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Conflict of Interest

ANALYSIS OF THE ENFORCEABILITY OF CONFLICT OF INTEREST LAWS IN THE CZECH REPUBLIC

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ISBN: 978-80-905762-9-2

Published in 2014.

www.oziveni.cz
www.bezkorupce.cz

This project has been funded with support from the European Commission and International Visegrad Fund. This publication reflects the views only of the authors, and the European Commission or International Visegrad Fund cannot be held responsible for any use which may be made of the information contained therein.

Co-funded by the Prevention of and Fight against Crime Programme of the
European Union



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1. INTRODUCTION

What exactly is a conflict of interest? Is there a single generally accepted definition? There is no universal and unambiguous answer. The concept is influenced by differences in moral standards among various societies that also develop over time. There are many various approaches to resolving conflicts of interest. International organisations provide general guidelines that are then adopted and implemented by many international and national institutions or form the basis of their internal codes of behaviour. There is a similar level of variation between the mechanisms defining conflict of interest, levels of regulation, the enforceability of regulations in EU member states (where most countries have their own rules and standards) and any limitations. Regulations, higher standards, and other large-scale measures intended to prevent unethical behaviour and increase public confidence are a highly discussed topic.

OECD¹ for example distinguishes between:

- i) Actual conflict of interest: Current duties and responsibilities of a public official are in direct conflict with his or her private interests;*
- ii) Apparent conflict of interest: It seems that the private interests of a public official could improperly influence the performance of his or her official duties and responsibilities, but this is not the case;*
- iii) Potential conflict of interest: Private interests of a public official represent a potential influence if the duties of the public official concerned the interests in question.*

Conflict of interest involves persons who hold public power and whose decision-making is torn between their personal interests and the public interest they are supposed to serve. Potential conflicts of interest become stronger anywhere where the public and private sector are in close contact or mutually interconnected. Conflict of interest is a standard situation that public officials are facing regularly. For this reason, it is necessary to have guarantees that public interest will be defended and that all decisions and actions will be impartial. The overwhelming majority of EU member states regulate conflict of interest by law, with specific rules for individual institutions².

In response to scandals related to the misuse of public funds, there is a growing pressure from the public calling for better regulation of conflicts of interest.

¹ OECD, 2003: Managing Conflict of Interest in the Public Service, available online <http://www.oecd.org/governance/ethics/48994419.pdf#page=57>

² See the results of the study made by the Commission's Bureau of European Policy Advisers http://ec.europa.eu/dgs/policy_advisers/publications/docs/hpo_professional_ethics_en.pdf#page=10

2. OBJECTIVE AND SCOPE OF THE ANALYSIS, DEFINITION OF TERMS

The objective of this analysis of the enforceability of conflict of interest laws in the Czech context is not to compare or evaluate the laws governing conflict of interest in general, but to focus on one specific aspect of the functionality of legal regulations, namely enforceability. The reason for that is our fundamental conviction that the existence of a legal regulation is not the only criterion that should be judged when assessing its applicability in practice. Implementation of a law, regardless of its quality or scope, is more or less dependent on the institutional mechanisms of enforceability.

In order for any legal regulation to be functional, it must contain conditions of enforceability without which it can have only a limited impact in practice. We will be focusing on the institutional mechanism of enforceability with respect to:

- i) the conditions defined in the law as a necessary prerequisite for any further implementation; and*
- ii) the means used to apply these conditions in practice.*

The basic conditions of enforceability monitored in this analysis include:

- Institutional oversight, monitoring and evaluation

We will focus on issues related to the existence of an oversight institution monitoring compliance with conflict of interest laws and the method of this monitoring. For example, how is it implemented and does it apply differently to different groups of people. We will evaluate this institution's competencies, powers and capacities, including from the perspective of hiring impartial staff. We will focus on oversight mechanisms controlling conflict of interest, including how violations of the law are resolved in practice. We will also be discussing the issue of declarations of personal wealth and their verification.

- Sanctions

Sanctions for violating the law are a significant condition of enforceability, as they can also have a strong preventive effect. Practice shows that results of investigations not backed by applicable sanctions are ineffective³. We will present an overview of existing sanctions for violating the law, and how they are implemented in practice, illustrated with available examples. We will try to evaluate the options or capacities of oversight bodies to apply additional measures in specific cases that the current law fails to address without the need to rewrite the law.

- Methodological guidance, education

Functional counselling or education on conflict of interest and the related laws could improve enforceability of the legislation by preventing violations. We will be looking at the availability of counselling, educational materials and training, as well as the issues of confidentiality.

- Transparency and public involvement

Laws on conflict of interest are intended to defend and protect public interest. Availability of information

³ Act No. 238/1992 Coll., on conflict of interest that was in effect until the end of 2006 only defined one sanction for violating the law. This sanction was reading the name of the public official at a meeting of a chamber of the Czech Parliament in relation with the violation of the law. Monitoring of Czech MPs and senators carried out by the Oživení civic association in 2002 that focused on their failure to declare personal wealth, shows that in the 1997–2002 period, the law was violated by almost half of all MPs and one in ten senators every year. The sanction, however, was also not applied because there was no functional controlling mechanism.

on the personal interests of public officials is an important condition for functional public oversight. We will focus on questions of the public and availability of information on the personal interests of public officials, e.g. declarations of personal wealth, active involvement in monitoring, options to report suspected violations of the law or availability of information on proceedings investigating these violations.

For the purposes of this analysis, we will be looking at conflict of interest in the following categories of public officials:

- Members of both chambers of the Czech Parliament
- Members of the Czech government
- Members of local administration bodies on the municipal and regional level (elected officials)
- Judges and public prosecutors
- Employees of the state (civil servants) with executive powers and financial responsibilities on management levels 1 and 2 in state administration
- Top managers (management levels 1 and 2) at organisations founded by a public entity or by law

A definition of conflict of interest can be found in the Conflict of Interest Act⁴ and the Municipalities and Regions Act⁵, but these two definitions are not fully compatible. Other laws typically mention “impartiality” or “bias”, both terms referring to conflict of interest. For this reason, we have chosen to define conflict of interest as a risk threatening impartiality of decision-making.

The main risks of an unresolved conflict of interest include biased behaviour or decision-making, clientelism, nepotism, abuse of powers, misuse of public funds, misuse of confidential information (in case of future jobs and transfers between positions, this is called the “revolving door effect”).

Preventive tools include in particular, an institution for reporting conflict of interest, abstaining from voting or negotiating, incompatibility of functions, providing notifications of income, activities and intangible property (summarily known as declarations of personal wealth⁶), limitations of private business or other gainful activities while in office or after leaving office.

2. 1. CONFLICT OF INTEREST LAWS

The basic regulation governing conflict of interest in the Czech Republic, besides the Constitution, is Act No. 159/2006 Coll., on conflict of interest that, among other issues, regulates conflict of public interest with the private interests of public officials (e.g. Members of Parliament, senators, members of government, mayors and deputy mayors, full-time members of regional local administration as well as heads of organisational units of the state and members of statutory, monitoring or controlling bodies of legal persons founded by law etc.). Special standards apply to judges and public prosecutors, representatives on the municipality level or employees of the state. Other partial regulations are found in laws on local administration (acts on municipalities, regions, the capital city of Prague, public contracts) and several others.

There are multiple laws regulating conflict of interest in the Czech Republic, or more specifically partial provisions in several different laws applying to various groups of persons. In general, public officials, either directly or indirectly, are responsible for acting and deciding without prejudice and for defending and promoting public interest. Personal interest is defined in similar ways in multiple regulations; in general, it is any interest that brings a personal benefit to the public official or prevents injury to any such benefit. Public officials must always

⁴ Quoting from Act No. 159/2006 Coll., Section 3 (1): “If any conflict between the interests of the public and his/her private interest occurs, no public official may prefer his/her own interest over the interests that he/she is obligated to enforce and defend as a public official. For the purpose of this act of law, personal interest is understood to mean any interest securing any private benefit or preventing possible reduction of any material or other benefit.”

⁵ Acts No. 128/2000 Coll., on municipalities and No. 129/2000 Coll., on regions define conflict of interest as follows: “Where circumstances dictate that the participation of a member of a municipal council in discussions and decision-making in a certain matter in the bodies of the municipality/region might constitute an advantage or injury for the member concerned or for a person close to him, for a natural or legal person represented by this member pursuant to the law or power of attorney (conflict of interests)...” Both laws apply to representatives of municipalities and regions; their definitions of conflict of interest, however, are not harmonised and are much broader in legal regulations directly concerning local administration, which may be a major issue in the implementation and enforceability of these rules.

⁶ The Conflict of Interest Act refers to the declaration of personal wealth as “notice of activities, income, gifts, liabilities and assets”.

put public interest first and not misuse their position and powers for their benefit or the benefit of another person, or to appeal to their function when resolving their personal affairs. Specific duties or limitations are different for each group of persons, i.e. categories of public officials.

Standard measures include, for example, disclosing public interest (withdrawing due to partiality). A conflict of interest is particularly strong when one individual performs multiple functions. For this reason, the law explicitly forbids holding certain functions concurrently. For public officials employed by the state, such limitations typically include forbidding any other gainful activities other than management of the official's personal assets and scientific, literary, educational or similar activities. To a smaller extent, Czech laws also define some limitations for people leaving public functions. Only a few groups of public officials, in particular elected representatives, are obliged to submit declarations of personal wealth. Available monitoring mechanisms, however, are very limited, and so are potential sanctions. The only exception is a relatively thorough process mechanism for judges and public prosecutors.

