Pl. ÚS 38/17 of 11 February 2020
149/2020 Sb.

The Act on Conflict of Interests (Central Register of Asset Declarations)

The Czech Republic
JUDGMENT
of the Constitutional Court
in the Name of the Republic

The plenum of the Constitutional Court, consisting of Chairman Pavel Rychetský and Justices Ludvík David, Jaroslav Fenyk, Josef Fiala, Jan Filip, Jaromír Jirsa, Tomáš Lichovník, Vladimír Sládeček, Radovan Suchánek, Kateřina Šimáčkové, Vojtěch Šimíček (judge rapporteur), Milada Tomková, David Uhlíř and Jiří Zemánek, regarding a petition from a group of 42 senators of the Senate of the Parliament of the Czech Republic, acted for by Senator Ivo Valenta, represented by Mgr. Jana Zwyrtek Hamplová, attorney, with her office at Olomoucká 36, Mohelnice, seeking the annulment of § 2 par. 1 let. q), § 10 par. 2 and 3 and § 11 par. 3 of Act no. 159/2006 Coll., on Conflict of Interests, as amended by Act no. 14/2017 Coll., and a petition from a group of 60 senators of the Senate of the Parliament of the Czech Republic, acted for by Senator Ing. Michael Canov, represented by JUDr. Stanislav Polčák, attorney, with his office at Řehenice 10, Pyšely, seeking the annulment of § 10 par. 3 and 14b of Act no. 159/2006 Coll., on Conflict of Interests, as amended by Act no. 14/2017 Coll. and Act no. 112/2018 Coll., with the participation of the Chamber of Deputies of the Parliament of the Czech Republic and the Senate of the Parliament of the Czech Republic, as parties to the proceeding, the government as a secondary party to the proceeding, and the group of 60 senators of the Senate of the Parliament of the Czech Republic, acted for by Senator Ing. Michael Canov, represented by JUDr. Stanislav Polčák, attorney, with his office at Řehenice 10, Pyšely, as a secondary party to the proceeding, as regards the petition seeking the annulment of the words "the deputy mayor of a municipality, city part or city district of a territorially subdivided charter city, the deputy mayor of a city district of the capital city of Prague or" and the words "a municipality, city part, or city district of a territorially subdivided charter city, a city district of the capital city of Prague," in § 2 par. 1 let. q), and as regards § 10 par. 2 and § 11 par. 3 of Act no. 159/2006 Coll., on Conflict of Interests, as amended by Act no. 14/2017 Coll., ruled as follows:

I. The provisions of § 14b par. 1 let. a), b) and c) of Act no. 159/2006 Coll., on Conflict of Interests, as amended by Act no. 14/2017 Coll., which amends Act no. 159/2006 Coll., on Conflict of Interests, as amended by later regulations, and other related Acts, and of Act no. 112/2018 Coll., which amends Act no. 159/2006 Coll., on Conflict of Interests, as amended by later regulations, are annulled as of the end of 31 December 2020.

II. The remaining parts of the petitions are denied.

Reasoning:

I. Definition of the matter

1. The group of senators acted for by Senator Ivo Valenta ("Petitioner 1"), on 30 November 2017 filed a petition seeking the annulment of § 2 par. 1 let. q), § 10 par. 2 and 3 and § 11 par. 3 of Act no. 159/2006 Coll., on Conflict of Interests, as amended by Act no. 14/2017 Coll., due to conflict with Art. 4 par. 1 and 4 and Art. 10 par. 2 and 3 of the Charter of Fundamental Rights and Freedoms (the "Charter"). The contested wording of all the cited provisions was inserted in the Act on Conflict of Interests by Act no. 14/2017 Coll., which amends Act no. 159/2006 Coll., on Conflict of Interests, as amended by later regulations, and other related Acts ("Act no. 14/2017 Coll."). Petitioner 1 also claims that the manner in which the Act on Conflict of Interests was adopted was unconstitutional, due to claimed inconsistency with Art. 40 of the Constitution of the Czech Republic (the "Constitution"), as a consequence of which it also concludes that the amending Act no. 14/2017 Coll. is unconstitutional.

2. Act no. 112/2018 Coll., which amends Act no. 159/2006 Coll., on Conflict of Interests, as amended by later regulations ("Act no. 112/2018 Coll.") was adopted at the time of the proceeding before the Constitutional Court. As regards the provisions of the Act on Conflict of Interests contested by Petitioner 1, Act no. 112/2018 Coll. changed only the text of § 10 par. 3 with effect as of 1 June 2019.

3. On 30 July 2018 the Constitutional Court received a petition from a group of 60 senators of the Senate of the Parliament of the Czech Republic ("Petitioner 2"), maintained as file no. Pl. ÚS 34/18, seeking the annulment of, in § 2 par. 1 let. q), the words "the deputy mayor of a municipality, city part or city district of a territorially subdivided charter city, the deputy mayor of a city district of the capital city of Prague or" and the words "a municipality, city part, or city district of a territorially subdivided charter city, a city district of the capital city of Prague," as well as § 10 par. 2 and 3, § 11 par. 3 and § 14b of Act no. 159/2006 Coll., on Conflict of Interests, as amended by later regulations, due to their claimed inconsistency with Art. 8 and Art. 102 par. 1 of the Constitution, and with Art. 1, Art. 3 par. 1, Art. 4 par. 1 and 4, Art. 10 par. 2 and 3 and Art. 21 par. 1 and 4 of the Charter.

4. The Constitutional Court ruled on the petition from Petitioner 2 in its resolution file no. Pl. ÚS 34/18 of 22 January 2019; it partly dismissed the petition due to impermissibility due to the obstacle of a pending suit (lis pendens), where the petition concerned the same provisions as the petition file no. Pl. ÚS 38/17, and partly joined it to the proceeding in the matter file no. Pl. ÚS 38/17, where it contested a provision that was new or had in the interim been amended by Act no. 112/2018 Coll. As regards the remainder of that petition, the Constitutional Court ruled, in the abovementioned resolution, by joining the petition seeking the annulment of § 10 par. 3 and § 14b of Act no. 159/2006 Coll., on Conflict of Interests to the joint proceeding with the petition maintained as file no. Pl. ÚS 38/17.

5. Thus, as regards the arguments presented, the subject matter of this proceeding is defined both by the petition from Petitioner 1 and the petition from Petitioner 2 [cf. point 5 of the Judgment of 27 November 2012, file no. Pl. ÚS 1/12 (N 195/67 SbNU 333; 437/2012 Coll.)].

II. Text of the Contested Provisions

6. The text of the contested provisions is the following (for clarity, related provisions that are not proposed to be annulled are given in parentheses, and the contested wording is emphasized):

§ 2
Public Official

(1) For the purposes of this Act, the term public official is understood to mean

a) a deputy of the Chamber of Deputies of the Parliament of the Czech Republic (a "Deputy"),

b) a senator of the Senate of the Parliament of the Czech Republic (a "Senator"),

c) a cabinet member or a director of a central public administration office not headed by a cabinet member,

d) a deputy of a cabinet member or the deputy for the civil service of the Minister of the Interior

e) the secretary general of the Office of the Chamber of Deputies, the secretary general of the Office of the Senate, or the secretary general of the Office of the President of the Republic

f) an inspector of the Office for Personal Data Protection,

g) the president of the Office of Technical Standardization, Metrology and Testing,

h) a member of the Council of the Czech Telecommunication Office,

i) a member of the Council of the Energy Regulatory Office,

j) a member of the Bank Board of the Czech National Bank,

k) the president, vice-president, or a member of the Supreme Audit Office,

l) the chairman or a member of the Office for Supervision of the Economic Management of Political Parties and Political Movements,

m) the Public Defender of Rights and his deputy,

n) a member of the Council for Radio and TV Broadcasting,

o) a member of a regional representative body[1] or a member of the City Council of the Capital City of Prague who is released from employment on a long-term basis to perform the office[2], or who, before being elected as a member of the representative body was not an employee, but who performs the office in the same scope as a representative body member who is released from employment on a long-term basis to perform the office,

p) a member of the representative body of a municipality, city part, or city district of a territorially subdivided charter city or a city district of the Capital City of Prague, who has been released from employment on a long-term basis to perform the office, or before being elected as a member of the representative body was not an employee, but who performs the office in the same scope as a representative body member who is released from employment on a long-term basis to perform the office, or

q) a mayor of a municipality, city part, or city district of a territorially subdivided charter city or a city district of the capital city of Prague, deputy mayor of a municipality, city part, or city district of a territorially subdivided charter city, the deputy mayor of a city district of the capital city of Prague, or members of the council of a municipality, city part or city district of a territorially subdivided charter city, a city district of the capital city of Prague, a region, or the capital city of Prague, who have not been released from employment on a long-term basis to perform the office[3].

[1] Translation note: for smoother flow of text, sometimes translated as "council".
[2] Translation note: for smoother flow of text, sometimes translated as "full-time".
[3] Translation note: for smoother flow of text, sometimes translated as "part-time".

§ 10 par. 2 and 3
Declaration of Assets

(1) A public official is required to declare precisely, completely and truthfully
a) property that he owns as of the day before he takes office
b) property that he acquires while holding office,
(2) In the declaration of assets the public official shall state
a) real property,
b) securities, book-registered securities, or rights connected with them,
c) an ownership interest in a commercial corporation not represented by a security or a book-registered security, and
d) other personal property by type,
1. the price of which, that is usual in the given place and time, exceeds CZK 500,000 in an individual case, in the event of a declaration of assets under paragraph 1 let.a), or
2. if he acquired them during the course of the calendar year and their aggregate value, not including assets the price of which is lower than CZK 50,000, exceeds CZK 500,000, in the case of a declaration of assets under paragraph 1 let. b).
(3) In a declaration of assets the public official shall also state the manner of acquisition and the price of the assets stated in paragraph 2 let. a) and d), with the exception of the manner of acquisition and price for real estate under paragraph 2 let. a), in the case of a declaration under paragraph 1 let. a). For other personal property under paragraph 2 let. d), the declaration under paragraph 1 let. a) shall state the price that is usual in the given place and time. A declaration under paragraph 1 let. b) shall state the price for which the public official acquired the real estate or other personal property.

7. For completeness, the Constitutional Court adds to § 10 par. 3 that the text of § 10 par. 3 first sentence before being amended by Act no. 112/2018 Coll., i.e. the text contested by Petitioner 1, is the following (for clarity, the words "manner of acquisition and," added by the amending Act no. 112/2018 Coll. are in brackets): ***"In the declaration of assets the public official shall also state the manner of acquisition and price of the assets listed in paragraph 2 let. a) and d), with the exception of the*** *[manner of acquisition and]* ***price for real property under paragraph 2 let. a), in the case of a declaration under paragraph 1 let. a)."***

§11 par. 3
Declaration of Income and Liabilities

(1) A public official is required to declare precisely, completely and truthfully any unpaid liabilities that he has as of the day preceding the day that he began to hold office. In the declaration he shall state unpaid liabilities exceeding CZK 100,000 in each individual case.
(2) A public official is required to declare precisely, completely, and truthfully, that
a) during the term of his office he acquired any monetary income or other material benefits, especially gifts, except for the gifts included in his declaration of assets under § 10 herein, bonuses, income from business or other gainful activities, dividends or other income from his interests in or for his activities for commercial legal entities ("income or other material benefits"), if the aggregate amount of such income or other material benefits exceeds CZK 100,000 in a calendar year; for this purpose, the term "income or other material benefit" does not include any salary, remuneration or other appurtenances to which a public official is entitled in connection with his holding of office under special legal regulations, and income of a spouse or partner of a public official; this aggregate amount shall not include gifts whose value is below CZK 10,000,

b) has unsettled liabilities, especially loans, credits, rent, liabilities resulting from leasing contracts with a right to purchase or liabilities from bills of exchange, if the aggregate amount of such liabilities exceeds CZK 100,000 as of 31 December of the calendar year for which the declaration is filed.

(3) A public official is required to state in a declaration the amount, type and source of each income under paragraph 2 let. a) and the amount and type of liability under paragraph 1 and paragraph 2 let. b), including the creditor; a natural person shall be identified by first name or names and family name, a legal person shall be identified by its business name, identification number, and registered address.

§ 14b
Scope of Access to the Register of Declarations

(1) As of the first day after the deadline stated in § 12 par. 1, 2 or 3, anyone can view the register of declarations for public officials set forth in

a) § 2 par. 1 let. a) to o), and for members of a regional council or the council of the capital city of Prague who have not been released from employment on a long-term basis for the performance of office, in the scope of all facts declared under § 9 to 11 and § 12 par. 4, with the exception of the date and place of birth of a public official and identification of real property,

b) § 2 par. 1 let. p), and with a mayor or deputy mayor of a charter city, mayor of a city part or city district of a territorially subdivided charter city or a city district of the capital city of Prague, the deputy mayor of a city part or a city district of a territorially subdivided charter city, a deputy mayor of a city district of the capital city of Prague and members of a council of a charter city, city part or city district of a territorially subdivided charter city and city district of the capital city of Prague, who are not released from employment on a long-term basis for the performance of office, in the scope of all facts declared under § 9, § 10 par. 2 let. a) to c), § 11 par. 2 let. a) and § 12 par. 5, with the exception of the date and place of birth of a public official and the identification of real property,

c) § 2 par. 1 let. 1), with the exception of a mayor and deputy mayor of a charter city, the mayor of a city part or city district of a territorially subdivided charter city or a city district of the capital city of Prague, deputy mayor of a city part or city district of a territorially subdivided charter city, deputy mayor of a city district of the capital city of Prague and members of the council of a charter city, city part or city district of a territorially subdivided charter city, city district of the capital city of Prague, a region, or the capital city of Prague, in the scope of all facts declared under § 9, § 10 par. 2 let. a to c) and § 12 par. 4, with the exception of the date and place of birth of the public official and identification of real property, or

d) § 2 par. 2, only in the scope of facts declared under § 9, § 10 par. 2 let. a to c), § 11 pars. 2 let. a) and § 12 par. 4, with the exception of the date and place of birth of the public official and identification of real property.

(2) The authorization under paragraph 1 to view the register of declarations and obtain data from it does not apply to public officials who are judges, state attorneys, or members of the Police of the Czech Republic or the General Inspectorate of Security Forces. Information contained in the register of declarations about these public officials is not provided under the statute governing free access to information.

(3) The following are also authorized to obtain information from the register of declarations for the performance of their offices

a) authorities competent to process offences under this Act,

b) courts and authorities active in criminal proceedings, or
c) the intelligence services of the Czech Republic.

III. The Claims of the Petitioners

III.1. Arguments of Petitioner 1

III.1.a) On the Manner of Adoption of the Act on Conflict of Interests

8. Petitioner 1 questions the constitutionality of the manner in which the Act on Conflict of Interests was adopted. It states that in 2006 the Senate did not consider the Act, that is, it did not express consent with it. The Act on Conflict of Interests is – regardless of its name – in its subject matter an election act, and therefore should have been adopted pursuant to Art. 40 of the Constitution, i.e., with the consent of both chambers of Parliament being required. The material understanding of the content of an election act includes the expiration of a mandate, including the reasons leading to that expiration. Allegedly, § 5 par. 3 of the Act on Conflict of Interests sets forth the incompatibility of the offices of a deputy or senator with the other offices set forth, and § 4a of the Act sets forth a further restriction. Incompatibility of offices is an important component of election law, and therefore it includes the issue of conflict of interests, the incompatibility of the activities and offices of deputies and senators, if it has an effect on the expiration of a mandate or has other serious consequences for a holder of elected office. The incompatibility of offices should be regulated in an election act, as election is connected with the right to hold and perform a public office undisturbed.

9. The process of adopting an act in the regime of Art. 40 of the Constitution must be evident from the beginning of the discussion. An election act must be designated as such (at least in the background report), and the consent of the Senate is required. Therefore, it is not decisive, whether the Senate happened to consent to the act, but whether the deputies and senators were aware that the consent of both chambers was necessary. Petitioner 1 cites Constitutional Court judgment file no. Pl. ÚS 13/05 of 22 June 2005 (N 127/37 SbNU 593; 283/2005 Coll.), which annulled Act no. 96/2005 Coll., which amended Act no. 238/1992 Coll., on Conflict of Interests. According to the petitioner, the Constitutional Court took as its starting point the fact that the cited amendment of the Act on Conflict of Interests, as an election act, must be discussed with the consent of the Senate being mandatory.

10. In conclusion, Petitioner 1 states that if the Senate did not discuss the bill during the adoption of the Act on Conflict of Interests in 2006, the manner in which the act was adopted was unconstitutional. And, "if the adoption of the original version of a statute is unconstitutional, the unconstitutionality also affects its amendments, because an amended version, insofar as it is not capable of having its own existence in the legal order, becomes a component of the original statute and shares its legal fate."

III.1.b) On the Content of the Contested Provisions

11. Petitioner 1 states that the amendment of the Act on Conflict of Interests made by Act no. 14/2017 Coll. led to several fundamental changes, primarily as regards the representatives of territorial self-government defined in § 2 par. 1 let. q), where the positions of mayors and deputy mayors are performed by a number of people who hold office as part-time council members, that is, not as professionals, and the office is not their main source of income. Yet, under the

contested legislation, facts are made public that also affect the spouses of public officials within joint property of spouses as well as third parties who sold them shares, commercial interests or other things, or lent them money. The declarations and data of the full-time members of municipal councils and part-time members of municipal councils, who hold the offices of mayor, deputy mayor, and council member, will be available without request, i.e. without any retrospective monitoring. In contrast, it will be possible to view the declarations of the civil servants of municipal offices only on the basis of an application. Therefore, the contested provisions are unconstitutional in that the obligations imposed by the Act significantly interfere in the rights of third (unobligated) parties.

