

# **CONFLICT OF INTEREST - CROATIA**

## **BACKGROUND**

Impartiality in exercising public office – since public office is exercised in the general interest – is a condition for a just and legal state-authority structure. For this reason, various functional and organisational measures are applied, which are aimed at removing even the slightest suspicion regarding the objectivity of exercising authority. This applies equally to measures that should ensure the independent status of state officials (salaries, benefits, immunity), as well as measures to prevent situations of opposing (public and private) interests (incompatibility, the prohibition of re-election, or conflicts of interest) from arising.

Conflict of interest is a common problem in the Croatian society. A distinct separation of private and official interest is imperative to guarantee just, transparent, unbiased and economic handling of state affairs.

Activities concerning the regulation of conflicts of interest are underway in many transitional countries. In Estonia and Macedonia, such provisions are included in anti-corruption laws. In the Republic of Slovakia and Bulgaria, similar provisions are included in the laws on information. Difficulties are evident both in Hungary and in the Czech Republic where the process of passing new laws and ethical codes is underway.

## **THE CONSTITUTIONAL GROUNDS FOR THE ADOPTION OF THE BILL**

The constitutional grounds for the adoption of the Bill are contained in the provisions of Article 2 paragraph 4 of the Constitution of the Republic of Croatia ("Official Gazette" no. 124/2000 – as amended).

## **ASSESSMENT OF THE SITUATION, BASIC ISSUES TO BE REGULATED BY THE BILL AND THE EFFECTS ARISING FROM THE BILL**

The Law on the Prevention of Conflicts of Interest in the Exercise of Public Office will regulate an area which is partly covered by the current Law on Obligations and Rights of State Officials (Official Gazette no. 101/98, 135/98, 109/99, 25/00). If the mentioned regulation is compared with the Bill on the Prevention of Conflicts of Interest in the Exercise of Public Office, several significant differences can be noted. While the Law on Obligations and Rights of State Officials regulates both the obligations and rights of state officials, the Bill on the Prevention of Conflicts of Interest in the Exercise of Public Office is intended to be a specific piece of legislation providing for only those instruments which are intended to prevent and render impossible the emergence of any conflict of interest in the case of public officials exercising public office. To this end, the Law aims at creating conditions which will make any conflict of interest impossible and is part of the overall struggle against any form of corruption at the legislative level. Another difference between the two laws mentioned above lies in the fact that the circle of persons to which the Law on the Obligations and Rights of State Officials applies is broader and includes, among others, holders of judicial office. The new Law on the Prevention of Conflicts of Interest in the Exercise of Public Office narrows the circle for the primary reason of

ensuring its consistent implementation and to assure respect for it as far as possible at this stage. In addition, holders of judicial functions within the judiciary and within justice administration in the broader sense of the word are not, and by their nature should not be, political officials and, generally speaking, are not subject to political public scrutiny, but are only open to scrutiny from experts and professionals.

The purpose of the Law on the Prevention of Conflicts of Interest in the Exercise of Public Office is to lay down standards of performance in public office, to familiarise officials with these standards and to indicate how they are expected to behave, as well as to inform the public about the conduct which is to be expected from an official.

Compared to the Law on the Obligations and Rights of State Officials, the Law on the Prevention of Conflicts of Interest in the Exercise of Public Office extends the obligations and prohibitions imposed on state officials to whom it applies. For instance, the Law expressly provides for the prohibition of certain conduct by officials, lays down the duration of obligations arising from the Law, even for a period after the termination of public office, and provides for the obligation to register any remuneration to which an official is entitled. The specific feature of the Law on the Prevention of Conflicts of Interest in the Exercise of Public Office lies in the fact that it is based on principles which represent legal and moral standards of conduct. It is beyond doubt that the enactment of the Law will provoke controversies and contrasting reviews and that its initial application will encounter difficulties. It will take some time before a uniform practice is established which will serve as the basis for the review of the performance of officials in the future. However, this should not be perceived as a disadvantage of the Law. It is the task of a special commission and of the public at large to interpret these legal and moral standards in an appropriate way, taking into account the purpose for which they were created - to ensure that officials act for the benefit of the general public and to prevent situations in which these interests might come into conflict with the officials' private interests. In this sense, the provisions of the Law relating to standards of conduct are not only in the service of citizens and the public at large, but of officials themselves. The provisions of the Law address both the officials as immediate addressees, and the public who should be adequately informed about the conduct of persons entrusted with the highest public office.

The Law on the Prevention of Conflicts of Interest in the Exercise of Public Office provides for the establishment of a Special Commission for the Resolution of Conflicts of Interest composed of members elected by the Croatian Parliament. The task of the Commission is to supervise official conduct within the meaning of the provisions of the Law, to interpret the application of the underlying principles of the Law and to conduct special procedures where there is reasonable doubt regarding the occurrence of a conflict of interest. In order to enable the Commission to work in the service of the implementation of the Law and to protect officials from ill-founded accusations with regard to their activity, special by-laws will have to be adopted regulating in greater detail the activities of the Commission and its powers to institute and conduct proceedings.

The Law on the Prevention of Conflicts of Interest in the Exercise of Public Office also provides for sanctions. These include fines and the possibility of a public announcement of the Commission's decision. The aim of the latter measure is to

acquaint the public with any violation of the provisions of the Law, which basically constitutes a political sanction.

The Law on the Prevention of Conflicts of Interest in the Exercise of Public Office is not the sole and exclusive instrument in the fight against corruption. It ought to be complemented by other regulations, criminal law regulations in particular, and it should be assessed in this light. In a certain way, the Law on the Prevention of Conflicts of Interest in the Exercise of Public Office is an ethical code of conduct.