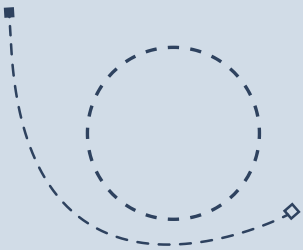
STEFAN BATORY FOUNDATION

The conflict of interest in the Polish government administration

LEGAL REGULATIONS

PRACTICE

ATTITUDES OF PUBLIC OFFICERS



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Legal regulations, practice, attitudes of public officers

Stefan Batory Foundation
Warsaw 2014

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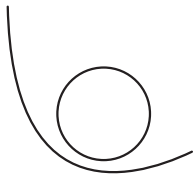

Warsaw 2014

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1. INTRODUCTION

The conflict of interest is a phenomenon, the scale of which is hard to assess, but it is undoubtedly present in every place where the public and the private spheres meet, and requires decisive legal and regulatory action that would limit its effects. However, legal regulations alone will not be sufficiently effective if simultaneously the civil society mechanisms are not developed to influence implementation of strategies that prevent conflict of interest situations. And this is the aim of the two-year project **"Social monitoring of the conflict of interest",** of which the Stefan Batory Foundation is a partner since July 2013.

The project leader is Moldavian Transparency International that invited five partners to share their experiences in monitoring public policies intended to prevent the conflict of interest, and in dialogue in this field with public administration. Four more organisations, in addition to our foundation, took part in the project: Eurasia Partnership Foundation and Transparency International – Anti-corruption Centre from Armenia, and TORO Creative Union and Ukrainian Institute for Public Policy from Ukraine.

Our aim was to strengthen the role and enhance the quality of the policies to prevent the conflict of interest in public administration. Thus, under the project, the present report from monitoring was prepared in order to better understand the barriers for developing policies to counteract the conflict of interest and to propose solutions to the problems. We focused on regulations and procedures to prevent or identify conflict of interest situations among public officers and decision-makers on the central government level, as well as on the modalities of implementation of the procedures and their effectiveness.

We would like to thank the National School of Public Administration, the Civil Service Department of the Chancellery of the Prime Minister, and members of the Bureau of Staff, Trainings and Organisation in the Ministry of Internal Affairs for their organisational support in performing the monitoring and professional advice in preparation of the survey tools and methods.

We hope that both the project itself and the report will give a broader picture of the subject that, so far, has not been comprehensively surveyed in Poland, and perhaps also will help to introduce specific solutions enhancing future conflict of interest management in the Polish public administration.

2. THE MAIN CONCLUSIONS AND RECOMMENDATIONS

Grzegorz Makowski

For the purposes of this report, we defined the conflict of interests as actual or possible situations where official responsibilities and private or other interests of a public officer are at odds, and when the pursuit of private interest can threaten public good or hamper carrying out his or her official duties.

As indicated by virtually all researchers of the subject, the conflict of interest is practically a permanent state – in particular in the public sphere[1]. For potentially, most persons holding public function – either politician or public officer – in every moment of performing his or her duties faces a dilemma – whether to follow the norm that obliges him or her to care for the public interest (the interest of the state and the society), or to focus on meeting his or her own needs or other particular interests (e.g. the interests of his or her family, particular "clients" of the institution, lobbyists etc.). The modern public service is founded on the dualism and division between public and private spheres which on the individual level give rise to a permanent dilemma and create a situation of at least potential conflict of interest for every public officer. Thus, in a sense, the conflict of interest is a normal condition that as such has no negative meaning. For example, devotion to family values in itself has not necessarily to be at odds with the duty to act legally and protect the public interest. To employ a relative in public institution, if he or she has the relevant qualifications and is recruited according to the normal procedure, is in theory consistent with the public interest. But from the perspective of the objectives that should be realised by public institutions, even a potential conflict of interest is a source of risk. Thus, to limit the possible negative consequences of the situation, relevant choices are made that are manifested in organisational and management structure of public institutions. That is why, some constraints are introduced limiting the possibility to employ relatives or situations when relatives remain in direct official dependence in public offices.

It is only one example of a situation where the potential conflict of interest can evolve into an actual one, taking the form of nepotism. We also mentioned one of the traditional techniques to manage the conflict of interest in public institutions that is intended to prevent such situations. The modern, increasingly complicated structure of public administration requires constant vigilance for and analysing the conflict of interest, studying the risk areas

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1 T. Potkański, ***Konflikt interesów***, [in:] C. Trutkowski, „Przejrzysty samorząd. Podręcznik dobrych praktyk", Scholar, Warsaw 2005, A. Lewicka-Strzałecka, ***Teoretyczne i praktyczne aspekty identyfikacji i ograniczania konfliktu interesów***, [in:] A. Węgrzecki (ed.), „Konflikt interesów – konflikt wartości", WAE, Warsaw 2005.

and developing new, still better mechanisms protecting from negative effects of the conflict of interest. And this was the aim of the monitoring, results of which are summarized below.

Data gathered by us let us present a diagnosis on the state of protection from negative consequences of the conflict of interest in the Polish government administration and recommendations how the protection could be enhanced – not only through changes in legal regulations, but most of all through organisational effort within the public institutions.

The conclusions presented in the report are based on four sources of information: (1) analysis of legal regulations; (2) analysis of documents (including internal regulations) that we received from all ministries; (3) opinions from public officers (mainly directors general and departmental directors, but also officers of lower ranks) on the conflict of interest in the government administration and abilities to limit related risks; (4) discussions with expert and academic specialists, as well as representatives of non-governmental organisations and government administration[2]. The diversity of sources of information should give us a relatively broad view of the issues that we are interested in, as well as better chance to answer the questions that we posed at the beginning of our monitoring.

In addition to the answer to the question what instruments the public administration has at their disposal to cope with the problem of the conflict of interest and what possible improvements can be introduced in this field, we were also interested in several more specific issues such as:

- **What is the awareness of / knowledge on the conflict of interest among government administration officers?**
- **What actions are taken by individual ministries to prevent conflict of interest situations and limit their effects** – do they develop their own internal policies in this field, do they have specific measures (rules of procedure, instructions, guidelines, declarations of interests etc.), do they inform and educate their employees how to react to conflict of interest situations, do they use sanctions for breaking the standards or regulations concerning the conflict of interest?
- **How effective are the activities undertaken or the existing policies concerning the conflict of interest?** How are they evaluated by the representatives of the ministries themselves?

We will start the discussion on the diagnosis with the statement that the problem of the conflict of interest is not well defined in the Polish legal system. Basically, there is no legal definition of the conflict of interest, though in many legal acts the notion is indirectly referred to. The fact that measures useful to limit negative consequences of the conflict of interests are scattered and fragmentary (the authors of the expert opinion rightly indicate casuistic nature of the existing regulations on the one hand, and their excessive vagueness on the other) makes it virtually impossible to form a coherent proposal how the problem should be understood, recognised, where the main risk areas exist and how to counteract it. **Thus, the Polish legal system forms no good basis for developing policies in the field of**

[2] The methods used in the survey are described in detail in the methodological note of the report.

counteracting the conflict of interest. Hence the proposal to better organise the existing regulations and to introduce a legal definition of the conflict of interest (we will return to the issue while discussing recommendations).

Chaos seems to reign also in the sphere of the awareness of public officers. Interesting differences can be detected when analysing the replies from the ministries to the question concerning their legal and institutional infrastructure used to manage the conflict of interest, and the opinions from ministerial directors general, departmental directors and lower-rank officers (a sample picture of opinions from the last group which, while not being representative, brings a lot of interesting information, was obtained by us thanks to cooperation from the National School of Public Administration and the Civil Service Department). The answers to the question concerning ministerial policies in the field of the conflict of interest show that **ministries often fail to realise that such basic instruments as the Ordinance no. 70 (the so-called "ethical ordinance) on the guidelines for observing the principles of civil service and on ethical principles of the civil service corps, or the managerial control procedure are available.** The answers given by public officers in the questionnaire survey led during NSPA and CSD trainings suggest that **the majority of the staff in the ministries and other central offices may have insufficient knowledge and preparation to properly react to conflict of interest situations.** And the opinions presented in the questionnaires match the results of document analysis – in public administration an urgent demand for informational and educational activities concerning the conflict of interest can be seen. But the ministerial directors general and departmental directors say in interviews that, in their opinion, their institutions and employees are well prepared to properly react to conflict of interest situations. Unfortunately, other data gathered under this project suggest that the optimism of the managerial staff is unjustified. It is certainly true that the awareness of the problem of the conflict of interest among public officers is much higher than several or a dozen years ago. The standards of operation, control and supervision are higher (as indicated by the directors), but there is much to be done yet, as witnessed by the review of institutional and legal solutions, and by the opinions from public officers themselves.

Finally, the third conclusion from the diagnosis relates to the lack of a systemic approach to the problems of the conflict of interest – both on the level of the national government policy, and within the individual ministries – that can lead to a hypothesis that also elsewhere in public institutions (e.g. in local government) the situation is no better. **On the level of national state policy the lack of any broader approach to the problem of the conflict of interests manifests itself e.g. in the already mentioned scattered legal instruments, but also in not taking any initiatives to change the situation.** *The Government Program to Counteract Corruption for the years 2014-2019***,**[3] accepted in 2014 (when the monitoring was already under way) includes proposals for activities consisting in analysing and recommending specific measures, including legislative ones, but till the moment when this report was completed, virtually no progress in implementation of the program was

[3] *The Government Program to Counteract Corruption for the years 2014-2019*, http://dokumenty.rcl.gov.pl/M2014001047601.pdf [2014.08.08].

noted. An exception is the draft of the act on financial disclosures from persons holding public functions, presented by the Ministry of Justice in the middle of July 2014, containing several solutions that are in line with the proposals presented in our report. We will discuss it in a while.

But independently from general public policy measures, **it could be expected that ministries should take the initiative and develop their own internal policies to counteract conflict of interest situations. However, the monitoring shows that there are huge differences in approaches to the problem. Some ministries have relatively well prepared and developed systems to counteract corruption, including the risks related to the conflict of interest (e.g. the Ministry of National Defence). Others seem to have some infrastructure in this field, but to a great extent it is not properly used (e.g. the Ministry of Agriculture and Rural Development or the Ministry of Economy). In still other ministries, as we already mentioned, the awareness of the conflict of interest is so low that even the most basic solutions that are available are not recognised as tools to counteract the problem.** The deficit of informational and educational activities is an additional negative factor. But it could be expected that some, at least minimal common standards to cope with the conflict of interest should exist, independently from the differences in tasks and activities between the ministries.

The solutions should be introduced not necessarily because the negative effects of the conflict of interest are overwhelming. The scale of irregularities connected to the conflict of interest seems not too great, as witnessed by small numbers of disciplinary procedures launched (even if we account for a "dark number" of unexposed cases, it will be probably still low). Nevertheless, the publicised and costly for the state corruption scandals (to mention only the recent so-called "IT affair" where the estimated losses amount to millions of PLN[4]) are frequent enough to justify developing mechanisms that protect the state from related risks. **The main argument for developing and prioritising policies to counteract the conflict of interest are the guidelines from the modern knowledge on organisational management where visible emphasis is placed on values, ethics and developing appropriate organisational culture that would create an internal immunological system protecting from abuses[5]. Organisation without its own, coherent policy to counteract the conflict of interest cannot be seen as modern, learning and developing one.**

Among our general recommendations , the most important are the following ones:

- **Proposal to develop a coherent state policy to counteract the conflict of interest in the public administration** (and elsewhere, because the problems of the conflict of interest are virtually not regulated at all e.g. among MPs – but the issue is outside the scope of the present report)[6].

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[4] W. Czuchnowski, M. Jałoszewski, ***Szef CBA: To największa afera w historii. Zmowy cenowe i łatwe pieniądze działają jak narkotyk***, Gazeta Wyborcza, ed. 21.11.2013.

[5] Batko, pp. 52-61, http://watchdog.org.pl/wwwdane/files/koncepcja_good_governance_lkwi.pdf

[6] G. Makowski, ***LIfting the Lid on Lobbying. Report from Poland***, the Stefan Batory Foundation /TI-Secretariat (manuscript)

- **Proposal to properly organise and unify the regulations concerning impartiality** and/or directly the problem of the conflict of interest.
- **The need to develop and introduce in the legal system a general concept** (definition) of the conflict of interest.

The last two proposals can be implemented at least in several ways. **But the precondition for any works on the proposals should be a thorough analysis of legal regulations (our report could serve as a starting point for such analysis)** that would show in detail how to standardise the existing regulations and where to introduce the concept (definition) of the conflict of interest.

One of the options to create general legal framework for conflict of interest situations in the public administration can be to amend / supplement the provisions of the Code of administrative procedure – that's also where the definition of the conflict of interest could be introduced.

Other solution could be to return to the idea of a special act of law regulating the problems connected with the conflict of interest. Such act could also help to reduce the excessive number of different regulations. The government initiative of 2011 was deservedly criticised and that's why it never left the stage of an initial draft[7]. Nevertheless, some of its provisions could form a basis for a new draft of comprehensive regulation, e.g. the proposals to standardise the regulations on maintaining the register of gains, to tighten the rules for employing public officers by businessmen after they quit public administration, to standardise the rules for filing, controlling and publication of financial disclosures and declarations of interests.

When defining the concept of the conflict of interest and developing uniform standards for public administration are concerned, at least two other ways are open. First, **all acts of law regulating official practice in public administration (the act on civil service, the act on government office workers, the act on local government workers etc.) can be supplemented with uniform modules containing some basic provisions defining the conflict of interest and rules of action in such situations.** The second way, possible though much more difficult, is to **return to the already discussed proposal of an act "General provisions of administrative law"**[8]. The act would create general framework for operation and development of the public administration. One of the main assumptions of a draft of the act presented in 2010 was also "[...] to regulate the basic issues important for public administration operation that have not been regulated in the existing law or have been regulated fragmentary and in an inconsistent way, when there are serious arguments for unifying such regulations"[9]. The problem of the conflict of interest could be one of such important issues.

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7 The draft assumptions for the act on selected ways to avoid the conflict of interest, http://www.legislacja.gov.pl/dokument/7706 [2014.08.08].

8 For the last time, the draft of the act was directed to the Parliament on the initiative of the Human Rights Defender, Janusz Kochanowski, in 2010. The project was presented by the Committee of Justice and Human Rights, but the works were not successfully completed.

9 Justification for the draft act General provisions of administrative law, Parliament document 3942 of December 29, 2010, p. 14.

Each of the proposed solutions has its proponents and opponents, thus – to repeat it once more – the choice of one of them or decision to look for other solutions should be based on thorough legal analysis performed by the government.

The existing solutions, in particular the following three instruments, should be strengthened: (1) the Ordinance of the Prime Minister no. 70 of October 6, 2011, on the guidelines for observing the principles of civil service (the so-called "ethical ordinance"); (2) managerial control procedures; (3) the regulations on filing, controlling and publishing financial disclosures of persons holding public functions.

The results of the monitoring show that the essential document defining general standards of work for civil service officers and of proper reactions to conflict of interest situations, i.e. the "ethical ordinance", is insufficiently internalised by ministerial workers. It is not seen as an instrument to counteract negative effects of the conflict of interest, and apparently the awareness of the document is also poor. To sign the text of the ordinance when entering a public post is not enough. Systematic informational and educational activities explaining its provisions (by the way, required by the very ordinance) are needed. Thus, the body responsible for implementation of the provisions of the ordinance (the Head of the Civil Service) should monitor more closely the implementation of the principles of the civil service and of the civil service corps. The differences in reception of the ordinance show, in the context of the problem of the conflict of interest, that closer cooperation with ministerial directors general is needed in this field. **A proposal to extend the principles of civil service and ethical principles of the civil service corps also to cover other posts in government administration should be given serious consideration. The standards are not obligatory for public officers from the Chancellery of the Parliament of the Republic of Poland, the Chancellery of the Senate of the Republic of Poland, central offices (such as the Office of Competition and Consumer Protection), government agencies.** It should also be analysed whether the posts of ministers, secretaries and undersecretaries of state could not be covered by the provisions of the ordinance.

Managerial control procedures, introduced by the provisions of the Act on public finances of 2009, could form an alternative to developing internal certified quality management systems (such as ISO or **CAF) in public institutions.** The systems can also be helpful in limiting risks connected with the conflict of interest, but to launch and maintain them is costly and requires political will on the part of individual ministers (which, as witnessed by the results of the survey, is often lacking). Hence the systems are rare on the level of the government administration. Managerial control also aims at developing organisational culture of institutions in such a way so that their employees are guided by high ethical standards and know how to react to conflict of interest situations. Unfortunately, based on the fact that **many ministries fail to perceive managerial control as an instrument of their policy to counteract the conflict of interest and on the review of reports on implementing the procedure, it can be concluded that the solution have to be modified.** The instruction of the Minister of Finance on managerial control procedures in

public finance entities should be replaced by a higher-rank document of similar content (e.g. an ordinance), where **the issues of counteracting the conflict of interest should be appropriately emphasised as a crucial element in managing public institutions that, under the managerial control procedures, should be implemented, analysed, evaluated and reported. The supplemented / extended model of managerial control could also include the instrument of declarations of interests.** Today, the declarations are virtually used only in public tender procedures, while many other situations should require their filing (e.g. in the case of members of grant commissions, members of advisory and consultation bodies etc.). Under the managerial control procedure, the instrument could become a standard solution.

During the final stage of preparation of the report in July 2014, the minister of justice submitted a draft of the act on financial disclosures from persons holding public functions that aims at introducing a new system of filing, controlling and publishing financial disclosures of public officers (the issue was so far regulated by the outdated provisions of the Act of 1997 on limitations to business activity of persons holding public functions). In this way, one of the main proposals of this report started to be implemented. **Thus, we want to emphasise at this point that implementation of the new system for financial disclosures is crucial and the above mentioned legislative procedure should be successfully completed. Many provisions included in the draft law are worth supporting,** in particular:

- **extending and standardising requirements concerning financial disclosures** (e.g. standardised forms);
- **extending the category of persons holding public functions that are required to publish their financial disclosures** (the project's authors estimate that their number will grow from 600 thousand to 800 thousand);
- **developing a new mechanism for controlling financial disclosures** that is intended to link the internal control of the disclosures by superiors with the external control performed by the Central Anti-Corruption Bureau and tax authorities.

It is only a brief description of the three most important changes that should make the system of financial disclosures more effective and transform it into a tool for effective limiting of the risks connected with the conflict of interest[10].

But the draft has also many defects, out of which at least two are worth mentioning at this point. The first one is to maintain the outdated model for filing the disclosures as paper documents and publishing them as electronic scans. Disclosures presented in this form are hard to analyse both by specialised bodies, and by citizens, or media that can play an important role in detecting potential conflict of interest situations. The draft also fails to resolve the problem of the so-called "revolving door" or the employment of persons holding public functions after they quit public administration. In Poland, regulations in this area are very liberal. At present, persons holding public functions may seek employment from businessmen, even those whom concerned their official decisions, as early as one year after

[10] G. Makowski, ***Jawność może stać się lekiem na korupcję***, Rzeczpospolita, ed. 2014.06.03.

quitting their post. The government commission in most cases approves the applications for shortening this already brief period of time, but using unclear criteria. Regulations in this field should be revised and harmonised with the OECD standards[11].

More detailed recommendations for measures that should be taken into account in order to enhance the ability to react to conflict of interest situations in public administration, in particular in ministries, concern:

1. **Introducing systematic educational and informational activities on the conflict of interest.** The monitoring shows that the existing informational and educational activities are not suited to the needs of the public administration, are of occasional nature (e.g. are connected with currently implemented EU projects), and if they are systematic (e.g. under the preparatory service) they remain a routine activity. Thus, it is recommended to develop a program of educational and informational activities concerning the conflict of interest in government administration (they could form a part of broader activities concerning corruption under the government ***Program to Counteract Corruption for the years 2014-2019***). The program, if appropriate financing is granted, can be prepared and implemented by the Civil Service Department of the Chancellery of the Prime Minister, and can include in particular:
   - **Unifying and highlighting themes concerning the conflict of interest under the preparatory service**.
   - **Developing (after identifying the real needs) and implementing systematic, cyclical trainings (e.g. in two or three-year cycles)** together with verification of the knowledge of public officers on the ethical principles (in particular in view of the fact that the provisions of the "ethical ordinance" require the members of the civil service corps to undergo verification of their knowledge on the principles of the civil service). The existing trainings are schematic, while they should rather have the form of coaching or workshops, and be definitely based on real-life examples of conflict of interest situations that arise in the public administration.
   - **Creating knowledge bases on the conflict of interest** – such informational resources are developed e.g. in American federal administration and in Australian administration. The Internet pages and internal networks (Intranet) of their public offices publish materials on how to interpret the conflict of interest, how to react to conflict of interest situations, how to avoid their negative consequences, how to signal threats to superiors or enforcement agencies (the resources often form a part of broader policies to counteract corruption in public offices and protect whistle-blowers). They also include interactive tools, e.g. check-lists helping to evaluate the risk of the conflict of interest and to take appropriate action. Other check-lists help to evaluate risks and determine reactions for whole organisational units (e.g. departments) or institutions, and thus are useful in developing risk maps and internal procedures. The resources made available to public officers and citizens also include

11 See: ***Post-Public Employment. Good Practices For Preventing Conflict of Interest***, OECD, Paris 2010.

summaries of audits and analyses, as well as descriptions of real-life examples of conflict of interest situations.

2. **Introducing the posts (or special organisational units) of "ethical advisers".** The persons, after appropriate training, should help workers of public institutions in deciding how to react to conflict of interest situations. The posts can form a part of the already existing structures (such as units to counteract corruption) and should operate under managerial control procedures – so that their activities are analysed and evaluated. Our monitoring and other surveys also show that it is not enough to create the posts, but **also** their visibility and accessibility for all employees should be guaranteed (it is often the case that the solution fails to work simply because public officers do not know who is the ethical adviser, what are his or her competencies, in what situations he or she can be consulted). A solution that is worth considering (though it would be revolutionary in Poland) is to outsource ethical advisory services. In the West (e.g. in the Netherlands or Great Britain) public institutions often use external ethical advisers.

Finally, it should be noted that transparency is the best weapon against negative effects of the conflict of interest. Even actual conflict of interest situations, if exposed, can be easily neutralised or steps can be taken to counteract their negative consequences. Hence, permanent talks on the issue and proactive informing on potential or actual conflict of interest situations play decisive role (an useful tool in this field can be declarations of interests). Thus, the final general recommendation of this report can be to maintain the highest possible transparency of all activities connected with conflict of interest management.

3. METHODOLOGICAL NOTE

Grzegorz Makowski

The monitoring consisted of three stages of gathering data. First, an expert opinion on the existing legal regulations to control and counteract the negative effects of conflict of interest situations was prepared. It formed a preparatory, analytical step before the proper monitoring activities were started, and was intended to give a basis for recommendations for prioritising public policies in the field of the conflict of interest.

In the second stage, having in mind the conclusions from the expert opinion, we started to gather data on the instruments of policies to counteract the conflict of interest that were at the disposal of the ministries and the Chancellery of the Prime Minister. On December 18, 2013, applications for public information were sent to the Chancellery of the Prime Minister and the following ministries:

- Ministry of Administration and Digitization
- Ministry of National Education
- Ministry of Finance
- Ministry of Economy
- Ministry of Infrastructure and Development
- Ministry of Culture and National Heritage
- Ministry of Science and Higher Education
- Ministry of National Defence
- Ministry of Labour and Social Policy
- Ministry of Agriculture and Rural Development
- Ministry of Treasury
- Ministry of Sports and Tourism
- Ministry of Internal Affairs
- Ministry of Foreign Affairs
- Ministry of Justice
- Ministry of Environment
- Ministry of Health

The text of the application was consulted, among others, with the representatives of the Civil Service Department of the Chancellery of the Prime Minister and with the Bureau of Staff, Trainings and Organisation in the Ministry of Internal Affairs that, simultaneously with our application, sent to the ministries its own query for similar information. We expected

that the answers to the query form the Ministry of Internal Affairs will be more complete than the ones received by us in response to the application for public information. But surprisingly, the information that we got proved to be more comprehensive. The replies were received by us until February 20, 2014.

The third stage of the monitoring consisted in a series of deepened interviews with the crucial representatives of the ministries – directors general and chosen by them directors of the departments that, in their opinion, were most vulnerable to negative effects of conflict of interest situations. The specific criterion in the choice of the departmental directors were frequent contacts between their organisational units and different stakeholder groups.

The two groups of respondents were chosen for two reasons. First of all, it was assumed that directors general, in view of their rich experience (these are usually persons with long period of service and established position in public administration), must deal with the issues of the conflict of interest and have both theoretical, and practical knowledge in this field. In addition, as "administrators" of their ministries, they should be familiar with their activities and take many managerial decisions, also concerning the policy to counteract threats connected with the conflict of interest.

Departmental directors, in turn, are more familiar with the current activities of their public offices. Thus, we assumed that they are more in touch with practical risks and dilemmas related to conflict of interest situations. They also have better contact with lower-rank employees. As we were not able, in view of limited resources available, to reach a broader group of respondents, including public officers that hold the posts of heads of units or specialists, we decided that departmental directors will, at least to some extent, be able to represent the views of other ministerial employees, having at the same time, like their superiors, a broad knowledge and experience of working in public administration, and sufficient competencies to act as "experts", i.e. persons familiar with the problems of the conflict of interest in public administration.

Interviews (20) were conducted in February and March 2014 in the following ten ministries, two in each ministry – with the director general and a departmental director (or assistant director) selected by him or her:

- Ministry of National Education
- Ministry of Finance
- Ministry of Science and Higher Education
- Ministry of Culture and National Heritage
- Ministry of National Defence
- Ministry of Agriculture and Rural Development
- Ministry of Treasury
- Ministry of Internal Affairs
- Ministry of Justice
- Ministry of Environment

The choice of ministries was based on the formerly received answers to the question concerning the existing policy solutions to counteract conflict of interest situations. Based

on their initial analysis, we evaluated which ministries have richer and which of them have poorer infrastructure (internal regulations, instruments, strategies etc.) in this field. So finally, we chose the ministries that most successfully and least successfully cope with conflict of interest situations.

The interviews were anonymous. The respondents were advised that all information gathered during the interviews will be used only for research purposes and that the research report will contain no information that would allow to identify the place of work and the post of the respondents, and their statements will be labelled by randomly chosen codes.

The third stage of the monitoring was supplemented by questionnaire survey on a purposive sample of government administration officers – participants of trainings and courses organised by the National School of Public Administration and the Chancellery of the Prime Minister. The survey was performed using the technique of auditorium questionnaire. A detailed description of methods and results of the survey can be found in the supplement to the report.

The objective of the survey was to gather opinions on the conflict of interest, related risks and methods to counteract its negative effects from a wider group of public officers. The survey was intended to support and supplement (give wider context to) the results of the main part of the monitoring that consisted in the already mentioned interviews with ministerial directors.

However, in view of the technique used, i.e. auditorium questionnaire (and related limited control over the survey and non-representative sample of respondents) the survey cannot serve as a basis for more general conclusions. Hence, the report from this part of the monitoring has a form of a supplement.

4. THE CONCEPT OF THE CONFLICT OF INTEREST IN THE POLISH LEGAL SYSTEM

Natalia Mileszyk, Grzegorz Wiaderek

In our expert opinion, we present a review of Polish legal regulations concerning impartiality in public administration operations and avoiding the conflict of interest situations, in the context of international standards in this field. The opinion should help in diagnosing what are the main characteristics of the Polish regulations in this field, presenting at the same time some guidelines on practical implementation of impartiality standards in the Polish public administration and on the needed legal or organisational changes.

In our paper, we use a broad definition of the conflict of interest covering all circumstances that affect or can affect the impartiality of public administration operations. A reference point for our understanding of the notion is the definition presented by professor Mirosław Wyrzykowski: "A conflict is such mutual relation between values (or needs) that the values exclude each other, or implementing one of them hampers implementing other"[12]. However, it does not mean that the meaning of the notion used in the Polish law always matches the definition. We only wanted to have a possibly comprehensive definition covering various potential situations related to impartiality in public administration operations.

Our expert opinion is limited to public administration, i.e. the central government administration and the local government administration. Thus, we will not discuss important, but not covered by the scope of the paper, problems of impartiality and avoiding the conflict of interest in common courts of justice, in administrative courts, and in legal protection bodies (such as the Supreme Audit Office, public prosecutor's office, uniformed services). We also focus on regulations concerning the public administration and their preventive mechanisms and mechanisms of exclusion from decision-making processes, so penal regulations related to violations of conflict of interest rules are mentioned by us only occasionally.

Part I of the paper contains a review of the essential international regulations and standards concerning impartiality and avoiding the conflict of interest. In addition to presenting a list of important international regulations, we focus on their key elements relevant to the Polish legal solutions and the activities of public administration.

Part II contains a review of Polish regulations concerning the operations of public administration. We describe the regulations, focusing on those legal acts that are essential for operations of public administration on different levels or contain interesting legislative solutions. In view of the aims and the size of the paper, some legal acts that contain standard

[12] Mirosław Wyrzykowski, „Pojęcie interesu społecznego w prawie administracyjnym", Warsaw 1986, p. 164.

and repetitive provisions on exclusion of public officers or refer to the code of administrative procedure were ignored.

In part III we discuss the main standards implied by international regulations and their relevance for the Polish legal system and public administration operations, dividing them into two categories: the ones that are already present in the Polish legal system, and the ones that require legislative action or organisational changes to become effectively implemented.

Part IV is devoted to a discussion whether in the present regulatory and organisational situation any new regulations on avoiding the conflict of interest are needed in the Polish administration.

Finally, based on the legal analyses, we will present the issues related to the phenomenon of the conflict of interest and to the tools to counteract the lack of impartiality in the Polish administration that would require deeper empirical research.

At the end of the paper, as a supplement, we discuss the draft regulation of 2011 that was intended to comprehensively cover in one act of law the problems of counteracting and combating the conflict of interest.

4.1. Review of international standards and regulations

Transparency and accountability of public administration are the key values on which modern democracies are based. For long, the conflict of interest has been in the focus of attention of international community as a manifestation of the abuse of power, and more broadly as a threat leading to corruption. That is why, within the international legal regulations, provisions concerning the conflict of interest are usually contained in anti-corruption laws, and international law regulations dealing solely with the conflict of interest are rare. The issues are usually regulated by "soft" instruments, such as standards, ethical codes, and guidelines.

In this chapter we discuss international regulations and standards introduced by the United Nations, the OECD, the Council of Europe and the European Union that are binding for Poland. Most of the regulations concern not only public administration, but also a broad spectrum of public institutions. It should also be noted that many international organisations and institutions have their internal regulations concerning the conflict of interest[13].

4.1.1. United nations

The first UN document directly mentioning the issue of the conflict of interest was the resolution of the General Assembly of January 27, 1997, on action against corruption[14], and more specifically its appendix – the International Code of Conduct for Public Officials. The

[13] For example, Art. 52 of the Council Regulation (EC, Euratom) no. 1605/2002 of June 25, 2002, on financial regulation applicable to the general budget of European Communities; document available at: www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002R1605:PL:NOT [access: January 10, 2014].

[14] General Assembly Resolution no. A/RES/51/59, available at: unpan1.un.org/intradoc/groups/public/documents/un/unpan010930.pdf [access: January 10, 2014].

conflict of interest is interpreted by the General Assembly as a situation of abuse of power in order to achieve personal or financial gains by public officials or members of their family. The Code also mentions the issues of financial disclosures, accepting gifts, using confidential information and political activity of public officials.

According to the Code, the conflict of interest should be counteracted mainly preventively, through the prohibition to acquire any function incompatible with the office of the public official (Art. 4). Public officials should also disclose any activities undertaken for financial gain in addition to their public function (Art. 5), as well as file financial disclosures (Art. 8). In addition, the Code contains the prohibition of improper use of public resources or information (Art. 6). However, the Code of Conduct is a very laconic document, leaving a lot of room for discretionary implementation of its rules by member states. In 2002, the UN Secretary General presented a report from implementation of the International Code of Conduct for Public Officials[15]. The report analyses solutions introduced in 54 countries, including Poland, covering also issues such as the existence of national codes of conduct for public officials, mechanisms of accountability, regulations concerning the conflict of interest, financial disclosures and political activity of public officials. The report concludes that most of the standards of the International Code of Conduct for Public Officials were in part or fully implemented in the countries that were surveyed. The analysis of the report shows that the solutions introduced in Poland are in line with the standards that are in force in other countries.

United Nations Convention against Corruption[16], seen as the first really international legal act regulating the problems of corruption[17], was ratified by Poland on September 15, 2006. According to the Convention, counteracting the conflict of interest is a preventive measure against corruption. The convention also emphasises that regulating conflict of interest issues enhances the transparency of public institutions. Thus, the states being the parties to the Convention are required to "endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest" (Art.7 pt. 4).

The convention encourages individual countries to actively counteract the conflict of interest through measures and systems requiring public officials to file declarations with appropriate authorities. The declarations should concern, among others, external activity of public officers, their assets and substantial gifts and benefits from which a conflict of interest may result with respect to their functions as public officials (Art. 8 pt. 5 of the Convention). Thus, the role of the above listed preventive measures was highlighted, though the decision whether and what legal regulations to adopt in this field was left to the member states. In addition, the Convention highlights the issues related to public procurement procedures

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15 Report from the Secretary General no. E/CN.15/2002/6/Add.1, document available at: http://unpan1.un.org/intradoc/groups/public/documents/un/unpan039934.pdf, [access: January 10, 2014].

16 O.J. 2007 no. 84, item 563, document available at: http://bip.ms.gov.pl/pl/ministerstwo/wspolpraca-miedzynarodowa/wspolpraca-w-ramach--onz-i-obwe/konwencja-narodow-zjednoczonych-przeciwko-korupcji/, [access: January 10, 2014].

17 Jan Wouters, Cedric Ryangaert, Ann Sofie Cloots, „The international legal framework against corruption: achievements and challenges", Melbourne Journal of International Law, no. 14/1, p. 216.

and encourages the states-parties to introduce obligatory declarations of interests for public officials responsible for public procurement (Art. 9 pt. 1e).

If the preventive measures are not introduced, conflict of interest situations may result in misappropriation of public funds, influence peddling, abuse of functions, illicit enrichment, as well as obstruction of law enforcement. The member states, under the Convention, are required to criminalise such situations[18].

Standards to counteract the conflict of interest can also be found in many other UN "soft" legal instruments. In 2013, the United Nations Office on Drugs and Crime[19] developed a Strategy for Safeguarding against Corruption in Major Public Events[20]. The document refers to the notion of "conflict of interest" in the context of different activities connected to organisation of such events, dealing with different issues from legal considerations to logistics. But all the regulations are "soft" legal measures, serving only as guidelines for national regulations, and member states have a lot of room to develop their own legal solutions.

4.1.2.Organisation for economic co-operation and development (OECD)

OECD was always a forum for international discussion on counteracting corruption and the conflict of interest, even at the time when UN initiatives were hampered for political reasons[21]. The most important legal act in this field is the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions[22], but the legal act concerns mainly the issues of criminal responsibility and defines what measures should be taken by the member states in case of bribery of foreign officials, which can result from conflict of interest situations. However, the Convention (as well as any other OECD convention) contains no direct reference to the notion of the conflict of interest.

Nevertheless, OECD is the international organisation that developed the most comprehensive "soft" regulations concerning the conflict of interest. The extensive Managing Conflict of Interest in the Public Service OECD Guidelines[23] formed a reference point for many countries. Their main legislative recommendations include:

- defining the conflict of interest,
- describing examples of situations when the conflict of interest takes place,
- introducing clear and comprehensive regulations concerning disclosing conflict of interest situations in various areas of public service,

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18 The Convention also regulates the issue of the conflict of interest in the private sector, but the subject is outside the scope of this expert opinion.

19 United Nations Office on Drugs and Crime (UNODC) – http://www.unodc.org/, [access: January 11, 2014].

20 A Strategy for Safeguarding against Corruption in Major Public Events, document available at: http://www.unodc.org/documents/corruption/Publications/2013/13-84527_Ebook.pdf, [access: January 11, 2014].

21 Jan Wouters, Cedric Ryangaert, Ann Sofie Cloots, „The international legal framework against corruption: achievements and challenges", Melbourne Journal of International Law, no. 14/1, p. 22.

22 Poland ratified the Convention on September 8, 2000, document available at: http://bip.ms.gov.pl/pl/ministerstwo/wspolpraca-miedzynarodowa/wspolpraca-z-oecd/ [access: January 13, 2014].

23 Managing Conflict of Interest in the Public Service OECD Guidelines and Overview, 2003, document available at: http://www.oecd.org/gov/ethics/managingconflictofinterestinthepublicservice.htm, [access: January 13, 2014].

- determining what measures should be taken by particular public officials in particular conflict of interest situations,
- covering by the regulations (also at the stage of their preparation) other entities that may be engaged in conflict of interest situations in public administration, such as companies or non-governmental organisations,
- paying attention to measures to prevent the conflict of interest[24].

OECD pays special attention to risks related to both disclosed and potential conflict of interest situations, for in both cases the confidence in public administration can be undermined.

4.1.3. Council of europe

The main goal of the Council of Europe is to develop common and democratic principles in Europe, so no wonder that the conflict of interest also became a subject of its interest[25]. As early as in 1997, the Committee of Ministers adopted a resolution on the twenty main rules to combat corruption[26]. The document contains no direct reference to the conflict of interest, but it emphasises the need to introduce legal instruments to prevent corruption (paragraph 1) and to regulate duties and rights of public officials, taking into account the risks of corruption (paragraph 10)[27].

In 2010, the Committee of Ministers issued a recommendation for member states on codes of conduct for public officials[28]. Its Article 8 defines general rules related to conflict of interest situations – public officials are required to avoid such situations and are not allowed to take undue advantage from their position. The following articles present more detailed provisions. Article 13 contains the definition of the conflict of interest[29], and requires public officials to disclose conflict of interest situations and to withdraw from a given matter if such situation occurs. The recommendation also introduces the notions of "declaration of interests" that, subject to national regulations, public officials may be required to file (Art. 14), and of "incompatible outside interests" that may result from public officials' activities,

[24] OECD undertook many activities to improve the quality of regulations on the conflict of interest in member states, developing documents such as the handbook „Managing Conflict of Interest in the Public Sector – toolkit" or presenting good practices for particular situations, such as employment after quitting public service in „Post-Public Employment – good practices for preventing conflict of interests" – all documents available at http://www.oecd.org/gov/ethics/managingconflictofinterestinthepublicservice.htm, ,[access: January 13, 2014].

[25] Also as internal organisational problem, e.g. in 2007 the Parliamentary Assembly of the Council of Europe adopted the resolution on the conflict of interest of the members of the Assembly, Resolution 1554 (2007), document available at: http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1554.htm, [access: January 13, 2014].

[26] Resolution (97)24, document available at: http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution(97)24_EN.pdf , [access: January 13, 2014].

[27] The Council of Europe adopted several documents concerning counteracting and criminalising corruption, such as Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime, Council of Europe criminal law convention on corruption, Council of Europe civil law convention on corruption.

[28] Recommendation of the Committee of Ministers no. (2010)10, document available at: http://www.coe.int/t/dghl/monitoring/greco/documents/Rec(2000)10_EN.pdf; to the recommendation is attached the explanatory memorandum, available at: https://wcd.coe.int/ViewDoc.jsp?id=354025&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383,[access: January 13, 2014].

[29] „Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties".

both paid and pro-bono (Art. 15). The recommendation discusses also political activity (Art. 16), accepting gifts (Art. 18) and misuse of official position (Art. 21). Member states should regulate all the matters in their national legal systems.

The Council of Europe also created the Group of States against corruption (GRECO)[30] with the main objective to monitor the implementation of the standards developed by the Council of Europe concerning corruption and implementation of other international obligations in this area. In the years 2003-2006, GRECO dealt mainly with the issue of corruption in public administration, paying special attention to the standards related to the conflict of interest[31]. Also presently, the conflict of interest is one of the subjects researched by GRECO[32].

4.1.4. European union

The European Union is aware of the need to counteract conflict of interest situations, both in EU institutions and in public administration of the member states. The subject was discussed during preparatory work on the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union[33]. The convention regulates passive corruption on the part of public officials that often results from the conflict of interest. But the very problem of conflict of interest situations is regulated mainly in individual EU institutions and agencies, and proposed standards form only inspiration and example of good practices for the member states[34]. But on the other hand, the problems of the conflict of interest in individual member states are monitored by the European Anti-Fraud Office (OLAF) – counteracting the conflict of interest is perceived by the Office as a means to prevent financial abuses[35].

4.1.5. Summary

To sum up, many international organisations are interested in the problems of the conflict of interest in public administration, in particular in connection with counteracting corruption. But in spite of the wide interest in the issue, which is often discussed on the

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30 Resolution of the Committee of Ministers (99) 5 establishing the Group of States against corruption (GRECO), May 1, 1998, document available at: http://www.antykorupcja.gov.pl/download/4/3215/RezolucjaRadyEuropyNr995powolujacaGrupePanstwprzeciwKorupcjiGRECO.pdf , [access: January 13, 2014].

31 Reports on the subject concerning individual countries are available at: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports(round2)_en.asp, the subject is also discussed in the report summarizing the activities of GRECO in the years 2001-2010, available at http://www.coe.int/t/dghl/monitoring/greco/general/Compendium_Thematic_Articles_EN.pdf ,[access: January 13, 2014].

32 The questionnaire for member states is available at: http://www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp,[access: January 13, 2014], during the work on the report Poland had not yet presented its report.

33 The convention, prepared in 1997, was ratified by Poland in 2004, document available at: http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/3050/$file/3050.pdf.

34 Like the „Declaration of honour on exclusion criteria and absence of conflict of interest" filed when applying for EU posts.

35 More information on the activities of OLAF in this field is available at: http://ec.europa.eu/anti_fraud/policy/preventing-fraud/index_en.htm, [access: January 14, 2014]

international level, the international legal acts (treaties, conventions) on the matter (such as the UN Convention against corruption) are rare. In view of different public administration models even in Europe alone, the regulations are rather general and usually take the form of standards or recommendations ("soft" instruments). Thus, individual countries have a lot of freedom to choose their own implementation methods, measures and specific standards.

The issues of the conflict of interest are less specifically regulated than criminal law problems concerning directly corruption. But that does not mean that international standards on the conflict of interest are absent – their best examples are the activities of the OECD in this field and very detailed guidelines from the organisation concerning legal solutions in member states. Thus, when deciding on regulations concerning the conflict of interest, the Polish law-makers should refer both to the international standards, and to experiences of other countries in their implementation.

4.2. Review of polish regulations

In this part we will describe the key domestic legal measures concerning preventing and reacting to conflict of interest situations.

4.2.1. Constitution of the republic of poland

The problem of the conflict of interest (not only in public administration, but also in legislative and judiciary bodies) is closely connected with the constitutional principles[36]. The absence of relevant regulations in the form of acts of law to counteract the conflict of interest can lead to undermining the basic principles of the rule of law. Among the basic constitutional principles for public authorities that are especially relevant for impartiality of public administration bodies are the principle of law and order (legalism) and the principle of equality before the law.

According to Article 7 of the Polish Constitution[37] „public authority bodies in their actions have to base on and are limited by the law". All activities undertaken by public authorities, including public administration authorities, have to be based on the provisions of law[38]. In addition, the way that the public authorities use their competencies must not be arbitrary, but have to result from powers that were delegated to them. Thus, a decision taken by any public authority is in line with the principle of legalism only when the authority has relevant competencies to act in a given field, acts according to relevant decision-making procedures, and the content of the decision is consistent with the norms of the substantive law[39]. Thus, the principle of law and order is closely related to the problem of the conflict of interest – impartiality in the activities of public administration authorities is a result of

36 Wiliam B. Gwyn, "The meaning of the separation of powers", 1965, p. 128.
37 Constitution of the Republic of Poland of April 2, 1997, O.J. 1997 no. 78 item 483 with amendments.
38 Bogusław Banaszek, „Konstytucja Rzeczpospolitej Polski. Komentarz", Warsaw 2009, p. 57.
39 Piotr Winczorek, „Komentarz do Konstytucji Rzeczypospolitej Polski z 2 kwietnia 1997 r.", Warsaw 2008, p. 28.

basing their actions on and limiting them by the law. Public administration officers have to take decisions and perform their official duties based only on legal considerations. So the principle prohibits taking into account any personal or financial preferences.

The issue of the conflict of interest should also be seen in the context of the constitutional principle of equality before the law. Article 32 par. 1 of the Polish Constitution states that all citizens are equal before the law and have the right to be equally treated by public authorities. The Constitutional Tribunal in its ruling indicated that "all legal entities possessing given pertinent characteristics to the same degree, are to be treated equally, i.e. according to the equal measure, without discrimination or favouring any of them" (the principle of equality in substantive sense)[40]. The principle of equality is addressed to public authorities, including the public administration. The treatment received from public authorities must not depend on personal or financial gains of the person who takes the decision. The state should ensure that decisions taken by public administration officials are based exclusively on substantial and procedural premises defined by the law, independently from personal or financial preferences of public officers. Thus, counteracting conflict of interest situations serves the purpose of implementing the principle of equality before the law of all persons under the jurisdiction of the Republic of Poland.

It should be also added that official activities of public administration officials must be free not only from their personal or financial preferences, but also from their political, ideological, religious views, and also independent from political influences. The issue should be considered in the light of Article 25 par. 2 of the Polish Constitution where it is stated that the authorities of the Republic of Poland remain impartial as to religious, ideological or philosophical views, and ensure the freedom of their expression in public life. So no premises other than substantive ones may be taken into account by public authorities in their decision-making processes.

