



Conflict of Interest as a Negative Phenomenon of Society

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Abstract

Conflict of interest is a negative phenomenon that we encounter every day of our lives. Society around the world, including Kosovo, encounters conflict of interest even without being aware that it is contrary to the legal basis of the country where it works or operates. People often have one-sided preferences, through which they favor others, thus offering them opportunities for benefits which in many cases make them gain power. Conflicts of interest can occur whenever we take action that brings us personal benefits. The authors based on their research have concluded that conflict of interest is a personal conflict of interest versus organizational conflict of interest. Economists in recent times are debating whether it is necessary to adopt a code of ethics to deal with widespread concerns about conflict of interest. But unfortunately the unethical behavior of man at work towards money and wealth is like a magnet which can not be detached.

Keywords: *Conflict of Interest; Corruption; Anti-Corruption Agency; Public Official; Negative Phenomenon*

Introduction

Conflict of interest is one of the most complex areas in the fight against corruption. Authors Maloku & Maloku (2019) define Corruption as any breach of duty of official or responsible persons in legal entities and any activity by the initiators or beneficiaries of this conduct, directed in response to a reward that has been directly or indirectly promised, offered, given, requested, accepted or expected to take care of yourself or another person. However, when it comes to the notion of corruption, the author Maloku (2019) explains it better in the terminological file of victimology, where he emphasizes that corruption is an incitement for illegal actions of officials, representatives, private persons, giving material benefits, etc. When it comes to corruption there is almost always a common denominator "a conflict of interest" which exists when an individual or corporation has a real or perceived opportunity to exploit its position for personal or corporate gain. Corruption occurs when the individual or corporation take

advantage of this opportunity and abuse their position for private gain. The good news is that if conflicts of interest can be controlled, the risk of corruption can be minimized. Understanding the relationship between corruption and conflict of interest can lead to the prevention of misconduct and fraudulent activity. Conflict of interest does not always lead to corruption, but corruption always requires a conflict of interest (Kelly, 2016).

It is also true that in most cases corruption occurs in those cases where a previous private interest has influenced the misconduct of a public official. That is why it would be wise to think of conflict of interest prevention as part of a broader policy to prevent and fight corruption. Set in this context, conflicts of interest policies are an important instrument for building public sector integrity and for protecting and promoting democracy.

With the development of human society, various forms of crime have also developed (Maloku, 2015: 461). No country is spared from criminal offenses (Maloku, 2015: 119), therefore Kosovo is also attacked by this criminal offense. Kosovar society together with the legislature have been trying to combat conflict of interest since the past, starting with the 2006 Anti-Corruption Action Plan established by the OSCE (Plani i Veprimt Kundër - Korrupsion, 2006), then the adoption of the law on the prevention of conflict of interest, the establishment of special agencies, and international cooperation to combat and prevent its spread as a negative phenomenon.

1. Literature Review

Conflict of interest as a criminal offense is extremely well elaborated by the authors Jararevic & Maloku (2021) in their book Law of Criminal Procedure I and II (general and special part), the authors discuss this criminal offense in terms of substantive law of Bosnia and Herzegovina. Crime as a social and individual phenomenon and its causes, have always been an object of interest, since the introduction of human society (Maloku, 2016: 114) The same authors Jasarevic and Maloku (2021) in their other book Criminology (etiology and phenomenology of crime) facilitate us to understand the etiology and phenomenology of crime to study more easily understand the causes of crime / According to the law on prohibition of conflict of interest (IC) in the exercise of public office conflict of interest arises from a circumstance in which the official has a private interest, which affects, can affect or seems to affect the performance of his official duty with impartiality and objectivity (Ligji Nr 06/L-011 për Parandalimin e Konfliktit të Interesit në Ushtrimin e Funkcionit Publik, 2018) . According to the law on prevention of conflict of interest in the exercise of public functions of the Republic of Albania, conflict of interest is the state of conflict between public duty and private interests of an official, in which he has private interests, direct or indirect, affecting in, may affect or appear to affect the improper performance of his public duties and responsibilities (Ligji Nr.9367 për Parandalimin e Konfliktit të Interesave në Ushtrimin e Funkcionit Publik, 2005).

