ReSPA

Regional School
of Public Administration

Comparative Study

Conflicts of Interest in Practice

ReSPA

Dragan Djuric
Programme Manager

Authors

National authors

Albania
Alma Osmanaj, anti-corruption expert
(contributing expert: Helena Papa, Lawyer Inspector, HIDAACI)

Bosnia and Herzegovina
Emir Djikic, anti-corruption expert

Kosovo*
Fadil Mitari, anti-corruption expert
(contributing expert: Hasan Preteni, Director, Anti Corruption Agency)

Macedonia
Dr. Slagjana Taseva, anti-corruption expert

Montenegro
Boban Saranovic, anti-corruption expert

Serbia
Nemanja Nenadic, anti-corruption expert

International author
Dr. Tilman Hoppe, LL.M., anti-corruption expert

ReSPA is a joint Initiative of European Union and the Western Balkan countries working towards fostering and strengthening the regional cooperation in the field of public administration among its Member States. It seeks to offer excellent innovative and creative training events, networking activities, capacity building and consulting services to ensure that the shared values of respect, tolerance, collaboration and integration are reaffirmed and implemented throughout the public administrations in the region.

CONTACT
Regional School of Public Administration
Branelovica
P.O. Box 31, 81410
Danilovgrad, Montenegro
Telephone: +382 (0)20 817 200
Internet: www.respaweb.eu
E-mail: respa-info@respaweb.eu

Foreword

By Mr. Suad Music
ReSPA Director

ReSPA has been actively working in the area of ethics and integrity since 2012 and has established a successful network regarding this topic. This network is composed of the heads of anti-corruption agencies and their deputies (or similar bodies) of the Western Balkans countries and Kosovo* who are meeting regularly in different places under the supervision and leadership of ReSPA.

ReSPA successfully drafted and published the comparative study "Income and Asset Declarations in Practice" in 2013.[1] It provided the basis for achieving a relevant and substantial impact with comparatively few resources: reform measures in several countries are under way; an international standard following the study is serving as a benchmark for future monitoring of reforms in the region and beyond (and which already indicates some conflicts of interest aspects); and an adopted template for an international agreement facilitating data exchange in the region.

Dovetailing the success of this comparative study on asset declarations, a comparative study on conflicts of interest will be the trigger for supporting in-country reforms in the region. Conflicts of interest have repeatedly been an issue of concern for the region in the recent monitoring documents of the OECD/SIGMA, EU, and the Council of Europe's Group of States against Corruption (GRECO). In addition, the OECD/SIGMA Principles of Public Administration count "regulation of incompatibilities and conflicts of interest" among integrity measures in public service (page 54). Thus, further improvement of regulations and the setting up of verification mechanisms are on the strategic or political agenda in the region.

ReSPA is ready to contribute to these reform efforts with this study, and with the subsequent support and monitoring of how its recommendations are implemented.

The success of the finalisation of the study would have been difficult to achieve without the support of all authors and researchers involved in this study. Therefore, I would like to express my gratitude to all regional and international experts, who have contributed with their inputs to this activity.

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* This designation is without prejudice to positions on status, and it is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

[1] ReSPA, Asset Declarations in Practice – A regional study of Western Balkan countries, 2013, 219 pages, http://www.respaweb.eu/download/doc/Comparative+study+-+Income+and+asset+declarations+in+practice+-+web.pdf/485ce800f0a3f55719e51002d0f75b5e.pdf.

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Introduction

By Dr. Tilman Hoppe

"The prevention of conflict of interest becomes one of the most important keys of corruption prevention" – with these words the Council of Europe summarised the prominent role of conflicts of interest in the area of fighting corruption.[2]

Numerous publications and resources in anti-corruption literature deal specifically with conflicts of interest, for example:

- Council of Europe, Ethics for the Prevention of Corruption in Turkey, Academic Research Report, Conflict of Interest, Prof. Dr. Ömer Faruk Gençkaya, May 2009[3]
- OECD, Managing Conflict of Interest in the Public Sector, A Toolkit, 2005[4]
- OECD, Conflict of Interest Policies and Practices in Nine EU Member States, A Comparative Review, 2006[5]
- U4, Sitting on the fence: Conflicts of interest and how to regulate them, Quentin Reed, U4 ISSUE 2008:6[6]
- World Bank, Public Accountability Mechanisms (PAM): assessments of countries' in-law and in-practice efforts with regard to conflict of interest restrictions[7]

Useful statistical overviews on the implementation of conflicts of interest are contained in the following recent publication:

- Regional Anti-Corruption Initiative (RAI), Rules and experiences on integrity issues (2012).[8]

However, none of the above publications addresses real-life cases and challenges of conflicts of interest.

The reader of this study can benefit from concrete cases illustrating how conflicts of interest appear in the real lives of public officials. Public officials either intentionally exploit such situations, or they

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[2] Council of Europe, Conference Octopus Interface about Corruption and Democracy, Strasbourg, 20–21 Nov. 2006, cited from UNODC 2007, Presentation, www.oecd.org/site/adboecdanti-corruptioninitiative/39368014.pdf .

[3] http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/TYEC/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf.

[4] http://www.oecd.org/gov/ethics/49107986.pdf.

[5] http://www.oecd.org/gov/ethics/managingconflictofinterestinthepublicservice.htm#toolkit.

[6] http://www.u4.no/publications/sitting-on-the-fence-conflicts-of-interest-and-how-to-regulate-them/.

[7] http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/0,,contentMDK:23352107~pagePK:148956~piPK:216618~theSitePK:286305,00.html.

[8] http://www.rai-see.org/doc/Study-Rules_and_experiences_on_integrity_issues-February_2012.pdf.

are often involuntarily confronted by such conflicts in the course of their work, and are then faced with the dilemma of multiple choices.

The real-life case approach of this comparative study allows for recommendations for reform which are not based on abstract principles, but draw on cases and ethical dilemmas as they appear in the region. As there is no such compilation of real-life cases in the area of conflicts of interest in anti-corruption literature, the added value and impact of this study may extend well beyond the ReSPA region.

1. Conflicts of interest framework

1.1 Overview

By Dr. Tilman Hoppe

The comparison of all six countries shows the following **similarities**:

- The legislators of many countries define conflicts of interest **separately** in the statutes of each profession: civil servants, ministers, independent agencies, local governments, parliament, and the judiciary each have their own rules on conflict of interest. An example from the European Union of such an approach is Germany. At the same time, many countries have an all-encompassing conflict of interest law for all three branches of power. An example for this approach would be Slovenia. All ReSPA members have one relatively **all-encompassing** conflict of interest law. It applies to high-level civil servants and elected public officials, and often includes judges and parliamentarians as well as ordinary civil servants.
- All the countries also have a **central oversight body**: Commission(s) (Bosnia), the Anti-Corruption Agency (Kosovo*), State Commission for Preventing Corruption (Macedonia), Agency for the Prevention of Corruption (Montenegro), and the Anti-Corruption Agency (Serbia).
- There is a **general definition** of conflict of interest, an obligation to disclose any ad-hoc interest, and an obligation for recusal.
- Public officials are also obliged to regularly disclose their **financial and personal interests** which might give cause to ad-hoc conflicts of interest or to incompatibilities.

The six ReSPA members **differ** when it comes in particular to the following issues:

- The simplicity of conflict of interest regulations: some countries have easily understandable **definitions** and procedures, whereas others set comprehensive conditions and make many distinctions (e.g. Albania).
- Ordinary **civil servants** are sometimes not subject to the conflict of interest law (e.g. Serbia), but are subject to special rules under civil service and administrative procedure law.
- Some countries lack **restrictions** on one or several of the following issues for some categories of public officials:
    - Holding government contracts;
    - Accepting gifts;
    - Outside employment;
    - Private sector -employment related to the previous field of work after leaving office is forbidden for public officials in most countries, with one exception (Macedonia).

- In particular for Ministers and Members of Parliament, a body providing **guidance** on conflicts of interest is missing in several countries.
- Two countries have a regulation on **sponsoring** (Albania and Montenegro), of which only Montenegro requires public disclosure of donations.
- **Lobbying** is only regulated in Montenegro.
- The degree to which the oversight body **actively monitors** data in order to detect cases where public officials make decisions without disclosing their conflict of interest varies among members. This concerns in particular procurement decisions, where Kosovo's* Anti-Corruption Agency conducts checks to detect violations.
- The amount and degree of **statistical data** available on conflicts of interest varies among the members.

Obviously, there are many differences in the extent of conflict of interest restrictions and technicalities of procedures. The following chart gives a detailed overview on these issues. It is based on information from the World Bank,[9] updated as of 2015 (in case of Montenegro, as of the new Law on the Prevention of Corruption of December 2014, in force as of January 2016). The fields indicating differences of particular interest to the reader are highlighted in grey:

[9] https://www.agidata.org/pam/Map.aspx.

	Country	AL	BiH	KO*	MK	ME	RS
1.	**Legal framework**						
2.	Laws regulating restrictions on conflicts of interest	Yes	Yes	Yes	Yes	Yes	Yes
3.	Constitutional requirement to avoid specified conflict(s) of interest	Yes	No	Yes	Yes	Yes	Yes
4.	Code of Conduct/Ethics	Yes	Yes	Yes	Yes	Yes	Yes
5.	**Public Officials Coverage**						
6.	Head(s) of State are obligated to avoid specified conflict(s) of interest	Yes	Yes	Yes	Yes	Yes	Yes
7.	Ministers/Cabinet members are obligated to avoid specified conflict(s) of interest	Yes	Yes	Yes	Yes	Yes	Yes
8.	Members of Parliament (MPs) are obligated to avoid specified conflict(s) of interest	Yes	Yes	Yes	Yes	Yes	Yes
9.	Civil Servants are obligated to avoid specified conflict(s) of interest	Yes	Yes	Yes	Yes	Yes	Yes
10.	Spouses and children are obligated to avoid specified conflict(s) of interest	Yes	Yes	Yes	Yes	Yes	No
11.	**Restrictions**						
12.	Head(s) of State						
13.	General restrictions on conflicts of interest	Yes	Yes	Yes	Yes	Yes	Yes
14.	Income and Assets						
15.	Accepting gifts	Yes	Yes	Yes	Yes	Yes	Yes
16.	Private firm ownership and/or stock holdings	Yes	Yes	Yes	Yes	Yes	Yes
17.	Ownership of state-owned enterprises (SOE)	Yes	Yes	Yes	Yes	Yes	Yes
18.	Business activities						
19.	Holding government contracts	Yes	Yes	Yes	No	Yes	Yes
20.	Board member, adviser, or company officer of private firm	Yes	Yes	Yes	Yes	Yes	Yes

	Country	AL	BiH	KO*	MK	ME	RS
21.	NGO or labour union membership	Yes	No	No	Yes	Yes	No
22.	Outside employment	Yes	Yes	Yes	Yes	Yes	Yes
23.	Post-employment	Yes	Yes	Yes	Yes	Yes	Yes
24.	Public office mandate						
25.	Simultaneously holding policy-making position and policy-executing position	Yes	Yes	Yes	Yes	Yes	Yes
26.	Simultaneously holding two distinct policy-making positions	Yes	Yes	Yes	Yes	Yes	Yes
27.	Participating in official decision-making processes that affect private interests	Yes	Yes	Yes	No	No	No
28.	Assisting family or friends in obtaining employment in public sector	Yes	Yes	Yes	Yes	No	Yes
29.	Ministers/Cabinet members						
30.	General restrictions on conflicts of interest	Yes	Yes	Yes	Yes	Yes	Yes
31.	Income and Assets						
32.	Accepting gifts	Yes	Yes	Yes	Yes	Yes	Yes
33.	Private firm ownership and/or stock holdings	Yes	Yes	Yes	Yes	Yes	Yes
34.	Ownership of state-owned enterprises (SOE)	Yes	Yes	Yes	Yes	Yes	Yes
35.	Business activities						
36.	Holding government contracts	Yes	Yes	Yes	No	Yes	Yes
37.	Board member, adviser, or company officer of private firm	Yes	Yes	Yes	Yes	Yes	Yes
38.	NGO or labour union membership	Yes	No	No	Yes	Yes	No
39.	Outside employment	Yes	Yes	No	Yes	Yes	Yes
40.	Post-employment	Yes	Yes	No	Yes	Yes	Yes
41.	Public office mandate						

	Country	AL	BiH	KO*	MK	ME	RS
42.	Simultaneously holding policy-making position and policy-executing position	Yes	Yes	Yes	Yes	Yes	Yes
43.	Simultaneously holding two distinct policy-making positions	Yes	Yes	Yes	Yes	Yes	Yes
44.	Participating in official decision-making processes that affect private interests	Yes	Yes	Yes	No	Yes	No
45.	Assisting family or friends in obtaining employment in the public sector	Yes	No	Yes	Yes	No	Yes
46.	Members of Parliament (MPs)						
47.	General restrictions on conflicts of interest	Yes	Yes	Yes	Yes	Yes	Yes
48.	Income and Assets						
49.	Accepting gifts	Yes	Yes	Yes	Yes	Yes	Yes
50.	Private firm ownership and/or stock holdings	Yes	Yes	Yes	Yes	Yes	Yes
51.	Ownership of state-owned enterprises (SOE)	Yes	Yes	Yes	Yes	Yes	Yes
52.	Business activities						
53.	Holding government contracts	Yes	Yes	Yes	No	Yes	Yes
54.	Board member, adviser, or company officer of private firm	Yes	Yes	Yes	Yes	Yes	Yes
55.	NGO or labour union membership	Yes	No	No	Yes	Yes	No
56.	Outside employment	Yes	Yes	No	No	Yes	Yes
57.	Post-employment	Yes	Yes	No	Yes	Yes	No
58.	Public office mandate						
59.	Simultaneously holding policy-making position and policy-executing position	Yes	Yes	Yes	Yes	Yes	Yes
60.	Simultaneously holding two distinct policy-making positions	Yes	Yes	Yes	Yes	Yes	Yes
61.	Participating in official decision-making processes that affect private interests	Yes	Yes	Yes	Yes	Yes	No
62.	Assisting family or friends in obtaining employment in public sector	Yes	Yes	Yes	Yes	No	Yes

	Country	AL	BiH	KO*	MK	ME	RS
63.	Civil servants						
64.	General restrictions on conflict of interest	Yes	Yes	Yes	Yes	Yes	Yes
65.	Income and Assets						
66.	Accepting gifts	Yes	No	Yes	Yes	Yes	Yes
67.	Private firm ownership and/or stock holdings	Yes	No	Yes	Yes	Yes	Yes
68.	Ownership of state-owned enterprises (SOE)	Yes	No	Yes	Yes	Yes	Yes
69.	Business activities						
70.	Holding government contracts	Yes	No	Yes	No	Yes	Yes
71.	Board member, adviser, or company officer of private firm	Yes	Yes	Yes	Yes	Yes	Yes
72.	NGO or labour union membership	Yes	No	No	Yes	No	No
73.	Outside employment	Yes	No	No	No	Yes	Yes
74.	Post-employment	Yes	Yes	No	Yes	Yes	Yes
75.	Public office mandate						
76.	Simultaneously holding policy-making position and policy-executing position	Yes	Yes	Yes	No	No	No
77.	Participating in official decision-making processes that affect private interests	Yes	No	Yes	Yes	Yes	No
78.	Assisting family or friends in obtaining employment in public sector	Yes	No	Yes	Yes	No	Yes
79.	Spouses and children						
80.	Income and Assets						
81.	Accepting gifts	Yes	Yes	Yes	No	Yes	Yes
82.	Private firm ownership and/or stock holdings	Yes	Yes	Yes	No	No	No
83.	Ownership of state-owned enterprises (SOE)	Yes	No	Yes	No	No	No

	Country	AL	BiH	KO*	MK	ME	RS
84.	Business activities						
85.	Holding government contracts	Yes	No	Yes	No	No	No
86.	Board member, adviser, or company officer of private firm	Yes	No	Yes	No	No	No
87.	NGO or labour union membership	Yes	No	No	No	No	No
88.	Outside employment	Yes	No	No	No	No	No
89.	Post-employment	Yes	No	No	No	No	No
90.	(Lines 90–94 “Public office mandate” of family members, as included in the original World Bank table are omitted in this table, as their content is not relevant for this study.)						
95.	**Sanctions**						
96.	Head(s) of State						
97.	Fines are stipulated for violations of COI regulations restricting behaviour	Yes	Yes	Yes	No	Yes	Yes
98.	Administrative sanctions are stipulated for violations of COI regulations restricting behaviour	Yes	Yes	Yes	Yes	Yes	Yes
99.	Penal sanctions are stipulated for violations of COI regulations restricting behaviour	No	No	No	No	No	No
100.	Ministers/Cabinet members						
101.	Fines are stipulated for violations of COI regulations restricting behaviour	Yes	Yes	Yes	No	Yes	Yes
102.	Administrative sanctions are stipulated for violations of COI regulations restricting behaviour	Yes	Yes	Yes	Yes	Yes	Yes
103.	Penal sanctions are stipulated for violations of COI regulations restricting behaviour	No	No	Yes	No	No	No
104.	Members of Parliament (MPs)						
105.	Fines are stipulated for violations of COI regulations restricting behaviour	Yes	Yes	Yes	No	Yes	Yes
106.	Administrative sanctions are stipulated for violations of COI regulations restricting behaviour	Yes	Yes	Yes	Yes	Yes	Yes
107.	Penal sanctions are stipulated for violations of COI regulations restricting behaviour	No	No	No	No	No	No
108.	Civil servants						

	Country	AL	BiH	KO*	MK	ME	RS
109.	Fines are stipulated for violations of COI regulations restricting behaviour	Yes	Yes	Yes	No	Yes	Yes
110.	Administrative sanctions are stipulated for violations of COI regulations restricting behaviour	Yes	Yes	Yes	Yes	Yes	Yes
111.	Penal sanctions are stipulated for violations of COI regulations restricting behaviour	No	No	Yes	No	No	No
112.	**Monitoring and Oversight**						
113.	Head(s) of State						
114.	Enforcement body specified	Yes	Yes	Yes	Yes	Yes	Yes
115.	Individual or agency specified for providing guidance	Yes	No	Yes	No	No	No
116.	Process for resolving conflicts of interest	Yes	No	Yes	Yes	Yes	No
117.	Ministers/Cabinet members						
118.	Enforcement body specified	Yes	Yes	Yes	Yes	Yes	Yes
119.	Individual or agency specified for providing guidance	Yes	No	Yes	No	No	No
120.	Process for resolving conflicts of interest	Yes	No	Yes	Yes	Yes	No
121.	Members of Parliament (MPs)						
122.	Enforcement body specified	Yes	Yes	Yes	Yes	Yes	Yes
123.	Individual or agency specified for providing guidance	Yes	No	Yes	No	No	No
124.	Process for resolving conflicts of interest	Yes	Yes	Yes	Yes	Yes	No
125.	Civil servants						
126.	Enforcement body specified	Yes	Yes	Yes	Yes	Yes	No
127.	Individual or agency specified for providing guidance	Yes	No	Yes	No	Yes	No
128.	Process for resolving conflicts of interest	Yes	Yes	Yes	Yes	Yes	No

1.2 Albania

By Alma Osmanaj, with contributing expert Helena Papa

Regulatory basis and definition

The system of conflicts of interest in the Republic of Albania is defined, regulated and implemented by a number of different acts, stakeholders and public institutions. On the one hand it could be argued that the phenomenon of conflict of interest is regulated in a fragmented manner. This includes acts of different positions, importance and weights in the hierarchical pyramid of norms. According to the level of importance, it should be mentioned that provisions regarding incompatibilities of public functions, which is one type of conflict of interest, are stipulated in the Constitution of Albania. Furthermore, several acts such as the Codes of Administrative, Civil and Criminal Procedures, or the Law on Civil Servants or the Law on the Ombudsman, etc. also contain specific provisions on this issue. All the aforementioned provisions in the constitution and laws preceded the special Law on the Prevention of Conflicts of Interest that was adopted only 10 years ago.

On the other hand, it could be argued that by adopting the Law on the Prevention of Conflicts of Interest (LPCI) as the central piece of legislation, a unified regulation of conflicts of interest is ensured in the Republic of Albania. Thus, with some exceptions, the LPCI regulates in detail all types of conflicts and does so for the largest categories of public officials and/or elected individuals. Moreover, with the adoption of the LPCI, the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest[10] (HIDAACI) is responsible for prevention of conflicts of interest as a central institution. The HIDAACI was first set up for the implementation of the Law on the Declaration and Audit of Assets, financial obligations of elected persons and certain public officials No. 9049, dated 7 April 2003 and later on its powers were extended to the prevention of conflicts of interest.

This second mission conferred on the HIDAACI, in relation to the implementation of the Law on the Prevention of Conflicts of Interest in the exercise of public functions No. 9367, dated 7 April 2005,as amended[11], is to guarantee impartial and transparent decision making in the best possible interest of the public and to guarantee trust in public institutions through preventing conflicts between the public interest and the private interests of an official in the exercising of his functions.

Thus this study will present a two-fold approach. It will offer an overview of the legal and institutional framework but I will also combine the analysis of legal institutions with practical cases showing the challenges in relation to its implementation.

a. Officials and decision making

The Law on the Prevention of Conflicts of Interest has developed in an extensive and detailed way the concept of conflicts of interest between the private interest of an official and his official duty. Based on these elements, it is crucial to determine whether a causal link exists between the private interest (as a cause) and the incorrect way of exercising public functions (as a consequence). In

[10] At that time the High Inspectorate for Declaration and Audit of Assets (HIDAA) http://www.hidaa.gov.al/?lang=en.

[11] As amended with Law no.9475, dated 9 February 2006, with Law 9529, dated 11 May 2006, with Law no.86, dated 18.09.2012, with Law no.44, dated 24.04.2014.

general terms, the subjects with a duty to implement this law, as defined in article 4 of the latter, are: the officials, persons related to them, and all public institutions.

All these categories are regulated by the LPCI in a proportionate and differentiated manner, in accordance with the particular stage of their involvement in the decision-making process and taking into account the relevance of their functions. Thus different prohibitions and restrictions in relation to private interests are foreseen for high-level officials (article 33) or elected persons (article 28) and persons related to them (articles 24 and 35) than those foreseen for low- and medium-ranking officials. In addition, at the institutional level, the LPCI stipulates the setting up of responsible authorities in each public entity, in charge of taking all necessary measures to prevent, manage and resolve conflicts of interest among the officials working under these institutions.

According to the LPCI, the definition of an official[12] requires that two preliminary conditions are met: an official is a person who holds a public function and at the same time has fundamental and determined competencies in relation to the decision-making process of an act issued. In addition, the LPCI assesses the position of the official in both a static (position-oriented) and dynamic (task-oriented) way.

Under article 4 of the law, the activity of an official might be related to case-by-case decision making which places him in a dynamic position. Therefore, even if the official is the holder of a low-level management position, he might be exposed, even if only in a single instant or action, to taking fundamental and determined decisions in the issuing of an act.

Under the same article, based on the fact that an official is someone who holds a specific public position such as in a state institution at a local or central level, etc. (article 4 item 1(c)), the holding of this function makes him automatically accountable in relation to this law, regardless of whether the person is involved or not in a particular decision-making process. Therefore, obligations and specific restrictions are stipulated for this large category of officials (and related persons). In that regard, the position of the official is perceived as static.

b. Determinative competence in decision making for an act and the preliminary stages of the decision-making process

The “performance of duties and responsibilities in a correct [or] incorrect way” is defined by the aforementioned article 3. The aim is to provide clear indications on how to assess whether the official’s performance has been affected by any private interest. However, the decision-making process is not detailed by the LPCI but by the Code of Administrative Procedures. The LPCI regulates only those cases where decision making is affected by a situation of conflict of interest and not the decision-making process itself. According to the LPCI, the decision-making process for issuing an act is defined based on the following elements/stages:

a) The last stage of the decision-making process during which the final content of the act is decided;
b) The decision making for an act is also defined by the preliminary stages of the decision-making process according to point “a” of this paragraph, which are fundamentally important and determinative for the final content of the act;
c) The official has fundamental and definitive competency for any act if his participation in, effect on or position in the decision making for this act, according to points “a” or “b” of this paragraph, determine the content of the act.

[12] Article 3 item 7 of the LPCI.

The determinative competence for issuing an act is a crucial element for the assessment of the existence of a conflict of interest in the decision making of an official and this is regardless of his position in the hierarchy of the institution (article 4 item 2 (c)). Therefore, pursuant to the HIDAA's Guideline No. 239 of 2006, "determinative competence" is assessed as deriving from:

- *A ruling, proposing, advising, managing or supporting role;*
- *The possession of information; or*
- *For specific reasons defined in the internal regulations of every public institution.*

However, the aforementioned sources are not exhaustive ones. Thus for a comprehensive assessment of facts and circumstances that have contributed to the issuance of the act, other sources may be relevant. In addition, in order to identify whether a conflict of interest exists, the LPCI (in article 4 item 2 (b)) takes into consideration not only the last stage (article 4 item 2 (a)) but also the preliminary stages of making a decision. For that purpose comment No. 3 of the HIDAA's guideline document[13] of 2006 defines in a non-exhaustive way, the following stages:

- *Drafting of project acts by the official or officials and their submission to the responsible body for decision making;*
- *Providing comments, opinions, suggestions or any other documented contribution concerning this draft act from other officials, inside or outside the institution;*
- *Including or providing comments, opinions, suggestions or any other documented contributions from any official as a result of requests, claims or information to interested parties concerning this draft;*
- *Including or providing comments, opinions, suggestions or any other documented contribution of any official with authority to finally decide on the act;*
- *Including any prior, intermediary and/or auxiliary documents for making a decision on an act or contract that mainly relates to organisation, costs, revenues, strategies, human resources, functions, duties and administrative responsibilities, without which the final content of the draft act or contract, as a whole, could not be decided on or supported.*

Moreover, public institutions are the bodies responsible for regulating, in practical terms and according to their field of activity, the following concepts in their respective internal regulations: the determinative competence, and the preliminary stages in making a decision. Thus, the officials, under their institutional framework, are to be made aware of the circumstances under which they may be in a conflict of interest during a decision-making process and how to avoid and resolve it if such a situation arises.

Definitions and types of conflicts of interests

A conflict of interest is defined by article 3 of the LPCI as:

"*a situation of conflict between the public duty and the private interests of an official, in which he has direct or indirect private interests that affect, might affect or seem to affect the performance, in an incorrect way, of his public responsibilities and duties.*"

[13] Explanatory and training Manual on the Prevention of Conflicts of Interest, issued on December 2006.

All types and subtypes of conflicts of interest are further precisely defined by the LPCI. The conflict of interest defined in paragraph 1 of article 3 includes several other definitions of the different forms in which its can appear. However, there are two main types of conflicts of interest – case-by-case and continued conflicts of interest:

- *A "case-by-case" conflict of interest is a situation in which a conflict of interest appears in taking a particular decision or in a particular case;*
- *A "continued" conflict of interest is a situation in which a conflict of interest might appear repeatedly and/or often in the future.*

The private interests of an official, as defined by article 5 of LPCI, are those interests that conform with, are contained in, are based on or come from:

- *Property rights and obligations of any kind;*
- *Any other juridical civil relationship;*
- *Gifts, promises, favours, preferential treatment;*
- *Possible negotiations for employment in the future by the official during the exercising of his function, or negotiations for any other kind of relationship with a private interest for the official after leaving the duty performed by him during the exercising of his duty;*
- *Engagements in private activity for the purpose of profit or any kind of activity that creates income, as well as engagements in profit-making and non-profit organisations, syndicates or professional, political or state organisations or any other organisation;*
- *Relations on the basis of: family or co-habiting; the community; ethnicity; religion; recognised relationships of friendship or enmity;*
- *Prior engagements from which the previously mentioned interests have arisen or arise.*

a. Case-by-case conflict of interest

A case-by-case conflict of interest is related to a specific decision-making process and as such it may be manifested in three different ways, which are as follows:

- An "actual" conflict of interest is a situation in which the private interests of an official affect, have affected or might affect the performance of his official duties and responsibilities in an inappropriate way;
- An "apparent" conflict of interest is a situation in which the private interests of an official seem, on the face of it or by their nature, as if they have affected, affect or might affect the performance of his official duties and responsibilities in an inappropriate way, but, in fact, the effect has not occurred, is not occurring or cannot occur;
- A "potential" conflict of interests is a situation in which the private interests of an official might in the future cause an actual or apparent conflict of interest, if the official were to be given certain duties or responsibilities.

The difference between an "actual" conflict of interest and an "apparent" (or perceived) and "potential" one is that the actual one is a concrete conflict and as such it should be declared and resolved by the official him/herself or by his/her superior. An apparent conflict of interest is punishable only if the official has committed, in addition, a procedural violation which transforms the apparent (or perceived) conflict into an actual one (for example, a public official might be dealing with a distant relative and thus be in a perceived conflict of interest; however, as soon as the public official breaches procedural rules in favour of the relative, the perceived conflict of interest becomes an actual conflict of interest). The state of "potential conflict of interest" is foreseen as a warning for the official or the public authority, aimed at reminding them to perform

their duties with due diligence and to bear in mind that the potential for a conflict of interest is always present in certain sectors or the making of certain decisions.

Chapter 3 of the LPCI raises some specific issues of "case-by-case" conflicts of interest which are also defined as the main restrictions/prohibitions for an official. The three main prohibitions relate to:

1. Entering into contracts with state institutions as a party (article 21);
2. Receiving income for performing a particular function (article 22); and
3. Receiving gifts, favours, promises or preferential treatment (article 23).

The first two prohibitions also apply to other persons related to the official. This includes: the spouse, cohabitant, adult children and the parents of the official and those of the spouse and cohabitant (article 24).

The third prohibition is not connected to an exhaustive range of related persons (as stipulated in article 24) but includes any person that offers or gives items such as gifts, favours, promises or preferential treatment, with the exception of protocol gifts, which are allowed. Thus, the offering or the receiving of the aforementioned items in connection with the exercising of public duty, regardless of who is offering or giving these items and whether it is done directly to the official or through an intermediary, is prohibited. However, the expression "for himself **or any other person**" is missing in article 23. Thus it seems that the LPCI does not explicitly exclude gifts or any other form of favour provided to others (family members, relatives, etc.) as a prohibition for the official.

Entering into a contract with state institutions as a party is another specific prohibition stipulated by article 21 of the LPCI. The key word in this prohibition is "contract" and this due to the great importance of such decisions within public authorities. The conclusion of these types of contracts (with state institutions) involves taxpayers' money and thus these decisions should not be negatively affected by the (void or voidable) interference of the private interests of the officials involved. The principle of good administration requires careful scrutiny of both the officials involved in the conclusion of the aforementioned contract, as well as of the specific facts and circumstances on a case-by-case basis.

According to some experts, as foreseen in the Manual on Conflicts of Interest[14], the prohibition of article 21 of the LPCI is divided into prohibitions of a "relative and absolute nature". On one hand, a prohibition of an absolute nature is only related to the function of the official. Namely, if the official holds any of the functions stipulated in points 1, 2 and 6 of this article, regardless of his competence in the making of a particular decision, there is a strict prohibition against entering into a contract with a state institution. On the other hand, a prohibition of a relative nature is related to a particular instance of decision making. Thus, pursuant to item 3 of article 21, any official involved in a contract in relation to a state institution should take the necessary measures to avoid any situation of conflict of interest by declaring it and withdrawing from the decision-making process in order to resolve the conflict.

However, two conditions should be met in a cumulative way in order for this clause to be activated. The public official should have determinative competence to issue the contract and one or more of his private interests need to be those stipulated in article 37 of the Code of Administrative Procedures and/or article 709 of the Civil Code, or else he must have an interest specified in points 1 or 2 of this article.

[14] Explanatory Manual on Conflicts of Interest issued in 2006, p.21, http://www.osce.org/eea/25013?download=true.

In addition, the prohibition foreseen in article 22 of the LPCI, on “Receiving income from performing a particular function” focuses on officials working or representing a state authority and who have a determinative competence or a special role in the decision-making process. Thus paragraphs 1 and 2 of this article stipulate as follows:

1. *It is prohibited for any official to own, in an active manner, shares or parts of capital, or any other kind of benefit that does not come from passive ownership, from commercial companies that have been exempted from or have received reductions in customs or tax obligations, or when these companies exercise activity in free zones, if the official has fundamental and definitive competency in granting any of the aforementioned treatments to the company.*

2. *An official who is the representative of a public institution in the ownership of shares or parts of the capital of commercial companies, during the exercising of this function, is prohibited from:*

    a) *receiving, directly or indirectly with the intermediation of third parties, any financial benefit, including the creation of a future financial resource, that is related to or gained because of his duty as a representative;*
    b) *accepting in his favour gifts or parts of the capital of the company, its members or bodies;*
    c) *purchasing parts of the capital, shares or assets of these companies;*
    ç) *direct or indirect benefits from the suppliers or clients of these companies.*

b. Continued conflict of interest

As previously mentioned, a continued conflict of interest is defined as a situation in which a conflict of interest might appear repeatedly and/or often in the future. This can be manifested in two classical ways: as an apparent conflict of interest or a potential one.

In general terms this type of conflict should be understood as the incompatibility between the public function and the official’s private interest. The difference between the case-by-case conflict of interest and the continued one resides in the fact that, whereas in the first case the role of the official in making a particular decision is assessed against his private interest, in the second case of conflict of interest, the assessment is of a more general nature. Thus all the duties or functions of the official as a whole and his functional role in different decision-making procedures versus his private interests are taken into consideration during this assessment. Consequently a case-by-case conflict of interest can be transformed into a continued one only if this conflict of interest appears repeatedly or often, thus jeopardising the correct exercising of official duties as a whole.

The concept of “frequency” in a continued conflict of interest is defined in quantitative terms. Despite the fact that the quantitative criterion of the concept of frequency is often determinative, the criterion of the value or importance of making certain decisions should not be neglected. The situation when the making of several decisions of a certain importance/value are taken into consideration in determining the conflict of interest, the official is exposed to continued conflict of interest if these decisions constitute the core of his official duties. Moreover, despite the fact that the LPCI foresees specific restrictions for high-level officials, a continued conflict of interest may be present with any official regardless of his position in the hierarchy of the institution.

In addition, articles 27–36 of the LPCI explicitly foresee the restriction of “private interests for the prevention of particular cases of a continuing conflict of interest”. These provisions aim to prevent the conflict of interest of certain officials with important duties and competencies in public decision

making. At the time that those provisions were included into the law, two main threats were taken into account: the high risk of a conflict of interest occurring with these categories of officials and the gravity of damage that might be caused to the public interest or to third parties' rights.

However, the prohibitions foreseen in these articles are not of an exhaustive nature. Taking into account that prohibitions and incompatibilities with public functions are not only foreseen by the LPCI but also by the Constitution and the laws of other bodies, article 26 of the LPCI stipulates the principle of implementation of the most severe restriction in cases where two laws foresee two different restrictions for the same category of official.

Due to the object and the nature of restrictions applied as well as the position in the institution's hierarchy, the officials stipulated by section 2 of chapter 3 of the LPCI could be divided into two groups. The first group comprises: members of the Council of Ministers and Deputy Ministers (article 27); MPs (article 28); mayors, presidents of townships and chairmen of regional councils (article 29); certain other officials in high state functions such as: President of the Republic, Constitutional Court judges, Supreme Court judges, chairmen of the High State Control, the General Prosecutor, the Ombudsman, members of the Central Election Commission, members of the High Council of Justice; and the Inspector General of the High Inspectorate of the Declaration and Audit of Assets (article 33).

The second group comprises: members of the Regulatory Authority Body (article 30); officials of the tax or customs body (article 32); high- and medium-level officials, directors of the Public Administration, other public institutions, the State Police and the Armed Forces of the Republic of Albania (article 31).

In general terms, there are four types of limitations foreseen by this section, including: property rights, private activities, leadership or managerial roles and secondary employment.

- Regarding property rights, the restrictions are focused on the possession of active or passive stocks or shares of capital.
- Regarding private activities the restrictions mainly concern activities in different types of commercial companies including some regulated/liberal professions such as attorneys, notaries, etc.
- The prohibition on taking on leadership roles is related to the management for profit-making or non-profit organisations.
- In relation to secondary employment restrictions, only full-time employment is forbidden.

These restrictions of particular private interests are also valid for related persons, as stipulated by article 35 of the LPCI. Thus, these articles foresee two main restrictions which apply to related persons as well as to the officials themselves. They concern the possession of shares or parts of capital (article 35 paragraph 2), as well as the performance of a commercial activity (article 35 paragraph 4). However, if the first restriction applies to the official, it also applies automatically to persons related to the official.

The second restriction, concerning the prohibition from exercising activities as a natural person or legal entity, applies when several conditions are met. Namely, only if the activity is the same as or overlaps with the sphere of jurisdiction of the official and his competency to act, with individual or normative acts issued by him, or when the official has a fundamental and decisive role in the issuance of these acts, which have legal consequences, benefits or costs to this natural person or legal entity or other natural persons who cooperate or compete with the related person. This restriction does not apply if: a) the only means with which the official may create the above effects is a law or a decision of the council of a municipality, commune or region or a judicial decision; or

b) the activity and/or several commercial activities of the related person taken together amount to a total annual gross revenue that does not exceed a limit of 10 million ALL (approx. 7150 €).

In conclusion, it is very important to mention that the restrictions foreseen by LPCI are not the only applicable ones. The Constitution of Albania stipulates specific provisions regarding: members of parliament (article 70 paragraphs 2, 3 and 4), the President of the Republic (article 89), ministers (article 103 paragraph 2), members of the Central Election Commission (article 154), judges (article 143), judges of Constitutional Court (article 130), etc. In addition, laws governing other bodies such as the one on the organisation and functioning of the High Council of Justice, on the organisation of courts, on the Ombudsman, on the State Attorney, on the organisation and functioning of the General Prosecution Office, etc. stipulate specific restrictions for the respective categories of officials.

The entire legal framework is taken into consideration when the official him/herself, or his/her superior, the state organisation where the official works or the High Inspectorate assesses that a situation may fall into a situation of conflict of interest and consequently takes all necessary measures to avoid or resolve it.

Albanian legislation on conflicts of interest does not explicitly foresee any general pre-employment restrictions. Some restrictions are foreseen in the criteria of selection and/or nomination of particular high-level officials. Mainly these restrictions do not relate to economic or property interests, but to the correct, independent, professional and unbiased performance of functions. For example, the Law on the Organisation and Functioning of the High Court No. 8588, of 15 March 2000, as amended, states that a candidate for High Court judge should not have been a member of a political party for five years preceding the date of nomination. The restriction aims to avoid political influence in the High Court.

The Law on Sponsorship No. 7892, dated 21 December 1994[15], as amended, restricts sponsorship to "financial support and material aid of social and public activities including humanitarian, cultural, artistic, sporting, educational, environmental and literary, scientific and encyclopaedic and press-publishing activities". Sponsorship aimed at obtaining economic benefits in return is prohibited. The only economic advantage a sponsor can obtain from sponsorship activities is a tax deduction of a certain percentage and in compliance with Albanian tax legislation. The law does not stipulate any public transparency on sponsorships received or any special conflict of interest provisions regarding the sponsor or the sponsored public institution. Thus, general rules apply in terms of conflict of interest.