12. However, the interest in the transparency of the public administration cannot be addressed by disproportionate interference in the privacy of persons holding office part-time. The fact that the Act imposes an obligation to publish detailed information about assets on part-time public officials (mayors, deputy mayors) leads to a lack of interest in working for local government. Moreover, information is also published about the assets of person who sold or lent something to a public official, which is disproportionate. The state thus transfers its responsibility to maintain a non-corrupt environment onto thousands of people who work in their free time and selflessly for local government, as it intends to make available, in a public register, to an indeterminate circle of persons, virtually all information about the assets of these persons. Information can easily be misused against these persons.

13. The access to information is not monitored in any way, because it is not applied (except for civil servants) on the basis of a recorded application, which would at least guarantee retrospective inspection. Everyone will have completely anonymous access in the register to information about the private property of any of the obligated persons. Publication of information is irreversible interference in the rights of non-obligated persons, because the Act affects subjects who were not elected to any office, do not want to be, and who did not even give the presumed consent for this publication, e.g. spouses. The publication of data concerning the businesses of obligated persons can interfere with fair economic competition, and interferes in the rights of third parties (business partners, shareholders). This violates Art. 4 par. 1 and 4 of the Charter, because even a statute cannot simply impose just any obligation; moreover, the essence and significance of the fundamental rights that are limited must be preserved.

14. There is allegedly also violation of the right to privacy under Art. 10 par. 2 and 3 of the Charter. There is a public interest in preventing a conflict of interests, but it cannot automatically justify extensive violation of the right to privacy. The legitimacy, necessity, and proportionality of such measures must always be determined. Any collection and publication of personal data, including data about property transactions, even if permitted by law, carries with it a danger of misuse. According to the petitioner, it is more appropriate to not collect these data, so that they will not be misused, with the exception of a completely fundamental public interest in collecting them. The public interest does not a priori take precedence over the protection of personal data. The petitioner points out that measures that limit fundamental rights or freedoms may not have negative consequences that exceed the positives represented by the public interest in these measures. The scope of information provided cannot be justified by the effort to prevent a conflict of interests. It may be possible to use the declared information to identify sensitive asset data about persons, including those who are not public officials. The contested provisions of the Act make it possible to introduce an Orwellian Big Brother world, where the state collects a quantity of information that can be used sometime, about somebody, against somebody, and to somebody’s benefit.

15. The scope of the legislation will not withstand testing by the principle of proportionality, nor was the aim pursued by the legislation credibly named and justified. If a different approach to information about civil servants is introduced (requiring an application), then all the more so there should be legislation governing the access to information about persons who are neither civil servants, nor elected public officials, but merely sold or lent something to these persons.

16. Finally, the Petitioner claims that legitimate expectation was violated due to the unexpected change to the conditions for the holding of public office. A candidate for public office legitimately expects that he will hold the public office under the conditions known at the beginning of holding it, and that these conditions will not be substantially changed for the worse. This is false retroactivity.

III.2. Arguments of Petitioner 2

18. Petitioner 2 claims the contested articles are inconsistent with Art. 8 and Art. 102 par. 1 of the Constitution, as well as with Art. 1, Art. 3 par. 1, Art. 4 par. 1 and 4, Art. 10 par. 2 and 3 and Art. 21 par. 1 and 4 of the Charter. The arguments are partly analogous to those of Petitioner 1, only they are elaborated and justified in more detail.

19. Primarily, the petitioner believes that the contested provisions represent an unconstitutional intent, which is the collection or publishing of information about the property situations of municipal politicians, including those who are part-time and hold less exposed public offices, without taking appropriate account of the importance of protection of privacy. According to the petitioner, the amendment, Act no. 112/2018 Coll., adopted in the interim, even deepens the negative effects of the previous amendment, Act no. 14/2017 Coll. Under the legislation in effect before the changes implemented by Act no. 14/2017 Coll., an obligated person submitted a statutorily defined set of data, and these data were stored under the supervision of an authorized person (the secretary of the office). If a third party requested access to these data, it was made possible upon an application. The background report to Act no. 14/2017 Coll. does not in any way explain why this practice and the legislation had to be changed, whether any problems had been identified as regards the local level.

20. The problems of the amendment of Act no. 14/2017 Coll. also lie in the fact that it fundamentally expanded the range of persons who must make a public declaration, but a part-time municipal public official cannot be compared with top-level politicians; it introduced automatic publication of practically all data provided, in a form anonymously accessible to anybody through a public data network on the portal of the Ministry of Justice, and expanded the data provided to include clearly sensitive personal data from the private sphere, even in relation to other persons (spouses, partners). As a consequence of these changes, several hundred municipal public officials resigned, and the most serious reasons given were not disagreement with providing these declarations to state authorities, but their blanket publication with anonymous access for everybody. In the context of the Czech Republic, the contested regulation potentially applies to ca. 60,000 representatives, because the structure of municipalities and cities is characterized by a significant number of self-governing units[4] with a low number of residents. As a consequence, it is necessary to have the participation of a significant number of citizens, who are to fill public offices in municipalities and cities. In smaller municipalities, to fill the offices presumed by law, a high degree of citizen participation is necessary. Moreover, as the size of a locality declines, the intensity of election competition

[4] Translation note: for smoother flow of text, sometimes translated as “local governments”.

declines markedly. In smaller municipalities it is quite difficult to mobilize a sufficient number of citizens who will hold public offices in the local government. If a municipality provides part-time public officials very limited means, and, on the contrary, they are required to "publicly expose their property situations," this has adverse consequences for the exercise of local government, in the form of lack of interest of those who are successful and competent. Yet, the amount of administrative work continues to grow, and the personal responsibility connected with holding the office of a representative, or other offices, increases. It is not possible to impose disproportionate requirements on local government that could lead to paralyzing it. Thus, the legislation is inconsistent with Art. 8, which guarantees local government of territorial self-governing units and Art. 102 par. 1 of the Constitution, under which the members of representative bodies are elected by a secret vote on the basis of a universal, equal, and direct right to vote. According to the European Charter of Local Self-Government, the conditions under which local elected representatives work must permit the free exercise of their offices. The contested provisions also led to a relative massive violation of the Act, the reason being fear of publishing details about one's property situation, in an environment that is traditionally highly suspicious, even envious, as well as fear about publishing these data on websites where anybody has access to them, including persons with criminal tendencies.

21. Petitioner 2 also claims that the contested provisions, in the aggregate, represent a disproportionate burden in relation to the passive election right under Art. 21 of the Charter in connection with Art. 102 par. 1 of the Constitution, which every candidate must bear if elected, which discourages participation in public life.

22. Petitioner 2 explains the limited scope of the proposed judgment as regards § 2 par. 1 let. q) and states that they do not contest the obligation for "part-time" mayors to provide a declaration, "because to a certain degree they stand at the head of a municipality, and the obligation to provide these declarations has its justification; however, they too deserve protection as regards the effects of § 14b of the Act."

23. Petitioner 2 also alleges violation of the right to privacy, because limitation of the right to privacy is to be interpreted restrictively, and interference is to be proportionate. Petitioner 2 finds disproportionate the very inclusion of part-time public officials, defined in the proposed judgment of its proposal as regards § 2 par. 1 let. q), in the régime of the Act on Conflict of Interests.

24. Petitioner 2 accepts the legitimate aims that the contested legislation pursues, and considers them to be responsible and transparent performance of state administration, maintaining confidence in public institutions, and protection of public funds. However, it questions whether the means chosen by the legislature is suitable for achieving these aims as regards part-time deputy mayors and councilors. A municipality is represented externally basically only by the mayor; in the case of deputy mayors these are infrequent and exceptional situations. In smaller municipalities in particular, it is not unusual that this authority is not exercised at all during an entire electoral term, and often a council is not even established. Moreover, the scope of published data does not permit reaching a qualified conclusion about, for example, corrupt activity. Such a conclusion can be reached, only with knowledge of further circumstances, for example, by the police, who have further necessary information and knowledge, and therefore have access to this information on the basis of § 14b par. 3. In any case, those who wish to enrich themselves through holding office will choose such means as the contested legislation cannot affect.

25. The scope of items that are to be subject to a declaration of assets allegedly raises "doubts of a constitutional nature" in terms of Art. 10 par. 2 and 3 of the Charter. The collection of data about the assets of public officials alone represents a violation. "In view of the numerous exceptions, it is also a question, what picture of the assets of public officials is actually presented through the central register of declarations." Here too the contested legislation cannot meet the test of proportionality just in a review of its suitability. The contested legislation "raises questions concerning the duplication of instruments for the inspection of management with public funds," public funds are also protected by instruments such as the register of contracts, data about real estate can be obtained from a public register, the real estate register. As regards § 11 par. 3 (information about income and liabilities) Petitioner 2 states that it violates the right to privacy of third parties who are creditors of the public official. The problem outlined stands out especially in a situation where third parties became creditors of a public official at a time when he was a mere private person, and could not expect that information about that relationship would later be made public.

26. If the Constitutional Court were to find the abovementioned provisions to be constitutional, Petitioner 2 proposes annulling at least § 14b, under which anyone is entitled to view the central register of declarations without meeting any conditions whatsoever, and thus also obtain personal data (including data about assets) concerning public officials. This violates Art. 10 par. 3 of the Charter.

27. Petitioner 2 considers the interference in the right to privacy, consisting of the publication of data about the assets of public officials, to be completely disproportionate, also in light of judgment file no. IV. ÚS 1378/16 of 17 October 2017 (all decisions available at http://nalus.usoud.cz), which concerned the publication of the salaries of public officials. It believes that it would be constitutional to make information available upon application, the model that was used until the autumn of 2017.

28. The contested legislation will also not meet the criterion of necessity, as milder measures exist, in the form of either simply collecting data (and ensuring access for the appropriate authorities), or collecting data accompanied by the mechanism of providing information upon application, as in the older framework. Finally, Petitioner 2 refers to judgment Pl. ÚS 3/14, concerning review of the Act on Archiving, in which the Constitutional Court took into account the fact that the Act contained guarantees against the misuse of information. However, the presently contested legislation does not provide any guarantees.

29. Petitioner 2 questions the need of adopting such a "robust instrument" given the existence of Act no. 340/2015 Coll., on Special Conditions for the Effectiveness of Certain Contracts, Publication of These Contracts, and the Register of Contracts (the Act on the Register of Contracts), and Act no. 134/2016 Coll., on Public Procurement, the aim of which is also the transparency of the management of public funds. Moreover, conflict of interests in the area of municipal self-government is addressed in § 83 par. 2 of Act no. 128/2000 Coll., on Municipalities (Municipal Establishment). According to Petitioner 2, one can either take as a starting point the monitoring of public funds, or public assets, or focus on the persons of public officials and their property situations. There is also a place for monitoring of the assets of public officials, but in the case of the contested provisions there is duplication with Act no. 321/2016 Coll., Which Amends Certain Acts in Connection with Proving the Origin of Property. The complexity and multiplicity of anticorruption instruments raises the question of whether the legislature is not actually rather creating conditions for the violation of laws. Moreover, the state, somewhat paradoxically – instead of fighting crime – creates conditions for it, when it

offers potential perpetrators a unique database with the data of potential targets. The contested legislation goes against the worldwide trend toward higher protection of personal data. The contested legislation negates the right to privacy of public officials to the benefit of a problematic principle of transparency

IV. Statements of the Parties to the Proceeding and the Secondary Party to the Proceeding

30. The Constitutional Court requested statements from the parties to the proceeding and the secondary party to the proceeding, and subsequently also responses from the petitioners.

31. The Public Defender of Rights informed the Constitutional Court that she would not join the proceedings as a secondary party.

IV. 1. Statements from the Chambers of Parliament

32. In its statement, the Chamber of Deputies of the Parliament of the Czech Republic (the "Chamber of Deputies"), recapitulated the course of the legislative process of the adoption of Act no. 14/2017 Coll. and stated that the bill of the Act, before being promulgated, went through the constitutionally prescribed process, that both chambers of Parliament expressed consent with it in constitutionally described procedures, it was signed by the appropriate constitutional authorities, and duly promulgated.

33. In its statement, the Senate of the Parliament of the Czech Republic (the "Senate") described the legislative history of the individual contested provisions and stated that during the adoption of Act no. 159/2006 Coll., on Conflict of Interests, the Senate resolved not to discuss the bill of the Act. As regards Act no. 14/2017 Coll. the Senate returned the bill with amending proposals to the Chamber of Deputies, and the Chamber of Deputies approved the bill in the wording approved by the Senate. In conclusion, it summarizes that during the adoption of Act no. 159/2006 Coll., as well as the amending Act no. 14/2017 Coll. the Senate proceeded within the bounds of its constitutionally prescribed powers and in a constitutional manner.

IV. 2. Statement from the Government

34.The Government proposed denying the petition.

35. As regards the claims about the Act on Conflict of Interests being adopted in an unconstitutional manner, the government states that thinking of this Act as an election act would represent an expansive interpretation completely disproportionate to the purpose of Art. 40 of the Constitution. The incompatibility of offices, as one of the reasons for the expiration of the mandate of a deputy or senator is set forth in the Constitution. Thus, the Act on Conflict of Interests does not establish a new manner of expiration for the mandate of a deputy or senator, but only makes more specific one of the manners of expiration of a mandate defined in the Constitution. One cannot conclude from judgment file no. Pl. ÚS 13/05 that any act that regulates the status of persons during the exercise of an elected office is an election act, even if it imposes new obligations on them. Act no. 96/2005 Coll. was annulled because it changed election acts, and for that reason it was supposed to be adopted in accordance with Art. 40 of the Constitution, as a whole. If one accepted the arguments of Petitioner 1, then any statutes concerning the incompatibility of the office of a deputy or senator with another office would

have to be considered election acts under Art. 40 of the Constitution. In addition, it would be necessary to review not only whether these statutes had been approved by both chambers, but also whether the bills had been treated as election acts from the beginning of the legislative process. Thus, the government considers the interpretation of Petitioner 1 to be very expansive and unsustainable; according to the government the Act on Conflict of Interests is not an election act, and thus the process of adoption of the amendment, Act no. 14/2017 Coll., containing the contested provisions, was not unconstitutional.

36. The government also questions the claimed unconstitutionality of all the contested provisions. It states that the Group of States Against Corruption (GRECO) has warned for a long time about the inadequate monitoring of public officials in the area of conflict of interests and has called for ensuring the greatest possible transparency, which will lead to minimizing the risks of corruption at all levels of public administration. In 2014 the GRECO recommendations were one of the most significant factors leading to the amendment of the Act on Conflict of Interests. Among the measures brought by the amendment is the introduction of the obligation to file the declaration as of the day of taking office, making the monitoring mechanism more effective, setting stricter penalties, making asset declarations electronic, and regulating the conditions for the transition of public officials from the public to the private sphere. According to Constitutional Court judgment file no. II. ÚS 171/12 of 15 May 2012 information about the assets of a public official belongs not in the public official's private sphere, but his social sphere, that is, areas that he shares together with other members of society, and just as a public official attempts to protect and exercise his rights and justified interests in these areas, likewise other members of society try to protect and promote them here. Society has the right to require transparency in the property situations of public officials for the purpose of ensuring effective monitoring, i.e. whether there is not a danger that specific public officials, when performing their office, prioritize their private interests to the detriment of public interests. One can justifiably presume that endangering or even violating the public interest in this regard will become apparent precisely through the assets of a public official, as well as other persons connected to him through property. Public monitoring can also function preventively in the form of public authorization to view the register of declarations. Against the objection of possible misuse and endangering of persons whose asset data is in the register, the government raises the argument that a whole range of information is available in public registers, the real estate register, or, for example the register of contracts, with similar potential for misuse.

37. As regards the contested § 2 par. 1 let. q), the government states that part-time mayors, deputy mayors, or councilors of municipalities and regions were also considered public officials under the legislation in effect before Act no. 14/2017 Coll. entered into effect, and were subject to an obligation to declare assets. They too are public officials with the authority to decide on public matters. In smaller municipalities it is not unusual for the mayor himself to manage the municipality according to an approved budget, execute budget measures himself, and decide on municipal matters himself like a sole shareholder in a commercial company, issue municipal directives, set the division of powers in the municipal office, including himself establish and terminate the office's divisions and departments. As regards deciding on public matters, in the question of scope and importance there is no difference between full-time and part-time public officials. Part-time mayors or councilors do not differ in the scope of competencies and influence from persons who are in the same position in connection with the office held, but who are full-time. Therefore it is not significant whether a public official is full-time or part time – the key is not the level of compensation, but the importance of the matters he decides about, often without monitoring and correction mechanisms. Therefore, if § 2 par. 1 let. q) of the Act

on Conflict of Interests were annulled, there would be a considerable reduction in the scope of the obligation to file a declaration of these public officials, even below the level that applied to them long-term even before Act no. 14/2017 Coll. went into effect. Regarding the narrowed proposed judgment for annulment only as regards part-time deputy mayors, representatives of mayors, or municipal councilors, the government states that it is the role of a deputy mayor to stand in for a mayor, and when standing in for a mayor, the deputy mayor thus exercises the mayor's powers. If the mayor has the status of a public official, which Petitioner 2 does not dispute in any way, there is no reason for the deputy mayor, whose role has (even if only potentially) the same powers, not to have that status. Likewise, the petitioner does not give a reason why a full-time deputy mayor should have the status of a public official, while a part-time mayor would not.

