

# THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY CZECH REPUBLIC

## ARTICLE 7, PARAGRAPH 4 UNCAC

### CONFLICT OF INTEREST

#### CZECH REPUBLIC (NINTH MEETING)

**I - Information requested from States parties in relation to preventing and managing conflicts of interest (art. 7, para. 4)**

**1. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention, and in particular to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.**

**Information sought may include:**

**1.1 Description of specific conflict of interest standard(s), indicating if these standards**

From the point of view of the Ministry of Justice of the Czech Republic, a general act which regulates the conflicts of interests area is the Act No. 159/2006 Coll., on Conflicts of Interests, as amended (hereinafter “Act on Conflicts of Interests”).

In the previous version of the Act on Conflicts of Interests, effective until 31 August 2017, shortcomings had been identified which reduced the effectiveness of the system of control over the conflicts of interest. In particular, there were a too high number of registration authorities and a thereto associated fragmentation of records of notifications, an absence of the obligation of public officials to lodge an initial notice, shortcomings in the system of an administrative punishment of offenses committed in the area of conflict of interest etc.

Therefore, an amendment of the Act on Conflicts of Interests was passed, promulgated as an Act No. 14/2017 Coll., effective as of 1 September 2017, which brought, among other things, the following changes:

- (i) the establishment of a Central Register of Declarations under the authority of the Ministry of Justice;
- (ii) setting the obligation for a public official to give a notice at the beginning of his/her post;
- (iii) setting other prohibition for public officials according to Sections 4a-4c of the Act on Conflicts of Interests;
- (iv) tightening up and extending the ban on competition laid down in Section 6 of the Act on Conflicts of Interest;
- (v) modifying the system of administrative punishment of offenses committed in the area of conflict of interest..

In addition, the Ministry of Justice issued a **Regulation No. 79/2017 Coll., on the Structure and Form of Notice according to Act on Conflicts of Interests** (hereinafter the “Regulation”). In order to facilitate and unify the procedure of notifications by public officials according to Sections 9 to 11 and 12 (4) of the Act on Conflicts of Interest, the Department on Conflicts of Interests of the Ministry of Justice of the Czech Republic prepared a **Methodology for Public Officials**.

### **1.1.1 Are publicized widely**

The Act on Conflicts of Interests, the Regulation, as well as the Methodology for Public Officials are publicly accessible through the public data networks from several sources. The Act on Conflicts of Interests and the Regulation are accessible, among others, in the Collection of Laws while the Methodology for Public Officials is accessible on the Ministry of Justice’s website.

### **1.1.2 Regulate the outside activities of public officials**

The Act on Conflicts of Interests defines a public official in its Section 2. Many obligations are imposed to public officials, especially the obligations to prefer public interest above private interests, including the prohibition to jeopardize public interest (Section 3 of the Act on Conflicts of Interests). In addition, the Act of Conflicts of Interests regulates the limitation of performing some activities of public officials and the incompatibility of selected public functions with other activities (Sections 4 to 6), and regulates the obligation to lodge various notifications which should primarily help the registration and control body to identify the facts suggesting the existence of conflict of interest (Sections 7 to 12).

### **1.1.3. Prohibit the holding by public officials of certain types of assets or positions in legal entities that are incompatible with their primary functions, such as an individual sitting on the board of a company.**

#### **1.1.3.1. Limitations based on Section 4 of the Act on Conflicts of Interests**

The provisions concerned stipulate that public officials defined in Section 2 (1) (c) to (m) of the Act on Conflicts of Interests shall not:

- a) be engaged in business or any other gainful activity,
- b) act as a statutory body or a member of a statutory body, managing body, supervisory body or controlling body of any business corporation, unless specified otherwise by special legal regulations,
- c) enter into any employment or similar relation or service relationship, except for relations resulting from his/her public office.

The limitations defined above do not apply to the administration of the public official’s own assets and to scientific, teaching, journalistic, literary, artistic or sporting activities, except for business activities in such areas.

The public officials mentioned in Section 1 shall terminate all activities specified therein without unnecessary delay after assuming a public office, within 30 days at the latest. If it is not possible to meet the time limit specified in the previous sentence because of reasons beyond the public official’s control, he/she shall report such a fact in writing to the relevant registration body and adopt all measures warranting that all activities are terminated.

