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TITLE

LEGISLATIVE SOLUTIONS TO GAPS IN ARMENIAN LEGISLATION IN THE FIELD OF CONFLICT OF INTERESTS IN PUBLIC SECTOR

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LIST OF ABBREVIATIONS

CoI	Conflict of interests
MP	Member of Parliament
RA	Republic of Armenia
OECD	Organization for Economic Co-operation and Development
LRoP	RA Law on Rules of Procedure of the National Assembly
LPS	RA Law in Public Service
GRECO	Group of States against Corruption
NGO	Nongovernmental organization
LAPICS	Law on the Adjustment of Public and Private Interests in Civil Service
LCI	Law on Prevention and Detection of Conflicts of Interest
STT	Special Investigation Service

Introduction

There is a recognized relationship between corruption and conflict of interest. However, they are still different things. Most of the time, corruption appears where a prior private interest improperly influenced the performance of the public official. Turning to the explanation of corruption, the World Bank has provided a very brief definition: "the abuse of public office for private gain"[1]. The Organization for Economic Co-operation and Development defines the conflict of interests (CoI) in the following way: "Conflict of interest occurs when an individual or a corporation (either private or governmental) is in a position to exploit his or their own professional or official capacity in some way for personal or corporate benefit"[2]. In other words, a conflict of interest exists when someone could abuse his or her official position for private gain. Comparison of these definitions shows how the two concepts are so closely intertwined. A conflict of interests exists where an official could abuse their position for private gain whereas corruption exists where an official does abuse their position for private gain. Thus, while a conflict of interests doesn't always lead to corruption, corruption always requires a conflict of interest.[3] Corruption cannot exist without a conflict of interests. Each and every corrupt act is driven by an underlying conflict. Corruption exists to some degree in almost any culture thus all the countries have some degree of possible conflict of interests.

The fight against corruption has been at a high level on the political agenda in Armenia for years. It is widely agreed by observers that corruption remains an important problem for Armenian society. According to various national and international reports, the transparency in public sector appears to be unsatisfactory. Even though, the proper regulation of conflict of interests can minimize the degree of corruption. This is the reason why it would be wise to consider conflict of interest prevention as a part of a broader policy to prevent and combat corruption.

Armenia's status as a developing country afflicted by various forms of corruption, it has experience of frequent breaches of law, Society has low level of legal thinking and it vitalizes the need to find gaps in legislation concerning conflict of interests and provide solutions to them.

[1] The world Bank Group: Helping Countries Combat Corruption: The Role of the World Bank
[2] The world Bank Group: Helping Countries Combat Corruption: The Role of the World Bank
[3] Association of Certified Fraud Examiners- Conflict of Interest: Gateway to Corruption(2014)

The conflict between the public and the authorities results from the absence of trust on the part of the former towards the latter, and public officials' personal interpretation of their own authority, which ignores check and balances and exceeds the boundaries established by law. It is important for a developing country with a growing legislative system to reach a balance in this regard, foster confidence within the public and ensure it of the fact that punitive measures are implemented for all illegal acts.

Various legislative tools exist to ensure society's trust and to avoid the risk of conflict of interests arising in the public sector. Even though a variety of laws that regulate this sphere in Armenian legislation do not provide, or provide only partial regulation and toolkits. Regulation of conflict of interests in the public sector is particularly important because if they are not appropriately recognized and controlled, the power of public officials becomes unpredictable. Though it is difficult to imagine a scheme of legislative regulations capable to cover all the gaps in the existing system, it is possible by taking into account the numerous conditions and factors surrounding conflict of interests. My research will aim to reveal basic gaps in legislation, define the challenges involved in addressing them, and provide new toolkits for a more advanced regulatory framework.

The categories of persons covered by the provision of conflict of interests are enshrined in RA Law on Public Service. Conflict of interests provisions regard only the high-ranking officials, leaving out of regulation conflict of interests of other public servants and respective relations. RA Law on Public Service Article 5, Par 15 sets forth the definition of the "high-ranking official" and the list of such persons. It includes officials occupying highest level positions in legislative, executive and judiciary, headed by RA President. The list of such officials contains heads of state bodies established by laws of Armenia, oversight bodies of the president and prime minister, advisors and assistants of the president, heads of communities. In total there are 681 positions (both at the state and regional/local levels).[4]

As the scope of officials included in the sphere of public services has a quite wide range, I will concentrate on the gaps and regulations covering the high-ranking officials, including the branch of executive and legislative bodies. Judicial branch could be the part of current research,

[4] Transparency International, Monitoring of conflict of interest in central public institutions, Yerevan, Armenia (2014)

but this sphere is more specific and the regulation of conflict of interests caused by the activity of Judges and prosecutors should be improved in a special manner, typical for the judicial institutions. Ethics board or commission should be established or upgraded taking into account singularity of the professional activity of the judges and prosecutors. So for more concrete and organized research, it is preferable to explore narrow topic.

Conflict of interests cannot be avoided by simply prohibiting all private-capacity interests on the part of public officials. Instead, the laws should provide toolkits and responsibilities for every possible infringement. Public institutions must provide realistic policy frameworks, set enforceable compliance standards, and establish effective management systems.[5] To avoid conflict in the public sector, it is important to explore the entire legal system and understand the roots of the behavior of public authorities. The present report contains recommendations and further suggestions on key challenges to be addressed to improve the provision of conflict of interests with respect to MPs and the executive authorities in consideration of international practice and guidelines of international organizations.

Chapter 1

[5] OECD Guidelines for Managing Conflict of Interest in the Public Service

For the first step, there should be determined the types of Conflict of interests. Conflicts of interests can be **actual**, **perceived** or **potential**. As it is defined in Londa Esadze's work "Guidelines for Prevention of Conflict of Interests" they are:

• An actual conflict of interests involves a direct conflict between a public official's current duties and responsibilities and existing private interests.