38. As regards § 10 par. 2 and 3 and § 11 par. 3 the government states that the obligation to report data, given the existence of the possibility of public access to them (under the conditions in § 14b), is not in and of itself an obstacle that would, under Art. 7 par. 1 of the European Charter of Local Self-Government, not permit the free exercise of public offices, and as a result of which the right to participate in public affairs would be violated. The legal order recognizes various limits of a similar type, e.g. the obligation to undergo a security clearance for access to certain public offices, or the obligation to undergo a psychological evaluation (e.g., for applicants for service in the Police of the Czech Republic). The requirement of protecting the public interest can be considered legitimate in the sense that certain limits on the exercise of some rights can be imposed for its benefit. An asset declaration under § 10 par. 2 a 3 of the Act on Conflict of Interests is the most important range of declared information. If the annulment of the cited provisions ruled out the transparency and monitoring of the assets of public officials, doubts will arise about the very meaning and purpose of the obligation to file a declaration and of the Act on Conflict of Interests as such. Annulling § 11 par. 3 as requested would not annul the obligation to declare a public official's income and liabilities, the only thing annulled would be the provision governing the manner of identifying these incomes and liabilities for purposes of filing a declaration. At the same time, even after annulment it would not be possible to accept, in view of the meaning and purpose of the obligation to file a declaration, that a public official would not identify income and liabilities in any way at all in a declaration.

39. The government points out that Act no. 14/2017 Coll. made a change only as regards the obligation to file an "entry" declaration, i.e. a declaration in which a public official, at the beginning of his term of office, declares, among other things, assets that he owns as of the day before the day he takes office. It is not true that the amendment newly expanded the scope to the joint property of spouses or joint ownership; that obligation existed before the amendment was adopted, as it concerns a component of assets. If the obligation to file a declaration did not also apply to the common property of spouses, the obligation to file a declaration would become ineffective, for one thing because a significant part of the assets of persons in a marriage is often part of the joint property of spouses, and for another because, the transfer of assets owned by a public official (who is married) into the regime of joint property of spouses would, in conditions where such property would not be subject to an obligation to file declaration, create an opportunity to avoid the abovementioned social monitoring. Likewise, identifying the source of income or a person to whom a public official has a liability was also part of the legislation before amendment by Act no. 14/2017 Coll. It was only for practical reasons that the amendment expressly stated which specific data a public official is required to state in the declaration for this purpose. In contrast, this amendment adjusted the limits that determine when the obligation to file a declaration arises, raising the value of things for which the obligation

does not apply from CZK 25,000 to CZK 50,000, i.e. narrowing the obligation to file a declaration.

40. As regards the argument that the legislation is redundant due to the existence of the register of contracts, the government states that the register cannot replace the function of a declaration under the Act on Conflict of Interests in the contested scope. The register of contracts is not a competitor to the register of asset declarations, but supplements it.

41. As regards the argument that citizens will not be interested in holding elected office, especially in local government, the government notes that the interest can be considered adequate, judging by the ongoing political campaign [statement of 26 September2018 – note by the Constitutional Court].

42. As regards the proposal to annul § 14b of the Act on Conflict of Interests, the government states that what is proposed is only annulment of the scope of viewing the register of declarations, not the authorization itself to view the register. Thus, according to the government, the resulting legislation after annulment of § 14b of the Act on Conflict of Interests could be interpreted in the sense that viewing the declarations of public officials is possible in the scope of all declared information.

43. As regards the argument of making information available only upon application (not through free viewing of the register), the government states that this would be only a formal obstacle, which, moreover, would be combined with a relatively high administrative load. The Ministry of Justice does not have the jurisdiction or instruments to evaluate the reasons or legal interest of an applicant for viewing or to research the purpose for obtaining the accessed information. Under § 13 of the Act on Conflict of Interests, the applicant's legal interest or reason for viewing, or purpose for obtaining the personal data thus obtained is not verified in any way. Making information available on the basis of an application does have a certain psychological effect, as a result of which the authorization to view the declarations of public official would not have to be used to such an extent, but that effect may be effective only vis-à-vis a part of the potential parties interested in viewing.

44. The government also disputes the claim of Petitioner 2 that the adoption of the amendment of Act no. 112/2018 Coll. deepened the negative effects of the Act. On the contrary, according to the government the amendment contributed to increasing the protection of privacy of municipal politicians, as the most sensitive declared data (about personal property, liabilities, and, in the case of part-time municipal politicians, also about income) were ruled out from publication. These data are now available only to selected public authorities for monitoring purposes. Other declared data, which still have to be published in the register (primarily data about business and certain independent income-earning activities, real property and interests in commercial companies) also were and are fundamentally publicly available from other public administration registers and information systems (the real estate register, the trade license register, the public register).

45. The government also disputes the claim of Petitioner 2 about the lack of a time limit on the storing of declarations in the register and points to § 14 par. 2 let. c) and the time limit set forth there, of storing data for 5 years from the end date of the term in office.

46. The government believes that the contested legislation will withstand the test of proportionality and considers it to be a suitable, necessary, and appropriate means for achieving

the stated aim. Without public monitoring the necessary confidence in public law institutions would not be maintained. For the aim to be achieved, the legislation must be effective; therefore, certain provisions were made more specific by the amendment in Act no. 14/2017 Coll. (an obligation to file a declaration of assets upon taking office was newly introduced). At the same time, the chosen means is necessary, because it preserves the fundamental rights and makes it possible to achieve the aim pursued. The previous system was not sufficiently effective to be able to fulfil the purpose of the Act. The Act did not set forth how a person to whom a public official has a liability is to be defined. In practice it happened that a public official stated that he borrowed "from a friend" or that he had credit "from a bank." In the case of natural persons, the Act requires only the provision of a first and last name, not other identifying data, such as a date of birth or personal identification number. For legal entities identification is required such as is completely routine in practice. The effect on part-time public officials is also necessary, because here too there is a need for monitoring of the responsible exercise of power by public officials and the related monitoring of the potential incidence of conflict of interests. Moreover, the obligation does not apply to members of representative bodies generally, but only some public officials (the mayor, deputy mayor, and councilors). The required data about assets set forth in § 10 and 11 of the Act represent minimum information without which effective monitoring and prevention of conflicts of interest will not be possible. The contested legislation is also appropriate and one can point to a number of public registers and lists of natural persons and legal entities in which the personal data of natural persons and legal entities are legitimately published (e.g., the commercial register, register of societies, the register of foundations, the trade license register), and in the case of natural persons in a scope (first and last name, date of birth, residential address, potentially other data) exceeding the scope of data of natural persons that are published in an asset declaration under the Act on Conflict of Interests (only first and last name). As regards the protection of the rights of third persons, the government then points to, e.g. the publicly accessible insolvency register, or the register of contracts, which also contain the data of third persons. In addition, third persons, merely on the basis that they will be identified in a public register as persons having a certain asset relationship to a public official, cannot suffer a detriment that would be disproportionately greater than the public interest in monitoring and preventing conflict of interests and the related responsible exercise of public power, unless such detriment arose from dishonest conduct.

V. Responses of the Petitioners

V. 1. Response of Petitioner 1

47. Petitioner 1 sent its response to the government's statement, in which it states that if similar legislation was also in effect earlier, that does not automatically mean that it was consistent with the constitutional order. The Czech Republic is not bound by the GRECO recommendation, and it must be weighed carefully, if only because public administration is organized differently in different states, and the degree of corruption can also be different. The public does not have an absolute and general right to know about circumstances concerning persons active in the public sphere and their spouses. Unmonitorable publication of the assets and liabilities of a public official can provide a "weapon" for blackmailing, threatening, or influencing him, thus, it can lead to a completely different aim than the Act has, i.e. the possibility of corruption and pressure. As regards the argument that the record must include the joint property of spouses, Petitioner 1 states that the effectiveness of legislation cannot be a reason for taking constitutionally guaranteed rights away from persons who are not public

officials. That sets the interest of an individual above the interest of the state, which is a sign of an authoritarian state.

48. Not differentiating the status of a full-time and part-time municipal public official represents an attempt to discourage persons who hold part-time offices from the interest in holding these offices, and thus indirectly cause the extinction of small municipalities and their artificial merging, and thus endanger the right to self-government. In small municipalities "transparency" exists naturally. Part-time councilors perform these offices for minimal compensation and in their spare time. They have been deciding public matters since 1990, and local government, with some exceptions, has not faced any mass corruption due to them. With part-time public officials, the legislation intervenes in their "civilian work life, in particular economic competition." The government does not distinguish between state government and local government, and transparency in state government cannot be achieved through interference in local government.

49. As regards the argument that milder means do not exist, Petitioner 1 states that if the state does not know how to intervene against corruption in specific cases, it cannot instead of that intervene in the fundamental rights of thousands of innocent persons, including those that having nothing to do with either state government or local government. The argument that other registers exist is also deceptive. Information registers cannot be considered the same as a register of the complete assets of specific persons, which are to be anonymously available to an indeterminate range of people. Moreover, people register voluntarily in registers like the commercial register or trade license register by starting to conduct business.

V. 2. Response from Petitioner 2

50. Petitioner 2 states that the government did not sufficiently address the claimed violation of Art. 8 of the Constitution and disputes the claim that creating conditions that discourage citizens from participation in public offices in local government does not have a constitutional dimension a priori. Even if it were possible to accept the claim that "society has the right to require transparency in the property situations of public officials for the purpose of ensuring effective social monitoring," that does not yet mean the publication of selected data to the wider public without any monitoring of the identity of those who are to become familiar with these highly sensitive data and without securing responsibility for the publication of these data. Social monitoring can be exercised in different ways, and publishing a certain range of personal data on websites is one of them – paradoxically, the one that most significantly interferes in the privacy of the persons in question. There is no further monitoring of the "flow of these data" in the public sphere, yet the data represent a desirable commodity for a number of entrepreneurial and high-risk groups. As a possible solution, the Senate proposed identification of the subjects who are to obtain access to these collected data, which the Chamber of Deputies rejected. It is not acceptable for tens of thousands of public officials to be burdened because of a few individuals. The state should not resort to the practice of collecting and publishing sensitive personal data if it is not able to sufficiently exercise its instruments and possibilities in the area of criminal repression. Petitioner 2 also does not agree that there is effective social monitoring in the authorization of the public to view the register of declarations, and believes that other – and milder – methods of social monitoring are possible.

51. Petitioner 2 also points to the differences between the register of declarations on the one hand and other registers (e.g. the real estate register, the register of contracts), which do not

primarily concern the situations of natural persons, but information about legally or economically relevant facts where the public interest exists from the nature of the matter.

52. As regards the government's claim that the risk of endangering the public interest in consequence of its conflict with private interests arises from the nature of the activity performed, Petitioner 2 states that here too it is necessary to differentiate. Those public officials who perform activities that potentially most endanger the public interest should be burdened by the relatively largest obligations. There is a marked difference between municipalities where the mayor fulfils the role of the council, and municipalities where no council is established. Yet, the status of the mayor and deputy mayor in municipalities with a council and municipalities without a council is objectively different. Without the decision of the municipal representative body it is not possible to perform key tasks. As regards the need to distinguish between full-time and part-time public officials, it adds that the burden of obligations should be based on not only the risk of endangering the public interest on the part of a public official, but also from the level of income that is tied to the holding of the public office and from the public administration level at which the given person performs his office. Nor is it true that a part-time and unpaid municipal public official can be more susceptible to corrupt conduct. By that logic, the riskiest would be municipal representatives without an entitlement to compensation, to whom, however, the Act on Conflict of Interests does not apply. Limiting availability of data to a period of only five years lacks reasonable criteria for setting the period, the period is disproportionate, and the government does not address the issue of why the data are available during that period to anyone, without conditions.

53. The petitioner states that in the decision of the Grand Chamber of the European Court of Human Rights, Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland of 27 June 2017, no. 931/13 the ECHR gave precedence to the priority of taxpayers over freedom of speech and the public interest in transparency of assets.

54. Regarding the argument that interest in working for local government is not declining, for one thing Petitioner 2 pauses over the method that was used to evaluate the interest as appropriate (i.e. "per the current election campaign"), and further states that based on the number of registered candidates in municipal elections in 2018, the interest in candidacy is declining appreciably, and the number of municipalities in which there was only one candidate list, grew significantly. This trend is negative and risky for the quality of democracy.

VI. Waiver of Hearing

55. As the Constitutional Court did not expect further clarification of the matter from a hearing, under § 44 of Act no. 182/1993 Coll., on the Constitutional Court, as in effect (the "Act on the Constitutional Court") it waived a hearing.

VII. Review of the Procedure of Adoption of the Contested Provisions

56. In accordance with § 68 par. 2 of the Act on the Constitutional Court, the Constitutional Court first reviewed whether the contested provisions were adopted within the bounds of constitutionally-provided competence and in a constitutionally-prescribed manner.

57. The contested provisions, § 2 par. 1 let. q), § 10 par. 2 and § 11 par. 3 of the Act on Conflict of Interests were supplemented or amended by Act no. 14/2017 Coll.; § 10 par. 3 and § 14b of the Act on Conflict of Interests was supplemented by Act no. 14/2017 Coll. and partly amended by Act no. 112/2018 Coll.

58. Based on statements from both chambers of Parliament and the relevant stenographic records from the meetings of the chambers (available at www.psp.cz and www.senat.cz), the Constitutional Court determined, as regards Act no. 14/2017 Coll., that the bill of the Act, as amended by the adopted amending proposals, was approved by the Chamber of Deputies on 14 September 2016. On 19 October 2016 the Senate returned the bill to the Chamber of Deputies with amending proposals. On 29 November 2016, the Chamber of Deputies approved the bill of the Act in the version of the amending proposals adopted by the Senate. The President of the Republic did not sign the adopted Act, and on 19 December 2016 returned it to the Chamber of Deputies. The Chamber of Deputies maintained the original bill of the Act in its vote on 11 January 2017. The adopted Act was promulgated in the Collection of Laws on 25 January 2017 as no. 14/2017 Coll.

59. As regards Act no. 112/2018 Coll. the Constitutional Court determined that the bill of the Act, as amended by the accepted amending proposals, was approved by the Chamber of Deputies on 20 April 2018. On 17 May 2018 the Senate returned the bill to the Chamber of Deputies with amending proposals. On 29 May 2018 the Chamber of Deputies adopted the original draft of the Act. The President of the Republic signed the approved Act on 5 June 2018. On 15 June 2018 the Act was promulgated in the Collection of Laws as no. 112/2018 Coll.

60. A disputed issue presented by Petitioner 1 was whether the Act on Conflict of Interests is an election act, and whether therefore the Act on Conflict of Interests or its amendments, containing all the contested provisions should have been adopted pursuant to Art. 40 of the Constitution, i.e. with the consent of both chambers.

61. As regards that point, for brevity the Constitutional Court refers to its judgment of 11 February 2020, file no. Pl. ÚS 4/17 (part VIII.), in which it considered in detail the constitutionality of the adoption of Act no. 14/2017, from the point of view of (i) the same objections that were raised in the present matter. It concluded that the Act in question was adopted within the bounds of constitutionally prescribed competence and in a constitutionally prescribed manner. Because the Constitutional Court found no reasonable grounds to deviate in any way from that conclusion, it finds that the contested provisions were adopted within the bounds of constitutionally prescribed competence and in a constitutionally prescribed manner.

VIII. Substantive Review of the Contested Provisions

VIII. 1. Intervention in the Right to Self-Determination Regarding Information

62. The petitioners both claim that there was violation of the right to privacy, or the right to self-determination regarding information. The constitutional provision is contained in Art. 10 par. 3 of the Charter, under which "Everyone has the right to be protected from the unauthorized gathering, public revelation, or other misuse of his personal data."

63. As the Constitutional Court stated in judgment file no. Pl. ÚS 24/10 of 22 March 2011 (N 52/60 SbNU 625; 94/2011 Coll.), "Along with the traditional definition of privacy in its spatial dimension (protection of one's residence, in the wider sense of the word) and in connection

with autonomous existence and the creation of social relationships undisturbed by the public authorities (in marriage, in the family, in society), the right to respect for private life also includes a guarantee of self-determination in the sense of the individual's fundamental decisions about himself. In other words, the right to privacy also guarantees the individual's right to decide in his own discretion whether, or in what scope, in what manner, and in what circumstances the facts and information from his private sphere are supposed to be made available to other subjects. This is an aspect of the right to privacy in the form of the right to self-determination regarding information" (point 29). As the German Constitutional Court stated on this point, the right to self-determination regarding information is "the right to decide for one's self about the export, storage, further transfer, and use of personal data" (BVerfGE 65, 1/43).

64. In the presently adjudicated case, it is evident that the contested legislation intervenes in the right to privacy, in the form of the right to self-determination regarding information, because every public official who falls under the regime of the Act on Conflict of Interests must, under threat of penalty, provide data about his assets, income, and liabilities, which are data of a private nature. Although this is an obligation that is imposed on persons active in public life, it also does not concern data concerning their official activities, or the exercise of public power as such, but concerning data from their private lives, that is, data concerning their private assets, their incomes, and their liabilities.

65. The Constitutional Court thus considers the interference in the right to privacy to be evident. However, whether that interference is constitutionally acceptable or not is a different issue. The cited Art. 10 par. 3 of the Charter already makes clear that it is only the unjustified handling of personal data that is constitutionally impermissible, and this impermissibility is even expressed as misuse of data.

66. The Constitutional Court also points out that in the contested legislation it is necessary to distinguish two basic types of interference in the right to privacy, or the right to self-determination regarding information, which differ in their intensity: (1.) The obligation itself to file a declaration about assets, income, and liabilities (the "declaration"), and (2.) making the submitted data available to the public.