Prevention

Article 42 (f) of the LPCI stipulates the HIDAACI as the body responsible for:

"*advising particular officials, superiors, and superior institutions, at their request, about specific cases of the appearance of a conflict of interests and questions of ethics related to them, as well as on the period registration of interests*."

Therefore, since its establishment in 2003, the High Inspectorate has provided, whether based on an annual programme or on institutions' requests, technical assistance and advice to all

[15] http://www.legislationline.org/documents/id/6687 (amended English version).

responsible authorities which are also stakeholders in charge of the prevention, treatment and resolution of cases of conflicts of interest.

With the amendments of 2014, a division of the powers between the High Inspectorate, which provides training, advice and assistance to the responsible authorities, and the responsible authorities, which provide direct support, training and advice to officials subject to the duty to declare private interests, was achieved. Consequently, the legislation in force (the Law on the Declaration and Audit of Assets No. 9049, dated 10 April 2003, and the Law on the Prevention of Conflicts of Interest No. 9367, dated 7 April 2005) stipulates that the HIDAACI only conduct training for the responsible authorities and not for every particular official, who should get such assistance from the respective authority (article 5 of Order No.1 on the Establishment, Functions and Responsibilities of the Structures in Charge of Preventing Conflicts of Interest within Public Institutions, dated 27 June 2014, of the Inspector General). This division of tasks was based on the fact that, especially on the issue of preventing and resolving case-by-case conflicts of interests, the HIDAACI (except citizens' denunciations) is unable to identify or receive notifications for this type of conflict which occurs within the institution and the institutional chain of decision making. The Albanian public administration every day issues approximately 6,000 acts and decisions, thus it is impossible for the HIDAACI to verify and check whether all of them are free of conflicts of interest. This process can be trusted and managed only by the decision-maker him/herself, his/her superior or by the superior institution. In addition to training, the HIDAACI conducts checks within the responsible authorities in order to identify problems and improve their performance in the exercising of these duties. During 2015, more than 160 audits were conducted by the HIDAACI in all responsible authorities within the central public administration.

Since the responsible authorities have the duty to detect, identify and address case-by-case conflicts of interest (which the High Inspectorate is unable to address), it is necessary to strengthen their capacities through training, guidance, advising and distribution of appropriate literature. This increases the possibilities of detecting and addressing in a timely manner these issues within public institutions. As a consequence, during 2014–2015, the HIDAACI not only organised several training sessions but also distributed explanatory materials aimed at raising awareness among all the responsible authorities about their role and functions. The materials concerned: recent changes of legislation on the declaration and auditing of assets and the prevention of conflicts of interest (brochure); guidelines on the declaration and auditing of assets and the prevention of conflicts of interest; guidelines on filling out the "Declaration of Private Interests" official documents; an explanatory manual and training on the role of authorities in the prevention and control of conflicts of interest, etc.

Furthermore, all the necessary instructions and orders were drafted, approved and published for the implementation of the legal framework, regarding the declaration and auditing of assets and conflicts of interest, issued by the Inspector General of the HIDAACI. These orders and instructions provided detailed information and guidance for all officials including information on their rights and responsibilities, additional sanctions for the infringements provided in these orders, procedures regarding the publication of declarations of private interests, etc.

In addition, the High Inspectorate organised separate meetings and explanatory lectures with particular institutions and officials that had requested legal assistance, in order to address institutional and individual problems encountered, especially for case-by-case conflicts of interest.

Regular declaration of private interests

The importance of the LPCI lies not only in the fact that this law foresees definitions and concepts about conflict of interest types, their legal nature and the subjects with a duty to comply with the law, but also in that it regulates through specific procedures how a situation of conflict of interest can be avoided, prevented or resolved.

Article 6 of the LPCI provides a general obligation for any official and/or superior authority to avoid, prevent or put an end to a situation of conflict of interest. In order to comply with this article all officials are obliged to make declarations on themselves, in advance, on a case-by-case basis. In the self-declaration, the official himself assesses whether his private interests may lead to a situation of conflict of interest (article 7, LPCI). However, this declaration, which is usually made in written form, should be completed by the official whenever it is requested by his/her superior manager or by the superior institution, although, as a general rule the declaration should be requested and completed in advance. When the declaration is not submitted on time, it should be requested and completed as quickly as possible. The template for the aforementioned document (declaration), which can be used by each and every public official, is published on the HIDAACI's website. This document is drafted bearing in mind that the declaration should be a positive statement of the public official, filled in and submitted, prior to making a decision, when the official believes has he/she is or may be in a situation of conflict of interest. According to article 11 of the LPCI, all situations of conflict of interest declared or identified should be registered in the conflict of interest register which is kept by the responsible authority in every public institution.

In addition, all officials are obliged, no later than 30 days after taking office, to issue an authorisation for the public institution where they exercise their functions to check and obtain personal data about the official, wherever they are recorded. This authorisation is also valid for every superior institution, including the HIDAACI.

Requiring written authorisation seems also to be the way to enhance officials' awareness of their duties to declare case-by-case conflicts of interest. Consequently, institutions and/or the HIDAACI may collect data from a wide range of sources such as the media, public or private registers, the general public and also from any other lawful source (article 9, LPCI).

In addition, the obligation to provide information on the private interests of an official is an obligation of a general nature. Thus any other official, any public institution, any interested party or person should report on a conflicting private interest, when he/she is aware of it (article 8, LPCI). Administrative protection is ensured for any official or any subject who offers well-grounded information about cases of conflicts of interest not declared by the subjects of this law (article 20, LPCI).

Management of conflicts of interest

After the first step is completed, and the conflict of interest, when identified, has been declared by the official himself, the official or his/her superior or the superior authority should take all necessary measures in order for the official to avoid this situation. Therefore, in addition to the declaration of conflict of interest, articles 37–39 of the LPCI stipulate the ways of handling conflicts of interest. Article 37 stipulates the basic ways of treating and solving conflicts of interest of a general nature.

Beyond this, article 38 stipulates solutions for particular cases of continued conflicts of interest. It should be highlighted that the measures stipulated for avoiding a conflict of interest are ranked in a

proportionate manner by article 37 (paragraphs 1–4) of the LPCI. Thus, regarding the position of the official, the first step to preventing and resolving a case-by-case conflict of interest consists in declaring it. The second step is to avoid such a conflict through the official taking, as the case may be and as appropriate, one or more of the following options:

a) *Transferring or alienating private interests;*
b) *Excluding him/herself ahead of time from the particular process of decision making, with the exception of cases when delegation of the competencies of an official to another official is impossible because of the law or because of the situation or in the case of a collegial organ, by not participating in the discussion and voting in the issue in conflict;*
c) *Resigning from those private engagements, duties or functions that are in conflict with his/her public function; or*
d) *Resigning from the public function, especially in the conditions of the emergence of continuing conflicts of interest.*[16]

In addition, the official shall notify his/her superior or the superior institution about the suggested solution or of the measures taken in order to avoid the conflict in question. He/she should provide written evidence and documentation on the resolution of such a conflict. This procedure does not exempt the respective official from responsibility for falling into a conflict of interest when the measures taken by him do not turn out to be effective in preventing or avoiding the conflict of interest. Thus it is the responsibility of the official's superior or the superior institution, starting from the most immediate one, to avoid and resolve every conflict of interest situation of a subordinate official. This is the 3rd procedural step foreseen by article 37 paragraph 4 of the LPCI. The immediate superior or the superior institution, if applicable, shall use one or more of the following ways to solve the conflict of interest of a subordinate official:

- *Withholding from the official specified information related to the exercising of his/her function;*
- *Not assigning duties to the official that might lead to the appearance of a conflict of interest;*
- *Not permitting the official to take part in the decision-making process;*
- *Reviewing or changing the duties and competencies of the official;*
- *Transferring the official to another duty that avoids the conflict of interest;*
- *Taking measures necessary to avoid the appointment or selection of an official to functions in which conflicts of interest might arise or exist;*
- *In the case of an action taken in the presence of an actual conflict of interests, however this is observed, if he/she has this competency, annulling or revoking as soon as possible the actions taken by the official, and if possible before any consequences arise;*
- *The action may also be annulled or revoked if it is judged that the action was taken under the conditions of an apparent conflict of interests that might appear as case-by-case or continued ones;*
- *The action is not annulled or revoked by the superior when he judges that the consequences that might come from the annulment or revocation obviously exceed the benefits from this annulment or revocation.*[17]

[16] Article 37 paragraph 1 (a, b, c and ç) of the LPCI.

[17] Article 37 paragraph 4 of the LPCI

The superior institution also intervenes in order to solve a conflict of interest related to the head of a state institution. This intervention could be done if two conditions are met: a superior institution is in place; and the intervention does not interfere with the independence of the institutions. Regarding officials who are equivalent to or members of a constitutional body, the treatment and solution of conflict of interest is done by the competent authority defined by the Constitution itself.

As previously mentioned, article 38 stipulates solutions for particular cases of continuing conflicts of interest, and especially for categories of official foreseen in chapter 3 section 2 of the LPCI, which could not be solved by the ways specified in article 37, which are as follows:

- *Resigning from the management functions or membership of the management bodies;*
- *Ceasing the performance of the activities prohibited according to chapter 3 section 2 of this law;*
- *Transferring the rights of active ownership of the shares or parts of capital that the official owns to another person, defined as a trusted person, in accordance with article 3 paragraph 6 of the LPCI.*

However, according to article 38 point (c) of the LPCI, the trusted person:

- *May not be the official's spouse or parent-in-law, his/her adult child or their spouses, a parent of the official, his/her brother or sister, or their spouse, a person with a known friendship with this official, an official or other person with ties of dependency, even indirect ones, because of the public function with the official in question; and*
- *May not be a natural commercial person, whether or not one of the individuals mentioned above, a company in which the official owns directly or indirectly shares or parts of capital within the meaning of article 25 of this law, or a non-profit organisation in which the official has had or has an interest of any kind.*

Regarding the procedure of resignation from the management functions or the membership of the management bodies foreseen for the categories of official in articles 27, 28, 29 and 31 of the LPCI, it shall be effected no later than 15 days from the moment this obligation arises. In addition the official shall notify and submit his resignation without delay no later than 10 days after starting his/her public office.

Regarding suspension of the performance of the activities prohibited for the category of official in articles 27–31 of the LPCI, this shall be completed no later than 30 days from the moment this obligation arises. Firstly, the official shall ask the competent bodies to deregister these activities according to the law, then he/she shall notify and prove the fulfilment of these obligations without delay, no later than 10 days after starting his/her public office.

Regarding the transfer of the rights of active ownership of the shares or parts of capital that he/she owns to another person, defined as a trusted person, article 38 paragraph 3 of the LPCI stipulates that such a procedure shall be completed no later than two months from the moment that this obligation arises. In addition this official shall notify and prove the transfer or alienation of the rights of active ownership of the shares or parts of capital owned, without delay no later than 15 days after starting his/her public office.

However, the LPCI also provides for some flexibility and as such, the time period foreseen for the abovementioned procedures may be extended by the superior manager or superior institution when the official makes a justified request explaining the reasons for the lateness. In every case, the reasons for extension and the new time periods are recorded and documented, but these time periods may never exceed twice the time period defined above, with the exception of cases when the extension is dictated by the obligatory procedural time periods specified by the Constitution, by

procedural laws, commercial legislation and/or the rules of public institutions for the issuance of official documents and/or the performance of juridical actions, or when the time period is extended because of the needs of the Competition Authority, in order to assess the dominant position of a company in the market.

In conclusion, the obligation to take measures to avoid the conflict lies at every step along the hierarchy of every public institution, ranging from the official him/herself and continuing up to all superior officials and institutions (paragraph 4 of article 37).

The HIDAACI gathers information from all public institutions, such as the National Civil Registry, the National Register of businesses, licences, etc., which is cross-checked with the information provided by the official him/herself (in his/her asset declaration). During the process of full checking of declarations of private interests (declarations of assets) conducted by the HIDAACI, the conflict of interest is also verified and checked according to the procedure specified by the Law on the Declaration of Assets No. 9049. It is worth mentioning that, during the procedure of full checking, different public institutions, such as the tax and customs authorities, the National Business Register and the Albanian Civil Register provide data on every public official subject to declaring assets. Thus, the HIDAACI's inspectors also verify the continued conflicts of interest of the public official undergoing the full asset-checking procedure. During the aforementioned procedure and based on data received by the Civil Registry Office (verifying family members), the National Business Register (verifying businesses or commercial companies, shares/parts of capital and business partners/trusted persons), etc., the HIDAACI's inspectors verify incompatibilities with public functions.

There is a specific procedure for procurement processes: all bidders have to submit a declaration of non-existence of conflicts of interest. No random checks are carried out by the institutions themselves assessing whether the declarations are true. However, the system relies on: bidders reporting on each other's conflicts of interest; detection by external complaints; and deterrence through blacklisting violators of conflict of interest provisions for up to three years.

Monitoring compliance

At the level of public institutions and besides each public official, the responsible authorities for implementation of the LPCI provisions are:

- Immediate superiors of officials, according to the hierarchy, within a public institution;
- Directorates, units of human resources or units specially envisaged to address issues pertaining conflicts of interest within each public institution;
- Superior institutions (for example the Ministry of Justice in the case of the General Directorate of Prisons).

In addition, the High Inspectorate was established as the central authority responsible for implementation and monitoring of the LPCI. Taking into account that some of the stakeholders responsible for preventing, avoiding and resolving conflicts of interest are developed in the aforementioned chapters, this chapter will deal only with the responsible authorities established in the human resources unit/departments and the High Inspectorate.

a. Responsible authorities/human resources department

According to article 42 paragraph 2 of the LPCI, every public institution has the obligation to establish responsible authorities for the prevention of conflicts of interest. The establishment of

these specific structures, which replaced the low inspectorates, is aimed at strengthening the implementation of the provisions of the LPCI, mainly by providing assistance, training and advice to officials, addressing in a prompt manner any case of conflict that emerges as well as serving as a focal point between the official, the public institution where the official works and the High Inspectorate. These responsible structures, due to their functions and competencies, are stipulated to be parts of the human resources department/unit, established by order of the head of the public institution. In addition the position and job description of the civil servant/s performing the duties of the responsible authority are or must be defined by institutions in the form of bylaws or internal regulations.

The responsible structure provides major support to the institution itself, by playing an active role in providing a fair decision-making process free of conflicts of interest. These structures carry out the following tasks:

- The prevention of conflicts of interest;
- The identification, addressing and resolution of such a conflict; and
- The registration of cases of conflict of interest. This obligation, stipulated by article 11 of the LPCI, is recorded in a specific register for conflict of interest cases, issued and kept by each public institution.

In cases when a conflict of interest has arisen, the responsible structures ensure that all the other structures responsible for the implementation of the LPCI's obligations are informed or mobilised to take measures for the implementation of the following proposals:

- That measures against the officials are taken;
- That the internal acts regulating the issue of conflict of interest are revisited/revised;
- That the consequences of the acts issued in the situation of conflict of interest are dealt with.

Thus according to article 40 paragraph 1 of the LPCI, all administrative contracts and the acts of every public institution and appeals against them, issued under the conditions of an actual or apparent conflict of interests, are invalid in accordance with the Code of Administrative Procedures. It was deemed necessary to include this sanction in the law, since the fines available were not large enough to act as a deterrent and, in addition, institutions were often hesitant to invalidate legal acts (if only as an internal favour to the corrupt public official). This provision allows the HIDAACI to submit a motion for invalidating the legal act, possibly through the State Advocacy Office if the institution itself or its superior body fails to act.

In implementing its duties and functions, the responsible authority has a double responsibility. On one hand it has the responsibility to inform and notify any official about his/her obligations in order to guarantee full respect of the legislation on the prevention of conflicts of interest, including providing advice, training and support. On the other hand it has to submit to the High Inspectorate a written report on the activity carried out under this law, and all measures taken annually by this structure or the institution itself for the previous year, including the cases of the conflicts of interest, the procedures followed for preventing or processing them, the attained outcome, as well as issues related to the periodical declarations.

Decisions by public institutions do not seem to be published as a general rule. Only decisions by the National Assembly (on members of parliament) and the preceding procedure are clearly published.

b. The HIDAACI

The High Inspectorate for Declaration and Audit of Assets and Conflict of Interest was established as a central responsible authority for the implementation of the Law on the Declaration and Audit of Assets and the Law on the Prevention of Conflict of Interest. Regarding the implementation of the Law on the Prevention of Conflict of Interest of 2005, the HIDAACI's powers and competencies have been strengthened through several amendments, in a steady and progressive way.

In general terms, the HIDAACI's particular duties under the law (article 42) are the following:

- General oversight of the policies and mechanisms to prevent and avoid conflicts of interest, including recommendations to the National Assembly for legislative amendments and the provision of assistance to initiatives by other public institutions;
- Processing and verification of the asset declarations, as a tool in the identification of conflicts of interest;
- Drafting and adopting templates for declaring case-by-case and continued conflicts of interest;
- Providing advice, training and support for institutions and their responsible authorities on specific cases of possible conflicts of interest and ethical questions related to them;
- Conducting administrative investigations of case-by-case conflicts of interest and of restrictions on permissible interests, either at the request of the public institution concerned or on the HIDAACI's own initiative;
- Applying administrative measures against officials – including fines and initiatives to invalidate administrative acts;
- The right to access data from any public or private entity; these entities are obliged to provide such data on request within 15 days.
- Legal remedies against the HIDAACI's decision on conflicts of interest identified and sanctioned are guaranteed by the legislation in force. Thus these decisions can be appealed to an administrative court within 30 days.

In practice, the HIDAACI's main activity relating to conflicts of interest appears to be the identification of continued conflicts of interest, deriving either from the declaration of asset checks or from requests for interpretation submitted by the official him/herself or the superior manager or superior institution. Regarding case-by-case conflicts of interest, the main responsibility to identify, address and resolve such a conflict lies with the public institution itself. There are approximately 6,000 acts issued every day by the Albanian administration. Therefore, it is impossible for the HIDAACI, as an external body, to be aware of, identify and resolve case-by-case conflict of interest situations in every individual decision-making process in the whole administration.

The institutional performance of the HIDAACI is reflected in real time through publication of press releases and communications on its official website. During the period 2014–2015 more than 100 written communications have been posted (approx. 6 communications per month). The decisions of the HIDAACI are publicly available through regular notifications (summaries of decisions or the list of officials sanctioned by administrative measures, etc.) posted on its official website.

Anonymous complaints are possible in principle if there is reasonable ground to believe that the complaint is real, or if there is enough information to start an investigation on the presented case. Free telephone lines are established by law in all public institutions providing all citizens with the possibility of reporting cases of conflict of interest or other related corruption infringements. The HIDAACI has a free telephone line (08009999) as well, recording these kinds of complaints/denunciations. Moreover an email address has been established and is functional for the same purpose (unedenoncoj@hidaa.gov.al). In addition, in 2015 the National Anti-Corruption Coordinator established and set up an online portal for reporting corruption, the so-called "STOP CORRUPTION" portal.

Since 2006, the Law on Cooperation of the Public in the Fight against Corruption aims to facilitate complaints and notifications about corruption and protect those who do so. However, due to the fact that the law has a number of significant weaknesses and has not produced any visible results, a new law on whistleblower protection is under development. This new draft law, among other things, foresees the establishment of internal and external reporting mechanisms, in the public and private sectors, charged with protecting whistleblowers from the consequences of their revelations. The draft law aims to protect whistleblowers by creating a new structure, under the office of the Inspector General of the HIDAACI which will be empowered to investigate cases in both the public and the private sectors, including cases of conflict of interest.

Sanctions and other measures in place

The LPCI foresees solutions in cases where an official and/or his superior manager fail to take appropriate measures to prevent, address and resolve cases of conflict of interest. Thus, articles 44 and 45 of the LPCI provide for specific administrative sanctions and disciplinary measures to be implemented. All administrative infringements foreseen by article 44 of the LPCI stipulate fines from 30,000 ALL (approx. 210 €) to 500,000 ALL (approx. 3,500 €). They relate to an official committing the following infringements:

- In the event of failure to self-declare or failure to declare upon request, the official shall be fined;
- In the event of failure to issue the conflict of interest authorisation, the official shall be fined;
- In situations in which an administrative act is invalidated due to a conflict of interest the official who was culpably responsible shall be fined.

In addition the LPCI also provides administrative measures with “fines” against the official, persons related to him/her as well as the trusted person, as follows:

- Violation of prohibitions on contracting with public institutions may lead to fines against officials, related persons, trustees or company managers;
- Failure to resolve conflicts of interest is punishable by fines against the official or the related person.

Furthermore, the LPCI foresees administrative measures such as fines also for the responsible authorities within different state institutions. The responsible authorities defined by article 41 as the directorates of human resources within public entities are as follows:

- Where the data required by the High Inspectorate under item 1(1) of article 42 of this law is not made available, the responsible individuals of the public and private institutions shall be fined;
- With regard to other violations of this law, the Inspector General may impose fines of approx. 360–720 €. Fines are issued by the HIDAACI, either directly if it has itself concluded a violation, or at the proposal of the official’s superior manager or superior institution.

The authority for establishing all administrative measures in accordance with the LPCI is the Inspector General of the HIDAACI. All procedures for the implementation of administrative measures and appeals against them are regulated by the Administrative Procedure Code.

Regarding disciplinary measures, these are to be implemented by the institution where the official committing the infringement is working. The HIDACCI notifies the responsible institution every time an infringement of the LPCI has been committed, asking for the respective institution to take disciplinary measures against the official working under its area of responsibility.

Although a “conflict of interest” does not constitute a criminal offence in the Albanian criminal legislation, violations of the LPCI, and situations when a public official fails to performs his/her duty in a correct manner due to private interests, can constitute the committing of one or more criminal offences, such as abuse of office, passive corruption, violation of equality of parties in tenders, falsification of documents, etc.

In addition, the new article 43 paragraph 1 of the LPCI which states that “Declarations on conflict of interest and all supporting documents are considered as official documents. Introduction therein of false data constitutes a criminal offence and is to be punished under the applicable law” has strengthened such a position by establishing criminal liability for disclosing false information in a declaration of conflict of interest. In any case, the criminal liability regardless of other forms of liability such as administrative and/or disciplinary ones can always be activated provided that elements of a criminal offence have been identified or proved.

Statistics

Statistical data on administrative measures (concerning declarations of assets and conflicts of interest)

During the period 2014–2015, the HIDAACI imposed approximately 820 administrative fines for public officials after the legislation was amended. These administrative fines concern infringements both of declarations of assets and conflicts of interest. At the same time, the verification procedures have been taking place, and the HIDAACI is coming across frequent law violations, which also refer to previous years. During 2014, approx. 400 administrative measures were applied. In January–September 2015, 420 new administrative measures were applied. The most frequent occasion for conflicts of interest (especially case-by-case conflicts) was the conclusion of public contracts or similar benefits/gains from public funds.

Statistics on violations of article 257a (1, 2) of the Criminal Code (declarations of assets; not all cases concern conflict of interest but also inexplicable wealth)

During the institutional activity of the HIDAACI over the previous 10 years, the approximate total number of cases forwarded to the prosecution office was about 55, while during the period 2014–2015, 157 referrals were forwarded to the prosecution office which is more cases than referred before this period. Seventy-four of the 157 criminal charges are from 2014. For 2015 (January–September), 83 new criminal charges/referrals were submitted to the General Prosecution Office (GPO).

In 2015, a considerable number of cases involving high-ranking public officials were forwarded to the prosecution office including: judges and prosecutors (12 judges and two prosecutors); MPs (seven MPs), ambassadors, chairmen of institutions, local elected chairmen, and middle- and low-level management officials.

Regarding some of the aforementioned high-level officials, the value of assets illegally acquired amounts to approximately 50 million €. For these amounts there are reasonable grounds to believe that these are the proceeds of criminal activities conducted by the alleged offenders, such as corruption and money laundering.

1.3 Bosnia and Herzegovina

By Emir Djikic

Regulatory basis and definition

The rules on conflict of interest for executive and elected officials are prescribed by laws on conflict of interest at the level of Bosnia and Herzegovina (BiH), at the entity levels and the Brcko District level, i.e. the Law on Conflict of Interest in the Government Institutions of Bosnia and Herzegovina, the Law on Conflict of Interest in the Government Institutions of the Federation of Bosnia and Herzegovina, the Law on the Prevention of Conflict of Interest in the Government Institutions of the Republika Srpska, and the Law on Conflict of Interest in the Institutions of the Brčko District of Bosnia and Herzegovina.[18] Laws on conflict of interest are related to elected officials, holders of executive functions and advisors at government institutions performing public functions (hereinafter: public officials) and regulate the field of prevention of conflict of interest, incompatibility of functions, prohibition of certain engagements and activities, restrictions on employment upon expiration of the term of office, rules on acceptance of gifts and provision of services, the obligation to submit financial statements, sanctions for non-compliance with the law and other related issues. There is no prohibition on the sponsoring of public institutions at any level of BiH.

In the judiciary, the rules on conflict of interest are only partly defined by the Rulebook on Conflict of Interest of the High Judicial and Prosecutorial Council (HJPC)[19], which was passed within the Law on the HJPC (articles 10.2 and 16)[20]. It includes concrete rules and defines the terms and meanings of potential conflicts of interest as well as sanctions to be taken once a situation of conflict of interest is established. These rules are yet to be expanded for all the members of the judiciary. So far, the only rules on conduct and ethics for the judiciary as a whole are covered in the codes of ethics for prosecutors and judges.[21]

Regular declaration of private interests

The asset declaration system in BiH is regulated by a number of different laws[22]. However, monitoring of asset declarations remains of a basic nature, with the focus on whether the

[18] Law on Conflict of Interest in the Government Institutions of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, Nos. 16/02, 14/03, 12/04, 63/08, 18/12, and 87/13; Law on Conflict of Interest in the Government Institutions of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina, No. 70/08; Law on Prevention of Conflict of Interest in the Government Institutions of the Republika Srpska, Official Gazette of the Republika Srpska, No. 73/08; Law on Conflict of Interest in the Institutions of the Brčko District of Bosnia and Herzegovina, Official Gazette of the Brčko District of Bosnia and Herzegovina, Nos. 43/08 and 47/08.

[19] Rulebook on Conflict of Interest of the High Judicial and Prosecutorial Council (HJPC).

[20] Law on the High Judicial and Prosecutorial Council, Official Gazette of BiH, No. 25/04.

[21] Judicial Ethics Code available at http://vstv.pravosudje.ba/; Code of Prosecutorial Ethics available at http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=1&id=25&jezik=e.

[22] The BiH Election Law establishes an obligation to submit asset declaration forms for all elected officials at all levels, including data on the wealth of candidates and the members of their immediate family (spouse, children and household members). The Law on Conflict of Interest at the state level also obliges elected officials to submit regular financial reports under material and criminal liability for the authenticity of the information provided. While the CEC is required to refer suspicions of malpractice to the competent prosecutor's office, the law does not prescribe any penalty if officials fail to submit their asset declaration form. The Law on Amendments to the Law on the Council of Ministers also requires ministers in the Council of Ministers to submit a CEC statement, which, among other categories, also contains an asset

declaration has been formally completed and is in accordance with the established deadlines. The verification and accuracy of asset declarations remains problematic as the formal system of asset declaration relies excessively on the principle of voluntarism in compliance with laws and obligations. There is an obligation to submit financial statements which is prescribed by the Election Law[23] (this applies to elected officials at all levels, that is, election candidates, including the obligation to submit data on the wealth of the candidates and the members of their immediate family (spouse, children and household members) and is used in the field of conflict of interest). There is eventually no information in the case of other officials to whom the Law on Conflict of Interest (executive officials and advisors) applies. Moreover, there is no mechanism for reporting on their financial situation during the term of office, especially in case of significant changes in assets. Due to a controversial decision made by the Agency for the Protection of Personal Data, asset declarations are no longer publicly available on the Central Election Commission (CEC) website.[24] This prevents the public at large and the media from monitoring conflicts of interest relating to the assets contained in the declarations.

The legal framework that provides for integrity mechanisms in the judiciary does not cover all aspects of the integrity of judges and the judiciary. When applying for the position of judge, candidates are required to enclose a statement of their assets (asset declaration form). The applicants are asked to list their own property and that of their family (spouse and members of the family household), including real estate, bank accounts and stocks. In addition, the applicants are required to state their financial obligations (receivables and liabilities) and provide an estimation of their total assets. The appointed judges are required, during their term of office, to automatically notify the HJPC of any changes in their personal income, personal property, family property, financial obligations and the value of total assets, as well as changes relating to their spouse and members of the family household regarding their activities in public and private companies. The HJPC does not have the authority to verify the authenticity of the data contained in judges' asset declaration forms, which prevents the HJPC from determining whether judges have provided accurate and complete information in their declaration forms.[25] Appointed judges are required, no later than 31 March of each year, to file an annual financial statement with the HJPC reporting, among other things, "the extra-judicial or extra-prosecutorial activities performed, including the amounts of remuneration".[26] Asset declarations in the judiciary are not publicly available.[27]

Prevention

Training and seminars for public officials on the issues of ethics and conflicts of interest are organised, however they are sporadic and are part of individual projects or initiatives, and not a long-term activity.

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declaration, which is subsequently vetted by the State Investigation and Protection Agency (SIPA). Finally, the Law on the Civil Service of BiH sets forth the obligation of civil servants and of their immediate family members to submit an asset declaration when appointed to a specific position in the civil service.

[23] Election Law of Bosnia and Herzegovina, Official Gazette of BiH, Nos. 23/01, 07/02, 09/02, 20/02, 25/02, 04/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13 and 07/14.

[24] "CIK sklonio imovinske kartone BiH političara" [*CEC Stashes Away Politicians' Assets Declaration Forms*], Al Jazeera Balkans, 27 August 2014, http://balkans.aljazeera.net/vijesti/cik-sklonio-imovinske-kartone-bh-politicara.

[25] Law on the High Judicial and Prosecutorial Council, Official Gazette BiH, No. 25/04.

[26] Ibid. (article 86).

[27] "Zašto sudije i tužitelji kriju imovinske kartone*"* [*Why judges and prosecutors hide assets declarations*], 7 August 2015, http://ba.n1info.com/a55488/Vijesti/Vijesti/Sto-sudije-i-tuzitelji-kriju-imovinski-karton.html.

Public officials can seek advice on issues of conflict of interest from the authorities in charge of implementing the conflict of interest laws, and this mechanism is especially popular after elections when appointments at all levels of government occur.

There are no rules on rotation of public officials that is specifically aimed at preventing conflicts of interest.

Management of conflicts of interest

The last amendments to the Law on Conflict of Interest at the level of BiH were adopted in November 2013. With these latest amendments, the CEC is no longer responsible for the implementation of this law and instead a new commission, established at the Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption (hereinafter: Anti-Corruption Agency) within the Department for Conflicts of Interest, took over the implementation. It consists of a majority of parliamentary members (six representatives of the Parliamentary Assembly) and three members from the Anti-Corruption Agency. Since the adoption of these amendments, the mechanisms for determining conflicts of interest at the level of Bosnia and Herzegovina (BiH), the Federation of Bosnia and Herzegovina (FBiH) and the Brcko District of BiH (BD BiH), have not been functioning. The laws of the FBiH and BD BiH also need to be changed, since they were both implemented by the CEC, whose entire staff was transferred to the Commission at the state level, and thus will no longer be in charge of implementation of the laws at the lower levels. The FBiH and BiH have not yet adopted the amendments and thus have no institution in charge of determining conflicts of interest. On the other hand, Brcko District amended its Law on Conflict of Interest in February 2015, giving the authority of determining conflicts of interest to the BD Election Commission. However, BD BiH will need to amend the law again since it is in collision with the Election Law of BiH which explicitly prescribes the authorities of all election commissions vertically, i.e. for both entities.[28]

A new commission at the level of BiH has been formed, but the executive body in charge of the implementation of the law has not been functional for almost two years, due to delays in transferring the staff that formerly belonged to the Central Election Commission to the Anti-Corruption Agency.

The Law on Conflict of Interest at the level of the Republika Srpska (RS) is implemented by the Commission for Determining Conflict of Interest in the Government Institutions of the RS, and is therefore not affected by the changes of the legislation at level of BiH.[29]

Monitoring compliance

The authority in charge of determining conflicts of interest can initiate a procedure *ex officio* or based on a valid, justified and non-anonymous report from other public officials or other interested

[28] "Razgovarano o mogućnostima harmonizacije propisa i prakse u oblasti sukoba interesa" [*Talks on possibilities of harmonising law and practice in the field of conflict of interest]*, Government of Brcko District BiH, 9 July 2015, http://www.bdcentral.net/index.php/ba/vijesti/3446-razgovarano-o-mogunostima-harmonizacije-propisa-i-prakse-u-oblasti-sukoba-interesa-.

[29] Law on the Prevention of Conflict of Interest at the Government Institutions of Republika Srpska, Official Gazette of Republika Srpska, No. 73/08 (article 14).

parties. If the authority (i.e. the Commission) has grounds to think that an official is in a conflict of interest, the Commission will ask the official to give a statement on the circumstances and then come to a decision on whether a conflict of interest has occurred and whether any sanctions will be imposed. The process of determining a conflict of interest is mostly reactive, with the exception of the period of appointment of officials, when they must be approved by the relevant institutions and when there is the greatest chance that conflicts of interest will be detected. After that and during the mandate, conflicts of interest are detected and determined based on reports from public officials and other interested parties.

Third parties and individuals can report conflicts of interest, however they cannot be anonymous. Protection for whistleblowers is enabled only for individuals working in institutions at the level of BiH who report corruption within their institutions.[30]

An official can be called on to remove the cause for their conflict of interest. In this case they will not be sanctioned if they comply with the given deadlines. After the Commission reaches the decision, the official can appeal to the relevant court (depending on the level of government and the jurisdiction).

There are no specific databases or registries of family ties and their vested interests that would make the process of detecting conflicts of interest easier. Only the financial information contained in the official's asset declaration of their family members is available (to the oversight bodies, but not to the public).

The Central Election Commission is still in charge of collecting asset declarations for all candidates, but there is no verification of the accuracy of the information submitted in financial statements. Although the Anti-Corruption Agency was entrusted with analysis of the submitted data on the assets of public officials for the purpose of verifying whether there are cases of corruption and taking the necessary measures in compliance with law, it is still unclear whether it might have the capacity for the performance of these duties.

On top of that, there are no adequate sanctions for providing inaccurate data on the assets of officials, and the declarations on assets, income and interests are not public.

Statistics

Since November 2013 when the latest amendments to the Law on Conflict of Interest in the institutions of BiH were adopted, there have been no official statistics available on conflicts of interest at the BiH, FBiH and BD BiH levels. The latest statistics at these three levels cover the period from 1 January–19 November 2013 when the CEC was still in charge of the implementation of the conflict of interest legislation.

In this period, the CEC determined in four cases that there were no elements forming the basis for the imposition of sanctions, therefore it dropped the procedure. In 17 cases the CEC determined that there was a breach of the relevant provisions of the Law on Conflict of Interest. The 17 decisions resulted in the sanction of non-eligibility to run for any function of elected officeholder, executive officeholder or adviser for a period of four years after the breach of the law. Of the 17 imposed sanctions, one sanction (6%) referred to the state level, three sanctions (18%) to the level

[30] Law on Whistleblower Protection in the Institutions of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina 100/13.

of FBiH and 13 sanctions (76%) to the municipal level. For these 17 cases, apart from the sanction of ineligibility to run for candidacy, financial sanctions ranging from 1,000 KM to 10,000 KM (approx. 5,100 €) were also imposed.[31]

In the RS, the Commission for the Identification of Conflict of Interest of the RS in 2012 determined six cases of conflict of interest and in 13 cases dropped the procedure. In 55 cases, the procedure ended with the adoption of another act (answers, information and similar) and 15 conclusions were also adopted. Twenty-six opinions were issued in 2012. The number of cases that the Commission completed in 2012 was 100 out of 105.[32]

Overview of imposed sanctions since 2012

Year	2009	2010	2011	2012	2013
Number of sanctions		6	5	6	10

The Commission for the Identification of Conflict of Interest of the RS in 2013 adopted 28 decisions (in 10 cases a conflict of interest was determined and sanctions imposed), in 24 cases the Commission gave an opinion and adopted 14 conclusions. 43 cases were solved by the adoption of another act (answers, information and similar). In 2013, in nine cases the person concerned filed an appeal against the decision of the Commission and all appeals were sent to the Appeals Commission for review. The Commission considered six appeals filed in 2013 and in three cases the Appeals Commission confirmed the decisions of the Commission. The remaining three appeals were considered in 2014 and in all three cases the Appeals Commission confirmed the decisions of the Commission.[33]

[31] Report on the implementation of laws within the competence of Central Election Commission BiH in 2013, pp. 58–59, available at https://www.izbori.ba/Documents/CIK/God-Izvjestaji/2013/Izvjesce_za_2013_godinu_SIO_BiH-bos.pdf.

[32] Annual report for 2012 of the Commission for the Identification of Conflict of Interest of Republika Srpska.

[33] Annual report for 2013 of the Commission for the Identification of Conflict of Interest of Republika Srpska.

1.4 Kosovo*

By Fadil Miftari with contributing expert Hasan Preteni

The field of conflict of interest in Kosovo* is regulated by law No. 04/L-051 on the Prevention of Conflict of Interest in the Discharge of Public Functions. The provisions of this law define mandatory rules for senior public officials (from all three branches of power) in order for them to prevent conflicts of interest during the exercising of their function, between public and private interests. It also defines the basic restrictions for senior public officials in the exercising of their public function and other functions that are not of a public nature.[34]

The law in question defines conflict of interest as:

> *"A situation of incompatibility between the official duty and private interest of a senior official, when he/she has direct or indirect private interest, personal or property interests, that influence, might influence or seem to influence his/her legitimacy, transparency, objectivity and impartiality during the exercise of public functions".*[35]

Conflict of interest in Kosovo* legally began to be regulated in 2005, through the Law Against Corruption No. 2004/34 which was approved by Kosovo's* lawmakers on 22 April 2005. This law regulates the fields related to administrative investigation of corruption, declaration of assets and the prevention of conflicts of interest. The institution that had to be established and be responsible for implementation of this law was the Anti-Corruption Agency[36] (ACA).

After the establishment of the ACA and the submission of requests for a special law, the Kosovo* Assembly approved on 2 November 2007 the first law No. 02/L-133 on the Prevention of Conflict of Interest. This law was amended in 2009, and on 31 August 2011 the Kosovo* Assembly approved the new law No. 04/L-051 on the Prevention of Conflict of Interest in the Discharge of Public Functions", which continues to be in force. The ACA is the central authority that is responsible for supervision and implementation of the provisions of this law.[37]

Kosovo* legislation also has some laws and internal regulations (sub-legal acts) and a section of them regulate conflict of interest, specifically for certain fields such as: the civil service, local self-government, public enterprises, codes of ethics and corporate governance for public enterprises, health, the tax administration, the Central Bank of Kosovo, mining and minerals, the courts, the rights and responsibilities of MPs, the Independent Media Commission, the police and internal auditing.

