CHAPTER 3

Czech Republic

Vladimír Ježek
Karel Loucký
Petr Sušický

Table of Contents

1. Overview of the Czech Local Government System 145
  1.1 Community Financing and Local Property 146

2. Characteristics of Local Public Utilities 148
  2.1 Defining the Sector 148
  2.2 Availability of Information on Local Utilities 150
  2.3 Managing Utility Services 151
  2.4 Financing Local Utilities 152
  2.5 Capital Investment Financing 153

3. Regulatory Means of the Sector 155
  3.1 Ownership Rights 155
  3.2 Business Entities in the Utilities Sector 157
  3.3 Rules of Economic Competition 159
  3.4 Methods of Determining User Fees 160
  3.5 Social Aspects of the Conversion of Local Utilities 161

4. Practice of Competition Procedures and Contracts 162

5. Legislation to Protect the Consumer 169

6. Specific Problem Areas 170
  6.1 Relation Between Public and Private Sectors 170
  6.2 Organizational Forms of Public Companies 171
  6.3 Influencing and Control of the Local Services 172
  6.4 Legislative Discrepancies 172
  6.5 Social Impacts of Privatization 172
  6.6 Cooperation Between Small Municipalities/Communities 173
  6.7 Policy development and implementation 173

Appendix: Conditions and Limits Stated by the Act
on Awarding Public Contracts 175

Note 181

1. OVERVIEW OF THE CZECH LOCAL GOVERNMENT SYSTEM

Czechia (the Czech Republic) has been an independent state since its founding on January 1. 1993. The Czech Republic is the legal successor of the territory that was, up until December 12. 1992, part of federated Czechoslovakia. The split of Czechoslovakia had practically no influence on the course of the transformation process which started at the end of 1989 with the fall of the communist government.

The Czech Republic has a population of 10 million, and a relatively high number (about 6,000) of self-governing units or 'communities', each of which is run by a local board of representatives who are elected in local elections. The possibility to significantly reduce the number of communities in order to increase the efficiency of public administration is not commonly considered politically feasible.

Larger communities not only have the responsibilities of self-government, but also perform some functions of state government. The way a community delegates tasks of state government amongst its organs depends partly on the nature of set agendas, and partly on the realistic ability of the local community or town hall to carry out the tasks entrusted to it in a sufficiently qualified manner.

Up until November 2000, communities represented a single level of self-government administration. Now there are fourteen regions, representing the second level of self-government. The real impact of this significant structural change on the effectiveness of public administration cannot, however, be estimated at present.

Before 1990, the then Czechoslovak State did not have municipalities but rather city or local national committees. Independence and decision-making powers of these committees were much less than they are those of communities today. They were more executive components of state government rather than representatives of local government. Another important fact is that they were not independent legal entities, they did not own property—they only administered state property—and of course they did not conduct business. From a financial point of view, it was more a redistribution of state funds. This meant that a fundamental part of local budgets consisted of state subsidies.

Local utilities were mostly secured through locally designated state companies—such as transportation companies (municipal mass transit); housing companies (state housing authorities in cities or communities, residential heating); and technical services (street cleaning, road maintenance, waste management, street lighting). Similarly, services of a more detailed nature were also secured, such as laundries, cleaners, hairdressers, gardening, cemetery maintenance, and even bakeries. As already mentioned, these businesses were strongly subsidized by city budgets. Some of these

organizations have persisted long after 1989 in the form of state companies. However, the common trend was that they were transformed into other types of institutions, as will be discussed later.

A decisive change in the functioning of cities and communities in the Czech Republic came with the ratification of Communities Act No. 367/1990 Coll. (Collection of the Czech Acts). This law defined cities and communities as legal entities that independently administer their own assets and manage their own financing. The law also states the basic obligations for each of these municipalities, especially in the areas of: approving a local development program and annual budgets; duties in the areas of education, social care, health and culture; and ensuring local public order, sanitation, waste removal, water supply, waste water disposal; and setting types of local fees and their rates. Communities may also establish special legal entities in order to carry out their activities.

A direct state impact on communities and their management, including the placing of sanctions if necessary, does not exist under common regulations. The great freedom communities have in handling their assets, relies on the constitutional principle, mainly in the fundamental equality of ownership rights for all owners.

1.1 Community Financing and Local Property

The period 1990–92 was a transitional period with a gradual decrease in the significance of purpose-based and non-purpose-based subsidies from state and local funds and the strengthening of local revenue base (for example local taxes and fees, and property sales). A decisive change in municipal financing came as a part of complex tax reforms coming into effect at the beginning of 1993. Briefly, the law defined what part of the total collected tax revenues would be allocated to communities each year and by what criteria. The community could then use these funds autonomously. A stricter regime exists in the case of state purpose-based subsidies whose importance, however, has fundamentally decreased. They are provided for the development of selected areas—for example housing construction or infrastructure development.

Since 1993, communities have received personal income taxes, income taxes from businesses of natural persons with residence in the city, and property taxes. Since 1996, cities and communities have been receiving a share of corporate income taxes while personal income taxes are currently lower. The revenues of these four taxes makes up roughly 60–70% of local budget revenues, which is relatively high. This is a stable source that can be relied on for as long as the government and parliament do not change the law. From this point of view, communities at present cannot regard income tax as a fully established, stable entity. This has a certain impact mainly on a community's long-term financial planning.

A specific problem is the fact that cities cannot—with the exception of property tax rates, though not so important financially—influence the amount of their tax revenues. The tax laws are statewide, passed by the parliament, and affect the budgetary rules as determined within the

structure of allocating such taxes among individual cities and communities. This situation has been partly changing since 2001, when regions began to function as central elements between the local and state government. Regions will also have their own finances and property, so that financial resources will once again be close to regional areas.

Czech municipalities have a relatively wide freedom in terms of both the income and expenses of their budgets compared to other countries. With expenses there is freedom as to where money can be spent, provided, of course, it is approved by the relevant city or community organs. Regarding income, there are bank loans, revenues from communal obligations—in short—other possible sources besides state redistribution of taxes and local fees. There is no limit to the degree a community can become indebted. Other relatively important sources of income to local budgets have been the sale of property.

In terms of independent asset management, the most important law for cities and communities was Act No. 172/1991 Coll. on the transfer of certain state property to communities. It was partly a change in the so-called 'right to manage' property originally owned by municipal and local national committees, to the real ownership of property by the cities and communities. It also involved the return of property that the communities and cities had owned before 1949.

Another important law was Act No. 92/1991 Coll. on conditions of state property transfer to other persons, the so-called law on Large-Scale Privatization. The specific ministry, the National Property Fund, was in charge of this privatization. Every subject—including a private person, commercial company, or municipality—could apply for the state property, the only condition was to describe the 'privatization project' where the proposed conditions of the transfer and the expected future use of the transferred property were described in detail. The Fund would then decide about the transfer, and would have the transfer contract prepared, containing the conditions with which the new owner would be obliged to fulfil. As a part of this transformation of state property, the cities and communities were able to acquire property or a part of the stock of future joint-stock companies, provided there were logical reasons in terms of ensuring local utilities, i.e. that the property transferred to the community would help to fulfil the duties and tasks of the community as defined by law. In such cases immediate transfers were, as a rule, mostly free of charge.

Through these two laws, cities became the owners of enormous properties, and it was just a question as to how they wanted to administer it. The common trend now is for the city to keep that part of the property which is directly needed for its basic activities as well as property that is the source of long-term benefits. This was accompanied by relatively large sell-offs, which are known as 'secondary privatization'. This relates to, for example, a portion of public housing; stock shares in regional companies whose activities do not relate directly to the functioning of cities; or small stakes in companies that offer no possibility to influence their operations. The decisions involved in these sales, as with purchases or exchanges, are exclusively in the hands of the local board of representatives.

Through these unforced transfers, cities have also acquired property of former transportation companies, technical and other local utilities. The fates of these former local businesses are varied. As a rule, cities converted them into new businesses, always in keeping with the relevant purpose which brought about its original establishment. A somewhat complicated situation occurred with the waterworks and sewerage, where joint-stock companies were directly created, with individual communities and cities having a proportionate share. At present, some of this property has already been privatized. Analogously diverse is the situation with waste water treatment, which in some cases are built by the city itself, whilst in other cases belong to private entities. This requires a sensitive coordination of negotiations for the most efficient operation, and with terms agreeable for citizens.

2. CHARACTERISTICS OF LOCAL PUBLIC UTILITIES

2.1 Defining the Sector

The basic legal standard by which communities are administered is the community law. This law specifies the rights and obligations of communities. The state may intervene in community activities only in cases to uphold the law and only using ways allowed by law.

Most community duties are stated in the law in rather general terms, but some of these obligations are specified directly by the law. Among these are: household waste removal; the cleaning of public city spaces; a drinking water supply; and the removal and treatment of liquid waste (sewage).

Other duties of a community depend on local conditions, specified by law only in general terms. The community government is responsible for a number of them, but part of the responsibility is also shared with the state government. They include: matters of local order (including the management of community police as independent organizations, i.e. organizationally not dependent on police stations); economic development; social development; along with cultural and environmental development. Typical areas include specifically: the maintenance of green areas; local public transportation system; local road maintenance; street lighting; residential heating; administration and maintenance of community property; administration and maintenance of cemeteries, and so on.

