

# Conflict of interest of public officials



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# Introduction

Anyone can commit to active participation in public life and take part in decision-making on common issues. However, one is still a citizen who necessarily retains legitimate interests arising from his/her private life. Conflict between private and public interests that a public official should defend cannot simply be prevented or even prohibited. The issue of conflict of interest must therefore be approached with discretion.

If conflict of interest is not recognised and addressed where necessary, it can undermine the fundamental principles of public administration, threaten fair decision-making, influence the allocation of public resources, encourage corruption, disrupt the rule of law and undermine public confidence in public institutions.

The intention of this brochure is to briefly describe conflict of interest and its context, to present the basics of legal regulation in the Czech Republic and to utilise comparisons with foreign countries. The aim is to contribute to a better understanding of the issue of conflict of interest in the Czech public administration and to limit the negative impact of this phenomenon as much as possible.<sup>1</sup>

# Conflict of interest in context

In everyday practice in public administration, it is difficult to capture every moment when there may be a conflict between the pursuit of public and private interest. Preventing conflict of interest is rendered more difficult by the fact that some cases are truly complicated and subtle, while on the other hand, a very obvious conflict can be publicly downplayed and not addressed in the long term because there are no effective and enforceable preventive tools.

One possible **definition of** a conflict of interest is a conflict between a public duty and the private interests of a public official, where private interests could inappropriately influence the performance of his or her official (public) duties and obligations. The **public interest** is a vague legal concept, the existence of which is not to be generally established by law, but must be interpreted on a case-by-case basis, by weighing the various relevant sub-interests. It is therefore primarily up to the executive or the judiciary powers to decide on the existence of a public interest when considering specific cases.<sup>2</sup> In general, an interest is a public interest if it is the interest of at least a substantial part of society and is directed towards general welfare and good.<sup>3</sup>

Defining the public interests at stake would be problematic. Therefore, the prevention of conflict of interest focuses primarily on **personal interests** so that they do not remain hidden and it is possible to assess whether, for example, a particular official has committed a breach of duty in relation to the exercise of public authority. The personal interest may not only consist of financial gain, but also of strengthening one's position in society by obtaining other undue advantages.

## ILLUSTRATIVE EXAMPLE

A mid-sized town's transport councillor is to formulate a draft community position on the planned relocation of a major regional road from the town centre. In doing so, he or she should weigh up the various public interests, including good transport service or environmental protection. However, his or her considerations may be distorted by the fact that the councillor him/herself, his or her relatives, friends and business partners live and work in various locations that will be directly affected by the change.

That is why transparency about what personal interests a politician in an important position may have is important. It should be ascertainable whether the public official controls companies, is a member of special interest groups or owns real estate that could give rise to a conflict of interest. The public should be able to find out the relevant information or the conflict of interest should be reported by the official him/herself.

2 Judgment of the Constitutional Court of 28. 6. 2005, ref. no. Pl. ÚS 24/04 - the so-called "Labe River Weirs"  
Available here: <https://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-24-04>

3 This may include, for example, the protection of the environment, life and health, cultural heritage, external security, etc.

## Conflict of interest and corruption

As soon as someone is so-called “sitting on two chairs”, he or she may be tempted to prioritise his or her personal interests. These may consist not only in their own material enrichment, but also in the unauthorised support of related persons or in other endeavours that threaten or damage the interest of the whole community. The actual abuse of the official position for private gain is one possible definition of **corruption**.<sup>4</sup>

Conflict of interest poses a significant corruption risk and can often be an indicator of serious wrongdoing. In the fight against corruption, it is therefore necessary to detect potential conflict of interest early and then know the procedures for dealing with it. **Prevention** is a key tool in the fight against corruption. Once the activities affected by the conflict of interest have been implemented, the solution is difficult.

Attention is often drawn to conflict of interest in relation to the risk of corrupt behaviour. Yet every conflict of interest is not automatically corruption. In many situations, a conflict of interest arises through no fault of the individual actors. The main question then is how they deal with the situation.

### ILLUSTRATIVE EXAMPLE

In selecting a site for the relocation of a major road in the city, the Transport Councillor is proposing a solution that will bring significant relief from the freight traffic in the city centre, while at the same time it may reduce the value of some of the land he or she owns at the new junction.

