

REGULATING CONFLICT OF INTERESTS

LESSONS LEARNT FROM SLOVAKIA

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THE RATIONALE

- High levels of corruption and corruption perception in the public sphere
- Ineffective spending of public funds
- Manipulated public procurement
- Nepotism and corporativism in public decision making processes



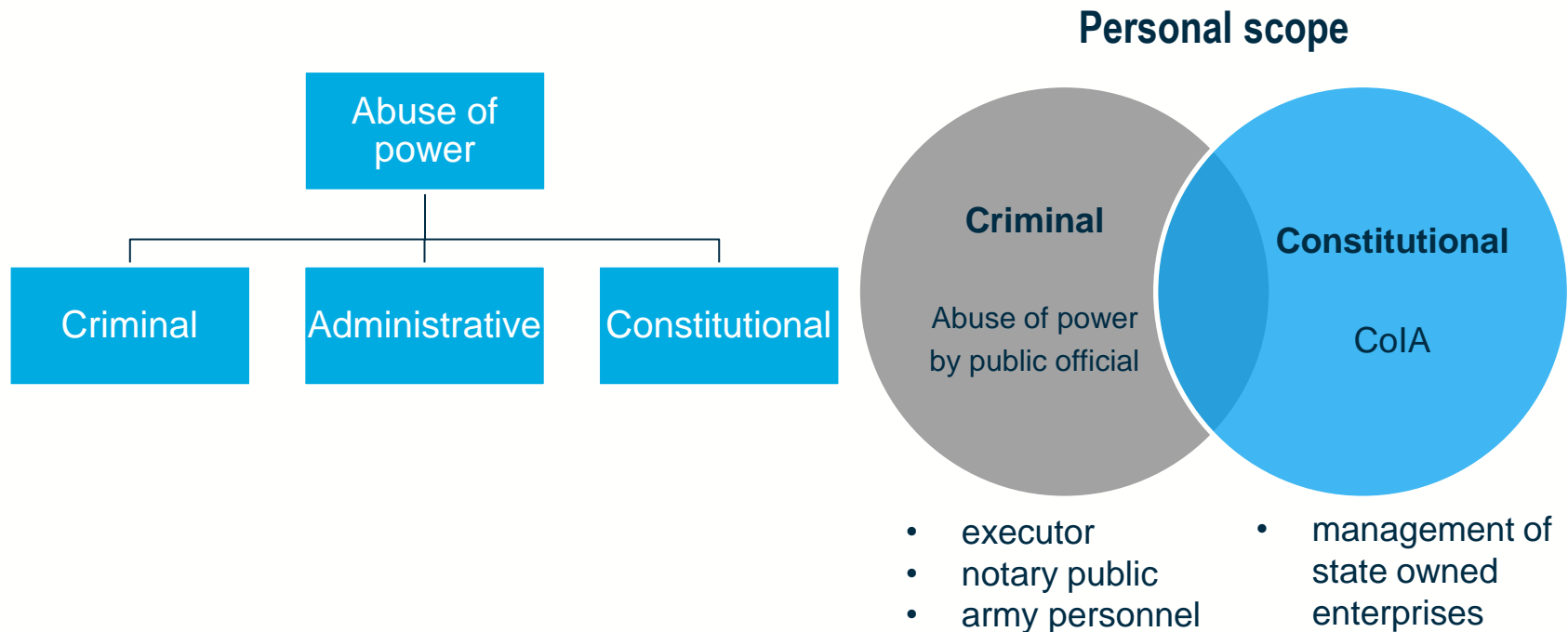
THE LAW

- Constitutional Act No. 357/2004 Coll. on Protection of Public Interest in Exercising the Functions of Public Officials (Conflict of Interest Act)
 - Adopted: 26 May 2004
 - Effective: 1 October 2004
 - Amended: 1 January 2006
- Act with the power equal to the Constitution (part of the constitutional order)
 - Difficult to amend – current *status quo* preservation
 - Specific sanctions