Finally, these also include services which are secured partly by the state and partly by the communities, based on a division of activity as prescribed by law. Among these are mainly education, social care and public health services.

To explain the exact division of tasks between the state and the municipalities is very complicated and goes beyond the purpose of this report. This division differs by individual agenda, and is different for different categories of communities. Among the individual community activities as

named below, there are no fundamental differences in matters of securing the relevant utilities. A somewhat different situation is in the case of utilities with natural monopoly features (water-works, street lighting, etc.).

Among services that as a rule are secured by a community, the most important are the following:

a) drinking water supply,
b) sewer system,
c) household solid waste,
d) hazardous and bulk waste,
e) residential central heating,
f) city cleaning (pavements, streets),
g) maintenance and renewal of green areas,
h) local road maintenance,
i) parking,
j) cemetery administration and maintenance,
k) local public transportation, integrated regional transportation,
l) leisure time facilities (playgrounds and sports facilities),
m) social housing,
n) administration and maintenance of community property,
o) share in crime prevention, drug prevention,
p) health services,[1]
q) municipal information system,
r) street lighting,
s) cultural activities directly organized with the support of local government,
t) sports activities supported by the community.

The significance of the local utilities sector depends on the longstanding situation in a given community. It is definitely dependent on its size and in view of the large number of small community governments in the Czech Republic, it is clear that in the range of cases a solitary community will not be able to ensure the utilities it expects to receive. Concerning the ownership of respective organizational forms of securing utilities, it has been noted that at present there are none that meet satisfactory standards.

For example, in Prague, the city districts independently manage their entrusted property. This has led in one city district to a change of administration of household property from the care of

the community to private entities, because securing this service by community powers was deemed insufficient. In other city districts during this same period, the process was decided as exactly the opposite, again for reasons of bad experience with private firms.

There is always a certain tension here to maximize controllability of the process to the benefit of one side, which is often awarded to one's own organization or community component. There is a natural effort towards the internal economy with one's own private entity, while entities living from public money lack natural motivation. A satisfactory solution so far has not been commonly found—experience indicates that the situation can be improved by a stabilized market with sufficient supply of firms able to substantiate certified good references.

A classic problem is the difficult question of effective quality control of supplies to the public sector. This problem cannot be solved by improving legislation and especially with one-time supplies (where a settlement will establish and expand in the future, which the utility customer must rely on), it seems practically unsolvable.

The impact of the public utilities sector on local budgets differs of course from city to city, but some regularities can be generalized. A major expense of each local budget is traffic infrastructure maintenance and transportation—mass transportation is subsidized everywhere, single rides on covered expenses is not enough, so these components can amount to a significant proportion of budgetary expenses.

In roughly the same terms, the same concepts apply to expenses for city cleaning, the maintenance of roads and public green areas, waste management and street lighting. In bigger cities, support of culture has become a relatively major expense, for example subsidies for theater, culture houses, musical organizations and cinemas. As previously mentioned, the support of sports, mostly mass and performance, in several cases were subsidized to the highest level.

2.2 Availability of Information on Local Utilities

Communities are obliged to provide the most available information on their activities, decisions and plans under several laws. Among these, the most significant are the law on communities, the law on free access to information and the law on public contracting. Unfortunately, information provided according to these laws relates only to a relatively narrow target group. This results in a constantly insufficient level of information about the work of local government, which could, and should, ensure more efficient cooperation with the public in the broadest sense of the word. Most communities realize this insufficiency and search for additional ways to inform the public, especially in larger cities where this problem is the most severe. A standard means of informing the public is via the media, which is owned solely by the municipality.

A major change in availability of information is represented by the gradual transfer of some data registries into public form, accessible by internet. This includes the commercial registry, which already is accessed by this method; in near future the real estate registration office should be similarly accessible. The law on public contracting placed the obligation to provide defined contract information in electronic form. In exactly this way the law on the free access of information commissions, community offices, and other public administrative offices can provide information via the internet.

Another problem which authors have met is the lack of relevant statistical data. The reason is not only that the data itself is not at disposal but actually in most cases there is no person or group authorized to collect and publish this data. The main problem is that statistics could collect the data characteristic for some formally specified reality (e.g. how many economical subjects are registered and qualified to offer household solid waste disposal) but considering the present conditions in the Czech Republic, it is quite unrealistic to expect that such data can give the information on how many subjects really do the activities regarding household solid waste disposal and to what extent and quality.

2.3 Managing Utility Services

Even though community governments have been in operation for more than ten years, it is necessary to state that optimal fulfillment of functions to which community management must enter has often not yet been found. There should be an equilibrium between the owner of communal property and the customer (user) of public utilities. Often, however, the utility provider has a role and is responsible for the status and creation of social policy.

When services are performed by municipal employees there is the advantage of closer access to information and (theoretically) better supervision of their work. In practice, however, supervision makes sense only when the non-fulfillment of required parameters could be threatened with effective sanctions. Regarding the type of protection the current labor law provides to employees in the Czech Republic, it is less possible to secure reparations, compared to the ability to sever relations with external subcontractors, who provide their services on a contractual basis.

The common model in the Czech Republic is that the community secures utilities by its own special organizations. As a rule, it is a contributory organization, often they are businesses in which the community ensures an adequate influence on decisions. Contributory organizations are used mainly in utilities with a lasting nature of subsidy of activities from the side of the community, for example in social services.

Some services are hard to imagine being secured by the community itself or with help of their own organizations. A typical example are social services provided to specialized target groups,

such as the homeless in the centers of large cities. Cooperation with the non-profit sector is common, which concentrates on these services, and the provision of community funding, but also, for example, space at subsidized rent. Some activities, such as special social care on city streets, attention to the handicapped, and so on, would not be possible at all without special types of private entities.

In the area of development, maintenance and repair of common municipal property disrepair of property has already demanded cooperation with private entities. A very frequent form are the various kinds of agreements, which de facto represent a gain of financial sources for quickly carrying out necessary repairs (long-term rent), or conversely transferring property into private hands (privatization).

The fields where the optimal forms in their development are searched, is a broader cooperation with private enterprises such as in areas of community development and regulation of the undesired phenomena. In many cases, public administration still deems private entities as a matter to be brought under control and regulated, rather than engaging in dialogue about development and regulation possibilities. (Even this dates back to the time of national committees, although not substantially, but importantly. Also from the entrepreneur's point of view, relations with local government are often felt rather limiting and unfriendly.)

The perspective of cooperation between communities and the private sector rests in long-term relations founded on mutual understanding. With entrepreneurs, there is the risk of a gradual worsening of quality in the provided utilities ('self-indulgence'). As long as the criteria used are as objective as possible and known beforehand (before concluding or renewing a contract), this risk may be avoided.

2.4 Financing Local Utilities

At the local level there are only a few services provided to individual or corporate consumers, whose price is reduced by city or community subsidy. Already unsubsidized are prices of drinking water, fees for sewage, heating prices, hot water, electricity, telecommunication fees, gas, waste removal.

On the other hand, financial support is always found when speaking about riders on municipal mass transportation systems, entry fees to non-private theaters, swimming pools, as well as tenants, where most rental agreements thus far do not cover the costs of long-term maintenance of the municipal housing stock.

Of course, all public utilities such as administration and maintenance of roads, parks and public greens, maintenance of school buildings, ensuring cleanliness of public free spaces and other duties secured by the community are subsidized. Costs for these activities are a standard part of the community budget, however they are secured.

Local utilities are often provided on a contractual basis under conditions that represent either direct or indirect community subsidy. With the beginning of the 1990s, when communities were just starting to gain experience, it was often the practice to intentionally provide private subjects with advantageous conditions. This was often out of fear that the given service would cease without major community support. A more common opinion was that the better the conditions a private entity receives for his business, the better the service provided to the end-user. Practice soon showed that these premises were mistaken. These persist to the present day, for example certain unsuitable business contracts which communities have great difficulties in abandoning.

From the development that followed in the Czech Republic, several conclusions can be drawn. Firstly, it must be very carefully considered whether the specific utility can truly be obtained under natural, unregulated market conditions. Another heritage of planned economy widely spread among public administration representatives (and often unconsciously), is that the care of public affairs consists above all of formulating and giving conditions under which to ensure public welfare. Communities that succeed in avoiding these obstacles are more successful, as a rule, in creating realistic living conditions in the community.

Secondly, if a specific utility really needs support or subsidy, this support must be carefully assessed to an adequate degree. Practice has confirmed that creating conditions inadequately advantageous does not lead to improved services, but rather to their devastation. Moreover, in a community that otherwise operates according to market principles, giving advantages to certain businesses puts them in a better position than the rest, which paradoxically puts community government in the role of harming economic competition.

Thirdly, if a certain utility cannot be provided without support or subsidy, it is appropriate to provide advantages according to the recipients, and not to the providers. The availability of the utility to target groups is thus supported or maintained without, however, the utility provider being exposed to the risks mentioned above.

2.5 Capital Investment Financing

As previously mentioned, Czech cities and communities have great freedom in seeking funding for their activities. The most common method is the use of budgetary non-purpose revenues, which are of course limited, and at the same time there exists many permanent recurring expenses (the operation of schools, the internal operation of city hall, and so on).