To sum up, regulations concerning the conflict of interest serve the purpose of implementation and materialisation of the basic constitutional principles, such as legalism and equality before the law. On the other hand, the principles form a basis for detailed regulation of conflict of interest situations on the level of acts of law. All regulations concerning the conflict of interest should support democratic standards, the quality of government, and better functioning of public authorities.

4.2.2. Code of administrative procedure

The group of principles contained in the Code of administrative procedure[41] includes the principle of legalism of the activities of the administration (Art. 6), the principle of law and order in the administration (Art. 7) and the principle of care for citizens' confidence in public authority (Art. 8). None of the principles can be implemented without ensuring impartial decisions from public administration. So Article 24 introduces the measure of excluding

40 Ruling of the Constitutional Tribunal of March 13, 1998. K 24/97, OTK 1998, no. 2 item 13.
41 The Act of June 14, 1960, O.J. 1960 no. 30 item 168 with amendments.

public officer in a situation of conflict of interest. The situation can result from his or her family relations, official relations or formerly held functions, and the list of conflict of interest situations is closed and case-oriented:

Art. 24. §1

The employee of public administration entity shall be excluded from procedures in matters:

1. where he or she is a party or remains in such relationships with one of the parties, that the result of the procedure may influence his or her rights or duties,
2. concerning his or her spouse or family and relatives,
3. concerning persons connected to him or her as a result of adoption, care or guardianship,
4. where he or she was a witness or expert, or represented or represents one of the parties, or where one of the persons mentioned in pts. 2 or 3 represented parties,
5. where he or she participated in issuing the contested decision,
6. because of which he or she was subject to official investigation, disciplinary or criminal procedure,
7. where a person being his or her official superior is one of the parties.

The exclusion for reasons listed above is automatic.[42]. The employee may also be excluded on demand (from the employee or from one of the parties) or ex officio if the existence of the circumstances described in §1, that can raise doubts as to his or her impartiality, are proved to be probable (Art. 24 §3).

The situation where the employee of administrative authority participated in issuing contested decision poses the greatest interpretation problems. There are some court rulings that say that this reason for exclusion should be interpreted very broadly – the person who participated in issuing decision by administrative body of the first instance should be excluded from entire proceedings starting from the moment when the appeal is filed till the decision of the appeal body is issued[43]. The provision aims at avoiding a situation where the employee formerly participating in administrative procedure, and thus having an established opinion on the matter, would be to some extent determined by his or her previous experiences connected to the proceedings[44]. This "determination" can concern both the factual aspects of the matter, if he or she participated in evidence proceedings, or the way the decision was issued, if he or she issued the decision in the name of the administrative body.

According to Art. 25 §1 of CAP also administrative bodies may be excluded in case of matters concerning financial interests of their heads or persons related to their heads in a way described in Art. 24 §1 par. 2 and 3 of CAP, or persons holding managerial posts in administrative bodies of the next higher level or persons related to them in a way described

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42 Andrzej Wróbel, „Komentarz aktualizowany do art. 24 Kodeksu postępowania administracyjnego", LEX, legal state for July 18, 2013.

43 The ruling of the Supreme Administrative Court in Warsaw of September 11, 2002, V SA 2535/01, LEX no. 149513.

44 The ruling of the Supreme Administrative Court in Warsaw of July 6, 2011, II GSK 743/10, LEX no. 1083386.

in Art. 24 §1 par. 2 and 3 of CAP. The exclusion is an example of a measure counteracting conflict of interest situations deriving from official dependence.

According to the Code of administrative procedure, no complaint may be filed for a decision refusing to exclude an employee (Art. 24 of CAP in connection with Art. 141 §1 of CAP). But the complaint can be subject to control when the decision on the appeal to the ruling is taken at the end of the proceedings of particular instance. The control is based on the principle of objectivity of proceedings. The Constitutional Tribunal accepted such interpretation, stating that:

"The right of a party to exclude an employee based on CAP is neither a direct constitutional right, nor it derives from the provisions of the substantive law. It is also not decisive in determining rights and duties of the party. The instrument of excluding an employee based on CAP is a procedural instrument under which the party is entitled to objective settlement of the matter"[45].

4.2.3. The act on limitations to business activity of persons holding public functions

The so-called anti-corruption act[46] introduces limitations to business activity for persons holding public functions. The main objective of the act is to prevent corruption among persons holding public functions, and to counteract corruption on the highest levels of public authorities through stopping mutual infiltration between public power and business[47]. To this end, the act introduces limitation to the freedom of economic activity guaranteed in Art. 20 of the Constitution. The provisions of the act concern in particular:

- persons holding public managerial posts, in the meaning of the provisions on remuneration for persons holding public managerial posts and for judges of the Constitutional Tribunal;
- employees of public offices, including members of the civil service corps, holding managerial posts;
- village mayors (town mayors, city presidents), deputy village mayors (deputy town mayors, deputy city presidents), treasurers and secretaries of municipalities, heads of organisational units in municipalities, managers and members of managing bodies of municipal legal persons, and other persons issuing administrative decisions in the name of village mayors (town mayors, city presidents);
- members of district executive councils, district treasurers, district secretaries, heads of district organisational units, managers and members of managing bodies of

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45 The ruling of the Constitutional Tribunal of March 7, 2005, P 8/03, OTK-A 2005/3/20 – the Tribunal stated that Article 24 of CAP is consistent with Art. 2 and Art. 45 par. 1 of the Constitution of the Republic of Poland, and is inconsistent with Art. 6 par. 1 and Art. 13 of the Convention for Protection of Human Rights and Fundamental Freedoms.

46 August 12, 1997, O.J. no. 106, item 67 with amendments.

47 Agnieszka Rzetecka-Gil, „Ustawa o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne. Komentarz", LEX, legal status for March 15, 2009.

district legal persons, and other persons issuing administrative decisions in the name of district heads;

- members of executive councils of voivodeships, voivodeship treasurers, voivodeship secretaries, heads of voivodeship local government organisational units, managers and members of managing bodies of voivodeship legal persons, and other person issuing administrative decisions in the name of the voivodeship marshal.

The act defines explicit prohibitions concerning the listed persons. According to Art. 4 of the act, the persons subject to its provisions, during the time of holding functions listed in Art. 2, are not allowed to:

- be members of executive boards, supervisory boards or audit committees in commercial companies;
- be employed or perform other activities in commercial companies, which could raise suspicion of their partiality or interestedness;
- be members of executive boards, supervisory boards or audit committees in cooperatives, with the exception of supervisory boards of housing cooperatives;
- be members of executive boards in foundations conducting business activity;
- own in commercial companies more than 10% of shares or shares representing more than 10% of their equity capital;
- conduct business activity personally or together with other persons, and manage such activity or be a representative or a plenipotentiary in conducting such activity (with the exception of agricultural activity in the field of plant and animal production conducted in the form of family farm).

The provision was introduced in order to counteract situations and links that can create a moral hazard of abusing the official post[48]. The broad list of persons covered by the act and the list of prohibited activities is aimed at eliminating situations and links that could not only raise doubts as to personal impartiality or integrity of public persons, but also undermine the authority of constitutional state bodies and weaken the confidence of citizens and general public as to their proper functioning. The prohibition is absolute, no matter what kind of business activity is concerned[49].

In addition, according to Art. 7 par. 1 of the act, persons covered by the act are not allowed to be employed by or perform other activities for a businessman, if they participated in issuing individual decisions concerning the businessman, during one-year period after quitting public function. The provision was controlled by the Constitutional Tribunal which stated that the measure was not excessively restrictive, because in view of the motives and social aims of the acceptable limitation in an act of law of the constitutional principle of freedom of employment, the principle itself was not violated, but only limited to some extent for a defined group of persons for a defined period of time[50]. What's interesting, sanctions (fine or arrest) for breaking the provisions concern businessmen rather than

48 Resolution of the Constitutional Tribunal of April 13, 1994 r., W 2/94, OTK 1994/1/21.
49 The ruling of the Supreme Administrative Court in Warsaw of April 19, 2005, OSK 1186/04, LEX no. 176126.
50 The ruling of the Constitutional Tribunal of July 23, 1999, K 30/98, OTK 1999, no. 5, item 101.

public officials (Art. 15 of the Code of Petty Offences). The solution aims at preventing and punishing unethical behaviours of businessmen who try to promptly use special expertise of the persons, thus interfering with normal and transparent market mechanisms. Some commentators say that it is the public official who should be punished, because it is him or her who has the fullest knowledge to what extent, if at all, he or she participated in issuing individual decisions concerning the businessman.[51]. The period of prohibition is not absolute – it may be waived by the commission established by the Prime Minister (Art. 7 par. 2).

The act and its executive Ordinance issued by the President of the Republic of Poland of July 4, 2011, on defining the samples of declaration on business activity and financial disclosure (O.J. 2011 no. 150, item 890) require the persons listed in the act to file financial disclosures, and describe their content and procedure of filing. The deadlines for filing financial disclosures are: the first financial disclosure – before entering the post, next financial disclosures – every year before March 31, and the last financial disclosure – on the day of quitting the post. Failing to file financial disclosure or filing untruthful financial disclosure results in official responsibility. Filing untruthful financial disclosure is also criminalised – such person is liable to imprisonment up to five years (Art. 14 of the Act on limitations to business activity). When the offence is lighter, the person is subject to restriction of personal liberty or fine, or is liable to imprisonment up to one year.

The act also establishes the Register of Gains to disclose all gains received by the members of the Council of Ministers, secretaries and undersecretaries of state in ministries and the Chancellery of the Prime Minister, heads of central offices, voivodes, deputy voivodes, members of voivodeship executive councils, voivodeship secretaries, voivodeship treasurers, members of district executive councils, district secretaries, district treasurers, heads of municipalities (town mayors, city presidents), deputy heads of municipalities, municipal secretaries and municipal treasurers (Art. 12 of the act). All of them have to report to the register information on:

- all paid posts held and jobs performed in public administration and in private institutions, as well as professional activity performed in the form of self-employment;
- the facts of financial support for public activity performed by them;
- donations received from domestic and foreign entities exceeding 50% of the lowest remuneration for work mentioned in Art. 6 par. 3;
- domestic and foreign trips unconnected with their public function, if their costs were not born by them, their spouse, the institution of their employment, or political parties, associations or foundations of which they are members.

In addition, also information on participation in the bodies of foundations, commercial companies and cooperatives have to be reported to the register, even when the activities are not remunerated. An important characteristics of the Register is its openness. It is maintained by the State Election Commission and its content is published once a year.

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51 Robert Suwaj, „Analiza stanu prawnego w zakresie problematyki antykorupcyjnego na poziomie gminy", ***Samorząd Terytorialny*** 2000, no. 4, p. 29.

4.2.4. The act on public procurements

Public procurements is an area particularly vulnerable to corruption risks and conflict of interest situations in public administration. The act[52] defines the rules of exclusion of persons whose impartiality in public tender procedures can raise doubts. The principle of impartiality and objectivity of persons engaged in public procurement procedures is expressed in art. 7 par. 2 of the act (thereafter called APP).

The group of persons subject to exclusion was defined by a general description "persons active in public procurement procedures". According to art. 17 of APP, such person is subject to exclusion if he or she:

- is a bidder for the contract in question;
- is a spouse, a family member or a relative of, or is connected as a result of adoption, care or guardianship with the contractor, his or her legal representative or members of supervisory bodies of contractors bidding for the public contract;
- in the period of three years to the date of initiating the public procurement procedure was employed based on job or commission contract by the bidder or was a member of executive bodies or supervisory bodies of the bidders for the public contract;
- remains in such legal or factual relationship with the bidder which may raise reasonable doubts as to his or her impartiality;
- was finally sentenced by a court of law for an offence connected with public procurement procedure, for bribery, for an offence against business trading or other offences committed for financial gains.

Persons active in public procurement procedure file a written declaration on the absence or the existence of circumstances leading to their lack of impartiality described in the act. Filing untruthful declaration is criminalised. The declaration is filed with the head of the contracting authority or with the employee of the contracting authority to whom the head of the contracting authority delegated in written his powers described in APP – they are responsible for guaranteeing that preparatory activities and activities under initiated public procurement procedure are performed by persons that are impartial and objective. The APP indicates no deadline for filing the declaration on the absence or the existence of circumstances resulting in exclusion from public procurement procedure. The form of the declaration is defined. The documents are attached to public procurement documentation and are verified under control activities undertaken by authorised institutions, as well as under appeal or judicial proceedings.

The notion of the "person active in public procurement procedure" requires clarification, because some doubts were raised as to precisely whom it concerns. The notion should be explained using the definition of "public procurement procedure" added to the Act on public procurements in 2009 (Art. 2 pt. 7a of APP). According to the definition, public procurement procedure is the procedure initiated by the contracting authority through

[52] The Act of January 29, 2004, O.J. 2004 no. 19 item 177 with amendments.

public announcement on contract or sending invitation to negotiations in order to select contractor that will be awarded the contract, or – in the case of single source procurement – in order to negotiate the contract. Thus, as shown by the practice of public procurement procedures, it should be assumed that "persons active in public procurement procedure" are those who perform activities only after the procedure was initiated: the head of the contracting authority if he or she is active in the procedure, or other person to whom the head of the contracting authority delegated in written his powers to perform particular activities under the procedure, members of the tender commission, experts, and other persons performing activities under the procedure[53]. On the other hand, the category will not include persons who prepare the procedure, e.g. persons preparing the description of the contract, assessing the value of the contract, preparing the description of methods for evaluating whether the prospective bidders meet the criteria for participating in the procedure. As a result, the documentation of the procedure is not unnecessarily voluminous, and declarations are filed only by persons that can in fact influence the course of the public procurement procedure.

4.2.5. The act on civil service

According to the Constitution of the Republic of Poland, the civil service corps was established to ensure professional, reliable, impartial and politically neutral implementation of the tasks of the state (Art. 153 of the Constitution). The civil service corps includes public officers employed in: the Chancellery of the Prime Minister, ministerial offices and offices of chairmen of the committees being members of the Council of Ministers, and central offices of government administration bodies, voivodeship offices and other offices forming auxiliary apparatus for local bodies of government administration supervised by ministers or central government administration bodies, headquarters, inspectorates and other organisational units forming auxiliary apparatus for chiefs of joint services, inspections and voivodeship guards and chiefs of district services, inspections and guards, unless other acts of law decide otherwise, the Forest Reproductive Material Office, budget units serving state special purpose funds being at the disposal of government administration bodies (Art. 2 par. 1 of the Act on civil service).

Having in mind the interest of the state, members of the civil service corps, in their administrative activities, should be free from "personal views or sympathies"[54]. In addition, Art. 76 of the act[55] requires the members of the civil service corps to perform their duties in reliable and impartial way, and explicitly forbids them to be guided by individual or group interests (Art. 78 par. 1). That is why the act uses the principle of formal ***incompatibilitas***, which means that a member of the civil service corps is not allowed e.g. to hold the function of the city councillor (Art. 78 par. 4). The act also contains the prohibition of official

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53 Grzegorz Wicik, Piotr Wiśniewski, „Prawo zamówień publicznych. Komentarz", Warsaw 2007, p. 13.
54 The ruling of the Constitutional Tribunal of December 12, 2002, K.9/02, OTK ZU 2002, no. 7/A.
55 The Act of November 21, 2008, O.J. 2008 no. 227 item 1505 with amendments.

dependence relation between spouses and relatives or persons in affinity relation, as well as persons connected as a result of adoption, care or guardianship (Art. 79). Additional employment and additional paid work of the members of the civil service corps must be approved in written by the director general of their office (Art. 80 par. 1). The provisions define only the general guidelines and standards for civil servants. Hence, more detailed regulations in this field were needed.

The requirement of impartiality described in Art. 76 of the Act on civil service was defined in more detail in the Ordinance of the Prime Minister no. 70 of October 6, 2011, on the guidelines for observing the principles of civil service and on ethical principles of the civil service corps. It should be noted that the ethical principles described in the ordinance that was issued based on the relevant provisions of the act of law are of much higher legal rank than the previous ethical principles issued without such basis (they were defined in a so-called internal management act).

According to §18 of the Ordinance, the principle of impartiality, binding for all members of the civil service corps, should be manifested in particular in:

- avoiding any suspicions of a conflict between public and private interests;
- abstaining from any work or activity that interfere with official duties;
- equal treatment of all participants in the administrative procedures and resisting any pressures;
- not manifesting familiarity with persons publicly known from their activity, in particular political, business, social or religious activity, and avoiding promoting any interest groups.

In §4 of the Ordinance it is indicated that in order to comply with the principle of disinterestedness, members of the civil service corps in particular:

- do not accept any gains from persons engaged in the procedure;
- do not accept any remuneration for public appearances if they are connected with their official function;
- quit additional employment or paid work if continuing the additional employment or paid work may have negative impact on activities performed within their official responsibilities;
- do not conduct trainings if conducting them might have negative impact on impartiality of procedures under way.

4.2.6. Basic acts of law concerning local government

Similar measures related to the conflict of interest were introduced in acts of law concerning local government on the level of municipalities, districts and voivodeships, so we will discuss all the three acts of law together. Regulations on the conflict of interest contained in the Act on municipal local government[56] (thereafter called AMG), in the Act

[56] The Act of March 8, 1990, O.J. 1990 no. 16 item 95 with amendments.

on district local government[57] (thereafter called ADG), and in the Act on voivodeship local government[58] (thereafter called AVG) are often identical or analogous, thus the standards for all three levels of local government are coherent.

The regulations concerning the conflict of interest in local government units can be divided, according to their object, into the groups of regulations related to: formal ***incompatabilitas***, substantive ***incompatabilitas***, financial disclosures, and actual conflict of interest situations. All the legal provisions are intended to serve the purpose of transparent and effective operation of local government and prevention of corruption.

The principle of formal ***incompatabilitas*** (prohibiting holding simultaneously several public functions) on the municipality level is regulated in Art. 25b and Art. 27 of AMG. Thus, the function of municipal councillor cannot be held jointly with the functions of MP or senator, voivode or deputy voivode, or the member of bodies of other local government units. Membership in bodies of other local government unit means holding the functions of district or voivodeship councillor, or the member of district or voivodeship executive council. On the other hand, no legal provision prohibits municipal councillor from membership in a body of intermunicipal association (see Art. 70 par. 2 of AMG). Holding the function of the head of municipality or deputy head of municipality excludes holding analogous function in other municipalities, membership in bodies of local government units, employment in government administration, holding the function of MP or senator. Analogous provisions are contained in Art. 21 par. 8, Art. 26 par. 3 of ADG, and Art. 23 par. 4, Art. 31 par. 3 of AVG. Additionally, in voivodeship local government it is prohibited to jointly hold the function of the member of audit commission and the functions of voivodeship marshal, president and vice-president of the voivodeship regional council, and membership in voivodeship executive council (Art. 30 par. 2 of AVG).

The principle of substantive ***incompatabilitas*** introduces limitations to the activities pursued outside the public administration, most commonly professional or business activities. Municipal councillor is not allowed to be employed in the municipal office of his or her municipality (Art. 24a of AMG, and analogously, Art. 23 of ADG and Art. 25 of AVG). If an employee from municipal office is elected to the municipal council, he or she is granted unpaid leave for the period of his or her term and three months after its termination (Art. 24b of AMG, Art. 24 of ADG – without the additional three-month period of leave, and Art. 26 of AVG). In addition, the head of the municipality is not allowed to enter civil law agreements (Art. 24d of AMG, and respectively, for district head and district executive council Art. 23 par. 5 of ADG, and for vivodeship marshal and voivodeship executive council (Art. 25 par. 4 of AVG). As for the rules concerning additional employment, in practice municipal councillors are employed outside the municipal offices, or conduct business activity. However, any additional activity should not undermine confidence of citizens in their official functions (Art. 24e of AMG, Art. 25a of ADG, and Art. 27a of AVG). The possibility

[57] The Act of July 5, 1998, O.J. 1998 no. 91 item 578 with amendments.
[58] The Act of July 5, 1998, O.J. 1998 no. 91 item 576 with amendments.

to use municipal resources in their business activity is also restricted (Art. 24f of AMG, and analogously Art. 25 b of ADG and Art. 27b of AVG).

Art. 24h par. 1 of AMG states that councillor, head of the municipality, deputy head of the municipality, municipal secretary, municipal treasurer, head of municipal organisational unit, manager and members of managing body of municipal legal person, and persons issuing administrative decisions in the name of the head of the municipality are required to file financial disclosures. In the case of districts, financial disclosures are required from councillors, members of the district executive council, district secretary, district treasurer, heads of district organisational units, managers and members of managing body of district legal person, and persons issuing administrative decisions in the name of the head of the district (Art. 25c par. 1 ADG). In voivodeship local government, financial disclosures are required from councillors, members of the voivodeship executive council, voivodeship secretary, voivodeship treasurer, heads of voivodeship organisational units, managers and members of managing body of voivodeship legal person, and persons issuing administrative decisions in the name of the marshal of the voivodeship (Art. 27c par. 1 of AVG). Financial disclosures cover personal assets and joint assets of spouses. All the information (with the exception of the address of the person filing the disclosure and localisation of real-estate assets) are published in the Public Information Bulletin (Art. 24i of AMG, Art. 25d par. 3 of ADG, and Art. 27d par. 3 of AVG).

The acts also introduce an obligation of withdrawal in conflict of interest situations – Art. 25a of AMG states that councillor is not allowed to take part in voting in the council or commissions, when the matter concerns his or her legal interest (analogously, Art. 21 par. 7 of ADG, and Art. 24 par. 2 of AVG) USW), no matter whether the councillor's interest is consistent or inconsistent with the interest of the municipality – the very possibility of conflict of interest situation is a sufficient condition to exclude the councillor[59]. Legal interest means personal, specific and actual legally protected interest that may be realised based on specific provision of law, directly connected with individually and legally protected situation of a party[60]. Thus, it exists when there is a substantive connection between binding norm of administrative law and legal situation of particular legal entity. The exclusion covers all acts voted by municipal council or commission, thus also so-called intentional resolutions of municipal council, as well as all commission resolutions that are not legislative in their nature[61].

4.2.7. The act on the principles of developmental policy

The act[62] regulates the broad area of developmental policy defined as "the set of mutually connected activities undertaken and implemented in order to secure stable and sustainable development of the country, its socio-economic and regional and territorial

59 The ruling of the Supreme Administrative Court in Warsaw of April 9, 2013, I OSK 125/13, LEX no. 1336306.
60 The ruling of the Supreme Administrative Court in Warsaw of April 9, 2013, I OSK 124/13, NZS 2013/3/13.
61 The ruling of the Supreme Administrative Court in Warsaw of January 11, 2012, I OSK 2006/11, LEX no. 1107471.
62 The Act of December 6, 2006, O.J. 2006 no. 227 item 1658 with amendments.

cohesion, enhancement of competitiveness of its economy, and creation of new jobs on the national, regional or local level" (Art. 2). The developmental policy is conducted by the Council of Ministers and voivodeship, district and municipal local governments (Art. 3). So the act regulates granting and clearing EU funds under operational programs. Art. 31 par. 3 of the act regulates the procedure for excluding experts who select the projects to be co-financed. The rules of exclusion are the same as in Art. 24-25 of the Code of administrative procedure. The provisions aim at safeguarding reliable and objective evaluation of the projects. Detailed regulations concerning procedural aspects, samples of declarations etc. in the context of impartiality of the evaluation process of projects are left to be regulated by particular legal acts concerning implementation of individual operational programs and by individual competition documents.

Before starting the evaluation of any project, the expert is required to file a written declaration that no circumstances leading to his or her exclusion exist and that no doubts as to his or her impartiality towards the entity applying for co-financing or the applicant exist. Untruthful declarations are criminalised. Jacek Jaśkiewicz opts for an approach analogous as in the case of Art. 24 of CAP – objection that an expert was not excluded, in spite of the existence of relevant conditions, can be raised only in the objection concerning evaluation of an application for EU funds, and – if the objection is dismissed – in a complaint to the administrative court[63]. The declaration is attached to the documentation of particular application for co-financing.

4.2.8. The act on the employees of state offices

According to Art. 17 par. 2 of the act,[64] the same requirements apply to the employees of state offices as to the members of the civil service corps, namely to reliably and impartially perform their duties. The act covers state officers and public workers employed in the Chancellery of the Parliament, the Chancellery of Senate, the Chancellery of the President of the Republic of Poland, the Supreme Court, the Bureau of the Constitutional Tribunal, the Bureau of the Human Rights Defender, the Bureau of the Children's Rights Defender, the Bureau of the National Broadcasting Council, the State Treasury Solicitors' Office in matters not regulated by separate provisions, the National Election Office, Regional Account Chambers, the Bureau of Inspector General for Personal Data Protection, the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, and persons employed in the Chancellery of the Prime Minister, ministerial offices and the offices of chairmen of the committees being members of the Council of Ministers, and offices of central government administration bodies, vivodeship offices, and other offices forming auxiliary apparatus for local bodies of government administration supervised by ministers or central government administration bodies, the Government Legislation Centre, headquarters, inspectorates and other organisational units forming auxiliary apparatus

63 Jacek Jaśkiewicz, „Ustawa o zasadach prowadzenia polityki rozwoju. Komentarz", LEX, 2013.
64 The Act of September 16, 1982, O.J. 1982 no. 31 item 214 with amendments.

for heads of combined voivodeship services, inspections and guards, and the Forest Reproductive Material Office.

Employees and public officers from the above listed offices are required, at the moment of employment and on every request from the head of their office, to file financial disclosure (Art. 17 par. 4). Their additional employment requires approval from the head of the office (Art. 19 par. 1). Employees of the state offices are not allowed to perform any activities that may raise suspicion as to their impartiality (Art. 19 par. 2). The purpose of the regulations is to "(...) prevent public persons from engaging in situations and links that could not only raise doubts as to their personal impartiality or integrity, but also undermine the authority of constitutional state bodies and weaken the confidence of citizens and general public as to their proper functioning"[65]. Having in mind relatively broad discretionary powers of the heads of the offices, the regulations can be effective and sufficient only when internal regulations of particular institutions describe in more detail the conditions on which decisions of the head of the office are based.

The approval from the head of the office for additional employment of his or her workers, required by both the act on the employees of state offices, and other legal acts, raises many controversies as to its binding interpretation. The law fails to define criteria that should be taken into account by the head of the office when deciding on the approval for additional employment of his or her workers. It also fails to clearly determine whether the approval from the head of the office should concern only particular employment or paid work, or it may be more general – concerning specific period of time or specific kind of employment. Some commentators believe that the approval depends on free assessment of the employer and is fully discretionary[66]. Others are of different view and say that the decision to approve additional employment or other paid work of public workers is not discretionary and its refusal should be properly substantiated.[67] So it is evident that the issue should be regulated in more detail to avoid such controversies in interpretation of the regulations.

4.2.9. The act on foreign service

The act[68] regulates the activities of the foreign service that covers civil servants employed in the ministry of the minister responsible for foreign affairs, persons employed in the ministry that are not civil servants, persons employed in foreign service, plenipotentiary representatives of the Republic of Poland in foreign countries or in international organisations, members of the foreign service transferred to posts in organisational units of the ministry servicing the tasks of the minister responsible for Polish membership in the European Union (Art. 2).

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65 Resolution of the Cinstitutional Tribunal of April 13, 1994, W 2/94, OTK 1994, no. 1, item 21.

66 Beata Klink, „Podejmowanie dodatkowego zatrudnienia przez pracowników administracji publicznej – problematyka prawna", ***Radca Prawny*** 1999, no. 6, p. 106.

67 Anna Dubowik, „Dodatkowe zatrudnienie i inne zajęcia pracowników służby publicznej", PiZS 2005, no. 10, pp. 15-23

68 The Act of November 9, 2001, O.J. 2001 no. 128, item 1403, with amendments.

According to Art. 36 par. 1 of the act members of foreign service are not allowed to take additional employment or other paid work without written approval from the director general of the foreign service. Additional restrictions apply to the spouses of ambassadors and consuls – they are not allowed to take employment outside Poland during the period of time of holding the function by their spouses (Art. 31 par. 2), with the exception of employment in the diplomatic mission that requires approval from the director general of the foreign service (Art. 31 par. 1).

4.2.10. The act on local government employees

The Act on local government employees[69] regulates the status, rights and duties of local government workers. According to the act, "local government worker employed at public officer's post, including managerial public officer's post, is not allowed to perform activities that are inconsistent with or related to activities performed by him or her under his or her official responsibilities, that can raise reasonable suspicion of his or her partiality or interestedness, as well as activities inconsistent with his or her duties defined in the act of law" (Art. 30 par. 1). In case of performing prohibited activity, the sanction is dismissal from work (Art. 30 par. 2).

The Supreme Court stated that "the reason justifying termination of employment contract based on this provision is the possibility that the activities performed will raise suspicion of partiality or interestedness. Thus, the employer does not have to show that the employee performed his or her duties partially or interestedly, and in particular that he or she received any gains in connection with them"[70]. The Supreme Court presented a definite view that potential conflict of interest situation alone can be the sufficient reason for termination of employment contract, and that the employer is not required to show that the employee performed his or her duties partially or interestedly[71]. The ruling was passed in a particular case of a local government employee based on the regulations concerning that group of workers and is binding only in that particular case. Nevertheless, it can be assumed that similar view on consequences of conflict of interest situations can also find proponents in relation to other groups of public officers.

Local government worker employed at public officer's post is also required to file declaration on the type of business activity conducted by him or her (Art. 31 par. 1). The declaration has to be presented to the head of particular unit (Art. 31 par. 3). Employees are also required, on demand from the person authorised to perform activities in the field of labour law, to file financial disclosures (Art. 32 par. 2).

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69 The Act of November 21, 2008, O.J. 2008 no. 223 item 1458 with amendments.

70 The ruling of the Supreme Court of June 18, 1998, in case I PKN 188/98 (published in OSNP 1999/13/421, item 421) – the Court in its ruling referred to Art. 18 of the Act of March 22, 1990 on local government employees (O.J. no. 21, item 124 with amendments) that is analogous to Art. 30 of the present act of law.

71 The interpretation is consistent with the opinion expressed by Artur Rycak in „Ustawa o pracownikach samorządowych. Komentarz", LEX, 2013.

4.2.11. Acts of law regulating healthcare sector

There are areas in the market economy where the state, in view of special importance of the areas, establishes institutions and mechanisms to supervise the institutions and entities operating in them. As examples, such sectors can be mentioned as power generating, healthcare, telecommunications, financial markets. The sectors are vulnerable to situations where employees or experts of the supervising institutions can be accused of the lack of impartiality. The healthcare sector is particularly vulnerable to such risks. Hence, the regulations for the sector contain mechanisms intended to prevent conflict of interest situations. Below, we describe such key mechanisms contained in three acts of law regulating the healthcare sector.

4.2.11.1. The act on the office for registration of medicinal products, medical devices and biocidal products

The act[72] contains very detailed, case-oriented regulations concerning impartiality. It defines a wide range of prohibitions binding for the President of the Office, vice-presidents of the Office, employees of the Office, persons working for the Office based on commission contracts or specific-task contracts and performing activities connected to procedures related to medicinal products, medical devices and biocidal products, and members of commissions of opinion-giving and advisory nature and groups of experts (there are six such commissions attached to the President of the Office). They are not allowed to (Art. 9 par. 1 of the act):

- be members of commercial company bodies, representatives or plenipotentiaries of businessmen who participate in official procedures or produce or trade in products covered by the act (defined in detail in the act);
- be co-owners or partners in commercial companies, or parties to civil partnership contract, conducting business activity in the field described above;
- be members of bodies of cooperatives conducting the activity described above;
- own shares in commercial companies conducting the activity described above, and shares in cooperatives conducting the activity described above;
- conduct business activity in the field described above;
- perform paid work based on commission contract, specific-task contract or other similar contract concluded with entities described above;
- remain in such legal relationship with a party of the procedure that the decisions taken in matters belonging to the responsibilities of the President of the Office may impact their rights or duties deriving from the relationship.

According to Art. 9 par. 6 of the act, persons working for the Office based on commission contracts or specific-task contracts and performing activities connected with the procedures

[72] The act of March 18, 2011, on the office for registration of medicinal products, medical devices and biocidal products (O.J. of April 19, 2011, O.J., O.J. 2011.82.451 with amendments).

related to medicinal products, medical devices and biocidal products inform the President of the Office, while the President and vice-presidents of the Office inform the minister responsible for healthcare matters, on:

- entering employment relationship with the entities listed in Art. 9 par. 1 of the act, within 30 days from entering the relationship;
- entering a contract for managerial services with the entities listed in Art. 9 par. 1 of the act, within 30 days from entering the contract;
- being in such legal relationship with the party in the procedure that the decisions taken in matters belonging to the responsibilities of the President of the Office may impact their rights or duties deriving from the relationship, within 30 days from acquiring the knowledge on the existence of such circumstances.

If one of the above circumstances takes place, they are subject to exclusion based on the Code of administrative procedure.

The President and vice-presidents of the Office, employees of the Office, persons working for the Office based on commission contracts or specific-task contracts or other similar contracts, performing activities connected with the procedures, and members of commissions of opinion-giving and advisory nature and groups of experts, file on a special form declarations of interests (Art. 9 par. 2 of the act). Untruthful declarations are criminalised. The declaration is filed before starting employment, entering relevant contract or nomination to a commission. Breaking obligations and prohibitions deriving from the declaration can lead to termination or cancellation of the relevant contracts or dismissing the members of commissions, which in view of the detailed nature and appropriate control forms is a sufficient tool to counteract conflict of interest situations. The declaration of interests is filed on a special form defined in the Ordinance of the Minister of Health of June 1, 2011, on the sample of declaration of interests[73].

4.2.11.2. The act on healthcare services financed from public funds

The act[74] introduces an interesting solution: special state organisational unit is established, the **Agency for Health Technology Assessment. The tasks of the agency include activities related to evaluation of healthcare services and opinion-giving on government healthcare programs. According to** Art. 31s of the act, to the president of the Agency the Transparency Council is attached with opinion-giving powers. Members of the Council are nominated by the Minister of Health for six-year term.

According to Art. 31s par. 8 of the act, members of the Transparency Council, their spouses, their descendants and ascendants in direct line, and persons with whom members of the Transparency Council live in cohabitation, are not allowed to:

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73 O.J. 2011 no. 144 item 665, with amendments.

74 The Act of August 27, 2004, O.J. 2008 no. 164 item 1027, with amendments.

- be members of commercial company bodies or representatives of businessmen conducting economic activity in the field of production of or trade in drugs, food products of special nutritional use, medical products;
- be members of commercial company bodies or representatives of businessmen conducting economic activity in the field of advisory services connected with reimbursements for drugs, food products of special nutritional use, medical products;
- be members of cooperatives, associations or foundations conducting activity described in the previous paragraphs;
- own shares in commercial companies and shares in cooperatives conducting activities described above;
- conduct business activity in the fields described above.

The act contains very restrictive requirements concerning declaring impartiality and disclosing possible conflict of interest situations.

The members of the Transparency Council file a declaration on the absence of the circumstances described above called "declaration on the absence of the conflict of interest" both before nomination to the Council, and before every meeting of the Council (Art. 31s par. 10). In addition, members of the Council and persons not being members of the Council who were commissioned to prepare written or oral expert or other opinions for the Council file declarations of interests at particular meetings of the Council for particular applications discussed by the Council. The additional declarations are aimed at verifying the impartiality of persons participating in the proceedings or the preparation of materials concerning particular applications, since the general declarations of impartiality mentioned above may fail to cover all possible situations.

Members of the Transparency Council and persons not being members of the Council who were commissioned to prepare written or oral expert or other opinions for the Transparency Council, if they perform paid work based on employment relationship, contract for managerial services, commission contract, specific-task contract or other similar contracts concluded with entities mentioned in Art. 31s par. 8 of the act, file declaration of interests concerning themselves, their spouses, their descendants and ascendants in direct line, and persons with whom they live in cohabitation (Art. 31s par. 9 of the act).

If conflict of interest situation takes place, the member of the Transparency Council, at his or her own request, or at the request of the person presiding the meeting of the Transparency Council, may be excluded from voting or participation in the proceedings of the Transparency Council in matters affected by the disclosed conflict of interest (**Art. 31s par. 13 of the act**).

In the meetings of the Transparency Council may participate, without the right to vote, medical experts in the field discussed at a particular meeting, and other persons invited by the chairman of the Transparency Council. The persons are also required to file the above mentioned declarations: the declaration of interests and the declaration on the absence of the conflict of interest (Art. 31s par. 15). Declaration of interests is also filed by persons who present comments to published verification analysis of the Agency or in connection with

published agenda for a meeting of the Transparency Council. The comments are considered by the Agency and published in the Public Information Bulletin of the Agency together with filed declaration of interests (Art. 31s par. 23 of the act).

4.2.11.3. The act on patients' rights and on the commissioner for patients' rights

It is also worth to discuss the solutions contained in the Act on patients' rights and on the commissioner for patients' rights[75]. The act (Art. 67e) establishes voivodeship commissions for adjudicating medical incidents (infections of patients from biological pathogens, serious injuries or health disturbance to patients, or death of patients as a result of decisions incompatible with the present medical knowledge). According to Art. 67g of the act, members of the adjudicating panel of the commission, their spouses, descendants and ascendants in direct line, are not allowed to:

- own, be employed in or cooperate with the healthcare entity managing the hospital or the insurer connected with the application to evaluate the medical incident, or be members of bodies of the entity or the insurer;
- be members of bodies or employees of the creating entity in the sense of the regulations on healthcare activity, if the entity created healthcare entity, not being an entrepreneur, that manages the hospital connected with the application to evaluate the medical incident;
- own more than 10% of shares or equity capital in commercial companies being healthcare entities managing the hospital or the insurer connected with the application to evaluate the medical incident.
- In addition, member of the adjudicating panel is excluded from proceedings if:
- he or she is the party filing the application or remains with the party in such legal relationship that the result of the proceedings before the voivodeship commission can impact his or her rights and obligations;
- he or she remains in such personal relationship with the party filing the application that can raise doubts as to his or her impartiality;
- the party filing the application is his or her spouse or relative;
- the party filing the application is connected to him or her as a result of adoption, care or guardianship;
- he or she was or is legal plenipotentiary or representative of the party filing the application.

The act also provides for filing relevant declarations. Before being nominated to the adjudicating panel, members of the voivodeship commission file declarations on the absence of the above mentioned circumstances, called "declaration of the absence of the conflict of interest". The requirements apply also to persons who are not members of the voivodship commission, but prepare expert opinions for the commission. The sample of the

[75] The Act of November 6, 2008, O.J. 2009 no. 52, item 417, with amendments.

declaration on the absence of the conflict of interest was defined in the ordinance of the Minister of Health[76]. The requirement to file such declarations should be seen as an useful measure, helping in preventing conflict of interest situations and in verifying activities in a situation where circumstances that may indicate that members of the commission acted partially are exposed.

4.3. National regulations and international standards

As indicated earlier, the international standards concerning the conflict of interest usually take the form of "soft" regulations, such as recommendations, standards and guidelines, rather than treaties or conventions. But it should be assumed that the international standards concerning regulation of conflict of interest situations, while not binding, are well embedded in the legal practice of many countries (in particular in Europe).[77]. Below, we will compare the long established international standards with the Polish regulations. The analysis is divided in two parts: first, we will discuss the standards that have not been fully incorporated into Polish regulations, and then, we will indicate the solutions that can be seen as implemented in the Polish legal system. However, it should be noted that we discuss only the solutions and standards which, in our opinion, are pertinent to the legal regulations concerning impartiality and avoiding conflict of interest situations.

4.3.1. International standards not incorporated into the polish legal system

4.3.1.1. Definition of the conflict of interest

In the Polish law, there is no legal definition of the conflict of interest like the ones that are contained in many international legal acts (for example, Article 13 of the recommendation of the Committee of Ministers of the Council of Europe says that conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties). In the Polish literature of the subject, definitions of the notion also can be found, but there is still no definition on the level of an act of law. Article 24 § 1 of CAP contains a list of situations that are seen as possibly leading to conflict of interest situations. However this case-oriented catalogue is not a definition in the meaning of the Polish law. The definition in an act of law is not directly required by any international treaty, but is highly recommended by the OECD. The lack of legal definition of the notion of the conflict of interest (and generally, its absence in national acts of law) make it impossible to prepare a catalogue of conflict of interest situations, also recommended by the OECD. Such legal definition would also be very

[76] The Ordinance of the Minister of Health of December 8, 2011 on the sample of the declaration on the absence of the conflict of interest filed by member of voivodship commission for adjudicating on medical incidents, O.J. 2011 no. 274, item 1625.

[77] Nikolay Nikolov, "Conflict of interest in European public law" [Konflikt interesów w europejskim prawie publicznym], *Journal of Financial Crime* 20/4, 2013, s. 407.

useful in resolving interpretation problems concerning particular behaviours or situations discussed in the context of the conflict of interest.

4.3.1.2. Declaration of interests

Article 14 of the recommendation of the Committee of Ministers of the Council of Europe from 2010 introduces the notion of "declaration of interests" which, subject to national regulations, public official may be required to file. However, in the Polish legal system the mechanism of filing the declaration of interests is only partially implemented. In view of the fact that no developed and general system of filing declarations of interests exists, the instrument has limited preventive role in situations of the lack of impartiality. Thus, the risk is that conflict of interest situations more often will be detected ***post factum***, as a result of control activities or legal interventions of interested parties.

4.3.1.3. Accepting gifts

According to Art. 9 of the International Code of Conduct for Public Officials accepted by the United Nations, public officials should not solicit or require directly or indirectly any gifts that may influence the exercise of their functions. Introducing regulations concerning directly accepting gifts is also among recommendations of OECD. In Poland, in spite of relatively extensive regulations to counteract corruption, the issue of accepting gifts and rewards is still insufficiently regulated in view of the fact that the existing regulations apply to only selected groups of persons, rather than being general legal standard for the whole public sphere (ethical codes, though important, are not sufficient mechanism in this field).

4.3.1.4. Disclosing potential conflict of interest situations

OECD also recommends introducing clear and comprehensive regulations concerning disclosing potential conflict of interest situations (the standard is also mentioned in Article 13 of the recommendation of the Committee of Ministers of the Council of Europe of 2010). When analysing the Polish regulations, we feel that a great attention is paid to preventing conflict of interest situations (according to the same guidelines, it is the preventive measures that are the most important ones), but the procedures in a situation of detected conflict of interest are not sufficiently clear. Of course, Art. 24 of CAP introduces the measure of excluding public officer on his or her own request, but it fails to cover all possible situations (e.g. it does not apply to experts cooperating with the administration) and concerns only some aspects of public administration activities.

4.3.2. International standards incorporated into the polish legal system

PROHIBITION TO ACQUIRE FUNCTIONS THAT ARE INCONSISTENT WITH THE OFFICIAL POST – The prohibition is stated in Art. 4 of the International Code of Conduct for Public Officials accepted by the United Nations and in Art. 15 of the recommendation of the Committee of Ministers of the Council of Europe (incompatible outside interests). The prohibition can take the form of formal ***incomatibilitas*** (prohibition of acquiring other functions in the public administration):

- member of the civil service corps is not allowed to be e.g. a councillor (Art. 78 par. 4 of the Act on civil service);
- the function of municipal councillor cannot be held jointly with the functions of MP or senator, voivode or deputy voivode, or the member of bodies of other local government units. Person holding the post of the head of the municipality or the deputy head of the municipality is not allowed to hold the post of the head of the municipality or the deputy head of the municipality in another municipalities, be a member of local government bodies, be employed in government administration, hold the function of MP or senator (Art. 25b and Art. 27 of AMG, and analogously Art. 21 par. 8, 26 par. 3 of ADG, Art. 23 par. 4 and Art. 31 par. 3 of AVG).

The prohibition can also take the substantive form, limiting activities outside the public administration (e.g. economic or social activity). The regulations take the form of either:

1. General prohibition introducing standards such as the following:
   - employees of state offices are not allowed to perform any activities that could raise suspicions as to their impartiality (Art. 19 par. 2 of the Act on the employees of state offices);
   - local government worker employed at public officer's post, including managerial public officer's post, is not allowed to perform activities that are inconsistent with or related to activities performed by him or her under his or her official responsibilities, that raise reasonable suspicion of his or her partiality or interestedness, as well as activities inconsistent with his or her duties defined in the act of law (Art. 30 par. 1 of the Act on local government employees);
   - any additional activity of a councillor cannot undermine the confidence of citizens in his or her function (Art. 24e of AMG, Art. 25a of ADG, and Art. 27a of AVG).
2. Or specific prohibition indicating particular activities that are prohibited:
   - municipal councillor is not allowed to be employed in the municipal office in the municipality where he or she was elected (Art. 24a of AMG, and analogously Art. 23 of ADG and Art. 25 of AVG),
   - persons subject to the Act on limitations to business activity of persons holding public functions are not allowed to conduct business activity personally or together with other persons, or manage such activity or be a representative or a plenipotentiary in conducting such activity; be members of executive boards, supervisory boards or audit committees in commercial companies, be employed or perform other

work in commercial companies that could raise suspicions of their partiality or interestedness, be members of executive boards, supervisory boards or audit committees of cooperatives, with the exception of supervisory boards of housing cooperatives, be members of executive boards of foundations conducting economic activity (Art. 4 of the Act on limitations to business activity of persons holding public functions).

REQUIREMENT TO DISCLOSE ANY ACTIVITY CONDUCTED IN ADDITION TO OFFICIAL FUNCTION – The requirement is stated in Art. 5 of the International Code of Conduct for Public Officials accepted by the United Nations. In Poland, not only the requirement of disclosure was introduced, but also an approval from the superior is required to conduct such activities, e.g.:

- the written approval from the director general of the office is required for additional employment and paid work of a member of the civil service corps (Art. 80 par. 1 of the Act on civil service);
- additional employment of workers of state offices depends on the approval from the head of the office (Art. 19 par. 1 of the Act on the employees of state offices);
- member of the foreign service is not allowed to take employment or other paid work without written approval from the director general of the foreign service (Art. 36 par. 1 of the Act in foreign service);
- local government worker employed at public officer's post is required to file the declaration on the nature of his or her business activity (Art. 31 par. 1 of the Act on local government employees).

