with Section 25, Subsection 2 of the Code of Administrative Procedure). In other situations, the sanction in the

form of making the legal act invalid is not legally called out and it would have to be called out under special legislation in order to be imposed. However, in a situation in which such special legislation does not explicitly specify what legal consequences would ensue should such a document not be also posted in a remotely accessible manner (per Section 25, Subsection 2 of the Code of Administrative Procedure), the lack of validity or unenforceability of the given document or other legal consequences of the failure to post the given information in such a manner cannot be claimed due to a violation of Section 26, Subsection 1, sentence three of the Code of Administrative Procedure, where no such consequences are discussed. More details about this particular issue can be found in Summary Report No. 14/2005 of the Advisory Committee of the Minister of the Interior for the Code of Administrative Procedure – "Interpretation of Section 26, Subsection 1 of Act No. 500/2004 Coll.".

In the context of the above-discussed conditions related to the legality (validity) of the items posted on the official public bulletin board, it is necessary to point out that the Act on Municipalities does not state that the given legal act will not be valid due to a failure to post the contents of the bulletin board in a remotely accessible manner. This is why a situation in which documents that are posted on the official public bulletin board, which is maintained by the local town or city hall, in accordance with the Act on Municipalities, but not currently posted on the internet-based version of the bulletin board, does not automatically make the legal acts associated with the posted documents invalid. It is however necessary to point out that a failure to post the given content on the internet-based version of the bulletin board does constitute a violation of Section 26 of the Code of Administrative Procedure.

2. The Distribution of Information at Municipal Council Meetings and the Use of Other Methods Customary in the Given Location

Under its Section 97, the Act on Municipalities states that *a municipality informs local citizens about the activities of the municipal bodies at the meetings of the municipal council and through the use of other methods that are customary to the given location*. This legal provision assumes that a municipality and its bodies will be required to actively keep the public informed about their activities at a rather general level – i.e. without having local citizens seek and ask for specific information (this is where the Information Act or Act No. 123/1998 Coll. would come into place).

The distribution of information at municipal council meetings is a logic product of the lawmakers' idea that these meetings should be the platform where local citizens bring up things they would like to have attended to by municipal authorities. The members of the municipal council are required to attend these council meetings and to protect the interests of the local residents. The law also dictates that these meetings be open to the public and accessible to a broad range of citizens. There are no circumstances under which these meetings can be closed to the public.

The distribution of information using methods that are customary to the given location would normally include the posting of information on notice boards, announcements in the local press or on the local radio station, etc. This provision can also cover the posting of information on the official public bulletin board or on the internet. The scope of this information distribution duty and the requirements related to the content of the information to be provided are not called-out under the law, the Act on Municipalities just refers to the use of methods customary to the given location.

The town's mayor is responsible for keeping the public informed about the activities of the given municipality (under the above-noted legal provision and under Section 103, Subsection 4(e) of the Act on Municipalities). This responsibility cannot however be interpreted as one in which the mayor would personally have to handle the given tasks (to personally post information on notice boards, etc.). The mayor's responsibility should be looked upon as more of a coordination task, where the mayor would usually have appointed someone (an employee of the municipal council) to handle this obligation.

3. Other Methods for the Distribution of Information in a Remotely Accessible Manner

Firstly, it should be pointed out that there is no law, which would require a municipality to set up and maintain its own website, which means there are no specific legal requirements for the content of such a website. There are however legislative provisions which require public bodies to make information and documents available to anyone using an openly accessible medium. Today, the most frequently used tool for such purposes is an internet website.

The legislation under which all governmental and local bodies and authorities and public institutions managing public resources are required to make certain types of information available in a remotely accessible manner was first introduced (effective January 1, 2000) as part of Act No. 106/1999 Coll. on free access to information, as last amended. In the given context, this specifically involves that category of information, which is "required to be made publicly available" (for comparison, see Section 5 of the Information Act). This type of information must be made publicly accessible by each entity that is required to make such information available at their offices or branch offices, in a location that is freely accessible to any person. This information must also be made publicly available in a remotely accessible manner (for comparison, see Section 5, Subsection 4 of the Information Act). With respect to information, which must be made publicly available, we should specifically point to Section 5, Subsection 3 of the Information Act, under which the party that is required to make the given information publicly available is also required to provide the make the same information accessible in a remotely accessible manner upon request. This has to be done within 15 days after the information was first made publicly available (if the information was originally released in a paper format, providing an accompanying text summarizing the contents of the original document is sufficient for remote access).

The posting of information other than the information about the activities of the given municipality, which must be made publicly available under the law (such as the minutes of municipal council meetings) in a remotely accessible manner (i.e. on the internet), is considered to be a positive, voluntary initiative, which is consistent with the philosophy that public administrative bodies should be providing a service to the public. In this specific case, it is worth noting that even if such non-mandatory posting of information is being done using a freely accessible medium (e.g. the internet), the given municipality must still comply with the requirements for the protection of data that is to be treated as confidential under special legislation (for comparison, see Section 5, Subsection 7 of the Information Act).

4. Making Information Available at the City Hall

The earlier parts of this documents have discussed the methods that are used by a municipality to actively keep local residents informed about its activities (to a large extent, these methods have been those that were anticipated under the law). In the next section of this document, we will be discussing the "passive" distribution of information involving situations in which the given documents must either be always accessible for viewing at the local city hall by the group of individuals specified under the law; or, the given information must be provided upon request, by an external entity from outside of the given municipality (see Part 5).

Under Section 16, Subsection 2(e) of the Act on Municipalities, any local resident, aged 18 or above, *has the right to be given access to and take notes from the municipal budget and the financial statements of the given municipality for the previous calendar year, records showing the resolutions passed during and minutes taken at municipal council meetings and the resolutions passed by the municipal board and its committees.* Under Section 16, Subsection 3 and under Section 17 of the Act on Municipalities, *any natural person, aged 18 or above, who owns real estate in the given municipality, and any foreign national, aged 18 or above, who is a permanent resident of the given municipality, may enjoy the same rights (*in the latter case, this right applies *if so established in an international treaty by which the Czech Republic is bound and which has been put into effect).*

Section 52(a) of the Act on Municipalities states that *residents of municipalities associated under a single collection of towns and municipalities, aged 18 or above, have the right to attend meetings of the association's council and to have access to the minutes taken during such meetings.*

With respect to minutes taken during municipal council meetings, the Act on Municipalities dictates (Section 95, Subsection 2) that the *minutes, must be drawn up within 10 days after the meeting and filed and made available for viewing at the city hall.* Since a question arose in the subsequent practical implementation of this legislation in terms of who exactly should be allowed to have access to such minutes of municipal council meetings, we would hereby like to reference a ruling of the Supreme Administrative Court, dated June 27, 2007 (ref. no.: 6 As 79/2006-58), which specifically addresses this issue and which limits the

access to such minutes to the parties that are listed in the law (specifically, this includes the residents of the given municipality – see Section 16, Subsection 2(e) of the Act on Municipalities).

And finally, Section 101, Subsection 3 of the Act on Municipalities dictates that *the minutes from the municipal board meetings must be filed at the city hall and made accessible for viewing by the members of the municipal council.*

In practical terms, the requirement to make certain documents, which are called out under the law, available to certain parties basically means that the specified parties have the legal right to access and view the respective document in an uncensored version (i.e. without any redactions taken – for example, to protect personal data); and, along with being allowed to take notes from the documents, these parties are also allowed to request copies of these documents. To protect oneself from any unauthorized use of any provided information (i.e. the use of such information in a manner that is in violation of the law), one might seek recourse before a court through filing a motion

5. Request for Information in Accordance with the Information Act

Today, anyone can approach any municipality, governmental body, a local self-governing entity or other public authority (i.e. the obligated parties – for comparison, see Section 2, Subsection 1 of the Information Act) with a request for information; and, the given entity is required (under the above act) to provide the requested information.

5. 1. Proceeding in Accordance with the Information Act

The Information Act is a special type of law, which comprehensively deals with the procedures to be used in processing requests for information. The following section of the document will only discuss the key steps in the process dealt with in the Information Act.

In order to allow for a request for information ("request") that has been filed to be processed, using the protocol prescribed under the Information Act, the request must meet certain legally prescribed criteria. Specifically, it must be clear from the request, to which obligated entity it is being directed; and, it must state that the party requesting the information is doing so on the basis of the Information Act (for comparison, see Section 14 of the Information Act).