The investment councillor, on the other hand, is pushing for the option of repairing the existing route through the town centre, as this will leave the production hall owned by his or her company easily accessible. This option does not have the support of residents, yet this councillor is trying to persuade colleagues on the council to vote for it. He or she promises to direct other major city investments so that they can make money off of the public contracts that will be associated with them.

It should be taken into account that the more sophisticated, organised and also more harmful forms of corruption tend to be based on interlocking relationships within groups that can operate in several different locations. These **clientelistic networks** operate in a vast system of conflicts of interest, where one part of an organised group acts for the benefit of another with the prospect of gaining advantage through counter-benefits spread over time and place. Detecting conflict of interest and setting up functional prevention can help to disrupt such groups or make it more difficult for them to operate.

Given the need to consider each case on its own merits and the need to know the context and individual interests of public officials and their associated persons and organisations, blanket bans are not very effective. Rather, the emphasis should be on **transparency** and the availability of relevant information for decision-making and control, both public and civil. The trust of the public can only be gained when doubts about the predominance of private interests are refuted and public officials respond appropriately to problematic situations. In assessing the situation, the view from the outside plays a role, i.e. how those who observe the actions of the public official perceive any conflicts between the interests in question.

<sup>4</sup> Corruption is not defined in the Czech legal system, however, in the broadest sense it can be understood as the abuse of a position (office, power, information) in order to obtain an unjustified personal benefit, either for oneself or for another. It can manifest itself in a wide range of behaviours, from ethical transgressions to failure to comply with legal obligations to the commission of a crime. The most extreme and also the most complex form of corruption is considered to be the control of institutions that are supposed to set or enforce the rules. This can also happen at the national level.

## Conflict of interest in public administration

Conflicts between personal interests and public interests can occur in any area. In specific proceedings, such as administrative or judicial proceedings, this issue is dealt with by the juridical institute of **bias**, which is a ground for exclusion from the hearing. This occurs if the person in question has any personal connection to the case that could affect the outcome of the proceedings. Judges, prosecutors and civil servants in both service and employment have a legal obligation to perform their duties impartially. Decision-making by a biased person can derail the entire procedure. In individual proceedings, the procedural rules generally offer the parties remedies to defend themselves against the existence of an improper relationship of the decision-maker to the case at hand.

However, in addition to these proceedings, there are a number of decision-making processes that, while not directly affecting citizens' rights and obligations in a procedural sense, also have a major impact on their lives. These are decision-making by politicians and senior public officials, primarily in matters of public property management, but also in other matters, such as conceptual issues and the formulation of solutions.

# Measures to prevent conflict of interest

In order to prevent conflict of interest of public officials, various measures are taken to ensure that the undue prevalence of one's personal interest at the expense of public interest does not occur as much as possible.

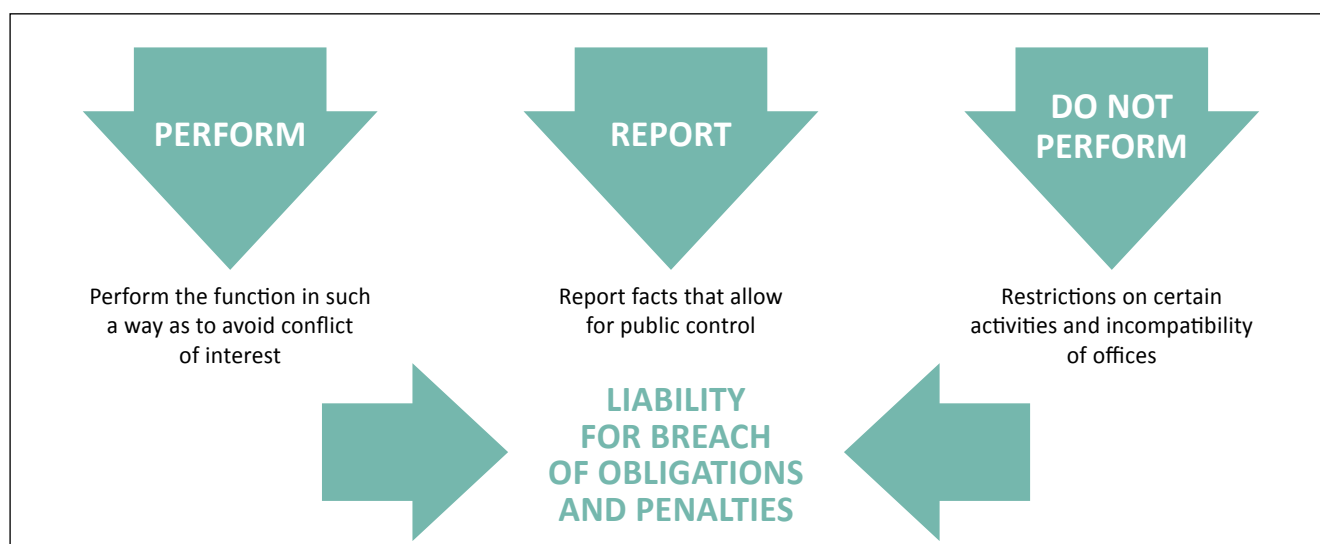
In the Czech Republic, the key law is Act No. 159/2006 Coll., on Conflict of Interest, as amended, which sets out most of the measures to prevent conflict of interest of public officials. The law defines these officials and establishes their rights and obligations consisting of the prohibition to perform certain secondary activities, the prohibition to raise money from public budgets and the obligation to file various types of declarations.