If the cities establish separate businesses for ensuring certain activities, they often use their own property instead of financing. For example, in the case of joint-stock companies that ensure the operation of mass transit, the city provides all the means of transportation, transportation networks, and buildings of operation.

Another source of funding is access to credits from domestic and foreign banks. One particular problem can be the strict requirements of these financial institutions in securing the money borrowed. It must be said, however, that the largest part of borrowed money has so far been directed at the reconstruction of neglected local technical infrastructure.

Otherwise, cities have a great freedom to support various business goals, they can even guarantee their credit (which is a rather risky operation, which was used especially at the beginning of the 1990s and later rightly abandoned for its demonstrated risk), of course only after discussion and approval by the board of representatives. It is necessary to maintain rules of law on awarding public contracts as well as the law on public support.

In financing the public sector in the Czech Republic, the subsidy system has a relatively rich tradition. It is very widespread and covers practically all areas of activities on the local government level. The most common case is the situation where a subsidy is granted from the state budget via the relevant ministry or other central organ. At present, several subsidies are being granted at the district office level. In recent times funds from the European Union are becoming a trend. The most important subsidies used by cities and communities of the Czech Republic are granted from sectoral budgets. In environmental services grants are provided for: the construction of sewers; waste water treatment plants; water supply; ecological solutions to waste management (e.g. support of recycling); support of protection of green areas (e.g. reconstruction and revitalization of municipal parks and orchards); revitalization of protected areas, protection of the atmosphere; and municipal park maintenance. In the transportation sector, investment support is provided for urban mass transit (for example buses and trolley buses).

Administration, maintenance and renewal of housing stock are granted by attractive loans for repairs, modernization and expansion of housing—very popular and largely utilized by citizens. This applies, however, also to community housing administration, maintenance and renewal. This includes support of leased housing construction and technical infrastructure—i.e. subsidies determined for a housing unit and for technical infrastructure, for meeting certain conditions ensuring the social aspect of this construction. This may also include subsidies for eliminating specific defects in panel construction. This is a much needed protection project, lengthening the life of panel buildings build from older technology.

As part of pre-entry assistance, candidate countries may upon entry into the European Union have access to financial resources from two funds:

- ISPA—support of large-scale projects aimed at the development of conveying environmental protection,
- SAPARD with the goal of modernizing agriculture and developing the rural environment.

In addition, there have already been several years of PHARE aid. For example, the PHARE CBC program is utilized for supporting various activities as part of cooperation beyond borders,

i.e. on the borders between the Czech Republic and Austria, Germany and Poland. The PHARE 2000 and 2001 programs in the meantime support selected regions in the Czech Republic. This support should be gradually expanded to all regions in accordance with regional policies of the European Union.

3. REGULATORY MEANS OF THE SECTOR

Basic regulatory means available to communities are to issue decrees (always within the legal framework), use of community property and finally setting levied local fees. Another group of regulatory means is the provision of grants or charging fees for services with regards to their possible regulatory function.

Use of community property is practically unlimited, responsibility is assumed by the elected board of representatives. Community ownership rights are just as broad as private ownership rights. The system of local fees (i.e. local taxes, because fees are not collected for concretely provided services) is practically the only direct means of regulation a community has. The regulatory role of local fees can be exerted in cases where the community is in financial difficulties and the attempt to maximize profits from fees can then represent limits to their regulatory role.

Defining standards or service performance can help to improve the regulation in the sector. Up until now, no commonly accepted or applied standards were accepted. Defining such a standard is up the municipality itself and should be a part of the public tender condition. Another possibility commonly used is to demand that the proposal of the performance standards will be offered by the bidder in the public tender.

3.1 Ownership Rights

Under Act No. 172/1992 Coll. on the transfer of certain property of the Czech Republic to community ownership, communities gained ownership rights to state property, which formerly they only had the so-called ‘right to manage’. With the enactment of this law, communities and cities began to manage their property and the execution of an independent sphere of authority when securing community development and satisfying the needs of citizens, and providing public utilities, fundamentally changed. An independent community sphere of authority is logically founded on the possibilities to manage their own property and secure development of all sides of the community in accordance with the decisions of the community board of representatives.

According to traditional ideas, the owner is entitled to hold and use his property, to use the fruits and profits of his property and to charge for them. Ownership rights are also defined in this

sense in the civil code, as amended. Ownership rights and their protection are the same for all entities, even communities. The right of an owner to hold and use his property and to charge for it has been in effect on our territory within commonly binding legal regulations since 1811, when the general civil code was issued, with which certain modifications were valid up until 1950. From a formal viewpoint the contents of ownership rights were defined similarly, and with further legal modifications have been valid in principle up to the present day.

From the beginning of the 1950s to the beginning of the 1990s, the factual content and conception of ownership rights was deformed by legal distinctions made between many types of ownership imbedded in the constitution at that time. Socialist ideology, legal theory and practice was distinguished by the so-called socialist societal ownership, which was by the state, cooperative or by societal organizations (e.g. by the National Front political party, unions, or interest groups). Furthermore, personal ownership that served only to satisfy personal material and cultural needs of citizens were significantly limited by the law of permissible scope (e.g. a family house could not be larger than $120m^2$). Personal ownership could not serve business purposes. On the whole, district law permitted private ownership that served to limit individual business based on one's own labor.

Private ownership was instead formal, however, inasmuch as the owner could charge only permissible relevant state organs for use of his property. In housing under private ownership state organs (national committees) allotted housing for the use of citizens, and the owner was forced to respect decision of this allotment in his building. The owner could make his building available only with the consent of state organs. Decisions on housing exchanges in private houses were made by the national committee, not by the owner. Also, private owners of small workshops or other small operations could conduct business with their property individually only as an exception granted by the relevant state organs. Agricultural land also was in some cases formally in private ownership, but the owner could personally secure agricultural products on his land, which was quite difficult, and was forced to hand over his land free of charge for the use of agricultural cooperatives or state farms.

In the 1980s the concept of national property administration based on law was replaced by the concept of the right to manage state property that it administered. The concept of the right to manage in affairs of state ownership is to this day protected by law. It is applied to state property—for each state possession of the Czech Republic there is a relevant state organ, business or state institution of the right to manage.

A major part of community property today was acquired not by gradual acquisition but by transfer from the state once the Act No. 172/1991 Coll. went into effect on 24 April 1991. This law transferred property previously owned by the Czech Republic and managed by national committees to communities. The above-cited reasons for the transfer of ownership to communities was not related, however, to matters that served to fulfil the duties of smaller operations. For purposes of transferring this state property, small-scale privatization was undertaken. Small

enterprises were handed over to small and medium businessmen who the state wanted to assist in the speedy development of small and medium-sized businesses.

Small-scale privatization took place in the Czech Republic relatively successfully. A person who successfully privatized a small enterprise and acquired goods, supplies and operational equipment also had the right of rent control for the space where the privatized business was located. These spaces themselves were not, as a rule, the subject of small-scale privatization.

Communities, however, could intervene in small-scale privatization in other ways. If a community considered the privatization of a small enterprise of the former national committee inappropriate, it could apply to the relevant state organ for a transfer of what would otherwise have been privatized, to its own ownership. The relevant state organs, however, considered whether such a request from the community was suitable. Nevertheless, such cases were rather exceptional and quite unimportant except very small municipalities.

A special case of ownership is public housing. Under Act No. 172/1991 Coll., a majority of formerly state housing and plots of land creating a functional unit was transferred to the ownership of communities. This related above all to larger cities, which acquired the ownership rights of the housing.

The significance of this transfer of ownership rights of housing to communities was demonstrated with the start of privatization of community housing in many cities and communities. Some communities decided that privatization of housing would be carried out by selling selected houses to cooperatives or business associations created from the current tenants. Other communities decided to sell individual flats (apartment units) in accordance with the law on flat ownership.

3.2 Business Entities in the Utilities Sector

For an overall characterization of businesses in the Czech Republic, it is necessary to consider the current state of legal modifications contained above all in the commercial code, civil code, trade law, community law, as well as the law on public contracts.

The commercial code, Act No. 513/1991 Coll., is the basic legal regulation that established the position of entrepreneurs, commercially binding relations and other relations connected with conducting business. Relations between entrepreneurs are considered commercially binding as determined by the commercial code, as far as their business activities are concerned. Similarly, relations between entrepreneurs and the state or local government (community) are considered commercially binding, when related to securing public needs.

Commercial companies, cooperatives and other legal entities prescribed by law are registered in the commercial registry. A commercial company is a legal entity established for purposes of

conducting business. Possible forms of commercial companies include public commercial companies, limited partnerships, limited liability companies and joint-stock companies.

When providing public utilities, especially with public contracts, a community may conclude a contract and enter into legal relations with all of the above-mentioned types of commercial companies. At present, the most widespread type is the limited liability company, whose members are liable only up to the unpaid amount of starting capital as registered in the commercial registry. Unsatisfied claims of a community towards non-solid limited liability companies can become quite problematic, often even impossible. Other applicants for public contracts are joint-stock companies. Public commercial companies and limited partnerships do not often operate in the sphere of public utilities.

