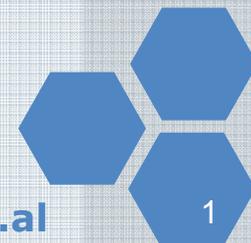


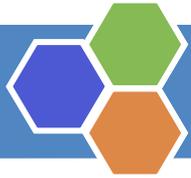
Prevention of Conflict of Interest in carrying out Public Functions



Pergatiti: Fjorida KALLÇO

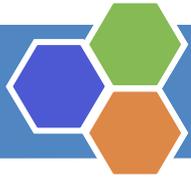
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Legal Framework of conflict of interest

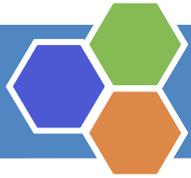
- ❑ **Constitution of the Republic of Albania**
 - ❑ **Administrative Procedural Code**
 - ❑ **Law nr.9131, dated 8.9.2003** “On rules of ethics in the public administration”
 - ❑ **Law nr.9367, dated 7.4.2005** “On Conflict of Interest Prevention in the Exercise of public Functions (PKI).
- **Conflict of Interests Prevention** *Law is a significant legal Instrument in combatting corruption.*
 - *The Law aims at standardising and unifying all rules covering all forms of conflict of interest and all categories of public officials such as: those elected, members of the government, directors of independant institutions, public officials, judges and prosecutors.*
 - *The Law covers all decision-making public processes: legislative; administrative (local and central government); judicial (civil, penal e administrative).*



Conflict of interest prevention Law

This Law **defines:**

- A clear intention related to an impartial, transparent decision-making in the best possible interest of the public and of its trust in public institutions,
- Institutional Structure in charge for the implementation of this law by following the principle of establishing a central structure (ILDKP);
- Liabilities, standarts and procedures for the declaration of private interests;
- Impediments and restrictions to private interests of public officials in order to prevent specific cases of conflicts of interests;
- Impediments and restrictions to private interests for incompatible cases with the public function for certain categories of officials.
- Alternative means and methods used in any situation and by any institution relating the way of solution of a certain case as regards conflict of interest;
- Consequences of certain acts undertaken under the conditions of conflict of interest.
- Sanctions on legal violations during the exercise of public functions.

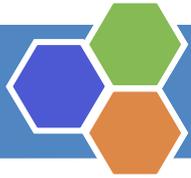


Role of HIDAA in identifying and preventing of Conflict of Interests

High Inspectorate in the quality of the central authority in charge of the implementation of Conflict of Interests Prevention Law carries out the tasks and has the following responsibilities:

- ✧ To offer technical assistance on counselling and supporting legal and sub-legal initiatives to public institutions for the prevention of conflict of interest;
- ✧ To strengthen capacities for the administration of conflict of interests in public institutions;
- ✧ To advice public officials, and their superiors of higher institutions as requested by them on special occasions in case of conflicts of interests;
- ✧ To exercise verification and administrative investigation of the conflict of interests, and prevention of restrictions of interests as defined by law upon request of the public institution or central one or when deems it necessary and upon its own initiative;
- ✧ To take punishing administrative decisions available to its competence as defined by law;



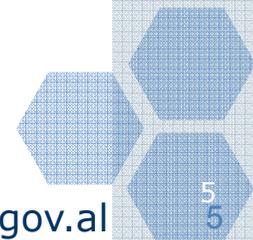


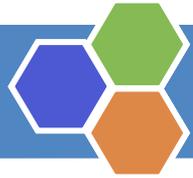
The System of identification of conflict of interests

- 1. The system of identification of interests in moments of conflicts taken case by case.**
- 2. The system of periodical identification of private interests' declarations of public officials by audits undertaken by the High Inspectorate of Assets Declaration.**

The Systems, case by case and periodically, of identification and registration of interests assist to:

- Prevent conflicts of interests in an efficient way;
- Inform the public in the best way possible with the recorded interests' data.

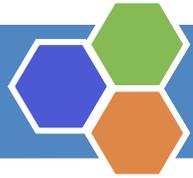




Investigation of Conflicts of Interests cases

- ❖ **Administrative Investigation of Continuous Conflict of Interests – incompatibility between public responsibilities and private interests of an official .**
 - Logical and arithmetic audit
 - Complete audit
- ❖ **Administrative Investigation of Conflict of Interests in decision-making case by case, mainly regarding**
 - Administrative acts of central and local institutions
 - Contracts with public institutions as parties,
 - Public Procurement, Auctions, Concessions, ets

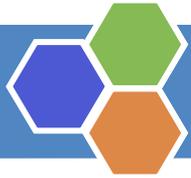
The High Inspectorate commences its procedures of administrative investigation in case of conflict of interest upon request of the superior institution or its initiative when informed by legal sources.



