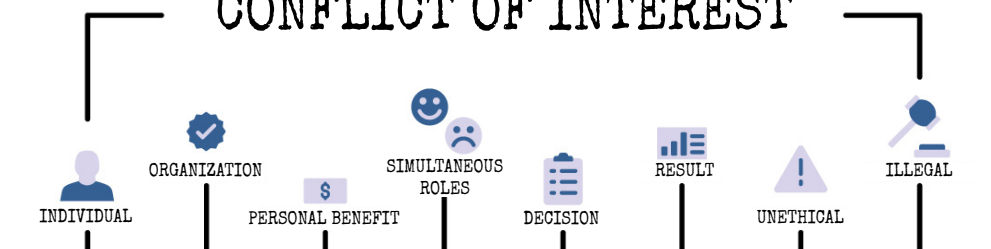


CONFLICT OF INTEREST



GUIDE

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FOREWORD

This guide is designed to help citizens understand their role in conflict of interest situations and its emerging forms, as well as ways to deal with them. Promoting a culture of responsible, accountable and transparent society is a key for success of the efforts to achieve a rule of law that prevents and tackles any illegal actions.

Citizens' integrity is the foundation of any democratic state governed by the rule of law. Namely, the citizen as an individual, but also as a key user of public services, has a special and extremely important role in the preventive approach in the fight against corruption and successful management of possible situations of conflict of interest.

Often, citizens encounter situations when party, friendship and kinship ties are used to get a job or to exercise a right. This can result in hampering the prudent achievement of citizens' rights when they want to do so in the right way. Persons who refuse to engage in conflicts of interest are often subject to hostile behaviour or pressure, are discriminated against and perceived as disloyal to colleagues or management structures, or - in radical cases - live in fear of being laid off.

Dealing with corruption by reducing conflicts of interest and living and working with integrity requires the perseverance and determination of all stakeholders in the society. Opposing a citizen who behaves in favour of achievement of personal goals of officials, gives an invaluable contribution to the creation of a society with integrity, and a society in which there is greater trust in institutions of the system.

That is why these individuals deserve the greatest respect.

The situations that cause conflict of interest are very different, in rare cases - identical (repetitive), and there are really complicated cases, difficult to identify and which require the involvement of qualified and competent professionals who would be able to determine and confirm the existence of a conflict of interest.

This guide is designed to help citizens recognize the possibilities and ways of conflict of interest, to recognize the negative effects and how conflict of interest affects not only them, but also the society as a whole. At the same time, it aims to increase the knowledge about the negative effects of conflict of interest situations, to encourage resistance and readiness to deal with it.

This guide is intended for the general public and citizens, and especially for those who are in daily or frequent contact with public officials and public sector employees.

WHAT IS CONFLICT OF INTEREST?

Conflict of interest is a situation in which an official has a **private (personal) interest** that affects or may affect the impartial performance of his/her public authority or official duties, thereby making a **decision** that is not in **the public interest**.

What is a public, and what a private interest?

PUBLIC INTEREST – interest in the common good and progress for all citizens, that means protection of the fundamental freedoms and rights of every citizen established by the Constitution

PRIVATE INTEREST – personal interest of the official which may prevail in the performance of his/her public authority or official duty

Personal interest can be:

Material: *money, profit, avoidance or reduction of losses, and other material goods of any kind*

Non-material: *benefits, services, privilege, advantage*

CONFLICT OF INTEREST FORMULAS

Decision + private interest = conflict of interest

Decision + public interest ≠ conflict of interest

If the private interest that might affect the decision-making is added to a decision that you have to make as an official, or an official has to make on your behalf as a citizen, this represents **conflict of interest**, regardless of whether the outcome of the decision will be positive or negative.

IS THE CONFLICT OF INTEREST ALWAYS APPARENT?

Actual conflict of interest – a situation in which there is a direct conflict between official duties and private interest in the particular case of decision-making.

Example: When a citizen files an appeal against the decision of one institution to another institution (e.g. a second-instance decision-making commission), and when his/her spouse sits in the body responsible for deciding upon those appeals. The spouse who is part of the decision-making commission would have an actual conflict of interest.

Potential conflict of interest – a situation in which conflict of private and public interests can, but would not necessarily occur, in the future. A potential conflict of interest can be detrimental to the institution's reputation and erode public confidence, just like actual conflict of interest would, regardless of whether the final decisions are prudent and appropriate.

Example: The mayor has a brother who owns a company that sells computers. Although there are no tenders for IT equipment, it is possible that in the future the company of the mayor's brother may want to participate in the public procurement procedure. The mayor has a potential conflict of interest.