Other business entities in the sphere of public utilities can be cooperatives. These are associations without a self-contained number of persons established for purposes of conducting business or ensuring economic, social or other needs of its members. Various manufacturing and consumer cooperatives have a relatively long tradition in the Czech Republic, cooperatives such as socialist organizations were active even under socialist Czechoslovakia, even though somewhat deformed given the political and economic circumstances at that time. At present, cooperatives no longer operate as business entities. Mainly housing cooperatives established by tenants have an important position. Foreign legal entities or naturalized persons may also provide various utilities as business entities. With deepening European integration we can expect a greater number of foreign persons doing business in the Czech Republic. Foreign persons may conduct business under the same conditions and to the same extent as Czech citizens, unless otherwise stated by law. Foreign persons have to comply with more complicated conditions to acquire trade licenses and to register in the commercial registry; foreign persons may not legally acquire real estate in the Czech Republic; and for foreign persons it is more complex to receive permits to employ foreigners, and so on.

Each entrepreneur is obliged to register in the commercial registry: commercial name and legal form, place of operation, subject of business, persons authorized to negotiate for the company and other data. It is general practice for communities to request a submitted recent extract from the commercial registry when concluding contracts. Several years ago the commercial registry became more widely available through the Internet: it is difficult to appreciate the significance of this step towards improving the business climate.

Within the public utilities sector the community itself may conduct business. In fulfilling the duties in the area of an independent sphere of authority it may establish and run a legal entity or other subject. If the community itself conducts business, utilities are secured by community employees under employment contracts, or by persons who work for the community on the basis of an agreement on work activities or an agreement to perform work according to the commercial code.

To better satisfy the needs of citizens in the area of an independent sphere of authority, communities may also create voluntary association of communities according to communal law. An association of communities is a legal entity that acquires legal authorization by registering in the 'registry of cooperatives', kept at district offices. The main financial and/or property sources of the association are the direct contributions from the budget of the communities involved or the state subsidies. When providing services to satisfy public needs in communities and cities, there arises a whole series of diverse legal relations among the various legal entities and natural persons. Above all, there arises legal relations between the entrepreneur providing the service and the community (or the state) to whom the service is provided. In addition, there is the legal relation between the citizen (natural person) to whom the service is provided, and the service provider. Services to satisfy public needs are provided by various business entities—entrepreneurs (legal entities and natural persons), whilst in some cases services are provided by the community (or the state) itself. In some cases, services are provided not only for citizens (naturalized persons) but also for satisfying the needs of non-business legal entities operating in the community (e.g. schools, foundations, churches, charitable organizations, citizen's groups, etc.).

Legal relations among the above-mentioned entities arise above all on the basis of various kinds of contracts that are set out in the commercial and civil code. In securing utilities to satisfy public needs, the commercial and civil code allows contracts to be concluded, even such contracts that are not stated specifically in the commercial and civil code. Such contracts, however, may not go against the contents or purpose of law, commercial custom or principles on which the law is established.

3.3 Rules of Economic Competition

Economic competition rules are set out in the commercial code. Its formulation is important, insofar as protection from unfair competition is concerned, according to the equality of Czech citizens positioned with foreign persons who conduct business in the Czech Republic. Otherwise foreign persons may insist on protection in economic competition according to international treaties to which the Czech Republic is bound, and which were publicized in the Collection of Laws, or if not, then on the basis of mutual agreement.

Unfair competition under the commercial code is taken as negotiations in economic competition that is at variance with proper ethics of competition and causes the detriment of other competitors or consumers. Examples of unfair competition particularly include: false advertising; falsely marked goods and services; parasitism on the reputation of another competitor's business, products, or services; bribery; defamation; revealing trade secrets; and endangering the health of consumers or the environment.

Rights of protection from unfair competition according to the relevant sections of the commercial and civil code can be claimed in court, whose verdict is levied against the perpetrator for maintaining

unfair competition, to pay damages, provide the corresponding reparations (satisfaction), or pay his unjustified enrichment.

The law determines which agreements between competitors are prohibited and illegal, inasmuch as they lead to breach of rules of economic competition, unless the Office for the Protection of Economic Competition allows an exemption. Prohibited agreements include especially those which lead to a division or practical dominance of the market, those limiting market access of the other competitor, those containing direct or indirect price fixing, etc.

The law also determines when there is a monopoly or dominant position on the market and the obligations of the business entities resulting from such position. A monopoly or dominant position may not be abused by the competitor for the detriment of the other competitors or consumers, nor for the detriment of the public interest.

The law considers the following as an abuse of a monopoly or dominant position: directly or indirectly forcing inadequate terms in contracts with other market participants; binding agreements by concluding contracts under the condition that the other party takes more goods or other supplies not connected with the requested subject of the contract by fact or by commercial custom; fixing different conditions with the agreed to or comparable fulfillment towards individual market participants that are unsuitable for these participants in economic competition; halting or limiting production, sales or technical development of goods in order to gain unfair economic advantage to the detriment of the buyer.

The law also determines cases of disrupting economic competition by company mergers. The merging of companies that disrupts or may disrupt economic competition undermines the permission of the Office for the Protection of Economic Competition. It is considered to be a disruption of competition if, through a merger, the companies exceed 30% of total turnover on the world market or local market of goods.

In this connection, the Office allows mergers if by the participation of the competitors it can be shown that the disruption of competition which may arise is outweighed by the economic advantages this merger would bring. In other cases the Office does not allow such a merger. For cases of breach of rules of economic competition the Office for the Protection of Economic Competition places sanctions.

3.4 Methods of Determining User Fees

The question of determining fees is important where the end-user of a utility shares in the cost of the service, i.e. not paying the full cost. In such a case the question arises as to why a community instead of a private subject should provide a utility at market conditions.

In the sector, practically no prices are regulated at the national level except housing rent control. In other cases, the decision about the price regulation or price setting is to be made by the municipality and can be involved into the contract between municipality and the service supplier.

A characteristic problem in determining fees for a utility provided by a community is the question of the amount of the share of the community; i.e. the amount of granted subsidy. It is not always realized that the stated price represents not only the cost (and therefore the burden) for the utility user, but also simultaneously carries out other functions, especially regulatory and informational functions (providing the user with information on value of the provided fulfillment). A frequent mistake that communities commit is underestimating these additional functions because the price is considered only in terms as a burden for the customer.

Non-economic criteria also enters into the decision. These criteria are often the social aspects—unfortunately, the exact social data are in most cases not at disposal, and therefore the decisions are made as a result of political discussion only. Obtaining further and more detailed social data for the proper decisions, i.e. decisions effective from the economic and social point of view as well, is the task for the municipalities in the future. It is clear, and experience repeatedly confirms, that adequately determined prices for provided utilities lead to their better use and thus economic management of public funds.

In determining what form the amount for user fees should be set (or rather what discounts will be provided) discounts aimed at concrete users according to concrete situations should be given preference, rather than providing cheaper services indiscriminately. It is a fact that offering flat discounts of cheaper services has a long tradition from the days of planned economy on the one hand, and what is organizationally easier on the other. Whatever greater efficiency gained in allocating public funds in this latter way, it is definitely worth addressing the method of offering discounts everywhere possible.

3.5 Social Aspects of the Conversion of Local Utilities

The major conversions of local utilities took place in the Czech Republic at the beginning of the 1990s, simultaneously with small privatization and the freeing up of most prices. Against most expectations, it did not lead to an inappropriate growth in the prices of utilities. Of course in most cases it resulted in a balancing out of prices, especially where the utility was overtly or covertly subsidized by the central state planning of the former regime. With some utilities it even led to a significant increase in offered utilities reacting to demand and this new situation on the market has shown to be long-term.

Another important social aspect is the impact of these changes on employment. In this case the influence on employment was rather positive, in particular the development of utilities in regions

helped slow the impact of restructuring other branches of the national economy. One of the causes of this phenomenon was the fact that the utilities sector as it was in the Czech Republic was relatively underdeveloped. Its swift development at the beginning of the 1990s succeeded in utilizing the work force freed up from other sectors.

On the other hand, the utilities sector, which is largely provided by smaller companies, is very sensitive to state interference in the area of employment. So, for example, the mandatory raising of the minimum wage, which at first sight may appear as an appropriate social measure, particularly hinders small businessmen in the utilities sector (because they are as a rule more dependent to a larger degree on skilled labor than, say, certain manufacturing processes) and this has a negative influence on the offer of utilities.

A demonstrated trend is the gradual improvement of quality and solidity of entities active on the utilities market. This has led especially to sufficient supply on the utilities market, which resulted in non-solid and unqualified service providers from the market over several years to driven out of the market, unless they were let go before that.

One not-to-be-neglected social aspect is the changes in the utility customer's legal awareness. The balancing out of prices led to a more realistic look at their economy and to the control of its quality. Social aspects in a broad sense of the word—let's say the way people affected by utilities think—must be considered by each community according to their local conditions, and as a rule they do just that. The costs of solid waste can serve as an example. The success of the system that the community applies is as a rule a fundamental way depending on whether and how citizens are able and willing to accept it.

4. PRACTICE OF COMPETITION PROCEDURES AND CONTRACTS

The basic legal regulation that modifies the procedure when awarding public contracts in the Czech Republic is Act No. 199/1994 Coll. on awarding public contracts which regulates the ways of awarding public contracts (including the 'public tender' as a special case). The tender system in awarding public contracts in our country before 1995 had been missing for several decades. This also resulted in inadequacies in management of public funds. The importance of the tender system in awarding public contracts can be similarly deduced from the experience of member countries of the European Union, where the subsequently applied system of awarding public contracts on the basis public tenders brings savings of public funds. The savings gained by the awarding of public contracts through tender exceeds the costs for running the tender system in awarding public contracts in most member states of the European Union.