**Conflict of Interest Act on the server *Zákony pro lidi* (Laws for People):**



The Conflict of Interest Act places restrictions on the activities of certain public officials that are otherwise perfectly legal and perfectly normal in ordinary civilian life. Only for public officials can such activities pose a risk that is avoided by prohibition, restriction or transparent information. In doing so, the law follows the basic prerequisites and limitations for the exercise of various official positions set out in the Constitution.

**The duties of public officials under the Conflict of Interest Act can be generally distinguished as follows:**



## Public officials and the general definition of conflict of interest

Section 2 of the Conflict of Interest Act lists the **public officials** to whom the Act applies. Officials are divided into two groups. According to paragraph 1, these are officials performing more or less political functions (e.g. members of Parliament and the Government, the management of the highest public institutions, some of the highest-ranking officials and representatives of local governments), while the second paragraph defines apolitical public officials from the ranks of civil service, judiciary and security forces.

In individual provisions, the Conflict of Interest Act specifies which officials within the personal scope of the Act are subject to this obligation. The most stringent **restrictions apply to** members of the government and officials of central administrative authorities, while apolitical officials under paragraph 2 are often exempt from the obligations related to the public's access to the control of public authority. These officials are only subject to legal restrictions if they perform activities within the scope of their function that are risky from the point of view of the protected public interest (e.g. they handle significant financial resources or decide in administrative proceedings).

Czech legislation **defines in general terms** what is meant by a conflict of interest in the Conflict of Interest Act, and at the same time provides all public officials with instructions on how to approach it in general terms:

### Section 3

- (1) A public official is obliged to refrain from any action in which his or her personal interests may affect the performance of his or her duties. For the purposes of this Act, a personal interest is defined as an interest that brings to a public official, a person close to a public official, a legal person controlled by a public official or a person close to a public official an increase in property, a property or other benefit, the avoidance of a possible reduction in property or other benefit, or any other advantage; this does not apply if it is otherwise a benefit or an interest that is generally evident in relation to an unlimited number of addressees.
- (2) If there is a conflict between the proper performance of a public function and a personal interest, a public official may not favour his or her personal interest over the interests that he or she is obliged to promote and defend as a public official.
- (3) A public official must not jeopardise public interest by
  - (a) using his or her position, authority or information acquired in the exercise of his or her office to obtain a pecuniary or other advantage or benefit for him/herself or another person,
  - (b) referring to his or her office in matters relating to personal interests, in particular his or her profession, employment or business; or
  - (c) granting permission for commercial advertising purposes, in return for remuneration or another advantage, to indicate his or her name or names and surname, or permission to be depicted in connection with his or her office.



## Incompatibility of offices and prohibition of secondary activities

In some cases, the degree of conflict between two public interests is so risky that no risk can be tolerated. The legislation then introduces incompatibility of offices, i.e. specific public officials are prohibited from holding certain types of offices at the same time. This is the so-called **true incompatibility of offices**. For example, it is not possible to be both a Member of Parliament and a member of the management of a supreme supervisory authority, or to be both a judge and a civil servant.

