

**Legal regulation of conflict of interest:  
international and foreign experience**

**Abstract:** It is investigated the international legal norms and recommendations of international organizations, related to the prevention and settlement of conflicts of interest and the study of the positive experience of the Republic of Moldova on these issues. It is dealt with the provisions of the Law of Moldova “On conflict of interest”, which define the process for declaring by public officials their personal interests and activities of the National Anti-Corruption Commission, which exercises control over the compliance with legislation on the prevention conflicts of interest and the completeness and accuracy of such declarations.

**Keywords:** conflict of interest; settlement of conflicts of interest; personal interests; the declaration of personal interests; public officials.

Serving the public interest – is the main task of governments and government agencies all over the civilized world. Citizens expect from officials of public authorities of honest, fair and impartial performance of their official duties. Society increasingly hard expects and demands that governments should provide conditions, under which private interests, business and other relationships public officials will not compromise the mechanism of government decision making or undermine the authority of the public administration. Requirements of society to government decisions naturally constantly growing, so inefficiently resolved conflicts of interest on the part of public officials are able to undermine public confidence in government institutions [5, p. 2].

A conflict of interest arises from the presence at public officials selfish desire to

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take advantage of the power of a violation of professional ethics. It belongs to the internal personal conflicts public officials.

At the core of the conflict of interest is a conflict between the law and the personal interest, between morally right and morally wrong in terms of social morality, professional ethics. Typically, the result of a conflict of interest is to obtain public official benefits for themselves, their family or their friends, against the interests of the state.

Harm to the public interest inflicts not only real (existing conflict), but also a potential (private interest in the relevant field), just such conflict generates distrust to public officials and suspicion of involvement in the committing a corrupt act. Therefore create a legislative mechanism of settlement of conflict of interests in public service is a paramount importance in the way of prevention of corruption.

Study on conflicts of interest paid attention to the works of such scholars as: O.G. Kalman D.S. Kovryzhenko, A.T. Komzyuk, O.V. Kuzmenko, O.M. Litvak, D.M. Lukyanets, M.I. Melnyk, S.S. Rohulskyy, O.P. Riabchenko, M.I. Havronyuk, and others.

The aim of article is to study international law and recommendations regarding legal mechanism settlement of conflicts of interest and study positive experience management of it in the Republic of Moldova.

In order to intensification measures, aimed at more effective prevention of corruption and fight against it, in 2003 adopted the UN Convention against Corruption. Under the Convention, each State Party shall, accordance with the fundamental principles of its domestic law, to create, maintain and strengthen such systems, which promote transparency and prevent conflicts of interest [1].

In many European countries, the notion of conflict of interest and mechanisms to prevent conflicts of interest determined by the general laws on public service: Law “On Public Service” and “On limiting participation in business persons that perform public functions” – in Poland, Public Service Code and the Criminal Code – in Austria, Law “On Public Administration” – in Iceland, the Public Service Code – in Greece. At the same time, some European countries and former Soviet Union

countries adopted special laws about conflict of interest. Among these countries: Serbia (Law “On Conflict of Interest”), Czech Republic (Law “On Conflict of Interest”), Croatia (Law “On conflict of interest in the exercise of public authority”), Latvia (Law “On conflict of interest in the activities of officials”), Lithuania (Law “On public and private interests in the public service”), Moldova (Law “On Conflict of Interest”).

Also in some European countries, as recommended by the Council of Europe, provides settlement of the problem of conflict of interest codes of behavior for public officials. In the Annex to Recommendation № R (2000) 10 Council of Europe – “Model Code of behavior for Public Officials” – notes that a public official should not allow his personal interests were in conflict with his public office. Avoiding such conflicts of real, potential or possible is his duty. The public official must not abuse their position for their personal interests (art. 8) [3]. The Council of Europe recommends that governments of States Parties encourage, in accordance with national laws and principles of public administration, the adoption of national codes of behavior for public officials based on the model code of conduct for public officials.