REQUIREMENT TO FILE FINANCIAL DISCLOSURES – The requirement is stated in Art. 8 of the International Code of Conduct for Public Officials accepted by the United Nations. In Poland the issues related to the requirement are regulated in detail, e.g.:

- government employees and officers are required, when entering the employment relationship and on every demand from the head of their office, to file financial disclosures (Art. 17 par. 4 of the Act on the employees of state offices);
- councillor, head of the municipality, deputy head of the municipality, municipal secretary, municipal treasurer, head of municipal organisational unit, manager and members of managing body of municipal legal person, and person issuing administrative decisions in the name of the head of the municipality are required to file financial disclosures (Art. 24h par. 1 of AMG, and analogously Art. 25c par. 1 of ADG and Art. 27c par. 1 of AVG);
- local government employees are required, on demand from the person authorised to perform activities in the field of labour law, to file financial disclosures (Art. 32 par. 2 of the Act on local government employees).

ABUSE OF OFFICAL POST – The problem is regulated in Art. 6 of the International Code of Conduct for Public Officials accepted by the United Nations and in Art. 21 of the recommendation of the Committee of Ministers of the Council of Europe. The standards concern exploiting both official posts and public funds, and the information acquired in

connection with the official post. As examples of the prohibition to be guided by individual interest in taking decisions and performing official duties can be cited:

- explicit prohibition to be guided by individual or group interest (Art. 78 par. 1 of the Act on civil service),
- limitations on using municipal resources for personal business activity (Art 24f of AMG, and analogous Art. 25 b of ADG and Art. 27b of AVG).

PUBLIC PROCUREMENTS – In the United Nations Convention against Corruption special attention is paid to public procurements, and the states-parties are encouraged to introduce requirement to file declarations of interests by persons engaged in tender procedures in order to ensure their transparency (Art. 9 par. 1e). The standard is implemented in Art. 17 of the Act on public procurements.

To sum up, it could be said that international standards concerning the conflict of interest are of rather preventive nature and refer to the requirement to disclose and prevent conflict of interest situations by public officials (e.g. Art. 8 of the recommendation of the Committee of Ministers of the Council of Europe of 2010). Such approach makes public officials more responsible for the quality of public administration, and raises their awareness of the problem of the conflict of interest. In Poland, when implementing the international standards, the issue was approached from a slightly different angle, with more focus on introducing lists of prohibitions connected to official posts. The approach can be equally effective as the first one, but may also result in more passive attitudes on the part of public officials.

Despite the excessively casuistic approach and the lack of legal definition of the conflict of interest, the Polish regulations concerning conflict of interest situations in public administration should be evaluated favourably. They include requirements for public officers and experts cooperating with the administration as to reporting conflict of interest situations, and indicate prohibitions concerning holding jointly different functions or conducting different types of activities. Thus, it can be justly stated that Polish regulations, in spite of some defects, form a good basis for effective prevention of conflict of interest situations and reacting to the cases of violation of the principle of impartiality. But regulations alone, in particular in the field so closely connected to ethical problems, are not sufficient. What's also needed is high awareness of the problems among public officers and persons cooperating with the public administration, and well-rooted practice of continuously meeting and enforcing the requirements defined in the acts of law.

4.4. Possible legislative and institutional developments

The analysis presented above, concerning the existing regulations to control impartiality of decision-makers in public administration, leads to several conclusions that are important in view of possible legal or organisational changes in this field.

First, it should be noted that regulations concerning impartiality contained in many legal acts of different ranks introduce advanced mechanisms to counteract the conflict of interest, including models of behaviour and methods to control behaviours in order to

promote standards of impartiality. In view of that, it seems that there is no need to introduce additional extensive regulations. But several issues should be considered.

First of all, the need to introduce a general legal definition of the conflict of interest should be considered. On the one hand, the absence of such definition in the Polish legal system sometimes poses interpretation problems, but on the other, the law-makers mange to cope with the problem, tailoring the catalogues of situations resulting in the lack of impartiality to specific circumstances regulated by particular acts of law. Thus, while the issue of the definition of the conflict of interest seems not to be paramount, it would be convenient to introduce such definition in an act of law (e.g. in the Code of administrative procedure), so that it could form a reference point for other regulations and a benchmark for interpreting particular situations raising doubts as to the observance of the principles of impartiality.

The above analysis of legal acts with special attention to regulations concerning the conflict of interest clearly shows the plurality of such regulations, their different level of particularity (from very specific provisions to general references to other acts of law), and the existence of additional regulations of lower rank (e.g. ministerial ordinances). The plurality of measures leads to a chaos and is inconsistent with the requirements of clarity and appropriate quality of legal regulations. Thus, the sphere undoubtedly should be made more orderly, e.g. through eliminating unnecessary provisions or documents that are already contained in other regulations (e.g. repeating in different legal acts the list of exclusions for public officers that is already contained in the Code of administrative procedure). Of course, this should be preceded by a thorough analysis of good and bad practices, and examination how specific mechanisms to counteract the conflict of interest work in practice.

The next issue is related to the regulations concerning the requirement to register financial gains received during the period of holding public office or holding public function, that is limited to only selected groups of persons. It seems that the need to cover with the requirement a broader group of persons should be considered, but the possible new regulations in this field should be specific and should not lead to any unnecessary bureaucratic burdens.

Similar problem concerns filing declarations of interests. Some legal acts regulate the issue very definitely and specifically, while other remain more general. Also in this field, it would be advisable to introduce more clarity and standardisation, so that in different sectors of public administration similar standards and models for such declarations are used.

Some problems are also posed by the degree of specificity of regulations on the conflict of interest and different requirements and obligations introduced for different groups endangered by conflict of interest situations. As an example, additional paid work in the civil service can be cited – the law-makers introduced different restrictions related to additional paid work for different groups belonging to the civil service corps. All members of the civil service corps are required to seek written approval for additional employment from the director general (and in the case of the director general – from the Head of the Civil Service). But civil servants and members of the civil service corps holding higher posts in the civil

service are additionally required to seek written approval from the director general (and in the case of the director general – from the Head of the Civil Service) also for all other paid works. The requirement does not concern the rest of the civil service workers. So here again, standardising the regulations would be advisable.

The analysis of legal regulations related to the problems of the conflict of interest raises questions and problems that should be answered also empirically. In the context of research activities conducted under the project "Social monitoring of the conflict of interest", several issues can be indicated to which – based on the analysis of the existing law – special attention should be paid.

First of all, the problem of understanding the notion of the conflict of interest by public officers and experts cooperating with public offices seems to be crucial, for there is no single and precise definition of the notion. Instead, there are many regulations of different levels and many different opinions on the subject presented in the public discourse. So it would be advisable to learn from where the respondents derive their knowledge on the meaning of the terms "impartiality" and "conflict of interest", how they define the notions, and to what extent their definitions match the situations described in legal regulations.

Another problem is the question of the real knowledge on the existing rules and legal acts of different levels concerning impartiality among public officers. On the one hand, it is worth to examine how effective in practice are different legal acts, rules of procedure and ordinances and how aware public officers are of the consequences of breaking them. On the other hand, the results of such survey could form a basis for conclusions as to their content, standardisation etc.

It is also important to establish to what extent public administration workers and experts see the existing regulations, prohibitions, orders and their consequences as adequate, covering proper areas, and accompanied by proper sanctions. The problem is to strike the right balance between the real protection of impartiality and ensuring the appropriate quality of work. There is a risk that if the standards for impartiality and avoiding the conflict of interest are to elevated, they can hamper normal operation of public offices and their cooperation with experts that have real expertise in particular fields. In particular, it is worth to learn to what extent, in the opinion of the respondents, the prohibitions and the sanctions for breaking them are in fact the right tool to combat partiality, and to what extent the very disclosure of different links and factors that can influence impartiality of public officers can be sufficient, for the fact that someone is less than hundred-percent impartial does not necessarily mean that his or her opinions or decisions will be inaccurate or wrong.

Another interesting issue is whether, in the opinion of the respondents, the notion of the conflict of interest and related prohibitions and sanctions can be graded depending on the role played by particular person in the decision-making process. The process includes both persons who directly decide on different matters, and persons who only present their opinions, advices etc. Should all of them be covered by the same standards concerning the conflict of interest, exclusions etc., or should the measures be graded and tailored to their roles in the process – perhaps, sometimes it is enough to only disclose a conflict of interest,

so that the decision-maker is aware of it? If so, it is worth to consider in what situations a person should be excluded from decision-making process, and in what situations it is enough for him or her to file the relevant declaration of interests.

The next question concerns the problem of controlling and verifying the compliance with orders and prohibitions related to impartiality of particular procedures and avoiding the conflict of interest. It would be useful to learn the opinion of the respondents on how effective the existing control mechanisms and tools are. Do the mechanisms guarantee real and effective control, or do they remain just another formality? Do the procedures related to them form another bureaucratic burden and do they not hamper significantly the normal activities of public offices? If the respondents report that the system is dysfunctional, then can they indicate specific causes of the situation and methods to remedy the problem (and do the methods consist in legal or rather organisational changes)?

The above mentioned issues relate to the question whether any additional regulations are needed. It would be useful to ask the respondents whether they see any gaps in the existing regulations, whether they can give examples of behaviours or situations that raise doubts as to compliance with the standards of impartiality and are not covered by the existing legal mechanisms in their offices. Suggestions as to possible changes in legal regulations presented in this paper can be useful in such survey.

The last problem concerns the real effectiveness of exclusions of public officers and experts from decision-making processes as a result of situations undermining their impartiality. It would be interesting to learn to what extent, in the opinion of public officers, the mechanism is effective in protecting from partiality, and to what extent it is only a formal measure that fails to protect decision-makers from pressures from the excluded persons resulting from their mutual relations and working together in the same office.

4.5. LEssons from works on the draft assumptions to the act on selected measures to avoid the conflict of interest of 2011

At the end of our expert opinion, the draft act of law concerning directly the conflict of interest and comprehensively regulating related problems should also be mentioned. In 2011, just before the end of the 6th term of the Polish Parliament, draft assumptions to the act of law on selected measures to avoid the conflict of interest were presented (before, the draft was called the anti-corruption act of law)[78]. But the discussion on the act was not resumed in the next term of office of the Parliament.

The act aimed at standardising and supplementing regulations concerning the conflict of interest contained in many sectoral acts of law. For the first time, the intention was to comprehensively regulate the matter. In the draft assumptions special attention was paid to problems concerning public administration requiring legislative amendments, such as:

[78] The project is available at: http://legislacja.rcl.gov.pl/docs//1/6372/6376/6377/dokument2960.pdf ,[access: January 27, 2014].

The register of gains – the scope of information reported to the register was broadened to include participation in the bodies of professional associations, associations, chambers of commerce, in order to prevent informal lobbying. Also municipal, district and voivodeship councillors were added to the group of persons required to report information to the register. The project also included proposal to change the entity responsible for maintaining the register from the State Election Commission to the Central Anti-Corruption Bureau.

More restrictive provisions concerning employing public officers by businessmen after they quit their public post or function. The proposed period of prohibition was three years and concerned employment by the businessman, his or her legal descendant or subsidiary, if the public officer participated in administrative procedure concerning the above mentioned persons. The provisions on the prohibition were to become absolute – the Commission that presently may, in special circumstances, shorten the period of prohibition was planned to be dissolved.

The rules for filing financial disclosures and methods of their analysis and verification – the requirement to file financial disclosures concerning both the public official and his or her spouse was to apply to all persons covered by the draft act of law (approximately 750 000 persons). Financial disclosures were to contain additional information on issues such as matrimonial regime, the amount of direct subsidies to farms or businesses, sitting in chambers of commerce or sports companies.

Creating the list of functions that can be held by persons performing public tasks – the persons were to be allowed to sit in executive board, supervisory board, audit committee, or to be a plenipotentiary of companies which shares belong to the State Treasury, local government companies and water companies.

Access to financial disclosures – the disclosures (without sensitive data) were to be made available to persons that serve the society and the state according to the provisions of the press law, and to entities that have as one of their statutory task combating corruption. The disclosures were to be made available on application containing justification of the need to get acquainted with the disclosure of particular person. Financial disclosures were also to be made available to public administration bodies performing tasks in the field of counteracting and preventing corruption.

The project also contained proposals for new solutions such as:

- prohibition for persons performing public tasks based on civil law contracts to accept financial or personal gains by invoking their official function;
- definition of gifts (as small presents of common and occasional nature) and the ways of accepting them, including enumerative list of situations where a gift may be accepted, and the requirement to report gifts of value exceeding 100 euro to the Register of Gains;
- centralisation of institutional control over conflict of interest situations in the Central Anti-Corruption Bureau;
- standardising the times when financial disclosures should be filed – every person subject to the act of law were to be required to file financial disclosures when starting

employment, taking a post, or entering the service; on termination of employment contract, quitting a post, dismissal from service, and once a year throughout the period of holding public post;

- all bodies accepting financial disclosures were to be required to maintain a register of the documents and to analyse the financial disclosures;
- introducing standard sample of financial disclosure.

The project of the act covered a broad group of persons from legislative power, executive power and judiciary. A catalogue of "persons performing public tasks" was introduced, including as many as 59 categories. That would be another definition, in addition to already existing definitions of "public official" and "person holding public functions". From the experiences in interpreting these notions, it could be expected that the new definition would lead to legislative chaos.

In the assumptions it was indicated that, in some circumstances, for breaking the provisions of the act, i.e. not reporting gains to the register or violating the prohibition of employment connected with performing public tasks, the head of CAB could impose an administrative penalty in the form of a fine in the amounts of, respectively, from 1000 to 10 000 PLN and from 10 000 to 50 000 PLN. In view of the effectiveness of penalising corruption behaviours, the solution should be seen as favourable, because administrative fines are much more direct and more effective sanction that criminal procedure led according to Penal Code.

The act was also intended as a legal act gathering all regulations concerning the conflict of interest contained in the existing acts of law – their particular provisions were to be transferred to the new legal act. It was planned to transfer to the new legal act the provisions concerning the conflict of interest from legal acts such as the acts of law on local government, the acts of law on the Border Guards, the act on public procurements, the act on regional account chambers, the law on industrial property, the act on healthcare services financed from public funds, the act on Customs Service, the act on State Sanitary Inspectorate, the act on military service of professional soldiers. This solution is doubtful, mainly in view of the fact that the provisions on the conflict of interest contained in particular acts of law were tailored to the specific needs of the institutions and were coherent with the other provisions of the acts.

The above discussed project was not passed. Many of its solutions met with critical comments. It was indicated that the project created a risk of legislative chaos and excessive oppressiveness from the state. It also seems that the authors of the project failed to substantiate the need to introduce the provisions. It should be noted that provisions on counteracting the conflict of interest in public administration are already present in the Polish legal system, sometimes taking the form of very detailed regulations. Thus, it seems important to effectively implement the existing measures rather than to create new regulations.

5. MINISTERIAL INTERNAL POLICIES IN THE FIELD OF THE CONFLICT OF INTEREST IN POLAND – ANALYSIS OF INFORMATION RECEIVED FROM THE MINISTRIES

Grzegorz Makowski

This part of the report presents the results of the first (field) stage of the monitoring of the policies aimed at preventing and counteracting negative effects of conflict of interest situations in the Polish government administration. It contains discussion and analysis of information received from all ministries that existed at the time of the survey in response to the application directed to them by our research team based on Art. 2 par. 1 and Art. 10 par. 1 of the Act of September 6, 2001, on the access to public information[79] (how this part of the monitoring was performed is described in the methodological note, and the text of the application is presented in the Appendix).

Before we discuss the results of the survey, several points should be mentioned. Generally, it should be remembered that the analysis does not present a full picture of how in fact ministries cope (or fail to cope) with the problem. The picture becomes more complete when the results of all the other parts of the monitoring, i.e. interviews with ministerial directors general and departmental directors, are taken into account. However, our query directed to the administration was very carefully prepared, consulted with external experts (including public administration officers themselves), and resulted in very interesting answers, containing pertinent information, source documents, suggestions, and sometimes (as in the case of the answer given by the Ministry of Finance) even elements of analysis of the problem performed by the respondents themselves.

As our research control over this stage of the monitoring process was limited (of which we were fully aware) the scope of information received by us depended on the proper understanding of our application by the administration and their willingness to cooperate. But we can risk an opinion that the material gathered is good enough to describe with some detail (at least from formal point of view) what infrastructure needed to limit the effects of the conflict of interest is present in central administration institutions in Poland, and to identify the most urgent problems in this respect.

The answers given by the ministries can be seen as a reflection not only of the awareness of the problem of the conflict of interest among the public workers who signed the answers, but also more generally, of the institutional awareness – because the answers must have been agreed upon with their superiors, if not with directors general, then at least with the

[79] O.J. no. 112, item 1198

heads of their departments. To give answers to such a complex question also required some analytical work. Thus, their final content can be seen as a kind of a picture of institutional reaction to the problem of the conflict of interest.

We mention this because the answers sometimes had important, factual gaps – e.g. some regulation, document or other tool related to the conflict of interest in force in a given ministry was not indicated. The answer of the Ministry of Economy is the best example of such omission (discussed later in the report) where the Integrated Management System, existing in the ministry from 2009, covering the issues of preventing corruption, and thus also at least indirectly of the conflict of interest, was not mentioned. But our goal was to gather and analyse the material presented by the ministries themselves. So we intentionally do not add our own reviews of Internet pages of the ministries, their Public Information Bulletins or other pertinent documentation, which could form only another stage of monitoring process, not covered by our project. Only in particularly interesting or important instances we do give a broader interpretation of the gathered material, extending our analysis beyond what was presented by the ministries themselves.

However, such sometimes formally "incomplete" picture of the ministries' policies in the field of the conflict of interest can be more informing on the real, practical approach of the institutions to the problem. Unfortunately, the approach is often rather superficial despite apparent multitude of existing instruments.

But the material gathered during this part of the monitoring process let us also prepare a kind of ranking of public institutions, indicating how well or how badly and in what respects they are able to minimise the risk of the conflict of interest. Resulting rankings can be found at the end of the paper.

When preparing the application to be sent to the ministries, we decided to use our own definition of the conflict of interest, based on the legal expert opinion prepared for the project and a review of scientific literature on the subject[80]. **We defined the conflict of interest as "[...] an actual or possible situation where official responsibilities and private or other interests of a public officer are at odds, and when pursuit of private interest can threaten public good or hamper carrying out his or her official duties ".** We also listed the legal regulations in relation to which the activities undertaken by ministries in the field of the conflict of interest were particularly interesting for us:

- The Act of August 21, 1997, on limitations to business activity of persons holding public functions.
- The Act of November 21, 2008, on the civil service.
- The Act of September 16, 1982, on employees of the government offices.
- The Act of January 29, 2004, on public procuremets.

In our application, we emphasised the issue of managing the conflict of interest in typical situations, such as combining public functions with sitting in statutory bodies of commercial companies, owning shares in companies, potential conflict of interest situations related to

[80] B. Kudrycka, Combating Conflict of Interest in the CEE Countries, Local Government and Public Service Reform Initiative, Budapest 2004, A. Stawiarz, Konflikt interesów w administracji publicznej, Wolters Kluwer, Warsaw 2009.

the activity pursued by a spouse, violating the principle of impartiality in decision-making processes (in particular, in the context of public tenders or seeking additional employment).

By referring to specific regulations, we wanted to make the answers more standardised and lower the risk of receiving information that would be irrelevant in view of the objectives of our project. However, we were aware that in this way we may limit to some extent the information that we receive (conflict of interest problems encountered by ministries go beyond what is described in legal regulations). But we made this methodological choice believing that it is better to receive answers to relatively precise questions, than to general ones that could be arbitrarily or even mistakenly interpreted by the respondents. In addition, we assumed that, since we used a specific legal instrument – an application for access to public information – we should be as precise as possible. Nevertheless, in our letter to the ministries we did not exclude the possibility to broaden the proposed catalogue. Anyway, our concerns that the answers would be to narrow proved to be unjustified. As was already mentioned at the beginning of the chapter, the information that we received often went beyond what is described in the regulations listed in the application. At the same time, the answers – as the ministries were encouraged to use a special table – had similar form, thus facilitating their final analysis.

We succeeded in achieving the expected results. The information gathered at this stage of the monitoring not only helped to prepare this part of the report, but also were useful in preparing and implementing the next stages of the monitoring.

5.1. Basic components of ministerial internal policies in the field of the conflict of interest

Let's begin with the most formalised activities of the ministries in the field of the conflict of interest. As we already know, in Poland several acts of law are in force that contain some provisions intended to protect public administration from conflict of interest situations and their negative effects. Activities of all government offices, including ministries, must by based on and limited by the regulations. But they themselves can also introduce and develop their own, internal regulations, and we wanted to get from them information on these solutions.

The majority of the ministries declared that they had at least several documents, mainly ordinances and rules of procedure, that were more or less related to the problems of the conflict of interest. What's interesting, the ministries of justice, culture and national heritage, and internal affairs answered that they had no such internal documents.

The answers could mean that the respondents did not see the existing internal regulations (even when they were obligatory) as part of an infrastructure of protecting from negative effects of the conflict of interest. They could also result from a mistake or negligence on the part of the respondents. But the latter explanation is less probable, e.g. because, as shown by the letters exchanged with the ministries, their officers are usually aware of the existence of measures helping to counteract the conflict of interest: similar answers from many of them indicate that they are generally aware of the problem. What's

more, it is hard to suppose that, for example, the Ministry of Internal Affairs, being one of the most active ministries in the field of counteracting the conflict of interest (at the time of the survey, a relevant internal policy was under preparation in the ministry), would simply overlook regulations or documents helpful in combating the problem. We should rather assume that **some standard documents – such as e.g. ordinances concerning procedures of decision-making on public tenders – were not reported in view of the presence of other measures that are less general in nature, and dedicated specifically to counteracting the conflict of interest.**

Anyway, **in most cases, the instruments reported by the ministries were standard regulations in the form of ministerial ordinances, ordinances of director general or rules of procedure that are required by an act of law or other higher legal act, as well as by ordinances issued by the Prime Minister.**

The most commonly reported measure was the ordinance of the Prime Minister no. 70 of October 6, 2011, on the guidelines for observing the principles of the civil service and on the ethical principles for the civil service corps[81] **and the ordinance on dealings with entities performing professional lobbying activity.**

5.1.1. The ordinance of the prime minister no. 70 or the so-called "ethical ordinance"

The ordinance of the Prime Minister on the guidelines for observing the principles of the civil service and on the ethical principles of the civil service corps sets forth, as suggested by its title, the general standards for activities of public officers or civil servants. The document contains many crucial provisions that are important in limiting the risk of the conflict of interest.

The first chapter of the "ethical ordinance" contains a list of the principles of the civil service that all public servants undertake to observe by signing special declaration when they take their posts. In general, the majority of the principles can more or less protect public officials and institutions from conflict of interest situations.

In particular, the following principles should be cited: the principle of legalism and the requirement to promote citizens' confidence in the state; the principle of impartiality; the principle of openness and transparency, of professionalism, of rational management of public funds, of open and competitive recruitment for public administration posts. These are the principles that must always be violated by public officers who in situations of the conflict of interest in their decisions are guided by considerations other than the public good, such as their private or family interests or the interests of particular groups. Then, their actions will be non-rational, partial, non-transparent and non-professional. As a consequence, their decisions will threaten the idea of democratic legal state and the confidence of citizens in its bodies.

81 M.P. no 93, item 953

The ordinance also illustrates how the principles should be implemented in practice. For example, civil service officers are forbidden to accept additional (i.e. unrelated to their responsibilities) gains for performing their work, seek additional employment (they can do it only when the additional job has no negative effects for the performance of their official duties and is approved by their superiors). According to the principle of openness and transparency, public officers are required to give information on the methods and results of their work, and on decisions that they take. Decisions should be unambiguous, clearly and properly justified, and understandable to the interested parties. These are valuable guidelines in the context of counteracting the conflict of interest.

Openness and transparency of decision-making processes form the best guarantees that the decisions will reflect the public interest rather than other interests that are at odds with the public interest. In addition, only then the decisions can be subject to social (and not only internal or political) control and become really accountable in the full sense of the word.

According to the principle of professionalism, public officers are required to be familiar with (and accept that their knowledge in this field will be verified) the principles of the civil service and ethical rules, and to use them in practice. Cases of breaking the rules, when public officers fail to perform their official responsibilities or exceed their competences, are subject to disciplinary procedures.

The second chapter of the "ethical ordinance" presents six principles for the civil service corps: worthy behaviour, public service, loyalty, political neutrality, impartiality and reliability. As with the first list, virtually all the principles can be useful in preventing conflict of interest situations. But two of them play crucial role – the principle of political neutrality and the principle of impartiality. The first of them means for public officers, among others, the ban on manifesting political views and supporting initiatives of political nature, as well as requirement to keep transparent their relations with persons holding public functions of political nature. The principle protects public officers from political influence and the resulting possible conflict of interest situations. **But the most important is the principle of impartiality that is defined in the "ethical ordinance" by a direct reference to the notion of the conflict of interest. It should be noted that the principle means not only that public officers must not be in actual conflict of interest situations. To allow a suspicion to arise that while performing their duties, public officers could face a conflict between private and public interests, is enough to be guilty of breaking the rule.**

The provisions of the ordinance enumerate typical situations where it is impossible to remain impartial, for example when a public officer takes an additional job interfering with his or her official duties, succumbs to a pressure, prefers one party in an administrative procedure. What's interesting, also distancing oneself from figures publicly known from their political, business, social or religious activity is seen as an important condition, based on the otherwise right intuition that such contacts can in fact involve a risk of supporting not only specific views, but also groups that are usually represented by such figures – and that would mean a possible situation of conflict between public and private interests.

5.1.2. Regulations concerning contacts with lobbyists

The second measure, slightly less commonly mentioned by the ministries, were ordinances (usually issued by directors general) on the procedures used when contacting entities performing professional lobbying activities. In connection with a policy to counteract the conflict of interest, such regulations were reported by the Ministry of Health, the Ministry of Education and the Chancellery of the Prime Minister. Other ministries, when answering the question, referred directly to the Act on lobbying in the law-making process[82] (although in theory, every ministry should have also an internal regulation on the subject).

Incidentally, it is worth noting that none of the answers received by us mentioned the ordinance of the Prime Minister on declaring interest in the works on drafts of normative acts and on basic assumptions for drafts of legal acts of 2011[83] that forms the basic implementing regulation to the lobbying act. It would seem that if the respondents agree that lobbying regulations form an important part of the system of counteracting the conflict of interest, then at the operational (ministerial) level the above mentioned ordinance or another implementing regulation defining the procedure of public hearings on draft regulations[84] will be seen by them as more pertinent that the act itself. But leaving the matter aside, let's focus on the internal regulations reported by the three government institutions.

Regulations concerning contacting professional lobbyists only indirectly relate to the issues that we are interested in. Of course, contacts with such entities can always be a source of potential conflict of interest situations, but the mentioned regulations are of purely formal nature and in most cases form no part of a broader institutional strategy or policy (that is anyway lacking in most ministries) to counteract the conflict of interest.

The "lobbying ordinances" reported by all the three government institutions (i.e. two ministries and the Chancellery of the Prime Minister) were prepared as documents establishing an internal unit (or units) responsible for registration and coordination of contacts with lobbyists, the binding procedure for public officers in such situations and the methods of registering, documenting, and reporting the contacts. In this respect, all of them are similar. The differences between them derive from how detailed they are, and this in turn can impact their effectiveness, also in relation to conflict of interest situations.

The simplest in its form is the ordinance form the Chancellery of the Prime Minister[85]. It describes the types of contacts that can be made by lobbyists with public officers (such as declaring the interest in works on the draft of a normative act, motion for starting legislative initiative, presenting opinions, or proposal to have a meeting). According to the ordinance, the employees of the Chancellery are required to document meetings in memorandums of a defined form. The unit responsible for coordinating contacts with lobbyists is the Legal Department of the Chancellery that can transmit particular matters

82 O.J. 2005 no. 169 item 1414
83 O.J. no. 181 item 1080
84 O.J. 2006 no. 30 item 207
85 The Ordinance no. 20 of the Head of the Chancellery of the Prime Minister of December 1, 2006, on the procedures in the Chancellery of the Prime Minister concerning entities performing lobbying activity.

to other organisational units of the Chancellery. But its main responsibility is to register meetings, gather documentation, formally verify the statements from lobbyists, as well as to check their proper registration (that is a precondition for starting professional lobbying activity). The department is also responsible for preparing annual reports. In general, the ordinance contains no original or special measures related to possible conflict of interest situations in contacts between public officers and lobbyists.

Also the ordinance of the director general in the Ministry of National Education is not too detailed nor it contains any specific provisions concerning the conflict of interest[86]. But one feature makes it different from the document from the Chancellery of the Prime Minister: the processing of applications from lobbyists, as well as organising meetings, documenting them etc. from the beginning remains within the competences of "proper departments" and it is them that are fully responsible for the matter. The task of the Organisational Bureau of the Ministry is only to archive and perform summary analyses of the documents from the contacts. It seems that such "decentralised" model can be less effective to control the lobbying activities in the ministry and the related possible conflict of interest risks than the former mechanism where one main organisational unit in the ministry deals with all the contacts with lobbyist and can only delegate its powers to other sections or units. In this field that requires prudent and controlled action, centralising powers in one organisational unit can be more effective, while dividing the responsibility for contacts with lobbyists among different individual departments can lead to a situation where no uniform standards are used throughout the ministry. Every department, outside the general guidelines contained in the ordinance, will develop its own methods to deal with lobbyists, and thus also with conflict of interest situations.

The most detailed provisions concerning contacts between the institution and lobbyists are contained in the ordinance of the director general in the Ministry of Health[87]. At first look, the ordinance is similar to the two former ones, but it has several distinctive features. First of all, the regulation has a broader scope. The ordinance from the Ministry of Health covers not only professional lobbyists (i.e. those who are registered on the list in the Ministry of Administration and Digitization), but also all stakeholders trying to influence the decision-making processes. From the perspective of preventing the conflict of interest, it can mean a broader impact of the regulation. For example, the public officers from the Ministry of Health have to be vigilant to the problem, when contacting not only pharmaceutical companies or medical equipment manufacturers, but also patient organisations, local governments, hospitals etc., representatives of which can also be seen as persons pursuing lobbying activity.

Another feature that differentiates the ordinance from the other ones is a clear definition of persons who are allowed to contact lobbyists, namely: the minister, secretaries and undersecretaries of state, the director general, or directors of organisational units of the

[86] The Ordinance no. 8 of the Director General in the Ministry of National Education on the procedures for employees of the Ministry of National Education concerning entities performing lobbying activity.

[87] The Ordinance no. 2 of Director General in the Ministry of Health of March 14, 2006, on procedures for the employees of the Ministry of Health concerning activities undertaken by parties performing professional lobbying activity and non-registered parties performing activities related to professional lobbying activity.

ministry. Te persons may delegate their powers to contact lobbyists in writing to lower-rank employees of the ministry. The requirement at least potentially can limit the risk of unfair lobbying and related risks of the conflict of interest, for it positively narrows (in contrast to the regulation introduced in the Ministry of Education) the group of public officers entitled to contact lobbyists and creates tighter control over the relations. Additionally, the officers holding more prominent posts are under tighter social control that also (at least potentially) should limit the risk of conflict of interest situations or other negative effects of lobbying activity. The ordinance of the Ministry of Health strengthens control over the contacts with lobbyists also by unambiguously requiring public officers to prepare memorandums not only from direct meetings, but also from telephone talks.

And finally, one more feature of the "lobbying ordinance" from the Ministry of Health worth noting is the detailed procedure for organising meetings between representatives of the ministry and lobbyists. The procedure is highly centralised with the main role of the coordinating unit – the Bureau of the Director General. Its officers decide to whom a question, an application for meeting or other motion will be directed. They are present during the meetings with lobbyists and are required, independently from similar requirement from persons conducting the meeting, to prepare their own information for the press bureau of the ministry.

The solution is clearly intended to protect from unfair lobbying (as well as from related possible conflict of interest situations) not only public officers, but also the whole institution, for at least in theory, the provisions can help the ministry to manage a crisis situation where its employee is subject to pressures from groups of interest.

Of course, we analyse only the formal and legal aspects of the ordinances. The question remains how the solutions work in practice. **But nevertheless, the three examples described above show how different in their approach and in the level of detail can be internal regulations concerning contacts between ministerial employees and lobbyists that can possibly lead to conflict of interest situations. The very fact that not all ministries mentioned in their answers similar regulations shows differences in their approach to the problems within their organisational culture.**

5.1.3. Other 'typical' legal instruments protecting from the conflict of interest mentioned by the ministries

In their answers to our application, the ministries also reported other solutions supporting the control over the conflict of interest (but not dedicated solely to the problem), such as **internal regulations and rules of procedure concerning participation of public officers in tender commissions.** Usually, they are based on the Act on public procurements (APP)[88] that (as was already mentioned in the discussion on legal framework for the control of the conflict of interest) contains certain requirements concerning members of the commissions

[88] O.J. 2004 no. 19 item 177

(such as prohibition of having family connections with prospective contractors) in order to guarantee the objectivity of the tender procedure.

Such detailed provisions can be found, for example, in the Ordinance no. 23 of the Director General of the Ministry of Administration and Digitization from 2012[89]. It is an extensive, almost 50-page document describing in detail every step to be taken during tender procedure realised in the ministry. The ordinance concerns both procedures covered by the Act on public procurements, and other tender procedures (not covered by the Act e.g. in view of low value of contracts). In the regulation, it is precisely defined who is responsible for particular decisions. Requirements of filing declarations by the members of commissions are repeated and described in more detail than in the Act itself. But they are not extended to situations where other tender procedures are used which can be seen as a defect of the solution (thus, persons deciding in single source tender procedures are not required to file any declarations).

Similar ordinances used as an instrument to counteract the conflict of interest were also reported by the Ministry of Foreign Affairs, while the Ministry of Health indicated that its employees are required to act in line with the "Anti-corruption guide for public officers" and the "Recommendations on anti-corruption measures during public tender procedures" – the guidelines prepared in 2010 by the Central Anti-Corruption Bureau[90]. However, reference to the documents can be seen as a relatively soft instrument, because failing to adhere to the guidelines brings virtually no consequences (at least no direct consequences, in contrast to the situation where the provisions of ordinance are violated).

Among other typical regulations mentioned in the answers to our application as enhancements for counteracting the conflict of interest, worth noting are **rules of work, procedures of recruitment and internal regulations concerning seeking additional employment by public officers.** The last ones are usually included in the rules of work of the ministries, though not without exceptions – for example, the Ministry of Infrastructure and Development or the Ministry of Administration and Digitization have separate regulations in this field. They contain, in addition to the usual requirement to seek approval from director general for additional employment, some other provisions intended as additional safeguards from possible conflict of interest situations.

For example, the Ordinance no. 29 of the Minister of Administration and Digitization on additional employment or additional paid work by a member of the civil service corps (...)[91], in its paragraph 3 states that additional employment and any additional paid work must not involve activities that are at odds with the principles of the civil service and the ethical principles of the civil service corps. And the mentioned principles, as we remember, include the definition of the conflict of

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89 The Ordinance no. 23 of the Director General in the Ministry of Administration and Digitization on awarding public contracts in the Ministry of Administration and Digitization.

90 Poradnik antykorupcyjny dla urzędników, Central Anti-Corruption Bureau, Warsaw 2012

91 The Ordinance no. 29 of the Director General in the Ministry of Administration and Digitization on seeking additional employment or additional paid work by members of the civil service corps employed in the Ministry of Administration and Digitization.

interest and quite detailed description when it can occur. In addition, the ordinance directly states that additional work must not "[...] undermine the confidence in public service, **raise suspicions as to any links between public and private interests** [...]". It can be argued that the provisions still form a relatively soft instrument of protection from the conflict of interest. Nevertheless, including the requirements in a separate ordinance referring to the discussed above ethical principles of the civil service corps and the principles of civil service that were included in a legal act of higher rank, i.e. in the ordinance of the Prime Minister, can be seen as placing an additional emphasis on the problem. Both the applicant for the approval of his or her additional employment, and the decision-maker, i.e. Director General, are told by the clear provision to analyse every such case not only in terms of the impact on public officer's official duties in the ministry, but also in terms of possible impact on his or her ability to protect the public interest, within the declared mission of both individual public officers and the whole institution. So, though the solution remains fragmentary (it concerns only the situation of seeking additional employment by public officers), it highlights the problems of the conflict of interest.

Introducing a special ordinance that highlights the issues not only helps to better control the conflict of interest situations, but also additionally supports the provisions contained in ethical principles and civil service principles. We can risk a suggestion that it would be advisable that such ordinances or at least direct references to the problem of the conflict of interest and ethical and civil service principles are a standard feature of internal regulations in all ministries, and cover also other vulnerable areas in their activities in addition to the problem of seeking additional employment by public officers.

Unfortunately, in most cases, the types of documents mentioned by ministries in their answers to our application, such as rules of work or procedures of recruitment, contained only general provisions without direct reference to the problem of the conflict of interest. In addition, the fact that not all ministries mentioned such documents as elements of their infrastructure to protect public officers and the institutions from the effects of the problem can show not that they are in fact absent, but rather that the institutions are not sufficiently sensitive to the problem. Since the regulations were not mentioned, then it can be concluded that some ministries simply saw no connection between additional employment of public officers and the conflict of interest.

5.1.4. Managerial control – the "great absentee"

The managerial control should be seen as a typical mechanism of the policy to counteract the conflict of interest. But only two ministries mentioned it in their replies to our application.

The system was introduced under the public finance reform in 2009, and more precisely, in the provisions of chapter 6 of the Act of August 27, 2009, on public finances[92]. The regulation

92 O.J. 2009 no. 157 item 1240s

defines managerial control as "[...] all activities undertaken to secure implementation of aims and tasks in a way that is legal, effective, cost-effective, and timely". Among the aims of the mechanism the act mentions compliance of activities of public finance units with the provisions of law and internal procedures, as well as risk management.

To implement and perform managerial control in public institutions, including ministries, is the responsibility of ministers. They are required, among others, to prepare activity plans and to file annual reports called "declarations on the state of managerial control".

The managerial control forms an instrument helping organisations (ministries and other public institutions, including local government units) to "learn" and "self-improve"[93]. The system was designed not as a traditional mechanism to "control" or "manage" organisations, but as a tool strengthening the powers and responsibilities of their employees, as witnessed by the mechanism of preparing the declarations on the state of managerial control that should also be based on information gathered directly from employees (e.g. through questionnaires, discussions etc.). Andrzej Szpor who analysed the system says that "[...] **managerial control is in fact a special organisational solution that is introduced, maintained and refined in an organisation in order to enhance its transparency – both for those who manage it, and for those who are employed in it, as well as for those who, for various reasons, are interested in its proper operation**"[94].

The general framework of managerial control set in the Act on public finances is supplemented by a special communique from the minister of finance describing its standards[95]. It sets forth in detail the priorities of the procedure. These are:

- **internal environment** – the issues of ethical values, professional competencies of employees, organisational structure and delegating powers within the institution;
- **aims and risk management** – defining aims and tasks within the organisation, as well as measures to achieve them, including factors threatening its mission;
- **control mechanisms** – guidelines for performing control, supervising and auditing activities, as well as the issues of protecting institutional resources and detailed mechanisms of control in the field of financial and economic operations;
- **information and communication** – the issues of external and internal communication;
- **monitoring and evaluation** – a set of standards for the very procedure of managerial control – monitoring, self-evaluation, auditing etc.

From our perspective, the most important is the first point covering the ethical issues.

Another document issued by the minister of finance – ***The guidelines for preparation of the declaration on the state of managerial control***[96] – contains a suggested catalogue

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93 A. Szpor, 2012,Pojęcie kontroli zarządczej (wybrane aspekty) Centrum Rozwiązywania Sporów i Konfliktów przy WPiA UW (manuscript)

94 Ibidem.

95 Communique no. 23 of the Minister of Finance of December 26, 2009, on managerial control standards for public finance sector.

96 ***The guidelines for preparation of the declaration on the state of managerial control***, Ministry of Finance, Warsaw 2011.

of irregularities (weaknesses) that should be identified and dealt with by the managerial control. The list includes a paragraph on complying with and promoting the principles of ethical behaviour that mentions corruption and conflict of interest situations – „both within the unit, and in relations with external entities".

The guidelines are not of obligatory nature, but they contain an explicit suggestion that conflict of interest situations should fall under the procedure. It also seems quite natural, in view of the general concept of managerial control. Thus, the fact that only two ministries mentioned the instrument in their answers to our application shows that, unfortunately, it is not used (contrary to its very logic and suggestions from the Ministry of Finance that supervises the mechanism) in ministries as an instrument of the policy to counteract the conflict of interest. And it is too bad, because the procedure could link different particular activities undertaken within institutions in order to protect them from negative effects of conflict of interest situations with the broader context of organisational culture and management model.

5.2. Anti-corruption policies and other special measures mentioned as instruments of policies to counteract the conflict of interest

Now, we will discuss several examples of special measures dedicated to the conflict of interest that were reported in response to our application. The group includes specific instructions and rules of procedure concerning directly the problems of the conflict of interest, anti-corruption strategies, and comprehensive solutions for quality management that include systems to counteract corruption risks (so-called SCCT).

But in the beginning, it should be noted that quality management strategies and systems concern the problem of the conflict of interest to a lesser extent – however surprising the statement may seem. After all, the conflict of interest remains, in particular in public institutions, a common, if not the most common, source of corruption and other irregularities[97]. But in the comprehensive documents describing anti-corruption policies of different ministries the notion of the conflict of interest is often either not mentioned at all, nor defined or discussed, or is covered indirectly, with the focus on more or less particular situations where the conflict of interest can arise. This weakness is present e.g. in the Integrated Management System of the Ministry of Economy[98].

In this way, an important aspect of ant-corruption activities related to the conflict of interest is overlooked. If a strategy or a program fails to define clearly the notion of the conflict of interest and indicate its connection with corruption, then the promoters of ministerial anti-corruption policies and public officers that are targeted by various information and education activities have no clear idea of mutual connections between the two phenomena.

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97 See C. Trutkowski, P. Koryś, Przeciwdziałanie korupcji w praktyce Polityka antykorupcyjna w polskiej administracji publicznej, The Stefan Batory Foundation, Warsaw 2013, pp. 103-111, T. Potkański, Konflikt interesów [in:] C. Trutkowski (ed.), Przejrzysty samorząd. Podręcznik dobrych praktyk, Warsaw, Scholar, 2006, pp. 74-75.

98 The Policy of Integrated Management System of the Ministry of Economy, Ministry of Economy, Warsaw 2012 (updated version).

In the case of SCCT modules, the situation is the more surprising because the guidelines for their development include a very clear description of the problems of the conflict of interest and their connection with the corruption risks. Based on them, algorithms for activities of public officers or for evaluations of corruption threats in particular situations and decision-making procedures (such as decisions in public tender procedures) should be developed.

5.2.1. Anti-corruption strategies and systems

From a purely formal point of view, relatively comprehensive internal framework policies covering also the problems of the conflict of interest are present in the ministries that introduced some anti-corruption programs. But in the answers received by us, only the Ministry of Agriculture and Rural Development mentioned its anti-corruption strategy, developed in 2008. The Ministry of Economy, as we already mentioned, has an Integrated Management System that includes a certified SCCT module. But for the reasons that will be discussed later in the report, the ministry failed to report the system as a part of its infrastructure to counteract conflict of interest situations.

5.2.2. Anti-corruption strategy in the ministry of agriculture and rural development

The anti-corruption strategy of the Ministry of Agriculture and Rural Development gives the impression of a document that very comprehensively deals with the problem. Unfortunately, when analysed in more detail it proves to be very sketchy. The first stage of its preparation was a diagnosis of the situation and analysis of such typical areas as law-making processes in the ministry, issuing administrative decisions (in particular permissions, licences, and specific grants), relations with stakeholders, internal control procedures, or ethical attitudes of employees, and their potential reactions to situations where the risk of corruption arises.

Next, in the form of general graphs, the threats that can be connected with the areas were briefly presented. Among those that can be particularly interesting in the context of the conflict of interest, were for example, threats connected with pressures from interest groups to influence decisions or legal solutions, unlawful lobbying, insufficient openness in activities of organisational units of the ministry, and insufficient training of public officers or favouring some entities that can be enhanced by vague decision-making procedures (e.g. in tenders that do not fall under the Act on public tenders), breaking the "many-eye" principle, or different actions taken by public officers in similar situations. But the ministerial strategy fails to describe the risks in more detail. They obviously are linked with the problem of the conflict of interest, but the document contains no definition of the notion and fails to connect it with the problem of corruption, or even to refer to other documents, analyses, guides (e.g. the ones prepared by the Central Anti-Corruption Bureau), or the already described Ordinance no. 70 of the Prime Minister, which shows that the strategy have not been updated since 2008.

Apparently, also its implementation has not been evaluated, because the Ministry of Agriculture and Rural Development sent no report on the subject and described in its reply no activities related to its implementation. The information also cannot be found in the Public Information Bulletin of the ministry. Thus, it cannot be assessed whether the projects described in the strategy have in fact been implemented. To some extent, it can be assumed that they have been implemented, because most of them consisted in either introducing internal regulations (e.g. ordinances of the Director General), or conducting trainings, and several of them were in fact led, as reported in the reply from the ministry.