If the given request cannot be processed in accordance with the Information Act (and specifically its Section 14(a) or Section 15, discussing the providing of information with a licensing or sublicensing contract and/or a decision to reject the request for information) due to a lack of sufficient information about the party requesting the information, the given obligated entity should ask the party requesting the information – within 7 days after the request has been filed – to provide the missing data. If the request lacks the required level of specificity, it can't be understood or if it is unclear what exactly the party that has filed the

request is asking for, the entity providing the information may ask the party requesting the information – within 7 days after the request was filed – to provide additional data or additional clarification on the content of the request. If the information being requested doesn't fall within the jurisdiction of the given obligated entity, the given entity could put the request on hold and notify the party having filed the request that this was done, within 7 days of the filing of the request.

Unless the given obligated entity issues a decision rejecting the given request for information (in accordance with Section 15 of the Information Act), the entity will provide the information to the requesting party within 15 days after the given request has been filed or refiled. This timeframe can be extended by up to 10 days in situations that are anticipated under the law (for comparison, see Section 14, Subsection 7 of the Information Act).

It is also possible to ask the party requesting the given information to pay the costs related to the supplying of the information and to do so before the information is provided (for comparison, see Section 17 of the Information Act).

Upon request, the given obligated entity is required to make the given information publicly available in a remotely accessible manner, within 15 days after the information was originally provided (for comparison, see Section 5, Subsection 3 of the Information Act).

Should the party requesting the information not be satisfied with the way in which their request was handled, they have a right to file a complaint (per Section 16(a) of the Information Act) or to file an appeal (per Section 16 of the Information Act). In such a case, the regional authority becomes the entity with jurisdiction over the processing of such complaints or appeals filed against a municipality in its position as an obligated entity (for comparison, see Section 178, Subsection 1 of the Code of Administrative Procedure). Should the party requesting the information still be dissatisfied with the way in which their request was handled, they can seek recourse by filing an administrative complaint with a court.

5. 2. Statutory Protection of Certain Types of Confidential Information

When making certain types of information publicly available to a broad range of parties, it is necessary to respect certain legal restrictions on the release of certain types of information. The legislation covering these restrictions limits access to certain types of information – mostly due to the need to protect the rights of certain third parties. For example, this included Act No. 101/2000 Coll. (the protection of personal data), the Civil Code (the right to privacy), the Commercial Code (the protection of confidential business information) and the Copyright Act (copyright protection).

Protection of Personal Data and Right to Privacy

Since in practice the refusal to provide information is most frequently related to the protection of personal data, the following section will discuss this topic in more detail. Under Article 10 of the Charter of Fundamental Rights and Freedoms, everyone has the right to demand that their human dignity, personal honor and good reputation be respected and that

their name be protected (Paragraph 1), everyone has the right to be protected from any unauthorized intrusion into their private and family life (Paragraph 2) and everyone has the right to be protected from the unauthorized gathering, public disclosure or unauthorized use of their personal data (Paragraph 3).

The legislative treatment of the constitutionally guaranteed protection of one's personal data is part of Act No. 101/2000 Coll. on the protection of personal data, as last amended (hereinafter as "**Act No. 101/2000 Coll.**"); and, the right to privacy is covered under Sections 11 through 16 of Act No. 40/1964 Coll., the Civil Code, as last amended (hereinafter as "**Civil Code**").

This is where it should be pointed out that the Ministry of the Interior is not the body responsible for overseeing and enforcing the implementation of Act No. 101/2000 Coll. The body responsible for this task is (in accordance with the act) the "The Office for Personal Data Protection" ("**UOOU**"). This government office publishes its opinions (positions) on various issues that might arise with respect to the implementation of the above act on its website (www.uoou.cz). In the context of this document, the following two such positions of the UOOU should be brought up: Position No. 1/2007 ("Position on the Applicability of the Right to the Protection of Personal Data while Providing Information on Activities Carried Out by Entities that Are Part of the System of Public Administration") and, perhaps more significantly, Position No. 2/2004 ("Providing Access to and the Publication of Personal Data from the Meetings of Municipal and Regional Councils and Boards").

With respect to the rights to privacy that are guaranteed to an individual under the Civil Code, the law says that a person who might feel as if their rights have been violated can seek recourse through the court system.

With respect to the issue of protecting personal data, we should point out (in general terms) that it is necessary to differentiate between the posting of documents on an official public bulletin board and its web-based version in a situation in which the disclosure of information is required under the law (the law requires public entities to make certain types of information available on a public bulletin board). In this case, entire documents are being posted (i.e. including any personal data contained in such documents; or, in other words, this is a situation in which personal data is being disclosed in a lawful manner). The other type of situation is one in which there is a "voluntary" posting of documents on an official public bulletin board and/or its web-based version, in which case the entity posting the document must comply with the legislation governing the protection of personal data (for example, by blackening out (or redacting) the given parts of the document).

Also, whenever information is being disclosed under the Information Act, it is necessary to ensure compliance with the legislation related to the protection of personal data (per Section 8(a) of the Information Act). Even if information is being made publicly available on a voluntary basis (for comparison, see Section 5, Subsection 7 of the Information Act), it is necessary to comply with any legal requirements related to the protection of data contained in the Information Act.

This is where we would like to bring back up a ruling issued by the Supreme Administrative Court (ref. no.: 6 As 40/2004 – 62; published under no: 711/2005), based on which, the right to be given access to more detailed information (i.e. including information, which is protected under the law) is tied to the status of the party requesting such information (e.g., the request will be treated differently if the party requesting the information is a resident of the given municipality or a member of the local municipal council). Based on the opinion expressed in the above-referenced case law, which was introduced by the Supreme Administrative Court, the residents of the given municipality have the right (once they have verified their identity) to be given access to certain internal documents maintained by the municipality (Section 16, Subsection 2(e) of the Act on Municipalities); and, the local residents have the right to be given access to these documents, not just if they are being posted on the official public bulletin board or a web-based version thereof; but, they can also be provided direct access to the given documents in files maintained by the given municipality; wherein, in such a situation, the personal data of the local residents is not blackened out (or redacted), if such information is being directed accessed by a resident of the given municipality. Also, local residents may request a copy of resolutions passed at council meetings (i.e. they can obtain a copy of the entire document versus just being able to take their own notes).

Based on the above-referenced ruling of the Supreme Administrative Court, it would therefore mean that, if a party, who is authorized to do so under special legislation (e.g. a resident of the given municipality, who has the right to access certain information under the provisions of the Act on Municipalities) requests access to certain documents (in accordance with the provisions of the Information Act) and requests that the respective documents be shown to them in their "original" state, the information contained in these documents is also to be shown to the requesting party in their original state (no redactions).

Frequently asked questions:

1) What documents does a municipality have to make publicly available?

Under the law, municipalities are required to make certain types of information publicly available – i.e. accessible to anyone – using specific methods of information distribution (normally, such information should be made available in a "remotely accessible manner", which basically means it should be posted on the internet).

- The disclosure of information that must be made publically available under the law (e.g. under the Information Act and under the Code of Administrative Procedure (specifically, its Section 26, Subsection 1), administrative bodies, which includes municipal authorities, are required to make publicly available the contents of their official public bulletin boards).
- The disclosure of other information, besides the information that must be made publicly available under the law (i.e. the voluntary disclosure of additional information) is within the discretion of the given municipal authority. However, the type of information being disclosed in this manner and the manner in which it

is distributed by the municipality must conform to Section 4, Subsection 2 and Section 5, Subsection 7 of the Information Act (i.e. the information must be provided in all formats and languages in which it was originally produced – save for the exceptions specifically called out in the Information Act.

2) Is it possible for a single municipality to have multiple notice boards? And, if so, how can one tell which notice board is the official public bulletin board?

The law doesn't address the issue of how many notice boards a municipality can maintain. It is therefore up to the given municipality as to how many notice boards it wants to set up and their locations (normally, this would be in locations that are customary to the given locale). If a municipality decides to set up multiple notice boards, it can then post information about its activities (i.e. the contents of its official public bulletin board) on all of these notice boards. One rule that should however apply is that the notice board, which the municipal authorities decide to use as their official public bulletin board, should be marked as the "City of XYZ Official Public Bulletin Board" in order to prevent confusion as to which of the multiple notice boards is its official bulletin board.