#### **1.1.3.2. Limitations based on Section 4a of the Act on Conflicts of Interests**

It follows from the provisions concerned that a public official mentioned in Section 2 (1) of the Act on Conflicts of Interests may not be a broadcaster of a radio or television broadcasting or a publisher of a periodical press or an owner, member or controlling entity of a legal person who is the broadcaster of a radio or television broadcasting or a publisher of a periodical press.

In such a case, a public official shall be obliged to terminate his/her activities of a radio or television broadcasting or of issuing a periodical press, or to terminate his/her participation or membership in a legal person who is a broadcaster of a radio or television broadcasting or a publisher of a periodical press without undue delay after he/she has begun to perform his/her office but no later than 60 days from the date of the commencement of the office. If, for reasons beyond the control of a public official, it is not possible to adhere to the time limit referred to in the previous sentence, the public official shall within that period inform the registration authority and shall at the same time take all necessary measures to fulfill the obligation referred to in the first sentence.

In the case that a public official has not terminated his/her participation or membership in a legal person who is a broadcaster of a radio or television broadcasting or a publisher of periodicals, he/she may not exercise voting rights in that corporation. If a public official is the sole member of a company, he/she may not, during deciding of the highest authority of that company, make decisions other than those imposed by law or relating to the cancellation of a company, or to elect bodies in a company or their members unless their office terminated.

#### **1.1.3.3. Limitations base on Section 4b of the Act on Conflicts of Interests**

The company, in which a public official specified in Section 2 (1) (c) of the Act on Conflicts of Interests or a person controlled by such an official owns a share in the amount of at least 25 % of the participation of a partner of that business corporation, shall not participate in a procurement procedure according to the Public Procurement Act as a participant or a subcontractor by whom the contractor proves his/her qualification. The contracting authority shall exclude such a company from the procurement procedure.

#### **1.1.3.4. Limitation based on Section 4c of the Act on Conflicts of Interests**

From the provision concerned follows the prohibition to provide a subvention according to legislation on budgetary rules, or an investment incentive according to legislation on investment incentives to a business corporation where a public official defined in Section 2(1)(c) of the Act on Conflicts of Interests or a person controlled by such an official owns a share representing at least 25 % of the participation of a partner of that corporation.

#### **1.1.3.5. Limitation based on Section 5 of the Act on Conflicts of Interests**

It follows from the provision 5(1) of the Act on Conflicts of Interests that **no Member of Parliament (a Deputy or a Senator)** representing the state in a managerial, supervisory or controlling body of any corporate entity in which a state or a company controlled by the state or the Czech National Bank or all these entities together own a share or voting rights, **shall be entitled to receive any reimbursement, share on profit or any other payable for such a representation, except** for payables which the public official receives as an insurance payment from a performance liability insurance or which he/she receives

in connection with his/her presence at the meetings of such bodies according to common habits in an amount up to 10.000 CZK per year.

**A public official specified in Section 2 (1) (o) to (p)**, who has been selected by a Region, the Capital City of Prague, a municipality, a city district, a part of a territorially structured statutory town, or a city district of the Capital City of Prague, to perform the office of a member of a managing, supervising or a controlling body of a business legal entity, in which the Region, the Capital City of Prague, a municipality, a city district, a part of a territorially structured statutory town, or a city district of the Capital City of Prague, or legal entity controlled by them has a share or voting rights, **is not entitled to any remuneration for such activities, to any profit share or any other benefit, except for payables** which the public official receives as an insurance payment from a performance liability insurance or which he/she receives in connection with his/her presence at the meetings of such bodies according to common habits in an amount up to 10.000 CZK per year.

Furthermore, the position of a Deputy or Senator is incompatible with any appointment or office within the public administration of the Czech Republic, whether on an employment or service basis, in which he/she would be making decisions

- a) at a ministry or in another public administration office,
- b) in a public prosecution office or a court of justice,
- c) in security services, armed forces of the Czech Republic, the Supreme Audit Office, the Office of the President of the Czech Republic, the Office of the Chamber of Deputies, the Office of the Senate, state funds and in the Ombudsman's Office.

