

MINISTRY OF JUSTICE, ADMINISTRATION AND LOCAL SELF-GOVERNMENT

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D R A F T
BILL ON THE PREVENTION OF CONFLICTS OF INTEREST IN THE EXERCISE OF
PUBLIC OFFICE

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Zagreb, January 2002

I 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).

II 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.

III THE SOURCES OF FUNDS NECESSARY FOR THE IMPLEMENTATION OF THE LAW AND AN ESTIMATE OF THEIR VALUE

The implementation of this Law does not require special funds to be earmarked from the national budget of the Republic of Croatia.

IV BILL ON THE PREVENTION OF CONFLICTS OF INTEREST IN THE EXERCISE OF PUBLIC OFFICE

General Provision

Article 1

(1) This Law shall regulate conflicts between public interest in the exercise of public office and the private interest of a person exercising public office, including other issues related to the application of the law.

(2) In exercising public office, officials shall behave in such a way as not to impair the confidence and the trust of citizens, shall perform their duties conscientiously and responsibly and respect the rules provided for by law or otherwise regulating the obligations and responsibilities attached to their work and the public office they exercise.

(3) In exercising public office, officials shall abide by the prescribed provisions and in so doing shall take into account the ethics of their vocation and of the office they have accepted.

(4) In exercising public office, officials shall not place their private interest above the public one.

(5) Conflict of interest shall exist in situations where an official has a private interest which affects or may affect his or her impartiality in the exercise of public office.

The Notion of an Official

Article 2

For the purpose of this Law, officials shall include:

- The President of the Republic of Croatia,
- Members of the Croatian Parliament,
- Members of the Government of the Republic of Croatia,
- Deputies and Assistants to Ministers,
- The Governor, Deputy Governor and Vice Governors of the Croatian National Bank,

- The Chief State Auditor and Deputies,
- The Ombudsman and Deputies,
- Secretaries of the Croatian Parliament and Government,
- Secretaries of ministries,
- Directors, Deputies and Assistants to Directors of state administration authorities,
- The Chief State Treasurer,
- The Chief Inspector and Deputies and Assistants,
- Heads of Offices, Directors of Agencies, Directorates and Institutions appointed by the Government of the Republic of Croatia or by the Croatian Parliament, including their Deputies and Assistants
- County Prefects and County Vice Prefects, the Mayor of the City of Zagreb and Deputy Mayors,
- The President and Deputy President of the Croatian Privatisation Fund,
- The Director and Assistants to the Director of the Croatian Pension Insurance Institute,
- The Director, Deputy and Assistants to the Director of the Croatian Health Insurance Fund.

Principles of Activity

Article 3

(1) Officials shall act honourably, impartially and efficiently, abiding by the principles of responsibility, honesty, conscientiousness, openness and credibility in the exercise of their public office.

(2) Officials shall be personally responsible for their activities in exercising the public office for which they have been appointed, or elected, and are politically answerable, irrespective of guilt, to the body and to the citizens who have appointed or elected them.

(3) Officials shall not exploit the public office for personal gain or for the gain of persons related to them. Officials shall not be in any dependent relationship towards persons who could influence their objectivity.

(4) Officials as public persons shall endure the interest that citizens show in them or in their behaviour.

(5) Citizens shall have the right to expect from officials the behaviour declared by them when running for public office.

Related Persons
Article 4

Within the meaning of this Law, related persons shall include a marital or extramarital spouse of an official, his direct bloodline relatives, foster parent or foster child, indirect bloodline relatives to the third degree and relatives of the in-law family to the second degree, and other persons who can reasonably be considered to have related interests with the official based on other grounds or circumstances.

Conduct of an Official in Suspected Conflict of Interest
Article 5

In the case of doubt as to whether certain conduct is in accordance with the requirements and principles of public office, officials shall seek the opinion of the Commission for the Resolution of Conflicts of Interest.