To sum up, it could be expected that the Ministry of Agriculture, having its own anti-corruption strategy, would apply a systemic approach to the problem of the conflict of interest. But this is not the case. The document itself is very sketchy, contains no definition of the conflict of interest, refers to no other important documents nor to any analysis of the connection between the conflict of interest and corruption. No information was also provided on how the strategy was implemented. What's more, the anti-corruption strategy had already been subject, before our report was prepared, to more or less thorough analyses[99] that also had indicated similar weaknesses and had reported that no signs of real implementation of the policy could have been detected.

5.2.3. The integrated management system in the ministry of economy

Unfortunately, the situation is similar in the case of the Integrated Management System in the Ministry of Economy, that also includes a Strategy to Counteract Corruption Threats (IMS SCCT). To some extent, from the perspective of our main area of interest – the polices intended to counter the conflict of interest risks and their negative effects – the situation is even worse, because answering our application the Ministry of Economy failed even to report IMS SCCT as a measure that could be useful in counteracting the conflict of interest (sic!) in spite of the fact that it was a certified system (in contrast to the anti-corruption strategy from the Ministry of Agriculture).

From the analytical point of view, it does not matter much whether the ministerial officers who drafted the answer forgot about the document, intentionally ignored it, or failed to report it for some other reasons. What matters is the very fact that it was ignored which can indicate one of the three situations: either the system lost its certificate and ceased to have any practical role in the functioning of the ministry[100], or its role is purely formal, or it lacks some crucial features such as an analysis of the connection between the risk of corruption and conflict of interest situations. But in view of the fact that the Ministry of Economy was the first ministry to introduce the issue of the control over corruption risks to its management policy, we will, as an exception, discuss the system despite the fact that it was not mentioned in their reply that we received.

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99 Zob. Polityka antykorupcyjna Ocena skuteczności polityki antykorupcyjnej polskich rządów prowadzonej w latach 2001–2011, the Stefan Batory Foundation, Warsaw 2011.

100 Perhaps, this explanation should be dismissed in view of the ministerial reply.

Some indications of why the IMS SCCT was not mentioned in the reply from the ministry can be found in the content of the document itself, and in other analyses of the document from the past[101]. SCCT of the Ministry of Economy is generally focused on three elements:

- **developing appropriate organisational culture that would foster counteracting corruption** – among others, through relevant standards and regulations concerning contacts with the external world, introducing the principle of "open door" (e.g. where the Director General of the ministry together with his or her employees meets clients coming with complaints and petitions), anti-mobbing regulations and procedures for action in corruption situations, developing a mechanism of refining the IMS SCCT (e.g. through gathering opinions and suggestions from employees);
- **introducing the system of process cards** (or special forms to document the official proceedings), covering issues such as: investigating complaints and petitions, execution of agreements, preparation of drafts of legal acts, issuing administrative decisions, granting subsidies;
- **procedure of corruption risk assessment** – i.e. reviewing all types of decision-making processes in the ministry and identifying their stages where corruption can take place, and the methods to limit the risks (e.g. through intensified supervision), as well as actions when it actually takes place.

In addition, the system also establishes a two-person team of ethical advisers with the task to give support to employees in risky situations. After reading the IMS SCCT, the first impression is that it contains no reference to the notion of the conflict of interest at all, though it could be reasonably expected in view of the fact that the general guidelines for SCCT modules recommend detailed analysis of corruption risks connected with possible conflict of interest situations[102]. Moreover, at the final stage of implementation of the government anti-corruption strategy for 2002-2009[103], trainings for public officers were led that included presentation of a well-prepared models of corruption situations based on discussions between experienced trainers and public officers that focused on the conflict of interest[104]. The trainings showed that **the limitation of the number of conflict of interest situations can be the best safeguard against corruption that can result from them. Public officers should be trained in such a way so that they can stop a conflict of interest situation (which is a process) in time and exit it, protecting themselves and the public interest.** But the strategy of the Ministry of Economy seems to ignore this aspect.

Furthermore, the fact that the conflict of interest was not duly accounted for in the IMS SCCT of the Ministry of Economy is also witnessed by the results of the audit of the system,

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101 See C. Trutkowski, P. Koryś, Badanie Systemu Przeciwdziałania Zagrożeniom Korupcyjnym w Ministerstwie Gospodarki, the Stefan Batory Foundation, Warsaw 2012

102 See C. Trutkowski, P. Koryś, Przeciwdziałanie korupcji w praktyce Polityka antykorupcyjna w polskiej administracji publicznej..., p. 57-99

103 G. Makowski, J. Zbieranek, J. Gałkowski, Ocena stanu realizacji I i II etapu rządowego programu zwalczania korupcji – Strategia Antykorupcyjna za lata 2002–2009, [in:] Korupcja i antykorupcja, Wybrane zagadnienia, ed. J. Kosiński, K. Krak, A. Koman, the Central Anti-Corruption Bureau, Warsaw 2012.

104 T. Potkański, Konflikt interesów..., p. 75

commissioned by the ministry and led by the Stefan Batory Foundation in 2011[105]. The audit showed that the strategy not only fails to resolve the problems related to conflict of interest situations, but also creates itself additional ones. For example, in the report from the audit it was indicated that the ministerial teams to identify risks are threatened by conflict of interest situations. In practice, the teams included only employees from the units engaged in a given decision-making process. Only sporadically they were joined in their proceedings by public officers from outside the units, representatives of the Director General or external experts. In this way, within the closed group of public officers engaged in a given decision-making process, any possible conflicts of interest or other malpractices, if they occur, can be easily concealed. Our Foundation experts also analysed the risk assessment cards – the fact that in the report there is no mention whether and how the documents took into account conflict of interest issues as one of the risk factors shows that the problem was not seriously considered.

In addition, the ethical adviser team appeared to be poorly recognisable by ministerial officers, and their role was not defined in enough detail. Ministerial officers interviewed during the audit were not sure whether and when they can contact the team, if they suspect that a conflict of interest situation may arise.

We mention the audit performed by the Stefan Batory Foundation for the Ministry of Economy because the fact that answering our application, the ministry failed to send their own anti-corruption strategy, is a sign that it is not embedded in the awareness of ministerial officers, and probably – if still in force – it contains the same mistakes, while it could be expected that documents like the strategy should form a base for effective policy in the field of the conflict of interest in the administration. But unfortunately, neither the IMS SCCT in the Ministry of Economy, nor the anti-corruption strategy form the Ministry of Agriculture and Rural Development cannot play such role.

5.2.4. Anti-corruption procedures in the ministry of national defence

Specific measures of systemic nature are in place in the Ministry of National Defence. Though the ministry has no separate document (a strategy, a program, or a certified system) concerning its policy to counteract corruption and negative effects of the conflict of interest, in addition to typical measures, it has original, internal legal and structural solutions. For example, the ministry has its own ethical code for both public officers and professional soldiers, as well as a specific solution for the latter group – the Code of Honour of Professional Soldier of the Polish Army. Both documents contain provisions to prevent the conflict of interest. But a special measure that should be mentioned in this point is the Bureau for Anti-Corruption Procedures, being an organisational unit of the Ministry of National Defence.

105 C. Trutkowski, P. Koryś, Badanie Systemu Przeciwdziałania Zagrożeniom Korupcyjnym..., p. 20, 26

According to the organisational rules of procedure of the ministry, the mission of the Bureau is to prevent corruption situations in the ministry.[106]. The responsibilities of the bureau are mainly of analytical nature. The tasks of the bureau include identifying corruption threats and mechanisms (including those resulting from weaknesses in the existing decision-making procedures), developing solutions and monitoring their implementation, reviewing and consulting matters related to corruption, supervising purchases made for the ministry, reviewing drafts of legal acts as to their transparency and possible risk of corruption, organising trainings. There is no direct reference to the conflict of interest in the description of the tasks of the bureau, but its mandate is so broad that it is virtually impossible that the unit ignores the issue (anyway, it was mentioned in the reply to our application). It is a unique unit of this type that is so deeply embedded in the structures of the ministry.

5.2.5. Various procedures in the ministries of health and foreign affairs

In the group of the ministries that have at least rudimentary solutions that can be seen as comprehensive measures to limit the risk of the conflict of interest, the Ministry of Health and the Ministry of Foreign Affairs can be included.

In comparison to other ministries, the Ministry of Health has relatively many instruments useful in counteracting the conflict of interest. In reply to our application, in addition to typical solutions, such as the already described Ordinance no. 70 of the Prime Minister and relatively detailed ordinance concerning contacts with lobbyists that also was discussed, the Ministry of Health mentioned another document concerning meetings with external clients, titled ***Procedure for receiving external clients,*** that contains guidelines for contacts between ministerial officers (employed mainly in the Drug Policy Department and in the Refunds and Analytical Division) and stakeholders that support particular solutions (concerning mainly refund applications filed by pharmaceutical companies). The document deals mainly with organisational matters, such as the requirement to arrange meetings in advance or to record conversations during such meetings. It also contains provisions intended to support coordination of activities performed by all units engaged in contacts with external clients and by the Bureau of Director General. Thus, the procedure is an extension of the already discussed "lobbying ordinance". But the Ministry of Health has at its disposal also other instruments supporting management of risks connected with the conflict of interest.

At this point, we have to go beyond what was sent to us in the reply to our application, admitting that we are again rather surprised that the ministry failed to present the full picture, because in addition to the ***Procedures*** the Ministry of Health has many other solutions forming a kind of organisational policy. For example, the Department of Health Policy and the Department of Mother and Child in the Ministry of Health use a special rules of procedure describing the proceedings of the competition commission that decides on healthcare programs financed from ministerial resources and supervised by

[106] Organisational Rules of Procedure of the Ministry of National Defence (MND Official Journal 2006 no. 21, item 270 with amendments)

the department[107]. The rules of procedure contain many provisions intended to prevent possible conflict of interest situations threatening the members of competition commissions, as well as a samples of declarations of impartiality and confidentiality that are filled by the members of the commissions and attached to the protocol from their proceedings. Similar requirements concern members of commissions deciding in offer competitions for highly specialised health services. In addition, the ministry has the Unit to Counteract Fraud and Corruption in Healthcare – an organisational unit that is to some extent analogous to the anti-corruption bureau in the Ministry of National Defence[108]. The responsibilities of the unit include diagnosing forms and areas of corruption risks or presenting recommendations in the field of ministerial anti-corruption policy. The unit is also engaged in law-making processes, evaluating drafts of normative acts as to related corruption threats. Thus, the unit naturally must have also to do with the problem of the conflict of interest. It is hard to explain why the unit was not mentioned in the reply to our application. Another instrument that was not mentioned is the post of ethical adviser responsible for "reviewing and initiating activities in the field of counteracting and preventing corruption in the ministry"[109]. Last but not least, the reply also contains no reference to the Act on healthcare services financed from public resources (described in our legal expert opinion)[110]. Under the act, the Agency to Evaluate Medical Technologies (AOTM) was established that performs tasks related to evaluating various healthcare services and reviews government programs in this field. The body takes part in decision-making processes that can give rise to considerable financial consequences both for the state, and for medical service providers, or entities supplying resources needed to provide the services. Thus, the area of operation of the agency is exceptionally vulnerable to corruption and conflict of interest risks. That is why, under the act, the agency has its Transparency Council with consultation and reviewing powers concerning the decisions taken by the agency. As was already mentioned in the legal expert opinion, regulations concerning the body contain probably the most detailed requirements in the whole Polish law concerning filing declarations of interests (to some extent, they could form a model solution for other public offices).

This and several other measures and solutions implemented by the Ministry of Health under their anti-corruption policy were not mentioned in the reply to our application for access to public information. It is surprising that ministerial officers could overlook so many measures. Perhaps, they were not reported as instruments to counteract the conflict of interest because they are scattered and fail to form one comprehensive document describing the anti-corruption policy of the ministry. We mention them in our report because the situation is analogous to the case of the Ministry of Economy that in their reply to our application failed to give information on their IMS SCCT system. The situation can only be

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107 Appendix no. 2 to the Ordinance of the Minister of Health of March 11, 2010, on proceedings to prepare and implement health programs.

108 The Ordinance of the Minister of Health of October 4, 2006, on establishing the unit to counteract fraud and corruption in healthcare.

109 http://www.mz.gov.pl/ministerstwo/urzad/przeciwdzialanie-korupcji/dzialania-antykorupcyjne

110 O.J. 2004 no. 210 item 2135

seen as another sign of a chaos in this field, as well as of the fact that the conflict of interest issues are not properly embedded in the organisational culture of public offices.

The second example that we will discuss in this chapter is the Ministry of Foreign Affairs. In the reply to our application it was indicated that not long before our monitoring started, the ministry began to develop measures that in the future can become its internal anti-corruption policy, covering also the problems of the conflict of interest. It should be noted that in addition to standard documents, more or less related to the problems of the conflict of interest, the ministry has its own specific solutions based e.g. on the provisions of the Act on foreign service[111] or the ordinance of the minister of foreign affairs of 2002 on publishing scientific and journalistic texts, and publicising information in mass media, as well as accepting gifts and other benefits of similar nature by the members of the foreign service. The ministry also has the post of Ministerial Plenipotentiary for Managerial Control and Anti-Corruption Procedures whose tasks include managerial control issues (as indicated by the title), ethical, anti-corruption and conflict of interest issues – the last notion is explicitly mentioned in par. 2 pt. 1 of the ordinance[112]. The broad spectrum of responsibilities of the plenipotentiary also includes reviewing drafts of normative acts as to possible corruption threats, consulting internal control activities, initiating trainings and information activities. But the most important information sent by the ministry relates to the regulations requiring filing declarations of interests that were under preparation at the time when the monitoring was performed. The document should contain a definition of the conflict of interest, and a description of risk areas and negative effects of the conflict of interest. It should also be accompanied by internal regulations requiring all ministerial officers to sign a declaration that they will disclose any conflict of interest situations (when the survey was led, the text of the declaration was still not ready).

5.2.6. The ordinance on the conflict of interest of the ministry of treasury

In the context of the solutions introduced in the ministries of health and foreign affairs, an interesting, though rather incomplete and fragmentary instrument can be mentioned from the Ministry of Treasury. Since 2013, the ordinance no. 30 of the minister of treasury is in force on the "Guidelines for action in situations of corruption, the conflict of interest or other behaviour that is undesirable in the Ministry of Treasury"[113].

The ordinance contains, among others, definitions of undesirable behaviour (the notion covers, in addition to all actions breaking the law or internal regulations of the ministry, also "unauthorised" collecting information by ministerial employees on privatisation processes or economic situation of entities supervised by the ministry), corruption and the conflict of

111 O.J. 2001 no. 128 item 1403

112 The Ordinance no. 15 of the Minister of Foreign Affairs of June 1, 2012, on establishing the post and on responsibilities of the Plenipotentiary for Managerial Control and Anti-Corruption Procedures (MFA Official Journal of July 15, 2012, item 15).

113 The Ordinance no. 30 of July 25, 2013, of the Minister of Treasury on guidelines for action in situations of corruption, the conflict of interest or other behaviour that is undesirable in the Ministry of Treasury 25.

interest. The last definition reads as follows: the conflict of interest is "a situation of double loyalty to public and private interests, where an employee of the ministry, when considering or deciding a matter from his or her field of responsibility, remains or remained in such personal, professional, economic or other relations with the person or the entity interested in the matter that can raise reasonable doubts as to his or her objectivity or impartiality". It is an interesting account of the problem, helping to react to various conflict of interest situations.

According to the ordinance, the minister and the director general are required to supervise and monitor implementation of its provisions. The latter is required, among others, to react to conflict of interest situations, to initiate immediate control activities, to notify enforcement agencies, to analyse risks, and to prepare remedies. A third person directly engaged in implementation of the ordinance is the director of the Bureau of Control who coordinates activities in the field of counteracting corruption, the conflict of interest and other undesirable behaviour. The bureau also maintains the register of risky situations reported. Under the ordinance, also a special post was created for an officer responsible for reacting immediately to problems that arise, and advising employees that are e.g. in a conflict of interest situation. The officer should also prepare definitions of different posts so that competencies of various employees do not increase the risk of irregularities. It is a function similar to ethical advisers, though not titled as such.

The ordinance emphasises the importance of the principles of the ethical code of the civil service corps, requires employees to inform on and document the situations of risky behaviour, confirms the need to use official procedures. An interesting provision is the paragraph 10 of the ordinance that requires ministerial officers to conduct any talks with stakeholders (such as investors or beneficiaries of public support granted by the ministry) only in the presence of two other ministerial officers.

In a conflict of interest situation, employee is required to advise the third party about inadmissibility and consequences of such situation, if possible gather evidence and prepare memorandum that is registered in the Bureau of Control. The ministry also has a special e-mail address where reports on irregularities can be sent.

In general, the procedures described in the ordinance of the minister of treasury are relatively concise and cannot be too helpful for employees that want to exit a conflict of interest situation. If the ministry decided to introduce such internal regulation, they could go a bit further and apply more sophisticated measures, such as special information line, methods for anonymous reporting of irregularities, or solutions to protect whistle-blowers (persons who, in good faith, report irregularities, corruption and conflict of interest situations). Perhaps, in the future the regulation will evolve into a full-blown system.

5.2.7. Declarations of interests

Finally, we should mention one more "special" measure – the declarations of interests. We use the quotation marks for two reasons. The first reason is that, as was already mentioned

on several occasions in this report, in some selected areas declarations of interests are a standard instrument and are obligatory mainly for members of public tender commissions, but are also required by a couple of other regulations, e.g. regulations concerning performing control activities[114]. The second reason is that the declaration is such a simple (if not trivial) tool that it can hardly be seen as a special solution. Nevertheless, in the context of the answers we received, declarations of interests should be treated as something special, because outside the field of public tenders they are used sporadically.

It should be also noted that our respondents had no clear idea what a declaration of interests is. Thus, as situations where declarations of interests are filed, they often cite the ones regulated by the provisions of the Act on civil service forbidding public officers to combine their official posts with other functions – additional employment, sitting in local government decision-making bodies, or pursuing any other activities incompatible with their official responsibilities or undermining confidence in the institutions they represent. Of course, for example, when public officer applies to his or her superior for approval for his or her additional employment, he or she has to sign a declaration that the additional employment will not interfere with his or her official duties. But the declaration usually contains no specific clauses explicitly referring to the notion of the conflict of interest. Declarations of interests were also mistakenly identified with financial disclosures required from public officers. But these are different declarations from the ones that are signed by public officers who take particular decisions or sit in various bodies, such as competition commissions, where – as witnessed by the answers received – filing declarations of interests remains a good practice of some ministries or their organisational units rather than a standard solution for all institutions or for entire areas of their operation.

The only situations (in addition to the typical ones, such as tender procedures, applying for approval for additional employment, or recruitment procedures) reported in the answers to our application concerned competition commissions under grant programs or areas specific for particular ministries. For example, in the Ministry of Treasury the declarations are filed by persons preparing analyses supporting privatisation processes. In the Ministry of Foreign Affairs declarations of interests are required from the members of commissions that award and clear grants-in-aid. In the Ministry of Agriculture, members of commissions deciding on admitting public officers to the Civil Service Corps file declarations that can to some extent protect from conflict of interest situations, but cover only the issue of family relations between members of the bodies and the applicants. But in general, the practice of filing declarations of interests is not common, though it would seem that it should be a standard measure, e.g. when decisions such as grants-in-aids (common in all ministries) are taken.

Finally, it should also be noted that even when the declarations of interests are required, no mechanisms for their verification exist. In the typical situations, such as tender commissions, the only safeguards are provisions of the Penal Code that define sanctions for

114 O.J. 2011 no. 185 item 1092.

untruthful declarations, or disciplinary procedures. What's more, also no clear regulations or standards concerning archiving and storing the declarations exist, again with the exception of those that are filed in connection with sitting in tender commissions that are simply attached to the documentation of the whole procedure. In case of other typical declarations (e.g. those filed under recruitment procedure), the situation is similar: they are simply added to the rest of documentation of a given decision-making process. Most ministries have no special registers nor statistics concerning the numbers of declarations filed.

5.3. Methods of familiarising public officers with the problems of the conflict of interest

Informational and educational activities concerning the problem of the conflict of interest were another issue mentioned in our application sent to the ministries. We wanted to learn how public officers are familiarised with the problems, how, if at all, they are informed on the possible conflict of interest situations and their consequences, and how often, if at all, training activities in this field are performed.

Unfortunately, the information that we received were not too detailed. Nevertheless, based on the answers that we received, at least two conclusions can be drawn. First, the conflict of interest plays no prominent role in information and education policies of the ministries. In the answers to the question how public officers are informed on the possible conflict of interest situations the following main activities were reported:

- information activities under the preparatory service;
- familiarising public officers with the content of the Ordinance no. 70 (when entering the post, every public officer is required to sign the full text of the document);
- trainings;
- meetings with ethical advisers;
- e-learning tools and intranet;
- other activities, usually only occasional, such as special lectures organised by bureaus of director general.

The list seems to be rich, but it was compiled by simple adding different answers received from all ministries. In none of them (at least according to the answers we received) all of the activities are performed, though they seem to be rather standard measures. What's more, not all ministries mentioned e.g. preparatory service or signing the text of the "ethical ordinance" by their employees as instruments to counteract the conflict of interest, though it would seem that the measures are indispensable.

In addition, all of the listed measures should be qualified. Thus, even if the problems of the conflict of interest are dealt with during the preparatory service (e.g. during trainings or practices in the units that are responsible for counteracting irregularities), they are only one of many elements of the process, as witnessed by sample descriptions of the preparatory service sent by some ministries and by opinions of the participants of our expert panels where initial results of the survey and possible recommendations were

discussed. Unfortunately, the very act of signing the text of the "ethical ordinance" when taking an official post by a public officer has rather limited impact on the awareness of the conflict of interest problems, as witnessed by the fact that not all replies mentioned the document as an important instrument to counteract the conflict of interest. Anti-corruption, ethical or other trainings referring to the topic of the conflict of interest (discussed in more detail below) have no systematic nature. Ethical advisers, e-learning modules, spreading the knowledge on the conflict of interest through internal networks of the ministries, or other informational and educational activities are only reported in individual ministries. To sum up, the replies to our application show that the ministries have no such thing that can be called an informational system on risks related to the conflict of interest – anything analogous to obligatory trainings in health and safety regulations.

Focusing on the issue of trainings, it must be said that between 2010 and 2013, almost all ministries organised some trainings dealing more or less directly with the problem of the conflict of interest. According to the answers received, only the ministries of internal affairs and of culture and national heritage had no such trainings[115].

The trainings that touch the problems of the conflict of interest had various main subjects – they concern, among others, the issues of exercising managerial control or auditing. Many ministries reported that their employees participated in trainings related to implementation of the Ordinance no. 70 that naturally had to cover the subject of the conflict of interest, and in anti-corruption trainings led by the Central Anti-Corruption Bureau, or organised by the ministries and led either by the ministries themselves or by external providers. The problem is that usually the trainings were one-time events, and were not repeated later in the three-year period.

5.4. Disciplinary procedures related to conflict of interest situations

In this last point of the chapter, we will discuss briefly the issue of accountability for conflict of interest situations. We wanted to learn whether in the years 2010-2013 the ministries received any complaints related to conflict of interest situations and whether any disciplinary procedures were launched or penal procedures were initiated concerning their public officers.

The answers received show that such situations happen only sporadically. Most ministries received no complaints in the period of time indicated. Several disciplinary and penal procedures were launched. The institutions that reported such cases, usually indicated one, maximum three such situations. As for the disciplinary procedures reported, there were literally five of them – one in progress, one discontinued, and in case of the remaining three procedures we were not informed about their results.

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115 Also the trainings reported by the Ministry of Treasure raise some doubts – they were labelled as trainings concerning conflicts, but dealt with e.g. interpersonal conflicts, communication between employees, or mediation rather than the conflict of interest.

Thus, the issue is not worth further analysing. It can only be said that, having in mind the average employment numbers in ministries (about one thousand employees for every ministry – in 2012 all the ministries employed 12.5 thousand people), the percentage of public officers subject to such procedures is extremely low. Of course, the question remains whether the data reflect the real scale of the problem of the conflict of interest, or they are distorted by low awareness or low reliability of the respondents.

Summary data on disciplinary procedures launched in the whole civil service corps that can be found in the report from the Head of the Civil Service ***On the state of the Civil Service and implementation of its tasks in 2012*** (document required by the already discussed Ordinance no. 70 of the Prime Minister) can supplement the picture of the situation. The report shows that the number of investigation (preliminary) procedures and disciplinary procedures grows.

In 2011 there were 591 investigation procedures and 227 disciplinary procedures in progress, the next year – 630 and 304, respectively. In 2012, 219 disciplinary penalties came into force, while a year earlier, the number was 158. Over a half of the disciplinary procedures that were launched (in 2011 – 52%, in 2012 – 55%) concerned violating the principles of civil service or the ethical principles of the civil service corps (discussed earlier in this chapter). In ministries, 21 such procedures were launched in 2012, while 13 penalties came into force. The rest of the procedures were launched in other public offices.

According to the report, in 2012 the greatest percentage of procedures launched concerned violating the principles of worthy behaviour (28%), reliability (27%) and legalism (9%). When final penalties related to violations of both civil service principles and civil corps ethical principles are concerned, the greatest percentage of them related to the principles of reliability (37%) and worthy behaviour (18%).

Cases of violating the principle of impartiality (the closest to the notion of the conflict of interest) were rather marginal. Unfortunately, the Department of the Civil Service was unable to present precise data for the year 2012. But in 2013, 276 (59 in the ministries) disciplinary procedures were launched, and 82 (7 in the ministries) penalties came into force, out of which 7 procedures (in the ministries only one) concerned the principle of impartiality. The number of penalties connected to violating the principle that came into force in 2013 was only 4, and none of them concerned ministerial officers.

Finally, it should be noted that we don't know the number of cases in the ministries, because the data supplied covered summarily central and regional offices, tax administration and other administrational units. However, having in mind that out of over 120 thousand public workers included in the Civil Service Corps only 10% work in ministries, it can be inferred that disciplinary procedures connected to conflict of interest situations are really exceptional in this sector.

5.5. Summary

In general, the policies of the Polish ministries in the field of the conflict of interest present an ambiguous picture. On the one hand, based on the received answers it should be concluded that plenty of instruments are available that can be used to limit the risk of the conflict of interest. Some of them have even a systemic scope – e.g. the "ethical ordinance", regulations of the Act on Public Procurements, or some regulations of the Act on Civil Service. **The problem is that these organisational solutions form no uniform, consistent system,** as witnessed by the considerable differences in the answers that we got.

In this connection, the example of the Prime Minister's ordinance no. 70 is particularly symptomatic. The regulation is an excellent document setting up the basic standards for public administration operation, including the standards aimed at preventing the conflict of interest. The regulation was accepted in 2011, and it would seem that after over two years from its coming into force public officers should not only be well aware of its existence, but also unambiguously connect it with the issue of preventing the conflict of interest. But that is not the case, since not all ministries mentioned the regulation in their answers to our query. Similar conclusion can be drawn when managerial control is concerned.

The level and the quality of implementation of various solutions is also inconsistent, as witnessed by the example of regulations concerning contacts with lobbyists which often can be a source of conflict of interest situations. One ministry implements more rigid, detailed and centralised solutions, while other applies only general regulations barely adding anything to what is already provided for in the relevant act of law and ordinance. Similarly, in the case of the "ethical ordinance" some ministries "implant" its provisions in their own instruments (such as procedures for employing additional workers), while other ones – as we already mentioned – fail to mention the ordinance at all. But in most cases the regulation has, as it were, a life of its own, and is not taken into account in their organisational strategies or other documents concerning or related to the issues of the conflict of interest.

In some ministries the issue of the conflict of interest is approached more systematically – relevant strategies are developed, ethical adviser posts are created, special organisational units to prevent corruption, including conflict of interest situations, are set up, and regular trainings are conducted. In other ones, no such solutions are implemented which shows that the approach to the issue of the conflict of interest in Polish central administration is unsystematic, not to say chaotic. Thus, to standardise at least minimal requirements concerning legal and organisational solutions binding for all ministries should be the first and foremost priority. Even if the ordinance no. 70 was intended as a step in that direction, then – though being undoubtedly an important and professional document – it should be followed by other, farther reaching solutions. Another, stronger incentive is needed to create a minimal standard in the field of preventing the conflict of interest.

What should be such a minimal standard? Given the existing legal solutions, first of all **the crucial fields of activities common for all ministries that are especially exposed**

to the conflict of interest should be identified. They would include, as indicated in the answers from ministries: public tenders, decisions concerning grants-in-aid, grants, programme financing etc. (including competition committees), recruitment procedures, approving additional employment of public officers, advisory and consultation bodies, legislative procedures, contacting professional lobbyists and other stakeholders. **The existing regulations concerning the crucial areas (mainly at the level of ministerial and director general orders, as well as employment statutes) should be reviewed and standardised,** with special emphasis on the issue of the conflict of interest (e.g. through direct reference to the Ordinance no. 70). **If needed, new regulations should be introduced** (e.g. new director general or ministerial orders) – for example, requiring more widespread use and disclosure of declarations of interests. The declarations themselves, as tools to prevent conflict of interest situations, should be at least to some extent standardised, e.g. through identifying typical and common situations for all ministries where they should be filed (for example, by external experts, members of competition commissions, persons deciding on contracts granted outside tender procedures, members of consultation bodies etc.). Also methods of controlling and archiving the declarations could be standardised. Perhaps, also sanctions for failing to file declarations of interests should be defined. And the sample of declarations should be standard for all ministries.

A model set of minimal regulations concerning the conflict of interest should be implemented throughout all ministries, and its preparation, introduction and implementation should be coordinated by the Civil Service Department.

The next step should be to try to develop internal systems to prevent the conflict of interest. To this end, **the procedures of exercising management control could be modified** (even without legislative amendments) **to place more emphasis on the issue of the conflict of interest. That would be a task mainly for the minister of finance** who, according to the provisions of the Act on Public Finance, is responsible for general coordination of the management control system, including disseminating its standards and issuing its implementation guidelines. Perhaps, the modalities of exercising the management control should be more standardised (e.g. through a relevant ordinance supplementing the existing communications or guidelines for its implementation, but this would require an amendment to the Act on Public Finance) in order to require all the relevant bodies, including ministries, to analyse some crucial elements – including the issue of the conflict of interest.

On the other hand, we are not overly enthusiastic about introducing and developing certified systems such as CAF or SPZK. Their successful implementation, maintenance, and development require financial effort and determination, for which Polish ministries are not prepared. But **some elements of the systems (such as ethical adviser posts or special anti-corruption units analysing risks, reviewing decisions, organising training and informational activities) could presumably be introduced in all ministries, especially in view of the fact that some ministries already have them.** Such units should not only exist in every ministry, but they should also have similar powers, scope of operation,

and (possibly high) position in organisational structure in order to exert real influence on the functioning of a given institution as a whole. Some option is also to modify the scope and modalities of operation of the units responsible for internal control and auditing (an interesting solution in this field was introduced in the Ministry of Finance – see above). And above all, elements of such systems should be included in the managerial control model.

Another task is to systematise and intensify training and informational activities. Public workers have no sufficient information on what conflict of interest is, how to resolve related dilemmas, how to resist temptations, or whom to consult and where to seek information. **The issues of the conflict of interest should be more strongly emphasised during the preparatory service and adaptation trainings. In general, the training and informational activities concerning corruption and conflict of interest should be more systematic and should be repeated every two or three years.**

We do not intend to give any methodological guidelines, but it is worth to note that although such trainings should be organised in cooperation with the Central Anti-corruption Bureau, given the character of the institution, "civil" lecturers would have a better contact with the participants of the trainings. The role could be performed by specially trained workers of the Civil Service Department, which anyway can perform such activities on the regular basis, if only it is given the relevant powers and resources enabling them, for example, to hire trainers and lecturers from outside the administration. The CAB workers who now conduct many trainings for public workers are treated by them with reserve (see the opinions from the participants of the expert panels) to the detriment of the effectiveness of the training activities. For sure, they are competent, but our survey shows that they kind of "deter" listeners in public offices. In addition, the existing trainings are exceedingly theoretical (as confirmed by the participants of our expert panels), with no practical workshops that would give practical knowledge and present examples of situations from real life.

Ministries seem also not to fully use their own, existing information resources. Many questions and dilemmas could be easily resolved if public workers have easy access through their Intranet networks to instructions, simple guides, or checklists enabling them to decide what to do in a given situation. But the answers received show that only one ministry (the Ministry of National Education) created such information base, and even then it is hard to evaluate its usefulness. It is a simple and cheap method to prevent the conflict of interest provided that such sources of information are well organised **and easy to use**, and public officers are encouraged to use the knowledge.

6. OPINIONS ON THE CONFLICT OF INTEREST FROM OFFICERS HOLDING KEY POSTS IN THE GOVERNMENT ADMINISTRATION

Robert Sobiech

6.1. The conflict of interest – definitions, causes, consequences and vulnerable areas.

6.1.1. What is the conflict of interest?

The survey showed that the conflict of interest is interpreted in many different ways. Some public officers see the conflict of interest mainly as the situations where common good and particular good of individuals or groups are at odds. The notion of common good is often mentioned in the proposed definitions of the conflict of interest. Promoting the common good is seen as the most important mission of public administration, as well as a reference point for identifying particular interests or gains.

> We have to weigh the common good on the one hand and situations where while performing our responsibilities we can infringe on our own interests, the interests of our family or groups whose interests are important to us. All the situations where we have to weigh two goods (...) the good of public administration (...) the good of organisation or some other institution and a private good (...) These are all the issues related to purely anti-corruption procedures, i.e. when I have to restrain my basic instinct to profit from my activities, or all the things that in civilised world are regulated by the penal code, i.e. bribery, using influence in order to obtain private gains. (R1)
>
> It is precisely the conflict between the common good seen as the total of goods and services from government institutions offered to citizens and an individual interest that may or may not be compatible with the aims of the state.(R11)

The idea of the common good is often associated with the notion of the state. The conflict of interest is seen as incompatibility between individual or group interests and the interest of the state defined in conceptions of national development or in the objectives of public policies – an incompatibility manifested in situations where actions of public officers are based on values and aims of other persons, groups or communities, or where they represent the interests of other entities.

> The conflict of interest takes place when public officer (...) representing or acting in the name of the state, is at the same time connected with or engaged in – at the level of accepted values, beliefs, but also his or her actual work for other entity – the processes or activities that are regulated by his or her public office (R12).
>
> It is a matter of incompatibility between private interests and the interests connected with the work, with the responsibilities resulting from the work in public administration. We belong to (...)

some broader community, and the interests of the community [should not] be in conflict with our responsibilities in our everyday work in the office. (R17).

Sometimes, the conflict of interest is interpreted as a violation of the principle of impartiality seen as a source of social legitimacy for public administration. The state, and above all the public administration is seen as an impartial, objective arbiter, trying to implement solutions reconciling arguments from different groups and protecting citizens from domination of particular interests of powerful groups and institutions.

The conflict of interest is mainly a situation where actions from one side can influence decisions concerning the other side, more or less beneficial (...), when a matter is not considered objectively, but based on some one feature, one aspect of the matter. (R4).

Ministerial decisions or decisions taken on the political or the legislative levels may or may not prefer one of the groups. The problem is that decisions should be taken as impartially as possible (R3).

For other respondents, the conflict of interest means a systemic incompatibility between the aims of the state and the aims of other institutions, social groups or individuals. It is indicated that the conflict of interest is a constant and natural phenomenon. The conflict of interest itself is not seen as a bad thing. The main challenge are the modalities of taking decisions that in consequence can substantially change conditions for many social groups or organisations that represent them.

Different aims of companies, interest groups, family values [lead] to (...) a collision – the two perspectives simply diverge, someone cares more about something, someone is more powerful, someone wants to dominate the other side so that his case, his interest could gain more prominence (R11).

It is a normal situation, such things happen. The problem is how we react to the conflict between private and official relations of public administration officer (...) If a known, transparent model of action exists, if a relevant procedure for action or reaction is in place, then it is resolved promptly. The situation is pathological only when no procedures exist, when decisions taken by people resolving such conflicts are discretionary (R2).

The conflict of interest is also seen as competing interests and aims of public administration and its external and internal stakeholders. Interpreted in this way, the conflict of interest is understood as more or less natural situation where institutions and organisations compete for public resources or try to enhance the conditions for achieving their own objectives.

For this ministry, the conflict of interest is intrinsic to its operations. We have (...) trade unions, social and professional organisations, and administration that implements the policy of the state (...). The two areas are naturally on the two sides of the barricade. (...) We can see this incompatibility between claims of the one side and capabilities of the other. This is a conflict of interest (R5).

Some respondents see the conflict of interest as a conflict between the interest of the state and interests of particular ministries. They see the conflict of interest mainly as internal rivalry between different government administration offices. In some interpretations, the conflict of interest is also seen as an internal process within government administration

offices. The conflict is understood as rivalry between different organisational units or as the sphere of disagreements between employees and their superiors.

> We face the conflict of interest between the state and the ministry. It is very difficult, in particular when implementing public policies. The common sense would suggest that we should waive a part of financial resources allocated for us in the state budget (...) and that it would be a pro-state action. But on the other hand, there is the ministerial perspective, where the minister or the ministry is responsible for particular achievements, for activity in a given field. Then he or she finds himself or herself in a clear conflict of interest situation – a conflict between the interests of his or her field of responsibility (...) as a minister and the interests of the state trying to reduce budget deficit and cut spending wherever possible (R3).

> I am in a conflict of interest situation, because on the one hand I should be loyal to my employer and show him the irregularities that can hamper performing and achieving our tasks and aims, but on the other hand why should I show them to the inspectors from the Supreme Audit Office (R5).

> For me, the conflict of interest consists mainly in disloyalty to my employer. If an employee is disloyal, this is a conflict of interest. The employer expects something from the employee, and the employee cannot or refuses to meet the expectations (R5).

The interpretations described above show that many respondents see the conflict of interest much more broadly and not only as an incompatibility between official responsibilities and private interests of a public official. The statements defining the conflict of interest as a threat to the common good, the functioning of the state or the impartiality of public administration decisions reveal a strong identification of their authors with the civil service values and their awareness of their role in the contemporary society. But what can be alarming are the opinions of some respondents seeing the conflict of interest as a permanent factor in rivalry between different public administration offices. To a great extent, such interpretations seem to result from strong divisions between ministries and excessive autonomy of Polish ministries and central offices. For the respondents voicing such opinions, the conflict of interest is associated with competition between different public offices or internal rivalry in their public institution. Difference of interests is seen by them as an indispensable element of the status quo, and effective action often means for them achieving particular aims to the detriment of other public offices, departments or individual employees.

6.1.2. Consequences of the conflict of interest

In the opinion of our respondents, the conflict of interest is a dysfunctional situation, requiring both preventive action and proper reaction to particular instances of such conflict. The great majority of our respondents perceive the conflict of interest in a broader context of the functioning of the state, implementation of public policies or relationships between citizens and public authorities, and present detailed analyses of consequences of the conflict of interest and the reasons for which public administration should counteract conflict of

interest situations. The following three most important negative consequences of conflict of interest situations were indicated: threat to the democratic system, social and economic costs, and negative impact on the functioning and the image of public offices.

For some respondents, conflict of interest situations are at odds with the idea of democratic state that should try to foster the common good. They lead to a situation where decisions on public matters are to a great extent left to the most powerful and influential interest groups. If accepted, the situation naturally leads to a crisis of the democratic state that should regulate different social expectations.

> We have to decide (...) whether we are a tribal state or we are a state aspiring to be democratic. In the tribal state everyone cares most for his or her clan and for benefits for his or her family, his or her tribe. In the democratic state, an advanced one, while working in public administration I have to be sure that other people work for public good and not for their private or clan interests (R1).
>
> We work to meet social needs, being aware that on the one hand we represent the state, and on the other we have to take into account social interests in a broader sense. This is (...) a measure of the level of the development of the democracy or the state (R2).

Conflict of interest situations are also perceived as an important factor undermining social confidence in the state and public administration. Disbelief of citizens in impartiality of public officers plays crucial role. Publicly exposed conflict of interest situations support the belief on the part of citizens that the state is separated from citizens, and strengthen the already existing attitudes of distrust towards public administration or more generally towards public authorities.

> We are here to resolve the problems of citizens, serve all citizens with impartiality, caring for interests of all citizens, and not only of particular groups. We should be impartial and objective in our activities. As the administration, we should serve all citizens, so preferring some professional groups or some other groups is at odds with the very mission of public administration. Otherwise, we will lose credibility, our activity will not make sense. Citizens should trust the authorities, and they will not trust us until it is clearly communicated and obvious for all that we are impartial, that interests of one group are not more important than interests of other groups (R17).
>
> Every such news about conflict of interest situations significantly undermine already low, in my opinion, confidence in the administration and the government as such. And it is general and can be seen everywhere – I talk about society that distrusts the administration and the government, and about the government – the political class – that distrusts public officers. Thus, all elements of the complex organism and of the consensus that is needed are undermined (R16).

The importance of the principle of impartiality is also justified by citing social expectations that public administration should be the arbiter solving conflicts and protecting citizens from the domination of big corporations, interest groups, but also from dominating the public sphere by the most powerful ministries. Conflict of interest situations often lead to substantial social and financial costs resulting from decisions beneficial for influential economic or political lobbies.

> The role of the administration often consists in being an objective arbiter, even if it is not a literal arbiter, like in a dispute, because there is no dispute between different parties, but only a need to

weigh different arguments and have a general picture of the situation on the national level. If decisions were distorted by preferring a group, an individual, or an area, then the natural balance would be destroyed. It would be dangerous, because the most powerful minister would "wrench away" resources for his or her sector to the detriment of other sectors. Speaking the managerial language, the most powerful stakeholder would win the biggest part from a common pool to be divided (R3).

Individual decisions, in particular when big money is at stake, sometimes to finance multiannual investment programs. They have repercussions (...) for the whole regions (...) if one region gets them, another will not. It is a zero-sum game. The cake cannot be bigger so that everyone is satisfied. Only one beneficiary will feed, and the rest will remain hungry. So if the decision was unfair, not based on the merits, then (...) such decisions result in (...) serious financial consequences felt for many years (R3).

It should be noted that the majority of the opinions presented above rest on a silent assumption that public authorities are able to develop objective criteria of common good or public interest that would be used in planning and implementing public policies. The belief in objective, professional solutions is closely linked with the acceptance for the principle of impartiality as a crucial guideline in the activities of public administration. But practical implementation of the principle is often hampered by different factors. In part, they result from inability to fully justify the aims and the instruments of public policies by the existing knowledge, in part from inability to reconcile the different values promoted by particular social groups, and in part from decisions promoting the interests of selected groups or regions in line with programs of political parties that are in power. The awareness of the limitations to the principle of impartiality, including the knowledge on the conditions of the public policy processes, seems to be a necessary modifying factor for the definitions of the conflict of interest proposed by the high-rank civil servants. On the other hand, the awareness of social expectations for impartial activity for the common good should be an indispensable factor in political decision-making processes.

Some of the respondents describe the negative consequences of conflict of interest situations mainly in terms of losses incurred by their own public offices. According to the most common interpretations, conflict of interest situations generate costs for particular public offices. In this connection, the respondents mention the risk of losing financial resources, additional costs generated in the process of reconsidering the matters that were questioned in view of conflict of interest situations, and longer period of time needed to reach final decisions.

A decision can be invalid, reaching the conclusion is time-consuming and can generate costs both on the part of the applicant, and on the part of the public body, also in terms of possible compensation (R13).

Financial consequences can result from wrong decisions concerning public spending. They can result from decisions that can be interpreted as mismanagement. They can mean a loss of resources if someone fails to perform an agreement that was concluded, and even in spite of safeguards in the agreement, the resources can be lost forever (R19).

Public exposure of conflict of interest situations can bring considerable losses in the image of public institution. For some public offices, even a suspicion of a conflict of interest situation, if publicised, can result in the loss of credibility in the eyes of both general public, and other members of public administration.

> If such thing is publicly exposed, then the institution is negatively perceived by general public. Then, it is said that the institution is not guided by social good, but by some internal interests. It can be only an isolated incident, but immediately the bad opinion sticks to the office as a whole (R5).
>
> Every suspicion, not to mention justified suspicion, is a serious burden for organisation, for managers of the organisation – I'm not talking about the need to excuse oneself, to explain, usually it's already too late for this, because the image is already tarnished – and this, in turn, makes it impossible to build a professional image of administration (...), and every accusation about lack of professionalism (...) generates additional costs, the lack of confidence is always costly, transaction costs always increase, everyone tries to cover his or her back, everyone tries to be on the safe side; every safeguard generates costs (R13).

The awareness of serious consequences of conflict of interest situations is at odds with opinions of some respondents that counteracting the conflict of interest is not seen as a priority. According to some respondents, so far the conflict of interest has not been defined as an important problem for public administration and is often treated as relatively unimportant phenomenon in the operations of public offices. It is usually seen as an aspect of the problem of corruption, and measures to counteract the conflict of interest usually form part of broader anti-corruption strategies.

> In general, people are not sensitive to the issues of the conflict of interest, not only among public officers, but also among government officials. They also sometimes make decisions on some issues when they shouldn't do it. They also sometimes play a role that they shouldn't play, for until recently they were on the other side. I mean situations where e.g. someone who was a beneficiary of a ministry takes the post of undersecretary or secretary in the ministry (R20).

6.1.3. Causes of the conflict of interest

Opinions from our respondents indicate many different factors that can lead to conflict of interest situations. For some respondents, conflict of interest situations result from intentionally breaking the existing regulations in order to receive additional gains, often of financial nature. For others, conflict of interest situations result from the pressure exerted by different professional or social groups and inability to resist temptations. The conflict of interest can also result from the situation where the values and interests of the family and friends prevail over the values of the community as a whole.

> It is a result of human weakness. Simply, of the weakness of their character, and not of defective legal regulations. Today, legal regulations limit the conflict of interest, but not all can properly use the regulations. And most commonly, it is a fault of one or two persons who have less clean intentions, less clean characters (R4).