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[34] Law No. 04/L-051 on the Prevention of Conflict of Interest in the Discharge of Public Functions (article 5) Scope.

[35] Ibid. (article 6) Definition of conflict of interest.

[36] The Anti-Corruption Agency is an independent institution established by the Kosovo* Assembly in July 2006, which started to function on 12 February 2007. Its main responsibilities are administrative investigations of corruption, analysing and eliminating the causes of corruption, incompatibility of holding public positions and performance of profitable activities for official persons, restrictions regarding the acceptance of gifts related to the performance of official duties, supervision of their assets as well as of related individuals close to them and limitations regarding contracting subjects that participate in public tenders. The ACA reports to the Assembly regarding its work on an annual basis.

[37] Law No.04/L-051 on the Prevention of Conflict of Interest in Discharge of Public Functions, (article 19) Competencies of the Agency Pertaining to the Conflict of Interest.

Regular declaration of private interests

The entire legal framework in Kosovo* contains provisions that aim to prevent conflicts between the public and private interests of senior officials during the exercising of their public function, whereas the main objective of law No. 04/L-051 is to determine the rules, subjects, responsibilities and competencies to identify, address and resolve cases between conflict of public and private interest of the senior official. The term "senior officials" comprises officials from all three branches of power and thus includes parliamentarians and judges; it also applies to the municipal level of power. The main contents of law No. 04/L-051 are as follows:

Incompatibility during the exercise of public function – the law forbids senior officials from becoming managers or members of the managing or controlling body of private enterprises. It prohibits regular wage compensation in the capacity of a member of a steering body of a publicly owned enterprise or joint stock company with public property, except the right to compensation for travel costs and other necessary expenses. Senior officials, in the capacity of a member of a steering body or supervisor of non-profit legal entities or other legal entities which carry out work in the field of science, sport, education, culture and humanitarian activities, are not entitled to receive compensation for travel costs and other necessary expenses, unless if otherwise provided by other laws. An enterprise where a senior official is the owner or partially owns it, is prohibited from entering into contracts or obtaining financing from the central or local institutions in which the senior official is in a decision-making position.[38] There is no specific provision relating to a public official overseeing a former (private) employer. However, this case would fall under the general conflict of interest clause.

Restrictions during the exercise of public function – Restrictions imposed on senior public officials during the exercise of other functions besides their primary function, are due to the fact that the law has foreseen that: a public senior official cannot be a manager or member of a managing body in a profit or non-profit organisation, with the exception of political parties and in cases when this function is dedicated due to the function. They may not exercise private activity within free occupations, such as advocacy, notary, mediation or private enforcement, as a consultant, agent or representative of organisations.[39]

Restrictions after termination of public functions – A senior official who concludes the exercising of their public function is not entitled for a year to be employed or appointed in a supervisory position, or to be involved in the control of public or private enterprises, if his/her duties during the two-year period prior to the conclusion of public functions were directly related to the supervision or control of the business of such enterprises.[40]

Case-by-case declaration of senior officials' private interests – Every senior official, during the exercising of his/her public function, based on his/her knowledge and in good faith, is obliged to make his/her preliminary declaration, case by case, on the existence of his/her private interest regarding the decision making in a particular case, that may be a cause for conflicts of interest. In addition, a case-by-case declaration of private interests is conducted every time by the senior

[38] Ibid. (article 15) Incompatibility with the discharge of public functions.

[39] Ibid. (article 16) Restrictions of senior official in exercising other activities in addition to the discharge of public functions.

[40] Ibid. (article 17) Restrictions for senior officials after termination of public functions.

official, when this is required by the supervisor or by the supervisory institution, which in this case is the ACA.[41]

Transfer of enterprise managing rights – Regarding this point, the law has regulated and specified that a senior official, who is the owner of shares or share capital of an enterprise, during the exercising of public functions, should transfer administration or management rights, or management of the enterprise to a trusted person. This should be done within a legal period of thirty (30) days of the election or of the appointment to the public position. The trusted person will act towards the realisation of the rights of the senior official and the rights from the capital on his/her behalf but on the official's account. The senior official has no right to provide information, instructions, orders, or in any other way stay in contact with the trusted person, thus having an impact on the realisation of the rights and fulfilment of duties. However the law has provided that the senior official is entitled to return the rights in administration or management of the enterprise from the trusted person after the end of the mandate or public position.[42] It is unclear, though, to what extent this provision works in practice. It would appear easy for a public official to transfer the management rights to a friend who would then – secretly – follow the orders of the public official in managing the company.

Membership of a senior official in non-governmental organisations – A senior official may be a member of the steering body of a non-governmental organisation in the field of humanitarian, cultural, sports and similar activities, without the right to receive payment, except compensation for travel costs and similar. However, non-governmental organisations cannot financially benefit from the Kosovo* budget if a member of the steering body of the non-governmental organisation, in the capacity of an official, has a direct or indirect impact on decision making regarding funding for non-governmental organisations that benefit from budgetary resources.[43]

Exercising of other activities by a senior official – The law provides that a senior official who is elected as a representative of a political party may retain the right to exercise his/her function in the political party, if not otherwise specified by law. During the time of the exercising of the public function, the senior official may realise profits based on copyright, patents and similar rights.[44]

In Kosovo* there are no restrictions on sponsorship of public events by private subjects since there is no specific law on this issue. But in practice, this issue appears not to have much relevance. Similarly, there is no specific law on the issue of "lobbying".

Prevention

Law No. 04/L-051 provides that the prevention of conflicts of interest must firstly be performed by the public official him/herself. According to the law, a senior official has the duty to prevent and resolve internally, by him/herself in the most effective manner, any situation of a conflict of interest. But if the senior official is in any doubt about the existence of a conflict of interest pertaining to him/her, he/she should consult the direct supervisor or steering body. As for the composition of commissions for tendering processes, the head of the institution or the authorised representative must notify the ACA in writing regarding the members of that commission. The ACA has the right to

[41] Ibid. (article 13) Case–by-case declaration of an official's private interests.

[42] Ibid. (article 14) Transfer of enterprise managing rights.

[43] Ibid. (article 11) Senior officials' membership of non-governmental organisations.

[44] Ibid. (article 10) Exercising of other activities by senior officials.

participate as an observer in the work of that commission. If the manager or managing institution is not convinced about the existence of a conflict of interest or suspects that he has or may have a conflict of interest, then he/she is directed to the ACA which will make a final decision on the prevention of the conflict of interest.[45]

Actions forbidden for senior officials – During the exercising of a public function, a senior public official is forbidden from performing several actions. He/she cannot request or accept any reward or promise of reward regarding the undertaken action or omission that he/she is obliged to undertake within the public function. He/she may not gain any right, or accept promises for gaining it in cases where this would violate the principle of equality before the law. He/she may not influence the decision of any official or body for reasons of personal material profit or that of any person related to him/her. He/she may not promise employment or any other right in exchange for a gift or promised gift, as well as in obtaining or awarding public work or public supply for personal gain. It is strictly forbidden to use confidential information that is available or obtained in good faith during the exercising of the function for personal gain or for someone else. He/she may not affect the decision making of legislative, judicial or executive bodies by using his/her official position for the purpose of personal gain or for that of others.[46]

Management of conflicts of interest

The two main institutions for monitoring the conflicts of interest in Kosovo* are the supervisors of senior officials (following case-by-case declarations) and the Anti-Corruption Agency. The procedure in the Agency officially commences due to one of the following triggers:

- a case-by-case declaration by a senior official, if his/her supervisor does not resolve the conflict on his/her own;
- an open complaint by any person;
- an anonymous complaint;
- media reports; or
- irregularities found from verification of asset declarations.

The Agency informs the senior official about the commencement of the procedure and regarding the request, and informs him/her of the facts that the Agency possesses. The procedure of the Agency is confidential. The Agency publishes only the final results of the conducted procedure. The decisions are available online.[47] In case of reasonable doubt about the existence of a conflict of interest, the Agency informs the senior official that he/she has violated the provisions set forth by the law. The Agency shall independently verify the facts, whereas other institutions within their competencies are obliged without further delay, as requested by the Agency, to make available the facts and the required data. If after election, appointment or confirmation of the mandate, the senior official continues to perform an activity or function that this law defines as incompatible with the new function, then the Agency warns the senior official and sets a deadline by which he/she is required to cease the activity or to resign from the position. If the senior official continues to perform incompatible activities or functions under this law, despite the warning from the Agency, then the Agency will request from the institution where the senior official exercises his/her function to commence the procedure for his/her dismissal. The competent body where the senior official

[45] Ibid. (article 8) Officials' obligation to prevent conflicts of interest.

[46] Ibid. (article 9) Senior official's forbidden actions.

[47] http://www.akk-ks.org/sq/vendimet (Albanian).

continues to perform an incompatible function with this law should commence the procedure for dismissal from the function according to the Agency's request. If a Deputy of the Assembly performs an incompatible activity with this law, the Agency will inform the President of the Assembly and request the initiation of proceedings against him/her. The Agency, within an undefined period must be notified by the competent authorities regarding their undertaken actions.[48]

Monitoring compliance

Senior public officials are legally obliged to declare their assets to the Anti-Corruption Agency. It is also a legal requirement for them to declare their work positions on the declaration form, including their engagements outside their public official duties. According to the annual report of the Agency, almost one-third of officials have more than one work position.

After concluding the declaration of assets, the Agency is obliged to check the declared data through preliminary verification and comprehensive checking of the forms. All forms are subject to preliminary verification, whereas a minimum of 20% of the total number of forms of declarations of assets of public officials are subject to comprehensive checking. During these controls, ACA officials are obliged to check all cases of multiple employment. To this end, the ACA checks the state databases for information possibly contradicting the declaration by the public official. In all cases of violations of the law, the Agency shall issue binding decisions for officials to avoid the situation of a conflict of interest or non-compliance in the exercising of public functions. According to the Law on Conflicts of Interest, there are sanctions for disobedience of the decisions of the Agency and these are material sanctions from 500–2,500 € which are imposed by the court, as well as the request for dismissal from their work position. All decisions are public.

Sanctions –According to law No. 04/L-051 a conflict of interest does not constitute a criminal offence, but it is a minor offence and is punishable by a fine. Fines range from 500–2,500 € for violations of the obligations defined by the law in question. Apart from sanctions, the court can also impose a protective measure on senior public officials: prohibition of exercising public function for a period of three months to one year.

However, since 1 January 2013 when the Criminal Code of Kosovo* entered into force, a conflict of interest is also a criminal offence, and the foreseen punishment is from one to five years imprisonment

Statistics

Regarding statistics, the ACA publishes on an annual basis statistics concerning the addressed cases of conflicts of interest. From 2007 until the end of 2014, the Agency addressed 859 cases.[49] The annual reports include comprehensive statistics and charts, among which is the following:

[48] Law No.04/L-051 on the Prevention of Conflict of Interest in the Discharge of Public Functions, (article 18) Administrative procedure of the Agency on cases of conflict of interest.

[49] ACA annual report 2014, pp 25–26: http://www.akk-ks.org/repository/docs/Raporti%20vjetor%20final%202014%20-%20versioni%20anglisht.pdf.

Institutions	Cases reported for conflict of interest	Cases that avoided conflict of interest	Cases without conflict of interest	Opinions	Cases proceeded for investigation	Request for Dismissal /minor offense	Cases in procedure
Government	67	31	4	19	/	2	11
Assembly of Kosovo	5	1	1	3	/	/	/
Court /Prosecution	13	5	1	1	/	/	6
Independent Agencies	20	8	1	6	/	/	5
Public Enterprises	33	16	4	9	/	/	4
Local Government	126	77	23	8	3	5	10
Total	264	138	34	46	3	7	36

Table 12. Total of Conflict of interest handled cases in 2014.

The ACA identified 1,509 senior officials who exercise or hold two or more functions/positions. The ACA also issued 67 opinions to Contracting Authorities (Public Institutions); in 64 cases the ACA's recommendations for termination of procurement activities were observed. The total value of cases in which procurement activity was discontinued following the ACA's recommendations was 28,680,803 €.

1.5 Macedonia

By Dr. Slagjana Taseva

Regulatory basis and definition

The major piece of legislation which widely and universally covers conflict of interest issues within public institutions is the Law on the Prevention of Conflict of Interest (LPCI)[50] enacted in 2007. Before adoption of the LPCI, general provisions on the management of conflict of interest were part of the Law on the Prevention of Corruption (LPC)[51] of 2002.

Chapter IV of the LPC contains provisions (articles 40–46) which relate to conflict of interest matters. The two laws overlap to some degree as far as management of conflicts of interest is concerned. This concerns, in particular, regulations on general principles of conduct of public officials (articles 4–6 of the LPCI and articles 3–4 of the LPC) and regulations on gifts (articles 15–16 of the LPCI and article 30 of the LPC). Such a situation may cause problems in the interpretation of the laws in question and should be remedied.

The definition of conflict of interest set out in article 3(1) item 1 of the LPCI is as follows:

> *"'Conflict of interest' is a conflict between the public authorisations and duties and the private interests of officials, where the official has a private interest which has an impact or could have an impact on the performance of his/her public authorisations and duties."*

Article 3(1) item 3 of the LPCI defines the personal scope of application of the law: "'Public authorisations and duties' means the execution of activities of public interest under equal conditions in a material and immaterial sense". This definition actually encompasses all individuals who are employed by public institutions regardless of the scope of their responsibilities. It makes all these individuals subject to provisions of the LPCI including in particular the obligation to submit conflict of interest statements (article 20-b of the LPCI) or prohibitions on employment after leaving "office" (article 17 of the LPCI).

The definition of "related persons" is very broad (article 3(1) item 5) and specifies that individuals are deemed to be related to a public official if they are his lineal or lateral relatives by blood up to the fourth degree or in-laws up to the second degree. This article was additionally amended in September 2009 by adding *"*as well as any natural person or legal entity with which the official has a private interest", which makes the scope of the definition even broader.

The two main laws define incompatibilities and absolute conflicts of interest. However the definitions are more precise in the Law on the Prevention of Corruption (LPC)[52]. Articles 40–46 define the following incompatibilities: unlawful requests by a superior; failure to report a penalty-liable act; a prohibition on exercising influence over others; discretionary powers; offers of bribes; procedures in the case of an accusation of corruption; invalidity of legal acts; and damage compensation.

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[50] Law on the Prevention of Conflict of Interest ("Official Gazette of the Republic of Macedonia", No. 70/2007 and unified text Official Gazette 128/99).

[51] Law on Prevention of Corruption ("Official Gazette, Nos. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010").

[52] Ibid.

The LPCI contains more general provisions. Chapter III of the LPCI is titled “Principles of Operation” and articles 4–6 contain very general principles of conduct of public officials. They could be called a “code of conduct in a nutshell” in the context of conflict of interest management. Article 5 paragraph 2 of the LPCI regulates that the official must not:

- accept or solicit benefits in return for discharging his/her duties;
- exercise or gain rights by transgressing the principle of equality before the law;
- abuse the rights arising from the discharging of authorisations;
- accept awards or other benefits in return for performing operations relating to public authorisations and duties;
- solicit or accept awards or services in order to vote or not to vote or to influence the adoption of a decision by a body or person so as to gain benefits for him/herself or benefits for individuals in close affiliation with him/her;
- promise employment or realisation of some other rights by accepting a gift or a promise for a gift; or
- influence decision making in public procurements or in any other way to use his/her position in order to influence the adoption of a decision with a view to accomplishing private interests or benefits for him/herself or for persons in close affiliation with him/her.

Article 6 of the LPCI regulates that individuals who are in close affiliation with the official, for whom it can be justifiably deemed that there is an interest which connects them with the official, cannot supervise or perform checks to monitor the work of the official. In addition, chapter IV of the LPCI, titled “Proceedings in the Case of the Conflict of Interest” in article 9 contains a material provision that obliges an official who owns or manages a commercial company or institution to entrust the management to another person or body before starting public office, becoming a civil servant, or being employed as a person with special duties. Related individuals as defined in article 3(1) item 5 are excluded from this obligation.

Macedonia is a rare example where the State Commission for the Prevention of Corruption (SCPC) is responsible for checking for corruption in the commercial sector. Article 1 of the LPC regulates the authority of the law over the commercial companies.[53]

The LPCI establishes a three-year prohibition on employment after leaving office[54] as well as a prohibition on acquiring shares or representing individuals or entities from the employing authority. It also stipulates a prohibition on an official being a member of the management or a supervisory board of a company, public enterprise, agency, fund or other entity with dominant state capital, unless otherwise specified by law (article 18). However, a civil servant or a person with special duties and authorisations specified by law can be a member of the management board or the supervisory authority of a company. There are conflict of interest rules related to membership of a CSO or foundation (article 20).

The second level of conflict of interest management legislation is made up of specific laws on public employment containing provisions pertaining to management and resolution of specific conflict of interest issues in respect of the material scope which these acts cover. These acts contain rules on, inter alia, incompatibilities, accessory activities, limitations on employment after

[53] Ibid.

[54] Law on the Prevention of Conflict of Interest (“Official Gazette of the Republic of Macedonia”, No. 70/2007 and unified text Official Gazette 128/99, article 17).

leaving office, recusal and withdrawal. Examples include for instance: the Law on Civil Servants[55] and the Law on Public Servants[56] which are essential pieces of legislation regulating the duties and responsibilities of a large number of civil and public servants. The Law on Administrative Servants[57] and the Law on Public Sector Employees[58] also contain conflict of interest principles.

There are also provisions of major codes of procedure (i.e. the Code of Criminal Procedure, the Code of Civil Procedure, and the Code of Administrative Procedure) that typically specify the circumstances under which a public official who is in charge of judicial, prosecutorial or administrative proceedings is required to recuse himself or withdraw from a conflict of interest situation. In addition, the Law on Members of Parliament[59] stipulates the incompatibility of the position of MP with any public function or profession or any profitable profession.

The Law on Public Procurement (LPP) also contain regulations with regard to ethics and conflicts of interest deriving from the Law on the Prevention of Conflict of Interest and the Law on the Prevention of Corruption.[60] In the LPP[61], articles 62–63 stipulate that members of the Public Procurement Commission should sign a statement for the non-existence of conflicts of interest that shall form part of the documentation of a particular public procurement procedure. In the Law on Public Internal Financial Control (LPIFC)[62], article 39 specifies conflict of interest circumstances, under which an internal auditor should not participate in an audit.

The above list does not exhaust the entire set of laws and by-laws which address specific conflict of interest issues throughout the entire Macedonian legal system.

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[55] Law on Civil Servants ("Official Gazette of the RM" Nos. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 06/2009, 114/2009, 35/2010, 167/2010, 36/2011, 6/2012, 24/2012, 15/2013, 82/2013, 106/2013 and 132/2014, as well as Constitutional Court decisions).

[56] Law on Public Servants ("Official Gazette of the Republic of Macedonia" Nos. 52/2010, 36/2011, 6/2012, 24/2012, 15/2013, 82/2013, 106/2013 and 132/2014). Decisions of the Constitutional Court of the Republic of Macedonia, U. No. 83/2010 of 8 June 2011, published in the "Official Gazette of the Republic of Macedonia" No. 86/2011; U. No. 77/2011 of 2 September 2011, published in the "Official Gazette of the Republic of Macedonia" No. 132/2011; U. No. 184/2011 of 15 February 2012, published in the "Official Gazette of the Republic of Macedonia" No. 27/2012, U. No. 221/2011 of 11 March 2012, published in the "Official Gazette of the Republic of Macedonia" No. 53/2012; U. No. 42/2012 of 9 May 2013, published in the "Official Gazette of the Republic of Macedonia" No. 70/2013, U. No. 55/2012 of 24 April 2013, published in the "Official Gazette of the Republic of Macedonia" No. 75/2013 and U. No. 63/2013 of 8 October 2014, published in the "Official Gazette of the Republic of Macedonia" No. 156/2014.

[57] Law on Administrative Servants ("Official Gazette of the RM" No. 27/2014).

[58] Law on Public Sector Employees ("Official Gazette of the RM" No. 27/2014).

[59] Law on Members of Parliament ("Official Gazette, No. 84/05, 161/2008, 51/11, 109/2014").

[60] Sigma Assessment 2013 http://www.sigmaweb.org/publicationsdocuments/FYROMAssessment_2013.pdf (accessed on 1 August 2015).

[61] Law on Public Procurement ("Official Gazette of the RM" Nos. 136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014 and 130/2014).

[62] Law on Public Internal Financial Control ("Official Gazette of the RM" 90/09 from 27 July 2009).

Regular declaration of private interests

The Declaration of Interest adopted by the SCPC on the basis of articles 20-a and 20-b of the LPCI contains the obligation for officials to fill in and submit the declaration to the SCPC within 30 days of their appointment. The declaration template is available online.[63]

The declaration contains personal data, information about the function/position and the public authority, and interests containing the personal engagements and the engagements of the related individuals. The declaration is submitted only once upon appointment/employment and, apart from the template, the declarations are not available online.

There is no legal obligation for officials to report changes in their personal interests.

Prevention

The SCPC regularly organises training for different stakeholders (officials, judiciary and local administration) and it also cooperates in including the topic in regular training programmes. Training is also organised in cooperation with international organisations (UNDP) or with technical cooperation (TAIEX).

Since the accumulation of offices has taken on serious dimensions, especially at the local level among members of municipal councils, the SCPC published an appeal for strict implementation of the law by officials and other stakeholders. It increased the number of voluntary resignations from one of the accumulated offices.[64]

Officials must also submit requests for an opinion related to post-employment or conflict of interest issues. This issue is regulated by the LPC (article 27) which provides an obligation for the official to inform the SCPC if, within three years of the date of end of office, he/she establishes a trade company or begins a profitable activity in the field in which he/she used to work. The same law establishes that an official may not acquire shares or rights in an entity over which he/she has supervision during his/her term of office or within three years of its termination.

Nevertheless the law does not provide for any restrictions on pre-employment engagements and there is no restriction on public officials, who in their previous job received income from business entities, having the right to have a direct supervisory or control function in respect of such business entities. This issue has not been addressed by the fourth round of the GRECO evaluation.[65]

In Macedonia there is a separate law on donations and sponsorships for public activities.[66] The law does not contain any special restrictions for sponsoring of public activities by private entities. The entire procedure for donation and sponsorship is regulated and the Ministry of Justice is responsible for implementation of the law.

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[63] http://www.dksk.org.mk/images/stories/pdf/obrazec/izjavazainteresi.pdf.

[64] Ibid.

[65] https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4%282013%294_ GRECO Evaluation Report on the Former Yugoslav Republic of Macedonia, Strasbourg December 2013.

[66] Official Gazette of the RM 47/06 amended Official Gazette 86/08.

Management of conflicts of interest

According to article 1(2) of the LPCI, the SCPC is the only competent authority for implementation of this law. Public institutions do not actively participate in conflict of interest management and genuinely act as if implementation of the LPCI was the sole responsibility of the SCPC.

Prior to 2012 there was no clear obligation for the SCPC to check conflict of interest statements, but since 2010 some statements have been checked on the SCPC's own initiative.[67] The Decree on the Manner of Checking the Content of Conflict of Interest Statements, adopted by the Government in March 2012[68], prescribes a three-step checking procedure, to be carried out by the SCPC as follows:

- verification of whether the conflict of interest statement has been completed in accordance with the form prescribed by the SCPC;
- cross-checking of the conflict of interest statement with the asset declaration to verify that all public authorisations and duties have been declared;
- supplying of data from the Trade Register and the registers of other legal entities that would enable confirmation of the correctness of the facts given in the statement.

The SCPC, by its autonomous decision, sets out a plan[69] with the sequence to be followed for checking of conflict of interest statements. All of the statements included in the plan are checked with the same level of detail, and there is no reduction in the number of statements to be checked following a random selection. In 2012, the statements of government members, administration officials, MPs and local authorities were checked. In 2013, following the local elections, the statements of mayors and municipality council members were checked. In 2014, judges from various courts were checked, as well as public prosecutors.[70] In addition, according to article 3 of the Decree, the SCPC is obliged to check the completeness of the statements of new officials immediately. [71]

Within 30 days of appointment/election, officials submit the statement on conflict of interest to the SCPC on the official form published on the SCPC website. In case of failure to submit the statement the official may be fined by a court of law 1,000 € to 3,000 €.

If an official finds him/herself in a position of conflict of interest, he/she must notify the SCPC within 30 days. The procedure for determining a conflict of interest is carried out by the SCPC: *ex officio*; at the request of an official; upon receiving a report from another person; at the request of the manager or an anonymous report. If a conflict of interest is determined, the SCPC issues a decision (which is not published) and the officials must remedy the situation within 15 days. If the official does not act upon the decision, the SCPC can issue a public warning. The procedures are the same for all officials and compliance is monitored by the SCPC.

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[67] OECD (2013), "The Former Yugoslav Republic of Macedonia Assessment Report 2013", *SIGMA Country Assessment Reports*, 2013/10, OECD Publishing. http://dx.doi.org/10.1787/5jz2rqkbxq22-en.

[68] Official Gazette of the Republic of Macedonia No. 42 of 28 March 2012.

[69] Information from a PowerPoint presentation http://slidegur.com/doc/48597/sudir-na-interesi.

[70] Annual Report of the SCPC for 2014, only in Macedonian, p. 51.

[71] The obligation to verify the completeness of these conflict-of-interest statements arises from article 3 of the Regulation on the Manner of Verifying the Contents of the Conflict of Interest Statements, which envisages a verification of each statement immediately after it has been received.

The SCPC also monitors regular declarations on a permanent basis and ad-hoc ones on the basis of a request. The lack of a clear list of officials creates problems in practice, especially in obtaining relevant data about elected and appointed officials.

Monitoring compliance

The SCPC monitors regular declarations on a permanent basis and ad-hoc ones on the basis of a request. The officially published manual[72] does not contain a methodology or steps for monitoring compliance. There are also no procedures in place to check databases, such as the civil registry for the family connections of bidders with officials in procurement procedures.

According to the SCPC[73] the procedure regarding initiators is open to the public. It acts not only on its own initiative but also upon requests by specific officials, the managing authority in a body, a third-party report (natural person or legal entity), as well as upon anonymous reports. Whistleblowers are not explicitly protected when reporting conflict of interest cases, but a case of reporting conflict of interest violations would probably qualify for protection. However the SCPC is not selective in its work and assesses all reports and complaints, directly or indirectly received information, public knowledge, without exception. It establishes the facts relevant for making conclusions and acting through data, official information and other documents as well as the possible relations of the official with close persons and possibilities for conflict of interests in light of the legal competences, authorisations and duties prescribed in the Law on Prevention of the Conflicts of Interests and in the other laws that include provisions related to the conflict of interests.

The SCPC safeguards the data obtained during the procedure from any manipulation.

The issue of alleged conflicts of interest is permanently present in the public awareness. Often, the public assumes a conflict of interest of public officials, even when one does not exist in reality. This is especially true for officials' membership of several management or supervision bodies. The LPCI allows indirectly for several exemptions from incompatibility by referring to various other laws which foresee multiple memberships.

In case of a violation of the provisions of the LPCI, article 25 of this law foresees that the SCPC can issue a public warning, take an initiative for the instigation of a disciplinary procedure or an initiative for dismissal (article 25) against the official concerned. A public reprimand is pronounced and published in the media in case of a first violation. An initiative to dismiss the official occurs in case of a second violation, after a public warning has already been pronounced (article 26). The law also foresees fines imposed by the competent court for misdemeanours, namely a fine of the amount of the MKD equivalent of 1,000 € to 3,000 € if an MP fails to submit his/her statement of interests to the SCPC.

After reviewing the legal framework and practice in its implementation, GRECO concluded that the sanctions available for other types of violations, such as the provision of false or incomplete information on the declarations, are not dissuasive enough and recommended that sanctions be provided in the relevant laws for all the infringements they contain.[74] In this regard a ban from

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[72] Manual on Integrity and Conflicts of Interest, published by the SCPC 2013, http://www.dksk.org.mk/en/images/banners/manual_integrity_coi_f.pdf.

[73] SCPC Annual Report 2010, p. 39.

[74] GRECO Evaluation Report on the Former Yugoslav Republic of Macedonia, Strasbourg December 2013, R. IV.

holding office can be found among the disciplinary sanctions for judges, since the violation of conflict of interest is considered a violation of the Code of the Judicial Ethics (paragraph 7.1).[75] With the adoption of the Code, the Assembly of the Association of Judges of Macedonia formed an Advisory Council, as a new body for the effective implementation of the established principles and in line with the issues regarding conflicts of interest and corruption. In addition, under the Law on Courts,[76] failure to declare assets or interests and concealment of property also constitute disciplinary violations for which a judge may be held accountable in a disciplinary procedure. The disciplinary measures that may be pronounced in such a case are: a written notice, a public reprimand or a salary reduction amounting to 15% to 30% of the monthly salary of a judge for a period of one to six months. However the disciplinary infringements applicable to judges are not clearly defined. In this regard, GRECO issued a recommendation to extend the range of sanctions to ensure better proportionality and so that dismissal of a judge would only be possible for the most serious cases of misconduct.[77]

Entire chapters of the law are dedicated to the exclusion of judges from the judicial procedure where a conflict of interest with judges exists.[78]

Statistics

The majority of cases are reports about the accumulation of offices in holders of public authorities i.e. the exercising of two or more functions simultaneously. This phenomenon is most frequent in the municipalities among members of the municipal councils with simultaneous exercising of the function of director in public enterprises and institutions at the central and local levels.[79] The most frequent factors for conflict of interest are a lack of knowledge about the conflict of interest, corruption and insufficient effective control.

In the period between 2009, when the obligation for submitting the statements was established, and the end of 2014, the SCPC received 6,539 statements of interest.[80] Based on articles 20-a and 31-a of the LPCI, the SCPC initiated misdemeanour procedures in the Basic Court Skopje 1.

Table 1: Conflict of interest cases according to the LPCI[81]

Year	Misdemeanour procedures initiated
2014	6
2013	8
2012	26

[75] Code of Judicial Ethics 2014.

[76] Law on Courts, ("Official Gazette of RM", Nos. 58/2006, 35/2008, 150/2010, U. Nos.256/07, 74/08, 12/11).

[77] GRECO Evaluation Report, IV Round of Evaluation, published on 6 December 2013.

[78] Law on Criminal Procedure and the Law on Civil Procedure.

[79] SCPC Annual Report 2010, p. 25.

[80] SCPC Annual Report 2014, p. 51

[81] Source: Annual Reports of the SCPC, http://www.dksk.org.mk/en/index.php?option=com_content&task=blogcategory&id=14&Itemid=43.

Year	Number of cases	Public warnings	Conflicts established
2014	171	40	77
2013	273	15	132
2012	96	5	29
2011	78	8	37
2010	194	7	48
2009	69		20
2008	44		9
2007	30		4

Table 2: Dismissal initiatives based on the LPCI[82]

Year	Initiatives
2014	3
2013	0
2012	3

[82] Source: Annual reports of the SCPC 2012, 2013 and 2014 http://www.dksk.org.mk/index.php?option=com_content&task=blogcategory&id=18&Itemid=47.

1.6 Montenegro

By Boban Saranovic

Regulatory basis and definition

In 2004, the Parliament of Montenegro adopted a law on conflicts of interest. It is noteworthy, that this same law also established the Commission for the Prevention of Conflict of Interest (hereinafter: Commission). However, the law did not have the necessary legal mechanisms for combating conflicts of interest. Therefore, the Government proposed and Parliament adopted the Law on the Prevention of Conflict of Interest.[83] This law underwent several changes.[84] The definition of public officials was extended. For the first time the incompatibility of public functions was introduced. For example, a public official who performs work in state administration and local government bodies may not perform the function of member of parliament (MP).

It should be noted that Montenegro adopted a new law on the prevention of corruption[85] in 2014, regulating also the area of conflict of interest. The new Agency for the Prevention of Corruption will be established from 2016. The Agency for the Prevention of Corruption will be formed by merging the Directorate for Anti-Corruption Initiatives and the Commission.

Conflict of interest is defined in article 2 of the Law on the Prevention of Conflict of Interest:

> "*A public official shall discharge his public office in such a manner that he shall not place private interests before the public interest and shall not cause a conflict of interest. A conflict of interest exists when the private interests of a public official affect or may affect the impartiality of the public official in the performance of public office".*[86]

Of course, the area of conflict of interest is not only regulated by this law. The Constitution of Montenegro regulates the issue of incompatibility of functions.[87] The Law on Local Self-Government[88] contains a special incompatibility provision for local officials: article 91 paragraph 2 stipulates that a local official's office shall be incompatible with holding any other local public office or membership of the managerial bodies of public services.

Civil servants are not included in the definition of "public officials", except senior civil servants appointed by Government on the basis of an application process. The issue of conflict of interest

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[83] Official Gazette of Montenegro No. 1/09, adopted on 19 January 2009.

[84] Official Gazette of Montenegro Nos. 41/11, 47/11 and 52/14.

[85] The Law on the Prevention of Corruption was adopted in December 2014 but will apply from 1 January 2016.

[86] the same definition of conflict of interest in article 7 of the Law on the Prevention of Corruption. Both laws explain the meaning of the expressions: the public interest is the material and non-material interest for the good and prosperity of all citizens on equal terms; private interests of a public official mean ownership or other material or non-material interests of a public official or individuals related to him.

[87] The Constitution of Montenegro, adopted on October 2007, in article 104 prescribes the incompatibility of duties for the prime minister and members of the government as well in article 124 for judges.

[88] Official Gazette of Montenegro Nos. 42/03, 28/04, 75/05, 13/06, 88/09 and 3/10.

for civil servants is regulated by the Law on Civil Servants and State Employees.[89] In addition, there is a Code of Ethics of Civil Servants and State Employees.[90]

A very important law is the one that regulates the field of public procurement, which defines conflict of interest between purchasers and bidders in article 4.[91]

The issue of conflict of interest exists in the Code of Ethics of the Montenegrin Parliament, the Code of Ethics for Judges, as well as the Code of Ethics for Prosecutors.[92] Furthermore, the Law on the Prevention of Conflict of Interest applies to MPs, judges and the highest-ranking officials, with a few exceptions.[93] Also, for these individuals the disqualification procedure is governed by separate laws and legal acts.

The Law on the Prevention of Conflict of Interest regulates certain restrictions on the discharging of public office for public officials such as:

- the discharging of other public affairs;
- management rights in companies;
- the discharging of managerial and other functions in a company;
- the discharging of public office in public companies and public institutions;
- service contracts;
- restrictions on termination of public office; and
- prohibitions on accepting gifts and refusal of gifts.

The Law on the Prevention of Corruption will bring some changes and innovations in restrictions for public officials. Namely, with regard to restrictions on the discharging of public office, public officials may not acquire income or other compensation on the basis of the membership of management bodies or supervisory boards. Also, new restrictions are introduced for sponsorships and donations to public organisations, including an obligation for annual disclosure.[94]

The Law on Civil Servants and Employees provides similar restrictions including the prohibition of abuse of power and use of state assets, prohibitions on receiving gifts, refusing gifts, secondary employment, prohibition of establishing business organisations, restrictions on membership of the bodies of legal entities (articles 71–76).

Regular declaration of private interests

The Declaration on the Existence of Conflicts of Interest is regulated by article 12 of the Law on the Prevention of Conflict of Interest. Under this article, a public official who participates in discussion and decision making in the authority where he discharges public office, in a matter in which he or a related person have a private interest, shall inform the other participants by giving a declaration on

[89] Official Gazette of Montenegro No. 39/11, articles 8 and 69–78.

[90] Official Gazette of Montenegro No. 20/12, articles 5, 9 and 12.

[91] Official Gazette of Montenegro No. 42/11, articles 15–18.

[92] Code of Ethics, article 10, http://www.skupstina.me/images/dokumenti/eticki_kodeks_poslanika.pdf; Code of Ethics article 7, http://www.sudovi.me/ospv/eticki-kodeks-sudija/; Code of Ethics, http://www.tuzilastvocg.me/media/files/KODEKS%20TU%C5%BDILA%C4%8CKE%20ETIKE%20NOVI.pdf.

[93] One of the exceptions is that a declaration on the existence of conflict of interest shall not refer to MPs or councillors. The same applies to a public official to whom the rules on exceptions prescribed by a special law or another act apply.

[94] Law on the Prevention of Corruption, article 5 paragraph 2, articles 21 and 22.

the existence of a private interest. The Commission gives an opinion on the existence of conflicts of interest.

On the issue of civil servants, there are provisions related to the obligation to report a potential conflict of interest. A civil servant is obliged to inform his immediate manager in writing about a potential conflict of interest.

The Commission gave 34 opinions on the existence of conflicts of interest in the period from January 2014 to June 2015. The largest number of cases referred to the question of incompatibility of functions, mainly for local officials.

The Commission's opinions on the existence of conflicts of interest are available and are published on the official website of the Commission.[95]

Prevention

Measures for the prevention of conflicts of interest are carried out by the Commission. The Commission gives a high level of importance to education and awareness about prevention measures. Therefore, training has been organised in the past for public officials, as well for non-governmental organisations (NGO) and the media. Also, the Commission has conducted a public survey.[96] In terms of international cooperation and exchange of experience, the Commission cooperates with several agencies from the region and also worldwide.[97]

The Human Resources Management Authority provides training for some public officials and civil servants. Mainly, training has been focused on property cards – the entering and verification of data, integrity plans and protection of whistleblowers.

It is important for the prevention of conflict of interest that public officials have someone to ask for advice. The Law on Civil Servants and State Employees in article 68 prescribes the obligation of the state authority to create and adopt an integrity plan. Afterwards, the head of the authority is to appoint an integrity manager. All employees are obliged to inform the integrity manager about each situation, occurrence or action which, on reasonable grounds, is assessed to represent a possibility for the occurrence and development of corruption, conflict of interest or other types of illegal or unethical actions.[98] The Ethics Committee of each state authority has similar competences.[99]

One way to prevent conflicts of interest is to rotate public officials on a regular basis. As a good example, we can highlight the Customs Administration of Montenegro. They adopted the rules on the temporary schedule of servants and employees in the regional units of the customs administration. The rules prescribe the rotation of employees on a regular basis.

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[95] http://www.konfliktinteresa.me/new/index.php?option=com_blankcomponent&view=default&Itemid=147&lang=me.

[96] Report on the Work of the Commission for the Prevention of Conflict of Interest for 2014, p. 119, http://www.konfliktinteresa.me/new/attachments/article/481/IZVJE%C5%A0TAJ%20%20O%20RADU%202015.%20doc.pdf.

[97] The Commission cooperates with agencies from Serbia, Bosnia and Herzegovina, Kosovo* and China.

[98] Guidelines for the Development of an Integrity Plan, No. 01-940/13, Ministry of Justice, 31 January 2013.