3) Can the regional authority or the city hall have a really large number of notice boards at the same time (for example, 7)?

In accordance with Section 26, Subsection 1, sentence two of the Code of Administrative Procedure, *a single official public bulletin board is set up for local self-governing entities.* This legal provision does not however imply that the respective regional authority or city hall has to have just a single large glass display case, where they will be posting public announcements. Such an interpretation of the above legislation would conflict with the purpose and the reasons behind the requirement to have an official public bulletin board maintained. This is because, considering the large number of documents that a local self-governing entity is required to post on a public bulletin board, it is logical and fully in accordance with the law, for multiple display cases (physical boards) to be used – whereby, all of these boards then logically and collectively make up a single official public bulletin board. Another common practice, which is also in compliance with the law, is a system in which the individual offices that are part of the given municipal or regional authority take part of the official public bulletin board; and, they use it for information related to that particular office and have it set up in front of their building. In such situations, each individual board (i.e. each part of the official public bulletin board) should then contain information about the location of the other parts of the official public bulletin board (and possibly information on the types of information posted on these boards).

4) How should a municipality post a specific document on its official public bulletin board? Is a municipality required to scan the document (and post it on the web-based version of its bulletin board); or, does the municipal authority, which has issued the given document (such as an official decision, a notice, etc.) provide an electronic version of the document along with the paper version?

Generally, the requirement to send documents (such as official decisions, etc.) in an electronic form must be so called out under the law. The provisions of Section 25, Subsection 3 of the Code of Administrative Procedure states that *if the given situation involves proceedings in which certain information is being posted in the form of a public notice in the administrative jurisdictions of multiple municipalities, the administrative body delivering the respective document must send it – no later than by the date on which it is being posted – to all of the involved municipalities, which are then required to immediately post the document on their official public bulletin boards, and to keep it there for at least 15 days.* From the above-quoted legal provisions, it can be assumed that the law only dictates the requirement to have the given document sent out; but, it doesn't specify the form in which the document must be distributed. On the other hand, the quoted provisions imply that the given municipalities are required to immediately post the document on their official public bulletin boards. The given municipality should therefore produce an electronic version of the given document once it receives a physical identical copy of the document (by scanning it) in order to be able to make the document available online (i.e. in a remotely accessible manner). The use of an identical copy and a scanned copy of the document is also supported by the fact that the given document comes in its original version (i.e. it contains an original signature and/or stamp).

At this point, we should also like to point out Act No. 300/2008 Coll. on electronic communication and authorized document conversion (the eGovernment Act), which came into effect on July 1, 2009. Among other things, the new act anticipates public authorities communicating with one another using the newly introduced "data box" system (which is fully electronic) and the issue of sending official documents just in a paper format should soon become obsolete.

5) Does the party posting a document on the official public bulletin board have to indicate on the document that it has also been posted on the web-based version of the bulletin board?

This requirement is not directly called out in the law. In order to make sure the public is kept properly informed, the following of this practice is recommended. Along the same lines, it is recommended that a separate directory of documents, which have been posted on the official public bulletin board be maintained (this should include documents posted on the web-based version of the bulletin board).

6) What type of information must be made publicly available and what type of disclosure method needs to be used after a municipal council meeting has been held (i.e. does the information have to be published on the physical bulletin board and the web-based version of the bulletin board or, does it only have to be made available for viewing)? This would particularly apply to the minutes of the meeting and the record of the resolutions voted on at the meeting.

Generally, when it comes to information related to resolutions voted on at municipal council meetings, the law does not explicitly set out any rules dealing with the disclosure of this information. This however is closely related to the requirement that any resolutions voted on at such a meeting becomes an integral part of the minutes from the meeting and, with respect to the minutes, the Act on Municipalities requires such minutes be made available at the city hall for viewing (for comparison, see Section 95, Subsection 2 of the Act on Municipalities). Under current legislation, there is no legal requirement to post the minutes on the official public bulletin board or on a web-based version of the board. However, as part of good administrative practices and the effort to maintain our public administration in as transparent a way as possible, it is recommended that these documents be posted for viewing by the public (after they are treated as called for in Section 5, Subsection 7 of the Information Act).

Certain documents, which have to be posted on the official public bulletin board maintained by the municipal authority under the Act on Municipalities, are in their own separate category. This category specifically includes municipal ordinances (Section 12 of the Act on Municipalities) and the municipality's plans to trade in, sell or donate real estate owned by the city (Section 39 of the Act on Municipalities). In such cases, the Act on Municipalities associates the posting of the given documents on the official public bulletin board of the given municipality as one of the conditions for the legal enforceability of the given legal act (e.g. its validity). In this context, the term "official public bulletin board" refers to the physical version of the board, which is normally located in the vicinity of the local city hall.

The Code of Administrative Procedure also requires (under its Section 26, Subsection 1) that the contents of the official public bulletin board be made available in a remotely accessible manner. This means that, under this legislation, the documents, which are being posted by the municipal authorities on their official bulletin board, must also be made available in a remotely accessible manner (which today usually means by posting on the internet). The law however does not state that a failure to comply with this requirement would result in a voiding or lack of validity of the given legal act (e.g. a public ordinance or the municipality's plan to dispose of certain real assets).

7) What type of data is a municipality required to post on the web-based version of its bulletin board in order to prevent the given legal act from being ruled invalid?

Under Section 26 of the Code of Administrative Procedure, a municipality is required to post documents on both versions of its official public bulletin board (i.e. the physical version and the web-based version). A failure to do so constitutes a violation of the Code of Administrative Procedure.

The given legal act is subject to being voided if the document is only posted on the physical version of the bulletin board and not posted on the web-based version for the following types of documents:

- Correspondence delivered in the form of a public notice, concerning a matter, which is being handled by the municipality, in accordance with the provisions of the Code of Administrative Procedure (Section 25, Subsection 2).
- Documents that have been explicitly made subject to this requirement under special legislation (for example, the Act on Municipalities does not contain any such requirements).

8) What should be done about provisions in the procedural rules of a municipal council, under which the municipal authorities are required to make publicly available minutes taken from and resolutions voted on during municipal council meetings by posting these on the given municipality's website (or its public bulletin board), without giving any consideration to the confidential nature of such information as personal data?

A decision to include the requirement to make publicly available minutes from and resolutions voted on during municipal council meetings by posting this information on the website of the given municipality is within the sole discretion of each municipality. However, such a disclosure of data would still have to conform to legislation restricting the public disclosure of such data (see Section 5, Subsection 7 of the Information Act). For instance, Act No. 101/2000 Coll. requires the redaction of personal data prior to its posting on the internet (i.e. the data must be stricken out). A failure to do so would give the part whose personal data was disclosed in such a manner the ability to seek recourse before a court. Such a disclosure might also become subject to a fine imposed by the Office for Personal Data Protection.

9) Do the procedural rules of a municipal council have to be posted on the official public bulletin board and, concurrently (or subsequently), also on the website of the given municipality?

The Act on Municipalities does not require a municipal council to make publicly available its procedural rules (either on its public bulletin board or the internet). However, the Public Administration Supervision Department of the Ministry of the Interior believes these procedural rules should qualify as information, which is subject to mandatory disclosure under the Information Act. This is because it can basically be treated as a 'main document' (under the definition of Section 5, Subsection 2 of the Information Act) or as a document-directive, under which the given obligated entity acts and makes decisions (under the definition of Section 5, Subsection 1(e) of the Information Act). In terms of the way in which this information should be disclosed, the above legislation states that in the first instance, the information should be made accessible at the offices (and branch offices) of the given obligated entity in a publicly accessible location and it should be possible to obtain copies of the respective documents. In the second instance, the law just mentions the requirement to make the information available at the offices of the given obligated entity and the requirement to include the procedural rules in the 'list of main documents'. The Information Act also

requires that this type of document be made publicly available in a remotely accessible manner – which usually means having it posted on the internet.

10) Is the posting of minutes from municipal board meetings on the internet and/or on the public bulletin board of the given municipality legal under the Act on Municipalities?

The posting of minutes from municipal board meetings on the internet is certainly not in violation of the Act on Municipalities. On the contrary, the disclosure of such information should be looked upon as a positive one, allowing the local residents to keep updated on the issues being discussed by the board. It is however necessary to make sure that, when being posted, the minutes are reviewed to bring any disclosures into conformity with legislation, which requires that certain data be treated as confidential (for comparison, see Section 5, Subsection 7 of the Information Act). This legislation to be considered includes Act No. 101/2000 Coll. and the Civil Code. The same requirements must be complied with when posting minutes from a board meeting on the physical version official public bulletin board.