Prohibited Conduct of Officials
Article 6

Except as otherwise provided in this Law, officials shall not:

- a) receive or request any gifts or any other advantage or any promise of a gift or any other advantage for the exercise of their office;
- b) exercise or acquire an entitlement in the case where the principle of equality before the law is violated;
- c) abuse the special rights of officials arising from, or necessary for, the exercise of their office;
- d) receive additional remuneration for work done in exercising public office;
- e) give promises or exert influence over decision-making;
- f) request, accept or receive anything of value or any service for voting on any matter or exerting influence over a decision of a body or person;
- g) promise employment or any other entitlement in exchange for any gift or any promise of a gift;
- h) give preferential treatment to persons on the grounds of their party or other affiliation or origin, or personal or family connections;
- i) deny access to their financial transactions;
- j) exert influence over the assignment of tasks or commissions by the state;

- k) accept direct payment in cash for themselves or for anyone else;
- l) use for personal advantage, or for the advantage of a related person, non-public knowledge concerning the activities of state authorities;
- m) use public office in any other way in order to exert influence over the decision-making of legislative, executive or judicial authorities, with the aim of gaining personal advantage or the advantage of a related person, a privilege or an entitlement, or to conclude a legal transaction or in any other way to favour personal interests or the interests of a related person.

Officials Reporting Their Means Article 7

(1) Within 30 days from the day they begin to exercise their office, officials shall provide a report with data on their property, permanent or expected income, and the property of their spouse and children, including the expected income of these persons in the future under normal circumstances.

(2) An official shall not receive his or her salary prior to the fulfilment of the obligations under paragraph 1 of this Article.

(3) The form of the report referred to in paragraph 1 of this Article shall be laid down by the Commission on the Resolution of Conflicts of Interest.

(4) For the purposes of this Law, an official's tax card shall be a public document.

Responsibility for the Purposeful and Economical use of Entrusted property Article 8

(1) Officials shall use the property, means of work and financial resources entrusted to them in a purposeful, expedient and economical manner.

Receipt of Gifts Article 9

(1) For the purposes of this Law, a gift shall imply monies, objects, entitlements, services without remuneration and any other advantage given or promised to an official (for example: catering services and the provision of the services of an overnight stay, the writing-off of a debt or liability, travelling expenses or a similar service, an admission ticket, an object of art, a

souvenir, insurance or a similar service, a medical or similar service, which the official has not paid for in person according to the current market price).

(2) An official may keep and need not report any gift not exceeding the amount of 500.00 Kuna.

(3) An official may keep any gift worth up to an average monthly salary in the Republic of Croatia, but shall report it to the Commission for the Resolution of Conflicts of Interest.

(4) The gift as provided for in paragraphs 2 and 3 of this Article shall also include several gifts given by the same donor within a period of one year.

(5) An official shall not keep gifts exceeding the value referred to in paragraph 3 of this Article, and shall report them to the Commission for the Resolution of Conflicts of Interest. Such gifts shall become the property of the Republic of Croatia.

(6) Notwithstanding the amount, an official shall not keep any money, other security or precious metal, and shall report them. Such valuables shall become the property of the Republic of Croatia.

(7) When in doubt as to the value of a gift, an official shall ask for a receipt from the donor or shall refuse the gift.

(8) The value of any gift shall be determined according to its market value.

(9) Provisions 1 to 8 of this Article governing the receipt of gifts shall also apply to persons receiving a gift for the benefit of an official.

Remuneration of Officials

Article 10

(1) While exercising public office, officials shall not receive any remuneration except the salary for the duty they perform, unless otherwise explicitly provided for by law.

(2) Officials shall not receive any other salary apart from their regular salary.

The performance of other activities by officials

Article 11

(1) While exercising public office, an official may accept another public office, except one in a political party, only with the approval of the body which appointed him or her.

(2) While exercising public office, an official may spend part of the working hours pursuing activities in educational or scientific institutions, cultural organisations, professional associations and the like, only if he or she has pursued these activities continuously until the assumption of public office, or if he or she has been undergoing the procedure of being elected to a scientific or teaching post, and if the remuneration attached thereto does not exceed one-third of the regular salary in these institutions or associations.

(3) Officials shall not be advisers to, or under an employment contract with, legal or natural persons.

Membership of Companies or of Companies' Management Boards and Supervisory Boards

Article 12

(1) An official who is a member of a company during his term of public office shall transfer his or her shares in the company to another person, excluding the persons as described in Article 4 of this Law, or to a special body. This person or special body shall act on its own behalf and on behalf of the official in terms of the exercise of membership rights.

(2) For as long as his or her shares in companies are transferred to another person or to a special body, the official shall not give information, instructions, orders or be otherwise in contact with this person or body and thus exert influence on the exercise of rights and the settlement of obligations arising from membership rights in these companies. An official shall have the right to be informed about the situation in the companies where he or she owns shares.

