

# CONFLICT OF INTERESTS IN THE CIS COUNTRIES: A COMPARATIVE ANALYSIS

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## ABSTRACT

*The purpose of the article is to analyze the legal systems of some of the CIS countries (Moldova, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Belarus) regarding the regulation of situations involving conflicts of interest. The subject of the study is the legal systems of some CIS countries in the context of regulation of conflict of interest. The method of analysis and synthesis allowed considering the formation of situations that contribute to the emergence of conflict of interest. At the same time, methods of comparative analysis, induction and deduction reasoning made it possible to identify the characteristics that are common to most CIS countries, according to the similarity of the legal system. The comparative legal method helped to determine the causal relationship between a personal interest and the emergence of a further conflict of interest. The results of the study made it possible to identify the areas for improvement in the field of combating conflict of interest. Based on the research, the determining factors of emergence of conflict of interest among public servants were specified. It was defined that the regulation of conflict of interest in some countries refers to ethical rules of conduct in some countries, while most countries enshrine these rules in administrative law. Value/originality. Proposals for further improvement of the legislation were formed on the basis of the approach, proposed by the authors.*

**Keywords:** Conflict of Interest, Real and Potential Conflict, Personal Interest.

## INTRODUCTION

The lack of a clear legislative mechanism for the resolution of conflicts of interest necessitates the systematization and generalization of those doctrines that currently exist in domestic and international practice regarding the regulation of this problem. Considering the latter as a prerequisite for the emergence of corruption as a phenomenon, one should pay attention to the elimination of the prerequisites for the emergence of corruption offenses to which the conflict of interest belongs. The following situations may be prerequisites for conflict of interest: abuse of official position for personal or financial gain for the families of public officials; participation in any transaction, occupation of position, performance of functions, presence of financial, commercial or other similar interests which are incompatible with their

position, functions, duties; failure to report on business, commercial or financial interests or activities for obtaining financial gain; the misappropriation of public funds, property, services or information obtained in the course of official duties for the performance for activities, which are not related to the performance of official functions; abuse of the former position after assuming public positions.

The concept of conflict of interest in the international arena is not always reflected in the format, which we (Ukrainians) are accustomed to, as conflict of interest is reflected in the section Conflicts of Interest and Disclaimer in the International Code of Conduct for State Officials (Legislation of Ukraine, 1996).

The European model of resolving conflict of interests differs from the legal mechanisms, which exists in the former Soviet Union countries, but it has many similarities. In our study, we will focus on the legislative mechanisms of conflict of interest of some CIS countries.

## RESULTS AND DISCUSSION

In each legal system, both Romano-Germanic and Anglo-Saxon, there are peculiarities of the order of detection of conflict of interests, the ways of its prevention and interpretation of the concepts of conflict of interest, personal interest, actual and potential conflict of interest and others.

To begin with, let us consider the legislation of the CIS countries in the area of regulation conflict of interest.

The Law of the Republic of Moldova On Declaration of Property and Personal Interests of June 17, 2016 no. 133 is the main normative act regulating the procedure for identifying and preventing conflicts of interest. The provisions of this Law regulate incompatibilities and restrictions established for persons occupying positions of responsibility, resolution of conflicts of interest, as well as the procedure for filing declarations of conflict of interest (Law and Regulation, 2016).

According to article 2 of the Law of the Republic of Moldova: On Declaration of Property and Personal Interests conflict of interest means the situation in which the subject of declaration has a personal interest that influences, is capable or probably capable to influence the impartial and objective fulfillment of the obligations and duties assigned to him/her.

The legislator of the Republic of Moldova identifies potential, actual and accomplished conflict of interests (Article 12; Law and Regulation, 2016).

Accomplished conflict of interest is the act of the subject of declaration, which is to satisfy the application/request, issue an administrative act, conclusion of an agreement directly or through the mediation of a third party, participation in decision-making or taking a decision in complying with the obligations, prescribed by the position of responsibility; when such a situation occurs the subject of declaration is obliged:

1. To report immediately (or no later than three days) on the conflict of interest to the highest office or superior authority;
2. Not to fulfill the application/request, not to issue an administrative act, not to conclude an agreement directly or through a third party, not to participate in decision-making until the resolution of the conflict of interests.