Sources of identification of private interests

Identification by third persons

- ❖ It is a task for:
 - ⇒ Any other official, aware of, in a particular way of the superior;
 - ⇒ Any public institution in awareness of.
- ❖ It is fair for:
 - ⇒ Interested Parties affected by an official's actions;
 - ⇒ Any person that has information and is interested in general.
- ❖ **Other sources of information**
 - public or private registers;
 - information provided by the media;
 - data or complaints filed by the public;
 - any other legal source.
 - denouncement dialled at the free number 0800 9999 of HIDAA
 - official statements and electronical mail unedenoncoj@hidaa.gov.al

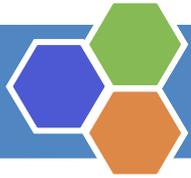


Protection and delivery of information

Any official or subject, who offers information based on cases of conflicts of interests which are not declared by subjects to this law, benefits a specific administrative protection on occasions:

- The official, who has been reported, may neither exercise any administrative competence to punish the subject who has provided information, nor be an obstacle to the last one to acquire the respective legal rights for reasons of providing information;
- When measures taken against the subject who has provided information are defined by another legal reason, then it is only a dependant public official who may be entitled to take the decision .



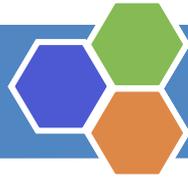


Restrictions on conflict of interest case by case

Conflict of Interest Prevention Law has defined some restrictions to private interests for prevention of conflict of interest case by case for specific cases relating to:

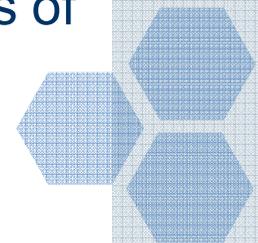
- **Prohibition to conclude contracts**
- Incomes as a result of public function.
- Gifts, favours, promises and preferential treatments

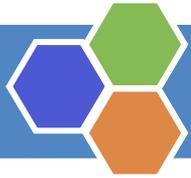
The Law has stipulated restrictions even for persons related to the public officials: Husband/wife, children if adults and parents of the official and his husband/wife.



Categories involved in preventing the conclusion of contracts

- President of the Republic;
- Prime Minister, deputy-prime minister, other ministers and deputy-ministers;
- Deputies;
- Judges of the Constitutional Court and Supreme Court, members of the High Council of Justice (KLD), Attorney General, Head of the Supreme State Audit (KLSH), People's Attorney, members of the Central Elections Commission (KQZ), General Inspector of the High Inspectorate of Assets Declaration and Audit of Assets (ILDKP); members of regulatory authorities bodies;
- Secretaries General, directors of departments and general directors of central institutions as well as any other official in any public institution, who is, at least, equal to general directors in terms of position.

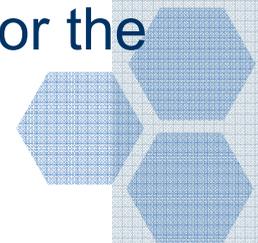


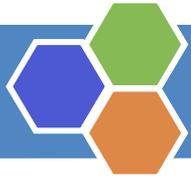


Absolute prevention to conclude contracts (Article 21.1)

- ❖ The Law has stipulated to prevent public officials and persons related to them to conclude contracts with parties such as a public institutions because of their public function, responsibilities and competences.
- ❖ Public officials are not allowed to benefit from public funds procured by any central or local public institution throughout the territory of the Republic of Albania.
- ❖ Absolute prevention is extended to all sorts of contracts such as: public Procurement of construction works, goods or services, sales, exchange, rent, donation, supply, entrepreneurship, transport etc, (*except contracts stipulated by article 21/5*).

HIDAA has undertaken to carry out an electronical audit for the identification of cases of conflict of interests of officials in procuring public funds, auctions and concessions.

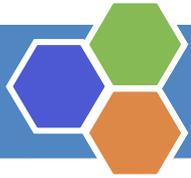




Restrictions to continuous conflict of interests

Prevention and/or restrictions are extended to certain categories of public officials and are differentiated according to importance of their function, as well as the risk to conflict of interest. The following categories of public officials are included:

- Members of the Council of Ministers and Deputy Ministers, Deputies,
- Mayers of Municipalities/communes/Regions' councils,
- Members of regulatory entities,
- High and medium ranked officials, directors of public administration, state police and armed forces,
- Officials of the Tax office,
- Senior state Functions,
- Persons related to the public official (Wife/husband and respective parents, and children)



Restrictions on continuous audit of interests

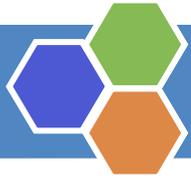
Prevention or restriction of private interests as predicted by law are focused mainly on two directions:

1. Prevention in the exercise of private activities and involvement in organisations

- As a director in profit-making or non-profit organisations
- Exercise of duty as a physical person, partnership activity, free-lance, etc.
- Full-time employment at another position.

2. Differentiated restrictions in the tenure of shares or part of equity based in the evaluation of relation between function and risk/possible damage stemming from conflict of interest.