Earlier practice found preferential, with some exceptions, the system of awarding public contracts from free hands, which meant allocation of contracts to companies among several potential contractors without public tender. This system had several insufficiencies, above all, it did not ensure maximum efficiency when allocating public funds, since it eliminated the choice of the most suitable offer by being oriented only on one offer.

The spirit of the law on awarding public contracts is for the grantor and the bidder to gain advantages stemming from a free market. The grantor should gain namely technical and economic advantages from the ability to choose among offers of many businesses; the bidder has the opportunity of economic gain and winning the contract.

The regulatory function of a single market can be realized only when economic relations of two business entities manage their own funds (i.e. their own assets). If one of them manages public funds, it is necessary to enforce the law, which adequately regulates market mechanisms from the point of view of managing public funds, and ensures obligatory enforcement of the public tender system when awarding public contracts by methods common around the world. This creates conditions for transparent and indiscriminate procedures when awarding contracts and choosing the most suitable bidder on the basis of public tender.

When enforcing the law on awarding public contracts in individual cases it is a deciding factor whether the contract is paid (even partially) from public funds. Under this condition, the defined terms of the public contract are relied upon as the applicable contract between the legally determined grantor and chosen bidder.

Obligatory public tender does not relate to contracts whose subject is below a certain financial limit. The financial limit is defined in terms of the adequacy of total costs on the organization and the performance of public tender in comparison with the total value of the contract.
Following a prescribed code when awarding public contracts has existed in the Czech Republic since 1991, but was not coordinated. The result of this effort were numerous decisions of state government organs that often conflicted, and suggestions of other institutions that were not legally binding. This ended with the issuance of Act No. 199/1994 Coll.

In order to operate a tender system of awarding public contracts, the state adopted article 67 of the European Agreement on Founding Associations to the European Community and in agreement concluded with European Association of Free Trade. The law on awarding public contracts is in accordance with international treaties, by which the Czech Republic is bound, and is compatible with the law of European Community.

The law to a certain ideological degree relates to the system of public contracts in effect in Czechoslovakia since 1920. During the period of planned socialist economy, free competition of independent business entities did not exist, and therefore special modification of tenders in

awarding public contracts had no meaning. The only exception was Decree No. 101/1973 Coll. on project competition.

What is defined as a public contract by the above-mentioned Act depends mostly on the Customer, i.e. the subject granting the contract. The Act applies to specified Customers such as ministries and other administrative bodies, autonomous territorial units (and in case of Prague the capital city and other statutory municipalities also to the municipal districts and quarters) and the budgetary and contributory organizations established by them, the budgets of district authorities and the budgets of the autonomous territorial units. The Customers may also be recruited from among manufacturers; carriers; water, electricity, gas and heat utilities supplying public networks; the operators of public transportation systems, telecommunications, sewerage systems and water purification plants; These persons or entities pay the cost of the public contract with the pecuniary means drawn from the state budget, state funds, the contributions of international organizations, the budgets of district authorities and the budgets of the autonomous territorial units.

To conclude a public contract, the Customer should announce a public tender, unless the Act stipulates otherwise. Another procedure other than the public tender is acceptable, provided the future obligation of the Customer brought about by the contract does not exceed the limits specified in the Act, and provided the conditions set in the Act are met. Upon enacting the initial release of the Act, the amount of these limits often proved impractical, and in some cases practically unfeasible.

Generally, the Act on awarding public contracts was developed on principles similar to the legal rules regulating public contracts in other European countries. Nevertheless, the legislation on the granting of public contracts currently in force in the Czech Republic is not fully compatible with the EU law. Comprehensive public tender legislation completely in line with the EU law should be enacted by 2002 at the latest. Foreign business entities can be excluded from participation in the public tenders, which is a fact not fully in correspondence with the effort to join EU.

The Act on granting public contracts has some adherents, who believe that the controls over the public means come first, and are willing to accept the hindrance often brought about by the lengthy complaint solving process, lengthy proceedings of the Competition Protection Authority (UOHS hereinafter) surveillance body, and possibly lengthy court proceedings needed to review some UOHS rulings.

On the contrary, the opponents of the Act on granting public contracts believe that the current procedure of granting the public contracts represents a futile interference in the contractual freedom of the Customers; particularly the municipalities/communities are limited in the independent use of their own property. The opponents of regulation of the process of granting the public contracts also emphasize the fact that some provisions of the Act can be easily sidestepped, and they see it as a reason for allowing contractual freedom and the free play of market forces even in

the area of granting public contracts, especially in case of the municipalities/communities, where the citizens can better exert control over the activities of the Community Board and its disposal of the public property.

As required by the Commercial Code the public tender shall be announced in writing; it shall define the subject matter of the contract; it shall quote the deadline for submitting a draft contract, as well as the deadline for announcement of the winning tender. The Announcer of the public tender shall select the best tender and shall communicate the decision as stipulated in the Tender terms and conditions. In case the Tender terms and conditions do not determine the method of selection, the Announcer is free to select the winning tender using his/her own discretion.

The Act on granting public contracts regulates the public tender procedure aiming to select the best tender in much greater detail than the Commercial Code. Therefore, in relation to the Commercial Code, this is a case of *lex specialis*.

The Act on granting public contracts governs in detail the procedures followed by Customers, interested parties and Tenderers in the process of selecting the best tender for a public contract. The public tender, its terms and conditions, and possibly its amendments and cancellations are announced by the Customer in the Commercial Bulletin, or at the central address. The Act specifies the time limit for submitting the tenders ("tender time limit" hereinafter), and the period of time for which the tenders remain in effect and binding for the Tenderers ("binding period" hereinafter).

In addition, the Act regulates the ways of submitting the tenders and the possibility of granting preferential treatment to some Tenderers—for example, it is permissible to prefer some domestic persons/entities, or to restrict the participation so that only domestic Tenderers are admitted; moreover it is possible to give priority to the Tenderers, whose workforce consists of more than 50% of employees with health impediments.

When announcing the public tender, the Customer is also entitled to ask the Tenderers to prove their qualifications in a pre-qualification procedure; this procedure will eliminate the Tenderers lacking the proper qualifications. To make sure that the Tenderer complies with his/her duties following from the tender, the Act requires that the Customer asks the Tenderer, by a stipulation in the Tender terms and conditions, to offer a guarantee amounting to 0.5% to 3% of the future monetary obligation. The Act also regulates in detail the procedure followed by the Customer when accepting the written tenders in envelopes; the process of opening the envelopes; and the way the process is documented by a written report.

The tenders are reviewed and evaluated by a commission. The requirements for the commission staffing and qualification derive from the amount of the future obligation. For public contracts generating an obligation in excess of CZK 200 Million the commission is appointed by the

pertinent minister or by the statutory body of the Customer; the commission shall include a representative of the Ministry of Finance, as well as representatives of two other ministries with related scopes of activities. For public contracts generating an obligation in excess of CZK 300 Million the commission is appointed by the Government in consideration of a proposal submitted by a relevant minister, or by the Customer's statutory body. The commission shall prepare a report on the review and evaluation of the tender; the report shall, first and foremost, contain the assessment of the individual tenders; it shall state the reasons leading to the best tender selection; and it shall arrange the tenders in order of the evaluation results.

The right to decide on selecting the best tender is not vested in the commission but in the Customer. The Customer is obliged to decide on the basis of the commission evaluation of the best tender, unless the he/she stipulated the right to reject all submitted tenders in the Tender terms and conditions. The best tender is the tender best meeting the criteria specified by the Customer in the Tender terms and conditions. The Customer is entitled to rule otherwise than the commission. In case the Customer's ruling does not honor the order of tenders as developed by the commission, he/she is obliged to submit a written rationale.

The right of the Customer to decide otherwise than the commission, is based on the fact that the responsibility for the result of the public tender (which is not the decision about the tenderer itself but getting the contracted service or supply in time and with expected quantitative and qualitative parameters) is always on the Customer and not on any commission.

The Customer is obliged to notify, within the binding period, all the Tenderers not excluded from the tendering procedure of his/her decision on the best tender, and state the tenders winning the second and third places. In the notice of the best tender selection the Customer shall quote the tender prices and shall notify the Tenderers of the possibilities of raising complaints.

The Customer is obliged to conclude a contract with the winning Tenderer within 30 days of the end of the binding period included in the Tender terms and conditions. The binding period shall be extended by this length of time. At the same time the binding periods of the second and third place tenders shall be also prolonged. Nevertheless, the Customer shall not conclude any contract before the complaint period elapses.

In case the selected Tenderer refuses to conclude a contract with the Customer, or provided the contract is not concluded for reasons on the Tenderer's part, the Customer shall call upon the second place Tenderer to conclude a contract. In case the second place tenderer refuses, the contract shall be concluded with the third place Tenderer.

There are alternative ways of granting public contracts. The Act also provides for other ways of granting public contracts than those based on a public tender—these alternative ways are used in specifically enumerated cases. They pertain mostly to those public contracts, whose performance is not associated with amounts in excess of the statutory limit value.