A potential conflict of interest is a situation, in which personal interests of the subject of declaration may give rise to an actual conflict of interest and are declared in accordance with the established procedure.

The actual conflict of interest arises when the subject of declaration is encouraged to satisfy the application/request, issue an administrative act, perform the operation directly or through a third party, or participate in decision-making, in which a person is personally interested or it concerns his (her) close relatives, legal or natural persons, with whom he (she) is in property relations and who influence or have a potential to influence the impartial and objective performance of the powers of a public position or a responsible position of the State.

In Moldova, subjects of responsibility must report on a) an interest (their own or that of their relatives) in a decision that must be made by the subjects of responsibility or in making which they must participate, or in the action they must take in the performance of their duties; b) the position (their own or that of their relatives) of a shareholder, founder, member of the administrative board, member of the controlling or audit committee of a legal entity (commercial or non-commercial), if the legal entity received property, including funds, loans guaranteed by the State or local public administration, or public order for procurement from a public organization, in which the subject of declaration carries out his (her) duties.

In this case, attention should be drawn to the fact that in Moldova, persons declare not only their own interest and position, but also that of their relatives, while in Ukraine just real and potential conflict of interest is declared, which concern the subject of responsibility.

In our view, the experience that is worthy of the attention of domestic legislators is the declaration of personal interests; Article 13 of the Law of the Republic of Moldova: On Declaration of Property and Personal Interests (Law and Regulation, 2016).

In this declaration the subject of responsibility (the person applying for election, appointment and approval for the position of a civil servant) reports on:

1. His (her) position of the authorized administrator and/or affiliation with collegial bodies within public organizations;
2. Contracts, including those on provision of legal assistance, consultations and civil contracts, concluded or in progress, funded by the state or local budget and foreign funds or concluded with state-owned companies;
3. Position of a shareholder or a member of a business entity, member of governing, administrative, audit or controlling bodies within non-profit organizations or business associations or a member of non-profit or international organizations.

The declarant is solely responsible for the information, its timeliness, completeness, and submission. After that, the declaration of an actual conflict of interest is registered in the Register of Declarations of Conflict of Interest.

The Law of the Republic of Belarus: On Combating Corruption of July 15, 2015 no. 305-C contains the provision on conflict of interests, which means a situation in which personal interests of a public official, her (his) husband (wife), close relatives or relatives affect or may have an effect on the proper performance of the duties by public official when making a decision or participating in a decision-making or undertaking other activities (Law and Regulation, 2015).

According to article 21 of the Law of the Republic of Belarus: On Combating Corruption a state employee is obliged to notify in writing his (her) immediate supervisor of a conflict of interest or possible conflict of interest, as soon as he (she) becomes aware of it, and has the right

to declare in writing his (her) resignation from decision-making, participation in decision-making or taking other activities that cause or may cause a conflict of interest.

There is no specialized institution for combating conflict of interests in Belarus, just as there is no appropriate procedure for declaring personal interests, which at the same time simplifies the work on detection of conflict situations and reduces the importance of detecting and preventing such situations.

In case of a conflict of interest, a civil servant may be denied the appointment and transferred to another public office, as well as disposition disciplinary sanctions on him (her) up to removal from office in the manner prescribed by legislative acts.

There is an article on guarantees to natural persons, who contribute to the detection of corruption in the Law of the Republic of Belarus: On Combating Corruption. It stipulates the conditions of state protection for the persons who facilitate the detection of offenses that contribute to the commission of corruption offenses. Wives (husbands), close relatives and relatives of such persons are also under State protection if there are sufficient grounds.

Law of the Republic of Kazakhstan of November 18, 2015 no. 410-V: On Combating Corruption defines conflict of interests as a contradiction between personal interests of persons occupying positions of responsibility, persons authorized to perform public functions, persons, who are assimilated to them, officials and their authority, in which the personal interests of these persons may result in improper performance of their official powers (Article 1; Legislation of Ukraine, 2003).

According to article 15 persons occupying positions of responsibility, persons authorized to perform public functions, persons, who are assimilated to them, officials are prohibited from performing their duties if there is a conflict of interest (Law and Regulation, 2015).