(3) Officials may not be members of boards of directors or supervisory boards of companies.

(4) Officials may be members of managing or supervisory bodies of non-profit legal persons such as foundations, associations and other legal persons pursuing scientific, humanitarian, cultural, sports and similar activities, but shall not be entitled to any remuneration or receipt of gifts in this capacity, except for the reimbursement of travelling and other expenses.

The Registration of Remuneration to which Officials are Entitled

Article 13

(1) Officials shall record with the Commission for the Resolution of Conflicts of Interest any income outside their regular salary which they are entitled to within 15 days from receiving the said income.

(2) Officials who pursue scientific, artistic or cultural activities shall report any income arising from such activity. Each contract forming the basis of payment and income shall be delivered to the Commission for the Resolution of Conflicts of Interest

Other Income of Officials

Article 14

(1) Except for the reimbursement of expenses and the income referred to in Article 13 of this Law, officials shall not receive any other remuneration or gift from a foreign state, foreign or international organisation, or international association.

(2) Officials shall inform the Commission for the Resolution of Conflicts of Interest of the receipt of remuneration referred to in paragraph 1 to which they are entitled.

Notification of Influence Exerted on an Official's Impartiality

Article 15

(1) Officials shall have the obligation without delay to reveal and inform the body which elected or appointed them, and the Commission for the Resolution of Conflicts of Interest, about any pressure or improper influence to which they have been exposed in the exercise of public office.

(2) Officials who, contrary to the provisions of this Law, have been offered a gift or any other advantage related to the exercise of their public office, shall:

1. reject such an offer
2. try to establish the identity of the person making the offer
3. where a gift is involved which, due to specific circumstances, cannot be returned, the official shall keep it and report it immediately
4. list witnesses of this event, if possible
5. within a reasonable time, submit a written report on the event to the competent person or body
6. if a punishable offence is involved, report it to the bodies in charge of conducting proceedings.

The Duration of Obligations Arising from this Law

Article 16

The provisions of this Law imposing on officials the obligations referred to in Article 6 and Article 7 of this Law shall be applicable for a period extending from the date of the election or appointment to office to the date of the termination of office, and for a period of 1 year after the date of termination of office.

Commission for the Resolution of Conflicts of Interest

Article 17

(1) For the implementation of this Law a Commission for the Resolution of Conflicts of Interest (hereinafter: Commission) shall be established.

(2) The Commission shall be composed of 7 members who shall elect a president from their number. Members of the Commission shall be appointed by the Croatian Parliament on the proposal of the Government of the Republic of Croatia.

(3) Four members of the Commission shall be Members of the Croatian Parliament, and other members shall be eminent public figures. No two members of the Commission shall be from the same political party.

(4) Members of the Commission shall be elected for a term of five years, while the first term of the Commission shall last for three years. A member of the Commission may be eligible for re-appointment two times in a row at most.

Grounds of the Commission's Activity and Competence

Article 18

(1) In its activity, the Commission shall be governed by this Law, good customs and the political responsibility and credibility of officials, taking into account the protection of the integrity of the office and not of the person exercising it.

(2) The Commission shall pass instructions, and prescribe the official forms and the organisation of a register for the purpose of implementing the provisions of this Law. The Commission shall pass the Rules on Internal Organisation and Procedure, prescribing the rules on keeping the register, on the nature of the official forms, on implementing the rules of conducting proceedings and delivering decisions, as well as on the drawing up of reports.

(3) The Commission shall decide on whether an act or omission constitutes a violation of the provisions of this Law. The Commission's decision shall contain a statement of reasons.

(4) Every six months, the Commission shall submit a report on its activity to the Croatian Parliament, and shall also submit a report to the public for information.

Procedure before the Commission

Article 19

(1) A procedure before the Commission shall be initiated on the request of the Commission or of an official.

(2) The Commission may institute a procedure by acting on a report by any other person or on an anonymous report.

(3) The Commission shall be entitled to establish facts through its own investigation and to collect facts and evidence through the activity of other bodies of executive authorities.

(4) The Commission shall give notification of any suspected violations of an official's obligations to the official suspected of violating the rules of conduct as provided for in this Law, requesting him or her to declare himself or herself with regard to these allegations.

(5) When in doubt as to the application of official rules of conduct, a person may request and obtain an opinion from the Commission.