A conflict of interest exists when two or more conflicting interests relate to the activity of an individual or institution. Conflict lies in the situation, not in any behavior or lack of behavior of the individual. Essentially, a conflict of interest occurs when what an individual considers to be in his / her best interest is not the same for another person or organization to whom the person owes allegiance and may take various forms that flow for various reasons. (Koreman, 2006) Many individuals may not be able to see the ethical dimensions of decisions regarding their responsibilities to work and personal life. It also depends on how people define certain life events, which can obscure or bypass a conflict of interest. However a potential conflict of interest may force an individual to create incentives which interfere with the justice system. (Jaqua.E, 2021) And conflict of interest can exist when personal judgments or actions can be influenced by a private or personal interest, leading to personal, financial or professional gain (Harvard Catalyst, 2008). Council of Europe Recommendation 2000 Code of Conduct for Public Officials

states: Conflict of interest arises from a situation in which the public official has a private interest which is or appears to affect impartial performance and objectives to his / her official, a definition which is also found in the law prohibiting the IC of Kosovo.

While the OECD (Organisation for Economic Co-operation and Development, 2004) in its 2003 recommendations defines the conflict of interest as a conflict between the public duty and the private interests of a public official, in which the public official has interests of private capacity, which may adversely affect the performance of duties and their official responsibilities (Managing Conflict of Interest in the Public Sector: A Toolkit, 2005).

An important legal provision for the avoidance of conflict of interest is Article 61 FR 2018, which contains revised rules on conflict of interest. As of 2 August 2018, it applies to all funds deriving from the EU budget and to all ways of management. Under Article 61 FR 2018 a conflict of interest exists when the “impartial and objective exercise of the functions of a financial actor or other person” involved in the implementation of the budget is compromised for reasons involving family, life emotional, political or national affiliation, economic interest, or any other direct or indirect personal interest (European Commission Guidance on the Avoidance and Management of Conflicts of Interest under the Financial Regulation (2021/C 121/01), 2021).

2. Methodology

This study is based on the use of numerous research methods. The particular scientific methods, used in this paper are primarily the method of analysis and synthesis (Maloku, 2021: 53), In this paper, using comparative, theoretical and meta-analysis methods (Maloku, 2020: 170) will be presented the views of some authors regarding the criminal offense of conflict of interest.

The study is based on various scientific analyzes and studies, plans and strategies previously drafted, used literature obtained from research papers, websites and various electronic media. Graphs and statistics were also used to show the criminal offense of conflict of interest. Photographs were also used to explain the conflict of interest process. The paper provides a brief summary of the criminal law aspect, namely the material law aspect (Maloku & Maloku2020: 21), of the criminal offense of conflict of interest according to the Criminal Code of the Republic of Kosovo. The purpose of this research is to recognize the extent of this problem (Maloku, 2015: 29) in order to provide adequate recommendations regarding combating and preventing the crime of conflict of interest.

3. Results and Discussion

3.1. Legislation of the Republic of Kosovo in the prevention of Conflict of Interest

A conflict of interest can lead to legal consequences as well as job loss. Personal interest in itself does not cause conflict, but when official duties and responsibilities are mixed with personal interests and benefits then a conflict of interest also appears. In Republic of Kosovo the issue of "conflict of interest" is regulated and addressed by Law No. 06 / L-001 dated 27 April 2008 on the prevention of conflict of interest in the exercise of public office (Ligji Nr 06/L-011 për Parandalimin e Konfliktit të Interesit në Ushtrimin e Funkcionit Publik, 2018) , this law which had come as an obligation regarding the fulfillment of the criteria from the European Reform Agenda. While in 2017 it was requested to change the legal framework on conflict of interest, adapting it in line with European standards, (Instituti i Kosovës për Drejtësi, 2018) The purpose of the law is to strengthen the integrity of the public sector and guarantee the performance of public duties in an objective, impartial and transparent manner in the service of the public interest between identifying, preventing, managing and resolving conflicts of interest of officials. (Ligji