#### **1.1.3.6. Limitations based on Section 6 of the Act on Conflicts of Interests**

For one year following the end of his/her term of office, no public official defined in Section 2 (1)(c) to (m) and 2 (b) to (e) may become a partner or accept any position in any body of any corporate entity or become employed by any entrepreneur, if such a corporate entity or entrepreneur within the last three years preceding the end of his/her term of office concluded an agreement with the state or any territorial self-governing unit, with a legal entity established by law or founded or established by the state or by a territorial self-governing unit, concerning a high-amount public procurement and, at the same time, such an agreement fell within the competence of such a public official or of a body on behalf of which he/she was acting.

#### **1.1.4 Limit the official actions a public official may take because of a conflict of interest**

A public official is obliged to refrain from any conduct in which his/her private interests may affect the performance of his/her duties. If any conflict between the interest of the public interest 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. **The Section 3 of the Act on Conflicts of Interest** stipulates the "private interest" and provides that no public official may jeopardise the public interest, by

- a) using his/her official standing, executive powers or information obtained in connection with his/her office to acquire material or other benefit for himself/herself or any other person,

b) referring to his/her office in matters related to his/her personal interests, above all to his/her job, occupation or business,

c) allowing any party to use his/her first name(s) and surname or his/her image together with his/her official title for commercial advertising purposes in return for payment.

Other limitations are described in chapter 1.1.3, or in individual subchapters.

In addition, it follows from **Section 8 of the Act on Conflicts of Interests** that a public official in the course of a meeting of any constitutional body, another state body or any body of a territorial self-governing unit or of a legal entity established by law in which the public official makes an address, submits a proposal or is entitled to vote, shall announce his/her relation to the considered issue in case any personal benefit or injury might arise for him/her as a result of discussing the issue or in case he/she has any other personal interest in the considered issue; this provision shall not apply to generally obvious benefits or interests with respect to an unlimited number of recipients. This so-called “declaration on private interest” shall be presented verbally by the public official in the course of the meeting, at the latest before the considered issue is to be voted on; each declaration of that kind shall become an integral part of meeting minutes.

### **1.1.5 Apply criminal, administrative or other sanctions where public officials do not comply with applicable conflicts of interest regulations**

In case of violating the Act on Conflicts of Interests, the public officials are liable for a misdemeanor (have an administrative liability). A public official commits a misdemeanor according to Section 23 (1) of the Act on Conflicts of Interest if he/she:

- a) performs a function or activity incompatible with the performance of the function of a public official in breach of Section 4(1) or Section 5 (3) of the Act on Conflicts of Interests,
- b) is a broadcaster of a radio or television broadcasting or a publisher of a periodical press or an owner, member or a controlling entity of a legal person who is the broadcaster of a radio or television broadcasting or a publisher of a periodical press in breach of Section 4a (1),
- c) receives a remuneration in breach of Section 5 (1),
- d) does not submit a declaration on personal interest pursuant to Section 8 (1),
- e) states clearly inaccurate, incomplete or false data in declarations pursuant to Sections 9 to 11 and Section 12 (4), or
- f) does not submit a declaration within a time limit pursuant to Section 12 (1), (2) or (3).

Any person who used to be a public official commits a misdemeanor if he/she

- a) violates the prohibition to exercise the activity for a determined period of time since the termination of office of a public official pursuant to Section 6,
- b) does not make a declaration within the time limit pursuant to Section 12 (3) or states clearly inaccurate, incomplete or false data therein.

A public official or a person who used to be a public official should be fined based upon the severity of the misdemeanor committed. If a public official commits any misdemeanor stipulated above in paragraph 1 (a) to (c), he/she may be fined from 1.000 CZK to 50.000 CZK. If a public official commits any misdemeanour stipulated above in paragraph 1 (d) to (f) and a person who used to be a public official commits any misdemeanor stipulated above in paragraph 2 (b), he/she may be fined from 5.000 CZK to 250.000 CZK for such a misdemeanor. If a person who used to be a public official violates

the prohibition stipulated in Section 6 of the Act on Conflicts of Interest, he/she may be fined from 25.000 CZK to 500.000 CZK.

If a public official commits a misdemeanour stipulated above in paragraph 1(f), it is also possible to impose him/her a reprehension.

#### **1.1.6 Description of training or advisory services to public officials regarding relevant conflicts of interest regulations**

From Section 14b (3) of the Act on Conflicts of Interests follows the obligation for the so-called supporting bodies (their exhaustive list is included in Section 14b (2) of the Act on Conflicts of Interests) to inform the public official immediately after making a record into the Central Register of Declarations about the record, as well as to inform him/her about his/her obligation to submit a relevant notification (entrance or final – see more in Chapter II 1.2.1) within a stipulated time limit.