[99] In accordance with article 19 of the Code of Ethics of Civil Servants and State Employees.

Management of conflict of interest

As mentioned earlier, for almost all public officials it is obligatory to provide ad-hoc declarations whenever a conflict of interest occurs. The state authority is obliged to forward the declaration to the Commission, which in turn, renders an opinion. It should be noted that the public official may not participate in the matter in question until the Commission gives its opinion.

The Commission adopted the Rules of Procedure.[100] In article 25 paragraph 1 of these rules it is specified that the procedure for giving an opinion on the existence of a conflict of interest may be initiated at request of a public official or the body in charge of an appointment or election. Furthermore, the initiative must be in written or electronic form and must contain facts with evidence of the existence of a conflict of interest. A public official may request from the Commission that the opinion should be delivered within a certain timeframe. A public official whose period in office has terminated shall be also obliged to declare ad-hoc conflict of interest situations according to article 42 paragraph 2 of the Rules of Procedure before the Commission for the Prevention of Conflict of Interest ("A currently serving public official or public official whose office has terminated shall be obliged to provide accurate and full data with regard to a potential conflict of interest").

The Commission shall adopt a decision/opinion in a closed session within 15 days of the day of the termination of the procedure. The decision of the Commission shall be prepared in written form and delivered to the public official. The decisions are available on the official website of the Commission. The method of work and decision making is regulated by the Rules of Procedure of the Commission for the Prevention of Conflict of Interest. The Commission's sessions shall be chaired by the President of the Commission. Voting is public, performed by a count of raised hands. Members of the Commission are obliged to be excluded from voting if they are related to the public official or other person about whom the Commission is making the decision, and must refrain from voting. However, there is no procedure which defines this situation precisely.

For civil servants there is an obligation to inform in writing their immediate manager about a potential conflict of interest. In addition, in case of a potential conflict of interest the head of the state authority shall make a decision on recusal of the civil servant from working on certain tasks, in accordance with the law regulating general administrative procedure. According to article 34 of the Law on General Administrative Procedure[101] it is defined that in the case of recusal, another official shall be assigned to make a decision in the administrative matter.

Monitoring compliance

One of the responsibilities of the Commission is monitoring restrictions in the discharging of public office. However, this monitoring consists only in checking property records and the handling of initiatives/complaints. When it comes to other (ad-hoc) cases of conflict of interest, then the Commission renders opinions on the basis of declarations by public officials.

A civil servant is monitored by his/her immediate manager, the integrity manager or the Ethics Committee.

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[100] Adopted 18 March 2015.

[101] Official Gazette of Montenegro No. 32/11.

In all these procedures, managers have a certain role in monitoring their employees. Although managers should have a more active role in checking for conflicts of interest, in practice this is not the case. Monitoring is not easy for a number of reasons. Some of the reasons are objective (limited time, need for delegation), while some are not (inactiveness, a lack of interest). However, managers have to find suitable tools for monitoring their employees. At first, managers should consider the difference between monitoring and surveillance. It is important that they provide clear written instructions and inform employees. They need to be transparent regarding cases and their decisions. They should also use social networks to raise public awareness.

Methodology

Monitoring restrictions in the discharging of public office is only partial. As mentioned earlier, it consists only of checking property records and the handling of initiatives. Therefore, there are situations not covered when the property card does not have data that can indicate a conflict of interest or when there is no initiative/complaint. This form of partial checks is insufficient and ineffective because it does not detect all illegal or unethical actions. Nevertheless, it should be noted that the Commission has a shortage of employees while, at the same time, the number of public officials has increased in recent years and now numbers just over 4,000.

Article 74 of the Law on Civil Servants and State Employees regulates the issue of secondary employment. A civil servant may, outside working hours, following the prior approval of the head of the state authority, perform activities or provide services only if the state authority that he is working for does not supervise such activities or work, or if such work is not prohibited by a separate law and if it does not represent a conflict of interest. An interesting case was published by the media about the double engagement of professors from a state university. This case suggested that for many years many professors were engaged in two or more jobs. The university reacted after the media reports.[102]

A procedure in which it is to be decided whether or not there is an infringement of the Law on the Prevention of Conflict of Interest shall be started by the Commission on the initiative of the authority where the public official currently performs or previously performed his/her public office, or the body in charge of the election, i.e. nomination of the public official, other state or municipal body, or another legal or natural entity. A procedure may be also initiated by the Commission in the line of official duty. This law does not provide the possibility of submitting an anonymous request. However, the Commission does take into consideration every anonymous request as grounds for initiating a case *ex officio*.[103] It should be emphasised that the new Law on the Prevention of Corruption in article 31 paragraph 2 stipulates that the Agency for the Prevention of Corruption may initiate the procedure *ex officio*, on the basis of its own knowledge or based on anonymous requests.

Whistleblower protection is currently regulated by several laws. The Law on Civil Servants and State Employees in article 79 paragraph 1 stipulates that:

> *"A civil servant and/or state employee, having made a denunciation to a competent authority, after he learns, in the course of performing his tasks, that a criminal offence against official duty or criminal offence or act with elements of corruption has been committed, is obliged to inform his immediate manager in writing about the denunciation".*

[102] http://www.rtcg.me/vijesti/drustvo/93540/advokati-ucg-otkazi-profesorima-po-zakonu.html.

[103] Meeting, Commission for the Prevention of Conflict of Interest, Podgorica, 15 July 2015.

Paragraph 2 of the same article prescribes that the immediate manager is obliged to take all measures to ensure the anonymity, protection against all forms of discrimination, suspension, and restriction or denial of the rights determined by this law, as well as against termination of employment. Of course, there are provisions in other laws which, directly or indirectly, regulate whistleblower protection.[104]

There is a lack of protection for whistleblowers in that this issue is not yet institutionalised or specifically regulated by law in Montenegro. The protection should extend to the disclosure of information concerning different types of illegal conduct, in accordance with the recommendation of the Council of Europe.[105]

The Law on the Prevention of Corruption will lead to major progress with regard to extending protection towards whistleblowers on all types of violation of regulations (not just criminal acts with elements of corruption, but also "ethical rules" which would include conflict of interest), a two-tier system of reporting, deadlines for notification of measures taken, etc.[106]

Public procurement officers are not covered under the term "public official" referred to in article 3 of the Law on the Prevention of Conflict of Interest.[107] The public procurement law contains rules on the prevention of conflict of interest for public procurement officers, members of the Commission and all other people involved in the process of public procurement, as well for bidders. These rules oblige the aforementioned people to notify about an actual or potential conflict of interest and submit a statement regarding this. The statement is an integral part of the public procurement documentation. A conflict of interest in the public procurement procedure exists under certain conditions. One of the conditions is kinship.[108] There is no regulated procedure to check for this condition. However, the public procurement administration has a list of suppliers and a list of public procurement officers and they are available on their official website.

The sanctions provided for infringements of the provisions on conflicts of interest are: being relieved of duty, suspension and disciplinary measures according to article 38 of the Law on the Prevention of Conflict of Interest. The public authority in which the official discharges his public office and the body in charge of the election, nomination or appointment shall inform the Commission about the measures undertaken regarding the decision of the Commission establishing that the public official has violated this law. It shall do so within 60 days of the day of receiving the decision with a written explanation. The disciplinary procedure is regulated by laws and acts that govern labour relations.

The Commission is in charge of submitting the request for initiation of the misdemeanour procedure. Criminal provisions are regulated according to articles 49–51 of the Law on the Prevention of Conflict of Interest. Provisions stipulate a financial penalty for the public official, or the responsible person in a legal entity. For some misdemeanours, protection measures exist for

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[104] Labour Law, article 102, Official Gazette of Montenegro No. 66/12; Law on Free Access to Public information, article 45, Official Gazette of Montenegro No. 44/12.

[105] Council of Europe, Resolution, 1729/2010, 29 April 2010, and Recommendation CM/Rec (2014)7 on the protection of whistleblowers, http://www.coe.int/t/dghl/standardsetting/cdcj/Whistleblowers/protecting_whistleblowers_en.asp.

[106] Law on the Prevention of Corruption, articles 44–70.

[107] Opinion of the Commission, http://www.ujn.gov.me/strucna-misljenja-nadleznih-institucija/.

[108] Articles 16 and 17 of the Law on Public Procurement prescribe actual or potential conflicts of interest for public procurement officers, all other people who are involved in the procurement procedure, as well for bidders. So, kinship between these people is a reason for a conflict of interest.

the seizure of objects, such as gifts, or a safeguard measure of prohibition from discharging activities for duration of six months to one year. The magistrates' court has imposed warnings in a large percentage of cases of conflict of interest (see statistical data below). So far, confiscation of property gain has not been imposed in any proceedings before the courts, although this measure is prescribed in two laws.[109]

Statistics

The number of public officials has risen to 4,033.[110]

From January 2014 to June 2015, the Commission received a total of 1,339 initiatives (the Commission *ex officio*: 1,141; others: 158). The Commission adopted only two decisions, that there was no infringement of the aforementioned law.

The role of the magistrates' court is important because of the imposition of sanctions.

Table 1: Imposed measures in 2014

	IMPOSED MEASURES	NUMBER OF CONVICTIONS	AS A PERCENTAGE
1.	Warning	184	63.5%
2.	Fine	82	28.3%
3.	Discontinuation of proceedings	10	3.5%
4.	Acquitted	10	3.5%
5.	Overruled	4	1.4%
	TOTAL	**290**	**100.0%**

The data from the table shows that the majority of imposed measures were warnings. The provisions regarding the misdemeanour procedure allow imposition, not just of the aforementioned measures, but also of protection measures such as seizure of objects as well confiscation of property gain.

To ensure the possibility of checking data from the income and property report, a public official is obliged to give the Commission consent to access the data in his/her account with banks and other financial institutions.[111] Public officials submit this statement with the income and property report form. So far, 359 public officials have submitted reports with this statement, of which 240 public officials gave the Commission consent to access the data in their accounts (with their signature

[109] Law on Misdemeanours, articles 50, 51 and 227, Official Gazette of Montenegro No. 1/11; Criminal Procedure Code of Montenegro, articles 468–475, Official Gazette of Montenegro Nos. 57/09 and 49/10.

[110] Report on the Work of the Commission for the Prevention of Conflict of Interest for 2014, p. 34,

http://www.konfliktinteresa.me/new/attachments/article/481/IZVJE%C5%A0TAJ%20%20O%20RADU%202015.%20doc.pdf.

[111] In accordance with article 20 paragraph 2 of the Law on the Prevention of Conflict of Interest.

and account number), 59 also gave consent but without the account number, and 60 did not give consent. This data indicates that some public official may be avoiding or even hindering the checking of the data from the report.

In 2014 the Commission informed the state authorities in five instances to initiate procedures to relieve public officials of their duties due to conflict of interest infringement. Two of them were relieved of duty. During this year, the Commission has initiated proceedings for 20 public officials, and these procedures are still in progress.

1.7 Serbia

By Nemanja Nenadic

Regulatory basis and definition

Conflict of interest in Serbia is regulated in the Constitution (2006), laws, by-laws and codes of ethics. The Law on the Anti-Corruption Agency[112] (ACA) provides the most comprehensive rules on conflict of interest relevant for the approximately 30,000 "holders of public office"[113]. This includes management of public bodies in all branches and levels of government, extra-budgetary funds and various public services (health, education and culture). Conflict of interest provisions exist also in sector laws, and thus apply to civil servants in general administration, police officers, public sector medical doctors, etc.

Conflict of interest rules for public sector employees are not comprehensive enough and the level of their development significantly differs from one law to another (e.g. central vs. local government civil servants). Besides the specific and modern "conflict of interest" regulation that Serbia has largely developed during the 21st century, there are also "old" incompatibility rules set out in various procedural laws (such as the Law on General Administrative Procedure, Law on Civil Procedure and Criminal Code Procedure).The number of ethical codes has increased, but their importance remains insignificant.

The Constitution states that "no one may exercise a state or public function that is in conflict with his other functions, businesses, or private interests"[114], but it does not define what a conflict of interest is. The definition in the Law on the Anti-Corruption Agency covers actual, potential and apparent conflict of interest: "**conflict of interests** is a situation where an official has a private interest which affects, may affect or may be perceived to affect the actions of an official in the discharging of his office or official duty in a manner which compromises the public interest"[115].

The definition is not sufficiently elaborated in other provisions of the law. There is no further reference to perceived conflict of interest whatsoever, while for the two other types of conflict of interest, the law does not always distinguish between them. Conflict of interest regulation in Serbia to a great extent deals with prohibitions, restrictions and the duties of public officials, aimed at preventing conflicts of interest, with only a few provisions regulating the resolution of an actual conflict of interest (articles 27 and 32) and oversight.

The Law on the Anti-Corruption Agency introduced one general rule for the prevention and resolution of conflicts of interest:[116]

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[112] The law was adopted in 2008, but implementation started only on 1 January 2010. This law replaced the Law on the Prevention of Conflicts of Interest in the Discharge of Public Functions (2004) that had a narrower scope (approximately one-third of the officials covered now) and less effective mechanisms of implementation (e.g. a lack of fines, vague control powers).

[113] On 17 September 2015, the register on the Agency's website contained the names of 28,140 active public officials. The register is not fully comprehensive, since it depends on data the Agency receives from various public bodies.

[114] Constitution of the Republic of Serbia, article 6 (2006).

[115] Law on the Anti-Corruption Agency, article 2 (2008).

[116] Further on in this chapter we use this term as a reference to an actual conflict of interest only (if not specified otherwise).

"An official shall avoid creating relations of dependency towards persons that may influence his impartiality in the discharging of public office and if such a relation cannot be avoided or already exists he shall undertake everything that is necessary to protect the public interest"[117].

However, it is not the only obligation upon officials to "avoid creating relations of dependency". On the contrary, the number of restrictions is impressive. The advantage of such an approach is the possibility of introducing fines and/or administrative sanctions for violations of the rules that are easy to recognise. The problem, however is a lack of flexibility, i.e. the official must obey the restriction, even when it is obviously not proportional to the risks of possible conflicts of interest. Another problem of the extensive regulation is the perception that an official should obey only the explicitly mentioned prohibitions, restrictions and duties.

The Constitution and conflict of interest laws in Serbia deal with the incompatibility of several public functions, providing both general rules in that regard (in the Law on the ACA) and specific rules for specific types of officials (in some sector laws). The rules in this regard are not always comprehensive, as they are a consequence of different concepts – "separation of powers", the efficient discharging of duties or the prevention of "double payments".

Public officials are allowed to keep their ownership of any company. However, they have to transfer the managerial rights to a "non-associated" person, within 30 days of taking office (until the end of the mandate). The official may not give information, directives or orders to the person to whom the managing rights have been transferred[118]. Inconsistent to this duty is a prohibition on establishing a company or buying shares in existing ones during the mandate. That prohibition applies only to officials "whose public office requires full-time employment or permanent engagement"[119]; this term, however could be interpreted in various ways.

Public officials are limited in their individual business activities and may not perform other jobs or engagements (i.e. in the public or private sector). However, this prohibition is valid only for the abovementioned category of officials, and may be overridden by a positive opinion from the Agency if not forbidden in other laws or regulations[120]. Furthermore, officials may "engage in research, educational, cultural, humanitarian and sports activities" without the Agency's approval (only notification is needed), if such engagement does not compromise the impartial discharging and dignity of the public office[121].

Indirect government contracting (i.e. through firms owned by public officials or members of their families) is not prohibited. The law[122] obliges firms where an official owns more than a 20% share or interest to report their participation in government contracting procedures (e.g. public procurement, privatisation) to notify the Agency, within three days of undertaking the first actions in the procedure. The firm should notify the Agency on the outcome of the procedure as well, i.e. whether they were awarded the contract or not. However, there is no mechanism in place for the Agency to oversee whether officials' companies are complying with this duty, nor is there any

[117] Law on the Anti-Corruption Agency (2008), article 27.

[118] Ibid, article 35.

[119] Ibid, article 33.

[120] Ibid, article 30. Prior to asking the Agency, an official should obtain consent for this engagement from the body that appointed him/her.

[121] Ibid, article 30.

[122] Ibid, article 36.

further investigation procedure. There is no duty to report government contracts of public officials' or their close relatives' companies that were already concluded before entering office.

Public officials are also very limited in their activities in private sector legal entities and in civil society. So,

> *"during tenure of public office an official whose public office requires full-time employment or permanent engagement may not hold management, supervisory or representation of private capital in a business company, private institution or other private legal entity"*[123].

They may sit on the boards of NGOs if "the Agency does not determine a conflict of interest"[124]. Such a conflict may not be claimed in the case of professional associations' boards (e.g. associations of judges)[125]. Membership of international organisations is not expressly regulated.

The law[126] deals with "gifts in connection to the discharging of public office". In general, an official is not allowed to receive such gifts and has to reject them[127]. Officials' family members should do the same[128] if offered a gift related to the discharging of public office. Exceptions are "protocol or other occasional gifts" (but not if in cash or securities). The law further details in which cases the gift may be retained. A gift is defined to include "money, objects, rights or services performed without adequate compensation, or any other benefit given to the official or associated person in respect of the discharging of public office"[129].
The main problem is the lack of criteria to establish whether the gift was related to the discharging of public office or not. So, public officials and their family members may claim that they received gifts "in a personal capacity", while their supervisors, political opponents and citizens may claim the opposite, with both sides having no solid proof for such statements.

There is no comprehensive legislative answer regarding donations given to a public institution, but only if related to the public official. If a public institution is the recipient of a private-sector pecuniary donation or sponsorship it seems that there is no restriction for the official to receive it on behalf of the institution (and to decide later about the interests of the donor's company, natural person, foundation, international organisation or foreign country). It is not clear whether the public official would be allowed to be paid for performing a public function from a source other than the institution for which he/she works, since there is no explicit prohibition, and the sources of such income might be non-controversial.

The law provides for post-employment restrictions, again, in an inconsistent way. So, for the two years after the end of their mandate, officials have to ask for the Agency's approval for "employment or establishing business relations with a legal entity, entrepreneur or international organisation engaged in activity related to the office the official held"[130]. Unlike the previously

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[123] Ibid, article 33, para 2.

[124] Ibid, article 34, para 1.

[125] Ibid, article 34, para 1.

[126] Ibid, article 39.

[127] Ibid, article 40.

[128] Ibid, article 42.

[129] Ibid, article 2.

[130] Ibid, article 38, para 1.

mentioned prohibitions and restrictions, this one applies to all officials except those "elected by citizens" (i.e. the president of the Republic, MPs and members of regional and local assemblies)[131].

While still in office, officials may be offered another job. There is no explicit duty to report such an offer. However, in some circumstances there might be a reporting duty – if the offer may influence a decision-making process, the official should excuse him/herself on that basis. If the job offer is given with the aim of influencing ongoing decision making, it could be treated as a criminal offence (bribery) and therefore would have to be reported.

While it is clear that the public office may not be used for the benefit of the official or his/her close friends and relatives, the law has less strict restrictions, if any, when it comes to the interests of political parties or members of their constituency. Of course, public officials are prohibited from directly subsidising their political parties or employing party members in public services if there are better candidates for the job. However, they may easily use the absence of clear criteria and the absence of competition when appointing their "special advisors" to achieve the same goal.

There are rules in place[132] to prevent an individual using "public resources and the public meetings which he/she attends in an official capacity for promotion of political entities". Using public resources is allowed when necessary for security reasons. Officials (except members of assemblies) are:

> *"required at all times to unequivocally present to his/her interlocutors and the general public whether he/she is presenting the viewpoints of the body in which he/she holds an office or the viewpoints of a political entity".*

There are no clear rules in regards to the "timing" of organising public events, campaigns, conferences, etc. So, public officials may promote themselves and their political parties in the pre-election period through popular activities (e.g. distribution of aid to the poor, signing of contracts with an investor, opening ceremonies of new schools), while presenting such activities as "regular work".

Specific forms of political party interests or other vested interests might appear when making decisions between two public interests (e.g. whether to repair the road in one village or another, whether to participate in one public event or another). The decision in such cases can be seriously affected (even in the preparatory phase) by criteria that should, strictly speaking, be irrelevant, such as: where do more people vote for a minister's or mayor's party, or where is his or her hometown? Any one of such considerations is theoretically forbidden, but it is almost impossible to make such an official liable for violation of conflict of interest rules; the consideration of undue interests can always be hidden behind discretionary powers or behind several layers of a decision-making process.

Conflict of interest rules are not the same for all public officials and there is a major difference between those with a "full-time function" (which have more strict prohibitions) and the rest. In some aspects, the restrictions are weaker for MPs and members of other assemblies. The differences are more visible in the area of "double public functions", where various restrictions are set in sector legislation. The very concept of "public official" does not cover all the people with a significant role in the decision-making process. It is most visible in the case of advisors, who are neither officials nor civil servants but may, most often informally, seriously influence the decision-making process.

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[131] Ibid, article 38, para 4.

[132] Ibid, article 29.

Regular declaration of private interests

Public officials have been declaring some of their private interests through asset declarations to the Anti-Corruption Agency[133]. Officials submit declarations at the beginning and end of the mandate, as well as annually in the case of larger changes in their assets/interests. The report contains information about real estate, registered movable property (such as vehicles), bank deposits, shares and interests in enterprises, other securities, intellectual property rights, debts, income, membership of NGOs and "all other data and evidence deemed by the official as relevant for the implementation of this law".

Besides this, officials have to "report suspicion of a conflict of interest", pursuant to article 32 of the Law on the ACA to their superior and to the Anti-Corruption Agency and to follow the Agency's instructions thereafter. Such reporting takes place at the beginning of the mandate and during the mandate.

Both public officials and civil servants have to follow also duties from the Law on General Administrative Procedure and to report some types of conflicts of interest. Similarly, judges and prosecutors have to obey procedural rules set out in judicial procedure regulations. These rules are similar to those in administrative procedure.

Part of the data from the register is available on the Anti-Corruption Agency website, i.e. real estate and vehicle description, information about bank deposits, income from public sources and information about shares in enterprises[134]. On the other hand, the law does not stipulate the publishing of suspected and resolved conflicts of interests and there is no practice to publish this kind of information.

Prevention

In the area of prevention of conflict of interest and training of public officials, the dominant role is played by the Anti-Corruption Agency (ACA). The ACA is, among other things, in charge of issuing opinions and directives for enforcement of the law, of issuing guidelines for developing integrity plans, of cooperating with research organisations and civil society organisations in implementing corruption prevention activities, and of introducing and implementing education programmes concerning corruption. Other actors may and occasionally do organise training for public officials (e.g. the Government's Service for Cadre Management, the Standing Conference of cities and municipalities).

In several provisions of the law, public officials are obliged to ask for the Agency's advice or opinion before taking further action. This is the case also with "suspicion of a conflict of interest" (article 32, paragraph 1).

[133] These issues are regulated in articles 43–47 of the Law on the Anti-Corruption Agency.

[134] Law on the Anti-Corruption Agency (2008), article 47.

Management of conflicts of interest

When it comes to (actual) conflict of interest, the Law on the Anti-Corruption Agency provides for general and some more specific rules. The general rules, in article 27, oblige officials to "discharge the duties of public office in a manner which shall not subordinate the public interest to the private interest", "to observe the regulations concerning his/her rights and duties", "maintain the trust of citizens concerning his/her conscientious and responsible discharging of public office", to "undertake everything necessary to protect the public interest" and not to "use public office to acquire any benefit or advantage for himself or any associated person". These prohibitions and duties seem to be wide enough to cover all possible conflict of interest situations. However, both officials and control bodies need more detailed rules to resolve whether there was a conflict of interest in a concrete, real-life situation.

The general rules therefore cover some typical situations that conflict of interest is associated with, such as patronage, nepotism, deciding in one's own matters or when interests of associated individuals are affected, etc. The specific rules regarding this are described in article 32. At the beginning of the mandate and during the mandate, the official has to "notify his/her immediate superior and the Agency, in writing and within eight days, of any **conflict of interest or any suspicion of a conflict of interest** concerning himself/herself or an associated person". This is a rather strange duty. An official may not know all the possible conflicts of interest he/she or associated individuals have at the beginning of the mandate, so reporting them would be impossible. In addition, once aware of being in a conflict of interest, an eight-day reporting period seems to be too long. However, the provision loses any meaning due to the mentioning of "suspicions" – an official may claim that he/she did not have any.

The Agency may ask for additional data to establish the facts, and may "notify the official and the body in which the official holds public office and propose measures for eliminating the conflict of interest"[135] (i.e. to abstain from participation in decision making). The Law on the Anti-Corruption Agency is not the only one regulating this issue. Therefore, the aforementioned provisions "do not preclude application of the provisions on disqualification set forth in other laws governing judicial or administrative procedures"[136]. According to these procedural rules a person involved in decision making should excuse him/herself from that decision making in case of certain conflicts of interest (e.g. relationships with parties in that procedure or their attorneys)[137].

The responsible official, under administrative procedure rules, "shall discontinue any further work on that case and notify the authority responsible for deciding on the exclusion, as soon as he/she learns of any of the grounds for exclusion". "If the officer deems that there are other circumstances justifying his/her exclusion" (e.g. business relationships, friendship), "he/she shall, without interrupting his/her work, notify the same authority thereof"[138]. A party in the procedure may request the exclusion of the responsible officer, either on the grounds explicitly mentioned in the law, or "other circumstances that raise doubts as to his/her impartiality". The officer whose exclusion has been requested "may not perform any actions in the procedure pending the decision on that request, save for those actions that cannot be delayed"[139]. The exclusion is decided by the

[135] Ibid, article 32, para 3.

[136] Ibid, article 32, para 4.

[137] Law on General Administrative Procedure (1997), articles 32-38.

[138] Ibid, article 33.

[139] Ibid, article 34.

head of institution or by the superior institution, at the same time designating another responsible officer[140]. The decision on the exclusion of a member of a collegiate body shall be adopted by that body[141].

The Law on the Agency provides for harsh consequences – "an individual legal act the adoption of which included involvement of an official disqualified due to a conflict of interest shall be void."[142] However, it would not happen "if the official who participated in its adoption reported the conflict of interest in accordance with this law and if allocating another person to participate in the adoption of the act was not possible"[143]. The Law on General Administrative Procedure[144] in such cases provides for an extraordinary legal remedy – reopening the case, after the decision is final, if "6) the officer who should have been excluded in accordance with the law was involved in the decision making".

Monitoring compliance

Compliance with the rules is monitored by the Anti-Corruption Agency. The Agency, among other things, keeps a register of officials, their asset declarations and checks the accuracy and completeness of information in the asset declarations[145]. Besides the ACA, other bodies may monitor compliance as well, but their role is not sufficiently stressed in the law (a superior officer or institution in charge of appointment of an official; the parliamentary committee that discusses the ACA's annual reports). So, the superior officer should be notified upon suspicion of a conflict of interest (article 27) and about the refusal of an illegal gift (article 40). The body in charge for electing, nominating or appointing the public official should provide an opinion about any potential additional employment of the public official (article 30).

However, there is no regular monitoring and control system of conflict of interest, either by law, or in practice. Aside from verification of assets declarations, the ACA would monitor conflict of interest only if notified that there is something potentially wrong – e.g. by the official seeking advice, by a whistleblower's complaint or by a media article.

While there are some legal possibilities for monitoring compliance with conflict of interest rules proactively, none of them is mandatory for the Agency or superior officers. The Anti-Corruption Agency is given strong powers in article 25 paragraph 2 of the law:

> *"State bodies and organisations, territorial autonomy and local state bodies, public services and other legal entities with administrative authority shall be required to forward within 15 days, at the request of the Agency, all documents and information necessary for the Agency to perform the tasks from its purview."*

It means that the Agency may, for example, collect information from the tax authority in order to check whether an official had non-reported income that was otherwise legal, and may compare

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[140] Ibid, articles 35 and 36.

[141] Ibid, article 37.

[142] Ibid, article 32, para 5.

[143] Ibid, article 32 para 6.

[144] Ibid, article 239.

[145] Law on the Anti-Corruption Agency (2008), articles 5 and 48.

information held by the Public Procurement Office and the Privatisation Agency with that submitted by the officials' owned firms, etc.

For the purpose of checking asset declarations (article 48), the Agency "may require the competent authorities to obtain data from financial organisations, business companies and other persons". This in particular means that the Agency would (indirectly) have access to bank accounts and information about the work of private enterprises.

However, there is no duty to conduct these preventive controls at all, nor a procedure on how to do this. The only exception is with the verification of the asset declarations, where the Agency shall determine its own annual plan of control, whose scope is not defined.

In case the Agency reveals a discrepancy "between the data presented in the Report and the actual status or a discrepancy between the increased value of the property of the official and his/her lawful and reported income", the Agency "shall establish the cause of such a discrepancy and notify the body in which the official holds office, i.e. the other competent bodies"[146]. These bodies "shall within three months of receiving the notice notify the Agency of the measures taken". "The Agency may request that the official submit information on property and the income of other associated persons" (i.e. more distant relatives, friends) "if there is reasonable suspicion that the official is concealing the real value of his/her property". The Agency may also "summon the official or an associated person in order to obtain information on the real value of the property of the official".

The Agency would launch *ex officio* a procedure to establish whether there was violation of the law. This could be initiated by the official, a superior officer, or a whistleblower's report. In this procedure, "the Agency may summon the official, an associated person or the person who filed the report. The official must have an opportunity to give a statement in the procedure before the Agency. The procedure before the Agency is closed to the public"[147].

The Law on the Agency does not provide for anonymous complaints[148], but just for the protection of the reporting person's confidentiality (i.e. Agency will not reveal his/her personal information)[149]. However, the recently adopted Law on the Protection of Whistleblowers[150] sets forth the duty of each public and private sector entity to act on the basis of anonymous complaints as well.

Basic "sanctions" for violation of the rules set by the Law on Anti-Corruption Agency are "measures", such as a "caution and public announcement of recommendation for dismissal"[151]. There is a two-phase decision-making process (with the Board of the Agency being the appeal body) and the possibility to oppose the "measure" in an administrative dispute[152].

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[146] Ibid, article 49.

[147] Ibid, article 50.

[148] Ibid, article 65.

[149] Ibid, article 56.

[150] Law on the Protection of Whistleblowers, article 13. The whistleblowers' protection law provides protection for those who report any irregularity, which includes also violation of conflict of interest rules.

[151] Law on the Anti-Corruption Agency (2008), article 51.

[152] Ibid, articles 52–55.

For most violations (but not all), there are fines, set out in articles 74–76. The range of fines for officials is 15,000–150,000 RSD (approx. 125–1,250 €), while non-complying legal entities may be fined up to 2 million RSD.

The Law on the Anti-Corruption Agency also contains the criminal offence of failure to report property or reporting false information[153]:

> *"An official who fails to report property to the Agency or gives false information about his/her property, with an intention to conceal facts about the property, shall be punished by imprisonment for a period of six months to five years".*

Additionally, the mandate of the sentenced official would terminate, and he/she would be banned from assuming public office for a period of ten years[154]. This criminal offence should be improved (in particular by removing the word "intention") and should be moved to the Criminal Code.

There are also "regular" criminal offences, set forth in the Criminal Code that could be related to conflicts of interest. These are, in particular, "abuse of power" (article 359) and "trading in influence" (article 366).

Statistics

According to its last report for the year 2014, the Agency:

- launched 14 criminal charges for hiding property or income (from declaration);
- reported 34 other potential criminal cases to the prosecutors' offices and other relevant bodies;
- initiated 153 misdemeanour procedures for failure to declare in time;
- six cases related to the failure to report termination of office;
- five cases related to the failure to transfer managerial rights; and
- four cases of another nature.

During the same year, the misdemeanour court issued a total of 101 decisions related to conflicts of interest.

The Agency dealt with 581 cases where some violation was suspected. Among others, 49 were for failure to transfer managerial rights in the firms, five for failure to report participation in public procurements and four for failure to report a gift. More than 500 cases were related to the late submission of reports. The largest group of officials were MPs (38), followed by 32 judges, 21 state secretaries, 20 assistant ministers, 64 directors of public enterprises at the local level, etc.

The Agency issued 551 measures, of which 526 were just "warnings", i.e. the weakest possible sanction.

The department for the resolution of conflicts of interest in 2014 processed the impressive number of 1,286 cases. This includes 313 opinions (interpretations of the law), 181 approvals of another function or job, 91 rejections of another function or job and 23 opinions on how to resolve conflicts of interest. In more than 200 cases violations of the law were identified.

Agency receives and finalises, on average, close to 1,000 complaints on an annual basis.

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[153] Ibid, article 72.

[154] Ibid, article 73.

There were no significant legislative changes in the area of conflicts of interest. Weaknesses in the law were identified in the National Anti-Corruption Strategy (2013), but no legislative action followed. The Agency proposed in 2014 a “model law”, i.e. a detailed proposal for reform. This document is being used in 2015 as the starting point for a working group drafting the new law (established by the Minister of Justice).

Some provisions of the Law on the Anti-Corruption Agency were changed due to Constitutional Court decisions, mostly dealing with the rights of the Agency’s director being found to be too extensive. In one case, the Parliament adopted an “authentic interpretation”. This relates to the duties of managers in public sector companies (parliament decided to exclude them from the duty to submit asset declarations).

Note: There is no English version of the updated version of the Law on the Agency.

2. Real life cases

2.1 Overview

By Dr. Tilman Hoppe

The following table lists the main legal/practical question marking each case. The table is meant for ease of reference so readers can quickly look up cases relevant to their particular interest:

Country	Number	**Table 1: Key issues** (simplified)
AL	1	Do conflict of interest rules apply to **elected** but not yet appointed **MPs**?
AL	2	**Incompatibility** of a judge's business activities
AL	3	Can the State General Advocate represent a case where the **father-in-law** used to represent the other side?
AL	4	A **minister's wife's** company cannot participate in a public tender and the company omits to declare a conflict of interest
AL	5	The Ombudsman can sign an MoU with an NGO where his **spouse** is the director.
BiH	1	Failure of the oversight body to address a public official with four **multiple functions**.
BiH	2	Oversight body fails to act on Prime Minister sitting on board of Development Bank granting his **son's business** a loan.
BiH	3	Oversight body finds no evidence of conflict of interest where the Prime Minister and Deputy Prime Minister **appoint relatives** to a state-owned company.
BiH	4	**Political favouritism** appears to hinder an investigation into corruption based on a leaked voice recording of the Prime Minister.
KO*	1	**Incompatibility** of a position at the central bank and vice chancellor of a state university.
KO*	2	**Incompatibility** of a position in public company and member of the board of directors of a pensions savings trust.
KO*	3	Member of a municipal assembly votes in favour of **son's business**.
KO*	4	Is it constitutional if an **MP** also exercises a function that possibly qualifies as being in the **executive** sector?
KO*	5	Director of department of education appoints himself to HR commission and hires **relatives** as teachers.
MK	1	Public sector contract with business of public official's **wife**.
MK	2	Hiring of a **family member**.
MK	3	Managing partner of audit house is the **brother** of the president of the steering board of the former public sector company.
MK	4	**The brother of a minister** is appointed to public sector company without conflict of

		interest.
MK	5	Bankruptcy trustee illegally sells assets from a bankruptcy procedure to his **spouse**.
MK	6	A member of the Securities Commission votes to freeze the selling of shares of a company he had previously **audited**.
ME	1	**Incompatibility** of being an MP and a member of a bank committee.
ME	2	Public official takes part in a consortium applying for a **public tender**.
ME	3	One person exercising **seven public functions**.
ME	4	Company of president of municipality submits sole tender in **public procurement**.
ME	5	President of municipality runs a **business**.
ME	6	Director of state-owned company omits to **declare** ownership of shares.
RS	1	Business of member of kindergarten management board wins **contract** to supply kindergarten.
RS	2	Can a public official give advice as a private expert and exercise **supervision** of his/her client?
RS	3	Restaurant owned by mayor's **family** delivers services to the municipality.
RS	4	MP's business receives loan approved by **political party** colleagues.

Table 2: Key features

Country	Number	Detection	Position of public official	Cause of conflict of interest	Sector	Financial damage?
AL	1	Internal complaint	Member of Parliament	Own business interest	Public procurement	No
AL	2	Verification of asset declaration	Judge	Family	Judiciary	No
AL	3	Notification by public official	State General Advocate	Family	Justice	No
AL	4	Citizen complaint	Deputy Minister	Family	Health	No
AL	5	Media	Ombudsman	Family	Human rights	No
BiH	1	Citizen complaint	Councillor in the municipal assembly and three other positions	Incompatible multiple positions	Local government	Yes
BiH	2	Media, based on officially released	Prime Minister	Family	Development bank	Yes

		information				
BiH	3	Media, based on officially released information	Prime Minister	Family	SOE company, road construction	Yes
BiH	4	Media	Prime Minister	Political favouritism	Parliament	Yes
KO*	1	Media	Board member, Central Bank of Kosovo	Personal	Finances	Yes
KO*	2	Verification of asset declaration	Executive Director	Personal	Public enterprise	Yes
KO*	3	Anonymous complaint	Member of the municipal assembly	Family	Local government	No
KO*	4	Citizen complaint	Member of Parliament	Incompatibility	Parliament	Yes
KO*	5	Official complaint	Director Education	Family	Education	No
MK	1	Citizen complaint	Director Medical Institute	Family	Health	Yes
MK	2	Media	Director	Family	Health	Yes
MK	3	Media	Steering Board of Fair	Family	Audit	Yes
MK	4	Media	Director/Minister	Family	Government	No
MK	5	Citizen complaint	Bankruptcy trustee	Family	Judiciary	No
MK	6	Official complaint	Member of the Securities Commission	Auditor	Finances	No
ME	1	Media	Member of Parliament	Own business	Parliament	Yes
ME	2	Media	Head of department	Own business	Government	Yes
ME	3	Media	Member of Council	Family member	Public and private sector	Yes
ME	4	Media	Head of department	Own business, family	Local government	Yes
ME	5	Media	Head of department	Own business	Local government	No
ME	6	Verification of asset declaration	Director	Family member	Private sector	No
RS	1	Citizen complaint	Director and	Family	Education	Yes

			board member of kindergarten			
RS	2	Media	Head of department	Own business	Spatial planning	Yes
RS	3	Anonymous complaint	Mayor	Own business	Tourism	Yes
RS	4	Plenary debate	Member of Parliament	Private employment	Law	Yes

The above overview of 30 cases points towards the following main conclusions:

- Most cases were triggered by the **media**. Even though the above overview is probably statistically not representative, it raises the question of why there are not more cases triggered by active oversight by the responsible bodies.
- There are cases where the oversight bodies found conflict of interest violations by verifying the truthfulness of asset declarations. However, the cases almost exclusively concern incompatibility of functions, and not case-by-case conflicts of interest, such as the procurement of a public contract to a family member. Thus, it seems as if more **active detection** mechanisms are necessary for detecting case-by-case violations.
- It is not fully clear what percentage of the above citizen complaints in fact refer to cases of anonymous or confidential reporting. It appears though as if confidential and **anonymous reporting** channels are an important reporting tool, since often the informers will be close to the public official concerned and might fear repercussions.
- Conflict of interest violations go through **all sectors** of the state, and affect all levels including local governments.
- Most cases concern **family** relations or favouring one's **own business** interests.
- Conflict of interest violations are not merely an abstract ethical problem, but lead to real **financial** damage.