• A perceived or apparent conflict of interests can exist where it could be perceived, or appears, that a public official's private interests could improperly influence the performance of their duties – whether or not this, is in fact the case.

• A potential conflict of interests arises where a public official has private interests that could conflict with their official duties in the future.[6]

This diversification helps in the selection of tools and instruments for prevention of the conflicts. It can guide the future development of the legal mechanisms regulating the provision of Conflict of interests.

Boundaries between CoI and criminal liability

According to legal dictionary the definition of the term "conflict of interests" is defined as being in connection with "public officials and fiduciaries and their relationship to matters of private interest or gain them"[7]. According to OECD Guidelines and Overview the definition of "conflict of interests" is following: a "conflict of interest" involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.[8] In Armenian legislation the definition of this term is given by the RA Law on Public Service and by the RA Law on Rules of procedure of the National Assembly/charter and also in other legal acts, but the more accurate description provides the RA Law on Public Service, which defines the conflict of interests as "a situation where a high-ranking official who

[6] Londa Esadze, Guidelines for Prevention of Conflict of Interest, Belgrade, Serbia, 2013
[7] Black's Law Dictionary: http://thelawdictionary.org/conflict-of-interest/
[8] ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, Managing Conflict of Interest in the Public Service "Guidelines and Overview": https://www.oecd.org/gov/ethics/48994419.pdf

has been performing his duties acted or made a decision that could be reasonably interpreted as his or her personal interests or interest of related person". The law mentioned above regulates legal relations only of the officials of the executive authorities, leaving out the National Assembly deputies. The provision of conflict of interests concerning members of parliament is established in RA Law on National Assembly rules which are the only sectorial law that defines the CoI.

According to above-presented laws, the entrepreneurial activity for MP and government authorities is prohibited. Particularly, Articles 65 and 88 of the Constitution establish that legislators and government officials cannot engage in entrepreneurial activity while the Law on Public Service states that *"a public servant or public authority cannot be engaged in the entrepreneurial activity by himself or herself."* A member of parliament and a member of the Government, under the meaning of the RA Law on Public Service, are considered as high-level public officials, for whom the constitutional norm in a mandatory way forbids to be engaged in entrepreneurial activities, regardless whether that engagement is being conducted personally or via intermediaries, while the legislative norm forbids engagement in entrepreneurial activities ***personally.***[9]

Taking into consideration the fact that RA Law on Public Service restricts that a member of parliament, a member of the government, or other servants of the community are considered as high-ranking officials, the study of upper mentioned rules will reveal that the Constitution initially has set more accurate and precise prevention of engaging in entrepreneurial activities. Though, the legislature later has diverged from the constitutional stipulation and attenuated with the term "personally" and by this provided the officials with the opportunity to conduct business not personally, but for instance via trustees. The other way that the officials evade the law enforcement is by becoming a founder of the company but not taking part in its management. And still the single word "personally" doesn't influence or change the significance of "entrepreneurial activity".

The legal definition of it is given in Article 2 of the RA Civil Code, that is: *"Entrepreneurial activity is independent activity by a person conducted at its own risk pursuing as a basic purpose the extraction of profit from the use of property, sale of goods, doing work, or rendering of*

[9] Transparency International, Monitoring of conflict of interest in central public institutions

services."[10] Hence, if the individual implements the activity independently (not personally) aiming to gain profit, then the activity is considered as entrepreneurial, despite the fact whether the official was doing it personally as a founder or manager, or via other people, trustees.

The other confusion about the presented formulation is the following that conflict of interests can be displayed in four simultaneous binding conditions stipulated by the law:

1. High-ranking officials act within its powers.

2. Acts or issue a decision within its powers.

3. The action or decision is legal.

4. The action or decision results in the improvement of their or a related person's economic or legal situation.

First, three components lead to criminal responsibility, so the border between conflict of interests and criminal liability is unclear. Moreover, this formulation means that only circumstances are illegal, and all the actions of a high-ranking official within its powers are legal.

Mainly, the article 310 of the Criminal Code prescribes criminal liability for the violation of the prohibition to engage in business activities. So here we can see the sensitive border between these two articles. The Armenian legislator provided following separation for two different infringements: it diversified the categories by the circumstances. In the case of conflict of interests, the consequences do not have pecuniary character and in the case of criminal liability, the actions have monetary character. An example of this situation can become acts of a Member of Parliament who comes up with legal initiative aiming to better own business. To have this initiative passed were invited international experts, who were already paid for completed work at that stage. As a consequence, it turns out that there is a conflict of interests as the government has had material damage.

Non-pecuniary interests do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. The most obvious example of this is family interest – for instance, if a government organization that

[10] RA Civil Code, Article 2

gives grants to sporting organizations has a senior staff member whose daughter is a star player in a group which is applying for funds, the staff member has, or could be perceived to have a personal interest in the outcome of the grant application.

Thereby, the border between conflict of interests and criminal liability is unclear, and the diversification presented above is provisional so that the law could be interpreted differently and there is no common perception. The lack of imperative prohibitions of norms may not ensure accurate behavior. Hence, the boundary between two concepts and articles should be précised.

Legal consequences of decisions made in respect of conflict of interests

According to Armenian legislation, Members of Parliament and the government have the right of legislative initiative in the National Assembly, and the Executive body adopts decisions which should be enforced through the RA. Sometimes, in addition to their general obligations public officials act on behalf of their interests and contribute to the other lurk issues in Armenian legislation. It is the absence of particular consequences for the decisions of executive bodies, causing a conflict of interests or for the legal norms initiated by the Members of Parliament which could cause a conflict of interests or already caused to CoI. The existing gap brings to the impunity of the potential illegal acts of the officials. Falling to provide the exact transparency for such kind of situations, the legislator, and public servants rely on the good-will and the law-obedience, which give them the opportunity to try their destiny.