> Favouring one's family is a behaviour that is deeply embedded in humans, so if we fail to introduce an institutional mechanism that says: No, you must not employ your family members, you must not employ your relatives, you must not favour your family, then it will be hard to stop it (R1).
>
> It can happen that they are in some way illegally motivated by stakeholders to make favourable decisions. These are human weaknesses that make us susceptible to external influence (R5).

Other explanations mention the patterns of social behaviour and relations shaped in the communist era when the conflict of interest was seen as a natural reaction to the deficits of goods and services. Despite the time that elapsed, many citizens feel that it is only natural for them to obtain public services through friends or to behave according to the principle of mutual benefits. The phenomena are most common in the case of services that are not readily available, leading to conflict of interest situations.

> We used to live in a country where the conflict of interest was a natural thing, nobody spoke about it. We used to go to a public office to settle some official matter, taking with us a small gift for the public officer to return the favour of his or her effort, and now having some decision-making power in a public office it's easy to start to think in the same way: you helped me in something, so I will help you in another thing (R18).

The low level of internalisation of civil service values by public officers is seen as an important cause of conflict of interest situations. It is a result of defective system of recruiting public workers, emphasising the criteria of education, abilities and experience, and ignoring attitudes and motivation of the prospective public officers. Equally important factor is insufficient emphasis on developing appropriate ethical attitudes among persons already employed in public administration, including small number of trainings promoting values and norms specific for public work. As a result, many young public workers have poor awareness of their professional ethics, and import the patterns of behaviour from their original surroundings or use the general stereotypes concerning public administration. The temptation connected with conflict of interest situations is additionally increased by low salaries in public administration.

> If this basic ethical framework was defined and everybody knew that public and private spheres must be separated, then perhaps it would be easier for everyone to take decisions (R18).
>
> Not only they ae poorly paid, but also we recruited people who are not willing to work for the idea (...) so the greater is the risk of conflict of interest situations (R1).

Many respondents see the excessively complicated regulations and unclear and inconsistent law as a cause of the conflict of interest. The situation creates opportunities to foster private or institutional interests that are hard to detect during routine control procedures, thus enhancing the attitudes of promoting the interests of family members, friends or interest groups. Our respondents describe situations where unclear, complicated regulations were intentionally created to exploit the detailed knowledge on them after quitting public administration. A potential conflict of interest situation also arises when public office creates complicated and unclear legal regulations, and then its employees conduct trainings to explain them.

> The more complicated the law we have, where having expertise in it you can make a favour to somebody, the greater the related risks and temptations (R1).
>
> We have many examples when a regulation was drafted in order to complicate rather than simplify the system. This is the case with the tax law, and e.g. people who are paid for advising or trainings benefit from complicating the tax law (R15).
>
> The legal system is overregulated. We have plenty of various strange institutions, low-level regulations – it is a really big sphere in Poland that requires thorough cleaning (R16).

Opinions on the causes of conflict of interest situations presented during the interviews show how many complex factors lead to such situations. At the same time, they convince us that measures to counteract the conflict of interest cannot be based on simple, one-dimensional strategies eliminating only selected causes. Thus, an effective strategy to counteract the conflict of interest should cover, among others, control instruments to limit the temptation of getting additional material and symbolic gains, developing appropriate ethical attitudes of civil service, refining recruitment and preparation mechanisms for prospective public administration workers, as well as more general reforms to improve the quality of new legal regulations.

6.1.4. The areas most vulnerable to conflict of interest situations

According to many our respondents, the areas most vulnerable to conflict of interest situations are public tenders and recruitment of new public workers. When public tenders are concerned, it is indicated that the risk of conflict of interest situations is balanced by detailed regulations preventing the violation of the principle of impartiality. However, in the field of recruiting new public workers, there is still plenty of room for discretionary decisions, possibly motivated by the interests of relatives or the interests of political parties.

> Such area are, above all, public tenders. It is a sphere where really big funds are at stake, and there is often very tough competition to win them. As a result, the risk is very high that someone will be hard pressed, that someone will try to influence the results of the procedure. These are often multiannual contracts, and often very lucrative (R3).
>
> Despite the competitions, they are won by persons who "have to" win them. Not always the best ones and not always the ones who have qualifications required for a given post. (...) perhaps in every public office you can find several such examples (R5).

For other respondents, the risk of the conflict of interest is always connected with administrative decisions that are more or less discretionary. These are both the decisions that impact the conditions for selected social groups, and the decisions concerning the implementation of tasks of institutions and organisations. Particularly risky area is the law-making process, as well as the processes of developing public policies that can infringe on the interests of influential groups or circles. In this sense, the conflict of interest is a permanent factor in public administration operation, and such situations of conflict of interest should be counteracted and prevented by every public office.

In the general scale, these are all regulative areas, or everywhere where the state intervenes in economic activity or in human behaviour (...) in a small scale, these are those small things when we issue decisions and these discretionary decisions can directly influence some activities (R1).

If an administrative body decides who will take a part of the market, then it is obvious that a temptation arises (...) The potential area of risk lies always where the sole powers of administration reach, in the form of either discretionary or administrative decisions (R3).

Law-making is always a good deal for someone, and a worse deal for someone else. And if somebody takes part in it, he or she can play a double role (R7).

6.2. The conflict of interest in the polish government administration – diagnosis of the situation

6.2.1. Incidence of the conflict of interest

The opinions from respondents concerning the scale and the incidence of the conflict of interest in the whole public administration[116] do not allow us to form any clear diagnosis. On the one hand, we heard opinions that even potential conflict of interest situations are rare, and when they take place, they are properly dealt with by the majority of public officers. On the other hand, many respondents maintain that different forms of potential conflict of interest situations can be found in many areas of public administration operations.

The belief that potential conflict of interest situations are common, permanent phenomenon in the Polish public administration prevails. The opinion that potential conflict of interest situations are frequent is accompanied by statements about different safeguards that prevent the potential conflict of interest from evolving into actual conflict of interest situations. It is indicated that sufficient legal regulations and internal procedures are in place in public offices, as well as that the majority of public officers observe the relevant rules, being aware of the existing threats and acting in line with the existing rules for avoiding actual conflict of interest situations.

In my opinion, [they] occur extremely rarely. These are only potential conflict of interest situations. That's why we introduce precautionary measures. That's why we have constantly refined the mechanisms in the last ten years; every new act of law, every amendment in law was accompanied by greater and greater vigilance and lower acceptance for the phenomenon. (R3).

I think that they are more common than official reports show, but I wouldn't say that it is a big problem. Perhaps, because there are very strict regulations penalising such acts, so the area of the conflict of interest that is not directly covered by codes and other regulations seems to be not so large. So I think that potential conflict of interest situations are frequent, but in the greater part they are effectively managed and (...) they never evolve into actual conflict of interest situations that would be dangerous (R13).

The conflict of interest is always present. The question is only whether we can manage the conflict of interest. In public administration no area can be totally excluded from the conflict of

[116] In this part of the survey, the respondents were asked about the presence of the conflict of interest in the public administration as a whole.

interest. It exists. We only have to have procedures that would guarantee that the potential conflict of interest will not materialise (...) There is nothing special in it, and I think that it is quite natural that the conflict of interest persists. The question is whether we are aware of it, whether we can manage it and know our public workers (R17).

For some of the respondents, the conflict of interest is rather a hidden problem that can hardly be assessed as to its scale and intensity and is rarely detected in view of insufficient regulations in this field or in view of the network of mutual links between public administration and external world that are difficult to diagnose. As a result of the hidden nature of the phenomenon and the related lack of appropriate instruments for its detection and monitoring, such opinions take the form of hypotheses based on observation of processes taking place in public administration offices.

From my experience, I think that they are quite frequent. Such conflict of interest situations are quite frequent, but they are not reported (...) It is easy to do it, it is easy to hide them or make them difficult to be identified (...). If the conflict was somehow limited by control mechanisms or a monitoring and clear rules in this field, then for sure it could be, if not eliminated, then greatly limited R8.

For sure, there must be a whole mass, a whole sphere that is hidden, somewhere there under the surface, that results from the inability to introduce some other systemic solutions (R11).

I suppose that there are many areas where the conflict is not properly identified or perhaps intentionally ignored (R13).

Some of the respondents indicate examples of such areas of a hidden conflict of interest. They usually mention the area of law-making where complicated regulations can significantly limit the possibility to identify what groups or institutions exerted their influence. Other examples concern complex relations between public administration and their stakeholders, where the interests of external entities are often hidden under the cover of activities presented as supporting the mission of public offices – such situations are hard to detect under the existing legal regulations. Sponsoring special events, funding prizes, organising conferences, or seeking employment from stakeholders after quitting public administration are the examples that are presented to illustrate the area of insufficiently explored conflict of interest situations. According to some of the respondents, accurate diagnosis of the situations depends mainly on individual assessment whether the offered forms of support are or are not consistent with the aims and values of public administration, and is hard to be done based on additional, detailed procedures regulating the relations of public administration with the external world. For other respondents, the crucial thing is to identify and publicise the hidden, so far unrecognised threats, and to develop the methods to react to them.

When I watch some solutions, some institutions, I have the feeling that such situations happen. Sometimes, seeing some situations, watching them, I have doubts whether it is really just incompetence or to the contrary, that some solutions are developed or implemented in such a way that good intentions of their authors can be questioned. Does the fact that a regulation is so complicated and requires so much prevarication and is open to so many, often inconsistent, interpretations is only a result of incompetence of its authors or to the contrary (R16).

There is plenty of such situations (...) that e.g. various prizes are given or, for example, conferences or events of commercial nature are sponsored (...). Conflict of interest situations of this kind sometimes are not at all connected with any money transfers. For example, I can become a sponsor of a conference where participation as a rule cannot be remunerated, but at the same time if it is organised by a commercial firm that uses the conference to advertise its products, then I'm engaged in it, even if any financial funds are not paid, and a conflict of interest situation arises between public and private spheres (R20).

6.2.2. The conflict of interest today and in the past

The great majority of the respondents see many positive changes in reacting to conflict of interest situations that have taken place in the last decade. One of the most important changes is significantly higher awareness of both the existence of the problem and the threats it poses to individual careers, effectiveness of public office operation, or public image of the administration.

When I started my career in public administration the theme was totally inexistent. You couldn't hear about it (...) Today, it is quite common thing. (...) and I feel that the awareness is a bit higher (...) More and more people start to think whether it is ok to undertake such and such activity, to do something... employees make memorandums from different sponsored meetings, they know that we have a kind of regulation how to behave, what is admissible and what is not... they don't accept gifts and... know that some things are not ok etc. (R16).

People are more aware of what behaviour is unethical, what is the conflict of interest, they are aware of consequences of violating certain standards (R12).

I think that in general, we move towards a higher culture of public life and a part of it is the awareness of the conflict of interest that can arise in different situations, and should be at least taken into account (R13).

More attention to the conflict of interest in public administration is also the result of more general changes in thinking on the public sector, its role, and rules of its operation. The experience of imperfect market mechanisms, the need to limit political influence, expectations of wider accessibility and better quality of public services, or growing belief in special responsibilities of public administration led to a situation where the risks connected with the conflict of interest became incorporated into the collective awareness of many citizens. Positive change also resulted from entering the public administration of a new generation, without the burden of historically formed attitudes of lack of respect for the state and the public good.

New generations enter that don't think using the euphemism that my generation had somewhere at the back of our heads, that if someone steals he or she is called a smart person rather than thieve. I think that young people will not use such figures that our generation, grown in the communist system, had at the back of our heads, where people who evidently were stealing were called smart, resourceful persons. But it is a process (R14).

The awareness of the problem and the awareness of its consequences translate into specific legal and institutional solutions implemented in government administration offices. Regulations concerning public tenders are particularly often mentioned. According to some of the respondents, the growing set of institutional regulations, accompanied by sanctions for public officers who break them, forms an effective barrier preventing conflict of interest situations from happening.

> Certainly, we have more regulations in this field, for sure there is more legal provisions intended to try to identify the conflict of interest, but certainly we need more of them (R8).
>
> The tools become more civilised, i.e. the act on public procurements was very helpful in this field, defining measures that can be used in public tenders, and also leading to a situation where – in the recent ten years, maybe not ten, but recent six or seven years – more and more attention have been paid to the conflict of interest and its consequences have been shown, in a more pathological, spectacular light, showing the collapse of public finances, and the consequences for individuals (R11).

The wider interest in the problems of the conflict of interest, introducing preventive and reaction mechanisms also results from the efforts of the Polish and international non-governmental organisations, and in particular watchdog organisations. Only individual respondents indicate that greater awareness on the part of public officers and implementation of preventive mechanisms resulted to a great extent from control activities of media exposing the most blatant conflict of interest situations.

> It is true that perhaps most often the non-governmental organisations and media speak about conflicts of interest. They are two strong pillars that highlight the problem and show the negative impact of the conflict of interest on decision-making. So mainly the two pillars help to identify and help to discuss the issue within the administration, and to highlight the issues. In fact, they are the driving force. When there is an external monitoring of certain activities, if there is a monitoring from non-governmental organisations, media, then administration also strives to implement some mechanisms that will show that activities of public officers are transparent (R8).

Also opinions that are critical to the changes being introduced are not rare. For some respondents, the problem of the conflict of interest is dominated by other issues, mainly by the problem of corruption. For others, the measures to counteract the conflict of interest are only a rhetorical slogan, and have little to do with systemic solutions that would really cope with the problem.

> We are more focused on the problem of corruption than on the conflict of interest; corruption is much more frequently discussed, and rarely – I can't recall a situation where we tried to discuss or organise some more serious conferences on the conflict of interest. Most commonly, we talk about corruption, but for me, the conflict of interest is a road that leads to corruption if there is no reaction (R15).
>
> In my opinion, nothing special was introduced in Poland. The whole talk is a propaganda, while none rational, deeper, excellent moves, proposals and measures were implemented. Or using other words – were not invented (R6).

Changes taking place in the civil service corps, lowering the status of the profession of civil officer and poor identification of public officers with the civil service and its principles, are seen as an important obstacle in counteracting the conflict of interest. Some respondents indicate the negative effects of the changes that limit the standing of the civil service, leading to lowering their status and relaxing the mechanisms of social control.

> It depends (...) on how we develop organisational culture and the culture of the whole civil service. The corps has to have high standing. People have to have the feeling that civil service corps means something, that they serve the state. And when they have the feeling, there will be no irregularities. Certainly ten years ago, when I started my professional career, the strength of the civil service and the status of the civil service was higher, more meaningful. Later, at some point, it greatly weakened (R4).

The weakness of the system to counteract conflict of interest situations also lies in poor ability to analyse new phenomena arising in the environment of public administration, and to develop instruments tailored to the new challenges. As an example can serve the processes of globalisation and related transformations in the private sector.

> Today, much more threats arise, because to be honest, the issue of various financial links, and e.g. owning some shares in companies that form part of bigger capital groups in the globalised world – it is certainly a difficult problem that cannot be easily followed also in regulations. So we can have a feeling that the problem of the conflict of interest becomes more difficult, is less visible, also as a result of globalisation of various processes. And certainly, the regulations can't keep pace with the various possibilities of conflict of interest situations created by the market (R8).

6.3. Conflict of interest management in the workplace of the respondents

6.3.1. Incidence of conflict of interest situations

The differences in opinions on the scale of the problem of the conflict of interest generally in public administration are not mirrored by opinions on conflict of interest situations in particular workplaces of our respondents. The majority of respondents believe that in the last three years conflict of interest situations only incidentally or never took place in their public offices. The low incidence of actual conflict of interest situations results mainly from the relevant procedures regulating reactions to possible conflict of interest situations, as well as from the awareness of the principles of the civil service, in particular the principle of impartiality and disinterestedness. An important factors are also the awareness of existing threats and preventive actions when a situation takes place that may lead to an actual conflict of interest. Opinions of the respondents concern mainly the area of public tenders and seeking additional employment.

> As far as I know, in the last three years no such situations were detected. At least, I got no information that anybody was dismissed for such reasons (R4).
>
> No, I didn't encounter such situations. Employees ask to be excluded when a potential conflict of interest situation may occur. They ask to be excluded from the procedure, they simply take no

part in the procedure. An information from an employee "that suspicions can arise because once I had an agreement, I was engaged, I did something for this entity" results in exclusion of such person (R3).

I think that such "hard", confirmed cases of infringement on some rules and of actual conflict (...) were not too many, or even I can't say that any such situation was confirmed and consequences were drawn. (...) An internal regulation in the form of a letter that everyone is required to be familiar with says quite clearly that I expect that everything, e.g. in the field of employment and activities outside the ministry, will be reported to me so that I could approve it or not (R13).

The few detected situations of the conflict of interest usually met with a prompt reaction of public offices. Usually, disciplinary sanctions are used, and in sporadic situations an employee is dismissed from work, or procedures set forth in the regulations on public tenders are launched.

There are such small things connected with performing some paid activities or tasks without the approval from the superior. It proves to be in fact a conflict of interest. Then, a disciplinary procedure is started that can even lead to dismissal from the service or administration (R2).

If the situation is connected with public tenders, the reaction usually consists in sending the case to the financial discipline advocate (R8).

The incidence of conflict of interest situations cannot be fully diagnosed in view of the lack of tools for detecting and registering conflict of interest situations that would enable us to both identify actual conflict of interest situations and register the official reaction towards people engaged in such situations. The majority of the respondents, when describing conflict of interest situations from their offices, rely on their own memory or on the reports from their colleagues. The absence of a system to register conflict of interest situations is particularly visible when identification of links between public officers and external entities is concerned. The problem concerns in particular the verification of declarations filed under public tender procedures. For some respondents, the limited capabilities to verify declarations filed by public officers is a sign that control system is imperfect. For others, strengthening control functions to better diagnose conflict of interest situations is seen as introduction of excessive verification procedures requiring a lot of work, time and financial resources that are disproportionate to the scale and the importance of the problem.

It is the biggest problem, to gather hard data (...) I tried to gather such information on detected conflict of interest situations, and in fact there are relatively few detected conflict of interest cases, in general only few situations. So perhaps the problem lies not in the existing or non-existing regulations in this field, but in an effective mechanism to verify whether the conflict in fact took place (...). And we have thousands of tenders from our ministry, tens and thousands of tenders. It is hard to check every tender, and in fact it would require some good research program, but also it would mean to transfer some people from other work for a long time, to verify every tender as to actual or identified conflict of interest situations (R8).

Conflict of interest situations are only sporadically reported by the employees of the surveyed public offices. The majority of the respondents say that in their offices it never happened that conflict of interest situations were reported by their employees. No

such reports are received even in the public offices where special anonymous reporting procedures concerning conflict of interest and corruption situations, guaranteeing high level of security for the whistle-blowers, were introduced. The main reason for the situation is that whistle-blowing is seen as denunciation, breaking the solidarity among employees of the institution, and that managers are seen by lower rank employees in terms of "us-them" division. The already described limited identification with the civil service and the weakness of social control mechanisms also play their role.

> It never happened. We even tried to launch such anonymous anti-corruption e-mail address. Normally it is difficult to go to someone, it is easier to send an anonymous message (R9).
>
> We have a web page where every citizen or employee can report any problem concerning corruption or the conflict of interest, and these are such magical solutions that, as it seemed, were to solve the problem, but I can't recall even one serious report. Every month, I receive such information on the number and content of the reports, and if any serious report came we would launch the whole procedure, we have to react – but I can't recall even one serious report sent through this page (R15).

Only in few public offices there were individual reports on potential conflict of interest situations from employees. They were verified by the management, and if confirmed they met with reaction towards the persons engaged in the situations, consisting in preventive action (e.g. exclusion from a given procedure, transferring to other tasks).

> It happened. I know about several situations in our office that the employees reported (...) maybe the situations never materialised because they reported. After reports from them, there were changes, and some other persons dealt with it (...). In recent years there were perhaps... two or three such situations. So rather not too many (R6).
>
> There were situations where, either anonymously or by telephone, we got reports on some conflict of interest situations. We, in my field of responsibility, verified some actual cases of the conflict of interest. (...) the majority of the situations are some disagreements between employees and some personal animosities (...) as a result of which one person denunciates other, and reports something to enforcement agencies or here to the bureau for anti-corruption procedures with charges against individuals, but usually the information is very unreliable (R8).

Small role in exposing conflict of interest situations is also played by media and non-governmental organisations. Media only occasionally mention the problem of the conflict of interest, presenting situations when legal regulations are broken or the principle of impartiality is violated. According to the respondents, the majority of accusations from media concerning conflict of interest situations find no factual corroboration. They see media as a source of unjustified criticism rather than as institutions controlling the activities of public administration. The same is true when non-governmental organisations are concerned, rather marginally interested in the problems of the conflict of interest and in controlling the activities of public administration. No respondent gave any example of conflict of interest situation exposed by non-governmental organisation. The absence of systemic mechanisms to detect conflict of interest situations in most public offices is not sufficiently compensated by monitoring and control of public administration from media and watchdog organisations.

Usually, these were either missed shots or information that we responded to according to the press law. I can't recall any such case of exposing the conflict of interest (R15).

There was a situation where someone sent information about me, probably from some competing company, that I awarded contract to their competitor. Of course, media contacted me and from the start they had negative attitude, but at the end it transpired that no such contract at all was processed in the ministry. (...) Media are often used to mislead general public, to spread negative opinions (...) When non-governmental organisations are concerned, I had no signals or contact from them (R18).

It seems that non-governmental organisations (...) paid no attention to the existing conflicts of interest here (...) At least in the field of my activity, I can't recall such situations (...) The conflict of interest and the situation of being in a conflict of interest are quite simple to identify and those documents, i.e. when you know what documents to ask for, for example, to verify some conflicts of interest, and if the members of media and non-governmental organisations know how to exert pressure on the office and what questions to ask. For people often talk about the conflict of interest when they don't know whether the conflict really takes place, and ask for documents that will not help to verify the situation, will not show whether the conflict in fact took place (R8).

6.3.2. Preparedness of public officers to conflict of interest situations

The great majority of respondents believe that the employees of their public offices are well prepared to possible conflict of interest situations. This is particularly true for employees with the longest period of service and civil servants, rather than for inexperienced employees.

I think that they are decently prepared. The situation is (...) that we know each other to the extent that we were checked. I will never bet all my money that they would know how to react if they were in a conflict of interest situation (R4).

In general, nobody have ever caught us, as the employees of the ministry, in an actual conflict of interest situation – at least I don't remember such situation, so I think that, being carefully watched, we as a group must tread relatively carefully, if there are no obvious examples of such situations, and I doubt that in the present times, something that can be well sold would remain hidden (R13).

Appropriate preparation results from the knowledge of public employees on the conflict of interest, and mainly from their familiarity with regulations, principles of civil service and internal provisions developed in some ministries. Opinions from our respondents show that no uniform, integrated approach to spread the knowledge on the conflict of interest and proper reactions to conflict of interest situations is used. Every ministry implements its own policy of presenting relevant information, basing on different sources of knowledge and methods. Only few offices use more than one source of information and perform systematic educational activities.

For some public offices, the familiarity of their employees with the ordinance of the Prime Minister[117], defining the principles binding for the civil service members, is a sufficient

[117] „Ordinance no. 70 of the Prime Minister on the guidelines for observing civil service principles and on ethical principles of the civil service corps".

precondition to prevent conflict of interest situations. It is assumed that knowledge of the principles and the values of the civil service should automatically translate into ability to identify conflict of interest situations and make public officers react properly to such situations.

> Every employee signs a declaration that he or she read [the ordinance]. Every department has documents confirming that employees are familiar with the regulation. For me, it is a kind of public officer's catechism. In the regulation, all factors are listed (...) that should be taken into account by public officer, and also situations are described that should be avoided by public officer (R5).

In other public offices, the preparatory service, being for some new public officers the main opportunity to familiarise with the world of public administration, is seen as an important part of preparation to possible conflict of interest situations. While the knowledge of the ordinance of the Prime Minister is required from every government administration officer, the participation in the preparatory service program depends on the decision of the managers of individual offices. Some of the respondents indicate that the program is not very helpful in developing proper attitudes and values among public officers because it also assumes that it is enough to familiarise them with the existing regulations and provisions, and then they will be able to identify conflict of interest situations and properly react to them.

> This is the main source of knowledge for new employees, as we talk mainly about new employees, because employees with a long period of service just know all of this. But new employees have the so-called preparatory service. (...) They are informed in detail, they must get acquainted with administrative procedure where one of the important elements is the exclusion of an employee in case of the conflict of interest situation. They must get familiar (...) among others with the ordinance on public tenders where it is also indicated that the declarations should be filed and how to react to a situation when there are doubts as to our impartiality (R3).

> I think that we are much more focused on ethical matters to prevent conflicts than other ministries, (...) the ethical module in the preparatory service is obligatory in our office. And elsewhere the trainings are not obligatory (R9).

> The preparatory service (...) became optional and to be honest, few people are sent for it. Newly employed persons in public administration are rarely sent for it, unless they are very young and fresh. And the preparatory service was intended not only to give basic knowledge on public tenders, constitution, administrative law. It was mainly intended to develop appropriate attitudes. But it is not the case, as few people are sent for it. And in addition, it is led by commercial firms that have no idea about it. They cannot develop attitudes because they don't know what the attitudes are. Not that they are bad, only that they are not familiar with this world, they lack the ethos (R20).

Few public offices leave the problems of the conflict of interest to the sphere of direct relations between employees and their superiors. Informal talks with superiors or colleagues from work are seen as the main source of knowledge in this field. Some respondents indicate the crucial role of the managerial staff who are responsible for spreading the knowledge on the proper reactions to conflict of interest situations and for informing their employees on guidelines and instructions developed in their public offices.

So many things you can learn in the corridors. It is normal. Officially, the things are not discussed, because these are often things that are shameful, unpleasant, bad for the image of the institution (R5).

For sure, employee's superior should be a source of knowledge for him or her. In particular when something new happens or some new potential risks arise. (...) When we proceed an act of law because new tasks were added, then the manager should inform about it and indicate that everybody should be vigilant (R4).

In fact they are also informed (...) in everyday practice, i.e. how guidelines (...) are issued (...) on the internal interpretation of the existing regulations, what is allowed, and what is not allowed, or what is admissible, and what is not admissible (R2).

Many respondents report about organising special training programs that include the problems of the conflict of interest. Most of them are anti-corruption trainings where the issue of the conflict of interest is only one of many discussed topics. Some respondents indicate that the trainings are only sporadic and discontinuous, some of them suggest that training programs should be more practical. In several ministries, in the recent years there have been no trainings concerning the problems of the conflict of interest.

We have and conduct this type of trainings. They include analysis of particular cases, how to react in different situations. Sometimes [we use] different sources of knowledge, but of course you cannot fully regulate ethical attitudes of every employee using regulations or trainings, it's obvious.(R2).

In 2010, the Central Anti-Corruption Bureau organised a training for our employees. I can't recall who exactly was required to participate, but it was a wide group. Anti-corruption training showing the mechanisms where partiality, conflict of interest or risk of corruption can be suspected (R3).

We have such trainings, they are organised at least once a year, virtually everybody can participate, and anyway they are required to participate. On the other hand, it is much harder to find somebody who can talk interestingly about the conflict of interest and give fine examples, so that it would be remembered by people who have real life problems, rather than some theoretical situations (R13).

Some respondents emphasise an important role of ethical advisers as a source of both knowledge and practical guidelines useful in different situations. In some public offices, they are also entitled to represent whistle-blowers exposing conflict of interest situations.

These are the persons to whom everybody who suspects a conflict of interest situation may come for advice. It is absolutely anonymous. I only get general information on the number of such cases. They are not many, but they happen. In reality, people go there and ask whether doing this or that can lead to a conflict (R9).

6.3.3. Policies on the conflict of interest in public offices

In the field of the conflict of interest, the great majority of public offices have no consistent strategy of activities that would integrate different training initiatives and internal regulations developed by some ministries, as is shown by the answers from the respondents when asked to describe the policy of their offices on the conflict of interest. In many ministries,

it is assumed that sufficient instruments to counteract conflict of interest situations are the general regulations concerning e.g. public tenders, seeking additional employment or filing financial disclosures, together with the ethical code of the civil service. Some ministries introduce additional measures in the form of internal regulations, special trainings, or (in isolated cases) create special organisational units to counteract corruption and conflict of interest situations. The additional solutions are mainly introduced by individual ministries that are more vigilant to the threats connected with the conflict of interest, and are not a result of any consistent plan for action covering the whole government administration. In none of the surveyed ministries, any attempts to develop a comprehensive strategy to counteract the conflict of interest were undertaken. It seems that the situation results from both ignoring the importance of the problem, and believing that the existing solutions are effective. Opinions on the need to counteract the conflict of interest presented by public officials seem to match the views that prevail among the social environment of public administration. So far, the issue of the conflict of interest does not feature in the agenda of the biggest political parties. It is also not seen as an important threat by the main stakeholders of public administration (trade unions, employer associations, media or the majority of non-governmental organisations).

> Specific activities titled "avoiding the conflict of interest" – such procedure is rather nonexistent. As with the procedure of managerial control (...). All our efforts to see to that that public officers perform their work in a responsible, competent, timely manner – these are also efforts that should prevent conflict of interest situations (R5).
>
> There is no general policy, no policy especially dedicated to preventing the conflict of interest. I would say that it is a part of supervision over departments from their executive directors. A part of recruitment policy that, hopefully, lets us choose people who will avoid conflict of interest situations, and it is also developing relevant values among the employees (R7).
>
> We have no such direct solutions. There is the anti-corruption one, but it is broader and a bit different. (...) The Ethical Code of the Civil Service also talks about such things but I'm not sure whether the examples it gives can really translate into avoiding such situations or the right action. I think that the more general a thing is the poorer the effects it can bring (R16)

In only few public offices special attention to the problem of the conflict of interest (within the anti-corruption initiatives) led to establishing a special organisational unit or developing internal rules defining how to react to potential conflict of interest situations. But even then, no comprehensive strategy to counteract the conflict of interest was introduced.

> Creating such unit that deals generally with the issues of corruption and the issues of the conflict of interest, all ethical issues, shows that there is a problem, but also that we try to cope with it in some way. (...) But there is no effective program to manage the conflict of interest, and no general approach to the conflict of interest. Certainly, it is bad that there is no such uniform strategy to combat, among others, the conflict of interest, since we are mostly interested in the corruption issues, but the conflict of interest can also lead to corruption, be a cause of corruption. So we certainly don't ignore this aspect, and after several years of experience and analysing particular situations we finally concluded that a broader program is needed, more focused on the conflict of interest in general, and also this purpose should be served by the anti-corruption strategy (R8).

6.3.4. How effective are the instruments used to counteract conflict of interest situations?

The absence of any uniform and coherent conflict of interest policy does not necessarily mean that individual preventive measures introduced by public administration offices must be ineffective. Our respondents described several effective methods to react to situations of potential or actual conflict of interest.

The most commonly mentioned solutions include regulations concerning public tenders, as well as regulations concerning seeking additional employment by public officers – the areas that generally are seen as the most vulnerable to conflict of interest situations. Small number of respondents emphasise the preventive role of filing financial disclosures.

> Selection of the members of tender commissions – very high transparency. For many years, neither the Supreme Audit Office nor any other external control unit have ever questioned any purchase nor any public contract – these procedures are also performed by persons that are very well prepared. All public purchases. The same holds for giving grants. These are transparent, visible procedures (R20).
>
> In general, the good thing is that in every process, e.g. when public contracts are awarded, more than one entity, organisational unit is engaged. Only this leads to strengthening the process, its greater transparency – we record the documents, the procedure is visible at every stage. It is transparent who took what decision, commissions evaluating offers also consist of several persons that come from at least two departments or units. So in my opinion, only this should counteract conflict of interest situations (R12).
>
> It mainly consist in observing the rules concerning analyses and filing financial disclosures. Asking for approval for additional paid employment. These things are very carefully observed, checked and really consistently implemented (R2).

An example of effective instruments used in some public offices can be internal regulations concerning the proper reaction to conflict of interest situations, usually included in broader anti-corruption solutions. Effective, though rare regulations, can be ordinances concerning people quitting public administration. Only small number of the respondents see the need to introduce any instruments of early detection and prevention of conflict of interest situations, such as risk analyses, implemented under anti-corruption strategies.

> We have the ministerial decision that describes how an employee should act in his or her contacts with representatives of companies, with lobbyists, with businessmen. And I think, I feel that at least 90 % of all employees in the ministry are familiar with the regulation, because it is relatively brief so that people were not discouraged to read it and the issues connected with the conflict of interest were not overregulated – you can publish whole volumes, but then nobody will read it (...) so there is such decision that shows that the conflict of interest is counteracted. Exactly how to react when somebody wants to sponsor some initiatives, how to behave during various meetings, conferences, or which conferences to attend, what may be and what may not be a conflict situation. (...) we already issued over, close to 40 such interpretations on how to act in particular situations. And they are also published in the internal network of the ministry (R8).
>
> How to manage the conflict of interest in case of people who quit (...) what happens to them later. It is also a question whether it is corruption, whether when taking some action under tender

procedure I can't already find myself in a conflict of interest situation – and then, in a while, for example, I quit and go to the company, and will perform the contract, on which I presently work, but on the side of the contractor. So in this field, a regulation was also introduced (...) that for three years forbids to seek employment by such person (R8).

[There should be] risk analyses for corruption situations. They require such a conscious looking at our functioning and detecting the elements that can be distorted. First, we have to look whether such mode of functioning can lead to a situation where the risk is higher.(...) it requires taking a conscious look at the consequences of all our actions that are performed to achieve the final goal. Inside, I presume, is hidden the conflict of interest, but it is not totally evident (R16).

In some public offices, an effective instrument to counteract conflict of interest situations is to delegate powers to make decisions on spending public funds to independent experts or to include independent entities into the teams that supervise planning and implementing public tasks.

In many areas, we practically gave the decision powers to expert teams, academic groups, at the same time safeguarding in some way their independence. So it is not public officer who decides who will receive what funds, but experts who develop a kind of ranking based on their expertise. (...) In this way, we lower the risk of conflict of interest situations (R4).

Our respondents also described many weaker points as far as counteracting the conflict of interest is concerned. In this connection, they mentioned mainly the sphere of developing knowledge, awareness and attitudes. Small number of trainings or their limited focus only on presenting the existing legal regulations considerably hamper the ability to present norms and values that should guide the actions of public administration officers.

I still notice deficit of knowledge, and I mean an elementary knowledge related to performance of everyday tasks – a lack of humility and lack of the sense of service. It is our awareness that can make our state better, wiser, so that its citizens will trust the state (R17).

I feel that today, when conflict of interest management is concerned, there is a deficit of this training element that we discussed (...). Even from the perspective of managerial staff, no mechanism of transmitting the knowledge exists (R18).

Some respondents indicate that procedures and behaviours should be more standardised in order to limit the discretionary element in decision-making processes. The proposals include both introducing internal regulations, guidelines or rules for action in possible conflict of interest situations, and making the relevant procedures more precise.

We have no regulation that would tell how to react to conflict of interest situations. I think that especially persons with shorter period of service can sometimes be shy to ask their superiors or be unsure what to do – to confess or not to confess. Such reference book of some kind, that would show step by step what to do, or instruction for action would probably make it easier (R12).

There must be standardised and defined [procedures]. In administration, the areas where you don't know what to do, exist on the borderlines, i.e. in places where different departments or units meet. And in order to help it, to eliminate those dark or grey areas where nobody knows what to do (...) I opt for introducing managerial solutions. At every stage, it should be known who has to do what and in what time, how many people are engaged, what final product is expected. This appro-

ach is still not present in administration. It seems that it can play an important role in eliminating conflicts of this type that we discuss today (R2).

Attitudes and behaviours of public officers themselves, being often an embedded element of organisational culture, can significantly hamper efforts to counteract the conflict of interest. Many respondents mention the problem that employees are reluctant to reveal conflict of interest situations. According to some respondents, to a significant extent the failure of whistle-blowing programs that were supposed to help in detecting irregularities results from deeply rooted sense of group solidarity and weak identification with the place of work or the civil service corps, which in turn can result from the lack of motivating incentives from public administration, manifested in particular in relatively low salaries of public officers.

> We expect that you will do your job, and we think that it is your duty to be on watch whether any such things take place. It is hard to achieve in our society, it is known that nobody likes denunciations, but the system is not a system of denunciation, because we have denunciation when it is not true, and has, I would say, quite a different aspects. But when we see that somewhere in the organisation something goes wrong, then we should in a possibly soft manner pay attention to the situation (R13).

> Public administration worker should know (...) that he or she really wants to work here, wants to do important things for the country or the state that pays him or her as much as it can afford. And the problem is that at this borderline between administration and business, when the salaries are not too high, temptations can arise that can result in resolving the conflict of interest to the detriment of the administration, the state (R2).

6.3.5. Recommendations for future activities

Measures to counteract the conflict of interest in government administration include both regulations, guidelines, control instruments or sanctions, and activities intended to influence attitudes and behaviours of public officers. Our survey shows differences of opinions on the usefulness of various instruments, as well as on the activities that should be taken in the future. The different opinions as to how the future policy to counteract the conflict of interest should look like depend on different beliefs as to what methods to develop the required behaviours among government administration officers are effective. One view is that the norms are violated mainly because there are no effective instruments of control and sanctions. The main cause of violating the principle of impartiality is the belief that the conflict of interest probably will not be exposed, and even if it will, that the relevant sanctions are not too painful. The second view is that the most important thing in public administration is acceptance and internalisation of the values and the norms of the public sector. Strong identification with the values and the awareness of widespread acceptance of common ethical standards among the majority of public officers can form an important barrier preventing conflict of interest situations. In the opinion of the great majority of the respondents, the future policy to counteract the conflict of interest should take into account

both perspectives, but there are significant differences as to how the strategies of control and of developing appropriate attitudes should be balanced.

The strategy of control is advocated by only few respondents. Its supporters believe that the most important thing is to introduce regulations that would cover new areas of risk, to build internal systems to detect conflict of interest situations, and above all, to effectively react and use sanctions in the situations where regulations or ethical principles are violated. In the opinion of this group of respondents, it is the lack of firm reactions towards employees who are in conflict of interest situations that creates environment where the conflict of interest is ignored and tolerated.

> In the beginning, I also strongly opted for educational activities. But it seems to me that much more effective is to draw consequences and effectively draw consequences towards persons who break some rules, and such information spreads much faster in the ministry, in the public office, than education. Unfortunately, education is seen, perhaps only in administration, but it is seen as another training, another certificate (...). Of course, we should inform people, we should talk with them, but at present the standards are not so high to give up this disciplinary action and some kind of sanctions. In my opinion, the effective detection and disciplinary action is more important that education. (...). Without disciplinary action the educational initiatives will not matter so much, because every ministry can say that all its employees are trained, but it won't eliminate the conflict of interest. (R8).

> If something like that happens, ostracism from the rest of the public officers and exclusion from the corps for good. Not turning a blind eye, not ignoring, but taking really strong action, introducing relevant tools so that in case of detecting [the conflict of interest] (...) when someone is excluded from the civil service, then it is for the rest of his or her life. No return. So that everybody knows that the risk is high, that it's not worth taking the risk (R3).

A small group of respondents opt for an approach combining both regulations, standardised procedures or control of behaviours, and activities to develop the knowledge, and above all to develop appropriate attitudes. Both approaches should be implemented simultaneously, and none of them should be preferred.

> Government administration should also take into account conclusions from external reviews (...) indicating some mechanisms, some conclusions that should be translated into internal procedures, and in the end should translate into changes in regulations. But on the other hand, the task to develop appropriate attitudes among public officers cannot be abandoned. (...) In the long term the administration should be shaped in such a way to gain knowledge how to resolve conflicts that arise. For me, these are two fields of activities that mutually support one another. (R2).

The majority of the respondents are of the opinion that in the near future, the policy concerning the conflict of interest should focus mainly on developing appropriate attitudes and on building organisational culture, because common acceptance for values and principles of the civil service can form the most effective barrier preventing conflict of interest situations. The opinions are supported both by the belief that there are no legal means to effectively control behaviours of public officers, and by the belief in the power of commonly accepted principles of a professional group integrated by a common mission, sharing

and defending common values. In contrast to the supporters of the strategy of control, proposing introduction of several specific instruments and regulations, the advocates of the softer approach of developing attitudes and building organisational culture usually cannot indicate any specific proposals for particular activities. The few presented solutions include introducing changes in the recruitment system for the civil service that would prefer candidates with strong motivation to work in the public sector, and promoting the values of civil service among public workers with the shortest period of service.

> I feel that the only efficient solution is to try to develop appropriate culture, sensibility in organisations. (...) We are not able to codify, enumerate all situations – case by case, that such conflict requires such reaction. (...) In law, it is possible to codify and describe different situations, that such behaviour is threatened by such sanctions, or that people should act in some way. But when ethics is concerned, we can use only general norms, only build an organisational culture enhancing this kind of reflection in every situation, whether there is a risk of conflict, how to react so that not to break the rules. (R15).
>
> The sphere of prohibitions and commands guarded by sanctions is perhaps even a bit overgrown, and it is always worth to pay more attention to encouraging people to think in certain terms and to observe certain standards rather than to study regulations (R13).

According to the respondents, an organisational culture based on the idea of the service for the state cannot be built without significantly strengthening the status of and creating stable conditions for the civil service. The persistent negative stereotypes concerning public officers, supported by media, lead to a growing frustration among public officers. The low social status of public officers and critical attitudes from many influential opinion circles create a situation where the motivation to work for public good is not rewarded by the relevant positive social evaluation of work in public administration. An additional reason for frustration are relatively low salaries in public administration, in particular when managers and highly qualified specialists are concerned. As a consequence, we have a growing sense of temporariness among public servants where by many, in particular newly employed public workers, the work in public administration is seen as a temporary stage in their professional career. In the situation, the risk of the conflict of interest grows. The belief that work in public administration is only temporary solution makes public officers less resistant to the temptation to take decisions guided by the interests of prospective employers, political parties or the family and relatives. An additional result of the situation is disintegration of the professional community and related weaker social control. To change the situation, activities going far beyond the routine strategies to counteract the conflict of interest have to be undertaken.

> (...) The problem is that public officers are required to have enormous knowledge, to be highly competent, to observe high ethical standards, they have to be clear, pure, free of any suspicion. And on the other hand, in papers, in TV all the time we hear that public officers are parasites who all day long drink coffee and earn too much (...). I know that it is not that simple that we add more money, and then everyone will be fantastic, but the two aspects have to be balanced: competent,

clever, ethical, but at the same time we should not say that they earn too much, that their salaries should be cut. There is no other way (R4).

If we bear in mind that for the last five years salaries in public administration were frozen and (...) everyone attacks administration, everyone talks bad about administration (...) then at least some people start to see [their work in administration] as a temporary stage. Not as a long-term work for the state, but as a temporary stage, (...) they start to think about gains that can be got from this temporary stage. And from there is only a small step to possible temptation. To do it in a way that would make the next step easier. Every temptation is an additional risk. The more stable our staff, the better educated, paid, the lower the risk will be (...). Not punishing, but counting on the belief that the risk is not worth taking. This is a totally different model, perhaps very hard to implement (R3).

6.5. Summary

The survey showed that there is no widely shared definition of the conflict of interest. The conflict of interest is perceived as an inconsistency between common good, often understood as the interest of the state, and the good of individuals or social groups. The conflict of interest is also interpreted as the tension between different interests and aims of public administration and its stakeholders, as incompatibility between the interests of the state in general and the interests of particular ministries, or as internal rivalry between different government administration offices.

The opinions that the conflict interest is a threat to the common good, to the functioning of the state or to the impartiality of decisions made by public administration show strong identification with the values of the civil service and awareness of its role in modern society. On the other hand, the opinions that the conflict of interest is a permanent factor in rivalry between public administration offices can be seen as alarming. It seems that to a great extent such interpretations result from strong divisions between different ministries and excessive autonomy of the Polish ministries and central offices.

Threat to the principles of democracy, social and economic costs, and negative effects for the functioning and the image of public offices are seen as the gravest consequences of the conflict of interest situations. They are also seen as an important factor weakening social confidence in the state and the public administration.

The conflict of interest is seen as a result of many social, cultural or institutional factors, such as greed, preferring private and family values over the values of the state, but also as a consequence of imperfect selection of candidates to the civil service, low level of salaries or excessively complicated and unclear regulations.

So far, the conflict of interest has not been tagged as an important problem for public administration, and is often seen as relatively unimportant phenomenon in the activities of public offices. It is perceived mainly as one of the aspects of the problem of corruption, and the measures introduced usually form a part of broader anti-corruption strategies.

Conflict of interest risks arise every time when administrative decisions are taken that affect the activities of external entities, and in particular in the process of law-making. The areas most vulnerable to the conflict of interest are public tenders and employment in public administration.

The survey showed that opinions on the incidence of the conflict of interest in the Polish public administration are strongly divided. According to some respondents, even potential conflict of interest situations are rare, and the few actual conflict of interest situations are promptly detected and meet with a proper reaction from public offices. Others say that to a great extent, the conflict of interest is a hidden problem, of a scale and intensity that are hard to assess, rarely detected in view of the absence of relevant instruments and non-transparent regulations, or a complex network of links between public administration and the external world.

As the areas of hidden conflicts of interest are usually mentioned the law-making processes where the complexity of the final regulations considerably limits the possibility to detect potential influence from external entities. Other examples mention complex relationships between public administration and its stakeholders where the interests of external entities are often covered by activities presented as support for the mission of public offices and are hard to demonstrate based on the existing legal regulations. Sponsoring of special events, funding prizes, organisation of conferences or seeking employment in stakeholder organisations after quitting public administration are described as the areas that are not sufficiently explored as to possible conflict of interest situations.