(6) Before imposing a sanction the Commission shall hear the official to whom the sanction applies.

Sanctions for the violation of the provisions of this Law

Article 20

(1) Within ten days from coming into public office, officials shall submit a written statement to the Commission stating that they are familiar with the provisions of this Law and

that they agree to be liable to the sanction prescribed by this Law in the case where they violate these provisions

(2) The Commission may impose on an official the following sanctions: the retention of part of the official's net monthly salary, a warning, or the publication of the Commission's decision at the official's expense.

(3) The Commission may sanction an official who fails to submit the report under Article 7 of this Law, or fails to provide the requested data in the submitted report, by the retention of income to an amount ranging from 500.00 to 2,000.00 Kuna of the net monthly salary.

(4) The Commission may sanction an official who gives false data in the report referred to in Article 7 of this Law by the retention of net monthly salary to an amount ranging from 1,000.00 to 3,000.00 Kuna.

(5) The Commission may issue the sanction referred to in paragraph 3 of this Article to an official who violates the provisions of this Law concerning the prohibited conduct of officials (Article 6), the receipt of gifts (Article 9), the remuneration of officials (Article 10), the performance of other activities by officials (Article 11), membership of companies, of the management and supervisory boards of companies (Article 12), the registration of remuneration to which officials are entitled (Article 13), other income of officials (Article 14), notification of influence exerted on an official's impartiality (Article 15), and the duration of obligations arising from this Law (Article 16).

(6) The sanction involving the retention of part of an official's net monthly salary shall not be applied longer than three months, and the aggregate amount covered by this retention shall not exceed 8,000.00 Kn.

(7) The Commission may issue a reprimand to an official instead of retaining part of the net monthly salary if it establishes especially mitigating circumstances.

(8) The Commission may order that the decision pronouncing the official guilty be published at the official's expense.

Transitional and Final Provisions

Article 21

(1) The Government of the Republic of Croatia shall, within three months from the date when this Law enters into force, submit a motion to the Croatian Parliament for the appointment of members of the Commission

(2) The Croatian Parliament shall appoint the members of the Commission within six months from the date when this Law enters into force.

(3) Within thirty days from the date of appointment, the Commission shall pass the Rules of Internal Organisation and Procedure.

Article 22

On the date when this Law enters into force, the provisions of Articles 2 to 10 of the Law on the Obligations and Rights of State Officials shall cease to be valid (Official Gazette 101/98, 135/98, 105/92 and 25/2000).

Article 23

This Law shall enter into force on the eighth day from the date of its publication in the "Official Gazette".

EXPLANATION

Article 1

This article regulates the area governed by the Law. The obligations of holders of public office do not merely arise directly from this Law, but also include rules of conduct based on principles that officials should become familiar with and which point the way to desirable behaviour. It also requires that the public be informed of such principles. This article also contains the definition of conflict of interest.

Article 2

This article defines the range of persons to whom this Law applies. However, the principles of the Law should be applicable to all cases related to the exercise of public office. The former law provided for rules applicable to too broad a range of persons. This, along with the fact that it lacked any adequate sanctions, meant that the scope of supervision was insufficient. This Law does not apply to judges.

Article 3

This article lays down principles which should be adhered to by each official and which serve as criteria for defining proper conduct. They include legal and moral standards of conduct which are helpful in deciding disputable cases.

Article 4

These provisions define the range of persons considered as persons related to officials. All the persons of kin who are considered as related to the official are exhaustively listed. Related persons also include any persons who may be considered as related in interest with the official on some other grounds and depending on special circumstances. These may be both natural and legal persons. For instance, these persons may be in a business relation with the official (this also includes legal persons) or may include those who have different private links with the person. Persons should be assessed on a case-by-case basis.

Article 5

Before any clear practice is developed, it will not be easy to establish the specific meaning of obligations in controversial cases and many disputable situations will certainly arise. Such disputes would be decided by the Commission issuing discreet instructions as to what needs to be done. The fact that the range of officials is limited is important. However, the rules of conduct may be applicable to other officials in governmental and nongovernmental bodies, although not the sanctions and procedures provided hereto. The idea is that the purpose and the intended effects of this Law should extend to other persons who are not covered by Article 2. For them, the rules of the Law would primarily be considered as ethical norms.

Article 6

This article provides specifically for the prohibited types of conduct of officials.