Except for cases in which the future value of performance does not exceed the statutory limit value, the public contracts may be granted by the method of a request for a tender addressed to several potential tenderers, or a request for a tender addressed to a single potential tenderer. These cases of urgent need are subject to a Government decision in a situation, when the public contract in question is a special one.

Nevertheless, even the above-mentioned alternative ways of granting the public contracts are governed by some mandatory regulations, whose observance is enforced, among others, by the possibility of filing complaints against the actions of the Customer; moreover, this area is supervised by a surveillance body (Competition Protection Authority—UOHS), whose ruling can be revised by an administrative court.

If the contract is concluded on the basis of a request for a tender addressed to several potential tenderers, the Customer is obliged to conclude the contract solely with the Tenderer, who submitted the best tender as evaluated according to the criteria specified in the request. The criteria set shall be the same for all potential tenderers. If the contract is concluded on the basis of a request for a tender addressed to a single potential tenderer, the addressed Tenderer shall submit, before the contract is concluded, just his/her Trade Certificate.

Only when under surveillance can an Act become really effective. The Act defines the prerogatives associated with the surveillance activities and the principles applicable to the surveillance body—UOHS. Nevertheless, the surveillance executed in conformity to this Act of law in no way restricts the supervisory activities of other relevant bodies, or the powers of courts of law.

The possibility to perform surveillance and to introduce remedial measures improves the Tenderers' chances of successfully seeking redress in case the Customer violates the law. The observation of the Act on granting public contracts is enforced mostly by the revisions of the Customer's acts and decisions; by the inspections of the Customer's procedures followed when the public contracts are being granted; by checking the security of statistical data on granting the public contracts and by imposing sanctions when the law has been violated.

The Tenderer, or possibly the participant of the pre-qualification proceedings, is entitled to complain against the acts of the Customer performed in the course of the tendering procedure, or when the contract is granted other than through a public tender, and claim violation of the Act on the Customer's part.

The complaints may not be raised against the Customer's decision to introduce a two-round public tender; against the decision to hold the pre-qualification proceedings; against the decision to reject all tenders, provided the Customer had stipulated this right in the tender documents; against the decision to restrict the tendering procedure so as to embrace only domestic persons or entities; against the requirement that the Tenderer produces a guarantee; and against the correction of obvious calculation errors.

The complaints should be submitted in writing within the time limit stipulated by the law. The Tenderer's complaints shall be assessed by the Customer's statutory body, or, as far as the municipalities/communities are concerned, by the Mayor. If the statutory body (or the Mayor) finds that the law was breached, the decision on remedial measures shall be issued no later than 10 days of the complaint receipt. If the statutory body (or the Mayor) finds the complaint unfounded, the Tenderer shall be notified of the fact, as well as of the possibility to ask, within 10 days, for a revision of the Customer's decision by the UOHS surveillance authority. UOHS shall fully review the contested Customer's decision, without being bound by the Tenderer's proposals.

In a case that the submitted proposal contests the Customer's decision on the selection of the best tender, the UOHS Authority either cancels the contested decision, provided it finds that the law was violated; or orders the Customer to repeat the process of selection; or cancels the granting of the public contract; or rejects the proposal and confirms the Customer's decision, provided it finds no breach of law.

In a case in which the proposal requires a review of other acts of the Customer, the UOHS Authority, upon scrutiny, rules either that the law was not violated and consequently the proposal is turned down, or that the law was violated and consequently UOHS orders the Customer to remedy the situation, or possibly UOHS cancels the granting of the public contract. The process of reviewing the Customer's acts by a surveillance body is governed by the Act on administrative proceedings No. 71/1967 Coll., Administrative Code.

In accordance with sec. 61 of the Administrative Code, the ruling of UOHS, which is a central body of a state or government administration, can be challenged and a remedial instrument can be asked for—the remedial instrument is 'remonstrance'; the right to decide on the remonstrance rests with the UOHS chairperson.

The UOHS Authority publishes its final rulings made in the previous calendar year in a Collection of Rulings on Public Contracts and on the Authority's website.

In 1998, for example, UOHS ruled on 235 cases concerning the granting of public contracts. In 88 cases the Tenderer's proposal was rejected; in 48 cases the Customer was ordered to revise the granting of the contract; in 51 cases the Customer was ordered to re-assess the selection of the best tender; in 26 cases the Customer was ordered to implement remedial measures; and in 22 cases the Customer was fined for law infringement. The UOHS reports to the Government.

UOHS intelligence can also be used to reveal the most common errors and deficiencies in the activities of the Customers granting the public contracts. These include mainly: the tender documents do not sufficiently specify the public contract; the tender documents require qualifications above the provisions of the Act; the requirements stipulated in the tender documents are on purpose made inadequate or useless in an attempt to grant the contract as a highly specialized job to just

one Tenderer; more than one tender is selected as the best tender; or when evaluating the tenders, the Customers disregard the contents, order and importance of the individual criteria.

The lawfulness of an UOHS ruling (the chairperson's ruling on the remonstrance) can be reviewed by an appropriate administrative court of law based on a filed claim. Then the one party of the lawsuit is the plaintiff (the tenderer) and the other party is the UOHS, which issued the contested ruling. If the contested ruling is found in conformance to the law, the action is rejected. If, on the contrary, the court concludes that the contested ruling is unlawful, or that the knowledge of the relevant facts is erroneous, the proceedings are canceled and the case is returned to UOHS for additional processing.

5. LEGISLATION TO PROTECT THE CONSUMER

Another Act of law regulating competition and free market that has not been mentioned yet in sufficient detail is Act 634/1992 Coll. On Consumer Protection. As is the case with the Act on competition protection, the Act 634/1992 is a public law regulation that stipulates the duties of product dealers and service providers—particularly the obligation to sell the products in proper quantity and quality at a negotiated price, always quoting the price of the goods put on sale, etc. The Act forbids any consumer discrimination; declares a ban on the sale of dangerous products; prohibits influencing the customer with deceptive information; orders the product dealers and service providers to inform the consumers on the goods and services, and prescribes other duties related to the sale of products and the provision of services.

The main surveillance body keeping an eye on the observation of the Act on consumer protection is Czech Commercial Inspection, a state/government body reporting to the Ministry of Commerce and Industry. In some cases the surveillance duties are being shifted to Czech Agricultural and Foodstuffs Inspection. In the area of health protection, particularly as regards the health hazards generated by products and services, the Act observation is supervised by the Hygiene Service.

The surveillance bodies are also entitled to inflict penalties in case the duties imposed by the Act are disregarded; such a penalty may occasionally reach CZK 1,000,000, and in case of manufacturing, importing or supplying a product, whose defect causes a loss of life or impairs health, the penalty can be increased up to CZK 10,000,000 (the same fine can be charged to a person who caused a loss of life or impaired health by providing a faulty service).

In addition to establishing the surveillance bodies, the Act also specifies public administration tasks for a given area of activity. The state/government administration bodies and the local administration bodies are obliged, within their respective jurisdictions, to make all provisions

needed to prevent dangerous products, or products dangerous because they can be mistaken for foodstuffs, from being put to use, or to stem their use in the future. The public administration bodies shall inform the consumers on the dangerous products using all available means, particularly through media.

Both the Act on competition protection and the Act on consumer protection represent a substantial impediment to the free market and regulate contractual freedom, but a similar legislation can be encountered in other European countries too, and in this area the necessity to regulate the free market and contractual freedom is generally accepted. Both the quoted Acts regulate the consumer and competition protection in a standard way. Therefore the Acts do not require substantial amendments, but according to the public perception some rather important deficiencies still persist in the performance of those state/government bodies that are charged with supervising the observance of the Acts and that are authorized to impose sanctions, or order the removal of the deficiencies found, in case the lawful duties were disregarded. Nevertheless generally it can be said that when implementing the Act these bodies do not perform worse than other state/government bodies, or worse than the local administration bodies in other areas of activities.

6. SPECIFIC PROBLEM AREAS

6.1 Relation Between Public and Private Sectors

The overall trends indicate quite clearly a gradual tilt towards the privatization of services wherever there are no substantial arguments against it. By privatization we mean not only a shift towards the profit-based private entities, but also towards the non-profit organizations—foundations, public service companies, interest groups and the like.

In contrast to the emergence of the business entities, the non-profit entities come to existence at a slower pace. They are also slower at making new relations with the local municipal administrations—the main reason can be seen in the fact that their results are more difficult to assess than the performance of a simple business contract.

For a multitude of reasons a private entity generally proves to perform better than the municipality/community. In some areas the municipality is completely ineffective, e.g. because its decision-making process is not, in many cases, sufficiently fast and the scope of authority sufficiently broad. Some important business decisions have to be made by the Municipal Board, so that by itself the municipality cannot respond to a sudden change of situation. Nevertheless in some areas such a change of situation is quite natural and consequently these areas are completely closed to the municipalities.

All in all, the public administration should concentrate particularly on supporting economic competition, in some cases the municipal decisions lead to partial monopoly reinstatement. For illustrative purposes one can look at the situation that has developed in Prague, where after several years of free competition among waste collection and disposal companies the municipality opted for dividing the city into sectors serviced by a monopoly supplier of services (of course, selected through a public tender).