2.2 Albania

By Alma Osmanaj, with contributing expert Helena Papa

Case 1: Member of Parliament elected but not yet appointed

Background

At the end of the parliamentary elections of 2009, the Central Election Commission (CEC), announced the winning candidates for elections to the National Assembly of Albania by the decision No. 602, dated 8 January 2009. X.Y, was declared one of the winners of seats at the general elections and MP for the district of Shkoder. He took his oath as a member of parliament on 25 February 2010.

However in 2009 X.Y. was also a business partner with a 51% shareholding in the limited liability company “M.L.” This position is confirmed by the business certificate issued by the National Business Registration Centre. On 22 October 2009 the company “M.L.” took part in a public tender procedure for the renewal of the IT system of Durres Municipality, and was awarded the relevant contract. The tender won with Durres Municipality was worth 171,000 € and was paid to “M.L.” in two instalments: the first payment was made on 17 February 2010 and the second on 21 May 2010.

Detection of the case

The case was detected through an internal complaint at the National Assembly.

Procedure

In accordance with article 70 paragraph 4 of the Albanian Constitution, one-tenth of the National Assembly members initiated incompatibility proceedings for the mandate of the MP, X.Y., accusing him of benefitting from public funds after being elected. For this purpose, a motion for his removal was set before the Parliamentary Council on Mandates, Regulation and Immunity, which held a hearing in the presence of X.Y.

On 21 October 2010, the report of the Council, issued at the end of the hearings, was adopted by parliament and parliament decided to send the case to the Constitutional Court, which is the body in charge of determining incompatibilities with the function of MP.

Inter alia, X.Y. contested the decision of the Parliament, arguing that his private activity was not incompatible with his mandate as MP. His term as an MP had begun the day when he took his oath and not on the day when the Central Election Commission (CEC) declared the winners of seats at the elections. Taking into account that the contract between the company “M.L.” and Durres Municipality had been signed before that date, he stated that his mandate as MP was not incompatible with his private interests or business.

The Constitutional Court considered that X.Y. had violated the provisions of article 70 paragraph 3[155] of the Albanian Constitution when taking part in the tender organised by the Municipality of Durres and signing the relevant contract with its representatives after he had started the mandate of MP:[156]

"After promulgation as winner of a seat in the elections by the CEC, the MP X.Y. had the legal obligation to avoid any case of incompatibility with his function as MP. His main claim that at the time of the conclusion of the contract he was not an MP, because he had not yet taken the oath, is unfounded. Firstly and according to article 71 paragraph 1[157] of the Constitution, X.Y.'s mandate began on 8 January 2009, while payments were made by Durres Municipality and received on 17 February 2010 and 21 May 2010. Secondly, his failure to take the oath cannot be presented as a legitimate excuse, because the omission of this action was the result of his personal decision based on political expediency which was made public after the announcement of the final election results. The fact that the MP X.Y. did not take the oath for several months after the CEC's announcement of the election results and the beginning of his deputy mandate, does not exclude him from the responsibility to fulfil the obligations arising from the parliamentary term which started a few months later.

"The court reiterates that an MP, declared as such by the electoral commission to represent the people's will, should not link the exercising of his duty or the measures to be taken to exercise his duty in compliance with the legal constitutional framework with casual political developments even if those interests are directly related to the interests of the political group he belongs to. MPs have an individual responsibility for the exercising of their duty and cannot justify unconstitutional actions with other unconstitutional situations. Not taking oaths without justifiable reason constitutes in itself a violation of article 72 of the Constitution. Therefore such an omission should have been avoided at the time by the MP in question and

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[155] Article 70 of the Albanian Constitution:

1. *Deputies represent the people and are not bound by any obligatory mandate.*

2. Deputies may not simultaneously exercise any other public duty with the exception of that of a member of the Council of Ministers. Other cases of incompatibility are specified by law.

3. Deputies may not carry out any profit-making activity that stems from the property of the state or of local government, nor may they acquire their property.

4. For every violation of paragraph 3 of this article, on the motion of the chairman of the Assembly or one-tenth of its members, the Assembly decides on sending the issue to the Constitutional Court, which determines the incompatibility.

[156] Decision No. 44 dated 7 October 2011 of the Albanian Constitutional Court.

[157] Article 71 of the Albanian Constitution:

1. *The mandate of the deputy begins on the day when he is declared elected by the respective electoral commission.*

2. The mandate of the deputy ends or is invalid, as the case may be:

a. if he does not take the oath;

b. if he resigns from the mandate;

c. if one of the conditions of ineligibility stipulated in articles 69 and 70 paragraphs 2 and 3 is ascertained;

d. if the mandate of the Assembly ends;

e. if he is absent for more than six consecutive months in the Assembly without reason; or

f. if he is convicted by a final court decision for the commitment of a crime.

should not have been used as an excuse to justify the situation of incompatibility in which he found himself. Taking the oath is a crucial event in the constitution of the National Assembly and as such cannot be treated as a timeline dividing constitutional and unconstitutional behaviour. The MP has the obligation at the time of the announcement of final election results, regardless of when he is sworn in, to act as an MP. Such a thing did not happen in the case of X.Y.

"Therefore, the Constitution Court ruled that the MP X.Y. was in the state of incompatibility with the office of a member of the Albanian Parliament."

Follow-up

After the pronouncement of the Constitution Court's decision, the National Assembly, based on article 71 paragraph 1 (c) of the Constitution, terminated the mandate of the MP X.Y.

Case 2: A judge with undeclared business

Background

X.Y., a judge and member of the High Judicial Council (HCJ) was fully audited. After verification, the HIDAACI's inspectors found discrepancies between the documentation submitted by the subject of verification and data provided by the National Business Registration Centre which is the body in charge of administering all business files. The inconsistency found between judge's asset declarations and the registered documents created reasonable suspicion that forged documents had been submitted to the HIDAACI by the judge, aiming to avoid his legal responsibilities to exercise the function of judge and member of the HCJ in compliance with the Constitution and the legislation in force, resulting in a conflict of interest situation.

In addition, in the annual asset declaration forms of judge X.Y., it was identified that limited liability companies (LLCs) such as "M. Group", "P." and "Z." were owned and not duly declared by the judge and his wife. This information was provided by the National Business Registration Centre which also supplied the relevant business registration certificates.

Moreover, there were shares or parts of the capital of the aforementioned LLCs owned by the judge or his wife as follows:

- The judge's wife was the sole owner of the "M. Group", with 100% shareholdings;
- The judge's wife was the sole owner and manager of the company "P.";
- The judge and his wife were joint business partners of the company "Z." with equal 50% shareholdings.

None of the shares or parts of the capital of the aforementioned companies was transferred to a "trusted person" as stipulated by article 38 paragraph 1(c) and article 3 paragraph 6 of the LPCI.

According to article 143[158] of the Constitution and articles 22 and 23 of the Law on the Organisation and Functioning of Judicial Power (LOFPJ), being a judge is incompatible with any other public, private or political activity, or any other activity. Judges may not be members of political parties, engage in political activities, participate directly or indirectly in the administration or management of companies or act as experts or arbitrators. In addition, article 33[159] of the LPCI, prohibits judges who are HCJ members from actively holding shares or capital shares in profit-making organisations. The same prohibition is valid if the aforementioned shares or parts of the capital are registered in the name of a person "related" to a judge (spouse or partner, adult child, parents or parents-in-law) as stipulated by article 35[160] of the LPCI.

Therefore, and in order for the judge and member of the HCJ to keep the same functions, he and his spouse should have had the rights of active ownership of the shares or parts of capital that he owned transferred to another person, defined by the LPCI as the "trusted person" who may not be a close relative or a subordinate of the judge[161].

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[158] Article 143 of the Constitution of Albania: "Being a judge is not compatible with any other state, political or private activity."

Article 22 of the LOFJ: Incompatibilities with the duties of judges: "A judge may not exercise any other state, private or political activity."

Article 23 of the LOFJ: Restrictions because of the duties

"*1. The judge is prohibited from:*

a) taking part in a political party, or participate in activities of a political nature;

b) participating in corporate management or governance, in person or by representation."

[159] LPCI article 33: Restrictions for Certain Other Officials in High State Functions

"*The President of the Republic, a judge of the Constitutional Court, a judge of the High Court, the Chairman of the High State Control, the General Prosecutor, the People's Advocate, a member of the Central Election Commission, a member of the High Council of Justice and the Inspector General of the High Inspectorate of Declaration and Audit of Assets and the Conflict of Interest may not own shares in an active manner or parts of capital in a commercial company of any form*."

[160] LPCI article 35: Presence of Interests in Persons Related to the Official.

"*1. For the purpose of articles 27–33 of this law for the restrictions on the private interests of officials defined in the other articles of this section, only the spouse, adult children and parents of the official, spouse and partner are related persons.*

2. If shares or parts of capital are registered in the name of a related person, they are considered the same as if they were registered in the name of the official himself and the property rights of the related person in them are restricted to the same extent and manner as in the case of the official himself. These restrictions are not applicable to persons related to an official."

[161] LPCI article 38 item 1(c):

"i) The trusted person may not be his/her spouse or parent-in-law, adult children or their spouses, the parents of the official, his/her sibling or their spouses, persons with a known friendship with this official, an official or other person with ties of dependency, even indirect ones, because of the public function, with the official in question;

ii) The trusted person may not be a natural commercial person, whether or not one of the persons mentioned above, a company in which the official owns directly or indirectly within the meaning of article 25 of this law shares or parts of capital, a non-profit organisation in which the official has had or has relationships of interest of any kind."

Detection of the case

In 2014, in accordance with article 25 paragraph 1 of the Law on the Declaration and Auditing of Assets", the HIDAACI conducted a full audit procedure for all judges of the first instance and appeal courts of Albania.

Procedure

The HIDAACI concluded that judge X.Y. had violated the LPCI provisions and since 2010 had been in a situation of continued conflict of interest. In addition, he (and his spouse) had not taken any measure to solve this conflict as foreseen by article 38 paragraph 1(c) and article 3 paragraph 6 of the LPCI. Therefore, according to article 44 paragraph 1(ç) of the LPCI, the HIDAACI sanctioned judge X.Y. in April/May 2015 by imposing the administrative measure of a fine of 300,000 ALL (2,100 €) and asked the HCJ to take the relevant disciplinary measures against the judge.

Follow-up

No disciplinary measures have been applied so far against the judge. Due to other infringements of the Law on the Declaration and Auditing of Assets, criminal charges were submitted to the General Prosecution Office. The case is ongoing.

Case 3: General State Advocate representing a case against a relative

Background

On 31 July 2007, the commercial company "X" LLC, in the capacity of applicant, lodged an application (against Albania) with the European Court of Human Rights (EHCR), for violation of the right to a fair hearing in civil matters during the period 1998–2007. In the national system, until 2006 this company was represented in all the trial sessions by X.Y. (deceased 2006). X.Y. was also the father-in-law of the General State Advocate (SAG), nominated to that position in 2014. The General State Advocate is the government agent responsible for the legal representation of the Republic of Albania to the European Court of Human Rights. The State Attorney General was required to represent and submit comments about case No. 331/08: "X." LLC vs. Albania.

Detection of the case

A request for an interpretation about whether the General State Advocate was in a situation of conflict of interest and an indication of possible solutions was submitted to the HIDAACI by the SAG office.

Procedure

In order to resolve the dilemma of the existence of conflicts of interest, an interpretation and resolution in compliance with articles 18 and 24 of the Law on State Advocacy No. 10018, dated 13 November 2008, had to be provided.

Paragraph 1 of article 24 of the Law on State Advocacy stipulates that:

"*the General State Advocate, as well as any state advocate cannot represent the state, if there is an interest in a case in trial, even if not publicly known, under the provisions of the Administrative Procedure Code and the legislation on the prevention of conflicts of interest in the exercising of public functions.*"

Consequently, and given that the company "X." in all its domestic proceedings was represented by the General State Advocate's father-in-law, and taking into account the family relationship, the representation of Albania (the State Advocacy Office), by virtue of the General State Advocate to the ECHR, could constitute an apparent conflict of interest, especially if the issue had been raised by the applicant (the company) during the trial.

The resolution of this apparent conflict of interest is foreseen in article 37 (b)[162] of the Law on the Prevention of Conflicts of Interest in Exercising Public Functions No. 9367, dated 7 April 2005, and article 18 paragraph 1 of the Law on State Advocacy. Thus, article 37 (b) foresees that the official in a conflict of interest should exclude himself from the decision-making process, in this case from the representation process. Meanwhile, article 18 paragraph 1[163] of the special law foresees the possibility for the General State Advocate, which is based on the interests of the Republic of Albania, to contract external legal services and consulting representation, with the approval of the Minister of Justice, according to a competition procedure. Moreover, the office of the General State Advocate is a subordinate body of the Ministry of Justice. Therefore, the General State Attorney was able to be a signatory and represent Albania to the ECHR on the case of "X." LLC vs. Albania.

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[162] Article 37: The Basic Ways of Treating and Resolving Conflicts of Interest.

"*For the earliest possible and most effective prevention of every conflict of interest of any kind whatsoever:*

1. The official, in the exercise of his functions, ahead of time, according to the circumstance, the need, in a graduated manner or in proportion to the importance of the situation, shall avoid and resolve, himself, every situation of conflict of interests of any form whatsoever, using, as the case may be and as appropriate, one or more of the following steps:

a) transferring or alienating private interests;

b) excluding himself ahead of time from the concrete process of decision making, with the exception of cases when the delegation of the competencies of an official to another official is possible because of the law or because of the situation; in the case of collegial bodies, when a member is excluded from the decision-making process, the collegial body will function as such, with the exclusion of that member from the decision."

[163] Article 18: Outsourcing services and consulting representation.

"*1. In matters of importance to the interests of the state, or when the nature of the case requires lawyers specialising in specific areas, the State Attorney General, with the approval of the Minister of Justice, may contract lawyers and an advocacy office, domestic or foreign, in representation and protection of the interests of the Albanian state, according to a competition procedure.*"

Follow-up

The General State Advocate requested a postponement of the hearing before the ECHR, in order to resolve the situation of an apparent conflict of interest and contract external legal services and consulting representation for the trial in question.

Case 4: Medical supplies by deputy minister's husband

Background

In 2015, the National Agency for Drugs and Medical Devices (NADMD), in compliance with the Law on Public Procurement No. 9343, dated 20 November 2006, and its secondary legislation, announced an open electronic tender procedure for "stamps with security elements".

Through a duly filed official complaint, the NADMD was informed that "Z." LLC, was not an eligible tender candidate because the application submitted was not compliant with the legislation about conflicts of interest. X.Y., who was the sole owner of the company, was also the husband of L.Y., Deputy Minister of L. Moreover, the company "Z" did not submit the declaration of that there was no conflict of interest, which is a general requirement imposed by the Decision of the Council of Ministers (DCM) on Rules of Public Procurement No. 1 , dated 10 January 2007.

Detection of the case

The National Agency of Drugs and Medical Devices asked the HIDAACI to conduct a conflict of interest verification and to provide a resolution for this case.

Procedure

Article 21 of LCPI No. 9367, dated 7 April 2005, stipulates that:

"*No individual, if he/she corresponds to an official in charge of one of the functions/tasks defined in chapter 3 section 2 of this law, and no commercial company, partnership or simple company, in which the official owns, actively or passively, shares or parts of the capital/equity, in any amount, can contract or subcontract any public institution.*"

Therefore, according to article 27 of the LPCI, the function of deputy minister is part of the functions defined by chapter 3 and a strict prohibition of non-entering into a contract with any public institution applies.

In addition, DCM 1 on Rules of Public Procurement dated 10 January 2007, stipulates that any economical operator participating in the procurement of public funds procedure must submit, among other documents, a declaration of the non-existence of conflict of interest in which any private interest in relation to the operator himself and/or related persons (the spouse/partner, adult children or the parents of the official or parents of the spouse) must be completed. By compiling such a declaration stating that X.Y.'s wife was holding the position of deputy minister, X.Y. (and his company), as persons related to a high-level public functionary, he could not participate and conclude a contact with a public institution and thereby benefit from public funds. Based on

paragraph 1(b) of article 26 of the Law on Public Procurement No. 9643, dated 20 November 2006, as amended, the Contracting Authority shall refuse an offer or a request for participation in the tender if the bidding or candidate is in a conflict of interest.

The HIDAACI decided the following: that “Z.” LLC, in which X.Y. was the sole shareholder, as the husband of L.Y., the Deputy Minister of L, may not participate in the aforementioned procurement procedure organised by the National Agency of Drugs and Medical Devices. And if he had participated in the tender procedure, the contracting authority must disqualify and refuse the offer because the spouse of the applicant is in a conflict of interest.

Follow-up

The economic subject/bidder was disqualified and the public contract was withdrawn.

Case 5: Ombudsman cooperating with an NGO

Background

In 2011 a Memorandum of Understanding was signed between the Office of the Ombudsman and the NGO “E.”. The MoU was aimed at strengthening their cooperation in the framework of the two-year project “Improving mental health care in the prison system in Albania”. Also, in 2012, within the framework of the new two-year project “Enhancing access to the justice system in Albania: Human rights protection in the pre-trial detention system”, a new cooperation agreement was signed between those organisations. There was no financial benefit for “E.” from the state budget. “E.” was already financed by foreign donors before the cooperation agreement was concluded. Due to the fact that the executive director of “E.” was the spouse of the Ombudsman, the HIDAACI was asked to conduct a verification and to declare if, by signing these cooperation agreements, the Ombudsman was in a situation of conflict of interest or not.

The Law on the Prevention of Conflicts of Interest in Exercising Public Functions No. 9367, dated 7 April 2005, as amended, clearly defines private-interest ownership restrictions for public officials and related persons, in compliance with the relevance of their competencies and functions. Failure to implement the limitations provided by law constitutes a continued conflict of interest with the official function and/or decisions made in a conflict of interest.

As regarding the Ombudsman’s position, the restrictions are stipulated by the Law on the Prevention of Conflict of Interest and by its own Regulations on the People's Advocate. Thus, article 33 of the LPCI, stipulates the following limitations: "[...] the Ombudsman may not own shares in an active manner or parts of capital in a commercial company of any form."

Article 10 of the Law on the People's Advocate, in relation to incompatibilities with the office of the Ombudsman, stipulates the following:

"The Ombudsman is prohibited from belonging to political parties or organisations, performing any other political, governmental or professional activities and participating in the management of social organisations, economic and commercial companies. He can exercise the right to publish and teach."

The MoU signed between the institution of the Ombudsman and the NGO “E.”, which is neither an administrative act nor a contract, does not form part of the restrictions provided either by the LPCI or by other laws that apply in the field of conflict of interest.

Detection of the case

A request to the HIDAACI for interpretation.

Procedure

In view of the facts and legal considerations, the HIDAACI concluded the following:

1. *There were no private interests in the official decision-making process of the Ombudsman towards the NGO "E.", which could be a cause of a conflict of interest.*
2. *There were no private interests in breach of the restrictions (above) stipulated in law No. 9367 and in other body-level laws for the Ombudsman function and persons related to him.*
3. *Moreover, both MoUs were signed and concluded by the directors responsible for pre-trial detention and prisoners’ human rights and not by the Ombudsman himself. Thus, even if he were considered to be in an apparent conflict of interest, by withdrawing from the signing of the MoUs he took the necessary measures foreseen by article 37 of the LPCI and prevented such a situation of conflict.*

Follow-up

The MoUs were signed and explanations were provided.

2.3 Bosnia and Herzegovina

By Emir Djikic

Case 1: Multiple functions for single, private interest

Background

It is common practice in BiH for a public official to perform multiple functions for which he/she receives remuneration, salary or other kind of financial compensation and thus finds himself/herself in a situation of conflict of interest. In performing multiple functions, there is an assumption that the required impartiality and objectivity in carrying out public functions are endangered and that the performance of multiple public functions includes private interests which are put above the general public interest. In a small city in the east of the Republika Srpska, Zvornik, one person held four simultaneous positions (one of which was the position of councillor in the municipal assembly). This councillor in the Zvornik Municipal Assembly was also the head of the Health Insurance Fund of the RS's branch office in Zvornik, Chairman of the Board of Directors of the General Hospital in Zvornik and a member of the Supervisory Board of the RS Lottery.

The complaint

The case against the person in question was reported for the first time in June 2009 by hospital employees to Transparency International, which subsequently reported the case officially. The employees suspected a conflict of interest, in particular they questioned whether that one person who was conducting several public functions had the required impartiality and objectivity in carrying out his public work, and because this situation impaired the performance of public functions.

Procedure before the Conflict of Interest Commission

The Supreme Court of RS, acting on the complaint submitted by Transparency International BiH (TI BiH), ruled on 25 January 2012 that the elected councillor in the Zvornik Municipal Assembly had put his private interests above the common interest by holding an elected office in addition to performing three other parallel functions and ordered the Commission for the Identification of Conflict of Interest of the RS to establish the conflict of interest in the repeated procedure and to impose the appropriate sanctions. The Supreme Court of the RS took the view that the performance of four parallel functions entails a private interest because one can assume that each of these functions is granted with a monetary gain, salary or some kind of financial compensation. However, the Commission has not taken any action yet, and only the Commission for Determining the Conflict of Interest is given the right to decide whether that assumption is correct or not.

After collecting all the relevant information in 2009, TI BiH reported the case to the Commission for the Identification of Conflict of Interest of the RS. After conducting an investigation the Commission issued a decision determining that the person in question was not in a conflict of interest. TI BiH filed an appeal to the RS Appeals Commission in December 2009. The RS Appeals Commission rejected the appeal confirming that there was no conflict of interest in this particular case. In January 2010 TI BiH started an administrative dispute proceeding before the District Court of Banja Luka. In September 2010, the District Court of Banja Luka rejected the TI BiH lawsuit. After a final decision in 2012, TI BiH filed a request for an extraordinary review of the court decision to the

Supreme Court of the Republika Srpska. The RS Supreme Court granted the request and annulled the decision of the Commission ordering the reopening of the proceeding. In April 2012 the Commission for Determining Conflict of Interest again came to the conclusion that the person in question was not in a conflict of interest and TI BiH filed a complaint which the Commission did not adopt. In June 2012, TI BiH once again launched an administrative dispute proceeding before the District Court of Banja Luka. The court rejected the lawsuit on the same grounds as the first time. In June 2012 TI BiH decided to file one more request for an extraordinary review of a court decision to the Supreme Court of the Republika Srpska. The process is still ongoing.

According to the prevailing opinion of BiH administrative and legal practice, the courts generally abide by the rules of direct non-interference in the discretionary rights of the administrative authorities in administrative matters because it would be considered an influence of the judiciary authority on the administration authority. But, regardless of the previously stated, the Supreme Court for example expressed its attitude, i.e. by explaining the matter or annulling the action by which the administrative body decided that one person was not in a conflict of interest, it got involved in clarifying all the circumstances. So in this case it played a significant didactic role affirmatively interpreting the provisions of the Law on Conflict of Interest, primarily quoting article 5, and afterwards explaining that the proper application of this article may only be determined by examining whether in this case the reported person put private interests above general interests. The court even pointed out that the impugned fact finding must be clear from the explanation and arguments given by the Commission, and that it is not enough to quote and list the declarations of the consulted institutions where the reported person carries out all public functions.

At one point, the court even said that a person potentially in a conflict of interest should assess whether he/she is objectively able to behave “conscientiously, responsively, legally, impartially and with integrity” in carrying out multiple functions, i.e. that only the person in question should be consulted in the evidence-gathering procedure. With this, the court was teaching the public the proper application of the Law on Conflict of Interest. The court also showed how complex the issue of conflict of interest is and that, in deciding about its existence, it is necessary to consider all opinions, even that of the person to whom the application relates.

Follow-up

The case has not yet been brought to an end, and the persistent refusal of the Commission to conduct evidence-gathering proceedings thoroughly and comprehensively according to the instructions of the Court and provisions of the Law on Conflict of Interest gives the best illustration of the unfortunate current situation in the field of legal sanctions for conflicts of interest. It turns out that the greatest problem is the fact that the Commission for Determining Conflict of Interest, when it gets involved in meritorious decision making, does not give a justification for its decision and does not establish the facts properly. The uncovering of conflicts of interest is a very sensitive issue that represents an ethical issue and each case must be reviewed separately.

Case 2: Blurred line between state budget and private pockets

Background

The Government of the Republika Srpska (RS Government), in accordance to the Law on the Investment and Development Bank of the Republika Srpska is the (“shareholder”) Assembly of the Bank, since the bank is 100% state-owned. The RS Investment and Development Bank has been for several years the subject of media reporting for the controversial and non-transparent allocation

of loans to individuals close to the ruling structure. Despite the fact that the law provides that *ex-officio* investigations may be carried out, this happens very rarely in practice. F.E., a private company for the production and distribution of fruit and vegetables, in which the son of the RS's Prime Minister owns 50% of the shares, received a 3-million-KM loan (approx. 1.5 million €) from the RS Investment and Development Bank in 2008 after the Credit Committee approved it. The RS's Prime Minister presided over that Committee at the time when it granted the loan to his son's company. It is very interesting and symptomatic that F.E. submitted the application for a loan on the Friday and the loan was approved on the Monday, the first working day following the request.

The complaint

The Investment and Development Bank of the RS officially released the information on granting the loan to the Prime Minister's son. Immediately after releasing information, the media began widely reporting on the case and the Prime Minister confirmed publicly that the bank had granted the loan to his son.

The case report was submitted after TI BiH's Advocacy and Legal Advice Centre collected records from bank sessions by means of a request for access to information. Having analysed their content, TI BiH found that a loan had been granted to the son of the chairman of the Credit Committee.

Procedure before the Conflict of Interest Commission

After collecting all the relevant official information, in 2009 TI BiH reported the case to the Commission for the Identification of Conflict of Interest of the RS, which is in charge of determining conflicts of interest for public officials in the RS. After carrying out the procedure, the Commission dismissed the report, concluding that at the time referred to in the report, the Law on Conflict of Interest was not yet in force. TI BiH filed an appeal to the RS Appeals Commission and the RS Appeals Commission expeditiously rejected the complaint as unfounded. TI BiH initiated an administrative dispute and filed a lawsuit to the District Court of Banja Luka, but again the court rejected the lawsuit as unfounded. As a last resort, TI BiH filed a request for an extraordinary review of the court decision to the Supreme Court of the Republika Srpska, but the request was denied even though the court concluded that a conflict of interest existed.

Regardless of the fact that the law was not in force at the time of the loan approval, TI BiH initiated an administrative dispute against the Commission's decision in this case, considering it important because this action was not a one-off and the conflict of interest in the said case was a permanent condition, and the Commission should make a decision on this. Namely, TI BiH based its arguments on the belief that the legal criteria defining conflicts of interest and the possession of private interests was an ongoing state which simultaneously lasted as long as the disputable functions in the specific case. Afterwards, in the case of the loan approval, the conflict of interest could not be evaluated only on basis of the date of approval but also the term of the repayment of the loan should be considered, and for all that time the reported official was performing the function of chairman of the Credit Committee, too.

Under such a definition and understanding of conflict of interest, the disputed situation also covered a period when the law was in force. In the end, the court rejected the claim by accepting the arguments of the Commission for Determining Conflict of Interest, saying that the loan approval was a one-off action, and the same stance was taken by the Supreme Court, and thus the Commission rejected involvement in this case. The fact that the Commission for the Identification of Conflict of Interest of the RS persistently refused to decide on the report, referring to formal

deficiencies, reflects the fact that the law itself was not understood in its full sense because article 2 provides a very extensive definition of conflict of interest, which requires the Commission's work on all cases, including those considered to be borderline in terms of conflict of interest and this, according to the provisions in force, includes potential situations where a conflict of interest might occur.

Follow-up

The lack of the Commission's commitment in this case causes suspicion that the competent administrative body, determined under the Law on Conflict of interest, is intentionally refusing to resolve reports related to conflicts of interest, especially ones that involve high-ranking officials. The case has received extensive media attention and has been very often mentioned by the representatives of the opposition, but has never been followed by an official investigation looking into concerns that the loan approval was not transparent and not in line with the prescribed criteria. During the entire period in which the procedure was conducted before the Commission and courts, the Prime Minister was threatening journalists and opposition politicians whenever they initiated a discussion on the case. In particular the Prime Minister was threatening TI BiH and its representatives since they were the ones who initiated the procedure before the Commission and the courts.

Case 3: Abuse of public office – Our way or the highway

Background

Following the elections in 2010 and the establishment of the Government of FBiH, almost 1,000 decisions regulating different personnel/staff positions, removals of management in public companies and institutions and subsequent new appointments were recorded.[164] In July 2011, the Prime Minister of FBiH at the time appointed his brother as the Executive Director for Maintenance in the public company FBIH Roads and Highways. Also, the Deputy Prime Minister and Minister of Agriculture of FBiH at that time appointed his son-in-law as the Executive Director for economic and financial matters in the same company. In the case of the Prime Minister's brother it is interesting that the Prime Minister requested to be excluded from voting on the appointment of his brother. Moreover, it is interesting that just one day before the appointment of the Prime Minister's brother to the position of Executive Director, the Statute of the company was changed in the part covering the necessary qualifications for the position of Executive Director for Maintenance in the public company FBiH Roads and Highways.

The complaint

The Government of FBiH officially released the information on the appointment and the news media reported extensively on the case.

Procedure before the Conflict of Interest Commission

[164] Centre for Civic Initiatives, Monitoring report of the Government of the Federation BiH 2011–2014, available at http://www.cci.ba/dokumenti/Summary_Government_FBiH_english.pdf.

After collecting the official documentation, in August 2011[165] TI BiH's Advocacy and Legal Advice Centre filed a report against the aforementioned individuals. However, this case had not been reviewed by the CEC for more than year, because of, among other things, the refusal of the FBiH Government to provide the requested documentation to the CEC.[166] In the course of the investigation, the CEC tried several times to acquire official records and documents from the Government, but the Government systematically obstructed the investigation by refusing to make these available to the CEC. The correspondence between the Government and the CEC regarding CEC's access to the Government's official records lasted more than 15 months.[167]

After 16 months of investigation and collecting documentation, the CEC's Department for the Implementation of Conflict of Interest Legislation proposed that it would determine a conflict of interest for the Prime Minister of FBiH, as well as in the case of the Deputy Prime Minister of FBiH, and impose a sanction of 5,000 KM (approx. 2,500 €), and 4,000 KM respectively for abusing their positions by influencing the appointments of their close relatives in a public company. In December 2012, the CEC unanimously decided to stop the procedure saying that there was no evidence of a conflict of interest.

In July 2013, after the CEC officially announced Government obstruction of the investigation, TI BiH asked the CEC BiH to provide the information about the actions taken in this case. When the CEC BiH refused to provide the information,[168] TI BiH filed a lawsuit for violating the Law on Free Access to Information.

In May 2014, the Court of BiH accepted the TI BiH lawsuit against the CEC ordering the CEC to disclose the information. The CEC subsequently informed TI BiH that in the case of the Prime Minister of FBiH, it had decided to dismiss the proceedings due to a lack of evidence of conflict of interest.

Follow-up

During the entire period in which the procedure was conducted before the CEC, the Government systematically and wilfully obstructed the investigations. Despite the fact that the Department for the Implementation of Conflict of Interest Legislation proposed the imposition of sanctions in the aforementioned cases, all seven CEC members unanimously voted against it. The whole case was characterised by media controversies, the CEC initiating the procedure only after 15 months and then delaying and postponing the case from one session to the next.

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[165] Transparency International BiH, Annual report of the Advocacy and Legal Advice Centre 2011, 20 March 2012, available at http://www.scribd.com/doc/86198917/ALAC-Godisnji-Izvjestaj-za-2011.

[166] "Nikšićev brat državna tajna" [*Nikšić's brother is state secret*], Oslobođenje, 9 November 2012, http://www.oslobodjenje.ba/vijesti/bih/niksicev-brat-drzavna-tajna.

[167] "Posao za brata i zeta: Da li se otezanjem slučaja štiti premijer FBiH" [Jobs for brother and son-in-law: is the Prime Minister of FBiH being protected by postponement of the case?], Radio Slobodna Evropa, 11 August 2012, http://www.slobodnaevropa.org/content/posao-za-brata-i-zeta-da-li-se-otezanjem-slucaja-stiti-premijerfbih/24790319.html.

[168] "Zapošljavanje brata i zeta: CIK odgodio odluku o sukobu interesa u slučaju Nikšića i Ivankovića Lijanovića" [*Appointing brother and son in law: CEC postpones decision on conflict of interest in cases Niksic and Ivankovic Lijanovic],* 24 sata info, 4 December 2012, http://24sata.info//politika/125291-zaposljavanje-brata-i-zeta-cik-odgodio-odluku-o-sukobu-interesa-u-slucaju-niksica-i-ivankovica-lijanovica.html.

Case 4: Raid the messenger

Background

Following tight election results, anonymous stakeholders leaked voice recordings to the public featuring the voice of the incumbent Prime Minister of the Republika Srpska (RS). The incumbent Prime Minister was also a candidate for member of the Bosnia and Herzegovina (BiH) Presidency in the recent elections, and the current designated prime minister due to put together the new RS Government. In the recording, she is allegedly heard talking about the "purchase" of the newly elected parliament members with a view to composing a new ruling majority led by her party, the Independent Social Democrats (SNSD). The case illustrates how apparent (political) favouritism of law enforcement towards government representatives hindered an effective investigation into a possible case of high-level corruption. "Political relations" are one of the private interests relevant for conflict of interest under the Council of Europe Model Code of Conduct for Public Officials (article 13 of recommendation No. R(2000)10).

The complaint

The recording was leaked to the public via the klix.ba portal, which according to its claims, faced pressure in the form of requests from the police for interrogation as well as from the RS Ministry of the Interior to disclose the recording's anonymous source.

Procedure before the institutions

The very first statement of the RS Ministry of the Interior claimed that the PM had been "subjected to multiple eavesdropping and the incriminating recording was ultimately fabricated". The RS Ministry of the Interior qualified the controversial audio recording as fabricated in November 2014 without carrying out an investigation. However, in later statements, the RS Police Director claimed that "an expert analysis of the recording has been ordered", which raises concerns whether a proper investigation was carried out at all.[169] There is still no official information available concerning the authenticity of the recording or the status of that investigation, despite the issue being a high-level political affair.

An interesting coincidence is that the recording emerged only in the post-election period when the designated PM was facing major difficulties in assembling a ruling majority. Moreover, the MPs who may have been the subjects of the "purchase" mentioned in the recording suddenly left their pre-election coalitions to become so-called independent deputies willing to collaborate with and voting alongside the ruling party. It is interesting to note that the son of one of the MPs was appointed adviser to the President of the RS and his wife the Deputy Director for Medical Affairs in the hospital in Bijeljina.[170]

In April 2015 the RS Special Prosecutor's Office confirmed that a forensic investigation on the audio recording of the "buying" of MPs had not been conducted. Concurrently it presented an

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[169] "MUP RS vrši pritisak na portal Klix.ba zbog afere prisluškivanja Zeljke Cvijanovic" [Ministry of Interior RS puts pressure on portal klix.ba in case of eavesdropping on Zeljka Cvijanovic], Klix, 4 December 2014, http://www.klix.ba/vijesti/bih/mup-rs-a-vrsi-pritisak-na-portal-klix-ba-zbog-afere-prisluskivanja-zeljke-cvijanovic/141204057.

[170] "Vojin Mitrović nepoželjan u bijeljinskom SNSD" [*Vojin Mitrović is not desirable in Bijeljina's SNSD*], 26 May 2015, http://www.magazinistina.com/vojin-mitrovic-nepozeljan-u-bijeljinskom-snsd/.

argument according to which the investigation could not be conducted because the original recording had been returned to the web portal klix.ba under a decision of the Municipal Court in Sarajevo. The investigating authorities failed to determine the authenticity of the recording and according to the information disclosed to TI BiH they did not perform a single investigative action which could clarify this controversial case. In the reply to queries, Banja Luka's District Prosecutor's Office stated that the case had been forwarded to the RS Special Prosecutor's Office, which explained that the checking of the authenticity of the recording was the only object of the investigation. No further investigative action to determine whether the alleged "purchase" of the MPs had actually been committed have been undertaken.[171]

Follow-up

Instead of investigating the Prime Minister, the RS police raided the Klix portal that published the recording.[172] In June 2015, the opposition parties in the National Assembly of the RS requested a special session on the aforementioned case which was accepted by the parliamentary majority. However, the session resulted in no concrete action and the opposition's conclusions were not accepted by the National Assembly of the RS.[173] The international community raised serious concerns and severely condemned this act, characterising it as highly dangerous for the media and journalist freedoms.[174]

[171]"Specijalno tužilaštvo RS potvrdilo da nije radjeno vjestacenje snimka" [*RS Special Prosecutor's Office Confirmed that Forensic Investigation on Recording of 'Buying' of MPs Has Not Been Conducted],*Transparency International BiH, 16 April 2015, available at http://ti-bih.org/specijalno-tuzilastvo-rs-potvrdilo-da-nije-radeno-vjestacenje-snimka-o-navodnoj-kupovini-narodnih-poslanika/?lang=en.

[172] "Završen pretres redakcije bh. Portala" [Completed raid of the redaction of the BH portal], Al Jazeera, 29 December 2014, available at http://balkans.aljazeera.net/vijesti/policija-pretresa-bh-portal-klixba-1.

[173] "Sutra nastavak posebne sjednice NSRS" *[Tomorrow the continuation of the special session of NSRS*], 24 June 2015, http://mondo.ba/a577574/Info/BiH/Posebna-sjednica-Narodne-skupstine-Republike-Srpske.html.

[174] "Zaštita izvora je od ključnog značaja za novinarstvo" *[Protection of sources is of crucial importance for journalism*], 29 December 2014, available at http://ba.n1info.com/a17185/Vijesti/Vijesti/OSCE-osudio-upad-MUP-a-RS-u-Klix.html.

2.4 Kosovo*

By Fadil Miftari with contributing expert Hasan Preteni

Case 1: Two positions – banker and vice-chancellor of a state university

Background

S.R had been a member of the Board of the Central Bank of Kosovo* since 16 May 2008, with a five-year term. On 1 October 2012, by the decision of the Steering Council of the University of Prishtina, he was elected as the vice-chancellor for resources and infrastructure in the State University of Prishtina. According to the laws in force, this position brings him into a conflict of interest. The law stipulates that:

> *"a public official cannot be a manager or member of management bodies in profit or non-profit organisations, except political parties and cases when such a function is intended for the public function*".[175]

The simultaneous exercising of these two functions represents an incompatibility of functions and constitutes a conflict of interest in the exercise of the public function.