The fact that board meetings are not open to the public only applies to the meeting itself and not to the disclosure of information about the activities of the municipal board. In fact, the Information Act explicitly allows (under Section 5, Subsection 7) the given obligated entity to make publicly available any type of information –except for specific types of information called out in the act. In relation to the above, we would like to make a reference to the ruling of the Supreme Administrative Court (ref. no: j. 6 As 40/2004 – 62; published under 711/2005) in which *neither the fact that the meetings of a municipal board are not open to the public nor the fact that members of the municipal council have the right to view the minutes from municipal board meetings (per Section 101, Subsections 1 and 3 of Act No. 128/2000 Coll. on municipalities) do, on their own, restrict the right to be given access to information pertaining to the matters contained in such minutes (see Article 17, Paragraph 1 of the Charter of Fundamental Rights and Freedoms).*

11) In accordance with Section 95 of the Act on Municipalities, a meeting of a municipal board must be documented through minutes, which must subsequently be filed at the city hall and made available upon request. What are the limitations on the inclusion of sensitive data related to private individuals or legal entities in these minutes, when it comes to the review and approval of matters such as leases and transfers of real estate, donations, subsidies, etc., in terms of compliance with the legislation on the protection of personal data?

Such personal data must be included in the minutes from a meeting to the extent required in order to allow the parties who will subsequently be reading such minutes to learn about the decisions that have been reached at the given meeting, in relation to the subject matter, with a sufficient degree of specificity. This means that, for example, when writing about contracts signed by a private individual, it is necessary to identify the given individual in a manner allowing the reader to ascertain the person's identity (this usually includes a first and last name, date of birth and the person's address).

Similar identification requirements would apply to private individuals operating as a sole proprietorship and to legal entities (i.e. normally, the party is identified with their business name, business address and business identification number). In other words, one has to make sure the given party won't be confused with someone else. When such minutes are being subsequently accessed by parties authorized to view such documents (see Section 16, Subsection 2(e) and Section 101, Subsection 3 of the Act on Municipalities), the law assumes the party viewing the document will be shown the full (original) version of the document. If the minutes were to be posted publicly (e.g. on a public bulletin board or on the internet), certain types of sensitive information would have to be redacted (i.e. blackened out).

This means that when a certain party is viewing minutes from a municipal board meeting, the party is being given access to data contained in such a document in a manner that is in conformity with the requirements called out in Act No. 101/2000 Coll. However, should a party authorized to view the full (unedited) version of municipal board meeting minutes subsequently make the given data or the notes, which they have taken when looking at the minutes, available to other parties in a manner that violates the law, the individual or entity to which the given information relates would then have (under the Civil Code) the right to seek recourse by filing a motion to protect their privacy with a court. Also, the Office for Personal Data Protection might impose a fine for such a violation.

12) Is a municipality required, under the Information Act, to provide a complete set of records on the results of audits conducted by the committees of the municipal board, in relation to the self-governing practices used by the given municipality?

The information included in the reports on the results of audits of the self-governing practices in the given municipality are certainly a part of the information disclosure duties, which have been established under the Information Act. This means, a municipality is required to make such information available (e.g. upon a person requesting a copy of such records). Due to the fact that these audit records are primarily intended for use by the municipal board, they may be provided for viewing after having been put on the agenda of a municipal council meeting. The given obligated entity (i.e. the given municipality) may remove certain types of information from the records prior to their disclosure (specifically, this would apply to information, which is exempt from disclosure due to one of the reasons specified under Section 7 through 11 of the Information Act).

13) Do members of the media (reporters) have any special status in terms of their ability to obtain information from municipal authorities?

As far as providing access to information is concerned, Czech law does not give any privileges or special status to members of the media (reporters) [after all, the term 'reporter' is not even included as one of the parties whose rights and obligations are discussed under Act No. 46/2000 Coll. on the rights and obligations associated with the publication of printed periodicals and changes to certain acts, as last amended (the Press Act)]. The only issue that the Press Act addresses (under its Section 16) is the specific conditions for the protection of

information sources and content. Although it might be true that some institutions give members of the media preferential treatment, there is no law that would dictate that anyone is obligated to do so. This however doesn't mean that a reporter cannot (just like any other person) take advantage of the right to be given access to information, which is guaranteed under Article 17 of the Charter of Fundamental Rights and Freedoms and which applies under the Information Act. Under the Information Act, one might, among other things, request access to minutes from and resolutions voted on at municipal council and board meetings and, as the obligated entity in such a situation, the given municipality would be required to provide this information (while, at the same time, the municipality is required to make sure, when disclosing such materials, that any information, which is protected from disclosure under the same act, is kept confidential).

How can citizens participate in their local government's affairs (i.e. what rights does a resident of a municipality have)?

The legislative treatment of the status assigned to the local resident of a municipality is covered under the general provisions of the Act on Municipalities (part two, chapter one). The resident of a municipality is one of the basic rudiments, which go to define a municipality as a local, self-governing community, along with a delineation of the municipality's territory, municipal property and rights of self-government. Local residents therefore represent the so-called human element of the given local self-governing body. Local residents have extensive powers, which are designed to allow them to participate in their local government's affairs. At the level of the collective rights of a territorial corporate entity, these powers are guaranteed under Article 100, Paragraph 1 of the Czech Constitution – i.e. *self-governing territorial entities are comprised of local communities of citizens that inhabit a particular geographic area, who have the right to self-government. At the level of the rights, which the given resident* has as an individual, these powers are guaranteed to them under Article 21, Paragraph 1 of the Charter of Fundamental Rights and Freedoms – i.e. *citizens have the right to participate in the administration of public affairs – either directly or through a democratic election of representatives.*

The rights of the resident of a municipality (specifically those covered under the provisions of Section 16 of the Act on Municipalities) can be looked upon as a component of the legislative treatment of the constitutional principle established under Article 21, Paragraph 1 of the Charter of Fundamental Rights and Freedoms, which guarantees each citizen the right to be able to participate in the administration of public affairs – either directly or through the election of representatives. In terms of the previously referenced constitutional treatment of these rights, which is part of Section 16 of the Act on Municipalities, these rights should be duly enforced in the day-to-day practices of municipal councils and allowed to be exercised to their extent, without any restrictions. This means that, if the Act on Municipalities leaves the task of defining specific conditions for the ability to exercise these rights (e.g. the right to express one's opinion at municipal council meetings with respect to the matters being discussed – per Section 16, Subsection 2(c) of the Act on Municipalities) up to the provisions

of the procedural rules of the given municipal council, such a legally established delegation of rights cannot be interpreted such that the given municipal council will have the authority to decide whether or not the given rights are to be honored.

The provisions of Section 16 of the Act on Municipalities cover (at a general level) certain rights, which local residents (i.e. the persons who meet the criteria listed under Subsection 1 of the above-referenced provisions) may exercise – with respect to the bodies that are part of their municipal self-governing entity. Natural persons (i.e. private individuals) with the status of a local resident (i.e. citizens residing in the given municipality) are given certain important rights under the Act on Municipalities, which are related to their involvement and participation in the affairs of the municipal self-government entity. This is why it is necessary to clarify, with a high degree of specificity, what the particular criteria are for a person to qualify to have the status of a local resident. Under current legislation, a person must meet both of the following two basic criteria in order to qualify as a local resident: (1) they must be a Czech citizen; and, (2) they must be registered as a permanent resident of the given municipality. However, there is an exception to the requirement to meet both of these criteria (i.e. citizenship and permanent residency); because, under Subsection 3 of the above-referenced provisions of the Act on Municipalities, a natural person, who owns real estate in the given municipality, also qualifies as a local resident. (This, among other things, protects the rights of vacation property owners, whose permanent address is somewhere else, but who might be spending a significant amount of time in the given municipality, from which it might be logically concluded that they would have a personal interest in the handling of the public affairs of the given municipality.) Such a legislative treatment provides additional protection for the ownership rights of the given parties; and, with respect to the actual self-governing practices, this arrangement is more objective with respect to the ability to properly assess and evaluate the needs of local residents and make decisions, which are consistent with these needs.