67. To evaluate the constitutionality of intervention in fundamental rights, the Constitutional Court generally requires that the intervention pursue a legitimate aim, and at the same time be proportionate to that pursued aim. In its settled case law, the Constitutional Court requires that in cases of conflict between fundamental rights or freedoms and the public interest or other fundamental rights or freedoms it is necessary to review the purpose (aim) of the intervention in relation to the means used, and the measure for evaluation is the principle of proportionality. Evaluating the permissibility of a given intervention according to the principle of proportionality includes three criteria. The first of them is evaluation of the capability (suitability) for meeting the purpose – the Court examines whether the specific measure is even capable of achieving the intended aim, which is protection of another fundamental right or public good. The second step is evaluating necessity – the Court examines whether, when selecting means, the one that was used is the one that best preserves the fundamental right. Finally, proportionality (in the narrower sense) is evaluated, i.e. whether the detriment to the fundamental right is not disproportionate in relation to the intended aim. Thus, measures restricting fundamental rights may not, in cases of conflict between a fundamental right or freedom with the public interest, have negative consequences that exceed the positives represented by the public interest in the given measures.

VIII. 2. The Legitimate Aim of the Contested Legislation

68. The Constitutional Court has no doubt that the contested legislation pursues a legitimate aim, specifically, preventing the exercise of public power for the benefit of private interests (misuse of power).

69. Under Art. 2 par. 3 of the Constitution the state authority serves all citizens, but it can be asserted only in cases, within the bounds, and in a manner provided by law. This also applies if the public power is decentralized and part of it is exercised by territorial self-governing units. If the self-governing units are territorial communities of citizens who have the right to self-government (Art. 100 par. 1 of the Constitution), the exercise of self-government must serve precisely the interests of the citizens of municipalities and regions, as well as the public interest, which may also exceed the local interests of a municipality or region, or their residents. Thus, the exercise of public power cannot serve private interests, and it is fully legitimate for a conflict of interests to be not only legally regulated, or punished, but also for it to be effectively prevented.

70. In addition, as regards self-government, § 2 par. 2 of Act no. 128/2000 Coll., on Municipalities (Municipal Establishment), as amended, also provides that "a municipality cares for the all-round development of its territory and the needs of its citizens; while meeting its tasks it protects the public interest." Similarly, under § 2 par. 3 of Act no. 129/2000 Coll., on Regions (Regional Establishment), as amended, "in exercising its independent jurisdiction and transferred jurisdiction, a region shall protect the public interest."

71. Statutory regulation aimed against potential conflict of interests of those who exercise public power, whether within state bodies or bodies of other public law corporations (municipalities, regions), in its essence represents protection of the addresses of public power against potential misuse of a position of power by those persons who hold a certain position in the structure of public power. Thus, the public power, in the form of a statute, restricts itself (its public officials) in the interest of protecting all those towards whom the public power may function. Thus, the legitimate aim of the legislation governing conflict of interests is not only to prevent the exercise of state power for a private interest, that is, prevent or minimize the potential for misuse of a position of power for a private interest, but also to ensure the responsible and transparent exercise of public power, serving the addressees of public power, and, as a result, also to maintain public confidence in the activity of the public authorities.

72. Thus, we can reach the partial conclusion that the contested legislation pursues the stated legitimate aim, and the Constitutional Court will further consider the specific means of fulfilling this legitimate aim and their constitutionality. Thus, the Constitutional Court will consider in order the issues of
- the personnel scope of the Act on Conflict of Interests in relation to part-time public officials in self-governing units [§ 2 par. 1 let. q)],
- the scope of data that public officials are required to declare (§10 par. 2 a 3 a § 11 par. 3), and finally
- the manner of publishing the data thus obtained (§ 14b).

VIII. 3. On the Issue of Personnel Scope of the Act – on the Constitutionality of § 2 par. 1 let. q) of the Act on Conflict of Interests

73. The Act on Conflict of Interests in § 1 defines the obligations, limitations and responsibility of "public officials." The purpose of § 2 of the Act on Conflict of Interests is to define the term "public official." Thus, including specific persons in the list in § 2 represents the definition of the personnel scope of the Act on Conflict of Interests. Thus, one consequence of the proposed derogation of § 2 par. 1 let. q) would be the complete removal of the persons defined in § 2 par. 1 let. q) from the regime of the Act on Conflict of Interests, i.e., from not only the contested provisions, but the obligations generally that this Act imposes on all public officials in its individual provisions.

74. The contested provision of § 2 par. 1 let. q) applies to certain local government public officials who are not released from employment on a long-term basis to perform the office (the "part-time public officials"). Petitioner 1 contests the entire § 2 par. 1 let. q) of the Act on Conflict of Interests. Petitioner 2 contests only part of § 2 par. 1 let. q), arguing that in the regime of the Act on Conflict of Interests, in the event of derogation by the Constitutional Court, the only part-time public officials to remain would be the mayor of a municipality (or city part or city district of a territorially subdivided charter city or city district of the capital city of Prague) and members of a regional council (or the council of the capital city of Prague).

75. The Constitutional Court points out that the Act on Conflict of Interests, since it went into effect (that is, since 1 January 2007), included part-time mayors of municipalities and members of the councils of municipalities and regions in the term "public official" [cf. § 2 par. 1 let. q) of the Act on Conflict of Interests, in the wording in effect until 19 June 2008]. Act no. 216/2008 Coll., which amends Act no. 159/2006 Coll., on Conflict of Interests, expanded (with effect as of 20 June 2008) the personnel scope of the Act on Conflict of Interests to also include part-time deputy mayors of municipalities [cf. § 2 par. 1 let. m) of the Act on Conflict of Interests, in the wording in effect as of 20 June 2008]. Until the amendment of the Act on Conflict of Interests implemented by Act no. 14/2017 Coll., the Act also included the legislative abbreviation "municipality," which also included a city part, a city district of a territorially subdivided charter city, or a city district of the capital city of Prague, as well as the legislative abbreviation "region," which also included the capital city of Prague. Thus, an express mention of city parts, city districts, and the capital city of Prague in the now-contested provision is not an expansion of the scope of the Act before its amendment by Act no. 14/2017 Coll., but only a different legislative-technical structure, consisting of removing the legislative abbreviations "municipality" and "region." Thus, we can summarize that the Act on Conflict of Interests, from the moment it went into effect, that is from 20 June 2008 (as regards the position of deputy mayor), applies to all persons who are included in the contested provision of § 2 par. 1 let. q). Thus, in terms of expanding the personnel scope of the Act, the criticized amendment, Act no. 14/2017 Coll. did not bring any change as regards the part-time public officials of municipalities and regions.

76. Both petitioners claim that Act no. 14/2017 Coll. brought a number of changes that disproportionately affect precisely the part-time public officials of local government; the substance of their arguments is a concern about the "property striptease" that public officials have to undergo. Allegedly, the reason for the resignation of a number of municipal public officials was not disagreement with providing asset declarations, but the blanket publication of the declarations giving anonymous access to everybody. Likewise, insofar as Petitioner 2 in its constitutional complaint documents lack of interest in working for local governments using a

survey conducted by the Association of Local Self-Governments of 18 July 2018, it ties this lack of interest precisely to the consequences of that amendment.

77. Insofar as Petitioner 2 states in its petition that the amendment of Act no. 14/2017 Coll. "fundamentally expanded the range of persons who must make a public declaration," we cannot agree. As regards part-time public officials in local governments, the range of persons who must file a declaration did not expand in any way. Thus, the expanded impact of the Act occurred not with the range of obligated subjects (as regards part-time public officials in local governments), but "only" with the public access to filed declarations, or data from them. In any case, it is evident from both petitions that what they see as controversial in the amending Act no. 14/2017 Coll., is the fact that the data from a declaration of assets, income, and liabilities are generally available to everyone through remote access, and supposedly the legislation governing conflict of interests before the adoption of Act no. 14/2017 Coll. "was not subject to any criticism about unsuitable statutory regulation.".

78. Thus, although the petitioners' arguments are partly relevant, where they attack general availability of data from the central register of declarations (regarding which, see below), in contrast it cannot be an appropriate response to their objections to completely remove the part-time public officials in local government defined in § 2 par. 1 let. q) from the regime of the Act on Conflict of Interests, leading, in consequence, to turning back the legislative framework governing conflict of interests to before 2007.

79. Further, we must point out that the Act on Conflict of Interests contains a number of other obligations regarding the persons defined in § 2 par. 1 and 2, which the petitioners do not dispute in any way, and which they do not claim to be unconstitutional. For example, there is the obligation to file a notice of personal interest under § 8 of the Act on Conflict of Interests or a notice of activities under § 9 of the Act on Conflict of Interests. Thus, the complete removal of the persons defined in § 2 par. 1 let. q) from the regime of the Act on Conflict of Interests cannot be an appropriate reaction to the objections of the petitioners.

80. The Constitutional Court does not agree with the Petitioners' claim that annulling § 2 par. 1 let. q) of the Act, that is, removing part-time public officials in self-governing units from its regime should be justified by the fact that part-time public officials receive low compensation for serving in office, or that the administrative load on municipalities is increasing. The relevant criterion for statutory regulation of conflict of interests is supposed to be the exercise of public power itself, i.e. the potential existence of a conflict between the public interest and the private interest. That is not in any way connected with the issue of compensating a public official or imposing an administrative load on municipalities. Certainly one cannot convincingly justify removing only some part-time public officials from the regime of the Act on Conflict of Interests (deputy mayors of municipalities, city parts, or city districts of a territorially subdivided charter city, deputy mayors of a city district of the capital city of Prague; a "municipal deputy mayor"). A municipal deputy mayor stands in for the mayor when he is absent, or when the mayor is not exercising the office (§ 104 par. 1 of the Act on Municipalities), or performs the office of mayor when the office of mayor is unoccupied (§ 103 par. 6 of the Act on Municipalities). Thus, when standing in for the mayor, his powers are the same as the powers of the mayor. Therefore, there is no reason why a municipal deputy mayor should not be subject to the regime of the Act on Conflict of Interests while the municipal mayor would be.

81. Moreover, a mayor, or potentially also a deputy mayor, exercises certain powers of the council in those municipalities where a council is not established, and his range of competencies

is thus expanded even further (cf. § 99 par. 2 of the Act on Municipalities). Also, a municipal mayor ensures the exercise of transferred jurisdiction in municipalities where there is no secretary of the municipal office [cf. § 103 par. 4 let. f) of the Act on Municipalities], so here the Act on Conflict of Interests protects not only the exercise of local government from potential conflict of interests, but also the exercise of state administration. The case of council members of a municipality, city part, or city district of a territorially subdivided charter city or city district of the capital city of Prague (the "municipal council") involves the executive body of a municipality in the sphere of independent jurisdiction, which can simultaneously also exercise transferred jurisdiction (cf. § 99 par. 1 of the Act on Municipalities). Thus, a municipal council, like a municipal mayor, can exercise not only self-government, whose interests both petitioners defend, but also state administration. A municipal council has a number of its own competencies (§ 102 of the Act on Municipalities), and thus this does not involve only the implementation of the will of the representative body, as Petitioner 2 indicates.

82. The Constitutional Court does not intend to denigrate the petitioners' arguments concerning the increasing administrative load on municipalities, the insufficient compensation for municipal representatives, or the general lack of interest in participation in the activities of municipal self-government, especially in small municipalities. However, the solution to these problems is not the complete removal of municipal public officials from the regime of the Act on Conflict of Interests, i.e. de facto accepting that conflicts of interest may happen in small municipalities, or that a potential conflict of interests will be more difficult to discover. An appropriate response could be, e.g., reducing the administrative load that is shifted from the state to municipalities, methodical assistance to municipalities, improving municipal financing or compensation for municipal public officials, but not giving up on preventing and monitoring the risk of conflict of interests, which can arise just as equally with full-time as with part-time public officials, in small municipalities and large cities, regions, or at the national level. In any case, it is also up to the petitioners themselves (groups of senators), in their role in the legislative process, to work actively to achieve true "assistance" to municipalities for preventing the risks described.

83. The criterion for including specific persons in the regime of the Act on Conflict of Interests is the potential risk of conflict of interests connected with the exercise of a specific office in public administration. Here there is no difference between full-time and part-time public officials, because the scope of their competencies when exercising public power is the same. As regards the argument that part-time public officials in local governments also have their employment, or entrepreneurial activities (a claimed potential intervention in "civilian working life, in particular economic competition"), that makes it all the more likely that a conflict of interests can occur, hence the interest in preventing conflict of interests, or monitoring it, does not thereby decrease in any way as regards part-time public officials in local governments. Moreover, it cannot be overlooked that regulation consisting of preventing a conflict of interests is not only a restriction on the right to self-government guaranteed in Art. 8 of the Constitution (from the point of view of the obligations of public officials in self-government), as the petitioners state, but also a protection for that right from the point of view of all addressees of local government activities. Setting certain obligations for public officials at the same time protects all those in whose interest the public power (including local government) is supposed to be exercised.

84. We can close by saying that the Constitutional Court did not annul § 2 par. 1 let. q) of the Act on Conflict of Interests, or parts of it, because this definition of the personnel scope itself is clearly not unconstitutional. If the prevention of conflict of interests, joined with increasing

public confidence in the activities of public authorities is also a legitimate aim of legislation, then including the persons defined in § 2 par. 1 let. q) in the regime of the Act on Conflict of Interests is undoubtedly a means that is capable of fulfilling that aim. At the same time, it is a necessary means, because that same aim cannot be achieved to the same degree through other means, especially as regards the prevention of conflict of interests and the possibility of public monitoring of conflict of interests. This means also cannot be seen as disproportionate, because when starting a public office one can expect certain restrictions that a public office, or the connected duties and responsibility, carries with it. Here we must point out again that this is not regulation directed at private subjects, but a certain form of self-regulation of the public power in the interest of it being properly exercised. Hence, it is not disproportionate if persons who hold public office, even as part-time public officials of local governments, are subject to the Act on Conflict of Interests, which is meant to ensure the proper execution of the public power, or to prevent the prioritization of private interests.

85. Beyond this, the Constitutional Court repeatedly points out that the Act on Conflict of Interests has applied to the persons defined in the contested provision since 2007, or 2008, and the constitutionality of the Act's personnel scope is being contested only now, in connection with the amendment of Act no. 14/2017 Coll., which, however, does not apply to the personnel scope of the Act in relation to part-time public officials in local governments.

86. Therefore, as regards the contested § 2 par. 1 let. q) of the Act on Conflict of Interests, the Constitutional Court found that the petitions are not justified, and therefore denied them.

VIII. 4. On the question of the scope of data provided – on § 10 par. 2 and 3 and § 11 par. 3 of the Act on Conflict of Interests

87. The petitioners base the claimed unconstitutionality of § 10 par. 2 and 3 and § 11 par. 3 of the Act on Conflict of Interests on the disproportion scope of data that declarations of assets or declarations of income and liabilities must contain and on the interference in the rights of third persons whose data are also contained in the declarations and can be subsequently made public.

VIII. 4. a) On the constitutionality of § 10 par. 2 of the Act on Conflict of Interests

88. Under § 10 par. 1 [sic.] a public official is required to "declare precisely, completely, and truthfully a) property that he owns as of the day before he takes office, and b) property that he acquires while holding office." Act no. 14/2017 Coll. newly introduced the obligation to file an "entry declaration" (a declaration of assets owned before taking office), alongside the already existing annual declarations of assets acquired while holding office.

89. The Constitutional Court, being bound by the proposed judgment in the petition, points out that neither of the petitioners contests the obligation set forth in § 10 par. 1 of the Act on Conflict of Interests. The, the institution itself of annual declarations of assets set forth in § 10 par. 1 of the Act on Conflict of Interests is not contested, but only the individual parameters set forth in § 10 par. 2 and 3.

90. The contested § 10 par. 2 specifies that the declaration is to state a) real property, b) securities, book-registered securities, or rights connected with them, c) an ownership interest in a commercial corporation not represented by a security or a book-registered security, and d) other personal property by type, for which the Act further sets a limit from which it is necessary to include the property in the declaration ("other personal property"). For an entry declaration,

that limit is that the property value exceeds CZK 500,000. For ongoing annual declarations, the declaration must include only those things whose value in the aggregate exceeded CZK 500,000, and things whose price is lower than CZK 50,000 are not included in that aggregate total.

91. Insofar as Petitioner 2 states that the scope of items that are to be subject to the declaration of assets raises "doubts of a constitutional nature," we must add that in § 10 par. 2 the legislature not only specified the scope of a declaration, but also narrows it, compared to the obligation set forth in § 10 par. 1. Whereas under § 10 par. 1 a public official is required to declare data about assets "precisely, completely and truthfully", § 10 par. 2 sets limits for personal property, and only above those limits is the value of property sufficiently relevant for the respective personal property to be included in the declaration. In the Constitutional Court's opinion, these limits are capable of defining the relevant value of personal property in such a way that public officials will not be disproportionately burdened by an obligation to declare the acquisition of less valuable (or even all) personal property. Hence, in view of the purpose that they are to serve, the Constitutional Court does not consider these limits to be in any way disproportionate. Annulment of § 10 par. 2 would result in a legislative framework requiring the provision of "precise and complete" data about a public official's assets under § 10 par. 1, thus, not only the assets specified in § 10 par. 2. A derogation by the Constitutional Court would thus only deepen the interference claimed by the petitioners, into the rights of those who are to provide a declaration of assets, leading to absurd consequences consisting of an obligation to declare the ownership or acquisition of any personal property whatsoever.

92. Therefore, insofar as the petitioners do not see a constitutional defect in the obligation to "precisely, completely and truthfully" declare data about assets, which is set forth in § 10 par. 1, which is not contested and questioned, the detailing and specification of those assets, or the narrowing of that obligation as regards the scope of assets, implemented in § 10 par. 2 cannot represent an unconstitutional framework. On the contrary, this specification prevents uncertainty in the interpretation of the Act, and thus ensures its foreseeability. At the same time, by setting limits for the value of personal property, it narrows the impact of the obligation established in § 10 par. 1 only to the existence or change of ownership for property of more significant value.

