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SPOILS SYSTEM AND CONFLICT OF INTERESTS IN THE PUBLIC ADMINISTRATION

State, legal framework for prevention
and effectiveness of the model



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to Prevent Spoils and Conflict of Interest
in the Public Administration

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Dragan Gocevski PhD



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1. Spoils and merit systems for recruitment of civil servants

“To the victor belong the spoils”¹ – a phrase whose literal meaning is interpreted as the victor who in a certain conflict lays claim not only to the subject matter of the conflict, but also to an additional reward. The principle of recruitment and selection of civil servants to work in public administration, more commonly known as the spoils system, also relies on this phrase. Although officially elaborated in 1832, the system was introduced several years earlier when US President John Adams had placed many of his friends in offices in the administration and judiciary before handing over his post to his successor Thomas Jefferson. Three decades later, President Andrew Jackson championed the practice attempting to establish it as a fundamental democratic principle of rotations in the public service.² The spoils system in the United States, as a principle of recruitment of federal civil servants, saw its formal end in the period from 1871 until 1883 with the enactment of the so called Pendleton Act³ stipulating that jobs in the US federal administration should be awarded on the basis of formally determined criteria for candidates, usually in connection to a certain degree of education, years in the service, etc.

Nowadays, the Weberian model of state administration dominates in the countries declaring themselves as democracies with a republican model of government, where civil servants are employed on the grounds of meritocracy. The merit system is characterized by:

- Precise description of the job and tasks that should be performed by

1 To the victor belong the spoils;

2 “The management service is considered a type of ownership and the government as means to improve individual interests, instead as an instrument established solely to serve the people. Corruptive behavior demonstrated by some people and the distortion of correct feelings and principles of others affect the government to divert from its legitimate objectives and it is being turned into a machine supporting a handful of people to the detriment of the majority. The tasks of civil servants are or can be made to be so simple so that intelligent people could be easily trained to execute them; I myself believe that more is lost from the long stay of civil servants than what is gained from their experience... In a country where civil services are created solely to benefit the people, not a single individual lays more claim than anyone else in a public office. These positions are not established to allow individuals to be financially supported from public funds.” Grizo N. Davitkovski B. Pavlovska-Daneva A., “Public Administration” Iustinianus Primus Faculty of Law Skopje, 2011, page 184;

3 The Pendleton Civil Service Reform Act (ch. 27, 22 Stat. 403). Adopted on 16 January 1881, it is a federal law in the United States envisaging jobs in the federal organs of the government to be awarded on the basis of merits.

the office-seeker;

- Precise description of the competencies that should be demonstrated by the candidate applying for the post;⁴
- Application of the principle of depoliticization i.e. noninterference of political affiliations and interests of the office-seekers when performing official tasks during working hours;
- Strict ban to exert pressure on office-seekers during the decision-making process;
- Transparent process to select candidates, usually followed by an announcement regarding the need of a new employment and the issuance of a job announcement.

A job announcement can be either public or internal. In general, a public announcement or a job posting refers to all those who meet the conditions for the given job, and civil servants who are already employed in state institutions can apply for the job as well as individuals working in the private sector, including unemployed people that meet the conditions listed in the announcement. An internal call or internal announcement is issued by a service seeking to fill a job vacancy. Only individuals already employed in an organization in a need of employment can apply for the internal announcement. Internal calls can be also viewed as mechanisms for promotion in the service because those who are already hired in the organization itself can apply for the announcement.

The substantial characteristic of the two systems for the recruitment of civil servants – the spoils and merit systems – is that they are legitimate and legal employment systems in state organs i.e. they are employment systems founded in law. From one country to another, the implementation of one system or both of them has its own specifics and variations, but one comparative practice suggests that there is not a single country applying exclusively only one system. Usually, the spoils system is applied for political office-holders, i.e. so called appointed and elected offices, including ministers, directors, presidents and members of collective organs of power (legislators, counselors, chairpersons

4

Employment based on expertise and competency

of committees, etc.) and their deputies. The spoils system only in rare cases is applied for traditional job offerings for civil servants and even then the system is applied for top posts. Usually, career posts are filled by using the principles of meritocracy.

This substantial characteristic of the two systems is vital in avoiding any misconceptions about the employment of a civil servant under pressure or under influence by a political (or any other influential) elite when positive legal regulations envisage meritocratic criteria for “an employment in line with the spoils system.” This is wrong because, as it has already been mentioned above, the spoils system stipulates a legally defined procedure for filling posts or offices. With regards to a meritocratic-designed procedure and employment criteria, if employments are realized under pressure (be it political or direct pressure by superior civil servants) and individuals who fail to meet the formally determined employment conditions are hired as a result and also against the formally determined employment procedure, in that case the spoils system is not implemented, instead the employments are considered illegal.

This phenomenon (amongst other things) is a form of corruption of the system for selecting civil servants and every civil service system has to include adequate legal mechanisms to prevent, curb and sanction this kind of employments.

Thus, the focus of analysis in this research is a specific form of corruptive behavior, the use of public authorizations i.e. formal authorizations not only by people appointed and elected on political basis, but also by career civil servants in order to attain personal interests, financial, intangible or other types of benefits.

2. Characteristics of the civil service system in the Republic of Macedonia and legal framework

The civil service system in the Republic of Macedonia was introduced in 2000 with the Law on Civil Servants.⁵ The Law on Civil Servants has served and will serve as a *lex specialis* principle regulating the status, rights and duties of civil servants employed in bodies of the state and local government and other state bodies until January 2015, when the new Law on Administrative Servants⁶ will enter into force together with the Law on Public Sector Employment.⁷

For the first time ever, the status of public sector employees is fully regulated with a special law, i.e. the 2010 Law on Public Servants⁸, which determines the scope of the public service, joint principles and the basics of employment, rights and duties, liability, assessment, termination of employment, protection and decision-making process related to the rights and obligation and the registry of public servants.⁹

Civil servants are individuals who perform matters in connection to the functions of the state, in accordance with the Constitution and the laws, in a professional and politically neutral and impartial manner, i.e. individuals who perform professional, normative and legal, executive, administrative, administrative and supervisory, planning, material and financial, accounting, computer-related and other activities in jurisdiction of the body in compliance with the Constitution and the laws.

5 Law on Civil Servants (Official Gazette of R. Macedonia n. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 6/2009, 114/2009, 35/2010, 36/2011, 6/2012, 24/2012, 15/2013, 82/2013, 106/2013, 132/2014);

6 Law on Administrative Servants (Official Gazette of R. Macedonia n. 27/2014)

7 Law on Public Sector Employment (Official Gazette of R. Macedonia n. 27/2014)

8 Law on Public Servants (Official Gazette of R. Macedonia 52/2010, 36/2011, 6/2012, 24/2012, 15/2013, 106/2013, 132/2014);

9 Until the adoption of the Law on Public Servants, the status of the employees in administrative organizations performing public activities was regulated only with material regulations stemming from the compatible area (laws in the field of healthcare, education, labor and social protection and etc.);

Persons employed in the bodies of the state and local government and other state bodies, founded in accordance with the Constitution and the law, are appointed as civil servants.^{10/11}

Depending on the type of education, work experience, liability and complexity of working duties, 13 titles are defined in the state administration, systemized into four groups: secretaries, managing, professional and administrative professional officers.

With the 2000 Law on Civil Servants and its numerous amendments, as well as with the Constitution, attempts have been made to implement the system of meritocracy. However, as of 2006, the progress reports on the Republic of Macedonia issued by the European Commission have been pointing out a remark that the mechanisms to improve professionalism and accountability, guarantee independence and political neutrality, as well as the exposure of civil servants in the administration, appointed at top and medium managerial posts, influences (as a result of political changes) are represented and that they breach the merit-based system of employment and promotion. Similar remarks refer to the fragmentation of the legal framework and an underdeveloped system of trainings.¹² The intention to legally promote meritocratic principles of employment and functioning of the civil service resumes under the latest legal framework stemming from the Law on Administrative Servants and the Law on Public Sector Employment.