Additionally, in order to be able to actively participate in the self-governing processes of the given municipality, the law states that the given individual must be 18 years of age or older. Aside from their right to vote for and be elected as a member of the municipal council and cast a vote on a referendum organized by the municipality, all local residents, aged 18 or above, have the right to attend municipal council meetings and express their opinion on the matters being brought before the council, express their opinion on the municipal budget and financial statements prior to their approval, have access to the budget and financial statements for the previous calendar year and to submit their own proposals, comments and suggestions to the municipal authorities. Also, local residents are entitled to request that specific matters, which fall within the competency of the local government, be reviewed by the municipal board or council. If such a request has been signed by local residents representing at least 0.5% of the total population of the given municipality, the matter must be given a hearing at a meeting of one of the above-referenced municipal bodies within a period of 60 days; and, if the matter falls within the competency of the municipal council, it must be given a hearing within a period of 90 days. One special form of participation in municipal affairs is the exercising of the so-called ‘civic petition law’. This right is covered under separate legislation.

Compared to the previous legislation, the latest version has introduced a number of additional rights for the local residents of a municipality. These changes are perhaps most notable with respect to the right of local residents to express their opinions on any matters that are being discussed at municipal council meetings (such an expression of opinion must be carried out in accordance with the municipal council's procedural rules). This is something that was not permitted under the previous legislation. One must also point out that, under its Section 36, Subsection 1, the Act on Municipalities also gives the right to express one's opinion at municipal council meetings to the so-called 'honorable citizens of the local municipality' (this is the only right, which an individual with this type of residency status can exercise, when it comes to the rights of a local resident).

One of the new arrangements introduced under the new legislation is the fact that individuals aged 18 or older, who own real estate in the given municipality (see above), may exercise the same rights as those guaranteed under the law to local residents aged 18 or older (however, an exception is the right to vote for and to be elected as a municipal council member and the right to cast votes in a referendum organized by the local municipality). If there is a question as to whether or not a given individual is the actual owner of the property they are claiming ownership to, the ownership can be verified. Should it be discovered that the person claiming to own the given property is not the actual owner (but, for example, a relative of the owner or a tenant on a rented property), the given party would not be able to exercise the rights that are guaranteed to the actual owner under Section 16, Subsection 3 of the Act on Municipalities, with respect to the person's ability to participate in the self-governing processes of the given municipality. However, in a situation in which an individual has exercised the rights that are guaranteed to local residents under Section 16, Subsection 2(c) through (g), while purportedly the owner of the given property; but, it is later discovered that this individual has exercised such rights, despite the fact that they are not the actual owner, the fact that the person has exercised such rights cannot be retroactively voided from a legal point of view; because the law states that parties, other than those that are explicitly allowed to do so under the law, may express their opinions at municipal council meetings; wherein, it is solely up to the members of the given municipal council as to whether they want to allow such individuals to be heard.

Under Section 17 of the Act on Municipalities, *the rights that are given to local residents under Section 16 of the same act also belong to private individuals, aged 18 or above, who are a foreign national but a permanent resident of the given municipality, if so established in an international treaty by which the Czech Republic is bound and which has been put into effect.* This legislative provision is most related to the Czech Republic's membership in the European Union, where the objective has been to allow the citizens of other EU member states to participate in the self-government activities of the municipality in which they reside. Even so, the Act on Municipalities does not limit these rights, which are guaranteed to foreign nationals, to citizens of other EU member states. The legislation is far more flexible in that it allows these same rights to the citizens of those other countries that have signed the related international treaties.

Under such a legislative framework, selected foreign nationals are given the constitutional right to participate in the administration of local municipal affairs in the

jurisdiction in which they are a permanent resident. Such an involvement can either take place directly or indirectly, in which case, the given individual votes for his or her representative to act on their behalf as a member of the municipal council. The only currently applicable legal exception, with respect to the ability of these qualified foreign nationals to exercise their rights as a local resident, is the fact that they cannot be elected as mayor or deputy mayor of the given municipality (for comparison, see Section 103, Subsection 2 of the Act on Municipalities).

Given the fact that a municipality represents a local, self-governing community of citizens (Section 1 of the above act); and, given the fact that, in accordance with the Czech Constitution, the municipality is a self-governed entity, which is managed and administered by a municipal council, the members of which are elected by local residents, the fact that the local residents have the legal right to actively participate in the local municipal council meetings, through publicly expressing their opinion, cannot be looked upon as a mere formality. This is also why, in a system in which the involvement of local residents in the administrative matters of the given municipality isn't established in a formal manner, the municipal council must at least include, in its procedural rules, a set of procedures, designed to allow local residents (i.e. the public) to always express their individual opinions on the items that are being discussed as part of a given meeting's agenda, before the final voting on such matters takes place (i.e. before a final decision on the given matter is made). Should a situation arise in which the procedural rules of the given municipal council do not give individual residents the opportunity to express their own opinions on the given matter until after the matter has been voted on (i.e. until after a decision on the matter has been made), such an arrangement would have to be considered a misunderstanding of the fundamental constitutional principles related to the concept of local self-government; and, in a way, as an abrogation of the rights of those who voted for the members of the given municipal council as their representatives.

Frequently asked questions:

1) Under what conditions can a local resident of the given municipality exercise their right to express their own opinion on matters that are being discussed at a municipal council meeting in a manner that conforms to the given council's procedural rules (Section 16, Subsection 2(c) of the Act on Municipalities)?

This right is directly established under the law and the text of the legislation dealing with this right, as well as the principles on which this legislation is founded, implies certain minimal requirements, which must be met by the given municipal council and reflected in its procedural rules, in order to prevent a violation or abrogation of such rights.

Local residents of a municipality must be given the opportunity to express their own opinions on matters on topics that are currently up for discussion before a municipal body. What this means is that local residents must be allowed to present their opinions before the given matter has been voted on (i.e. before it is brought to a definitive conclusion). Furthermore, the law requires that residents be allowed to present their opinions at the same

time as the discussion of the item on the council's agenda (as part of a discussion held on the given matter or after the matter has been discussed by council members, but before it is voted on). On the other hand, local residents are required under the law to 'stick-to-the-point' or to 'not-go-off-topic' – i.e. their contribution should be restricted to the respective agenda item currently being discussed. Should a resident decide to steer the discussion onto matters unrelated to the agenda item under discussion (their comments having no factual relation to the given subject of discussion), such an expression of opinion would no longer qualify as an exercise of the rights that are guaranteed to local residents under Section 16, Subsection 2(c); and, in such a situation, it might even be possible to prevent the given person from any further speaking. This right to express a resident's opinion can also be limited to a certain extent (but not precluded) in the given council's procedural rules – for example, by setting out a maximum number of times that an individual can comment on a particular issue or by the setting out a maximum length of time for the presentation of an opinion.

2) Is a local resident legally allowed to express their own opinion regarding the agenda that has been proposed for the municipal council meeting?

Under Section 16, Subsection 2(c) of the Act on Municipalities, a local resident of the given municipality has the right to express their own opinion on any matter, which is being discussed at a council meeting (irrespective of whether the item is on the agenda for the meeting, i.e. an item to be voted on during the meeting, or whether it is 'just-a-piece-of-information' provided to council members). This would include the proposed agenda for the meeting.

3) Can a local resident request that a specific matter be included on the agenda of a municipal council meeting, which is already under way?

A local resident cannot, on their own, submit an official proposal to include a certain matter on the agenda of a council meeting, which is already under way (e.g. by requesting that the existing agenda be amended). Nor is such a right of a local resident implied under the provisions of Section 16, Subsection 2(f) or of Section 16, Subsection 2(c) of the Act on Municipalities. This is because only the parties specified under Section 94, Subsection 1 of the above act have the right to propose additional issues to be included on the agenda of an ongoing municipal council meeting (this is evident from the logic implied by the above-referenced provision, in combination with the following provisions of Section 94, Subsection 2 of the Act on Municipalities). Based on the above-referenced legislation, proposals to include specific items on the agenda of a municipal council meeting may only be made by council members, the municipal board and its committees.

Under its Section 16, Subsection 2(f), the Act on Municipalities states that, if a request to have a certain matter reviewed by the municipal board or the municipal council has been signed by local residents representing at least 0.5% of the given municipality, the matter must then be included on the agenda of a municipal board or council meeting and discussed by the board or council within 60 days, if the item falls within the competency of the local government; or, within 90 days, if the items falls within the competency of the municipal

council. In such situations, the municipal body approached with such a request is obligated to formally review the given matter by including it on the agenda for one of its meetings.

