

Declarations of income and assets; Polish instruments assessment

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Disclosing private interests is considered as a key step in identifying and avoiding conflicts of interest. Consequently, Poland introduced a rigorous system which requires Polish civil servants to disclose prescribed assets, liabilities and debts which are considered as holding a potential for conflicts of interest.

In this presentation we would like to introduce to you Polish system of submitting declarations of income and assets, which functions in Polish public administration. Our aim is to focus especially on regulations concerning public servants working for the local authorities on all three levels (the commune, the district and the region). Nevertheless, the solutions created for the purposes of local authorities are nothing new, as other public servants working for government administration had had similar obligations. For example, also the judges of the public courts as well as debt collectors are obliged to submit the declarations. This is why this issue is not left in emptiness and we will try to draw some general conclusions in reference to these duties.

Members of the civil service are obliged to disclose their private interests as follows:

- *Before employment:* prior to taking up a position, members of the civil service are obliged to submit an asset declaration statement in which they are required to list their real estate ownership (number of houses, apartments) as well as other properties and pecuniary interests. They should also indicate whether they are a member of a management board, supervisory board or audit commission of a company under commercial law, or whether they sit on an executive board of foundations that conduct business activity. They should also provide information on their own business activity and or their involvement in business activity by others.
- *During employment:* civil servants are obliged to submit an annual asset declaration statement by 31 March each year. The declaration includes information on real estate ownership (number of houses, apartments), other properties and pecuniary interests. The declaration should also indicate whether the civil servant is a member of the management board, supervisory board or audit commission of a company under commercial law, or whether they sit on the executive board of a foundation that conducts business activity, or if they conduct business activity on their own or together with other persons.
- *Post public employment:* on the day they leave their position, civil servants are obliged to submit a final asset disclosure statement in which they should list their real estate ownership (number of houses, apartments), other properties and pecuniary interests, membership of the management board, supervisory board or audit commission of a company under commercial law, and whether they sit on a executive board of a foundation that conducts business activity, or they conduct business activity on their own or together with other persons. Up to one year following the end of their tenure, civil servants cannot be employed by, or perform other activities for, a business entity if they took part making official decisions in individual cases concerning the business. Persons with state managerial positions are obliged to obtain the consent of a special commission

responsible to the Prime Minister in order to undertake employment in an entity that was supervised by the former state official.

The *Limitation on Conducting Business Activity by Persons Performing Public Functions Act* established a National Registry of Benefits. Persons who hold state managerial positions as well as local self-government public officials (mayors, deputy mayors, members of executive district/regional boards, secretaries, and treasurers, and their spouses) are obliged to report all presents and benefits they receive and debts they incur to the National Registry of Benefits. Particularly they must submit information on all earnings defined as stemming from all positions and activities subject to remuneration (both in public administration and in private institutions); from work carried out independently, sponsorship of public activities of the functionary, gifts and travel unrelated to public office; all gifts exceeding 50 percent of the minimum monthly wage; and all other benefits exceeding the same value. The register is public and is maintained by the State Election Commission.

The obligation to submit a declaration of income and assets may take different forms. Some professional groups have been fulfilling this obligation for a longer period of time, whereas other have just started doing it recently. In this study we will present mainly the solutions applied on the local government level. However, the phenomenon of property declarations has been already present in Polish legislation for some time. The table below presents the general outline of the legal condition in this respect.

THE SUBJECT SUBMITTING THE DECLARATION	TRANSPARENCY OF THE DECLARATION	LEGAL ACT INTRODUCING THE OBLIGATION	PUNISHMENT FOR NOT SUBMITTING THE DECLARATION
1. Managerial positions in the Civil Service Corps 2. Some of the employees of the Regional Financial Chambers and Independent Appeal Courts ¹ 3. Some of the employees of the state-owned banks, state enterprises, state agencies, 1 person companies being the property of the Treasury.	confidential information	The Act on limitation concerning the freedom of running business activities by persons holding public positions from the 21st of August 1997, (Journal of Laws 1997 No 106, item 679)	PROFESSIONAL RESPONSIBILITY
Members of the Board of a public insurance company	confidential information	The act on organization and functioning of the pension funds from the 28th of August 1997, (Journal of Laws 1997 No 139, item 934)	the supervising authority may inflict a punishment in the amount up to 10 000 PLN on the obliged party !!!
Members of the Parliament Poslowie i Senatorowie	transparent available on the internet website ¹	The act on carrying out the mandate of a member of the parliament from the 9th of May 1996, (Journal of Laws 1996 No	statutory responsibility and losing the right to receive remuneration until the moment of submitting the declaration

¹ In case of the President of the Appeal Court the situation is really odd, as they should submit their property declaration to an authority, which does not exist any more in the Polish public administration system for 7 years.