THE LAW



- **Conflict of Interest Act** – part of the broader approach to combating abuse of power



THE LAW



- Personal scope:
 - 37 categories of persons (central gov't, local gov't, public firms, judiciary, legislature, academia, etc.)
 - Exhaustive list - problematic
- Tools:
 1. Incompatibility of functions
 2. Conflict of interest disclosures
 3. Property declarations
 4. Limitations after the termination of the exercise of public office
 5. Sanctions for breach of duties



GENERAL OBLIGATIONS

- Obligation to promote and protect public interest
- Prohibition of favoring private over public interest:
 - using of information acquired while in exercise of public office
 - gifts
 - mediation of a commercial contract with state or other public entity
 - acquire property from state (exception: public auction or competition)
 - silent company
 - bearer shares (exception: inheritance)
 - advertisement
 - abuse of sigils and symbols of office



INCOMPATIBILITY OF FUNCTIONS

- Prohibition to conduct business
 - Statutory, controlling or supervisory body
 - Self-employment
- Exception:
 - Share ownership
 - Regulated professions (e.g. attorney)
 - Publicly owned enterprises – no remuneration
- Reality check:
 - 2014: 133 mayors active as managers of private businesses, only 4 mayors fined by the Local Assemblies
 - 2015: 44 mayors still active as managers

CONFLICT OF INTEREST DISCLOSURE



- Every official must declare:
 - Private interest in the matter that is being deliberated
 - Interest of their political party (provided that the official has knowledge of that)
- Declaration must be noted in the minutes from the deliberation

PROPERTY DECLARATION



- Yearly property declaration:
 - List of employments
 - Yearly income from the public office as well as other employments
 - Property owned by the official or their family members
- Publication of declarations
- Exception for mayors and members of municipal assemblies
 - Only access under Freedom of Information Act
 - Restrictive interpretation by the township officials
 - Recently overturned by the Supreme Court

LIMITATIONS AFTER THE TERMINATION OF THE EXERCISE OF PUBLIC OFFICE



- Employment , corporate function, and share ownership limitations:
 - Awarded subsidy or other state aid
 - Awarded public procurement contract
 - Forgave fulfillment of a certain legal obligation
- Possibility of awarding an exception



SANCTIONS

- Obligation to immediately give up the incompatible function
- Pecuniary fine
 - Up to 1-year salary
- Loss of mandate
 - Repeated breach of the law
 - Failure to prove the origin of the assets growth, especially if it is unlikely in relations to the declared incomes
 - Only 1 case so far (mayor of Zemianská Olča)
- Mandatory sanctions; no discretion



LOSS OF MANDATE

- Most severe sanction
- Responsible bodies:
 - Committee of the National Council (3/5 of present MPs)
 - Local Assembly
 - Regional Assembly
 - Academic Senate

} 1/2 of members
- Appeal to the Constitutional Court (also for other sanctions)
 - Only the official
 - Not the minority which voted not to acquit the official

LOSS OF MANDATE



- **Zemianská Olča**

- Mayor found in breach of the Conflict of Interest Act
- Fine – 16,440.62 EUR
- Problems with delivery and execution
- Repeated breach of the Conflict of Interest Act by mayor
- Loss of mandate
- Problems with delivery
- Refusal to hand-over the office and documentation by the mayor
- Forceful opening of the mayor's office by the local assembly

2008



2010



THE FLAWS

- Exhaustive list of persons
 - Transformation of the public authority or public enterprise
- Political bodies
 - Protection of an official affiliated with the majority
 - Minority has no right to appeal
- Brief description of assets in property declarations
 - Only descriptive, no concrete information
- No publication of property declarations of mayors and local assembly members and refusal to make available under FoIA
 - Recently overturned by Supreme Court (judgment not published yet)
- Requirement to cease the proceedings when the official resigns



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