4) Does the right of a local resident to present their own opinion at a municipal council meeting (per Section 16, Subsection 2(c) of the Act on Municipalities) have to be covered in the procedural rules for the given municipal council?

Based on the provisions of Section 16, Subsection 2(c) of the Act on Municipalities, the procedural rules defining the procedures to be used during municipal council meetings should, among other things, further clarify the right of a local resident to express their own opinions at these meetings. Although these procedural rules may contain further details regarding the *exercising* of this right, the actual existence of the right and the ability to exercise it is not in any way conditioned upon its inclusion in the procedural rules of the given municipal council.

Furthermore, the inclusion of any additional conditionality in the council's procedural rules, may only pull together in an appropriate manner the ability to exercise this right; and, these conditions may not eliminate the ability to exercise this right or introduce limitations, which would make it practically impossible to exercise such a right (for example, by limiting the maximum length of a local resident's speaking time to say, 30 seconds). Besides the ability to regulate certain procedural matters (e.g. how does one get the ability to speak, how does one join a discussion, in what order are speakers heard, etc.), it is also possible to limit the amount of time a resident can speak on a particular matter (wherein this time limit must be adequate to allow the given resident to properly exercise their right to speak). The procedural rules may also deal with the ability of the meeting's chairperson to prevent a local resident from further speaking if they are going off-topic or if they've exceeded the maximum allotted time to speak (in such situations, it would likely be possible to prevent a resident from further speaking, even if the ability to do so is not explicitly included in the council's procedural rules. This is because, in such a situation, the given resident could be considered to have gone beyond the limit of their rights; and, preventing them from speaking any further could therefore be looked upon as a measure that had to be taken in order to allow the meeting to properly continue.

Therefore, even if the procedural rules do not include any specific provisions regarding the exercising of the above-referenced right, such rules cannot be considered in violation of the law because this said right of a local resident is established directly under the law (and it is therefore within the sole discretion of the given municipal council to take advantage of their opportunity to further regulate this right). If the procedural rules contain no provisions that would further regulate the right of a local resident to express their opinion, the given municipal council would then be legally required to allow a local resident to express their own opinion on the discussion of any item on the meeting's agenda, before the given matter is voted on and a final decision is made (if not specifically called out in the council's procedural rules, the time limit restricting the length of time the resident can speak on a given topic could perhaps be set by the council on an *ad hoc* basis – i.e. in direct response to a

specific request of a local resident attending the meeting to express their opinion on a certain matter).

5) What options do local residents have in terms of their ability to be represented by legal counsel in exercising their right under Section 16, Subsection 2(c) of the Act on Municipalities?

Since the law doesn't explicitly prohibit this option, such representation can be assumed to be permissible under the law (however, we recommend the authorization issued to the person representing the given resident possess an appropriate degree of specificity). The option to appoint another person as one's representative when exercising public rights is not a broadly applicable practice; and, it is therefore necessary to verify, in each individual case, whether the law permits the exercising of the given right through a proxy. The inability to use a proxy in a particular situation might either be directly implied under the given legislative provisions (e.g. in the case of the rights guaranteed under the law to the local residents of a municipality, the rights called out under Section 16, Subsection 2(a) and (b) of the Act on Municipalities cannot be exercised through a proxy – which is comparable to Section 33, Subsection 1 of Act No. 491/2001 Coll. and Section 36, Subsection 1 of Act No. 22/2004 Coll.); or, it could be implied by the nature of the given right itself (e.g. certain public rights can only be exercised by specific private individuals).

6) Under what conditions can a local resident ask the municipal authorities to provide copies of resolutions voted on and minutes taken during municipal council meetings, resolutions voted on by the municipal board and the committees of the municipal board or council and, possibly even, the minutes from municipal board meetings (per Section 16, Subsection 2(e) of the Act on Municipalities)?

Under Section 16, Subsection 2(e) of the Act on Municipalities, local residents *have the right to be given access to and take notes from the municipal budget and the financial statements of the given municipality for the previous calendar year, records showing the resolutions passed during and minutes taken at municipal council meetings and the resolutions passed by the municipal board and the committees of the municipal board and council.* However, under the above-referenced provisions of the Act on Municipalities, the law does not explicitly establish the right to ask for *copies* of the documents maintained by the given municipality.

On the other hand, the providing of information on the activities carried out by a municipality is also subject to the provisions of the Information Act. In the context of the Information Act, the provisions of Section 16, Subsection 2(e) of the Act on Municipalities represent a special ("privileged") type of access to certain types of information, wherein the access is being provided to certain parties and through the use of certain particular methods.

In relation to the above, we would like to make a reference to the ruling of the Supreme Administrative Court (ref. no: j. 6 As 40/2004 – 62; published under 711/2005) in

which *neither the fact that the meetings of a municipal board are not open to the public nor the fact that members of the municipal council have the right to view the minutes from municipal board meetings (per Section 101, Subsections 1 and 3 of Act No. 128/2000 Coll. on municipalities) do, on their own, restrict the right to be given access to information pertaining to the matters contained in such minutes (see Article 17, Paragraph 1 of the Charter of Fundamental Rights and Freedoms). The obligated entity, who is providing information contained in minutes from a municipal board meeting to a party other than a member of the municipal council, must make sure that the rights and freedoms that are guaranteed to other parties under the law are protected, as anticipated under Section 12 of Act No. 106/1999 Coll. on free access to information. These provisions do however not apply if a local resident is requesting access to information contained in resolutions voted on by the municipal board, to which the person must be provided direct access in the form of viewing the given records and taking their own notes (in accordance with Section 16, Subsection 2(e) of Act No. 128/2000 Coll. on municipalities).*

This means that, if a local resident asks for copies of the documents, which are called out under Section 16, Subsection 2(e) of the Act on Municipalities, to which they have the right (as a resident of the given municipality) of being given access through the right to view these records and to take their own notes from these records, such a request must be treated as a request submitted under the Information Act. If copies of such documents are provided to the party requesting such copies, the restrictions of the right to be given access to information, applicable under Section 12 of the Information Act, will not apply. This is because under the above quoted provisions of the Act on Municipalities, a local resident has the right to be given access to such privileged information and, as such, the law assumes that the residents of the given municipality will be able to obtain such information. Because of this, it is unnecessary to, for example, blacken-out (redact) personal data contained in the records of resolutions that are voted on by the municipal board. The residents of the given municipality (and even parties such as the members of the local municipal council) can also obtain copies of these records using their own equipment (e.g. a digital camera). In terms of minutes taken during municipal board meetings, these minutes must be provided to a local resident after it has been assured that the rights and freedoms of other parties have been properly protected, as anticipated under Section 12 Information Act (because the law does not directly establish the right of a local resident to be given access to the minutes of municipal board meetings).

7) How can a local resident exercise their right to request that certain matters, which fall within the competency of the local government, be reviewed by the municipal board or council (per Section 16, Subsection 2(f) of the Act on Municipalities)?

Under Section 16, Subsection 2(f) of the Act on Municipalities, local residents, who are 18 years of age or older, *have the right to request that specific matters, which fall within the competency of the local government, be reviewed by the municipal board or council. If such a request has been signed by local residents representing at least 0.5% of the total population of the given municipality, the matter must be given a hearing at a meeting of one of the above-referenced municipal bodies within a period of 60 days; and, if the matter falls*

within the competency of the municipal council, it must be given a hearing within a period of 90 days. The law does however not explicitly call out the manner in which this right is to be exercised, nor does it establish the obligations of the given municipal authorities, that would apply in relation to this right – especially when it comes to the procedures used for the processing of such a request.

The above-referenced legal provisions differentiate between two possible ways for requesting that certain matters, which fall within the competency of the local government, be reviewed by the municipal board or council. These two different processes correspond to the differences between the obligations of the municipal council and the obligations of the municipal board, with respect to the handling of such a request. The law anticipates a *simple request*, which can be submitted by any local resident (or by multiple residents), and it also anticipates something that is legally referred to as a *qualified request*, which has to be submitted collectively by local residents, who represent at least 0.5% of the given municipality's total population.