The measures to prevent and eliminate conflicts of interest in the Republic of Kazakhstan carried out by the immediate supervisor or management of the organization on requests of the subjects of responsibility or when receiving information from other sources are:

1. Removal of the persons specified in paragraph 1 of this article from the performance of their official duties and the assignment of these duties to another person;
2. Change of duties;
3. Adoption of other measures for resolving the conflict of interest.

The special anti-corruption authority in the Republic of Kazakhstan is Anti-Corruption Service, which acts as an operational and investigative unit of the authorized anti-corruption body, which carries out activities aimed at preventing, detecting, termination, solving and investigating corruption offenses (Article 19). The legal acts indicate that Anti-Corruption Service is a part of the law enforcement system, thus endowed with the same powers as the police, and is subordinated within the structural and functional system to the central executive body, which is the Ministry of Internal Affairs.

Responsibility for committing actions or making decisions under conflict of interest involves invalidation of agreements, contracts and actions; Article 26 Article 26 of the Law; On Combating Corruption.

It is the Republic of Kazakhstan that has become one of the first countries to introduce the experience of reporting corruption offenses. A person who has any information on committing corruption and an offense that encourages corruption may report this. The State

ensures the protection of such people and encouragement them by paying remuneration and other bonuses.

The procedure for protection of whistleblowers is enshrined in the Rules on Promotion of Persons Who Reported a Corruption Offense or Otherwise Contributing to Combating Corruption of December 30, 2015, no. 1131 (Legislation of Ukraine, 2015).

The primary duty of a party to a conflict of interest in Russia Federation is to notify the representative of the employer in a certain order prescribed by regulatory legal acts of the Russian Federation about a conflict of interest or the possibility of its emergence as soon as he (she) becomes aware of it. This obligation enshrined in article 11, part 2 of the Law of Russian Federation; On combating Corruption meets the requirements of article 15, paragraph 12 of the Federal Law; On the State Civil Service of the Russian Federation of July 27, 2004 no. 79-FZ. According to this norm, one of the main responsibilities of civil servant is to inform the representative of the employer about personal interest in the performance of official duties, which may lead to a conflict of interest, and take action to prevent such a conflict (Law and Regulation, 2008).

State (municipal) bodies of Russian Federation do not establish any special requirements for the notification procedure, except that the notification itself must be submitted in writing. A written notice can be both preliminary (with a statement of facts indicating the possibility of a conflict of interest), and subsequent (outlining the essence of the conflict of interest).

However, the Russian reality needs clarification of the form of notification of a conflict of interest, taking into account the extension of this obligation to persons who are not in official relations with the employer. It seems appropriate to file to the employer or the representative of the employer along with the certificates of income, property and property obligations the declaration of private interests.

It is proposed to include in this declaration the information on the relatives of the person willing to be a state (municipal) servant concerning their places of employment, their positions, the nature of the work they perform, the securities belonging to them, their shares in the authorized capital of legal entities.

In accordance with the provisions of the Law of the Kyrgyz Republic of December 12, 2017: On Conflict of Interest conflict of interest arises between social and legal obligations and the personal (private) interests of persons defined by law, whereby their personal (private) interests affect or may have an impact on the performance of their official duties, which leads or may lead to a violation of rights and interests of citizens, organizations or the State (Law and Regulation, 2017).

Conflict of interest in the Kyrgyz Republic, as well as in the Republic of Moldova, can be potential, actual and accomplished.

Examining each of them in detail, one can ascertain their features; in particular potential conflict is a situation, in which the personal interests of individuals under certain conditions can adversely affect the performance of their duties. At the same time actual conflict of interest is a situation in which personal (private) interests of individuals directly affect the performance of their official duties. An accomplished conflict of interest occurred when the acts or contracts have been taken or concluded by the subject of responsibility under conflict of interest.