In addition to specified other official positions, public officials are restricted from other ancillary activities, economic activities or ownership rights (typically to shares in business corporations). This is called **false incompatibility**. The most stringent restriction on secondary private activities applies to members of the government and heads of central administrative authorities, who, according to Section 4(1) of the Conflict of Interest Act, may not engage in business or other self-employed activities. Furthermore, they may not be members of the board, management, supervisory or controlling body of a legal person engaged in business or be in an employment or other similar relationship, unless it is a relationship in which they are acting by virtue of a public office.

In addition, from 2017, members of the government and heads of central government bodies are not allowed to receive public funds from subsidies, investment incentives or public procurement. The ban also applies to legal entities in which the official owns or controls more than 25% of the shares. Similarly, a ban on radio or television broadcasting or publishing periodicals was introduced for political public officials. Again, they are not allowed to own 25% or more of the shares or to control legal entities that carry out such activities.

*From the point of view of the public interest and the protection of democratic values, it is acceptable that the legislator, in response to the concentration of significant economic and media power, takes measures within the limits of the constitutional order to prevent the possible gradual deformation of the democratic regime into one of its fictitious or illiberal variants that contradict the requirements of the Constitution and the Charter of Fundamental Rights and Freedoms.*

– paragraph 165 of Constitutional Court ruling file no. Pl. ÚS 4/17 (“lex Babiš”), modified

The ruling is available here:



A specific prohibition is the so-called **“cooling-off period”**, i.e. the prohibition to carry out certain activities for a certain period of time after leaving public office. Pursuant to Section 6 of the Conflict of Interest Act, enumerated public officials, in particular members of the Government, chairpersons of central administrative authorities and elected representatives, are not allowed to serve for one year after leaving office on the bodies of legal entities engaged in business activities or to enter into an employment relationship with an employer engaged in business activities, if such person or employer has concluded a contract on which the public official has taken decisions in the last three years prior to the date of leaving office.

## Reporting obligations

Essential preventive measures are transparency of the public official's circumstances and his/her participation in decision-making. Various forms of asset declarations and obligations to publicly disclose information on involvement in interest associations (e.g. professional chambers, but also leisure associations) or information on the performance of any other activities relevant to the evaluation of public office are commonly introduced.

Czech public officials must report their **activities, assets, income and liabilities**. These declarations are made jointly and are divided into three types according to when they are made: initial, annual and exit. Declarations of public officials<sup>5</sup> are available to the public in the **Central Register of Declarations** maintained by the Ministry of Justice, upon request.<sup>6</sup> Persons to whom a public official's declaration is provided may use it only for the purpose of monitoring the public official's compliance with his or her legal obligations.

### Access to the Central Register of Declarations:



If a situation arises in which a public official decides on a matter concerning him or herself, he or she should, pursuant to Section 8 of the Conflict of Interest Act, **declare his or her relationship to the matter under consideration** orally during the meeting of a constitutional or other state or local government body, as well as during the meeting of a body of a legal person established by law, no later than before the vote on the matter is taken. The declaration must be part of the minutes if they are taken. It is not forbidden for a public official to participate in the vote and perhaps even support the plan. According to the Ministry of the Interior's methodological statement on the conduct of local government bodies<sup>7</sup>, it is the moral position and political responsibility of the official to consider the consequences of engaging in voting in a conflict of interest.

## Compliance monitoring

In the Czech Republic, the conflict of interest agenda is entrusted to the Ministry of Justice, which primarily supervises the submission and content of declarations by public officials. The Ministry monitors the compliance of all public officials with the reporting obligation and examines the content of the declarations by random checks or on the basis of public suggestions.<sup>8</sup> In the event of irregularities being detected, the Ministry sends a notification of suspected offences to municipalities with extended competence, which are competent to enforce the **offence liability** according to the place of residence of the public official.

5 The content of declarations by judges, prosecutors and members of the Police of the Czech Republic or the General Inspectorate of Security Forces is not accessible to the public.