93. A similar statement can be made regarding the claimed unconstitutionality of providing data about assets in the joint property of spouses. This obligation again flows from § 10 par. 1, whose constitutionality is not contested, as the provision of "complete" information about assets also includes assets in the joint property of spouses. Annulling § 10 par. 2 would not change anything about this obligation. Moreover, by excluding assets falling within the joint property of spouses it would not be possible to completely meet the aim of the Act, because assets acquired during marriage will generally fall into the joint property of spouses. Excluding it from the declaration regime would make the declaration, with many public officials, incapable of fulfilling its role. Also, no identification whatsoever of the husbands or wives of public officials is required in the declaration of assets, as the declaration concerns only assets, not identification of close persons. Thus, the obligation arising from the Act does not establish anything that would not be necessary for achieving the aim pursued, or that could be considered redundant or disproportionate.

94. Thus, the Constitutional Court did not find grounds for the annulment of § 10 par. 2 of the Act on Conflict of Interests, because it did not find that provision – in the context of the submitted petitions – to be unconstitutional. Therefore it denied this part of the petition.

VIII. 4. b) On the Constitutionality of § 10 par. 3 of the Act on Conflict of Interests

95. The contested § 10 par. 3 specifies the requirements of an asset declaration, stating that a public official shall state the manner of acquisition and the price of assets, only for assets stated in § 10 par. 2 let. a) and d), i.e. for real property and "other personal property," not for securities, book-registered securities, or rights connected to them, or for an interest in a commercial corporation not represented by a security or a book-registered security. Further, regarding real property, under the contested provision, it is not necessary to state the manner of acquisition and price of real property in an "entry declaration," whereas for periodic declarations the price for which a public official acquired the real property is stated. For "other personal property," under § 10 par. 2 let. d) in an "entry declaration" the price that is usual in the given place and time is stated, and in periodic declarations the price for which the public official acquired the "other personal property." These requirements apply only to personal property whose value exceeds the abovementioned limits.

96. The Constitutional Court does not consider the abovementioned requirements to be disproportionate. The introduction of entry declarations is meant to provide a possibility to compare the assets of a public official upon taking office with the level to which his assets increased during the course of his holding office. The mere obligation to file an entry and periodic declarations established in § 10 par. 1 is not contested by the petitioners.

97. From the point of view of effective monitoring of a potential conflict of interest, the consequences of which can appear precisely in the property sphere of public officials, the requirement to state the price for which real or personal property was acquired (within the abovementioned limits) does not appear to be an arbitrary or disproportionate requirement, because in terms of the aim that the legislation pursues it is precisely the value of a thing that is that is relevant to evaluating the possible "suspicious" increase in the property sphere of a public official during the period when he holds public office. Likewise, it is relevant to provide the manner of acquiring a thing in the abovementioned cases, because from the point of a view of a possible conflict of interests there is again a fundamental difference in whether a public official acquires a particular thing, e.g. through a purchase contract or as a gift. The gifting of a valuable thing or purchase of a thing for an unusually low price can, for example, be an indicator of a possible "consideration" (tied to holding the office) vis-à-vis the other contractual party.

98. In other words, the abovementioned requirements for stating the manner of acquiring an asset and the price of the asset in cases defined in the Act are requirements that, in a proportionate manner, meet the legitimate aim of the Act, that is, ensuring that an asset declaration has real meaning, or has a certain informative value. The obligation to state the price for which a thing was acquired, or the specification of the manner in which a thing was acquired, is not particularly burdensome or complicated for the obligated persons. In contrast, the lack of these data would greatly complicate the fulfilment of the legitimate aim of the contested legislation, because it would make the legislation unclear, incomplete, and vague.

99. Act no. 112/2018 Coll., in relation to § 10 par. 3, resulted in expansion of the exception concerning the content of "entry declarations" for real property. Under the amended framework in effect as of 1 June 2019 a public official, in an entry declaration when taking public office is not required to declare not only the price of the real property, but also not the manner in which it was acquired. Thus, the protection of privacy is even strengthened in this regard, and hence

the amendment implemented by Act no. 112/2018 Coll. does not, as regards the text of § 10 par. 3, bring a change that would be capable of raising doubts regarding its constitutionality.

100. This part of the petition is also not justified.

VIII. 4. c) On the Constitutionality of § 11 par. 3 of the Act on Conflict of Interests

101. The contested provision of § 11 par. 3 establishes certain specific obligations in the declaration of assets and liabilities. Here the Constitutional Court again points out that under § 11 par. 1 a public official must "precisely, completely and truthfully" declare in the "entry declaration" any unpaid obligations that he has before taking office, if each individual case exceeds CZK 100,000. Under § 11 par. 2 he must then in each annual declaration declare income or other property benefits acquired during the time of holding office (with the exception of salary, bonuses, and other appurtenances connected with holding the office), if the aggregate amount in a calendar year exceeds CZK 100,000; gifts whose value is lower than CZK 10,000 are not included in the total. The public official is also required to declare unpaid liabilities if their aggregate value at the end of the year exceeds CZK 100,000. The petitioners do not contest these obligations established in § 11 par. 1 and 2. The subject of the petition is only § 11 par. 3, establishing the detailed requirements of a declaration, specifically the obligation to state the amount, kind and source of every income, and the amount and type of a liability, including the person to whom the public official has that liability. Creditors are to be identified by first and last name for natural persons, and company title or name, ID number, and registered address for legal persons.

102. In this situation the Constitutional Court does not find the requirement established in § 11 par. 3 to be disproportionate. The amount of income or obligation must be stated, because otherwise § 11, or the entire framework for declarations of assets of obligations, would cease to make sense. If the Act is to be capable of achieving its legitimate aim, it is necessary for the data about income and obligations be specified and individualized. In any case, as the government also says, the specification of the required data is intended to prevent the previous practice of unclear identification of creditors or sources of income by providing statements like "loan from a friend," etc. For purposes of preventing or uncovering a potential conflict of interests, the identification of a source of income or identification of a creditor is rather fundamental, because regulation of conflict of interests is intended to prevent precisely the situation where the public power is exercised not in the public interest, but in a private interest, and that private interest need not be only the interest of the public official himself, but also of any third person. Thus, the decision-making of a public official can be influenced precisely by the effort to pursue the interest of a third person in exchange for a certain property consideration. Thus, the data about income and obligations specified in § 11 par. 3 are necessary for fulfilling the aim pursued.

103. Moreover, deleting the contested provision would not in any way change the obligation to file a declaration of assets and liabilities within the meaning of § 11 par. 1 and 2, it could only again lead to unclear interpretation regarding the scope of data, especially as the Act still required that information about income and obligations be provided "precisely, completely and truthfully." Even without the specification in the contested § 11 par. 3, this requirement could be interpreted as a requirement to provide information not only about the amount of income or a liability, but also precisely about the third person to whom a public official has the liability, or from whom the declared income flows, because only in that form is the information precise

and complete. Thus, derogation of the contested provision would not (if the obligations provided § 11 par. 1 and 2 and not contested by the petitioners were preserved) lead to stronger protection of privacy, but rather to unclear interpretation, and the related unforeseeability of the legislative framework.

104. Intervention into the self-determination regarding information of third persons whose data will be set forth in the declaration can be considered suitable and necessary for fulfilling the aim of the Act, because without these data it is not possible to fulfill the aim pursed by the Act. At the same time, the Constitutional Court also considers this intervention to be proportionate, because the information is narrowed only to quite basic identification of the relevant person, whether natural (first and last name), or legal (commercial title or name, ID number, registered address). I.e., the declared data are only those that are necessary for achieving the aim (possible indicators of conflict of interests), not redundant data. As stated above, derogation would also not lead to a lower intensity of the interference into the rights of third persons anyway, because the obligation to identify the source of income or creditor can be derived even from § 11 par. 1 and 2. Thus, the contested provision only clearly specifies the data that are necessary for identification. Therefore, this part of the petition is also unjustified.

VIII. 4. d) On the Issue of the Scope of Data Provided – Summary

105. The Constitutional Court summarizes that as regards the first type of interference in the right to privacy, consisting of the very provision of data about assets, income, and liabilities in the scope set forth by the contested § 10 par. 2 and 3 and § 11 par. 3 of the Act on Conflict of Interests, it found the contested legislative framework to be proportional in relation to the abovementioned legitimate aim. Therefore, it denied this part of the petition as unjustified.

VIII. 5. Scope of the Accessible Data – on the Unconstitutionality of § 14b

106. The Constitutional Court further considered the scope of availability or publication of data from the register of declarations. A considerable part of the arguments of both petitioners primarily contests the public availability of data about the assets of part-time public officials in local governments (the "property striptease"), but none of the provisions of the Act concerning the accessibility of data from a declaration is contested. However, the subject of the review is the entire § 14b, which governs the scope of viewing the register of declarations.

VIII. 5. a) Regimes for Availability of Data and the Scope of Viewing the Register of Declarations under § 14b par. 1 let. a) to c)

107. Although § 14b governs the scope of viewing the register of declarations, a key provision in this context is also § 13 par. 3 of the Act on Conflict of Interests, which provides: "Everyone has the right to view the register of declarations cost-free through the public data network in the scope provided by this Act. The declarations of public officials set forth in § 2 par. 1 shall be available without a prior application. Declarations of public officials set forth in § 2 par. 2 may be viewed on the basis of an application." The background report to Act no. 14/2017 Coll. (publication 564/0, 7th electoral term of the Chamber of Deputies) identifies these categories of persons, differentiated by a different regime of access to data, as "politicians" (§ 2 par. 1), that is, persons subject to the regime of access to data without an application, and "non-politicians" or "civil servants" (§ 2 par. 2), that is, persons subject to the regime of access to data upon application, moreover with additional limitations for potential further dissemination of the data obtained.

108. The Constitutional Court points out that Act no. 14/2017 Coll. changed the form of the registration of declarations, and instead of the existence of ca. 6 500 registration bodies (cf. § 14 of the Act on Conflict of Interests, in the wording in effect until 31 August 2017, or the information from the background report – publication 564, 7th electoral term of the Chamber of Deputies), a central register was established, maintained by the Ministry of Justice, with declarations being filed electronically. Moreover, the amendment implemented by Act no. 14/2017 Coll., in addition to centralizing the register of declarations, brought another fundamental change in terms of public access to the data, abandoning the regime of making data available only upon application, and creating two regimes for access.

109. The first regime, newly introduced, represents blanket publication of the declared data, because these data are available to anyone, anonymously, without any application whatsoever, through the public data network, i.e. the internet. This regime applies to all public officials defined in § 2 par. 1 of the Act on Conflict of Interests, including part-time public officials in local governments under § 2 par. 1 let. q).

110. The second regime applies to public officials defined in § 2 par. 2, who are also subject to obligations under the Act on Conflict of Interests only under additional conditions defined by the Act (cf. § 2 par. 3 and 4). The significant point is that this viewing presumes the filing of an application and requires identification of the applicant. The applicant is assigned a username and password for access to the register of declarations, valid for 6 months from the day of first use. The Act prohibits disclosing the username and password to a third person (§ 13 par. 5) and limits the further use of the data obtained (§ 13 par. 8).

111. However, the provision on the possibility of making declarations of public officials available without an application, i.e. de facto establishing the free access to these personal data (§ 13 par. 3), is not itself – somewhat surprisingly – contested (see point 106), although a considerable part of the arguments attacks precisely the blanket publication of data from the register, or bases the unconstitutionality of other parts of the Act by reference to the blanket publication of a range of declared data. The Constitutional Court, bound by the proposed judgment in the petition (but not by the reasoning), will consider in turn the individual parts of the contested § 14b of the Act on Conflict of Interests. Because this is an abstract review of norms, the Constitutional Court is not bound by the arguments of the petitioners, which concentrate primarily on the disproportionate interference in the privacy of part-time representatives of local governments.

112. As regards the persons set forth in § 2 par. 1 of the Act on Conflict of Interests, that is, persons for whom the regime of automatic publication of declared data is established, only the part of the provision in par. 1, let. a) - c) is relevant. The scope of data that are publicly available from filed declarations is divided here into three groups, which differ in the scope of available data according to the category of public officials under § 2 par. 1. Part-time public officials in local governments fall under the regime of all three groups for access to data in a declaration, depending on the kind of self-governing unit (region, municipality, the capital city of Prague), and on the specific category. However, we cannot agree with Petitioner 2 that the amendment of the Act on Conflict of Interests, no. 112/2018 Coll, further deepened the negative consequences of the Act in terms of access to data, because, on the contrary, one can conclude that the scope of access was stratified and a range of data was excluded from access. Before the amendment implemented by Act no. 112/2018 Coll., the framework provided the same scope of access to data for all public officials defined in § 2 par. 1, in the widest scope, corresponding

to the current regime under § 14b par. 1 let. a). As regards part-time public officials in small municipalities, who are now subject to § 14b par. 1 let. c), Act no. 112/2018 Coll. ruled out access to data on income and liabilities declared under § 11, data about other personal property declared under § 10 par. 2 let. d), and data about assets from the entry declaration under § 10 par. 1. Thus, Act no. 112/2018 Coll. considerably increased the protection of privacy as regards part-time public officials of municipalities.

113. Nonetheless, regardless of the foregoing, it was necessary to review whether, even after the cited amendment, the form of access to data does not represent a violation of the right to privacy and the right to self-determination regarding information.

VIII. 5. b) Review of the Constitutionality of § 14b par. 1 let. a) to c)

114. The Constitutional Court first states that in reviewing the intensity of interference in a public official's privacy and right to self-determination regarding information, it is necessary to distinguish two forms of that interference. In a case where a public official is only required to file a declaration of assets, income and liabilities, the intensity of interference is undoubtedly lower than in a case where he files the declaration with the knowledge that his property situation will immediately become, automatically, a "public matter," i.e. they will become part of the publicly accessible register of declarations. In the first case, by the nature of the matter, the declaration is intended for a body authorized to handle it, where in the second case there is a range of unspecified persons (practically anybody) without a connection to the exercise of a public office (in terms of place and time, e.g. a resident of a municipality in a particular electoral term of the public official – see also point 156), who have unrestricted access to these declarations. The wider the range of persons that can become familiar with the public official's property situation, the more intensive the interference in privacy that the person may feel. Therefore, insofar as the Constitutional Court found the contested provisions of the Act concerning the framework for filing a declaration of assets, income and liabilities to be constitutional, it did not thereby automatically accept that the regime for publishing (or providing access to) the data thus obtained is also constitutional.

115. Insofar as the government bases its arguments on the Constitutional Court judgment of 15 May 2012, file no. II. ÚS 171/12 (N 105/65 SbNU 439), we cannot completely agree with the conclusions that it draws from it. The cited judgment concerned a complaint seeking protection of personality that was filed by the then-vice chairwoman of the Council of Czech Television against interference consisting of publication of information about her husband's traffic accident, and the publication of her name in that context. As the Constitutional Court stated, "at the time when the incriminated articles came out and the general courts were deciding, the secondary party held the public office of vice chairwoman of the Czech Television Council. This was an important position in the media field. Therefore, the information itself about the secondary party's husband's traffic accident, stating his family relationship to her, cannot be seen as interference in the purely private sphere. This information undoubtedly falls into the secondary party's social, civic, and professional sphere, which cannot be subject to absolute self-determination regarding information. The public has a right to know about circumstances that apply to a publicly active person, even it is primarily a matter concerning her husband. The very fact of the existence of a serious traffic accident, which the husband of a publicly active person was involved in, carries the potential to influence the conduct and behavior of such a person in the performance of her office. This applies all the more so in the case of a public office in the media field."

116. In its statement, the government concludes that information about the property situation of a public official belongs in his social sphere, that is, an area that he shares together with other members of society, and society has the right to require transparency in the property situations of public officials for the purpose of ensuring effective social monitoring of whether there is a danger that specific public officials, in the performance of their offices, prioritize their private interests to the detriment of public interests.

117. However, it is still valid, as stated in the introduction, that the right to privacy in the form of the right to self-determination regarding information guarantees the individual's right to decide in his own discretion whether, in what scope, in what manner, and under what circumstances facts and information from his personal private sphere are to be made available to other subjects (Pl. ÚS 24/10, point 29). Otherwise, interference in this right (freedom) occurs, and it is necessary to review whether there is a violation.

118. It follows from the cited judgment, as well, as e.g. from the judgment of 17 July 2007, file no. IV. ÚS 23/05 (N 111/46 SbNU 41) that the social sphere of the right to privacy "can be intervened in under certain conditions, because facts may appear in it that could be the subject of a justified public interest"; in this context the Constitutional Court is speaking of the possibility of proportionate intervention by the public authorities for the purpose of protecting the interests of society. Thus, we can conclude that a range of facts from the area of private life may have a connection to the public interest, and therefore publication of them need not always represent interference or violation of the right to privacy. Therefore the Constitutional Court takes as its starting point the fact that the public interest in certain information about the property situation of public officials and persons close to them can come into conflict with the right to self-determination regarding information and the right to privacy. However, this public interest must be weighed with the repeatedly cited right to protection of privacy and self-determination regarding information. This weighing is done using the test of proportionality, which will be applied below.

119. The property situations of public officials cannot be completely certainly classified in the "outside edge" of the social sphere defined in the cited judgments, file no. IV. ÚS 23/05 or file no. II. ÚS 171/12, i.e. in the "public sphere," in which "practically no restrictions exist for disseminating true facts from it," because it overlaps with "the professional sphere of persons active in public life." In the presently adjudicated case the subject of publication, or provision of access from the private sphere, is data about private property, income and liabilities, not data about the professional activity itself of public officials and their income from (exclusively) public funds, that is, data that are directly connected with the performance of their office. However much data about property can be connected (at least potentially) to the professional activity of public officials, especially with a conflict of interests, corrupt or clientelistic conduct, it is not the same type of information as information about the activities of public authorities under Art. 17 par. 5 of the Charter.