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		73, item 350)	
Inspectors and employees of the tax control offices being the employees of the civil service	confidential information	The act on the tax control from the 28th of September 1991, (Journal of Laws 1991 No 100, item 442)	PROFESSIONAL RESPONSIBILITY
Police Officers	confidential information	Act on Police from 06.04.1990	PROFESSIONAL RESPONSIBILITY
Court debt collectors	confidential information	The bill on court debt collectors and financial enforcement proceedings from 29 – 08 - 1997 (Journal of Laws 1997 No 133, item 882)	PROFESSIONAL RESPONSIBILITY
Officers and employees of the Border Patrol	confidential information	Act on Border Patrol from 12.10.1990	PROFESSIONAL RESPONSIBILITY
Judges from the public courts	confidential information	Law on the public courts system from 27 – 07 -2001 (Journal of Laws 2001 No 98, item 1070)	DYSCIPLINARY RESPONSIBILITY
Officers of the Customs Service	confidential information	The bill on the Customs Service from 24 – 07 -1999 (Journal of Laws 1999 No 72, item 802)	PROFESSIONAL RESPONSIBILITY
Prosecutors	confidential information	The bill on the office of prosecution from 20 – 06 -1985 (Journal of Laws 1985 No 31, item 138)	DYSCIPLINARY RESPONSIBILITY
Employees of the Revenue Offices and the tax offices being the employees of the civil service	confidential information	The bill on the Revenue Offices and tax offices from 21 – 06 -1996 (Journal of Laws 1996 No 106, item 489)	DYSCIPLINARY RESPONSIBILITY
Judges of the administrative courts	confidential information	Law on the administrative courts system from 25-07-2002 (Journal of Laws 2002 No 153, item 1269)	DYSCIPLINARY RESPONSIBILITY
Judges of the Supreme Court	confidential information	Bill on the Supreme Court from 23-11-2002 (Journal of Laws 2002 No 240, item 2052)	DYSCIPLINARY RESPONSIBILITY
Employees of the local governments ³	confidential information	local governments employees act from 22-03-1990 (Journal of Laws 1990 No 21, item 124)	PROFESSIONAL RESPONSIBILITY
Fire fighters employed at headquarters of the State Fire Brigades	confidential information	The Bill on the State Fire Brigades from 24-08-1991 (Journal of Laws 1991 No 88, item 400)	PROFESSIONAL RESPONSIBILITY

Regular soldier holding a position of a commanding officer of a military unit, a position of a deputy commanding officer of a military unit or a position of an accountant	confidential information	The Bill on the military service of regular soldiers from 11-09-2003 (Journal of Laws 2003 No 179, item 1750	DYSCIPLINARY RESPONSIBILITY
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As we can observe it in the table, the regulations concerning the obligation of submitting the declarations vary significantly depending on a given professional group. In case of some of these groups this obligation is described in detail, in others the provisions of other bills apply respectively, in some cases there is even no reference to the other provisions and this issue is not settled by the law. It seems that this issue requires more clarification and standardization, in order to prevent situations when the legal obligation exists, but there are no efficient tools which allow for its execution.

The most recent modifications in the conflict-of-interest policy intend to bring more transparency to local government and in order to restore public confidence in the operations of local governments. The new amendments to laws governing local administration introduced mandatory asset declarations for public officials and also request information on any family ties to recipients of public spending. The rigorous public disclosure requirements for public servants came to effect in the beginning of 2003 as part of the Government's effort to curb corruption and nepotism. Officials who fail to comply with these new requirements will incur financial penalties or even be removed from office. In addition, local government officials are not allowed to receive any gifts or benefits from parties to decisions in which the official participated in an official capacity. This ban remains in force for three years after the end of the term of office.