Article 7

This article lays down the obligation for a record to be kept of the property of officials. Such an obligation exists under present legislation as well, but this provides for no sanctions or implementing bodies and therefore the provision has been completely ineffective. This is a legal obligation, not just an ethical one. The idea of the possibility to have access to a tax card and the fact that this Law defines it as a public document is subsidiary to the basic text, but is a simple and probably enforceable measure. The public nature of an official's tax card is a reflection of the idea and of the need for officials to understand that, due to their functions and the condition that they need to act in the public interest, they therefore have, unlike other citizens, special obligations.

Article 8

This article provides for the obligation of officials to use the property and assets entrusted to them in the exercise of their office in a purposeful, expedient and economical manner. The obligations laid down in this article are both ethical and legal.

Article 9

This article regulates the receipt of gifts. The definition of a gift is such that it includes any services which an official may be given free of charge. In this sense, this is a very radical and far-reaching provision. At the same time, the article provides for limits to the value of a gift and of several gifts which, when coming from a single donor, have to be of a relatively low value, which applies to both given or promised gifts.

The gifts are divided into three groups:

- (I) A gift of a value higher than the previous year's average monthly salary in Croatia; such a gift may not be accepted and, if accepted, should be considered as a gift given to the Republic of Croatia;
- (II) A gift of a value ranging between 500 Kuna and the previous year's average monthly salary in Croatia; an official may accept such a gift only if he or she reports it to the Commission for the Resolution of Conflicts of Interest. This is intended to increase transparency in receiving gifts belonging to this category;
- (III) A gift of up to 500 Kuna of value, which may be received by an official without the obligation to report it; normally these gifts are tokens of appreciation which should not lead, either by their value or by their purpose, to any conflict of interest.

Gifts given by one and the same person are cumulative, which prevents any circumvention of the relevant provisions by one person giving several gifts of lesser value to an official on several occasions in the course of one year, but in such a way that their aggregate value exceeds the limits defined for any of these categories.

The definition of a gift is very broad, which serves to prevent any circumvention of regulations. For instance, the wording "a similar service" is used to denote what stands for a gift without exception. In particular, these provisions regulate that an official must not receive any gift consisting of money, securities or precious metals.

Article 10

This provision regulates the remuneration which an official must not receive in addition to his or her salary for the job he or she performs, and that he or she may not receive a second salary in addition to the regular one. This provision is related to the following Article.

Article 11

This article lays down expressly all the duties which an official must not accept while exercising public office.

Article 12

This provision regulates that, while exercising office, an official must transfer his or her shares in a company to a special body or to other persons acting on their own behalf and on behalf of the official. However, "other persons" may not include the related persons as provided for in Article 4 of this Law.

Officials may not be appointed to management boards, supervisory boards and other bodies of companies, whereas they may be members of management or supervisory bodies of non-profit legal persons. In any case, they must not receive any remuneration or any other advantage for such appointments.

Article 13

Experience has shown that the most frequent and simplest way of abusing an official duty is by receiving different forms of remuneration and income in addition to salaries. This prohibition should be harmonised with other laws (copyright, judges, etc.).

Article 14

This is one of the classic provisions for the prevention of corruption.

Article 15

This article stresses the obligation of an official to follow a certain course of action when his or her objectivity is exposed to influence or pressure.

Article 16

It is necessary to regulate the obligation of those whose public office is being terminated. Their obligation continues, in order to clearly present their link with the subsequent employer, his or her activities, and with any income originating from the possibly delayed payment of a service.

Article 17

The establishment of a Commission is absolutely crucial. This Law has four mainstays: principles whose binding force goes beyond the letter of the law, prohibited conduct, a special body in charge of these issues, and sanctions as a general and special deterrent of abuse. The composition of the Commission, its size and structure may vary, but what needs to be ensured is that the Commission is an independent body. The arrangement whereby its members are MPs has its advantages and disadvantages (*nemo iudex in causa sua*). Their term of office must be different from that of officials, otherwise there can be no guarantee of non-partisan control.

Article 18

This is a key provision concerning the operation of the Commission, as it provides for its powers and procedures. What is disputable is the activity of the Commission in matters which are not directly regulated by this Law, but by customs and ethics. However, the stricter solution, which has been accepted here, should be retained for the sake of efficiency.

Article 19

This article regulates the procedure before the Commission.