A more detailed list of specific regulations governing conflict of interest can be found in the following table that lists types of public officials, relevant laws and a brief description of the applicable regulation.

public official	legal regulation	description of the regulated area
Members of Parliament	Constitution of the Czech Republic (No. 1/1993 Coll.)	Defines a fundamental incompatibility between the members of both chambers of the Parliament, meaning that no one may be a member of both at once, and also with the functions of president and judge; the law also defines extensive immunity, including for offences and criminal immunity for Members of Parliament; incompatibility of functions defined in the constitution is decided by the Constitutional Court.
	Conflict of Interest Act (No. 159/2006 Coll.)	The law defines a duty to defend public interest and forbids promoting personal interest instead; it provides a definition of public interest and prohibits the abuse of a position, power or information for the benefit of the official or other persons; prohibits appealing to function and limits presence in commercial advertising; defines the obligation to orally disclose any personal relationship to a discussed matter during hearings (recorded in writing); creates a duty to provide an annual notice of income, gifts and commitments, activities and property, regulates how the notices are archived and controlled and defines sanctions; Members of Parliament are forbidden from receiving remuneration for their functions in bodies of business enterprises that are partially or fully owned or controlled by the state; defines a general incompatibility of functions for positions that are in an employment or service relationship with public administration, the public prosecutor office or courts, the security forces, the Supreme Audit Office, Office of the President of the Republic, the Chamber of Deputies or the Senate, state funds and the office of the Ombudsman.
Members of the government	Constitution of the Czech Republic (No. 1/1993 Coll.)	The law defines incompatibility between the positions of a member of government, who as a Member of Parliament may not be the chair or vice-chair of the Chamber of Deputies or Senate or member of Parliament committees or investigatory commissions; in the Czech Republic, it is common practice (allowed by the Constitution) to be both a Member of Parliament (legislative power) and member of government (executive power) at once; the Constitution also assumes that activities related to the performance of the function will be regulated by a special law.
	Conflict of Interest Act (No. 159/2006 Coll.)	The law defines a duty to defend public interest and forbids promoting personal interest instead; it provides a definition of public interest and prohibits the abuse of a position, power or information for the benefit of the official or other persons; prohibits appealing to function and limits presence in commercial advertising; defines the obligation to orally disclose any personal relationship to a discussed matter during hearings (recorded in writing); creates a duty to provide an annual notice of income, gifts and commitments, activities and property, regulates how the notices are archived and controlled and defines sanctions; the law limits the options for members of government to engage in gainful business activities or be members of statutory or similar bodies of business enterprises, or hold other employment or service relationships with the exception of management of personal assets or scientific, literary, artistic or sports activities; the law defines a one-year post-function period in which the person is not allowed to be employed by legal persons that signed a contract or won a large public tender while the official was in office and took part in this contract.

Members of local administration – mayors and other elected representatives	Conflict of Interest Act (No. 159/2006 Coll.)	The law only applies to full-time representatives of regions or municipalities and part-time mayors or deputy mayors; it defines a duty to defend public interest and forbids promoting their personal interest instead; it provides a definition of public interest and prohibits the abuse of a position, power or information for the benefit of the official or other persons; prohibits appealing to function and limits presence in commercial advertising; defines the obligation to orally disclose any personal relationship to a discussed matter during hearings (recorded in writing); creates a duty to provide an annual notice of income, gifts and commitments, activities and property, regulates how the notices are archived and controlled and defines sanctions; full-time representatives may not receive remuneration for their functions in business enterprises that are partially or fully owned or controlled by the local administration; full-time representatives are bound by a one-year post-function period in which they may not be employed by legal persons that signed a contract or won a large public tender while the official was in office and took part in the contract.
	Municipalities Act (No. 128/2000 Coll.) Regions Act (No. 129/2000 Coll.) Capital City of Prague Act (No. 131/2000 Coll.)	The duty of representatives (full or part-time) to report a conflict of interest before hearings; monitoring is limited to public control (public participation at meetings of representatives guaranteed by the law); conflict of interest is defined as follows: “Where circumstances dictate that the participation of a member of a municipal council in discussions and decision-making in a certain matter in the bodies of the municipality/region might constitute an advantage or injury for the member concerned or for a person close to him, for a natural or legal person represented by this member pursuant to the law or power of attorney”; there are no control mechanisms or sanctions, which are only found in the Criminal Code, e.g. in the criminal act of abusing powers of officials.
	Public Contracts Act (No. 137/2006 Coll.)	The law forbids members of evaluation committees to have a relationship with a public contract or to be biased; it specifically disallows participation in the processing of the offer and having a personal interest in a public contract or a personal, working or other similar relationship with the participants; the law defines a duty to submit to a member of the evaluation committee a written declaration of impartiality before the committee meeting starts.
Judges and public prosecutors	Constitution of the Czech Republic (No. 1/1993 Coll.)	The law defines incompatibilities of functions, specifically with the positions of president and Member of Parliament and with any function in public administration; it also assumes that other limitations will be defined in a special law.
	Judges and Courts Act (No. 6/2002 Coll.)	The law defines the fundamental rights and duties of judges in the exercise of their functions and their obligation to decide impartially; it prohibits influencing the impartiality and independence of decision-making; the law defines incompatibilities of functions, stating that judges other than presidents or vice-presidents of courts are prohibited to hold any other function in public administration; judges other than presidents or vice-presidents of courts may not be engaged in any other gainful activity than management of their own assets and scientific, educational, literary, journalistic and artistic activities or activities in advisory bodies of ministries, the government and the Parliament; responsibility for any damage caused by an unlawful decision of a judge, a decision on detention, punishment or protective measures and damage caused by maladministration is carried by the state; the judge may be asked for a financial compensation in regression only if his or her fault was determined in disciplinary or criminal proceedings; the law defines the method of handling reports of misconduct, referred to as disciplinary proceedings, including possible sanctions (reprimand, salary reduction, removal from office) and power of the minister to temporarily suspend the office of a judge; disciplinary proceedings are single-instance without the possibility of an appeal, but may be renewed.

Constitutional Court Act (No. 182/1993 Coll.)		The status, rights and obligations of constitutional judges are regulated by a special law that defines incompatibility of the position of a judge with other paid functions or other gainful activities with the exception of management of their own assets and scientific, educational, literary and artistic activities, unless such activities are detrimental to the function, importance or dignity of the judge, or undermine confidence in the independence and impartiality of the decisions of the Constitutional Court; membership in a political party or a political movement is also disallowed; the act defines disciplinary proceedings for disciplinary offences, sanctions and the options of appealing or seeking remedy; disciplinary proceedings of a judge of the Constitutional Court are different from other judges, primarily because they also apply to offences (it is impossible to prosecute judges of the CC for offences); the proceedings may only be initiated by the President or the Plenum of the Constitutional Court, the disciplinary senate hearing is not public and the only possible sanction is a reprimand; only if it is proven that were the judge to remain in office, the mission of the CC or the position of its judges could be jeopardized, the judge may be removed from office (which, however, must be preceded by a final reprimand as a formal prerequisite for the termination of the office); against the decision of the disciplinary senate, a CC judge may file an appeal within 15 days from the date of receipt, but will be temporarily relieved of his or her duties for the entire duration of the disciplinary proceedings.
Public Prosecution Act (No. 283/1993 Coll.)		The law defines the rights and obligations of prosecutors as public officials whose job is to represent the state in protecting the public interest; it defines the obligation to responsibly fulfil tasks and comply with unbiased procedures, rejecting any external intervention or other influence that could result in a breach of any of the obligations; it limits the overlapping of functions, stating that together with the position of a public prosecutor, head prosecutor or deputy head, or together with functions associated with a temporary allocation to a ministry or the Judicial Academy, prosecutors may not hold any other paid office or engage in any gainful activity except for management of their property and scientific, teaching, literary, journalistic and artistic activities or activities in advisory bodies of ministries or the government and bodies of the two chambers of Parliament; it regulates the actions of the prosecutor as an arbitrator or mediator in legal disputes or representative of parties in court proceedings and similar positions; the law defines the process for handling reports of misconduct, known as disciplinary proceedings, including their possible sanctions (reprimand, salary reduction, removal from office) and the power of the minister to temporarily suspend the office of public prosecutors.
Act on Proceedings in Matters of Judges, Public Prosecutors and Court Executors (No. 7/2002 Coll.)		The law defines the procedure for situations where the responsibilities of judges or public prosecutors are violated, known as disciplinary proceedings; it primarily sets forth the conditions and deadlines for starting the proceedings.
Act on Court Criminal Proceedings (Criminal Procedure Code) (No. 141/1961)		The law defines conditions for withdrawing from criminal proceedings for an inability to decide impartially and withdrawing due to bias.
Civil Procedure Code (Act No. 99/1963 Coll.)		Defines conditions for withdrawal from hearings and decision-making processes for judges and assessors due to bias, i.e. if, due to their relationship to the matter at hand, the participants or their representatives, there is reason to doubt their impartiality; also defines the method for discussing the exclusion of a judge from the proceedings.
Code of Administrative Justice (Act No. 150/2002)		Regulates withdrawal from proceedings in administrative justice for bias; also applies to judges who took part in proceedings or decision-making processes in the same matter at an administrative body or during previous court proceedings.