Furthermore, in order to facilitate and unify the procedures of notifications by public officials pursuant to Sections 9 to 11 and 12 (4) of the Act on Conflicts of Interests, a Methodology for Public Officials has been worked out which is publicly accessible on the Ministry of Justice's website.

Likewise, a public official may contact the Ministry of Justice directly (by telephone, e-mail, via a data box or through a postal service operator) with any question or query.

#### **1.1.7 Description of public access to information on government processes in which there is a higher risk of conflict of interest between the interests and activities of a public official and the particular type of government process**

All processes of the government in general are described in its Rules of Procedures available online at <https://www.vlada.cz/cz/ppov/lrv/dokumenty/jednaci-rad-vlady-91200/> (in the Czech language only). The issue of conflict of interests with respect to government processes falls also under the Act on Conflict of Interests.

#### **1.1.8 Description of the specific duties and responsibilities of the specialized staff or bodies given responsibility to strengthen transparency and prevent conflicts of interest in government**

At the Office of the Government, a Unit for Fight against Corruption exists which focuses also on the issue of conflict of interests (as part of its other activities, it is no specialized body). A special Department for Conflict of Interests exists at the Ministry of Justice which is responsible for most of the activities described in this document.

#### **1.1.9 Description of the institutional structure and procedures to oversee the compliance with conflict of interest legislation and apply respective sanctions**

Anyone on the part of the public has the opportunity to turn to the Ministry of Justice and to disclose to it the facts that indicate the untruthfulness or incompleteness of the information contained in the notifications registered in the Central Register of Declarations. The Ministry of Justice will then investigate the facts stated in the communication and, on the basis of the information available to it:

- (i) **assess the communication as unfounded** (ie. it does not itself identify facts indicating the untruthfulness or incompleteness of the information given in the notification of a public official), or

- (ii) **evaluate the communication as well-grounded and forward it** with all necessary supporting documents **to the body responsible for dealing with misdemeanors in the area of the conflict of interests** (depending on the nature of the misdemeanor, such a body may be the Office for Personal Data Protection or a municipal authority of a municipality with an extended jurisdiction).

If the Ministry of Justice concludes that there is a substantial disproportion between the property values acquired by a public official during the performance of his/her office and his/her income, it shall refer the matter to the Financial Administration for further proceedings pursuant to Section 38x et seq. of the Act No. 586/1992 Coll., on Income Taxes, as amended.

If the Ministry of Justice finds the facts indicating that a criminal offense has been committed, it shall notify them in accordance with Section 8 of the Act No. 141/1961 Coll., the Criminal Procedure Code, as amended, to a public prosecutor or police authorities. The Ministry of Justice is authorized to carry out the above-mentioned inspection activities also on its own initiative.

In case of verifying the facts indicating the untruthfulness or incompleteness of the information provided in the notifications by judges, such an activity is undertaken by the Supreme Court, proceeding analogically to the procedure of the Ministry of Justice. Unlike other public officials, however, judges are not liable for a breach of obligations stipulated by the Act on Conflicts of Interest. Therefore if a violation of a notification obligation by a judge is detected, only a petition to initiate disciplinary proceedings on the disciplinary liability of the judge concerned can be filed under the Act No. 7/2002 Coll., on proceedings in matters of judges, public prosecutors and court bailiffs, as amended.

#### **1.1.10 Description of the measures aimed at preventing conflicts of interest concerning former public officials in private entities, such as**

It is a limitation stipulated in Section 6 of the Act on Conflicts of Interests (see Chapter 1.1.3.6).

#### **2. Please outline the actions required to ensure or improve the implementation of the measures described above and any specific challenges you might be facing in this respect**

As the new amendment to the Act on Conflicts of Interests has been effective only from 1 September 2017, we have not yet evaluated its functioning. The review of the effectiveness of the regulations in the area of conflict of interest is planned for 2 years after the act No. 14/2017 Coll. comes into force. By this time, the necessary knowledge and statistical data from the area of conflict of interest should be available

#### **3. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?**

We have not identified any need for technical assistance in this sense at the moment.