This is based also on the Statute of the University of Prishtina which explicitly says that:

> *"The main steering authorities of the university are: the Steering Council, the Chancellor and the Senate, while Vice-Chancellors are members of the Senate with decision-making rights.*[176]

Detection of the case

In December 2012, a daily newspaper in Prishtina on its front page published a leading article regarding the possible case of conflict of interest. The article related to the official S.R. who was exercising the duty of the Chair of the Board of the Central Bank of Kosovo* and was appointed Vice-Chancellor of the State University of Prishtina.

Procedure before the Conflict of Interest Commission

The Anti-Corruption Agency, as the main institution for implementing policies for the prevention of conflicts of interest, immediately opened the case. Based on the "Rules of Procedure", it contacted the author of the article (the journalist) to get more information about the case.

ACA officials confirmed that the individual in question already had the status of a high official, that is, he had declared income as the official chair of the Board of the Central Bank of Kosovo.

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[175] Law No.04/L-051 on the Prevention of Conflict of Interest in the Discharge of Public Functions, (article 16) Restrictions of the senior official in exercising other activities in addition to the discharge of public functions – http://www.akk-ks.org/repository/docs/Ligji_per_parandalimin_e_konfliktit_shqip.pdf.

[176] Statute of the University of Prishtina (article 16 and 43) – http://www.uni-pr.edu/getattachment/Ballina/1---Statuti-i-UP-se----21-09--2012---Shqip.pdf.aspx.

However, on the asset declaration form for the reporting year he had not declared a secondary work position.

Based on the Law on the Prevention of Conflict of Interest in the Discharge of Public Functions, the Agency had opened the case under the suspicion of a conflict of interest. The ACA had performed its regular procedures by informing the official in written form about the commencement of an investigation. Following the letter, the senior official came to the Agency to address the facts which the ACA had already provided through official channels. While addressing the facts, it was ascertained that the official was holding two positions which were incompatible with each other.

The Agency instructed the official to avoid the situation of conflict of interest, and within the legal deadline to resign from one of the positions.

Despite this, the official in question did not take any action to avoid this situation. After the expiration of the first deadline of 30 days, the Agency submitted the second letter, which according to the law is called a "Warning Notice". Following this letter, the official responded with a letter through in which he denied that his situation was a conflict of interest.

On 7 May 2013, the Agency made a ruling,[177] which concluded that the official, S.R., was in a conflict of interest and requested that the institution where he exercised his function dismiss him. In addition, the Agency initiated minor offence proceedings at the competent court.

Follow-up

After publication of the official decision, he entered the offices of the ACA and attempted to meet with the director of the Agency. This was not achieved since, according to the legislation in force, the ruling cannot be discussed or debated. Consequently, he threatened some ACA officials, and the case was reported to the police as well.

After commencing court proceedings, the official resigned from the position of vice-chancellor. The court took this into account and did not impose any further sentence.

Case 2: Two-time **director**

Background

E.Q. was exercising the function of Executive Director in a large public company and was a member of the Board of Directors of an important mechanism for a pensions savings trust. In Kosovo* this situation constitutes a conflict of interest.

[177] Ruling of the Agency about the case in question – http://www.akk-ks.org/repository/docs/vendim-Sejdi%20Rexhepi%20(1).pdf.

Detection of the case

In 2012, during checking of asset declaration forms, officials of the Agency identified a case of suspected conflict of interest. The suspicion was that a public official was exercising two senior public functions.

Procedure before the Conflict of Interest Commission

The proceeding was carried out pursuant to the Law and Rules of Procedure of the ACA. The official was notified in writing that his case was being addressed by the ACA on suspicion of a conflict of interest. However his reaction was dismissive towards the request from the ACA to avoid the conflict of interest, claiming that he was acting legally. He also claimed that the exercising of these two functions was not against the law. The general practice of the Agency is to handle the statute documentation of the institutions where the officials are employed. During the review of the documentation, the ACA found that he was exercising a managerial function, whereas the status of his position was "senior official". According to the law in force,[178] the exercising of these two functions is a conflict of interest for the discharging of public functions.

The Agency, acting in accordance with the administrative procedure for cases of conflict of interest, sent a second letter to E.Q. which is known as a "Warning". After expiration of the legal deadline for avoiding the illegal situation that was created, the Agency finally decided that the case must be referred to the Court for Minor Offences.[179] Furthermore, the ACA requested that the employer dismiss the individual from the function of Executive Director.[180]

Follow-up

After commencement of the proceedings and the publication of the ruling of the Agency, the senior official stood down from one function (as member of the Board of the pensions savings trust), the less well-paid position. The court fined the official in the first instance an amount of 500 €.[181]

A special characteristic of this case is that this official was fired after a year from the other mandate as well being dismissed from the managerial function (Executive Director) in the largest public company in Kosovo. This was (also?) due to the fact that he had not complied with the incompatibility provisions. This is the most typical case in which the mechanisms whose mission is the rule of law acted in a coordinated manner in order to take measures against negligence and non-compliance with the law in force. As a consequence, E.Q lost two senior functions in independent institutions.

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[178] Law No.04/L-051 on the Prevention of Conflict of Interest in the Discharge of Public Functions, (article 16) Restrictions on the exercising of other activities in addition to the discharge of public functions.

[179] Request from the ACA for commencing minor offence procedures; http://akk-ks.org/repository/docs/01.01.pdf.

[180] Request from the ACA submitted to the employer to dismiss E.Q.: http://akk-ks.org/repository/docs/001.01.pdf.

[181] Decision Ruling of the court for the case of E.Q.: http://www.akk-ks.org/repository/docs/0.0.0.0.2.pdf.

Case 3: Father voted **for** the interests of his son's company

Background

In a municipality of Kosovo, at the meeting of the Municipal Assembly held on 27 November 2014, a point on the agenda was a review of the request of a company – "Mushroom" – for the granting of a parcel of land for the cultivation of mushrooms. M.L is a member of the Municipal Assembly and participated in the voting, although the submitter of the request was the company where his son exercises a managerial function (director) in the private business. The proposal was approved with a majority of the votes.

Detection of the case

The ACA was informed by an anonymous person about this case that there was a potential conflict of interest.

Procedure before the Conflict of Interest Commission

After examination of the evidence, the ACA opened the case, and the assembly member was invited and the facts were presented to him. M.L. in the meeting with the officials of the ACA admitted that he had participated in the meeting but stated that he was not aware that this situation could represent a conflict of interest.

In such cases, the law clearly stipulates that:

> *"Each senior official during the discharging of his/her public functions is obliged to make a preliminary case-by-case self-declaration, on the basis of his/her knowledge and in good faith, of the existence of his private interests that might be a cause for a conflict of interest".*[182]

In addition, the law also stipulates certain forbidden actions for the public senior officials which states that: *"*During the discharging of the functions, senior officials are forbidden to take actions which may in any way suit his personal interest or the interest of close or trusted individuals*"*.[183]

The Law on Local Self-Government provided for cases when a member of a Municipal Assembly shall be excluded from the meeting of the Municipal Assembly.

> "*A member of the Municipal Assembly or of a committee shall be excluded from decision-making and administrative procedures relating to any matter in which he or she, or an immediate family member of his or hers, has a personal or financial interest".*

Considering all of these points, the ACA in its decision concluded that M.L. should have declared the conflict of interest and should have been excluded from the meeting.

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[182] Law No.04/L-051 on the Prevention of Conflict of Interest in the Discharge of Public Functions (article 13).

[183] Ibid. (article 9).

Follow-up

Furthermore, the ACA referred the case to the Court for Minor Offences. The decision was published by the ACA, while the court has yet to issue any information about progress on the case.

Case 4: Deputy appointed to executive function

Background

B.Sh. in the last parliamentary elections was elected as the deputy in the list of a political party, which ended up with the fourth largest number of the seats in Parliament. After many issues regarding the formation of local institutions, the government was established by the two parties with the largest number of deputies together with minority parties.

The party of B.Sh. remained in opposition without any executive function. After six months in opposition, B.Sh. transferred to one of the governing political parties. Considering his experience acquired during dialogue with Serbia, the governing parties proposed him to be the coordinator for negotiations.

Detection of the case

This case was identified by a reaction from the “opposition block” that was very powerful and medial. They alleged a conflict of interest with the aim of preventing him from exercising this function. It should be noted that this is not a case of a conflict between a public and private interest, but between two public interests: the interest of being a member of parliament (overseeing the Government), and the interest of being a member of the executive branch (supervised by Parliament).

Procedure before the Conflict of Interest Commission

The ACA is an institution whose mission is to handle cases of this nature. As a result, its director publicly confirmed that the case would be handled with priority. The case was opened under the suspicion of a conflict of interest in the discharging of a public function for the senior official, B.Sh., Deputy of the Assembly of Kosovo*, and at the same time Coordinator of the Republic of Kosovo* for negotiations with Serbia.

The senior official was initially informed by the ACA with an official letter about the commencement of a potential situation of conflict of interest. After receiving this letter, a meeting was organised with the senior official. During the meeting, ACA officials informed him about the potential situation of the conflict of interest. B.Sh. in the function of the Coordinator for Negotiations with Serbia was appointed by the Assembly of Kosovo, and he would report to the Assembly, the President of the Assembly and the parliamentary oversight committee regarding his work.

In addition, the issue of the conflict of interest is regulated by the Law on the Prevention of Conflict of Interest. According to this law, the positions of deputy and coordinator are in the category of senior public officials. Pursuant to this law, all senior public officials are obliged to prevent conflicts

of interest and resolve these issues within legally defined deadlines and in the most effective way possible to prevent any situation of their conflict of interest.[184]

The ACA analysed the situation and reviewed the facts that were available and did not find sufficient evidence to verify the situation of the potential conflict of interest and any incompatibility with the exercising of the public function. This due to the fact that the Law on the Prevention of Conflict of Interest does not contain restrictive provisions regarding the case of exercising the aforementioned functions. The ACA, in its ruling, referring to the law, stated that:

> *"[…] senior official B.Sh., during the exercising of public functions shall consider the obligation for a case-by-case declaration of interests in relation to the decision-making process for particular issues".*[185]

The ACA also stated that the official must adhere to the principles of actions and omissions during the exercising of the public functions stipulated in the legal provisions in force.[186]

Regarding the brought suspicions of the restriction and incompatibility of the Deputy in the exercising of the public function envisaged with the Constitution of the Republic of Kosovo*[187] and with the Law on the Rights and Responsibilities of the Deputy,[188] the ACA, according to its mandate and the competences stipulated by the law, declared itself not competent to interpret the norms of the Constitution and the Law on the Deputy.

Furthermore, the ACA concluded that the review of the situation created by the appointment of B.Sh., the Deputy of the Assembly of Kosovo, to the function of Coordinator of the Republic of Kosovo* for Negotiations with Serbia, was the responsibility of the competent institutions.

Follow-up

On 11 July 2015, a daily newspaper in Prishtina, on its front page published a critical article about B.Sh., stating that he was violating the Constitution of Kosovo* (article 7) by holding the function of Deputy and of the Coordinator of the Government – article 72:

> *"A member of the Assembly of Kosovo* shall not remain in any executive post in the public administration or in any publicly owned enterprise, nor shall he exercise any other executive function as provided by law."*

It also published a decision issued by the Prime Minister of Kosovo, who allocated an amount of 150,000 € per year for the coordinator and his office, which the newspaper deemed to be in contradiction with the Constitution of Kosovo.

On 14 July 2015, the Agency published its opinion on its website that it had submitted the case to the Constitutional Court for interpretation.[189]

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[184] Ibid. (article 8).

[185] This quotation refers to the decision of the ACA: http://www.akk-ks.org/repository/docs/vendim-mbyllje_k.i-_Blerim_Shala_361261.pdf, from law no. 04/L-051 (article 13 paragraphs 1, 2 & 3).

[186] Law No. 04/L-051 on the Prevention of Conflict of Interest in the Discharge of Public Functions (article 7) Principles of senior officials' actions and inactions.

[187] Constitution of Kosovo* (article 13 paragraphs 1, 2 & 3).

[188] Law No. 03/l-111 on the Rights and Responsibilities of the Deputy.

[189] Decision of the Agency regarding the case of B.Sh: http://www.akk-ks.org/repository/docs/vendim-mbyllje_k.i-_Blerim_Shala_361261.pdf.

Case 5: Self-appointment as a member of a commission in order to employ family members

Background

This case relates to S.A, a teacher in a secondary school in one of the municipalities of Kosovo. He had worked for five years as a teacher at that school. The director of the Department of Education in that municipality decided to open up several positions for teachers including the position which S.A. was currently in. After a public advertisement for the vacancy, the director chose himself and two other members close to him as members of the commission for evaluating the candidates and their admission.

As a result, two of the director's nieces, his brother's daughter and sister's daughter were employed for this job vacancy. The other two members of the commission each engaged one of their close family members. However, the rules of the advertisement in question determined that only those candidates who exercised the role of a teacher had an advantage for this position. In contradiction to these rules, S.A was not re-employed.

Detection of the case

S.A. complained to the Anti-Corruption Agency with a request for this case to be addressed for a conflict of interest.

Procedure before the Conflict of Interest Commission

The ACA opened the case and after collecting the facts, assessed that the municipal officials, first of all the Director of Education had acted contrary to the Law on the Prevention of Conflict of Interest which forbids a public official from assessing anyone based on his/her personal interest or relatives, as well as obliging him/her to carry out a preliminary declaration for each case for the existence of a private interest related to decision making.[190]

The ACA analysed the legal basis and the assessment of damage caused to the public interest by the illegal actions of the members of the commission in question. As a result, these violations were assessed to have breached not only the legal provisions of the Law on the Prevention of Conflict of Interest, but also found sufficient elements of a criminal offence.

The ACA decided to press criminal charges at the competent public prosecution office.

Comment: The mentioned cases are all real and were addressed by the ACA. They were opened by relying entirely on the close cooperation with ACA officials.

[190] Law No. 04/L-051 on the Prevention of Conflict of Interest in the Discharge of Public Functions, (articles 6 and 13).

Follow-up

After having pressed criminal charges, the prosecutor of the Basic Prosecution Office in Gjakova on 10 October 2014 filed an indictment.[191] Based on the media reports, the first court hearing was held on 20 January 2015 at the Basic Court in Gjakova.

No final decision has yet been taken, but according to the Criminal Code of Kosovo, the official person who personally participates in any official issue in which he/she or any family member or any other legal entity related to him/her has a financial interest, is punishable with a fine or imprisonment for up to three years.

[191] Basic Prosecution Office in Gjakova, indictment PP/I. No. 211/2014.

2.5 Macedonia

By Dr Slagjana Taseva

Case 1: Medical institute director supports his wife's business with public money

Background

During the years 2000, 2001 and 2002 the OOZT Institute of Skopje's Medical Faculty concluded several contracts with the company "Elbijor" for purchases of medical and laboratory material. A total of 31,382,242 MKD, or 514,426 €, was paid. The company "Elbijor" was owned by the wife of the OOZT Institute's director.[192]

Detection of the case

A citizen complained about the case to the SCPC.

Procedure before the SCPC

The SCPC reviewed the tender documentation and contracts and determined the conflict of interest. It referred its findings to the Public Revenue Administration.

The Public Revenue Administration acting on an initiative of the tax inspectors for the OOZT Institute discovered a violation of tax obligations. As a consequence, the OOZT Institute, based on personal income tax, profit tax and interest, paid a total of 3,326,447 MKD in taxes in June 2003.

Follow-up

Taking into consideration the aforementioned, as well as the fact that the director S.P. refused to submit the data requested by the SCPC on the basis of asset declaration rules (articles 33 and 35) according to the LPC, the SCPC passed the conclusion to initiate proceedings for discharging S.P. from the position of director of the OOZT Institute within Skopje's Medical Faculty (based on article 49(1) paragraph 5 which stipulates the jurisdiction of the SCPC to initiate a proceeding before the competent bodies to discharge, replace, criminally prosecute or apply other measures of responsibility towards elected or appointed civil servants, officials or responsible persons in public enterprises and other juridical persons managing state capital).

However, the discharge never came through. The Professorial Council of the Medical Faculty adopted the Statute of the Medical Faculty on 7 October 2003, stating that institutes and hospitals are internal organisational units of the faculty. Therefore, the Council argued, the SCPC did not have any jurisdiction over its internal conflict of interest issues.

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[192] State Commission for Prevention of Corruption Annual Report 2003.

Case 2: Director of the health fund bypasses procedures to employ wife

Background

The case concerns employment of the wife of R.Z. the director of the Public Health Fund (PHF), in Skopje Military Hospital as a dentist. It was a case of nepotism and conflict of interest.

Detection of the case

In 2003 the State Commission, on its own initiative and as a result of media reports[193], initiated proceedings for determining the current situation regarding the employment of the wife of R.Z., the director of the PHF, in Skopje Military Hospital.

Procedure before the SCPC

In order to collect accurate and objective information the State Commission for the Prevention of Corruption made a decision to take several steps in checking the formal proceedings in regard to the employment. The SCPC sent a formal request to the State Labour Inspectorate to conduct an inspection in regard to the employment of the wife of the director.

As a second step, the SCPC also checked whether the Ministry of Finance had issued a financial allowance for the employment which was necessary for any employment in a public institution.

The State Labour Inspectorate issued an official report and concluded that there was no announcement of the vacancy for a dentist in the Military Hospital.

The Ministry of Finance also informed that there was no financial approval for the employment. After receiving the information from the competent state bodies, the SCPC determined that this employment was realised against the provisions of the Law on Working Relations and the Law on Service in the Army of Macedonia, and was a result of nepotism and influence exerted by R.Z. as director of the Health Fund who had direct influence over the work of the hospital.

Follow-up

Assessing that R.Z. had breached article 29 of the Law on the Prevention of Corruption, i.e. he influenced the employment of his wife without first carrying out the procedure foreseen by law, the State Commission for the Prevention of Corruption, according to article 49 of the law, submitted to the Government of the Republic of Macedonia and the Steering Board of the PHF an initiative to discharge R.Z. from the position of director of the Public Health Fund.

R.Z. was discharged on 30 October 2003.

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[193] Newspaper “Vest” issue 884 from 19 June 2003, “Health fund director employs his wife in military hospital”.

The SCPC submitted, prior to this, a demand to the court to initiate misdemeanour proceedings against R.Z., in accordance with article 29 paragraph 2, because he did not fulfil the legal obligation to inform the Commission regarding the employment of his wife.

No information has reached the SCPC on the further outcome of the proceeding.

Case 3: Brother audits sister's company.

Background

The case concerns a conflict of interest between two commercial entities: Skopje Fair AD Skopje and X.Y. Audit House. The managing partner of X.Y. Audit House for the Republic of Macedonia, T.B., is a brother of the President of the Steering Board of Skopje Fair AD Skopje, L.K.

Detection

On 30 July 2003 the conclusion from the Report of the Independent Auditors was published in the newspaper "Dnevnik". The SCPC members read the information in a routine practice to read daily newspapers in order to recognise indications of cases that may be subject to the SCPC's jurisdiction.

Procedure before the SCPC

The case concerned private businesses. However, the State Commission was also responsible for combating corruption in the private sector (article 59 of the Law on the Prevention of Corruption). The information was presented at the official session of the SCPC and the SCPC discussed its jurisdiction over the possible conflict of interests in the given situation and decided to open a case.

The SCPC took the following steps: an official request was sent to X.Y. Audit House to inform it about the existence of the internal conflict of interest rules and procedure, and to provide a copy of the regulation. In addition the SCPC asked for clarification of the conflict of interest rules and procedures that needed to be applied in the particular case. The response was positive. There were existing rules and procedures that had not been applied in the case of auditing Skopje Fair. The auditing company was not notified about the fact that the managing partner for X.Y. in the Republic of Macedonia, T.B., was a brother of the President of the Steering Board of their client, Skopje Fair AD Skopje, L.K.

As a conclusion the SCPC determined that there was a conflict of interest.

Follow-up

Commencing from the determined conflict of interests, the SCPC assessed that there was a reasonable suspicion regarding the audit report, and as a result it decided, according to article 59 paragraph 5 of the law, to submit to the Public Revenue Administration an initiative for additional auditing of the financial affairs of Skopje Fair AD Skopje. The outcome of this audit is unknown.

Case 4: Premature reaction to two officials who are brothers

Background

The case concerns I.F., the Minister of the Economy and Deputy Prime Minister, and his brother, B.F., the director of Skopje's "Petrovec" Airport. In 2003 the brother of the Minister was appointed Airport Director.

Detection of the case

The media started to ask the SCPC for an opinion regarding a conflict of interest and nepotism in this case. For the journalist it was an obvious case of conflict of interest and nepotism.

Procedure before the SCPC

After receiving the information from the media, the SCPC took a formal decision to open a case on its own initiative and to undertake all necessary activities to determine the factual situation regarding the indications of nepotism during the appointing of B.F. as Airport Director. The SCPC took the following steps: it informed the media about the decision to open a case and it submitted an official request to the airport officials to provide the documents related to B.F.'s appointment as director including the CVs and applications of the other applicants.

All the documents requested were provided and after reviewing the official documents the SCPC concluded that the all the necessary proceedings for the appointment had been fulfilled. The appointment was made on the basis of the long career of B.F. in the airport services as well as his qualifications. There was no evidence of nepotism or any undue influence from the Deputy Prime Minister, I.F., regarding the appointment of his brother, B.F.

Follow-up

As a reaction to the SCPC opening the conflict of interest case against the Minister, I.F., the Prime Minister B.C. decided to propose the dismissal of I.F. from his position in the Government. The Parliament confirmed the dismissal without further discussion. Nevertheless, the State Commission, after the undertaken activities, determined that there was no nepotism in this case. However, the Government and the media were not satisfied with the SCPC's decision: the PM, due to the premature decision for dismissal of I.F., while the media claimed that it was obvious to anyone that it was a case of nepotism.

Case 5: Bankruptcy trustee selling assets to relatives

Background

The case concerns a bankruptcy trustee who illegally sold the assets of the entrusted company in the bankruptcy procedure in favour of his spouse and to gain personal profit.[194]

Detection of the case

A complaint from a group of citizens was submitted to the SCPC on 11 September 2006, reporting irregularities in the bankruptcy proceedings.

Procedure before the SCPC

The SCPC received information that the official T.L., appointed as a bankruptcy trustee in the bankruptcy procedure against the company "Prehrana" from Bogdanci, had committed activities that constituted abuse of his official duty as a bankruptcy official in selling the entrusted company's assets to the company of his wife.

The SCPC established that there was a reasonable suspicion that T.L. had committed the crime of abuse of his official position and authority and of frivolous performance of his official duty by illegally selling the assets of the entrusted company in favour of his spouse.

According to the SCPC[195], the official T.L., as a bankruptcy trustee, allowed the execution of the transaction for selling the assets of the company "Prehrana" in contradiction of the LPCI, the Law on Bankruptcy and the Code of Ethics for bankruptcy officials.

The Code of Ethics for bankruptcy officials explicitly stipulates that the bankruptcy official, his assistants in the proceedings and members of his family shall not buy directly or indirectly and in any form the property of the bankruptcy debtor that forms part of the bankruptcy estate.

The SCPC information showed that he had acquired personal profit amounting to **2,335,000** MK or 38,000 €. The SCPC forwarded the case to the Public Prosecution Office.

Follow-up

The case was evaluated by the Public Prosecution Office, which decided to reject the case as not sufficiently founded. However the SCPC requested an additional review. The additional review and the respond of the State Prosecutor confirmed the first prosecutorial decision. The State Prosecutor argued that the element of "damage" in the criminal offence "abuse of official duty" had not been met. The State Prosecutor concluded that there was no evidence of damage or of

[194] Source SCPC Annual Report 2008, p.19, http://www.dksk.org.mk/en/images/stories/PDF/scpc_annual_report_2008.pdf.

[195] Public information newspaper "Vecer", 6 June 2008, http://vecer.mk/makedonija/stechaen-upravnik-proneveril-38000-evra.

personal gain. The property had been offered for sale several times (for a price five times as high) before being sold to the official's wife. The State Prosecutor did not consider the conflict of interest standard as it was not an element of the criminal offence.

Case 6: An auditor participates in a decision on freezing shares

Background

The case concerns a member of the Securities Commission who voted to freeze the selling of shares in a company he had previously audited in the capacity of an independent auditor.[196]

Detection of the case

Citizen complaint: the head of the Securities Commission submitted a report to the SCPC on 4 June 2008 regarding the evident conflict of interest of one of the commissioners who, according to the Law on Securities, should have not participated in the part of the session deciding on a case in which he had an interest.

Procedure before the SCPC

The SCPC received information that a member of the Securities Commission had not complied with the conflict of interest rules requiring him to be exempted from participating in a decision of the Securities Commission for the freezing of the sale of the shares in company A. owned by the company S.L. from Skopje.

The SCPC established that one of the Securities Commission members had voted on a case he had previously audited in the capacity of an independent auditor. The SCPC established that the Securities Commission conflict of interest procedure had not been followed and it therefore asked the Securities Commission to issue a warning to its member and to annul the decision that he participated in illegally.

Follow-up

The decision was not annulled.

The Securities Commission concluded that, despite the fact that the conflict of interest rules found in the Law on Securities had not been followed, it was not necessary to annul the decision and to vote again. Five other members voted for the decision and one abstained (the commissioner in the case). So it was concluded that his presence had not affected the final decision.

The commissioner resigned from his position in the Securities Commission. Afterwards he was appointed a board member in a bank, again following intervention from the SCPC.

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[196] Based on the information from a press conference published in the newspaper "Vecer", 6 June 2008, http://vecer.mk/makedonija/stechaen-upravnik-proneveril-38000-evra.

The same commissioner in the Securities Commission was appointed a board member of a bank while also being commissioner. Therefore he resigned his post as commissioner following the SCPC's conclusion on a conflict of interest based on the accumulation of functions.

Other examples based on the LPCI

Case Law – Source: State Commission for the Prevention of Corruption's ANNUAL REPORT 2009 (pages 40–41)

A) Cases in which a conflict of interest was established	**B) Cases in which a conflict of interest was not found**
Government of RM – Secretary General The SCPC found an alleged and factual conflict of interest in the function Secretary General of the Government of RM where his son is a minister. The Secretary General tendered his resignation and it was accepted.	**Head of branch of public company and member of the Management Board (MB)** The SCPC gave the opinion that there was no conflict of interest when the head of the branch of the public enterprise (PE) Makedonski Shumi was appointed a member of the MB of the PE.
Official – civil servant in the Ministry of Justice, Legal Unit Valandovo The SCPC found a conflict of interest in the case where a civil servant was also the head of a department in the Ministry of Justice and a member of the MB of the PE Social Work Centre. Due to the accumulation of functions it was requested that the official resign from the function member of the management board. The SCPC was informed that the person had filed a request to be dismissed from the MB.	Relatives in the **State Attorney's Office of RM** An official from this authority informed the SCPC that she was employed in a regular procedure despite the fact that her close relative already works in the office. The SCPC did not find a conflict of interests because it had already given an opinion and checked the statements of the complainant.
Citizen who is not an official The SCPC gave an opinion that there was a conflict of interest where a member of a municipal council was also a member of the MB of a PE established by the municipality.	**Faculty of Medicine, Skopje** The SCPC did not find a conflict of interest in the public procurement procedure by a university faculty, in which participated a company owned by a person employed at the faculty. The person did not have managerial function, neither participated in the public procurement procedure, nor participated in any other way in decision making.
Municipal Economics High School "Gostivar" The SCPC gave the opinion that there was a conflict of interest due to the parallel execution of two incompatible functions – member of the municipal council and director of a school established by the same municipality. The procedure for selection of a director of the school was annulled.	**Broadcasting Council** The SCPC did not find a conflict of interest in the case of the president of the Broadcasting Council regarding the Council's competences in the elections and the fact that his spouse was a candidate on the local councillor list in the Municipality of Prilep.
Council of Public Prosecutors The SCPC found an incompatibility between	**Customs Administration of RM** There was a report by the Customs

the functions of member of the Council of Public Prosecutors and professor at the Faculty of Law and requested that the member should not perform the activity of professor.	Administration of a possible conflict of interests in the case of a customs official whose close relative was the owner of a company. In this case there was a disciplinary proceeding and the SCPC concluded that this constituted a sufficient response.
Members of management boards in public enterprises established by the City of Skopje In this case the SCPC established a conflict of interest due to the parallel execution of two incompatible functions – director of a state authority in the central government and member of the MB of a PE established by the City of Skopje. After the intervention of the State Commission, these individuals resigned from the membership of the management boards	**A judge's membership of the MB of a citizens' association** The SCPC found that there was no conflict of interests where a judge was a member of an MB of a citizens' association but was not paid for it.
Member of the Securities Exchange Commission. The SCPC found a conflict of interest with a member of the Securities Exchange Commission due to membership of the Steering Board of a joint stock company. The person resigned from the function of commissioner, member of the Securities Exchange Commission.	**Official – civil servant** The SCPC did not find a conflict of interest in the case of an official employed in the Ministry of the Economy with the function of member of the MB of a public institution. The case was initiated by the official concerned.

2.6 Montenegro

By Boban Saranovic

Case 1: He is an expert

Background

The case concerns restrictions in the exercising of public functions, more precisely incompatibility of public functions.

In 2004, Montenegro adopted its first Law on the Prevention of Conflict of Interest. The law prescribes a number of restrictions in the exercise of public function. One of the restrictions stipulates that a public official may not be the president or member of a management body or supervisory body, executive director, member of management of the public company, public institution or other legal entity. Exceptionally, a public official, other than the President of Montenegro, **an MP**, a member of the Government, judge or public prosecutor may hold the position of a chairperson or member of a management or supervisory body, executive director in one of the aforementioned bodies in which the state or a municipality is the owner.

Public official H.H. became a member of parliament (MP) in 2008. A few years later, in 2011 the public official also became a member of a committee in a private bank. So, for the last four years, the public official has been simultaneously performing both positions. Also, the public official has been receiving the salary of an MP and compensation for his membership of the committee.

Detection of the case

Public officials are obliged to file income and property reports to the Commission. The Commission enters the data from the reports on income and assets as submitted by the public official into the Register of Income and Assets. The publication of asset declarations is stipulated in the Law on the Prevent of Conflict of Interest. Since 2005 the Commission has been publishing information on: the assets and incomes of public officials, received gifts, the final decisions and opinions of the Commission, as well as the decisions concerning misdemeanour and those of ordinary courts on violations of the law. In accordance with the prescribed rules, public official H.H. submitted his property report. Data from property reports is available for public access.[197] Since the data from the property report is public and available on the Commission's website, a Montenegrin daily newspaper disclosed this information. The newspaper article was published in March 2015. The article emphasised that public official H.H. was an MP and a member of the committee of a private bank. Also, it stated that H.H. was receiving compensation for his membership of the committee. Finally, that public official H.H., by virtue of his membership of the committee, was violating the provisions of the Law on the Prevention of Conflict of Interest.

[197] According to the Law on the Protection of Personal Data (Official Gazette of Montenegro, No. 1/07) some data from property reports is not available for public access, such as personal identification numbers, home addresses, telephone numbers and the names of underage children.

Procedure before the Commission

The Commission took the case under consideration after the article was published in the media. The Commission interpreted the provision which prohibits a public official from being, inter alia, the president or a member of a management or supervisory body. More precisely, the subject of interpretation was article 9 of the Law on the Prevention of Conflict of Interest. Namely, this article prohibits the public official from being the chairperson or a member of a management body or supervisory body, executive director, member of the management of a public company, public institution or other legal entity. Paragraph 2 of the same article explicitly forbids an MP from holding the position of chairperson or member of the aforementioned bodies.

In the procedure, the Commission interpreted part of article 9 ("…the president or a member of a management body or supervisory body…"). The Commission's understanding regarding the case of public official H.H. was that the committee was not a management or supervisory body, but a body of experts. In the end, the Commission concluded that the disputed provision had not been violated.

Follow-up

As mentioned above, the Commission concluded that in the case of H.H. there was no violation of the Law on the Prevention of Conflict of Interest. Public official H.H. still holds office as an MP and is a member of the committee of the private bank and receives incomes for both positions as well.

The interpretation of legal documents is fundamental whenever the meaning of a legal document must be determined. Firstly, the document has to be read as a whole. Furthermore, a legal document must be interpreted in such a way as to take into account its purpose or object. Interpreting legislation in such a way is called a "purposive approach". To understand the purpose of legislation, it is sometimes useful to read what was said when it was being enacted. However, this method did not bring any clarification in this case. Also, during the process of interpretation, the reader should take into consideration other legislation. For example, the Law on Business Organisations is important in regard to this case – this law regulates legal forms of business entities and company bodies. Based on this law one could conclude that the committee was not a management or supervisory body. However, defining this term more precisely in the Law on the Prevention of Conflict of Interest could eliminate uncertainties regarding its interpretation.

Even if one was to assume that the Commission's interpretation of this provision was accurate, a practical question would remain: how would one decide on a situation where the MP votes on laws related to the area of banking, taking into consideration his engagement in this business area? In this case, a conflict of interest would occur, which however would be transparent to the public as it was declared in the official's property card. Still, the law would have a gap in the following situation: if the conflict concerned a private interest which was not part of the declaration on the property card, the public would not know about it. Article 8 exempts MPs from the necessity to declare their private interests before every session. Therefore, it seems necessary to introduce an obligation for MPs in article 8 to declare any interest ad hoc which is not evident from the regular declarations. For example: an MP's husband might suffer from a rare kind of terminal cancer. The MP finds herself in a position to vote on a law allowing for risky clinical trials on humans for the testing of new pharmacological products. The law would benefit her husband as he could obtain a new unapproved drug in pilot treatments. At the same time, the law might endanger the health of many trial patients in the country. Similar situations could arise involving material interests. Should the MP in this situation not have to declare her private interest when voting on the law?

Case 2: The best analysis comes from my own company

Background

This case demonstrates a suspected conflict of interest of a public official with possible connections to a company that won a tender in public procurement.
Y.K. became a public official in 2005. Over the following two years, Y.K. became the founder and owner of several companies. In late 2012, Y.K. was appointed a member of the Government. The state authority, in which Y.K. is the head, announced a tender in August 2013. A consortium (consisting of three companies) won the contract on the basis of the announced tender. One of the members of the consortium was the company owned by Y.K. The consortium performed the services on the basis of the announced tender.

Detection of the case

A few months later, the case was published in a daily newspaper. The case was investigated in detail by the media. Eleven companies had applied for the tender. One of the members of the winning consortium was the company owned by Y.K., according to the data from Central Registry of Business Entities (henceforth the Registry). Nevertheless, this data stemmed from 2006 and 2007. In 2013, when the news article was published, the data in the Registry had changed. Other people were now indicated as the owners of this company. The news article raised the question of whether or not Y.K. was still the owner of the company. The media asked the state authority where Y.K. exercised his public function. The state authority replied that Y.K. was not the owner of the company.

Procedure before the Commission

A procedure in which it is decided as to whether or not there is any infringement of the Law on the Prevention of Conflict of Interest can be initiated by the authorised entities. The initiative can be submitted by the authority where a public official performs the public function, the body in charge of the election or nomination of the public official, or by another state or municipal body, or another legal or natural entity. Also, the procedure can be initiated by the Commission in the line of official duty. However, in this case no procedure was opened, despite the fact that there were several articles published about this case.

Follow-up

The registration of business entities is conducted in the Registry. The Registry contains all important data about business entities. Among other things, it contains personal data about the founder, the owner and the authorised person. But, on the Registry's official website, the only available data is that concerning the current owner or the authorised person of the company. The Commission has no access to data other than that from the official website. Therefore, the Commission has no information on the previous owners and founders of business entities. The unavailability of chronological data somewhat limits the competence of the Commission. Notwithstanding the aforementioned, it remains unclear why the Commission or other authorised

entities did not initiate a procedure. Also, if the procedure had been initiated, it seems that the limited data available online would not have been an obstacle. According to article 20a of the Law on the Prevention of Conflict of Interest, the Commission could have verified the data from the property report by comparing it with the data collected from the public authorities and legal entities that have such data available. The public authorities are obliged to provide the requested data and information. One of them is the Central Registry for Business Entities, which is a part of the Tax Administration. For example, there should be paper records on the previous owners in the Registry.

From all of this, we can see that a procedure had to be initiated. Most importantly, initiating the procedure would have provided an answer to the question of whether there was a conflict of interest or not. In this way, the case remains opaque. The core role of the Commission, as a supervisory body, is to prevent such occurrences and to clarify cases. In this regard, the Commission did not fulfil its main statutory task.

Case 3: Multiplied by seven

Background

This case concerns multiple memberships of management boards.

The Law on the Prevention of Conflict of Interest prescribes restrictions for public officials. Among other things, the law prohibits a public official from being the president or a member of a management body or supervisory body, executive director, member of the management of a public company, public institution or other legal entity. A public official may hold the position of a president or a member of a management or supervisory body, or executive director in one of the aforementioned bodies exclusively where the state or a municipality, is the owner. Otherwise, the public official is violating the law. Furthermore, if a public official receives income on the basis of multiple memberships, those incomes shall be considered as illegally gained property. So, the Criminal Procedure Code and the Law on Misdemeanours contain provisions regarding procedures and rules of confiscation of property gain.[198]

The Law on the Prevention of Corruption, which will be applied as of January 2016, prescribes another restriction regarding membership. The law stipulates that a public official may not acquire income or other compensation on the basis of membership of any management bodies or supervisory boards.

In 2004, U.E. was appointed to the function of member of the Council for Privatisation. At the same time, however, he was a member of several management or supervisory boards. Some of his memberships of these boards were declared in his property report. However, membership of three boards was not reported in his report. U.E. was receiving monthly compensation for membership of all these boards. In the course of 2007, U.E. ceased to be a member of the Council. Since then, U.E. has not been a public official.

[198] Criminal Procedure Code, articles 478–485; Law on Misdemeanours, articles 50 and 51.

Detection of the case

The case was disclosed by the media. Several news articles were published in daily newspapers and in one weekly newspaper. Those newspaper articles stated that U.E. was a member of seven boards at the same time. Also, it was emphasised that in U.E.'s property report his membership of only four boards was declared. Therefore, his membership of three other boards was not reported, according to the data from the articles.

Procedure before the Commission

However, a procedure before the Commission was initiated by one non-governmental organisation (NGO). Acting upon the initiative, the Commission conducted this procedure. The Commission took into consideration all the facts related to the case. However, the Commission did not discuss whether the public official had violated or complied with the law. The Commission concluded that the initiative had been submitted at a time when U.E. had already resigned from his public function. The Commission's opinion was that U.E., from the moment of termination of his public function, was no longer obliged to act in accordance with the Law on the Prevention of Conflict of Interest. Consequently, the Commission rejected the initiative of the NGO as unfounded.

The NGO initiated an administrative dispute against the final decision of the Commission. During the procedure, the Administrative Court conducted a thorough review of the Commission's first-instance decision. Also, U.E. stated that he was not a public official at the time the initiative was submitted. From the point of view of the court, the fact that U.E. was not a public official at the time of the submission of the initiative did not absolve him of his legal obligation when he was in office. Therefore, the Administrative Court found that the Commission's decision was erroneous. The Administrative Court remanded the case to the Commission for re-evaluation in 2007. The Commission made no data available to the public regarding the further procedure.