In fact, the legal framework foresees combined implementation of the two employment systems, whereby a difference must be made between managing officers, for whom the spoils system is applied, and professional state/

10 Article 3 Law on Civil Servants; Article 3 Law on Administrative Servants;

11 In the bodies of the state administration, the municipal administration and the administration of the City of Skopje and the professional services of: the Assembly of RM, the President of RM, the Government of RM, the Constitutional Court of RM, the Supreme Court of RM, courts, the Judicial Council of RM, the ombudsman, the public prosecutor's office, the State Election Commission, the State Commission for Prevention of Corruption, the Directorate for Protection of Personal Data, the Commission for Protection of Competition, the Administration Agency, the State Audit Office and persons employed in the institutions entrusted with public authorizations and the institutions performing activities of public interest;

12 The 2006 Progress Report on RM (COM (2006) 649 final) page 7; the 2007 Progress Report on RM (SEC (2007) 1432) page 10; the 2008 Progress Report on RM (SEC (2008) 2695) page 9-10; (certain progress is made); the 2009 Progress Report on RM (SEC (2009) 1335) page 10; the 2010 Progress Report on RM (SEC (2010) 1332) page 8; the 2011 Progress Report on RM (SEC (2011) 1203) page 9-10; the 2012 Progress Report (SEC (2012) 332) page 8-9; the 2013 Progress Report (SEC (2013) 413) page 10;

administrative servants or career servants, for whom the merit system (system of meritocracy) is envisaged. Such a solution is realized in a myriad of states, however the implementation is carried out with certain differences in terms of drawing a line defining where the spoils system ends and where meritocracy begins to function. It is safe to say that in the Republic of Macedonia the first system is applied for ministers, i.e. office-holders in state bodies, their deputies who are, amongst other things, individuals bearing political liability before the Government and the Parliament. It also includes secretary generals i.e. state secretaries, which is in accordance with the latest legal amendments.^{13/14}

Table 1 – Overview of civil service groups and titles in the Republic of Macedonia in accordance with the Law on Administrative Servants¹⁵

| Mixed system | Merit system | | |
|---|---------------------------------|------------------------------------|--|
| Secretaries (A) | Top administrative servants (B) | Expert administrative servants (C) | Assisting and expert administrative servants (D) |
| State secretary | State advisor | - Advisor | - Independent officer |
| Secretary general | Head of sector | - Senior Associate | - Senior officer |
| Secretary of the City of Skopje | Assistant head of sector | - Associate | - Officer |
| Secretary of a municipality, based in a city | Head of department | - Junior Associate | - Junior officer |
| Secretary of a municipality, based in a village | | | |

In the Republic of Macedonia, the merit system was introduced with the Law on Civil Servants in 2000. Prior to its adoption, a decision on the need of new employees was made by an office-holder in charge of a body of the

13 Ibid;

14 In accordance with the Law on Civil Servants and its relevant amendments from 2000 to 2009, State Secretary, Secretary General and Secretary without titles that belong to the so called mixed concept of recruitment (spoils and merit). Namely, State Secretary, Secretary General i.e. Secretary could have been appointed a top civil servant during the term of the office-holder of the body where a person is appointed (minister, director, mayor). Since 2009, State Secretaries (appointed in ministries) are exempted from the regime of the Law on Civil Servants. This title is a typical political office (pure spoils system). The Law on Administrative Servants, which enters into force in January 2015, envisages only employees, top civil servants, to be appointed as state secretaries (once again introduction of the mixed concept of recruitment of these titles);

15 Article 23-27, Law on Administrative Servants;

administration as part of the general act of systematization of tasks and duties, if financial means were provided. During this period, an employment was realized in an administration body for performing tasks and duties in accordance with the act of systematization of tasks and duties on the basis of a public announcement, while an employment was created for the remaining tasks and duties upon a public call.

Since the adoption of the 2000 Law on Civil Servants, an employment in the civil service is subject to a transparent process based on the criteria of professionalism and competency and the application of the principle of adequate and equitable representation of members of the communities. As of February 2015, job vacancies in the public administration will be filled through:

- An employment procedure by issuing a public call;
- A promotion by issuing an internal call and
- Mobility enabling civil service staff to be distributed or taken over.¹⁶

3. Strategic goals and legal framework to prevent conflict of interest in the public administration

The Government of the Republic of Macedonia in 2010 passed a public administration reform strategy for the period 2010-2015¹⁷ as well as an action plan on implementing strategic goals. One of the strategic goals highlighted in the Strategy urged corruption in the public administration to be prevented. It was underlined in the act itself that in 2010 there were good practices for the development of policies and practices to curb corruption, including transparency and good governance, such as adoption of the required legislation, establishment of bodies tasked with preventing corruption, development of the civil service and a code of ethics for civil and public servants, access to information and notifications for the public, corporative management in the

¹⁶ Article 30, Ibid;

¹⁷ PUBLIC ADMINISTRATION REFORM STRATEGY IN THE IN THE REPUBLIC OF MACEDONIA (2010-2015) 21.12.2010

private sector, prevention of conflict of interest, etc.¹⁸ Nevertheless, this act pinpointed the need to upgrade the activities and make efforts for continuous implementation of the laws and use of instruments and practices to curb corruption.¹⁹ In this respect, the Strategy also underscores the need to intensify the national activities, based on proactive inter-institutional cooperation, complete the process of harmonizing the legal framework with international legal standards and increase the proactive approach with respect to internal control in the public sector.²⁰

3.1. Relevant legal framework for prevention of conflict of interest

The following laws were pointed out in the Strategy as having a key role in preventing and reducing corruption that are in need of being changed and/or supplemented:

- The 1996 Criminal Code;²¹
- The 2010 Law on Criminal Procedure;²²
- The Law on the Public Prosecutor's Office;²³
- The Law on the Council of Public Prosecutors;²⁴

18 Ibid page 63;

19 Ibid; It is interesting to note that the previous versions of the Public Administration Reform Strategy 2010-2015, published on 28.9.2010, refer to slow dynamics of the implementation of the corruption prevention policy and deadlock in its implementation was seen as the main hurdle for the development of a sustainable system to prevent corruption;

20 Ibid;

21 "Official Gazette of the Republic of Macedonia" n. 37/1996, 80/1999, 48/2001, 4/2002, 16/2002, 43/2003, 19/2004, 40/2004, 81/2005, 50/2006, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 41/2014, 115/2014, 132/2014;

22 The Law on Criminal Procedure ("Official Gazette of the Republic of Macedonia" n. 15/97) was amended in 2002, 2004, 2008 and 2009 stipulating in addition to the police, investigative powers to be also entrusted to the Financial Police and the Customs Administration. The scope of the application of special investigative measures was also significantly expanded. A new Law on Criminal Procedure ("Official Gazette of the Republic of Macedonia" n. 150/2010, 100/2012) was adopted in 2010.

23 Adopted in 2004 and in 2007 a new law was passed, "Official Gazette of the Republic of Macedonia" n. 150/07, 111/2008;

24 "Official Gazette of the Republic of Macedonia" n. 150/2007, 100/2011;

- The Law on Prevention of Corruption, enacted in 2002.²⁵ It regulated measures preventing corruption in executing authorizations and public posts, measures preventing conflict of interest as well as measures preventing corruption in fulfilling authorizations of public interest until 2007 when conflict of interest was regulated by a separate Law on Prevention of Conflict of Interest. A separate body was also set up to implement the Law on Prevention of Corruption – the State Commission for Prevention of Corruption;
- The Law on Public Procurement, adopted in 2007²⁶ and amended in 2009, which introduced a new incrimination – misuse of the procedure for public call, allocation of a contract for public procurement or private-public partnership. A relevant document regulating this sphere is the Law on Concessions and Other Forms of Public-Private Partnerships;²⁷
- The Electoral Code;²⁸
- The Law on the Financing of Political Parties;²⁹
- The Law on Free Access to Information of Public Character³⁰ as well as other laws in connection to corruption and conflict of interest.

Moreover, the normative framework also includes international treaties ratified in the Republic of Macedonia, including the Criminal Law Convention on Corruption of the Council of Europe, ratified in 1999, and the Protocol

25 “Official Gazette of the Republic of Macedonia” n. 28/02, 46/2004, 126/2006, 10/2008, 161/2008 и 145/2010;

26 “Official Gazette of the Republic of Macedonia” n. 136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 28/2014, 43/2014, 130/2014;

27 The Law on Concessions and Other Forms of Public Private Partnerships adopted in (“Official Gazette of the Republic of Macedonia” n. 7/2008, 139/2008). In 2012, a new Law on Concessions and Public Private Partnership was adopted (“Official Gazette of the Republic of Macedonia” n.6/2012, 144/2014);

28 “Official Gazette of the Republic of Macedonia” n. 40/2006, 136/2008, 44/2011, 51/2011, 142/2012, 31/2013, 34/2013, 14/2014;

29 “Official Gazette of the Republic of Macedonia” n. 76/2004, 86/2008, 161/2008, 96/2009, 148/2011, 142/2012, 23/2013;

30 “Official Gazette of the Republic of Macedonia” n. 13/2006, 86/2008, 6/2010, 42/2014;

ratified in 2005 (ETS No.191); the Civil Law Convention on Corruption of the Council of Europe, ratified in 2000; the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe, ratified in 1999, and the second additional protocol; the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, ratified in 2000; the UN Convention against Transnational Organized Crime (UNTOC), ratified in 2004; the UN Convention against Corruption (UNCAC), ratified in 2007.

In the Republic of Macedonia, the issue of conflict of interest for the first time was regulated under the Law on Prevention of Corruption.³¹ At the same time, regulations were introduced in view of conflict of interest in the Law on Election of Members of the Parliament of the Republic of Macedonia in 2002³², the Law on Civil Servants³³, the Code of Ethics for Civil Servants³⁴ and the Criminal Code of the Republic of Macedonia.

3.2. Law on Prevention of Conflict of Interest

2007 saw the adoption of the first Law on Prevention of Conflict of Interest.³⁵ Amendments to the Law Prevention of Conflict of Interest were passed in 2009³⁶ and 2012³⁷. The law defines what conflict of interest is, how to act in case of conflict of interest, what measures need to be taken to prevent conflict of interest when exercising jurisdictions and public authorizations entrusted to civil servants. The State Commission for Prevention of Corruption (SCPC) is the body in charge of implementing the law. The law aims at securing better identification of conflict of interest and manifestations of conflict of interest. The law defines what an official is and it consequently covers public servants as well.³⁸ Also, acting in its capacity as the body in charge of implementing the law, SCPC has prepared and published Guidelines for

31 Law on Prevention of Corruption, "Official Gazette of the Republic of Macedonia" n. 28/02.

32 "Official Gazette of the Republic of Macedonia" n. 42/02.