The mechanism for identifying conflicts of interest in the Kyrgyz Republic is similar to the one, which is in the Republic of Moldova, and lies in:

1. Declaring personal (private) interests at recruitment, when taking up a new assignment with another scope of authority;
2. Clarification if there is a kinship between the employer and employees when recruiting, including in accepting documents by the authorized bodies for participation in the election;
3. Identification of affiliated entities with persons in the course of public procurement in accordance with the law on public procurement;
4. Declaring income, expenses, liabilities and property of persons in accordance with the legislation on declaring;
5. Informing the head or the ethics committee of the relevant body on the conflict of interest;
6. Carrying out activities on prevention, detection, verification of conflict of interest by the bodies and persons performing control functions;
7. Consideration and examination of applications and complaints received by the organization;
8. Analysis of publications and messages in the media.

Article 24 of the Law: On Conflict of Interests clearly enshrines the procedure for declaring personal (private) interests, stating that persons, who are elected, appointed or approved to the post or transferred to another position with another scope of powers are obliged to fill out a declaration of personal (private) interests in the manner prescribed by law. We shall notice that the declaration of personal interests is filed separate from the declaration of income, expenses, property and liabilities.

The Law of the Republic of Tajikistan: On combating Corruption of July 25, 2005 no. 100 does not contain the concept of conflict of interest as a corruption offense, although it contains a complete list of administrative offenses related to corruption, including the acceptance of gratuity in the form of money, services and other forms from government bodies and organizations, in which the person does not perform the relevant functions, as well as from non-governmental organizations, public associations, individuals, unless otherwise provided for by legislation of the Republic of Tajikistan; acceptance of gifts and other services in connection with the performance of governmental or equivalent functions from service-dependent persons; granting illegal or unjustified benefits, privileges to natural or legal persons during preparation and decision-making, etc. Article 12 of the Law of the Republic of Tajikistan: On Combating Corruption (Law and Regulation, 2005).

However, the definition of a conflict of interest is explicitly given in the Law: On Civil Service of March 5, 2007 no. 233. According to this provision it is a situation where, in the course of the performance of official duties, a public servant is influenced by his (her) own interests, which results in making decisions that are contrary to the public interest. For actions taken by civil servants under conflict of interest, the latter shall be held accountable under disciplinary rules. (Law and Regulation, 2007).

There is the Law: On Combating Corruption in the Republic of Turkmenistan, as in several other CIS countries. According to its provisions conflict of interest is a situation in which personal interest (direct or indirect) of a civil servant affects or may have an impact on proper performance of his (her) duties and in which a contradiction arises or may arise between the personal interest of a public servant and the rights and legitimate interests of a citizen, State or society, is capable of giving rise to corruption offenses related or causing harm to the rights and legitimate interests of citizens, State or society (Law and Regulation, 2014).

If the concept of conflict of interests is enshrined in the above-mentioned Law, the procedure for prevention and settlement of conflict of interest is regulated by the Law On Ethics and Official Conduct of a Civil Servant of March 1, 2014, no. 35-V. The latter is aimed at

increasing the requirements for the moral authority and competencies of a civil servant and establishes general ethical rules and rules of conduct for a public servant for the purpose of a proper performance of public duties (Law and Regulation, 2014).

Pursuant to the Law of the Republic of Turkmenistan: On Ethics and Official Conduct of Civil Servants civil servants when performing their official duties shall not permit personal interests to develop into conflict of interest.

## CONCLUSION

In the CIS countries, the conflict of interest belongs to the sphere of regulation of administrative legislation and anti-corruption rules of conduct for public servants. In the vast majority of cases, conflict of interest falls into the category of violations governed by ethical rules of conduct for public servants, and the bodies that monitor this type of violations are the Ethics and Conduct Commission for Civil Servants.

Personal interest of the public servant, which manifests itself in obtaining certain benefits, promotion of entrepreneurial activity, promotion of useful persons, etc. lies at the root of the conflict, which contradicts the principles of performance of duties by civil servants and poses significant risks for corruption.

The most suitable experience of conflict of interest management is the one of the Republic of Moldova, since the control over the occurrence of such situations is carried out at the stage of submission of information on conflict of interest in the relevant declaration, which simplifies monitoring and ensures timely detection of corruption offenses.

Thus, in most CIS countries, the conflict of interest belongs to the administrative and criminal sphere of regulation of the Republics of Turkmenistan and Tajikistan is in the plane of ethics and civil service laws, while in the rest of these states the conflict of interests contributes to offenses contributing to offenses, administrative offenses related to corruption.

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