Follow-up

This type of case raises an important issue. If someone, contrary to the law, receives income on the basis of membership of boards, should such revenue be considered as illegally acquired? The Law on Misdemeanours stipulates the confiscation of property gain obtained as a result of the commission of a misdemeanour. Article 227 of the law foresees that in the procedure of confiscation of property gain, the provisions of the Criminal Procedure Code shall be applied accordingly.[199] Therefore, income or other compensation acquired based on unlawful membership shall be subject to confiscation of property gain. The case also shows the problem of a lack of transparency in the work of the Commission, which might raise the question for an outsider as to whether it pursued this case properly after the court's decision.

[199] The Criminal Procedure Code regulates in detail the procedure for confiscation of property gain, articles 478–485.

Case 4: Procurement for father and son

Background

The case represents a conflict of interest in public procurement procedures.

The Law on Public Procurement contains rules on the prevention of conflicts of interest for public procurement officers, members of a tender commission and all other people involved in a process of public procurement, as well as for the bidders. These rules oblige the aforementioned to declare an actual or potential conflict of interest and submit a statement regarding this. Conflict of interest in a public procurement procedure exists under certain conditions. One of the conditions is kinship[200] between any person involved in the procurement procedure.

In 2006, R.B. became a municipality president. After assuming the function, R.B. submitted his property report to the Commission. In his report, it was declared that he was a founder and an authorised person in two companies. During 2009, the municipality announced a call for public bidding. The subject of the public tender was the purchase of vehicles for the municipality. R.B. was himself involved in the procurement procedure. The president and members of the Commission for the Opening and Evaluation of Tenders were appointed by R.B. in his capacity as president of the municipality. Only one bidder submitted a tender, the company MTMS. The co-founders and authorised individuals of this company were R.B. and his son. The municipality as a contracting authority concluded the contract with the winning bidder. Based on the tender and signed contract, the company MTMS delivered 15 vehicles to the municipality, with a total value of 200,000 €.

Detection of the case

Soon after the public procurement procedure was finished, the newspapers wrote about the case. In the articles, it was noted that this company, whose owner was R.B., had won the tender. Over recent years, this story has been repeatedly published in the media. One NGO also published an article about R.B. and his alleged illegal activities.

Procedure before the Commission

The Commission has not initiated any procedure despite the fact that the case has been repeatedly exposed in the media over the last six years. Also, the State Commission for Control of the Public Procurement Procedure did not take any action regarding this tender. As there were no other competing bidders, no-one lodged a complaint against the decision in the public procurement procedure.

[200] Articles 16 and 17 of the Law on Public Procurement relate to actual or potential conflict of interest.

Follow-up

It is more than clear that in this case the provisions concerning conflict of interest were violated: the public official obviously abused his public function by placing his private interest before the public interest. The bottom line is that the public official enabled his own company to win a tender for public procurement. The public procurement law contains a clear anti-corruption policy and conflict of interest prohibitions. The conflict of interest is more than obvious in this case. For example, the public official reported in his own property report that he was the owner of the company MTMS. Also, available data from the official site of the Central Registry of Business Entities confirms this fact. Still, despite this and all the other evidence, there was no reaction from the authorities regarding the case. They never provided any explanation for not initiating a procedure and there is no apparent logical reason for this. Hence, one even has to raise the question as to whether the inaction by the authorities fulfils elements of criminal offence of abuse of official power.[201]

Case 5: Heading a municipality and a company

Background

The Law on the Prevention of Conflict of Interest regulates restrictions on the discharging of public functions for public officials. Inter alia, the law prohibits a public official from having management rights in companies. It means that a person who is the owner or founder of a public company, other company, institution or other legal entity shall, within 30 days of the day of election, appointment or nomination for the public office, transfer his management rights in these entities to another legal entity or natural person. Also, the public official shall, within five days of the day of transfer of management rights, submit to the Commission information on the person to whom he/she has transferred the management rights as well as proof of the transfer of management rights. The person to whom the public official has transferred the management rights shall be considered a related person. In case of violation of this restriction, the public official may have a fine imposed on him/her.

P.P. became the president of a municipality in September 2014. P.P submitted his property report to the Commission. However, he did not report that he was the founder and executive director of the company ASTAL. It should be noted that P.P. was obliged to provide accurate and complete data in the report. Also, he did not transfer his management rights in this entity to another person.

Detection of the case

The case was disclosed by a daily newspaper publishing the data from the property report. Comparing the data from the report with data from the Central Registry of Business Entities, the article established that P.P. had not reported that he was the founder of the company ASTAL. The article pointed out that P.P. had violated the provisions of the law. At the time of the publishing of the article (March 2015) he had still not transferred his management rights in spite of the legal obligation to do so within 30 days of appointment to public office.

[201] Criminal Code, article 416, Official Gazette of Montenegro No. 40/13.

Procedure before the Commission

The Commission did not initiate any procedure either before or after the publication of the media article.

Follow-up

A few months after the article was published, P.P. liquidated his company on a voluntary basis, but he had already violated the provisions of the Law on the Prevention of Conflict of Interest. However, this case of potential conflict of interest never resulted in any abuse of public function. Between the company and the municipality no business relations ever occurred. Still, the case demonstrates "no fear" of the law, a careless mentality and a lack of accountability by the official concerned. Similarly worrisome is the fact that the Commission did not consider at least warning P.P. to fulfil his legal obligations. This could create the perception that actual implementation of the law is not important and that violations will remain unpunished.

Case 6: Unreported stocks and shares

Background

M.O. is the executive director of a company which is partly in state ownership. During 2013 M.O. was appointed to the status of public official following amendments to the law. Thus, she was obliged to submit a property report to the Commission. In her report, M.O. failed to report stocks and shares in several companies belonging to her and her spouse.

Detection of the case

The case was opened *ex officio* by the Commission due to the verification process of the data from the report.

Procedure before the Commission

The Commission initiated proceedings to determine whether or not public official M.O. had failed to fulfil her obligation under articles 19 and 20 of the Law on the Prevention of Conflict of Interest (article 19: "A public official shall submit the income and property report to the Commission, as well as an income and property report for his/her spouse […]" and "[….] the public official shall provide accurate and complete data in the report."; article 20: "The report shall contain: […] stocks and shares in a legal entity […]"). In the ensuing procedure before the Commission, it was decided that public official M.O. had violated the provisions of the Law on the Prevention of Conflict of Interest. The Commission initiated a misdemeanour procedure.

After the first-instance decision of the Commission, the public official appealed through an administrative dispute. The Administrative Court followed the appeal and remanded it to the Commission for re-evaluation. In the re-evaluation process, the Commission determined that the public official had already updated her property report in the meantime, which now included the

stocks and shares. However, public official M.O. had not updated the personal data of her family members. The official stated that she had not reported the personal data for her family members because this data was protected under the Law on Personal Data Protection.

In the ensuing misdemeanour procedure, the public official was fined because she had failed to provide accurate and complete data in the property report.

Follow-up

The most common misdemeanour proceedings initiated by the Commission are violations of article 19 of the Law on the Prevention of Conflict of Interest. The article obliges public officials to give accurate and complete data in the report. Most often the Commission has initiated procedures against public officials who have not reported immovable assets (land), movable assets (vehicles) or stocks and shares in a legal entity.

Without such declarations, prevention of conflicts of interest becomes almost impossible. However, conflicts of interest are not only represented by failures of an official to report a vehicle or land inherited from parents or stocks and shares in a company, they are also caused by many ad-hoc situations in the daily working life of public officials which are not related to asset declarations.

2.7 Serbia

By Nemanja Nenadic

Case 1: Best offer for kindergarten lightning – so what's the problem?

Background

Member of a public kindergarten management board T. in city B. was also a manager of a private enterprise that provides various services. Among other things, the enterprise installs liquid gas facilities and reconstructs external lighting. This was exactly what the kindergarten needed in late 2012, before the winter started.

Thus, the kindergarten paid 1 million RSD (approx. 10,000 €) for the above service. According to the Law on Public Procurement[202], it was mandatory to invite at least three offers for procurement, given the amount, and a public invitation of an unlimited number of interested firms was only optional. T.'s enterprise gave the best offer. He signed the contract, on the one side, and J., the director of the kindergarten, signed on the other side.

Detection of the case

The complaint to the Anti-Corruption Agency was made by a confidential source.

Procedure before the Anti-Corruption Agency

The Anti-Corruption Agency initiated a process, after receiving a report that indicated an irregularity[203]. The Agency found the public officials (T. and J.) "guilty" of violating conflict of interest rules (articles 27 and 32 paragraph 1 of the Law on the ACA), and it pronounced the measure of "public announcement of recommendation for dismissal". The decision was published in the local official gazette (at the expense of the respective officials) and later, on the ACA's website.

T. claimed that he had not participated in the decision-making process as a member of the kindergarten's board. There was a committee to evaluate the bids, and only the director had signed the contract on behalf of the kindergarten. Furthermore, he claimed that the director was not an associated person to any board member. "If he had been", he argued, "none of the board members would be able to participate in the process when a director is appointed or dismissed". However, he admitted that there was "some" private interest on his side in this contract.

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[202] Law on Public Procurement (2008).

[203] Decision no. 014-020-00 –00157/2013-11(T.). Decision no. 014-020-00 –00156/2013-11 (J.).

The Agency established some formal elements of violation – that the official did not inform the Agency or local assembly about any "suspicion of conflict of interest". The Agency also established that there was a "relationship of dependency and oversight" between the two kindergarten officials (board member and director). While there was no violation of the Law on Public Procurement, the Agency found a violation of the Law on the Agency. The decision stated that the board member "obtained a benefit for his firm... using his relationship of oversight and control over the director of the kindergarten".

What was the problem in this case of small-scale procurement? How did the officials harm the public interest? Since T. did not participate in the decision making, a conflict of interest was not possible here at all on his side. He acted as a private firm manager in this deal and was legitimately looking out only for the interests of that firm. The person possibly having a conflict of a public and private interest in this case could have been the director of the kindergarten, who signed the contract. But, did she? The public interest was to obtain the best "value for money" service, and the accepted offer was evaluated as the best one, not having at the same time any particular private interest of her own. Eventually, her "interest" might have been indirect: the person that oversees her work has some interest in the contract being signed; her decision to sign/or not to sign the contract might therefore affect the future decisions of her superior.

But still, if the director of kindergarten had a conflict of interest and failed to resolve it, how could another person, the member of the kindergarten's board, be found guilty? Article 32, paragraph 1 of the law, makes it mandatory for the official to report his/her conflict of interest, but also any conflict of interest of his/her "associated person". As explained, the director of the kindergarten might have had some (indirect) conflict of interest here. Since the definition of "associated person"[204] is quite a broad one, and makes the director and board member associated persons of each other, then, formal grounds for the sentence exists – board member T. did not report the conflict of interest of his "associated person", director J. But there is confusion as well – the possible conflict of interest that director J. had in this case was based on T's interest in his private company![205]

The Agency ran the case against director J. as well and pronounced the same measure. She strongly denied not just that she had any private interest in this case, but also any influence on the final decision, pointing out that she merely accepted what the bid evaluation committee had proposed. The justification for the Agency's decision in her case reads:

> *"Since the director is accountable to the Board [...] she undoubtedly had a private interest in that, even if it did not influence her discharging of public office, nor could have influenced it, at any rate, it appeared as an influence [...] Bearing in mind that the director could not have avoided the relation of dependency, since it comes from the subordination of the Board which is defined in the law, she was obliged to undertake to*

[204] "...as well as any other legal entity or natural person who may be reasonably assumed to be associated in interest with the official". "**Private interest** is any kind of benefit or advantage to the official or associated person".

[205] The "saga" may continue after contracting. Actually, during the execution of the contract, the conflict of interest would be much more visible. The director of the kindergarten may be in a position to decide whether to sue the private company if it, let's say, fails to deliver the contracted services. But at the same time, the manager of that private company is a kindergarten board member, who is meant to be holding the director accountable.

do everything necessary to protect the public interest, i.e. to avoid contracting and to report the conflict of interest to her superior and the Agency…".

So, the Agency found that the kindergarten director had a "conflict of interest", but did not make clear what type of conflict it was. At least, the Agency said that there was a perceived conflict of interest, and that this had to be reported as well.

The argument against a wide definition of "conflict of interest" and "associated person" is most visible from the *reductio ad absurdum* used by the defence in this case – if the director of the kindergarten is an "associated person" to the board member, then none of the board members could take part in a decision-making process that affects the director. That means pretty much every decision – not just when the board decide whether to dismiss or reappoint director, but also when discussing the annual plan or annual report signed by the director, etc.

Follow-up

This case, aside from illustrating the problems that a broad definition of "conflict of interest" and "associated person" may bring in implementation of the law, is interesting for other reasons as well. In Serbia, as in other countries, there are some public functions where an official is permitted to be involved in private business activities and some where this is strictly forbidden. One of the legislator's criteria on whether to allow officials to have their own businesses is the amount of working time a person should invest in the discharge of public function. It would be obviously senseless to prohibit all the business activities of officials working for the public good only once a month or once a week. The vast majority of "board member" public offices are of that kind. In Serbia, the law distinguishes between officials on that basis: "an official may not perform other jobs or engagements during his/her tenure in public office **which require full-time working hours or full-time employment**".

On the other hand, such business activities of "part-time officials" may cause a conflict of interest. A potential solution might be if firms owned by officials avoided contracting with related public-sector institutions. It might be inappropriate to impose an absolute prohibition of that kind, as firms may have other owners as well, and their legitimate interests would be affected. Both the director and the board member of the kindergarten claimed that the Law on Public Procurement at the time of contracting did not prohibit the contract in question. The new law[206] adopted soon after contains stricter rules:

"a conflict of interests […] exists where the relationship between the contracting authority and the bidder may impact the impartiality of the contracting authority in making a decision in the public procurement procedure, namely: if the contracting authority's representative or a person related to him or her is part of the bidders' management; […] the contracting authority cannot award the contract to the bidder in case of the existence of a conflict of interest. The Republic Commission for the Protection of Rights in Public Procurement Procedures, at the request of the contracting authority, will approve the concluding of the contract […] provided that the

[206] Law on Public Procurement, adopted in December 2012, in force since 1 March 2013., articles 29 and 30.

contracting authority demonstrates that […] the difference in prices is 10% higher […] in favour of the selected bidder".

Information about the direct consequences of this case is scarce. Media with national coverage did not report on it at all. According to the Anti-Corruption Agency's database of officials, T. was no longer a board member of the kindergarten several months after the Agency issued this recommendation. On the other hand, J. continued to be the director of the kindergarten after the Agency's decision. Moreover, at the same time, she was a member of the national Parliament in the period 2012–2014. For the 2014 elections, she was not on her party's election list.

Case 2: Self-contracting in the public interest?

Background

Urban planning laws in Serbia are often changed. The higher the number of regulations, the lower the level of respect for them. On the basis of one such change in 2009, all municipalities in Serbia had to prepare spatial plans by September 2011, even if they did not have sufficient funds in their budgets.[207] Many of them lacked sufficient knowledge to perform that job and looked for the help of relevant central government institutions. The procedure of such an engagement was, however, controversial. For example, Belgrade and Leskovac's public institutions hired the Republic Agency for Spatial Planning (RAPP) without a previous public procurement procedure. Namely, the Law on Public Procurement allowed the tender to be circumvented in case there was an exclusive right of a certain public authority to perform a certain job. However, this was not the case here.

Dr S. is without doubt an expert in the area of spatial planning and a university professor. He was appointed by the Government to the post of director of the Republic Agency for Spatial Planning (RAPP). After legislative changes enabled the RAPP to provide commercial services for the municipalities and other entities, he signed on behalf of the RAPP contracts to provide expert help to the cities of Leskovac, Belgrade and Negotin. Then, he appointed himself as a member of the team for the preparation of these plans and determined the amount he would receive as a member of that team. The total value of these fees was approximately 800,000 RSD (8,000 €). He informed neither the superior body nor the Anti-Corruption Agency about a conflict of interest, but claimed that he had conducted some informal consultations with his employees and the Minister for Protection of the Environment and Spatial Planning.

Among the reasons for engaging the RAPP, the head of Leskovac's authority said, "S. had worked with us before, as a consultant […] he is familiar with this area, which is very specific". Similarly, Belgrade's authorities explained that they had had good cooperation with the RAPP on previous jobs, and that the deadline for compliance with the urban planning law was very short… Even the RAPP was insinuated to be in an "institutional conflict of interest" – because of working on local urban plans and later checking their compliance with legislation. However, the director, S., rejected

[207] http://www.rtv.rs/sr_lat/drustvo/preskupa-izrada-prostornih-planova_204360.html.

these arguments, claiming that the Ministry would check compliance, not the RAPP[208]. Indeed, the RAPP was organised as an expert governmental body. However, precisely because of that expertise, it is possible that the Ministry would at least ask the RAPP for advice in such compliance procedures.

In this case several conflict of interest situations may be suspected. The first is the decision of the city authorities to hire the RAPP for this project (if there were grounds for such a decision to be influenced by their previous relationships or future oversight of either the RAPP or RAPP employees in a personal capacity). The second conflict of interest situation is most clear – the very fact that director S. in his official capacity decided on his own additional engagement as a private person. The third conflict of interest would be the one of director S. and other members of the project team from the RAPP, that might appear in their future dealing with municipalities. If the RAPP director or any other team member advised (for a private fee) the local municipality on achieving compliance with regulations, they would later on be at least perceived to not be impartial any more when formally determining compliance for the RAPP (because they would also have a private interest as a consultant having performed well on the earlier contract). This would constitute a conflict of interest. However, if, as director S. stated, the RAPP was not in charge of verifying compliance, the advice as a consultant to municipalities would not cause a conflict with the official function.

Detection of the case

As stated in its decision, the Agency initiated a procedure in May 2012, *ex officio*, when it realised, "on the basis of verifying his asset declaration", that the director of the RAPP had received additional payments. On the other hand, one tabloid[209] claimed that its writing about the case, based on whistleblowers' complaints about mobbing, was crucial. Most probably, the most important factor was a text published on one anti-corruption portal in November 2011, and the promise of a former director of the Anti-Corruption Agency that everything would be checked thereafter[210]. In the publicly available part of the asset declaration registry, one can find that director S. had additional income from the RAPP, but not at the levels that were the focus of this case.

Procedure before the Anti-Corruption Agency

In his defence statement, S. claimed, among other things, that the payments were made in accordance with the regulations, that he had consulted lawyers within the RAPP, asked the Minister for approval, that he was transparent about having this additional job, that the cities asked him because of his expertise and not because of his public function, that the Law on the Agency

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[208] http://www.politika.rs/rubrike/Ekonomija/199551.sr.html.

[209] http://www.kurir.rs/smenjen-borislav-stojkov-direktor-drzavne-agencije-clanak-937813.

[210] http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/press-clipping/3494-.

explicitly allows the performance of scientific-research jobs, and that he was using private capacities in the public interest.

The Agency established that the director had not officially informed the Government about his conflict of interest suspicions. The managerial board of the RAPP claimed that it was informed about the disputed contracts, but the Agency did not accept this argument, since it was just the regular annual reporting of the RAPP and not personal information about a conflict of interest sent by its director. The Agency pointed out that the amount of fees was determined as discretionary. However, it does not seem that this fact was decisive in establishing a violation of the law – it was enough that the director had not informed the Government and the Agency. So, the Agency decided[211] in October 2012 that S. had violated articles 27 and 32 paragraph 1 of the law, by using his public office to obtain material gain and advantages for himself. The measure pronounced was "public announcement of recommendation for dismissal".

Follow-up

After this case, but not because of it, the Law on Urban Planning was changed several times (every new government announces huge reforms in urban planning and construction), but it does not seem that any change was caused by this case. In December 2014, the RAPP was completely abolished as an institution and the Ministry for Construction, Traffic and Infrastructure took over its functions. Of course, the Ministry is not allowed to conduct commercial activities that might produce similar conflict of interest situations in the future.

In the meantime, soon after the Agency's decision, S. resigned. The Government relieved him of his duties on 8 November, at his own request and, as he said, "for a completely different reason"[212].

This case is interesting from several points of greater importance. There is no doubt that S. was an expert in the field. Therefore, his decision to hire himself on the project was probably also in favour of (one) public interest (beside his private interest in the fee). Another public interest lay in the fact that his performance in the capacity of director might have suffered. Obviously, the greatest harm done to the public interest was a reputational one. While the decision of the Agency seems to be correct – under the law the expert should work as an expert, not as director – the law has a certain inconsistency. If the same director had done a job of a similar or larger size and fee, but through some other arrangement (e.g. a contract with the university faculty), there would have been no violation of the law, as this would have been "scientific" work.

Another point of view is a potential criminal offence. In this and in almost all other similar cases where the conflict of interest was not resolved, there are in place some elements of "abuse of

[211] Decision no. 020-00-00014/2012-11.

[212] Danas, daily newspaper, 10 February 2014, reaction of S. to the previously published text in the same daily that claimed the Government had relieved S. of his duties on the basis of the Agency's recommendation.

power" – a criminal offence. Namely, there is some form of violation of the rules, as a formal precondition and obtaining of (material) gain. However, what has to be proved (and what the Agency apparently does not investigate within the scope of its duties) is *dolus,* the awareness of illegality and gain and the willingness to obtain it. In the absence of investigative powers of the Agency, two risks are possible: 1) a case of abuse not being investigated by the public prosecutor, after the Agency finalises its job; and 2) public officials being unjustifiably "accused" in the public discourse after the Agency's decisions are published, as citizens do not make clear distinction between criminal liability, conflict of interest and violation of preventive rules.

Case 3: Mayors in support of local economy (including their businesses)

Background

In some smaller Serbian cities, mayors are people who already have their own businesses. Those businesses are run within the family, and after taking the office, the mayor just "transfers managerial rights" to the spouse, brother, parents or others, so the firm can continue to work. This, however, inevitably leads to the risk, in particular when due to nature of job, that the municipality may cooperate with such a firm and, moreover, be one of its major clients.

S., the Mayor of K. (12,000 inhabitants) is undoubtedly an interesting person. He is the owner of a famous restaurant in that city, the holder of 246 patents, the author of nine books, a Guinness world record holder (for the biggest fish soup) and a former member of 19 political parties[213].Following his current political party obtaining a majority in the local elections, councillors elected him as mayor. It is not clear whether he transferred the ownership of the restaurant to his wife.

During 2013 and in the first half of 2014, the Municipality of K. paid to his firm approximately 700,000 RSD (less than 6,000 €) for services (food, drinks and accommodation).

Detection of the case

There is no information on how the case was detected, but probably it was based on an anonymous or confidential complaint delivered to the Agency. The Agency then opened the case *ex officio*.

Procedure before the Anti-Corruption Agency

The mayor defended himself with the following arguments: the municipality is small, there are only three decent restaurants or accommodation facilities and the one owned by his wife provides services at the lowest prices. Furthermore, that firm had donated much larger amounts to the municipality, for various events. Actually, he had helped the municipality financially and not vice-versa.

[213] He explains that he became a member of all these parties after their representatives had lunch in his restaurant and offered him membership.

The Agency established that the mayor was still registered as an entrepreneur and that he had failed to inform the Agency about that. They also analysed the municipal rulebook on using funds for representation; the rulebook gives the mayor the right to issue a plan of representation costs and to allow in all cases spending of money for that purpose. The Agency established that the mayor had informed neither the Agency nor the municipal assembly about the conflict of interest he had, and pronounced the measure of "public announcement of recommendation for dismissal" on 12 October 2014.

Follow-up

Almost a year later, S. is still mayor. In one of his press statements, he still claims that there was no conflict of interest, that "there was no room" in other restaurants, etc.[214] There is no information on the website of the Municipality of K. about any potential changes to the rulebook on the costs of representation in order to minimise the risks that arose in this case. There is no information about public procurements of restaurant services in 2013, 2014 or 2015. The publishing of such an announcement would be mandatory according to the Law on Public Procurements if the value of similar procurements on an annual level were above 400,000 RSD (3,320 €).

Case 4: Parliamentarians in conflict of interest? Not even discussed!

Background

Members of the Serbian parliament are often "under the magnifying glass" of the public. Actually, the National Assembly has been, with all its weaknesses, for years one of the most transparent central government institutions. It has direct exposure (TV broadcasts of sessions), has a very informative website and responds to access to information requests. Being significantly weaker than the executive branch of the government, it is a preferred target of the media who are not brave enough to write about the real power holders.

The possibility of parliamentarians being corrupted is limited. Namely, during the 25 years of Serbia's recent democracy, the majority in the Parliament has been very narrow and voting has been largely organised by party leaders or the chairs of MP groups' at best. In such a context, the possibility of individual MPs effectively influencing a final decision in most of instances has not been not very high.

One of the "conflicts of interest" of MPs was raised due to the fact that for years a number of city mayors had been MPs as well. Since implementation of the Law on the Agency started, the Agency particularly insisted that mayors should decide whether they wanted to stay in parliament or at their post in local government. After years of fighting that included two changes to the law, the Agency and the public won over the political interest (some strong local and regional leaders fought to keep their positions). In reality, most of the mayors shifted to the post of "chair of the city's assembly", that the Agency considered compatible with the job of MP.

[214] http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/press-clipping/7740-2015-06-10.

The issue of parliamentarians' conflict of interest was raised in the media in the context of the privileges of certain professions. This was linked with the strong influence of lawyers and medical doctors in some convocations of the Parliament.

An occasion for more concrete discussions on this issue was the adoption of the Law on the National Assembly. On the basis of a proposal by Transparency Serbia[215], the independent MP, P., proposed[216] that MPs should report to the chair of the Parliament any attempt to influence his/her opinion (lobbying or bribing) and any conflict of interest an MP might be in. However, there was no political will to adopt it.

However, since 1 January 2010, the conflict of interest provisions of the Law on the Anti-Corruption Agency have been in place also for MPs.

Detection of the case

Soon after adoption of the Law on the Anti-Corruption Agency, the Liberal Democrat Party (LDP), an opposition party, tested the implementation of conflict of interest rules in parliamentary practice.[217] At the beginning of the March 2010 session, the chair of the LDP group of MPs, J., asked the parliamentary chair to explain whether B., an MP of the ruling Socialist Party of Serbia (SPS), who is also a director of the public enterprise "Srbijagas" had reported a conflict of interest. Namely, one of the topics on the agenda was parliamentary approval for a loan, whose beneficiary was "Srbijagas". He asked the same question of V., an MP from the ruling Democratic Party (DS) and member of the Board of "E.B.", the bank that had provided the loan. J. reminded MPs of their duty to report conflict of interest situations to their "superior" (the Parliament Speaker) and the Agency and to excuse him/herself from participation in the decision-making process.

Procedure before Parliament

During the speech, the chairwoman offered for the issue to be voted on the parliamentary voting day, as it was a potential violation of the parliamentary rules of procedure. J. refused, saying: "We cannot arbitrate here whether Tuesday is today or not"[218]. The chairwoman responded that the law should be respected, but that the applicable provision "will be in force only from 1 April" (it was still March at that time).

J. then protested about a wrong interpretation of the law, since 1 April was the deadline for officials to choose between double functions, and had nothing to do with the reporting of actual conflicts of interest. He claimed that the chairwoman had in this way violated the rules of procedure (the dignity of the Parliamentary provision). But his argument was rejected again, this time by the vice-chair of the Parliament. She stated that "during the whole mandate, an MP has all the rights and

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215 http://www.transparentnost.org.rs/images/stories/inicijativeianalize/predlozi%20amandmana%20na%20predlog%20zakona%20o%20narodnoj%20skupstini%20februar%202010.doc.

216 26 February 2010 – http://www.otvoreniparlament.rs/2010/02/26/133101/page/18/.

217 http://www.otvoreniparlament.rs/2010/03/02/page/3/.

218 He also appealed to the chairwoman's personal experience: "You were the target of a conflict of interest campaign, for cooperation with one pharmaceutical company, and you had to justify yourself and to abandon that additional engagement. We would like to know whether other MPs will do the same."

duties coming from that mandate" (including voting rights). J. again tried to explain and read article 32 of the Law on the Agency, including the provision that "each individual act, where an official with conflict of interest has participated in the decision making, will be null and void". The chairwoman claimed again that conflict of interests should be resolved by 1 April, thus pointing again to a non-relevant provision in this case.

The Minister for Finance explained what the law regarding the loan was about: the State of Serbia was to take a loan from several banks (totalling 160 million €), and the selection of banks was done through a public procurement of services. Another similar law dealt with a 170 million € loan for the needs of the public enterprise "Srbijagas". The discussion continued about other things, i.e. why and how "Srbijagas" had made such a huge loss, whether the oil–gas agreement between Serbia and Russia was a bad or good thing, that the director of an enterprise making such losses should not be allowed to participate in the discussion, that "Srbijagas" was paying money for advertisement and promotion while the public budget was covering the company's debts, that the director was travelling to Madrid to watch a Champions' League match, etc. There is no further information available about the case.

Follow-up

This case remains the only time someone in Parliament tried to enforce implementation of conflict of interest provisions for the voting of MPs. The law regarding the National Assembly did not change, neither did the rules of procedure to regulate the issue. A Parliamentary Code of Conduct has been in preparation for more than three years now, without either the draft being published or any clear reference being made about its effect on the conflict of interest issue. But the problem persists. It is not just a failure by Parliament to develop, clarify or implement the existing conflict of interest rules – it is hard to advise how these rules should be tailored at all, bearing in mind the nature of MPs' work. MPs are free to continue having their jobs and firms and that may create some conflict of interest situations. Legal provisions do not make clear which restrictions are valid for MPs, since some of them are permanently employed in Parliament and some are not. But, even if there were no businessmen on the parliamentary benches, still there would be many issues affecting the private interests of MPs on a daily basis – when voting for the budget, laws regulating the professions of their spouses or relatives, taxes affecting their parents' property, or loans that their children will pay back.

Even though the Serbian legislators failed to conduct any activity in regards to their own conflicts of interest, international monitors did not. Recently[219], GRECO conducted its fourth round of evaluations for Serbia[220] that deals with conflicts of interest of parliamentarians (and others). The evaluation team (GET) was

> "*concerned that the current Law on the ACA might inappropriately narrow the concept of conflict of interests by focusing mainly on prohibitions and restrictions with respect to secondary activities […] clearer guidance needs to be provided on what situations actually or potentially constitute conflicts of interest and on how to deal with them. This need appears particularly pressing with respect to MPs, given that a culture of prevention and avoidance of conflicts of interest has apparently not yet fully taken root in the National Assembly […] Moreover, the concept of conflicts of interest with respect to MPs needs to take into account the nature of parliamentary work by focusing on the*

[219] 2 July 2015.

[220] https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep(2014)8_Serbia_EN.pdf.

specific private interests of MPs in relation to matters under consideration in parliamentary proceedings. In the view of the GET, this important question should not only be dealt with by a Code of Conduct, since planned, clear legal provisions are also required. Such a regulation must be tailored to include a precise definition of conflicts of interest for MPs and an appropriate and enforceable mechanism for ad-hoc declarations of interest by MPs. It could either be included in the Law on the ACA, or in a future law governing conflicts of interest of public employees and officials, or in another legal act applicable specifically to MPs such as the Law on the National Assembly […]".

3. Strengths and weaknesses in preventing, detecting, and managing conflicts of interests

3.1 Overview

By Dr. Tilman Hoppe

The main strengths of the conflict of interest legislative and institutional frameworks in the region are the following:

- Comprehensive conflict of interest **legislation** covering, by and large, the entire public sector and regulating prevention, management, oversight and sanctioning of conflict of interest;
- A **central oversight body** being in charge of conflict of interest oversight (in combination with public institutions/supervisors);
- The possibility of reporting conflict of interest violations in a **confidential** manner and **anonymously**, as well as implicit or explicit **whistleblower** protection in most countries;
- A **ban on holding office** being an option for serious violations in several countries;
- In some instances the available **statistical data** on conflict of interest is very informative, showing also the concrete financial damage avoided through conflict of interest oversight, or the financial damage inflicted through violations (e.g. Kosovo*).

The main weaknesses could be described as the following:

- A lack of action by the oversight bodies to act with full **determination** upon all complaints (e.g. BiH, ME);
- A lack of a mechanisms for **actively detecting** unreported concrete public decisions rendered in conflicts of interest;
- A lack of capacity and interest in oversight by **supervisors** at work, while central oversight institutions are rather far away from the everyday decision making of public officials;
- Equalisation of the violation of **incompatibility** provisions with abuse of conflict of interest in concrete decision-making processes, where the latter should be the more serious violation.
- Small **loopholes** in the conflict of interest framework, such as exceptions for gift giving to family members;
- **Sanctions** being rather limited and constituting no effective deterrent;
- A lack of **international data** exchange mechanisms, in order to trace, in particular, ownership of companies related to conflict of interest;
- A lack of detailed **statistical** data on conflict of interest and its management.

3.1 Albania

By Alma Osmanaj, with contributing expert Helena Papa

Since 2005, the system of prevention and regulation of conflicts of interest in the Republic of Albania has been regulated through a detailed specific law adopted for this purpose. The whole system is based on a fundamental principle, the prevention of conflicts of interest. Only as an exception, when preventive measures have failed to achieve the ultimate result, does the law provide means for resolving conflicts of interest. The resolution of the consequences of acts issued in a situation of conflict of interest, as well as the punishment of the officials committing such infringements are also integral parts of this legal framework. Furthermore, regarding the institutional framework, the structures responsible for the implementation of the Law on the Prevention of Conflict of Interest are created internally, at the level of the public institutions, as well as externally through the establishment of the High Inspectorate, as the central responsible authority. However, several shortcomings have been identified, including ones in the legal and institutional framework, as well as its implementation in practice.

Regarding the legal framework, the following shortcomings exist:

- The fact that the Law on the Prevention of Conflict of Interest is a very complex and detailed one, including rules accompanied by many exceptions, making its understanding and implementation difficult for all stakeholders involved. Thus, it is advisable to revise the legal framework, in order to assess whether the time has come to simplify the LPCI or to adopt a new law.
- Article 23 of the LPCI, does not explicitly stipulate that items such as gifts, favours, promises or preferential treatment, are prohibited “for the official him/herself or any other person”. Thus it appears that the LPCI does not explicitly prohibit gifts or any other form of favour provided to the official for other individual, as they could be given to family members, relatives, etc.
- The amounts of the administrative sanctions stipulated by the LPCI are considered to be not in proportion to the infringement or potential damage committed and of an insufficient level. Taking into account that the proceeds of crime generated by corruption-related offences are generally of a much higher value than the imposed administrative sanctions, their effective and dissuasive purpose and the incentive to honest behaviour is hardly being reached. Therefore, it is advisable, based on the gravity of the infringement committed, for an increase in the amounts of the sanctions to be stipulated and these should be between two and five times the amounts of the existing administrative measures/fines.

Regarding the institutional framework and its implementation:

- Despite the fact that the HIDAACI is conducting good work in identifying and solving cases of continued conflict of interest, the internal structures within every public institution that perform the duties of the responsible authorities for preventing conflicts of interest remain weak. Different experts have stated that case-by-case conflicts of interest are not always properly investigated. This is due to a number of factors mainly related to the lack of capacities and knowledge of the responsible authorities established in different state institutions. Furthermore, civil servants who, among other duties, perform also the tasks of the responsible authorities for the prevention and solution of conflicts of interest within the aforementioned public institutions, lack the appropriate incentives, including financial ones, related to these additional functions.
- Therefore, these structures should be strengthened, through the provision of appropriate training and remuneration for the respective officials.

- The HIDAACI should continue to assist the responsible authorities with guidance documents simplifying the law, checks and training, aimed at building their capacities in order that these structures might provide training and advice for officials within the institution on their responsibilities under the law.
- In addition, direct access to information both in public registers and in electronic (online) databases, which may speed up the investigation of conflict of interest cases, has not been granted to the HIDAACI yet.

The aforementioned challenges identified by the author are also reflected in the main strategic documents in the fight against corruption such as the National Cross-Cutting Strategy Against Corruption (2015–2020) and its Action Plan (2015–2017) adopted by DCM No. 247, dated 20 March 2015. The objectives and priorities of the anti-corruption strategy have been drafted based on the achievement, challenges and lessons learned. They focuses on the prevention of conflicts of interest and the auditing of the asset declarations of the public officials and elected persons

The three-year anti-corruption action plan sets out the following measures:

- Functionalisation of an (internal) electronic register of declarations of conflict of interest;
- An increase in the capacities of public procurement officials to implement the procurement legislation, including the implementation of legislation pertinent to the prevention of conflicts of interest;
- The identification of cases of conflicts of interest through periodic comparison with the electronic registry of the Public Procurement Agency (PPA) and the National Registration Centre (NCR);
- Comparison of the list of subjects that have the obligation to declare their assets with the list of individual taxpayers declaring incomes over 2 million ALL/year (approx.14,300 €) with the relevant tax authorities;
- An increase in the capacities of the administrative structures/responsible authorities to detect, deal and solve case-by-case conflicts of interest; and
- Legislative changes related to simplification of the legislation on the declaration of assets and the prevention of conflicts of interest.

3.2 Bosnia and Herzegovina

By Emir Djikic

The main characteristics of conflict of interest legislation in Bosnia and Herzegovina are: its complexity, the lack of harmonisation between the laws at different levels of administration, and leniency when it comes to restrictions and sanctions.

Conflict of interest is very broadly defined in BiH legislation, and the definition itself should present solid grounds for its further regulation. Although robust, the laws contain wide loopholes that allow some situations of conflict of interest to be perfectly legal.

Firstly, the scope of officials to whom the legislation applies is not sufficiently encompassing and leaves a whole set of officials to whom the legislation does not apply, e.g. civil servants in managing

positions or directors of public companies. Additionally, the relatives of officials are not equally defined and covered by the legislation across the country.[221]

The most concerning issue that brings into question the very purpose of the legislation, is the fact that the body in charge of the implementation of the Law on Conflict of Interest in the Government Institutions of Bosnia and Herzegovina is composed mostly of members of parliament, i.e. representatives of political parties, implying that members of the Commission are expected to identify conflicts of interest in cases involving their party colleagues or themselves. This brings into question their impartiality in the decision-making process and provides political control over the determining of conflicts of interest among public officials. Furthermore, the delays in forming the new Commission and in transferring the executive body that will be in charge of implementation of the law, which has left the state level and the FBiH and Brcko District levels without implementation of the conflict of interest legislation for almost two years, clearly show that there is no political will for effective and objective enforcement of the law.

Secondly, for the purpose of verifying the presence of a conflict of interest, "the Commission may initiate a procedure based on its decision upon receipt of a valid, justified and non-anonymous report or *ex officio*". However, it is nowhere stated that the person filing a report has the status of a party in administrative proceedings, so the Commission would have a discretionary right to decide on whether to initiate the proceedings. As a consequence of this, if the Commission is of the opinion that there is no conflict of interest, the person filing a report would have no legal remedy to challenge such a decision. Also, no deadline for initiating proceedings is mentioned (according to the existing law, the Commission can initiate a proceeding as late as four years after a report), nor is there a maximum time limit for the duration of proceedings. Since public officials do not have to be suspended during proceedings, they might remain in a situation of conflict of interest, even until the expiration of their term of office in the case of elected officials.