33 "Official Gazette of the Republic of Macedonia" n. 59/ 2002, 112/ 90, 34/ 2001 and 103/ 01.

34 "Official Gazette of the Republic of Macedonia" n. 96/01.

35 "Official Gazette of the Republic of Macedonia" n. 70/07.

36 "Official Gazette of the Republic of Macedonia" n. 114/09.

37 "Official Gazette of the Republic of Macedonia" n. 6/12.

38 Article 3 page 2, Law on amending the Law on Prevention of Conflict of Interest (Official Gazette of RM n. 114/2009);

Managing Conflict of Interest.³⁹ In the Strategy, a strong emphasis was put on providing efficiency of the system, which will be evident through measurable indicators and parameters, the need of organizing further joint actions in all spheres of the society: politics – by voicing political willingness to adopt new laws and amend existing ones; execution of laws – by acting in an efficient and proactive fashion to implement the law; civil society and the media – by educating and raising public awareness about the new standards to strengthen the integrity of the institutions - and also with the international community. The State Commission for Prevention of Corruption on the basis of its legal authorizations determined by the Law on Prevention of Corruption (Article 21, Paragraph 1) had drafted and adopted the State Program for Prevention and Repression of Corruption and for Prevention and Reduction of Conflict of Interest for the period 2011-2015 at a session held on 2 December 2011.

The State Commission for Prevention of Corruption published “The Guidelines for Managing Conflict of Interest”, where it defines the specific relationship between corruption and conflict of interest as a potential corruptive act:

*“...There is clear relationship between corruption and conflict of interest. Corruption is the use of public office for private gain. Conflict of interest is the performance of public duties where the public official has a personal interest that is, or appears to be, in conflict with their official duty. Corruption may often include cases of conflict of interest, but not all cases of conflict of interest are cases of corruption.”*⁴⁰

Taking a risk for oversimplification, we will illustrate this distinction between corruption and conflict of interest by using practical examples. Corruption is considered a crime already committed which by a legal act (law, rulebook, manual, etc.) is regulated as corruption and is subjected to a certain sanction (disciplinary measure, fine, prison sentence, etc.). An official or civil servant at a top post will abuse his/her office to acquire some kind of benefit, either by embezzling official funds or by affecting an outcome of a process. Conflict of interest is a situation which involves an official or civil servant that could be used to acquire some kind of benefit.

39 www.dksk.gov.mk, September 2008;

40 “Guidelines for Managing Conflict of Interest”, SCPC, 2008 page 3;

In a bid to simplify it even more, it is safe to say that corruption is when A abuses his/her office for personal interest and conflict of interest is when A may abuse his/her office for personal interest. What A is going to do in a given situation, it depends on whether a corruptive crime will be committed or not. It can be said that corruption is preceded by a situation in which there is conflict of interest.

Example 1: hypothetical situations leading to conflict of interest and corruption

| | Conflict of interest | | Corruption | |
|---|---|--|---|--|
| A – an official in department for public procurements | Applying at a normal, common and legal procedure for public procurement call, one of the bidders is A's brother | A fails to act upon the matter, does not report conflict of interest, concludes the procedure and puts forward a proposal involving the best bidder and submits it to an official, irrespective of whether the best bid has been offered by the firm of A's brother or by another, the procedure was carried out appropriately | A gives information to his/her brother enabling the brother's firm to be picked as having the best bid. The bid is filed to an official without reporting anything. | A gives information to the brother or to another bidder on condition to get a percent from the procurement A should be held responsible for corruption Anyone collaborating with A has to be held responsible (Criminal liability) |
| | In addition to not being excluded due to objective reasons (if there's no replacement), A has strong argument that s/he reported conflict of interest appropriately | Despite the procedure being appropriate, A should be held responsible for conflict of interest | A should be held responsible for corruption A's brother is consequently held accountable | |

Difficulties may arise in every legal system in an attempt to precisely and clearly define conflict of interest and the measures that need to be taken in order the public administration, the private sector and the general public to

be adequately informed about “what exactly is conflict of interest” and to raise awareness amongst them, which are seen as target groups, in a bid to learn how to recognize conflict of interest and how to act in such cases.

Conflict of interest in the legislation of the Republic of Macedonia is defined as abuse or potential situation that may lead to misusing public authorization and duties of an office-holder or a person employed in an organization with public authorizations that is tasked with performing public matters in order to fulfill his/her covetous interest for themselves or for someone closely related to them. This issue in the Republic of Macedonia is regulated in several regulations that have been already mentioned. Thus, the Law on Prevention of Conflict of Interest, considered a special material regulation focused on preventing conflict of interest, refers to the President of the Republic of Macedonia, MPs, mayors, ambassadors and other appointed representatives of the Republic Macedonia abroad, elected and appointed individuals from and in the Parliament of the Republic of Macedonia and the Government of the Republic of Macedonia, bodies of the state administration and other state bodies, bodies of the judiciary, public enterprises, institutions, other legal entities of the central and local authority, state servants and staff employed in bodies of the state administration and other state bodies, bodies of the judiciary, public enterprises, other legal entities of the central and local authority, councilors in the council of the municipalities, councilors in the Council of the City of Skopje, as well as staff hired through agencies for temporary employment with authorization that is defined by law.

The precise legal formulation of the term “conflict of interest” is a conflict of public authorizations and duties with the private interest of an official whereupon an official has a private interest that influences or might influence the performance of his/her public authorizations and duties. This phrase is crucial because it defines conflict of interest more extensively, not only as a committed crime (which is the case with corruption), but also a situation that might affect an office-holder or civil servant when executing his/her authorizations i.e. formal tasks. Due to the circumstances of the given situation, it might also affect his/her professional conduct and decision-making abilities, urging the person to take certain measures, such as reporting the case to superior civil servants or reporting it to the State Commission for Prevention of Corruption, filing request to be excluded from a procedure, etc.

Failure to take appropriate measures paves the way for launching a procedure to hold someone responsible.

There is no single legal formulation for public interest in all the regulations, however under a universal interpretation, public interest is all rights and duties of the citizens and legal entities in a country, which as such are defined and guaranteed by the constitution and law, including ratified international treaties.⁴¹ Notwithstanding that, an official must take into consideration and take care of all the rights of an involved party guaranteed (conditionally speaking) by any law all the while paying attention not to expose the party to costs or unfounded damages. On the other hand, public interest obligates the official to secure continuous and consistent fulfillment of all the duties of the party towards the country.

The law stipulates that private interest is any form of benefit, personal benefit, exploitation or benefit of a closely-related person, i.e. any form of *quid pro quo*⁴² relationship that can be established by an official and that is likely to affect or will affect his/her decision-making abilities while performing public authorizations and duties. The law defines benefit as property and property rights or other rights that should not belong to an official. Persons in wedlock or in a domestic partnership with an official, his/her lineal blood relatives up to fourth degree of kinship, adoptive parent or adoptee, in-laws conclusive with second degree of kinship, as well as any natural or legal entity with whom the official has private interest are considered persons in close relationship.⁴³

For performing public authorizations and formal tasks, an official is prohibited from receiving or even expecting to receive gifts, such as money, securities, items and other services.⁴⁴ The official is obliged to refuse such an offer and identify the person making the offer. In case a gift has been received that cannot be returned, an official is required, without delay, to report it to a relevant body, name witnesses and other evidence. The official is also bound in a period

41 Article 3 page 1 al 7, Law on Prevention of Conflict of Interest: “broader social interest for the common good and progress of all citizens under equal conditions in a material and intangible sense that might be threatened by causing damages of material or intangible nature due to the emergence of a conflict between private and public interest”;

42 Literally meaning something for something, a favour for a favour, give and take, etc;

43 Article 3, page 1 al. 5 Law on Prevention of Conflict of Interest;

44 Article 5, page 2, Ibid;

of 48 hours at the latest to submit a written report to the State Commission. Exceptions from this rule, i.e. situations in which it is permitted to accept a gift are unequivocally defined by law. By rule, they refer to books, souvenirs and similar goods, whose value does not exceed EUR 100 in MKD equivalent. If an official is not employed in the public sector as a career servant, the gift should not be worth more than MKD 1,000 and the total amount of all the gifts by the same person cannot be higher than MKD 3,000.

One of the instruments used to determine between public authorizations and private interest is the “statement of interests”, which is made by an official. It contains data on his/her personal and private interest in executing public authorizations and duties. The statement of interest could be the most important instrument in preventing and detecting conflict of interest and consequently every organization responsible for performing public authorizations needs to adopt adequate regulations (rulebooks and manuals), which will precisely define a content of the statement of interest in an adequate manner for every employee to be able to fill it out.⁴⁵ Additionally, it is necessary to work on determining the “subject” that will control those statements which are not filed to the SCPC, i.e. those statements that are managed and organized by the institution itself. All politically appointed or elected individuals are required to file a statement of interests to SCPC, while state and public servants (and administrative staff as of 2015), are obligated to file statements to the institution that employs them in a period of 30 days right after assuming office, i.e. the beginning of their employment.

An official in performing public authorizations and duties is bound to respect the principles of legality, equality, efficiency, trust, independence, public, impartiality, honesty and professionalism and to act in a conscientious and professional fashion, without discriminating or favoring anyone else, fully respecting human rights and liberties and human dignity, without advocating private interest. In other words, public interest should always come first when making decisions; one must not be motivated by ethnic, religious, political, family or other personal interest; one must not be involved in a decision-making process in which there is, or appears to include, personal interest.