Almost all local self-government public officials are obliged to make a disclosure on income and property. This disclosure covers their separate estate and joint property of spouses (with the exception of a particular spouse's property). The declaration includes information about:

- funds, real estate, shares in commercial companies and the purchase of property from the Treasury or from other state legal entity, local government units or their associations or from local government legal entities (the property that was purchased by vendees); information on any business activity and positions at private companies;
- income received from employment or from other commercial activity or occupation stemming from the sources mentioned above;
- personal property with a value exceeding PLN 10,000 (about €2,500);
- pecuniary obligations with a value exceeding PLN 10,000 (about €2,500), including debts and loans as well as contractual obligations.

Now, the case of the local government employees and officers' declarations of income is regulated in detail by the Polish law. When in 1990 the Polish parliament has reactivated local government on the level of commune, nobody expected that only 8 years later another stage of the reform would take place – the establishment of the local government on the district and regional level (powiat and wojewodztwo samorządowe) Many local government officers which have been working on their position from the very beginning, now refer to the period of the first two terms (1990-1998) as a 'romantic era'. They claim that during that period we could actually experience a real manifestation of the home rule. The number of legal regulations was not big enough to cause significant limitations in the field of making decisions by the local authorities. Many issues, which today may seem inappropriate, were left to the local governments' discretion. Polish legislation did not regulate at that time in detail the system prohibiting holding two or

more positions at once or other prohibitions of anti – corruption character. However, the longer the local government existed, the more legal regulations introducing different types of prohibitions were issued by the Polish Parliament.

As far as the issue of property declarations in case of the local government is concerned, in the original version of the bill on the local authorities (bill from the 8th of March 1990) no such obligation was described. This obligation was introduced only in 1998. However, the current legal condition in respect to submitting property declarations at the local government is a result of the changes in the legislation which were introduced in 2003.

During the period between 1998 and 2003 the existing obligation of submitting property declarations was in fact a fiction. You may ask about the reasons to judge this situation so strictly. According to the regulations valid at that time, a councilor was to submit the declaration concerning his or her property to the chairman of the council. The declaration was to include information on the financial and property condition of a given person, financial resources, shares and stocks of companies and information concerning the property being common property in a marriage. The counselor was obliged to submit the declaration within 30 days from taking his seat, 2 months before subsequent elections and every year, up to the 30th of March the declaration describing the condition on the 31st of December the previous year. The reason for this obligation being fictitious is the fact that the content of the declarations was a confidential information. Nobody apart for the counselor himself and the chairman of the council had access to the submitted declaration. A counselor submitted the documents to the chairman and at that time the part of the social factor in the process was over. A regular inhabitant of a given area could not find out what the financial condition of a counselor was before he or she took the seat and could not compare it with the condition after the end of the term. Naturally, the legal provisions included a possibility of making the content of the submitted declaration available to the public. The first possibility was the consent of the counselor himself. The second possibility could take place if the chairman decided that there was a justified situation and even without obtaining the permissions of the counselor, having obtained an opinion of an auditing committee, he or she could make the data from the declaration public. Even if such events did happen, they were only exceptions confirming the rule that in general the content of the property declarations was made secret. Consequently, there were situations where the submitted declarations contained information far from the truth. The counselors wrote in the declarations information that were unserious. For example, in one of the communes a counselor stated that the only movable property he possessed was a canary and a mother-in-law. The lack of regulations making this obligation more precise resulted in a situation where it was not taken seriously. The main reason for it was the fact that there were no serious sanctions for not submitting the declaration. The only consequence for the counselors was not receiving the remuneration, but they still kept their seat. Additionally it should be emphasized that such a situation still takes place in the Polish local government. only starting from the next term of the local governments (Nov. 2006) the counselors who don't submit the property declaration before the closing date will lose their seats. Their seat will expire according to the law. If a mayor (wójt) does not fulfill this obligation the result will be the same.

To sum up the period of 1998-2003, we can find there several important features of the legal regulations in the field of submitting property declarations.