The biggest problem concerns the governmental decisions which could have an adverse outcome for the public interests. For example, the governmental decision came into force, and according to it, there have been established several regulations and are taken certain actions about a particular group of persons. So faced with such a violation what measures should be taken? Should the decision be revoked? Does it have retroactivity? What kind of liability should be provided for the infringer? Should it be a disciplinary responsibility?

Regarding Armenian legislation, the decision would be revoked, but the official does not have any liability for it. Thus, we have an apparent gap in legislation, which gives an opportunity to officials to act on their behalf or behalf of the persons related to them.

The same situation is with the bills and already existing legal norms drafted by Members of Parliament, but if in the case of governmental activity the decisions could be revoked, then in the case of legal acts adopted by National Assembly-the act continue to work even if the conflict of interests is established. According to law the ad hoc Ethics Committee of the National Assembly is competent to examine possible violations by MPs with respect to incompatibilities and restrictions on secondary activities under the Constitution and the LRoP, with respect to the rules of ethics contained in the LRoP and to the requirement under the LRoP to submit a statement on a conflict of interest.[11]

Taking into consideration the existing gaps in the law and lack of current regulations we can follow that even if the Ethics Committee found the conflict of interests and investigates the process, in the end, the adopted law would stay in force and would continue to influence the public interest. Regard the decision adopted by the Government we can sum up that they would be null, but the authorities would not take responsibility for it. Nevertheless, the activity of the Ethics Committee is urgently required to strict supervision and enforcement of the rules.

Institutional mechanisms for preventing conflict of interests

The Republic of Armenia has centralized form of the prevention of conflict of interests. Thus, there are several ethic commissions implementing an activity for disclosure and prevention of CoI. Ethics Commission for High-ranking Officials was formed and started functioning in 2012. The aim of Ethics Commission for High-ranking Officials is to reveal the conflict of interests of high-ranking officials. In respect of the rules of ethics contained in the LPS, there are several instruments helping to disclose the CoI:

- Required declaration of the Property and income of Public officials.
- Required declaration of the Property and income of persons related to Public officials.
- Analysis and publication of the declarations by the Ethics Committee.

[11] Transparency International, Monitoring of conflict of interest in central public institutions http://transparency.am/files/publications/1415892815-0-609149.pdf

• Current measures for disclosure of the CoI within the competence of the Ethics Committee.

Moreover, Ethics Commission for High-ranking Officials gives clarification based on the application of a high-ranking public official on the necessity to issue a statement regarding the conflict of interests in a concrete situation. However, the law provides/intends it as a right of a high-ranking official, not his responsibility. The Ethics Commission for High-ranking Officials in the case of detecting CoI submits recommendations on their elimination and prevention to the president of the Republic, The National Assembly, and the Government, as well as publishes information on the measures taken in the regard of violations of the rules of ethics.[12] However, the law does not clearly define what measures can the Commission take or on what are aimed undertaken measures: elimination of the consequences of a conflict of interest, or only to note the fact by his decision. The Ethics Commission for High-ranking Officials maintains the register of declarations of property, income and persons related to high-ranking public officials, conduct analysis and ensure publication of declarations. This function enables the Commission to compare the incomes of the official with their sources and to oversee his investments and possibility of CoI.[13] So here we can see that Armenian legislation does not oblige officials to provide declarations of their interests which are a big crack in the system.

More detailed regulation is provided by the RA law on National Assembly rules. Parallel to National Assembly is formed The Ethics Commission, which has several mechanisms for providing disclosure duties, general transparency requirements, monitoring and control instruments. The principal instruments are the following:

• Official request to obtain the necessary information and documentation related to the issues under consideration.

• Opportunity to conduct inspections, expert research on the circumstances subject to disclosure of the subject during the process.

• Free access to any state institution or organization, or community, as well as information and documentation relating to the issues under consideration.

[12] RA Law on Public Service, Article 43
[13] Transparency International, Monitoring of conflict of interest in central public institutions

• Publication of the decisions and analysis of the examined issue.

Taking into consideration the fact that the instrument presented above could not support to all the situations the legal should enlarge the scope of mechanisms of disclosure of CoI. Moreover, different types of public officials need to be regulated differently. GRECO recommendations request exhaustive list of instruments to prevent and avoid conflict of interest:

1. Restrictions on ancillary employment;

2. Declaration of personal income;

3. Declaration of family income;

4. Declaration of personal assets;

5. Declaration of family assets;

6. Declaration of gifts;

7. Security and control of access to internal information;

8. Declaration of private interests relevant to the management of contracts;

9. Declaration of private interests relevant to decision-making;

10. Declaration of private interests relevant to participation in preparing or giving policy advice;

11. Public disclosure of declarations of income and assets;

12. Restrictions and control of post-employment business or NGO activities;

13. Restrictions and control of gifts and other forms of benefits;

14. Restrictions and control of concurrent external appointments (e.g. with an NGO, political organization, or government-owned corporation);

15. Refusal and routine withdrawal of public officials from public duty when participation in a meeting or making a particular decision would place them in a position of conflict);

16. Personal and family restrictions on property titles of private companies;

17. Divestment, either by the sale of business interests or investments or by the establishment of a trust or blind management agreement.

As can be seen, the area of conflict of interests is a field of extraordinary complexity and political and legal sensitivity. Only the principle as such is easy to define. However, to resolve a conflict and to distinguish between actual, apparent, real, and potential conflict situations usually requires legal, technical and managerial skills and a fundamental understanding of many issues and points of view involved.