Perceived conflict of interest – a situation in which there is or seems to be a private interest that can be interpreted to affect official action and decision-making, although the real situation does not have to be such.

Example: When an employee of the State Audit Office performs an audit of the institution in which his next of kin (cousin) is employed, but does not hold a managerial position.

WHICH ARE THE MOST COMMON FORMS OF CONFLICT OF INTEREST?

NEPOTISM

A situation in which an official in decision-making gives preference to a particular individual or group with whom s/he is in a family relationship.

The word comes from the Latin word **nepōs** - **grandson, relative** and means care and protection for family members, relatives, partners and other related persons through position, name and power.

Nepotism can enable the less favourable bidder, who is a relative of an official who makes the decision, to have the opportunity to establish business relationship with the state, to the detriment of taxpayers.

The most common example of nepotism are employment procedures in the public sector, when the best candidate would not be employed, but a candidate who is in a family relationship with a public official working in that institution. By not selecting the best candidate, the affected individual loses, by unfairly not getting the job, but also the society as a whole. Nepotism can also occur in public procurement procedures, concluding direct contracts, issuing permits, and so forth.

CRONYISM

A situation in which a public official gives preference to a certain individual or group, based on established party-political relations or friendly relations, regardless of their actual abilities.

We often encounter such situations in the post-election period, when the winning political option employs a large number of its party cadres in public sector institutions.

While nepotism can be determined by specifying the type and degree of kinship of a relative by blood or otherwise, it is difficult to give an effective legal definition of cronyism.

The prevention on nepotism, cronyism and clientelism does not imply complete exclusion of relatives, members of political parties or friends.

Prevention of nepotism and cronyism means a ban on the abuse of authority by civil servants in order to secure privileged position for family members, political parties or friends.

The goal is not to prevent family members or friends from working together.

The aim is to prevent the possibility of a public servant being biased in the exercise of discretionary powers.

WHY IS IT IMPORTANT TO RECOGNIZE CONFLICT OF INTEREST IN THE PUBLIC SECTOR?

Conflict of interest opens space for abuse of position and power, which, in turn, can lead to a general abuse of trust, i.e. a loss of trust in the system.

If the conflict of interest is not timely identified, the public official has an opportunity to gain benefit and thus commit an act of corruption. It is therefore necessary to eliminate even the slightest doubt, regardless if it is only a potential conflict of interest.

It is necessary for the institutions to establish a set of standards that will ensure that public officials represent the interests of citizens, and not their own and the interests of their loved ones, and that they perform their duty in an honest, fair and impartial manner.

Officials have multiple responsibilities and bear accountability, both to the citizens, who expect their rights and interests to be exercised, and to the employer, in this case, the state, which expects the public officials to perform their duties responsibly and successfully.

In addition to the fact that it can often cause material damage, conflict of interest also has consequences that cannot be measured, and are long-term and difficult to recover from, such as loss of confidence in public service, civil servants and institutions and broader loss of confidence in the system and the state.

Due to rising public expectations regarding the responsibility of public officials and the requirement for the state to prevent them from using their position to satisfy their personal interests, many states have enacted laws and codes governing the conduct and performance of the duties of public servants, particularly pertaining to prevention of conflict of interest.

Conflict of interest is not always corruption, but every corrupt action bears conflict of interest !!!

Public officials and civil servants, i.e. all employees in the public sector have a role and task to serve the public interest and the interest of citizens.

Hostility, same as friendship, can lead to conflict of interest if the public official allows it to influence his or her actions and decisions.

In the Republic of North Macedonia, the conflict of interest is governed by the Law on Prevention of Corruption and Conflict of Interest

WHAT A PUBLIC OFFICIAL HAS TO DO IN CASE OF CONFLICT OF INTEREST?

- First of all, you should ask for the potential conflict of interest to be noted officially/in writing and to inform your superior about it.
- Your superior may then seek additional guidance from his/her supervisor or counsellor for integrity and ethics, if such position is available in the institution in question.
- If there is a suspicion of a situation that might be a conflict of interest and the superior does not know how to act, it is mandatory to request an opinion from the State Commission for Prevention of Corruption (SCPC).
- **In such case, it is mandatory that the public official is exempted from decision-making and action.**

Every official must be excluded from decision-making and action when there is a conflict of interest.

WHAT CAN YOU, AS A CITIZEN UNDERTAKE IN CASE YOU HAVE DOUBTS THAT SOME PUBLIC OFFICIAL HAS CONFLICT OF INTEREST?

- If you are not a public official, and you suspect that there is a potential conflict of interest, you can request the exemption of that public official from further action on your case.
- And, by all means, you can report that public official to his superior or to the State Commission for Prevention of Corruption.