1. the local government act on the level of commune imposed the obligation to submit the declaration of income and assets only on the counselors
2. the content of the submitted declaration was to a large extent not specified
3. there were no real sanctions for not submitting the property declaration

4. the submitted declarations were not available, as they had a clause of confidential information

Generally speaking, due to significant loopholes in the legislation and too little details, the obligation of submitting the property declarations during that period was not treated too seriously.

The changes in this area and these were fundamental changes - took place in 2002. The act from the 23rd of November 2002 changed the regulations concerning submitting the declarations of income at all three levels of the local government in Poland. Since that moment, the submitted declarations were to become a serious tool in the fight with the pathologies of the public life. The most important change was introducing complete openness of the declarations. This change should be considered as highly positive. Naturally, some elements of the declaration are still confidential, but this kind of exclusions are something normal in every democratic system. The information concerning the location of a real estate as well as the address of residence of a person submitting the declaration is not revealed. An important change is also the obligation of publishing the submitted declaration on the website of every office. The central system of access to public information was created via the internet website www.bip.gov.pl With the use of this site we will find the address of every public institution in Poland which has been obliged to maintain its own internet website. In the same way, all the units of the local government have been obliged to publish on their websites copies of the property declarations.

The Polish legislator has also enlarged the group of persons obliged to submit the property declaration. From 2003 the legal condition in this respect is as the following:

THE SUBJECT OBLIGED TO SUBMIT THE DECLARATION	THE SUBJECT ACCEPTING THE DECLARATION	THE RESULT OF NOT SUBMITTING THE PROPERTY DECLARATION
COUNSELOR	The chairman of the council	From Nov. 2006 the mandate expires. Up to this moment the only result of not submitting the declaration was the loss of remuneration while the position was still kept
MAYOR	VOIVODE	
DEPUTY MAYOR	mayor	the loss of remuneration from the day on which the declaration should be submitted to the day of submitting the declaration. The head of a commune os obliged to dismiss the deputy head of a commune not later than 30 day from the day on which the deadline for submitting the declaration or information expired
SECRETARY	mayor	the loss of remuneration from the day on which the declaration should be submitted. The council dismisses the persons from their seats in a form of a resolution not later than 30 days from the day on which the deadline for submitting the declaration expired
TREASURER	mayor	
A PERSON AND A MEMEBER OF A BODY GOVERNING THE COMMUNAL LEGAL PERSON	mayor	the loss of remuneration from the day on which the declaration should be submitted to the day of submitting the declaration.

<p>THE MANAGER OF AN ORGANIZATIONAL UNIT (e.g. a director of a primary school, a commanding officer of the city ward)</p>	<p>mayor</p>	<p>A suitable institution dismisses the persons from their seats not later than 30 days from the day on which the deadline for submitting the declaration expired.</p>
<p>A PERSON MAKING ADMINISTRATIVE DECISIONS ON BEHALF OF THE MAYOR</p>	<p>mayor</p>	<p>the loss of remuneration from the day on which the declaration should be submitted to the day of submitting the declaration. The head of a commune terminates the employment their contract not later than 30 day from the day on which the deadline for submitting the declaration or information expired The termination of the employment contract is equivalent to termination of contract without a notice</p>

The disclosure of income and property, along with a copy of the declaration on income in the preceding tax year and its correction, has to be supplied in two copies. Councilors and mayors have to file the disclosure within 30 days of taking office. The following declarations of income and property have to be supplied by a councilor or a mayor, annually by April 30th concerning the preceding year, and two months before the end of their term. A deputy mayor, a member of an executive board, a secretary, a treasurer, a director of a local government unit, a manager of a local government legal entity, and a person authorized to make administrative decisions file their first declaration within 30 days of taking office or the first day of employment. Subsequent declarations must be filed by April 30 every year, and on the last day of their term or employment. The data in the declaration is checked by the authority where the declaration was filed, and it is also sent to the local office of the State Treasury, which does a similar check. The analysis of the declaration the treasurer's office also takes into account the income earned by the spouse of the official in the preceding tax year. The analysis may compare the figures of the declaration and the attached copy of the deposition on the income earned in a given tax year to previous declarations of income and property with the attached copies of the depositions on the amount of income earned in a tax year. If there is a suspicion that the declaration contains incorrect or outright false information, the official in charge of checking the declaration can request an audit from the director of the fiscal inspection office. If the request is refused, the case can be appealed to the general inspector of fiscal inspection. The official in charge of checking the declarations has to make a report to the adequate community/district or regional council by October 30, listing people who did not file a declaration or filed after the deadline; and outlining any incorrect information contained in the declaration, with detailed explanations. The information included in the declaration on income and property is public, excluding private data, such as the filer's home address and the location of his/her property.