Civil servants in central state administration with executive or financial powers at management levels 1 and 2	Act on Service of Public Servants (No. 218/2002 Coll.)	Defines the rights and obligations of public servants, including options of disciplinary punishments; the law as a whole is ineffective and the regulation is therefore mostly theoretical; because the public service act is ineffective, employment relationships of public servants are governed only by the Labour Code and, in specific cases, the Conflict of Interest Act, as well as sections of the Public Contracts Act.
	Labour Code (No. 262/2006 Coll.)	The law defines the following obligations for public administration employees: a) to consider cases and decide impartially and at work refrain from everything that could undermine confidence in the impartiality of decision-making; b) maintain confidentiality of facts learned on the job that are not in the interests of the employer to disclose to other persons; c) not accept gifts or other benefits in relation to the exercising of job duties, with the exception of gifts or benefits provided by their respective employer or where defined by law; d) to refrain from actions that could lead to a conflict of public and personal interests, in particular not to misuse information acquired during the performance of work for their own or someone else's benefit; the law restricts the activities of public employees by prohibiting other gainful activities without prior consent of the employer with the exception of scientific, educational, journalistic, literary or artistic activities or management of their own property; the law also prohibits membership in management or supervisory bodies of legal entities engaged in business activities unless appointed by the employer, but in that case only if they do not receive compensation from the respective legal entity.
	Conflict of Interest Act (No. 159/2006 Coll.)	The law applies to managers of central state administration authorities (management level 1) and heads of administrative offices, as well as managers at management levels 2 through 4 in an organisational unit of the state, and only applies to managers if they are deciding on the use of funds exceeding CZK 250 thousand per transaction, are directly involved in ordering or implementing a public contract or deciding in administrative proceedings; the law defines a general duty to defend public interest and forbids promoting personal interest instead; it provides a definition of public interest and prohibits the abuse of a position, power or information for the benefit of the official or other persons; prohibits appealing to function and limits presence in commercial advertising; defines the obligation to orally disclose any personal relationship to a discussed matter during hearings (recorded in writing); creates a duty to provide an annual notice of income, gifts and commitments, activities and property, regulates how the notices are archived and controlled and defines sanctions; managers of central state administrative bodies are limited in their options to engage in gainful business activities or be members of statutory or similar bodies of business enterprises, or other employment or service relationships with the exception of management of personal assets or scientific, literary, artistic or sports activities; the law defines a one-year post-function period in which the person is not allowed to be employed by legal persons that signed a contract or won a large public tender while the official was in office and took part in the contract.
	Public Contracts Act (No. 137/2006 Coll.)	The law forbids members of evaluation committees to have a relationship to the public contract or to be biased; it specifically disallows participation in the processing of the offer and having a personal interest in a public contract or a personal, working or other similar relationship with the participants; the law defines a duty to submit to a member of the evaluation committee a written declaration of impartiality before the committee meeting starts.

<p>Top managers (management levels 1 and 2) at organisations founded by public entities or by law</p>	<p>Conflict of Interest Act (No. 159/2006 Coll.)</p>	<p>The law applies to members of statutory bodies, members of controlling, supervisory or monitoring bodies of legal entities founded by law, state-funded organisations, organisations founded by a local authority, managers at management levels 2 through 4 in a legal entity founded by law, state-funded organisations, state-funded organisations of a local authority, managers of an organisational unit that is an administrative office and managers at management level 2 through 4 in an organisational unit of the state, but only applies to public officials if they are deciding on the use of funds exceeding CZK 250 thousand per transaction, are directly involved in ordering or implementing a public contract or deciding in administrative proceedings; the law defines a general duty to defend public interest and forbids promoting personal interest instead; it provides a definition of public interest and prohibits the abuse of a position, power or information for the benefit of the official or other persons; prohibits appealing to function and limits presence in commercial advertising; defines the obligation to orally disclose any personal relationship to a discussed matter during hearings (recorded in writing); creates a duty to provide an annual notice of income, gifts and commitments, activities and property, regulates how the notices are archived and controlled and defines sanctions; the law defines a one-year post-function period in which the person is not allowed to be employed by legal persons that signed a contract or won a large public tender while the official was in office and took part in the contract; the law does not apply to companies owned or co-owned by a public entity if they were founded pursuant to the Commercial Code, i.e. companies owned by the state or municipalities.</p>
	<p>State Enterprise Act (No. 77/1997 Coll.)</p>	<p>The law defines conditions in state companies and organisations founded by ministries with approval of the government; it specifically addresses the obligations of top managers of the company – directors, representatives and members of the supervisory board, prohibiting a) conducting trades related to the company’s business activities in their own name and on their account or an account of a close person; b) mediating the company’s business for the benefit of another person; c) take part in the business activities of another legal entity with a similar type of activities, with the exception of ownership of shares gained through voucher privatisation; and d) exercise the function of a statutory body or member of a supervisory (management) board of a legal entity with similar business activities, unless the company takes part in the activities of this entity.</p>
	<p>Zákon o veřejných zakázkách (č. 137/2006 Sb.)</p>	<p>The law forbids members of evaluation committees to have a relationship to the public contract or to be biased; it specifically disallows participation in the processing of the offer and having a personal interest in a public contract or a personal, working or other similar relationship with the participants; the law defines a duty to submit to a member of the evaluation committee a written declaration of impartiality before the committee meeting starts.</p>

This overview clearly illustrates the fragmented nature of the legal regulations as well as a clear effort to define conflict of interest for individual groups⁷ of public officials; the same group, however, is often covered by multiple definitions, like, for example, representatives in local administration. The limitations are naturally dependant on the scope of activities or powers of public officials. Examples include an obligatory disclosure of personal interest by part-time representatives of local administration, incompatibilities between functions for Members of Parliament, judges and representatives of the state, the duty to submit declarations of personal wealth by Members of Parliament, members of government, heads of administrative offices and full-time representatives of local administration or post-function limits imposed on members of the government and selected top officials.

2. 2. INSTITUTIONAL OVERSIGHT, MONITORING AND EVALUATION

In the Czech Republic, there is no single institution monitoring conflicts of interest. In accordance with the Conflict of Interest Act, there are several recordkeeping bodies. Their role is to archive declarations of public officials, verify their completeness, provide access to them and investigate suspicions of violations of the law by a public official. For Members of Parliament, these functions are in the hands of the mandate and immunity committees of the Parliament; for full-time local representatives, they are handled by the corresponding local authorities and for members of government and civil servants by their respective ministries. There is no institutional system for investigating reports of conflict of interest among part-time local representatives.

Violation of the law is classified as an offence⁸ and as such is normally resolved on the level of local recordkeeping bodies by offence committees consisting of one or more civil servants. Even though the recordkeeping bodies are meant to check the completeness of information in declarations, this power remains unused. There is no available information on any single case of a recordkeeping body investigating a declaration on its own initiative.

The Oživení civic association decided to exercise the right and, based on its own analysis⁹ of the completeness and accuracy of declarations of private wealth of 483 public officials, submitted a request to investigate a total of 122 suspected violations of the Conflict of Interest Act in 2011. Even though recordkeeping bodies are obliged by law to inform those who submit such requests on how they were handled, this clause was not applied in practice at all. Oživení had to submit requests for information following the provisions of the Freedom of Information Act¹⁰ to learn the results of the 118 cases.

The monitoring function can be summarised as follows:

- 1/ Competence levels of the staff of recordkeeping bodies is low and some of them followed an outdated version of the law;
- 2/ The fact that public officials are assigned to recordkeeping bodies by their place of residence is a risk, as violations of the law by the mayor of a municipality are handled as offences by their subordinates;
- 3/ The decision-making practice is inconsistent with different sanctions imposed for identical violations of the law;
- 4/ Recordkeeping bodies themselves violate the law by ignoring their duty to inform those who submit a request on the result of its investigation;
- 5/ The efficiency of sanctions is low; the imposed amounts were usually near the allowed minimum, and the result was often only a hearing where an explanation was provided;
- 6/ Results of investigations are not available to the general public.

Institutional monitoring of the Conflict of Interest Act fails completely and is essentially non-existent. Verification of submitted declarations is inefficient, which undermines their whole purpose.

Another complication hindering efficient verification of the contents of declarations made by public officials following the Conflict of Interest Act is the frequency with which they are submitted. These declarations are submitted every year, but it is not required to provide one at the beginning of an office term, which makes it impossible to compare wealth amassed while in office with publicly available information on the official's income.

⁷ European legislation on conflict of interest was obligatorily incorporated into national legislation through the Public Contracts Act.

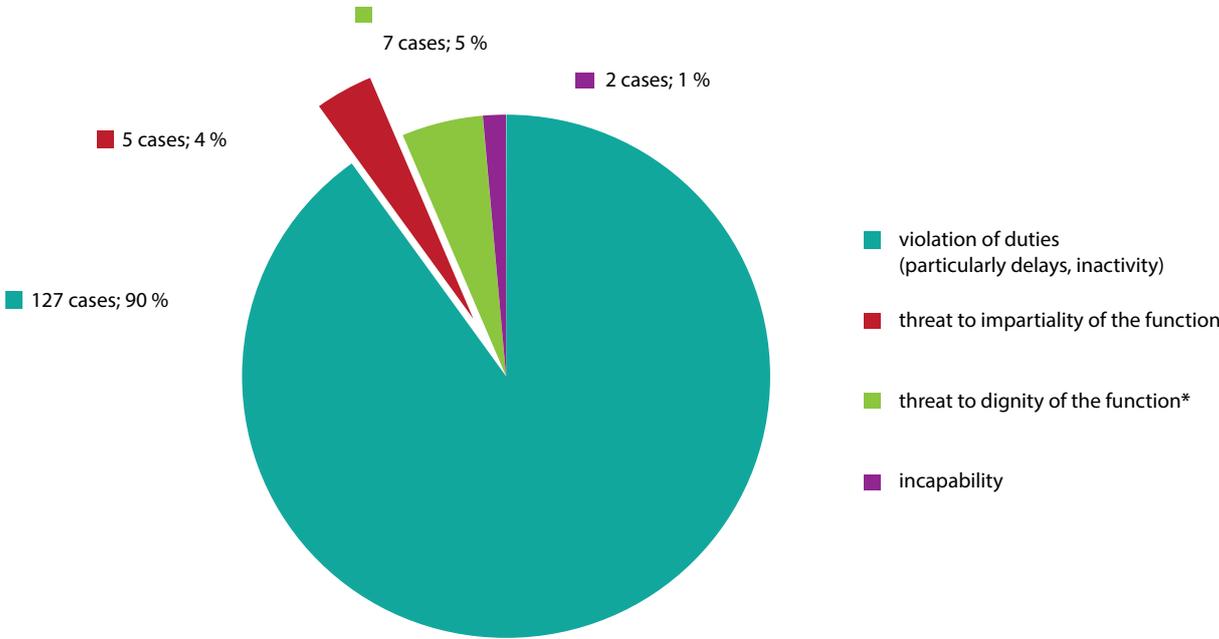
⁸ Amendment of the Conflict of Interest Act No. 216/2008 Coll. changed this from the original system, in which the matter was judged by a court and concluded with a mandatory published judgement, to offence proceedings which are not public; the penalties for violating the law have also been reduced. Capacity issues were not resolved and hundreds of recordkeeping bodies simply found themselves with an additional duty to perform.

