

Abstract

The dissertation is focused on the topic of conflict of interest as a decision-making problem in the performance of public functions, when the public interest, which the public official has to promote or defend by virtue of his position, and his private interest come into conflict.

The existing institutes of the Czech legal system, which regulate situations of conflict of interest, are divided into several groups, to which chapters of the dissertation are dedicated. Specifically, it concerns i) the pivotal and overarching duty of prevention and prioritizing the public interest over personal interest; ii) so called 'genuine incompatibility' and iii) 'non-genuine incompatibility'; iv) reporting obligations; and v) a category of other institutes focusing foremost on cooling-off period and regulation of lobbying.

The dissertation focuses specifically on the following areas of problems: i) in the case of genuine incompatibility (Chapter 4) on the issue of the cumulation of the function of a member of Parliament of the Czech Republic with the function of a member of the council of territorial self-governing units and certain negative manifestations associated with it in the process of adoption of laws affecting the territorial self-governments; ii) in the case of non-genuine incompatibility (Chapter 5), above all, the ban on participation in the competition for public funds and the ban on media ownership from the point of view of their proportionality (fairness), and their deficits; iii) in the case of the obligation to file asset declarations (Chapter 6), the criticism of the intervention of the Constitutional Court of the Czech Republic, as a result of which asset declarations are not accessible on the Internet, not even in case of top state representatives, and further to the unsatisfactory application practice consisting of the insufficient administrative punishment of certain offenses in the area of conflict of interest; and finally iv) in the case of other institutes, not regulated at all in the Czech Republic, or only marginally so (Chapter 7), on the meaning and benefits of their potential enactment, as well as on foreign legislation from which inspiration can be drawn.

These chapters are preceded by a more general explanation of the concept of conflict of interest, the roles of the state and requirements for the legal regulation of conflict of interest arising from the Czech constitutional order, as well as a basic presentation of the legal and ethical rules regulating the behavior of public officials in the Czech Republic, including the question of the enforceability of those legal obligations, violation of which the law does not allow to punish.

The dissertation is based on the belief that the regulation of conflicts of interest is closely related to the principles and safeguards enshrined in the constitutional order of the Czech Republic, as well as values protected by it. The conflict of interest of the executors of public power touches the very foundations of the democratic state, when it potentially threatens the imperative that public power should serve all citizens. Preventing conflicts of interest and effectively fulfilling the requirement that state power serves all citizens simultaneously protects and helps build public trust in execution of that power. Preventing the excessive accumulation of political, economic and media power then helps to counter the creeping decomposition of the requirements of the rule of law, the separation of powers and the freedom of political competition and protects citizens from the arbitrariness of its holders. For these reasons, regulation of the conflict of interest of public officials through the law is deemed necessary.

The conclusion of the dissertation is that the Czech Republic is equipped with relatively high-quality legislation, which, unlike some other countries in the Western civilization circle, regulates the issue of conflict of interest relatively comprehensively. Nevertheless, several reservations have been formulated against this legal regulation and its implementation in practice, which are in a large part result of the circumstances and the method of adoption of the law on conflict of interest and its later amendments with the aim to react to the situation of a significant concentration of power in the hands of one of the former prime ministers of the Czech Republic.

The possibility of circumventing the ban on awarding public contracts and providing subsidies to companies owned or controlled by members of the government is considered the most serious shortcoming of the Czech legislation. More effective control and enforcement of the regulation of conflict of interest should benefit apart from eliminating loopholes in the law above all from the designation of an administrative office independent of the Czech government, which would be called upon to authoritatively interpret the law on conflict of interest and incidentally assess whether it has been violated, even at the highest levels of political bodies, and to sanction detected violations. In addition, however, the dissertation draws attention to several other shortcomings and offers a number of *de lege ferenda* considerations in the given context.

Key words: conflict of interest; public official; incompatibility