Including false information in the property declaration results in penal responsibility. The provisions of art 233 § 1 of the penal code stipulates for this kind of behaviour a punishment of up to 3 years of imprisonment.

Taken into consideration the fact that the meetings of the resolution-making authorities are open and publicly available to all interested persons, such an obligation may put additional pressure in those who do not fulfill the obligation of submitting the property declarations.

According to some of the representatives of the doctrine, the obligation of submitting the property declarations was introduced carelessly, in a way allowing for evading it easily. It seems that indeed the legal regulation was very casuistic and not free from legislative mistakes. For example, we should include in the declaration information on the amount of financial resources in Polish and foreign currency on our account on the 31st of December of the previous year. In

many cases the persons submitting the declarations inform that they had 0 PLN on their accounts.

This kind of situation took place not only at the level of local government. The Minister of Internal Affairs and Administration informs in his property declaration² that he has 0 PLN and 0 in other currencies. In the next part of the declaration we can read that he has taken a mortgage credit for the purchase of a house in the amount of 290 000 PLN. A similar situation takes place in case of the Minister of Labour and Welfare who not having any cash in Polish or foreign currencies has a credit amounting to over 100 000 PLN. A question appears – are the ministers not telling the truth or do they really have no financial resources on their account at the moment. The example shows that the content of the obligation is not specified. It is relatively easy to answer the question without breaking the law. at the same time it is enough to make sure that on the 31st of December there are indeed to money on the account and the obligation is fully fulfilled.

A similar situation take place in case of the members of parliament. In the Podlaskie region in 2005 15 members of parliament were chosen. 3 persons out of them informed in their declaration that they have 0 PLN and no foreign currencies.

Apart from the obligation of submitting the property declarations the Polish legislator introduced in 2003 two additional obligations:

The first one in the obligation to submit a declaration concerning business activities of the closest persons. The catalogue of persons obliged to submit this kind of declarations as well as the catalogues of persons accepting them is identical to the one concerning the property declarations.

The declaration on business activity concerns the following information:

1. the business activity run by the spouse if such activity is performed on the territory of the commune in which the person obliged to submit the declaration is employed or holds his or her seat.
2. civil legal contracts concluded by the spouses, if:
 - such contracts were concluded with the institutions of the commune, the organizational units of the commune or legal persons of the commune and,
 - they do not concern legal relations resulting from:
 - using the services publicly available
 - or from the legal relations resulting from conditions which are publicly effective

These declarations are not transferred to the Revenue Office, as they are analyzed only by the subject accepting them. The declarations are also open and every interested person may get acquainted with them personally or via the website. The results of not submitting the declaration are identical to those relating to the property declarations.

The second obligation concerns submitting the so-called information. A group of persons obliged to submit the information as well as the subjects accepting it is identical as in the case of the above mentioned declarations. The information is not transferred to the Revenue Office, and the results of not submitting the information and changes are the same as in the case of the declarations mentioned above. the submitted information is also fully open and available to all the interested persons.

² http://www.kprm.gov.pl/8972_14903.htm

The information concerns the following facts:

1. the employment of a spouse 5 during the period of holding the position or employment of a person submitting the information

The information should include employment which took the following forms:

- the employment in an organizational unit of the local government
 - the employment in an association of units of the local government
 - the beginning of work or performing activities for remuneration on other grounds in companies in which at least 50% of shares or stocks is held by the units of local government.
 - the employment should take place on the territory of a given commune
2. the obligation of submitting the information concerns also the change of a position by the spouse employed by the bodies mentioned above.