The great majority of the respondents notice many positive changes in reacting to conflict of interest situations that have taken place in the last decade. One of the most important developments is the considerable growth of awareness of both the conflict of interest problem, and the risks it poses to individual careers, the effectiveness of the operations of public offices or the image of administration. As a result of the greater attention to the problem of the conflict of interest, basic regulations have been introduced to counteract the conflict of interest situations mainly in the fields of public tenders or additional paid employment of public officers.

The attention to the problems of the conflict of interest and introducing relevant mechanisms to counteract and react to them are also a result of the activities of Polish and international non-governmental organisations, as well as – to a smaller extent – of media controlling the activities of public authorities.

The majority of the respondents say that in the last three years, conflict of interest situations only incidentally or never took place in their public offices. The low incidence of conflict of interest situations results mainly from the existence of proper procedures regulating reactions of public officers to situations of possible conflict of interest, as well as from their familiarity with the rules governing the civil service.

According to some other respondents, the number of exposed conflict of interest situations is so small because there are no tools to detect and register conflict of interest situations. The lack of proper system to detect conflict of interest situations is particularly

visible when identifying links between public officers and external entities is concerned. The problem concerns mainly the declarations filed by public officers under public tender procedures. For some respondents, the limited capability to verify declarations from public officers is a sign of imperfect system of control. For others, to strengthen control functions helping to better diagnose conflict of interest situations would mean to introduce excessively complicated verification procedures.

Conflict of interest situations are only sporadically reported by the employees of the public offices surveyed. The majority of respondents say that they have never encountered situations where their employees reported such situations. The role of media and non-governmental organisations is also small in detecting conflict of interest situations.

The great majority of respondents believe that the employees of their public offices are well prepared to possible conflict of interest situations. It is true in particular for public workers with the longest period of service and public servants, rather than for inexperienced new public officers.

The preparedness of public officers to possible conflict of interest situations is a result of their familiarity with the relevant general regulations, the principles of the civil service, and detailed regulations developed in individual public offices. The opinions presented by the respondents show that no uniform, integrated approach to react to conflict of interest situations exists. Every ministry implements its own informational strategy in this field, based on different sources of knowledge and methods. Only few public offices use more than one source of information and lead systematic education and training activities.

The survey showed that in the public administration various sources of knowledge are used to inform on the conflict of interest and appropriate reactions to it. Only in few surveyed public offices, the issues of the conflict of interest were the subject of systematic trainings and meetings. In some public offices, ethical advisers are an important source of knowledge and advice. In others, the knowledge on the conflict of interest is transmitted mainly through informal discussions or direct contacts between employees and their superiors.

In the great majority of public offices there is no coherent strategy in the field of the conflict of interest that would integrate different preventive, educational and control actions. In many ministries a belief prevails that the existing general regulations on e.g. public tenders, seeking additional employment or filing financial disclosures, supported by the ethical code of the civil service, are sufficient instruments to counteract conflict of interest situations. Only in few ministries, special attention to the problems of the conflict of interest (under anti-corruption policy) led to establishing special organisational units or internal guidelines describing the appropriate reactions to potential conflict of interest situations. Relatively low attention to the problems of the conflict of interest seems to derive from a belief that the problem is unimportant, and that the existing solutions are effective.

The survey showed that several effective forms of reacting to potential or actual conflict of interest situations exist. According to our respondents, the best solutions can be found in the field of regulations on public tenders, regulations on seeking additional employment,

as well as the internal regulations, introduced in few public offices, concerning the proper behaviour in conflict of interest situations.

The examples of effective solutions show that the activities are diverse and isolated, and to a great extent result from the initiatives undertaken by individual ministries rather than from a coherent plan for action implemented throughout the government administration. For example, regulations concerning persons quitting public administration, measures to delegate decision-making powers to independent experts, or risk analysis procedures were introduced only in few ministries. As weaker points were indicated activities in the field of raising knowledge and awareness, and promoting proper attitudes, as well as the lack of easily available guidelines or instructions concerning the proper behaviour in possible conflict of interest situations.

In the opinion of the majority of the respondents, the conflict of interest policy should focus on raising awareness and promoting organisational culture, because properly internalised values and principles of the civil service can form the most effective barrier for possible conflict of interest situations.

According to many respondents, an organisational culture based on the idea of the service for the state cannot be built without significantly strengthening the status of and creating stable conditions for the civil service. The low social status of public officers and critical attitudes from many influential opinion circles create a situation where the motivation to work for public good is not rewarded by the positive social evaluation of work in public administration. An additional reason for frustration are relatively low salaries in public administration, in particular when managers and highly qualified specialists are concerned. As a consequence, we have a growing sense of temporariness among public workers. By many, in particular newly employed public workers, the work in public administration is seen as a temporary stage in their professional career. The belief that work in public administration is only temporary solution makes public officers much less resistant to temptations to take decisions guided by the interests of prospective employers, political parties or the family and relatives.

7. EXPERTS ON THE CONFLICT OF INTEREST AND ON LIMITING RELATED RISKS

Anna Stokowska

The documents that we received from ministries and the Chancellery of the Prime Minister constitute – as Grzegorz Makowski wrote analysing them – the evidence of institutional awareness of the problem of the conflict of interest in public administration, as well as a source of knowledge on the existing procedures and policies in this field. Thus, analysing them we could assess how central institutions formally manage the risk of the conflict of interest. The second stage of the monitoring – questionnaire surveys led among public officers and interviews with directors general and departmental directors in ministries – provided us with quantitative data (the survey), but also let us analyse how the procedures identified in the first stage of the monitoring are implemented in real life. The third stage of the survey was dedicated to interpreting the previously gathered data and developing recommendations indicating possible changes in the field of conflict of interest risk management. We decided to conduct three panels: with participation of representatives of the public administration (labelled as "civil servant panel"), with participation of non-governmental organisations (labelled as "non-governmental panel"), and with participation of representatives of academic and expert circles (labelled as "expert panel"). The panels took place on 23, 24 and 28 of April 2014 in the premises of the Stefan Batory Foundation, and in all, nineteen experts participated in the discussions – 7 in the civil servant panel, 6 in the non-governmental panel, and 8 in the expert one.

All three panels were moderated discussions with a general scenario highlighting the issues that we intended to raise during the meetings. The issues to be discussed were chosen based on the results of the earlier stages of the monitoring and in line with the objectives of the project and the guidelines from its leader – Transparency International Moldova. The issues discussed included questions concerning the need to introduce one legal definition of the conflict of interest and other possible amendments in legal regulations, the need to work on standards in this field in government institutions, the problems of management in public administration and related conflict of interest risks, as well as the deficits in training and informing public workers on the risks of the conflict of interest in their workplace. When preparing the scenarios for discussions we tried to create such conditions for exchange of opinions where the invited guests not only present their views on whether the existing solutions concerning the conflict of interest meet the needs of public administration, but also give their suggestions as to possible changes in legal solutions and initiatives to be

undertaken in order to better prevent conflict of interest situations and properly react when they do occur.

During the panel discussions, we tried to refer as often as possible to the challenges and problems identified when analysing documents, performing the questionnaire survey, and interviewing the directors from ministries. When questioning our experts about their opinions on our conclusions and insights, we also asked them to present suggestions as to possible methods of resolving the problems. While the discussions were led based on prepared scenarios, we tried not to treat them – as would be the case in a proper focus survey – as an obligatory list of themes to be discussed, but rather as a point of departure for discussion. Thus, while most of the themes discussed during all three panels were similar, our guests, depending on their personal interests, emphasised slightly different issues. Public officers discussed most thoroughly legal problems and the problems of managing public institutions in the context of conflict of interest situations; representatives of non-governmental sector focused on challenges related to prevention and education; and academic experts were most interested in discussion on the modalities to implement proposed changes in the public administration structures and on the need to change organisational culture in the Polish public administration. In view of the fact that the content of the discussions is more important for us than to whom particular opinions belong, we decided to relate them according to themes discussed rather than describing the panels separately, one by one. But every quotation is marked by the code of particular panel – civil servant panel: code U1; non-governmental panel: code P2; and academic panel: code A3.

So this chapter of the report is organised according to the themes that were discussed. Its first part concerns the definition of the conflict of interest. We asked our guests whether in their opinion the definition is needed, and if so, then why, in what form and where it should be introduced. The second, longest part of the chapter is dedicated to different ideas of activities or standards that – according to our experts – should be systemically implemented in the public administration. We discuss good and bad sides of declarations of interests, certified management systems in public administration, the need develop maps of risks and good practice bases, as well as the function of ethical adviser and desirable changes in education on the conflict of interest. At the end of the chapter possible methods to introduce the desirable changes are discussed. This last theme proved to be particularly interesting for academic experts – they focused on the social control as a means to support introducing good practices in the field of counteracting the conflict of interest situations, and on the role of a strong leader in the process of introducing the changes.

7.1. Definition of the conflict of interest

The expert legal opinion prepared by Grzegorz Wiaderek and Natalia Mileszyk for our project featured the recommendation that a general legal definition of the conflict of interest should be developed. According to the legal experts, the definition would enable us to avoid interpretation problems e.g. when developing internal policies, procedures or

documents in public offices and institutions. So we asked the experts participating in our panels whether they agree with the opinion and whether they can indicate other legal instruments that would enhance the awareness of the nature of the conflict of interest and the ability to manage conflict of interest risks in public administration.

Participants of all three panels agreed that a specific and unambiguous definition of the conflict of interest, included in a legal act of a sufficiently high level (even an act of law), would form a desirable benchmark not only for other more detailed regulations, but mainly for the practice of managing public institutions:

> For me, such definition would not eliminate other, more detailed solutions. It would rather be of more general nature and could be referred to when necessary. And around it, perhaps some case law, some literature would grow. [P2]

Precisely where the definition should be inserted was not discussed during either of the three panels, but the majority of experts agreed that it should be possibly high-level legal document so that appropriate awareness of the problem could be fostered, and real opportunity to shape other regulations and procedures could be created. At the same time, the need – and above all the feasibility – to create a separate act of law devoted exclusively to the prevention of the conflict of interest was definitely dismissed:

> We create additional volumes of legal regulations. One act of law that would generally regulate everything, in view of the present complex economic, political, legal relations – it is impossible to develop anything like that. [U1]
>
> There is no need to create additional acts of law, to extend regulations, and to require such and such things from everyone – it is enough to enforce what we have. And we have relatively good regulations. To educate and to enforce – that's what we should pay more attention to. [U1]
>
> In my opinion, such act of law with a general definition of the conflict of interest is needed. To highlight it as a separate issue. It need not to be an act of law that takes and eliminates everything from the other existing acts of law, cuts out and pastes. I think that it could form a reference point, a general definition, and particular solutions could be included in other regulations. I also think that the definition should show what the conflict of interest is and why it should be avoided. [P2]

Building a common ground in understanding the problem of the conflict of interest is important and should allow to increase awareness of both general public, and civil workers, as well as other people possibly vulnerable to the problem (such as businessmen, doctors, scientists, local government officials). In this connection, opinions such as cited below were presented:

> I am of the opinion that perhaps a general regulation is possible, as a kind of a signal. For as far as I know, we have no legal notion of the conflict of interest, and by its nature it must be a general definition. It should be a kind of a signal from the state to all its officers, but also to people from outside who should know that public officer must avoid the conflict of interest. [U1]
>
> The definition should be in place, i.e. it should be created, for it would set a standard for the notion, i.e. for understanding the notion – it would become defined in some way, perhaps making it easier for us to move around in this area. All of us would understand the issue in a similar way, and in my opinion it matters. [U1]

The problem of how detailed such definition should be and whether it is possible to develop a catalogue (open or closed) of behaviours or situations matching the definition is another thing. While the participants of the panels agreed that creating a general definition of the conflict of interest and including it in legal regulations would be desirable, some of them had doubts whether it is possible to create such a regulation that on the one hand would form a sufficiently capacious framework for further, more detailed regulations, and on the other – would not be subject to thoughtless and one-sided interpretations:

> Creating a legal definition has the drawback that everything outside the definition will not be seen as a conflict of interest (...). When they get the legal definition, then they will set aside everything else. [P2]
>
> The conflict of interest takes place in different forms and circumstances. For example, there is a mechanism of excluding a judge in penal proceedings etc. There are financial declarations etc. These are so different instruments and different areas where we try counteract the conflict of interest that I can't imagine that it is possible to put all this in one regulation. [P2]
>
> Such general definition with relatively precise dispositions should exist. The possibility to develop sectoral, official catalogues for particular areas. For it is impossible to build catalogues identical for all (...). Of course, today many public officers use the following formula: since it is not legally forbidden, then we can do different things. [A3]

In other words, we should avoid a situation where a more or less open catalogue of conflict of interest situations is created making us feel dispensed from further vigilance for other situations that can arise in practical operation of public offices. Thus, in the case of the conflict of interest, it seems particularly difficult to strike a balance between the precision of the general regulations and the need for reacting flexibly to situations arising in real life. The opinion of the participants of our panels was that the law not always properly answers to the problems that, in the end, must be resolved on the level of institutional management. To some extent, the ordinance no. 70 of the Prime Minister – already cited in many parts of this report – is such guide and benchmark of ethical standards for the civil service that can be invoked by internal regulations in public offices. But both the earlier stages of our survey, and the opinions from our experts show that the document is treated very superficially – newly employed civil service workers formally sign a declaration that they know it, but many of them in fact do not read it and do not know its content:

> I led trainings in at least three public offices concerning the conflict of interest. Usually, in the beginning we asked the following three questions. The question no. 1 was: Do you know the content of the ordinance no. 70? Who have read it? Few people raise their hands. Then, the second question is asked: Do you know what it is about? A bit more hands are raised. An then we ask: And who have signed a declaration that he or she knows the ordinance? An then everyone raise their hands. [A3]
>
> There are many practical, also specific ethical codes, various rules of action. The ordinance no. 70 is a kind of umbrella (...). Now, the problem is that there is no way to induce people to abide in every detail to the regulations. [U1]

In our opinion, provisions of the ordinance clearly describe the values and the principles that should guide the actions of public officers, and this is at least one of several reasons why it should become a standard also for the rest of the public administration, at least on the central level.

But the problem of enforcing the existing regulations is more complex – public officers are often unaware that when they break some regulations they can meet with sanctions, because they have not experienced a situation when an exposed case of the conflict of interest was resolved in any way.

> If some regulations are in force, public officers are often unfamiliar with them (...). Then, there is no awareness that the conflict of interest, when exposed, can lead to sanctions. Even if it is so, nobody knows any situations when regulations were enforced. As a result, people assume that it is not worth bothering, because anyway there will be no consequences. [A3]

Thus, it can be reasonably doubted whether introducing further documents containing norms and standards will bring the desired results in the form of raising awareness of the conflict of interest among civil service workers. And one of the central questions discussed during the panels concerned the issue to what extent the problems connected with conflict of interest situations can be solved within the everyday practice of public institution management, and to what extent the practice must be supported by relevant legal tools. The expectation that ethical problems can be solved using measures of penal nature is unreasonable. "It is not possible for all ethical norms (or even the most important of them) to be regulated by law. The sphere of ethics is so broad that no legal system can specifically encompass all its "realm" even in small part. Ethical norms should form an ethos, a basis for disciplinary action, public stigmatising or social ostracism. Unfortunately, the Polish civil service is lacking a proper system of criteria and models of behaviour"[118].

To sum up, during the expert panels some ambivalence could be felt as to the need both to draft one specific legal definition of the conflict of interest, and, more generally, to introduce central regulations intended to prevent conflict of interest situations or to help to manage them when they occur. On the one hand, the majority of our experts said that the definition, inserted in a legal act of possibly high level, would be helpful for better public institution management. But on the other hand, as the discussion progressed, our guests got closer and closer to the belief that first a change in political and organisational culture of public institutions should be brought about, and the real adherence to and the enforcement of the existing regulations – that so far are often only empty directives – should be guaranteed. Thus, perhaps the change in the approach to the conflict of interest problem should be initiated by the managers of public institutions themselves rather than by the law-makers.

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118 Szepietowska, Beata. ***Analiza aspektów praktycznych zapobiegania konfliktowi interesów*** w: Zubik, Marek (ed.). „Zapobieganie konfliktowi interesów w III RP". The Institute of Public Affairs. Warsaw 2003.

7.2. Proposed activities to prevent conflict of interest situations

Because the issues related to the conflict of interest were seen by the participants of our panels as belonging to the category of problems that should be properly managed at the level of internal regulations and procedures in every public office, the theme dominated the panel discussions, in particular during the civil servant panel. How to effectively manage institutions and what management standards to use in order to avoid conflict of interest situations, and when they do occur, how to effectively resolve them?

The questions met with several answers and proposals for solutions, connected mainly with building organisational culture based on trust and individual approach to every institution. The participants of the panels indicated that if the conflict of interest is treated as tantamount to corruption, and procedures geared for its punishing rather than preventing are introduced, then public officers, first, will not consider at all whether they are in a potential conflict of interest situation, and second, if they observe such situation, will not be eager to ask their superiors for advice or proposals for resolving the problem.

7.2.1. Risk maps

In the opinion of the panel participants, the efforts to refine the conflict of interest management methods in public administration should start with identifying the areas that should be more regulated (e.g. including the legal definition of the conflict of interest into one of acts of law), and the areas where softer measures (trainings, ethical codes, bases of good practices) will be more effective. Particular legal provisions should be tailored to identified needs of a given institution and should meet its real needs in the field of the risk of conflict of interest situations.

> We should be prepared for the risk of particular kinds of conflicts, and if we ask the question whether to make some regulations more detailed (...), then the scale of risks, the scale of possible conflict of interest situations do not allow us to say generally that we need it or don't need it. Very often, it is an individual assessment. (...) The reaction must be tailored to this risk, to the posts that are vulnerable. So that some unnecessary administrative elements are not introduced that will result in employing more and more people to control, with tiny effects. The analysis of risk is highly needed, to see where the conflict of interest must be combated – where the conflict of interest is most common. [U1]

The panel participants (in particular during the civil servant panel) were relatively sceptical as to the need to introduce excessive numbers of procedures preventing conflict of interest situations, fearing that it will lead to excessive bureaucracy and devaluation of some tools (in particular the declarations of interests that will be discussed later in this chapter). It can be assumed that the same fear (supported by economic reasons) motivated them to suggest that risk maps should be developed, and that procedures preventing conflict of interest situations should not be introduced where the risk of their occurrence is small:

If a given public office or a body defines such risk, then the best possible policy should be developed. If the risks are absent, then I'm not sure whether it makes sense to use energy and resources to build some super-tight procedure or policy counteracting the conflict of interest. There is always a chance that the risk can arise at some moment. But the question is how much it costs. For perhaps the policy is not worth developing, because the cost that can be born in ten years' time will be lower than the cost of developing the policy. It can be seen from different perspectives.

However, we feel that while to develop risk maps as a basis for strategy and procedure building is a good idea, the assumption that if somewhere the risk of the conflict of interest is low, then preventive action is not worth taking, can have negative impact on the attempts to introduce and consolidate values that are crucial for public administration.

7.2.2. Bases of good and bad practices

An interesting proposal for preventive action enabling us to more effectively identify the conflict of interest risks on the individual level is to create bases of good and bad practices, serving as reference points for public officers, and being a kind of illustration of how the conflict of interest looks like in real life.

I imagine that I open an Internet page, say that I have such and such dilemma, and perhaps someone – even anonymously, but I know that he or she was verified and in some way given access to the service – can tell me whether, in his or her opinion, it is a conflict of interest situation or not.

What would be helpful in management is creating a base of bad practices. American public administration every year presents stories showing what irregularities took place in different government institutions. Some people laugh that this is a kind of guide, but on the other hand it is a kind of illustration of things that seem very abstract.

It seems to be a right insight that showing how the conflict of interest looks like on particular examples can definitely enhance the understanding of the nature of the phenomenon and more effective identification of its cases. A similar theme was emphasised by the participants of the panels during discussions on trainings for civil service workers that will be summed up later in this chapter.

7.2.3. Civil law contracts and ethics of civil service

During the panels, a problem was raised of civil law contracts that are increasingly used in administration for hiring additional workers. Government institutions have to adhere to centrally decided limits of employment, so they use such contracts when they need additional workforce for individual projects or tasks:

Public administration is hard pressed to reduce employment. So now, the number of regular posts is reduced; public offices employ slightly less people than few years ago. But many tasks are performed using such specific-task contracts or commission contracts.

The situation leads to a kind of dilemma – workers employed in government institutions based on specific-task contracts or commission contracts do not belong to civil service

corps according to the Act on civil service, and thus their adherence to the provisions of the act cannot be enforced in the same way as for public workers having regular employment contracts. But an obvious intuition is that every person working for public administration should in his or her decisions be guided by public interest rather than his or her own particular interests. The ideal situation would be when ethical standards were so commonly internalised among government institution workers that adherence to them would be natural for them, independently from the form of their employment.

But before effective tools to build a proper organisational culture are successfully implemented it is worth considering how to solve problems related to civil law contracts in connection with the conflict of interest situations. One of proposals presented by panel participants was to introduce obligatory registration of such contracts in public institutions.

> What's dangerous is that public offices have no such consistent registers containing information how many such contracts are signed every year. It's very hard to get such information. Some ministries sign hundreds of contracts, while other on principle refuse to employ people in this way. All that is totally out of control and this is the area where many conflict of interest situations can arise, but we will never know about it.

In addition, public employees should also be influenced by instruments other than legal ones – as mentioned earlier in the report, the obligation to observe ethical standards by public officers does not necessarily have to be based on an act of law. For example, the issues can be formally regulated in individual contracts between employer and employee, requiring the latter to be on watch for conflict of interest situations and to react to them properly. The contracts can at the same time define disciplinary measures in case of breaking their ethical clauses.

7.2.4. Declarations of interests

The issue of declarations of interests was quite emotionally – but rather in pessimistic tone – commented by panel participants. They concluded that the majority of the models of declarations presently in use, in particular those used in connection with EU grants, fail to fulfil their role, and even lead to devaluation of the very idea of signing such declaration, leaving their users with a conviction that they are redundant and only generate additional paperwork.

> I don't know whether you saw the declaration of impartiality in applications related to EU grants. It is a pure nonsense. It cannot be signed, because they put everything in there, this, that, and provisions pasted from the Lex database. It's pointless. It tells nothing about impartiality. Such declaration should really show, based on a specific example tailored to the program, how the conflict can look like. Then perhaps it would be more effective, and the trainings would bring better results.

The opinion is strengthened by the fact that declarations, when signed, are usually not subject to any further processing – most commonly they are just put in the archives to be destroyed after several years together with other outdated documentation. They are not

verified or read by anyone – so untruthful declarations bring no consequences for people who signed them. To some extent, the situation results from the fact that no methods of verification are available, but nevertheless it leads to the corruption of the system designed to prevent the conflict of interest.

Another problem connected with the declarations is the fact that their clauses concerning the conflict of interest are not practical. For example, experts employed to evaluate applications from organisations applying for EU grants are required to declare that they have no connections with any organisations active in a given field. As a result, there is a risk that such experts will not have sufficient knowledge and expertise necessary to properly evaluate the applications:

> A balance should be stricken between the risk of the conflict of interest and the knowledge and the expertise in a given field. I think that it is ok to sign a declaration that I will be honest and don't have any connections; some form of it is needed. But various grace periods, various requirements are absurd. The situation is that we file applications (...) and someone who evaluates them have to sign a declaration that he or she have never had anything in common with organisations that deal with [this illness], so he or she has no idea about it. And then, we receive applications where it's evident (...) that people have no idea about things they evaluate. It's ok not to work for an organisation you have to evaluate, but those various conditions e.g. that for the last three years I have had nothing to do with a foundation that works in partnership with some bigger organisation ... The majority of organisations in Poland joined the same agreement [as we did], so in some way they are all connected [with us] (...).It is an example from my field, showing that it doesn't make sense.

So what should be the role of declarations of interests? In our opinion, if for some reason they cannot be verified, their role should be mainly educational – to raise awareness of the problem. But then, they have to be well-prepared tools, properly tailored to the situations and aims they serve:

> It should be considered when they are required to fill them. If again they get a 500-page excerpt from regulations and are required to sign every page of it, then it will not make sense at all. They will sign it mechanically.

A proposal was also presented to introduce a declaration that would be filed by public servants after quitting government institutions, in particular those who held higher posts:

> I have this idea of purely regulatory nature for higher-rank public officers who every 3 to 5 years from quitting the administration e.g. could be required to file legally sanctioned declarations on where they continue their professional career. Then, entering the higher level of public administration they would be aware that every 3 to 5 years they will be monitored.

The solution could supplement the one-year prohibition to seek employment with a businessman for whom the public officer issued administrative decisions, contained in the Act on limitations to business activity of persons holding public functions[119]. Public officers covered by the act are required to file financial disclosures during the whole period of holding public functions, so extending the period of obligatory financial disclosures and

[119] The Act of August 21, 1997, on limitations to business activity of persons holding public functions. O.J. 1997 no. 106, item 679.

modifying them to explicitly include a declaration of interests could be an effective tool to monitor this area that is potentially threatened by the conflict of interest. But the solution can be useful only if effective verification of the declarations is possible.

7.2.5. Ethical advisers

Ethical advisers or specialised ethical advisory units in public institutions are useful and important tools:

> I think that the more eyes watch, the better the chance that it will be harder to make some dirty deals. For me, it would be fine if such bodies, units responsible for ethical issues were created in public offices.

The obvious role of advisers should be mainly to advise public institution workers when they have doubts whether they are in a conflict of interest situation. Perhaps, introducing well-organised ethical adviser posts could lead to a more open and – as suggested in the legal expert opinion placed at the beginning of this report – a more flexible approach to the problem of the conflict of interest. For example, in conflict situations public worker would have not to be automatically dismissed or subject to a disciplinary procedure, but could be just excluded from a given decision-making process or subject to other preventive measures. However, such standards can become an effective tool to prevent the conflict of interest and to enhance its management only if ethical adviser is, first, properly empowered within the structure of his or her public institution and is trusted by other public workers, and second, is duly trained and has time and space to deal with possible ethical problems that occur in a given institution. In this connection, opinions such as the following ones were presented:

> A person comes with a problem and has to be trustful. Only then the chance is that it will work.
>
> There is a way to channel the things you are talking about. You come to somebody whom you trust and who will not at once start with the regulations, like controllers, but will try to consider what could be done in a given situation.
>
> There is a problem of personal qualifications for ethical adviser posts. Ethical advisers are commonly recruited from among the specialists of the lowest level. If such person is to advise other people, then he or she has to have some charisma, some authority in the office. It cannot be the most ordinary specialist from the archives – a place of official deportation. Higher knowledge, personal abilities are needed.

A different opinion was also presented – that the official rank of the person is not important, but his or her personal qualities, charisma and informal standing in the group of workers:

> The post held by the person [adviser] doesn't matter, rather his or her personal qualities, everyday behaviour, and not the post. Informal position of the person in the group is a very important factor. Many such factors that are not at all connected with his or her professional career. We have people of different official ranks, and watching them, meeting with them and analysing their results, we can conclude that the professional career factor is the least important.

Anyway, confidence in relation to the person who is going to give advice in ethical matters is necessary and crucial:

> When I show that I have some problem as an employee, then the employer can get angry with me. If I have a conflict of interest situation, I don't know if there is somebody... I would rather be afraid. In such situation support, a sense of support is needed.

But this seems to be the condition that is the hardest to achieve. To some extent, it is a result of hierarchical, relatively stiff structure of public administration that leaves little room for developing partner relations between employees of different official levels. The problem could be solved by changing the approach to public institution management in the direction of building horizontal structures, based on common values and trust. Another solution for effective advisory services in public institutions is to outsource them:

> What are people to do when they encounter bad practices or practices in case of which they are unable to evaluate whether they are good or bad, and have ambivalent feelings? We encounter such situations very commonly in different fields of our activity. We cannot assume that everyone will himself of herself answer the question (...). A situation can happen that there is (...) nobody to talk to, because all around there are only friends and you will need to go to other institutions (...). It can be solved by institutions internally, but also external institutions can be useful.

7.2.6. Trainings and information activities

Almost half of the respondents (45%) in the questionnaire survey conducted under our monitoring activities believe that public workers in their institutions are not well prepared to situations of possible conflict of interest. According to them, insufficient preparedness to such situations results mainly from the deficit of knowledge on the conflict of interest and low awareness of negative consequences of hiding such conflict or acting in a conflict of interest situation. These causes were indicated by 57% of the respondents. Similar conclusions can be drawn from documents received from ministries that show that educational efforts in central institutions to raise awareness of the conflict of interest are relatively weak. Trainings are rare, and – more importantly – they are accidental, occasional ventures rather than systemic, regular and prepared meetings. So we asked our panel experts what were the reasons for the situation and how the trainings and other informational activities should be organised to better serve their purpose.

First, it should be said that the panel participants, in particular during the civil servant panel, while mentioning trainings led in public institutions, conceded that trainings on ethical issues were rare and had no prominent place in the training schedules. In addition, it seems to be a problem concerning not only ethical trainings – generally, there seems to be no systematic approach to professional development of government workers:

> In the recent years, trainings have been cut by 30-40%. To expect that every theme will be financed is to expect impossible (...). Until EU funds are available, the trainings will be organised. But in few years, they will stop when the funding ends. And the Ministry of Finance says: pay for them from your current resources which are often very tight.

> I have a problem with justifying the spending: I even stopped to tell the society, journalists, even my superiors that we will have trainings on ethics – or what? The act on public tenders – ok, it is constantly being amended. Public finance – ok (...). Emphasis on computer trainings – very strong (...). The problem is how to justify spending financial resources on ethics, anticorruption. So what are you trained in – precisely! In Ethics. What is that? They talk like that: the office spent money for a nonsense, whether inside or outside the office, whether with or without a meal. There is plenty of work to be done, and workers will be trained on ethics? Here is the problem.

So when trainings are concerned, the first thing is to include them in the lists of priorities not only for selected public institution, but for government administration as a whole – political and social pressure to use softer forms of conflict of interest management such as trainings and informational activities can lead to a situation where directors general and heads of individual units will more willingly use them.

What are the objectives of educational activities concerning the conflict of interest according to our experts? As emphasised by the participants of all three panels, public officers should first of all be offered case-oriented knowledge based on examples and deeply rooted in their everyday professional life.

> Definitely, it has to be less theoretical and it should be shown on specific examples, cases, when the clash between private and public interests occurs.
>
> We organised training in (...). Part of the audience were interested – not in the training, but in workshops, the case stories. They are not interested in regulations. We sit and discuss specific situations. That's what interests them.
>
> From where comes the feeling that the trainings are ineffective? (...). Perhaps, they are too focused on explaining regulations, on presenting all this stuff, rather than on cases and processes. I personally led intensive trainings for public officers on irregularities in EU funding that also included issues of corruption, conflict of interest. Mostly, we discussed specific cases, including some concerning the conflict of interest. These were really fascinating discussions, disputes between them. They had very different approaches, and as a result they reached different solutions.
>
> What is lacking is that we should not only learn their needs, but also thoroughly analyse what are the problems of a particular group of public officers, what is their job. Most of trainings (...) are organised like that: somebody comes with a very fine presentation and shows it. When listening to the abstract things, people kind of turn off. In this connection, particularly important is the base of good or bad practices – it would require a concrete preparations, based on particular examples. And then, suddenly people have plenty of questions. It is definitely a case-oriented subject.

The third statement cited above also shows how important is in this field the space and the opportunity for discussion, exchange of opinions, and confronting situations taking place in various public institutions. As a result, public workers from different institutions can develop a sense of common experience, and find out that situations experienced by them are also familiar to others, whose experiences can in turn be useful for them. A similar opinion was presented also by another participant of one of the panels who emphasised how valuable is such opportunity to exchange opinions and experiences between public officers:

It's not about somebody presenting his original lecture. The most important thing was the opportunity to confront their problems with public officers from other institutions – the exchange of views, exchange of experiences.

But of course, the examples discussed and the discussion itself should also be linked with particular regulations – however, the most important thing is to strike the right balance between theory and practice.

Another objective of trainings and workshops on the subject could be to develop codes and procedures that are useful in a given institution and "tailored" to its needs, based directly on the needs indicated by its employees. In this way, participants of the trainings, being at the same time the recipients of solutions that are being worked out, would feel more responsible for their effective implementation and would better identify with them than in a situation when such solutions are imposed from outside.

There is always the problem that it comes from outside, trainings come from outside, and taking part in the trainings, it is hard to internalise the solutions that are imposed from outside... Perhaps it should be more strongly emphasised as a kind of proposal or recommendation, it is an idea worth discussing. Could not such trainings serve as a tool to work out solutions within individual institutions, say the ethical codes that could be developed during workshops by the public officers themselves, so that they could better internalise them? I know that it may sound a bit strange – like with schoolchildren, to sign a contract with them that they will sit still during classes, but it works, at least in the case of schoolchildren.

Thus, trainings enhancing the competence of public officers in the field of preventing the conflict of interest are undoubtedly useful and expedient. It is clear that they are needed and that they should have appropriate rank, quality and be tailored to the needs of different institutions. But the participants of our panels in the discussion on educational tools went beyond only trainings. The role can also be played by periodical evaluations, preparatory service and informal discussions within public institutions. While the first two tools were only briefly mentioned by the panel participants as measures helpful in developing criteria for identifying conflict of interest situations and sensitising public administration workers to the problem, the idea to organise informal internal meetings within public institutions was discussed in more detail.

Start to introduce the procedure of internal meetings. Meetings of management with different units are already organised, so the heads of the units should also meet with their workers, so that they don't have to search at the Internet BIP page or from someone else information on what's going on in their office. Such a simple thing.

They have both things (...) i.e. the open meetings at least once a year, to talk about everything, including the things that cannot be taken outside, about our operations, control, the world and our life experiences, which is very interesting (...). And besides, meetings of management with employees are organised once every two or three months, one-hour meeting. We have to do both things. They are mainly about our tasks and organisation of work. But they are not official either.

Such talks about everything or internal talks in the office ... such meetings in the department, in the office. In the last week, month, half a year, we had such and such situations in a given area –

> let's talk about it. That's what I learnt in Japan about quality management – it was always surprising for me how they can sit for hours and receive bonuses for thinking how to improve some tiny part of production process (...). It is a question of culture of discussions etc. We have no such culture of meetings (...). This is the third area of education that, in my opinion, is the finest, but there are some difficulties, because you have to overcome some private, personal things. The organisational culture has to be overcome, that some things can be discussed without a threat of sanctions.

In particular, the last statement quoted above indicates that educational activities should be multidimensional, and to be effective should be rooted in the general strategy of a given institution, be accompanied by appropriate organisational culture, and – perhaps most importantly – have systemic rather than occasional nature. If public workers fail to see the purpose of trainings on anti-corruption or on preventing the conflict of interest conducted in their workplace and if they fail to identify with the existing guidelines presented, for example, in ethical codes, then it will be hard to manage effectively situations of possible conflict of interest.

7.2.7. Certified management systems

The issue of integrated management systems or ISO certificates that can include features concerning preventing corruption can be seen as a theme that relates to most of the previously discussed problems, beginning with the fact that any certificates that increase the number of procedures and formalities to be executed must be seen by public workers as needed and useful, and ending with the fact that a measure of political will is necessary to introduce often costly and time-consuming systems that will bring effects in distant future. In the opinion of the panel participants, such political will is lacking, and even the general public grudgingly receives news that a public office spends substantial funds for introducing costly management system rather than for its statutory tasks.

> There is no public space, there is no room for trying this... The problem is that for general public, if e.g. the Ministry of Health introduced the ISO system, paid for it and implemented certification... then I bet that we could read on the front pages of papers: Ms Helena is dying, children suffer from diseases, and the ministry implements some official procedure. [U1]

Nevertheless, the panel participants appreciated – in spite of all related difficulties – the role of quality management systems in counteracting conflict of interest situations. They agreed that if the implemented systems limit even slightly the discretionary nature of decision-making processes in public offices, thus increasing transparency of public administration operations, then they are worth introducing and popularising.

An alternative to the certified quality management systems can be managerial control introduced in the Act on public finances[120]. The participants of the civil servant panel saw the system as one of the main standards helping to identify corruption risks, but also as an additional, not always justified, bureaucratic burden. Perhaps, that is why

[120] The Act of August 27, 2009, on public finance, O.J. 2009 no. 157 item 1240.

the instrument not always is effective or is not seen as a useful tool to counteract the conflict of interest and – more broadly – corruption. It is also possible that the idea of public institution as an organisation that can flexibly react to different problems and needs based on a comprehensive evaluation of the resources used and results achieved is not properly embedded in the mentality of public officers and the practice of public office operations. The managerial control as an instrument completely ignored in the answers that we received from the surveyed institutions is discussed by Grzegorz Makowski in the part of the report titled *Managerial control – "the great absentee"*.

7.3. Introducing changes – the role of social control, leaders and "implantology"

Managerial control is a tool introduced in the spirit of New Public Management, a trend in institutional management inspired by the private sector and geared for achieving specific aims and results rather than simply implementing the letter of the law[121]. „The NPM, so popular in recent decades, originates from the economic theories (e.g. theory of public choice, theory of transaction costs) and managerial experiences from the private sector. Reforms introduced under the NPM were based on mechanisms and instruments typical for private sector organisations. In recent years, some deficiencies of the concept began to become evident. The authors of the NPM failed to take into account the aims of particular public institutions and their influence on benefits obtained by different stakeholders. The NPM focused on improving the efficiency of public organisations and on reducing costs, rather than on their effectiveness in terms of their ability to meet social needs. Also an objection is raised that it was not specified how and by whom public organisations should be evaluated. The focus was on optimising the process of providing public services, using techniques from the private sector. Unfortunately, the concept of NPM also ignored the role of government in public organisations (...), or the political influences on decisions taken by public authorities"[122].

The political influence on public institution management was also commonly mentioned by the panel participants as a factor hampering changes in the field of counteracting the conflict of interest. The participants of our panels clearly indicated that public administration was too closely connected with the political sphere and that there was no clearly-cut and respected division lines between legislative and executive powers.

> Entering a higher level, I wonder what the conflict of interest looks like there; from my experience, I can say that there are many regulations on lower levels, but not on the central level ... (...) Executive power should not be linked with legislative one, but in Poland it is absolutely acceptable. Every MP can become a minister ... MPs discuss government proposals, but everybody knows that

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121 Szpor, A. ***Pojęcie kontroli zarządczej (wybrane aspekty)***, a shortened version of the article ***Kontrola zarządcza a mediacja w administracji publicznej***, in: „Kontrola Państwowa" No. 5/2011, Warsaw 2011. http://www.mf.gov.pl/documents/764034/3350650/20130307_09_pojecie_kontroli_zarzadczej_wybrane_aspekty_a_szpor.pdf [last access: 28.07.2014 r.]

122 Rudolf, W. ***Koncepcja governance i jej zastosowanie – od instytucji międzynarodowych do niższych szczebli władzy***. Acta universitatis lodziensis. Folia oeconomica 245, Łódź 2010.

they will pass them when the prime minister tells them to do it. And the fact that the same person is a senator and a secretary in a ministry … We reproach local governments (…) [while] there are many problems at the very top.

According to panel participants, it will be impossible to develop mechanisms for handling the conflict of interest and other ethical problems until administration is not fully empowered.

If we want to see a progress in the field of managing the conflict of interest, then we need an empowered public administration; its task is to eliminate the areas of the conflict of interest. It cannot be done from the top, only from the bottom, when they are empowered and ethical, motivating mechanisms are developed in institutions.

Also progressing and unnecessary growth of bureaucracy hampers introducing relevant standards, in particular those related to the integrated management systems:

For the great majority of public officers, introducing quality management system or managerial control are painful changes. Additional reports and documents are introduced. Beneficial effects will be seen in some time, and now I have a lot of work, because I have to fill another questionnaire of managerial self-assessment. Then I have to prepare an audit committee. Then, for six hours I sit with the audit committee and explain why the ministerial statement looks like this, and not like that. The gains are very distant in time and it is another problem in conflict of interest management.

Focusing on procedures and, as a result of it, withdrawing from the real world that the procedures should encompass, leads to a situation where the issues related to ethical norms (like the conflict of interest) also become more and more abstract and unrelated to everyday work of public officers. As a result, employees of public offices fail to notice that standards proposed by their superiors are in fact designed to serve public good or the good of a given public office. What's more, the more the standards are widespread and general, the less they are tailored to the specific conditions of particular institutions and the less they meet individual needs of their employees (e.g. they ignore whether or not grant competitions are organised in a given public office, or whether or not its employees have dealings with lobbyists):

When the office or the body defines such risk for itself, then the best possible policy should be developed. If the risks are inexistent then I'm not sure whether it makes sense to use resources and funds to build some super-tight procedure or policy counteracting the phenomenon, if the risk is low (…). I understand the role of the standard, but it is a question of the costs of maintaining administration. [U1]

I assure you that when I ask in public offices (…) about such basic things as whether you have opportunities to report, talk about management methods in the office, and when you did it for the last time, then I often hear something like that: yes, there was a man who tried to report such things, but he doesn't work here anymore. [A3]

Thus, relevant support mechanisms for introducing appropriate standards should be developed in order to meet in an adequate way the needs for greater empowerment of the administration and its employees and for their greater identification with relevant values and ethical norms (in this case, the ones preventing the conflict of interest). Our experts

presented three proposals in this area: improved social control, emergence of a strong leader for change and introducing "implants", i.e. small but consistent changes.

The theme of social control as a possibly effective tool to support introduction of ethical standards in public administration management was particularly prominent during the academic panel:

> Now, [the willingness] must be shown that anyway it will be regulated. And maybe the role of driving force for this can be played by social movements that are so common now, e.g. watchdog organisations. I deal with the issue of participation (...) in the field of energy sector, but all the time I try to see it as a method for decision-making, as a method for monitoring and limiting the conflict of interest. Still too little is said about it. The social movements that deal with the issues of participation have a huge potential to limit the conflict of interest from outside. [A3]

The role of social or non-governmental organisations, as well as media, can be twofold. On the one hand, they can initiate a kind of trend to counter the conflict of interest, highlighting the problem in the public discourse e.g. through advocacy, lobbying, or organising media events:

> The problem is that this is not important at all in the public debate, for society. There are no signs that it is at the top of the agenda. The practice is that if something is not at the top of the agenda, then forget about it. No chance for solutions. [A3]
>
> We (...) should talk about (...) what social forces would be able to initiate a trend for combating the conflict of interest. How to make it that an action under the slogan "Responsible state" was led by the paper Gazeta Wyborcza, and not only the Stefan Batory Foundation? What forces would be able to make it happen that it would be trendy etc.? [A3]

On the other hand, according to participants of our panels social organisations can also watch how the relevant procedures and regulations are implemented and whether public officers duly realise their responsibilities. This control relates in particular to financial disclosures and declarations of interests (in the areas where they are obligatory). For it is often the case, that public officers are required to file the relevant declarations, which are then archived without any verification (as shown by the answers received by us from ministries in the first stage of the monitoring). Similar situation exists when reports and evaluations of projects implemented by administration are concerned: not only they find no recipients, because they are prepared for purely formal reasons, but also – as a natural consequence – they have no translation into reality. The situation undermines public officers' confidence in the system that they work in, makes them feel helpless, but also supports fiction in the area where public good and relentless efforts to improve the functioning of the state should be the main priorities, which is well illustrated by the following statement:

> A regulation exists that once a year a report on the state of the public office should be prepared with a chapter concerning the management of anti-corruption activities, including the conflict of interest. A method exists to perform this evaluation of our public office in the field of conflict of interest and corruption management. Some standards of behaviour ... it is a fact. It goes to the drawer if no interest is shown from media, non-governmental organisations, independent bodies

> etc., then it is worse. But the worst situation is when we fail to give this feedback on the quality of management in this area. [A3]

Another factor for constructive and positive change in conflict of interest management in public administration mentioned during our panels is an effective leader.

> Success in the field that we are talking about (...) directly depends (...) on a whole series of processes that take place around us, and they can become the driving force to change the existing situation in the field of the conflict of interest (...). Provided that leaders for change will be found within the system who will highlight some things, even realising that at the end of the day their boss will not congratulate them. [A3]

As in any other area, also in public administration persons with authority are needed that would lead the way to new solutions that are better adapted to dynamically changing reality:

> It would be super if an authority figure – such as Owsiak or Kotański in their respective fields of activity – came. Someone who could influence the political class, who could make them shy and would have his or her own ethical stance. Someone who would move the imagination of masses, would have enormous knowledge – simply a leader. Today, the problem is that no leadership exists, nobody wants to take the task. Everybody see that it's to hard ... If somebody ... or perhaps something came with the power to generate different resources and ways ... [A3]

Perhaps, the Office of Civil Service could become the leader for change, or maybe the Supreme Audit Office is a better candidate – anyway, it must be an institution or a person, or a group of people highly autonomous in their activities and having the ability to influence both media and general public, as well as the political class and public administration workers.

In the context of public institution management practice and building legal framework for their operation, the problem of the conflict of interest should be, as far as possible, dealt with taking into account the individual conditions existing in particular public offices and – most importantly – taking into account values prevailing there.