Article 20

This Article prescribes sanctions for the violation of the provisions of this Law. The point of the sanctions is to withhold income from the net monthly salary of an official and to implement a kind of "exposure" to public reproof of any official who does not act in accordance with the provisions of the Law. For this reason, the sanction involving income retention of a certain amount from the net salary of an official constitutes a certain margin of risk for officials who do not adhere to the provisions of this Law. To cross this line would mean to expose oneself to public judgment (the measure of retention should be applied in conjunction with paragraph 8 - publication of decisions) and, ultimately, since it is the public which is the *conditio sine qua non* of the exercise of public office, to anticipate the termination of public office. Because of what has been said above, it is to be expected that officials will mostly adhere to the provisions of this Law and that procedures before the Commission will rarely arise. For cases of less grave

violations of the provisions of this Law, or where the Commission establishes the existence of especially mitigating circumstances related to an official, it is possible to apply the measure of a reprimand addressed to the official concerned.

Articles 21, 22 and 23

These provisions set the date of the coming into force of the above-mentioned Law and the cessation of the currently valid provisions of the Law on the Obligations and Rights of State Officials, since the issues contained therein are regulated by the provisions of this Law. These provisions also provide for the time limits for the appointment of members of the Commission.

CONFLICT OF INTEREST (the term, and a historical and comparative overview of international legislation)

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.

In historical terms, the prevention of conflicts of interest coincides with the formation of a professional administration at the time of enlightened absolutism, and later, with the fight against favouritism, nepotism, and the “spoils” system.¹ In the 19th century the system of “patronage”² gradually disappeared and was replaced, at lower executive positions, by the

¹ It should be mentioned that the rationale behind the introduction of the spoils system was an effort to spread democracy. As a candidate, Jackson promised that he would dismiss corrupt and incompetent officials and employees and replace them with his own supporters. And he kept his promise. Obtaining duties through privilege was considered normal. Such a system proved to be unsustainable in the long term and was abandoned through the passing of the Tenure of Office Act in 1867, and the Pendleton Act in 1883.

² The patronage system is generally linked to the British tradition. This system was in force until the mid-19th century when an inefficient public administration was being formed under the influence of liberal political philosophers (**Northcote, Trevlyan, Repport**), - **trebalo bi provjeriti, jer u hrv. tekstu nema zareza, a mislim da su i zadnja dva imena krivo napisana** - which included

“merit” system, and at higher executive positions, by the understanding that the exercise of public office was a matter of trust. The principle that no one can be a judge in his or her own case, and that competing personal interests are detrimental to the market game has since that time been considered as a tacit condition of democracy.

The process of spreading such principles was slow, and was accompanied by a number of public scandals, the development of the freedom of the press, a strengthening of the role of the state in the market, and by the growing public sensitivity to cost-effective public spending.

The main features of the systems of prevention of conflicts of interest in various countries are presented below. It must be stressed that these situations are historically specific (ideographic), but that they all have one common feature: their practical orientation in the effort to prevent conflicts of interest. Some countries (USA, Ireland) have an exemplary legislation, others consider this to be an issue of criminal law (France) or of constitutional provisions, whereas some countries attempt to include provisions dealing with this issue in the rules of procedure of legislative bodies and in laws regulating the rights and obligations of officials.

In the United States, prohibitions date from 1863 when it was forbidden to receive gifts and to conclude business where public and personal interest in self-dealings coincided. In the period of rapid industrial development, such ethical standards were partially suppressed (the emergence of the lobby system). The practice of raising the issue of potential conflict of interest at a public hearing held before appointing someone to office was established in 1920 as the consequence of a number of scandals (Teapot Dome – 1923). Rivalry between political parties showed that scandals have an effect on popularity and success at elections. A special Senate committee (the Douglas Subcommittee) was established in 1951, which articulated the Proposals for the Improvement of Ethical Standards. However, the respective legislation did not provide for any sanctions. For this reason, the American Bar Association (ABA), during J.F. Kennedy’s presidential campaign, raised the issue of conflicts of interest resulting from the influence of large companies, and supported the activities of the Select Committee on Standards of Conduct which became a permanent body comprising an equal number of members from both parties. The political struggle culminated in 1978, when Congress passed the Ethics in Government Act. In addition to laying down the principles of ethical standards, a permanent Commission was formed, provisions on the prevention of conflicts of interest were formalised, and the obligation of reporting property and transactions was precisely defined. The first consequence of the law which applied to all three branches of power was a mass relinquishment of office. It was claimed that the standards were not clear or practical, and that they discouraged people from engaging in politics and from building an administrative career. In 1982, after a number of very painful discussions and scandals, the Executive Order 11222 was formulated. Particularly frequent were violations regarding the maintenance of connections with earlier employers, the use of discretion

the prohibition of considerations of personal interest, favouritism, and recommendations in exercising public office.