Decentralized regulation in Armenian legal framework

As was mentioned above on 26 May 2011 in the scope of the legal reforms was adopted the new law on public Service (LPS). The LPS provides rules on ethics, prevention of corruption and declaration of income and property and mechanisms to implement them. The LPS has a provision establishing the Commission on Ethics for High-Ranking Officials, which is tasked among other things with maintaining a register of asset declarations of high ranking officials and analyzing and publishing the declarations.[14] The new law gave the opportunity to set the regulation preventing the breaches of ethics and the related disciplinary procedures, also set up specific ethics commissions within the National Assembly, the judiciary and the prosecution service to deal with situations that might give rise to conflicts of interest. The Armenian legal framework provides the decentralized system of bodies responsible for disclosure of the conflict of interests. Each body should have own ad hoc provision of the ethical commission which should provide the regulation and in the case of the establishment of breaches of the law, investigation of the process. Even though the law de jure provides such kind of provisions but de facto, not all the public bodies have ethical provisions. For example, the Constitutional Court

[14] RL Law on Public Service, Section 43

does not have the body responsible for the discloser of the conflict of interests. The stated above system should provide cooperation of the separate bodies. The basic principles of the law should be interpreted in the same way, yet taking into account the specifications of the field.

Though the law establishes bodies for the fight against the CoI, the law does not cover all the public officials, so there could be some range of the public servants whose actions and interests do not haves specific prohibitions and restrictions. The main difficulty of this system is the absence of the link between the commissions and the independence of the members of the commissions. The formers of the bodies have indirect or direct relation with the members. In the case of MPs ethical commission the members are elected among the MPs, so the independence of the members of commission is under doubts. Also, there are the issues according to the financing of the commission. Is the financing of the ethical body by the budget of the same institution normal? The decentralized system has its privileges but it could work only after elimination of the existing gap.

Chapter 2

During long decades, the corruption had taken its roots among different layers of the public service. Nowadays many countries try to improve their financial, economic and legal systems, therefore, they have chosen ways of stemming corruption. Various international organizations with cooperation with numerous countries every year make different surveys and conduct number of researches in this sphere to gain the adequate stability in this area. Thus, the aim of the entire work is to achieve transparency and legitimacy in every country.

Exploring the international practice, recommendations of different international organizations, approaches of various countries in the field of prevention of Conflict of interests I have chosen Bulgaria and Lithuania as role models. The basic sources I have used are the Evaluation and Compliance Reports of the Council of Europe in the scope of Group of States against Corruption (GRECO). The evaluation included different countries, but the final choice was made in favor of Lithuanian and Bulgarian legal systems as the level of the legal and economic development is close to Armenia's. Moreover, Lithuania illustrates really successful experience in the field of the centralized legal system, besides it is one of the countries which have exercised the guidelines and recommendations in a pretty good manner. For its part Bulgaria illustrates the developing system of centralized regulation and it is interesting alternative to the current system. Besides Bulgaria is one of the countries which tries to provide transparency by encouraging the engagement of the 3rd parties and NGOs in the lawmaking process.

The first model I would like to present is Lithuanian practice: here the issue of conflicts of interest is dealt within the Law on the Adjustment of Public and Private Interests in Civil Service (LAPPICS) in a comprehensive and detailed manner. This law applies to state politicians, including MPs, to judges and all the other persons in the civil service, including prosecutors. This law defines conflicts of interest and provides for (i) prohibitions and restrictions on persons in the civil service; (ii) rules on the prevention of conflicts of interest and (iii) a duty to declare private interests along with a mechanism of supervision and enforcement. It is formed in a really detailed manner and covers different edges of the CoI. The main responsibility for overseeing compliance by MPs with the rules on CoI lies with the Seimas Commission on Ethics and Procedure.[15] But, it is worth mentioning that Lithuania has

[15] GRECO Evaluation IV Lithuania (2014), point 43, page 15

decentralized method of control, so there are several ethic commissions besides the Seimas Commission on Ethics and Procedure.

In the case of Bulgaria, conflicts of interest are regulated in respect of MPs by the Rules of Procedure and the 2008 Law on Prevention and Detection of Conflicts of Interest (LCI). The Rules impose the following obligations on MPs: 1) not to consent to exercise duties in favor of the private interests of any person; 2) not to allow themselves to be bound by financial or other dependence in regard to any person if this may influence the exercise of their powers; 3) exercise their mandate without seeking or receiving material or other gain for themselves or persons with close ties to them, in the sense of the LCI; and 4) to disclose private interests, in accordance with the LCI, when tabling bills, making statements and voting in a plenary or a committee sitting.[16] The body responsible for establishing infringements of ethical principles, adopting decisions and referring materials to relevant competent bodies has been completed by the Anti-Corruption, Conflicts of Interest and Parliamentary Ethics Committee (ACCIPEC). This means decentralized regulation.

The laws presented above have positive and negative sides which influence the system. Therefore, throughout the research, I would try to bare mind on the advantages and privileges of two systems, which could become a role model for the imperfect Armenian legal system.

Boundaries between CoI and criminal liability

First of all, we should find out the definition provided by the certain law regulating this provision. According to article 2 of the LAPPICS, "conflict of interest" means a situation where a person in the civil service, when discharging his duties or carrying out instructions, is obliged to make a decision or participate in decision-making or carry out instructions relating to his private interests".[17] The article also contains, among others, definitions of 'private interests' "private economic or non-economic interest of a person in the civil service (or a person close to him) which may affect his decision-making in the discharge of his official duties" – and 'close persons', namely "the spouse, cohabitee, partner, when the partnership is registered in accordance with the procedure laid down by law (hereinafter referred to as the "partner"), the

[16] GRECO Evaluation IV Bulgaria(2014), point44, page 15
[17]RL Law on the Adjustment of Public and Private Interests in Civil Service

parents (adoptive parents), children (adopted children), brothers (adopted brothers), sisters (adopted sisters), grandparents, grandchildren and their spouses, cohabitees or partners, of a person in the civil service".[18] We can see that this law gives more concrete and large scope of the affiliates of the officials.