Can you report conflict of interest?

YES!

In situations when you are a direct or indirect witness of a conflict of interest or suffer the consequences of a public official's actions leading to conflict of interest, YOU as a citizen should react and report it.

WHERE AND HOW CAN YOU REPORT CONFLICT OF INTEREST?

FIRST STEP

First of all, we encourage you to use the reporting mechanisms in the institution where you came to realize that there is actual or potential conflict of interest. Each institution must publicly and clearly display the name and contact details of the person responsible for receipt of applications from whistle-blowers.

SECOND STEP

If:

- You have mistrust in the institution itself, i.e. you suspect that pointing to an institution in which you have noticed a conflict of interest will cause harmful consequences for you or someone close to you, or that no measures will be taken;
- You have witnessed or suspect that the head of the institution has a conflict of interest;
- After submitting an application, you did not receive feedback on the measures taken within the legally prescribed period of 15 days;
- Your application has not been processed; or
- You are not satisfied with the action

you can take the second step, which is to report to the State Commission for Prevention of Corruption (SCPC).

It is important to know that SCPC handles all applications, reviews them and further processes them, depending on the case.

The State Commission for the Prevention of Corruption is a legally competent institution for dealing with reports and cases of conflict of interest.

You can report/submit an application in writing:

- ***by submitting your data (name and contact details) so that SCPC can inquire additional information about the case, or***
- ***anonymously, if you think that by submitting personal data you could be in any way endangered***

WHAT DO INSTITUTIONS NEED TO DO IF THERE IS A DOUBT THAT A PUBLIC SERVANT OR ELECTED OFFICIAL HAS CONFLICT OF INTEREST?

The State Commission for Prevention of Corruption (SCPC) may initiate proceedings to determine whether a public servant or elected official has a conflict of interest.

The SCPC can do this:

- ex-officio;
- at the request of an official;
- upon application of another person - citizen or another employee within the institution;
- upon request of the head of the institution, i.e. the institution where the public servant or elected official performs his/her functions, public authorizations or official duties; and
- upon an anonymous application.

SCPC then collects documents, data and information from individuals and legal entities, as well as from the servant/official suspected of having a conflict of interest. Everyone from whom data is requested is obliged to submit it to the SCPC within 15 days.

SCPC must make a decision on the existence or non-existence of a conflict of interest within 30 days.

During the whole procedure, the SCPC provides protection of the identity of the person who reported the existence of a conflict of interest.

WHAT IF THE CONFLICT OF INTEREST IS CONFIRMED?

SCPC notifies the public servant / elected official and instructs him/her to eliminate the conflict of interest within 15 days.

- If the public servant / elected official acts upon the request of SCPC, i.e. removes the conflict of interest, the procedure is terminated and the public servant / elected official and the applicant are notified, if not anonymous.
- If the public servant / elected official does not act upon the request from SCPC and does not remove the conflict of interest, SCPC must notify the institution in which the public servant / elected official is employed / performs his/her duties.

For an elected or appointed official - such as ministers, directors of public enterprises, directors of clinics, etc., SCPC may initiate **dismissal / termination of office**.

For officials elected in direct elections - President of the State, Member of Parliament, Mayor and member of the Municipal Council, SCPC imposes a measure of **public reprimand**. The warning is published on the SCPC website and in the media.

For public servants and all other officials who are not in the category of elected or appointed officials - such as the head of a certain department in an institution, SCPC may request initiation of **disciplinary procedure**.

A fine of EUR 500 may be imposed on an official if he or she fails to comply with any of the requirements of the SCPC.

HOW DOES IT APPEAR IN PRACTICE?

Examples of conflict of interest

- The school principal employs a loved one by signing a Decision on the selection of a candidate and initiates employment procedure, although there were candidates who had higher score on the criteria set out in the job advertisement.
- In a public procurement procedure, a certain trade company appears close to a person who is part of the public procurement commission of the institution or is close to the person who manages the institution.
- An official makes a decision to give priority to a company for delivery of construction works based on request from a political party, in order to ensure himself/herself an advantage for the future.
- If a person, while performing his/her work duties, is involved in solving a problem related to the spouse's property-legal relations, s/he is in a conflict of interest, despite the fact that s/he is not obliged to prepare or sign any document.
- A judge decides on a case in which one of the parties is his/her close friend or relative.
- An official, i.e. a public servant or elected official fulfils the family interests in the employment of a husband, child or other close relative.
- An official, i.e. a public servant or elected official decides in a procedure for public procurement of goods or services from a relative or a trade company managed by a relative.

