



Cases of Preventing Conflicts of Interest and Incompatibility.

***High Inspectorate of Declaration and Audit
of Assets***

CONFLICT OF INTEREST

LEGAL BACKGROUND

- ➔ Law no.9367, dated 7 April 2005 “On the Prevention of Conflicts of Interest in the Exercise of Public Functions” (published in the Official Gazette no.31, May 2005). ;
 - Concept CI wider than the law PCI;
 - Different restrictions in different laws;

Conflict of Interest according the Law of Conflict of Interest

Rules

Means

Manners

Procedures

Object, article 2

Aim, article 1

Responsibility

Competence

SCOPE:

Impartial and transparent decision-making process, in the interest of public and institutions

MEAN:

Prevention of conflicts of interest for any official subject to the law

Definition (article 3, law PCI)

Defined by the effect of interests in decision-making

Actual Conflict of interest
(point 4/a)

Apparent Conflict of interest
(point 4/b)

Potential Conflict of interest
(point 4/c)

The conflict of interest between the public duty and the private interests of an official, in which he has private, direct or indirect interests, that might effect or seem to effect in the performance of his duties and public responsibilities appear in:

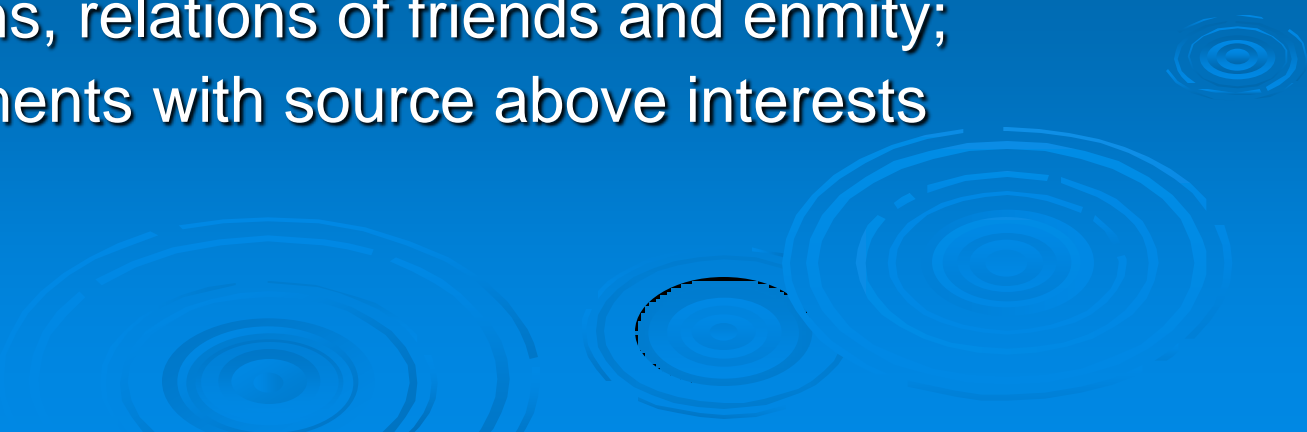
3 forms
2 dynamic forms

Case by case Conflict of interest
(point 4/ç)

Continues Conflict
(point 4/d)

Related to dynamic of effects

Private Interests

- Property rights and obligations of every kind of nature,
 - Every other juridical civil relation,
 - Gifts, promises, favors, preferential treatment,
 - Possible negotiations for future employment, or every other private interest relation for the official,
 - Engagements in private activity claiming income or every other kind of activity that brings income also engagements,
 - Family relations, relations of friends and enmity;
 - Prior engagements with source above interests
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Limitations

- **The most severe limitations principle** with regard to this law with other laws;
- Types and limitations of private interests of official categories, defined in this law (high level officials), do not exclude types and limitations defined in other laws for this category of officials, applied for this purpose, but, in every case, the most severe restriction is applied, article 26/1;
- For other officials, untreated ... are applied the restrictions defined in special laws for the same scope. Article 26/2.

Procedures of treating and solving Conflicts of Interest cases

1. Superior competences or superior institutions for treating and solving Conflict of Interest as well as procedures for applying this competencies are defined from:
 - a) Civil Procedure Code and Criminal Code of Procedurer, for court proceses and criminal procedures;
 - b) Code of Administrative Procedure for all public institutions, that come under this Code;
 - c) Special laws, regulating the activity of public institutions or rights and obligations of different officials categories;
 - d) Constitution, when the conflict affects an official, who is member of a constitutional organ.