Nr 06/L-011 për Parandalimin e Konfliktit të Interesit në Ushtimin e Funksonit Publik Neni 1, 2018) . The provisions of this law define the principles, rules and procedures regarding the permitted and prohibited conduct of officials during the performance of public duty as well as the measures provided for the violation of the provisions set out in this law. (Ligji Nr 06/L-011 për Parandalimin e Konfliktit të Interesit në Ushtimin e Funksonit Publik Neni 2, 2018) . In our country, the authority responsible for supervising and implementing the law on prevention of conflict of interest is the Anti-Corruption Agency, but there are other mechanisms that have the task of implementing this law, such as any official or senior official, official leaders who have task to prevent and resolve as effectively as possible any conflict situation between their public and private interests. The issue of conflict of interest is also regulated by the Criminal Code of Republic of Kosovo, Article 417 (Kodi Nr 06/L-074 Penal i Republikës së Kosovës, 2019)

3.1.1 Anti-Corruption Agency (ACA)

It is an independent and specialized body for the implementation of state policies for combating and preventing corruption in Kosovo. (Ligji Nr.03/L-159 për Agjencinë Kundër Korrupsion, 2010) The legal basis on which the Anti-Corruption Agency bases its work on the prevention of conflict of interest is the Law on the Prevention of Conflict of Interest in the exercise of public office. ACA for the prevention of IC uses all possible sources such as declaration forms, media and other sources that can serve to identify Conflict of Interest. Procedure for reviewing conflict of interest: (Parandalimi i Korrupsionit / Parandalimi i Konflikti të Interesit, 2009)

- Ex officio by the Anti-Corruption Agency
- At the request of the supervisory leader or supervisory body
- At the request of the official himself/herself
- According to the information by another person or anonymous information.

3.2 Types of Conflicts of Interest

Conflict of interest can be case by case or continuous: Case by case conflict is the situation with conflict of interest, which appears case by case and is related to a particular decision-making, while ongoing conflict of interest is the situation in which conflict of interest (possible or apparent) may occur repeatedly and / or frequently in the future.

3.2.1 Types of Interests Incurred Due to Ongoing Conflict of Interest

Property interest: Ownership of shares or shares / quotas in capital in a company that operates within the territory of their jurisdiction.

Private activity: Exercising private commercial activities or free professions

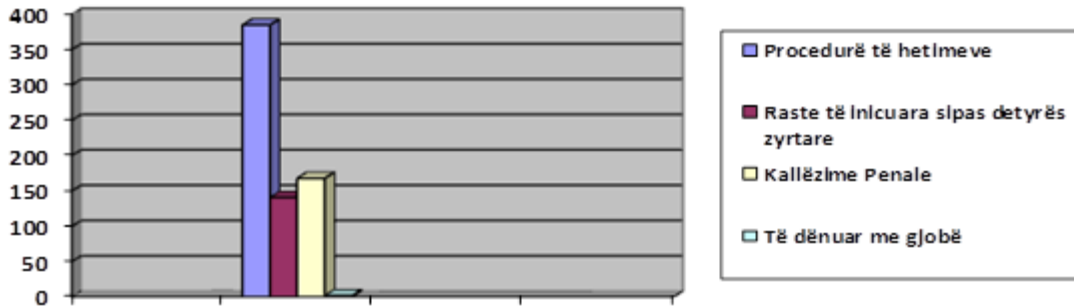
Leading role in for-profit organizations

Second full-time employment (Guidë për Parandalimin e Konfliktit të Interesave në Qeverisjen Vendore, 2014)

3.3 Cases of Conflict of Interest in Kosovo

Although in our country it seems as if the issue of conflict of interest is being adequately addressed, statistics on convictions and cases filed or criminal charges filed speak otherwise.