⁹ Oživení exclusively used publicly available sources for the verification of completeness and accuracy – the Commercial Register, Business Licence Register and partially the Land Register. Detailed results are available online at <http://www.bezkorupce.cz/nase-temata/stret-zajmu/monitoring-sz/>

¹⁰ Act No. 106/1999 Coll., on freedom of information

Legal duties of judges and public prosecutors are monitored by the Supreme Administrative Court (SAC). The SAC has held this role since 1 October 2008 and is responsible for disciplinary proceedings for violations of duties or for threatening the dignity or impartiality of judges and public prosecutors. The disciplinary court acts and decides through senates consisting of six members. These members are the president of the senate, the vice-president, a judge and three assessors. The team of assessors must always consist of one public prosecutor, one attorney and one lawyer working in another role. In case of public prosecutors, the senate is composed of the president of the senate, a vice-president and four assessors (2 public prosecutors, an attorney and a lawyer working in another role). Disciplinary proceedings are opened in response to a request for investigation; they are single-instance, and the only possible remedy is a reopening of the process. Oral hearings are public¹¹. Disciplinary proceedings concerning judges and public prosecutors are opened upon the request of the President and Minister of Justice against any judge, and upon the request of a president of a court against the judges of this court and judges at a lower level. The particulars are defined with great precision in the Act on Proceedings in Matters of Judges, Public Prosecutors and Court Executors. Capacities of the SAC can be considered adequate. The system for appointing members of disciplinary senates also provides a sufficient safeguard of independence and impartiality of the proceedings. The unavailability of potential remedies, however, is somewhat controversial. In October 2009, the SAC turned to the Constitutional Court with a request to evaluate whether the single-instance proceedings are constitutional, but it was rejected¹². In court practice of the SAC¹³, disciplinary proceedings related to impartiality account for 4 % of all proceedings concerning judges and one fifth of proceedings concerning public prosecutors (including cases where illegal activities were performed). A more detailed overview of disciplinary proceedings in the period between 1 October 2008 and 30 September 2013¹⁴ can be found in the following charts. There were 141 proceedings concerning judges in total, and 44 concerning public prosecutors. An overview of specific cases is provided in Appendices 1 and 2.

Disciplinary proceedings involving judges 2008 – 2013 (as of 30 September 2013)

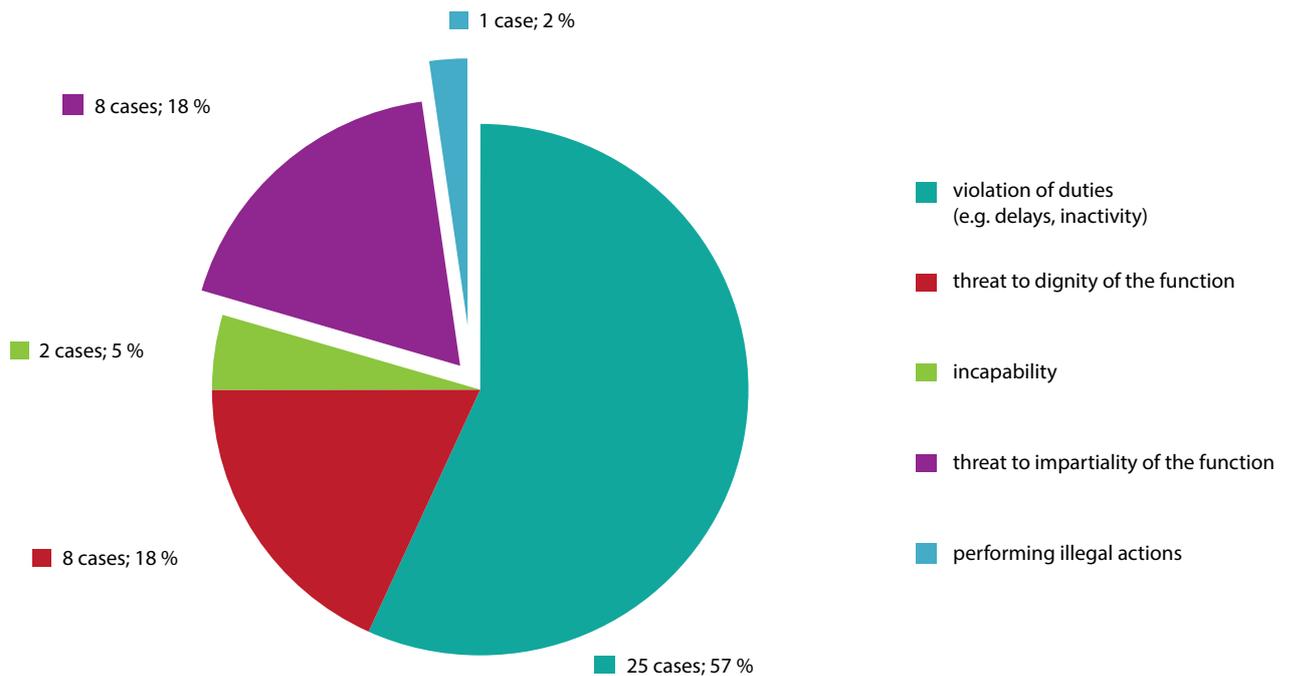


* note: some reports concerned the same person and the disciplinary proceedings were merged by the SAC, but here they are counted as separate cases; two proposals to renew the proceedings are not included in the statistics.

Source: SAC, processed by the authors, data as of 30 September 2013

¹¹ Annual Report of the Supreme Administrative Court for 2009
¹² Ruling No. ÚS 33/09
¹³ <http://www.nssoud.cz/main2Col.aspx?cls=InfoSoudList&menu=187> information on the SAC disciplinary proceedings concerning the responsibilities of judges and public prosecutors after 1 October 2008
¹⁴ SAC statistics provided upon an information request in November 2013, processed by the authors

Disciplinary proceedings involving public prosecutors 2008 – 2013 (as of 30 September 2013)



Source: SAC, processed by the authors, data as of 30 September 2013

For constitutional judges, a disciplinary violation is any action that bears the characteristics of an offence as it is impossible to conduct offence proceedings against a judge of the Constitutional Court (CC). The entity that can actively open disciplinary proceedings is the President of the Constitutional Court or its Plenum if the proceedings are to be led against the President of the CC. The hearings are not public and the only possible sanction is a reprimand. Only if the proceedings prove that if the judge remained in position the mission of the CC and the position of its judges would be jeopardised can the Plenum decide to remove the judge from office. That, however, must be preceded by an official reprimand that serves as the formal condition for issuing such decisions. A judge of the Constitutional Court may raise an objection against a decision of the disciplinary senate within 15 days. According to the Constitutional Court Act, judges who are involved in disciplinary proceedings are temporarily suspended from office. According to available information, there has never been a single case of disciplinary proceedings against a constitutional judge.

2. 3. SANCTIONS

The only sanction defined in the Conflict of Interest Act is for breaching duties in submitting declarations, specifically if these declarations are incomplete, inaccurate or false. The sanction is financial and the maximum possible amount is CZK 50 thousand. Violation of the duty to disclose personal interest carries no sanctions. Because there is no single register and because all recordkeeping bodies have the power to impose sanctions, it is difficult to obtain information on their total number. While the Act has been in effect for 6 years, the only available information comes from a single monitoring project of the Oživení civic association in 2011 – 2; the results of which have been made public. The association submitted to recordkeeping bodies 122 reports of suspected violations of the Conflict of Interest Act. The results were 26 known penalties: the cases of 2 public officials were discussed but not sanctioned, as the discussion was considered a sufficient remedy, 6 cases ended with a reprimand and 18 officials were fined between CZK 500 and 5,000¹⁵. Financial sanctions were generally imposed on the lowest possible level. For public officials, the fact that the case was published in the media was probably a greater blow than the imposed sanction, but this publication was initiated by the association that carried out the monitoring and not automatically by the investigating body. Compared to the fines for exceeding the posted speed limit by 5 kilometres per hour for example, i.e. CZK 1,000 if paid on the spot and CZK 1,500–2,500 in administrative proceedings, the sanctions seem inadequate. Considering the severity of the violation from the perspective of public interest, penalties for violating the Conflict of Interest are not sufficient. Further investigation would be required to determine if the reason for low sanctions against public officials is that the act is considered to have low severity or that the controlling mechanism is inadequate (subordinates may be deciding sanctions against their seniors, regular civil servants against high-ranking servants or politicians).