45 The form and content of the statement of interest are provided by SCPC and the manner verifying the content of the statements of interests is prescribed by the Government upon a proposal by the Ministry of Justice;

If an official discovers conflict of interest, which was not obvious when s/he joined the decision-making process, then it must be reported to his/her superiors and the official must be excluded from any further actions; an official must not accept or achieve any kind of benefit, which comes as a result of performing or failure to perform his/her formal duties; an official must not misuse official information acquired while performing duties. This means that an official must not favor or personally attain benefits by using official information. Also, an official is required not to use official information in an attempt to evade personal loss or damage.⁴⁶

In an effort to decrease the possibility of a conflict of interest, the Law envisages persons that are in a close relationship with the official – and for whom there is justification that some kind of interest exists with the official – not to be allowed to supervise or control his/her work.

One particularly sensitive area, where a situation of conflict of interest in the state administration might occur, is the selection of new staff, promotion in the service and forms of internal and external mobility within the service. It is envisaged that an official (civil servant appointed as a member of the Commission for Selection of Civil Servants), who participates in or makes decisions in the employment procedure or is included as a member of the body conducting the said procedure, is obligated to inform the head of the institution where s/he is employed about all the employment procedures that could cause conflict of interests. If there is some kind of relationship between an official and a job candidate that could constitute a conflict of interest, the head of the institution is required to take all the necessary measures to prevent conflict of interest, usually by excluding the involved civil servant from the procedure. In case of any doubts about the existence of a conflict of interest, the official and the head of the institution can ask SCPC for an opinion. This law is widely implemented in the public sector and is adequately implemented in the procedure for selecting civil (and public) servants. However, it must be noted that the Law on Civil Servants and the Law on Public Servants do not include provisions that clearly define this situation.

Exclusion as a “principle” is a well-known and present mechanism preventing conflict of interest, included in several procedural laws in the positive legislation

46 “Guidelines for Managing Conflict of Interest”, Ibid. page 6-7;

of the Republic of Macedonia. The Law on General Administrative Procedure contains provisions specifying that an official authorized to decide or to carry out certain actions in the administrative procedure of any case should be excluded if:

- the official person is involved in the procedure in the capacity of a party, co-authorized person, witness, expert witness, or legal counsel of the party;
- the official person is immediate family with the party, the legal counsel or the authorized person, or related up to and including the fourth degree of kinship, or married or related by marriage, up to and including the second degree of kinship, even if the marriage has been dissolved;
- the official person is a guardian, related by adoption or supporter of the party, the legal counsel or the party's authorized person;
- in the first instance procedure the official person participated in the administering of the procedure or in the adoption of the decision.⁴⁷

Once an official, who should decide on certain administrative issue or take action in the procedure, concludes that there is reason for exemption, s/he is obligated to stop any further activities regarding the specific case and notify the agency authorized to decide on the exemption. If the official person considers that there are other circumstances that justify his/hers exemption, then he/she should inform the same agency without interrupting the procedure.

The Law on General Administrative Procedure outlines in a precise manner the authorization to act upon a request for exempting an official, hence:

- the collegial body of the Parliament of the Republic of Macedonia itself decides on exempting its member, while the Parliament of the Republic of Macedonia decides upon exempting the chairman of the collegial body.

⁴⁷ Article 40, Law on General Administrative Procedure (Official Gazette of RM, n. 38/2005, 110/2008, 118/2008, 51/2011);

- The office-holder managing a body of the state administration decides to exempt an official in that body.
- The Government of the Republic of Macedonia decides to exempt the office-holder managing a body of the state administration.
- The collegial body of the Government of the Republic of Macedonia itself decides to exempt its member and the Government of the Republic of Macedonia reaches a decision to exempt the chairman of the collegial body.
- The mayor reaches a decision to exempt an official in the bodies of the municipality, the City of Skopje and the municipalities of the City of Skopje.
- The minister at the helm of a ministry in the relevant field decides to exempt a mayor during a decision-making process in an administrative procedure.
- A decision regarding an exemption is made with a conclusion that has to be reached in eight days since the day when a request was filed. Another official must be named in the conclusion on the exemption that will decide i.e. perform certain actions in the procedure in connection to the case. The conclusion determining the exemption cannot be appealed.

The Law on Prevention of Conflict of Interest more generally specifies the exemption of an official. When an official discovers circumstances suggesting conflict of interest, s/he is obliged to request exemption instantly and cease his/her activities. Exemption is approved by a decision made by a body where an official is elected or appointed, i.e. where the official is employed, and by a request of the interested person. It is defined in accordance with the provisions of the Law on General Administrative Procedure that an official following a decision by a superior official is exempted from performing an activity without making a request or against his/her will if it is obvious that there is conflict of interest in the case.

The Law also envisages certain limitations with respect to a future employment of an official after termination of a public office i.e. termination of an

employment. The introduction of this provision is justified because it takes into account the possibility of an official in public office to reach decisions that will affect future employment in the public sector, as well as the possibility acquired information and contacts to be used (without any justification) in an effort to attain advantage on the market. An official three years after terminating his/her public authorizations or duties, i.e. after having his/her employment terminated, cannot be neither hired in a company where s/he was a supervisor or established any contract to perform public authorizations or duties nor acquire shares in the legal entity in which s/he had been employed or conducted supervision. If shares are acquired in the legal entity through inheritance, the official is obligated to report the matter to SCPC. An additional measure is the ban for an official two years after public authorizations or duties are terminated, i.e. after the termination of the employment, to represent a natural or legal entity from the body where s/he was previously employed if s/he takes part in the decision-making process in a concrete case.

Limitations are also introduced with regard to memberships in administrative and supervisory bodies. Thus, an official cannot be a member of an administrative or supervisory body in a company, enterprise, agency, funds and all other organizational forms with a dominantly state capital, except where it is defined by law. By an exception, a civil servant and a person having special legally defined tasks and authorizations can join an administrative or supervisory body in a company. Official persons who are members of civil associations must not misuse information and data provided to them while performing their duties or use them to acquire personal benefit.

Every public office-holder, civil or public servant or other person in charge of performing public authorizations, the State Commission for Prevention of Corruption, the Parliament of the Republic of Macedonia, the Government of the Republic of Macedonia, ministries, local self-government units, courts, the Public Prosecutor's Office, the State Audit Office, other bodies and institutions, other subjects with public authorizations, the non-governmental sector and the media⁴⁸ are accountable to recognize (and report) cases of conflict of authorization.

Prevention and sanction of a possible conflict of interest in the state

48 Ibid page 19;

administration, also referring to civil servants and public servants, is regulated by the Law on Civil Servants and the Law on Public Servants and as of 2015 by the Law on Administrative Servants and the Law on Public Sector Employment as well. Other relevant regulation that is applied, not only on appointed elected persons, but also on civil servants and public servants, is the Code of Ethics for Civil Servants, the Code of Ethics for Public Office-Holders, Criminal Code and the Law on General Administrative Procedure as a procedural law of exceptional importance for all official persons managing an administrative procedure.

3.3 Law on Civil Servants

The basic characteristic of civil and public servants, as stipulated in 2000 and subsequently in 2010, is to consistently abide by the principles of accountability, legality and depolitization. These principles are defined also by the Constitution of the Republic of Macedonia. Thus, civil servants are expected to perform their duties in a conscientious, professional, effective, orderly and timely manner in compliance with the Constitution and the law, to pay attention in protecting public interest and also the citizens and legal entities serving as clients in an administrative procedure. The civil servant is obliged to perform activities in an impartial fashion, devoid of influences by political parties, should not be motivated by his/her political beliefs, personal financial interests, without misusing the authorizations and status entrusted to him/her as a civil servant and should protect the reputation of the body.

Although they are formally allowed to be members of political parties, civil servants by being party members and by participating in their activities should not put into question their status as a civil servant, the performance of official tasks stemming from that status, should not directly take part in election campaign or in other similar public events during working hours and are not allowed to wear or put up party symbols in offices.

To champion and support political conviction when executing official tasks, to accept gifts or other kinds of benefits, to abuse the status or to exceed authorizations when executing official tasks, as well as to put personal and financial interest in conflict with the position and status of civil servants are serious disciplinary violations, defined as disciplinary offence.

These rules are clearly defined under the Law on Civil Servants and any failure to abide by them is a disciplinary violation, for which in line with a legally defined procedure, a disciplinary measure is taken that could include a pay cut of 30% in a period ranging from one month to six months, demotion of the official, reprimand and even dismissal from office.

3.4 Law on Public Servants

In terms of work principles, the legal framework for public servants corresponds with the Law on Civil Servants, hence the common principles such as professional conduct, accountability, etc., are equally applied for public servants as well. Public servants are obliged to perform their official task and duties in a conscientious, professional, effective, orderly and timely manner in accordance with the Constitution, the laws and ratified international treaties, impartially. They also must not be motivated by personal and financial interests, must not misuse their authorizations and status as public servants and must at all times protect their personal reputation and the reputation of the institution where they are employed.