A similar situation was in force in Germany, particularly in the period of Bismarck’s reforms. Bismarck, known as a pragmatist who engaged in the not-so-honourable practice of bribery, insisted on the neutral position of executive officials.

to help acquaintances or partners, the receipt of gifts, and negotiations on employment after the termination of office (particularly for military personnel!). A new revision was initiated in 1989 which was much more rigorous than any before it. Nearly every year, additional instructions are issued for drawing up comprehensive reports.

The law forbids the soliciting of anything of value such as a service or gift, mutual activity aimed at personal gain or the gain of another person (improper influence). There is a complex structure of prohibitions of part-time or external employment and potential conflicts of interest. A conflict of interest is “a situation in which an official’s private interests are in opposition to public interest, or in which this appears to be the case. Some conflicts of interest are not inherently non-ethical or unacceptable”. This is why an attempt has been made to reduce the dim area of conflict. No remuneration can be accepted for speeches, public appearances, or articles. Any income gained from a foreign government or organisation is also forbidden. Even in the rare cases where additional income on top of the regular salary is allowed (university), an upper limit of permitted income has been set. It is forbidden to accept from the same person a gift (one or more) whose value exceeds the amount of \$250. It is also forbidden to accept a gift from a foreign government or society if its value exceeds \$200. There is a large number of operational, implementing rules; for instance, family gifts are an exception, and gifts whose value is lower than \$100 are not taken into account. It is forbidden to receive remuneration for membership of committees of societies and associations, although membership itself is allowed. Many rules also apply to household members, etc. It is forbidden (for one year) to lobby after leaving office. It is forbidden to accept travel allowances for more than 4 days (or 7 days outside the US), and this is only allowed in the case of delivering a presentation, talk or investigating a fact (a legitimate aim). In situations where there is doubt in implementing these rules, the Commission must pass a decision, but the burden of doubt is, in fact, upon the officials who have the obligation to prevent and avoid situations where there is an appearance of conflict. Possible exceptions, which are decided by the Commission, must be requested and approved in writing. These rules scrupulously encompass indirect contributions (to the family, spouse, fiancé, etc.).

The rules are even more rigorous for executive officials, where the criterion of “appearance of potential conflict of interest” is sufficient to give rise to the obligation to refrain from such a situation. Employees must request exemption from deciding about any matter which could have a potential effect on personal gain or advantage for related persons. The conflict is *questi facti*, but is also assessed according to the “sensitivity of the matter”, the impossibility for the matter to be resolved by someone else, and the “elimination of the chance that a reasonable person could doubt impartiality”. Ten principles of conduct have been formulated, such as “officials shall place public interests above personal ones”, “they shall not use confidential information for personal gain”, “they shall not solicit and receive gifts apart from those provided for by law”, “officials shall promote honesty in exercising public office”, “they shall not give preferential treatment to any organisation or person”, “they shall protect and conserve public property and shall not use it for other than officially approved activities”. The provisions of these ethical rules are complementary to the technical provisions of the law and provide the main guidelines for the Commission’s decision making.

There is a strict obligation to report income, property and expenses. An annual report must be submitted containing data on property, gifts, income, bills, and business transactions. The sanctions imposed on those who do not meet the obligations are very strict and include fines and “any other penalty the Commission considers to be appropriate” (R 20e). The Commission may consider an internal penalty or public reprimand to be sufficient. In more serious cases of avoiding obligations and submitting false data, the Commission passes the matter to the prosecutors to initiate criminal proceedings. It is also forbidden for officials to seek employment in companies where there would be a conflict of interest (for one year). The Commission decides in case of doubt about the application of such a restriction.