The law mentioned before also ban entrepreneurial activity and provides accountability for it. According to the law, the only allowed accessory activities are those that do not entail obligations or commitments of MPs in respect to third persons. However, in any case, accessory activities may not be pursued on a contractual basis or as a regular business. In this regard, Members of Parliament may look for consultation from the Commission on Ethics and Procedures. All accessory activities must be declared. As a consequence of this general inconsistency, Members of Parliament should not enter into unfaithful cooperation with state authorities. Inobservance by the Members of Parliament of the rules concerning the submission of asset declarations can cause administrative or criminal liability for him/her. Accordingly we can see the specific diversification for criminal liability. The law stipulates two types of responsibilities: administrative and criminal.

Moreover, the law establishes administrative fines of EUR 290 to EUR 1 448, they may be imposed by the State Tax Inspectorate for late submission or failure to submit a declaration of assets.[19] Persons may also be held criminally liable for failure to submit a declaration of assets or income if they were reminded of their duties by the State Tax Inspectorate and nevertheless failed to comply with them. Possible sanctions are community service, a fine or arrest. If the person fails to comply thereby seeking to avoid payment of taxes, possible sanctions are a fine or imprisonment of up to three years.[20] In the case of MPs, arises the issue of immunity waiver. This method helps to control the entrepreneurial activism of the member of the parliament as the criminal and administrative responsibility has the braking effect on the officials. So it makes their decisions more reasonable and wise. The other privilege of the clause is that immunity of the Member of the parliament waives, therefore it is a grave restraining mechanism. The imperative prohibitions and setting of criminal liability are the key points of the prevention of the possible negative outcomes of the activity of imperfect human beings.

[18] GRECO Evaluation IV Lithuania (2014) point45, page 15
[19] RL Code of Administrative Offences, Article 172-10
[20] RL Criminal Code, Article 221

In this field Bulgaria has the following experience: the liability for the infringement could be either administrative or criminal. In the case of failure to declare or late submission of a declaration, the law provides administrative fines ranging from BGN 1 000/EUR 500 to BGN 5 000/EUR 2 500. The same administrative fees are provided for a repeated violation, which can be challenged under the Administrative Violations and Sanctions Act. Concealing and withholding the contents of a declaration are criminal offences and carry a sentence of up to three years or a fine of BGN 100/EUR 50 to BGN 300/EUR 150 (Article 313 CC).[21] So we can see imperative character of the norms.

Legal consequences of decisions made in respect of conflict of interests

The Lithuanian legal framework stipulates: if it appears that the rules on conflicts of interest have been violated during the adoption of a law, transmission of the adopted law for the signature of the President of the Republic may be blocked. In the case of the absence of Commissions conclusions, the Seimas decides by vote whether to repeal the disputed law or to leave it in effect. If the Seimas repeals the disputed law, the debate on the draft will usually be repeated from the stage at which the violation was committed. [22]That means that there are negative consequences for the law initiator and the law in particular. The future force of the law could be suspended. To avoid such situations the law prescribes the duty of notification and self-exclusion, which was established for occasional use of it by MPs to abstain during parliamentary proceedings.

Moreover, the system has developed a mechanism of administrative fines of up to EUR 290 or up to EUR 580 in case of a repeated violation and negligence of recommendations and decisions of the commission. This toolkits help to restrain illegal activity.

The legal consequences of decisions made in respect of conflict of interests are very important because they regulate the outcomes of the law. The illegal consequences should be eliminated and the officials of the law should be reliable for their actions.

[21] GRECO Evaluation IV Bulgaria(2014), point 55, page 19
[22] GRECO Evaluation IV Lithuania(2014), point50, page 16

Institutional mechanisms for preventing conflict of interests

A good regulation of the provision of the CoI presupposes well-developed instruments for prevention. There are different types of the instruments but the only way to have organized and accurate regulation is the identification of the gaps and building of the exhaustive mechanisms. Lithuanian and Bulgarian practices show some advantages of their system of prevention of conflicts.

First of all, they try to provide transparency, and the first step for it is following: Plenary sittings are broadcast on the Seimas' (Ministers of Parliament of the Lithuania) website and may also air on radio and television, further to agreements between media companies and the Board of the Seimas. Minutes and verbatim reports of the sittings are published, with the exception of those of closed sittings, which are produced but not published. Plenary sittings' voting records are published on the Seimas' website. [23]This helps society to follow the process of drafting of the laws and the establishment of the possible conflicts of interests. In the aspect of CoI it helps to make indirect control of the possible conflict of interest of the MPs. So the accessibility of the information gives keys to the public and ethic commission to disclose situation of conflict of interests.

Another instrument for prevention of CoI is following: The GET was pleased to learn that article 138 of the Statute gives the possibility to the Speaker, the Board of the Seimas, the committee in charge of a bill, a parliamentary commission, a parliamentary group or a minister to request that the Special Investigation Service (STT) evaluates the draft bill with respect to potential risks from the point of view of corruption prevention[24]. Moreover, the President of the Republic also have right to send back an adopted law to the Seimas for it for investigation of anti-corruption analysis, but in the case if it has not occurred before the adoption of the law. The basic idea of analysis is identification of loopholes or gaps creating opportunities for unfair action and illustration of the hidden interests behind a draft law. The full analysis is communicated to the Seimas and part of it is made public.

[23] GRECO Evaluation IV Lithuania (2014), point 31, page 11
[24] GRECO Evaluation IV Lithuania (2014) point 32, page 12

In the case of Bulgaria, the right to initiate legislation is vested in each deputy and the Council of Ministers. Notably, they are to be drafted respecting the principles of justification, stability, openness and co-ordination and, before being presented to the Council, they are to be published on the institution's (e.g. a ministry's) official website together with the justification (report).[25] So the draft of laws is accessible for the public and open for the establishment of the possible conflict of interests.