Public servants by being members of political parties and by participating in their activities must not put into question their abilities to perform duties and work tasks stemming from the status of being public servants. They are also not allowed to wear or put up party symbols in offices. This kind of violations are considered a disciplinary offence that often envisage fines up to 30% of a monthly pay in a period from one month to six months.⁴⁹

49 Article 44, page 1 paragraph 2, page 2, Law on Public Servants;

3.5. Law on Administrative Servants⁵⁰

A specific novelty in the Law on Administrative Servants is the introduction of the so called cabinet staff, which represents a form of hybridization between the spoils and merit system. These are job positions in the cabinets of the President of the Republic of Macedonia, the President of the Assembly of the Republic of Macedonia, the President of the Government of the Republic of Macedonia, the vice presidents of the Parliament of the Republic of Macedonia, deputies of the President of the Government of the Republic of Macedonia, the Secretary General of the Government of the Republic of Macedonia and the cabinets of ministers. With the acts on job systematizations, they are defined as separate job positions in a cabinet. These job positions can be filled with administrative servants from the same institution or from another institution through a mobility procedure. The element of meritocracy is observed with the practice that a cabinet official must be a person who has already acquired a status of civil or public servant by completing the meritocratic process of selection, thus it is expected the employment to be objective. Cabinet staff is obliged to observe all the rules, tasks and principles of work that are equally applied for the other employed administrative servants.⁵¹ The spoils system is evident when politically appointed office-holders (or persons appointed by them) have the liberty to chose a public service (bodies of executive government, bodies of the state administration, other bodies of the state, administrative organizations, local self-government, etc) from which to ask for a reappointment of a certain official. The official is reappointed with an approval by the secretaries in the two institutions and an approval by the official persons themselves. The Law on Administrative Servants falls short of specifying whether the process for selecting cabinet staff, the office-holder, the secretary, even the civil servants themselves are required to lodge a statement of interests to the SCPC and whether the statement is kept in the cabinet. Given the specific nature of the job position of a cabinet staff, it is interesting to determine whether and to what extent the Law on Prevention of Conflict of Interest has subsidiary implementation.

A practice stipulating clear obligation for cabinet staff to lodge a statement of interest is of vital importance, because after a mandate of an office-holder comes

50 Administrative servants in terms of this Law are civil and public servants;

51 See: Law on Civil Servants and Law on Public Servants in this text;

to an end who has appointed him/her in the cabinet, a cabinet servant under a decision reached by the new office-holder is reappointed to a job position that is at the same level with the job s/he had performed prior to being appointed in the cabinet and in the same institution where s/he had previously worked. One might assume that the time spent in the cabinet has given the cabinet servant access to a certain scope of contacts and information which could be used by the official persons to exert influence over their future reappointment.

When referring to prevention of conflict of interest in the public and state administration, in relation to the manner for recruiting new staff, the procedure that is defined legally and objectively allowing the most competent and qualified candidate to be selected in a objective, unbiased manner devoid of external influences (political or other) is of paramount importance. There are three procedures for hiring administrative staff: by issuing a public call, through a promotion within the service i.e. by issuing an internal call, and through an internal mobility i.e. by reappointing staff from one service to another or reappointment from one job position to another within the same service.

Even though the procedures for employment, promotion and mobility in the service are precisely defined with the Law on Administrative Servants, it is interesting that it contains no “explicit obligation” on the submission of statements of interests!?. Namely, when selecting an administrative servant through a public call, those candidates who are applying to take an exam at the Administration Agency are not obliged to file a statement on the existence/non-existence of conflict of interest with a member of the selection committee.

The selection procedure for an administrative staff through a public job announcement starts after the public service seeking staff has expressed the need for a new employment. The service files a written request to an independent state body – the Administration Agency. All employments are executed in coordination between the Administration Agency, the Ministry of Information Society and Administration, the Ministry of Finance and the Secretariat responsible for the implementation of the Ohrid Framework Agreement. The selection procedure is conducted by the Administration Agency, which in the beginning issues a public announcement and sets up a selection commission. There are individual or group selection procedures.

The selection commission for an individual procedure is made up of three top administrative servants and the selection commission for group procedure is comprised of top administrative servants with the president being from the Agency, one member is from the Secretariat for the Implementation of the Ohrid Accord and other members from organizational units where jobs are planned to be filled, whose number has to correspond with the number of institutions offering job positions, as well as their deputies. Moreover, the procedure for selecting administrative servants takes place in four stages:

- Administrative selection;
- Examination for administrative servant: professional examination and an examination to evaluate the intellectual capacity of candidates. The examination for administrative servants, examination for administrative management and personality test are taken in specially equipped premises;
- Evaluation of credibility of evidence – it is carried out at least 3 hours prior to the interview;
- Interview. Situational questions for the candidate's competency for the job. The candidate must pass 60% of the previous stages in order to get to this stage.

Candidates have to also pass a so called personality test after which the selection commission divides the final ranking list into sub-lists according to the ethnic origin of the communities in the Republic of Macedonia. The secretary/top official person in a period of five days after receiving a proposal from the Commission is obligated to reach a decision on the selection. Those candidates that are discontent have the right to file a complaint in eight days' time to the Administration Agency (or to another relevant body defined under a different law).

With the decision being final, the head of the institution within five days concludes an employment contract for an indefinite period.

The procedure for promotion aims at allowing administrative staff to move up in their professional career, i.e. to be reappointed from lower to higher job

positions. The secretary/head of the institution files a request on launching a procedure to promote administrative staff to an organizational unit/authorized official person in charge of managing human resources. The institution itself posts an internal call on its website alongside an adequate form. An administrative servant from the institution that meets the required conditions can apply for the job offering within five to ten days. The secretary/head of the institution establishes a three-member selection commission for promotion: president – top official person from the unit that has issued the call and two top officials from the human resources unit. The procedure itself takes place in two stages – administrative selection and interview.

Points in administrative selection for every candidate are determined on the basis of the sum of the last three grades, trainings attended and mentorship certificates after which the commission compiles a ranking list including the top five candidates. Within five days after the administrative selection, the commission conducts an interview after which a final ranking list is made and proposes the top candidate to the secretary/head of the institution. Within three days after receiving the proposal, the secretary/head of the institution is bound to make a decision on the selection, otherwise they will have to elaborate why a selection was not made. The internal call can be repeated prior to deciding to issue a public announcement. Those who are discontent with the process are allowed to file a complaint to the Administration Agency within eight days. With the decision being finalized, the secretary/head of the institution in a period of five days reaches a decision to promote the administrative servant.

Discipline at work and the prevention of external influences on the work of administrative staff are regulated in an almost identical manner as stipulated in the Law on Civil Servants. Thus, disciplinary offence is a serious violation of official duties, discipline at work and the reputation of the institution or that of the administrative servant. With respect to the prevention of conflict of interest it implies:

- Expressing and supporting political conviction when performing work duties, participating in election activities or other public similar events during working hours, putting into question the status of administrative servant by carrying out party activities, wearing or putting up party symbols in offices;

- Using material and financial means illegally;
- Receiving gifts or other forms of benefit;
- Misusing the status of administrative servant;
- Misusing entrusted authorizations when performing tasks at work;
- Putting personal and financial interests in conflict with the position and status of administrative servant;

One of the following disciplinary measures could be taken after a disciplinary offence has been committed:

- Fine of up to 30% of the amount of a net salary paid the month prior to the disciplinary offence lasting from one to six months;
- Reappointment at a lower job position and
- Termination of the employment when detrimental consequences for the institution occurred all the while no facilitating circumstances are found for the administrative servant who committed the offence.

3.6. Law on Public Sector Employment

The Law on Public Sector Employment is a complementary regulation to the Law on Administrative Servants and is *lex generalis* i.e. regulation having general application referring to all the staff in bodies of state and local government and other state bodies founded in compliance with the Constitution and the law and the institutions performing activities in the field of education, science, healthcare, culture, labour, social protection and child protection, sport, as well as other activities of public interest that are defined by law and structured as agencies, funds, public institutions and public enterprises established by the Republic of Macedonia or municipalities, by the City of Skopje and municipalities in the City of Skopje. Individuals who have concluded employment contracts in some of the institutions mentioned above have the status of an employee in the public sector.

In accordance with the principle of equal conditions and equal approach to the job position for all interested candidates, the institutions are obliged to issue

an internal i.e. public call in order to announce job vacancies and conditions required to fill them. The institutions are obliged to plan employments in annual plans according to their needs, which are based on the methodology to plan employments in the public sector in line with the principle of adequate and equitable representation.

Employments in the public sector are concluded by issuing a public announcement whereby the most competent and qualified candidate for the job position is selected in a transparent, fair and competitive procedure.

Promotion in the public sector is enabled by issuing an internal call to select the best candidate for the job amongst the staff in the institution, based on an evaluation of the result, expertise and competency of the candidates, in a transparent, fair and competitive selection procedure.

A selection procedure is envisaged for every employment that includes verification of submitted evidence in meeting the conditions for the job, qualifying tests in written form or electronically, organization of interviews and/or other forms to evaluate the candidates.

While performing duties and tasks, employees in the public sector are required to abide by the principles of professional ethics, impartiality and objectivity.⁵² They are obliged to perform their duties and tasks in a politically impartial fashion without allowing to be influenced by their political beliefs and personal and financial interests.

The Law on Public Sector Employment explicitly specifies the prevention of conflict of interest as fundamental principle obliging the employees in the public sector not to put into conflict their personal material and intangible interest with the public interest and with their status that may cause conflict of interest. In this case, the Law on Public Sector Employment, the Law on Prevention of Conflict of Interest and other laws can be adequately applied.