In 2003 the Council of the Organization of Economic Cooperation and Development (OECD), referring to its Recommendation “Improving ethics of behavior in the public service” developed for the States Parties of OECD Guidelines for Managing Conflict of Interest in the public service. These recommendations first proposed common international standards in order to help the governments of countries to revise and modernize its policies policy on the settlement of conflict of interest in the public sector in accordance with good practice in States Parties of OECD. They are based on a practical approach, according to which it is believed that it is impossible to get rid of all conflicts of interest, therefore private interests of officials should be properly identified and included. In accordance with these Recommendations conflict of interest it is a conflict between a public duty and private interests of a public official, in which the public official has interests arising

from its status as a private individual, and which could improperly influence the performance of public official her official duties or functions [4, p. 3].

The positive innovation of Recommendations of OECD is considered the emphasis on the existence not only situations of actual conflict between the interests of a public official as a private individual citizen and his duty as a public official, but also situations in which there is an imaginary or potential conflicts of interest [4, p. 9].

Questions on prevention of conflicts of interest often considered as part of a broader policy to prevent and fighting corruption. In European countries and former Soviet countries national programs of prevention of conflicts of interest developed within one of two approaches: 1) programs to prevent conflicts of interest is part of a strategy of preventing and counteraction of corruption; 2) programs of preventing conflict of interests is part of a broad strategy of guaranteeing and improving the ethical standards of professional behavior in the public sector.

The first approach was common practice in the “new” European Union member states and some post-Soviet countries, while the other is reflected in the law of “old” European Union countries [4, p. 11].

Among the post-Soviet countries made significant progress in the settlement of conflict of interest in public service reached the Republic of Moldova. It has developed its national program for prevention of conflicts of interest within the strategy of prevention and countering corruption. Moreover, Moldova adopted a special law “On conflict of interest” (Law), which is determined by the entire process of managing conflict of interest.

Based on the positive experience of the Republic of Moldova expedient to closely examine its law “On conflict of interest”.

The mentioned Law concept of “conflict of interest” is defined under the OECD Guidelines. This legal act provides for the management of conflicts of interest, which is expressed in the proposed guidelines for officials to take responsibility for identifying personal interests, which may enter into conflict or are in conflict with their official obligations, and also offered to these individuals as well as to public

organizations to take measures for positive settlement of conflicts of interest. So this Law is aimed primarily at preventing such conflict.

Managing conflicts of interest and its settlement made by the relevant officials and the head of the public organization, about what they adopt a reasoned decision. Settlement of conflict of interest carried out by considering the circumstances, find and use the right decision for a positive resolution of this conflict.

The Law of the Republic of Moldova “On conflict of interest” clearly defined options for positive settlement conflict of interest, namely:

- 1) refusal by official of personal interest or removal of its interest;
- 2) refusal (prohibition) by official involved in a conflict of interest from participation in decision-making without her removal from office – with low probability of recurrence of conflict of interest;
- 3) restricting access official involved in a conflict of interest to specific information;
- 4) the transfer the official to the post at which there is no risk of a conflict of interest;
- 5) viewing range of responsibilities and functions of the official – if it is probable continuation of the conflict of interest at which the removal of decision-making is not recommended;
- 6) dismissal of the official from office, which provides performance of the conflict function, occupied as a private individual.

That official is obliged to submit any final decision, which requires of it to out of a situation of conflict of interest, in which it is located, or abandon the benefits that spawned conflict of interest [2].

In addition to the adoption of special laws on preventing conflict of interests, in recent years in Europe took a number of other important steps: created specialized anti-corruption agencies, implemented effective mechanisms to verify the declarations of assets and interests of senior government officials, protect persons who are informed about the abuse and others.