120. Thus, it can in no way be concluded from the cited judgment, file no. II. ÚS 171/12, that the now-contested legislative framework would automatically have to be considered constitutional. The important point is not only that interference in privacy can happen due to a justified public interest, as the government emphasizes when citing the judgment, but also whether a given interference will always be proportionate to the interest (aim) pursued .

121. On the contrary, insofar as Petitioner 2 argues on the basis of the ECHR judgment Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland of 27 June 2017, no. 931/13, we

must state that the case concerned the publication of a list of over a million taxpayers and their incomes, if they reached a certain amount. Thus, the conclusions of that judgment cannot automatically be applied, because the ECHR did not in any way consider publication of the property situations of publicly active persons, but publication of the income of a considerable number of private persons, defined only by the criterion of the level of their annual income, not by the performance of a public office or a similar criterion. Thus, the factual bases of the cases are considerably different.

122. As the Constitutional Court pointed out in its introduction, it does not in any way question the existence of a legitimate aim for the contested legislative framework, that being the interest in preventing or anticipating the execution of a public office in a private interest to the detriment of the public interest, in conflict with § 3 of the Act on Conflict of Interests. One component of prevention is undoubtedly public monitoring, and this is made possible, or made easier, by transparency of the property situations of public officials (cf. points 118 et seq. of judgment file no. Pl. ÚS 4/17). Thus, it is unquestionable that the property situation of a public official may indicate a potential conflict of interests.

123. The arguments of both petitioners primarily concern interference in the privacy of part-time public officials in local governments. However, because this involves what is known as abstract review of norms, the Constitutional Court is not bound by the petitioners' arguments, but only by the proposed judgment. The Court found no reasonable grounds why these part-time public officials in local governments would deserve a fundamentally different legal regime. The distinguishing criterion cannot be only whether a public official receives a certain form of compensation from public funds, but what decisions he takes part in, and whether during this a conflict can arise between the public interest and a private interest under § 3 of the Act on Conflict of Interests. The idea that a part-time representative or other public official in a local government should be subject to a greater degree of public monitoring only because he is released to perform the office and is therefore also differently compensated cannot be a direct reason for more intensive interference in the abovementioned rights and freedoms, regardless of the fact that the rules for compensation of these groups of public officials are contained in a framework set forth by a legal regulation [cf., e.g., § 73 and 134 of Act no. 128/2000 Coll., on Municipalities (Municipal Establishment), as amended by later regulations, and Government Directive no. 318/2017 Coll., on the Level of Compensation for Members of Representative Bodies in Territorial Self-Governing Units, as amended by later regulations].

124. Thus, to reach a conclusion on the constitutionality of publication of data from the register of declarations under § 14b of the Act on Conflict of Interests, it is necessary to review whether this means used to achieve the cited legitimate aim will withstand the test of proportionality. This weighing is normally, and in accordance with the settled case law of this court, performed using three, sometimes four, steps:
a) a legitimate aim must be pursued,
b) the capability (suitability) of the given provisions to achieve that aim is reviewed, i.e. whether the measure chosen by the legislature is even capable of achieving the aim pursued;
c) the need for this measure in relation to other potential measures is weighed (i.e., a comparison is made, whether the solution chosen by the legislature out of a plurality of possible – and comparably effective – solutions, best preserves the affected fundamental rights);
d) the balancing of the relevant fundamental rights (proportionality in the narrower sense) is assessed, i.e. it is examined, whether the negatives connected with the measure adopted by the legislature negative outweigh the pursued positive effect (comparing conflicting constitutional rights and values).

125. The publication of the property situations of public officials is undoubtedly capable of fulfilling the legitimate aim pursued, which is not only the easier discovery of a potential conflict of interests, but also its prevention. Awareness of the public access to information about one's property situation can lead to a higher degree of restraint in preferring a private interest to the detriment of the public interest. Although public availability of property situations cannot prevent all possible hypothetical illegal activities by public officials, as Petitioner 2 points out, that fact does not make the means applied one that is incapable of achieving the stated aim. Public access to property situations will undoubtedly anticipate and prevent conflicts of interest to a greater degree than would be the case if information about property were not publicly available. Thus, the Constitutional Court considers the selected means to be capable of achieving a chosen legitimate aim, not a means through which it would not even be possible to achieve the selected aim. Therefore, the contested legislative framework withstands the first step of the test of proportionality.

126. However, in evaluating the second step of the test of proportionality (the criterion of necessity), the Constitutional Court found that the legislative framework is not constitutional. The Constitutional Court does not find the selected means to be necessary for achieving the aim pursued, i.e. the aim pursued can also be achieved by milder means.

127. The background report to Act no. 14/2017 Coll. (publication 564/0, 7the electoral term of the Chamber of Deputies), regarding the implementation of two regimes for viewing the register of declarations, states that "in view of the protection of personal data, the public will be able to view without limitation only declarations filed by public officials set forth in § 2 par. 1 (politicians). […] The public will not have automatic access to declarations filed by non-politicians. This "dual track" is an expression of the increased protection of personal data for non-politicians compared to politicians. Only "basic data" about non-politicians will be made public." Thus, it appears from the background report and the government's statement that making public certain information from the private sphere of a publicly active person – a "politician," that is, a person who falls under the regime of § 2 par. 1 of the Act on Conflict of Interests – will always be in the public interest, and thus intervention in his right to self-determination regarding information is justifiable without anything further.

128. In contrast, Petitioner 2 refers to Constitutional Court judgment file no. IV. US 1378/16, concerning the provision of information about salaries from public funds, in which the Constitutional Court states that "the right to information in the public interest is not absolute; if its exercise interferes in the right to protection of private life, protected by Article 10 of the Charter and Article 8 of the Convention, all these rights must be weighed in each individual case, and a fair balance ensured between them, because they are equally valuable rights." Although the factual circumstances of judgment file no. IV. ÚS 1378/16 are different from the presently adjudicated situation, the difference weighs in favor of greater protection of privacy in the case of data about the property of public officials than in the case of data about their salaries. Whereas salaries involve public funds paid according to legal regulations (wee also, point 123), assets, income or obligations involve private property. In other words, providing information about the salaries of persons paid from public funds is direct monitoring of the management of public funds; when providing data about the property situations of public officials this direct purpose does not exist. A public official can manage his property in any manner, even uneconomically, and this is part of his autonomous decision making, as with every other private person. Although there is a public interest here as well, it is in a different form, and only in the aspect of monitoring or preventing a conflict of interests that the property

situation of a public official may indicate, or which the publication might simultaneously prevent. The regulation of conflicts of interests may have an effect on the economical management of public funds as a consequence, but this is not direct monitoring as in the case of providing information about salaries, but rather prevention against potential uneconomical management with public funds motivated by a private interest.

129. On a general level, without taking into account the factual circumstances of individual cases, it should be valid that information about what property a publicly active person owns, or what other income and liabilities he has, should be subject to greater protection, in terms of the right to privacy, than information about the amount of funds that the person received from public funds in the form of a salary. A considerably paradoxical situation results, where data about salaries are provided upon application (under Act no. 106/1999 Coll., on Freedom of Information, as amended by later regulations), while data about the private property situations of certain public officials are available to the public on a blanket basis and anonymously for everybody, and this concerns several tens of thousands of persons (on 10 February 2020 the register contained declarations from a total of 48,005 of public officials; see https://cro.justice.cz/).

130. We also cannot overlook the fact that the very manner in which specific information about the property situation of a public official is made accessible to the public has an influence on the protection of their protection. The interference in privacy is of higher intensity when data are made public automatically, than when data are provided upon application to a specific non-anonymous subject who may then, depending on other circumstances, potentially publish them further. When evaluating the second step of the test of proportionality (necessity), the Constitutional Court is of the opinion that the publication itself of an asset declaration is key, because the very circumstance of its provision and availability to the public fulfills a necessary preventive and monitoring function in terms of conflict of interest and limiting clientelism and corruption. The fact that these declarations are not available anonymously, but only on the basis of an appropriate application, the filing of which, together with the fulfilment of formal statutory conditions, does not appear to a priori make it impossible to obtain the requested information, and yet it far better preserves the fundamental right to self-determination regarding information. Filing the relevant application represents nothing more than demonstrating a certain interest and the requisite motivation to obtain the given data and should, in practice, function as a sort of "filter" that should discourage anonymous interested parties guided by mere curiosity, or even interests and motivations that do not deserve any legal protection at all. At the same time it could also lead to public officials providing these data with greater confidence that they will not be misused for purpose other than such monitoring (which, in view of the concentration of declarations in one place, is very demanding).

131. Thus, the Constitutional Court does not question that public monitoring concerning potential conflict of interests is necessary, and therefore does not question the possibility itself of public access to certain data from the register of declarations. Anyway, making data accessible through viewing the register of declarations has existed since Act no. 159/2006 Coll. on Conflict of Interests went into effect. However, it was necessary to evaluate whether such intensive interference in privacy, consisting of direct publication of data from the register of declarations is really a necessary instrument for achieving the stated legitimate aim and whether it was not possible to achieve that aim in another way, with a lower degree of interference in the right to privacy, and while respecting the repeatedly cited right to self-determination regarding information.

132. The Constitutional Court concluded that the legitimate aim pursued can be achieved in a comparable degree even with a lower intensity of interference in the privacy of the affected persons. The reason, among other things, is that in view of the centralization of all data into one register (instead of the previous 6,500 registration locations), complete digitalization of all declarations, and the possibility of applying for the provision of particular data in a very simple manner through a form on the website of the central register of declarations, public monitoring of a potential conflict of interests is sufficiently ensured by the regime of providing access to data from the register upon application.

133. If the aim of viewing the register is to be prevention or discovery of conflict of interest, or increasing public confidence in the activities of the public authorities, not merely satisfying personal curiosity, or even obtaining information for purposes that are unlawful or otherwise impermissible, the formal barrier, in the form of submitting an individual application, cannot be considered an obstacle that would hinder the fulfilment of that aim. A person who views the register for the purpose of fulfilling the abovementioned legitimate aim will have no reason whatsoever to hide his identity, and will have no fear about asking for specific data. In practice these will be, in particular, journalists, or representatives of the media, persons from various non-governmental organizations, but also anyone else who expresses interest in data from the register. Thanks to the digitalization both of the application and of the provision of data, everything can be processed relatively quickly, and thus for an applicant to view the register, if his interest is really serious, this is not an obstacle that would indicate that the selected legitimate aim cannot be achieved in a comparable degree in this manner. Providing data from the register upon application also simultaneously sufficiently fulfills the preventive function of making data available, that is, the public officials' awareness that anyone who identifies himself has the opportunity to obtain data from the register of declarations and uncover a potential conflict. Annulling the possibility of anonymous access without a formal application changes nothing about the obligation of public officials to file a declaration of assets, so the possibility of monitoring by the public is preserved.

134. The form of a non-anonymous application, that is identification of the applicant, reduces the probability of possible misuse of the obtained data about the property situation of public officials, or obtaining them for a purpose other than that pursued by the Act. As even this form of access cannot fully eliminate all risks, even the reduction of risk of misuse is an argument in favor of the conclusion that viewing the register on condition of a non-anonymous application ensures stronger protection for the right to privacy of the affected persons than anonymous viewing by anyone at all, i.e. automatic publication of data.

135. We can acknowledge that the transparency of property situations is, by the nature of the matter, always lower when providing information upon an application, than with blanket publication. However, the Constitutional Court adds that the transparency of the property situations of public officials is not supposed to be an aim by itself. This transparency is only a means, usable to the extent that it fulfils the aim of the Act, consisting of the transparency of the activities of public authorities. However, the Constitutional Court did not find that such wide transparency in the property situations, consisting of automatically publishing information from the register of declarations would be essential for the transparency of the activities of the public authorities.

136. Although the Constitutional Court fully understands the requirement of transparency and preventing potential misuse of the status of public officials, at the same time it is necessary to see that monitoring of the administration of public affairs, whether conducted by national

politicians, elite civil servants, or local representatives, may not hypertrophy into a system that persons will not connect to and will be discouraged from entering only because it is not pleasant for them to have their privacy (and the privacy of those close to them) disturbed , and beyond the degree necessary. The Constitutional Court assumes that the performance of public offices is primarily a service to the public, and although persons performing this service must be subject to public monitoring, that monitoring must not be based on a priori suspicion, scandal-mongering, mistrust, and overall negation. If the overall environment and atmosphere are set up in such a negative manner, this leads to the result that public offices will be primarily sought not by the most capable, people, but – apart from some exceptions – the "others." Because the 36ublicc sphere cannot fully compete with the private sphere in salaries for the personally and professionally best individuals, it is all the more important that it compensate this shortcoming by a feeling of usefulness from the work performed, stability of public service, and a certain degree of prestige.

137. The Constitutional Court also points out that when evaluating the justification for publishing information from the private sphere of particular persons, a number of criteria must be taken into account, and the status of the affect person, as a person active in public affairs, is only one of them (cf. e.g., the judgment of the ECHR Axel Springer AG v. Germany of 7 February 2012, application 39954/08, point 89 et seq.). Apart from the status of the person whom the published information concerns, there is also, for example, the question of the extent to which particular information contributes to the debate about the public interest, e.g. to what degree information from the private sphere is connected to the performance of public office by the given person, whether the information is true, in what manner and in what form it was published, and so on. With information about the property situation of public officials there is a presumption that the information is true, as well as that it concerns a publicly active person, but even with publicly active persons the existence of a public interest in publishing information depends on their position in the imaginary ladder of power, as well as on whether they expose their privacy more to the eyes of the public precisely by the fact that they become professional politicians. Thus, the public interest in publishing information from the private sphere may not exist always and automatically merely because the person whom it concerns is a publicly active person. It always also depends on the context of use and other circumstances concerning the publication of specific information. For example, if, a particular journalist obtains information from the private sphere of a mayor of a small municipality, there will be a difference in whether he publishes it in connection with a suspicion of unlawful conduct, or publishes it only to satisfy readers' curiosity. In that case the public interest need not predominate, because it must always be weighed on the basis of the factual circumstances of the matter, whether concerning the position of a public official in the system of the public power, the type of published information, the connection between specific information from the private sphere to the performance of public office, and so on.

138. Hence, the Constitutional Court believes that the existence of a public interest in publishing the property situation of public officials without any restriction whatsoever cannot automatically be presumed merely because they are publicly active persons. This also applies to information about third persons, typically the creditors of public officials, because here to the publication of their identity must be tested by the criterion of the existence of a public interest in each individual case. In contrast, a system consisting of providing information upon application creates a certain intermediate level between the provision of information to a particular individual and its further publication to an indeterminate range of addressees, e.g., in the media, on the internet, and so on. This intermediate level then ensures that before the actual

publication of information from the private sphere the existence and intensity of the public interest in publication can be evaluated.

139. In contrast, blanket publication of property situations, even with the limits established in § 14b, does not allow this evaluation, and presumes that a public interest exists, even though in individual cases it may not predominate. This will happen most often precisely with persons who hold less significant offices in the hierarchy of public power – typically part-time public officials in local governments, especially small municipalities. Although we can agree with the government's argument that the amendments of the Act on Conflict of Interests, Act no. 112/2018 Coll., precisely in the contested § 14b, limited public access to certain data from the central register and created levels of access to data, depending on the position of a given person in the hierarchy of public power, we still cannot automatically agree that that with the remaining publicly available data the interest in publication will always outweigh the right to privacy of the public officials.

140. Insofar as the government argues on the basis of the capacity of the Ministry of Justice as regards the provision of information upon an application, this is not a constitutionally relevant argument in terms of the necessity of interference in the right to privacy. If the state decides to implement a central register of declarations, and instead of 6,500 registration places create one central one, it cannot then address potential expenses or administrative work related to the scope of the resulting agenda, e.g. the provision of information upon an application, by publishing most data on a blanket basis, and thereby avoiding processing applications. The principle should be consistently applied that the state should impose only such obligations whose fulfilment it is also able to monitor and enforce.

141. It is also a significant circumstance that, in consequence of this publication, there are no other possible guarantees connected with the further disposition of the provided data, such as are possible, in contrast, when providing data upon an application. Insofar as the Constitutional Court, in judgment file no. Pl. ÚS 3/14 of 20 December 2016 (N 246/83 SbNU 793; 73/2017 Coll.) acknowledged that interference in privacy, also in the form of the right to self-determination regarding information, can occur through giving access to (not publication of) the archives of the StB [Communist-era secret police], it did so precisely with reference to the guarantees that apply to further disposition of the personal data obtained. Although the sensitive, and sometimes even intimate, data that can be found in the StB archives cannot be compared with data about property, the principle of protection of privacy, consisting of the existence of certain guarantees for further disposition of the accessed data, is analogous. In contrast, blanket publication in principle rules out any potential other guarantees.

142. The Constitutional Court closes by saying that in evaluating the contested legislative framework through the lens of the degree of interference in the right to self-determination regarding information of public officials, it concluded that § 14b par. 1 let. a) to c) will not withstand constitutional scrutiny. The reason is the fact that the aims of the contested legislative framework could have been reached in a comparable manner with a lower intensity of interference in the right to privacy, that is by viewing the register of declarations on the basis of an application (the test of necessity in the second step of the proportionality test).