In the first case [simple request], the law does not specify any particular format for the exercising of the right to submit such a request – which means that the request can either be submitted in writing or verbally (wherein the verbal option can basically only be used during municipal council meetings and only if the agenda for the given meeting has a special part where local residents are given an opportunity to bring up their own requests). In the latter case – i.e. in the case of the so-called qualified request – it is necessary to adhere to the legally prescribed form for submitting such a request. Here, the law requires that such a request be submitted in writing (this is implied under the part of the law that states that "…if such a request has been signed by…").

At the same time, the request should make it possible to verify that the applicable legal criteria have been met – i.e. to verify that the persons who signed the request are actually residents of the given municipality (other legislation, such as the provisions of Section 4, Subsection 1 of Act No. 85/1990 Coll. on the right to petition, can also apply in this case). The request should be addressed to the given municipal body – i.e. to the municipal council or board; and, it should clearly state that the parties submitting the request are asking that the given matter be reviewed by the given municipal body (as to the method to be used for the delivery of such a request to the "city", the methods customary in the given location should be followed).

8) What obligations do municipal bodies have in response to a local resident's right to demand that certain matters, which fall within the competency of the local government, be reviewed by the municipal board or council (per Section 16, Subsection 2(f) of the Act on Municipalities)?

The process that is to be used by the municipal bodies to handle such a request depends on the nature of the respective request (i.e. different municipal bodies have different obligations with respect to the right of local residents, as established under Section 16, Subsection 2(f)) of the above act). In the case of both types of request (i.e. a "simple request" or a "qualified request"), the given municipal body (i.e. board or council) should be informed

about the given request at one of its meetings (i.e. the request should be put on the agenda for the given meeting – either as a separate agenda item or as the part of the agenda reserved for requests, comments or suggestions from local residents). Normally, the submitted request should be included on the agenda of the closest upcoming meeting (this should be scheduled within a reasonable timeframe – i.e. as soon as possible after the request has been submitted – wherein the required length of time will vary, dependent on factors such as the amount of time required to gather the source data to be able to address the request).

The difference then lies in the subsequent steps that are to be taken. In the case of a "simple request", it is up to the given municipal body (board or council) to decide whether they will discuss the given matter by putting it on the agenda of an upcoming meeting or not and whether they will give doing something else about the given request in the future. In the case of a "qualified request", the given municipal body is obligated under the law to review the request and to do so within the legally prescribed timeframe. However, it is recommended that even "simple requests" always be reviewed by the given body; and, while a refusal to review the request should remain an option, it is one that should only be used when clearly justified (e.g. an identical request presented by the same resident having already been reviewed in the past; and, the new request doesn't contain any new information; or, the given resident has obviously been trying to exploit the right given to them under Section 16, Subsection 2(f) of the Act on Municipalities (this is implied under the general principle, which states that an exploitation of certain rights or an exercise of certain rights in a manner that violates the law or which is unethical, cannot be regarded as the act of exercising such rights)).

9) What exactly takes place when a certain matter, which falls within the competency of the local government, is reviewed by the municipal board or council (per Section 16, Subsection 2(f) of the Act on Municipalities)?

The Act on Municipalities does not explicitly call out what the term 'review' means when used in the given context. In all situations, the given matter should be included on the agenda of an upcoming meeting (either as a separate agenda item or as the part of the agenda reserved for requests, comments or suggestions from local residents). In the case of a municipal council meeting, the discussion of the given matter should be accompanied by an open discussion, where all attending residents would be given an opportunity to express their opinion on the given matter (in accordance with Section 16, Subsection 2(c) of the Act on Municipalities). Whether the action on the given request is treated as a resolution of the municipal council or board can depend on the nature of the request and the customary practices of the given municipality (if no decision is required in the given situation, it is a common practice to pass a resolution on the fact that the council "has acknowledged the presented information").

The law doesn't specify whether the given resident is to be informed about the results of the review of the given request (or even about whether or the request is to be reviewed or not). However, in accord with good administrative practices, it is recommended that such information be provided to the given party (e.g. in the form of a letter from the mayor or by

posting the information on the official public bulletin board of the given municipality, if the request was submitted as a "qualified request").

Notwithstanding and as stated above, the law doesn't explicitly establish the obligation to provide such information to the party submitting the given request (the requirements established under the law are satisfied once a decision has been made on such a request to review a certain matter or by the act of having the given request reviewed by the given municipal body); and, a failure to provide such information cannot be treated as a violation of the law (after all, minutes from and resolutions voted on during municipal council meetings and resolutions voted on by the municipal board are made available to all local residents, in accordance with Section 16, Subsection 2(e) of the Act on Municipalities, which means the given person always has a way to find out how their request had been handled).

10) What exactly does it mean when the law says that a municipal body is obligated to "process" a proposal, suggestion or recommendation that is submitted by a local resident, in accordance with Section 16, Subsection 2(g) of the Act on Municipalities? And, how can one prevent a failure on the part of the municipality to fulfill this obligation?

In accordance with Section 16, Subsection 2(g) of the Act on Municipalities, local residents, aged 18 or above, *have the right to submit their own comments and suggestions to the municipal bodies, wherein these bodies must process these comments and suggestions as soon as possible and always within 60 days (or within 90 days if the matter falls within the competency of the municipal council).* The law however stops short of further specifying how exactly such a proposal, suggestion or recommendation should be "processed".

Based on the nature of the related right to have such a proposal, suggestion or recommendation "processed", the term 'process' would always have to be interpreted such that the given proposal, suggestion or recommendation is taken into consideration and addressed by the given municipal body (i.e. the given municipal body would have to verify the information contained in the given proposal, suggestion or recommendation; and, based on their findings, they would have to take a certain position with respect to the given matter; and, also possibly they would decide on taking certain appropriate measures or decide on whether any such measures would be necessary).

However, there are certain exceptions to this requirements – for example, in a situation in which an identical recommendation or suggestion had already been submitted in the past by the same person and processed by the given municipal body; and, the newly submitted recommendation or suggestion doesn't contain any new information; or, in a situation in which, by submitting such a suggestion or recommendation, the given resident has been obviously trying to exploit their rights guaranteed under Section 16, Subsection 2(g) of the Act on Municipalities, the above obligation would be void.

Notwithstanding, as part of good administrative practices (i.e. a system where public administration is perceived as a service provided to the public), the "processing" of the given proposal, suggestion or recommendation would have to be accompanied by letting the given

resident know how the given matter has been handled and what conclusions were drawn (wherein, sending out such information within the statutory timeframe is considered to be sufficient when it comes to the meeting of this requirement). If it isn't possible to process the matter within the statutory timeframe or if the investigation of the given matter can't be concluded within that timeframe, the party that submitted the given proposal, suggestion or recommendation must be notified about such a situation – within the statutory timeframe.

Even thought it isn't explicitly called out under the Act on Municipalities (unlike in the case of the rights established under Section 16, Subsection 2(f)), these particular legal provisions also apply only to matters, which fall within the competency of the local government.

11) What is the relationship between the right of a local resident to request that certain matters, which fall within the competency of the local government, be reviewed by the municipal board or council (per Section 16, Subsection 2(f) of the Act on Municipalities) and their right to submit their own proposals, suggestions or recommendations to municipal bodies (per Section 16, Subsection 2(g) of the Act on Municipalities)?

While the rights established under Section 16, Subsection 2(f) of the given act give the municipal council or board the option to decide whether or not the given matter should be looked into (i.e. whether they will *review* the given request or not); that is, with the exception of requests submitted in the form of a "qualified request"; under the rights established under Section 16, Subsection 2(g) of the Act on Municipalities, the respective municipal body is obligated to *process* the given proposal, suggestion or recommendation, which effectively means that the given municipal body is required to look into the matter and take a certain position with respect to that matter.

When looking for differences between these two particular legal rights, it isn't possible to do so based on the text of the law itself (or the contents of the submitted request). Rather, this must be done based on the particular body, which is associated with that particular right under the law. This is because, while the text of Subsection 2(g) of the above act doesn't specifically identify this body, Subsection 2(f), on the other hand, does specifically mention the municipal board and council. In such a case, if a request is addressed to the municipal board or council and if the request falls within the independent authority of these bodies (and if the given matter has to be submitted to such bodies in order to be addressed), the parties must always proceed in accordance with Section 16, Subsection 2(f) of the Act on Municipalities.

On the other hand, if a request (such as a proposal, suggestion or recommendation) involving local-government-related matters is addressed to other municipal authorities (such as the mayor, the city hall, the city police or other municipal bodies), the request must be handled in accordance with Section 16, Subsection 2(g) of the Act on Municipalities (which would then include an obligatory review of the given matter).