Potential sanctions for judges as defined by the Courts and Judges Act are reprimands, wage reductions or removal from office. The Minister of Justice also has the power to temporarily suspend a judge's function. In the period between 1 October 2008 and 30 September 2013, we know of 5 cases of disciplinary proceedings against judges on the grounds of threats to their impartiality, 4 of which were closed. In two cases, the disciplinary senate acknowledged their guilt and reduced their salary, and two of the proceedings were terminated because the judge surrendered his or her function. It is difficult to judge the efficiency of the sanctions from this small sample, but the current system seems to be supported by cases in which judges, after the initiation of proceedings in which their removal from office was proposed, abandoned this office on their own volition. The capacities of the monitoring body, in this case the SAC, can be inferred from the duration of the proceedings. The two cases that ended with a decision of the disciplinary senate took 11 months each. Due to the number of cases, it is very difficult to assess the capacity of the monitoring body, but considering the severity of the corresponding behaviour and its impact on public interest, it can be said that the cases should, in general, be resolved earlier.

For the duration of disciplinary proceedings against a judge of the Constitutional Court, this judge is temporarily suspended from office. The only possible sanction is a reprimand. If it is proven that if the judge remains in position the mission of the Constitutional Court and the position of its judges would be jeopardised, the judge may be removed from office. This decision, however, must be preceded by an official reprimand that serves as the formal condition for issuing such decisions.

The sanctions for public prosecutors are defined by the Public Prosecution Act and are similar to those for judges. The sanctions can be a reprimand, wage reduction or removal from office, and the Minister again has the right to temporarily suspend a public prosecutor's function. In the period between 1 October 2008 and 30 September 2013, we know of 8 cases of disciplinary proceedings against public prosecutors

¹⁵ http://www.bezkorupce.cz/wp-content/uploads/2013/03/vysledky-2013_03.pdf

on the grounds of threats to their impartiality, 7 of which were closed. In 1 case, the public prosecutor was acquitted because guilt was not proven; in 3 cases, the disciplinary senate acknowledged guilt (ceasing the activity, reprimand, removal from office) and 3 proceedings were terminated (prosecutor surrendered the function, proceedings ongoing, reason not provided). A particularly interesting case involved a public prosecutor who said in an interview for a daily newspaper that she was in contact with the family of a “mafioso” and could not resign because she was paying her mortgage¹⁶. The disciplinary senate considered this a serious threat to the impartiality of her function and the public prosecutor was removed from office. Closed proceedings (i.e. those ending with a pronouncement of guilt or an acquittal) took on average 7.5 months, ranging from 3 to 10 months. As with disciplinary proceedings against judges, it is difficult to assess the capacity of the SAC by the number of imposed sanctions or duration of the proceedings due to a low number of cases.

2. 4. METHODOLOGICAL GUIDANCE, EDUCATION

There is no institution providing consultations in issues related to conflicts of interest and corresponding laws in the Czech environment. Education in this field is not mandatory and is not regularly provided by any institution. If a public official needs to resolve a conflict of interest, there is nowhere to turn to and no one to ask. Many public officials seek advice from their colleagues, which however cannot guarantee the information will be correct.

If a public official doubts the correctness of further actions, there is no available methodological guidance. The Conflict of Interest Act does not define a duty to provide consultations for any of the recordkeeping bodies or the SAC. Minor exceptions are the mandate and immunity committees of the Parliament, but these bodies also publish no official statements and any counselling is strictly informal.

However, it is debatable to what extent public officials seek education or methodological guidance in conflicts of interest. The Institute for Public Administration, an educational body of the Ministry of Interior, offers a single course concerning the Conflict of Interest Act. According to the management¹⁷ of the institute, public officials have little interest in education on ethics, and the course offer corresponds to that fact. A type of sub-legal regulation of conflicts of interest on the level of local authorities is Codes of Ethics, already adopted by some of them. Most of these documents however contain only general recommendations and there are no manuals for handling specific cases or any consultation services. Codes of Ethics are more commonly implemented for civil servants, and less often for elected representatives¹⁸.

2. 5. TRANSPARENCY AND PUBLIC INVOLVEMENT

Availability of information on the personal interests of public officials is an important condition for functional public oversight. Declarations of personal interests are in accordance with valid legislation provided orally, and the Conflict of Interest Act requires them to be recorded in writing. This duty can be fulfilled particularly when the person is physically present, e.g. at a meeting of local representatives. With meetings of regional representatives, the government, Parliament or top civil servants, the situation is considerably more complicated, even though the minutes from the meetings of local authorities, the government and Parliament are publicly available. It is virtually impossible to monitor decisions of top-level civil servants.

Declarations of activities, income, gifts, liabilities and assets submitted by public officials pursuant to the Conflict of Interest Act and kept in the registries of various corresponding bodies are available to the public free of charge when requested either in person or remotely on the basis of a request for access. A request for access requires verification of the person’s identity and must contain first and last name, date of birth, place of residence and correspondence address. This measure was adopted in order to protect public officials, and ensures

¹⁶ Mf Dnes, *Splácím dům, proto teď nemůžu rezignovat*, online http://zpravy.idnes.cz/zalobkyne-votavova-splacim-dum-proto-ted-nemuzu-rezignovat-prg-/domaci.aspx?c=A081112_223211_domaci_zra quoted on 2013-11-03 and Mf Dnes, *Státní zástupkyně se přátelila s rodinou mafiana*, online http://zpravy.idnes.cz/statni-zastupkyne-se-pratelila-s-rodinou-mafiana-f7g-/domaci.aspx?c=A081112_221558_domaci_zra quoted on 2013-11-03

¹⁷ Informal interview by Martin Kameník, Chairman of civic association Oživení, with a representative of the Institute for Public Administration <http://www.institutpraha.cz/> in October 2013.

¹⁸ An evaluation of the existence and quality of recommendations on ethics and conflicts of interest on the regional level was carried out by the Hodnoceníkrajů.cz project in 2012. It determined that 12 out of the 14 regions do not have a Code of Ethics for representatives, while all but one region do have such a code for other employees of local authorities. Available online at: http://www.hodnocenikraju.cz/cz/sets/kraje-2012/category/etika_a_stret_zajmu quoted on 2014-11-11

that all accesses to their declarations are recorded. The requesting party is also facing a sanction of CZK 50,000 if the information from the declaration is used for any other purpose than for determining potential conflict of interest¹⁹. Everyone has the right to notify the body maintaining the register of any facts indicating that the data in a declaration is false or incomplete. The body is then obliged to inform the requester on how this information was handled within 30 days. The format and structure of the form for making a report is defined by a specific regulation²⁰.

Practical experience²¹ with the registers has shown that the recordkeeping bodies are unable to provide access quickly and efficiently. Verification of the requester's identity was handled by delivering a letter by registered mail or into an e-government mailbox. Access credentials and password should be provided "without undue delay", which did not happen in many cases. Each recordkeeping body also controlled not only the time for which the requester may peruse the declarations, but also their availability. Typically, only information from the last calendar year was made available and not for previous years, even though there is no reason for doing so. The duration of access varied from unlimited or one-year access (mandate and immunity committees of the Parliament, the Jihomoravský, Karlovarský, Pardubický, Ústecký and Vysočina regions) to a single day (Královéhradecký, Liberecký, Moravskoslezský and Zlínský regions). Such limitations contradict the information on the official website of the Registry of Conflict of Interest²² according to which "based on an assigned user name and password, the electronic register may be accessed for 48 hours after first login". In the Plzeňský, Středočeský and Hlavní město Praha regions, access had to be requested repeatedly, as it was provided for 4 days, for example, of which two were the weekend and two were spent waiting for the letter, or the provided password did not work. Declarations were typically available as scanned documents that are not suitable for further processing. User friendliness of the registries is limited. For example, in the register administered by the Plzeňský region, it was impossible to search by name of the official, and all files had the name "dokument.pdf". This means that if a citizen is interested only in the governor of the region, for example, he or she still has to go through everything. Public monitoring is further limited by the way in which recordkeeping bodies interpret their legal obligation²³ to inform the requester on how his or her report of a suspected violation was handled. Most of the bodies either did not send any answer at all, or merely stated that the report had been accepted.

This practical experience shows that access to the declarations is needlessly complicated and limits the options of efficient public monitoring. It is possible to verify whether a declaration has or has not been submitted. Verifying its contents using publicly available means is difficult. The Commercial Register can only be used to verify activities, i.e. positions on supervisory boards or boards of directors. The pay for these functions can be only verified through a stroke of luck, for example if it is mentioned in the minutes from a general assembly meeting. The register of economic entities can be used to check business activities and licences. Issues of personal wealth are even more complicated. Real estate ownership can be verified in the land register, but this register cannot be searched by name. Verification of movable property with values exceeding CZK 500,000 or securities with a value exceeding CZK 50,000 or 100,000 is essentially only possible through direct personal participation in the transaction. The same applies to undeclared gifts or unpaid obligations.

Monitoring of mandatory disclosure of conflict of interest by elected representatives of local authorities can be theoretically performed by verifying minutes from meetings or by directly participating at these meetings. Such verification requires detailed local knowledge, because part-time representatives do not submit any declarations and there is therefore no instrument of public control.

Decisions of the disciplinary senate regarding judges and public prosecutors are published in an anonymised form on the SAC website. The public can not only inspect the cases retroactively, but also actively take part in the public hearings²⁴ of the disciplinary senate. Unfortunately, citizens may not initiate such proceedings. There have been cases where a Minister or President of a Court initiated the proceedings on the basis of a report from the general public. This, however, is not guaranteed.