143. Nor can the Constitutional Court agree with the government's argument that if § 14b, or part thereof, were annulled, the resulting framework "could be interpreted in the sense that viewing the declarations of public officials is possible in the scope of all declared information," that is, that this would open access to data without limitations. Insofar as § 13 par. 3 states that

"everyone has the right to view the register of declarations cost-free through the public data network in the scope set forth by this Act," this does not presume viewing limits which, if annulled, would allow unlimited viewing as regards the scope of data. On the contrary, § 13 par. 3 requires a specification of the scope of permissible viewing ("right […] view […] in the scope"); hence if the scope is not set forth in the Act it will not be possible to view any of the data in the register of declarations. Thus, annulment of part of § 14b can fulfil the purpose of greater protection of privacy.

144. In other words, although the Constitutional Court is of course aware that the primary constitutional problem lies in § 13 par. 3 of the Act on Conflict of Interests, which permits viewing the declarations of public officials under § 2 par. 1, it had to begin with the fact that this provision was not contested, and the Constitutional Court is bound by the proposed judgment in a petition. However, as a result of annulling § 14b par. 1 par. A), b), c) viewing through the public data network would become impossible in practice, and the unconstitutional consequences of the Act will thus be removed. The right to view the register of declarations through the public data network is tied to the scope set forth by the Act, and that is defined through the annulled § 14b par. 1 par. A), b), c). Nonetheless, it is evident that after the derogation performed by this judgment the legislature must take the fundamental grounds of this judgment into account, not only in relation to the annulled part of the Act, but also in relation to the material regulated by § 13 par. 3.

145. Therefore, until new legislation is adopted allowing viewing of the register of declarations only on the basis of an application, the consequence of the derogation will be the complete blocking of access to data from the register of declarations under the Act on Conflict of Interests regarding public officials defined in § 2 par. 1 of the Act on Conflict of Interests. However, the Constitutional Court cannot ensure through a derogatory verdict that the regime of full publication of data be changed to a regime of giving access to data upon application and that it define the requirements for filing an application, because the Court does not create, or change, legal frameworks, but only annuls them.

VIII. 5. c) Evaluation of Constitutionality of § 14b par. 1 let. d), par. 2 and 3

146. Although Petitioner 2 contests § 14b as a whole, its arguments are de facto directed only against paragraph 1, or its letters a) – c), which set the scope of viewing publicly available data.

147. The provision of § 14b par. 1 let. d) limits the scope of viewing the register as regards public officials defined in § 2 par. 2, to which the regime of automatic publication does not apply. On the contrary, with these persons it is possible to obtain data from their declarations only on the basis of a prior application, and further disposition of these data is limited [cf. VIII. 5. A) above]. The petitioner raises no objections as regards this regime for access, and likewise it does not in any way concern itself with the group of public officials defined in § 2 par. 2; on the contrary, it considers giving access to data upon application to be constitutional. Thus, the Constitutional Court found no reason for derogation as regards § 14b par. 1 let. d) of the Act on Conflict of Interests.

148. Likewise, Petitioner 2 raises no relevant arguments regarding § 14b par. 2. Moreover, the purpose of that provision suits the arguments of Petitioner 2, because it makes impossible giving access to data from the register of declarations for public officials who are judges, state prosecutors, members of the Police of the Czech Republic or the General Inspectorate of Security Forces . Thus, no constitutional question arises here as regards protection of privacy.

149. Finally, Petitioner 2 raises no arguments concerning the unconstitutionality of the contested § 14b par. 3, which, moreover, does not concern the question of publication of data. On the contrary, it states that information from the register of declarations can also be obtained by certain state bodies. Again, Petitioner 2 raises no objection of an unconstitutional defect as regards this jurisdiction. In contrast, in questioning the blanket publication of data, Petitioner 2 emphasizes the self-serving nature of § 14b par. 3, stating that state bodies (e.g. the police), with knowledge of other circumstances, are better able than the general public to reach conclusions about potential corrupt conduct.

150. Thus, the Constitutional Court summarizes that it found no reason for derogation of § 14b par. 1 let. d), or par. 2 and par. 3 of the Act on Conflict of Interests, because Petitioner 2 raises no constitutionally relevant arguments against them, and Petitioner 1 does not contest these provisions at all.

VIII. 6. On the Further Objections of the Petitioners

151. The objections as regards violation of Art. 4 par. 1 and 4 of the Charter (imposing obligations only while preserving the fundamental rights and freedoms, or the obligation to preserve the essence and significance of rights that are limited) need not be independently addressed, as the question of the proportionality of interference in the fundamental rights was evaluated above.

152. We cannot agree with the petitioners that the contested legislative framework would violate Art. 3 par. 1 of the Charter, which Petitioner 1 justifies by saying that "one cannot deprive the rich of their rights either, or otherwise unfairly burden them." Art. 3 par. 1 prohibits discrimination on the grounds of property, but the obligation to file a declaration applies to persons defined by the criterion of performing public office, not size of property. The legislation thus applies equally to "rich" persons and to less affluent persons. Thus, the criterion of property, which Art. 3 par. 1 of the Charter assumes when listing "suspicious" grounds for differentiation, is not applied when defining obligated subjects in the Act on Conflict of Interests [regarding the criteria for application of Art. 3 par. 1, see, e.g., judgment 15 of 28 June 2016, file no. Pl. ÚS 18/ (N 121/81 SbNU 889; 271/2016 Coll.), points 99 – 111].

153. Likewise, the general objection by Petitioner 2 of violation of Art. 1 of the Charter is not justified in any detail, and because the Constitutional Court itself here does not see any relevance to it, the Court considers it unjustified. Similarly, the Constitutional Court did not find justified the claimed violation of Art. 8 of the Constitution (the guarantee of the right to self-government for local governments), as it is evident from the abovementioned reasons that the contest legislation is not directed against the constitutional guarantees of territorial self-government, and its aim was found to be legitimate.

154. Insofar as Petitioner 2 also states that all the contested provisions "in their aggregate represent a disproportionate burden as regards the passive voting rights under Art. 21 of the Charter in connection with Art. 102 par. 1 of the Constitution, which every candidate must bear if elected," we cannot agree in the sense that this would lead to violation of the cited provisions (see also, generally, in terms of access to public offices, points 110 to 117, 133 of judgment file no. Pl. ÚS 4/17). Art. 102 par. 1 enshrines a universal, equal, and direct right to vote for members of representative bodies of local governments, and these principles are not in any way disturbed by the contested legislation. Insofar as the right to participate in the administration of

public affairs through the free election of representatives, or the right to equal access to public office is guaranteed in Art. 21 of the Charter, we must state that the legislation does not in any way formally limit the right to run for office in the representative body of a municipality or region, or for another office in local government. We can agree that a person interested in running for office may be discouraged by the requirements that are placed on him, but in the present case these are not formulated as a condition for holding office, and have no influence on the actual performance of a public office. An official in local government may be penalized if he does not fulfil the requirements arising from the Act on Conflict of Interests, but he cannot be in any way prevented from access to public office as a consequence of not fulfilling the obligations set forth in the Act on Conflict of Interests, nor can he be removed from office for reasons of not fulfilling the statutory obligations. In other words, the Act links penalties (fines), i.e. coercion by the authorities, to an unwillingness to provide data from one's private sphere, but at the same time this coercion does not take the form of preventing access to public office or loss of public office. Thus, a key element in the adjudicated matter was protection of the right to self-determination regarding information, and therefore it was through this lens that the Constitutional Court evaluated the contested legislation, and found it to be partially unconstitutional.

155. To close, we must also add that if Petitioner 2 speaks about duplication of regulations due to other legislation, in particular the Act on the Register of Contracts and the Act on Public Procurement, whose aim is also transparency in the management of public funds, we must add that the aims, purpose, and instruments of all the statues are somewhat different, and apply to different situations, so they complement each other, rather than competing with each other.

156. Insofar as Petitioner 2 states that the disproportionateness of the legislation also lies in the lack of time limitation for storing data in the register, we must point to § 14 par. 2 let. c) of the Act on Conflict of Interests, which limits the time for storing declarations to 5 years from the day one's term in office ends. In its response to the government statement pointing out this period, Petitioner 2 argues that it "lacks reasonable criteria for setting this period" and "considers it disproportionate," but of course it does not contest 14 par. 2 let. c) in its petition. Hence the Constitutional Court did not consider the question of whether the period for storing a declaration is proportionate.

VIII. 7. Conclusion

157. The Constitutional Court closes, that it did not find a reason to annul § 2 par. 1 let. q) of the Act on Conflict of Interests, i.e. for removing part-time public officials in local governments fully from the regime of the Act on Conflict of Interests, because an interest in preventing a conflict of interests exists with these public officials too. The Constitutional Court also did not find that the specification of the content of a declaration of assets, income and liabilities established in § 10 par. 2, § 10 par. 3 (as amended by Act no. 14/2017 Coll. and by Act no. 112/2018 Coll.) and § 11 par. 3 were not proportionate to the legitimate aim that the Act on Conflict of Interests pursues. Finally, as regards § 14b par. 1 let. d) and par. 2 and 3 of the Act on Conflict of Interests, the petitioners did not present any relevant arguments regarding their unconstitutionality, and the Constitutional Court itself did not find anything fundamental in this regard. Therefore, it denied these parts of the petitions as unjustified.

158. However, the Constitutional Court concluded that the manner of giving access to data from the register of declarations of public officials, consisting of direct publication of data from the register of declarations is not necessary for achieving the legitimate aim pursued, and thus

violates the right to privacy of the affected persons, specifically the right to self-determination regarding information under Art. 10 par. 3 of the Charter. Therefore, for the abovementioned reasons, the Constitutional Court partly granted the petition, and pursuant to § 70 par. 1 of the Act on the Constitutional Court annulled § 14b par. 1 let. a), b) and c) of the Act on Conflict of Interests.

159. Of course, it did so with a suspension of enforceability until after 31 December 2020, in order to give the legislature sufficient time to adopt legislation that will be constitutional. As the foregoing indicates, the Constitutional Court found unconstitutionality only in the non-anonymous and completely undifferentiated electronic access to asset declarations of all "politicians," not in the scope of the information provided. It concluded that in terms of the right to self-determination regarding information, there is no convincing reason for distinguishing between the individual groups of public officials defined in § 2 par. 1 of the Act on Conflict of Interests.

Instruction: *Decisions of the Constitutional Court cannot be appealed (§ 54 par. 2 of the Act on the Constitutional Court).*

Brno, 11 February 2020

Pavel Rychetský /signed/
Chairman of the Constitutional Court

Dissenting Opinion of Justice Jaroslav Fenyk to Constitutional Court judgment file no. Pl. ÚS 38/17

Under § 14 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, I am filing a dissenting opinion to verdict I. of judgment file no. Pl. ÚS 38/17 and also against the reasoning for that part of the verdict.

First I would like to emphasize that I partly agree with the content of the dissenting opinion of my colleagues Milada Tomková, Kateřina Šimáčková and Pavel Rychetský, in which they dissented from the plenary judgement, in particular as regards the obvious inconsistency between the proposed (in the petition) and resulting (verdict I.) derogation.

Beyond that dissenting opinion, I wish to state some of my own reservations.

As I stated above, it is obvious that the judgment as adopted does not annul a provision that was proposed by the petitioners for derogation, but goes beyond its framework in a remarkable manner. The result is the blanket annulment of the possibility of direct, cost-free viewing of the data from the asset declarations of all public officials (§ 2 par. 1 of the Act on Conflict of Interests) without an acceptable substitute, which the petitioners did not in fact in request, and I believe did not even expect.

The majority of the plenum of the Constitutional Court in this broad derogation verdict also relativized its strict approach to the regulation of the property situations of public officials, which it recently applied in the case Pl. ÚS 4/17 (the so-called "Lex Babiš").

Whereas in the matter Pl. ÚS 4/17 the majority of the plenum of the Constitutional Court considered constitutional a strict limitation of the relationship of public officials to doing business, assets, the exercise of property rights, and so on, on the grounds of the predominant public interest in the transparent conduct of these public officials, here the majority of the plenum of the Constitutional Court de facto denied the need for transparency. It thereby ruled out the possibility of monitoring the property situations of public officials by the public. This approach is not only inconsistent in terms of case law, but also relatively dangerous for the future, because it is an obvious departure by the Constitutional Court from the trend in its previous decisions, where it supported public involvement in the monitoring of the public authorities.

In my opinion, the petition from the senators and deputies should not have been granted either in the manner adopted by the majority of the plenum of the Constitutional Court, nor in the manner presented in the dissenting opinion of my 3 colleagues, concerning part-time public officials in local governments.

Distinguishing between full-time and part-time members of a municipal representative body (or distinguishing between full-time and part-time offices) in no way has any influence on the scope of the rights and obligations of a member of a municipal representative body. In this respect all members of a municipal representative body are equal.

It cannot be ruled out that a full-time member of a municipal representative body, based on his decision, will perform a full-time office in parallel with his existing employment, or that he will not enter into new (additional) employment during performance of the full-time office (of course, this applies on the assumption that this possibility is not expressly ruled out by a special regulation – see, e.g., § 33 StSlužˇ). Likewise, a full-time member of a municipal representative body is not in any way restricted in conduct of his business or other independent income-earning activity. The evaluation of whether, taking into account the specific member of the municipal representative body and his work load, it is suitable for this member of the municipal representative body to be released from employment to perform the office, depends fully on the municipal representative body – it cannot be ruled out that a full-time member of the municipal representative body may be a person whose time possibilities do not correspond to the "full-time commitment" for performance of public office assumed by legislation. Likewise, it need not be true that a part-time office of a member of a representative body is always performed by a person in parallel with other income-earning activity; and, of course, nothing prevents an office being held by, for example, a student or a pensioner.

In terms of the need for monitoring of the property situations by the public, there is no difference between full-time and part-time members of representative bodies. Whether a representative is full-time or part-time has no significance in their participation in the decision making by the municipal representative body. They participate to the same extent in the decisions concerning municipal matters (budget, disposition of municipal property, approval of generally binding decrees, etc.) and therefore there is no reason for a different approach to the monitoring of their property situations.

Nor is the argument acceptable that with part-time public officials an unwillingness to hold office may arise due to the monitoring of their property situations. After all, in the matter Pl. ÚS 4/17 the majority of the plenum of the Constitutional Court adopted an opinion under which it is constitutional to present a public official with the choice of whether to perform a public

office or whether to perform activities that are prohibited by law. Here the Act on Conflict of Interests is so benevolent that, for example, it does not prohibit part-time public officials from conducting a business (§ 4 par. 1 of the Act on Conflict of Interests), but it does subject them to increased public monitoring.

I am therefore convinced that the Constitutional Court judgment in this matter should have fully denied the petition.

Brno, 11 February 2020

Jaroslav Fenyk

Dissenting Opinion of Justice Milada Tomková

1. Pursuant to § 14 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, I submit a dissenting opinion to part of verdict I and the related parts of the reasoning.

2. I agree with verdict II. (denial), as well with annulment of § 14b par. 1 let. c) of Act no. 159/2006 Coll., on Conflict of Interests (the "Act"). However, I do not agree with the complete derogation of §14b par. 1 let. a) and b) of the Act, because I believe that in these provisions the Constitutional Court should have annulled on those parts concerning the part-time public officials in local governments.

3. As the judge rapporteur of the original draft of the judgment, which did not receive a majority of votes in the plenum, I naturally agree with that part of the reasoning that is based on the original report and concerns the review of the constitutionality of § 2 par. 1 let. q), § 10 par. 2 and 3 and § 11 par. 3, § 14b par. 2 and 3, as well as part of § 14b par. 1 of the Act.

4. However, I cannot accept the broad concept of the derogation verdict and the related essential grounds that the majority of the plenum adopted, for the following reasons:

I. Formulation of the Submitted Petitions and the Necessary Degree of Restraint by the Constitutional Court

5. Although a considerable part of the arguments of both petitioners questions public access to data about the property situations of part-time public officials of self-governing units, i.e., that "property striptease," due to which interest in working for local government is declining, Petitioner 1 paradoxically does not contest any of the provisions of the Act concerning the provision of access to data from asset declarations, and Petitioner 2 contests the entire § 14b of the Act, but that only regulates the scope of data that can be viewed, not the actual form of viewing, i.e. direct, cost-free viewing.

6. Neither petitioner contested § 13 par. 3 of the Act, which provides that "everyone has the right to view the register of declarations cost-free through the public data network in the scope set forth by this Act."

7. The concept of the annulled § 14b par. 1 let. a) to c) of the Act was set up on the basically correct consideration that different categories of property data are made accessible with different groups of public officials (the higher a public official is on the ladder of power, the wider the scope of property data that is available for viewing). However, this provision does not answer the question of whether the data are made available upon application or directly. Therefore, the majority's conclusion is somewhat unclear in point 159, that there was a "completely undifferentiated electronic access to asset declarations." On the contrary, the annulled provision ensured that for different groups of public officials different data from the asset declarations are published, not the complete declaration.

8. The Constitutional Court found unconstitutional the direct form of access to data (which, however, was not itself contested – cf. § 13 par. 3 of the Act) – but it "corrected" the unconstitutionality by annulling the provision that only defines the scope of data thus provided for individual public officials, whereby it made the data inaccessible (point 144).

9. As regards the scope of the derogatory verdict, considerable restraint by the Constitutional Court was appropriate, as it is evident that annulment of § 14b par. 1 let. a) to c) of the Act was not based on an argument of unconstitutionality of precisely that stratification of data that are to be made accessible, but on an argument of direct access to data established in the uncontested § 13 par. 3.

10. Thus, the Constitutional Court should have carefully weighed, for which group of public officials its derogation verdict renders access to property data absolutely impossible. The proposed judgment of Petitioner 2 did not admit any option other than either denying the petition, stating that § 13 par. 3 of the Act (concerning direct access to data from an asset declaration) is not contested, or, by derogation of part of the contested § 14b par. 1 let. a) to c) of the Act to render absolutely impossible access to data of a specific group of public officials. The Constitutional Court had to make these deliberations with awareness of the fact that potential lack of action by the legislature after the judgment becomes enforceable will make it absolutely impossible to view these data in any form.