> This knowledge what the conflict is, how to counteract it – it is an ethical and moral issue. To analyse, to draft new acts of law – perhaps it is not the right way. What matters is the organisational culture signalling that the conflict of interest is not welcome. [U1]
>
> The conflict of interest is a problem of value management (...). One of the most prominent changes in Poland consists in moving from managing using very tight regulations to managing based on values. [U1]

Then, management through values is a trend noticed and appreciated by high-rank civil servants. When the conflict of interest is concerned, the most prominent values should be common good and transparency – if the very values are particularly highlighted and internalised by all civil service workers in the public administration, then situations of the conflict between public and private interests will be promptly indentified, and the conflict itself will be no doubt effectively eliminated. But to effectively introduce the management through values, it should be seen to that that the values are really in the centre of interest of both employees, and the managerial staff who can then develop internal policies and

take decisions based on them. But how to make it that a value – in this case, the common good – become central for public administration? Our experts called the process "inserting implants", comparing it with the presence in the social awareness and the public space of disabled persons and their needs:

> We understand what the common good is, but for us it is not a value. How to make it that everyday practice of managing public administration is based on the value of the common good? (...) One of the first such implants was building ramps for wheelchairs of disabled people. Note that a kind of value – improving the comfort of life for disabled people – became successfully implanted into the institutional management of institutions. Today, in every public institution we have lifts, ramps for disabled people ... And suddenly, a value that was not at the top of the hierarchy was promoted to such extent that discriminating disabled people is now seen as a scandalous throughout Poland. [A3]

7.4. Summary

To a great extent, the picture of the conflict of interest management in public administration resulting from our panel discussions matches the conclusions of the earlier stages of our monitoring. It shows that a change in organisational culture and management culture is needed in public institutions, and only then we can see an improvement in the field of coping with the conflict of interest. Too close connection between administration and politics is also an important factor blocking changes: politicians exert pressure on central institutions so that they effectively implement their tasks at the lowest cost, discouraging them from organising systematic and extended ethical trainings. Both issues – the need to change organisational culture and eliminate excessive political influence on administration – require systemic action that is not the direct subject of this report. But we deeply believe that steps to enhance the conflict of interest risk management can be undertaken even in the existing circumstances. Proposals for such actions from the panel participants included:

- identifying the main areas in the activities of ministries that are particularly vulnerable to the conflict of interest;
- introducing internal or external ethical adviser posts held by persons competent in this field and trusted by other public officers so that they could effectively react to conflict of interest situations;
- creating bases of good and/or bad practices and other similar tools enabling public officers to promptly identify ethically doubtful situations;
- regulating the status of workers employed based on civil law contracts who today are not covered by the ethical standards that are binding for the public officers belonging to the civil service corps;
- purpose-oriented and thoughtful use of the declarations of interests in the areas identified as most vulnerable to conflict of interest situations;

- introducing more trainings based on case stories and paying more attention to systemic and cyclical education activities in the field of counteracting the conflict of interest;
- developing one legal definition of the conflict of interest, but without a separate act of law.

In addition, the role of media and social organisations was highlighted in promoting and supporting standards and good practices in the field of counteracting the conflict of interest, as well as the potentially positive role of leaders for change in the process.

All the proposals require further consultation and refining. But in our opinion, at least a minimum catalogue of activities that are worth introducing in all institutions at the central level should be developed. It should definitely include the issues related to declarations of interests and educational activities, and perhaps also issues related to ethical adviser posts, thus enhancing more systemic and coherent approach to the problem.

8. SUPPLEMENT – OPINIONS ON THE CONFLICT OF INTEREST FROM THE PARTICIPANTS OF TRAININGS ORGANISED BY THE NATIONAL SCHOOL OF PUBLIC ADMINISTRATION AND FROM TAX ADMINISTRATION OFFICERS

Robert Sobiech

8.1. Survey characteristics

The survey formed one of the first efforts to diagnose how well government administration workers are prepared to counteract and react to the conflict of interest situations. It also allowed us to learn about the level of knowledge, attitudes, and opinions of government administration workers concerning the conflict of interest. The survey was performed in cooperation between the Stefan Batory Foundation and the National School of Public Administration and the Civil Service Department of the Chancellery of the Prime Minister. We were interested in the following issues:

The level of understanding of the notion of the conflict of interest.

Opinions on the most important causes of conflict of interest situations in the public administration.

Incidence of conflict of interest situations in the public administration. The areas of public administration activities where the conflict of interest situations are most common.

Preferred attitudes and reactions in selected conflict of interest situations.

Opinions on the level of readiness of public institutions to cope with conflict of interest situations.

Solutions to handle and counteract the conflict of interest.

Evaluation of the effectiveness of solutions aimed at counteracting conflicts of interest. Proposals for solutions to counteract conflicts of interest.

The survey covered 123 government administration workers participating in trainings led by the National School of Public Administration in February and March 2014. The research tool consisted in an anonymous questionnaire filled by the public workers during the training. As the sample was purposive and relatively small, the survey cannot be seen as a representative account of the reactions of public servants to conflict of interest situations or as a representative illustration of their knowledge and opinions on the subject. Thus, the results of the survey and the conclusions should be seen as initial hypotheses for further analysis and study.

RESPONDENT CHARACTERISTICS:

Gender:

Women:	76%
Men:	23%

Age:

under 30:	18%
between 31 and 40:	36%
between 41 and 50:	25%
over 50:	21%

Workplace:

ministry:	43%
central administration institution:	22%
other:	35% (of which 67% were workers of tax offices, and 33% were workers of other government administration institutions)

Position:

support:	12%
specialist:	67%
management:	21%

Status within the civil service corps:

Civil service officers	24%
Civil service workers	76%

8.2. Results of the survey

8.2.1. Understanding of the notion of the conflict of interest

One of the survey objectives was to learn how the notion of the conflict of interest is understood in the public administration. Among respondents who presented their own definitions of the conflict of interest[123], the greatest percentage (48% of the respondents) understand the conflict of interest as a situation where the public interest is at odds with private interests. A great deal of answers from the respondents mention potential or actual

[123] It should be noted that for a great percentage of respondents answering an open question proved to be too difficult. Almost every third of respondents (32% of them) failed to answer the open question: "In your opinion, when can we say that a conflict of interest situation takes place in public administration?" It is hard to determine whether the high percentage of refusals to answer the question resulted from the methodological considerations (auditorium questionnaire, intended to be filled promptly) or from the absence of coherent definition of the conflict of interest.

gains not for public servants themselves but for their closest family or friends. In this case, the conflict of interest means situations where interests and expectations of family members or friends are taken into account by public servants in their decision-making processes:

> The conflict of interest occurs when someone's own, private interests dominate the public interest. In public administration a conflict of interest situation arises when public officer decides on matters concerning his or her family member or friend, and can be suspected of some gains. A situation when public officer who should be impartial (...) decides on matters concerning himself or herself, or people or institutions connected with him or her personally or financially. To take into account arguments from people related to me personally or socially. Employing friends, choosing "familiar" company in a public tender.

25% of the respondents see the conflict of interest mainly as preferring the interests of a political party or private sector in taking decisions concerning public matters. For some respondents, the main problem is the pressure from politicians on the public administration, for others, the source of the conflict is the pressure from private sector.

> When the interests (...) of a given political party are preferred to the public interest and the public good. The conflict of interest is the conflict between public administration and political parties and factions. When business influences the law-making processes. When the interests of e.g. a businessman are preferred to the public, social interest.

13% of the respondents see the conflict of interest as disagreements, different opinions or ideas within the public administration and its surroundings. The conflict means both differences of opinion within various teams, rivalry between ministries, and different expectations of public administration and its stakeholders.

> It occurs when different bodies have contradictory expectations concerning the way that given matters should be resolved (pressure from superiors to resolve some issues in a given way, different expectations from social partners). A situation where arguments of different parties are at odds. When several institutions are supposed to implement similar tasks. When a system (structure) of specific divergent links exists.

Interpretations related to inconsistency between public and private interest are voiced mainly by the youngest public officers (72% of respondents under 30 years of age and 31% of respondents over 50 years of age). On the other hand, among the oldest respondents the conflict of interest is rather perceived as excessive influence from business and politics or inconsistencies within the system of public administration.

8.2.2. Opinions on the most important causes for the conflict of interest in public administration

For 27% of the respondents[124], the main cause of the conflict of interest is selfishness and being motivated mainly by private interests on the part of public servants, or lack of

[124] The question about the causes for the conflict of interest (open question) was not answered by 32% of the respondents. The data presented concern persons who answered the question about the causes of the conflict of

understanding for or reluctance to be guided by the idea of common good in their work (diagram 1).

> Domination of private interests. Preferring private interests to professional considerations. A culture of the lack of respect for the state and the common good.

21% of the respondents indicate ambiguous, complicated regulations or procedures that are hard to understand.

> Very complex regulations hampering or prolonging processes – giving rise to a temptation to shorten the procedure, using well-known methods. Unclear and inconsistent regulations and internal procedures.

15% of public officers think that influences form business and politics play the crucial role.

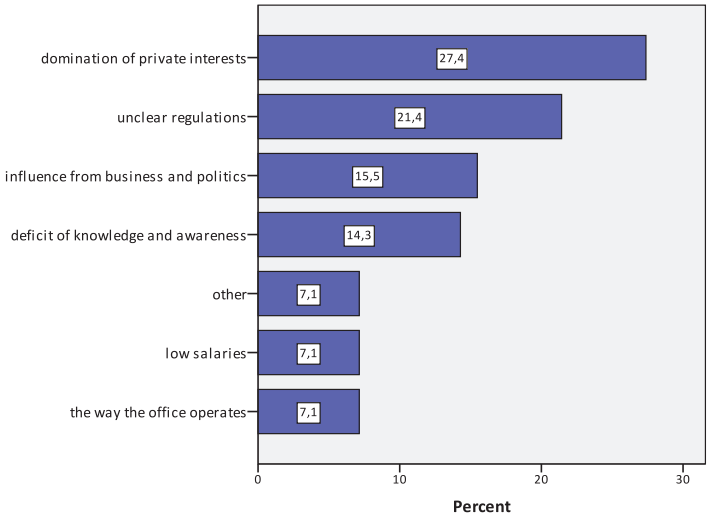
> Client relations created by political parties (on the central level) and local (regional) links, as well as groups of interest. Recruiting public officers (at the managerial level) using political party criteria. A risk of excessive interference in legislative processes from e.g. businessmen.

For 14% of the respondents, the deficit of knowledge on the conflict of interest or unawareness of being in a situation of the conflict of interest play the crucial role.

A small group of the respondents think that the conflict of interest results mainly from inadequate reactions from their superiors or managers of public institutions.

> Turning a blind eye by managers to some behaviours. Inadequate supervision over activities performed by public officers. Mistaken assessment of qualifications and abilities to hold a public function.

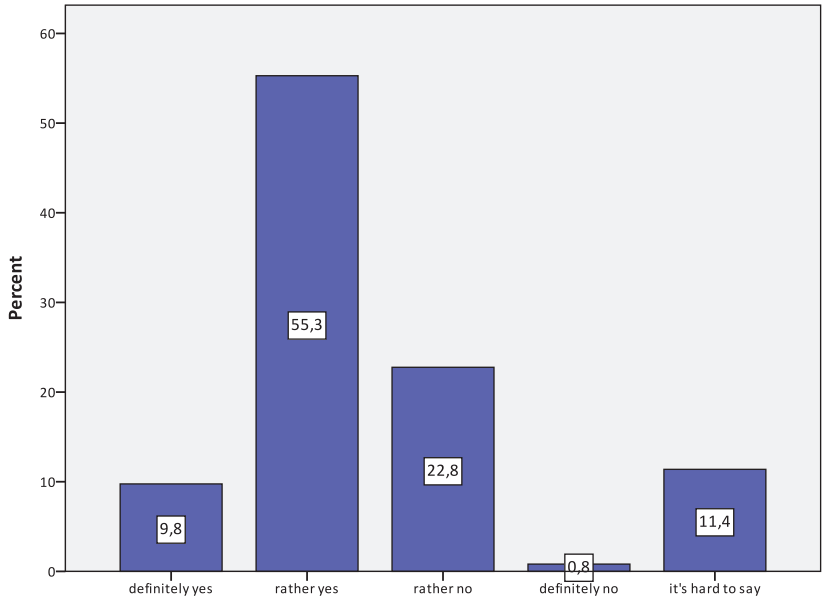
Diagram 1. In your opinion, what is the most important cause of conflict of interest situations in the Polish public administration?



interest. The other questions in the survey were not answered by 1% to 6% of the respondents (presented calculations ignore the refusals to answer a question).

Thus, for half of the respondents the conflict of interest results from defective regulations (legal provisions, internal regulations, remuneration methods) or existing solutions enabling politicians or businessmen to excessively influence the operations of public offices. For almost 43% of the respondents, the sources of the conflict of interest can be found in the mentality, lack of knowledge or low awareness of public officers themselves. Personal considerations are indicated mainly by employees from ministries and central institutions, as well as by persons holding managerial posts. Institutional causes are mentioned above all by support workers and employees from the other institutions.

Diagram 2. In your opinion, are conflict of interest situations common in the Polish public administration?



8.2.3. Incidence of conflict of interest situations in public administration

The conflict of interest is perceived as a common phenomenon in the Polish public administration. According to almost two thirds of the respondents (65,2%)[125], conflict of interest situations frequently occur in the operations of public institutions (diagram 2).

Common incidence of conflict of interest situations is more often indicated by the youngest respondents (under 30 years of age). 76% of public officers from this group think that the conflict of interest is a common phenomenon. 57% of the respondents aged 41-50 and 64% of the respondents aged over 50 is of a similar opinion. Persons over 40 years of age much more often cannot assess the incidence of conflict of interest situations (16% of

[125] Summed up answers "definitely yes" and "rather yes".

them answered "It's hard to say") than the youngest respondents (5% of them answered "It's hard to say").

The belief that the conflict of interest is a common phenomenon is correlated with the posts held. The lower the rank held in the official hierarchy of a public institution, the more often voiced the opinion that the conflict of interest is common. 52% of public servants holding managerial posts think that the conflict of interest frequently or very frequently occurs in the Polish public administration, while as much as 70% of persons employed at specialist posts and 64% of support employees is of similar view.

Over a half of the respondents (54%) say that conflict of interest situations are most common in local administration, and every fifth of the respondents (22%) think that the conflict of interest is most common in central government administration. Only 8% of public officers indicate that state administration is the most common place of conflict of interest situations.

The opinions on common incidence of conflict of interest situations in public administration are supported by personal experiences of the respondents. A half of the respondents (49.6%) say that in the last three years, conflict of interest situations took place in their institutions. 7% of the respondents know about at least a dozen conflict of interest situations, and 42% of the respondents know about at least one or several such situations.

The incidence of conflict of interest situations in their institutions is indicated mainly by employees of central offices (62%) and ministries (58%). 28% of employees of the other public institutions know about conflict of interest situations in their workplace. Conflict of interest situations are more often known to people employed at managerial (54%) and specialist (53%) posts, than to people employed at support posts (21%). The knowledge of conflict of interest situations in their workplace has no translation to their diagnoses on the incidence of conflict of interest situation throughout the Polish public administration. The belief that conflict of interest situations are common in public administration is voiced by 68% of the respondents who know of conflict of interest situations in their institutions, and by similar percentage (62%) of the respondents who say that conflict of interests situations have never occurred in their workplace.

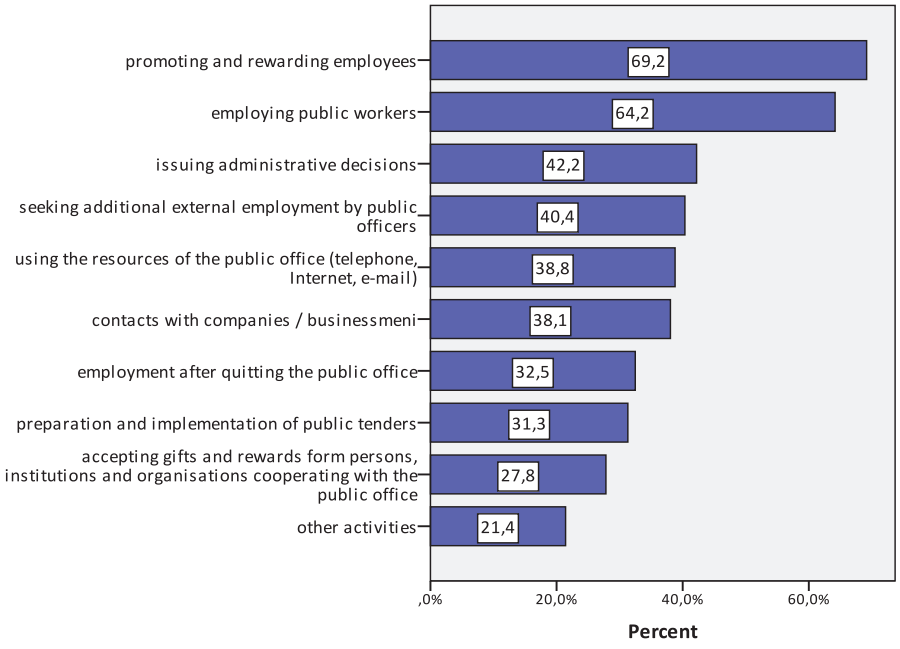
The knowledge of conflict of interest situations in their public institutions is poorly correlated to the knowledge on sanctions towards public officers engaged in such situations. Only 19% of the respondents who know about conflict of interest situations in their public institutions have knowledge on the reactions towards public officers who were found in conflict of interest situations (4 persons mentioned disciplinary sanctions, 2 persons mentioned a change in responsibilities, and according to 4 persons, there was no official reaction from their institutions to conflict of interest situations).

The answers from the respondents contained information on the areas of operation of their public institutions that were most vulnerable to conflict of interest situations (diagram 3). Human resources management is the area most threatened by possible conflict of interest situations in their workplace. 69%-64% of the respondents think that promoting, rewarding, and employing public workers are the situations where the conflict of interest can take place.

In the opinion of a high percentage of the respondents, a risk of the conflict of interest is present when administrative decisions are issued (42% of the respondents), additional workers are employed in the public institution (40% of the respondents), resources of the office are used or during contacts with businessmen (38% of the respondents). Relatively small percentage of the respondents (28%) indicate the possibility of conflict of interest situations when gifts or rewards from institutions or organisations cooperating with their public institution are accepted.

In the last three years of their professional career, the majority of public officers (63%) have not encountered situations of a potential conflict of interest. Almost every fourth of the respondents (23%) say that they encountered situations of potential conflict of interest, while 14% of public officers cannot say whether such situations took place. The experience of potential conflict of interest situations is most common among public workers from central offices (31%) and ministries (25%). Among employees of the other public institutions, possible conflict of interest situations were encountered by 18% of the respondents. Potential conflict of interest situations (table 1) take place most commonly in the work of persons holding managerial posts (32%), and much less commonly in the work of persons employed at specialist (19%) and support (21%) posts.

Diagram 3. In what operations of your public office can situations of a possible conflict of interest occur?



Answers "very often", "often"

Table. 1. Potential conflict of interest vs. the post held

		The post held			Total
		support	specialist	manager	
In the last three years, have you encountered situations of a possible conflict of interest?	Yes	21,4%	18,8%	32,0%	21,8%
	No	64,3%	63,8%	64,0%	63,9%
	It's hard to say	14,3%	17,5%	4,0%	14,3%
Total		100,0%	100,0%	100,0%	100,0%

Situations that could lead to the conflict of interest were mentioned mainly by the respondents who knew about the actual conflict of interest situations that took place in their public institutions. Among the respondents knowing about conflict of interest situations in their workplace, 37% of them said that they themselves were in situations of possible conflict of interest. Similar experiences were shared by only 10% of public workers who had no knowledge of conflict of interest situations in their workplace.

8.2.4. Attitudes and reactions to conflict of interest situations

The survey gives information about attitudes of public workers towards the conflict of interest, and about their opinions on desirable behaviour in situations of possible conflict of interest. Our survey questionnaire used two questions concerning the conflict of interest taken from the survey led by the Public Opinion Research Center on a representative sample of adult Poles[126]. The first question concerned a situation where "a person holding an important public function employs in a public firm a candidate known to him or her only socially, and not professionally". The second question concerned a situation where "a person holding an important public function have social contacts with a representative of a private company that was granted public contracts". The attitudes of the surveyed public workers proved to be very similar to the attitudes of the general public. Employing a person known only socially is accepted by 17% of public workers and by 15% of PORC respondents. It is seen as unacceptable by 77% of public workers and 78% of PORC respondents. Similar answers were given to the question about having social contacts with a representative of a private company that was granted public contracts. It is seen as acceptable by 25% of public officers and by the same percentage of PORC respondents, and as unacceptable by 65% of public officers and 64% of PORC respondents.

The attitudes of public officers towards employing friends and socialising with persons that were granted government contracts depend in particular on the post held, being nominated to civil service or having experience of potential conflict of interest situations. **The higher the rank in official hierarchy, the more frequent experience of potential conflict of interest situations, and the greater acceptance for employing friends and socialising with persons who were granted government contracts.**

126 „Conflicts of interest and lobbying" – dilemmas of politicians. CBOS. BS/122/2013.

Table 2. Opinions on employing friends vs. the post held

		The post held			Total
		support	specialist	managerial	
Person holding important public function employs in a public firm a candidate known to him or her only socially, and not professionally	Definitely acceptable		3,8%		2,6%
	Rather acceptable	7,1%	11,5%	25,0%	13,8%
	Rather unacceptable	14,3%	34,6%	29,2%	31,0%
	Definitely unacceptable	71,4%	41,0%	45,8%	45,7%
	It's hard to say	7,1%	9,0%		6,9%
Total		100,0%	100,0%	100,0%	100,0%

Employing friends is seen as acceptable by 7% of public workers holding support posts, and 25% of the respondents holding managerial posts (Table 2). It is accepted by 28% of civil service officers and 16% of civil service corps workers. Acceptance for employing people known only socially is declared by 29% of persons who were in a potential conflict of interest situation, and by 15% of the respondents who have not experienced such situations. Similar differences can be seen when acceptance for socialising with people who were granted government contracts is concerned. It is accepted by 40% of civil service officers and by 21% of the rest of the respondents, by 32% of persons who were in a potential conflict of interest situation, and by 23% of the respondents who have had no such experience.

The great majority of the respondents have basic knowledge on the appropriate behaviour in potential conflict of interest situations. Our questionnaire included two questions from a test used in a training materials concerning observing civil service principles[127], prepared by the Civil Service Department of the Chancellery of the Prime Minister[128]. The first question[129] concerning the appropriate behaviour in a situation where a friend asks us to support solutions that will be advantageous for his or her company (the principle of unselfishness) was answered correctly by 81% of the respondents. The second question concerning the proper behaviour in a situation of a suspected conflict of interest (the principle of impartiality) was answered correctly by 90% of the respondents. Both questions were answered correctly by 73% of public officers.

The knowledge on the proper behaviour in conflict of interest situations significantly depends on the age (and perhaps the duration of service) of the respondents. Both questions were answered correctly by 80% of the respondents aged over 50, and by 65% of the respondents aged under 30. High level of knowledge was characteristic for persons holding managerial posts (84% of them answered correctly both questions) and for persons employed at support posts (86%). Only 67% of persons employed at specialist posts answered correctly the questions. Certainly, the low level of knowledge among civil service officers should be surprising. Only 60% of the respondents from this group answered correctly both questions, while among the rest of the respondents the percentage was 81%.

[127] Ordinance no. 70 of the Prime Minister on the guidelines for adhering to civil service principles and on ethical principles of the civil service corps (M.P No. 93, item 953).
[128] http://www.docstoc.com/docs/119900021/PowerPoint-Presentation.
[129] Full text of the questions and answers is available in the Appendix A.

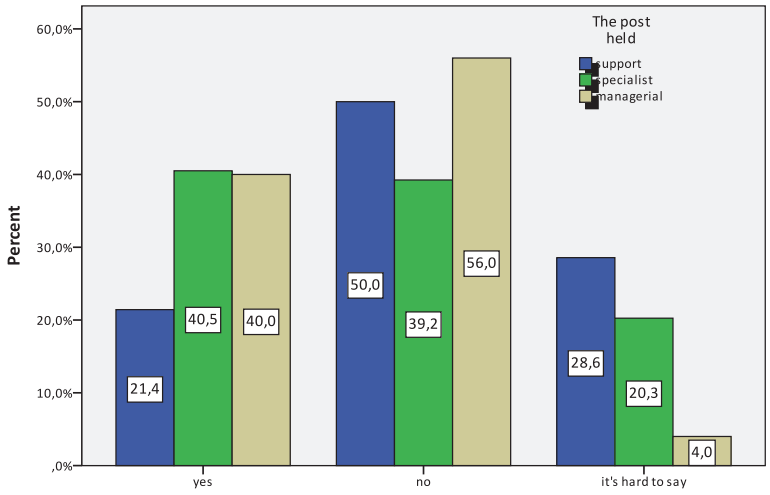
Equally surprising is the low level of knowledge among persons who in the past three years were in a situation of possible conflict of interest (57% of the respondents gave correct answers, as compared with 80% of the respondents who had no experience of a possible conflict of interest situation).

8.2.5. How well public offices are prepared for conflict of interest situations

Almost half of the respondents (45%) believe that public workers from their institutions are not well prepared to situations of a possible conflict of interest. Every third of the respondents (37%) is of a opposed opinion, while 18% of the respondents are unable to assess how well other public workers are prepared to possible conflict of interest situations.

Insufficient preparedness to deal with potential conflict of interest situations is reported mainly by the respondents from central public offices (54%) and ministries (49%) – the institutions where potential or actual conflict of interest situations are most common. The level of preparedness for possible conflict of interest situations is assessed differently by public workers holding different posts. The most critical are managers (diagram 4). 56% of the respondents from this group indicate insufficient preparedness of public workers in their institutions[130], 40% of them say that they are well prepared, and 4% of them have no opinion on the matter. The lack of appropriate preparedness is reported by 50% of the respondents holding support posts, and 39% of the respondents holding specialist posts. It should be noted that 29% of support workers and 20% of specialist workers are unable to assess how well their public offices are prepared to react to potential conflict of interest situations (the answer "It's hard to say").

Diagram 4. Are the employees of your public office well prepared to potential conflict of interest situations?



130 Summed up answers "definitely yes" and "rather yes".

According to 26% of the respondents[131], good preparation to potential conflict of interest situations results from participating in specialised trainings concerning the conflict of interest, but also trainings on the problem of corruption. For 23% of the respondents, good preparation in this area is the effect of the knowledge of and the familiarity with the existing regulations acquired during academic education or during preparation to employment in public administration.

> They know anti-corruption regulations. Education – diplomas signed by eminent professors. Knowledge of law.

23% of the respondents believe that good preparation of public officers results from internal procedures and regulations introduced in their offices.

> Internal procedures describing how to behave when there is a threat of a conflict of interest. Office management system in place. Implemented procedures for reacting to conflict of interest situations.

Every fifth of the respondents (20%) mentions the decisive role of values, ethical principles and awareness of consequences of the conflict of interest. (***Awareness of the types of situations that are labelled as "conflict of interest". Professional integrity***). 8% of the respondents indicated other reasons.

According to the majority of the respondents (57%)[132], insufficient preparation to possible conflict of interest situations results mainly from the deficits of knowledge on the conflict of interest and low awareness of its negative consequences. (***Insufficient knowledge on standards. Making decisions without thinking of their effects. Lack of competencies and professional qualifications***). 15% of the respondents think that insufficient preparation in this field is a consequence of the lack of the relevant procedures in their public offices. (***Lack of legal regulations – internal ordinances regulating behaviour in possible conflict situations***). 7.5% of the respondents see various forms of interference from politicians and businessmen in the operations of the public administration as the main cause of insufficient preparedness of public servants.

> Politics, various informal links.

5% of the respondents mention negligence or pressures from their superiors.

> They are afraid to lose their jobs, so they do everything their superiors order them to do (or politely "ask" them to do).

15% of the respondents reported other reasons for insufficient preparedness to possible conflict of interest situations.

Only 22% of the respondents say that in the last three years trainings concerning the problem of the conflict of interest were conducted in their public offices. The trainings are reported by 20% to 23% of the employees of ministries, central offices and other institutions.

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131 Answers of the respondents saying that public workers from their offices are well prepared to possible conflict of interest situations.

132 Answers of the respondents saying that in their public offices workers are not well prepared to possible conflict of interest situations.

The knowledge of organised trainings depends on the age and the official post of public servants. Organised trainings are reported by 44% of the respondents aged over 50, 20% of the respondents aged between 41 and 50, and only 10% of the respondents aged under 30. They are reported by 32% of managerial staff, 20% of specialists, and 14% of public workers holding support posts (Table 3), as well as 41% of nominated public officers and 17% of public workers. **The data show important limitations in internal communication, resulting in a situation where information on trainings reach mainly managerial staff and public officers with the longest duration of service.**

Table 4. Knowledge on trainings concerning the conflict of interest vs. the official post held

		The post held			Total
		support	Specialist	managerial	
In the last three years, have trainings concerning the problems of the conflict of interest been conducted in your public office?	Yes	14,3%	20,0%	32,0%	21,8%
	No	64,3%	65,0%	56,0%	63,0%
	It's hard to say	21,4%	15,0%	12,0%	15,1%
Total		100,0%	100,0%	100,0%	100,0%

Out of 26 persons having knowledge on trainings organised in their public offices, the great majority (77%) are the participants of the trainings. This means that in the last three years only 16% of all surveyed public officers took part in trainings concerning the problems of the conflict of interest[133]. It also shows that knowledge on trainings in this field is available only to small groups of public officers.

8.2.6. Solutions to handle and counteract the conflict of interest

Every fifth of the respondents (21%) thinks that clear rules to handle the potential conflict of interest are in place in his or her public office. 33% of the respondents report absence of such procedures, and almost half of the respondents (45%) have no knowledge in this field (answers "It's hard to say"). The existence of transparent rules of behaviour is most rarely reported by the youngest respondents (9% of persons below 30 years of age vs. 33% of persons over 50 years of age), employees of central offices (11%), support workers (14%), and persons without the status of civil service officers (19%). The absence of the relevant procedures is indicated mainly by people who happened to encounter situations of possible conflict of interest (Table 5). Only 4% of the respondents from this group report that transparent rules of behaviour are in place in their public offices. 58% of the respondents say that no such procedures are in place in their public offices, and 39% of the respondents have no knowledge on the matter. Opinions on insufficient preparedness of their public offices are voiced by employees of the offices where actual conflict of interest situations are most common. The absence of relevant procedures is indicated by 53% of the respondents who

[133] In view of the small number of persons that participated in trainings, it was not possible to present their characteristics.

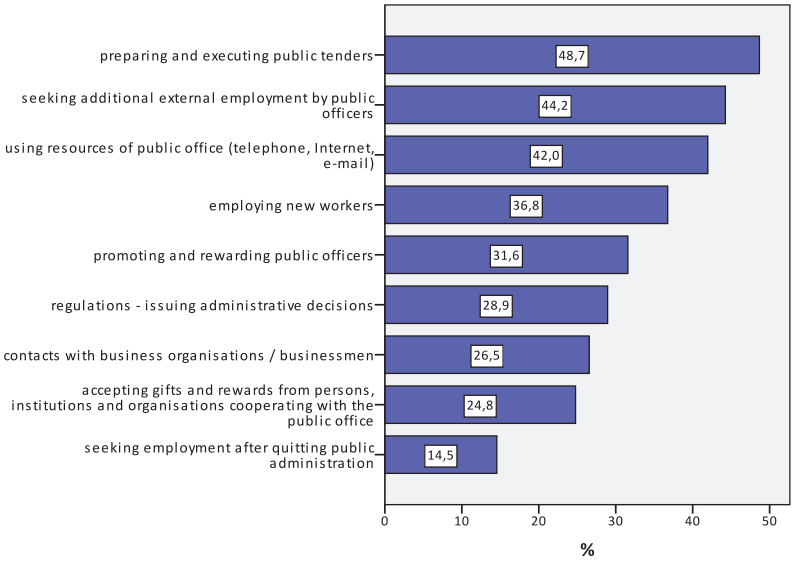
know about actual conflict of interest situations in their public offices, and by 15% of the respondents who heard about such situations taking place in their workplace.

Table 5. Existence of rules for behaviour in possible conflict of interest situations vs. experience of potential conflict of interest situations

		In the last three years, have you encountered situations of a potential conflict of interest?			Total
		yes	no	it's hard to say	
In your public office, are there transparent rules for behaviour in conflict of interest situations?	Yes	3,8%	26,3%	23,5%	21,0%
	No	57,7%	26,3%	29,4%	33,6%
	It's hard to say	38,5%	47,4%	47,1%	45,4%
Total		100,0%	100,0%	100,0%	100,0%

The answers of the respondents to the question whether relevant procedures and regulations to counteract conflict of interest situations are in place in selected areas of operation of their public offices give a slightly more optimistic picture (diagram 6). Almost half of the respondents (49%) report the existence of the relevant procedures in the field of public tenders. 44% of the respondents indicate that procedures preventing conflict of interest situations when new workers are employed are in place in their public offices, 32% of the respondents know about procedures for promoting and rewarding public workers, 37% of them know about regulations for employing new workers, 29% of them know about relevant procedures concerning issuing administrative decisions. 27% of the respondents

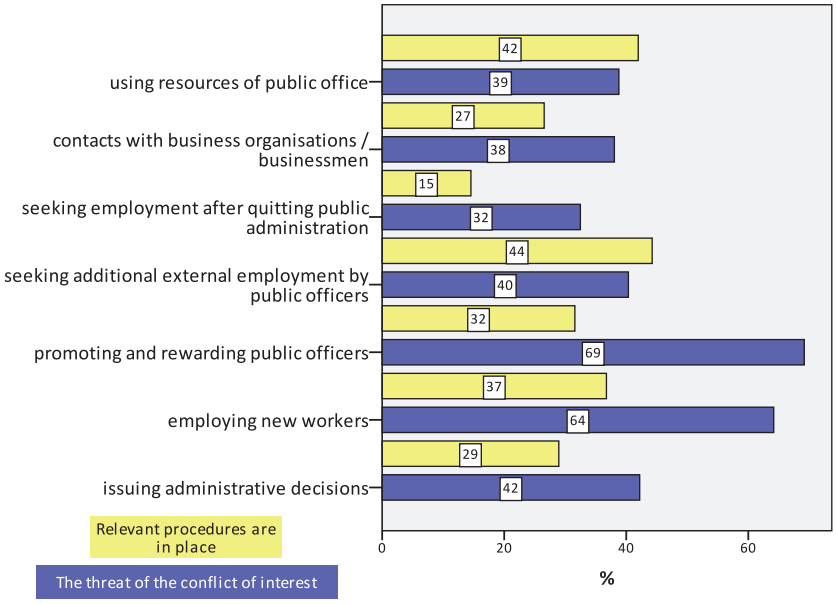
Diagram 5. The existence of procedures or regulations to counteract conflict of interest situations



say that procedures regulating contacts with business organisations or companies are in place in their public offices. The least commonly known are procedures and regulations concerning employment after quitting public office (15% of the respondents) and accepting gifts and rewards from other organisations and institutions (26% of the respondents).

When we compare the answers of the respondents on the existing procedures to counteract conflict of interest situations and on the areas of operation of public offices that are most threatened by conflict of interest situations, it becomes evident that several areas of activity in public offices require additional safeguards (Table 7). The greatest discrepancy between the threat of conflict of interest and the existence of relevant regulations is seen in the field of human resources management. According to 69% of the respondents, promoting and rewarding employees is the area of potential conflict of interest in their public offices, while only 32% of the respondents mention relevant protective procedures in this field. Similar discrepancy can be seen in the area of employing new workers (64% of the respondents report possible threats in this field, and only 37% of the respondents say that relevant procedures are in place). When employment after quitting public office and issuing administrative decisions are concerned, the discrepancies are slightly smaller.

Diagram 6. The existence of relevant procedures and regulations vs. the threat of the conflict of interest.

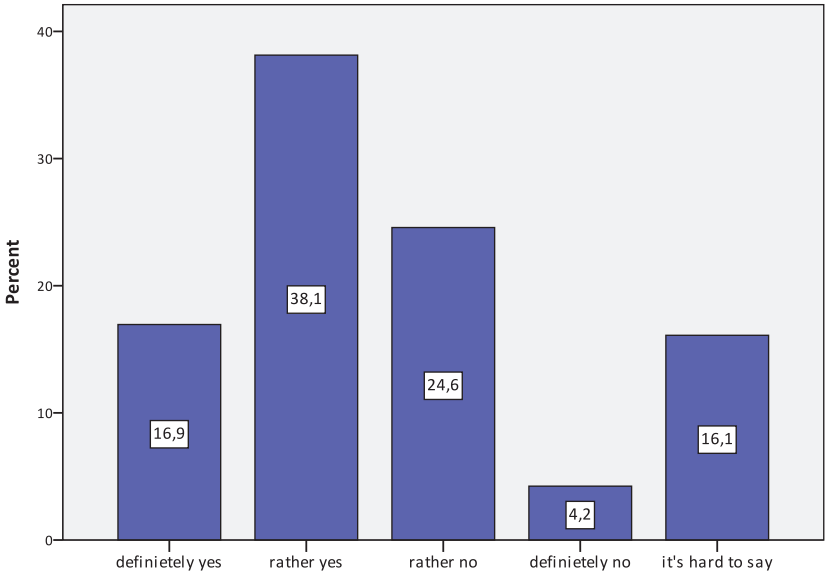


20% of the respondents filed declarations of interests at least once during their public office career. Filing declarations of interests is slightly more commonly reported by older public officers (32%), people holding managerial posts (24%), and civil servants (29%). Declarations of interests were filed more frequently by persons who experienced conflict of

interest situations (36%) and in public offices where actual conflict of interest situations took place (27%). Only 10% of the respondents say that in some situations all employees of their public institutions had to file declarations of interests.

Over a half of the respondents (55%) say that in their public institutions additional mechanisms or regulations counteracting conflict of interest situations should be introduced. 29% of the respondents say the opposite, while 16% of them have no opinion on the matter (diagram 8). Introducing new solutions is advocated by 80% of the respondents saying that employees in their public offices are not well prepared to handle possible conflict of interest situations, and by 33% of the respondents saying that employees in their public offices are well prepared to handle such situations.

Diagram 7. In your opinion, should additional mechanisms or regulations to conteract conflict of interest situations be introduced in your public office?



New solutions are usually advocated by the youngest respondents (67% of the respondents under 30 years of age and 62% of the respondents aged between 30 and 40), and by persons with low level of knowledge on how to react to conflict of interest situations. The need to introduce new mechanisms and procedures is indicated by 74% of the respondents who correctly answered both questions from the Chancellery of the Prime Minister test. Proposals for changes correspond to the shortfalls in the training activities in public offices. They are voiced by 63% of workers employed in public offices where trainings on the conflict of interest were not led, and by 42% of the respondents from public offices where such trainings took place, as well as by 67% of the respondents who did not take part in such trainings, and by 35% of the respondents who participated in the trainings. 43% of

the respondents[134] see the need to introduce procedures and regulations defining how to react to conflict of interest situations.

> Introduction of guidelines, decisions defining how to behave in given situations. Regulations to prevent bypassing, straining the rules concerning employing and promoting people. Clear rules for employing people. Declarations on not being employed elsewhere. Clear procedures regulating and defining relevant line of action. Frequent checks of links of people on the highest management level. Periodic evaluations of superiors (managerial staff) should be performed more frequently than for rank-and-file workers.

33% of the respondents advocate initiatives to enhance their knowledge and skills. Most common proposals are trainings to enhance abilities to recognize and handle conflict of interest situations, but also initiatives to raise awareness and acceptance for the principles of public service.

> Greater awareness of the problem. Obligatory participation in trainings of the political management together with the rest of the employees of the public office. Public officers' awareness that they serve Poland rather than political parties; Polish central government institutions must not be a field for short-term political struggles. Raising public officers' awareness in this field, and severe sanctions towards people guilty of breaking the rules.

9% of the respondents indicate that "early warning" mechanisms for conflict of interest situations are needed.

> Defining and describing the risk of the conflict of interest. Permanent identification of risks in this field (case analysis and anticipation of possible threats). Evaluation of actions of workers – reacting to abuse of their powers.

11% of public officers advocate other solutions, such as changing relations between managerial staff and rank-and-file public workers. (***The example comes from the top – the chief is worth his or her subordinates. To allow to talk abour the problem and the methods to solve it***).

Educational and training initiatives are most commonly advocated by the youngest respondents. Intensifying training activities is supported by 50% of the respondents under 30 years of age, and 20% of the respondents over 40 years of age. The proposal is also slightly more commonly (38% of the respondents) voiced by people who know about conflict of interest situations in their public offices. On the other hand, proposals to introduce new regulations and provisions are most commonly presented by the respondents aged between 41 and 50 (70%), employees of ministries (58%), managerial staff (61%), civil servants (58%). The belief that formal mechanisms and regulations are an effective tool is more typical for the respondents having no experiences with potential conflict of interest situations (52%) and for the respondents having no knowledge about conflict of interest situations in their public offices (67%).

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134 All respondents were asked the question concerning proposals of solutions. 36% of them answered the question.

8.3. Summary

Government administration workers have various levels of understanding of the conflict of interest. For almost half of the respondents the conflict of interest means discrepancy between the public interest and private interests of the public workers themselves or their friends. For others, the conflict of interest means excessive influence on the activities of the administration from politicians or businessmen. Some of the respondents see the conflict of interest as disagreements within the public administration or disagreements between the public administration and the external world.

Selfishness and no respect for the common good on the part of some public workers (27% of respondents) and also unclear, complicated regulations (21% of respondents) are seen as the main causes of the conflict of interest. Half of the respondents indicated the decisive role of institutional and systemic factors (regulations, procedures, political and business interference). For 43% of the respondents ethical attitudes or lack of knowledge and low awareness on the part of public workers themselves form the main sources of the conflict of interest.

Two thirds of the respondents say that the conflict of interest is a common phenomenon in the Polish public administration. Half of the respondents maintain that in recent three years conflict of interest situations have taken place in their public institutions.

The knowledge of conflict of interest situations in their institutions is poorly related to the knowledge of consequences for the public workers that were engaged in conflict of interest situations. Only 19% of respondents who know about conflict of interest situations having taken place in their institutions also know what was the reaction of the institution in relation to such public workers.

Human resources management is seen as the area that is most exposed to the conflict of interest. 69%-64% of respondents say that situations of possible conflict of interest in their institutions are related to rewarding or hiring employees.

Only every fourth of respondents encountered a situation of potential conflict of interest in their workplace. Situations of possible conflict of interest usually arise in the work of people holding managerial posts, and much less frequently in the work of people performing specialist or support functions. Experience of potential conflict of interest is also more common among public workers that know about real instances of conflict of interest in their workplace.

The great majority of the respondents are strongly against employing friends in public institutions or socialising with representatives of private companies carrying out public contracts. The opinions of public workers are almost perfectly in line with the opinions of the Polish society as a whole, as indicated by the PORC surveys. The highest level of acceptance for such behaviour is seen among managers and civil service officers.

The great majority of respondents have some basic knowledge on how to react to situations of potential conflict of interest. Proper reactions to situations where the principles of impartiality and unselfishness can be violated is declared by 80% of respondents. What

can be alarming is the fact that people who experienced situations of potential conflict of interest have the lowest level of knowledge.

Only every third of respondents believe that employees of their public office are well prepared for situations of potential conflict of interest. In this respect, the most critical are managers. Only 22% of respondents say that during the last three years trainings concerning conflict of interest were conducted. Only small groups of employees know about conducted trainings (mostly managers and people who took part in the trainings). During the last three years trainings concerning the problem of the conflict of interest covered only 16% of respondents.

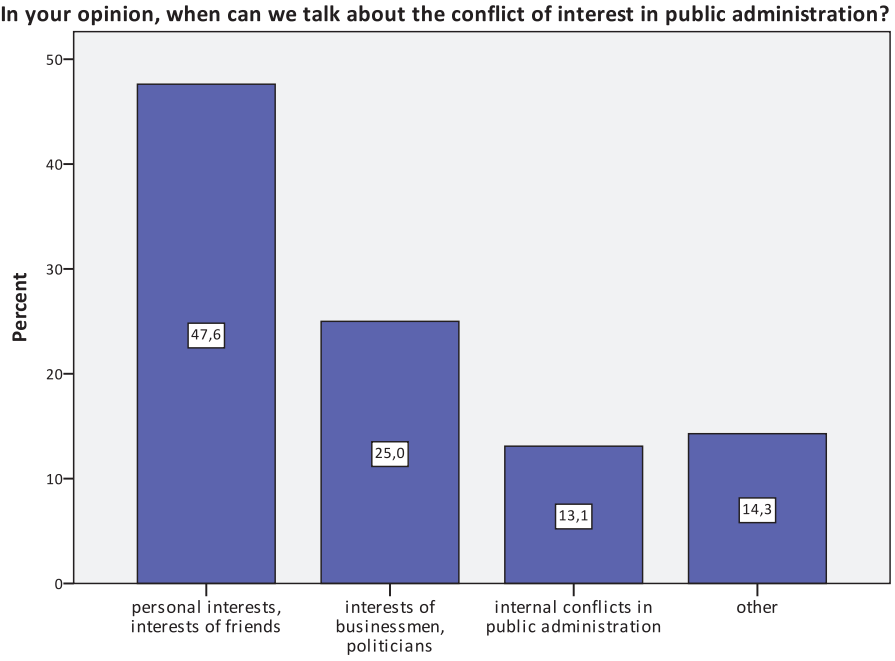
Only every fifth of respondents (21%) believe that their public institutions have transparent procedures for situations of conflict of interest. 33% of respondents say that no such procedures are in place, and the greatest percentage (45%) of them have no knowledge in this respect. The absence of relevant procedures is indicated mostly by people who happened to find themselves in a situation of potential conflict of interest. Only 4% of respondents from this group declare that their public offices have clear procedures for conflict of interest situations. Insufficient preparation of their public institutions to conflict of interest situations is much more commonly indicated by employees of offices where such situations most frequently occur.