When considering the possibility of charging a private company with a service, the risk of business failure of the private company is weighed against the sensitivity of the service rendered. One option for the future rests in a broader cooperation between the public and the private sectors (public-private partnership). It is a method, whose proper implementation is still sought for. In this area the situation is strongly influenced by business conditions regulated by the state or government, particularly by the tax strategy. The existing conditions do not motivate entrepreneurs to cooperate with the public sector.

As mentioned above, the current drift is toward the privatization of services. With the experience gained in the often dynamic changes of tide in the 1990s, we can say today that the balance between the private and the public activities basically reached an equilibrium, and if there are any shifts of demanded and supplied services between the sectors at all, they are always considered in view of the relatively subtle impact of the envisaged changes.

6.2 Organizational Forms of Public Companies

The possibility to achieve the goals of public service effectively and to produce optimal results of business competition is relatively independent of the organizational form. The risk of failure is naturally reduced when dealing with renowned companies with an established good will. Nevertheless this process will take some time needed to develop the entrepreneurial structure adequate to the place and time conditions, as well as to the overall legal and economic milieu of the country.

In some areas of business the services are still monopolized, which is true especially of the services provided by the key infrastructure (water supply, public transportation). In the case where the monopoly spreads locally due to the local conditions (e.g. waste management in large cities), it is the municipal bodies that should set the conditions so that the abuse of monopoly position is made as difficult as possible (to expect its complete removal would be unrealistic) and find efficient mechanisms of enforcing these conditions.

Generally, the monopoly regulation is mostly in the hands of the state or government and not the municipalities.

6.3 Influencing and Control of the Local Services

The best basis for control of the local services is a sound competitive environment and a well-phrased contract enabling to seek a new service provider whilst keeping the losses at a minimum. It is just another reason why the interventions of the public administration into the public tenders should be minimized (as mentioned elsewhere), though they are often inspired by the best of intentions.

A general problem encountered while trying to keep the local services under control is the fact that for a good number of them, is rather difficult to find objective performance criteria. Moreover, in some cases it is necessary to take into account the losses incurred when swapping the current service provider for a new one. Judging from the hitherto experience, such a change will pay. What is important here is not just the specific act of replacing the supplier, but the signal thus extended into the entrepreneurial community demonstrating that the local administration is ready to effect such a change and face the temporary losses.

6.4 Legislative Discrepancies

Even after ten years of development based on free economic and political competition, the Czech legislation has a good deal of weak spots. At first, the poor quality of legislation stemmed from insufficient qualification and training of the legislators, who lacked suitable technical expertise generated by practice. Several hundreds of laws enacted by the Parliament yearly just illustrate a situation which could hardly result in sound legislation.

It would be unrealistic to expect that the legislation will be improved so as to make a quality basis for effective society performance in the near future. Nevertheless both the professionals and the general public perceive one deficiency as more serious than just the poor quality of legislation—it is the frequent changes of and amendments to the Acts. Of course, this situation is society-wide and cannot be solved on the level of municipalities.

Generally, it can be said that despite a great deal of minor problems generated by mutually conflicting or half-baked laws, no legislative discrepancy is so grave as to put the municipality and utility performance in serious jeopardy. The above-mentioned legislative deficiencies also have a good side—in the case of a major conflict emerging, it is usually solved or at least alleviated in a relatively short period of time.

6.5 Social Impacts of Privatization

Since the 1989/90 break in political situation the attitude of service users to services has undergone a substantial change. The most important changes can be characterized as such:

After the price controls and deformations had been removed, the service users gradually came to accept the real price of services that became the sale price, and they substantially adjusted their behavior to the new situation. The adjustment rests mostly in a change of structure of the services used. As regards municipality rulings on market regulation and subsidizing of services, the changes effected testify of a more liberal approach, as the municipality is incapable of foreseeing the shifts in demand and supply at the service market.

Another important factor making the prices more realistic is the fact that the service users have become more sensitive about service quality. This sensitivity in itself replaces the previous controls and regulations, and as a result the factual aspects of control are much more effective. Consequently, it is the duty of public administration to create a supportive framework in which the consumer controls can come to full fruition; in many case the consumer can initiate an investigation, but cannot perform it by him or herself—then it is up to the public administration to execute the investigation in a qualified way.

6.6 Cooperation Between Small Municipalities/Communities

In the Czech Republic, the cooperation of small municipalities is important particularly due to their relatively large number and small average size. Owing to these characteristics there are inevitably plenty of municipalities incapable of meeting the responsibilities imposed upon them. The possibility of cooperation between small municipalities is regulated by the law, especially by the Acts on municipalities.

To achieve common objectives, the small municipalities usually establish ad hoc associations designed to accomplish costly development projects with complex logistics, for example the provision of potable water supply, the revitalization of waterways, waste water management, the issues of public transportation, sporting facilities (e.g. bicycle paths), and so on. In a similar way they cooperate in fulfilling strategic goals and processing land planning documentation (the compatibility of land development plans, the territorial systems of environmental stability, et cetera.)

Most of the small municipalities profit by cooperation with other small municipalities located nearby. In addition to improved solutions to the local affairs, this cooperation also brings about better chances of accessing financial sources, in some cases the sources derived from European Union sources.

6.7 Policy Development and Implementation

Recently, the participation of the local administrations in the process of legislation development has increased. In relation to the ongoing overhaul of public administration, this process appears

quite inevitable. The participation is effective on two levels. The Association of Cities and Communities, which represents over two thirds of the inhabitants of the Czech Republic, gives opinions on the drafts of Acts. The Association has established a special expert commission on each area of issues; proper attention is also paid to accepting the differences in positions between large cities and small communities.

The Association of Cities and Communities is an organization very effective at serving the needs of municipalities and communities in the Czech Republic; the strength of the Association derives from the relatively high percentage of the municipalities and communities involved, as well as from the qualified job it does, particularly through its expert commissions.

Of course, the process is not quite smooth; some areas of friction between the central and local administrations are here to stay. Nevertheless the obligation to consult the local administrations about all issues follows from the European Charter of local administrations, the greater number of whose provisions the Czech Republic embraced. The situation of cities and communities has gradually been improving and currently it seems that their share of concept development is adequate to their capacity and qualification capabilities.

The informal factors enhancing the decision-making and consulting mechanisms include the several elections that the country has gone through. The elections lift the people experienced in local politics into higher political positions, either elected positions or executive positions, or, conversely, they return people back to practice, where they can capitalize on the experience acquired and contacts made—in consequence, the situation leads again to the above mentioned improvement.

When preparing and processing the strategic developmental plans, the local public with some expertise can usually be successfully tapped to help with the job.

A weakness persists in the incapability of involving the general public into the process of concept preparation and negotiation. Perhaps it can be seen as a positive factor that the municipalities do perceive this fact as a disadvantage. Nevertheless, the search for ways of how to make the public more interested in community affairs and thus to improve the results achieved—be it actual or just publicly perceived improvement—is difficult. In an ever increasing degree the municipalities employ their own means of conveying information (City Hall Bulletins, local or regional periodicals), whilst dynamic development is obvious in the use of e-mail and internet.

APPENDIX

Conditions and Limits Stated by the Act on Awarding Public Contracts

Procedures for Procuring Public Contracts for contracting authorities as stated in § 2b(1), (5), (6) of the Public Procurement Act

For Real Estate or a Set of Machinery or Equipment (Excludes VAT)	For Other Cases (Excludes VAT)	Procurement Procedure
under CZK 500,000	under CZK 500 000	Small-scale public contract—direct purchase possible (§ 49b of the Act)
over CZK 500,000 under CZK 2.5 mil.	over CZK 500 000 under CZK 1 mil.	Simplified procurement—request bids from 3 interested parties (§ 49a of the Act)
over CZK 2.5 mil. under CZK 20 mil.	over CZK 1 mil. under CZK 5 mil.	Invitation to more interested parties to submit a bid—at least 5 interested parties (§ 49 of the Act)
over CZK 20 mil.	over CZK 5 mil.	Commercial public tender (Part Two of the Act)
—	—	Invitation to one interested party to submit a bid (§ 50 of the Act)

Procedures for Procuring Public Contracts for contracting authorities as stated in § 2b(2), (3), (4) of the Act (except for telecommunication network operators and telecommunication service operators)

For Real Estate or a Set of Machinery or Equipment (Excludes VAT)	For Other Cases (Excludes VAT)	Procurement Procedure
under CZK 500 000	under CZK 500 000	Small-scale public contract—direct purchase possible (§ 49b of the Act)
over CZK 500 000 under CZK 2.5 mil.	over CZK 500 000 under CZK 1 mil.	Simplified procurement—request bids from 3 interested parties (§ 49a of the Act)
over CZK 2.5 mil. under CZK 50 mil.	over CZK 1 mil. under CZK 12 mil.	Invitation to more interested parties to submit a bid—at least 5 interested parties (§ 49 of the Act)
over CZK 50 mil.	over CZK 12 mil.	Commercial public tender (Part Two of the Act)
—	—	Invitation to one interested party to submit a bid (§ 50 of the Act)

Procedures for Procuring Public Contracts for contracting authorities of operators of telecommunication networks and telecommunication services as stated in § 2b(2) of the Act

For Real Estate or a Set of Machinery or Equipment (Excludes VAT)	For Other Cases (Excludes VAT)	Procurement Procedure
under CZK 500 000	under CZK 500 000	Small-scale public contract—direct purchase possible (§ 49b of the Act)
over CZK 500 000 under CZK 2.5 mil.	over CZK 500 000 under CZK 1 mil.	Simplified procurement—request bids from 3 interested parties (§ 49a of the Act)
over CZK 2.5 mil. under CZK 50 mil.	over CZK 1 mil. under CZK 18 mil.	Invitation to more interested parties to submit a bid—at least 5 interested parties (§ 49 of the Act)
over CZK 50 mil.	over CZK 18 mil.	Commercial public tender (Part Two of the Act)
—	—	Invitation to one interested party to submit a bid (§ 50 of the Act)

In determining the procedure for procuring public contracts, the amount of future monetary obligation excluding value added tax shall be decisive (viz. § 67 of the Act).