When it comes to the disclosure of the financial and asset declarations of public officials, as well as those of the members of judiciary, on the whole, it can be stated that the monitoring of asset declarations remains of a basic nature, with a focus on whether the declaration is formally complete and in accordance with the established deadlines. Asset declarations are not available to the public and there is no authority in charge of verification of the accuracy and authenticity of the declared assets and financial information. There is also no mechanism for reporting on the financial situation during the term of office, especially in case of significant changes in assets, and without transparency and control over the reports, they become obsolete.

As to the effectiveness of the implementation of the law, it has been almost non-existent, given the pause in the implementation of the laws due to legal and institutional changes. Moreover, the laws themselves do not foster effectiveness, considering that the BiH Law still prescribes a deadline of four years to initiate the procedure, which is completely inadequate considering the fact that officials, due to this deadline, may be in a situation of conflict of interest for their entire term of office. The statute of limitations in the Republika Srpska is two years.

The leniency of the laws in terms of sanctions and the procedures for imposing sanctions further enables officials to remain in a position of conflict of interest and to earn additional profit even after the conflict of interest has been detected. For example, the Commission may ask the officials to eliminate their conflict of interest within a given deadline, and only when the officials refuses to do so may the Commission initiate procedures for determining the conflict of interest and for imposing

[221] Transparency International BiH, Improvements to the National Integrity System in BiH, June 2013, available at http://ti-bih.org/wp-content/uploads/2013/06/Improvement-for-the-National-Integrity-System-in-BiH.pdf.

sanctions. In this process of "negotiation" with public officials who are in a position of conflict of interest, instead of them being ineligible to stand for election, the Commission may submit to the same competent authority which appointed the official a "proposal for dismissal" of the public official, which does not have to be accepted by the respective institution and is not binding. Thereby, an elected official, executive officeholder or adviser would be free to continue to hold their function which puts them in a situation of conflict of interest. Even the public "call for resignation" that the Commission can issue as one of the sanctions, is not binding, and its only consequence is public shaming. This mechanism has already been proved to be ineffective, since there were so many corruption affairs exposed by the media and civil society, and also cases of conflict of interest reported by CSOs and the media, which never led to any resignations, or even sanctions.

Furthermore, sanctions consisting of a reduction of net monthly salary by 30% or 50% are not much stricter because there is no definition of the minimum threshold. This can also mean a reduction of the monthly salary by 1%, which is in no way adequate, especially in cases of significant illegal material gain. In this context it is worth mentioning that there are no sufficient provisions on confiscating the proceeds from violating the conflict of interest provisions.

The fines prescribed by the laws, especially the ones at the RS level, are too low (up to 750 €) and do not even nearly match the profit someone might have earned from conflicting or incompatible positions.

Furthermore the regulations do not include provisions on the prevention of improper migration of officials from the public to the private sector, while the ban on holding an incompatible function for up to six months after expiry of the mandate is also insufficient to prevent someone using their authority and contacts after their mandate has expired.

All these deficiencies in the legal framework suggest that a deep and comprehensive reform of the legal framework on the conflict of interest is necessary, especially in terms of its harmonisation and the strengthening of the independence of the authorities in charge of the enforcement of laws. However, this will require greater pressure from stakeholders, and especially the international community within the EU integration processes. The 4th Round Evaluation Report of the Group of States against Corruption (GRECO) has not yet been published, and hopefully the recommendations given by GRECO will act as an incentive, even though BiH has a long track of ignoring the recommendations, which is also proved by the fact that the recommendations from the 3rd Round have not yet been enforced.

3.3 Kosovo*

By Fadil Miftari with contributing expert Hasan Preteni

The issue of conflict of interest is well regulated in Kosovo. The legal basis follows other legal changes and the Anti-Corruption Agency has gained the necessary experience in addressing cases of conflict of interest. The ACA receives on a daily basis cases and requests for clarification about possible situations of conflict of interest. Only this year, there have been about 100 cases addressed by this institution.[222]

The ACA uses a good practice by publishing all its decisions or opinions. This practice has proved to have a positive effect especially on the awareness of public officials and the general public

[222] ACA official website section for decisions on conflicts of interests: http://www.akk-ks.org/sq/vendimet/date/2015#indexmain.

regarding the idea of what a conflict of interest is. Besides this, the publication of the decisions had an effect in the form of "pressure" on all public officials to prevent by themselves a conflict of interest before the ACA handles their cases.

The measures taken by the institutions (public officials' employer) against those officials who have not respected the decisions of the Agency require more seriousness. However, these are rare cases. According to the annual report of the ACA for 2014, out of a total of 145 addressed cases, 138 officials were prevented from further conflict of interest and only seven cases were sent to court for minor offences.[223]

The ACA as a monitoring authority has a sufficient mandate for addressing cases where there is a suspicion of a conflict of interest. This is regarding the implementation of the Law on the Conflict of Interest, but in cases where constitutional interpretation is required, the ACA refers the cases to the Constitutional Court. The same thing is done when a public official does not want to resolve the conflict of interest and refers them to minor offence courts. However, cases related to a conflict of interest which is stipulated in the Criminal Code of Kosovo* are referred to the Basic Courts for issuing the sanctioned decisions.

In cases of non-compliance with the rulings of the Agency, the Agency always informs the heads of the institutions where the officer exercises a public function about the findings and concrete recommendations regarding the measures towards them. All the decisions of the ACA about the conflict of interest are made public.[224]

In view of the safety of informants/whistleblowers in cases of conflict of interest in Kosovo*, there is no law that specifically regulates this matter, but the Agency with its own Rules of Procedure (secondary legislation) has regulated this well. The name of the person who passed on the information is never published. Every person who passes information to the Agency – including on conflicts of interest – is initially asked whether he/she wants to be anonymous or provide his/her name and it proceeds based on the wish of the reporting individual. In cases where criminal charges are filed, the Agency points out that the case has been conducted according to information from an anonymous source.

In terms of conflicts of interest in public procurement, the ACA is the official authority that performs oversight for all public bodies in Kosovo*. The "Procurement Review Body" is mandated to oversee only the tendering process and procedures, but not conflict of interest cases in this field. In terms of family relationships in procurement procedures, the ACA collaborates with the Civil Registration Agency which operates under the Ministry of Internal Affairs. Practically, the Civil Registry Agency provides the ACA with official data/information on the family relationships of certain procurement officials that may be in conflict of interest. In case of a suspicion of a conflict of interest, the ACA requires the Civil Registry Agency to provide data, such as the birth certificate of the particular officer. Through this certificate the ACA can confirm, to a large extent, the family relationship of that particular officer to the other (bidding) party. The birth certificate contains data on that particular officer, and his/her parents and their origin. This certificate can provide the ACA with information on family relationships up to the second degree. Considering that Kosovo* is a very small country, the confirmation of family relationships is not a difficult task, so with little effort it is easy to find the exact family relationship. To this end, the ACA has signed a Memorandum of

[223] ACA annual report for 2014, pp 25, 26 & 27: http://www.akk-ks.org/repository/docs/Raporti%20vjetor%20final%202014%20-%20versioni%20shqip%20(1).pdf.

[224] ACA official website section for decisions on conflicts of interests: http://www.akk-ks.org/sq/vendimet/date/2015#indexmain.

Cooperation with the police and with the Ministry of Internal Affairs. Sometimes, the ACA also obtains initial information on family relationships from media reports.

In order to be more successfully engaged in the prevention of conflicts of interest, some analysis has been conducted. Of particular importance is an assessment report[225] conducted by international experts engaged by the Council of Europe through the joint Project of the European Union and Council of Europe against Economic Crimes in Kosovo* (PECK).[226] The ACA officials agreed with their recommendations.

The recommendations of this report are the following:

1. The Law on the Prevention of Conflict of Interest must be aligned with the Criminal Code of Kosovo* which handles conflict of interest as a criminal offence, whereas the Law on the Prevention of Conflict of Interest does not foresee this.

2. The definition of an "official" must be aligned with the Law on the Declaration of Property. This derives as a result of the fact that addressing the conflict of interest for all employees in the public sector may not be possible. The number of senior officials is around 4,200.[227]

3. Regarding the transfer of responsibility to a "trusted person",[228] the law does not stipulate specifically who the trusted person might be. The relation between the trusted person and family member should be precisely defined. A full comparative research of similar laws in the USA, Canada, Australia, etc. defines the trusted person as a person who is not a relative, subordinate employee or any other related person that has business relations with the public official, such as a joint venture or joint investment. The idea is to manage the trust independently, with no control and influence by the official. It is recommended that this should be the model for Kosovo.

4. To explain better what the difference is between "incompatibility" and "conflict of interest". Separation of these two situations is especially important considering the fact that conflict of interest has become a criminal offence, whereas general incompatibility of two or more functions is not stipulated as a criminal offence.

5. To accurately determine multiple employment, since the current law regulates "other activities" of officials by allowing them to exercise functions within a political party and activities in the fields of science, sport, education, culture, etc.[229]

6. There are cases of some public officials who perform several functions at the same time and who are paid out of regular working hours, whether in public or private bodies. This can lead to a range of potential conflicts of interest. It is necessary to precisely define in the law the conditions for any "external" activity. This should be determined also in the codes of conduct for various sectors such as: the judiciary, civil service, education, health, etc.

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[225] http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/PECK-Kos/PECK_default_en.asp.

[226] Ibid.

[227] Law No. 04/L-050 on the Declaration of Property (article 3).

[228] Law No. 04/L-051 on the Prevention of Conflict of Interest in the Discharge of Public Functions (article 3, item 1.5).

[229] Ibid. (article 5).

7. In order to avoid multiplication of external commercial activities that potentially lead to a conflict of interest, it is recommended that the Law on Conflict of Interest should specify that activities in the fields of science, sport, education, etc. are limited to the public sector, whereas related activities in the private sector should be prohibited unless otherwise provided by special laws.

3.4 Macedonia

By Dr. Slagjana Taseva

There are several strong points in the conflict of interest framework of Macedonia. There is a separate law that equips the SCPC with powers of enforcement. Violations of some provisions of the LPCI are regarded as petty offences and are resolved by the competent courts. There are secondary rules of enforcement in cases of noncompliance with conflict of interest regulations applicable to officials from public administration, law enforcement, administration of justice or the customs authorities or employment law. Violation of conflict of interest provisions may be deemed grounds for instigating disciplinary measures under these laws.

The LPC and LPCI overlap to some degree as far as management of conflict of interest is concerned. This in particular concerns regulations on general principles of conduct of public officials (articles 4–6 of the LPCI and articles 3–4 of the LPC) and regulations on gifts (articles 15–16 of the LPCI and article 30 of the LPC). Such a situation may cause problems in interpretation of the laws.

In the Macedonian legal system, conflict of interest and violation of the LPCI are not criminal acts as such. Article 275(v) of the Criminal Code provides punishments for abuse of official duties in public procurement procedures, which may be connected with conflict of interest cases.

The SCPC is the only competent authority for the implementation of this law. Public institutions do not actively participate in conflict of interest management and genuinely act as if implementation of the LPCI was the sole responsibility of the SCPC.

The OECD Guidelines[230] affirm that implementation of anti-corruption and conflict of interest policies is the responsibility of all stakeholders who must cooperate with each other in order to achieve high anti-corruption, conflict of interest management standards. Although it is clear that all public authorities are obliged to respect the applicable laws and regulations, such a situation where the SCPC is charged by law with the implementation of the LPCI as the sole responsible body is unfavourable and may be the cause of many problems affecting the process of putting the provisions of the LPCI into practice.

The SCPC permanently faces the problem of not having a comprehensive overview of the number and identity of all elected and appointed officials. In order to overcome this problem, the SCPC's opinion is that it is necessary to define the individuals who are obliged to submit asset declarations by stating the offices and introducing an obligation for the institutions to submit data to the SCPC after elections or appointments. In addition the SCPC needs to be granted access to all the necessary databases and registers of the public authorities. In practical terms, it seems rather difficult for the SCPC or other state authorities to verify people's family relations up to the fourth

[230] "Managing Conflict of Interest in the Public Service. OECD Guidelines and Country Experiences", OECD 2003, available on the official website of the OECD: http://www.oecd.org/gov/ethics/48994419.pdf.

degree: it is not the task of civil registries to keep family trees. Therefore, one would have to trace many birth and marriage certificates in order to establish relations of the fourth degree. In addition, such a broad definition of the family relations that fall under the scope of the LPCI may seem inadequate to a small population such as in Macedonia and may be hard to enforce in practice.

Officials are not obliged to report changes in their personal interests, as is the case with asset declarations. The possibility of requiring them to do this would contribute to significantly improving effectiveness in the prevention of conflicts of interest.

In its executive summary the GRECO fourth round evaluation report notes that despite this good legal framework, the effective implementation and enforcement of legislation remains an issue of concern and needs to be addressed as a matter of priority. GRECO also takes the view that the sanctions available for other types of violations, such as the provision of false or incomplete information on the declarations, are not dissuasive enough.[231]

3.5 Montenegro

By Boban Saranovic

There are several strong points in Montenegro's conflict of interest framework. Since 2004, huge progress has been made regarding conflicts of interest. First, the reworked definition of a public official was widened and now allows for the coverage of a total of 4,033 officials. Also, the Law on the Prevention of Conflict of Interest contains provisions regarding the incompatibility of public offices. For example, a public official who performs work in state administration and local government bodies may not perform the function of a member of parliament (MP).

The Law on the Prevention of Conflict of Interest regulates certain restrictions in the discharging of public office for public officials. The restrictions are quite comprehensively formulated. However, the law could distinguish more clearly between certain conflict of interest situations. Being in a conflict of interest situation itself it is not the same thing as using one's public office for private benefit. For instance, it is a less serious situation to be holding shares and stocks than having a concrete private interest which conflicts with official duties. Also, the law should clarify all terms which are not clear enough, in such a way as to explain the meaning of terms. This could eliminate uncertainties regarding interpretation of these terms.

In order to further improve the area of preventing corruption and conflict of interest, Montenegro adopted the Law on the Prevention of Corruption. The law was adopted in December 2014, but will apply from 1 January 2016. The law provides for the setting up of an independent anti-corruption agency which will unify and strengthen the competences of all existing institutions combating corruption in Montenegro. Through the implementation of the Law on the Prevention of Corruption, this agency will exercise its jurisdiction, inter alia, in preventing conflict of interest. It is envisaged that the agency will have approximately 50 employees. This will increase its administrative capacity.

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[231] GRECO Fourth round Evaluation Report Greco Eval IV Rep (2013) 4E 6 December 2013 p. 80 p.172: In 2010, the SCPC initiated ten requests for misdemeanour procedures in front of the competent courts against judges who had failed to submit a conflict of interest statement. Seven procedures were completed, out of which a fine of 150 € was pronounced against two judges, two procedures resulted in a warning and in three cases, no sanction was pronounced. The last three procedures are still pending.

In addition, the law will bring some changes and innovations in the restrictions for public officials. Namely, with regard to restrictions in the discharging of public office, public officials may not acquire income or other compensation on the basis of their membership of management bodies or supervisory boards. Also, new restrictions are introduced for sponsorships and donations to public organisations.

The Law on the Prevention of Corruption will lead to major progress with regard to extending the protection of whistleblowers regarding all types of violation of regulations (not just criminal acts with corruption elements), a two-tier system of reporting, deadlines for notification of measures taken, etc.

So far, it has not been possible to initiate a procedure on the basis of an anonymous complainant. It should be emphasised that the new Law on the Prevention of Corruption stipulates that the Agency for the Prevention of Corruption may initiate the procedure *ex officio*, on the basis of its own knowledge, or based on anonymous requests.

The Commission's administrative capacity (budget, staff and IT infrastructure) needs to be increased and the Commission should carry out its tasks in a more proactive manner. It is known that for effective implementation of laws, sufficient capacity is key to fulfilling the task of supervision. However, it appears that in the past the Commission has not always applied its competences in practice.

One of the responsibilities of the Commission is monitoring restrictions in the discharging of public office. Monitoring restrictions in the discharging of public office is just one aspect of conflict of interest. As mentioned earlier, it consists only of checking property records and the handling of procedures. This form of partial check is insufficient and ineffective because it does not detect all the other conflict of interest situations.

A system of electronic submission of asset declarations should be introduced. The lack of electronic case management threatens the transparency and impartiality of the work of the Commission. Regarding data from the income and property report, the necessity should be introduced for much more thorough data checks to be performed. This means that during the verification process, the Commission should compare data for the last four years or from the time when he/she became a public official. The decision on which asset declarations should be checked is not based on risk-assessment methodology. In practice, checks have been limited to the area of incompatibility of functions.

To ensure the possibility of checking data from the income and property report, a public official may give the Commission consent to access the data in his/her account with banks and other financial institutions. The Commission still lacks the power to access information held by banks or other financial institutions. This is legally feasible taking into consideration recent action taken by the EU regarding bank secrecy. Council Directive 2011/16/EU already provides for the mandatory exchange of information between member states on certain categories of income or capital. EU Council Directive 2014/107widened the scope of automatic exchange of information in line with international developments. The financial information to be reported includes interest, dividends, account balance or value and other income generated with respect to assets held in the account or payments made with the respect to the account. This directive will apply from 2017.

The declaration of conflict of interest is a fundamental instrument for transparency. Therefore, it is not a good solution for MPs, local councillors, judges, prosecutors and other professions not to be obliged to declare ad-hoc conflict of interest situations. The law should oblige them to declare any interest and exclude themselves from any decision-making process in which they have a private interest. In this context, guidelines would be helpful. They could provide public officials with

concrete examples of interests that should be declared (outside activities, employment, investments, etc.).

The Commission is in charge of submitting requests for the initiation of misdemeanour procedures. The Commission has so far not fulfilled this task in a proactive manner. Namely, there has been a practice of discontinuing proceedings if public officials provide additional information or correct their data. This practice should be stopped. The Commission should even be able to directly initiate misdemeanour proceedings in cases where evidence and facts clearly indicate that the law has been violated. This is significant because of the statutes of limitations for initiating proceedings. Misdemeanour proceedings have mostly resulted in admonitions and small fines. It is important that sanctions should be adequate and relate to the seriousness of the violation. However, even though the Commission has the right to appeal against the decisions of misdemeanour bodies, it has not made much use of it. Confiscation of property gain has not been imposed in any proceedings before the courts, although this measure is prescribed in two laws: the Law on Misdemeanours and the Criminal Procedure Code. Equally, the Commission is not using its right to request confiscation of property gain, especially in cases of illegal enrichment. In this context, Montenegro should consider criminalising inexplicable wealth (illicit enrichment).

A violation of conflict of interest can be subject to disciplinary action or even criminal sanctions. The disciplinary sanctions provided for infringements of the provisions on conflicts of interest are: being relieved of duty, suspension and disciplinary measures, according to article 38 of the Law on the Prevention of Conflict of Interest. But, a widening of the range of sanctions should be considered. For instance, regarding violations during termination of office, sanctions should be added such as suspension of salary and prohibition from holding public office for some period. Furthermore, after termination of office some sanctions should apply, such as the reduction of the official's pension (e.g. by a certain percentage). Concerning violations in the public procurement process, another preventive measure could be to flag tainted procurement decisions and to put the company's name on a "black list" for a certain period. Including all these types of sanctions is the only way of preventing conflict of interest comprehensively.

At present, the Law on the Prevention of Conflict of Interest does not apply if other laws (e.g. the Law on Public Procurement) have their own rules. This should be reconsidered with a view to ensuring a consistent and effective legal framework.

3.6 Serbia

By Nemanja Nenadic

The Serbian legal framework for conflict of interest prevention is not drafted well. It has loopholes on the one hand, but also overly rigid restrictions on the other; it has provisions that are too vague, thus enabling a variety of interpretations, but also provisions where the audit body is limited in its decision making with formal reasons and prevented from resolving the problem in the most efficient way. The interpretations of the already wide definitions of "conflict of interest" and "associated person" create additional problems. The legal term "conflict of interest" has existed for more than decade now in laws, and exclusion/incompatibility rules are known to have existed for a much longer period. However, "conflict of interest" is quite often confused in public discourse and among officials with the performance of several public functions, business activities and abuse of power. The culture of reporting conflicts of interest is therefore underdeveloped and mechanisms to prevent it are weak.

Even if the Anti-Corruption Agency (and its predecessor, the Republic Board for the Resolution of Conflicts of Interest between 2004 and 2009) dealt more with issues of multiple public functions, submission of reports, secondary jobs and transferral of managerial rights, there is significant practice related to the failure to report conflicts of interest as well. In the final decisions of the Agency, the most frequent type of offence are situations where the director of a public institution, most often a school or a medical centre, employs a spouse, a child or other close relative, while not reporting that conflict to anyone nor abstaining from the hiring procedure.

The profile of practice depends mostly on what people report to the Agency. Namely, there is no effective tool to establish *ex post* that a conflict of interest existed but was not reported. Apart from individuals reporting such offences to the Agency, whistleblowers, political and personal enemies of the official, other citizens or NGOs, there is also the media as a source of information. In several instances, the Agency reacted to publications indicating a potential conflict of interest. The detection of a conflict of interest based on verification of asset declarations might be only an indirect tool. For example, if the verification reveals assets and income that the official failed to declare, it may be the case that there was some conflict of interest when obtaining this income. There are greater opportunities to proactively identify violations by crosschecking data already held by public bodies. The best, but still not sufficiently used, opportunity would be linking the public procurement portal with information about firms owned by public officials. In addition, the Agency should have the power to conduct external audits on compliance with conflict of interest provisions on a random sample of cases.

Furthermore, the problem is aggravated due to the passivity of managers and other oversight bodies in dealing with conflicts of interest of subordinates, thus leaving it mostly to the Agency to identify (or not) the problem, if it can do this as an external body at all. Most conflicts of interest identified originate from various public services (not the government itself) and from the local level. This rather corresponds with the possibility of revealing conflicts of interest in a small community than in the larger context of central government bodies. Although the judiciary is covered by the law, it seems that conflict of interest among judges has not been discussed by the Agency at all, but only by judicial bodies. Where a conflict of interest in the judiciary is perceived, there is a possibility of resolving it during the trial and that is what parties are mostly interested in. There is no practice of dealing with conflicts of interest among members of parliament. However, there are examples where the Agency identified conflicts of interest in the actions of members of other collective bodies, such as the boards of public institutions.

The need for legislative reforms is widely recognised. The Agency has pointed to weaknesses in the legislative framework in all its annual reports. In mid-2011, the Agency started to work with other stakeholders in the Government, the international community and the civil sector on a new anti-corruption Strategy. Only two years later, in 2013, the National Anti-Corruption Strategy was adopted, with a corresponding action plan[232]. The first year of implementation showed that strategic documents do not matter much. The Ministry of Justice did not respect the deadlines relating to the improvement of the legal framework for prevention and resolution of conflicts of interest. So, work on a new draft law began only in the spring of 2015 and is still on-going (in September 2015), instead of being finalised by the end of 2014.

The starting point for that task is a model law, prepared by the Agency[233]. The Agency explains that,

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[232] Action Plan for the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the period 2013–2018.

[233] http://www.acas.rs/model-law-on-the-law-on-the-anti-corruption-agency/.

"[...] a need arose for clarification and specification of a certain number of provisions as well as for different regulation of certain important issues, especially ones relating to conflicts of interest, accumulation of public offices, the asset and income declarations of officials, and the competencies of the Agency".

The proposed model, among other things:

- Excludes perceived private interest from the definition of conflicts of interest, which "seems to affect" the conduct of officials discharging public office, which eliminates the possibility of broad interpretation.
- Provides firmer guarantees of political independence of the Agency and details the procedure of decision making within the Agency.
- Provides the Agency with new powers (e.g. conducting corruption risk assessments of public authority bodies, the right to immediate and unimpeded access to official records and the documents of public authority bodies and other legal entities; the right to submit on its own initiative special reports on corruption to the National Assembly).
- Distinguishes between the terms "conflict of interest" and "accumulation of public offices".
- Prescribes that an official may not use knowledge and information acquired during discharging of public office to acquire any benefit or advantage for himself or any other person or to cause damages to another person, if there is no public access to such knowledge and information.
- Details the rules for conflict of interest reporting, i.e. by introducing the duty to report the private interest itself, not the conflict of interest and specifies the rules on declaring individual acts void because of a conflict of interest; the existing law, under article 32, provides for a period of eight days to notify the Agency "of any suspicions of a conflict of interest concerning an official or an associated person" but it is not clearly stipulated when the prescribed time limit begins. That is why in practice it often occurs that, at the time of receipt of the notice by the Agency, the consequences of a conflict of interest have already occurred for an official, so the prescribed measures for eliminating the conflict of interest become irrelevant. In addition, the existing law, under the provision of article 32, paragraph 5, which provides for the voidance of an individual legal act, the adopting of which has included the involvement of the official disqualified due to a conflict of interest, is not applicable because it does not prescribe who shall issue the decision which sets out the voidance and who shall take measures regarding the determined voidance of the individual legal act. Also, the existing law exempts contracts from these specific sanctions. The provisions of the new law relating to the voidance of an individual legal act and/or contract eliminate the above deficiencies.
- More clearly prescribes the situation when an official may perform other jobs and prohibits consultation activities. The existing law regulates this issue in an inadequate way. It does not define the meaning of the term "other job" and does not distinguish between the activities of an entrepreneur and activities of freelance professions, regulated by a special provision, which is not considered entrepreneurship. Provisions of the existing law which prescribe that the prohibition of performing other jobs or activities applies only to public offices which require full-time working hours or full-time employment are ambiguous, and provide for the possibility of performing other jobs or activities with the approval of the Agency, while particular provisions stipulate when an official may perform other jobs or activities at the moment of assuming public office, while prescribing different criteria for determining the incompatibility of performing those jobs and activities with the discharging of public office.

- Regulates business activities in a more comprehensive way.
- Regulates in a more precise way the procedure of the Agency upon receiving a notification of undue influence on the official.
- Introduces the prohibition of establishing business relations with a public authority body in which the public official (or former public official) had discharged public office.
- Enlarges the circle of associated persons whose property and income an officer is required to report to the Agency.
- Introduces the right of the Agency to require that the associated person submit directly information on his/her property and income, if there is a suspicion that the official is concealing the real value of his/her property or income.
- Introduces the obligation of the bank to submit data on all the official's accounts to the Agency, as well as data on other business relations of the official and persons associated with him/her and banks.
- Mandatory publishing of the Agency's decision on the website.
- The duty of the Agency to act upon anonymous complaints, if the complaint and evidence submitted with it, alone or together with other data available to the Agency, cause sufficient suspicion of the existence of corruption in the work of a public authority body or public official.
- Improves the penal provisions (the object of the action in the criminal offence of wrongful declaration has been expanded to include income as well as property, and the subjective component leaves out the intention to conceal the data that the public official is obliged to report).

While the provisions of this model, as a starting point for legislative changes, could help resolve some problems, including most of those mentioned above, there are still many gaps and disputable issues. Among other things, the model fails to enlarge the scope of public officials (e.g. special advisors are not covered), to define clearly the duties of the Agency within the scope of control, to regulate precisely some special types of conflict of interest (members of collective bodies), etc. Particularly sensitive and not fully elaborated is the issue of voidance of an act done in a conflict of interest. It might not be justified to apply this absolute consequence in all cases where an official in charge had a conflict of interest. Serbia also needs clearer regulation to prevent abuse of public office for political interests, either in this or in another law.

Besides all that, conflict of interest has to be regulated much more clearly in a large number of other acts. Provisions have to be changed even in the supreme act of the country – the Constitution – as it currently only forbids conflict of interest, instead of making it mandatory to resolve it in favour of the public interest. Rules have to be specified in laws regulating the work of members of public services, those in local administration and in several other professions that face particular challenges.

Furthermore, Serbia still lacks a lobbying regulation. Increasing of the level of transparency in the decision-making process in general would significantly improve the possibilities of conflicts of interest being observed. The recently adopted whistleblower protection law is an important step, although in itself it contains serious loopholes. The effects of both the laws and its possible loopholes still have to be seen (the whistleblower law having been in force only since June 2015).

Greater effects may be achieved, even in the current legislative framework, if the Agency were to publish its opinions more often on how to resolve conflicts of interest in concrete cases and go

beyond only identifying formal violation of the rules in its decisions. In all instances where a conflict of interest has not been resolved, an abuse of office may be happening as well. So, public prosecution offices should inform the public about whether they have found elements of criminal offence in the cases that are published. Other public institutions may also help the implementation of conflict of interest rules, by informing their employees about their duties, checking compliance, informing the public about this oversight and decisions and advice. Local governments have the potential to work on their own, in particular through affirmation of the already existing provisions of the Code of Ethics of Officials of Local Government and the work of monitoring boards.

In the scope of future reforms, the recommendations of GRECO may play an important role. GRECO recommended that the transparency of the legislative process be further improved. Within that context, GRECO also recommended:

> *"ii. (i) swiftly proceeding with the adoption of a Code of Conduct for members of parliament and ensuring that clear guidance is provided for the avoidance and resolution of conflicts of interest; and (ii) ensuring that the public is given easy access to the future Code and that it is effectively implemented in practice, including by raising awareness among members of parliament on the standards expected of them and by providing them with confidential counselling and dedicated training;*
> *"iii. introducing rules for members of parliament on how to interact with lobbyists and other third parties who seek to influence the parliamentary process and making such interactions more transparent".*

GRECO also suggested

> *"iv. (i) changing the composition of the High Judicial Council, in particular by excluding the National Assembly from the election of its members, providing that at least half its members are judges elected by their peers and abolishing the* ex officio *membership of representatives of the executive and legislative powers".*

A similar provision is defined for public prosecutors and their State Prosecutorial Council (viii. (i)).

Regarding all three categories of public officials (parliamentarians, judges and prosecutors), GRECO recommended:

> *"xii. that the rules on conflicts of interest and related matters that apply to members of parliament, judges and prosecutors, inter alia, those that concern the definition and management of conflicts of interest, the holding of several public offices concurrently and secondary activities, asset declarations (scope, disclosure of information and control) and sanctions, be further developed and clarified;*
> *"xiii. that the role of the Anti-Corruption Agency in the prevention of corruption and in the prevention and resolution of conflicts of interest with respect to members of parliament, judges and prosecutors be further strengthened, inter alia, i) by taking appropriate measures to ensure an adequate degree of independence and by providing adequate financial and personnel resources; and ii) by extending the Agency's competences and rights, to include, for example, the right to immediate access to data from other public bodies, the right to act upon anonymous complaints and on its own initiative, and the right to file criminal charges, request misdemeanour proceedings and launch initiatives for disciplinary proceedings."*

GRECO invited the authorities of Serbia to submit a report on the measures taken to implement the abovementioned recommendations by 31 December 2016. So far, as explained, the work on changes to the Law on the ACA has begun. Changes to other relevant regulations is envisaged in

strategic documents, either existing ones (Judiciary Reform Strategy, Anti-Corruption Strategy), or draft versions (Action Plan for Chapter 23 of negotiations with the EU[234].

[234] http://www.mpravde.gov.rs/tekst/9664/treci-nacrt-posle-tehnickog-usaglasavanja-sa-komentarima-evropske-komisije.php.

4. Recommendations

By Dr. Tilman Hoppe

Probably the most striking observation one can make from the cases in Chapter 2 is the high ratio of cases concerning incompatibilities, but the comparatively low number of cases of real conflict of interest violations, such as public contracts concluded with somebody of private interest. At the same time, most cases were triggered by media reports, citizen complaints, or by NGOs. This raises the question of whether **active detection** mechanisms would not achieve more than passively waiting for complaints to turn up more or less by accident.

Conflicts of interest related to **sponsoring**, **lobbying**, and **advisory** boards seem to be issues which most existing regulations – as described in Chapter 1 – do not cover yet. Sponsoring can put the public entity into a conflict of interest – would a police station be tempted to provide preferred service to a hotel in the neighbourhood from which it received computers? Is the former profession of a lobbyist compatible with a mandate in parliament, or should a former parliamentarian be allowed to work as a lobbyist immediately upon leaving parliament? There are many entry points in the public sector where people prepare or render decisions, who are not public officials and who do not fall under conflict of interest regulations. An example is advisory boards at the Ministry of Health, which advise on the licensing of new pharmaceuticals.

Several cases have shown the important role that **civil society** organisations play in pushing for implementation of conflict of interest provisions. It is thus important to enable civil society at large and NGOs to monitor compliance with conflict of interest provisions through **open data**. This concerns not only asset declarations and decisions on managing conflict of interest, but also the entire public decision-making process. In addition, NGOs with fighting corruption among their statutory purposes should be legally empowered to apply for a **court** decision on the validity of public contracts and other public decisions rendered in possible conflicts of interest.

Liability of **legal persons** for corruption offences is a rather new concept in the region. There are often cases where legal persons profit from conflict of interest violations. For example, companies often win profitable public sector contracts through private relations with public officials. It is not enough to sanction the public official and to void such contracts. Legal persons should be liable in these cases and pay an effective **fine** and/or be **blacklisted** for procurement, as otherwise there would be no effective deterrent. The Council of Europe's Venice Commission has made it clear that a **ban on holding office** is possible even for political officeholders where "an official [refuses] to resolve an actual conflict of which he or she is aware."[235]

From Chapters 1 to 3 one can derive the following recommendations:

1. **Focus on concrete decisions**: Incompatibilities are fairly easy to detect, mainly by verifying the truthfulness of asset declarations. However, incompatibilities are usually "only" potential conflicts of interest (e.g. the private business of a public official is not a conflicting

[235] CDL-AD(2008)014, http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)014-e.

interest as long as the business stays away from the public sector). It is thus important to focus on cases where public officials actually abuse a conflict of interest in a concrete decision-making process (e.g. awarding a public contract to a business of their family).

2. **Data-mining**: annual declarations of personal and financial interests and ad-hoc notifications of conflicts of interest are only two of many possible sources for detecting conflict of interest, and only provide limited insight.[236] Conflict of interest oversight should also use the following sources of information for actively detecting abuse of conflict of interest:
    a. **Files** and **registers** of individual cases of decision making, such as on procurement or on hiring, should be an additional starting point for detecting conflict of interest violations.
    b. Data contained in files and registers, such as names of public officials or companies, should be cross-checked with civil registries, business registries, procurement databases, etc., in order to detect any possible private relationship which one of the stakeholders has failed to notify.
    c. The random check should be a **standard** procedure by the central oversight body on conflicts of interest (e.g. Ethics Commission), by the Court of **Auditors** during regular audits, and/or by internal **inspection** boards.
    d. To this end, an explicit **methodology**, set of guidelines, and/or checklist should be in place on how to select cases in state agencies for an audit and what steps to take for detection of possible conflict of interest.
    e. At the same time, oversight bodies need sufficient **powers** to request data and documents for such checks from state bodies as well as private natural and legal persons.
3. **Sponsoring**: Consider establishing guidelines outlining to what extent and under what circumstances private parties can donate money and other assets to the public sector (donation), possibly in order to raise their visibility in exchange (sponsoring). The guidelines will help donors avoid legal risks, in particular, those related to bribing public officials or violating political finance provisions.
4. **Lobbying**: The profession of lobbyist is incompatible with public sector functions in many countries. There are also cooling-off periods in several countries for lobbyists. It should be considered whether conflict of interest provisions in the Western Balkans region should reflect this emerging international standard.
5. **Advisers**: Ensure that conflict of interest provisions also apply to stakeholders who are not formally public officials, but exert influence on public sector decisions, in particular: advisory boards and expert commissions (e.g. an advisory board for pharmaceutical licensing attached to the health ministry).

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[236] Western Balkan Recommendation on Disclosure of Finances and Interests by Public Officials (ReSPA 2014), recommendation E.12, http://www.respaweb.eu/download/doc/Asset+Standard+FIN+14+12+10.pdf/45571feb5cde81505de6e2e67b566b3b.pdf.

6. **Civil society organisations**: Oversight bodies may sometimes be hesitant to pursue a certain case, for example where political interests are at stake, or simply because they interpret regulations in a different way. Civil society organisations and other interested third parties should be empowered to apply to a court to annul public decisions rendered in conflict of interest.
7. **Inter-agency cooperation**: In preventing, managing, and sanctioning conflicts of interest, different stakeholders are involved. They should not operate in isolation from each other:
    a. Information on the outcome of disciplinary, administrative or criminal procedures needs to be fed back to all stakeholders (e.g. prosecutors need to inform an ethics commission on the outcome of a procedure, just as the commission needs to inform the supervisor of the public official concerned). Regulations need to ensure such a **flow of information**.
    b. Oversight bodies need to have the power to **challenge in court** decisions by prosecutors to drop charges (e.g. because of a lack of evidence or for legal reasons), and to appeal the decisions of misdemeanour bodies.
8. **Sanctions** – an effective and comprehensive sanctions framework should:
    a. Also target supervisors who are responsible for overseeing and preventing conflict of interest violations in case they intentionally or recklessly fail to act when a public official fails to comply with the provisions on managing a conflict of interest;
    b. Make legal persons liable for conflict of interest violations (e.g. where a company enters into a contract with a public body despite knowing of a conflict of interest);
    c. Include a ban on procurement in cases where bidders commit serious conflict of interest violations;
    d. Foresee dismissal for public officials in cases of serious violations;
    e. Ban public officials from public office for a number of years if they have been dismissed in case of a conflict of interest;
    f. Be proportionate and effectively deterrent regarding the (potential) damage done by the conflict of interest, and should also allow for the forfeiture of any profit made.
9. **Transparency** – the following should be public data, ideally online:
    a. Annual declarations of personal and financial interests;
    b. Decisions on managing conflicts of interest;
    c. National databases such as on procurement; business registry, etc.;
    d. Decisions on disciplinary, administrative, and criminal sanctions;
    e. Meaningful statistics itemised by conflict of interest violations, public sectors affected, sanctions applied, financial damage avoided or incurred, etc.;
    f. Transparency in the decision-making process starting at the earliest possible stage (e.g. publishing draft laws not only when they reach parliament, but already before adoption at cabinet level).

ReSPA is an international organisation which has been entrusted with the mission of boosting regional cooperation in the field of public administration in the Western Balkans. As such, ReSPA is a unique historical endeavour, established to support the creation of accountable, effective and professional public administration systems for the Western Balkans on their way to EU accession.

ReSPA seeks to achieve this mission through the organisation and delivery of training activities, high level conferences, networking events, summer schools, study tours and publications, the overall objectives of which are to transfer new knowledge and skills as well as to facilitate the exchange of experiences both within the region and between the region and the EU Member States.

CONTACT
Regional School of Public Administration
Branelovica
P.O. Box 31, 81410
Danilovgrad, Montenegro

Telephone: +382 (0)20 817 200
Internet: www.respaweb.eu
E-mail: respa-info@respaweb.eu