The provisions of Section 16, Subsection 2(g) of the Act on Municipalities therefore don't apply to matters addressed to the municipal board or council; in which case, one would always have to proceed in accordance with "special" provisions of Section 16, Subsection 2(f) of the Act on Municipalities. This procedural approach also allows the authorities to appropriately handle situations in which one small difference in the text of the filed request could predetermine how the municipal council or board will proceed; and, it can impact the agenda of a meeting held by these bodies, despite the fact that the actual subject of the request would always remain unchanged – regardless of whether it is presented one way or the other.

In this context, the latter part of the provisions of Section 16, Subsection 2(g) of the Act on Municipalities, which discusses the legal time windows for the processing of a proposal, suggestion or recommendation, which falls within the competency of the municipal council, must be interpreted such that the extended timeframe would apply in those situations in which a request concerning matters, which fall within the competency of the municipal council, is addressed to another body.

12) How can one prevent violations of the rights, which are established under Section 16, Subsection 2(f) and (g) of the Act on Municipalities, by municipal authorities?

The rights of a local resident of the given municipality can be violated merely as a result of the fact that the request to review a certain matter was never submitted to the body competent to handle the matter or the fact that a matter brought up in a "qualified request", which had been submitted to the municipal authorities, was not reviewed within the statutorily established timeframe. In such a situation, the Act on Municipalities offers the option to perform an audit of the given municipality's self-governing practices (in accordance with Section 129(a) of the act). Should the violation of the given rights take place in the form of a resolution passed by the municipal board or council, one might consider the implementation of oversight measures, in accordance with Section 124 of the Act on Municipalities (however, even in such a case, one would have to determine whether the material aspects of the given matter warrant the implementation of such measures – i.e. whether a supervisory intervention by the government is necessary in order to protect the given rights –for comparison, see Article 101, Paragraph 4 of the Czech Constitution). Considering existing case law (so far, the courts have only ruled on the implementation of Section 16, Subsection 2(c) of the Act on Municipalities – see Question No. 13), this is one of the situations, which might qualify as an unlawful intervention or as an unlawful failure to act, which are both practices that can be contested before a court, in accordance with Sections 79 and 82 and the following provisions of Act No. 150/2002 Coll. the Code of Judicial Procedures, as last amended.

13) Is there any recourse for a violation of other rights, which are established under Section 16 of the Act on Municipalities, by municipal authorities?

First of all, we must point out that the rights of local residents, as established under Section 16 of the Act on Municipalities, are tied into a corresponding obligation of the given municipality (or its bodies) to allow their local citizens to exercise the given rights. Should a

municipality prevent its residents from being able to exercise these rights, that, in and of itself, would constitute a violation of the law.

Given the constitutionally guaranteed right to establish self-governing entities and the existence of the principle of minimizing the intervention of the national government into the affairs of local self-governing entities (for comparison, see Article 101, Paragraph 4 of the Czech Constitution), no central governmental body can dictate to municipal authorities, which are part of a locally governed entity, how they should do their work. Notwithstanding, the Ministry of the Interior is a governmental body, which has the right to deal with (as part of their supervisory powers established under Section 129a of the Act on Municipalities) instances of violations of the Act on Municipalities, in relation to the way in which the given municipality is exercising its powers of self-government. With respect to this oversight of the self-governing practices of municipalities, the Ministry of the Interior is authorized under the law to call out the existence of illegal or improper practices and the nature of these practices in a report prepared after a completed audit.

The mayor, or a party authorized by the mayor, would then have the obligation to introduce to the municipal council, as part of its closest upcoming meeting, the results of the audit; and, if it was discovered during the audit that municipal bodies had been engaged in illegal practices, the mayor or mayor's representative would present to the council a proposal for remedial actions and the prevention of any future recurrences of such violations (alternatively, the mayor could brief the council on how such remedial measures have already been put into place). The municipal authorities must then immediately post the information on the given meeting of the municipal council (in relation to the results of the audit and proposed remedial steps), or information on what types of remedial steps have already been taken in response to the given unlawful practices engaged in by the municipal bodies, on the official public bulletin board of the given municipality – keeping it posted there for at least 15 days (in this case, special attention is to be given to the ability to keep the public – in particular the local residents – properly informed about the activities of their elected representatives). The legal rights given to the local residents of a municipality are closely tied in to the principle of keeping municipal council meetings open to the public, which is established under Section 93, Subsection 2 of the Act on Municipalities. Any failure to adhere to this principle would make any resolutions passed at a meeting that is closed to the public subject to being voided or subject to retaliatory actions by supervisory bodies or administrative courts.

Furthermore, one cannot exclude the possibility of potential litigation regarding the applicability of Section 16 of the Act on Municipalities. Here, we would like to take note of several examples of current case law, such as the ruling of the Regional Court in Ústí nad Labem (dated May 3, 2007; ref. no.: j. 15 Ca 196/2006-35; ruling published under no. 1400, in the Collection of Decisions of the Supreme Administrative Court No. 12/2007, page 1,108) [the ruling relates to the establishment of regions as a part of the hierarchy of local governments; published case law: *Through their procedural rules, regions may not limit the rights of the local residents of the given region to express their own opinions on matters that are being discussed by the regional authorities – wherein these rights are guaranteed under Act No. 129/2000 Coll. on regions (Section 12, Subsection 2(b)). The local residents of the given region can therefore express their own opinions in relation to issues that are being*

discussed at regional council meetings.]; or, the ruling of the Regional Court in Ústí nad Labem (dated May 29, 2006; ref. no.: j. 15 Ca 164/2005-41; ruling published under no. 965, in the Collection of Decisions of the Supreme Administrative Court No. 11/2006, page 965) [published case law: *local residents of the given region not only have the right to express their own opinions on matters that are being discussed at regional council meetings as one of the items on the agenda for the given meeting, but they also have the right to express their own opinions on the agenda for the council meeting itself – doing so before the agenda has been approved; this is implied under Section 12, Subsection 2(b) of Act No. 129/2000 Coll. on regions (regional order)]*.

With respect to the rights of the local residents of a municipality, which are established under Section 16 of the Act on Municipalities, one should also bring up the fact that the responsibilities of the elected municipal officials have a political dimension (i.e. if the local residents aren't satisfied with the performance of the current municipal council, it can have an impact on the results of the upcoming local elections).

In a situation in which a single elected municipal official engages in actions, which violate the law, the municipal council could remove that person from their office – provided the council disapproves of the given person's actions. Should the provisions of Act No. 312/2002 Coll. on officials of local self-governing entities and on changes to certain acts (as last amended) be violated, in such a situation, it is possible to proceed in accordance with the applicable parts of the Labor Law.

14) Who has the right to speak at municipal council meetings?

The provisions of the Act on Municipalities imply that parties other than the members of the given municipal council also have the right to speak at council meetings. Under the above act, the parties who are granted this right include *government officials or representatives appointed by them, senators, members of parliament and the representatives of the bodies of the given region* (per Section 93, Subsection 3 of the Act on Municipalities), as well as *local residents of the given municipality, aged 18 or above* (per Section 16, Subsection 2(c) of the Act on Municipalities), *any natural person, aged 18 or above, who owns real estate in the given municipality* (per Section 16, Subsection 3 of the Act on Municipalities) and *any foreign national, aged 18 or above, who is a permanent resident of the given municipality, if so established in an international treaty, by which the Czech Republic is bound, and which has been put into effect* (per Section 17 of the Act on Municipalities). All of the above-mentioned parties are legally entitled (provided the given criteria have been met) to present their own opinions at municipal council meetings (wherein, the parties called out under Sections 16 and 17 of the above act may only do so in relation to the matters being discussed and in accordance with the terms and conditions, which are called out in the procedural rules of the respective municipal council); and, the given municipal council must allow such parties to effectively exercise the above-noted rights. Other parties – besides those mentioned above – of course also have the right to present their own opinions at municipal council meetings (these meetings are open to the public and can be attended by anyone; however, these 'other parties' are not legally entitled to speak at such meetings (i.e.

this right isn't guaranteed to them under the law) and, therefore, if the members of the given municipal council decide not to allow such 'other parties' to present their own opinions on the given matters, the municipal council is not acting in violation of the law by so doing.

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