Prohibitions of case by case Conflict of Interest

Related with 3 important cases, that make the practical meaning of the existence and administration of Conflicts of Interest:

- Contracts
- Benefiting because of function
- Gifts, promises, favors , preferential treatments
- Limitations for related persons

Limitation for continuous Conflicts of Interest

- Restriction and/or limitations with regard to certain officials categories:
 - Council of Ministries Members and Deputy Ministers,
 - Members of Parliament,
 - Chairman of municipalities/communes /districts council
 - Regulative member organs,
 - High and medium level officials, head of public administration, state policy and armed force,
 - Officials of custom and taxation organ,
 - High state functions,
 - Related persons,

Restrictions of continuous conflicts of interest

These limitations or restrictions are mainly focused in two main aspects:

1. limitations participating in a private activity and engagement in organizations
 - Chairmen benefiting or governmental or non-governmental organizations
 - Any physical person, partnership, free profession
2. Differenced limitations owning shares or capital parts
3. Active ownership (members of Parliament, officials of governmental units, high and medium level officials...)
Passive ownership (members of Council of Ministers, Deputy Ministers, officials of custom and taxation organ, high-level state officials...)

Ways of solving Conflicts of Interest

➤ For officials:

- Transfer or rearrangement of private interest
- Self-exclusion from the decision-taking process;
- Resignation from the private engagements and private duties
- Resignation from public function
- Announcement to the superior and providing evidences of the documentation of **solving Conflicts of Interest**

Ways of solving Conflicts of Interest

➤ For superior or superior institution:

- The limitation of information
- Not allowing the participation in the decision-taking process
- Scrutinising, analysing and transferring the competencies
- Transfer to another duty
- Avoidance of appointment and election
- Revoking the acts, the apparent conflict of interest cases, apart the cases that overpass the benefits

Case Study

- What are the concrete and detailed duties and competences of the official in question?
- Does he have any essential and decisive competence in decision-making in issuing concrete normative and/or individual acts?
- What is the sphere (area, field) of this decision-making impact?
- How strong is the impact of this act on this sphere?

Case Study

- *What are the private interests of the official in question? .*
- *What chances does the act have in favoring private interests of this official? .*
- *What are the chances that official's private interests will negatively affect his role in the decision-making about this act?*
- *Is there any strong cause-effect relation between the interests and the act, which may lead to an unfair public decision-making solely for this cause?*

Case Study

➤ IX - Would he (the individual from the public) have confidence in the decision-making of the official in question, if he knew about the existence of private interests and their interference with this official's duty?

X – is this relation (cause-consequence) rare and random or it is a repeated relation and/or often of a continuous conflict of interest

Case Nr 1

In the company A&M, the son of General Secretary of Health Ministry owns 21 per cent of the shares. This company buys land, property of state in a tourist area. The purchase was based in an auction which was organized by the Ministry of Tourism . Organizing the auction was in full accordance with the law. The company AB deserved the purchase, due to the best financial and technical offer.

Is this contract in conditions of Conflict of Interest and if yes, provide ways of solution

Case Nr 2

- Official A.B is appointed, Director in a Directory of the Ministry of Economy Trade and Energy, and in his appointment his private interests resulted as the following:
 - 1- Director in “Alfa” company, with construction activity.
 - 2- Board member of Albanian Football Federation.
 - 3- His wife has activity as physical person in a drug store with annual income over 10 000 euro.
 - 4- His father-in-law is a shareholder in “H&M” company in petrol activity.

- ***Identification of Interests***

- From official private interests nr 1,2 and 4
- From media is known the interest nr.3

Is official A.B in a conflict of interest case, and if yes, provide ways of solution.

Case Nr 3

➤ Official EM is member of ERT (Regulatory Body of telecommunication) and declared these private interests before being appointed:

1- Does the activity as physical person in an auto serves is a conflict of interest?

2- Daughter is partner in a limited liability company, with activity phone line.

3- Son is employed as the Director of Marketing in mobile society, public limited company Alpha Mobil.

Is the official E.M in conflict of interests, and if yes, ways of solution

Case Nr 4

➤ G.L. is a customs official, who works in the collection of custom revenues and he resulted with the following private interests :

1- His mother-in-law is a partner with 25 % of capital parts in “Beta” limited liability company with import-export activity.

2- His brother owns 10% of actions in “Drini” public limited company, with import-export activity.

Is the official G.L in conflict of interests, and if yes, provide ways of solution.

Case Nr 5

- The parents of a Municipality Chairman , are shareholders in “Morava” public limited company, whose activity is outside of jurisdiction of the municipality. This company takes part in a tender organized by the municipality.
- Is there any conflict of interest and if yes, provide ways of solution.

Data for year 2007

- **HIDAA has inspected 200 conflicts of interests cases,**
 - In 70 cases officials have been in a conflict of interest situation
 - a- in 63 cases the conflict is solved by the officials resigning the private interests
 - b- in 7 cases officials resigned public function
 - 40 other cases are avoided recruiting, mainly functions that were in conditions of conflicts of interest
 - 40 cases announced by media, which have been inspected from HIDAA by the licensed experts on conflict of interest cases
 - 50 cases in direct communication with the Sector of Relations of Representative Authorities, especially chairmen of local units, are provided with assistance with regard to their appointment after elections of 18.2.2007.