A particularly important advantage of the Law on Public Sector Employment that contributes to preventing and curbing conflict of interest is the fact that it provides the employees with the right to protection if they have reported

⁵² Standards for personal integrity, professional ethics and conscience to protect public interest and adhere to the acts regulating these standards;

suspicious act or information about a crime or illegal or unapproved conduct.

Those employees in the public sector who have reported suspicion orally or in a written form, or have come across any findings that a crime has been committed or that it is being committed or that it is likely a crime to be committed against the official duty or other illegal or unapproved conduct that threatens the public interest, security and defense, must be provided with protection in compliance with the law. Their anonymity and confidentiality is also guaranteed to an extent and for a period of time as requested by them.

At the same time, this provision facilitates the application of the obligation of all employees to point out illegitimate work tasks. Employees in the public sector are obliged to perform tasks at work given by the office-holder at the helm of the institution, i.e. by the immediate superior, and act on them in accordance with the Constitution, laws or other regulations. If employees deem that the given task is against the law, they are bound to point that out to the person who has given them the task.

Even though employees legally are obligated to act on the task given in a written form (after pinpointing its illegality), once they conclude that to perform the task is a crime, they must immediately inform in written the official who is superior to the one who has delegated the tasks as well as SCPC. If they fail to do so, they can be held responsible for doing the task, including their immediate superior official. For filing a report to the superior official person and to SCPC, employees cannot be held responsible. This is identified as a so called limited subordination of administrative staff. Namely, on one hand the staff is obligated to do its job professionally and respect laws and other regulation based on law, and on the other they are required to perform tasks and orders delegated by their superiors. If the order by a superior official is illegal, whether it is issued due to ignorance or on purpose, the administrative servant is obliged to point out the error of the order to the superior official. If the superior insists the administrative servant to execute the order nonetheless, the administrative servant must ask the order to be issued in written and to lodge the written order to the official in a position higher than his/her superior or directly to the head of the institution. Then the administrative servant may execute the order because s/he will not be held accountable for executing the illegal order. An exception of this rule is when the administrative servant with

the illegal order does something that by law is defined as a crime. In that case, the order cannot be executed, otherwise s/he will be considered an accomplice.

The ban for political activity in the workplace also applies for employees in the public sector under conditions defined in a way that is identical to the Law on Administrative Servants.

In an effort to prevent conflict of interest, the Law on Public Sector Employment contains a clear provision on receiving gifts. In line with the provision, employees in the public sector must not receive gifts in relation to their job with the exception of protocol-related and temporary gifts with inconsiderable value. Gifts worth less than MKD 1,000 or gifts given by the same persons whose total value is less than MKD 3,000 in a given year are considered gifts with immaterial value. Gifts given by official persons or by international organizations during visits at home or abroad or in other similar circumstances are considered as protocol-related gifts.

The scope of this provision is extensive and the ban and limitations involving gifts refer in an equal measure to the spouse of an employee, persons in a domestic partnership with the employee, their children, parents and people who live in the same household. Employees in the public sector are required to warn those giving gifts that the gifts exceeding the determined value are owned by the employer. If the donor insists on giving the gift, the employee or other persons involved are obliged to give the gift to the employer. Data on received gifts, their values, donors and other circumstances are registered in the file on gifts. The manner for handling gifts, the manner for managing the file of gifts and other issues in connection to receiving gifts are defined by a decree of the Government.

3.7. Criminal Code

Even without the existence of a committed crime, conflict of interest is a situation that bounds the parties involved (official person and client) to take certain measures in a bid to eliminate the conflict of interest. Failure to take adequate measures prompts adequate accountability to be held – public accountability if an office-holder is involved; charges to be brought against every official, a disciplinary responsibility for an administrative servant and other staff in the public sector, as well as criminal liability.

The criminal code stipulates a prison term from three months to three years for an official or top manager in a public enterprise or a public institution that will abuse discretion authorizations amid conflict of interest to gain personal benefit or to cause harm to others.⁵³

If an official person amasses substantial wealth in terms of real estate, causes serious property damages or severely violates the rights of other people, then the person will be sentenced to a prison term ranging from six months to five months.

If an official person amasses substantial wealth in terms of real estate or inflicts significant damages, the person will receive a jail sentence of at least three years.

Top manager, top manager – foreign legal entity with a subsidiary in the Republic of Macedonia or a person performing matters of public interest will receive the same sentences for the crimes mentioned above, if the crime is committed while exercising his/her special authorizations or duties as defined by law.

If an administrative procedure is breached, relevant monitoring is omitted or other types of reckless behavior serving an official or responsible person (legal entity) to amass for himself/herself or for another individual some kind of benefit or to inflict damages to others, then they will be sentenced to imprisonment from six months to three years, also being bound to pay a fine.

⁵³ Article 353-c, Criminal Code: “Official person or authorized person in public enterprise or public institution who, through breach of the legal regulations for conflict of interest or for principled action during performing discretion authority, with omission of relevant monitoring or in other way obviously incorrectly acts in performing of his/her authorities and as a result of that will obtain some benefit for himself/herself or for other person or will cause damage to somebody, shall be sentenced with imprisonment of three months to three years.”;

If the crime is committed due to negligence, the official or the person in charge will be sentenced to a prison term ranging from six months to two years and a fine.

4. Relevant institutions

4.1. State Commission for Prevention of Corruption

The State Commission for Prevention of Corruption (SCPC) is an independent state body, responsible to conduct direct control over the implementation of the Law on Prevention of Conflict of Interest. In this respect, SCPC is in charge of adopting relevant bylaws, enacting the state program with an action plan preventing and reducing conflict of interest, providing opinions on draft-laws in the interest of preventing conflict of interest, verifying the statements of interests, reviewing cases of conflict of public and private interest defined by law, reporting its activities and measures to the Parliament of the Republic of Macedonia and submitting the report to the Government of the Republic of Macedonia and the media, cooperating with other state bodies in a bid to prevent conflict of interest, carrying out activities to train staff to detect conflict of interest in accordance with this law or with another law, taking measures specified under the Law on Prevention of Conflict of Interest, informing the public about conflicts of interests and performing other activities that are defined by law.

SCPC conducts the procedure to identify conflict of interest based on the principles of legality, confidentiality, objectivity, impartiality and non-selectiveness and it is launched and conducted ex officio, following a request by an official based on a report filed by another person and following a request of the person in charge of the body.

A procedure to identify conflict of interest can be also launched on the basis of an anonymous report unless its findings are founded on facts.

For the procedure to verify the factual state, SCPC collects documents, data and information from natural and legal entities and also from officials. Those involved are obliged to submit the needed documents within 15 days since receiving the request from SCPC. Otherwise, SCPC will check any findings

on the existence of conflict of interest ex officio. SCPC is obliged to reach a decision on the existence or non-existence of conflict of interest within 30 days after interviewing the subjects i.e. verifying the findings.

SCPC is obliged ex officio, similar with reporting conflict of interest, to notify an official unless conflict of interest is detected and to demand within 15 days after filing the decision the conflict of interest be eliminated. If it is acted upon, the Commission will cease the procedure and notify the official and the person who has filed the report. If the official falls short to act on, the Commission will issue and hand over a public warning to the civil servant. As a measure, the public warning is published in the media. If the official fails to take steps to eliminate the conflict of interest 15 days after the public warning is issued and also fails to inform the Commission, SCPC will launch an initiative before a relevant body asking the public authorizations and duties of the public office-holder to be terminated i.e. an initiative for opening a disciplinary procedure for determining a disciplinary offence for a civil or public servant.

Penalties are foreseen for violations of obligations defined under the Law on Prevention of Conflict of Interest. If steps are made against the limitations related to an employment following the expiration of public office i.e. employment in a public service, penalty in amount of EUR 500 to 1,000 in MKD equivalent will be handed down to a natural entity. Penalty in amount of EUR 3,000 to 5,000 in MKD equivalent will be handed down to a person in charge in a legal entity. Penalty for offence ranging from EUR 1,000 to 3,000 in MKD equivalent will be handed down to an official for acting against the obligations to file a statement of interest, failure to report an employment in the private sector or any other potential conflict of interest to SCPC.

4.2. Inter-institutional cooperation

The State Commission for Prevention of Corruption has the primary authorization to implement the Law on Prevention of Conflict of Interest and take adequate measures to monitor the development in this area. However, the obligation to adhere to this law and to all other relevant laws outlining measures in cases of conflict of interest refers to all bodies in the country, the bodies of the state administration, municipalities and the City of Skopje, public enterprises and all private legal and natural entities that establish relations with

the public sector.

Having in mind that “conflict of interest” is the entrance hall in corruption, i.e. a situation in which every official has the legal and moral duty to exclude himself/herself from deciding or acting upon if a possibility of conflict of interest is found, it can be concluded that without exclusion of the official, every further decision set to be reached can be considered an act of corruption (sanctioned in a different way or as a disciplinary breach at work or a crime). Hence, although it is legally simple, the institutional framework to prevent conflict of interest can be described as extensive.

Every appointed or elected person in a public office is obliged to lodge a statement of interest directly to the Commission and every administrative servant, whose employment may put him/her in situations in which conflict of interest could arise, is bound to fill in a statement of interest in the organization where s/he is employed.