11. If the Constitutional Court was supposed to "protect" any of the groups of public officials in the stated manner, and with the abovementioned potential consequences, it was necessary for the presented arguments to provide a sufficient basis for a derogation verdict in relation to each group of public officials defined in § 2 par. 1, or § 14b par. 1 let. a) to c) of the Act. The status of public officials in the hierarchy of power, their influence on the operation of the state and politics, the form of their involvement in public life (part-time public officials work in their free time, in addition to their employment) are considerably different, and therefore they cannot all be viewed in completely the same way (for details, see point II. below) and the arguments concerning some of them cannot be mechanically extended to all.

12. The leitmotif of both petitions was protection of local governments, particularly in small municipalities, and especially part-time municipal public officials. It must be pointed out that Petitioner 2 contests, among other things, "the collection or publishing of information about the property situations of municipal politicians, including those who are not full-time, and hold less exposed public offices, without taking appropriate account of the importance that protection of privacy plays in the constitutional order and, more generally, in modern society." It then generally defines the petition by saying that "as regards municipal representatives, the amended Act on Conflict of Interests a) fundamentally expanded the range of persons who must make a public declaration …b) brought a fundamental change, primarily in the automatic publication

of practically all provided data, in a form accessible anonymously to anyone over the public data network on the portal of the Ministry of Justice, c) expanded the data provided to include clearly sensitive personal data and from the private sphere ….” Petitioner 2 further states that “in the Czech Republic this regulation potentially affects approximately 60,000 persons who are representatives,” as well as that “particularly in smaller municipalities [it is] rather difficult to mobilize a sufficient number of citizens who will hold public office in local government.” The petitioner itself emphasizes that “if a municipality can provide these citizens, who are supposed to develop their municipality in their free time (part-time performance of office), only very limited funds, and simultaneously imposes on them public exposure of their property situations, the consequences of the aggregate of negative effects is simple - a) those who are successful and capable in their private professions will decline to run for the relevant elected offices …, b) the decline in interest in administration of public affairs at the municipal level can even lead to a situation where there will not be even one candidate list in local elections, which will have further negative consequences not for the citizens of the municipality and the municipality as such, but also on the state and the state budget ….” Petitioner 2 then documents excessive interference in the rights of local political with a survey of local elections in 2018, mentions the growth in the amount of administrative work that affects local governments and their public officials, and the personal responsibility connected to holding office, and argues on the basis of the right to self-government and the resignation of a number of representatives due to unwillingness to expose their privacy to the public. Also, the request for priority review was justified by reference to the upcoming elections to municipal representative bodies.

13. In point 111, as well as in point 123 the Constitutional Court emphasizes the abstract nature of the review and being bound by the proposed verdict, not the reasoning (i.e. the arguments) of the petitioners. In point 123 it states that “the arguments of both petitioners primarily concern interference in the privacy of part-time public officials in local governments. However, because this case involves what is known as abstract review of norms, the Constitutional Court is not bound by the petitioners’ arguments, but only by the proposed judgement. The Court found no reasonable grounds why these part-time public officials in local governments would deserve a fundamentally different legal regime.”

14. However, being bound by the proposed judgment and not the reasoning does not mean that the petitioner is not subject to the burden of proof. As indicated by the Constitutional Court’s decision making practice, “if the petitioner objects that the content of a statute is inconsistent with the constitutional order, for purposes of constitutional review it is not sufficient to merely identify the statute, or its individual provisions, proposed to be annulled, but it is necessary to also state the grounds for the alleged unconstitutionality” [judgment file no. Pl. ÚS 7/03 of 18 August 2004 (N 113/34 SbNU 165; 512/2004 Coll.)]. If the petitioner does not meet this burden, “there is no choice but to consider the petition inconsistent with § 34 par. 1 of the Act on the Constitutional Court, and thus incapable of review on the merits” [judgment file no. Pl. ÚS 2/08 of 23 April 2008 (N 73/49 SbNU 85; 166/2008 Coll.)]. Thus, the Constitutional Court can review “only those provisions to which the petitioner’s explicit claims and arguments are tied,” and the remainder of the petition must be rejected as obviously unjustified [judgment file no. Pl. ÚS 58/05 of 8 June 2010 (N 120/57 SbNU 477; 230/2010 Coll.)]. The Constitutional Court then also carried over this principle into its decision making on the consistency of international treaties with the constitutional order [judgment file no. Pl. ÚS 19/08 of 26 November 2008 (N 201/51 SbNU 445; 446/2008 Coll.)]: “here the Constitutional Court inclined to the conclusion (arising analogously from its settled case law in the review of legislation) that is directed only at the provisions of the relevant international treaty properly contested and justified in the petition.”

15. Thus, in the derogation of parts of § 14b par. 1 let. a) to c) of the Act, the Constitutional Court should have acted on the basis of specific arguments as regards specific public officials, from which it would have been possible to conclude that precisely they (or their privacy) needed to be provided constitutional protection, moreover, protection with relatively drastic consequences, consisting of the absolute inaccessibility of all data from asset declarations after the judgment becomes enforceable. However, as regards the protection of the majority of public officials cited in § 14b par. 1 of the Act, there were no relevant arguments. In view of the principle of separation of powers, moreover reinforced by such a specific subject for review (the Act on Conflict of Interests as a voluntary "self-restriction" by the representatives of public power), the Constitutional Court should have shown restraint.

16. In fact the Constitutional Court reviewed the constitutionality not of § 14b par. 1 let. a) to c), but of § 13 par. 3 of the Act, for which, however, it was not given discretion either by the proposed judgment in the proposal, or by the arguments presented by the petitioners as regards the majority of public officials.

II. Non-comparability of Public Officials in Terms of Legitimate Interference in Privacy

17. From a substantive viewpoint too, the majority's approach is too generalizing, and as regards expanding the derogatory verdict to all public officials established in § 2 par. 1 of the Act, also insufficiently justified.

18. It must be pointed out that the provisions of the annulled § 14b par. 1 let. a) to c) apply to all public officials defined in § 2 par. 1 of the Act, i.e. from deputies, senators, members of the government, deputies of members of the government, to the heads of the offices of the Chamber of Deputies and the Senate or the head of the Office of the President of the Republic, members of the Bank Council of the Czech National Bank, the president, vice president and members of the National Inspection Office, and to the mayors, deputy mayors, and councilors in small municipalities, who perform their activities alongside their employment, and often for symbolic compensation. It is obvious that the group of public officials defined in § 2 par. 1, to which the annulled § 14b par. 1 let. a) to c) refers, is not homogeneous; on the contrary, the public officials listen here are not comparable in many respects, or are not comparable for all imaginable purposes. However, in the judgment the majority overlooks this key aspect and treats them all the same way.

19. One can agree that in terms of the personnel scope of the Act (§ 2 par. 1), or the obligation to file the relevant declarations, there is comparability, that is, the substantial point is primarily whether a given person holds a public office and whether there is a danger of conflict of interest with that person. However, protection of privacy, or protection of the right to self-determination regarding information is a completely different question. Although everyone (including public officials) has a right to privacy, the degree of permissible interference may differ, precisely depending on how high on the ladder of power a particular public official is. This concept is part of the settled case law of the ECHR and of the Constitutional Court (application of the criteria of the status and public's knowledge of the person whose privacy was interfered in – see also the ECHR decision mentioned by the majority of the plenum, Axel Springer AG vs. Germany of 7 February 2012, application 39954/08). Interference in privacy (e.g. by the publication of certain information about the property of a publicly active person) will generally be more permissible where it concerns a person in a high position of power, and also generally known (which will generally coincide with those in the highest positions). Thus, access to

information about the property situation of members of the government or deputies cannot be completely compared to access to information about the property situation of mayors or councilors of small municipalities, because the performances of their offices has a significantly lower influence on the functioning of the state (i.e. their positions on the ladder of power are not comparable); at the same time, local politicians, especially in small municipalities, are not (unlike top national politicians) generally publicly known (e.g. in terms of the interest in nationwide access to data about their property). Likewise, the fact that someone is a professional politician, while someone else performs a public office in a small municipality in his free time, can lead to a conclusion about a different degree of protection of privacy. A professional politician enters politics with the knowledge that he (including some of his property relationships) is "more visible," and must expect that. Comparing part-time public officials in local governments with top national politicians, or not finding "any reasonable grounds" for a possible different degree of protection of privacy (point 123), cannot be considered correct.

20. In the original judge rapporteur's report the test of proportionality was made only for part-time public officials in local governments, and it was stated precisely, and only in regards to them, that direct access to data about property cannot withstand the second step of the proportionality test, because this access is not necessary in terms of the public interest. The higher we are on the ladder of power, the more likely it is that this thesis will not apply. It was certainly quite legitimate to discuss the precise limits of the derogatory verdict and weigh various criteria (only municipal self-government, all self-government, only part-time public officials, etc.), but always in connection with the arguments used to justify the annulment in relation to individual public officials. However, from the possible alternatives the majority of the plenum selected the least fortunate one (though formally the simplest), consisting of the approach that, given the difficulties connected with finding precise limits for the derogatory verdict within the framework of § 14b par. 1 let. a) to c), it decided to comprehensively annul the provision that defines the scope of viewing for public officials defined in § 2 par. 1 of the Act.

21. The legal conclusions (the essential grounds for derogation) are categorical, and the consequences of derogation are significant, because within the test of proportionality the Constitutional Court concluded that direct access to data about property from the declaration of assets is always unconstitutional, in relation to all public officials defined in § 2 par. 1. In future, any data about property from a filed declaration (even if relatively general) of any public official (including the highest ones) cannot be directly publicly available. Moreover, whether any of the data will be available at all after the judgment becomes enforceable, at least upon application, now depends on the activity and willingness of the legislature. With awareness of this intensity of its action and its consequences as well, the Constitutional Court should have weighed carefully, in the event of inaction by the legislature, for which category of persons the potential complete unavailability of data will even be legitimate.

22. Moreover, the conclusion made generally as regards all public officials is not sufficiently justified, because there were no arguments at all regarding the majority of public officials, whether in the petitions, or the government's statement or subsequent responses, as well as in the judgment itself. In other words, the leitmotif of both petitions and other procedural filings was, for one thing, the question of the justification of applying the Act on Conflict of Interests to some public officials in local governments, and for another the need for a certain stronger protection of privacy as regards them, precisely for ensuring the proper functioning of local government in small municipalities and towns. The result, however, is the complete

inaccessibility of any data whatsoever from the asset declarations of even the highest politicians.

23. The majority accepted the test of proportionality, as performed, from my original rapporteur report, as performed, but of course it applied it automatically to all public officials, although it had been conceived only as regards to those who are lower on the "ladder of power," or perform their activity in addition to their employment, for symbolic compensation. One cannot assume that all public officials can be treated equally and generally as regards protection of privacy. Paradoxically, the annulled provision implemented this necessary stratification, because the scope of data that are made accessible was distinguished precisely depending on the position of a given public official.

24. One can thus ask, whether with top national politicians at least some (certainly not all) information about assets, income and liabilities (e.g. only general information about the number of real properties, or interest in various commercial companies) really cannot be directly available to the public without the need to file an application? The Constitutional Court closed this question very categorically by saying that direct access without an application is always unconstitutional, although it did not at all consider the question of protection of privacy of top politicians, or the question of the scope of data for which it would be possible to presume a public interest, in combination with the status of a specific public person.

25. Doubts about the scope of the derogation are also supported by the view of comparative analyses of analogous legislation in 18 European countries which the Constitutional Court has at its disposal. This analysis indicates that the overwhelming majority of the surveyed countries publishes the asset declarations of at least a partial group of obligated subjects online, cost-free. On the one hand the possibility of direct online access exists; on the other hand there is an obvious need for stratification between the individual public officials, as regards the form or scope of available data. For example, in Italy property data about deputies and some other public officials are published on the website of the Parliament, in Kosovo all data contained in an asset declaration are published in an online property register on the website of the Anticorruption Office, In Lithuania information about the property of defined public officials (including real estate, interests in commercial companies, and liabilities) are published on the website of the central tax administration body, likewise some information from asset declarations is publicly available through an online register in Latvia, and one can search by the first or last name of a specific public official. In Germany some data concerning the income of deputies are publicly available for viewing on the website of the Federal Assembly. Specifically, this involves employment activity before becoming a member of the Federal Assembly, paid activities while performing the mandate of a deputy, offices in commercial companies, offices in associations and institutions of public law, offices in societies, associations and foundations, contracts on future activities and property benefits, interests in capital or personal companies, as well as gifts or other contributions for political activity. In contrast, the obligation to publish income does not apply to local politicians in Germany. The Austrian legislation allows one to anonymously and cost-free view the asset declarations of representatives of certain political offices, and in the case of local politicians the selected public figures include, for example, the mayor of Vienna. In contrast, the obligation does not apply to the majority of local politicians. Parts of the data from declarations of assets and income of public officials are also freely available on websites in, for example, Serbia, Croatia, and Slovakia.

26. Briefly, it is clear from the analysis of the 18 states that it is a completely standard arrangement for some data from a declaration of assets, income and liabilities of at least some public officials are available cost-free directly online without the need for an application, whether on the website of the parliament, or the anticorruption or tax office. Rendering impossible the online access to all data from a declaration of assets, income and liabilities for all public officials defined in § 2 par. 1 of the Act (including politicians in the highest positions) has no support in the constitutional order. Thus, it is only legitimate to discuss which specific public officials direct online access should apply to (e.g., in connection with stronger protection of local politicians), in what scope data are to be made available directly and in what scope only upon application (e.g., in connection with different degrees of sensitivity of individual data or in relation to third persons), or whether some should not be available to the public at all (in certain countries, the data of judges or state attorneys). However, in view of the essential grounds of the judgment, the Constitutional Court has made this structured and necessarily always very delicate evaluation as regards all public officials defined § 2 par. 1 of the Act completely impossible in future.

III. Conclusion

27. In its statement to the Constitutional Court the government said: "Society has the right to require transparency in the property situations of public officials for the purpose of ensuring effective monitoring, i.e., whether there is a danger that specific public officials, in performing their office, give priority to their private interests to the detriment of public interests. One can justifiably assume, that danger to or even violation of the public interest in this regard will appear precisely through the property situation of a public official, as well as other persons connected with him through property. Public monitoring may also function preventively, in the form of authorization for the public to view the register of declarations."

28. In contrast, the Constitutional Court decided that direct online viewing any data from a declaration of income, assets and liabilities is unconstitutional precisely with members of the government.

29. One can thus ask: If the representatives of the state want to be transparent precisely in the manner that the members of Parliament embodied in the contested Act and the government vehemently defended in the proceeding before the Constitutional Court, should the Constitutional Court, in the system of separation of powers, prevent them from doing so?

Milada Tomková

I join in the dissenting opinion.

Pavel Rychetský

I join in the dissenting opinion of Justice Milada Tomková to Constitutional Court judgment file no. Pl. ÚS 38/17.

Brno, 11 February 2020

Dissenting Opinion of Justice David Uhlíř

I disagree with the reasoning in the judgment of the plenum of the Constitutional Court in this matter (the "judgment") and file a dissenting opinion pursuant to § 14 of the Act on the Constitutional Court. I agree with the derogation verdict of the judgment, but also for different reasons. Thus, my dissenting opinion is a sort of "concurring opinion"; I believe that the Constitutional Court limited itself in its decision making to addressing the various arguments of both groups of petitioning senators, although it had the opportunity to conceive its deliberations more fully, or approach the contested Act from a different point of view.

Whereas the reason for annulling parts of the Act on Conflict of Interests was violation of the right to privacy, specifically the right to self-determination regarding information of the affected persons, I believe that the Act should also have been reviewed in terms of the territorial self-government set forth in Chapter Seven of the Constitution.

I state first that I have certain doubts regarding state intervention in the powers of the higher territorial self-governing units, which are to a considerable degree artificial creations . However, municipalities are natural formations, which in their entirety, form the state. It is difficult to imagine a democratic state without self-governing municipalities, which is one reason why renewal of municipal self-government by the constitutional Act no. 294/1990 Coll. was one of the first steps taken after the renewal of democracy in Czechoslovakia. Municipalities are not a creation of the constitutional framers, municipal self-government is not a gift from above to the citizens, but a proud expression of human community, which the state, through the Constitution, has committed to respect.

The legislature's interference in the right to self-determination regarding information of the leading representatives of the state (deputies, senators, ministers, and other top state representatives) is justifiable on the basis that one of the three powers of the state decided to "reveal its kidneys," the privacy of its own representatives, in order to support public confidence in the independent execution of the state power.

However, if this state power steps over its limits in a vertical direction and steps onto the field of local government (including the smallest village), the interference is difficult to justify. Under Article 101 par. 4 of the Constitution the state may intervene in the affairs of territorial self-governing units only if protection of the law requires it, and only in a manner provided by statute. Insofar as the Constitutional Court did not seriously ask itself the question, protection of which statute really and necessarily requires that every mayor and many members of municipal representative bodies file a declaration about his property, it did not sufficiently fulfil its task. The Act on Conflict of Interests, by itself, is only a means, a description of a method, but it does not define an aim, does not determine what statute here requires state protection from ill-considered actions by local government. It could perhaps be part of the municipal establishment that governs management of municipal property, but it is redundant to seek an answer to a question that, to my regret, neither the Constitutional Court nor the petitioners asked themselves.

In my opinion, in the case of municipalities (I am less certain regarding regions) this question should have been left to be decided by the representative body that independently manages a municipality, and the legislature should only have prepared a legislative framework for a representative body to make a decision that its members will publish their property situations.

David Uhlíř