The LAPPICS(Lithuanian law for CoI) and the Procedure Rules (Bulgarian law for CoI) besides stipulating the obligation to declare the assets, incomes and liabilities also set out the obligation for persons in the civil service, among whom are MPs, to submit declarations of private interests. Therefore, MPs and their family members also have to declare their assets, in accordance with the Law on the Declaration of Assets of Residents.

The income and asset declarations aim at preventing unjustified enrichment and tax evasion, whereas declarations of private interests aim at avoiding conflicts of interests in the public service. The content of the different declarations overlaps to some extent and the declarations of assets and private interests are public.[26] The declaration obligations arise from the moment the person stands for parliamentary elections. Extracts containing basic data from his/her income tax return and asset declarations, as submitted to the State Tax Inspectorate and approved by that body, as well as a declaration of private interests, are among the documents to be submitted to the Central Electoral Commission as part of the application to stand for elections.[27] The declaration instrument is the basic method for disclosure of the possible violations. It provides transparency and legitimacy.

The other key point in the revelation of the conflict is MPs duty of notification and of self-exclusion. According to article 21 of the Statute (Lithuania), members who have private interests in the issue must inform the presiding member of the sitting and stay away from further consideration and voting. If the Commission of Ethics and Procedure finds that an MP has not

[25] GRECO Evaluation IV Bulgaria(2014), point 26,page9
http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4(2014)7_Bulgaria_EN.pdf
[26] GRECO Evaluation IV Lithuania (2014), point 69, page 19
[27] RL Law on Elections to the Seimas, Article 38

complied with this obligation and has disregarded its recommendations, it has to inform the Seimas immediately. In this event, the Seimas may decide to consider the issue anew.[28]

Article 18 contains a one-year cool-off period regarding the conclusion of employment contracts for the management of entities over which former civil servants, including politicians, had power of supervision or control or in favor of which s/he participated in decision-making to obtain state orders or financial assistance, during the year immediately prior to the end of his/her functions. Article 19 provides for a one-year limitation on entering into contracts with the official's former employer and article 20, for a one-year limitation on representation of and official relations with natural or legal 18 persons of their former employer. Persons in the civil service must promptly notify their head of the office of such relations[29].

Effective regulation could be the establishment of the administrative fines in the case of the late submission of the declarations or the criminal liability for the failure of submission. Moreover, restrictive mechanism of administrative liability can be implied for the repetitive violations.

Concerning the cool-off mechanism, the requirement of declarations and the scope of the information Bulgaria has pretty close approaches to Lithuania. But on the other hand, we can observe the interesting approaches of Bulgaria.

Bulgarian legislation for the first time exercises the system of cooperation with third parties and NGOs in the stage of bill presentation and elaboration. The attendance of the public representatives gives them opportunity to raise proposals and questions. Such kind of engagement persecutes the idea of providence of high transparency, inclusivity and quality of the process to be further enhanced in several domains. As was mentioned before, the experience of Lithuania and Bulgaria also provides broad access to the lawmaking process. The instrument illustrated above could be a good mechanism for disclosure and in the same time for the restrictiveness of the actions of the public officials.

Centralized and Decentralized regulations in field of CoI

[28] GRECO Evaluation IV Lithuania (2014), point 49, page16
[29] GRECO Evaluation IV Lithuania (2014), point 60, page17

The practices of different countries show different systems of the ethical bodies depending on the specific character of the state. Lithuania has the similar system as Armenia, decentralized system, which has several bodies providing the prevention and ascertainment of the ethical infringements. In the case of Bulgaria the system is centralized, the Commission for Prevention and Ascertainment of Conflicts of Interest is the only authority competent to establish the existence of a conflict of interests in respect of some 120 000 officials who are subject to the LCI, including MPs.[30] Besides the Commission, there are the ACCIPEC which registers all the declarations to be submitted under the LCI. However, these two institutions have been vested with the powers they do not exercise complete oversight in this area.

Proceedings for ascertaining a conflict of interests may be instituted upon written notice from any person, request by an official, or ex official. For approaching the final assessment, the Commission requests information from the Constitutional Court, the ACCIPEC, any state or local self-government body, other institution or person. The bodies and the persons mentioned above are obliged to supply the materials. Within two months from the start of the investigation the commission announces the decision whether there is a conflict of interests.[31] The Commission prepares guidelines, which are published on its website, and participate in the training of officials subject to the LCI.

The Commission's decision may be contested before the court at two instances and in the case of ascertaining the absence of a conflict by a prosecutor within one month. Fines are imposed by the Commission's Chair within one month after the entry into effect of a decision ascertaining a conflict and can be challenged at two instances as well, pursuant to the Administrative Violations and Sanctions Act[32].

The identity of their contents, however, can only be detected by the prosecuting authorities after a signal from the Commission. The Commission itself is only bound to ascertain the existence of a conflict of interests if a particular case is reported to it and, as for the ACCIPEC, it only supervises the fulfillment by MPs of the obligation to file relevant declarations on time, and is to report any irregularity or any information on a potential violation of the conflicts of interest rules to the Commission. No sanctioning powers have been vested in the ACCIPEC either.

[30] GRECO Evaluation IV Bulgaria(2014), point57, page 19
[31] GRECO Evaluation IV Bulgaria(2014) point 45, page 16
[32] GRECO Evaluation IV Bulgaria(2014), point 55, page 19

The model presented above is an alternative to the system experiencing in Armenia. Though the power is in the concentration of the main body, the system works not so productive in case of sanctioning and enforcement.