¹⁹ Section 13 (9) of the Conflict of Interest Act

²⁰ Regulation No. 578/2006 Coll., effective from 1 January 2007, publishes the forms in a printed version and as an electronic pdf file. Less than two years later, in June 2008, the form was made available also in an editable doc format. <http://www.stretzajmu.cz/menu/1/pro-urad/clanek-22-formular-pro-oznameni-v-upravitelne-forme/>

²¹ Monitoring of conflict of interest of public officials carried out by the Oživení civic association in 2012, see <http://www.bezkorupce.cz/nase-temata/stret-zajmu/pristup-do-registru/>

²² <http://www.stretzajmu.cz/>

²³ According to Section 13 (6) of the Conflict of Interest Act: "The registration authority shall inform the applicant of how his/her application has been processed within 30 days following its presentation date".

²⁴ Public hearings are announced on the court website <http://www.nssoud.cz/main2col.aspx?cls=verejnejednani&menu=324>

3. SUMMARY

The laws governing conflict of interest in the Czech Republic are highly fragmented and not complementary. While they define the key duty to disclose personal interest, this obligation is not verified or easily verifiable in practice, and virtually impossible to enforce from the perspective of legislation on conflicts of interest. There is a basic instrument for verifying the conflict of interests of public officials, but it is not adequately used and remains a highly theoretical measure, because there is no institutional monitoring mechanism. Capacities of recordkeeping bodies are ignored, and the duties of maintaining archives have been imposed on them without providing any organisational or other support. Their levels of competence and ability to fulfil roles defined by the law are highly debatable, as is their willingness to perform any controls at all. Other problematic issues are the inefficiency of sanction mechanisms and the fact that decisions on violations of the law are not public. The Conflict of Interest Act is generally considered a toothless law, and for good reason.

Another unfavourable component is the absence of a central register and the fact that the mosaic consists of hundreds of various offices. This makes the coordination of activities very limited, and the Register of Conflict of Interest charges for access to the central registry. It would be possible to improve coordination without amending the laws. While the public has guaranteed access to declarations made pursuant to the Conflict of Interest Act and the option to submit reports on suspected violations, the application of these measures in practice is very complicated. One of the key obstacles is an unsuitable format of published information and low levels of user-friendliness of the individual registries.

Different groups of public officials are bound by different limitations or duties, particularly those concerning incompatibility of functions, limits on business and other activities and post-function limitations. The latter two only apply to members of the government and a specific group of civil servants. The laws also fail to address transfers between public functions (the revolving door effect). Post-functional limitations are very lax both in terms of their scope and the options of monitoring and enforceability. It bears mentioning that the Czech Republic does not have an effective law for civil servants and that the rules of conflict of interest are defined by the general Labour Code.

The model that applies to judges and public prosecutors, implemented by the Supreme Administrative Court, can be considered functional. The disciplinary senate includes not only judges and senators, but also persons working in other fields of law, which opens the opportunity for broader discussion and promotes impartiality. The published decisions may serve as educational material not only for other judges and public prosecutors, but also for the general public. Hearings of disciplinary senates are public, but regular citizens may not initiate the proceedings.

A key factor is the lack of a suitable or functional form of methodological guidance or consultations, not to mention confidential counselling. This is particularly worrisome because education is a crucial element not only in prevention, but also in resolving real situations. There are also virtually no official educational materials on topics such as manuals or guidelines.

4. RECOMMENDATIONS

The fundamental objectives of conflict of interest regulations for public officials do not primarily include a repressive function, but rather preventive, mitigatory and assistance functions that can be defined as follows:

- Preventive – stopping specific conflicts of interest in the potential stage before they become real;
- Mitigatory – ensuring there is a working process for negotiating and resolving conflict of interest situations in order to prevent specific corruptive behaviour and other forms of violations or the undermining of trust in public institutions;
- Assistance – providing help to public officials in understanding their ethical obligations related to their function, for example in edge cases or when making ethically difficult decisions.

In terms of these objectives, the regulation of conflict of interest in the Czech Republic has many shortcomings, as identified for example in the previous analysis of enforceability of the law for selected groups of public officials. Because it is not even clear which body is responsible for conflicts of interest, no state authority is providing any form of methodological support with a mitigatory or assistance function. Because of the fragmented and inconsistent definition of conflict of interest in various laws, lack of control and with it limited enforceability, the current legal regulation of conflict of interest is essentially failing in its function.

Recommendations for improving the situation in conflicts of interest:

1. Unified terminology and a clear definition of conflict of interest

Czech laws contain various provisions on conflict of interest for selected categories of obligated bodies (elected public officials – senators, members of parliament, members of the government, full-time and part-time representatives; employees of public administration – state employees, local authority officials, employees of various administrative authorities or contributory organisations) fragmented across a number of different legal regulations. While the law shows a clear effort to define conflict of interest for various groups²⁵ of public officials, there are often several different definitions applying to the same group. This situation is especially problematic for example with local representatives. Unclear terminology causes issues in application, particularly because there is no body or institution in the Czech Republic providing consultations or any form of methodological guidance.

For elected public officials, the basic definition of conflict of interest is provided in the Conflict of Interest Act²⁶. This Act applies to members of parliament, senators, members of government, full-time local representatives and part-time mayors (but not to all part-time local representatives). The Act institutes the basic obligation to defend public interest, defining personal interest as “any interest securing any private benefit or preventing possible reduction of any material or other benefit for a public official.” The exact definition of conflict of interest or personal interest is however different in other laws. “Public interest” as such remains undefined, or is blended together with the interests of a region and its inhabitants or a municipality and its people.

Czech laws include a rather vague obligation to defend public interest (which is not specifically identified and is defined differently in some aspects in various regulations)²⁷ and a prohibition of giving preference to personal interests; there is however a marked difference between the definitions of personal interest in legal and sub-legal standards.

²⁵ European legislation on conflict of interest was obligatorily incorporated into national legislation through the Public Contracts Act.

²⁶ Act No. 234/2014 Coll., on service of public servants.

²⁷ C.f. the Conflict of Interest Act and the Regions Act, Municipalities Act and the Act on the Capital of Prague.

» For correct application in practice, it is necessary to use in all legal standards the same and clear definition of conflict of interest as well as of personal interest. Czech laws understand conflict of interest as a situation, i.e. a conflict between public and personal interest (sometimes linked to close persons, relatives, family or business partners), but does not provide an unambiguous and unified definition. It would be advisable to define conflict of interest as the conflict between personal interest and correct or adequate performance of a public office, i.e. including behaviours that are to be expected from a public official. This makes interests much more specific than the rather vague “public interest”. This way, conflict of interest applies to potential failures in the performance of a duty or abuse of power. Similarly, personal interest becomes much more specific, and so does the key obligation to declare such interests.

» A suitable definition of “conflict of interest” is the one adopted by the Council of Europe, describing conflict of interest as a situation in which a public official has personal or private interests that may influence (or may seem to influence) the official’s impartiality and objectivity while in office.

2. Harmonised rules across legal regulations

Disclosure of conflict of interest can be considered a crucial part of the actions of a public official which has specific impact on decisions made or adopted. It is related to the official’s own understanding of his or her position and the ability use this understanding to correct specific actions.

The Conflict of Interest Act only defines an obligation to disclose any personal relationships to the matter that is being discussed, which must be recorded in writing²⁸. There are however no recommendations on what to do in this situation, e.g. not take part in the discussion, refrain from voting etc. The possibility of restricting voting rights in cases of conflict of interest has been rejected in various discussions as being in conflict with the constitution.

The obligation of representatives (full and part-time) to disclose conflict of interest before any discussion is defined in the Municipalities Act, Regions Act and the Act on the Capital of Prague. There is a clear disparity between the wording of the Conflict of Interest Act (where the disclosure is made during the discussion) and the other Acts (where the disclosure is made before the discussion). The only measure taken to prevent conflict of interest is the obligation to disclose personal bias. Before the adoption of Act No. 231/2002 Coll., the Regions Act allowed the deciding body to discuss the existence of a conflict of interest of a public official and, depending on the decision reached, remove a member of a collective body from discussions and decision-making in a specific case. The amendment cancelled that option, meaning that it is no longer possible for representatives to agree on removing a member of their group from deciding in a specific matter due to a conflict of interest or to reach any decision on whether there is any reason to remove this member from discussion²⁹. This amendment represents a key moment in placing even stronger emphasis on the moral integrity of the individual and his or her political responsibility. Neither representatives nor any other public officials need to explain whom might their decisions benefit or harm³⁰.

A principle commonly applied in practice states that if there is a personal interest that is considered “generally known”, there is no need to disclose it. According to a comment on the Municipalities Act from the lawyer Jan Vedral, public officials are not obliged to disclose a personal benefit if this benefit or interest is generally known³¹. This exception is probably meant to apply to cases where the body of which the public official is a member will be deciding on a matter that has consequences (positive or negative) not only for the public official or another

²⁸The public knows of very few cases in which personal interest was disclosed, one of them being discussions on a ban of smoking in public areas in which Members of Parliament who are smokers often made mention of the fact. Such enthusiasm is seen in the Chamber of Deputies only rarely.

²⁹Cogan, Rudolf: Krajské zřízení Praha: ASPI, 2044 – 442 p. ISBN 80-7357-041-6, p. 140.

³⁰Besides the disclosure obligation, the only other effort to regulate the actions of elected public officials in terms of conflict of interest can be found in the Code of Ethics for Representatives of the City of Prague, which recommends to abstain from discussion and voting in case of a conflict of interest: “When an item is discussed that in any way affects the representative, a family member, a close person or a natural or legal person with whom the representative had or has a personal or political relationship, the representative shall disclose this relationship before the item is discussed by the corresponding body of the City of Prague, but no later than before voting on this matter. In these situations, the representative should refrain from taking part in the discussion and voting.”