6 Previously, the declarations of public officials under Section 2(1) of the Act were directly accessible online, but this was abolished by the ruling of the Constitutional Court file no. Pl. ÚS 38/17 of 11. 2. 2020 due to the violation of the right to privacy. The ruling is available here: <https://nalus.usoud.cz/Search/ResultDetail.aspx?id=111021&pos=1&cnt=1&typ=result>

7 Opinion of the Department of Supervision and Control of Public Administration of the Ministry of the Interior No. 8/2011, dealing with the issue of the application of Section 83(2) of the Act on Municipalities. Available here: <https://www.mvcr.cz/odk2/clanek/stanoviska-odk-2011.aspx>

8 They do so predominantly through the online tool directly in the Central Register of Declarations, available here: <https://cro.justice.cz/verejnost/podnet>

# International comparison

When debating the setting of any legal regulation, it is useful to look abroad to identify good practice and, where appropriate, to learn from failed initiatives. With regard to the regulation of conflict of interest, foreign experience provides valuable evidence that it is possible to confront the abuse of the benefits associated with the power to decide on the affairs of others.

In order to provide information on the legal regulation of conflict of interest abroad, an expert publication was prepared – a comparative study, which offers a detailed comparison of the Czech legal regulation of conflict of interest with nine other countries. They are France, Croatia, Italy, Canada, Germany, Norway, Poland, Austria and Spain. The measures for preventing conflict of interest of public officials described in this publication were compared.

The comparative study can be found here:



## Results of compared countries










In general, regulation needs to be looked at from a distance and set up in such a way that it is comprehensive. Case-by-case modifications, or pulling individual measures out of the gears of other mechanisms, cannot be very successful because such solutions will offer easy ways to circumvent the rules. Detailed rules may also not lead to the intended goal if they are only on paper.

**The following table provides** a simplified overview of some key elements in the compared countries. A certain degree of simplification is necessary, so the assessment is divided into three levels according to colour. Green indicates that the country has a certain amount of regulation for the area, red represents the opposite. Yellow indicates situations where the measure is in place, but only partially, or where it is not very clear how to proceed.

## Conflict of interest of public officials

	CZ	F	HR	I	CAN	D	N	PL	A	E
separate law										
ethical rules										
general definition										
separate specialised institution										
false incompatibility of appointed officials										
false incompatibility of elected officials										
protection period										
declaration of personal interest										
declaration of the assets of appointed officials										
declaration of the activities of appointed officials										
declaration of the assets of elected officials										
declaration of the activities of elected officials										
rules for the acceptance of gifts										
regulation of lobbying										
means of enforcement										

Based on a detailed examination of the functionality of the entire conflict of interest prevention system in each country, the countries compared were divided into the following categories:

Insufficient legislation	
	
	
Moderately effective legislation	
Legislation with emphasis on moral integrity	
	
Effective and inspiring legislation	
	
	

It should be borne in mind that even the most sophisticated conflict of interest regulations are not able to completely prevent all undesirable phenomena. Partial problems and excesses occur even in countries where effective moral, ethical or legal rules have been set up regarding conflict of interest. A typical persistent problem in developed democracies is, for example, the transfer of influential public officials to the private sector, especially to large corporations seeking to maintain influence over legislation or oversight.

The most advanced legislation (especially French) offers suitable inspiration for standard-setting in the Czech Republic. In practice, Norway or Germany can achieve even better results, as confirmed by their ranking in the Corruption Perceptions Index, but they achieve their desired goal mainly by focusing on moral standards. These countries lack legal instruments for enforcement (e.g., offence liability), which makes these approaches difficult to transfer to the Czech Republic.

The comparison showed an interesting fact: Almost all of the rules were adopted primarily in response to specific cases that showed the weaknesses of a system that allowed public officials to abuse their public office and enrich themselves, their business companies, relatives or acquaintances. Thus, foreign experience shows that it is not easy to set up effective preventive mechanisms before misconduct occurs in these issues directly related to political life.

## Key parameters for functional adjustment in the Czech Republic

The enforceability of conflict of interest standards depends primarily on their quality and on the capacity or capabilities of the institutions that enforce them. The comparison clearly shows that the key to successful regulation is the existence of **an independent institution** that has sufficient powers and tools to enforce the obligations imposed and fundamentally shapes the whole environment.<sup>9</sup>

The comparison showed that the Czech Republic has some room for improvement both in its ability to set rules for the prevention of conflict of interest without **abusable loopholes** (rules that would be generally accepted by society) and in its ability to effectively enforce the set rules in such a way that conflict of interest is not merely a situation that is commonly known about, but the negative effects of which are only discussed and not actually addressed. Some partial regulations are completely missing, such as setting rules for the acceptance of donations by public officials.