Chapter 3

The research shows that Armenian legal system has many gaps in the field of mechanisms for providing disclosure duties, general transparency requirements, monitoring and control instruments. It could be assumed, that the main reason of the existing issues is the adoption of not exhaustive laws and endless amendment of the adopted laws. Furthermore, the system has a problem with the implementation. However, the research includes several solutions for the gaps presented above.

The first step should be providence of a clear and realistic description of what circumstances and relationships can lead to a conflict-of-interest. This will make public officials become well aware of the actions tracking the conflict of interests and provide sanctions as well.

Next, the legislator should focus on the accuracy of the actions of the public officials, approach of which could be provided only by the establishment of specific responsibilities for each unlawful action. Armenian legislation in the field of high-ranking officials provides the mandate for parliamentarians and sophisticated mechanism for the annulment of it. The Law on Public Services even does not call for any responsibility for late submission or repetitive conduct of infringement by the same official. The only regulation is set by the article 310 of the Criminal Code which prescribes criminal liability for the violation of the prohibition of engagement in business activities. The Armenian legal framework provided separation for two different infringements: it diversified the categories by the circumstances. In the case of conflict of interests, the consequences do not have pecuniary feature and in the case of criminal liability, the actions have monetary character. Usually the Members of the parliament use their mandate and avoid the responsibility for their unlawful actions. So the adoption of imperative measures would highly increase the sense of the responsibility among the officials. Considering as a base the international practices, we can assume that the idea of implementation of the administrative measure for the late submission of the declaration of assets (suggestion: also interests) and the repetition of the violation in the scope of CoI by the same official should provide administrative liability in the form of fixed financial fine.

Moreover, the failure of submission of any declaration should be the base for criminal liability because it is obvious refrain of revelation and future liability. In this way, the officials hide their assets and interest and operate their entrepreneurial activity. The only resolution of the described issues is the establishment of imperative norms proscribing administrative and

criminal liabilities for each breach of the law. In this case, the public official would know consequences for each breach of law.

The other fundamental problem is the consequences in relation to conflict of interests. The bills presented by the initiators (Government or MPs) should be observed and declared as fair since the beginning of the initiative of the law. The law should provide the mechanism for public and ethical commissions for immediate disclosure of the possible conflict of interests. Moreover, there should be a new provision in the law concerning the regulation of the cases when the law has already adopted and entered into force and the CoI had been disclosed after. There should be established mechanisms for elimination of the law without causing damages for the public. Additionally, there should be established responsibility for the infringer, pecuniary and non-pecuniary compensation for the injured people. Consequently the law should declare invalid already adopted decisions or annul the fulfillment of the actions prescribed by the law, in conditions of conflict of interests. Public officials should be required to remove the conflicting private interest if they wish to retain their public position

In addition, the transparency of the legislative process in the National Assembly should be secured and further improved by ensuring the requirements to carry out public discussions on draft laws as it is respected in practice. The drafts submitted to the National Assembly as well as amendments should be disclosed in a timely manner and by taking appropriate measures to ensure disclosure of information in accordance with ongoing committee works.

The other point that should be mentioned is the scope of information that is going to be disclosed by the declarations. According to RA Law on Public Service article 35.1: *"The high-ranking official, his/her wife or husband, parents and unmarried, adult children cohabiting with him or her must state their incomes of a tax year and the sources of their incomes prescribed by the Article."* [33]We can see that the scope of the affiliates provided by the declaration is narrow. In this step for the absolute transparency the scope of affiliates must be expanded to include the parents of the official, married children cohabiting with the official, and the declaration of information concerning announcement of interests should be enlarged.

Armenian legislation obliges the high-ranking officials and their affiliates to declare their assets (RA Law on Public service article 35), but the law does not oblige the officials and their affiliates to declare their interests, which gives an opportunity to officials to operate activities

[33] RA Law on Public Service, Article 35.1

prohibited by the law. Declaration of interests and improvement of the institute of asset management would exclude the chance of entrepreneurial activity of the officials. According to RA Law on public service article 23.2 the public servants and public officials need to apply to asset management institute but the Armenian legal system has shown negative experience.

Nowadays the public officials somehow provide the asset management of their business by transferring their right to execute the business to their relatives. But this example cannot be considered as asset management. Armenia should invest in the improvement of the companies providing professional, who could manage the business independently and adequately during the time of the official's position as a public official. In this case independence of the professional manager is the most important point. The declaration of the interests should be presented as the declaration I respect with the suggestions presented above.

Perhaps there should also be clearly defined the "cool-off" period supervision, the Ethical commissions should provide monitoring.

During the observation I have met different regulations of the conflict of interests; some of them had centralized features and some - decentralized, but for Armenian legal system should be beneficial and preferable to continue exercising decentralized system, but in the same time providing high development. The system should include the main body and local ethic commissions, acting parallel to the governmental bodies. The basic function of the main body should be insurance of the conflict-of-interest policy and it should be supported by organizational strategies and practices to help with identifying the variety of conflict-of-interest situations. It should provide the official interpretation of the laws and the necessary definitions, principles and essential requirements of the conflict-of-interest policy. In addition, guidelines and training materials, as well as advice and counseling, should provide practical examples of concrete steps to be taken for resolving conflict-of-interest situations.

All the requested amendments should be organized in a way that would cover not only the actual conflict of interests but the perceived and potential CoIs as well.