Graph.no.1: Cases of Conflict of Interest in 2019



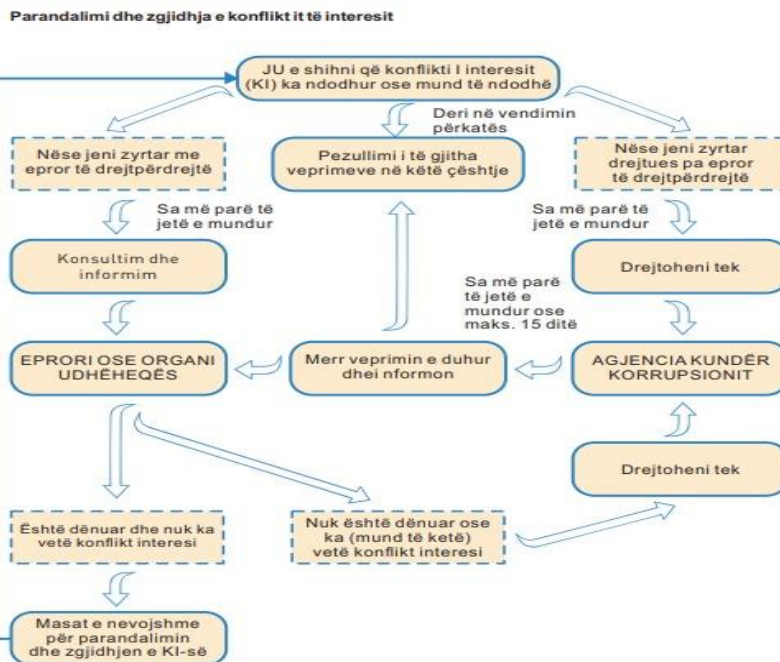
Source: (Statistics obtained from the Anti-Corruption Agency for 2019 for Conflict of Interest cases) (Statistika të Jurisprudencës, 2019)

Graph no.1 presented above based on the Anti-Corruption Agency in 2019 in Kosovo has opened an investigation procedure for 385 cases, of which 102 have been carried over from the previous year. Ex officio cases were a total of 141, and 168 criminal charges were filed (Havolli, 2020) while according to Jurisprudence statistics for adult persons convicted during 2019 for the criminal offense of conflict of interest according to the CCRK, there were 2 persons who were fined (Statistikat e Jurisprudencës për Persona Madhorë, 2019, 2019).

3.3 Measures to prevent and resolve conflicts of interest

Prevention and resolution of conflict of interest is provided in Law No. 06 / L-011 on Prevention of Conflict of Interest in Exercising Public Function in Chapter V, Supervision, Article 19. Below is a graph of the first steps to be undertaken in case of conflict of interest resolution.

Graph no.2: (Prevention and resolution of Conflict of Interest)



Source: (Graph taken from the Public Service Conflict Management Guide) (Valts, 2019)

Graph no. 2 presented above shows the path that should be taken in cases of conflict of interest resolution, suspension of actions and notification of the superior as first steps. These steps shown in the graph should be taken within 30 days.

3.4 Conflict of Interest Policies and Instruments

Conflict of interest policies are part of the structural framework because these policies help the democratic system to build overall trust and open the Government to control. Declaration of family property can be very helpful in detecting corrupt practices and are part of punitive instruments because in some countries conflict of interest is considered a crime and other countries have provided different penalties for violating laws and regulations on conflict of interest. (Villoria-Mendieta, 2005)

3.4.1 Instruments for Prevention and Avoidance of Conflict of Interest;

- Restrictions on dual employment
- Declaration of personal income
- Declaration of family income
- Declaration of personal property
- Declaration of family property
- Declaration of gifts
- Security and control over the receipt of internal information
- Declaration of private interests related to decision making
- Making public declarations of income and assets
- Restrictions and control of second concurrent employment (eg in an NGO, political party or state-owned corporation)
- Deprivation of ownership either through the sale of business or investment interests, or through the conclusion of a trust or blind management agreement.

Conclusion

At the end of the paper it is concluded that Conflict of interest is a negative phenomenon which is not adequately addressed in the Republic of Kosovo. Although the legislation of Kosovo regarding the issue of conflict of interest is in line with harmonization with the required EU directives, more work needs to be done to achieve results. Cooperation between institutions such as the Anti-Corruption Agency, the Prosecution, the Court and the Police needs to be much more efficient so that cases of conflict of interest can be dealt more seriously.

The fact that the statistics of persons convicted of the criminal offense of conflict of interest are very low is not an indication that this phenomenon does not occur in our country, on the contrary we are witnessing many cases of conflict of interest which occurs every day but there are no actions against it.

Kosovo is a country that together in harmony with the EU and member states should draft an action plan and strategy for a certain period of at least five years anti-corruption with the fight against conflict of interest in order to achieve positive results and sanctions should be applied on persons who are part of this phenomenon.

Stronger restrictions should also be imposed on the issue of declaring gifts and property of officials.

Gifts are among the first steps of bribery and as such should be completely banned.

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