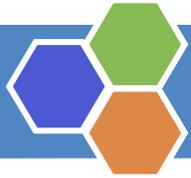
Basic Ways of handling and solving Conflict of Interests

The official in the exercise of of public functions is in charge of solving any situation of conflict of interest by using one or some of the different ways:

- Transfer or aliengnation of private interests.
- Self-exclusion from the concrete process of decision-making.
- Resignation from engagements, private assignments.
- Resignation from public function.
- Notification of the superior and evidencing of the documentation for the solution of Conflict of Interests

The official may not be free from the responsibility of being in conflict of interest when measures taken by him do not result useful in preventing and avoiding conflict of interest.

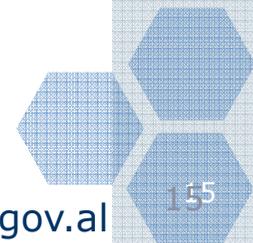


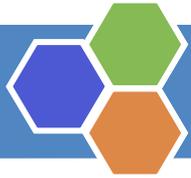


Basic Ways of handling and solving Conflict of Interests

The supervisor of the official is legally responsible for preventing conflicts of interests among the officials of his/her institution, using one or more of the following approaches:

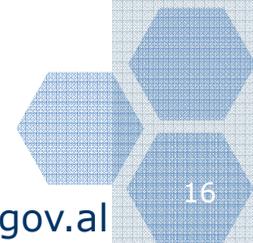
- **Related to the official**
 - » Limitation of information
 - » Not assign tasks
 - » Exclusion from decision-making
 - » Review or change tasks/competences
 - » Transfer the official to another assignment
 - » Avoiding of appointment or election
- **Related to the act (decisions taken under conflicts of interest due to private interests of the official)**
 - » Nullify/revoke the C.I act

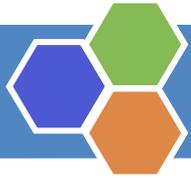




Invalidity of acts and contracts

- ❖ Relative Invalidity of acts and administrative contracts identified to have a clear conflict of interes;
- ❖ Absolute invalidity, no juridical consequences for civil contracts;
- ❖ Review and rejection of acts from judicial bodies, notaries, execution office and prosecutor;
- ❖ Relative invalidity of normative acts and individual provisions legally binding for law established subjects (except for the common laws) identified to have a factual conflict of interest.

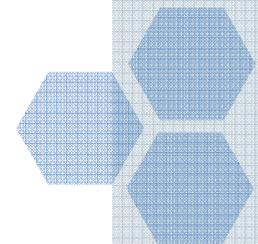


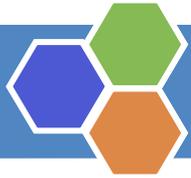


Sanctions on violations of the law on prevention of conflicts of interest (PCI)

1. The administrative measures taken against officials for violating provisions of the PCI Law are fines, issued by the Inspector General

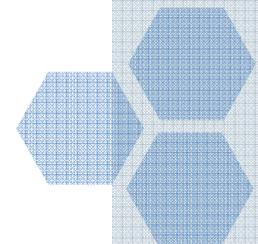
- 10 000- 100 000 Lekë, for violations related to respecting limitations of agreements, using the public office to generate income, accepting gifts, favours, preferential treatment from the officials.
- 100.000 – 200.000 Leke, for violation of deadlines and procedures on solving conflicts of interests
- 200.000 - 400.000 Leke, when the act is invalidated as a result of conflict of interests





Sanctions on violations of the law on prevention of conflicts of interest (PCI)

2. **Disciplinary measures**, regardless of criminal or administrative responsibility.
3. **Criminal investigation** in case of violations committed by the public official, constitutes elements of the criminal offense as predicted by Criminal Code .
 - Misuse of duty –Article 248
 - Illegal benefiting from interests -Article 257
 - Violation of equity amidst participants in the bidding process- Article 258
 - Passive Corruption of persons who exercise public functions - Article 259
 - Active corruption of persons who exercise public functions - Article 260
4. **Transfer of burden of indemnification** to the official who has acted in mistrust. The indemnification measure covers:
 - Assets damages
 - Non-material damages
 - Lost revenues





Data on HIDAA performance in 2010

- **261 cases of conflict of interest have been envisaged by HIDAA,**
 - **195 cases** have been evidenced based on the information submitted by the responsible authorities of public institutions and interested parties, and different ways of communication (mail, e-mail, phone calls, etc.); and the.
 - **66 cases** identified by the Arithmetical-Logical Control on declarations of conflicts of private interests of bodies responsible for declaration of possible private interests;
- **Fines, as an administrative measure** imposed to **20 senior officials** for non-resolution of conflicts of interests in due time and in a legal manner.
- Awareness and monitoring strategies have been drafted and implemented, focusing on prevention in time of conflicts of interests in public decisionmaking.
- Training courses have been organized to build capacities for public administration and prevention of conflicts of interest for:
 - **480 officials** of different levels, working for central institutions
 - **110 officials** from Municipalities and Municipality Councils

THANK YOU