These innovations were introduced on the execution of international agreements and conventions ratified by many countries. According to the UN Convention against corruption, each State Party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems, requiring public officials to provide the relevant bodies declarations, inter alia, about off-duty activities, employment, investments, assets and substantial gifts or profit, in respect of which may be a conflict of interest with their functions as public officials [1].

This provision of the Convention successfully integrated into the national legislation of the Republic of Moldova in matters of solving problems of monitoring accuracy of the data contained in the declaration of personal interests. Law of the Republic of Moldova, “On conflict of interest” established, that a candidate for election, appointment or approval by a public officer, must to identify and declare appropriate personal interests by submission of the declaration. At the same time requirement to declare personal interests included in all procedures and agreements, which regulate the recruitment, appointment or election to public office.

Declaration of personal interests, according to the legislation of the Republic of Moldova is filed within 15 days from the date from the date admission to employment shall confirmation of mandate or appointment. Every year it filed until 31 March. In the event of changes in the information that could lead to a conflict of interest, individual update a declaration of personal interests in 15 days after the occurrence of changes. The duty to submitting a corresponding declaration persists after one year from the date of termination of activity until March 31 next year.

Declaration of personal interests submitted in writing under the personal responsibility of the declarant and contains information on:

1. paid professional activity;
2. the status of the founder or member of management, administrative, audit or control of non-commercial organizations or political parties;
3. the status of shareholder of business entity, a credit institution, insurance company or financial institution;

#### 4. relations with international organizations.

Checking of the information presented in the declaration of personal interests, conducted by a special anti-corruption body – National Anti-Corruption Commission, and by her request – bodies whose powers include checking such information.

The heads of public organizations and the National Anti-Corruption Commission shall immediately take measures, required for the resolving conflicts of interest that become known to them from declarations, and inform the competent state bodies about detected violations of legislation [2].

Thus, the management of conflict of interest helps identify potential conflicts of interest and prevent real. A filing declaration of personal interests and their checking by special anti-corruption body is intended for a speedy resolution of existing conflicts.

Ukraine for fulfilling its international obligations and Recommendations of OECD also made changes in their national anti-corruption legislation. October 14, 2014 in Ukraine adopted a new law “On prevention of corruption”. This legal act determined the procedure of prevention and settlement of conflicts of interest. The relevant legal relationships devoted an entire chapter in the new law. Besides order of management of the conflict of interest in this chapter are defined also measures of external and self-regulation of the conflict. Another innovation of the law “On Prevention of Corruption” is delimitation of conflict to potential conflicts of interest and real. These innovations help effectively detect any manifestation of conflict of interest and help prevent its occurrence.

In pursuance to recommendations of the Council of Europe on the behavior of public officials in the public service, the new law “On Prevention of Corruption” separate chapter devoted to the rules of ethical conduct for public officials. It identifies key requirements that apply to the behavior of individuals. Also, Article 39 of the new law established priority of interests. According to this norm, persons holding positions, related with fulfilling functions of state or local government, representing the state or community, acting solely in their interests.

Another novelty of Ukrainian legislation by the Law “On Prevention of Corruption”, is the creation of the National Agency for the Prevention of Corruption, which will ensure the formation and implementation of public anticorruption policy and will take part in the settlement of conflict of interest. According to its powers, defined in Article 11 of the new law, National Agency for the Prevention of Corruption will check declaration of persons, authorized to perform functions of state or local government, will conduct monitoring of lifestyle of such peoples and will provide assistance in the field of prevention and settlement of conflicts of interest in the activities of persons, authorized to perform functions of state or local government, and equated entities.

Thus, Ukraine made a significant step in bringing its anti-corruption legislation in compliance with international conventions and recommendations of international organizations, of which it is.

Each country creates for fighting corruption and for preventing of conflicts of interest own forms and methods, which take into account the different cultural and national characteristics. However, studying the experience of the settlement of these processes in foreign countries is of considerable theoretical and practical interest and allows choosing the most appropriate model for the formation of the national anti-corruption policy.

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