In Great Britain, the stress in regulating conflicts of interest is placed primarily on defining the prohibitions of conflict for elected officials. The Disqualification Act (1975) lays down a precise list of positions to which the prohibitions apply, complemented by the regulations of parliamentary working procedure and previous documents. A Register of Members’ Interest has been introduced which concerns administrative positions in public and private companies, additional employment, client relations, particularly regarding professional consultations and representation, and assistance in campaigns or other forms of sponsoring. Any gift whose value exceeds £125, or whose value is higher than 0.5% of a salary, must be recorded in the register. The same is true for any real estate apart from the home. Ownership of shares or bonds should also be registered if it exceeds 1% of the company’s value, or an amount of £25,000.

The British administration is famous for its efficiency and professionalism. Nevertheless, regarding the activities of administrative officials, the basic document on the prevention of conflicts of interest is the Public Standards Act which requests from employees a commitment to the public interest, honesty, honour, objectivity, responsibility and openness.

The key provision in France is Article 24 of the Constitution, which very broadly defines incompatibility. The exercise of duty in one part or level of authority presents an obstacle to the performance of any activity at another level of authority, in a public company, or private enterprise. Exceptions (for example, television) are prescribed by a special law. Officials have the obligation to break any such links (including at the local level!) within two months from their appointment to office. French administrative theory, as well as the legislation, stems from the clear concept that the exercise of public duty functions in the public interest (*fonction publique – agent public*). Consequently, the chances of participating in any activity apart from professional politics and administration are wholly limited (by law or codes of conduct). Moreover, failing to meet such obligations is sanctioned through respective provisions of criminal law. The increasingly strict confines of a professional administrative career and the prohibition of any activity apart from the official position have gradually led in the last ten years to a movement into the private sector that has never been recorded before (*pantouflage*).

Prohibitions after the termination of office are also rigorously regulated, and include a sentence of up to five years of prison. Only scientific and art institutions are exempt from these restrictions.

Similar tendencies exist in Germany. The law (Abgeordnetengesetz, AbgG) contains provisions on the prevention of conflicts of interest, the prohibition of receiving gifts, and the protection of professional secrets (which extends to the limitation of employment). Officials are obliged to report income and expenses if they exceed a certain amount (44a AbgG). Provisions on the conflicts of interest for MPs have been built into the rules of procedure of the Bundestag. The President of the Parliament has to be notified of such activities, or of potential and real conflicts of interest. The penalty is a public announcement of the violation, with broad discretion of the President in deciding upon this matter. Donations also have to be reported. Received gifts may be retained only if their value is paid to the treasury. Following recent scandals concerning the funding of political parties, a discussion is currently underway. Employment is limited following the termination of duty, and there is an obligation lasting up to five years after the termination of duty to seek consent for any new employment.

Activities concerning the regulation of conflicts of interest are underway in 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 codices is underway.

Different systems abide by different rules, but all of them stress certain conditions to ensure that the rules on conflicts of interest are efficient. Such rules, on the other hand, are considered as a component part of the ethics of exercising office. In an effort to draw attention to potential implementing problems, the following issues can be raised:

1. The chief objective of regulation is to raise the level of trust in the legitimacy and impartiality of authorities.
2. Such legal regulation is not an aim in itself, but is focused on the spreading of a democratic political culture. It fits into a specific context where it is necessary to recognise the connection with other laws and other rules. This is not just another additional law, but a practical measure which has been missing in the system.
3. Legal regulation itself can be based either on structural measures or on a report on an individual case. The advantage of the former is indisputable, because the latter solution is only palliative and reserved for scandals which touch upon public morals.
4. Legal provisions are usually linked with, and complemented by, certain codices of a moral nature. Therefore, in France, deontology is stressed within professions; in the USA, special codices are passed; while in Britain, recommendations are codified into principles.
5. There are no clear rules on the types of sanctions imposed for violation. There is a clear implication that the main sanction is a moral one, that it is sufficient to publicly announce the violations. Some countries (France, Germany...) insist on penal regulation in order to have clear

rules of procedure. This is particularly disputed in prohibitions after the termination of office, and in cases where the real damage is negligible (but where the political and ethical damage is large).

6. There are different views on the organisation of special bodies and services which monitor the application of the rules. In some places, this is left to administration and hierarchical control (France), and in others, to Parliamentary bodies, or to a specific institution or committee. The investigative powers of such bodies are not usually very great, but the fact that the press and the rivalry of political parties disclose facts make them more effective. The political neutrality of such bodies is a key feature. The level of openness of society, the freedom of the press, and NGO activities have great importance, otherwise the focus would be transferred to bureaucratic formalities and not to the real effect.