Interpretation of the Act: For consequences resulting from the violation of these provisions the actual amount of monetary obligation in the contract shall be decisive. (Pelc, Procuring Public Contracts, 4th edition)

Summary of the Limits

TIME LIMITS	FOR PROCUREMENT
At least 14 days	To submit a bid in the case of an invitation to more interested parties (§ 49 par.6)
No more than 12 months from fulfillment of public contract	Invitation to one interested party to submit a bid in the case of an additional or repeated public contract, provided its scope does not exceed 50% of the original price of the public contract (§ 50 par. 1)
At least 36 days	Time limit for submitting public tenders (§ 7 par. 1)
No more than 90 days	Time limit for awarding contracts in public tenders (§ 8 par. 2)
90 days	Extension of time limit for awarding public contracts in which foreign aid programs financially participate (§ 8 par. 2)
TIME LIMITS	**FOR PROVISIONS RELATING TO QUALIFICATIONS**
Up to 7 days	Tenderers may request the contracting authority for detailed information needed to demonstrate any further qualifying prerequisites (§ 2a par. 3)
In the last 3 years	A tenderer was subject to disciplinary action under specific provisions regulating performance of a specialized activity (§ 2b par. 1 letter e))
Not older than 90 days	Age of extract from the Commercial Register (if registered) submitted by the tenderer proving his qualifications (§ 2c par. 2 letter. a))
Not older than 6 months	Age of extract from the Criminal Register submitted by the tenderer proving his qualifications (§ 2c par. 2 letter b))
Not older than 6 months	Age of confirmation from a health insurer and social security administration, submitted by the tenderer proving his qualifications (§ 2c par. 2 letter c))

Within 14 days	The tenderer must notify the contracting authority of any changes in qualifications (§ 2d)
No later than 25 days before expiration of the tender period	Time limit for notifying results of prequalification proceedings (§ 21 par. 2)
TIME LIMITS	**FOR PROVISIONS RELATING TO BID BONDS**
Within 7 days after announcement of most suitable bid	Release of bid bonds of tenderers whose bids placed fourth or lower in tender evaluation (§ 25 par. 2)
Within 7 days after concluding a contract	The contracting authority shall release the bid bond of the tenderer whose bid was evaluated and chosen as most suitable and at the same time release the bid bonds of tenderers whose bids placed second and third in the tender evaluation (§ 25 par. 2)
Within 7 days from delivery of notification	A tenderer who has raised objections which the contracting authority upholds is obliged to deposit the required bid bond again (§ 25 par. 7)
TIME LIMITS	**IN THE COURSE OF PUBLIC TENDERS**
At least 36 days	Time limit for submitting public tenders (§ 7 par. 1)
No more than 90 days	Time limit for awarding contracts (§ 8 par. 2)
More than 7 days from receipt of request	Time limit in which the tenderer is obliged to submit justification for an unusually low bid price (§ 36 par. 1)
At least 3 days before expiration of time limit for concluding a contract	Time limit for submitting documents under § 2c in the contracting authority's decision on the selection of most suitable bid (§ 38 par. 4)
After expiration of time limit for awarding public contract —no more than 14 days after receipt of contracting authority's request	At the request of a tenderer whose bid was not accepted, the contracting authority is obliged to return any samples and specimens or parts thereof which were included in his tender offer (§ 39a)
Within 30 days after expiration of time limit for awarding public contract	The contracting authority is obliged to conclude the relevant contract with the tenderer whose bid was chosen as most suitable; the time limit is extended for this period, after which the selected tenderer is bound by his bid; at the same time, the time limit for awarding the public contract for tenderers who placed second and third shall be extended, until such time resulting from provisions in § 41 (§ 41 par. 1)

TIME LIMITS	IN TWO-ROUND PUBLIC TENDERS
Within 52 days	Time limit for the first round of public tenders (§ 44 par. 2)
Within 30 days before expiration of the time limit for submitting first round tenders	Invitation from the contracting authority to negotiate the specifics of awarding the contract (§ 45 par. 2)
No later than 25 days before expiration of the time limit for submitting tenders	The contracting authority shall send the interested party the conditions or, if necessary, documentation related to the public tender (§ 45 par. 3)
Within 7 days from receipt of invitation	The tenderer shall confirm to the contracting authority his participation in the second round of the public tender (§ 47 par. 3)
TIME LIMITS	**IN THE COURSE OF THE INVITATION OF MORE INTERESTED PARTIES (§ 49)**
No more than 30 days	Time limit after which tenderers are bound by their bids and in which the contracting authority shall decide on the selection of most suitable bid
30 days after termination of the time limit for submitting bids, after which tenderers are bound by their bids	Extension of time limit for the tenderer whose bid was selected as most suitable, after which he is bound by his bid to conclude a contract
Termination of time limit under § 49 par. 7, no later than14 days after receipt of request of contracting authority	At the request of a tenderer, the contracting authority is obliged to return any samples and specimens or parts thereof which were included in his tender offer (§ 49 par. 12)
TIME LIMITS	**IN REGULATIONS ON OBJECTIONS**
No later than 10 days after receipt of notification of the contracting authority's actions or receipt of notification of selection	Submission of objections by tenderer to contracting authority (§ 55)
Within 10 days of receipt by contracting authority	Review of objections with the contracting authority (§ 56 par. 1)
Within 10 days of receipt of contracting authority‘s decision	Submission of tenderer‘s petition to review the contracting authority‘s decision; one copy to the supervisory organ, one copy to the contracting authority (§ 57 par. 2)

Within 4 years from the day when the law was violated	Commencement of proceedings by the supervisory organ‘s own initiative (§ 57 par. 1)
Within 7 days after receipt of a petition	The contracting authority is obliged to send documentation to the supervisory organ relating to the public procurement concerned, including bids of the participants in the proceedings (§ 58) and its opinion on the petition (§ 57 par. 3)
Within 7 days after receipt of notification	Tenderers may withdraw from the public tender (§ 57 par. 4)
Within 7 days after receipt of notification	The contracting authority is obliged to release bid bonds of tenderers who have withdrawn from the public tender (§ 57 par. 4)
TIME LIMITS	**IN REGULATIONS ABOUT SANCTIONS**
Within 1 year from the day when the supervisory organ learned that the contracting authority had violated provisions of this Act, but no later than 3 years after such violation	The supervisory organ may impose a fine for violation of provisions of the Act up to 1% of the value of the public contract (§ 62 par. 1)
No later than 4 months after non-fulfillment of obligations is ascertained, but no later than 1 year after expiration of the period specified for its fulfillment	Fines may be imposed by the supervisory organ for not providing requested information or documents, or not attending the ordered verbal proceedings for non-fulfillment of the enforceable decision (§ 62 par. 4)
At least 5 years	The supervisory organ shall exclude a tenderer from participating in public procurement proceedings if the tenderer‘s employee is legally sentenced for a crime „intrigues during public tenders” (§ 63 par. 1)
TIME LIMITS	**OTHER**
Within 15 days after concluding a contract	The contracting authority shall send a “Record of the Public Contract” to the supervisory organ (§ 64a par. 1)
Within 30 days after concluding a contract under Part Two of the Act	The contracting authority is obliged to announce the identity of the tenderer with whom such contract was concluded at the Commercial Bulletin and at the central address of the tenderer, including the bid price (§ 64a par. 2)

Within 30 days of revoking a public tender	The contracting authority is obliged to announce that a public tender has been revoked at the Commercial Bulletin and at the central address (§ 64a par. 2)
Within 15 days after fulfillment of the public contract	Should the pricing details differ from the actual prices by more than 10%, the contracting authority is obliged to send a "Record of the Public Contract" to the supervisory organ stating the actual prices and to publish the actual price of such contract at the Commercial Bulletin and at the central address (§ 64a par. 3)
For 5 years after concluding a contract or after a public contract has been revoked	The contracting authority is obliged to maintain public procurement documentation in its archives, including bids submitted by tenderers, with the exception of samples and specimens (§ 64b)
Within 3 days	Any action undertaken by a contracting authority or tenderer by means of telephone, fax or telex must be confirmed in writing (§ 68 par. 3)

Commercial Bulletin

Address: Dobrovského 25, 170 55, Prague 7

Telephone: +420 2 3307 1623, +420 2 3307 1624

NOTE

1 Health care is not typical community activity. If health services are provided by the community, it is for necessary care guaranteed by the community or services provided based on the decision of the board of representatives (e.g. clinics and hospitals). Decisions regarding fundamental parameters of health services are practically, however, in the hands of the Minister of Health as well as insurance companies.