For example, if a wife of a counselor was employed during the time he held the seat as a teacher at a primary school, he is obliged to inform about this fact. Also, if during this period the position she held changed, the counselor should inform about it. The general principle is that the information about a change should be issued within 30 days from the day the change took place.

The legal regulations described above depict some mechanisms which were supposed to prevent the pathologies in the local government, often having character of corruption. What is the most important is their practical dimension. Are really the obligation fulfilled in reality? The controllers from the Supreme Chamber of Control (NIK) have tried to answer this questions. In 2005 they have prepared a control of the procedure of submitting the property declarations in Poland³. The results of the control were published in January 2006. It is worth to emphasize that the control concerned the declarations submitted by different professional groups, not only the officers of the local government. The aim of the control was evaluation of the fulfillment of the obligation to submit the property declaration by the subject obliged to do so. According to NIK the practice of submitting and analysis of the property declarations does not secure the transparency of the public life. The existing situation according to NIK results in the opinion of the society about lack of honesty and calculation of the persons holding public seats. NIK has also pointed out to the lack of due diligence concerning the analysis of the submitted declarations and lack of consequences for those who did not submit the declarations or did so after the deadline. In case of incorrectness the reaction was not sufficient and not firm enough. According to NIK the standarization of the provisions in the filed of submitting property declarations towards all the professional group is a necessary condition for securing the fulfillment of obligations in this respect. The tables below show the situation referring to the property declarations submitted by the officers of local governments

Region	counselors		Board		Persons authorized to take decisions	
	In time	After the deadline	In time	After the deadline	In time	After the deadline
zachodniopomorskie	-	29	5	-	12	1
lubuskie	-	29	-	5	-	6
pomorskie	29	7	6	1	8	-

³ http://bip.nik.gov.pl/pl/bip/wyniki_kontroli_wstep/inform2006/2006002

kujawsko-pomorskie	33	-	6	-	No data	No data
lubelskie	34	-	3	2	9	1
łódzkie	30	1	5	-	10	-
podlaskie	35 (one person did not submit)	-	5	-	5	-
dolnośląskiego	30	-	5	-	10	-
mazowieckie	51	6	3	2	21	3
świętokrzyskie	31	2	5	-	38	1
wielkopolskie	34	10	Appointed on the 10th of Oct		3	-
śląskie	48	8	3	-	4	1
podkarpackie	30	-	5	-	4	-
opolskie	30	-	5	-	3	-
warmińsko-mazurskie	27	3	6	-	9	2

Declaration of income and assets	number of local government employees			
	obliged to submit the declaration	those who fulfilled the obligation within the legal deadline	those who submitted the declaration after the legal deadline	those who failed to fulfill the obligation to submit the declaration
2003	1089 (98,4%)	1073	13	3
2004	1128 (99,6%)	1115	11	2
2003	1168 (97,3%)	1136	27	5*
2004	1155 (97,9%)	1131	14	10**

* concerns the counselors from 5 units of the local government

* concerns the counselors from 8 units of the local government

to the table:

24 local government employees did not fulfill the obligation to submit the property declaration

towards 5 out of 24 the following sanctions were applied:

4 – the deduction from remuneration

1 – dismissal from the position of a manager of a unit of a commune and termination of an employment contract

41 counselors submitted the declarations after the deadline

28 had deducted remunerations for the period of delay

5 out of those who did not submit the declarations gave up the remuneration (2003)

- 4 out of those 5 gave up their seat (2004)

- 1 seat expired due to the verdict of a court who found a counselor guilty of an intentional crime (2004)

Nepotism, cronyism and the conflict of interest would be less pervasive if efficient mechanisms of control existed. But even though a law has been introduced that requires politicians and public officials to declare their property and restricts their right to economic activity it is too limited and lacks effective implementation instruments. Local-government public officials are obliged to declare their own property as well as the property owned jointly with their spouse. However, if the official's spouse owns assets that are not part of their common property, they do not have to be declared. Neither does the law say anything about the property owned by other members of the official's close family - parents, children and siblings. (When proposed in 1995 the law included requirement of family property disclosure but this 'strong' version did not get enough support in the Parliament.) This obviously leaves a lot of room for seeking and hiding rent.