In an effort to successfully implement its authorizations, the State Commission for Prevention of Corruption from 2007 to 2014 signed a protocol of cooperation with 18 institutions with duties related to the prevention of corruption and conflict of interest. It aimed at serving as a tool for swift exchange of information and documents, thus contributing to improving the actions of the institutions. It also played a role in strengthening direct cooperation through joint activities in specific and more complex cases of corruption, mutual professional assistance and joint approach in amending the regulations falling in the jurisdiction of adequate institutions.

The Protocol was signed by: the State Commission for Prevention of Corruption, the Directorate for Personal Data Protection, the Public Revenue Office, the Public Prosecutor’s Office of the Republic of Macedonia, the State Ombudsman of the Republic of Macedonia, the Judicial Council of the Republic of Macedonia, the Ministry of the Interior, the State Audit Office, the Customs Administration, the Financial Police Office, the Financial Intelligence Office, the Agency for Real Estate Cadastre, the Bureau of Public Procurements of the Republic of Macedonia, the State Appeals Commission for Public Procurements, the State Election Commission, the Council of Public

Prosecutors of the Republic of Macedonia, the Broadcasting Council⁵⁴, the Securities Commission and the Central Register of the Republic of Macedonia.

In the Protocol, the institutions agree within their authorizations to cooperate in:

- Sharing data and information;
- Providing mutual assistance while discovering cases of corruption and conflict of interest and taking necessary measures and activities in connection to these cases;
- Mutual professional cooperation in the process of educating and training of human resources;
- Coordinating activities at an internal and international level in an attempt to pave the way toward more effective prevention and repression of corruption and conflict of interest;
- Setting up joint teams including people specialized in certain areas that will enable certain specific cases in relation to prevention and repression of corruption and conflict of interest to be settled effectively and practically and
- Setting up joint teams to prepare the necessary legal regulation as well as other regulation that treats the same issue.

The Commission defines its activities in the state program for prevention and reduction of conflict of interest and plays an active role in its realization. In addition to the Commission, other active stakeholders taking part in the realization of the program include: the Parliament of the Republic of Macedonia, the Government of the Republic of Macedonia, the ministries, local self-government bodies, the Public Prosecutor's Office, other bodies and organizations, the non-governmental sector and the media.

54 In accordance with the Law on Audio and Audiovisual Services (Official Gazette of RM n. 184/2013) this body has been annulled and its authorizations have been taken over by the Agency for Audio and Audiovisual Media Service;

5. Implementation of the Law on Prevention of Conflict of Interest and other relevant regulations

5.1. Objective limitations of the model and the problem with testing

Although the general legal framework has been in force for some time and its implementation is set to continue, at the moment only the success achieved thus far i.e. the effectiveness of the system for prevention of conflict of interests in the state administration can be tested, because a bulk of the positive regulations will become void in less than two months. Starting 13 February 2015, the Law on Administrative Servants and the Law on Public Sector Employment will enter into force. Even though the changes introduced by these regulations are not extensive from a point of view to prevent conflict of interest, nevertheless the Law on Public Sector Employment includes imperative provisions that are due to strengthen the implementation of this principle.

A consistent implementation of a legal framework and public policy depends not only on objective factors (such as both material and human resources), but also on subjective factors, including political will, the commitment of relevant bodies to abide by these regulations by the book, the promptness of relevant judicial bodies and other relevant bodies supervising the application of these regulations to act accordingly. It is of vital importance to raise awareness amongst public office-holders and employees in the public sector about prevention of conflict of interest and corruption.

An objective limiting factor is the real capacities of the public services that keep records on statements of interests and one begs the question on who controls the accuracy of submitted statements.

Another factor is the precision and adequacy of the content of the statements of interest, which has to be regularly updated and harmonized with emerging circumstances and developments in a bid public authorizations of those submitting the statements as well as their private interests to be adequately covered.

An objective limiting factor towards consistent implementation of the regulations on the prevention of conflict of interests in the Republic of

Macedonia is demographics. It is necessary to make an analysis on human potentials when in a country of 2,065,000 inhabitants (with speculations suggesting that the number of those living in the country is smaller). Of those nearly 251,430 are aged 65 and over, 360,000 are employed in the private sector and 430,000 are aged up to 17 years.⁵⁵ It is required an analysis of the necessary capacities in the public sector to be made in order to prevent nepotism, defined as blood relationship stretching vertically and sideways up to fourth degree of kinship, including in-laws and godparents. Taking into consideration the obligation stemming from the Ohrid Framework Agreement on equitable representation of non-majority communities, an additional question arises about the extent of the demographic capacity of certain non-majority communities to be employed in the public sector all the while abiding to this principle consistently.

5.2. Activities of the State Commission for Prevention of Corruption in preventing conflict of interest

Implementing its primary authorization specified in the Law on Prevention of Conflict of Interest, in addition to actively monitoring developments and other legal measures, the Commission is also tasked with adopting a state program on preventing and clamping down conflict of interest (May 2008 and December 2011) with an action plan on its implementation. It identifies problems and forms of conflict of interest that are divided into nine critical areas: accumulation of public functions and profit, exertion of influence involving financial or other kinds of benefit, discretionary authorization, conduct of the office-holder when private interests are in question, gifts, nepotism, use of public good for private (personal), political and other interests, employment after the public post is terminated and use and abuse of information acquired ex officio that are not available to the public.

The action plan presents eleven sectors that are most at risk for corruption and conflict of interest:

- political sector: lack of transparency and supervision in the ongoing financial functioning of the political parties, the trade union and civil

⁵⁵ Statistics of the population on 30.06.2013 and 31.12.2013 according to gender and age, according to municipalities and statistical regions (NTES 3-2007);

organizations; shortcomings in the electoral and other regulations; an increasing level of discretionary authorizations with major differences in their intensity between certain public offices; no effects from the implementation of the Law on Lobbying; high percentage of laws adopted in a shortened i.e. urgent procedure;

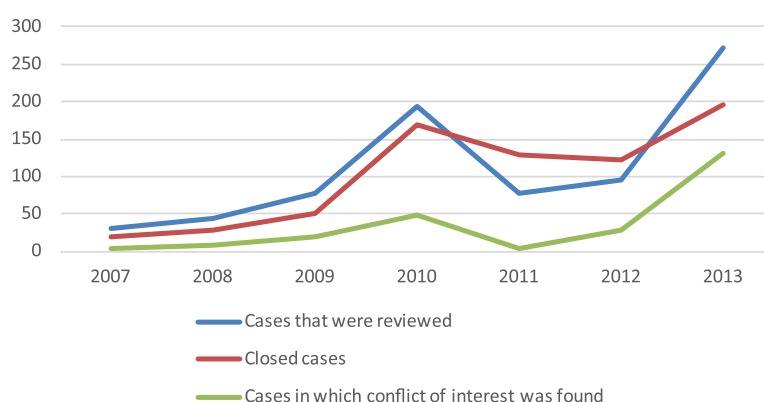
- judiciary: no stable and permanent independence of the judiciary and judges; insufficient transparency; no capacity of the Public Prosecutor's Office to assume its new role under the Law on Criminal Procedure; insufficient independence of the State Ombudsman of the Republic of Macedonia; no systematic controls of the functioning of notaries, enforcement agents and lawyers;
- public administration: incomplete decentralized management with public means; no solid guarantees regarding the implementation of work procedures; no risk assessments involving corruption in institutions of the public administration; no systematic measures preventing corruption; lack of public control over the functioning of the public administration that paves the way for various forms of conflict of interests;
- law enforcement bodies
- customs administration
- local self-government
- public sector
- private sector
- healthcare, labour and social policy
- education and sports;
- the media and civil society.⁵⁶

⁵⁶ Here, in a bid to save space, in-depth content is provided only for the first four out of the 11 sectors that are pinpointed as being subject to corruption and conflict of interest the most in the Action Plan on implementing the State Program on Prevention and Reduction of Conflict of Interest;

Table 2: SCPC's activities surrounding cases in the field of conflict of interest (Source: Reports of the State Commission for Prevention of Corruption 2007-2013)

| | 2007 ⁵⁷ | 2008 ⁵⁸ | 2009 ⁵⁹ | 2010 ⁶⁰ | 2011 ⁶¹ | 2012 ⁶² | 2013 ⁶³ |
|---|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Cases that were reviewed/*newly-established cases | 30 | 44 | 77 | 194 | 78* | 96* | 273 |
| closed cases | 19 | 29 | 50 | 169 | 128 | 123 | 196 |
| cases in which conflict of interest was found | 4 | 8 | 20 | 48 | 3 | 29 | 132 |
| cases with no conflict of interest | 7 | 16 | 30 | / | / | / | / |

Graph 1: SCPC's activities on cases in the field of conflict of interest (Source: Reports of the State Commission for Prevention of Corruption 2007-2013)



⁵⁷ Annual report about the work of the State Commission for Prevention of Corruption in 2007, page 23-41;

⁵⁸ Annual report about the work of the State Commission for Prevention of Corruption in 2008, page 29-36;

⁵⁹ Annual report about the work of the State Commission for Prevention of Corruption in 2009, page 41-47;

⁶⁰ Annual report about the work of the State Commission for Prevention of Corruption in 2010, page 22-26;

⁶¹ Annual report about the work of the State Commission for Prevention of Corruption in 2011, page 25-28;

⁶² Annual report about the work of the State Commission for Prevention of Corruption in 2012, page 28-32;

⁶³ Annual report about the work of the State Commission for Prevention of Corruption in 2013, page 36-38;

Table 3: Statements of interests filed in 2011 (Source: Reports of the State Commission for Prevention of Corruption 2007-2013)

| | 2010 | 2011 | 2012 | 2013 |
|---|------|------|------|--------------------|
| Statements of interests filed in the given year | / | 425 | 226 | 1459 ⁶⁴ |
| The total number of statements of interests filed since introducing the obligation for submitting a statement of interest ⁶⁵ | 3563 | 4160 | 4361 | 5820 |

After the official introduction of the obligation to lodge a statement of interest to the State Commission for Prevention of Corruption, 5,820 statements of interests have been filed by public office-holders suggesting that there is awareness to observe the obligation. From the available data, a connection cannot be made between the number of submitted statements and the number of procedures launched for verification, i.e. to detect the existence of conflict of interest from 2007 to 2013. The number of submitted statements of interest up to 2013 is 5,820 and the number of established cases, i.e. cases which were reviewed by SCPC from 2007 up to and including 2013 is 792 suggesting the scope of work has been mechanically increased year by year. The data in the annual SCPC reports reveal that the most critical area of conflict of interest is when the same person performs several public functions. In an effort to assess the effectiveness of the mechanisms preventing conflict of interest, the time span since introducing the obligation to lodge a statement of interest to SCPC is too short, thus the sample is too small.