³¹Vedral, J. Zákon o střetu zájmů. Komentář. 2nd edition. Praha: C.H. Beck, 2012. 201 p. quoted from p. 74–75.

person related to the official, but also an unspecific group of persons that includes the official, or more precisely (and most commonly) all members of the corresponding body. Such cases include for example voting on tax legislation in the Chamber of Deputies or the Senate, voting on a regulation defining various local fees by elected representatives of a municipality or generally discussing and voting on any draft legislative that applies to an unknown number of persons and cases that may happen in the future. This may however also include deciding on issues that with their consequences impact only individual public officials, but the consequences (i.e. interest or benefit) are generally known, meaning at least to members of the collective body that the official is also a member of. The primary purpose of this disclosure provision is, according to the author of the comment, to ensure that before voting, the members of the collective body know about everything that may lead to a conflict of interest of persons who will be voting in this matter. If these facts are generally known, there is no need to disclose them. If there is doubt whether the personal benefit or interest is generally known, it is better for the public official to disclose and prevent potential suspicion of a violation.

» It is essential to use the same definition of conflict of interest in the entire legal system. Similarly, all standards must use the same concept of a clear definition of personal interest, particularly in cases where there are overlaps in the laws affecting specific groups of public officials – e.g. local representatives are governed both by the Conflict of Interest Act and the Municipalities Act, Regions Act or the Act on the Capital of Prague.

» The same rule should also apply to the obligation of public officials to disclose conflict of interest, specifically in where and how to do so. To support this effort, the law should regulate the procedural aspect of meetings of collective bodies and the requirements for minutes from such meetings with information on tabled proposals, including any disclosed personal interests, speakers, voting results by name and result of the vote.

» The exception from the obligation to disclose personal interest for interests that are “generally known” should only apply to decisions that affect a theoretically unlimited group of people (such as a land development plan or tax laws, as in these cases, everyone is “biased” by definition). This exception should not interpret “generally known” as information that is widely available but only applies to individual public officials.

» The assistance function of conflict of interest regulations should be supported by giving collective bodies the option to vote on a recommendation to withdraw from discussion or voting in case of a specific conflict of interest of a public official.

3. Extension of function incompatibility

Czech laws do not prevent anyone from holding several elected functions on the national and/or various local levels (regions, municipalities) at the same time. In fact, combining even full-time representative functions on the municipal or regional level with the position of a Member of Parliament is relatively common practice, even though it has been heavily criticised by the public in recent years. A breakthrough in this context is the Code of Ethics for representatives of the Plzeň region which explicitly bans holding multiple full-time positions (i.e. those paid from public money) at the same time. Due to the uncertain definition of “public interest”, holding multiple functions at once may be potentially problematic, as the interpretation of the term is different at various political levels (municipal, regional, national).

Conflict of interest is a very pressing issue in contemporary public discourse particularly due to the activities of several Czech ministers, notably the current Minister of Finance Andrej Babiš or former Minister of Transport Aleš Řebíček. There are two issues here: one are their activities in the private sector (e.g. the recent case in which Andrej Babiš’s company won a billion-CZK tender of Lesy ČR, a semi-state enterprise) and another is wielding both legislative (as Member of Parliament) and executive (as Minister) powers at once, which is something not regulated by law, but very common. While Western democratic countries see this situation as perfectly justi-

fiable in working parliamentary democratic systems, Central and particularly Eastern Europe consider it problematic. Statistical data published by the media or NGOs shows that ministers attend far fewer meetings of the Chamber of Deputies of the Czech Parliament in their role as MPs than their colleagues, limiting their efficiency, but a much more important potential conflict lies in the clash between executive (regulatory) and legislative powers.

» It is recommended to adopt measures that limit coexistence of full-time political mandates (Members of Parliament, full time local representatives) at least on the level of MPs and regional councillors. For the other types of full-time positions, possible limitations should be first discussed in detail by the expert public. The prohibition on holding multiple offices at once should be at the very least a recommendation in sub-legal regulations such as Codes of Ethics.

» A possible solution for the coexistence of executive and legislative powers in the hands of an MP/minister is the introduction of a “sliding mandate” in which the position of an MP is suspended while the same person acts as a minister and his or her role is substituted by another person from the list of election candidates. This measure has been adopted in Slovakia and may serve as inspiration for the Czech Republic.

4. Extended prohibition on receiving remuneration for activities in region or city-owned companies

Limitations of the activities of public officials are naturally dependant on the scope of their powers. Examples include an obligatory disclosure of personal interest by part-time representatives of local administration, incompatibilities between functions for Members of Parliament and officials/state employees or the quite rare post-function limits imposed on members of the government and selected senior officials.

There is no legal regulation limiting the activities of regional full-time representatives in various companies that are partially owned by the region, such as members of the board of directors or supervisory board. According to the current Conflict of Interest Act from 2006 (effective from 1 January 2007), the activities of MPs and senators in such companies are limited (specifically, there is a limit on their remuneration), but this limitation does not apply on the regional and lower levels. This change in legislation quickly led to a situation in which MPs and senators left these positions completely (and were usually replaced by civil servants from relevant ministries), even though before the change itself they had all claimed that they consider these activities their obligation to society in safeguarding public interest. When cut off from financial rewards of hundreds of thousands CZK, they found it easy to delegate this obligation to regular civil servants who of course receive no extra compensation, as these activities are considered part of their work duties.

» The Conflict of Interest Act should be amended to expand this prohibition on remuneration to full-time members of local administration and their participation in supervisory boards of companies co-owned or co-managed by the state, region or local administration. Nominations for these companies should be regulated by a separate law.

5. Post-functional limitations

Czech laws define only very few limitations for former public officials. Specifically, there are some limitations for top-level officials, members of government and full-time representatives who may not be employed by legal persons that signed a contract or won a large public tender while the official was in office and took part in this contract. These limitations however do not apply to those who prepared any such contracts. It also only applies to contracts exceeding a certain volume, even though even smaller-scale contracts may be considerable³².

³² The limits are changed typically every two years by transposing the relevant European regulation into the Czech legal system. The current limits are defined in Government Regulation No. 77/2008 Coll., as amended; for specific figures, see e.g. <http://www.bezkorupce.cz/faqs/co-je-to-nadlimitni-a-podlimitni-verejna-zakazka/>

There are also only limited forms of control. The only other limitation is defined in the Codes of Ethics for representatives, stating that it is forbidden to abuse information gained while in office for personal benefit after leaving the position. While such measures are obviously very difficult to verify or enforce, in terms of the prevention of misuse of public powers they represent a significant step forward that is missing from the legal system. Transitions of lawmakers (regulators) into the private sector or vice versa have potential negative effects. The “revolving doors”³³ effect remains unaddressed.

» The Conflict of Interest Act (Section 6) should be expanded with regulations for specific types of public officials, prohibiting them from acting in companies working in the industry which the same official used to regulate. This measure should apply not only to future employment positions, but also membership in statutory bodies of a business entity or any form of collaboration such as providing expert advice or consultations.

» An example of good practice for further discussion of post-functional limitations is the United Kingdom and its Advisory Committee on Business Appointments (ACOPA³⁴). The Committee is an advisory body to the Prime Minister, considering applications for new jobs in the private sector for former ministers and senior civil servants (for up to 2 years after leaving office). The applications and the opinions of the Committee are published on its website. The Committee’s role is only advisory, and its opinions are recommendations with limited enforceability.

6. Single central register – recordkeeping body

One of the main problems of the declarations submitted per the requirements of the Conflict of Interest Act is the number of registers which is estimated at roughly 6,500 offices. The system of archiving declarations is very fragmented. The capacity of the individual offices is highly debatable, as are their levels of competence, the ability to fulfil roles defined by the law or their willingness to perform any controls at all. In practice, this means that it is not clear how many people are obliged to submit their declarations. Many offices are unfamiliar with the current version of the relevant legislative and some are not even aware of their recordkeeping duties. Providing access to these declarations is typically accompanied with many mistakes made by the registers, including insufficient periods of validity of issued user credentials.

» Declarations should be managed by a single central body.

» The declarations should be submitted in an electronic and machine-readable format. It is not necessary to use verified electronic signatures, as it is possible to submit the declaration at the same time by e-mail and in a signed hard copy confirming that the electronic data is correct. This method makes it possible to process the data electronically and reduces processing costs without increasing the expenses of the public official.

» The declarations should be published proactively. The register should automatically check that the duty has been fulfilled (i.e. whether complete declarations have been sent or not) and publish data on how the individual public officials comply with their obligations.

» The declarations should be submitted as of the day on which the person takes office (within 30 days from that date).

» The format of the declarations must guarantee that they are unified and transparent, also improving their preventive function.

» The central body should review declarations when it receives a report of a suspected violation from the general public. The list of such reports and initiated review proceedings as well as their results should be

³³ See e.g. [http://en.wikipedia.org/wiki/Revolving_door_\(politics\)](http://en.wikipedia.org/wiki/Revolving_door_(politics))

³⁴ <http://acoba.independent.gov.uk/>

regularly published. The results of these reviews are also useful for developing guidance and methodology for public officials.

» Public access to the declarations should be unlimited, or at least follow clear rules guaranteeing their availability.

» With respect to the powers and tasks listed above, it may be beneficial to combine this agenda with the areas of controlling, sanctions and methodology (see below).