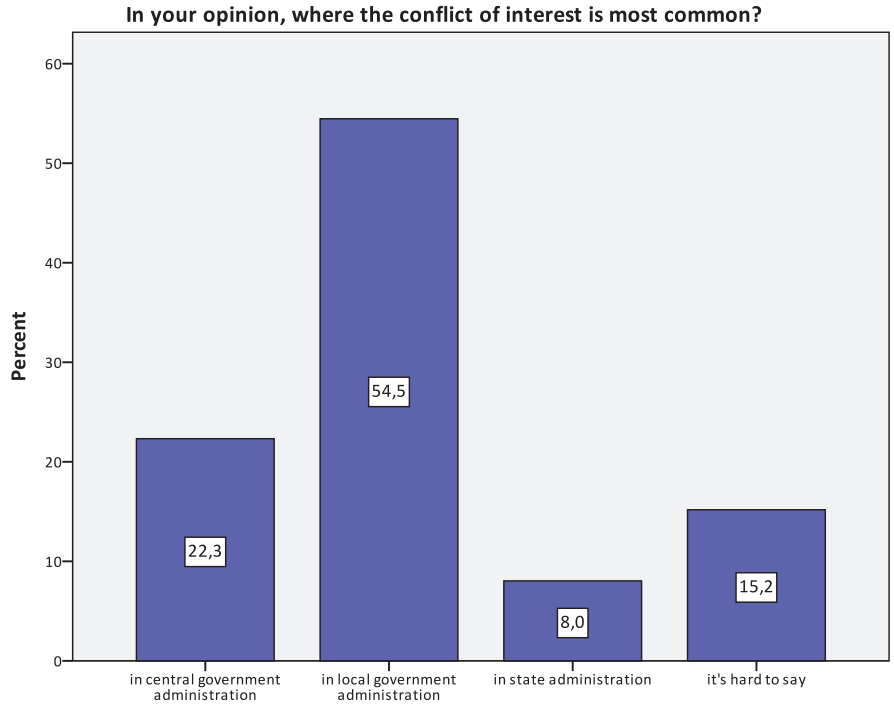
Relatively high percentage of respondents say that procedures and regulations preventing the conflict of interest in selected areas of operation are in place. Most commonly they refer to preparation and conducting of public tenders and hiring additional workers. Procedures regulating employment after quitting the office and accepting gifts or rewards from other institutions or organisations are very rare. The survey highlighted several areas of public administration activity that according to the respondents are most exposed to conflict of interest situations and insufficiently regulated by the existing procedures. The most problematic are the procedures for promoting and employing workers.

Insufficient preparation of public institutions is confirmed by the opinions of over half of the respondents that additional mechanisms or regulations preventing conflict of interest situations are necessary. Only 29% of the respondents see no need to introduce additional solutions. New measures are mostly supported by the youngest workers and people that have the lowest level of knowledge on how to react to conflict of interest situations.

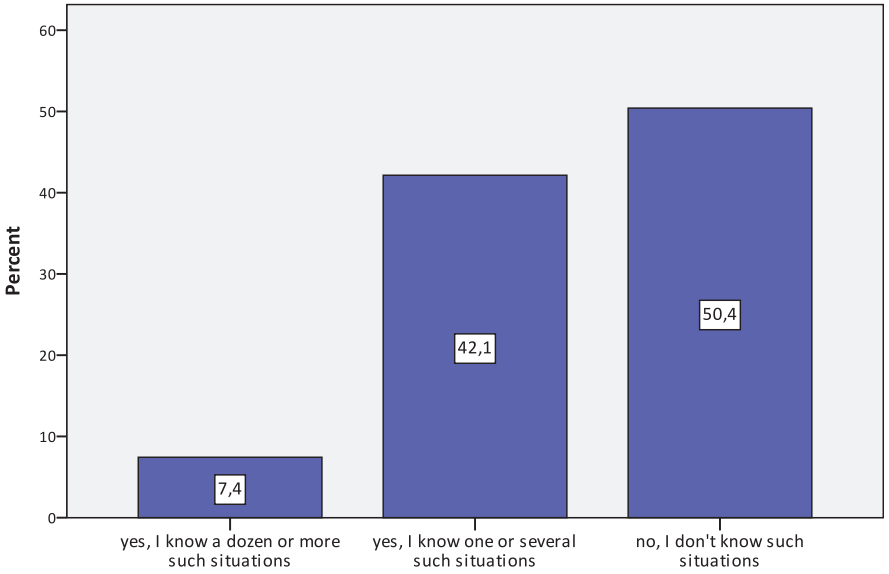
The most commonly presented proposals for additional measures are: introducing procedures and regulations describing how to react to conflict of interest situations, activities to foster the knowledge on and the ability to identify and react to conflict of interest situations, and improving awareness and promoting values of public service.

8.4. Percentages for all answers from the respondents

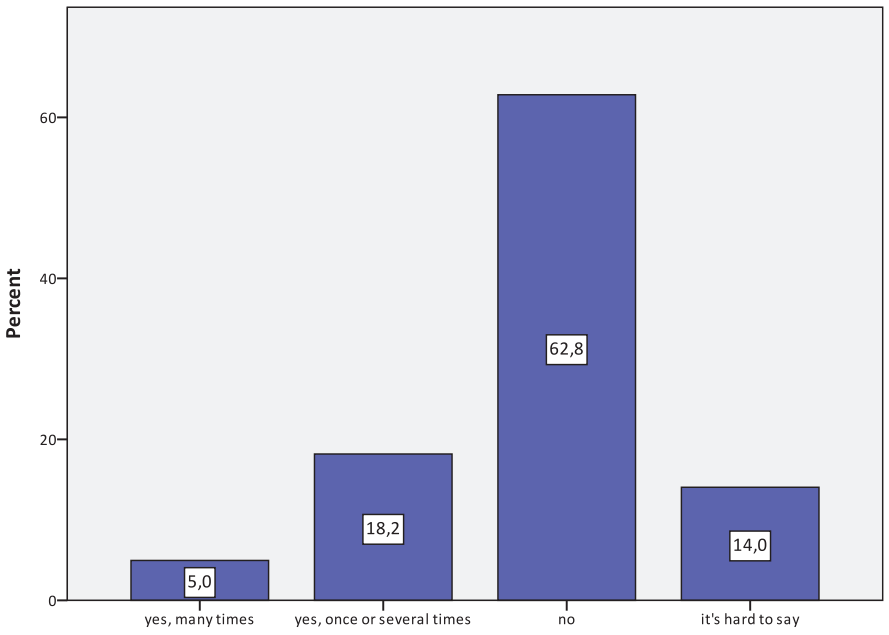




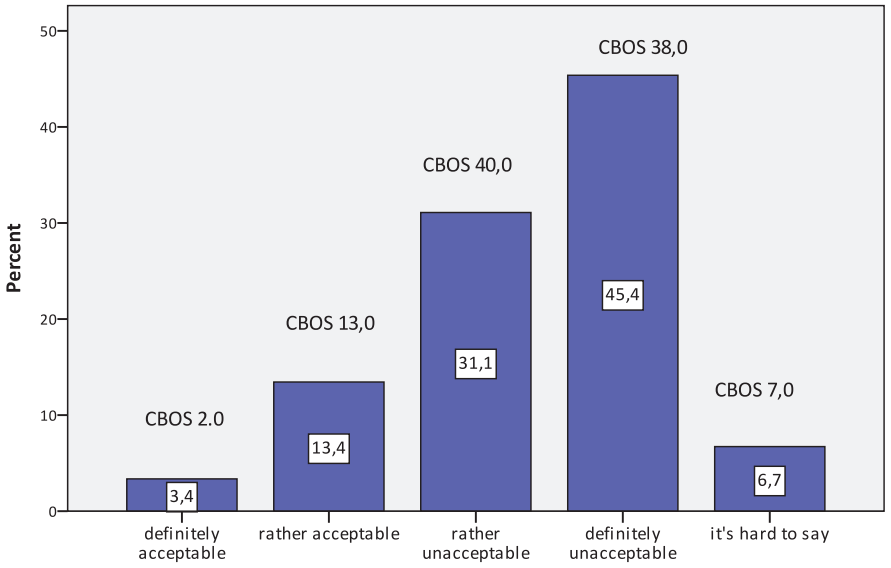
Are you familiar with conflict of interest situations taking place in your public office in the last three years?



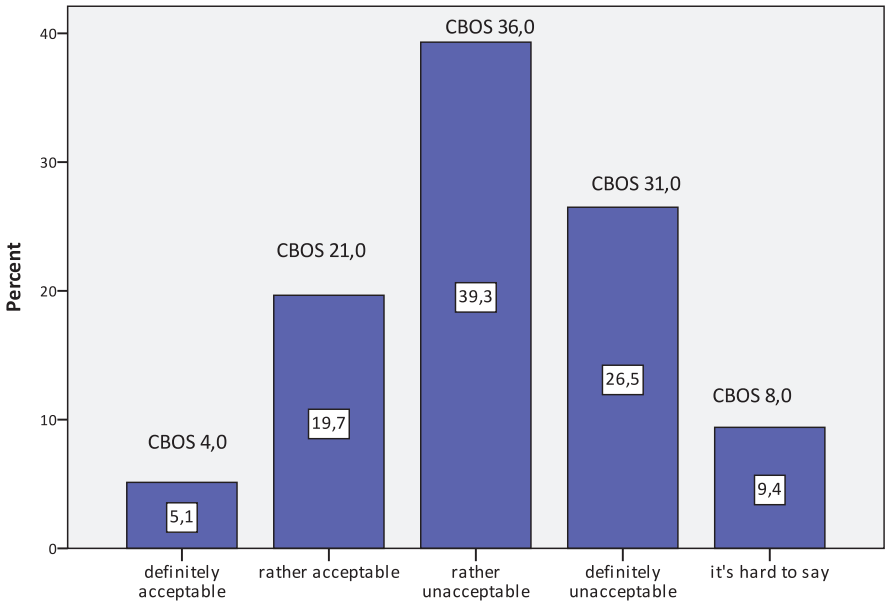
In the last three years, have you been in a potential conflict of interest situation while performing your official duties?



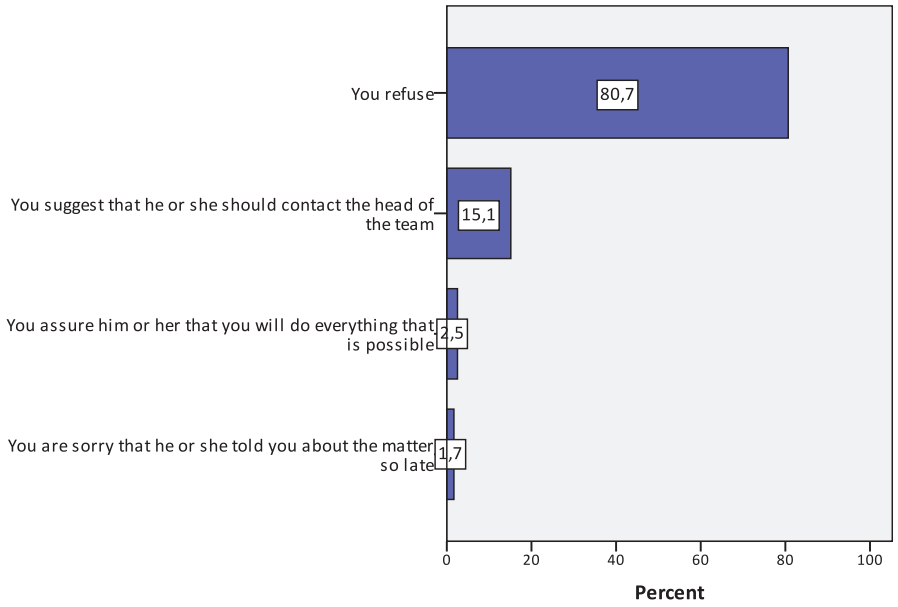
A person holding important public function employs in a public firm a candidate known to him or her only socially and not professionally.



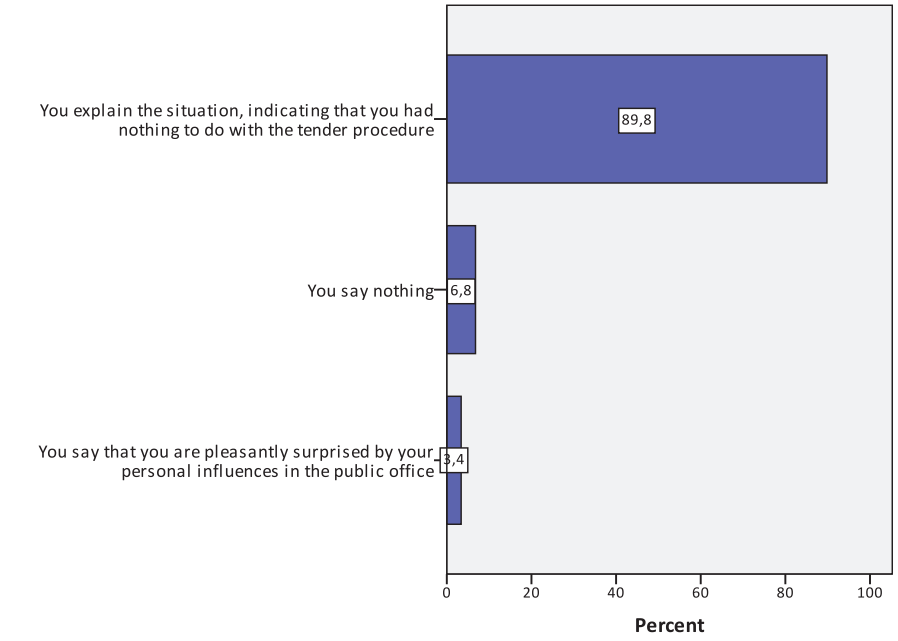
A person holding important public function socialises with a representative of a private company that was granted government contracts.



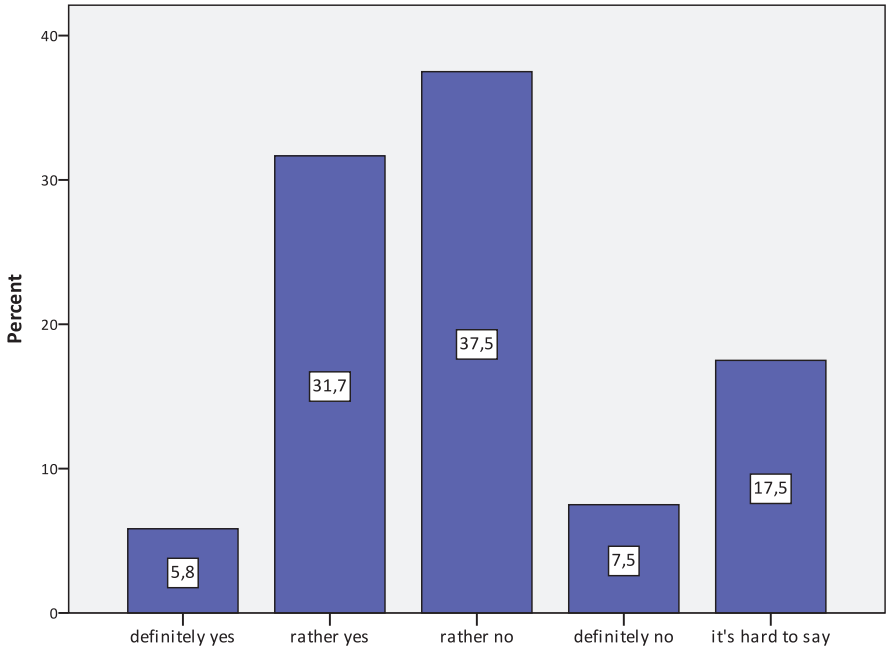
A friend asks you to support solutions that are more advantageous for his or her company; if you agree you can expect financial gains from him or her



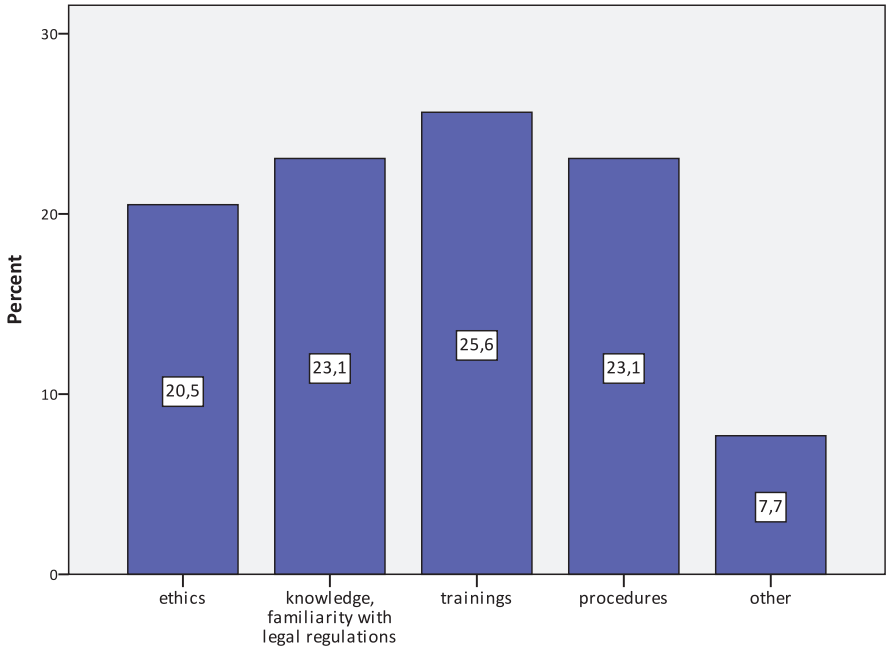
A company that you used to work for in the past won public contract from your public office and thanks you for that.



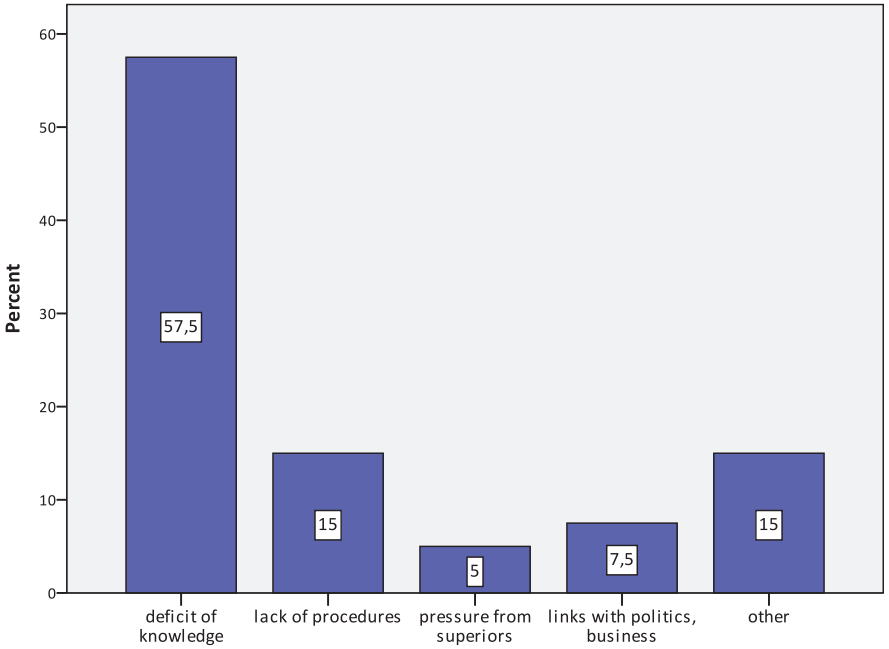
In your opinion, are the employees of your public office well prepared to possible conflict of interest situations?



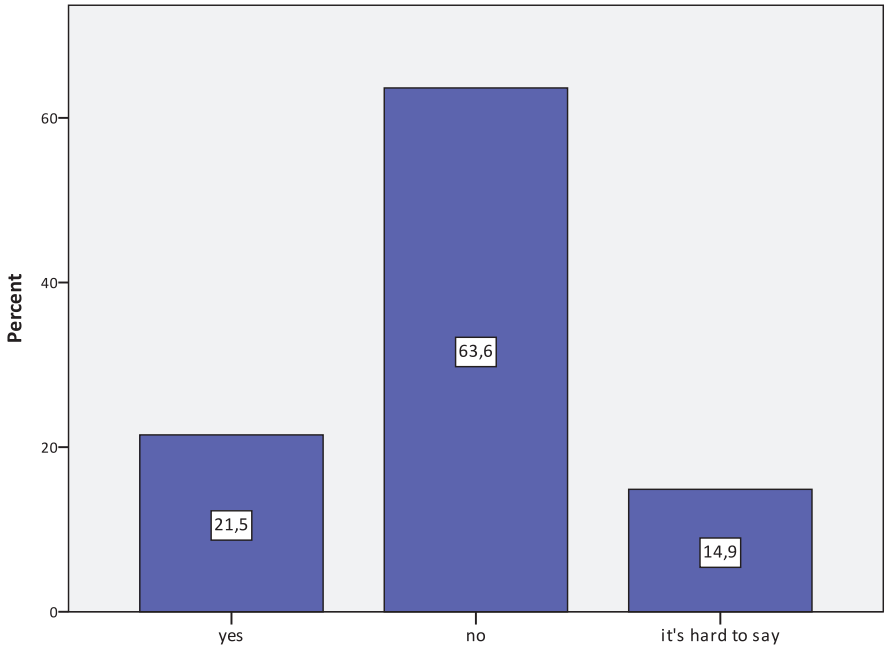
What are the reasons that the employees in your public office are well prepared to possible conflict of interest situations?



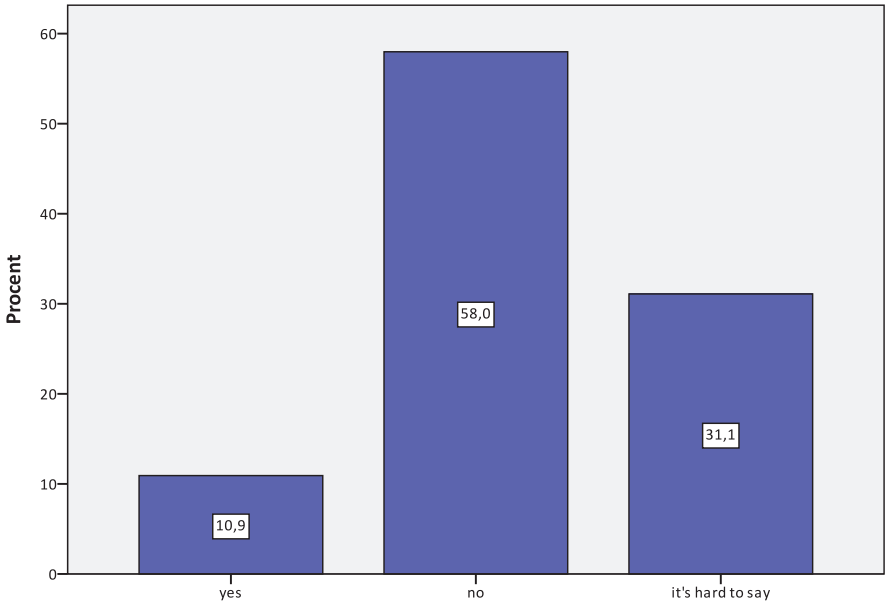
What are the reasons that the employees in your public office are not well prepared to possible conflict of interest situations?



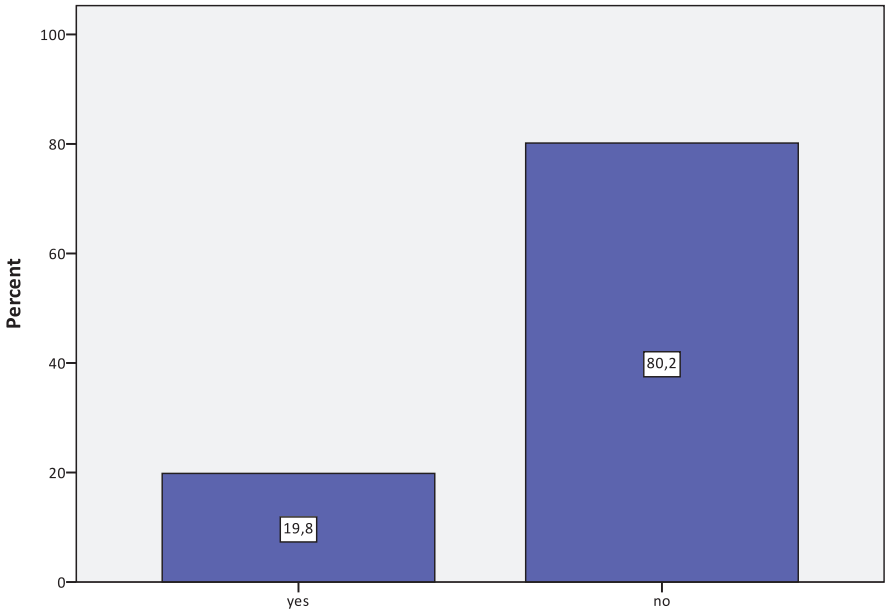
In the last three years, have any trainings concerning the problems of the conflict of interest been conducted in your public office?

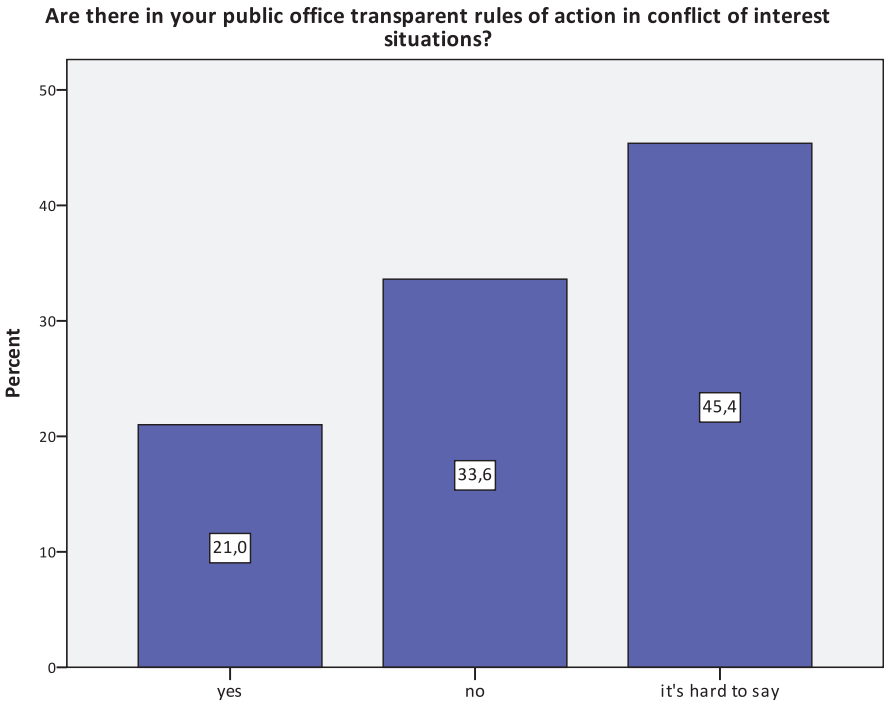


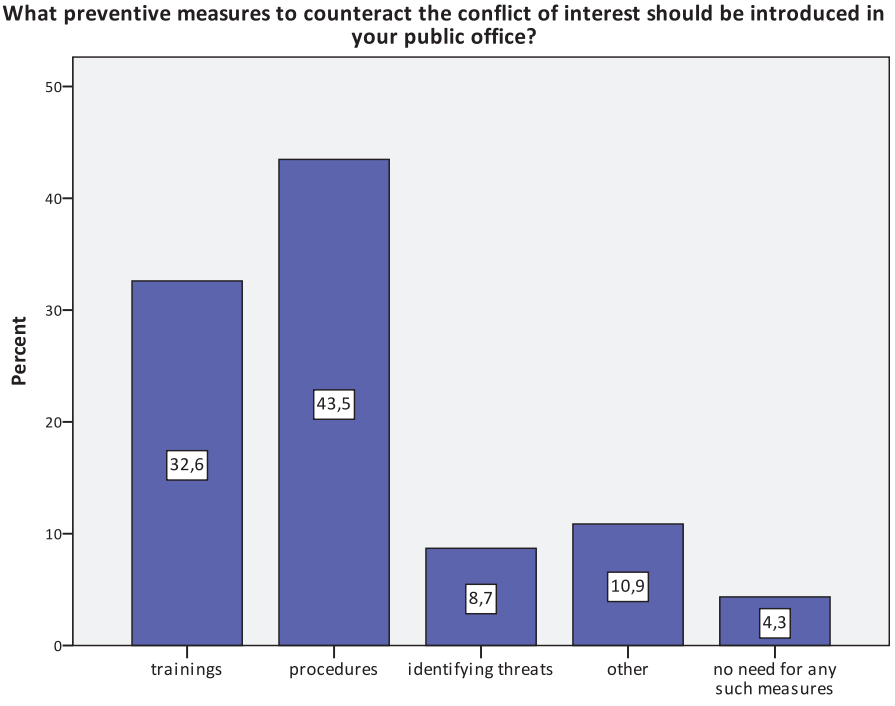
Are there any situations where all employees of your public office are required to file declarations of interests?



During your career in the public office, have you ever filed a declaration of interests?




Are there in your public office transparent rules of action in conflict of interest situations?
Percent
50
40
30
20
10
0
21,0
33,6
45,4
yes
no
it's hard to say


What preventive measures to counteract the conflict of interest should be introduced in your public office?
Percent
50
40
30
20
10
0
32,6
43,5
8,7
10,9
4,3
trainings
procedures
identifying threats
other
no need for any such measures

9. APPENDICES

9.1. Application for public information

Based on Art. 2 par. 1 and Art. 10 par. 1 of the Act of September 6, 2001 on access to public information (O.J. no. 112, item 1198 with amendments) and in connection with the international project "Social monitoring of the conflict of interest" (***Engaging Civil Society in Monitoring Conflict of Interest Policies)*** financed from the resources of the European Commission (agreement no. ENPI 2013/313-750), I apply in the name of the Stefan Batory Foundation for information on counteracting the conflict of interest in the Chancellery of the Prime Minister.

The conflict of interest means for us an actual or possible situation where official responsibilities and private or other interests of a public officer are at odds, and when the pursuit of private interest can threaten public good or hamper carrying out his or her official duties.

The conflict of interest can arise in particular in situations described in the acts of law: of August 21, 1997 on limitations to business activity of persons holding public functions (thereafter called UOPDG), of November 21, 2008 on civil service, of September 16, 1982 on employees of government offices, the act on public procurements, and the code of administrative procedure, and can result from:

- **holding public function and simultaneously sitting on statutory bodies of commercial companies** or foundations pursuing economic activity (in particular Art. 4 par. 1 and 4 of UOPDG);
- **holding public function and simultaneously being employed in commercial companies** (in particular Art. 4 par. 2 of UOPDG);
- **owning more than 10% share** in commercial companies (in particular Art. 4 par. 5 of UOPDG);
- **pursuing economic activity** (in particular Art. 4 par. 6 of UOPDG);
- **economic activity pursued by a spouse of a person holding public function that can give raise to suspicions of partiality** or interestedness (in particular Art. 8 par. 1 of UOPDG);
- **breaking the ban on being employed** by entities for which the public officer took decisions, in the period of one year from quitting public function (in particular Art. 7 par. 1 of UOPDG);
- **violating the principle of impartiality in public tender procedures** (in particular Art. 17 of the act on public tenders);

- **violating the principle of impartiality in the procedures of issuing administrative decisions** (in particular Chapter 5 of the code of administrative procedure);
- **publicly manifesting political views** or joining political organisation (in particular **A**rt. 76, par. 1, pt. 4, Art. 78 of the act on civil service);
- **breaking the ban on entering official dependence relation by spouses** and relatives (Art. 79 of the act on civil service);
- **taking additional employment or other paid work without written permission from director general** of the office, and taking activities or employments being at odds with the responsibilities defined in the act of law or undermining the confidence in civil service (Art. 80 of the act on civil service);
- **taking additional employment** without permission from the head of the office (Art. 19 par. 1 of the act on employees of government offices);
- **breaking the ban on pursuing activities that are at odds with public officer's responsibilities** or can raise suspicions of his or her partiality or interestedness (Art. 19 par. 2 of the act on employees of government offices);
- **breaking the ban on taking part in strikes or actions disturbing the normal operation of public offices** or in activities being at odds with the responsibilities of government officers (Art. 19 par. 3 of the act on employees of government offices).

Having in mind the above understanding of the conflict of interest, we ask you to answer the following questions:

1. Do you have in your ministry any documents (for example, ethical codes, rules of procedure, ministerial ordinances, guidelines for directors and heads of units concerning permissions for additional employment, or internal programs and strategies) describing the conflict of interest situations, instructing on the proper reaction to such situations, introducing internal "policy" of the institution in relation to the conflict of interest? If such documents exist, we ask you:
   - to give their titles and dates, and to send them in electronic version (MS Word document or scanned PDF document) to the address given at the end of the letter.
2. Are the employees of your ministry informed on situations where the conflict of interest can occur, and on related risks? If so, please, give a short description of how they are informed about it.
3. In the years 2010-2013, did your ministry organised any trainings for your employees entirely or at least partially devoted to the issues of the conflict of interest? If so, please give the list of the trainings and send their agendas (in the form of MS Word document or scanned PDF document) to the address given at the end of the letter.
4. Are the employees of your ministry required to file declarations of interests? If so, please give us a brief information on the following matters:
   - what is the basis of the requirement (e.g. general provisions of law or internal regulations) and when are they required to do it?
   - how are the declarations verified?

- how are the declarations registered and/or archived?
- what was the total number of declarations filed in the years 2010-2013?

5. In the years 2010-2013, did your ministry receive any complaints concerning your employees related to conflict of interest situations? If so, please:
   - give the number of complaints received in every year, and describe how they were resolved.
6. In the years 2010-2013, were any disciplinary procedures launched in your ministry against your employees concerning conflict of interest situations? If so, please:
   - give the number of such procedures launched in every year, and describe how they were resolved.
7. In the years 2010-2013, were any criminal proceedings conducted in your ministry against your employees, concerning conflict of interest situations? If so, please:
   - give the number of such proceedings for every year, and describe how they were resolved.

Please, send your answers to the preceding questions to the **e-mail address: astokowska@batory.org.pl**.

We will be grateful if answering the questions you use the table, a sample of which is attached to this letter. The electronic version of the table can be downloaded at the address: http://www.batory.org.pl/upload/konflikt-interesow-tabela.doc and is sent by us (together with the application) to the e-mail address: bdg@kprm.gov.pl.

In the case of copies of documents we ask you to make them available, if possible, in formats allowing their editing, e.g. as .doc or .rtf files, or in a scanned form as .pdf, .jpg files.

If you have any questions, please contact Ms. **Anna Stokowska**, e-mail address: astokowska@batory.org.pl, tel. 22 536 22 37 (between 10 a.m and 2 p.m.).

With best regards,
Grzegorz Makowski
Director of the Program
Responsible State
The Stefan Batory Foundation

List of recipients:
Chancellery of the Prime Minister
Ministry of Administration and Digitization
Ministry of National Education
Ministry of Finance
Ministry of Economy
Ministry of Infrastructure and Development
Ministry of Culture and National Heritage
Ministry of Science and Higher Education
Ministry of National Defence

Ministry of Labour and Social Policy
Ministry of Agriculture and Rural Development
Ministry of Treasury
Ministry of Sports and Tourism
Ministry of Internal Affairs
Ministry of Foreign Affairs
Ministry of Justice
Ministry of Environment
Ministry of Health

9.2. Table to answer our questions FOR the ministries

Do you have in your ministry any documents (for example, ethical codes, rules of procedure, ministerial ordinances, guidelines for directors and heads of units concerning permissions for additional employment, or internal programs and strategies) describing the conflict of interest situations, instructing on the proper reaction to such situations, introducing internal „policy" of the institution in relation to the conflict of interest?	
YES	NO
If such documents exist we ask you to give their titles and dates, and to send them in electronic version (MS Word document or scanned PDF document) to the address astokowska@batory.org.pl , and to write down their list below.	
Are the employees of your ministry informed on situations where the conflict of interest can occur, and on related risks?	
YES	NO
If so, please, give a short description of how they are informed about it.	
In the years 2010-2013, did your ministry organised any trainings for your employees entirely or at least partially devoted to the issues of the conflict of interest?	
YES	NO
If so, please give the list of the trainings and send their agendas (in the form of MS Word document or scanned PDF document) to the address astokowska@batory.org.pl.	
Are the employees of your ministry required to file declarations of interests?	
YES	NO
If so, please give us a brief information on the following matters: • what is the basis of the requirement (e.g. general provisions of law or internal regulations) and when are they required to do it? • how are the declarations verified? • how are the declarations registered and/or archived? • what was the total number of declarations filed in the years 2010-2013?	

In the years 2010-2013, did your ministry receive any complaints concerning your employees related to conflict of interest situations?				
YES		NO		
If so, please give the number of complaints received in every year, and describe how they were resolved.				
	2010	**2011**	**2012**	**2013**
Number of complaints				
Resolution				
In the years 2010-2013, were any disciplinary procedures launched in your ministry against your employees concerning conflict of interest situations?				
YES		NO		
If so, please give the number of such procedures launched in every year, and describe how they were resolved.				
	2010	**2011**	**2012**	**2013**
Number				
Resolution				
In the years 2010-2013, were any criminal proceedings conducted in your ministry against your employees, concerning conflict of interest situations (e.g. as a result of filing untruthful financial disclosures or declarations required from members of public tender commissions)?				
YES		NO		
If so, please give the number of such proceedings for every year, and describe how they were resolved.				
	2010	**2011**	**2012**	**2013**
Number				
Resolution				

9.3. Questionnaire for public officers

TO BE FILLED BY THE STEFAN BATORY FOUNDATION. DO NOT FILL.

Initials of person distributing the questionnaire
|__|__|
Date of filling the questionnaire
|__|__|/|__|__|/|__|__|

The title of training / seminar / conference etc.
|_____|

Dear Sirs,

The Stefan Batory Foundation in cooperation with the National School of Public Administration conducts an international research project concerning the conflict of interest in public administration, financed from the European Commission grant (agreement ENPI 2013/313-750). This questionnaire sheet is one of tools used in our survey.

We are eager to learn about your opinions and experiences concerning the issues. The questionnaire is ANONYMOUS, and your answers to the questions will only be used in a summary analysis performed by researchers from the Foundation. Conducting the survey, the foundation abides to the standards of the European Society for Opinion and Marketing Research (ESOMAR), which means that the answers given in the questionnaire cannot be traced in any way to the persons who filled the questionnaire.

We will be obliged if you answer all the following questions.

Q1. In your opinion, when can we talk about the conflict of interest in public administration?
(please, write down a short answer below)

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.....
.....
.....
.....

Q2. In your opinion, what are the most important causes of conflict of interest situations in the Polish public administration? *(please, write down a short answer below)*

.....
.....
.....
.....
.....

Q3. In your opinion, are conflict of interest situations common in the Polish public administration? ***(write „x" in only ONE box)***

1. definitely yes
2. rather yes
3. rather not
4. definitely not
5. it's hard to say

Q4. In your opinion, the conflict of interest situations occur most commonly: ***(write „x" in only ONE box)***

1. in central government administration
2. in local government administration
3. in state administration (e.g. the Chancellery of the Parliament, Senate, in the Chancellery of the President)
4. it is hard to say

Q5. Situations of the possible conflict of interest are connected with which activities in your office?

(...)

Q6. How do you perceive the following situations: in your opinion, is it acceptable or unacceptable when:

(...)

	Definitely acceptable	Rather acceptable	Rather unacceptable	Definitely unacceptable	It's hard to say
1. A person holding important public function employs in a state-owned company a candidate known to him or her only socially, and not professionally.	1	2	3	4	5
2. A person holding important public function socialises with a representative of a private company that was granted government contracts.	1	2	3	4	5

Q7. Below, two situations are described that can take place in the work of public administration officer.

Please, indicate one reaction that you would choose in the situations.

Situation A:

You participate in the proceedings of an interministerial group to prepare new solutions for the private sector. A friend of yours has a company. During social consultations, he presented his comments to the draft regulations, but they were not taken into account. The results of the proceedings of the group, reported by media, are unfavourable for him. Referring to your old friendship, he asks you to introduce other, more favourable solutions in the draft regulation, suggesting that if you do it you will receive financial reward from him.

What is your reaction?

1) You say that you are sorry that he told you about it so late.

2) You assure your friend that you will do what you can to introduce the more favourable solutions in the course of further proceedings.

3) You suggest that he should contact the head of the group who is more influential in decision-making processes.

4) You refuse.

Situation B:

For some time, you have held a managerial post in one of the government administration offices. Before, you worked in a private company. Once in a while, you meet on social grounds with your former colleagues from the company. During one of such meetings you learn that the company won a public contract from the office where you are now employed. Your colleagues, in their own name and in the name of the CEO of the company, want to thank you for choosing their company. They are glad to have "their" man in administration. You knew nothing about the tender and took no part in the tender procedure. You have totally different responsibilities in the office.

What is your reaction?

1) You don't comment on the matter.

2) You accept their thanks.

3) You explain the situation and unambiguously state that you had nothing to do with the tender procedure and that such procedures are not within the scope of your responsibilities.

4) You comment the situation saying that you are pleasantly surprised that you are so influential person in the office.

Q8. Do you know about conflict of interest situations taking place in your office in the years 2010 2013?

(write „x" in only ONE box)

1. yes, I know about at least several conflict of interest situations

2. yes, I know about one or two conflict of interest situations

3. I don't know, I have no knowledge about such situations

Q9. ***(for persons choosing answers 1 or 2 to the question no. 8)*** **Do you know what sanctions were applied towards the employees of your public office engaged in conflict of interest situations in the years 2010 2013?**
(write „x" in only ONE box)

1. yes, I know what sanctions were applied in all or in the majority of conflict of interest situations
2. yes, I know what sanctions were applied in some cases
3. I don't know whether and what sanctions were applied

Q10. In the years 2010 – 2013, were you in situations of possible conflict of interest while performing your official duties?
(write „x" in only ONE box below)

1. yes, at least several times
2. yes, but only occasionally
3. no
4. it's hard to say

Q11. In your opinion, are the employees of your public office well prepared to possible conflict of interest situations?
(write „x" in only ONE box below)

1. definitely yes
2. rather yes
3. rather no
4. definitely no
5. it's hard to say

Q12. ***(for persons choosing answers 1 or 2 to the question no. 11)*** **Why are the employees of your public office well prepared to possible conflict of interest situations?** ***(please, give three main reasons)***

.....
.....
.....
.....
.....

Q13. ***(for persons choosing answers 3 or 4 to the question no. 11)*** **Why are the employees of your public office not well prepared to possible conflict of interest situations?** ***(please, give three main reasons)***

.....
.....
.....
.....
.....

Q14. In the years 2010 – 2013, were trainings concerning the conflict of interest organised in your public office?
(write „x" in only ONE box below)

1. yes
2. no
3. I don't know, it's hard to say

Q15. ***(for persons answering "yes" to the question no. 14)*** **In the years 2010 – 2013, did you participate in trainings concerning conflict of interest matters organised in your public office?**
(write „x" in only ONE box below)

1. yes
2. no

Q16. Have you ever filed a declaration of interests in your public office?
(write „x" in only ONE box below)

1. yes
2. no

Q17. Are all employees of your public office required to file declarations of interests?
(write „x" in only ONE box below)

1. yes
2. no
3. I don't know, it's hard to say

Q18. Are there in your public office clear rules of behaviour in conflict of interest situations?
(write „x" in only ONE box below)

1. yes
2. no
3. I don't know, it's hard to say

Q19. Are there in your public office procedures or regulations to counteract possible conflict of interest situations in the following areas of activities?
(...)

	Yes	No	I don't know, it's hard to say
1. issuing administrative decisions	1	2	3
2. employing new workers	1	2	3
3. promoting and rewarding employees	1	2	3
4. seeking additional external employment by the workers of the public office	1	2	3
5. employment after quitting the office	1	2	3
6. preparation and execution of public tenders	1	2	3
7. contacts with businessmen, professional organisations, non-governmental organisations	1	2	3
8. accepting gifts and rewards from people, institutions and organisations cooperating with the public office	1	2	3
9. using public office resources (telephone, Internet, e-mail)	1	2	3

Q20. In your opinion, are additional mechanisms or regulations to counteract conflict of interest situations needed in your public office?
(write „x" in only ONE box below)

1. definitely yes
2. rather yes
3. rather not
4. definitely no
5. it's hard to say

INFORMATION ON THE RESPONDENT

M1. Gender

1. woman
2. man

M2. Age

1. under 30
2. between 31 and 40
3. between 41 and 50
4. over 50

M3. How long are you employed in public administration?

1. less than 5 years,
2. between 5 and 10 years,
3. between 10 and 15 years,
4. over 15 years.

M4. In what institution are you presently employed?

1. in a ministry,
2. in a central government office,
3. in a voivodeship office,
4. in other office

M5. What kind of post do you hold?

1. support
2. specialist
3. managerial

M6. Are you a civil servant?

1. yes
2. no

OTHER COMMENTS/ REMARKS

.....

.....

.....

.....

.....

.....

.....

THANK YOU FOR ANSWERING THE QUESTIONS

The Stefan Batory Foundation
ul. Sapieżyńska 10a
00-215 Warsaw, Poland

tel.: | 48| 22 536 02 00
fax: | 48| 22 536 02 20
batory@batory.org.pl
www.batory.org.pl

The present report contains result of research which was conducted within the monitoring framework in order to describe a policy regarding conflict of interest in Polish ministries and offer a means of overcoming difficulties in this area. We focused on regulations and procedures to prevent conflict of interest situations and its negative consequences and attitudes of public officers toward this problem.

Monitoring has been realized under the project "Social monitoring of the conflict of interest" in which the Batory Foundation takes part together with Moldavian Transparency International, Eurasia Partnership Foundation and Transparency International – Anti-corruption Centre from Armenia, and TORO Creative Union and Ukrainian Institute for Public Policy from Ukraine.

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www.batory.org.pl

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