What is SCPC's position on the remaining submitted statements? Does this imply that the statements which are not treated as cases by the Commission are checked and that there is no conflict of interest, or has the Commission failed to verify all the submitted statements? It can be assumed that since the introduction of conflict of interest as a phenomenon subjected to legal sanctions, the number of cases before SCPC is on the rise with inconsistent dynamics. However, of the total number of procedures launched to detect conflict of interest, the Commission determined the existence of conflict of

⁶⁴ The increasing number of newly-received statements of interest is due to an obligation, introduced after the 2013 local polls, requiring the newly-elected mayors and advisers in the bodies of local self-government units to file statement of interest;

⁶⁵ 7.12.2009;

interest in a smaller number of cases, which is insignificant up to 2013. One can beg the question whether the Commission has the capacity to verify all the statements that are filed or it acts upon only after receiving a request on the existence of conflict of interest, in which case it cannot be overlooked that a myriad of cases of conflict of interest are not taken into consideration (even provided that there are objective reasons for this). The increasing number of opened cases, closed cases and detected cases of conflict of interest in 2013 compared to the past few years is an indicator that the Commission is gradually building its capacities to tackle the issue.

Of the available data⁶⁶, it is evident that the number of office-holders (especially in local self-government units) - who are either not informed enough or are knowingly evading the obligation to file a statement of interest - is great, which confines the State Commission for Prevention of Corruption to act in a preventative manner in detecting and curbing corruptive activities in the public sector. Hence, it is necessary to take measures to strengthen SCPC's capacities in consistently implementing the Law on Prevention of Conflict of Interest. In this regard, the capacities for holding responsible all the office-holders evading this obligation should be underscored.

5.3. Preventing conflict of interest in procedures for hiring administrative servants

When it comes to conflict of interest and its prevention in the recruitment of new staff in the public administration, this process is closely related to the procedure for selection of civil servants. The bodies of the state administration involved in the procedure, i.e. the body seeking new employment and the Administration Agency, as an independent state body in charge of conducting procedures for selection of civil servants through a public call, are obliged to prevent conflict of interest in the procedure to select an administrative servant.

Within its authorizations, the Administration Agency up to now acts preventatively, i.e. it takes measures prior to the establishment of a selection commission. If such a case occurs, a member of the commission is excluded, i.e. the member is replaced by another one in the commission. If the member

66 http://www.dksk.org.mk/index.php?option=com_content&task=view&id=199&Itemid=57

of the commission is also a candidate, then s/he is replaced. There have been cases in which a member of the commission quit the job for which s/he had applied. In a bid to prevent such cases, in which a member of the commission has applied for the job, the Agency requires every application for a job position to be announced in order the candidate not to be introduced in the selection commission and to prevent all kinds of conflicts of interests.

The procedure to select a civil servant is concluded after a decision is reached for selecting the best candidate by a state secretary (if the employer is a ministry), secretary general or secretary (of a municipality or the City of Skopje) or by an office-holder (director or president of a commission as a collegial body without an appointed secretary). One candidate out of the top three candidates is picked after a submission by the Administration Agency to the body seeking an employment. Thus far, the Administration Agency hasn't received a complaint by a discontent candidate in connection to conflict of interest.

It suggests that the formal aspect of employments in the state administration is observed and that office-holders are careful in avoiding conflict of interest.⁶⁷

6. Recommendations for future development of the framework on prevention of conflict of interest

The State Commission on Prevention of Corruption puts forward several ways for prevention and settlement of conflict of interest:

1. Identifying critical areas of conflict of interest

With respect to this issue, the Commission has already laid solid foundations by identifying eleven sectors that are largely subject to corruption and conflict of interest.

One general measure, which needs to be introduced in a systematic way, is

⁶⁷ On the other hand, this might suggest that candidates lack information on the possibility to be protected from conflict of interest. Until there are formally launched procedures on the matter, one cannot reach such a conclusion with certainty. However, what need to be taken into consideration are the frequent remarks involving a high level of politicization in the public administration, especially in procedures for selecting new staff. See footnote 12;

the establishment of a register of office-holders. The same measure has been already planned, however the register needs to include columns with data from the statement of interest of every office-holder. Data from the register should be made public. A body of the state administration in the field of justice, public administration or the State Commission for Prevention of Corruption can be tasked with setting up and running this register.

An analysis needs to be conducted on the implementation of the provisions stemming from the Law on Prevention of Conflict of Interest in the public sector, i.e. for other employees in the public sector that are classified as Group II (officials with special authorizations) and Group III (providers of public services) in accordance with the Law on Public Sector Employment. Consequently, an effective mechanism should be introduced for verifying statements of interest (their submission, precision and validity i.e. truthfulness of the data) in public service providers, where the staff files statements directly to the office-holder, especially if they are not subject to (or in cases in which it is not precisely defined) further external verification by a relevant body.

More serious analysis is needed to verify whether there is consistent application of the practice to abide by the provision on preventing conflict of interest in the form of nepotism, defined as blood relations up to fourth degree of kinship horizontally and also sideways including in-laws and godparents. How often is this provision directed by other (separate) laws? In which of the eleven sectors is this provision most difficult to be applied? Is there a need the provision to be revised or even possibly eased given the demographic characteristics of the Republic of Macedonia?

2. Procedures providing transparency and supervision, where some basis measures are included, such as submitting a statement to report private interest

A legal obligation needs to be envisaged for all the bodies of the state administration and other providers of public services to be able to highlight those jobs in acts on the systematization of job positions that may be subject to conflict of interest. Based on data from the act on systematization, every administrative servant will be required to file a statement of interest to the body (organization) in which the s/he is employed and the statement will be incorporated in the Register of Civil Servants, i.e. Register of Public Servants,

which are kept by the Ministry of Information Society and Administration.

Statements of interests need to be unequivocally defined as information of public character by law.

3. A questionnaire that has to be filled out by an official

The Commission should prepare forms of “statement of interest” and a manual on how to fill out a statement containing adequate guidelines, particularly for public office-holders and administrative servants that may come across a conflict of interest while performing official duties.

4. Introducing a procedure for consulting and providing guidelines when acting upon a conflict of interest

5. Introducing and providing trainings to help the subject to identify and prevent conflict of interest

In view of preventative actions, it is necessary to continuously educate all public office-holders and civil servants that may face conflict of interest while performing their official duties and also to promote other preventative measures: guidelines to be put up in public places - where rights and obligations are exercised, and where a civil servant may have a conflict of interest with a client - on how to recognize a conflict of interest and what an official and/or a client is required to do if conflict of interest arises.

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CSOs network for prevention of spoils and conflict of interest in the public administration is a network of 18 civil society organizations, with a strategic focus in the prevention of conflict of interests in the public administration at national and local levels. The network is coordinated by the Institute for Democracy “Societas Civilis” Skopje (IDSCS), Ohrid Institute for Economic Strategies and International relations (OI) and the Macedonian Institute for Media (MIM). In the period December 2013-May 2015, the activities of the network are financed by the European Union.



The Institute for Democracy “Societas Civilis” - Skopje (IDSCS) is a Macedonian based think-tank organisation that is non-governmental, non-partisan and non-profit. It was established in 1999 by a group of intellectuals gathered around the idea for democracy, solidarity and civil society. Long term objectives of the Institute are to work on balanced socio economic development, active citizenship and participative political culture. In this direction, we focus our activities on rule of law, good governance and multiethnic and multicultural coexistence. IDSCS work is primarily based on sociometric research and project-based activities. We believe that human capital is a key precondition for positive social change, hence we eagerly undertake capacity building projects based on skills and knowledge transfer. Finally, ours society improvement is directly linked to availability of resources for self-reflection. In this sense, we advocate policy recommendations and strive to enrich the public discourse through promotion of evidence based policy, publishing and public events.



SPOILS SYSTEM AND CONFLICT OF INTERESTS IN THE PUBLIC ADMINISTRATION

State, legal framework for prevention
and effectiveness of the model



CSOs Watchdog Network
to Prevent Spoils and Conflict of Interest
in the Public Administration

Project is financed by the EU