Conclusion

During last years, Armenian legal system has undertaken several legal reforms, has discovered and eliminated many gaps of the sphere. Nowadays the legal framework continues its promotion and is in the phase of reformation. However, the system is still imperfect and the research helps to detect remained loopholes of Armenian legal system. The chapters presented above include the specific legal gaps, the international practice of regulation and possible solutions. The first loophole contains issue of liability of public officials. Whether the public officials should have disciplinary, administrative or criminal liability? In which case the concrete liability is preferable and would it have preventive character? The practices of Lithuania and Bulgaria show that the establishment of imperative norms concerning the illegal activity of the officials has preventive feature. This provides a good practice. Therefor the Armenian legal system should provide administrative fees for the late submission of declarations and repeating infringement and criminal liability for the separate infringements,

The other issue mentioned in the first chapter is about the legal consequences of decisions made in respect of conflict of interests. According to Armenian law, we can face to the problem of the adopted law in scope of conflict of interests. So the study detects the negative consequences of the law adopted in not legal conditions. As was mentioned above, Armenian law prescribes that Members of Parliament and the Government have the right of legislative initiative in the National Assembly, and the Executive body adopts decisions which should be enforced through the RA. Current regulations set annulment of the governmental decisions in the case of establishment of the conflict of interests. The same situation is about the bills and already existing legal norms drafted by Members of Parliament, but if in the case of governmental activity the decisions could be revoked, then in the case of legal acts adopted by National Assembly-the act continues to work even if the conflict of interests is established. All these normative acts should be lawful and ensure the absence of any indirect interest of officials. In fact, the law does not provide mechanisms for the annulment of the unlawful legal acts adopted by the National Assembly. Moreover, the system has an issue with the elimination of the consequences of unlawful acts. In the case of laws adopted by National Assembly, the obvious gap should be filled up to prevent issues that currently exist. Moreover, the establishment of liability for the governmental officials acting on their own behalf or by the interests of their

affiliates should be obligatory. The suggestion was to elaborate such norm which would revoke all the acts adopted in the scope of conflict of interests. Moreover, the law should provide measures for the outcome of that law.

The other important issue is the establishment of Institutional mechanisms for the providence of transparency in the field of conflict of interests. In the previous chapter there were presented the alternative measures, covering the problems discussed in the research. The first tool is the establishment of liability for the infringers acting within the scope of own interests, and the other is the establishment of liability for the late submission of declarations and repetition of the infringement by the same official. The other one is enlargement of the scope of information included in the declarations of the official and his/her affiliates. The declaration should include assets and the interests of the officials as well. Moreover, the list of persons considered as affiliates should be enlarged: there should also be added the parents and unmarried children not cohabitant to the official.

Concerning the process of law creation, the system should provide public discussions, including the NGOs and people interested in the process and normative acts. Moreover, there should be highly straightened deadliness of publication of the drafts in official sites and in this way should be provided easy access of public to each step they are interested in. The other step should be done is the monitoring of "cool-of" period, the ethical commissions need to control the subsequent activity of the officials, more precisely organize specific actions for the testing the officials professional activity.

As for the type of the system, whether it should be centralized or decentralized, the study shows that in every country the different models work unique. In case of Armenia the current system is preferable to decentralized system, but it should be improved in the field of establishing a governing body which should have advisory and organizing character.

It derives as to the conclusion that nowadays the Armenian legal system needs to revise the consistency of Laws by harmonizing the existing laws with the conflict-of-interest policy to remove conflicts and enable effective enforcement of the policy, including disclosure requirements and sanctions. Moreover, the full integrity requires appropriate and proper professional work of the public officials. For the developing countries which have ingrained corruption system is quite difficult to get the ideal transparency, it should be done a huge work in

this regard. The successful achievement of the outcome prescribes long term work, elimination of the gaps, accomplishment by exhaustive clauses the improvement of the applicable rules and change of corruption-oriented mentality.

Bibliography

1. Association of Certified Fraud Examiners- Conflict of Interest: Gateway to Corruption (2014) <http://www.acfe.com/uploadedFiles/ACFE_Website/Content/european/Course_Materials/2014/cpp/2B-Paul-Catchick.pdf>

2. Black's Law Dictionary < http://thelawdictionary.org/conflict-of-interest/>

3. Corruption prevention in respect of members of parliament, judges and prosecutors, evaluation report Armenia <https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep(2015)1_Armenia_EN.pdf

4. Corruption prevention in respect of members of parliament, judges and prosecutors, evaluation report Bulgaria <https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4(2014)7_Bulgaria_EN.pdf>

5. Corruption prevention in respect of members of parliament, judges and prosecutors, evaluation report Lithuania <https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4(2014)5_Lithuania_EN.pdf>

6. CoE/EU Eastern Partnership Programmatic Co-operation Framework (PCF),Legislative Toolkit on Conflict of Interest <http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/PCF%20Belarus/Project%20Documents/PCF%20BE%20summary.pdf>
7. Londa Esadze -Guidelines for Prevention of Conflict of Interest <http://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/cy%20activity%20Interface2006/143%20_2006_-if-rep%20londa%20esadze.pdf>
8. OECD guidelines and country experiences Managing Conflict of Interest in the Public Service < https://www.oecd.org/gov/ethics/48994419.pdf>
9. RA Civil Code < http://www.arlis.am/>
10. RA Criminal Code< http://www.arlis.am/>
11. RA Law on Public Service< http://www.arlis.am/>
12. RA Law on National Assembly statute< http://parliament.am/>

13. The world Bank Group: Helping Countries Combat Corruption: The Role of the World Bank

<www.tinyurl.com/ltygc4h>

14. Transparency International, Monitoring of conflict of interest in central public institution, Yerevan, Armenia (2014)<http://transparency.am/files/publications/1415892815-0-609149.pdf>

15. RL Law on Elections to the Seimas <http://www.legislationline.org/documents/action/popup/id/9068>

16. RL Law on Criminal Code **<**http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=366707 **>**

17. RL Code of Administrative Offences <http://iamnotscared.pixelonline.org/database_publications_scheda.php?id_doc=765&str_search_langreview=&str_search=&doc_lang=&part_id=>

18. RL Law on the Adjustment of Public and Private Interests in Civil Service <http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Lithuania_Conflict%20of%20%20Interest%20Law_1997%20amended%202009_en.pdf>