7. Institutional oversight and supervisory bodies

The current monitoring mechanisms are highly fragmented in the same way as the declaration registers. There is also no available information on compliance monitoring performed by the recordkeeping bodies on their own initiative. Available investigations (in particular the conflict of interest monitoring carried out by Oživení o.s.) show inconsistency in decisions on violations, inherent bias in the system (as people are making decisions on public officials who are hierarchically superior) and a general unwillingness to lead proceedings on violations of the Conflict of Interest Act all the way to a final decision (cases are often postponed and proceedings terminated).

Municipalities with extended competence who are dealing with transgressions in the field of conflict of interest are not legally guaranteed any form of assistance from other public bodies in verifying the data of individual declarations.

» The establishment of a central monitoring body for conflict of interest seems a crucial part of a functional legal framework for conflict of interest. The monitoring office should be an independent body of state administration. This would clearly define its responsibilities in the area. The monitoring body should have sufficient capacity to carry out all its tasks, in particular:

- Increasing the awareness of public officials about conflict of interest measures and their own obligations and duties through guidelines, manuals, trainings and consultations in specific cases (methodological support).
- Creating a complete list of obligated persons.
- Archiving all submitted declarations and other items described in the recommendations related to the recordkeeping body listed above, including monitoring public officials' fulfilment of their duties and publishing declarations.
- Receiving and investigating claims of conflict of interest violations by public officials.
- Imposing sanctions for violations of the law. Sanctions are subject to review by courts.
- Preparing and processing analyses of relevant laws and their implementation, proposing amendments and reforms.
- Publishing annual reports, results of investigations, lists of sanctions, reviewed cases etc.
- Cooperating with other public bodies when checking the accuracy of declarations.

8. Effective sanctions

Violations of conflict of interest regulations are primarily handled by municipalities with extended competence, of which there are 205 in the Czech Republic³⁵. Upon request from an MP, violations may be also investigated by the parliamentary Mandate and Immunity Committees as part of disciplinary proceedings. Administrative penalties turned out to be inefficient partially also due to inconsistencies that do not take into account the different levels of severity of various illegal behaviours.

³⁵ Act No. 314/2002 Coll., on municipalities with authorized municipal offices and municipalities with extended competence, as amended by Act No. 387/2004 Coll.

» Effective control mechanisms require effective sanctions. Sanctions for violations of conflict of interest regulations should be amended as follows:

- The sanctions should be more strict, to serve as a real motivation to fulfil legal obligations.
- The sanctions should correspond to the severity of the violation. The severity should be reflected in the minimal and maximal sanctions for specific types of violations (e.g. missing the deadline for submitting a declaration, refusal to submit a declaration, submitting false data, failure to disclose personal interest, violation of post-functional requirements etc.).
- Sanctions for violations of conflict of interest provisions should be identical in all relevant legislative and not apply only to the Conflict of Interest Act (e.g. the Municipalities Act, Regions Act, Act on the Representatives of Local Authorities etc.).
- Concluded proceedings and any issued sanctions should be published.

9. Public information and public control

While the public has guaranteed access to declarations made pursuant to the Conflict of Interest Act and the option to submit reports on suspected violations, application of these measures in practice is very complicated. One of the key obstacles is an unsuitable format of published information and low levels of user-friendliness of the individual registries.

» The conditions of functional public control have already been defined by some of the provisions mentioned above, specifically:

- Easily readable declarations that can be further processed.
- Option of reporting suspected violations of conflict of interest provisions and guarantee of their independent review or initiation of proceedings.
- Publishing final decisions of proceedings with public officials, including issued sanctions, appeals etc.
- Public proceedings in cases involving public officials.
- Cancelling the limitations on access to declarations by the public, specifically by allowing the information from declarations to be used for any other than commercial purposes.
- The monitoring body should be providing consultations on specific issues of conflict of interest.

10. Methodological guidance, education

A key factor is the lack of a suitable or functional form of methodological guidance or consultations, not to mention confidential counselling. This is particularly worrying because education is a crucial element not only in prevention, but also in resolving real situations. There are also virtually no official educational materials on the topic such as manuals or guidelines.

One of the key problems of the current legal framework of conflict of interest is a lack of methodological support for registers and investigatory bodies, leading to inconsistent decisions. There is currently no state body that would be explicitly assigned the responsibility for conflict of interest. This crucial problem could be resolved by the establishment of the proposed central monitoring body, responsible for conflict of interest as well as for archiving, reviews, issuing sanctions and providing methodological guidance.

» The monitoring body provides consultations and methodological guidance in conflict of interest to both public officials and the general public.

» Based on its activities and experience, it proposes changes in legislative, prepares manuals and organizes seminars or trainings.

11. Sub-legal and voluntary regulations

Assistance and mitigatory functions can be successfully provided by various sub-legal regulations, typically codes of ethics. These texts can focus on potential conflicts of interest in specific detail, provide guidelines and propose solutions, regulating the activities of public officials and promoting desirable behaviours while they are in office. Such regulations are particularly indispensable in the current situation where the state is not providing or securing any form of methodological support.

» Both chambers of the Czech Parliament as well as regional representative offices should adopt codes of ethics providing clear guidance on the obligations of elected public officials in the context of conflict of interest. These codes should also contain procedural measures allowing collective bodies (Chamber of Deputies, Senate, representative councils or committees) to formally recommend to a member to withdraw from discussion or voting in a specific case.

» Codes of ethics of employees in public administration should be an integral part of their rights and obligations to ensure that they can be enforced in their employment or service relationship.

» It is also possible to consider the use of other measures supporting transparency in decision-making, such as public schedules of public officials.

³⁶ From the 14 regions, only three have a Code of Ethics: the Capital of Prague and the Plzeň and South Moravia regions.

APPENDIX 1

Disciplinary proceedings against public prosecutors on the grounds of threats to impartiality of their function 2008–2013 (as of 30 September 2013)

content of the report	decision	file number
Public prosecutor at the Supreme Public Prosecutor's Office provided an interview to the Mf DNES newspaper, published under "Public Prosecutor Was Friends with a Mafioso Family" and "I'm Paying a Mortgage, So I Can't Leave", providing a controversial justification for remaining in office.	Acknowledgement of guilt – removal from office	12 Ksz 2/2008
Public prosecutor unlawfully obtained confidential information (on charges filed against him) and used it for his benefit, requesting more information from the public prosecutor's office in Brno, even though he did not need this information for his work duties. His further activities led to the case being removed from the scope of the powers of the police; with this step, the prosecutor intervened in criminal proceedings, even though he was not allowed to do that due to his personal bias and because it was outside the scope of his function.	Acknowledgement of guilt – no disciplinary sanctions	12 Ksz 5/2012
Asked another public prosecutor to file charges in a case concerning the privatisation of Mostecká uhelná společnost with the intention to illegally obtain information and make it available to persons outside the public prosecutor system, even though he did not need such information for his work duties.	Acknowledgement of guilt – reprimand	12 Ksz 14/2012
Did not accept any measures that would prevent doubts regarding her impartiality in a case involving a close friend.	Proceedings terminated – ongoing criminal proceedings	12 Ksz 5/2011
Without authorisation, obtained a document from another public prosecutor, converted it to an electronic format and sent it by electronic mail to three unknown persons.	Proceedings terminated	12 Ksz 6/2011
From camera recordings, determined the presence of unknown men at the building of the High Public Prosecutor's Office in Prague; did not wait for explanation of public prosecutor JUDr. Stanislav Mečl who was accompanying them and, without informing his superior, immediately released a statement to the media in which he accused the prosecutor of breaching internal security of the office. The media report forced the Supreme Public Prosecutor to inform the public about the character and legal nature of this action taken by the police, disclosing information about an ongoing criminal investigation.	Proceedings terminated – prosecutor left office	12 Ksz 8/2012
Took steps in favour of an accused person (actively arranged legal representation by an attorney, influenced the editor of a nationwide daily newspaper, instructed the accused on how to testify in front of the police).	Acquitted – not proven	12 Ksz 1/2010
Provided information from a file, even though it was a case actively involving measures defined in Sections 88, 158d (3) and 158e of the Criminal Procedure Code and even though the police Department for Investigating Organised Crime informed her that the criminal proceedings were of the utmost sensitivity.	ongoing	12 Ksz 1/2013

APPENDIX 2

Disciplinary proceedings against judges on the grounds of threats to impartiality of their function 2008–2013 (as of 30 September 2013)

content of the report	decision	file number
Repeatedly asked a judge handling a case that was not assigned to him questions about the procedure, encouraged her to admit evidence from the hearing of a witness, repeatedly told her the defendant was a publicly known figure and that the charges had been constructed by the police, all with the intention to influence her decision; without authorisation, accessed electronic documents pertaining to the case and changed 1 document.	Acknowledgement of guilt – salary reduced by 10 % for 6 months	13 Kss 13/2011
Did not disclose personal bias, even though a case involved her son	Acknowledgement of guilt – salary reduced by 15 % for 6 months	11 Kss 1/2011
Did not withdraw from an insolvency case which she was to monitor, and then purchased the property in question in the subsequent auction	terminated – judge left office	16 Kss 3/2012
The judge is a member of the Czech-Moravian Football Union and chairman of its Arbitration Committee; he did not terminate his function at the union even though he was informed of the official position of the Ministry of Justice stating that a judge's activities in an arbitration body, as a legal person resolving autonomous law cases, threatens and undermines confidence in independent, impartial and fair courts.	terminated – withdrawn	13 Kss 6/2012
Appointed an attorney despite the existence of a waiting list, asked another person to request a financial compensation he was not entitled to from a third entity, conspired to influence a decision in favour of a third person, and provided assistance to an attorney by giving him advice.	ongoing	13 Kss 9/2013

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Act No. 500/2004 Coll., Administrative Procedure Code

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