Many foreign jurisdictions also consider the immediate family and **persons close to** a public official who could be used to circumvent the rules. The Czech Conflict of Interest Act does not deal with this at all, and it can be expected that there will be purposeful transfers of assets to family members if a candidate for public office does not comply with the restrictions of the Conflict of Interest Act.

In the Czech Republic, public officials also have relatively loose rules for the **concurrence of offices** with other functions and activities. The problem is the accumulation of offices. In particular, their combination at national, regional and local level is very widespread. In some countries, on the other hand (e.g. France, Spain), regulation is very strict. It is assumed that many of the official positions acquired will be full-time functions and that the fragmentation of the official's attention would raise objections to the quality of his or her public service. Another problem in the Czech Republic is the insufficient regulation of the cooling-off period. The same applies to preventing the revolving door phenomenon.<sup>10</sup>

On the contrary, Czech legislation goes **quite far** in the scope of information required in the declarations submitted, but it is still crucial whether the declarations submitted are also examined in terms of their content and whether liability for breach of the law is enforced in the event of irregularities and proof of intent to conceal material facts. Consideration should also be given to how many public officials should be subject to the reporting obligations, or to what extent. .

9 The French High Authority for Transparency in Public Life could serve as inspiration. The Authority's website: <https://www.hatvp.fr/en/>

10 This is a situation where the same person alternately holds positions in public administration and in the entities that he or she regulated in his or her official position.

# Conference

Within the framework of the project **“Strengthening the Fight against Corruption by Increasing General Awareness of the Public Sector Focusing on Judges, Prosecutors and Public Administration”**, on 19 – 20 January 2023 an international conference organised by the Ministry of Justice on the topic of Conflict of Interest was held.

The introduction of the conference highlighted the societal context of trust in politics and public administration as a starting point for reflection on society’s desired and expected regulation of conflict of interest prevention.

*“Legislation regulating conflict of interest of public officials is an indispensable tool in a democratic state for building citizens’ trust in the institutions of the state and its representatives. Functionally set rules for preventing conflict of private and public interests can also help in the independent exercise of public functions, preventing clientelism, corruption and other negative phenomena in the exercise of public authority. Last but not least, it undoubtedly saves public money.”*

Michal Franěk, Senior Director, Section for Coordination of Legislation and Prevention of Corruption, Ministry of Justice

*“If state power is to be exercised for the people, it must not be exercised for a particular representative of state power, and especially not in a situation where his or her interest and the general interest are in competition. In extreme cases, therefore, it may be justifiable either not to allow a person who concentrates in his hands the various branches of power in society to participate in the decision-making process at all, or, on the other hand, to prevent him from accumulating political power together with economic or media power.”*

Jiří Kapras, Director of the Conflict of Interest and Anti-Corruption Department, Ministry of Justice

This was followed by a detailed presentation of the conclusions of the comparative study, the legislation and practice of the Ministry of Justice in relation to the reporting obligations of public officials and an analysis of problematic passages with an impact on municipal politics. The topic of conflict of interest was also discussed from the perspective of the state administration, especially regarding public procurement and the provision of subsidies. There was also a sharing of experience from experts from supervisory authorities in Croatia, Belgium and Romania and an introduction to foreign practice with the use of policy trusts in Canada.

**More information about the conference, presentations of speakers and an audiovisual recording can be found here:**



# Conclusion

Conflict of interest can not only have tangible effects, such as economic losses or poor quality public investments and services, but above all, it can undermine confidence in the functioning of the institutions of the democratic rule of law. Failure to address it in the long term may lead to the gradual deformation or even destruction of the democratic social order. Therefore, regulation in legislation is necessary to ensure the rule of law and the highest degree of equality before the law. However, legislation is merely the basis. In order to maintain a democratic legal order and thus defend the benefits it brings to citizens, the legal framework must be accompanied by other elements such as the integrity of institutions or a political culture that requires compliance with generally accepted rules without the threat of direct sanctions.

